

**D-1**

**DEPARTMENT OF ADMINISTRATION (F20-0302)**

Title 2, Chapter 11, Article 5, Governmental Mall Development



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** February 25, 2020

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

**FROM:** Council Staff

**DATE:** February 11, 2020

**SUBJECT:** Arizona Department of Administration  
Title 2, Chapter 11

**New Article:** Article 5  
**New Section:** R2-11-501

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This regular rulemaking from the Department of Administration relating to rules in Title 2, Chapter 11 regarding public buildings maintenance. The Department is seeking to create a new article, Article 5, and section, R2-11-501, that establishes an appeals process for denials or summary suspensions relating to governmental mall developments.

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

Yes. ADOA cites to both general and specific authority for these rules.

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

No. The rules do not establish a 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?**

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

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

The Department believes the public will benefit from the rulemaking in that it will provide a clear path to dispute decisions made by the Department in regards to the review and approval or disapproval in writing of requests for permission to develop structures or sites or award construction contracts for new buildings or improvements within the governmental mall. Other than the minimal administrative costs for compliance of the rule the Department has estimated no cost impact for this rule. No additional positions will have to be created to enforce the rule, nor does the rule place any burden on the stakeholders.

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

The Department had concluded that the process will have minimal or no financial impact. The addition of an administrative hearing is intended to benefit individuals and organizations, allowing them to contest the Department's decision without a court proceeding.

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

Key stakeholders include: the Department, and individuals or organizations who request to develop new sites or make improvements to buildings in the government mall.

The Department will benefit from the rules by having a clear process and public record of disputes.

Individuals or organizations who request to develop new sites or make improvements to buildings in the government mall will benefit by having the ability to contest the Department's decision. The hearing will provide the individual or organization the opportunity to tell its side of the story in a dispute, establishing a record of facts toward some type of resolution.

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

No. The final rules are not a substantial change, considered as a whole, from the proposed rules.

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

ADOA did not receive any comments on the proposed rules.

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

Yes. These rules require a permit. ADOA issues a general permit for these rules and thus complies with A.R.S. § 41-1037.

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

Not applicable. There is no corresponding federal law.

**11. Conclusion**

As mentioned above, the Department seeking to create a new section, to establish an appeals process for denials or summary suspensions for new buildings or improvements within the governmental mall.

ADOA accepts the usual 60-day delayed effective date for the amended rules. Council staff recommends approval of this rulemaking.

**Douglas A. Ducey**  
Governor



**Andy Tobin**  
Director

**ARIZONA DEPARTMENT OF ADMINISTRATION**

**DIRECTORS OFFICE**  
100 NORTH 15TH AVENUE • SUITE 403  
PHOENIX, ARIZONA 85007

January 16, 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: ADOA, Citation to Title 2, Chapter 11, Article 5, Regular Rulemaking

Dear Nicole Sornsin:

1. The close of record date: 1/1/2020
2. Does the rulemaking activity relate to a Five Year Review Report: No
  - a. If yes, the date the Council approved the Five Year Review Report: N/A
3. Does the rule establish a new fee: No
4. Does the rule contain a fee increase: No
5. Is an immediate effective date requested pursuant to A.R.S. 41-1032: No

ADOA certifies that the preamble discloses a reference to any study relevant to the rule that the agency reviewed. ADOA certifies that the preamble states that it did not rely on it in the ADOA's evaluation of or justification for the rule. ADOA certifies that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule.

The following documents are enclosed:

1. Notice of Final Rulemaking, including the preamble, table of contents, and text of each rule;
2. An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055;
3. If applicable : The written comments received by the agency concerning the proposed rule and a written record, transcript, or minutes of any testimony received if the agency maintains a written record, transcript or minutes;
4. If applicable : Any analysis submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of business in other states;
5. If applicable : Material incorporated by reference;

Nicole Sornsin, Chair

June 4, 2019

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6. General and specific statutes authorizing the rules, including relevant statutory definitions; and
7. If applicable : If a term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule, the statute or other rule referred to in the definition.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nola Barnes", with a long horizontal flourish extending to the right.

Nola Barnes

Assistant Director, ADOA, GSD

NOTICE OF FINAL RULEMAKING

TITLE #2. ARIZONA DEPARTMENT OF ADMINISTRATION

CHAPTER #11. DEPARTMENT OF ADMINISTRATION PUBLIC BUILDING MAINTENANCE

PREAMBLE

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

R2-11-501	New Section
Article 5	New Article

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

Authorizing statute: §A.R.S. 41-703

Implementing statute: A.R.S. §41-791 (D), and A.R.S. §74-796 (A)

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

Effective date will be the standard 60 days from after a certified original and two copies of the rule and preamble are filed in the office of the Secretary of State and the time and date are affixed as specified in A.R.S. § 41-1032(A).

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

Not applicable

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

Not applicable

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

Notice of Rulemaking Docket Opening: (volume #25, Issue 25) A.A.R. (page#1560)

Notice of Proposed Rulemaking: (volume #25, Issue 25) A.A.R. (page #1481)

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

Name:	Nola Barnes
Address:	1110 W Washington, suite 155
Telephone:	(602) 542-1954
Fax:	Not applicable
Web site:	<a href="http://www.gsd.az.gov">www.gsd.az.gov</a>

**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 wishes to establish an appeals process for ARS §41-1362; 41-1363; 41-1364.

**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 Department is providing a path for individuals or organizations to contest the Department's final decision without a court proceeding. The process should have minimal or no financial impact. The Administrative costs for compliance of these rules are minimal to the Department. There are no viable alternative methods of compliance that would apply.

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

None

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

None

**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:**

*(Editor's Note: All agencies answer first part of question here.)*

**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 reviews permit requests submitted to the City and provides approval or denial recommendations. All requests for a permit and the issuance of the permit is facilitated through the City of Phoenix.

**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:**

A.R.S. §41-1362

A.R.S. §41-1363  
A.R.S. §41-13624

- b. **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:**

None submitted

*(Editor's Note: If the answer is "yes" to Preamble item (12)(c),  
then the analysis should be filed with the rulemaking package)*

- 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:**

None

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

*(Editor's Note: Rule text begins per R1-1-502(B)(18).)*

**ARTICLE 5. GOVERNMENTAL MALL DEVELOPMENT**

**R2-11-501. Review of Denial or Summary Suspension**

- A. Under A.R.S. Title 41, Chapter 6, Article 10, an applicant, may obtain a hearing on a denial or summary suspension.**
- B. An applicant appealing a denial shall file a notice of appeal with the Department within 30 days after receiving the notice of denial.**
- C. If the Director summarily suspends a development project, the Department shall promptly prepare and serve a notice of hearing under Arizona Administrative Code Title 2, Chapter 19.**
- D. The Department shall notify the Office of Administrative Hearings, which shall schedule and conduct the hearing.**

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT**  
**TITLE 2. ADMINISTRATION**  
**CHAPTER 11. DEPARTMENT OF ADMINISTRATION PUBLIC BUILDING MAINTENANCE**  
**ARTICLE 5**

**1. Identification of the proposed rulemaking:**

The Arizona Department of Administration (ADOA) is amending the rules in A.A.C. Title 2, Chapters 11, to establish an appeals process for A.R.S. §41-1362; §41-1363; and §41-1364.

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

The rule will benefit the public by providing a clear path to dispute decisions made by the Department in regards to the review and approval or disapproval in writing of requests for permission to develop structures or sites or award construction contracts for new buildings or improvements within the governmental mall.

**3. A cost benefit analysis of the following:**

- (a) Costs and benefits to state agencies directly affected by the rulemaking, including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule;**

The administrative costs for compliance of this rule are minimal to the Department. No new FTEs are required for the Department to implement and enforce the proposed rule.

- (b) Costs and benefits to political subdivisions directly affected by the rulemaking;**

There is no estimated cost impact. The benefit of the administrative hearing process is that it provides a fair, impartial, and independent hearing to bring resolution to a contested decision. Similarly, it provides the parties (including a political subdivision) with a venue to present evidence and give testimony.

- (c) Costs and benefits to businesses directly affected by the rulemaking;**

There is no estimated cost impact; the benefit of the administrative hearing process is that it establishes a record of facts toward some type of resolution. In the hearing, a business is afforded to tell its side of the story in a dispute.

**4. Impact on private and public employment in businesses subject to the rulemaking:**

The benefit of the administrative hearing process is that it establishes a record of facts toward some type of resolution. In the hearing, a political subdivision is afforded to tell its side of the story in a dispute.

**5. Impact on small businesses:**

The benefit of the administrative hearing process is that it establishes a record of facts toward some type of resolution. In the hearing, a political subdivision is afforded to tell its side of the story in a dispute.

**6. Cost and benefit to private persons and consumers who are directly affected by proposed rulemaking:**

The Department reviews requests for permission to develop structures or sites or award construction contracts for new buildings or improvements within the governmental mall submitted to the City and provides approval or denial recommendations. All requests for permission and the issuance of a permit are facilitated through the City. This rule will provide a clear path and ensure that individuals can contest decisions made by the Department.

**7. Probable effect on state revenues:**

The Department does not anticipate that the proposed rules will have any effect on state revenues.

**8. Less intrusive or less costly alternative methods considered:**

The establishment of this rule provides a path for individuals or organizations to contest the Department's final decision without a court proceeding. The process will have minimal or no financial impact. The administrative costs for compliance of these rules are minimal to the Department. There are no viable alternative methods of compliance that would apply.

**9. Data on which the rule is based:**

A.R.S. §41-1362; §41-1363; and §41-1364  
Arizona Administrative Code, Title 2, Chapter 19  
A.R.S. Title 41, Chapter 6, Article 10

# Arizona Administrative CODE

2 A.A.C. 11 Supp. 18-3

www.azsos.gov

This Chapter contains rule Sections that expired under A.R.S. § 41-1056(J) on June 13, 2017.

Title 2



## TITLE 2. ADMINISTRATION

### CHAPTER 11. DEPARTMENT OF ADMINISTRATION - PUBLIC BUILDINGS MAINTENANCE

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.

<a href="#">R2-11-112.</a>	<a href="#">Expired</a> .....	<a href="#">3</a>	<a href="#">R2-11-207.</a>	<a href="#">Expired</a> .....	<a href="#">4</a>
<a href="#">R2-11-206.</a>	<a href="#">Expired</a> .....	<a href="#">4</a>	<a href="#">R2-11-208.</a>	<a href="#">Expired</a> .....	<a href="#">4</a>

**Questions about the expired rules? Contact:**

Department: Governor’s Regulatory Review Council  
Address: 100 N. 15th Ave., #305, Phoenix, AZ 85007  
Telephone: (602) 542-2058  
[Website: https://grrc.az.gov](https://grrc.az.gov)

**Questions about rules in this Chapter? Contact:**

Department: ADOA, General Services Division  
Address: 100 N. 15th Ave.  
Telephone: (602) 542-1579  
[Website: https://grrc.az.gov](https://grrc.az.gov)

**The release of this Chapter in Supp. 18-3 replaces Supp. 04-4, 9 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 2018 is cited as Supp. 18-1.

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 2. ADMINISTRATION**

**CHAPTER 11. DEPARTMENT OF ADMINISTRATION - PUBLIC BUILDINGS MAINTENANCE**

*Editor's Note: 2 A.A.C. 11 made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003. Under A.R.S. § 41-1026(E) these rules repeal and replace the emergency rules made at 9 A.A.R. 3046 (Supp. 03-3).*

*Editor's Note: 2 A.A.C. 11 made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). The public buildings maintenance rules were previously in 2 A.A.C. 6, which expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).*

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## CHAPTER 11. DEPARTMENT OF ADMINISTRATION - PUBLIC BUILDINGS MAINTENANCE

**ARTICLE 1. GENERAL****R2-11-101. Definitions**

The following definitions apply in this Chapter:

1. "Agency" has the meaning in A.R.S. § 41-1001.
2. "Department" means the Department of Administration.
3. "Director" means the Director of the Department of Administration or the Director's designated agent.
4. "Person" has the meaning in A.R.S. § 1-215 but includes an agency, unless the agency is listed in A.R.S. § 41-791(B)(3).
5. "State building" means a building under the jurisdiction of the Director.
6. "State property" means all real property and buildings under the jurisdiction of the Department, as prescribed by A.R.S. § 41-791.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-102. Alcoholic Beverages**

A person shall not possess or consume alcoholic beverages on state property.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-103. Altering Buildings or Grounds**

A person shall not alter, remodel, or redecorate state property without prior approval from the Director.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-104. Animals**

A person shall not bring an animal, other than an animal guide or service animal, onto state property without prior approval from the Director.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-105. Bicycles, Rollerblades, Rollerskates, and Skateboards**

A person shall not use or operate bicycles, rollerblades, rollerskates, or skateboards on state property, unless that person is an on-duty police officer on bicycle patrol or a state employee using a bicycle for transportation to and from work.

**Historical Note**

New Section made by emergency rulemaking under

A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-106. Electrical or Plumbing Systems**

A person shall not install or modify an electrical or plumbing system on state property, or any part of such a system, without prior approval from the Director.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-107. Heating or Cooling Equipment**

A person shall not tamper with or adjust heating or cooling equipment or controls on state property without prior approval from the Director.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-108. Noise**

A person shall not create loud noises on state property that interfere with the work of an employee or daily business of an agency.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-109. Plants**

A person shall not pick, cut, or remove flowers, shrubs, trees, or other plants or parts of plants from state property without prior approval from the Director.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-110. Roofs**

A person shall not be on the roof of a state building without prior approval from the Director.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-111. Signs**

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A person shall not install a sign of any type on state property without prior approval from the Director.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-112. Expired****Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2563, effective June 13, 2017 (Supp. 18-3).

**R2-11-113. Waste**

- A.** A person shall not leave garbage, litter, trash, human or animal waste, or any other kind of waste on state property unless the waste is deposited in a container the Department maintains for that kind of waste.
- B.** A person shall not deposit waste collected from a private residence or commercial business on state property.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-114. Windows**

A person shall not open windows in air-conditioned state buildings without prior approval from the Director.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**ARTICLE 2. TRAFFIC AND PARKING****R2-11-201. Definitions**

The following definitions apply in this Article:

1. "Citation" means a document, issued by the Department's Capitol Police under A.R.S. § 41-796, that contains a notice to appear.
2. "Decal" means a graphic designed label, placard, sticker, or tag that, when properly displayed, authorizes preferential parking privileges in state parking lots for the driver of a vehicle.
3. "Designate" means to identify with signs or markings.
4. "Employee" means any person elected, appointed, or employed by the state, either on a part-time or full-time basis, whether paid by payroll or under contract or serving as a volunteer.
5. "Loading zone" means an area that is painted yellow, designating a place for business pickups and deliveries.

6. "No-parking zone" means an area that is painted red, designating a place where parking is not permitted.
7. "Parking" means stopping or placing a vehicle in an area, regardless of whether the vehicle is attended or unattended.
8. "Parking space" means an area that the Department outlines with painted white lines, designating a place for parking a vehicle.
9. "Reserved parking space" means any parking space designated for a special purpose or a special class, such as physically disabled persons, travel reduction program participants, or visitors.
10. "Safety zone" means an area or space that is both:
  - a. Officially set apart within a roadway for the exclusive use of pedestrians; and
  - b. Protected, marked, or indicated by adequate signs as to be plainly visible at all times.
11. "Vehicle" has the meaning in A.R.S. § 28-101 and includes a "motor vehicle," a term also defined in A.R.S. § 28-101.
12. "Visitor" means any person other than an employee.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-202. General Provisions**

- A.** The state is not responsible for the care and protection of any vehicle or its contents at any time the vehicle is operated or parked on state property.
- B.** The person to whom a parking permit is issued is responsible for all parking violations involving the person's vehicle.
- C.** If parking lot or area reservation hours are altered, the Department shall post notices at the parking lot or area, and the changes are effective immediately.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-203. Parking Prohibitions**

- A.** A person shall not park a vehicle in a:
1. Bicycle rack or area;
  2. Loading zone, unless the person is making a pickup or delivery and the person's vehicle has commercial license plates or is state owned. Loading zone parking is permitted during the time the person is actually engaged in loading or unloading;
  3. Location that is not designated as a parking space;
  4. No parking zone;
  5. Reserved parking space without authorization, unless the person is a visitor using parking reserved for visitors; or
  6. Safety zone.
- B.** A person shall not obstruct any of the following with a vehicle:
1. Building entrance,
  2. Driveway,
  3. Fire lane,
  4. Loading dock, or
  5. Properly parked vehicle.
- C.** A person shall not drive or park a vehicle:

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1. On a pedestrian path or sidewalk; or
  2. In any area on state property closed by barricades, chain, tape, rope, traffic cones, or other traffic-control devices.
- D.** A person shall not park outside of the area designated by painted white lines when using a parking space.
- E.** In an emergency the Department may impose parking limitations or prohibitions required by the particular circumstances.
- F.** For special events the Department may impose parking limitations or prohibitions based on all of the following factors:
1. Previous experience with similar events, and
  2. Risk data.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-204. Parking Decals**

- A.** Unless a person is a visitor using parking reserved for visitors, the person shall properly display a reserved parking space decal in the manner prescribed in this Section to be authorized to park in a reserved parking space.
- B.** To park in a parking space reserved for the physically disabled, a person shall obtain a removable windshield placard or special plates, bearing the international symbol of access, from the Department of Transportation, Motor Vehicle Division, and display the placard or plates as prescribed by rules of the Department of Transportation.
- C.** A person with a decal for any other kind of reserved parking space shall display the decal from the rearview mirror, attach the decal to the left side of the windshield, or display the decal on the left side of the dashboard. The person shall ensure that the decal is visible through the windshield so it can be read by someone standing outside the vehicle.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-205. Operation of Vehicles on State Property**

- A.** On state property the Department shall enforce all state laws governing the operation of vehicles.
- B.** A person driving or parking a vehicle on state property shall obey posted traffic and parking signs.
- C.** The Department's Capitol Police shall enforce a maximum speed limit of 5 miles per hour in all state parking lots under the Department's jurisdiction.
- D.** Any person who has been in an accident involving a moving vehicle on state property shall immediately report the accident to the Department's Capitol Police.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-206. Expired****Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2563, effective June 13, 2017 (Supp. 18-3).

**R2-11-207. Expired****Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2563, effective June 13, 2017 (Supp. 18-3).

**R2-11-208. Expired****Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2563, effective June 13, 2017 (Supp. 18-3).

**R2-11-209. Removal of Vehicles from State Property**

The Department shall remove any vehicle on state property parked in a barricaded area, abandoned, or parked in a manner that constitutes a hazard or impediment to vehicular or pedestrian traffic or to the movement and operation of emergency equipment. The registered owner of the vehicle shall pay for all costs of removal.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**ARTICLE 3. SOLICITATION****R2-11-301. Definitions**

The following definitions apply in this Article:

1. "Solicitation" means any activity that can be interpreted as being for the promotion, sale, or transfer of products, services, memberships, or causes. Distribution or posting of advertising, circulars, flyers, handbills, leaflets, posters, or other printed information for these purposes is solicitation.
2. "Solicitation material" means advertising, circulars, flyers, handbills, leaflets, posters, or other printed information.
3. "Solicitor" means a person conducting a solicitation.
4. "Work site" means any location within a state building where public employees or officers conduct the daily business of an agency. Cafeterias and break rooms are not work sites.

**Historical Note**

New Section made by emergency rulemaking under

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A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-302. Unauthorized Solicitation Prohibited**

A person shall not conduct a solicitation on state property without express written permission from the Director.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-303. Application**

- A. Any person who would like to conduct a solicitation on state property may apply for a permit by filing, either in person or by mail, a Department-approved solicitation application form with the Director's Office.
- B. The completed application form shall be submitted at least 15 days before the desired date of the solicitation. A completed application form is one that is legible and contains, at a minimum, all of the following information:
  1. The name, address, and telephone number of the solicitor;
  2. The proposed date of the solicitation and the approximate starting and concluding times;
  3. The specific, proposed location for the solicitation;
  4. A general description of the solicitation's purpose; and
  5. Copies of solicitation materials to be used.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-304. Processing Procedure**

- A. Within three days of receiving an application, the Department shall notify the applicant that the application is either complete or incomplete. If the application is incomplete, the notice shall specify what information is missing.
- B. An applicant with an incomplete application shall supply the missing information within five days after the date of the notice. If the applicant fails to do so, the Department may deny the permit.
- C. Upon receipt of all missing information within five days, as specified in subsection (B), the Department shall notify the applicant that the application is complete.
- D. The Department shall not process an application for a permit until the applicant has fully complied with R2-11-303.
- E. The Director shall render a permit decision no later than three days after receipt of a complete application. The date of receipt is the postmark date of the notice advising the applicant that the application is complete.
- F. For the purpose of A.R.S. § 41-1073, the Department establishes the following permit time-frames:
  1. Administrative completeness review time-frame: three days.
  2. Substantive review time-frame: three days.
  3. Overall time-frame: six days.

**Historical Note**

New Section made by emergency rulemaking under

A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-305. Permit Issuance; Denial**

- A. Before issuing a permit, the Director shall review the application.
- B. After consideration of the factors in subsection (C), the Director may issue a permit to an applicant who has complied with the application requirements in R2-11-303.
- C. The Director may deny a permit for one or more of the following reasons:
  1. The solicitation interferes with the work of an employee or daily business of an agency;
  2. The solicitation conflicts with the time, place, manner, or duration of other events or solicitations for which permits have been issued or are pending;
  3. The solicitation creates a risk of injury or illness to persons or risk of danger to property; or
  4. The applicant or solicitation fails to comply with the requirements of this Article.
- D. A permit shall not be issued earlier than 60 days before the solicitation.
- E. If the Director denies a permit, the Department shall send the applicant a written notice explaining:
  1. The reason for denial, with citations to supporting statutes or rules,
  2. The applicant's right to seek a hearing to challenge the denial,
  3. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06, and
  4. The time periods for appealing the denial.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-306. Bulletin Boards**

- A. The Director shall designate at least one bulletin board for solicitation material in each state building.
- B. A person conducting a solicitation shall post solicitation material only on bulletin boards designated under subsection (A).
- C. The Department shall remove solicitation material that is outdated or improperly posted.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-307. State Resources**

A person shall not use state materials, supplies, or equipment or other resources, such as payroll stuffing or interoffice mail, to conduct a solicitation.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under

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A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-308. Work Sites**

Except for posting solicitation material on a bulletin board designated under R2-11-306, a person shall not conduct a solicitation at a work site.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-309. Exemptions**

- A. This Article does not apply to the following state programs:
1. The State Deferred Compensation Program,
  2. The State Employees Charitable Campaign,
  3. The U.S. Savings Bond Drive,
  4. The United Blood Services Blood Drive,
  5. The Capitol Rideshare Commuter Club,
  6. The Capitol Rideshare Clean Air Campaign,
  7. The Employee Wellness Program, and
  8. The employee recognition programs of each agency subject to these rules.
- B. An employee association composed principally of employees of state government agencies may apply under this Article for a permit to conduct a solicitation at a work site.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3). Amended by final rulemaking at 10 A.A.R. 5184, effective December 7, 2004 under A.R.S. § 41-1052(E) (Supp. 04-4).

**R2-11-310. Suspension or Revocation**

- A. The Director may suspend or revoke a permit for failure to comply with this Article or other applicable laws.
- B. Before the Director suspends or revokes a permit, the Department shall send the solicitor written notice, explaining:
1. The reason for suspension or revocation, with citations to supporting statutes or rules;
  2. The solicitor's right to a hearing before suspension or revocation;
  3. The time and place of the hearing concerning the suspension or revocation.
- C. If the Director finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in the order, the Director may summarily suspend the permit pending proceedings for revocation or other action, based on circumstances of the emergency.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-311. Review of Denial or Summary Suspension**

- A. Under A.R.S. Title 41, Chapter 6, Article 10, an applicant or solicitor may obtain a hearing on a denial or summary suspension.
- B. An applicant appealing a denial shall file a notice of appeal with the Department within 30 days after receiving the notice prescribed in R2-11-305(E).
- C. If the Director summarily suspends a permit under R2-11-310(C), the Department shall promptly prepare and serve a notice of hearing under A.R.S. § 41-1092.05.
- D. The Department shall notify the Office of Administrative Hearings, which shall schedule and conduct the hearing.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**ARTICLE 4. SPECIAL EVENTS****R2-11-401. Definitions**

The following definitions apply in this Article:

1. "Special event" or "event" means an assembly, demonstration, display, festival, parade, or rally conducted by a person other than a ceremony, gathering, or press conference conducted by a person authorized by the head of a state agency using the agency's own office space.
2. "Sponsor" means the person holding a special event.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-402. Unauthorized Special Event Prohibited**

A person shall not use state buildings or grounds for a special event without express written permission from the Director.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-403. Application**

- A. Any person who would like to hold a special event may apply for a permit by filing, either in person or by mail, a Department-approved event application form with the Office of Special Events.
- B. The completed application form shall be submitted at least two days before the desired date of the special event. A completed application form is one that is legible and contains, at a minimum, all of the following information:
1. The name, address, and telephone number of the sponsor;
  2. The proposed date of the event and the approximate starting and concluding times;
  3. The specific, proposed location for the event;
  4. A general description of the event, including equipment and facilities to be used;
  5. Approximate number of persons expected to be in attendance;

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6. The name, address, and telephone number of the person responsible for clean-up of the area after the activity, if different from the person in subsection (B)(1);
  7. The name, address, and telephone number of any chief monitor who will be designated to direct the event;
  8. A description of the badge or article of clothing used to identify monitors;
  9. A copy of any insurance policy for the special event; and
  10. A copy of any contract for medical, sanitary, and security services.
- C. The Director may accept a completed application form submitted less than two days before a press conference if the Director determines that enforcing the two-day requirement would nullify the need for the press conference. In this situation, R2-11-404 does not apply.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-404. Processing Procedure**

- A. Within one day of receiving an application, the Department shall notify the applicant that the application is either complete or incomplete. If the application is incomplete, the notice shall specify what information is missing.
- B. An applicant with an incomplete application shall supply the missing information within five days after the date of the notice. If the applicant fails to do so, the Department may deny the permit.
- C. Upon receipt of all missing information within five days, as specified in subsection (B), the Department shall notify the applicant that the application is complete.
- D. The Department shall not process an application for a permit until the applicant has fully complied with R2-11-403.
- E. The Director shall render a permit decision no later than one day after receipt of a complete application. The date of receipt is the postmark date of the notice advising the applicant that the application is complete.
- F. For the purpose of A.R.S. § 41-1073, the Department establishes the following permit time-frames:
  1. Administrative completeness review time-frame: one day.
  2. Substantive review time-frame: one day.
  3. Overall time-frame: two days.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-405. Permit Issuance; Denial**

- A. Before issuing a permit, the Director shall review the application.
- B. After consideration of the factors in subsection (C), the Director may issue a permit to an applicant who has:
  1. Complied with the application requirements in R2-11-403;
  2. Posted any deposit necessary under R2-11-407;
  3. Obtained any insurance necessary under R2-11-407; and
  4. Submitted evidence that the applicant will provide any medical, sanitary, and security services necessary under

R2-11-407. Submission of a copy of the contract for these services will satisfy this requirement.

- C. The Director may deny a permit for one or more of the following reasons:
  1. The event interferes with the work of an employee or daily business of an agency;
  2. The event conflicts with the time, place, manner, or duration of other events for which permits have been issued or are pending;
  3. The event creates a risk of injury or illness to persons or risk of danger to property; or
  4. The applicant or permit fails to comply with the requirements of this Article.
- D. A permit shall not be issued earlier than 60 days before the special event.
- E. If the Director denies a permit, the Department shall send the applicant a written notice explaining:
  1. The reason for denial, with citations to supporting statutes or rules;
  2. The applicant's right to seek a hearing to challenge the denial;
  3. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
  4. The time periods for appealing the denial.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-406. Monitors**

The sponsor shall designate one monitor for every 50 persons expected to be in attendance. The monitors shall wear a uniform, distinctive badge, or a distinctive article of clothing at all times during the event for identification purposes.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-407. Risk Management**

- A. The Director may take one or more of the following actions to the extent it is necessary and in the best interests of the state:
  1. Impose conditions on the conduct of the event in the permit;
  2. Require the applicant to post a deposit against damage and clean-up expense;
  3. Require the applicant to carry liability insurance and provide the certificate of insurance; and
  4. Require the applicant to provide medical, sanitary, and security services.
- B. The Director shall consider all of the following criteria to determine whether one or more of the actions in subsection (A) is necessary and in the best interests of the state:
  1. Previous experience with similar events;
  2. Deposits required for similar events in Arizona;
  3. Risk data;
  4. Medical, sanitary, and security services required for similar events in Arizona and the cost of those services.

## CHAPTER 11. DEPARTMENT OF ADMINISTRATION - PUBLIC BUILDINGS MAINTENANCE

- C. The Department shall not provide insurance or guarantee against damage to equipment or personal property of any person using state buildings or grounds.
- D. If the Director requires insurance for a special event, the sponsor shall list the state of Arizona and the Department of Administration as additional insured entities.
- E. The sponsor is liable to the state for any injury done to its property and for any expense arising out of the sponsor's use of state buildings or grounds.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-408. Suspension or Revocation**

- A. The Director may suspend or revoke a permit for failure to comply with this Article, permit conditions, or other applicable laws.
- B. Before the Director suspends or revokes a permit, the Department shall send the sponsor written notice, explaining:
  1. The reason for suspension or revocation, with citations to supporting statutes or rules;
  2. The sponsor's right to a hearing before suspension or revocation.
- C. If the Director finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in the order, the Director may summarily suspend a permit pending proceedings for revocation or other action, based on the circumstances of the emergency.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency

Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**R2-11-409. Review of Denial or Summary Suspension**

- A. Under A.R.S. Title 41, Chapter 6, Article 10, an applicant or sponsor may obtain a hearing on a denial or summary suspension.
- B. An applicant appealing a denial shall file a notice of appeal with the Department within 30 days after receiving the notice prescribed in R2-11-405(E).
- C. The Department shall notify the Office of Administrative Hearings, which shall schedule and conduct the hearing.
- D. If the Director summarily suspends a permit under R2-11-408(C), the Department shall promptly prepare and serve a notice of hearing under A.R.S. § 41-1092.05.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

**ARTICLE 5. SEVERABILITY****R2-11-501 Validity of Rules**

If a rule or portion of a rule contained in this Chapter is held unconstitutional or invalid, the holding does not affect the validity of the remaining rules.

**Historical Note**

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 3046, effective June 18, 2003 for a period of 180 days (Supp. 03-2). Emergency Section repealed and replaced by new Section under A.R.S. § 41-1026(E) made by final rulemaking at 9 A.A.R. 3781, effective August 8, 2003 (Supp. 03-3).

41-703. Duties of director

The director shall:

1. Be directly responsible to the governor for the direction, control and operation of the department.
2. Provide assistance to the governor and legislature as requested.
3. Adopt rules the director deems necessary or desirable to further the objectives and programs of the department.
4. Formulate policies, plans and programs to effectuate the missions and purposes of the department.
5. Employ, determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons as may be necessary in the performance of the department's duties and contract for the services of outside advisors, consultants and aides as may be reasonably necessary.
6. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of monies.
7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of the department's purposes, objectives and programs.
8. Accept and disburse grants, gifts, donations, matching monies 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.
9. Establish and maintain separate financial accounts as required by federal law or regulations.
10. Advise and make recommendations to the governor and the legislature on all matters concerning the department's objectives.
11. Delegate the administrative functions, duties and powers as the director deems necessary to carry out the efficient operation of the department.

41-791. Powers and duties relating to public buildings maintenance; compensation of personnel

A. The department is responsible for the direction and control of public buildings maintenance as prescribed in this article.

B. The department is responsible for the allocation of space, operation, alteration, renovation and security of the following buildings:

1. The state capitol executive tower of the state capitol building.

2. The state office buildings in Tucson.

3. The state office buildings located at:

(a) 519 East Beale Street in Kingman.

(b) 2910 North 44th Street in Phoenix.

(c) 417 West Roosevelt Street in Phoenix.

(d) 9535 East Doubletree Ranch Road in Scottsdale.

(e) 9545 East Doubletree Ranch Road in Scottsdale.

4. All other buildings owned or leased by the state and located near the state capitol building and the state office buildings in Tucson, except for:

(a) Buildings occupied, operated and maintained by the following state agencies:

(i) The department of transportation.

(ii) The Arizona power authority.

(b) The state capitol museum, the legislative services wing, the house of representatives and senate wings of the state capitol building and the building located at 1716 West Adams street in Phoenix.

(c) The department of economic security facilities purchased with federal funding assistance and exclusively and continuously operated and maintained for the department's own occupancy.

(d) The Arizona courts building.

(e) The mining, mineral and natural resources educational museum.

C. The department is responsible for the maintenance of the following buildings and grounds:

1. The entire state capitol building and the grounds adjacent to it.

2. The state office buildings in Tucson and the grounds adjacent to them.

3. Other buildings and grounds owned or leased by the state if the function is not otherwise assigned, except for the interior of the Arizona courts building.

D. The director may establish rules for the operation, maintenance and security of buildings and grounds under the director's jurisdiction.

E. The department shall:

1. Employ engineers and maintenance and operations personnel as required, including a buildings manager for the state office buildings in Tucson.
  2. Determine the hours of duty and assignment of personnel.
- F. All personnel employed under this article are eligible to receive compensation as determined under section 38-611.

41-796. Regulation of traffic and parking; monetary penalties; hearing; state traffic and parking control fund; definition

A. The department of administration may adopt and administratively enforce rules for the control of vehicles on state property with respect only to the following:

1. Maximum speed of vehicles.
2. Direction of travel.
3. Place, method and time of parking.
4. Nonparking areas.
5. Designation of special parking areas for state employees and the general public.
6. Prohibiting parking in vehicle emissions control areas as defined in section 49-541 of those vehicles which fail to comply with section 49-542.

B. The department shall adopt and administratively enforce rules requiring the designation of preferential parking areas, such as reserved, close-in or covered parking, to state employees with offices in vehicle emissions control areas as defined in section 49-541 who are car pool operators as defined in section 28-4032 or who drive vehicles powered by alternative fuel as defined in section 1-215.

C. The department may prescribe and collect reasonable monetary penalties for violations of the rules adopted pursuant to subsection A of this section.

D. The department shall:

1. Cause signs, markings and notices to be posted on the property for the regulation of vehicles.
2. Maintain parking lots and structures.

E. On the failure of a person who is issued a citation for a violation of a rule adopted pursuant to this section to appear, the administrative law judge may proceed to determine whether a violation has occurred and, if so, the penalty to be imposed.

F. Penalties that are imposed pursuant to this section and that are not paid within the time prescribed by the administrative law judge may be collected by an action filed with the justice court.

G. A state traffic and parking control fund is established consisting of monetary penalties collected pursuant to this section. The department shall administer the fund. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

H. All monetary penalties collected by the department for violations of the rules adopted pursuant to subsection A of this section shall be deposited in the state traffic and parking control fund.

I. Except as provided in section 41-1092.08, subsection H, a person who has received a final administrative ruling concerning a penalty imposed on the person as a result of a violation of a rule adopted pursuant to this section may have that ruling reviewed by the superior court in the county in which the institution involved is located pursuant to title 12, chapter 7, article 6.

J. For the purposes of this section, "state property" means property that is the responsibility of the department under section 41-791 and property that is the responsibility of the speaker of the house of representatives or the president of the senate under section 41-1304.05.

41-1362. Department of administration; powers and duties; governmental mall description; duty of city of Phoenix; general plan application

A. The department of administration may:

1. Accept gifts or grants of monies or other property from any person, including the United States or any agencies, departments or officers of the state.

2. Prescribe rules as necessary to carry out this article.

B. The department of administration shall:

1. Develop and maintain and amend as necessary a comprehensive long-range general plan for the development of the governmental mall composed of the area described in subsection C of this section.

2. Encourage public agencies as defined in section 11-951 to enter into intergovernmental agreements or contracts pursuant to title 11, chapter 7, article 3 as necessary to implement the general plan for the development of the governmental mall.

3. Review and approve or disapprove in writing requests for permission to develop structures or sites or award construction contracts for new buildings or improvements within the governmental mall. The department shall review requests submitted by this state or a political subdivision of this state in which this state or political subdivision has a contractual interest to ensure consistency with the approved general plan.

4. Review all planning activities within governmental mall boundaries.

5. Publish an annual report on the issues brought before the department and its recommendations.

C. The governmental mall is composed of the area with a western boundary of nineteenth avenue, a northern boundary of all lots abutting Van Buren street, an eastern boundary of seventh avenue and a southern boundary of the Harrison street alignment.

D. The city of Phoenix annually shall inform the department of administration of new major development projects and new major infrastructure improvements, including parks, streets and street-scaping within the downtown area redevelopment plan as defined in section 36-1471.

E. If the general plan of the city, county or state agency for land development does not conform with the general plan developed by the department of administration for the development of the governmental mall, the general plan developed by the department for the development of the governmental mall applies and shall be enforced.

41-1363. Monuments and memorials within governmental mall; legislative authorization; approval; procedure

A. Notwithstanding section 34-225 or any other law, a monument or memorial recognizing or honoring a person, group, entity or event shall be located in the governmental mall only if a prior legislative act authorizes the monument or memorial.

B. After legislative authorization, a monument or memorial may be established by the following procedures:

1. The proponents shall submit a concept to the department of administration for the design, dimensions and location of the monument or memorial.

2. The department of administration shall review the concept and determine the most appropriate location that highlights the monument or memorial and preserves the integrity of the governmental mall.

3. After recommendations from the historical advisory commission regarding the historical integrity of the monument or memorial and after any necessary negotiations with the proponents, the department of administration shall approve the final design, dimensions, location and maintenance requirements of the monument or memorial, the minimum dollar amount required for deposit in the state monument and memorial repair fund established by section 41-1365 and any statement, declaration, writing or inscription that will be imprinted or stamped on the monument or memorial.

4. Before the beginning of construction of the monument or memorial, the proponents shall enter into a contract with the department of administration specifying the conditions of the design, dimensions and location of the monument or memorial, a list of the artists, contractors and subcontractors that will be employed, the minimum dollar amount required for deposit in the state monument and memorial repair fund established by section 41-1365 and a verification that all employees for the project are insured and that this state is indemnified against any liability in regard to the construction.

5. An approved monument or memorial shall be completed and dedicated to this state within two years after the effective date of the legislative act authorizing the monument or memorial.

C. Except as otherwise provided in this section or section 41-1365, all fund-raising and the establishment and administration of a fund for deposit of monies and contracts for artistic design and construction of the monument or memorial are the sole responsibility of the proponents.

D. If the completed monument or memorial deviates from the final design or dimension that was approved by the department of administration or any statement, declaration, writing or inscription that is imprinted or stamped on the monument or memorial deviates from that which was approved by the department, the proponents are responsible for any costs incurred to conform the monument or memorial to the approved form.

E. The proponents shall collect an amount equal to at least ten percent of the artistic design and construction costs of the monument or memorial or the amount approved by the department of administration as provided in subsection B of this section. The department shall deposit these monies in the state monument and memorial repair fund established by section 41-1365 for the maintenance, repair, reconditioning or relocation of that monument or memorial. The monies must be deposited in the fund before the beginning of construction of the monument or memorial.

F. The department of administration may relocate monuments or memorials that are located in the governmental mall.

G. This section does not apply to monuments or memorials in which a political subdivision has a contractual interest that are located in the governmental mall but that are outside Wesley Bolin plaza.

41-1364. Alteration or modification to monuments and memorials within governmental mall; procedures; approval

A. Any alteration or modification to an existing monument or memorial that was completed pursuant to section 41-1363 must abide by the following procedures:

1. The proponents of the monument or memorial that submitted the concept pursuant to section 41-1363 shall submit the proposed alteration or modification to the department of administration.
2. After recommendations from the historical advisory commission regarding what impact the proposed alteration or modification would have on the historical integrity of the existing monument or memorial and after any necessary negotiations with the proponents, the department of administration shall approve or reject the proposed alteration or modification.
3. If the proposed alteration or modification is approved and before the beginning of construction involved in implementing the alteration or modification to the monument or memorial, the proponents shall enter into a contract with the department of administration specifying the scope of the alteration or modification to the monument or memorial, a list of the artists, contractors and subcontractors that will be employed and a verification that all employees for the project are insured and that this state is indemnified against any liability in regard to the construction involved in implementing the alteration or modification to the monument or memorial.
4. The alteration or modification to an existing monument or memorial shall be completed and dedicated to this state within two years after the effective date of the approval of the alteration or modification by the department of administration.

B. All fund-raising and the establishment and administration of a fund for deposit of monies and contracts for artistic design and construction of the alteration or modification to the existing monument or memorial are the sole responsibility of the proponents.

**DEPARTMENT OF HEALTH SERVICES (R20-0303)**

Title 9, Chapter 10, Articles 1, 3, and 7, Department of Health Services Health Care Institutions:  
Licensing

**Amend:** R9-10-109, R9-10-318, R9-10-702, R9-10-703, R9-10-706, R9-10-707,  
R9-10-708, R9-10-712, R9-10-716, R9-10-722



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

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**MEETING DATE:** March 3, 2020

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

**FROM:** Council Staff

**DATE:** February 10, 2020

**SUBJECT: DEPARTMENT OF HEALTH SERVICES (R20-0303)**  
Title 9, Chapter 10, Articles 1, 3, and 7, Department of Health Services Health Care Institutions: Licensing

**Amend:** R9-10-109, R9-10-318, R9-10-702, R9-10-703, R9-10-706,  
R9-10-707, R9-10-708, R9-10-712, R9-10-716, R9-10-722

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### Summary:

This Notice of Final Expedited Rulemaking from the Department of Health Services (Department) relates to rule amendments in Title 9, Chapter 10, Articles 1, 3, and 7, regarding the licensing of certain health care institutions. Pursuant to A.R.S. § 36-405 and 36-406, the Department is authorized to adopt rules establishing the minimum standards and requirements for construction, modification, and licensure of health care institutions. The Department adopted these rules in Title 9, Chapter 10 of the Arizona Administrative Code (A.A.C.)

The rules for behavioral health inpatient facilities are in 9 A.A.C. 10, Article 3, and the rules for behavioral health residential facilities are in 9 A.A.C. 10, Article 7. In Laws 2019, Ch. 134, the Legislature added requirements related to central registry background checks and notifications required to be made to the Department by certain behavioral health residential facilities. In Laws 2019, Ch. 270, § 4, the Legislature added A.R.S. § 36-425.06, which requires the Department to "license secure behavioral health residential facilities to provide secure twenty-four hour on-site supportive treatment and supervision." The Department is amending the

rules in Articles 3 and 7 to comply with these statutory changes. In addition, the Department is also amending R9-10-318(A)(9)(d) and R9-10-716(D)(2)(e), related to requirements for educational programs for children who are patients in behavioral health inpatient facilities or residents in behavioral health residential facilities, to avoid potential conflicts with the statutory authorities of the Department and the Arizona Department of Education.

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

Yes. The Department states that this rulemaking qualifies for expedited rulemaking pursuant to A.R.S. § 41-1027(A) because it does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated. The Department specifically cites to (A)(1) (amends or repeals rules made obsolete by repeal or supersession of an agency's statutory authority), (A)(5) (reduces or consolidates steps, procedures or processes in the rules, and (A)(6) (amends or repeals rules that are outdated, redundant or otherwise no longer necessary for the operation of state government) as justification for this expedited rulemaking.

Upon review of the justification provided in the Notice of Final Expedited Rulemaking and the amendments to the rules, Council staff finds that this rulemaking does qualify for expedited rulemaking because it does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated, and qualifies under the three bases listed above.

**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. This expedited rulemaking does not establish a new fee or contain a fee increase.

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

Not applicable. 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?**

Yes. Pursuant to A.R.S. § 36-704(A) (Prohibited acts; required acts):

[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.

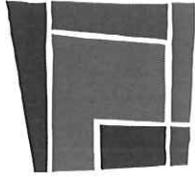
Thus, a general permit is not applicable and is not used. The type of license the Department issues qualifies under an enumerated exception to the general permit requirement in A.R.S. § 41-1037.

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?**

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

9. **Conclusion**

The Department is conducting this expedited rulemaking in order to comply with recent statutory changes as well as to avoid a potential conflict between the statutory authority of the Department and the Arizona Department of Education. It cites A.R.S. § 41-1027(A)(1), (5), and (6) as bases for this expedited rulemaking. Council staff finds that the Department demonstrates adequate justification for this expedited rulemaking and cites to the correct bases under A.R.S. § 41-1027(A) in its Notice of Final Expedited Rulemaking. If approved, the rulemaking would be immediately effective upon the filing of a Certificate of Approval with the Secretary of State. Council staff recommends approval of this expedited rulemaking.



# ARIZONA DEPARTMENT OF HEALTH SERVICES

## POLICY & INTERGOVERNMENTAL AFFAIRS

January 21, 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. 10, Expedited Rulemaking

Dear Ms. Sornsin,

1. The close of record date: January 20, 2020
2. Explanation of how the expedited rulemaking meets the criteria in A.R.S. § 41-1027(A)  
The rulemaking revises rules to comply with requirements in Laws 2019, Ch. 134; to clarify the rules in 9 A.A.C. 10, Article 7, related to providing secure housing for individuals ordered by a court into a behavioral health residential facility, pursuant to Laws 2019, Ch. 270, § 4; and to avoid potential conflicts with the statutory authorities for the Department and Arizona Department of Education, related to requirements in A.A.C. R9-10-318(A)(9)(d) and R9-10-716(D)(2)(e) for educational programs for children who are patients in behavioral health inpatient facilities or residents in behavioral health residential facilities. As part of the rulemaking, any changes to cross-references will also be corrected. The Department believes that the rulemaking meets the criteria for expedited rulemaking since it will not increase the cost of regulatory compliance, increase a fee, or reduce the procedural rights of persons regulated beyond what is required by statute. Thus, the rulemaking complies with criteria for expedited rulemaking under A.R.S. § 41-1027(A)(1), (5), and (6).
3. Whether the rulemaking relates to a five-year-review report, and if applicable, the date the report was approved by the Council:  
The rulemaking for 9 A.A.C. 10 does not relate to a five-year-review report.

The Department certifies that the preamble 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 items enclosed:
  - a. Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule
  - b. Statutory authority

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

Sincerely,

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

Stephanie Elzenga  
Director's Designee

SE:rms

Enclosures



Phoenix, AZ 85007

Telephone: (602) 364-2841  
Fax: (602) 364-4808  
E-mail: Kathryn.McCanna@azdhs.gov

or

Name: Stephanie Elzenga, Acting 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

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

Arizona Revised Statutes (A.R.S.) § 36-132(A)(1) requires the Arizona Department of Health Services (Department) to protect the health of the people in Arizona. In order to ensure public health, safety, and welfare, A.R.S. §§ 36-405 and 36-406 require the Department to adopt rules establishing minimum standards and requirements for construction, modification, and licensure of health care institutions. The Department has adopted rules to implement these statutes in Arizona Administrative Code Title 9, Chapter 10. Rules for behavioral health inpatient facilities are in 9 A.A.C. 10, Article 3, and rules for behavioral health residential facilities are in 9 A.A.C. 10, Article 7. Laws 2019, Ch. 134, added requirements related to central registry background checks and notifications required to be made to the Department by certain behavioral health residential facilities. Laws 2019, Ch. 270, § 4, added A.R.S. § 36-425.06, which requires the Department to “license secure behavioral health residential facilities to provide secure twenty-four-hour on-site supportive treatment and supervision.” After receiving an exception from the rulemaking moratorium established by Executive Order 2019-01, the Department is revising the rules to comply with requirements in Laws 2019, Ch. 134. The Department is also clarifying the rules in 9 A.A.C. 10, Article 7, related to providing secure housing for individuals ordered by a court into a behavioral health residential facility, pursuant to Laws 2019, Ch. 270, § 4. Finally, the Department is revising A.A.C. R9-10-318(A)(9)(d) and R9-10-716(D)(2)(e), related to requirements for educational programs for children who are patients in behavioral health inpatient facilities or residents in behavioral health residential facilities, to avoid potential conflicts with

the statutory authorities for the Department and Arizona Department of Education. The Department believes that the rulemaking meets the criteria for expedited rulemaking since it will not increase the cost of regulatory compliance, increase a fee, or reduce the procedural rights of persons regulated beyond what is required by statute. As part of the rulemaking, any changes to cross-references will also be corrected. The amendments conform to rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

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

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

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

Not applicable

**9. The 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 did not receive any written stakeholder comments about the rulemaking.

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

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

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

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

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

Not applicable

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

No business competitiveness analysis was received by the Department.

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

Not applicable

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

The rule was not previously made as an emergency rule.

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

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

**ARTICLE 1. GENERAL**

Section

R9-10-109. Changes Affecting a License

**ARTICLE 3. BEHAVIORAL HEALTH INPATIENT FACILITIES**

Section

R9-10-318. Child and Adolescent Residential Treatment Services

**ARTICLE 7. BEHAVIORAL HEALTH RESIDENTIAL FACILITIES**

Section

R9-10-702. Supplemental Application and Documentation Submission Requirements

R9-10-703. Administration

R9-10-706. Personnel

R9-10-707. Admission; Assessment

R9-10-708. Treatment Plan

R9-10-712. Medical Records

R9-10-716. Behavioral Health Services

R9-10-722. Physical Plant Standards

## ARTICLE 1. GENERAL

### **R9-10-109. Changes Affecting a License**

- A.** A licensee shall ensure that:
1. The Department is notified in writing at least 30 calendar days before the effective date of:
    - a. Except as provided in subsection (I), a change in the name of:
      - i. A health care institution, or
      - ii. The licensee;
    - b. A change in the hours of operation:
      - i. Of an administrative office, or
      - ii. For providing physical health services or behavioral health services to patients of the health care institution;
    - c. A change in the address of a health care institution that does not provide medical services, nursing services, behavioral health services, or health-related services on the premises; or
    - d. A change in the geographic region to be served by the hospice service agency or home health agency; and
  2. Documentation supporting the change is provided to the Department with the notification required in subsection (A)(1).
- B.** If a licensee intends to terminate the operation of a health care institution, the licensee shall ensure that the Department is notified in writing of:
1. The termination of the health care institution's operations, as required in A.R.S. § 36-422(D), at least 30 calendar days before the termination, and
  2. The address and contact information for the location where the health care institution's medical records will be retained as required in A.R.S. § 12-2297.
- C.** A licensee shall ensure that the Department is notified in writing, according to A.R.S. § 36-425(I), of a change in the chief administrative officer of the health care institution.
- D.** If a health care institution is accredited by a nationally recognized accrediting organization, a licensee may submit to the Department the health care institution's current accreditation report.
- E.** ~~If~~ Except as provided in A.R.S. § 36-424(B), if a licensee submits to the Department a health care institution's current accreditation report from a nationally recognized accrediting organization, the Department shall not conduct an onsite compliance inspection of the health care institution during the time the accreditation report is valid.

- F.** If a licensee is an adult behavioral health therapeutic home or a behavioral health respite home, the licensee shall ensure that:
1. The Department is notified in writing if the licensee does not have a written agreement with a collaborating health care institution, as required in R9-10-1603(A)(3) or R9-10-1803(A)(3) as applicable; and
  2. The adult behavioral health therapeutic home or behavioral health respite home does not accept an individual as a resident or recipient, as applicable, or provide services to a resident or recipient, as applicable, until:
    - a. The adult behavioral health therapeutic home or behavioral health respite home has a written agreement with a collaborating health care institution;
    - b. The collaborating health care institution has approved the adult behavioral health therapeutic home's or behavioral health respite home's:
      - i. Scope of services, and
      - ii. Policies and procedures; and
    - c. The collaborating health care institution has verified the provider's skills and knowledge.
- G.** If a licensee is an affiliated outpatient treatment center, the licensee shall ensure that if the affiliated outpatient treatment center:
1. Plans to begin providing administrative support to a counseling facility at a time other than during the affiliated outpatient treatment center's license application process, the following information for each counseling facility is submitted to the Department before the affiliated outpatient treatment center begins providing administrative support:
    - a. The counseling facility's name,
    - b. The license number assigned to the counseling facility by the Department, and
    - c. The date the affiliated outpatient treatment center will begin providing administrative support to the counseling facility; or
  2. No longer provides administrative support to a counseling facility previously identified by the affiliated outpatient treatment center as receiving administrative support from the affiliated outpatient treatment center, the following information for each counseling facility is submitted to the Department within 30 calendar days after the affiliated outpatient treatment center no longer provides administrative support:
    - a. The counseling facility's name,
    - b. The license number assigned to the counseling facility by the Department, and
    - c. The date the affiliated outpatient treatment center stopped providing

administrative support to the counseling facility.

- H.** If a licensee is a counseling facility, the licensee shall ensure that if the counseling facility:
1. Plans to begin receiving administrative support from an affiliated outpatient treatment center at a time other than during the counseling facility's license application process, the following information for the affiliated outpatient treatment center is submitted to the Department before the counseling facility begins receiving administrative support:
    - a. The affiliated outpatient treatment center's name,
    - b. The license number assigned to the affiliated outpatient treatment center by the Department, and
    - c. The date the counseling facility will begin receiving administrative support;
  2. No longer receives administrative support from an affiliated outpatient treatment center previously identified by the counseling facility as providing administrative support to the counseling facility, the following information for the affiliated outpatient treatment center is submitted to the Department within 30 calendar days after the counseling facility no longer receives administrative support from the affiliated outpatient treatment center:
    - a. The affiliated outpatient treatment center's name,
    - b. The license number assigned to the affiliated outpatient treatment center by the Department, and
    - c. The date the counseling facility stopped receiving administrative support from the affiliated outpatient treatment center;
  3. Plans to begin sharing administrative support with an affiliated counseling facility at a time other than during the counseling facility's license application process, the following information for each affiliated counseling facility sharing administrative support with the counseling facility is submitted to the Department before the counseling facility and affiliated counseling facility begin sharing administrative support:
    - a. The affiliated counseling facility's name,
    - b. The license number assigned to the affiliated counseling facility by the Department, and
    - c. The date the counseling facility and the affiliated counseling facility will begin sharing administrative support; or
  4. No longer shares administrative support with an affiliated counseling facility previously identified by the counseling facility as sharing administrative support with the counseling facility, the following information is submitted for each affiliated counseling facility within 30 calendar days after the counseling facility and affiliated counseling facility no

longer share administrative support:

- a. The affiliated counseling facility's name,
- b. The license number assigned to the affiliated counseling facility by the Department, and
- c. The date the counseling facility and affiliated counseling facility will no longer be sharing administrative support.

**I.** A governing authority shall submit a license application required in R9-10-105 for:

1. A change in ownership of a health care institution;
2. A change in the address or location of a health care institution that provides medical services, nursing services, health-related services, or behavioral health services on the premises; or
3. A change in a health care institution's class or subclass.

**J.** A governing authority is not required to submit the documentation required in R9-10-105(A)(5) for a license application if:

1. The health care institution has not ceased operations for more than 30 calendar days,
2. A modification has not been made to the health care institution,
3. The services the health care institution is authorized by the Department to provide are not changed, and
4. The location of the health care institution's premises is not changed.

## ARTICLE 3. BEHAVIORAL HEALTH INPATIENT FACILITIES

### R9-10-318. Child and Adolescent Residential Treatment Services

- A. An administrator of a behavioral health inpatient facility authorized to provide child and adolescent residential treatment services shall:
1. If abuse, neglect, or exploitation of a patient under 18 years of age is alleged or suspected to have occurred before the patient was accepted or while the patient is not on the premises and not receiving services from an employee or personnel member of the behavioral health inpatient facility, report the alleged or suspected abuse, neglect, or exploitation of the patient according to A.R.S. § 13-3620;
  2. If the administrator has a reasonable basis, according to A.R.S. § 13-3620, to believe that abuse, neglect, or exploitation of a patient under 18 years of age has occurred on the premises or while the patient is receiving services from an employee or a personnel member:
    - a. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
    - b. Report the suspected abuse, neglect, or exploitation of the patient according to A.R.S. § 13-3620;
    - c. Document:
      - i. The suspected abuse, neglect, or exploitation;
      - ii. Any action taken according to subsection (A)(2)(a); and
      - iii. The report in subsection (A)(2)(b);
    - d. Maintain the documentation in subsection (A)(2)(c) for at least 12 months after the date of the report in subsection (A)(2)(b);
    - e. 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 (A)(2)(b):
      - i. The dates, times, and description of the suspected abuse, neglect, or exploitation;
      - ii. A description of any injury to the patient related to the suspected abuse or neglect and any change to the patient's physical, cognitive, functional, or emotional condition;
      - iii. The names of witnesses to the suspected abuse, neglect, or exploitation; and

- iv. The actions taken by the administrator to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and
  - f. Maintain a copy of the documented information required in subsection (A)(2)(e) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated;
- 3. If a patient who is under 18 years of age is absent and the absence is unauthorized as determined according to the criteria in R9-10-303(H), within an hour after determining that the patient's absence is unauthorized, notify:
  - a. Except as provided in subsection (A)(3)(b), the patient's parent or legal guardian; and
  - b. For a patient who is under a court's jurisdiction, the appropriate court or a person designated by the appropriate court;
- 4. Document the notification in subsection (A)(3) in the patient's medical record and the written log required in R9-10-303(I)(3);
- 5. In addition to the personnel records requirements in R9-10-306(F), ensure that a personnel record for each employee, volunteer, and student contains documentation of the individual's compliance with the finger-printing requirements in A.R.S. § 36-425.03;
- 6. Ensure that the patient's representative for a patient who is under 18 years of age:
  - a. Except in an emergency, either consents to or refuses treatment;
  - b. May refuse or withdraw consent to treatment before treatment is initiated, unless the treatment is ordered by a court according to A.R.S. Title 36, Chapter 5 or A.R.S. § 8-341.01; is necessary to save the patient's life or physical health; or is provided according to A.R.S. § 36-512;
  - c. Except in an emergency, is informed of alternatives to a proposed psychotropic medication and the associated risks and possible complications of the proposed psychotropic medication;
  - d. Is informed of the following:
    - i. The policy on health care directives, and
    - ii. The patient complaint process; and
  - e. Except as otherwise permitted by law, provides written consent to the release of information in the patient's:
    - i. Medical record, or
    - ii. Financial records;
- 7. In addition to the restrictions provided in R9-10-311(C), ensure that a parent of a patient

under 18 years of age is allowed to restrict the patient from:

- a. Associating with individuals of the patient's choice, receiving visitors, and making telephone calls during the hours established by the behavioral health inpatient facility;
  - b. Having privacy in correspondence, communication, visitation, financial affairs, and personal hygiene; and
  - c. Sending and receiving uncensored and unopened mail;
8. Establish, document, and implement policies and procedures to ensure that a patient is protected from the following from other patients at the behavioral health inpatient facility:
- a. Threats,
  - b. Ridicule,
  - c. Verbal harassment,
  - d. Punishment, or
  - e. Abuse;
9. Ensure that:
- a. The interior of the behavioral health inpatient facility has furnishings and decorations appropriate to the ages of the patients receiving services at the behavioral health inpatient facility;
  - b. A patient older than three years of age does not sleep in a crib;
  - c. Clean and non-hazardous toys, educational materials, and physical activity equipment are available and accessible to patients in a quantity sufficient to meet each patient's needs and are appropriate to each patient's age, developmental level, and treatment needs; and
  - d. A patient's educational needs are ~~met by establishing and providing an educational component, approved in writing by the Arizona Department of Education~~ addressed according to A.R.S. Title 15, Chapter 7, Article 4;
10. In addition to the requirements for seclusion or restraint in R9-10-316, ensure that:
- a. An order for restraint or seclusion is limited to the duration of the emergency situation and does not exceed:
    - i. Two continuous hours for a patient who is between the ages of nine and 17, or
    - ii. One continuous hour for a patient who is younger than nine; and
  - b. Requirements are established for notifying the parent or guardian of a patient

who is under 18 years of age and who is restrained or secluded; and

11. Prohibit a patient under 18 years of age from possessing or using tobacco products on the premises.

**B.** An administrator of a behavioral health inpatient facility authorized to provide child and adolescent residential treatment services may continue to provide behavioral health services to a patient who is 18 years of age or older:

1. If the patient:

- a. Was admitted to the behavioral health inpatient facility before the patient's 18th birthday,
- b. Is not 21 years of age or older, and
- c. Is completing high school or a high school equivalency diploma or participating in a job training pro-gram; or

2. Through the last calendar day of the month of the patient's 18th birthday.

**ARTICLE 7. BEHAVIORAL HEALTH RESIDENTIAL FACILITIES**

**R9-10-702. Supplemental Application 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 a behavioral health residential facility shall include on the application:
1. Whether the applicant is planning to provide:
    - a. Behavioral health services to individuals under 18 years of age, including the licensed capacity requested;
    - b. Behavioral health services to individuals 18 years of age and older, including the licensed capacity requested; or
    - c. Respite services;
  2. Whether the applicant is requesting authorization to provide an outdoor behavioral health care program, including:
    - a. The requested licensed capacity for providing the outdoor behavioral health care program to individuals 12 to 17 years of age, and
    - b. The requested licensed capacity for providing the outdoor behavioral health care program to individuals 18 to 24 years of age;
  3. Whether the applicant is requesting authorization to provide:
    - a. Court-ordered evaluation.
    - b. Court-ordered treatment.
    - ~~a-c.~~ Behavioral health services to individuals 18 years of age or older whose behavioral health issue limits the individuals' ability to function independently, or
    - ~~b-d.~~ Personal care services;
  4. Whether the applicant is requesting authorization to provide recidivism reduction services as an adult residential care institution, including the requested licensed capacity for providing recidivism reduction services;
  5. For a behavioral health residential facility requesting authorization to provide respite services, the requested number of individuals the behavioral health residential facility plans to admit for respite services who:
    - a. Are included in the requested licensed capacities in subsections (A)(1)(a) and (b),
    - b. Are under 18 years of age and who do not stay overnight in the behavioral health residential facility, and
    - c. Are 18 years of age and older and who do not stay overnight in the behavioral health residential facility; and

6. For an outdoor behavioral health care program, a copy of the outdoor behavioral health care program's current accreditation report.
- B.** A licensee of an outdoor behavioral health care program shall submit a copy of the outdoor behavioral health care program's current accreditation report to the Department with the relevant fees required in R9-10-106(C).

**R9-10-703. Administration**

- A.** A governing authority shall:
1. Consist of one or more individuals responsible for the organization, operation, and administration of a behavioral health residential facility;
  2. Establish, in writing:
    - a. A behavioral health residential facility's scope of services, and
    - b. Qualifications for an administrator;
  3. Designate, in writing, an administrator who has the qualifications established in subsection (A)(2)(b);
  4. Adopt a quality management program according to R9-10-704;
  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 has the qualifications established in subsection (A)(2)(b), if the administrator is:
    - a. Expected not to be present on the behavioral health residential facility's premises for more than 30 calendar days, or
    - b. Not present on the behavioral health residential facility's premises for more than 30 calendar days; and
  7. Except as provided in subsection (A)(6), notify the Department according to A.R.S. § 36-425(I) when there is a change in the administrator and identify the name and qualifications of the new administrator.
- B.** An administrator:
1. Is directly accountable to the governing authority of a behavioral health residential facility for the daily operation of the behavioral health residential facility and all services provided by or at the behavioral health residential facility;
  2. Has the authority and responsibility to manage the behavioral health residential facility; and
  3. Except as provided in subsection (A)(6), designates, in writing, an individual who is present on the behavioral health residential facility's premises and accountable for the

behavioral health residential facility when the administrator is not present on the behavioral health residential facility's premises.

C. An administrator shall ensure that:

1. Policies and procedures are established, documented, and implemented to protect the health and safety of a 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 orientation and in-service education for personnel members, employees, volunteers, and students;
  - c. Include how a personnel member may submit a complaint relating to services provided to a resident;
  - d. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
  - e. Cover cardiopulmonary resuscitation training including:
    - i. The method and content of cardiopulmonary resuscitation training, which includes a demonstration of the individual's ability to perform cardiopulmonary resuscitation;
    - ii. The qualifications for an individual to provide cardiopulmonary resuscitation training;
    - iii. The time-frame for renewal of cardiopulmonary resuscitation training; and
    - iv. The documentation that verifies that the individual has received cardiopulmonary resuscitation training;
  - f. Cover implementation of the requirements in A.R.S. §§ 36-411, 36-411.01, and 36-425.03, as applicable;
  - g. Cover implementation of the requirements in A.R.S. § 8-804, if applicable;
  - ~~g.~~h. Cover first aid training;
  - ~~h.~~i. Include a method to identify a resident to ensure the resident receives physical health services and behavioral health services as ordered;
  - ~~i.~~j. Cover resident rights, including assisting a resident who does not speak English or who has a physical or other disability to become aware of resident rights;
  - ~~j.~~k. Cover specific steps for:
    - i. A resident to file a complaint, and
    - ii. The behavioral health residential facility to respond to a resident

complaint;

- ~~k~~.l. Cover health care directives;
- ~~l~~.m. Cover medical records, including electronic medical records;
- ~~m~~.n. Cover a quality management program, including incident reports and supporting documentation;
- ~~n~~.o. Cover contracted services; and
- ~~o~~.p. Cover when an individual may visit a resident in a behavioral health residential facility;

2. Policies and procedures for behavioral health services and physical health services are established, documented, and implemented to protect the health and safety of a resident that:
  - a. Cover resident screening, admission, assessment, treatment plan, transport, transfer, discharge planning, and discharge;
  - b. Cover the provision of behavioral health services and physical health services;
  - c. Include when general consent and informed consent are required;
  - d. Cover emergency safety responses;
  - e. Cover a resident's personal funds account;
  - f. Cover dispensing medication, administering medication, assistance in the self-administration of medication, and disposing of medication, including provisions for inventory control and preventing diversion of controlled substances;
  - g. Cover prescribing a controlled substance to minimize substance abuse by a resident;
  - h. Cover respite services, including, as applicable, respite services for individuals who are admitted:
    - i. To receive respite services for up to 30 calendar days as a resident of the behavioral health residential facility, and
    - ii. For respite services and do not stay overnight in the behavioral health residential facility;
  - i. Cover services provided by an outdoor behavioral health care program, if applicable;
  - j. Cover infection control;
  - k. Cover resident time-out;
  - l. Cover resident outings;
  - m. Cover environmental services that affect resident care;

- n. Cover whether pets and other animals are allowed on the premises, including procedures to ensure that any pets or other animals allowed on the premises do not endanger the health or safety of residents or the public;
  - o. If animals are used as part of a therapeutic program, cover:
    - i. Inoculation/vaccination requirements, and
    - ii. Methods to minimize risks to a resident's health and safety;
  - p. Cover the process for receiving a fee from a resident and refunding a fee to a resident;
  - q. Cover the process for obtaining resident preferences for social, recreational, or rehabilitative activities and meals and snacks;
  - r. Cover the security of a resident's possessions that are allowed on the premises;
  - s. Cover smoking and the use of tobacco products on the premises; and
  - t. Cover how the behavioral health residential facility will respond to a resident's sudden, intense, or out-of-control behavior to prevent harm to the resident or another individual;
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 a behavioral health residential facility, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the behavioral health residential facility.
- D.** If an applicant requests or a behavioral health residential facility has a licensed capacity of 10 or more residents, an administrator shall designate a clinical director who:
1. Provides direction for the behavioral health services provided by or at the behavioral health residential facility;
  2. Is a behavioral health professional; and
  3. May be the same individual as the administrator, if the individual meets the qualifications in subsections (A)(2)(b) and (D)(1) and (2).
- E.** Except for respite services, an administrator shall ensure that medical services, nursing services,

health-related services, or ancillary services provided by a behavioral health residential facility are only provided to a resident who is expected to be present in the behavioral health residential facility for more than 24 hours.

**F.** The administrator of a behavioral health residential facility providing services to children shall notify the Department within 30 calendar days after:

1. Beginning to contract exclusively with the federal government, and
2. Receiving only federal monies for services provided.

**F.G.** 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 or has an accident that requires immediate intervention by an emergency medical services provider.

**G.H.** 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 a behavioral health residential facility'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.

**H.I.** If an administrator has a reasonable basis, according to A.R.S. § 13-3620 or 46-454, to believe abuse, neglect, or exploitation has occurred on the premises or while a resident is receiving services from a behavioral health residential facility's employee or personnel member, the administrator shall:

1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
2. Report the suspected abuse, neglect, or exploitation of the resident:
  - 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;
3. Document:
  - a. The suspected abuse, neglect, or exploitation;
  - b. Any action taken according to subsection ~~(H)(1)~~ (I)(1); and
  - c. The report in subsection ~~(H)(2)~~ (I)(2);
4. Maintain the documentation in subsection ~~(H)(3)~~ (I)(3) for at least 12 months after the date of the report in subsection ~~(H)(2)~~ (I)(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 ~~(H)(2)~~ (I)(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 ~~(H)(5)~~ (I)(5) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.

**J.** In addition to the notification requirements in subsections (F), (G), (H), and (I), an administrator of a behavioral health residential facility providing services to children that contracts exclusively with the federal government and receives only federal monies for services provided shall comply with A.R.S. § 36-418.

**~~I.~~K.** An administrator shall:

- 1. Establish and document requirements regarding residents, personnel members, employees, and other individuals entering and exiting the premises;
- 2. For a behavioral health residential facility licensed according to A.R.S. § 36-425.06 and in addition to the requirements in subsection (K)(1), establish and document requirements for a resident admitted according to A.R.S. § 36-550.09, consistent with R9-10-722(D);
- ~~2.~~3. Establish and document guidelines for meeting the needs of an individual residing at a behavioral health residential facility with a resident, such as a child accompanying a parent in treatment, if applicable;
- ~~3.~~4. If children under the age of 12, who are not admitted to a behavioral health residential facility, are residing at the behavioral health residential facility and being cared for by employees or personnel members, ensure that:
  - a. An employee or personnel member caring for children has current cardiopulmonary resuscitation and first aid training specific to the ages of children being cared for; and
  - b. The staff-to-children ratios in A.A.C. R9-5-404(A) are maintained, based on the age of the youngest child in the group;
- ~~4.~~5. Establish and document the process for responding to a resident's need for immediate and unscheduled behavioral health services or physical health services;
- ~~5.~~6. Establish and document the criteria for determining when a resident's absence is

unauthorized, including criteria for a resident who:

- a. Was admitted under A.R.S. Title 36, Chapter 5, Articles 3, 4, ~~or 5~~, or 10;
- b. Is absent against medical advice; or
- c. Is under the age of 18;

~~6.7.~~ If a resident's absence is unauthorized as determined according to the criteria in subsection (I)(5), within an hour after determining that the resident's absence is unauthorized, notify:

- a. For a resident who is under 18 years of age, the resident's parent or legal guardian; and
- b. For a resident who is under a court's jurisdiction, the appropriate court;

~~7.8.~~ Maintain a written log of unauthorized absences for at least 12 months after the date of a resident's absence that includes the:

- a. Name of a resident absent without authorization,
- b. Name of the individual to whom the report required in subsection (I)(6) was submitted, and
- c. Date of the report; and

~~8.9.~~ Evaluate and take action related to unauthorized absences under the quality management program in R9-10-704.

~~J.L.~~ An administrator shall ensure that a personnel member who is able to read, write, understand, and communicate in English is on the premises of the behavioral health residential facility.

~~K.M.~~ An administrator shall ensure that the following information or documents are conspicuously posted on the premises and are available upon request to a personnel member, employee, resident, or a resident's representative:

1. The behavioral health residential facility's current license,
2. The location at which inspection reports required in R9-10-720(C) are available for review or can be made available for review, and
3. The calendar days and times when a resident may accept visitors or make telephone calls.

~~L.N.~~ An administrator shall ensure that:

1. Labor performed by a resident for the behavioral health residential facility is consistent with A.R.S. § 36-510;
2. A resident who is a child is only released to the child's custodial parent, guardian, or custodian or as authorized in writing by the child's custodial parent, guardian, or custodian;
3. The administrator obtains documentation of the identity of the parent, guardian,

- custodian, or family member authorized to act on behalf of a resident who is a child; and
4. A resident, who is an incapacitated person according to A.R.S. § 14-5101 or who is gravely disabled, is assisted in obtaining a resident's representative to act on the resident's behalf.

**M.O.** If an administrator determines that a resident is incapable of handling the resident's financial affairs, the administrator shall:

1. Notify the resident's representative or contact a public fiduciary or a trust officer to take responsibility of the resident's financial affairs, and
2. Maintain documentation of the notification required in subsection ~~(M)(1)~~ (O)(1) in the resident's medical record for at least 12 months after the date of the notification.

**N.P.** If an administrator manages a resident's money through a personal funds account, the administrator shall ensure that:

1. Policies and procedure are established, developed, and implemented for:
  - a. Using resident's funds in a personal funds account,
  - b. Protecting resident's funds in a personal funds account,
  - c. Investigating a complaint about the use of resident's funds in a personal funds account and ensuring that the complaint is investigated by an individual who does not manage the personal funds account,
  - d. Processing each deposit into and withdrawal from a personal funds account, and
  - e. Maintaining a record for each deposit into and withdrawal from a personal funds account; and
2. The personal funds account is only initiated after receiving a written request that:
  - a. Is provided:
    - i. Voluntarily by the resident,
    - ii. By the resident's representative, or
    - iii. By a court of competent jurisdiction;
  - b. May be withdrawn at any time; and
  - c. Is maintained in the resident's record.

**R9-10-706. Personnel**

**A.** An administrator shall ensure that:

1. A personnel member is:
  - a. At least 21 years old, or
  - b. Licensed or certified under A.R.S. Title 32 and providing services within the personnel member's scope of practice;

2. An employee is at least 18 years old;
3. A student is at least 18 years old; and
4. A volunteer is at least 21 years old.

**B.** An administrator shall ensure that:

1. The qualifications, skills, and knowledge required for each type of personnel member:
  - a. Are based on:
    - i. The type of behavioral health services or physical health services expected to be provided by the personnel member according to the established job description, and
    - ii. The acuity of the residents receiving behavioral health services or physical health services from the personnel member according to the established job description; and
  - b. Include:
    - i. The specific skills and knowledge necessary for the personnel member to provide the expected behavioral health services or physical health services listed in the established job description,
    - ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected behavioral health services or physical health services listed in the established job description, and
    - iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected behavioral health services or physical health services listed in the established job description;
2. A personnel member's skills and knowledge are verified and documented:
  - a. Before the personnel member provides physical health services or behavioral health services, and
  - b. According to policies and procedures; and
3. Sufficient personnel members are present on a behavioral health residential facility's premises with the qualifications, experience, skills, and knowledge necessary to:
  - a. Provide the services in the behavioral health residential facility'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 comply with the requirements for behavioral health technicians and behavioral health paraprofessionals in R9-10-115.
- D.** An administrator shall ensure that an individual who is licensed under A.R.S. Title 32, Chapter 33 as a 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 A.A.C. R4-6-101.
- E.** An administrator shall ensure that:
1. A plan to provide orientation, specific to the duties of a personnel member, an employee, a volunteer, or a student, is developed, documented, and implemented;
  2. A personnel member completes orientation before providing behavioral health services or physical health services;
  3. An individual's orientation is documented, to include:
    - a. The individual's name,
    - b. The date of the orientation, and
    - c. The subject or topics covered in the orientation;
  4. A written plan is developed and implemented to provide in-service education specific to the duties of a personnel member; and
  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.
- F.** An administrator shall ensure that a personnel member, or an employee, a volunteer, or a student who has or is expected to have more than eight hours of direct interaction per week with residents, provides evidence of freedom from infectious tuberculosis:
1. On or before the date the individual begins providing services at or on behalf of the behavioral health residential facility, and
  2. As specified in R9-10-113.
- G.** An administrator shall ensure that a personnel record is maintained for each personnel member, employee, volunteer, or student that includes:
1. The individual's name, date of birth, and contact telephone number;
  2. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and
  3. Documentation of:
    - a. The individual's qualifications, including skills and knowledge applicable to the

individual's job duties;

- b. The individual's education and experience applicable to the individual's job duties;
- c. The individual's completed orientation and in-service education as required by policies and procedures;
- d. The individual's license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures;
- e. The individual's compliance with the requirements in A.R.S. §§ 36-411, 36-411.01, and 36-425.03, as applicable;
- f. The individual's compliance with the requirements in A.R.S. § 8-804, if applicable;
- ~~f.g.~~ If the individual is a behavioral health technician, clinical oversight required in R9-10-115;
- ~~g.h.~~ Cardiopulmonary resuscitation training, if required for the individual according to R9-10-703(C)(1)(e);
- ~~h.i.~~ First aid training, if required for the individual according to this Article or policies and procedures; and
- ~~i.j.~~ Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (F).

**H.** An administrator shall ensure that personnel records are:

- 1. Maintained:
  - a. Throughout an individual's period of providing services in or for the behavioral health residential facility, and
  - b. For at least 24 months after the last date the individual provided services in or for the behavioral health residential facility; and
- 2. For a personnel member who has not provided physical health services or behavioral health services at or for the behavioral health residential facility during the previous 12 months, provided to the Department within 72 hours after the Department's request.

**I.** An administrator shall ensure that a personnel member who is recidivism reduction staff at an adult residential care institution:

- 1. Submits an application for a fingerprint clearance card according to A.R.S. § 36-411; and
- 2. If the personnel member is denied a fingerprint clearance card, is evaluated to determine whether the personnel member:
  - a. Has successfully completed treatment for recidivism reduction as shown by:

- i. Documentation of completion of treatment for recidivism reduction;
  - ii. If applicable, continued negative results on random drug screening tests;
  - iii. If applicable, continued participation in a self-help group, such as Alcoholics Anonymous or Narcotics Anonymous, or a support group related to the personnel member's behavioral health issue; and
  - iv. No arrests or convictions of the personnel member related to the reason for denial of the fingerprint clearance card within the previous two years; and
- b. Is not likely to be a threat to the health or safety of staff or residents through:
- i. Review of the reasons for denial of a fingerprint clearance card;
  - ii. Assessment of the situations or circumstances that may have contributed to the reasons for denial of a fingerprint clearance card;
  - iii. Review of the steps taken by the personnel member to address the situations or circumstances that may have contributed to the reasons for denial of a fingerprint clearance card;
  - iv. Observation of the personnel member's interactions with residents while under direct visual supervision, as defined in A.R.S. § 36-411, by personnel members having a valid fingerprint clearance card; and
  - v. Institution of any other methods, according to policies and procedures, specific to the:
    - (1) Behavioral health residential facility;
    - (2) Issues of the residents that place them at risk for a future threat of prosecution, diversion, or incarceration; and
    - (3) Recidivism reduction services that are expected to be provided by the personnel member.

**J.** An administrator shall ensure that the following personnel members have first-aid and cardiopulmonary resuscitation training specific to the populations served by the behavioral health residential facility:

- 1. At least one personnel member who is present at the behavioral health residential facility during hours of operation of the behavioral health residential facility, and
- 2. Each personnel member participating in an outing.

**K.** An administrator shall ensure that:

- 1. At least one personnel member is present and awake at the behavioral health residential facility when a resident is on the premises;

2. In addition to the personnel member in subsection (K)(1), at least one personnel member is on-call and available to come to the behavioral health residential facility if needed;
3. There is a daily staffing schedule that:
  - a. Indicates the date, scheduled work hours, and name of each employee assigned to work, including on-call personnel members;
  - b. Includes documentation of the employees who work each calendar day and the hours worked by each employee; and
  - c. Is maintained for at least 12 months after the last date on the documentation;
4. A behavioral health professional is present at the behavioral health residential facility or on-call;
5. A registered nurse is present at the behavioral health residential facility or on-call; and
6. If a resident requires services that the behavioral health residential facility is not authorized or not able to provide, a personnel member arranges for the resident to be transported to a hospital or another health care institution where the services can be provided.

**R9-10-707. Admission; Assessment**

**A.** An administrator shall ensure that:

1. A resident is admitted based upon:
  - a. The resident's primary condition for which the resident is admitted to the behavioral health residential facility being a behavioral health issue, and
  - b. The resident's behavioral health issue and treatment needs are within the behavioral health residential facility's scope of services;
2. A behavioral health professional, authorized by policies and procedures to admit a resident, is available;
3. ~~General~~ Except as provided in subsection (A)(4), general consent is obtained from:
  - a. An adult resident or the resident's representative before or at the time of admission, or
  - b. A resident's representative, if the resident is not an adult;
4. General consent is not required from a patient receiving a court-ordered evaluation or court-ordered treatment;
- ~~4.5.~~ The general consent obtained in subsection (A)(3) is documented in the resident's medical record;
- ~~5.6.~~ Except as provided in subsection (E)(1)(a), a medical practitioner performs a medical history and physical examination or a registered nurse performs a nursing assessment on

a resident within 30 calendar days before admission or within 72 hours after admission and documents the medical history and physical examination or nursing assessment in the resident's medical record within 72 hours after admission;

~~6.7.~~ If a medical practitioner performs a medical history and physical examination or a nurse performs a nursing assessment on a resident before admission, the medical practitioner enters an interval note or the nurse enters a progress note in the resident's medical record within seven calendar days after admission;

~~7.8.~~ If a behavioral health assessment is conducted by a:

- a. Behavioral health technician or registered nurse, within 24 hours a behavioral health professional, certified or licensed to provide the behavioral health services needed by the resident, reviews and signs the behavioral health assessment to ensure that the behavioral health assessment identifies the behavioral health services needed by the resident; or
- b. Behavioral health paraprofessional, a behavioral health professional, certified or licensed to provide the behavioral health services needed by the resident, supervises the behavioral health paraprofessional during the completion of the assessment and signs the assessment to ensure that the assessment identifies the behavioral health services needed by the resident;

~~8.9.~~ Except as provided in subsection ~~(A)(9)~~ (A)(10), a behavioral health assessment for a resident is completed before treatment for the resident is initiated;

~~9.10.~~ If a behavioral health assessment that complies with the requirements in this Section is received from a behavioral health provider other than the behavioral health residential facility or if the behavioral health residential facility has a medical record for the resident that contains a behavioral health assessment that was completed within 12 months before the date of the resident's current admission:

- a. The resident's assessment information is reviewed before treatment for the resident is initiated and updated if additional information that affects the resident's assessment is identified, and
- b. The review and update of the resident's assessment information is documented in the resident's medical record within 48 hours after the review is completed;

~~10.11.~~ A behavioral health assessment:

- a. Documents a resident's:
  - i. Presenting issue;
  - ii. Substance abuse history;

- iii. Co-occurring disorder;
- iv. Legal history, including:
  - (1) Custody,
  - (2) Guardianship, and
  - (3) Pending litigation;
- v. Criminal justice record;
- vi. Family history;
- vii. Behavioral health treatment history;
- viii. Symptoms reported by the resident; and
- ix. Referrals needed by the resident, if any;

- b. Includes:
  - i. Recommendations for further assessment or examination of the resident's needs,
  - ii. The physical health services or ancillary services that will be provided to the resident until the resident's treatment plan is completed, and
  - iii. The signature and date signed of the personnel member conducting the behavioral health assessment; and
- c. Is documented in resident's medical record;

~~11.12.~~ A resident is referred to a medical practitioner if a determination is made that the resident requires immediate physical health services or the resident's behavioral health issue may be related to the resident's medical condition; and

~~12.13.~~ Except as provided in subsection (E)(1)(d), 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.

**B.** An administrator shall ensure that:

- 1. A request for participation in a resident's behavioral health assessment is made to the resident or the resident's representative,
- 2. An opportunity for participation in the resident's behavioral health assessment is provided to the resident or the resident's representative, and
- 3. The request in subsection (B)(1) and the opportunity in subsection (B)(2) are documented in the resident's medical record.

**C.** An administrator shall ensure that a resident's behavioral health assessment information is documented in the medical record within 48 hours after completing the behavioral health

assessment.

- D.** If information in subsection (A)(10) is obtained about a resident after the resident's behavioral health assessment is completed, an administrator shall ensure that an interval note, including the information, is documented in the resident's medical record within 24 hours after the information is obtained.
- E.** If a behavioral health residential facility is authorized to provide respite services, an administrator shall ensure that:
1. Upon admission of a resident for respite services:
    - a. Except as provided in subsection (F), a medical history and physical examination of the resident:
      - i. Is performed; or
      - ii. If dated within the previous 12 months, is available in the resident's medical record from a previous admission to the behavioral health residential facility;
    - b. A treatment plan that meets the requirements in R9-10-708:
      - i. Is developed; or
      - ii. If dated within the previous 12 months, is available in the resident's medical record from a previous admission to the behavioral health residential facility;
    - c. If a treatment plan, dated within the previous 12 months, is available, the treatment plan is reviewed, updated, and documented in the resident's medical record; and
    - d. The resident is not required to comply with the requirements in subsection ~~(A)(12)~~ (A)(13) if the resident is not expected to be present in the behavioral health residential facility:
      - i. For more than seven consecutive days, or
      - ii. For 10 days or more days in a 90-consecutive-day period;
  2. The common area required in R9-10-722(B)(1)(b) provides at least 25 square feet for each resident, including residents who do not stay overnight; and
  3. In addition to the requirements in R9-10-722(B)(3), toilets and hand-washing sinks are available to residents, including residents who do not stay overnight, as follows:
    - a. There is at least one working toilet that flushes and has a seat and one sink with running water for every 10 residents,
    - b. There are at least two working toilets that flush and have seats and two sinks with

running water if there are 11 to 25 residents, and

- c. There is at least one additional working toilet that flushes and has a seat and one additional sink with running water for each additional 20 residents.

- F. A medical history and physical examination is not required for a child who is admitted or expected to be admitted to a residential behavioral health facility for less than 10 days in a 90-consecutive-day period.

**R9-10-708. Treatment Plan**

- A. An administrator shall ensure that a treatment plan is developed and implemented for each resident that:
  - 1. Is based on the medical history and physical examination or nursing assessment required in ~~R9-10-707(A)(5)~~ R9-10-707(A)(6) or (E)(1)(a) and the behavioral health assessment required in ~~R9-10-707(A)(8) or (9)~~ R9-10-707(A)(9) or (10) and on-going changes to the behavioral health assessment of the resident;
  - 2. Is completed:
    - a. By a behavioral health professional or a behavioral health technician under the clinical oversight of a behavioral health professional, and
    - b. Before the resident receives physical health services or behavioral health services or within 48 hours after the assessment is completed;
  - 3. Is documented in the resident's medical record within 48 hours after the resident first receives physical health services or behavioral health services;
  - 4. Includes:
    - a. The resident's presenting issue;
    - b. The physical health services or behavioral health services to be provided to the resident;
    - c. The signature of the resident or the resident's representative and date signed, or documentation of the refusal to sign;
    - d. The date when the resident's treatment plan will be reviewed;
    - e. If a discharge date has been determined, the treatment needed after discharge; and
    - f. The signature of the personnel member who developed the treatment plan and the date signed;
  - 5. If the treatment plan was completed by a behavioral health technician, is reviewed and signed by a behavioral health professional within 24 hours after the completion of the treatment plan to ensure that the treatment plan is complete and accurate and meets the

resident's treatment needs; and

6. Is reviewed and updated on an on-going basis:
  - a. According to the review date specified in the treatment plan,
  - b. When a treatment goal is accomplished or changed,
  - c. When additional information that affects the resident's behavioral health assessment is identified, and
  - d. When a resident has a significant change in condition or experiences an event that affects treatment.

**B.** An administrator shall ensure that:

1. A request for participation in developing a resident's treatment plan is made to the resident or the resident's representative,
2. An opportunity for participation in developing the resident's treatment plan is provided to the resident or the resident's representative, and
3. The request in subsection (B)(1) and the opportunity in subsection (B)(2) are documented in the resident's medical record.

**R9-10-712. 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 a personnel member authorized by policies and procedures to make the entry;
  - b. Dated, legible, and authenticated; and
  - c. Not changed to make the initial entry illegible;
3. An order is:
  - a. Dated when the order is entered in the 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 according to policies and procedures to access the resident's medical record;
    - b. If the individual is not authorized according to policies and procedures, with the written consent of the resident or the resident's representative; or
    - c. As permitted by law;
  6. Policies and procedures include the maximum time-frame to retrieve a resident's medical record at the request of a medical practitioner, behavioral health professional, or authorized personnel member; and
  7. A resident's medical record is protected from loss, damage, or unauthorized use.
- B.** If a behavioral health residential facility 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 address;
    - c. The resident's date of birth; and
    - d. Any known allergies, including medication allergies;
  2. The name of the admitting medical practitioner or behavioral health professional;
  3. An admitting diagnosis or presenting behavioral health issues;
  4. The date of admission and, if applicable, date of discharge;
  5. If applicable, the name and contact information of the resident's representative and:
    - a. If the resident is 18 years of age or older or an emancipated minor, 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;

6. If applicable, documented general consent and informed consent for treatment by the resident or the resident's representative;
7. Documentation of medical history and results of a physical examination;
8. A copy of resident's health care directive, if applicable;
9. Orders;
10. If applicable, documentation that evaluation or treatment was ordered by a court according to A.R.S. Title 36, Chapter 5 or A.R.S. § 8-341.01;
- ~~10.~~11. Assessment;
- ~~11.~~12. Treatment plans;
- ~~12.~~13. Interval notes;
- ~~13.~~14. Progress notes;
- ~~14.~~15. Documentation of behavioral health services and physical health services provided to the resident;
- ~~15.~~16. If applicable, documentation of the use of an emergency safety response;
- ~~16.~~17. If applicable, documentation of time-out required in R9-10-714(6);
- ~~17.~~18. Except as allowed in R9-10-707(E)(1)(d), documentation of freedom from infectious tuberculosis required in ~~R9-10-707(A)(12)~~ R9-10-707(A)(13);
- ~~18.~~19. The disposition of the resident after discharge;
- ~~19.~~20. The discharge plan;
- ~~20.~~21. The discharge summary, if applicable;
- ~~21.~~22. If applicable:
  - a. Laboratory reports,
  - b. Radiologic reports,
  - c. Diagnostic reports, and
  - d. Consultation reports; and
- ~~22.~~23. Documentation of medication administered to the resident that includes:
  - a. The date and time of administration;
  - b. The name, strength, dosage, and route of administration;
  - c. For a medication administered for pain, when administered initially or on a PRN basis:
    - i. An assessment of the resident's pain before administering the medication, and
    - ii. The effect of the medication administered;
  - d. For a psychotropic medication, when administered initially or on a PRN basis:

- i. An assessment of the resident's behavior before administering the psychotropic medication, and
- ii. The effect of the psychotropic medication administered;
- e. The identification, signature, and professional designation of the individual administering or providing assistance in the self-administration of the medication; and
- f. Any adverse reaction a resident has to the medication.

**R9-10-716. Behavioral Health Services**

A. An administrator shall ensure that:

- 1. If a behavioral health residential facility is authorized to provide court-ordered evaluation or court-ordered treatment:
  - a. Court-ordered evaluation is provided in compliance with the requirements in A.R.S. Title 36, Chapter 5, Article 4; and
  - b. Court-ordered treatment is provided in compliance with the requirements in A.R.S. Title 36, Chapter 5, Article 5;
- ~~1.2.~~ If a behavioral health residential facility is ~~licensed~~ authorized to provide behavioral health services to individuals whose behavioral health issue limits the individuals' ability to function independently, a resident admitted to the behavioral health residential facility with limited ability to function independently receives:
  - a. Behavioral health services and personal care services as indicated in the resident's treatment plan, and
  - b. Continuous protective oversight;
- ~~2.3.~~ A resident admitted to the behavioral health residential facility who needs behavioral health services to maintain or enhance the resident's ability to function independently:
  - a. Receives behavioral health services, and, if indicated in the resident's treatment plan, personal care services; and
  - b. Is provided an opportunity to participate in activities designed to maintain or enhance the resident's ability to function independently while:
    - i. The resident receives services to maintain the resident's health, safety, or personal hygiene; or
    - ii. Homemaking functions are performed for the resident;
- ~~3.4.~~ Behavioral health services are provided to meet the needs of a resident and are consistent with a behavioral health residential facility's scope of services;
- ~~4.5.~~ Behavioral health services listed in the behavioral health residential facility's scope of

services are provided on the premises;

~~5.6.~~ Before a resident participates in behavioral health services provided in a setting or activity with more than one resident participating, the diagnoses, treatment needs, developmental levels, social skills, verbal skills, and personal histories, including any history of physical or sexual abuse, of the residents participating are reviewed to ensure that the:

- a. Health and safety of each resident is protected, and
- b. Treatment needs of each resident participating are being met; and

~~6.7.~~ A resident does not:

- a. Use or have access to any materials, furnishings, or equipment or participate in any activity or treatment that may present a threat to the resident's health or safety based on the resident's documented diagnosis, treatment needs, developmental levels, social skills, verbal skills, or personal history; or
- b. Share any space, participate in any activity or treatment, or verbally or physically interact with any other resident that may present a threat to the resident's health or safety, based on the other resident's documented diagnosis, treatment needs, developmental levels, social skills, verbal skills, and personal history.

**B.** An administrator shall ensure that counseling is:

1. Offered as described in the behavioral health residential facility's scope of services,
2. Provided according to the frequency and number of hours identified in the resident's treatment plan, and
3. Provided by a behavioral health professional or a behavioral health technician.

**C.** An administrator shall ensure that:

1. A personnel member providing counseling that addresses a specific type of behavioral health issue has the skills and knowledge necessary to provide the counseling that addresses the specific type of behavioral health issue; and
2. Each counseling session is documented in a resident's medical record to include:
  - a. The date of the counseling session;
  - b. The amount of time spent in the counseling session;
  - c. Whether the counseling was individual counseling, family counseling, or group counseling;
  - d. The treatment goals addressed in the counseling session; and
  - e. The signature of the personnel member who provided the counseling and the date signed.

**D.** An administrator of a behavioral health residential facility authorized to provide behavioral health services to individuals under 18 years of age:

1. May continue to provide behavioral health services to a resident who is 18 years of age or older:

a. If the resident:

i. Was admitted to the behavioral health residential facility before the resident's 18th birthday;

ii. Is not 21 years of age or older; and

iii. Is:

(1) Attending classes or completing coursework to obtain a high school or a high school equivalency diploma, or

(2) Participating in a job training program; or

b. Through the last calendar day of the month of the resident's 18th birthday; and

2. Shall ensure that:

a. A resident does not receive the following from other residents at the behavioral health residential facility:

i. Threats,

ii. Ridicule,

iii. Verbal harassment,

iv. Punishment, or

v. Abuse;

b. The interior of the behavioral health residential facility has furnishings and decorations appropriate to the ages of the residents receiving services at the behavioral health residential facility;

c. A resident older than three years of age does not sleep in a crib;

d. Clean and non-hazardous toys, educational materials, and physical activity equipment are available and accessible to residents on the premises in a quantity sufficient to meet each resident's needs and are appropriate to each resident's age, developmental level, and treatment needs; and

e. A resident's educational needs are ~~met, including providing or arranging for transportation~~ addressed according to A.R.S. Title 15, Chapter 7, Article 4:

i. ~~By establishing and providing an educational component, approved in writing by the Arizona Department of Education; or~~

ii. ~~As arranged and documented by the administrator through the local~~

~~school district.~~

**E.** An administrator shall ensure that:

1. An emergency safety response is:
  - a. Only used:
    - i. By a personnel member trained to use an emergency safety response,
    - ii. For the management of a resident's violent or self-destructive behavior, and
    - iii. When less restrictive interventions have been determined to be ineffective; and
  - b. Discontinued at the earliest possible time, but no longer than five minutes after the emergency safety response is initiated;
2. Within 24 hours after an emergency safety response is used for a resident, the following information is entered into the resident medical record:
  - a. The date and time the emergency safety response was used;
  - b. The name of each personnel member who used an emergency safety response;
  - c. The specific emergency safety response used;
  - d. The personnel member or resident behavior, event, or environmental factor that caused the need for the emergency safety response; and
  - e. Any injury that resulted from the use of the emergency safety response;
3. Within 10 working days after an emergency safety response is used for a resident, the administrator or clinical director reviews the information in subsection (E)(2); and
4. After the review required in subsection (E)(3), the following information is entered, according to policies and procedures, into the resident's medical record:
  - a. Actions taken or planned actions to prevent the need for the use of an emergency safety response for the resident,
  - b. A determination of whether the resident is appropriately placed at the behavioral health residential facility, and
  - c. Whether the resident's treatment plan was reviewed or needs to be reviewed and amended to ensure that the resident's treatment plan is meeting the resident's treatment needs.

**F.** An administrator shall ensure that:

1. A personnel member whose job description includes the ability to use an emergency safety response:
  - a. Completes training in crisis intervention that includes:

- i. Techniques to identify personnel member and resident behaviors, events, and environmental factors that may trigger the need for the use of an emergency safety response;
    - ii. The use of nonphysical intervention skills, such as de-escalation, mediation, conflict resolution, active listening, and verbal and observational methods; and
    - iii. The safe use of an emergency safety response including the ability to recognize and respond to signs of physical distress in a client who is receiving an emergency safety response; and
  - b. Completes training required in subsection (F)(1)(a):
    - i. Before providing behavioral health services, and
    - ii. At least once every 12 months after the date the personnel member completed the initial training;
- 2. Documentation of the completed training in subsection (F)(1)(a) includes:
  - a. The name and credentials of the individual providing the training,
  - b. Date of the training, and
  - c. Verification of a personnel member's ability to use the training; and
- 3. The materials used to provide the completed training in crisis intervention, including handbooks, electronic presentations, and skills verification worksheets, are maintained for at least 12 months after each personnel member who received training using the materials no longer provides services at the behavioral health residential facility.

**R9-10-722. Physical Plant Standards**

- A.** Except for a behavioral health outdoor program, an administrator shall ensure that the premises and equipment are sufficient to accommodate:
  - 1. The services in the behavioral health residential facility's scope of services, and
  - 2. An individual admitted as a resident by the behavioral health residential facility.
- B.** An administrator shall ensure that:
  - 1. A behavioral health residential facility has a:
    - a. Room that provides privacy for a resident to receive treatment or visitors; and
    - b. Common area and a dining area that contain furniture and materials to accommodate the recreational and socialization needs of the residents and other individuals in the behavioral health residential facility;
  - 2. At least one bathroom is accessible from a common area that:
    - a. May be used by residents and visitors;

- b. Provides privacy when in use; and
  - c. Contains the following:
    - i. At least one working sink with running water,
    - ii. At least one working toilet that flushes and has a seat,
    - iii. Toilet tissue for each toilet,
    - iv. Soap in a dispenser accessible from each sink,
    - v. Paper towels in a dispenser or a mechanical air hand dryer,
    - vi. Lighting, and
    - vii. A window that opens or another means of ventilation;
3. For every six residents who stay overnight at the behavioral health residential facility, there is at least one working toilet that flushes and has a seat, and one sink with running water;
  4. For every eight residents who stay overnight at the behavioral health residential facility, there is at least one working bathtub or shower;
  5. A resident bathroom provides privacy when in use and contains:
    - a. A shatter-proof mirror, unless the resident's treatment plan allows for otherwise;
    - b. A window that opens or another means of ventilation; and
    - c. Nonporous surfaces for shower enclosures and slip-resistant surfaces in tubs and showers;
  6. If a resident bathroom door locks from the inside, an employee has a key and access to the bathroom;
  7. Each resident is provided a sleeping area that is in a bedroom; and
  8. A resident bedroom complies with the following:
    - a. Is not used as a common area;
    - b. Is not used as a passageway to another bedroom or bathroom unless the bathroom is for the exclusive use of an individual occupying the bedroom;
    - c. Contains a door that opens into a hallway, common area, or outdoors;
    - d. Is constructed and furnished to provide unimpeded access to the door;
    - e. Has window or door covers that provide resident privacy;
    - f. Has floor to ceiling walls;
    - g. Is a:
      - i. Private bedroom that contains at least 60 square feet of floor space, not including the closet; or
      - ii. Shared bedroom that:

- (1) Is shared by no more than eight residents;
      - (2) Except as provided in subsection (C), contains at least 60 square feet of floor space, not including a closet, for each individual occupying the shared bedroom; and
      - (3) Provides at least three feet of floor space between beds or bunk beds;
    - h. Contains for each resident occupying the bedroom:
      - i. A bed that is at least 36 inches wide and at least 72 inches long, and consists of at least a frame and mattress and linens; and
      - ii. Individual storage space for personal effects and clothing such as shelves, a dresser, or chest of drawers;
    - i. Has clean linen for each bed including mattress pad, sheets large enough to tuck under the mattress, pillows, pillow cases, bedspread, waterproof mattress covers as needed, and blankets to ensure warmth and comfort for each resident;
    - j. Has sufficient lighting for a resident occupying the bedroom to read; and
    - k. Has a clothing rod or hook in the bedroom designed to minimize the opportunity for a resident to cause self-injury.
- C. A behavioral health residential facility that was licensed as a Level 4 transitional agency before October 1, 2013 may continue to use a shared bedroom that provides at least 40 square feet of floor space, not including a closet, for each individual occupying the shared bedroom. If there is a modification to the shared bedroom, the behavioral health residential facility shall comply with the requirement in subsection (B)(8)(g).
- D.** For a behavioral health residential facility licensed according to A.R.S. § 36-425.06, an administrator shall ensure that:
- 1. The premises are secure, as defined in A.R.S. § 36-425.06; and
  - 2. There is a means of exiting the facility for a resident who does not have special knowledge for egress that meets one of the following:
    - a. Provides access to an outside area that:
      - i. Allows the resident to be at least 30 feet away from the facility, and
      - ii. Controls or alerts employees of the egress of a resident from the facility;
    - b. Provides access to an outside area:
      - i. From which a resident may exit to a location at least 30 feet away from the facility, and
      - ii. Controls or alerts employees of the egress of a resident from the facility;

or

- c. Uses a mechanism that meets the Special Egress-Control Devices provisions in the Uniform Building Code incorporated by reference in A.A.C. R9-10-104.01.

**D.E.** If a swimming pool is located on the premises, an administrator shall ensure that:

1. The swimming pool is equipped with the following:
  - a. An operational water circulation system that clarifies and disinfects the swimming pool water continuously and that includes at least:
    - i. A removable strainer,
    - ii. Two swimming pool inlets located on opposite sides of the swimming pool, and
    - iii. A drain located at the swimming pool's lowest point and covered by a grating that cannot be removed without using tools; and
  - b. An operational vacuum cleaning system;
2. The swimming pool is enclosed by a wall or fence that:
  - a. Is at least five feet in height as measured on the exterior of the wall or fence;
  - b. Has no vertical openings greater than four inches across;
  - c. Has no horizontal openings, except as described in subsection ~~(D)(2)(e)~~ (E)(2)(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
3. A life preserver or shepherd's crook is available and accessible in the pool area.

**E.F.** An administrator shall ensure that a spa that is not enclosed by a wall or fence as described in subsection ~~(D)(2)~~ (E)(2) is covered and locked when not in use.

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Approval of a modification of a health care institution R9-10-110	A.R.S. §§ 36-405, 36-407, and 36-422	75 calendar days	15 calendar days	60 calendar days
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**Historical Note**

New Table 1 made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 859, effective April 2, 2005 (Supp. 05-1). Table 1 title and contents amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Table 1.1 amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-109. Changes Affecting a License**

- A. A licensee shall ensure that the Department is notified in writing at least 30 calendar days before the effective date of:
  - 1. A change in the name of:
    - a. A health care institution, or
    - b. The licensee; or
  - 2. A change in the address of a health care institution that does not provide medical services, nursing services, or health-related services on the premises.
- B. If a licensee intends to terminate the operation of a health care institution either during or at the expiration of the health care institution's license, the licensee shall ensure that the Department is notified in writing of:
  - 1. The termination of the health care institution's operations, as required in A.R.S. § 36-422(D), at least 30 calendar days before the termination, and
  - 2. The address and contact information for the location where the health care institution's medical records will be retained as required in A.R.S. § 12-2297.
- C. If a licensee is an adult behavioral health therapeutic home or a behavioral health respite home, the licensee shall ensure that:
  - 1. The Department is notified in writing if the licensee does not have a written agreement with a collaborating health care institution, as required in R9-10-1603(A)(4) or R9-10-1803(A)(5) as applicable; and
  - 2. The adult behavioral health therapeutic home or behavioral health respite home does not accept an individual as a resident or recipient, as applicable, or provide services to a resident or recipient, as applicable, until:
    - a. The adult behavioral health therapeutic home or behavioral health respite home has a written agreement with a collaborating health care institution;
    - b. The collaborating health care institution has approved the adult behavioral health therapeutic home's or behavioral health respite home's:
      - i. Scope of services, and
      - ii. Policies and procedures; and
    - c. The collaborating health care institution has verified the provider's skills and knowledge.
- D. If a licensee is an affiliated outpatient treatment center, the licensee shall ensure that if the affiliated outpatient treatment center:
  - 1. Plans to begin providing administrative support to a counseling facility at a time other than during the affiliated outpatient treatment center's initial or renewal license application process, the following information for each counseling facility is submitted to the Department before the affiliated outpatient treatment center begins providing administrative support:
    - a. The counseling facility's name,
    - b. The license number assigned to the counseling facility by the Department, and
    - c. The date the affiliated outpatient treatment center will begin providing administrative support to the counseling facility; or
  - 2. No longer provides administrative support to a counseling facility previously identified by the affiliated outpatient treatment center as receiving administrative support from the affiliated outpatient treatment center, at a time other than during the initial or renewal license application process, the following information for each counseling facility is submitted to the Department within 30 calendar days after the affiliated outpatient treatment center no longer provides administrative support:
    - a. The counseling facility's name,
    - b. The license number assigned to the counseling facility by the Department, and
    - c. The date the affiliated outpatient treatment center stopped providing administrative support to the counseling facility.
- E. If a licensee is a counseling facility, the licensee shall ensure that if the counseling facility:
  - 1. Plans to begin receiving administrative support from an affiliated outpatient treatment center at a time other than during the counseling facility's initial or renewal license application process, the following information for the affiliated outpatient treatment center is submitted to the Department before the counseling facility begins receiving administrative support:
    - a. The affiliated outpatient treatment center's name,
    - b. The license number assigned to the affiliated outpatient treatment center by the Department, and
    - c. The date the counseling facility will begin receiving administrative support; or
  - 2. No longer receives administrative support from an affiliated outpatient treatment center previously identified by the counseling facility as providing administrative support to the counseling facility, at a time other than during the counseling facility's initial or renewal license application process, the following information for the affiliated outpatient treatment center is submitted to the Department within 30 calendar days after the counseling facility no longer receives administrative support from the affiliated outpatient treatment center:
    - a. The affiliated outpatient treatment center's name,
    - b. The license number assigned to the affiliated outpatient treatment center by the Department, and
    - c. The date the counseling facility stopped receiving administrative support from the affiliated outpatient treatment center.
  - 3. Plans to begin sharing administrative support with an affiliated counseling facility at a time other than during the counseling facility's initial or renewal license application process, the following information for each affiliated counseling facility sharing administrative support with the counseling facility is submitted to the Department before the counseling facility and affiliated counseling facility begin sharing administrative support:
    - a. The affiliated counseling facility's name,
    - b. The license number assigned to the affiliated counseling facility by the Department, and

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- c. The date the counseling facility and the affiliated counseling facility will begin sharing administrative support; or
- 4. No longer shares administrative support with an affiliated counseling facility previously identified by the counseling facility as sharing administrative support with the counseling facility at a time other than during the counseling facility's initial or renewal license application process, the following information is submitted for each affiliated counseling facility within 30 calendar days after the counseling facility and affiliated counseling facility no longer share administrative support:
  - a. The affiliated counseling facility's name,
  - b. The license number assigned to the affiliated counseling facility by the Department, and
  - c. The date the counseling facility and affiliated counseling facility will no longer be sharing administrative support.
- F. A governing authority shall submit an initial license application required in R9-10-105 for:
  - 1. A change in ownership of a health care institution;
  - 2. A change in the address or location of a health care institution that provides medical services, nursing services, health-related services, or behavioral health services on the premises; or
  - 3. A change in a health care institution's class or subclass.
- G. A governing authority is not required to submit documentation of a health care institution's architectural plans and specifications required in R9-10-105(A)(5) for an initial license application if:
  - 1. The health care institution has not ceased operations for more than 30 calendar days,
  - 2. A modification has not been made to the health care institution,
  - 3. The services the health care institution is authorized by the Department to provide are not changed, and
  - 4. The location of the health care institution's premises is not changed.
- H. The Department shall approve or deny a request for a change in services or another modification described in this Section according to R9-10-108.
- I. A licensee shall not implement a change in services or another modification described in this Section until an approval or amended license is issued by the Department.
- 3. The name of the health care institution's administrator's or individual representing the health care institution as designated in A.R.S. § 36-422 and the dated signature of the administrator or individual; and
- 4. One of the following:
  - a. For a health care institution that is required to comply with the physical plant codes and standards incorporated by reference in A.A.C. R9-10-412 for the building, documentation of the health care institution's architectural plans and specifications approval in R9-10-104; or
  - b. For a health care institution that is not required to comply with the physical plant codes and standards, documentation that demonstrates that the requested modification complies with applicable requirements in this Chapter.
- C. The Department shall approve or deny a request for a modification described in subsection (B) according to R9-10-108.
- D. A licensee shall not implement a modification described in subsection (B) until an approval or amended license is issued by the Department.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-110 renumbered to Section R9-10-111; new Section R9-10-110 made by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-111. Enforcement Actions**

- A. If the Department determines that an applicant or licensee is violating applicable statutes and rules and the violation poses a direct risk to the life, health, or safety of a patient, the Department may:
  - 1. Issue a provisional license to the applicant or licensee under A.R.S. § 36-425,
  - 2. Assess a civil penalty under A.R.S. § 36-431.01,
  - 3. Impose an intermediate sanction under A.R.S. § 36-427,
  - 4. Remove a licensee and appoint another person to continue operation of the health care institution pending further action under A.R.S. § 36-429,
  - 5. Suspend or revoke a license under A.R.S. § 36-427 and R9-10-111,
  - 6. Deny a license under A.R.S. § 36-425 and R9-10-111, or
  - 7. Issue an injunction under A.R.S. § 36-430.
- B. In determining which action in subsection (A) is appropriate, the Department shall consider the direct risk to the life, health, or safety of a patient in the health care institution based on:
  - 1. Repeated violations of statutes or rules,
  - 2. Pattern of violations,
  - 3. Types of violation,
  - 4. Severity of violation, and
  - 5. Number of violations.

**Historical Note**

Amended effective February 4, 1981 (Supp. 81-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 97, effective January 1, 2014 (Supp. 13-4). Section R9-10-111 renumbered to Section R9-10-112; new Section R9-10-111 renumbered from R9-10-110 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13;

**Historical Note**  
New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by exempt rulemaking at 20 A.A.R. 3535, pursuant to Laws 2014, Ch. 233, § 5; effective January 1, 2015 (Supp. 14-4).

**R9-10-110. Modification of a Health Care Institution**

- A. A licensee of a health care institution that is required by this Chapter to comply with any of the physical plant codes and standards incorporated by reference in A.A.C. R9-1-412 shall submit an application for approval of architectural plans and specifications for a modification of the health care institution.
- B. A licensee of a health care institution shall submit a written request for a modification of the health care in a Department-provided format that contains:
  - 1. The health care institution's name, address, and license number;
  - 2. A narrative description of the modification;

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- 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 patient 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 patient's behavior and the patient's:
    - i. Chronological and developmental age;
    - ii. Size;
    - iii. Gender;
    - iv. Physical condition;
    - 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 patient is monitored and assessed according to policies and procedures;
  - e. A physician or registered nurse assesses the patient within one hour after the patient is placed in the restraint or seclusion and determines:
    - i. The patient's current behavior,
    - ii. The patient's reaction to the restraint or seclusion used,
    - iii. The patient's medical and behavioral condition, and
    - iv. Whether to continue or terminate the restraint or seclusion;
  - f. The patient 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 patient's medical record before the end of the shift in which the patient is placed in restraint or seclusion or, if the patient's restraint or seclusion does not end during the shift in which it began, during the shift in which the patient's restraint or seclusion ends:
- a. The emergency situation that required the patient to be restrained or put in seclusion;
  - b. The times the patient's restraint or seclusion actually began and ended;
  - c. The time of the assessment required in subsection (C)(9)(e);
  - d. The monitoring required in subsection (C)(9)(d);
  - e. The names of the medical practitioners and personnel members with direct patient contact while the patient was in the restraint or seclusion;
  - f. The times the patient was given the opportunity to eat or use the toilet according to subsection (C)(9)(f); and
  - g. The patient evaluation required in subsection (C)(12);
11. If an emergency situation continues beyond the time limit of an order for restraint or 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 patient is evaluated after restraint or seclusion is no longer being used for the patient.

**Historical Note**

Section R9-10-316, formerly numbered as R9-10-216, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-316 repealed, new Section R9-10-316 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-316 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-317. Behavioral Health Observation/Stabilization Services**

- A. An administrator of a behavioral health inpatient facility authorized to provide behavioral health observation/stabilization services shall comply with the requirements for behavioral health observation/stabilization services in R9-10-1012.
- B. If a behavioral health inpatient facility is authorized to provide behavioral health observation/stabilization services to individuals under 18 years of age, an administrator shall ensure that, in addition to complying with the requirements in R9-10-1012, the behavioral health inpatient facility complies with the requirements for a patient under 18 years of age, personnel records, and physical plant in R9-10-318.

**Historical Note**

Section R9-10-317, formerly numbered as R9-10-221, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-317 repealed, new Section R9-10-317 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-317 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-318. Child and Adolescent Residential Treatment Services**

- A. An administrator of a behavioral health inpatient facility authorized to provide child and adolescent residential treatment services shall:
  - 1. If abuse, neglect, or exploitation of a patient under 18 years of age is alleged or suspected to have occurred before the patient was accepted or while the patient is not on the premises and not receiving services from an employee or personnel member of the behavioral health inpatient facility, report the alleged or suspected abuse, neglect, or exploitation of the patient according to A.R.S. § 13-3620;

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2. If the administrator has a reasonable basis, according to A.R.S. § 13-3620, to believe that abuse, neglect, or exploitation of a patient under 18 years of age has occurred on the premises or while the patient is receiving services from an employee or a personnel member:
    - a. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
    - b. Report the suspected abuse, neglect, or exploitation of the patient according to A.R.S. § 13-3620;
    - c. Document:
      - i. The suspected abuse, neglect, or exploitation;
      - ii. Any action taken according to subsection (A)(2)(a); and
      - iii. The report in subsection (A)(2)(b);
    - d. Maintain the documentation in subsection (A)(2)(c) for at least 12 months after the date of the report in subsection (A)(2)(b);
    - e. 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 (A)(2)(b):
      - i. The dates, times, and description of the suspected abuse, neglect, or exploitation;
      - ii. A description of any injury to the patient related to the suspected abuse or neglect and any change to the patient's physical, cognitive, functional, or emotional condition;
      - iii. The names of witnesses to the suspected abuse, neglect, or exploitation; and
      - iv. The actions taken by the administrator to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and
    - f. Maintain a copy of the documented information required in subsection (A)(2)(e) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated;
  3. If a patient who is under 18 years of age is absent and the absence is unauthorized as determined according to the criteria in R9-10-303(H), within an hour after determining that the patient's absence is unauthorized, notify:
    - a. Except as provided in subsection (A)(3)(b), the patient's parent or legal guardian; and
    - b. For a patient who is under a court's jurisdiction, the appropriate court or a person designated by the appropriate court;
  4. Document the notification in subsection (A)(3) in the patient's medical record and the written log required in R9-10-303(I)(3);
  5. In addition to the personnel records requirements in R9-10-306(F), ensure that a personnel record for each employee, volunteer, and student contains documentation of the individual's compliance with the fingerprinting requirements in A.R.S. § 36-425.03;
  6. Ensure that the patient's representative for a patient who is under 18 years of age:
    - a. Except in an emergency, either consents to or refuses treatment;
    - b. May refuse or withdraw consent to treatment before treatment is initiated, unless the treatment is ordered by a court according to A.R.S. Title 36, Chapter 5 or A.R.S. § 8-341.01; is necessary to save the patient's life or physical health; or is provided according to A.R.S. § 36-512;
    - c. Except in an emergency, is informed of alternatives to a proposed psychotropic medication and the associated risks and possible complications of the proposed psychotropic medication;
  - d. Is informed of the following:
    - i. The policy on health care directives, and
    - ii. The patient complaint process; and
  - e. Except as otherwise permitted by law, provides written consent to the release of information in the patient's:
    - i. Medical record, or
    - ii. Financial records;
  7. In addition to the restrictions provided in R9-10-311(C), ensure that a parent of a patient under 18 years of age is allowed to restrict the patient from:
    - a. Associating with individuals of the patient's choice, receiving visitors, and making telephone calls during the hours established by the behavioral health inpatient facility;
    - b. Having privacy in correspondence, communication, visitation, financial affairs, and personal hygiene; and
    - c. Sending and receiving uncensored and unopened mail;
  8. Establish, document, and implement policies and procedures to ensure that a patient is protected from the following from other patients at the behavioral health inpatient facility:
    - a. Threats,
    - b. Ridicule,
    - c. Verbal harassment,
    - d. Punishment, or
    - e. Abuse;
  9. Ensure that:
    - a. The interior of the behavioral health inpatient facility has furnishings and decorations appropriate to the ages of the patients receiving services at the behavioral health inpatient facility;
    - b. A patient older than three years of age does not sleep in a crib;
    - c. Clean and non-hazardous toys, educational materials, and physical activity equipment are available and accessible to patients in a quantity sufficient to meet each patient's needs and are appropriate to each patient's age, developmental level, and treatment needs; and
    - d. A patient's educational needs are met by establishing and providing an educational component, approved in writing by the Arizona Department of Education;
  10. In addition to the requirements for seclusion or restraint in R9-10-316, ensure that:
    - a. An order for restraint or seclusion is limited to the duration of the emergency situation and does not exceed:
      - i. Two continuous hours for a patient who is between the ages of nine and 17, or
      - ii. One continuous hour for a patient who is younger than nine; and
    - b. Requirements are established for notifying the parent or guardian of a patient who is under 18 years of age and who is restrained or secluded; and
  11. Prohibit a patient under 18 years of age from possessing or using tobacco products on the premises.
- B.** An administrator of a behavioral health inpatient facility authorized to provide child and adolescent residential treatment services may continue to provide behavioral health services to a patient who is 18 years of age or older:
1. If the patient:

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- a. Was admitted to the behavioral health inpatient facility before the patient's 18th birthday,
  - b. Is not 21 years of age or older, and
  - c. Is completing high school or a high school equivalency diploma or participating in a job training program; or
2. Through the last calendar day of the month of the patient's 18th birthday.

**Historical Note**

Section R9-10-318, formerly numbered as R9-10-222, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-318 repealed, new Section R9-10-318 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-318 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). R9-10-318 renumbered to R9-10-319; new Section made by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-319. Detoxification Services**

An administrator of a behavioral health inpatient facility authorized to provide detoxification services shall ensure that:

1. Detoxification services are available;
2. Policies and procedures state:
  - a. Whether the behavioral health inpatient facility is authorized to provide involuntary, court-ordered alcohol treatment;
  - b. Whether the behavioral health inpatient facility includes a local alcoholism reception center, as defined in A.R.S. § 36-2021;
  - c. The types of substances for which the behavioral health inpatient facility provides detoxification services;
  - d. The detoxification process or processes used by the behavioral health inpatient facility; and
  - e. When an adjustable bed can be used by a patient and what actions are necessary, including supervision, to protect the patient's health and safety when the patient is in an adjustable bed; and
3. A physician or registered nurse practitioner with skills and knowledge in providing detoxification services is present at the behavioral health inpatient facility or on-call.

**Historical Note**

Section R9-10-319, formerly numbered as R9-10-223, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-319 repealed, new Section R9-10-319 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-319 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). R9-10-319 renumbered to R9-10-320; new Section R9-10-319 renumbered from R9-10-318 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-320. Medication Services**

A. An administrator shall ensure that policies and procedures for medication services:

1. Include:
    - a. A process for providing information to a patient about medication prescribed for the patient including:
      - i. The prescribed medication's anticipated results,
      - ii. The prescribed medication's potential adverse reactions,
      - iii. The prescribed medication's potential side effects, and
      - iv. Potential adverse reactions that could result from not taking the medication as prescribed;
    - b. Procedures for preventing, responding to, and reporting:
      - i. A medication error,
      - ii. An adverse reaction to a medication, or
      - iii. A medication overdose;
    - c. Procedures to ensure that a patient's medication regimen is reviewed by a medical practitioner to ensure the medication regimen meets the patient's needs;
    - d. Procedures for documenting medication administration and assistance in the self-administration of medication;
    - e. Procedures for assisting a patient in obtaining medication; and
    - f. If applicable, procedures for providing medication administration or assistance in the self-administration of medication off the premises; 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.** If a behavioral health inpatient facility provides medication administration, an administrator shall ensure that:
1. Policies and procedures for medication administration:
    - a. Are reviewed and approved by a medical practitioner;
    - b. Specify the individuals who may:
      - i. Order medication, and
      - ii. Administer medication;
    - c. Ensure that medication is administered to a patient only as prescribed; and
    - d. Cover the documentation of a patient's refusal to take prescribed medication in the patient's medical record;
  2. Verbal orders for medication services are taken by a nurse, unless otherwise provided by law; and
  3. A medication administered to a patient is:
    - a. Administered in compliance with an order, and
    - b. Documented in the patient's medical record.
- C.** If a behavioral health inpatient facility provides assistance in the self-administration of medication, an administrator shall ensure that:
1. A patient's medication is stored by the behavioral health inpatient facility;
  2. The following assistance is provided to a patient:
    - a. A reminder when it is time to take the medication;
    - b. Opening the medication container for the patient;
    - c. Observing the patient while the patient removes the medication from the container;
    - d. Verifying that the medication is taken as ordered by the patient's medical practitioner by confirming that:
      - i. The patient taking the medication is the individual stated on the medication container label,
      - ii. The patient is taking the dosage of the medication stated on the medication container label or according to an order from a medical practitioner;

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11. Is not used as a passageway to another sleeping area, a toilet room, or a bathing room;
  12. Contains one of the following to provide sunlight:
    - a. A window to the outside of the hospice inpatient facility, or
    - b. A transparent or translucent door to the outside of the hospice inpatient facility; and
  13. Has coverings for windows and for transparent or translucent doors that provide patient privacy.
- D.** An administrator of a hospice inpatient facility shall ensure that there is:
1. For every six patients, a toilet room that contains:
    - a. At least one working toilet that flushes and has a seat;
    - b. At least one working sink with running water;
    - c. Soap for hand washing;
    - d. Paper towels or a mechanical air hand dryer;
    - e. Grab bars attached to a wall that an individual may hold onto to assist the individual in becoming or remaining erect;
    - f. A mirror;
    - g. Lighting;
    - h. Space for a personnel member to assist a patient;
    - i. A bell, intercom, or other mechanical means for a patient to alert a personnel member; and
    - j. An operable window to the outside of the hospice inpatient facility or other means of ventilation;
  2. For every 12 patients, at least one working bathtub or shower accessible to a wheeled shower chair, with a slip-resistant surface, located in a toilet room or in a separate bathing room;
  3. For a patient occupying a sleeping area with one or more other patients, a separate room in which the patient can meet privately with family members;
  4. Space in a lockable closet, drawer, or cabinet for a patient to store the patient's private or valuable items;
  5. A room other than a sleeping area that can be used for social activities;
  6. Sleeping accommodations for family members;
  7. A designated toilet room, other than a patient toilet room, for personnel and visitors that:
    - a. Provides privacy; and
    - b. Contains:
      - i. A working sink with running water,
      - ii. A working toilet that flushes and has a seat,
      - iii. Toilet tissue,
      - iv. Soap for hand washing,
      - v. Paper towels or a mechanical air hand dryer,
      - vi. Lighting, and
      - vii. A window that opens or another means of ventilation;
  8. If the hospice inpatient facility has a kitchen with a stove or oven, a mechanism to vent the stove or oven to the outside of the hospice inpatient facility; and
  9. Space designated for administrative responsibilities that is separate from sleeping areas, toilet rooms, bathing rooms, and drug storage areas.

**Historical Note**

Adopted effective November 6, 1978 (Supp. 78-6). Section R9-10-618 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20

A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-619. Repealed****Historical Note**

Adopted effective November 6, 1978 (Supp. 78-6). Section R9-10-619 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4).

**R9-10-620. Repealed****Historical Note**

Adopted effective November 6, 1978 (Supp. 78-6). Section R9-10-620 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4).

**R9-10-621. Repealed****Historical Note**

Adopted effective November 6, 1978 (Supp. 78-6). Correction, subsection (H), after "... 105° F" added "no more than 110° F" as certified effective November 6, 1978 (Supp. 87-2). Section R9-10-621 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4).

**R9-10-622. Repealed****Historical Note**

Adopted effective November 6, 1978 (Supp. 78-6). Section R9-10-622 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4).

**R9-10-623. Repealed****Historical Note**

Adopted effective November 6, 1978 (Supp. 78-6). Section R9-10-623 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4).

**R9-10-624. Repealed****Historical Note**

Adopted effective November 6, 1978 (Supp. 78-6). Section R9-10-624 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4).

**ARTICLE 7. BEHAVIORAL HEALTH RESIDENTIAL FACILITIES****R9-10-701. Definitions**

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

"Emergency safety response" means physically holding a resident to manage the resident's sudden, intense, or out-of-con-

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trol behavior to prevent harm to the resident or another individual.

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted without changes effective October 30, 1989 (Supp. 89-4). Section R9-10-701 repealed, new Section R9-10-701 adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-702. Supplemental Application Requirements**

- A.** In addition to the license application requirements in A.R.S. § 36-422 and R9-10-105, an applicant for an initial license as a behavioral health residential facility shall include on the application:
1. Whether the applicant is requesting authorization to provide:
    - a. Behavioral health services to individuals under 18 years of age, including the licensed capacity requested;
    - b. Behavioral health services to individuals 18 years of age and older, including the licensed capacity requested; or
    - c. Respite services;
  2. Whether the applicant is requesting authorization to provide an outdoor behavioral health care program, including:
    - a. The requested licensed capacity for providing the outdoor behavioral health care program to individuals 12 to 17 years of age, and
    - b. The requested licensed capacity for providing the outdoor behavioral health care program to individuals 18 to 24 years of age;
  3. Whether the applicant is requesting authorization to provide:
    - a. Residential services to individuals 18 years of age or older whose behavioral health issue limits the individuals' ability to function independently, or
    - b. Personal care services;
  4. For a behavioral health residential facility requesting authorization to provide respite services, the requested number of individuals the behavioral health residential facility plans to admit for respite services who do not stay overnight in the behavioral health residential facility; and
  5. For an outdoor behavioral health care program, a copy of the outdoor behavioral health care program's current accreditation report.
- B.** In addition to the renewal license application requirements in A.R.S. § 36-422 and R9-10-107, an administrator of an outdoor behavioral health care program shall submit with a

renewal application, a copy of the outdoor behavioral health care program's current accreditation report.

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section R9-10-702 repealed, new Section R9-10-702 adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-703. Administration**

- A.** A governing authority shall:
1. Consist of one or more individuals responsible for the organization, operation, and administration of a behavioral health residential facility;
  2. Establish, in writing:
    - a. A behavioral health residential facility's scope of services, and
    - b. Qualifications for an administrator;
  3. Designate, in writing, an administrator who has the qualifications established in subsection (A)(2)(b);
  4. Adopt a quality management program according to R9-10-704;
  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 has the qualifications established in subsection (A)(2)(b), if the administrator is:
    - a. Expected not to be present on the behavioral health residential facility's premises for more than 30 calendar days, or
    - b. Not present on the behavioral health residential facility's premises for more than 30 calendar days; and
  7. Except as provided in subsection (A)(6), notify the Department according to A.R.S. § 36-425(I) when there is a change in the administrator and identify the name and qualifications of the new administrator.
- B.** An administrator:
1. Is directly accountable to the governing authority of a behavioral health residential facility for the daily operation of the behavioral health residential facility and all services provided by or at the behavioral health residential facility;
  2. Has the authority and responsibility to manage the behavioral health residential facility; and
  3. Except as provided in subsection (A)(6), designates, in writing, an individual who is present on the behavioral health residential facility's premises and accountable for the behavioral health residential facility when the admin-

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istrator is not present on the behavioral health residential facility's premises.

**C.** An administrator shall ensure that:

1. Policies and procedures are established, documented, and implemented to protect the health and safety of a 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 orientation and in-service education for personnel members, employees, volunteers, and students;
    - c. Include how a personnel member may submit a complaint relating to services provided to a resident;
    - d. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
    - e. Cover cardiopulmonary resuscitation training including:
      - i. The method and content of cardiopulmonary resuscitation training, which includes a demonstration of the individual's ability to perform cardiopulmonary resuscitation;
      - ii. The qualifications for an individual to provide cardiopulmonary resuscitation training;
      - iii. The time-frame for renewal of cardiopulmonary resuscitation training; and
      - iv. The documentation that verifies that the individual has received cardiopulmonary resuscitation training;
    - f. Cover first aid training;
    - g. Include a method to identify a resident to ensure the resident receives physical health services and behavioral health services as ordered;
    - h. Cover resident rights, including assisting a resident who does not speak English or who has a physical or other disability to become aware of resident rights;
    - i. Cover specific steps for:
      - i. A resident to file a complaint, and
      - ii. The behavioral health residential facility to respond to a resident complaint;
    - j. Cover health care directives;
    - k. Cover medical records, including electronic medical records;
    - l. Cover a quality management program, including incident reports and supporting documentation;
    - m. Cover contracted services; and
    - n. Cover when an individual may visit a resident in a behavioral health residential facility;
  2. Policies and procedures for behavioral health services and physical health services are established, documented, and implemented to protect the health and safety of a resident that:
    - a. Cover resident screening, admission, assessment, treatment plan, transport, transfer, discharge planning, and discharge;
    - b. Cover the provision of behavioral health services and physical health services;
    - c. Include when general consent and informed consent are required;
    - d. Cover emergency safety responses;
    - e. Cover a resident's personal funds account;
    - f. Cover dispensing medication, administering medication, assistance in the self-administration of medication, and disposing of medication, including provisions for inventory control and preventing diversion of controlled substances;
    - g. Cover prescribing a controlled substance to minimize substance abuse by a resident;
    - h. Cover respite services;
    - i. Cover services provided by an outdoor behavioral health care program, if applicable;
    - j. Cover infection control;
    - k. Cover resident time out;
    - l. Cover resident outings;
    - m. Cover environmental services that affect resident care;
    - n. Cover whether pets and other animals are allowed on the premises, including procedures to ensure that any pets or other animals allowed on the premises do not endanger the health or safety of residents or the public;
    - o. If animals are used as part of a therapeutic program, cover:
      - i. Inoculation/vaccination requirements, and
      - ii. Methods to minimize risks to resident's health and safety;
    - p. Cover the process for receiving a fee from a resident and refunding a fee to a resident;
    - q. Cover the process for obtaining resident preferences for social, recreational, or rehabilitative activities and meals and snacks;
    - r. Cover the security of a resident's possessions that are allowed on the premises;
    - s. Cover smoking and the use of tobacco products on the premises; and
    - t. Cover how the behavioral health residential facility will respond to a resident's sudden, intense, or out-of-control behavior to prevent harm to the resident or another individual;
  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 a behavioral health residential facility, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the behavioral health residential facility.
- D.** If an applicant requests or a behavioral health residential facility has a licensed capacity of 10 or more residents, an administrator shall designate a clinical director who:
1. Provides direction for the behavioral health services provided by or at the behavioral health residential facility;
  2. Is a behavioral health professional; and
  3. May be the same individual as the administrator, if the individual meets the qualifications in subsections (A)(2)(b) and (D)(1) and (2).
- E.** Except for respite services, an administrator shall ensure that medical services, nursing services, health-related services, or ancillary services provided by a behavioral health residential facility are only provided to a resident who is expected to be present in the behavioral health residential facility for more than 24 hours.
- F.** An administrator shall provide written notification to the Department of a resident's:

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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 or has an accident that requires immediate intervention by an emergency medical services provider.
- G.** 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 a behavioral health residential facility'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.
- H.** If an administrator has a reasonable basis, according to A.R.S. §§ 13-3620 or 46-454, to believe abuse, neglect, or exploitation has occurred on the premises or while a resident is receiving services from a behavioral health residential facility's employee or personnel member, the administrator shall:
1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
  2. Report the suspected abuse, neglect, or exploitation of the resident:
    - 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;
  3. Document:
    - a. The suspected abuse, neglect, or exploitation;
    - b. Any action taken according to subsection (H)(1); and
    - c. The report in subsection (H)(2);
  4. Maintain the documentation in subsection (H)(3) for at least 12 months after the date of the report in subsection (H)(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 (H)(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 (H)(5) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.
- I.** An administrator shall:
1. Establish and document requirements regarding residents, personnel members, employees, and other individuals entering and exiting the premises;
  2. Establish and document guidelines for meeting the needs of an individual residing at a behavioral health residential facility with a resident, such as a child accompanying a parent in treatment, if applicable;
  3. If children under the age of 12, who are not admitted to a behavioral health residential facility, are residing at the behavioral health residential facility and being cared for by employees or personnel members, ensure that:
    - a. An employee or personnel member caring for children has current cardiopulmonary resuscitation and first aid training specific to the ages of children being cared for; and
    - b. The staff-to-children ratios in A.A.C. R9-5-404(A) are maintained, based on the age of the youngest child in the group;
  4. Establish and document the process for responding to a resident's need for immediate and unscheduled behavioral health services or physical health services;
  5. Establish and document the criteria for determining when a resident's absence is unauthorized, including criteria for a resident who:
    - a. Was admitted under A.R.S. Title 36, Chapter 5, Articles 1, 2, or 3;
    - b. Is absent against medical advice; or
    - c. Is under the age of 18;
  6. If a resident's absence is unauthorized as determined according to the criteria in subsection (I)(5), within an hour after determining that the resident's absence is unauthorized, notify:
    - a. For a resident who is under 18 years of age, the resident's parent or legal guardian; and
    - b. For a resident who is under a court's jurisdiction, the appropriate court;
  7. Maintain a written log of unauthorized absences for at least 12 months after the date of a resident's absence that includes the:
    - a. Name of a resident absent without authorization,
    - b. Name of the individual to whom the report required in subsection (I)(6) was submitted, and
    - c. Date of the report;
  8. Document the notification in subsection (I)(6) and the written log required in subsection (I)(7); and
  9. Evaluate and take action related to unauthorized absences under the quality management program in R9-10-704.
- J.** An administrator shall ensure that the following information or documents are conspicuously posted on the premises and are available upon request to a personnel member, employee, resident, or a resident's representative:
1. The behavioral health residential facility's current license,
  2. The location at which inspection reports required in R9-10-720(C) are available for review or can be made available for review, and
  3. The calendar days and times when a resident may accept visitors or make telephone calls.
- K.** An administrator shall ensure that:
1. Labor performed by a resident for the behavioral health residential facility is consistent with A.R.S. § 36-510;
  2. A resident who is a child is only released to the child's custodial parent, guardian, or custodian or as authorized in writing by the child's custodial parent, guardian, or custodian;
  3. The administrator obtains documentation of the identity of the parent, guardian, custodian, or family member authorized to act on behalf of a resident who is a child; and
  4. A resident, who is an incapacitated person according to A.R.S. § 14-5101 or who is gravely disabled, is assisted in obtaining a resident's representative to act on the resident's behalf.

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- L.** If an administrator determines that a resident is incapable of handling the resident's financial affairs, the administrator shall:
1. Notify the resident's representative or contact a public fiduciary or a trust officer to take responsibility of the resident's financial affairs, and
  2. Maintain documentation of the notification required in subsection (L)(1)(a) in the resident's medical record for at least 12 months after the date of the notification.
- M.** If an administrator manages a resident's money through a personal funds account, the administrator shall ensure that:
1. Policies and procedure are established, developed, and implemented for:
    - a. Using resident's funds in a personal funds account,
    - b. Protecting resident's funds in a personal funds account,
    - c. Investigating a complaint about the use of resident's funds in a personal funds account and ensuring that the complaint is investigated by an individual who does not manage the personal funds account,
    - d. Processing each deposit into and withdrawal from a personal funds account, and
    - e. Maintaining a record for each deposit into and withdrawal from a personal funds account; and
  2. The personal funds account is only initiated after receiving a written request that:
    - a. Is provided:
      - i. Voluntarily by the resident,
      - ii. By the resident's representative, or
      - iii. By a court of competent jurisdiction;
    - b. May be withdrawn at any time; and
    - c. Is maintained in the resident's record.

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section R9-10-703 repealed, new Section R9-10-703 adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-704. Quality Management**

An administrator shall ensure that:

1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:
  - a. A method to identify, document, and evaluate incidents;
  - b. A method to collect data to evaluate services provided to residents;

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

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section R9-10-704 repealed, new Section R9-10-704 adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

**R9-10-705. Contracted Services**

An administrator shall ensure that:

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

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section R9-10-705 repealed, new Section R9-10-705 adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998

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(Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-706. Personnel**

- A.** An administrator shall ensure that:
1. A personnel member is:
    - a. At least 21 years old, or
    - b. Licensed or certified under A.R.S. Title 32 and providing services within the personnel member's scope of practice;
  2. An employee is at least 18 years old;
  3. A student is at least 18 years old; and
  4. A volunteer is at least 21 years old.
- B.** An administrator shall ensure that:
1. The qualifications, skills, and knowledge required for each type of personnel member:
    - a. Are based on:
      - i. The type of behavioral health services or physical health services expected to be provided by the personnel member according to the established job description, and
      - ii. The acuity of the residents receiving behavioral health services or physical health services from the personnel member according to the established job description; and
    - b. Include:
      - i. The specific skills and knowledge necessary for the personnel member to provide the expected behavioral health services or physical health services listed in the established job description,
      - ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected behavioral health services or physical health services listed in the established job description, and
      - iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected behavioral health services or physical health services listed in the established job description;
  2. A personnel member's skills and knowledge are verified and documented:
    - a. Before the personnel member provides physical health services or behavioral health services, and
    - b. According to policies and procedures; and
  3. Sufficient personnel members are present on a behavioral health residential facility's premises with the qualifications, experience, skills, and knowledge necessary to:
    - a. Provide the services in the behavioral health residential facility'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 comply with the requirements for behavioral health technicians and behavioral health paraprofessionals in R9-10-115.
- D.** An administrator shall ensure that an individual who is licensed under A.R.S. Title 32, Chapter 33 as a 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 A.A.C. R4-6-101.
- E.** An administrator shall ensure that:
1. A plan to provide orientation, specific to the duties of a personnel member, an employee, a volunteer, or a student, is developed, documented, and implemented;
  2. A personnel member completes orientation before providing behavioral health services or physical health services;
  3. An individual's orientation is documented, to include:
    - a. The individual's name,
    - b. The date of the orientation, and
    - c. The subject or topics covered in the orientation;
  4. A written plan is developed and implemented to provide in-service education specific to the duties of a personnel member; and
  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.
- F.** An administrator shall ensure that a personnel member, or an employee, a volunteer, or a student who has or is expected to have more than eight hours of direct interaction per week with residents, provides evidence of freedom from infectious tuberculosis:
1. On or before the date the individual begins providing services at or on behalf of the behavioral health residential facility, and
  2. As specified in R9-10-113.
- G.** An administrator shall ensure that a personnel record is maintained for each personnel member, employee, volunteer, or student that includes:
1. The individual's name, date of birth, and contact telephone number;
  2. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and
  3. Documentation of:
    - a. The individual's qualifications, including skills and knowledge applicable to the individual's job duties;
    - b. The individual's education and experience applicable to the individual's job duties;
    - c. The individual's completed orientation and in-service education as required by policies and procedures;
    - d. The individual's license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures;
    - e. If the behavioral health residential facility is authorized to provide services to children, the individual's compliance with the fingerprinting requirements in A.R.S. § 36-425.03;
    - f. If the individual is a behavioral health technician, clinical oversight required in R9-10-115;
    - g. Cardiopulmonary resuscitation training, if required for the individual according to R9-10-703(C)(1)(e);
    - h. First aid training, if required for the individual according to this Article or policies and procedures; and
    - i. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (F).
- H.** An administrator shall ensure that personnel records are:
1. Maintained:
    - a. Throughout an individual's period of providing services in or for the behavioral health residential facility, and

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- b. For at least 24 months after the last date the individual provided services in or for the behavioral health residential facility; and
- 2. For a personnel member who has not provided physical health services or behavioral health services at or for the behavioral health residential facility during the previous 12 months, provided to the Department within 72 hours after the Department's request.
- I. An administrator shall ensure that the following personnel members have first-aid and cardiopulmonary resuscitation training specific to the populations served by the behavioral health residential facility:
  - 1. At least one personnel member who is present at the behavioral health residential facility during hours of operation of the behavioral health residential facility, and
  - 2. Each personnel member participating in an outing.
- J. An administrator shall ensure that:
  - 1. At least one personnel member is present and awake at the behavioral health residential facility when a resident is on the premises;
  - 2. In addition to the personnel member in subsection (J)(1), at least one personnel member is on-call and available to come to the behavioral health residential facility if needed;
  - 3. There is a daily staffing schedule that:
    - a. Indicates the date, scheduled work hours, and name of each employee assigned to work, including on-call personnel members;
    - b. Includes documentation of the employees who work each calendar day and the hours worked by each employee; and
    - c. Is maintained for at least 12 months after the last date on the documentation;
  - 4. A behavioral health professional is present at the behavioral health residential facility or on-call;
  - 5. A registered nurse is present at the behavioral health residential facility or on-call; and
  - 6. If a resident requires services that the behavioral health residential facility is not authorized or not able to provide, a personnel member arranges for the resident to be transported to a hospital or another health care institution where the services can be provided.

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section R9-10-706 repealed, new Section R9-10-706 adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014

(Supp. 14-2).

**R9-10-707. Admission; Assessment**

- A. An administrator shall ensure that:
  - 1. A resident is admitted based upon the resident's presenting behavioral health issue and treatment needs and the behavioral health residential facility's scope of services;
  - 2. A behavioral health professional, authorized by policies and procedures to accept a resident for admission, is available;
  - 3. General consent is obtained from:
    - a. An adult resident or the resident's representative before or at the time of admission, or
    - b. A resident's representative, if the resident is not an adult;
  - 4. The general consent obtained in subsection (A)(3) is documented in the resident's medical record;
  - 5. Except as provided in subsection (E)(1)(a), a medical practitioner performs a medical history and physical examination or a registered nurse performs a nursing assessment on a resident within 30 calendar days before admission or within seven calendar days after admission and documents the medical history and physical examination or nursing assessment in the resident's medical record within seven calendar days after admission;
  - 6. If a medical practitioner performs a medical history and physical examination or a nurse performs a nursing assessment on a resident before admission, the medical practitioner enters an interval note or the nurse enters a progress note in the resident's medical record within seven calendar days after admission;
  - 7. If a behavioral health assessment is conducted by a:
    - a. Behavioral health technician or registered nurse, within 24 hours a behavioral health professional, certified or licensed to provide the behavioral health services needed by the resident, reviews and signs the behavioral health assessment to ensure that the behavioral health assessment identifies the behavioral health services needed by the resident; or
    - b. Behavioral health paraprofessional, a behavioral health professional, certified or licensed to provide the behavioral health services needed by the resident, supervises the behavioral health paraprofessional during the completion of the assessment and signs the assessment to ensure that the assessment identifies the behavioral health services needed by the resident;
  - 8. Except as provided in subsection (A)(9), a behavioral health assessment for a resident is completed before treatment for the resident is initiated;
  - 9. If a behavioral health assessment that complies with the requirements in this Section is received from a behavioral health provider other than the behavioral health residential facility or if the behavioral health residential facility has a medical record for the resident that contains a behavioral health assessment that was completed within 12 months before the date of the resident's current admission:
    - a. The resident's assessment information is reviewed and updated if additional information that affects the resident's assessment is identified, and
    - b. The review and update of the resident's assessment information is documented in the resident's medical record within 48 hours after the review is completed;
  - 10. A behavioral health assessment:
    - a. Documents a resident's:
      - i. Presenting issue;

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- ii. Substance abuse history;
  - iii. Co-occurring disorder;
  - iv. Legal history, including:
    - (1) Custody,
    - (2) Guardianship, and
    - (3) Pending litigation;
  - v. Criminal justice record;
  - vi. Family history;
  - vii. Behavioral health treatment history;
  - viii. Symptoms reported by the resident; and
  - ix. Referrals needed by the resident, if any;
- b. Includes:
- i. Recommendations for further assessment or examination of the resident's needs,
  - ii. The physical health services or ancillary services that will be provided to the resident until the resident's treatment plan is completed, and
  - iii. The signature and date signed of the personnel member conducting the behavioral health assessment; and
- c. Is documented in resident's medical record;
11. A resident is referred to a medical practitioner if a determination is made that the resident requires immediate physical health services or the resident's behavioral health issue may be related to the resident's medical condition; and
12. Except as provided in subsection (E)(1)(d), 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.
- B.** An administrator shall ensure that:
- 1. A request for participation in a resident's behavioral health assessment is made to the resident or the resident's representative,
  - 2. An opportunity for participation in the resident's behavioral health assessment is provided to the resident or the resident's representative, and
  - 3. The request in subsection (B)(1) and the opportunity in subsection (B)(2) are documented in the resident's medical record.
- C.** An administrator shall ensure that a resident's behavioral health assessment information is documented in the medical record within 48 hours after completing the behavioral health assessment.
- D.** If information in subsection (A)(10) is obtained about a resident after the resident's behavioral health assessment is completed, an interval note, including the information, is documented in the resident's medical record within 48 hours after the information is obtained.
- E.** If a behavioral health residential facility is authorized to provide respite services, an administrator shall ensure that:
- 1. Upon admission of a resident for respite services:
    - a. Except as provided in subsection (F), a medical history and physical examination of the resident:
      - i. Is performed; or
      - ii. Dated within the previous 12 months, is available in the resident's medical record from a previous admission to the behavioral health residential facility;
    - b. A treatment plan that meets the requirements in R9-10-708:
      - i. Is developed; or
      - ii. Dated within the previous 12 months, is available in the resident's medical record from a previous admission to the behavioral health residential facility;
  - c. If a treatment plan, dated within the previous 12 months, is available, the treatment plan is reviewed, updated, and documented in the resident's medical record; and
  - d. If the resident is not expected to be present in the behavioral health residential facility for more than seven days, the resident is not required to comply with the requirements in subsection (A)(12);
2. The common area required in R9-10-722(B)(1)(b) provides at least 25 square feet for each resident, including residents who do not stay overnight; and
3. In addition to the requirements in R9-10-722(B)(3), toilets and hand-washing sinks are available to residents, including residents who do not stay overnight, as follows:
- a. There is at least one working toilet that flushes and has a seat and one sink with running water for every 10 residents,
  - b. There are at least two working toilets that flush and have seats and two sinks with running water if there are 11 to 25 residents, and
  - c. There is at least one additional working toilet that flushes and has a seat and one additional sink with running water for each additional 20 residents.
- F.** A medical history and physical examination is not required for a child who is admitted or expected to be admitted to a residential behavioral health facility for less than 10 days in a 90-consecutive-day period.

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section R9-10-707 repealed, new Section R9-10-707 adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by exempt rulemaking at 22 A.A.R. 1035, pursuant to Laws 2015, Ch. 158, § 3; effective May 1, 2016 (Supp. 16-2).

**R9-10-708. Treatment Plan**

- A.** An administrator shall ensure that a treatment plan is developed and implemented for each resident that:
- 1. Is based on the medical history and physical examination or nursing assessment required in R9-10-707(A)(5) or (E)(1) and the behavioral health assessment required in R9-10-707(A)(8) or (9) and on-going changes to the behavioral health assessment of the resident;
  - 2. Is completed:

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- a. By a behavioral health professional or a behavioral health technician under the clinical oversight of a behavioral health professional, and
  - b. Before the resident receives physical health services or behavioral health services or within 48 hours after the assessment is completed;
3. Is documented in the resident's medical record within 48 hours after the resident first receives physical health services or behavioral health services;
  4. Includes:
    - a. The resident's presenting issue;
    - b. The physical health services or behavioral health services to be provided to the resident;
    - c. The signature of the resident or the resident's representative, and date signed, or documentation of the refusal to sign;
    - d. The date when the resident's treatment plan will be reviewed;
    - e. If a discharge date has been determined, the treatment needed after discharge; and
    - f. The signature of the personnel member who developed the treatment plan and the date signed;
  5. If the treatment plan was completed by a behavioral health technician, is reviewed and signed by a behavioral health professional within 24 hours after the completion of the treatment plan to ensure that the treatment plan is complete and accurate and meets the resident's treatment needs; and
  6. Is reviewed and updated on an on-going basis:
    - a. According to the review date specified in the treatment plan,
    - b. When a treatment goal is accomplished or changed,
    - c. When additional information that affects the resident's behavioral health assessment is identified, and
    - d. When a resident has a significant change in condition or experiences an event that affects treatment.
- B.** An administrator shall ensure that:
1. A request for participation in developing a resident's treatment plan is made to the resident or the resident's representative,
  2. An opportunity for participation in developing the resident's treatment plan is provided to the resident or the resident's representative, and
  3. The request in subsection (B)(1) and the opportunity in subsection (B)(2) are documented in the resident's medical record.

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section R9-10-708 repealed, new Section R9-10-708 adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by

exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-709. Discharge**

- A.** An administrator shall ensure that a discharge plan for a resident is:
1. Developed that:
    - a. Identifies any specific needs of the resident after discharge,
    - b. Is completed before discharge occurs, and
    - c. Includes a description of the level of care that may meet the resident's assessed and anticipated needs after discharge;
  2. Documented in the resident's medical record within 48 hours after the discharge plan is completed; and
  3. Provided to the resident or the resident's representative before the discharge occurs.
- B.** An administrator shall ensure that:
1. A request for participation in developing a resident's discharge plan is made to the resident or the resident's representative,
  2. An opportunity for participation in developing the resident's discharge plan is provided to the resident or the resident's representative, and
  3. The request in subsection (B)(1) and the opportunity in subsection (B)(2) are documented in the resident's medical record.
- C.** An administrator shall ensure that a resident is discharged from a behavioral health residential facility when the resident's treatment needs are not consistent with the services that the behavioral health residential facility is authorized and able to provide.
- D.** An administrator shall ensure that there is a documented discharge order by a medical practitioner or behavioral health professional before a resident is discharged unless the resident leaves the behavioral health residential facility against a medical practitioner's or behavioral health professional's advice.
- E.** An administrator shall ensure that, at the time of discharge, a resident receives a referral for treatment or ancillary services that the resident may need after discharge, if applicable.
- F.** If a resident is discharged to any location other than a health care institution, an administrator shall ensure that:
1. Discharge instructions are documented, and
  2. The resident or the resident's representative is provided with a copy of the discharge instructions.
- G.** An administrator shall ensure that a discharge summary for a resident:
1. Is entered into the resident's medical record within 10 working days after a resident's discharge; and
  2. Includes:
    - a. The following information authenticated by a medical practitioner or behavioral health professional:
      - i. The resident's presenting issue and other physical health and behavioral health issues identified in the resident's treatment plan;
      - ii. A summary of the treatment provided to the resident;
      - iii. The resident's progress in meeting treatment goals, including treatment goals that were and were not achieved; and
      - iv. The name, dosage, and frequency of each medication ordered for the resident by a medical practitioner at the behavioral health residential facility at the time of the resident's discharge; and

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- b. A description of the disposition of the resident's possessions, funds, or medications brought to the behavioral health residential facility by the resident.
- H. An administrator shall ensure that a resident who is dependent upon a prescribed medication is offered a written referral to detoxification services or opioid treatment before the resident is discharged from the behavioral health residential facility if a medical practitioner for the behavioral health residential facility will not be prescribing the medication for the resident at or after discharge.

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section R9-10-709 repealed, new Section R9-10-709 adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-710. Transport; Transfer**

- A. Except as provided in subsection (B), an administrator shall ensure that:
1. A personnel member coordinates the transport and the services provided to the 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. Subsection (A) does not apply to:
1. Transportation to a location other than a licensed health care institution,
  2. Transportation provided for a resident by the resident or the resident's representative,
  3. Transportation provided by an outside entity that was arranged for a resident by the resident or the resident's representative, or
  4. A transport to another licensed health care institution in an emergency.
- C. Except for a transfer of a resident due to an emergency, an administrator shall ensure that:

1. A personnel member 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.

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4). Section R9-10-710 repealed, new Section R9-10-710 adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-711. Resident Rights**

- A. An administrator shall ensure that:
1. The requirements in subsection (B) and the resident rights in subsection (E) 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 (E); and
  3. Policies and procedures include:
    - a. How and when a resident or the resident's representative is informed of the resident rights in subsection (E), and
    - b. Where resident rights are posted as required in subsection (A)(1).
- B. An administrator shall ensure that:
1. A resident is treated with dignity, respect, and consideration;
  2. A resident is not subjected to:
    - a. Abuse;
    - b. Neglect;
    - c. Exploitation;
    - d. Coercion;

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- e. Manipulation;
  - f. Sexual abuse;
  - g. Sexual assault;
  - h. Seclusion;
  - i. Restraint;
  - j. Retaliation for submitting a complaint to the Department or another entity;
  - k. Misappropriation of personal and private property by the behavioral health residential facility's personnel members, employees, volunteers, or students;
  - l. Discharge or transfer, or threat of discharge or transfer, for reasons unrelated to the resident's treatment needs, except as established in a fee agreement signed by the resident or the resident's representative; or
  - m. Treatment that involves the denial of:
    - i. Food,
    - ii. The opportunity to sleep, or
    - iii. The opportunity to use the toilet;
3. Except as provided in subsection (C) or (D), and unless restricted by the resident's representative, is allowed to:
- a. Associate with individuals of the resident's choice, receive visitors, and make telephone calls during the hours established by the behavioral health residential facility;
  - b. Have privacy in correspondence, communication, visitation, financial affairs, and personal hygiene; and
  - c. Unless restricted by a court order, send and receive uncensored and unopened mail; 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, unless the treatment is ordered by a court according to A.R.S. Title 36, Chapter 5 or A.R.S. 8-341.01; is necessary to save the resident's life or physical health; or is provided according to A.R.S. § 36-512;
  - c. Except in an emergency, is informed of proposed treatment alternatives, associated risks, and possible complications;
  - d. Is informed of the following:
    - i. The behavioral health residential facility's policy on health care directives, and
    - ii. The resident complaint process; and
  - e. Except as otherwise permitted by law, provides written consent to the release of information in the resident's:
    - i. Medical record, or
    - ii. Financial records.
- C. For a behavioral health residential facility with licensed capacity of less than 10 residents, if a behavioral health professional determines that a resident's treatment requires the behavioral health residential facility to restrict the resident's ability to participate in the activities in subsection (B)(3), the behavioral health professional shall:
1. Document a specific treatment purpose in the resident's medical record that justifies restricting the resident from the activity,
  2. Inform the resident or resident's representative of the reason why the activity is being restricted, and
  3. Inform the resident or resident's representative of the resident's right to file a complaint and the procedure for filing a complaint.
- D. For a behavioral health residential facility with a licensed capacity of 10 or more residents, if a clinical director determines that a resident's treatment requires the behavioral health residential facility to restrict the resident's ability to participate in the activities in subsection (B)(3), the clinical director shall comply with the requirements in subsections (C)(1) through (3).
- E. 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:
    - a. Supports and respects the resident's individuality, choices, strengths, and abilities;
    - b. Supports the resident's personal liberty and only restricts the resident's personal liberty according to a court order, by the resident's or the resident's representative's general consent, or as permitted in this Chapter; and
    - c. Is provided in the least restrictive environment that meets the resident's treatment needs;
  3. To receive privacy in treatment and care for personal needs, including the right not to be fingerprinted, photographed, or recorded without consent, except:
    - a. A resident may be photographed when admitted to a behavioral health residential facility for identification and administrative purposes;
    - b. For a resident receiving treatment according to A.R.S. Title 36, Chapter 37; or
    - c. For video recordings used for security purposes that are maintained only on a temporary basis;
  4. Not to be prevented or impeded from exercising the resident's civil rights unless the resident has been adjudicated incompetent or a court of competent jurisdiction has found that the resident is not able to exercise a specific right or category of rights;
  5. To review, upon written request, the resident's own medical record according to A.R.S. §§ 12-2293, 12-2294, and 12-2294.01;
  6. To be provided locked storage space for the resident's belongings while the resident receives treatment;
  7. To have opportunities for social contact and daily social, recreational, or rehabilitative activities;
  8. To be informed of the requirements necessary for the resident's discharge or transfer to a less restrictive physical environment;
  9. To receive a referral to another health care institution if the behavioral health residential facility is not authorized or not able to provide physical health services or behavioral health services needed by the resident;
  10. To participate or have the resident's representative participate in the development of a treatment plan or decisions concerning treatment;
  11. To participate or refuse to participate in research or experimental treatment; and
  12. To receive assistance from a family member, the resident's representative, or other individual in understanding, protecting, or exercising the resident's rights.

**Historical Note**

Adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20

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A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-712. 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 a personnel member authorized by policies and procedures to make the entry;
    - b. Dated, legible, and authenticated; and
    - c. Not changed to make the initial entry illegible;
  3. An order is:
    - a. Dated when the order is entered in the 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 according to policies and procedures to access the resident's medical record;
    - b. If the individual is not authorized according to policies and procedures, with the written consent of the resident or the resident's representative; or
    - c. As permitted by law;
  6. Policies and procedures include the maximum time-frame to retrieve a resident's medical record at the request of a medical practitioner, behavioral health professional, or authorized personnel member; and
  7. A resident's medical record is protected from loss, damage, or unauthorized use.
- B.** If a behavioral health residential facility 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 address;
    - c. The resident's date of birth; and
    - d. Any known allergies, including medication allergies;
  2. The name of the admitting medical practitioner or behavioral health professional;
  3. An admitting diagnosis or presenting behavioral health issues;
  4. The date of admission and, if applicable, date of discharge;
  5. If applicable, the name and contact information of the resident's representative and:
    - a. If the resident is 18 years of age or older or an emancipated minor, 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;
  6. If applicable, documented general consent and informed consent for treatment by the resident or the resident's representative;
  7. Documentation of medical history and results of a physical examination;
  8. A copy of resident's health care directive, if applicable;
  9. Orders;
  10. Assessment;
  11. Treatment plans;
  12. Interval notes;
  13. Progress notes;
  14. Documentation of behavioral health services and physical health services provided to the resident;
  15. If applicable, documentation of the use of an emergency safety response;
  16. If applicable, documentation of time out required in R9-10-714(6);
  17. Except as allowed in R9-10-707(E)(1)(d), documentation of freedom from infectious tuberculosis required in R9-10-707(A)(12);
  18. The disposition of the resident after discharge;
  19. The discharge plan;
  20. The discharge summary, if applicable;
  21. If applicable:
    - a. Laboratory reports,
    - b. Radiologic reports,
    - c. Diagnostic reports, and
    - d. Consultation reports; and
  22. Documentation of medication administered to the resident that includes:
    - a. The date and time of administration;
    - b. The name, strength, dosage, and route of administration;
    - c. For a medication administered for pain, when administered initially or on a PRN basis:
      - i. An assessment of the resident's pain before administering the medication, and
      - ii. The effect of the medication administered;
    - d. For a psychotropic medication, when administered initially or on a PRN basis:
      - i. An assessment of the resident's behavior before administering the psychotropic medication, and
      - ii. The effect of the psychotropic medication administered;
    - e. The identification, signature, and professional designation of the individual administering or providing assistance in the self-administration of the medication; and
    - f. Any adverse reaction a resident has to the medication.

**Historical Note**

Adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective

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tive July 1, 2014 (Supp. 14-2).

**R9-10-713. Transportation; Resident Outings**

A. An administrator of a behavioral health residential facility that uses a vehicle owned or leased by the behavioral health residential facility 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 or safety 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. Each individual in the vehicle is sitting in a seat 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.

B. An administrator shall ensure that:

1. An outing is consistent with the age, developmental level, physical ability, medical condition, and treatment needs of each resident participating in the outing;
2. At least two personnel members are present on an outing;
3. In addition to the personnel members required in subsection (B)(2), a sufficient number of personnel members are present to ensure each resident's health and safety on the outing;
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 each vehicle used to transport a resident;
5. The documentation described in subsection (B)(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 each 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, to notify in case of an emergency, who is present on the behavioral health residential facility's premises.

**Historical Note**

Adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-714. Resident Time Out**

An administrator shall ensure that a time out:

1. Is provided to a resident who voluntarily decides to go in a time out;
2. Takes place in an area that is unlocked, lighted, quiet, and private;
3. Is time-limited and does not exceed the amount of time as determined by the resident;
4. Does not result in a resident missing a meal if the resident is in time out at mealtime;
5. Includes monitoring of the resident by a personnel member at least once every 15 minutes to ensure the resident's health and safety and to discuss with the resident if the resident is ready to leave time out; and
6. Is documented in the resident's medical record, to include:
  - a. The date of the time out,
  - b. The reason for the time out,
  - c. The duration of the time out, and
  - d. The action planned and taken by the administrator to prevent the use of time out in the future.

**Historical Note**

Adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-715. Physical Health Services**

An administrator of a behavioral health residential facility that provides personal care services shall ensure that:

1. Personnel members who provide personal care services have documentation of completion of a caregiver training program that complies with A.A.C. R4-33-702(A)(5);
2. Residents receive personal care services according to the requirements in R9-10-814(A), (C), (D), and (E); and
3. A resident who has a stage 3 or stage 4 pressure sore is not admitted to the behavioral health residential facility.

**Historical Note**

Adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the

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Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-716. Behavioral Health Services****A.** An administrator shall ensure that:

1. If a behavioral health residential facility is licensed to provide behavioral health services to individuals whose behavioral health issue limits the individuals' ability to function independently, a resident admitted to the behavioral health residential facility with limited ability to function independently, in addition to behavioral health services and personnel care services as indicated in the resident's treatment plan, receives continuous protective oversight;
2. A resident admitted to the behavioral health residential facility who needs behavioral health services to maintain or enhance the resident's ability to function independently, in addition to receiving behavioral health services, and, if indicated in the resident's treatment plan, personal care services, is provided an opportunity to participate in activities designed to maintain or enhance the resident's ability to function independently while caring for the resident's health, safety, or personal hygiene or performing homemaking functions;
3. Behavioral health services are provided to meet the needs of a resident and are consistent with a behavioral health residential facility's scope of services;
4. Behavioral health services:
  - a. Listed in the behavioral health residential facility's scope of services are provided on the premises; and
  - b. When provided in a setting or activity with more than one resident participating, before a resident participates, the diagnoses, treatment needs, developmental levels, social skills, verbal skills, and personal histories, including any history of physical or sexual abuse, of the residents participating are reviewed to ensure that the:
    - i. Health and safety of each resident is protected, and
    - ii. Treatment needs of each resident participating are being met; and
5. A resident does not:
  - a. Use or have access to any materials, furnishings, or equipment or participate in any activity or treatment that may present a threat to the resident's health or safety based on the resident's documented diagnosis, treatment needs, developmental levels, social skills, verbal skills, or personal history; or
  - b. Share any space, participate in any activity or treatment, or verbally or physically interact with any other resident that may present a threat to the resident's health or safety based on the other resident's documented diagnosis, treatment needs, developmental levels, social skills, verbal skills, and personal history.

**B.** An administrator shall ensure that counseling is:

1. Offered as described in the behavioral health residential facility's scope of services,
2. Provided according to the frequency and number of hours identified in the resident's treatment plan, and
3. Provided by a behavioral health professional or a behavioral health technician.

**C.** An administrator shall ensure that:

1. A personnel member providing counseling that addresses a specific type of behavioral health issue has the skills and knowledge necessary to provide the counseling that addresses the specific type of behavioral health issue; and
  2. Each counseling session is documented in a resident's medical record to include:
    - a. The date of the counseling session;
    - b. The amount of time spent in the counseling session;
    - c. Whether the counseling was individual counseling, family counseling, or group counseling;
    - d. The treatment goals addressed in the counseling session; and
    - e. The signature of the personnel member who provided the counseling and the date signed.
- D.** An administrator of a behavioral health residential facility authorized to provide behavioral health residential services to individuals under 18 years of age:
1. May continue to provide behavioral health services to a resident who is 18 years of age or older:
    - a. If the resident:
      - i. Was admitted to the behavioral health residential facility before the resident's 18th birthday;
      - ii. Is not 21 years of age or older; and
      - iii. Is:
        - (1) Attending classes or completing coursework to obtain a high school or a high school equivalency diploma, or
        - (2) Participating in a job training program; or
    - b. Through the last calendar day of the month of the resident's 18th birthday; and
  2. Shall ensure that:
    - a. A resident does not receive the following from other residents at the behavioral health residential facility:
      - i. Threats,
      - ii. Ridicule,
      - iii. Verbal harassment,
      - iv. Punishment, or
      - v. Abuse;
    - b. The interior of the behavioral health residential facility has furnishings and decorations appropriate to the ages of the residents receiving services at the behavioral health residential facility;
    - c. A resident older than three years of age does not sleep in a crib;
    - d. Clean and non-hazardous toys, educational materials, and physical activity equipment are available and accessible to residents on the premises in a quantity sufficient to meet each resident's needs and are appropriate to each resident's age, developmental level, and treatment needs; and
    - e. A resident's educational needs are met, including providing or arranging for transportation:
      - i. By establishing and providing an educational component, approved in writing by the Arizona Department of Education; or
      - ii. As arranged and documented by the administrator through the local school district.
- E.** An administrator shall ensure that:
1. An emergency safety response is:
    - a. Only used:
      - i. By a personnel member trained to use an emergency safety response,
      - ii. For the management of a resident's violent or self-destructive behavior, and
      - iii. When less restrictive interventions have been determined to be ineffective; and

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- b. Discontinued at the earliest possible time, but no longer than five minutes after the emergency safety response is initiated;
2. Within 24 hours after an emergency safety response is used for a resident, the following information is entered into the resident medical record:
- The date and time the emergency safety response was used;
  - The name of each personnel member who used an emergency safety response;
  - The specific emergency safety response used;
  - The personnel member or resident behavior, event, or environmental factor that caused the need for the emergency safety response; and
  - Any injury that resulted from the emergency safety response;
3. Within 10 working days after an emergency safety response is used for a resident, the administrator or clinical director reviews the information in subsection (E)(2); and
4. After the review required in subsection (E)(3), the following information is entered into the resident's medical record:
- Actions taken or planned actions to prevent the need for the use of an emergency safety response for the resident,
  - A determination of whether the resident is appropriately placed at the behavioral health residential facility, and
  - Whether the resident's treatment plan was reviewed or needs to be reviewed and amended to ensure that the resident's treatment plan is meeting the resident's treatment needs.
- F. An administrator shall ensure that:
- A personnel member whose job description includes the ability to use an emergency safety response:
    - Completes training in crisis intervention that includes:
      - Techniques to identify personnel member and resident behaviors, events, and environmental factors that may trigger the need for the use of an emergency safety response;
      - The use of nonphysical intervention skills, such as de-escalation, mediation, conflict resolution, active listening, and verbal and observational methods; and
      - The safe use of an emergency safety response including the ability to recognize and respond to signs of physical distress in a client who is receiving an emergency safety response; and
    - Completes training required in subsection (F)(1)(a):
      - Before providing behavioral health services, and
      - At least once every 12 months after the date the personnel member completed the initial training;
  - Documentation of the completed training in subsection (F)(1)(a) includes:
    - The name and credentials of the individual providing the training,
    - Date of the training, and
    - Verification of a personnel member's ability to use the training; and
  - The materials used to provide the completed training in crisis intervention, including handbooks, electronic presentations, and skills verification worksheets, are maintained for at least 12 months after each personnel member who received training using the materials no longer provides services at the behavioral health residential facility.

**Historical Note**

Adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-717. Outdoor Behavioral Health Care Programs**

- A. An administrator of a behavioral health residential facility providing an outdoor behavioral health care program shall ensure that:
- Behavioral health services are provided to a resident participating in the outdoor behavioral health care program consistent with the age, developmental level, physical ability, medical condition, and treatment needs of the resident;
  - Continuous protective oversight is provided to a resident;
  - Transportation is provided to a resident from the behavioral health residential facility's administrative office for the outdoor behavioral health care program to the location where the outdoor behavioral health care program is provided and from the location where the outdoor behavioral health care program is provided to the behavioral health residential facility's administrative office for the outdoor behavioral health care program; and
  - Communication is available between the outdoor behavioral health care program personnel and:
    - A behavioral health professional,
    - A registered nurse,
    - An emergency medical response team, and
    - The behavioral health residential facility's administrative office for the outdoor behavioral health care program.
- B. An administrator of a behavioral health residential facility providing an outdoor behavioral health care program shall ensure that:
- Food is prepared:
    - Using methods that conserve nutritional value, flavor, and appearance; and
    - In a form to meet the needs of a resident such as cut, chopped, ground, pureed, or thickened;
  - A food menu is prepared based on the number of calendar days scheduled for the behavioral health care program;
  - Meals and snacks provided by the behavioral health care program are served according to menus;
  - Meals and snacks for each day are planned using the applicable guidelines in <http://www.health.gov/dietaryguidelines/2010.asp>;
  - A resident is provided:
    - A diet that meets the resident's nutritional needs as specified in the resident's assessment or treatment plan;
    - Three meals a day with not more than 14 hours between the evening meal and breakfast, except as provided in subsection (B)(5)(d);
    - The option to have a daily evening snack or other snack; and

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- d. The option to extend the time span between the evening meal and breakfast from 14 hours to 16 hours if the resident agrees;
  - 6. Water is available and accessible to residents unless otherwise stated in a resident's treatment plan;
  - 7. Food is free from spoilage, filth, or other contamination and is safe for human consumption;
  - 8. Food is protected from potential contamination; and
  - 9. Food being maintained in coolers containing ice is not in direct contact with ice or water if water may enter the food because of the nature of the food's packaging, wrapping, or container or the positioning of the food in the ice or water.
- C. An administrator of a behavioral health residential facility providing an outdoor behavioral health care program shall ensure that:
- 1. The location and, if applicable, equipment used by the outdoor behavioral health care program are sufficient to accommodate the activities, treatment, and ancillary services required by the residents participating in the behavioral health care program;
  - 2. The location and equipment are maintained in a condition that allows the location and equipment to be used for the original purpose of the location and equipment;
  - 3. Garbage and refuse are:
    - a. Stored in plastic bags in covered containers, and
    - b. Removed from the location used by the outdoor behavioral health care program at least once a week;
  - 4. Common areas:
    - a. Are lighted when in use to assure the safety of residents, and
    - b. Have sufficient lighting to allow personnel members to monitor resident activity;
  - 5. 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;
  - 6. Soiled clothing is stored in closed containers away from food storage, medications, and eating areas;
  - 7. Poisonous or toxic materials are maintained in labeled containers, secured, and separate from food preparation and storage, eating areas, and medications and inaccessible to residents;
  - 8. Combustible or flammable liquids and hazardous materials are stored in the original labeled containers or safety containers, secured, and inaccessible to residents;
  - 9. 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
  - 10. Smoking or the use of tobacco products may be permitted away from the residents.

**Historical Note**

Adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-718. 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,
      - ii. An adverse reaction to a medication, or
      - iii. A medication overdose;
    - c. Procedures to ensure that a resident's medication regimen is reviewed by a medical practitioner to ensure the medication regimen meets the resident's needs;
    - d. Procedures for documenting, as applicable, medication administration and assistance in the self-administration of medication;
    - e. A process for monitoring a resident who self-administers medication;
    - f. Procedures for assisting a resident in obtaining medication; and
    - g. If applicable, procedures for providing medication administration or assistance in the self-administration of medication off the premises; and
  - 2. 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. If a behavioral health residential facility provides medication administration, an administrator shall ensure that:
- 1. Policies and procedures for medication administration:
    - a. Are reviewed and approved by a medical practitioner;
    - b. Specify the individuals who may:
      - i. Order medication, and
      - ii. Administer medication;
    - c. Ensure that medication is administered to a 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; and
  - 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.
- C. If behavioral health residential facility provides assistance in the self-administration of medication, an administrator shall ensure that:
- 1. A resident's medication is stored by the behavioral health residential facility;
  - 2. The following assistance is provided to a resident:
    - a. A reminder when it is time to take the medication;
    - b. Opening the medication container for the resident;
    - c. Observing the resident while the resident removes the medication from the container;

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- d. Verifying that the medication is taken as ordered by the resident's medical practitioner by confirming that:
    - i. The resident taking the medication is the individual stated on the medication container label,
    - ii. The resident is taking the dosage of the medication stated on the medication container label or according to an order from a medical practitioner dated later than the date on the medication container label, and
    - iii. The resident is taking the medication at the time stated on the medication container label or according to an order from a medical practitioner dated later than the date on the medication container label; 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 a medical practitioner or registered nurse;
  - 4. Training for a personnel member, other than a medical practitioner or registered nurse, in assistance in the self-administration of medication:
    - a. Is provided by a medical practitioner or registered nurse or an individual trained by a medical practitioner or registered nurse; and
    - b. Includes:
      - i. A demonstration of the personnel member's skills and knowledge necessary to provide assistance in the self-administration of medication,
      - ii. Identification of medication errors and medical emergencies related to medication that require emergency medical intervention, and
      - iii. The process for notifying the appropriate entities when an emergency medical intervention is needed;
  - 5. A personnel member, other than a medical practitioner or registered nurse, completes the training in subsection (C)(4) before the personnel member provides assistance in the self-administration of medication; and
  - 6. Assistance in the self-administration of medication provided to a 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;
  - 2. A current toxicology reference guide is available for use by personnel members; and
  - 3. If pharmaceutical services are provided on the premises:
    - a. A committee, composed of at least one physician, one pharmacist, and other personnel members as determined by policies and procedures, is established to:
      - i. Develop a drug formulary,
      - ii. Update the drug formulary at least once every 12 months,
      - iii. Develop medication usage and medication substitution policies and procedures, and
      - iv. Specify which medications and medication classifications are required to be stopped automatically after a specific time period unless the ordering medical practitioner specifically orders otherwise;
    - b. The pharmaceutical services are provided under the direction of a pharmacist;
    - c. The pharmaceutical services comply with A.R.S. Title 36, Chapter 27; A.R.S. Title 32, Chapter 18; and 4 A.A.C. 23; and
    - d. A copy of the pharmacy license is provided to the Department upon request.
- E.** When medication is stored at a behavioral health residential facility, an administrator shall ensure that:
- 1. Medication is stored in a separate locked room, closet, cabinet, or self-contained unit used only for medication storage;
  - 2. Medication is stored according to the instructions on the medication container; and
  - 3. Policies and procedures are established, documented, and implemented for:
    - a. Receiving, storing, inventorying, tracking, dispensing, and discarding medication, including expired medication;
    - b. Discarding or returning prepackaged and sample medication to the manufacturer if the manufacturer requests the discard or return of the medication;
    - c. A medication recall and notification of residents who received recalled medication; and
    - d. Storing, inventorying, and dispensing controlled substances.
- 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 medical practitioner who ordered the medication and, if applicable, the behavioral health residential facility's clinical director.

**Historical Note**

Adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-719. Food Services**

- A.** Except for an outdoor behavioral health care program provided by a behavioral health residential facility, an administrator shall ensure that:
- 1. For a behavioral health residential facility that has a licensed capacity of more than 10 residents:
    - a. The behavioral health residential facility obtains a license or permit as a food establishment under 9 A.A.C. 8, Article 1; and
    - b. A copy of the behavioral health residential facility's food establishment license or permit is maintained;
  - 2. If a behavioral health residential facility contracts with food establishment, as established in 9 A.A.C. 8, Article 1, to prepare and deliver food to the behavioral health residential facility, a copy of the food establishment's license or permit under 9 A.A.C. 8, Article 1 is maintained by the behavioral health residential facility;
  - 3. Food is stored, refrigerated, and reheated to meet the dietary needs of a resident;
  - 4. A registered dietitian is employed full-time, part-time, or as a consultant; and
  - 5. If a registered dietitian is not employed full-time, an individual is designated as a director of food services who

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- consults with a registered dietitian as often as necessary to meet the nutritional needs of the residents.
- B.** Except for an outdoor behavioral health care program provided by a behavioral health residential facility, 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,
    - b. Includes the foods to be served each day,
    - c. Is conspicuously posted at least one calendar day before the first meal on the food menu 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 provided by the behavioral health residential facility are served according to posted menus;
  4. Meals and snacks for each day are planned using the applicable guidelines in <http://www.health.gov/dietaryguidelines/2010.asp>;
  5. A resident is provided:
    - a. A diet that meets the resident's nutritional needs as specified in the resident's assessment or treatment plan;
    - b. Three meals a day with not more than 14 hours between the evening meal and breakfast, except as provided in subsection (B)(5)(d);
    - c. The option to have a daily evening snack identified in subsection (B)(5)(d)(ii) or other snack; and
    - d. The option to extend the time span between the evening meal and breakfast from 14 hours to 16 hours if:
      - i. The resident 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;
  6. 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; and
  7. Water is available and accessible to residents unless otherwise stated in a resident's treatment plan.
- C.** Except for an outdoor behavioral health care program provided by a behavioral health residential facility, an administrator shall ensure that food is obtained, prepared, served, and stored as follows:
1. Food is free from spoilage, filth, or other contamination and is safe for human consumption;
  2. Food is protected from potential contamination;
  3. Potentially hazardous food is maintained as follows:
    - a. Foods requiring refrigeration are maintained at 41° F or below; and
    - b. Foods requiring cooking are cooked to heat all parts of the food to a temperature of at least 145° F for 15 seconds, except that:
      - i. Ground beef and ground meats are cooked to heat all parts of the food to at least 155° F;
      - ii. Poultry, poultry stuffing, stuffed meats, and stuffing that contains meat are cooked to heat all parts of the food to at least 165° F;
      - iii. Pork and any food containing pork are cooked to heat all parts of the food to at least 155° F;
      - iv. Raw shell eggs for immediate consumption are cooked to at least 145° F for 15 seconds and any food containing raw shell eggs is cooked to heat all parts of the food to at least 155° F;
      - v. Roast beef and beef steak are cooked to an internal temperature of at least 155° F; and
      - vi. Leftovers are reheated to a temperature of at least 165° F;
  4. A refrigerator contains a thermometer, accurate to plus or minus 3° F, placed at the warmest part of the refrigerator;
  5. Frozen foods are stored at a temperature of 0° F or below; and
  6. Tableware, utensils, equipment, and food-contact surfaces are clean and in good repair.

**Historical Note**

Adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-720. Emergency and Safety Standards**

- A.** Except for an outdoor behavioral health care program provided by a behavioral health residential facility, an administrator shall ensure that a behavioral health residential facility has:
1. A fire alarm system installed according to the National Fire Protection Association 72: National Fire Alarm and Signaling Code, incorporated by reference in A.A.C. R9-1-412, and a sprinkler system installed according to the National Fire Protection Association 13 Standard for the Installation of Sprinkler Systems, incorporated by reference in A.A.C. R9-1-412, that are in working order; or
  2. An alternative method to ensure resident's safety that is documented and approved by the local jurisdiction.
- B.** Except for an outdoor behavioral health care program provided by a behavioral health residential facility, 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. When, how, and where residents will be relocated;
    - b. How each resident's medical record will be available to individuals providing services to the resident during a disaster;
    - c. A plan to ensure each resident's medication will be available to administer to the resident during a disaster; and
    - d. A plan for obtaining food and water for individuals present in the behavioral health residential facility, under the care and supervision of personnel members, or in the behavioral health residential facility's relocation site during a disaster;
  2. The disaster plan required in subsection (B)(1) is reviewed at least once every 12 months;
  3. Documentation of a disaster plan review required in subsection (B)(2) is created, is maintained for at least 12

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months after the date of the disaster plan review, and includes:

- a. The date and time of the disaster plan review;
  - b. The name of each personnel member, employee, or volunteer participating in the disaster plan review;
  - c. A critique of the disaster plan review; and
  - d. If applicable, recommendations for improvement;
4. A disaster drill for employees is conducted on each shift at least once every three months and documented;
  5. An evacuation drill for employees and residents on the premises is conducted at least once every six months on each shift;
  6. Documentation of each evacuation drill is created, is maintained for 12 months after the date of the evacuation drill, and includes:
    - a. The date and time of the evacuation drill;
    - b. The amount of time taken for all employees and residents to evacuate the behavioral health residential facility;
    - c. Names of employees participating in the evacuation drill;
    - d. An identification of residents needing assistance for evacuation;
    - e. Any problems encountered in conducting the evacuation drill; and
    - f. Recommendations for improvement, if applicable; and
  7. An evacuation path is conspicuously posted on each hallway of each floor of the behavioral health residential facility.
- 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.
- Historical Note**
- Adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).
- R9-10-721. Environmental Standards**
- A.** Except for an outdoor behavioral health care program provided by a behavioral health residential facility, an administrator shall ensure that:
1. The premises and equipment are:
    - a. Maintained in a condition that allows the premises and equipment to be used for the original purpose of the premises and equipment;
    - b. Cleaned and, if applicable, disinfected according to policies and procedures designed to prevent, minimize, and control illness or infection; and
    - c. Free from a condition or situation that may cause a resident or other individual to suffer physical injury;
  2. A pest control program that complies with A.A.C. R3-8-201(C)(4) is implemented and documented;
  3. Biohazardous medical waste is identified, stored, and disposed of according to 18 A.A.C. 13, Article 14 and policies and procedures;
  4. Equipment used at the behavioral health residential facility 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;
  5. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
  6. Garbage and refuse are:
    - a. Stored in covered containers lined with plastic bags, and
    - b. Removed from the premises at least once a week;
  7. Heating and cooling systems maintain the behavioral health residential facility at a temperature between 70° F and 84° F;
  8. A space heater is not used;
  9. Common areas:
    - a. Are lighted to assure the safety of residents, and
    - b. Have lighting sufficient to allow personnel members to monitor resident activity;
  10. Hot water temperatures are maintained between 95° F and 120° F in the areas of the behavioral health residential facility used by residents;
  11. 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;
  12. Soiled linen and soiled clothing stored by the behavioral health residential facility are maintained separate from clean linen and clothing and stored in closed containers away from food storage, kitchen, and dining areas;
  13. Oxygen containers are secured in an upright position;
  14. Poisonous or toxic materials stored by the behavioral health residential facility are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to residents;
  15. Combustible or flammable liquids and hazardous materials stored by a behavioral health residential facility are stored in the original labeled containers or safety containers in a locked area inaccessible to residents;
  16. If pets or animals are allowed in the behavioral health residential facility, 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;
  17. 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
  18. 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:
1. Smoking tobacco products is not permitted within a behavioral health residential facility; and

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2. Smoking tobacco products may be permitted on the premises outside a behavioral health residential facility 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. On each day that a resident uses the swimming pool, an employee:
      - a. Tests the swimming pool's water quality at least once for compliance with one of the following chemical disinfection standards:
        - i. A free chlorine residual between 1.0 and 3.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test;
        - ii. A free bromine residual between 2.0 and 4.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test; or
        - iii. An oxidation-reduction potential equal to or greater than 650 millivolts; and
      - b. Records the results of the water quality tests in a log that includes each testing date and test result;
    2. Documentation of the water quality test is maintained for at least 12 months after the date of the test;
    3. A swimming pool is not used by a resident if a water quality test shows that the swimming pool water does not comply with subsection (C)(1)(a);
    4. At least one personnel member, with cardiopulmonary resuscitation training that meets the requirements in R9-10-703(C)(1)(e), is present in the pool area when a resident is in the pool area; and
    5. At least two personnel members are present in the pool area if two or more residents are in the pool area.
- Historical Note**
- Adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final expedited rulemaking at 25 A.A.R. 259, effective January 8, 2019 (Supp. 19-1).
- R9-10-722. Physical Plant Standards**
- A. Except for a behavioral health outdoor program, an administrator shall ensure that the premises and equipment are sufficient to accommodate:
    1. The services in the behavioral health residential facility's scope of services, and
    2. An individual accepted as a resident by the behavioral health residential facility.
  - B. An administrator shall ensure that:
    1. A behavioral health residential facility has a:
      - a. Room that provides privacy for a resident to receive treatment or visitors; and
      - b. Common area and a dining area that contain furniture and materials to accommodate the recreational and socialization needs of the residents and other individuals in the behavioral health residential facility;
    2. At least one bathroom is accessible from a common area that:
      - a. May be used by residents and visitors;
      - b. Provides privacy when in use; and
      - c. Contains the following:
        - i. At least one working sink with running water,
        - ii. At least one working toilet that flushes and has a seat,
        - iii. Toilet tissue for each toilet,
        - iv. Soap in a dispenser accessible from each sink,
        - v. Paper towels in a dispenser or a mechanical air hand dryer,
        - vi. Lighting, and
        - vii. A window that opens or another means of ventilation;
    3. For every six residents who stay overnight at the behavioral health residential facility, there is at least one working toilet that flushes and has a seat, and one sink with running water;
    4. For every eight residents who stay overnight at the behavioral health residential facility, there is at least one working bathtub or shower;
    5. A resident bathroom provides privacy when in use and contains:
      - a. A shatter-proof mirror, unless the resident's treatment plan allows for otherwise;
      - b. A window that opens or another means of ventilation; and
      - c. Nonporous surfaces for shower enclosures and slip-resistant surfaces in tubs and showers;
    6. If a resident bathroom door locks from the inside, an employee has a key and access to the bathroom;
    7. Each resident is provided a sleeping area that is in a bedroom; and
    8. A resident bedroom complies with the following:
      - a. Is not used as a common area;
      - b. Is not used as a passageway to another bedroom or bathroom unless the bathroom is for the exclusive use of an individual occupying the bedroom;
      - c. Contains a door that opens into a hallway, common area, or outdoors;
      - d. Is constructed and furnished to provide unimpeded access to the door;
      - e. Has window or door covers that provide resident privacy;
      - f. Has floor to ceiling walls;
      - g. Is a:
        - i. Private bedroom that contains at least 60 square feet of floor space, not including the closet; or
        - ii. Shared bedroom that:
          - (1) Is shared by no more than eight residents;
          - (2) Except as provided in subsection (C), contains at least 60 square feet of floor space, not including a closet, for each individual occupying the shared bedroom; and
          - (3) Provides at least three feet of floor space between beds or bunk beds;
      - h. Contains for each resident occupying the bedroom:
        - i. A bed that is at least 36 inches wide and at least 72 inches long, and consists of at least a frame and mattress and linens; and
        - ii. Individual storage space for personal effects and clothing such as shelves, a dresser, or chest of drawers;
      - i. Has clean linen for each bed including mattress pad, sheets large enough to tuck under the mattress, pillows, pillow cases, bedspread, waterproof mattress

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- covers as needed, and blankets to ensure warmth and comfort for each resident;
- j. Has sufficient lighting for a resident occupying the bedroom to read; and
  - k. Has a clothing rod or hook in the bedroom designed to minimize the opportunity for a resident to cause self-injury.
- C. A behavioral health residential facility that was licensed as a Level 4 transitional agency before October 1, 2013 may continue to use a shared bedroom that provides at least 40 square feet of floor space, not including a closet, for each individual occupying the shared bedroom. If there is a modification to the shared bedroom, the behavioral health residential facility shall comply with the requirement in subsection (B)(8)(g).
- D. If a swimming pool is located on the premises, an administrator shall ensure that:
1. The swimming pool is equipped with the following:
    - a. An operational water circulation system that clarifies and disinfects the swimming pool water continuously and that includes at least:
      - i. A removable strainer,
      - ii. Two swimming pool inlets located on opposite sides of the swimming pool, and
      - iii. A drain located at the swimming pool's lowest point and covered by a grating that cannot be removed without using tools; and
    - b. An operational vacuum cleaning system;
  2. The swimming pool is enclosed by a wall or fence that:
    - a. Is at least five feet in height as measured on the exterior of the wall or fence;
    - b. Has no vertical openings greater than four inches across;
    - c. Has no horizontal openings, except as described in subsection (D)(2)(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
  3. 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)(2) is covered and locked when not in use.

**Historical Note**

Adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-723. Repealed****Historical Note**

Adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp.

98-4). Repealed by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

**R9-10-724. Repealed****Historical Note**

Adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Repealed by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

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

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

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

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an

## **Statutory Authority**

### **Statutes**

#### **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.

**36-418. Behavioral health residential facilities; reporting requirement**

A licensed behavioral health residential facility that provides services to children, that contracts with the federal government and that receives only federal monies shall report to the department of health services within twenty-four hours after an actual or alleged event or situation that creates a significant risk of substantial or serious harm to the physical or mental health, safety or well-being of a resident at the facility or while the resident is in the custody of the facility and that requires notification to local law enforcement, the department of child safety or the United States department of health and human services. The licensee shall inform the department of health services regarding any corrective action plan required by the United States department of health and human services.

**36-422. Application for license; notification of proposed change in status; joint licenses; definitions**

A. A person who wishes to apply for a license to operate a health care institution pursuant to this chapter shall submit to the department all of the following:

1. An application on a written or electronic form that is prescribed, prepared and furnished by the department and that contains all of the following:

(a) The name and location of the health care institution.

(b) Whether the health care institution is to be operated as a proprietary or nonproprietary institution.

(c) The name of the governing authority. The applicant shall be the governing authority having the operative ownership of, or the governmental agency charged with the administration of, the health care institution sought to be licensed. If the applicant is a partnership that is not a limited partnership, the partners shall apply jointly, and the partners are jointly the governing authority for purposes of this article.

(d) The name and business or residential address of each controlling person and an affirmation that none of the controlling persons has been denied a license or certificate by a health profession regulatory board pursuant to title 32 or by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title or a license to operate a health care institution in this state or another state or has had a license or certificate issued by a health profession regulatory board pursuant to title 32 or issued by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title or a license to operate a health care institution revoked. If a controlling person has been denied a license or certificate by a health profession regulatory board pursuant to title 32 or by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title or a license to operate a health care institution in this state or another state or has had a health care professional license or a license to operate a health care institution revoked, the controlling person shall include in the application a comprehensive description of the circumstances for the denial or the revocation.

(e) The class or subclass of health care institution to be established or operated.

(f) The types and extent of the health care services to be provided, including emergency services, community health services and services to indigent patients.

(g) The name and qualifications of the chief administrative officer implementing direction in that specific health care institution.

(h) Other pertinent information required by the department for the proper administration of this chapter and department rules.

2. The architectural plans and specifications or the department's approval of the architectural plans and specifications required by section 36-421, subsection A.

3. The applicable application fee.

B. An application submitted pursuant to this section shall contain the written or electronic signature of:

1. If the applicant is an individual, the owner of the health care institution.

2. If the applicant is a partnership, limited liability company or corporation, two of the officers of the corporation or managing members of the partnership or limited liability company or the sole member of the limited liability company if it has only one member.

3. If the applicant is a governmental unit, the head of the governmental unit.

C. An application for licensure shall be submitted at least sixty but not more than one hundred twenty days before the anticipated date of operation. An application for a substantial compliance survey submitted pursuant to section 36-425, subsection G shall be submitted at least thirty days before the date on which the substantial compliance survey is requested.

D. If a current licensee intends to terminate the operation of a licensed health care institution or if a change of ownership is planned, the current licensee shall notify the director in writing at least thirty days before the termination of operation or change in ownership is to take place. The current licensee is responsible for preventing any interruption of services required to sustain the life, health and safety of the patients or residents. A new owner shall not begin operating the health care institution until the director issues a license to the new owner.

E. A licensed health care institution for which operations have not been terminated for more than thirty days may be relicensed pursuant to the codes and standards for architectural plans and specifications that were applicable under its most recent license.

F. If a person operates a hospital in a county with a population of more than five hundred thousand persons in a setting that includes satellite facilities of the hospital that are located separately from the main hospital building, the department at the request of the applicant or licensee shall issue a single group license to the hospital and its designated satellite facilities located within one-half mile of the main hospital building if all of the facilities meet or exceed department licensure requirements for the designated facilities. At the request of the applicant or licensee, the department shall also issue a single group license that includes the hospital and not more than ten of its designated satellite facilities that are located farther than one-half mile from the main hospital building if all of these facilities meet or exceed applicable department licensure requirements. Each facility included under a single group license is subject to the department's licensure requirements that are applicable to that category of facility. Subject to compliance with applicable licensure or accreditation requirements, the department shall reissue individual licenses for the facility of a hospital located in separate buildings from the main hospital building when requested by the hospital. This subsection does not apply to nursing care institutions and residential care institutions. The department is not limited in conducting inspections of an accredited health care institution to ensure that the institution meets department licensure requirements. If a person operates a hospital in a county with a population of five hundred thousand persons or less in a setting that includes satellite facilities of the hospital that are located separately from the main hospital building, the department at the request of the applicant or licensee shall issue a single group license to the hospital and its designated satellite facilities located within thirty-five miles of the main hospital building if all of the facilities meet or exceed department licensure requirements for the designated facilities. At the request of the applicant or licensee, the department shall also issue a single group license that includes the hospital and not more than ten of its designated satellite facilities that are located farther than thirty-five miles from the main hospital building if all of these facilities meet or exceed applicable department licensure requirements.

G. If a county with a population of more than one million persons or a special health care district in a county with a population of more than one million persons operates an accredited hospital that includes the hospital's accredited facilities that are located separately from the main hospital building and the accrediting body's standards as applied to all facilities meet or exceed the department's licensure requirements, the department shall issue a single license to the hospital and its facilities if requested to do

so by the hospital. If a hospital complies with applicable licensure or accreditation requirements, the department shall reissue individual licenses for each hospital facility that is located in a separate building from the main hospital building if requested to do so by the hospital. This subsection does not limit the department's duty to inspect a health care institution to determine its compliance with department licensure standards. This subsection does not apply to nursing care institutions and residential care institutions.

H. An applicant or licensee must notify the department within thirty days after any change regarding a controlling person and provide the information and affirmation required pursuant to subsection A, paragraph 1, subdivision (d) of this section.

I. A behavioral health residential facility that provides services to children must notify the department within thirty days after the facility begins contracting exclusively with the federal government, receives only federal monies and does not contract with this state.

J. This section does not limit the application of federal laws and regulations to an applicant or licensee that is certified as a medicare or an Arizona health care cost containment system provider under federal law.

K. Except for an outpatient treatment center providing dialysis services or abortion procedures, a person wishing to begin operating an outpatient treatment center before a licensing inspection is completed shall submit all of the following:

1. The license application required pursuant to this section.

2. All applicable application and license fees.

3. A written request for a temporary license that includes:

(a) The anticipated date of operation.

(b) An attestation signed by the applicant that the applicant and the facility comply with and will continue to comply with the applicable licensing statutes and rules.

L. Within seven days after the department's receipt of the items required in subsection K of this section, but not before the anticipated operation date submitted pursuant to subsection C of this section, the department shall issue a temporary license that includes:

1. The name of the facility.

2. The name of the licensee.

3. The facility's class or subclass.

4. The temporary license's effective date.

5. The location of the licensed premises.

M. A facility may begin operating on the effective date of the temporary license.

N. The director may cease the issuance of temporary licenses at any time if the director believes that public health and safety is endangered.

O. For the purposes of this section:

1. "Accredited" means accredited by a nationally recognized accreditation organization.

2. "Satellite facility" means an outpatient facility at which the hospital provides outpatient medical services.

**36-424. Inspections; suspension or revocation of license; report to board of examiners of nursing care institution administrators**

A. Subject to the limit prescribed by subsection B of this section, the director shall inspect the premises of the health care institution and investigate the character and other qualifications of the applicant to

ascertain whether the applicant and the health care institution are in substantial compliance with the requirements of this chapter and the rules established pursuant to this chapter. The director may prescribe rules regarding department background investigations into an applicant's character and qualifications.

B. The director shall accept proof that a health care institution is an accredited hospital or is an accredited health care institution in lieu of all compliance inspections required by this chapter if the director receives a copy of the institution's accreditation report for the licensure period. If the health care institution's accreditation report is not valid for the entire licensure period, the department may conduct a compliance inspection of the health care institution during the time period the department does not have a valid accreditation report for the health care institution. For the purposes of this subsection, each licensed premises of a health care institution must have its own accreditation report. The director may not accept an accreditation report in lieu of a compliance inspection of an intermediate care facility for individuals with intellectual disabilities. The director may accept an accreditation report in lieu of a compliance inspection of a behavioral health residential facility providing services to children only if both of the following apply:

1. The facility is accredited by an independent, nonprofit accrediting organization approved by the secretary of the United States department of health and human services.
2. The facility has not been subject to an enforcement action pursuant to section 36-427 or 36-431.01 within the year preceding the annual licensing fee anniversary date.

C. On a determination by the director that there is reasonable cause to believe a health care institution is not adhering to the licensing requirements of this chapter, the director and any duly designated employee or agent of the director, including county health representatives and county or municipal fire inspectors, consistent with standard medical practices, may enter on and into the premises of any health care institution that is licensed or required to be licensed pursuant to this chapter at any reasonable time for the purpose of determining the state of compliance with this chapter, the rules adopted pursuant to this chapter and local fire ordinances or rules. Any application for licensure under this chapter constitutes permission for and complete acquiescence in any entry or inspection of the premises during the pendency of the application and, if licensed, during the term of the license. If an inspection reveals that the health care institution is not adhering to the licensing requirements established pursuant to this chapter, the director may take action authorized by this chapter. Any health care institution, including an accredited hospital, whose license has been suspended or revoked in accordance with this section is subject to inspection on application for relicensure or reinstatement of license.

D. The director shall immediately report to the board of examiners of nursing care institution administrators information identifying that a nursing care institution administrator's conduct may be grounds for disciplinary action pursuant to section 36-446.07.

#### **36-425.06. Secure behavioral health residential facilities; license; definition**

A. The department shall license secure behavioral health residential facilities to provide secure twenty-four-hour on-site supportive treatment and supervision by staff with behavioral health training for persons who have been determined to be seriously mentally ill, who are chronically resistant to treatment for a mental disorder and who are placed in the facility pursuant to a court order issued pursuant to section 36-550.09. A secure behavioral health residential facility may provide services only to persons placed in the facility pursuant to a court order issued pursuant to section 36-550.09 and may not provide services to any other persons on that facility's premises. A secure behavioral health residential facility may not have more than sixteen beds.

B. For the purposes of this section, "secure" means premises that limit a patient's egress in the least restrictive manner consistent with the patient's court-ordered treatment plan.

**Laws 2019, Ch. 134 and Laws 2019, Ch. 270 are attached.**

State of Arizona  
Senate  
Fifty-fourth Legislature  
First Regular Session  
2019

**CHAPTER 134**  
**SENATE BILL 1247**

AN ACT

AMENDING SECTION 8-804, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 4, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-418; AMENDING SECTIONS 36-422, 36-424 AND 41-619.57, ARIZONA REVISED STATUTES; RELATING TO CHILDREN.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 8-804, Arizona Revised Statutes, is amended to  
3 read:

4 8-804. Central registry; notification

5 A. The department shall maintain a central registry of reports of  
6 child abuse and neglect that are substantiated and the outcome of the  
7 investigation of these reports made under this article. A finding made by  
8 a court pursuant to section 8-844, subsection C that a child is dependent  
9 based on an allegation of abuse or neglect shall be recorded as a  
10 substantiated finding of abuse or neglect. The department shall  
11 incorporate duplicate reports on the same incident in the original report  
12 and shall not classify duplicate reports as new reports.

13 B. The department shall conduct central registry background checks  
14 and shall use the information contained in the central registry only for  
15 the following purposes:

16 1. As a factor to determine qualifications for foster home  
17 licensing, adoptive parent certification, individuals who apply for child  
18 welfare agency licensing, child care home certification, registration of  
19 unregulated child care homes with the child care resource and referral  
20 system, and home and community based services certification for services  
21 to children or vulnerable adults.

22 2. As a factor to determine qualifications for persons who are  
23 employed or who are applying for employment with this state in positions  
24 that provide direct service to children or vulnerable adults.

25 3. As a factor to determine qualifications for individuals who are  
26 employed or who are applying for employment with a child welfare agency in  
27 positions that provide direct service to children or vulnerable adults.

28 4. As a factor to determine qualifications for positions that  
29 provide direct service to children or vulnerable adults for:

30 (a) Any person who applies for a contract with this state and that  
31 person's employees.

32 (b) All employees of a contractor.

33 (c) A subcontractor of a contractor and the subcontractor's  
34 employees.

35 (d) Prospective employees of the contractor or subcontractor at the  
36 request of the prospective employer.

37 5. ~~Beginning August 1, 2013,~~ To provide information to licensees  
38 that do not contract with this state regarding persons who are employed or  
39 seeking employment to provide direct services to children pursuant to  
40 title 36, chapter 7.1.

41 6. To identify and review reports concerning individual children  
42 and families, in order to facilitate the assessment of safety and risk.

43 7. To determine the nature and scope of child abuse and neglect in  
44 this state and to provide statewide statistical and demographic  
45 information concerning trends in child abuse and neglect.

1           8. To allow comparisons of this state's statistical data with  
2 national data.

3           9. To comply with section 8-804.01, subsection B.

4           10. TO PROVIDE INFORMATION TO LICENSEES DESCRIBED IN SUBSECTION D  
5 OF THIS SECTION REGARDING PERSONS WHO ARE EMPLOYED OR SEEKING EMPLOYMENT  
6 TO PROVIDE DIRECT SERVICES TO CHILDREN IN A LICENSED BEHAVIORAL HEALTH  
7 RESIDENTIAL FACILITY.

8           C. ~~Beginning August 1, 2013,~~ Licensees that do not contract with  
9 the state and that employ persons who provide direct services to children  
10 pursuant to title 36, chapter 7.1 must submit to the department of child  
11 safety in a manner prescribed by the department of child safety  
12 information necessary to conduct central registry background checks. The  
13 department of health services shall verify whether licensees, pursuant to  
14 title 36, chapter 7.1, have complied with the requirements of this  
15 subsection and any rules adopted by the department of health services to  
16 implement this subsection.

17           D. BEGINNING SEPTEMBER 1, 2019, LICENSEES THAT DO NOT CONTRACT WITH  
18 THIS STATE, THAT CONTRACT WITH THE FEDERAL GOVERNMENT, THAT RECEIVE ONLY  
19 FEDERAL MONIES AND THAT EMPLOY PERSONS WHO PROVIDE DIRECT SERVICES TO  
20 CHILDREN IN A LICENSED BEHAVIORAL HEALTH RESIDENTIAL FACILITY PURSUANT TO  
21 TITLE 36, CHAPTER 4 MUST SUBMIT TO THE DEPARTMENT OF CHILD SAFETY IN A  
22 MANNER PRESCRIBED BY THE DEPARTMENT OF CHILD SAFETY INFORMATION NECESSARY  
23 TO CONDUCT CENTRAL REGISTRY BACKGROUND CHECKS. THE DEPARTMENT OF HEALTH  
24 SERVICES SHALL VERIFY WHETHER THE LICENSEES, PURSUANT TO TITLE 36,  
25 CHAPTER 4, HAVE COMPLIED WITH THE REQUIREMENTS OF THIS SUBSECTION.

26           ~~D~~. E. If the department of economic security received a report  
27 before September 1, 1999 and determined that the report was substantiated,  
28 the department of child safety shall maintain the report in the central  
29 registry until eighteen years from the child victim's date of birth.

30           ~~F~~. F. If the department of economic security or the department of  
31 child safety received a report on or after September 1, 1999 and  
32 determined that the report was substantiated, the department of child  
33 safety shall maintain the report in the central registry for a maximum of  
34 twenty-five years after the date of the report. If the department of  
35 child safety maintains reports in the central registry for less than  
36 twenty-five years, the department shall adopt rules to designate the  
37 length of time it must maintain those reports in the central registry.

38           ~~F~~. G. The department shall annually purge reports and  
39 investigative outcomes received pursuant to the time frames prescribed in  
40 subsections ~~D~~ E and ~~F~~ F of this section.

41           ~~G~~. H. Any person who was the subject of a department investigation  
42 may request confirmation that the department has purged information about  
43 the person pursuant to subsection ~~F~~ G of this section. On receipt of  
44 this request, the department shall provide the person with written

1 confirmation that the department has no record containing identifying  
2 information about that person.

3 ~~H.~~ I. The department shall notify a person, contractor or licensee  
4 identified in subsection B, paragraph 4, subdivisions (a), (b) and (c) and  
5 subsection B, ~~paragraph~~ PARAGRAPHS 5 AND 10 of this section who is  
6 disqualified because of a central registry check conducted pursuant to  
7 subsection B of this section that the person may apply to the board of  
8 fingerprinting for a central registry exception pursuant to section  
9 41-619.57.

10 ~~I.~~ J. Before being employed in a position that provides direct  
11 services to children or vulnerable adults pursuant to subsection B,  
12 paragraphs 4, ~~and~~ 5 AND 10 or ~~subsection~~ SUBSECTIONS C AND D of this  
13 section, employees shall certify, under penalty of perjury, on forms that  
14 are provided by the department whether an allegation of abuse or neglect  
15 was made against them and was substantiated. The forms are  
16 confidential. If this certification does not indicate a current  
17 investigation or a substantiated report of abuse or neglect, the employee  
18 may provide direct services pending the findings of the central registry  
19 check.

20 ~~J.~~ K. A person who is granted a central registry exception  
21 pursuant to section 41-619.57 is not entitled to a contract, employment,  
22 licensure, certification or other benefit because the person has been  
23 granted a central registry exception.

24 ~~K.~~ L. An agency of this state that conducts central registry  
25 background checks as a factor to determine qualifications for positions  
26 that provide direct services to children or vulnerable adults shall  
27 publish a list of disqualifying acts of substantiated abuse or neglect.

28 ~~L.~~ M. An agency of this state that conducts central registry  
29 background checks may provide information contained in the central  
30 registry on all reports of child abuse and neglect that are substantiated  
31 and the outcomes of the investigations of the reports to carry out ~~the~~  
32 ~~provisions~~ of this section. Identifying information regarding any person  
33 other than the perpetrator may not be released. Information received  
34 pursuant to this section may not be further disseminated unless authorized  
35 by law or court order.

36 Sec. 2. Title 36, chapter 4, article 1, Arizona Revised Statutes,  
37 is amended by adding section 36-418, to read:

38 36-418. Behavioral health residential facilities; reporting  
39 requirement

40 A LICENSED BEHAVIORAL HEALTH RESIDENTIAL FACILITY THAT PROVIDES  
41 SERVICES TO CHILDREN, THAT CONTRACTS WITH THE FEDERAL GOVERNMENT AND THAT  
42 RECEIVES ONLY FEDERAL MONIES SHALL REPORT TO THE DEPARTMENT OF HEALTH  
43 SERVICES WITHIN TWENTY-FOUR HOURS AFTER AN ACTUAL OR ALLEGED EVENT OR  
44 SITUATION THAT CREATES A SIGNIFICANT RISK OF SUBSTANTIAL OR SERIOUS HARM  
45 TO THE PHYSICAL OR MENTAL HEALTH, SAFETY OR WELL-BEING OF A RESIDENT AT

1 THE FACILITY OR WHILE THE RESIDENT IS IN THE CUSTODY OF THE FACILITY AND  
2 THAT REQUIRES NOTIFICATION TO LOCAL LAW ENFORCEMENT, THE DEPARTMENT OF  
3 CHILD SAFETY OR THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES.  
4 THE LICENSEE SHALL INFORM THE DEPARTMENT OF HEALTH SERVICES REGARDING ANY  
5 CORRECTIVE ACTION PLAN REQUIRED BY THE UNITED STATES DEPARTMENT OF HEALTH  
6 AND HUMAN SERVICES.

7 Sec. 3. Section 36-422, Arizona Revised Statutes, is amended to  
8 read:

9 36-422. Application for license; notification of proposed  
10 change in status; joint licenses; definitions

11 A. A person who wishes to apply for a license to operate a health  
12 care institution pursuant to this chapter shall submit to the department  
13 all of the following:

14 1. An application on a written or electronic form that is  
15 prescribed, prepared and furnished by the department AND that contains all  
16 of the following:

17 (a) The name and location of the health care institution.

18 (b) Whether the health care institution is to be operated as a  
19 proprietary or nonproprietary institution.

20 (c) The name of the governing authority. The applicant shall be  
21 the governing authority having the operative ownership of, or the  
22 governmental agency charged with the administration of, the health care  
23 institution sought to be licensed. If the applicant is a partnership that  
24 is not a limited partnership, the partners shall apply jointly, and the  
25 partners are jointly the governing authority for purposes of this article.

26 (d) The name and business or residential address of each  
27 controlling person and an affirmation that none of the controlling persons  
28 has been denied a license or certificate by a health profession regulatory  
29 board pursuant to title 32 or by a state agency pursuant to chapter 6,  
30 article 7 or chapter 17 of this title or a license to operate a health  
31 care institution in this state or another state or has had a license or  
32 certificate issued by a health profession regulatory board pursuant to  
33 title 32 or issued by a state agency pursuant to chapter 6, article 7 or  
34 chapter 17 of this title or a license to operate a health care institution  
35 revoked. If a controlling person has been denied a license or certificate  
36 by a health profession regulatory board pursuant to title 32 or by a state  
37 agency pursuant to chapter 6, article 7 or chapter 17 of this title or a  
38 license to operate a health care institution in this state or another  
39 state or has had a health care professional license or a license to  
40 operate a health care institution revoked, the controlling person shall  
41 include in the application a comprehensive description of the  
42 circumstances for the denial or the revocation.

43 (e) The class or subclass of health care institution to be  
44 established or operated.

1 (f) The types and extent of the health care services to be  
2 provided, including emergency services, community health services and  
3 services to indigent patients.

4 (g) The name and qualifications of the chief administrative officer  
5 implementing direction in that specific health care institution.

6 (h) Other pertinent information required by the department for the  
7 proper administration of this chapter and department rules.

8 2. The architectural plans and specifications or the department's  
9 approval of the architectural plans and specifications required by section  
10 36-421, subsection A.

11 3. The applicable application fee.

12 B. An application submitted pursuant to this section shall contain  
13 the written or electronic signature of:

14 1. If the applicant is an individual, the owner of the health care  
15 institution.

16 2. If the applicant is a partnership, limited liability company or  
17 corporation, two of the officers of the corporation or managing members of  
18 the partnership or limited liability company or the sole member of the  
19 limited liability company if it has only one member.

20 3. If the applicant is a governmental unit, the head of the  
21 governmental unit.

22 C. An application for licensure shall be submitted at least sixty  
23 but not more than one hundred twenty days before the anticipated date of  
24 operation. An application for a substantial compliance survey submitted  
25 pursuant to section 36-425, subsection G shall be submitted at least  
26 thirty days before the date on which the substantial compliance survey is  
27 requested.

28 D. If a current licensee intends to terminate the operation of a  
29 licensed health care institution or if a change of ownership is planned,  
30 the current licensee shall notify the director in writing at least thirty  
31 days before the termination of operation or change in ownership is to take  
32 place. The current licensee is responsible for preventing any  
33 interruption of services required to sustain the life, health and safety  
34 of the patients or residents. A new owner shall not begin operating the  
35 health care institution until the director issues a license to the new  
36 owner.

37 E. A licensed health care institution for which operations have not  
38 been terminated for more than thirty days may be relicensed pursuant to  
39 the codes and standards for architectural plans and specifications that  
40 were applicable under its most recent license.

41 F. If a person operates a hospital in a county with a population of  
42 more than five hundred thousand persons in a setting that includes  
43 satellite facilities of the hospital that are located separately from the  
44 main hospital building, the department at the request of the applicant or  
45 licensee shall issue a single group license to the hospital and its

1 designated satellite facilities located within one-half mile of the main  
2 hospital building if all of the facilities meet or exceed department  
3 licensure requirements for the designated facilities. At the request of  
4 the applicant or licensee, the department shall also issue a single group  
5 license that includes the hospital and not more than ten of its designated  
6 satellite facilities that are located farther than one-half mile from the  
7 main hospital building if all of these facilities meet or exceed  
8 applicable department licensure requirements. Each facility included  
9 under a single group license is subject to the department's licensure  
10 requirements that are applicable to that category of facility. Subject to  
11 compliance with applicable licensure or accreditation requirements, the  
12 department shall reissue individual licenses for the facility of a  
13 hospital located in separate buildings from the main hospital building  
14 when requested by the hospital. This subsection does not apply to nursing  
15 care institutions and residential care institutions. The department is  
16 not limited in conducting inspections of an accredited health care  
17 institution to ensure that the institution meets department licensure  
18 requirements. If a person operates a hospital in a county with a  
19 population of five hundred thousand persons or less in a setting that  
20 includes satellite facilities of the hospital that are located separately  
21 from the main hospital building, the department at the request of the  
22 applicant or licensee shall issue a single group license to the hospital  
23 and its designated satellite facilities located within thirty-five miles  
24 of the main hospital building if all of the facilities meet or exceed  
25 department licensure requirements for the designated facilities. At the  
26 request of the applicant or licensee, the department shall also issue a  
27 single group license that includes the hospital and not more than ten of  
28 its designated satellite facilities that are located farther than  
29 thirty-five miles from the main hospital building if all of these  
30 facilities meet or exceed applicable department licensure requirements.

31 G. If a county with a population of more than one million persons  
32 or a special health care district in a county with a population of more  
33 than one million persons operates an accredited hospital that includes the  
34 hospital's accredited facilities that are located separately from the main  
35 hospital building and the accrediting body's standards as applied to all  
36 facilities meet or exceed the department's licensure requirements, the  
37 department shall issue a single license to the hospital and its facilities  
38 if requested to do so by the hospital. If a hospital complies with  
39 applicable licensure or accreditation requirements, the department shall  
40 reissue individual licenses for each hospital facility that is located in  
41 a separate building from the main hospital building if requested to do so  
42 by the hospital. This subsection does not limit the department's duty to  
43 inspect a health care institution to determine its compliance with  
44 department licensure standards. This subsection does not apply to nursing  
45 care institutions and residential care institutions.

1 H. An applicant or licensee must notify the department within  
2 thirty days after any change regarding a controlling person and provide  
3 the information and affirmation required pursuant to subsection A,  
4 paragraph 1, subdivision (d) of this section.

5 I. A BEHAVIORAL HEALTH RESIDENTIAL FACILITY THAT PROVIDES SERVICES  
6 TO CHILDREN MUST NOTIFY THE DEPARTMENT WITHIN THIRTY DAYS AFTER THE  
7 FACILITY BEGINS CONTRACTING EXCLUSIVELY WITH THE FEDERAL GOVERNMENT,  
8 RECEIVES ONLY FEDERAL MONIES AND DOES NOT CONTRACT WITH THIS STATE.

9 ~~I~~ J. This section does not limit the application of federal laws  
10 and regulations to an applicant or licensee that is certified as a  
11 medicare or an Arizona health care cost containment system provider under  
12 federal law.

13 ~~J~~ K. Except for an outpatient treatment center providing dialysis  
14 services or abortion procedures, a person wishing to begin operating an  
15 outpatient treatment center before a licensing inspection is completed  
16 shall submit all of the following:

17 1. The license application required pursuant to this section.

18 2. All applicable application and license fees.

19 3. A written request for a temporary license that includes:

20 (a) The anticipated date of operation.

21 (b) An attestation signed by the applicant that the applicant and  
22 the facility comply with and will continue to comply with the applicable  
23 licensing statutes and rules.

24 ~~K~~ L. Within seven days after the department's receipt of the  
25 items required in subsection ~~J~~ K of this section, but not before the  
26 anticipated operation date submitted pursuant to subsection C of this  
27 section, the department shall issue a temporary license that includes:

28 1. The name of the facility.

29 2. The name of the licensee.

30 3. The facility's class or subclass.

31 4. The temporary license's effective date.

32 5. The location of the licensed premises.

33 ~~L~~ M. A facility may begin operating on the effective date of the  
34 temporary license.

35 ~~M~~ N. The director may cease the issuance of temporary licenses at  
36 any time if the director believes that public health and safety is  
37 endangered.

38 ~~N~~ O. For the purposes of this section:

39 1. "Accredited" means accredited by a nationally recognized  
40 accreditation organization.

41 2. "Satellite facility" means an outpatient facility at which the  
42 hospital provides outpatient medical services.

1           Sec. 4. Section 36-424, Arizona Revised Statutes, is amended to  
2 read:

3           36-424. Inspections; suspension or revocation of license;  
4                   report to board of examiners of nursing care  
5                   institution administrators

6           A. Subject to the ~~limitation~~ LIMIT prescribed by subsection B of  
7 this section, the director shall inspect the premises of the health care  
8 institution and investigate the character and other qualifications of the  
9 applicant to ascertain whether the applicant and the health care  
10 institution are in substantial compliance with the requirements of this  
11 chapter and the rules established pursuant to this chapter. The director  
12 may prescribe rules regarding department background investigations into an  
13 applicant's character and qualifications.

14           B. The director shall accept proof that a health care institution  
15 is an accredited hospital or is an accredited health care institution in  
16 lieu of all compliance inspections required by this chapter if the  
17 director receives a copy of the institution's accreditation report for the  
18 licensure period. If the health care institution's accreditation report  
19 is not valid for the entire licensure period, the department may conduct a  
20 compliance inspection of the health care institution during the time  
21 period the department does not have a valid accreditation report for the  
22 health care institution. FOR THE PURPOSES OF THIS SUBSECTION, EACH  
23 LICENSED PREMISES OF A HEALTH CARE INSTITUTION MUST HAVE ITS OWN  
24 ACCREDITATION REPORT. THE DIRECTOR MAY ACCEPT AN ACCREDITATION REPORT IN  
25 LIEU OF A COMPLIANCE INSPECTION OF A BEHAVIORAL HEALTH RESIDENTIAL  
26 FACILITY PROVIDING SERVICES TO CHILDREN ONLY IF BOTH OF THE FOLLOWING  
27 APPLY:

28           1. THE FACILITY IS ACCREDITED BY AN INDEPENDENT, NONPROFIT  
29 ACCREDITING ORGANIZATION APPROVED BY THE SECRETARY OF THE UNITED STATES  
30 DEPARTMENT OF HEALTH AND HUMAN SERVICES.

31           2. THE FACILITY HAS NOT BEEN SUBJECT TO AN ENFORCEMENT ACTION  
32 PURSUANT TO SECTION 36-427 OR 36-431.01 WITHIN THE YEAR PRECEDING THE  
33 ANNUAL LICENSING FEE ANNIVERSARY DATE.

34           C. On a determination by the director that there is reasonable  
35 cause to believe a health care institution is not adhering to the  
36 licensing requirements of this chapter, the director and any duly  
37 designated employee or agent of the director, including county health  
38 representatives and county or municipal fire inspectors, consistent with  
39 standard medical practices, may enter on and into the premises of any  
40 health care institution that is licensed or required to be licensed  
41 pursuant to this chapter at any reasonable time for the purpose of  
42 determining the state of compliance with this chapter, the rules adopted  
43 pursuant to this chapter and local fire ordinances or rules. Any  
44 application for licensure under this chapter constitutes permission for  
45 and complete acquiescence in any entry or inspection of the premises

1 during the pendency of the application and, if licensed, during the term  
2 of the license. If an inspection reveals that the health care institution  
3 is not adhering to the licensing requirements established pursuant to this  
4 chapter, the director may take action authorized by this chapter. Any  
5 health care institution, including an accredited hospital, whose license  
6 has been suspended or revoked in accordance with this section is subject  
7 to inspection on application for relicensure or reinstatement of license.

8 D. The director shall immediately report to the board of examiners  
9 of nursing care institution administrators information identifying that a  
10 nursing care institution administrator's conduct may be grounds for  
11 disciplinary action pursuant to section 36-446.07.

12 Sec. 5. Section 41-619.57, Arizona Revised Statutes, is amended to  
13 read:

14 41-619.57. Central registry exceptions; expedited review; hearing

15 A. The board shall determine central registry exceptions for each  
16 substantiated report pursuant to section 8-804. The board shall determine  
17 a central registry exception after an expedited review or after a central  
18 registry exception hearing. The board shall conduct an expedited review  
19 within twenty days after receiving an application for a central registry  
20 exception.

21 B. Within forty-five days after conducting an expedited review, the  
22 board shall hold a central registry exception hearing if the board  
23 determines that the applicant does not qualify for a central registry  
24 exception under an expedited review but is qualified to apply for a  
25 central registry exception and the applicant submits an application for a  
26 central registry exception within the time limits prescribed by rule.

27 C. When determining whether a person is eligible to receive a  
28 central registry exception pursuant to section 8-804, the board shall  
29 consider whether the person has shown to the board's satisfaction that the  
30 person is successfully rehabilitated and is not a recidivist. Before  
31 granting a central registry exception under expedited review, the board  
32 shall consider all of the criteria listed in subsection E of this section.

33 D. The following persons shall be present during central registry  
34 exception hearings:

35 1. The board or its hearing officer.

36 2. The person who requested the central registry exception hearing.  
37 The person may be accompanied by a representative at the hearing.

38 E. The board may grant a central registry exception at a hearing if  
39 the person shows to the board's satisfaction that the person is  
40 successfully rehabilitated and is not a recidivist. The board may  
41 consider the person's criminal record in determining if a person has been  
42 successfully rehabilitated. If the applicant fails to appear at the  
43 hearing without good cause, the board may deny a central registry  
44 exception. The board shall grant or deny a central registry exception  
45 within eighty days after the central registry exception hearing. Before

1 granting a central registry exception at a hearing the board shall  
2 consider all of the following in accordance with board rule:  
3 1. The extent of the person's central registry records.  
4 2. The length of time that has elapsed since the abuse or neglect  
5 occurred.  
6 3. The nature of the abuse or neglect.  
7 4. Any applicable mitigating circumstances.  
8 5. The degree to which the person participated in the abuse or  
9 neglect.  
10 6. The extent of the person's rehabilitation, including:  
11 (a) Evidence of positive action to change the person's behavior,  
12 such as completion of counseling or a drug treatment, domestic violence or  
13 parenting program.  
14 (b) Personal references attesting to the person's rehabilitation.  
15 F. If the board grants a central registry exception to a person,  
16 the board shall notify the department of child safety, the department of  
17 economic security or the department of health services, as appropriate, in  
18 writing.  
19 G. A person who is granted a central registry exception is not  
20 entitled to have the person's report and investigation outcome purged from  
21 the central registry except as required pursuant to section 8-804,  
22 subsections ~~F~~ and G AND H.  
23 H. Pending the outcome of a central registry exception  
24 determination, a central registry exception applicant may not provide  
25 direct services to children pursuant to title 36, chapter 7.1.  
26 I. The board is exempt from chapter 6, article 10 of this title.  
27 Sec. 6. Rulemaking; department of health services  
28 The department of health services shall adopt rules requiring  
29 employees and personnel of residential facilities providing behavioral  
30 health services to children to report any abuse or neglect pursuant to  
31 section 13-3620, Arizona Revised Statutes.  
32 Sec. 7. Emergency  
33 This act is an emergency measure that is necessary to preserve the  
34 public peace, health or safety and is operative immediately as provided by  
35 law.

APPROVED BY THE GOVERNOR APRIL 24, 2019.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 24, 2019.

State of Arizona  
House of Representatives  
Fifty-fourth Legislature  
First Regular Session  
2019

**CHAPTER 270**  
**HOUSE BILL 2754**

AN ACT

AMENDING SECTIONS 13-4512 AND 36-273, ARIZONA REVISED STATUTES; AMENDING SECTION 36-405.02, ARIZONA REVISED STATUTES, AS ADDED BY LAWS 2019, CHAPTER 215, SECTION 4; AMENDING TITLE 36, CHAPTER 4, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-425.06; AMENDING SECTIONS 36-540 AND 36-550.05, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 5, ARTICLE 10, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-550.09; AMENDING SECTION 36-773, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 29, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 36-2903.12 AND 36-2903.13; AMENDING SECTIONS 36-2985 AND 41-3955.01, ARIZONA REVISED STATUTES; AMENDING TITLE 46, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 9; REPEALING TITLE 46, CHAPTER 2, ARTICLE 9, ARIZONA REVISED STATUTES; APPROPRIATING MONIES; RELATING TO HEALTH BUDGET RECONCILIATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-4512, Arizona Revised Statutes, is amended to  
3 read:

4 13-4512. Competency restoration treatment; order; commitment;  
5 costs

6 A. The court may order a defendant to undergo out of custody  
7 competency restoration treatment. If the court determines that  
8 confinement is necessary for treatment, the court shall commit the  
9 defendant for competency restoration treatment to the competency  
10 restoration treatment program designated by the county board of  
11 supervisors.

12 B. If the county board of supervisors has not designated a program  
13 to provide competency restoration treatment, the court may commit the  
14 defendant for competency restoration treatment to the Arizona state  
15 hospital, subject to funding appropriated by the legislature to the  
16 Arizona state hospital for inpatient competency restoration treatment  
17 services, or to any other facility that is approved by the court.

18 C. A county board of supervisors that has designated a county  
19 restoration treatment program may enter into contracts with providers,  
20 including the Arizona state hospital, for inpatient, ~~in-custody~~ IN-CUSTODY  
21 competency restoration treatment. A county competency restoration  
22 treatment program may do the following:

23 1. Provide competency restoration treatment to a defendant in the  
24 county jail, including inpatient treatment.

25 2. Obtain court orders to transport the defendant to other  
26 providers, including the Arizona state hospital, for inpatient, ~~in-custody~~  
27 IN-CUSTODY competency restoration treatment.

28 D. In determining the type and location of the treatment, the court  
29 shall select the least restrictive treatment alternative after considering  
30 the following:

31 1. ~~if~~ WHETHER confinement is necessary for treatment.

32 2. The likelihood that the defendant is a threat to public safety.

33 3. The defendant's participation in and cooperation during an  
34 outpatient examination of competency to stand trial conducted pursuant to  
35 section 13-4507.

36 4. The defendant's willingness to submit to outpatient competency  
37 restoration treatment as a condition of pretrial release, if the defendant  
38 is eligible for pretrial release.

39 E. An order entered pursuant to this section shall state ~~if~~ WHETHER  
40 the defendant is incompetent to refuse treatment, including medication,  
41 pursuant to section 13-4511.

42 F. A defendant shall pay the cost of inpatient, ~~in-custody~~  
43 IN-CUSTODY competency restoration treatment unless otherwise ordered by  
44 the court. If the court finds the defendant is unable to pay all or a

1 portion of the costs of inpatient, ~~in custody~~ IN-CUSTODY treatment, the  
2 ~~state~~ CITY, TOWN OR COUNTY shall pay the costs of inpatient, ~~in custody~~  
3 IN-CUSTODY competency restoration treatment at the Arizona state hospital  
4 that are incurred until:

5 1. Seven days, excluding Saturdays, Sundays or other legal  
6 holidays, after the hospital submits a report to the court stating that  
7 the defendant has regained competency or that there is no substantial  
8 probability that the defendant will regain competency within twenty-one  
9 months after the date of the original finding of incompetency.

10 2. The treatment order expires.

11 3. Seven days, excluding Saturdays, Sundays or other legal  
12 holidays, after the charges are dismissed.

13 G. The county, or the city if the competency proceedings arise out  
14 of a municipal court proceeding, shall pay the hospital costs that are  
15 incurred after the period of time designated in subsection F of this  
16 section and shall also pay for the costs of inpatient, ~~in custody~~  
17 IN-CUSTODY competency restoration treatment in ~~court~~-approved  
18 COURT-APPROVED programs that are not programs at the Arizona state  
19 hospital.

20 H. Payment for the cost of outpatient community treatment ~~shall be~~  
21 IS the responsibility of the defendant unless:

22 1. The defendant is enrolled in a program ~~which~~ THAT covers the  
23 treatment and ~~which~~ THAT has funding available for the provision of  
24 treatment to the defendant, and the defendant is eligible to receive the  
25 treatment. Defendants in these circumstances may be required to share in  
26 the cost of the treatment if cost sharing is required by the program in  
27 which the defendant is enrolled.

28 2. The court finds that the defendant is unable to pay all or a  
29 portion of treatment costs or that outpatient treatment is not otherwise  
30 available to the defendant. For defendants in these circumstances, all or  
31 a portion of the costs of outpatient community treatment shall be borne by  
32 the county or the city if the competency proceedings arise out of a  
33 municipal court proceeding.

34 I. A treatment order issued pursuant to this section is valid for  
35 one hundred eighty days or until one of the following occurs:

36 1. The treating facility submits a report that the defendant has  
37 regained competency or that there is no substantial probability that the  
38 defendant will regain competency within twenty-one months after the date  
39 of the original finding of incompetency.

40 2. The charges are dismissed.

41 3. The maximum sentence for the offense charged has expired.

42 4. A qualified physician who represents the Arizona state hospital  
43 determines that the defendant is not suffering from a mental illness and  
44 is competent to stand trial.

1 J. The Arizona state hospital shall collect census data for adult  
2 restoration to competency treatment programs to establish maximum capacity  
3 and the allocation formula required pursuant to section 36-206,  
4 subsection D. The Arizona state hospital or the department of health  
5 services is not required to provide restoration to competency treatment  
6 that exceeds the funded capacity. If the Arizona state hospital reaches  
7 its funded capacity in either or both the adult male or adult female  
8 restoration to competency treatment programs, the superintendent of the  
9 state hospital shall establish a waiting list for admission based on the  
10 date of the court order issued pursuant to this section.

11 K. NOTWITHSTANDING ANY OTHER LAW, A COUNTY MAY MEET ANY STATUTORY  
12 FUNDING REQUIREMENTS OF THIS SECTION FROM ANY SOURCE OF COUNTY REVENUE  
13 DESIGNATED BY THE COUNTY, INCLUDING FUNDS OF ANY COUNTYWIDE SPECIAL TAXING  
14 DISTRICT OF WHICH THE BOARD OF SUPERVISORS SERVES AS THE BOARD OF  
15 DIRECTORS.

16 Sec. 2. Section 36-273, Arizona Revised Statutes, is amended to  
17 read:

18 36-273. Powers and duties

19 A. The department may:

20 1. Use monies in the disease control research fund established  
21 ~~pursuant to~~ BY section 36-274 to contract with individuals, organizations,  
22 corporations and institutions, public or private, in this state for any  
23 projects or services that the department determines may advance research  
24 into the causes, the epidemiology and diagnosis, the formulation of cures,  
25 the medically accepted treatment or the prevention of diseases, including  
26 new drug discovery and development, AND FOR ACQUIRED IMMUNE DEFICIENCY  
27 SYNDROME REPORTING AND SURVEILLANCE. Public monies in the disease control  
28 research fund shall not be used for capital construction projects.

29 2. Enter into research and development agreements, royalty  
30 agreements, development agreements, licensing agreements and profit  
31 sharing agreements concerning the research, development and production of  
32 new products developed or to be developed through ~~department funded~~  
33 DEPARTMENT-FUNDED research.

34 3. Accept or receive monies from any source, including restricted  
35 or unrestricted gifts and contributions from individuals, foundations,  
36 corporations and other organizations and institutions.

37 4. Obtain expert services to assist in ~~the evaluation of~~ EVALUATING  
38 requests and proposals.

39 5. Request cooperation from any state agency for the purposes of  
40 this article.

41 6. Provide information and technical assistance to other  
42 jurisdictions and agencies.

43 7. Subject to title 41, chapter 4, article 4, employ personnel  
44 needed to carry out the duties of this article.

1 B. The department shall:

2 1. Review and evaluate proposals or requests for projects or  
3 services.

4 2. Establish a mechanism to review the contracts awarded to ensure  
5 that the monies are used in accordance with the proposals approved by the  
6 department.

7 3. Prepare and submit a report on or before January 15 of each year  
8 to the governor, the president of the senate and the speaker of the house  
9 of representatives that describes the projects or services proposed to the  
10 department pursuant to this article, the projects or services for which  
11 the department has awarded a contract and the amount of monies necessary  
12 for each proposal, the cost of each proposal for which a contract was  
13 awarded, the names and addresses of the recipients of each contract and  
14 the purpose for which each contract was made. The department shall  
15 provide a copy of this report to the secretary of state.

16 Sec. 3. Section 36-405.02, Arizona Revised Statutes, as added by  
17 Laws 2019, chapter 215, section 4, is amended to read:

18 36-405.02. Outpatient behavioral health and other related  
19 health care services; employees; rules

20 The department shall allow a person who is employed at a health care  
21 institution that provides OUTPATIENT behavioral health services, who is  
22 not a licensed behavioral health professional and who is at least eighteen  
23 years of age to provide OUTPATIENT behavioral health or other related  
24 health care services pursuant to all applicable department rules. The  
25 director shall adopt rules consistent with this section.

26 Sec. 4. Title 36, chapter 4, article 2, Arizona Revised Statutes,  
27 is amended by adding section 36-425.06, to read:

28 36-425.06. Secure behavioral health residential facilities;  
29 license; definition

30 A. THE DEPARTMENT SHALL LICENSE SECURE BEHAVIORAL HEALTH  
31 RESIDENTIAL FACILITIES TO PROVIDE SECURE TWENTY-FOUR-HOUR ON-SITE  
32 SUPPORTIVE TREATMENT AND SUPERVISION BY STAFF WITH BEHAVIORAL HEALTH  
33 TRAINING FOR PERSONS WHO HAVE BEEN DETERMINED TO BE SERIOUSLY MENTALLY  
34 ILL, WHO ARE CHRONICALLY RESISTANT TO TREATMENT FOR A MENTAL DISORDER AND  
35 WHO ARE PLACED IN THE FACILITY PURSUANT TO A COURT ORDER ISSUED PURSUANT  
36 TO SECTION 36-550.09. A SECURE BEHAVIORAL HEALTH RESIDENTIAL FACILITY MAY  
37 PROVIDE SERVICES ONLY TO PERSONS PLACED IN THE FACILITY PURSUANT TO A  
38 COURT ORDER ISSUED PURSUANT TO SECTION 36-550.09 AND MAY NOT PROVIDE  
39 SERVICES TO ANY OTHER PERSONS ON THAT FACILITY'S PREMISES. A SECURE  
40 BEHAVIORAL HEALTH RESIDENTIAL FACILITY MAY NOT HAVE MORE THAN SIXTEEN  
41 BEDS.

42 B. FOR THE PURPOSES OF THIS SECTION, "SECURE" MEANS PREMISES THAT  
43 LIMIT A PATIENT'S EGRESS IN THE LEAST RESTRICTIVE MANNER CONSISTENT WITH  
44 THE PATIENT'S COURT-ORDERED TREATMENT PLAN.

1           Sec. 5. Section 36-540, Arizona Revised Statutes, is amended to  
2 read:

3           36-540. Court options

4           A. If the court finds by clear and convincing evidence that the  
5 proposed patient, as a result of mental disorder, is a danger to self, is  
6 a danger to others, has a persistent or acute disability or a grave  
7 disability and is in need of treatment, and is either unwilling or unable  
8 to accept voluntary treatment, the court shall order the patient to  
9 undergo one of the following:

10           1. Treatment in a program of outpatient treatment.

11           2. Treatment in a program consisting of combined inpatient and  
12 outpatient treatment.

13           3. Inpatient treatment in a mental health treatment agency, in a  
14 hospital operated by or under contract with the United States department  
15 of veterans affairs to provide treatment to eligible veterans pursuant to  
16 article 9 of this chapter, in the state hospital or in a private hospital,  
17 if the private hospital agrees, subject to the limitations of section  
18 36-541.

19           B. The court shall consider all available and appropriate  
20 alternatives for the treatment and care of the patient. The court shall  
21 order the least restrictive treatment alternative available.

22           C. The court may order the proposed patient to undergo outpatient  
23 or combined inpatient and outpatient treatment pursuant to subsection A,  
24 paragraph 1 or 2 of this section if the court:

25           1. Determines that all of the following apply:

26           (a) The patient does not require continuous inpatient  
27 hospitalization.

28           (b) The patient will be more appropriately treated in an outpatient  
29 treatment program or in a combined inpatient and outpatient treatment  
30 program.

31           (c) The patient will follow a prescribed outpatient treatment plan.

32           (d) The patient will not likely become dangerous or suffer more  
33 serious physical harm or serious illness or further deterioration if the  
34 patient follows a prescribed outpatient treatment plan.

35           2. Is presented with and approves a written treatment plan that  
36 conforms with the requirements of section 36-540.01, subsection B. IF THE  
37 COURT DETERMINES THAT THE PATIENT MEETS THE REQUIREMENTS OF SECTION  
38 36-550.09, THE COURT MAY ORDER THE PATIENT TO BE PLACED IN A SECURE  
39 BEHAVIORAL HEALTH RESIDENTIAL FACILITY THAT IS LICENSED BY THE DEPARTMENT  
40 PURSUANT TO SECTION 36-425.06. If the treatment plan presented to the  
41 court pursuant to this subsection provides for supervision of the patient  
42 under court order by a mental health agency that is other than the mental  
43 health agency that petitioned or requested the county attorney to petition  
44 the court for treatment pursuant to section 36-531, the treatment plan

1 must be approved by the medical director of the mental health agency that  
2 will supervise the treatment pursuant to subsection E of this section.

3 D. An order to receive treatment pursuant to subsection A,  
4 paragraph 1 or 2 of this section shall not exceed three hundred sixty-five  
5 days. The period of inpatient treatment under a combined treatment order  
6 pursuant to subsection A, paragraph 2 of this section shall not exceed the  
7 maximum period allowed for an order for inpatient treatment pursuant to  
8 subsection F of this section.

9 E. If the court enters an order for treatment pursuant to  
10 subsection A, paragraph 1 or 2 of this section, all of the following  
11 apply:

12 1. The court shall designate the medical director of the mental  
13 health treatment agency that will supervise and administer the patient's  
14 treatment program.

15 2. The medical director shall not use the services of any person,  
16 agency or organization to supervise a patient's outpatient treatment  
17 program unless the person, agency or organization has agreed to provide  
18 these services in the individual patient's case and unless the department  
19 has determined that the person, agency or organization is capable and  
20 competent to do so.

21 3. The person, agency or organization assigned to supervise an  
22 outpatient treatment program or the outpatient portion of a combined  
23 treatment program shall be notified at least three days before a referral.  
24 The medical director making the referral and the person, agency or  
25 organization assigned to supervise the treatment program shall share  
26 relevant information about the patient to provide continuity of treatment.

27 4. The court may order the medical director to provide notice to  
28 the court of any noncompliance with the terms of a treatment order.

29 5. During any period of outpatient treatment under subsection A,  
30 paragraph 2 of this section, if the court, on its own motion or on motion  
31 by the medical director of the patient's outpatient mental health  
32 treatment facility, determines that the patient is not complying with the  
33 terms of the order or that the outpatient treatment plan is no longer  
34 appropriate and the patient needs inpatient treatment, the court, without  
35 a hearing and based on the court record, the patient's medical record, the  
36 affidavits and recommendations of the medical director, and the advice of  
37 staff and physicians or the psychiatric and mental health nurse  
38 practitioner familiar with the treatment of the patient, may enter an  
39 order amending its original order. The amended order may alter the  
40 outpatient treatment plan or order the patient to inpatient treatment  
41 pursuant to subsection A, paragraph 3 of this section. The amended order  
42 shall not increase the total period of commitment originally ordered by  
43 the court or, when added to the period of inpatient treatment provided by  
44 the original order and any other amended orders, exceed the maximum period

1 allowed for an order for inpatient treatment pursuant to subsection F of  
2 this section. If the patient refuses to comply with an amended order for  
3 inpatient treatment, the court, on its own motion or on the request of the  
4 medical director, may authorize and direct a peace officer to take the  
5 patient into protective custody and transport the patient to the agency  
6 for inpatient treatment. Any authorization, directive or order issued to  
7 a peace officer to take the patient into protective custody shall include  
8 the patient's criminal history and the name and telephone numbers of the  
9 patient's case manager, guardian, spouse, next of kin or significant  
10 other, as applicable. When reporting to or being returned to a treatment  
11 agency for inpatient treatment pursuant to an amended order, the patient  
12 shall be informed of the patient's right to judicial review and the  
13 patient's right to consult with counsel pursuant to section 36-546.

14 6. During any period of outpatient treatment under subsection A,  
15 paragraph 2 of this section, if the medical director of the outpatient  
16 treatment facility in charge of the patient's care determines, in concert  
17 with the medical director of an inpatient mental health treatment facility  
18 who has agreed to accept the patient, that the patient is in need of  
19 immediate acute inpatient psychiatric care because of behavior that is  
20 dangerous to self or to others, the medical director of the outpatient  
21 treatment facility may order a peace officer to apprehend and transport  
22 the patient to the inpatient treatment facility pending a court  
23 determination on an amended order under paragraph 5 of this subsection.  
24 The patient may be detained and treated at the inpatient treatment  
25 facility for a period of no more than forty-eight hours, exclusive of  
26 weekends and holidays, from the time that the patient is taken to the  
27 inpatient treatment facility. The medical director of the outpatient  
28 treatment facility shall file the motion for an amended court order  
29 requesting inpatient treatment no later than the next working day  
30 following the patient being taken to the inpatient treatment facility.  
31 Any period of detention within the inpatient treatment facility pending  
32 issuance of an amended order shall not increase the total period of  
33 commitment originally ordered by the court or, when added to the period of  
34 inpatient treatment provided by the original order and any other amended  
35 orders, exceed the maximum period allowed for an order for inpatient  
36 treatment pursuant to subsection F of this section. If a patient is  
37 ordered to undergo inpatient treatment pursuant to an amended order, the  
38 medical director of the outpatient treatment facility shall inform the  
39 patient of the patient's right to judicial review and to consult with an  
40 attorney pursuant to section 36-546.

41 F. The maximum periods of inpatient treatment that the court may  
42 order, subject to the limitations of section 36-541, are as follows:

43 1. Ninety days for a person found to be a danger to self.

1           2. One hundred eighty days for a person found to be a danger to  
2 others.

3           3. One hundred eighty days for a person found to have a persistent  
4 or acute disability.

5           4. Three hundred sixty-five days for a person found to have a grave  
6 disability.

7           G. If, on finding that the patient meets the criteria for  
8 court-ordered treatment pursuant to subsection A of this section, the  
9 court also finds that there is reasonable cause to believe that the  
10 patient is an incapacitated person as defined in section 14-5101 or is a  
11 person in need of protection pursuant to section 14-5401 and that the  
12 patient is or may be in need of guardianship or conservatorship, or both,  
13 the court may order an investigation concerning the need for a guardian or  
14 conservator, or both, and may appoint a suitable person or agency to  
15 conduct the investigation. The appointee may include a ~~court appointed~~  
16 COURT-APPOINTED guardian ad litem, an investigator appointed pursuant to  
17 section 14-5308 or the public fiduciary if there is no person willing and  
18 qualified to act in that capacity. The court shall give notice of the  
19 appointment to the appointee within three days of the appointment. The  
20 appointee shall submit the report of the investigation to the court within  
21 twenty-one days. The report shall include recommendations as to who  
22 should be guardian or who should be conservator, or both, and a report of  
23 the findings and reasons for the recommendation. If the investigation and  
24 report so indicate, the court shall order the appropriate person to submit  
25 a petition to become the guardian or conservator, or both, of the patient.

26           H. In any proceeding for court-ordered treatment in which the  
27 petition alleges that the patient is in need of a guardian or conservator  
28 and states the grounds for that allegation, the court may appoint an  
29 emergency temporary guardian or conservator, or both, for a specific  
30 purpose or purposes identified in its order and for a specific period of  
31 time not to exceed thirty days if the court finds that all of the  
32 following are true:

33           1. The patient meets the criteria for court-ordered treatment  
34 pursuant to subsection A of this section.

35           2. There is reasonable cause to believe that the patient is an  
36 incapacitated person as defined in section 14-5101 or is in need of  
37 protection pursuant to section 14-5401, paragraph 2.

38           3. The patient does not have a guardian or conservator and the  
39 welfare of the patient requires immediate action to protect the patient or  
40 the ward's property.

41           4. The conditions prescribed pursuant to section 14-5310,  
42 subsection B or section 14-5401.01, subsection B have been met.

43           I. The court may appoint as a temporary guardian or conservator  
44 pursuant to subsection H of this section a suitable person or the public

1 fiduciary if there is no person qualified and willing to act in that  
2 capacity. The court shall issue an order for an investigation as  
3 prescribed pursuant to subsection G of this section and, unless the  
4 patient is represented by independent counsel, the court shall appoint an  
5 attorney to represent the patient in further proceedings regarding the  
6 appointment of a guardian or conservator. The court shall schedule a  
7 further hearing within fourteen days on the appropriate court calendar of  
8 a court that has authority over guardianship or conservatorship matters  
9 pursuant to this title to consider the continued need for an emergency  
10 temporary guardian or conservator and the appropriateness of the temporary  
11 guardian or conservator appointed, and shall order the appointed guardian  
12 or conservator to give notice to persons entitled to notice pursuant to  
13 section 14-5309, subsection A or section 14-5405, subsection A. The court  
14 shall authorize certified letters of temporary emergency guardianship or  
15 conservatorship to be issued on presentation of a copy of the court's  
16 order. If a temporary emergency conservator other than the public  
17 fiduciary is appointed pursuant to this subsection, the court shall order  
18 that the use of the money and property of the patient by the conservator  
19 is restricted and not to be sold, used, transferred or encumbered, except  
20 that the court may authorize the conservator to use money or property of  
21 the patient specifically identified as needed to pay an expense to provide  
22 for the care, treatment or welfare of the patient pending further hearing.  
23 This subsection and subsection H of this section do not:

24 1. Prevent the evaluation or treatment agency from seeking  
25 guardianship and conservatorship in any other manner allowed by law at any  
26 time during the period of court-ordered evaluation and treatment.

27 2. Relieve the evaluation or treatment agency from its obligations  
28 concerning the suspected abuse of a vulnerable adult pursuant to title 46,  
29 chapter 4.

30 J. If, on finding that a patient meets the criteria for  
31 court-ordered treatment pursuant to subsection A of this section, the  
32 court also learns that the patient has a guardian appointed under title  
33 14, the court with notice may impose on the existing guardian additional  
34 duties pursuant to section 14-5312.01. If the court imposes additional  
35 duties on an existing guardian as prescribed in this subsection, the court  
36 may determine that the patient needs to continue treatment under a court  
37 order for treatment and may issue the order or determine that the  
38 patient's needs can be adequately met by the guardian with the additional  
39 duties pursuant to section 14-5312.01 and decline to issue the court order  
40 for treatment. If at any time after the issuance of a court order for  
41 treatment the court finds that the patient's needs can be adequately met  
42 by the guardian with the additional duties pursuant to section 14-5312.01  
43 and that a court order for treatment is no longer necessary to ~~assure~~  
44 ENSURE compliance with necessary treatment, the court may terminate the

1 court order for treatment. If there is a court order for treatment and a  
2 guardianship with additional mental health authority pursuant to section  
3 14-5312.01 existing at the same time, the treatment and placement  
4 decisions made by the treatment agency assigned by the court to supervise  
5 and administer the patient's treatment program pursuant to the court order  
6 for treatment are controlling unless the court orders otherwise.

7 K. The court shall file a report as part of the court record on its  
8 findings of alternatives for treatment.

9 L. Treatment shall not include psychosurgery, lobotomy or any other  
10 brain surgery without specific informed consent of the patient or the  
11 patient's legal guardian and an order of the superior court in the county  
12 in which the treatment is proposed, approving with specificity the use of  
13 the treatment.

14 M. The medical director or any person, agency or organization used  
15 by the medical director to supervise the terms of an outpatient treatment  
16 plan is not civilly liable for any acts committed by a patient while on  
17 outpatient treatment if the medical director, person, agency or  
18 organization has in good faith followed the requirements of this section.

19 N. A peace officer who in good faith apprehends and transports a  
20 patient to an inpatient treatment facility on the order of the medical  
21 director of the outpatient treatment facility pursuant to subsection E,  
22 paragraph 6 of this section is not subject to civil liability.

23 O. If a person has been found, as a result of a mental disorder, to  
24 constitute a danger to self or others or to have a persistent or acute  
25 disability or a grave disability and the court enters an order for  
26 treatment pursuant to subsection A of this section, the court shall  
27 transmit the person's name, sex, date of birth, social security number, if  
28 available, and date of the order for treatment to the supreme court. The  
29 supreme court shall transmit the information to the department of public  
30 safety to comply with the requirements of title 13, chapter 31 and title  
31 32, chapter 26. The department of public safety shall transmit the  
32 information to the national instant criminal background check system. The  
33 superior court may access the information of a person who is ordered into  
34 treatment to enforce or facilitate a treatment order.

35 P. On request, the clerk of the court shall provide certified  
36 copies of the commitment order to a law enforcement or prosecuting agency  
37 that is investigating or prosecuting a prohibited possessor as defined in  
38 section 13-3101.

39 Q. If the court does not find a person to be in need of treatment  
40 and a prosecutor filed a petition pursuant to section 13-4517, the  
41 evaluation agency, within twenty-four hours, shall notify the prosecuting  
42 agency of its finding. The court shall order the medical director to  
43 detain the person for an additional twenty-four hours to allow the  
44 prosecuting agency to be notified. If the court has retained jurisdiction

1 pursuant to section 13-4517, subsection C, the court may remand the person  
2 to the custody of the sheriff for further disposition pursuant to section  
3 13-4517, subsection A, paragraph 2 or 3.

4 Sec. 6. Section 36-550.05, Arizona Revised Statutes, is amended to  
5 read:

6 36-550.05. Community mental health residential treatment  
7 services and facilities; prevention services

8 A. A residential or day treatment facility shall be designed to  
9 provide a homelike environment without sacrificing safety or care.  
10 Facilities shall be relatively small, WITH preferably fifteen or ~~less~~  
11 FEWER beds.

12 B. Individual programs of a community residential treatment system  
13 shall include the following:

14 1. A short-term crisis residential treatment program. This program  
15 is an alternative to hospitalization for persons in an acute episode or  
16 situational crisis requiring temporary removal from the home from one to  
17 fourteen days. The program shall provide ~~ADMISSION CAPABILITY~~ twenty-four  
18 ~~hour~~ HOURS A DAY, seven days a week ~~admission capability~~ in the least  
19 restrictive setting possible to reduce the crisis and stabilize the  
20 client. Services shall include direct work with the client's family,  
21 linkage with prevocational and vocational programs, assistance in applying  
22 for income, medical and other benefits and treatment referral.

23 2. A residential treatment program. This program shall provide a  
24 ~~full-day~~ FULL-DAY treatment program for persons who may require intensive  
25 support for a maximum of two years. The program shall provide  
26 rehabilitation for chronic clients who need long-term support to develop  
27 independence and for clients who live marginally in the community with  
28 little or no support and periodically need rehospitalization. Services  
29 shall include intensive diagnostic evaluation, a ~~full-day~~ FULL-DAY  
30 treatment program with prevocational, vocational and special education  
31 services, outreach to social services and counseling to assist the client  
32 in developing skills to move toward a less structured setting.

33 3. A SECURE BEHAVIORAL HEALTH RESIDENTIAL FACILITY PROGRAM. THIS  
34 PROGRAM SHALL PROVIDE SECURE TWENTY-FOUR-HOUR ON-SITE SUPPORTIVE TREATMENT  
35 AND SUPERVISION BY STAFF WITH BEHAVIORAL HEALTH TRAINING ONLY TO PERSONS  
36 WHO HAVE BEEN DETERMINED TO BE SERIOUSLY MENTALLY ILL AND CHRONICALLY  
37 RESISTANT TO TREATMENT PURSUANT TO A COURT ORDER ISSUED PURSUANT TO  
38 SECTION 36-550.09.

39 ~~3.~~ 4. A ~~semi-supervised~~ SEMISUPERVISED, structured group living  
40 program. This program is a cooperative arrangement in which three to five  
41 persons live together in apartments or houses as a transition to  
42 independent living. The program shall provide an increase in the level of  
43 the client's responsibility for the functioning of the household and an  
44 increase in the client's involvement in daytime activities outside the

1 house or apartment ~~which~~ THAT are relevant to achieving personal goals and  
2 greater self-sufficiency. Services provided by the program shall include  
3 counseling and client self-assessment, the development of support systems  
4 in the community, a day program to encourage participation in the larger  
5 community, activities to encourage socialization and use of general  
6 community resources, rent subsidy and direct linkages to staff support in  
7 emergencies.

8 ~~4.~~ 5. A socialization or day care/partial care program. This  
9 program shall provide regular daytime, evening and weekend activities for  
10 persons who require long-term structured support but who do not receive  
11 such services in their residential setting. The program shall provide  
12 support for persons who only need regular socialization opportunities and  
13 referral to social services or treatment services. The program shall  
14 provide opportunities to develop skills to achieve more independent  
15 functioning and means to reduce social isolation. Services shall include  
16 outings, recreational activities, cultural events and contact with  
17 community resources, such as prevocational counseling and life skills  
18 training.

19 C. Individual and family support prevention services shall provide  
20 assistance to the seriously mentally ill residing in their own home. Such  
21 prevention services shall include transportation, recreation,  
22 socialization, counseling, respite, companion services and in-home  
23 training.

24 D. Each individual program shall use appropriate multidisciplinary  
25 staff to meet the diagnostic and treatment needs of the seriously mentally  
26 ill and shall encourage use of paraprofessionals.

27 E. Each program shall have an evaluation method to assess the  
28 effectiveness of the programs and shall include the following criteria:

- 29 1. Prevalence and incidence of the target behavioral problem.
- 30 2. Cost effectiveness.
- 31 3. Potential for implementing the program using available funds  
32 MONIES and resources through cost-sharing.
- 33 4. Measurability of the benefits.
- 34 5. Effectiveness of intervention strategy.
- 35 6. Availability of resources and personnel.

36 F. Each community residential treatment system shall be designed to  
37 provide:

- 38 1. Coordination between each program and other treatment systems in  
39 the community.
- 40 2. A case management system to enhance cooperation of elements  
41 within the system and provide each client with appropriate services.
- 42 3. Client movement to the most appropriate and least restrictive  
43 service.

1           4. Direct referral of clients for specific programs ~~which~~ THAT does  
2 not require the client to pass through the entire system to reach the most  
3 appropriate service.

4           Sec. 7. Title 36, chapter 5, article 10, Arizona Revised Statutes,  
5 is amended by adding section 36-550.09, to read:

6           36-550.09. Secure behavioral health residential facility;  
7                                   court determination; findings

8           A. IF A COURT FINDS THAT A PATIENT MEETS THE CRITERIA FOR  
9 COURT-ORDERED TREATMENT PURSUANT TO SECTION 36-540, SUBSECTION A, THE  
10 COURT MAY APPROVE THE PATIENT'S PLACEMENT IN A SECURE BEHAVIORAL HEALTH  
11 RESIDENTIAL FACILITY THAT IS LICENSED BY THE DEPARTMENT PURSUANT TO  
12 SECTION 36-425.06 AND THAT IS WILLING TO ACCEPT THE PATIENT IF THE PATIENT  
13 HAS BEEN DETERMINED TO BE SERIOUSLY MENTALLY ILL AND THE COURT FINDS THAT  
14 THE PATIENT IS CHRONICALLY RESISTANT TO TREATMENT AS SET FORTH IN THIS  
15 SECTION. PLACEMENT IN A SECURE BEHAVIORAL HEALTH RESIDENTIAL FACILITY FOR  
16 TREATMENT IS NOT A PERIOD OF INPATIENT TREATMENT FOR THE PURPOSES OF  
17 SECTION 36-540, SUBSECTION F.

18           B. A COURT MAY DETERMINE THAT A PERSON IS CHRONICALLY RESISTANT TO  
19 TREATMENT IF THE COURT FINDS THAT, WITHIN TWENTY-FOUR MONTHS BEFORE THE  
20 ISSUANCE OF A COURT ORDER PURSUANT TO THIS SECTION, EXCLUDING ANY TIME  
21 DURING THIS PERIOD THAT THE PERSON WAS HOSPITALIZED OR INCARCERATED, THE  
22 PERSON DEMONSTRATED A PERSISTENT OR RECURRENT UNWILLINGNESS OR INABILITY  
23 TO PARTICIPATE IN OR ADHERE TO TREATMENT FOR A MENTAL DISORDER DESPITE  
24 HAVING TREATMENT OFFERED, PRESCRIBED, RECOMMENDED OR ORDERED TO IMPROVE  
25 THE PERSON'S CONDITION OR TO PREVENT A RELAPSE OR HARMFUL DETERIORATION OF  
26 THE PERSON'S CONDITION. THE COURT'S FINDING SHALL BE BASED ON EVIDENCE  
27 THAT ESTABLISHES ALL OF THE FOLLOWING BY CLEAR AND CONVINCING EVIDENCE:

28           1. THE PERSON RECEIVED TREATMENT IN THE PRECEDING TWENTY-FOUR  
29 MONTHS IN OTHER LESS-RESTRICTIVE SETTINGS, INCLUDING UNSECURED RESIDENTIAL  
30 TREATMENT SETTINGS WITH ON-SITE TWENTY-FOUR-HOUR SUPPORTIVE TREATMENT AND  
31 SUPERVISION BY STAFF WITH BEHAVIORAL HEALTH TRAINING, AND THE TREATMENT  
32 WAS UNSUCCESSFUL OR IS NOT LIKELY TO BE SUCCESSFUL DUE TO THE PERSON'S  
33 EXPRESSED OR DEMONSTRATED UNWILLINGNESS TO COOPERATE WITH TREATMENT IN  
34 OTHER LESS-RESTRICTIVE OR UNSECURED RESIDENTIAL TREATMENT SETTINGS.

35           2. THE PERSON'S NONADHERENCE TO OR NONPARTICIPATION IN TREATMENT  
36 OVER THE PRECEDING TWENTY-FOUR MONTHS RESULTED IN ONE OR MORE OF THE  
37 FOLLOWING:

38           (a) SERIOUS HARM TO SELF.

39           (b) SERIOUS HARM OR THREATS OF SERIOUS HARM TO OTHERS.

40           (c) RECURRENT PERIODS OF HOMELESSNESS RESULTING FROM THE MENTAL  
41 DISORDER.

42           (d) RECURRENT SERIOUS MEDICAL PROBLEMS DUE TO POOR SELF-CARE OR  
43 FAILURE TO FOLLOW MEDICAL TREATMENT RECOMMENDATIONS.

1 (e) RECURRENT ARRESTS DUE TO BEHAVIOR RESULTING FROM THE MENTAL  
2 DISORDER.

3 3. ANY OTHER EVIDENCE RELEVANT TO THE PERSON'S WILLINGNESS OR  
4 ABILITY TO PARTICIPATE IN AND ADHERE TO TREATMENT OR THE PERSON'S NEED FOR  
5 TREATMENT IN A LICENSED SECURE RESIDENTIAL SETTING TO ENSURE THE PERSON'S  
6 COMPLIANCE WITH COURT-ORDERED TREATMENT.

7 C. A PERSON'S PLACEMENT IN A LICENSED SECURE BEHAVIORAL HEALTH  
8 RESIDENTIAL FACILITY FOR TREATMENT SHALL BE PART OF THE WRITTEN TREATMENT  
9 PLAN PRESENTED TO AND APPROVED BY THE COURT AS REQUIRED BY SECTION 36-540,  
10 SUBSECTION C, PARAGRAPH 2. THE COURT SHALL CONFIRM IN THE ORDER THAT THE  
11 PERSON'S PLACEMENT IN A LICENSED SECURE BEHAVIORAL HEALTH RESIDENTIAL  
12 FACILITY IS THE LEAST RESTRICTIVE ENVIRONMENT TO ENSURE THE PERSON'S  
13 COMPLIANCE WITH THE TREATMENT PLAN.

14 Sec. 8. Section 36-773, Arizona Revised Statutes, is amended to  
15 read:

16 36-773. Health research account

17 A. Five cents of each dollar in the tobacco tax and health care  
18 fund shall be deposited in the health research account for research on  
19 preventing and treating tobacco-related disease and addiction.

20 B. The department of health services shall administer the account.

21 C. Monies that are deposited in the health research account shall  
22 ~~only~~ be used ONLY to supplement monies that are appropriated by the  
23 legislature for ALZHEIMER'S DISEASE RESEARCH AND OTHER health research  
24 purposes and shall not be used to supplant those appropriated monies.

25 Sec. 9. Title 36, chapter 29, article 1, Arizona Revised Statutes,  
26 is amended by adding sections 36-2903.12 and 36-2903.13, to read:

27 36-2903.12. Hospital charge master transparency; joint annual  
28 report

29 ON OR BEFORE JANUARY 2, 2020 AND EACH YEAR THEREAFTER, THE DIRECTOR  
30 OF THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION AND THE  
31 DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES SHALL SUBMIT A JOINT REPORT  
32 ON HOSPITAL CHARGE MASTER TRANSPARENCY TO THE GOVERNOR, THE SPEAKER OF THE  
33 HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE SENATE AND SHALL PROVIDE  
34 A COPY TO THE SECRETARY OF STATE. THE REPORT SHALL DO ALL OF THE  
35 FOLLOWING:

36 1. SUMMARIZE THE CURRENT CHARGE MASTER REPORTING PROCESS AND  
37 HOSPITAL BILLED CHARGES COMPARED TO COSTS.

38 2. PROVIDE EXAMPLES OF HOW CHARGE MASTERS OR HOSPITAL PRICES ARE  
39 REPORTED AND USED IN OTHER STATES.

40 3. INCLUDE RECOMMENDATIONS TO IMPROVE THIS STATE'S USE OF HOSPITAL  
41 CHARGE MASTER INFORMATION, INCLUDING REPORTING AND OVERSIGHT CHANGES.

42 36-2903.13. Inpatient psychiatric treatment; annual report

43 A. ON OR BEFORE JANUARY 2, 2020 AND EACH YEAR THEREAFTER, THE  
44 DIRECTOR OF THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

1 SHALL SUBMIT A REPORT TO THE DIRECTOR OF THE JOINT LEGISLATIVE BUDGET  
2 COMMITTEE ON THE AVAILABILITY OF INPATIENT PSYCHIATRIC TREATMENT BOTH FOR  
3 ADULTS AND FOR CHILDREN AND ADOLESCENTS WHO RECEIVE SERVICES FROM THE  
4 REGIONAL BEHAVIORAL HEALTH AUTHORITIES. THE REPORT SHALL INCLUDE ALL OF  
5 THE FOLLOWING INFORMATION:

6 1. THE TOTAL NUMBER OF INPATIENT PSYCHIATRIC TREATMENT BEDS  
7 AVAILABLE AND THE OCCUPANCY RATE FOR THOSE BEDS.

8 2. EXPENDITURES ON INPATIENT PSYCHIATRIC TREATMENT.

9 3. THE TOTAL NUMBER OF INDIVIDUALS IN THIS STATE WHO ARE SENT OUT  
10 OF STATE FOR INPATIENT PSYCHIATRIC TREATMENT.

11 4. THE PREVALENCE OF PSYCHIATRIC BOARDING OR HOLDING PSYCHIATRIC  
12 PATIENTS IN EMERGENCY ROOMS FOR AT LEAST TWENTY-FOUR HOURS BEFORE  
13 TRANSFERRING THE PATIENTS TO A PSYCHIATRIC FACILITY.

14 B. THE REPORT SHALL PROVIDE THE INFORMATION SPECIFIED IN SUBSECTION  
15 A OF THIS SECTION SEPARATELY FOR ADULTS WHO ARE AT LEAST TWENTY-ONE YEARS  
16 OF AGE AND FOR CHILDREN AND ADOLESCENTS WHO ARE TWENTY YEARS OF AGE OR  
17 YOUNGER.

18 Sec. 10. Section 36-2985, Arizona Revised Statutes, is amended to  
19 read:

20 36-2985. Notice of program suspension; spending limit

21 A. ~~If this state's federal medical assistance percentage for the~~  
22 ~~program is less than one hundred percent~~ THE DIRECTOR DETERMINES THAT  
23 FEDERAL AND STATE MONIES APPROPRIATED FOR THE PROGRAM ARE INSUFFICIENT,  
24 the administration shall immediately notify the governor, the president of  
25 the senate and the speaker of the house of representatives and ~~shall~~  
26 ~~immediately~~ MAY stop processing all new applications.

27 B. The total amount of state monies that THE ADMINISTRATION may ~~be~~  
28 ~~spent~~ SPEND in any fiscal year ~~by the administration~~ for health care  
29 provided under this article shall not exceed the amount appropriated or  
30 authorized by section 35-173.

31 C. This article does not impose a duty on an officer, agent or  
32 employee of this state to discharge a responsibility or create any right  
33 in a person or group if the discharge or right would require an  
34 expenditure of state monies in excess of the expenditure authorized by  
35 legislative appropriation for that specific purpose.

36 Sec. 11. Section 41-3955.01, Arizona Revised Statutes, is amended  
37 to read:

38 41-3955.01. Seriously mentally ill housing trust fund;  
39 purpose; report

40 A. The seriously mentally ill housing trust fund is established.  
41 The director of the Arizona health care cost containment system  
42 administration shall administer the fund. The fund consists of monies  
43 received pursuant to section 44-313 and investment earnings.

1 B. On notice from the director of the Arizona health care cost  
2 containment system administration, the state treasurer shall invest and  
3 divest monies in the fund as provided by section 35-313, and monies earned  
4 from investment shall be credited to the fund.

5 C. Fund monies shall be spent on approval of the Arizona health  
6 care cost containment system administration solely for housing projects  
7 AND RENTAL ASSISTANCE for seriously mentally ill persons.

8 D. The director of the Arizona health care cost containment system  
9 administration shall report annually to the legislature on the status of  
10 the seriously mentally ill housing trust fund. The report shall include a  
11 summary of facilities for which funding was provided during the preceding  
12 fiscal year and shall show the cost and geographic location of each  
13 facility and the number of individuals benefiting from the operation,  
14 construction or renovation of the facility. THE REPORT SHALL ALSO INCLUDE  
15 THE NUMBER OF INDIVIDUALS WHO BENEFITED FROM RENTAL ASSISTANCE. The  
16 report shall be submitted to the president of the senate and the speaker  
17 of the house of representatives ~~no~~ NOT later than September 1 of each  
18 year.

19 E. Monies in the seriously mentally ill housing trust fund are  
20 exempt from the provisions of section 35-190 relating to lapsing of  
21 appropriations.

22 F. An amount not to exceed ten percent of the seriously mentally  
23 ill housing trust fund monies may be appropriated annually by the  
24 legislature to the Arizona health care cost containment system for  
25 administrative costs in providing services relating to the seriously  
26 mentally ill housing trust fund.

27 G. For any construction project financed by the Arizona health care  
28 cost containment system administration pursuant to this section, the  
29 administration shall notify a city, town, county or tribal government that  
30 a project is planned for its jurisdiction and, before proceeding, shall  
31 seek comment from the governing body of the city, town, county or tribal  
32 government or an official authorized by the governing body of the city,  
33 town, county or tribal government. The Arizona health care cost  
34 containment system administration shall not interfere with or attempt to  
35 override the local jurisdiction's planning, zoning or land use  
36 regulations.

37 Sec. 12. Title 46, chapter 2, Arizona Revised Statutes, is amended  
38 by adding article 9, to read:

39 ARTICLE 9. FAMILY CAREGIVER GRANT PROGRAM

40 46-341. Definitions

41 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

- 42 1. "DEPARTMENT" MEANS THE DEPARTMENT OF ECONOMIC SECURITY.  
43 2. "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT.

- 1           3. "QUALIFYING EXPENSES":  
2           (a) MEANS THOSE EXPENSES THAT RELATE DIRECTLY TO CARING FOR OR  
3 SUPPORTING A QUALIFYING FAMILY MEMBER.  
4           (b) INCLUDES:  
5           (i) IMPROVING OR ALTERING THE INDIVIDUAL'S PRIMARY RESIDENCE,  
6 WHETHER OWNED OR RENTED BY THE INDIVIDUAL, TO ENABLE OR ASSIST THE  
7 QUALIFYING FAMILY MEMBER TO BE MOBILE, SAFE OR INDEPENDENT.  
8           (ii) PURCHASING OR LEASING EQUIPMENT OR ASSISTIVE CARE TECHNOLOGY  
9 TO ENABLE OR ASSIST THE QUALIFYING FAMILY MEMBER TO CARRY OUT ONE OR MORE  
10 DAILY LIVING ACTIVITIES.  
11           (c) DOES NOT INCLUDE:  
12           (i) REGULAR FOOD, CLOTHING OR TRANSPORTATION EXPENSES OR GIFTS  
13 PROVIDED TO THE QUALIFYING FAMILY MEMBER.  
14           (ii) ORDINARY HOUSEHOLD MAINTENANCE OR REPAIRS THAT ARE NOT  
15 DIRECTLY RELATED TO AND NECESSARY FOR THE CARE OF THE QUALIFYING FAMILY  
16 MEMBER.  
17           (iii) ANY AMOUNT THAT IS PAID OR REIMBURSED BY INSURANCE OR BY THE  
18 FEDERAL GOVERNMENT, THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE.  
19           4. "QUALIFYING FAMILY MEMBER" MEANS AN INDIVIDUAL WHO MEETS ALL OF  
20 THE FOLLOWING REQUIREMENTS:  
21           (a) IS AT LEAST EIGHTEEN YEARS OF AGE DURING THE CALENDAR YEAR.  
22           (b) REQUIRES ASSISTANCE WITH ONE OR MORE ACTIVITIES OF DAILY LIVING  
23 AS CERTIFIED BY A PHYSICIAN WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER  
24 13 OR 17, A REGISTERED NURSE PRACTITIONER WHO IS LICENSED PURSUANT TO  
25 TITLE 32, CHAPTER 15 OR A PHYSICIAN ASSISTANT WHO IS LICENSED PURSUANT TO  
26 TITLE 32, CHAPTER 25.  
27           (c) IS THE INDIVIDUAL'S SPOUSE OR THE INDIVIDUAL'S OR SPOUSE'S  
28 CHILD, GRANDCHILD, STEPCHILD, PARENT, STEPPARENT, GRANDPARENT, SIBLING,  
29 UNCLE OR AUNT, WHETHER OF THE WHOLE OR HALF BLOOD OR BY ADOPTION.  
30           46-342. Family caregiver grant program; requirements  
31           A. BEGINNING JANUARY 1, 2020, THE FAMILY CAREGIVER GRANT PROGRAM IS  
32 ESTABLISHED FOR INDIVIDUALS WHO HAVE QUALIFYING EXPENSES DURING A CALENDAR  
33 YEAR DUE TO CARING FOR AND SUPPORTING A QUALIFYING FAMILY MEMBER IN THE  
34 INDIVIDUAL'S HOME.  
35           B. TO APPLY FOR A FAMILY CAREGIVER GRANT:  
36           1. AN INDIVIDUAL MUST SUBMIT AN APPLICATION TO THE DEPARTMENT ON A  
37 FORM PRESCRIBED BY THE DEPARTMENT.  
38           2. BE A RESIDENT OF THIS STATE.  
39           3. THE INDIVIDUAL'S ARIZONA GROSS INCOME, TOGETHER WITH ANY ARIZONA  
40 GROSS INCOME OF EACH QUALIFYING FAMILY MEMBER, IN THE TAXABLE YEAR MAY NOT  
41 EXCEED:  
42           (a) \$75,000 IN THE CASE OF A SINGLE PERSON OR A MARRIED PERSON  
43 FILING SEPARATELY.  
44           (b) \$150,000 IN THE CASE OF A MARRIED COUPLE FILING A JOINT RETURN.

1           4. THE INDIVIDUAL MUST INCUR QUALIFYING EXPENSES DURING THE  
2 CALENDAR YEAR IN WHICH THE INDIVIDUAL APPLIES FOR THE GRANT FOR THE CARE  
3 OF ONE OR MORE QUALIFYING FAMILY MEMBERS.

4           5. THE INDIVIDUAL MUST SUBMIT WITH THE CLAIM FOR THE GRANT THE  
5 QUALIFYING FAMILY MEMBER'S NAME AND RELATIONSHIP TO THE INDIVIDUAL.

6           C. THE AMOUNT OF THE GRANT IS EQUAL TO FIFTY PERCENT OF THE  
7 QUALIFYING EXPENSES INCURRED DURING THE CALENDAR YEAR IN WHICH THE  
8 INDIVIDUAL APPLIES FOR THE GRANT BUT NOT MORE THAN \$1,000 FOR EACH  
9 QUALIFYING FAMILY MEMBER.

10          D. AN INDIVIDUAL WHO RECEIVES A GRANT UNDER THIS SECTION IS NOT  
11 ELIGIBLE TO APPLY FOR A GRANT UNDER THIS SECTION AGAIN FOR THREE  
12 CONSECUTIVE CALENDAR YEARS.

13          E. THE DEPARTMENT SHALL CERTIFY APPLICATIONS FOR THE GRANT ON A  
14 FIRST-COME, FIRST-SERVED BASIS. THE DEPARTMENT MAY NOT AWARD GRANTS UNDER  
15 THIS SECTION THAT EXCEED IN THE AGGREGATE \$500,000 FOR ANY CALENDAR YEAR.  
16 THE DEPARTMENT SHALL INCLUDE QUESTIONS IN THE APPLICATION TO HELP THE  
17 DEPARTMENT DETERMINE WHETHER THE GRANTS THAT WERE PROVIDED DELAYED OR  
18 PREVENTED A QUALIFYING FAMILY MEMBER FROM ENTERING A LONG-TERM CARE  
19 FACILITY OR ASSISTED LIVING FACILITY IN THE CALENDAR YEAR OF THE  
20 APPLICATION OR FUTURE CALENDAR YEARS.

21          F. THE DEPARTMENT MAY USE THE ADVISORY COUNCIL ON AGING TO PROVIDE  
22 INPUT ON APPROVAL OF APPLICATIONS FOR GRANTS AND WHETHER AN EXPENSE IS A  
23 QUALIFYING EXPENSE OR OTHER ISSUES RELATING TO THE GRANT PROGRAM AS  
24 DETERMINED BY THE DEPARTMENT.

25           46-343. Family caregiver grant program fund; report

26          A. THE FAMILY CAREGIVER GRANT PROGRAM FUND IS ESTABLISHED. THE  
27 DIRECTOR SHALL ADMINISTER THE FUND. THE FUND SHALL CONSIST OF GRANTS,  
28 GIFTS, DONATIONS AND LEGISLATIVE APPROPRIATIONS. MONIES IN THE FUND ARE  
29 CONTINUOUSLY APPROPRIATED. MONIES IN THE FUND MAY BE SPENT ONLY FOR  
30 GRANTS PROVIDED TO INDIVIDUALS WHO ARE CARING FOR AND SUPPORTING A  
31 QUALIFYING FAMILY MEMBER IN THE INDIVIDUAL'S HOME AS SPECIFIED IN THIS  
32 ARTICLE.

33          B. EXPENDITURES FROM THE FAMILY CAREGIVER GRANT PROGRAM FUND FROM  
34 THE PREVIOUS CALENDAR YEAR SHALL BE REPORTED TO THE LEGISLATURE IN THE  
35 COURSE OF THE DEPARTMENT'S ANNUAL REPORT. THE DEPARTMENT SHALL INCLUDE  
36 AGGREGATED DATA SUMMARIZING THE QUALIFYING EXPENSES THAT WERE APPROVED FOR  
37 GRANTS, THE TYPES OF INDIVIDUALS THAT QUALIFIED FOR THE GRANTS AND  
38 INFORMATION ABOUT THE ABILITY FOR QUALIFIED FAMILY MEMBERS TO DELAY  
39 ENTERING A LONG-TERM CARE FACILITY OR ASSISTED LIVING FACILITY.

40          C. THE STATE TREASURER SHALL INVEST AND DIVEST MONIES IN THE FUND  
41 AS PROVIDED BY SECTION 35-313, AND MONIES EARNED FROM INVESTMENT SHALL BE  
42 CREDITED TO THE FUND.

1 D. INTEREST OR OTHER INCOME DERIVED FROM THE FAMILY CAREGIVER GRANT  
2 PROGRAM FUND MAY BE USED ONLY FOR THE PURPOSES OF THIS ARTICLE. INTEREST  
3 OR OTHER INCOME DERIVED FROM THE FAMILY CAREGIVER GRANT PROGRAM FUND MAY  
4 NOT BE USED TO SUPPLANT OTHER APPROPRIATIONS.

5 Sec. 13. Delayed repeal

6 Title 46, chapter 2, article 9, Arizona Revised Statutes, as added  
7 by this act, is repealed from and after June 30, 2023.

8 Sec. 14. ALTCS; county contributions; fiscal year 2019-2020

9 A. Notwithstanding section 11-292, Arizona Revised Statutes, county  
10 contributions for the Arizona long-term care system for fiscal year  
11 2019-2020 are as follows:

12	1. Apache	\$ 720,200
13	2. Cochise	\$ 5,176,200
14	3. Coconino	\$ 2,162,200
15	4. Gila	\$ 2,418,200
16	5. Graham	\$ 1,684,400
17	6. Greenlee	\$ 8,200
18	7. La Paz	\$ 822,000
19	8. Maricopa	\$185,791,300
20	9. Mohave	\$ 9,232,700
21	10. Navajo	\$ 2,981,000
22	11. Pima	\$ 45,157,400
23	12. Pinal	\$ 13,755,300
24	13. Santa Cruz	\$ 2,266,800
25	14. Yavapai	\$ 8,543,800
26	15. Yuma	\$ 9,556,400

27 B. If the overall cost for the Arizona long-term care system  
28 exceeds the amount specified in the general appropriations act for fiscal  
29 year 2019-2020, the state treasurer shall collect from the counties the  
30 difference between the amount specified in subsection A of this section  
31 and the counties' share of the state's actual contribution. The counties'  
32 share of the state's contribution shall comply with any federal  
33 maintenance of effort requirements. The director of the Arizona health  
34 care cost containment system administration shall notify the state  
35 treasurer of the counties' share of the state's contribution and report  
36 the amount to the director of the joint legislative budget committee. The  
37 state treasurer shall withhold from any other monies payable to a county  
38 from whatever state funding source is available an amount necessary to  
39 fulfill that county's requirement specified in this subsection. The state  
40 treasurer may not withhold distributions from the Arizona highway user  
41 revenue fund pursuant to title 28, chapter 18, article 2, Arizona Revised  
42 Statutes. The state treasurer shall deposit the amounts withheld pursuant  
43 to this subsection and amounts paid pursuant to subsection A of this

1 section in the long-term care system fund established by section 36-2913,  
2 Arizona Revised Statutes.

3 Sec. 15. AHCCCS; disproportionate share payments; fiscal year  
4 2019-2020

5 A. Disproportionate share payments for fiscal year 2019-2020 made  
6 pursuant to section 36-2903.01, subsection 0, Arizona Revised Statutes,  
7 include:

8 1. \$113,818,500 for a qualifying nonstate operated public hospital.  
9 The Maricopa county special health care district shall provide a certified  
10 public expense form for the amount of qualifying disproportionate share  
11 hospital expenditures made on behalf of this state to the Arizona health  
12 care cost containment system administration on or before May 1, 2020 for  
13 all state plan years as required by the Arizona health care cost  
14 containment system section 1115 waiver standard terms and conditions. The  
15 administration shall assist the district in determining the amount of  
16 qualifying disproportionate share hospital expenditures. Once the  
17 administration files a claim with the federal government and receives  
18 federal financial participation based on the amount certified by the  
19 Maricopa county special health care district, if the certification is  
20 equal to or less than \$113,818,500 and the administration determines that  
21 the revised amount is correct pursuant to the methodology used by the  
22 administration pursuant to section 36-2903.01, Arizona Revised Statutes,  
23 as amended by this act, the administration shall notify the governor, the  
24 president of the senate and the speaker of the house of representatives,  
25 shall distribute \$4,202,300 to the Maricopa county special health care  
26 district and shall deposit the balance of the federal financial  
27 participation in the state general fund. If the certification provided is  
28 for an amount less than \$113,818,500 and the administration determines  
29 that the revised amount is not correct pursuant to the methodology used by  
30 the administration pursuant to section 36-2903.01, Arizona Revised  
31 Statutes, as amended by this act, the administration shall notify the  
32 governor, the president of the senate and the speaker of the house of  
33 representatives and shall deposit the total amount of the federal  
34 financial participation in the state general fund. If the certification  
35 provided is for an amount greater than \$113,818,500, the administration  
36 shall distribute \$4,202,300 to the Maricopa county special health care  
37 district and shall deposit \$75,493,400 of the federal financial  
38 participation in the state general fund. The administration may make  
39 additional disproportionate share hospital payments to the Maricopa county  
40 special health care district pursuant to section 36-2903.01, subsection P,  
41 Arizona Revised Statutes, and subsection B of this section.



1           Sec. 17. County acute care contribution; fiscal year  
2                                   2019-2020

3           A. Notwithstanding section 11-292, Arizona Revised Statutes, for  
4 fiscal year 2019-2020 for the provision of hospitalization and medical  
5 care, the counties shall contribute the following amounts:

6	1. Apache	\$ 268,800
7	2. Cochise	\$ 2,214,800
8	3. Coconino	\$ 742,900
9	4. Gila	\$ 1,413,200
10	5. Graham	\$ 536,200
11	6. Greenlee	\$ 190,700
12	7. La Paz	\$ 212,100
13	8. Maricopa	\$18,131,400
14	9. Mohave	\$ 1,237,700
15	10. Navajo	\$ 310,800
16	11. Pima	\$14,951,800
17	12. Pinal	\$ 2,715,600
18	13. Santa Cruz	\$ 482,800
19	14. Yavapai	\$ 1,427,800
20	15. Yuma	\$ 1,325,100

21           B. If a county does not provide funding as specified in subsection  
22 A of this section, the state treasurer shall subtract the amount owed by  
23 the county to the Arizona health care cost containment system fund and the  
24 long-term care system fund established by section 36-2913, Arizona Revised  
25 Statutes, from any payments required to be made by the state treasurer to  
26 that county pursuant to section 42-5029, subsection D, paragraph 2,  
27 Arizona Revised Statutes, plus interest on that amount pursuant to section  
28 44-1201, Arizona Revised Statutes, retroactive to the first day the  
29 funding was due. If the monies the state treasurer withholds are  
30 insufficient to meet that county's funding requirements as specified in  
31 subsection A of this section, the state treasurer shall withhold from any  
32 other monies payable to that county from whatever state funding source is  
33 available an amount necessary to fulfill that county's requirement. The  
34 state treasurer may not withhold distributions from the Arizona highway  
35 user revenue fund pursuant to title 28, chapter 18, article 2, Arizona  
36 Revised Statutes.

37           C. Payment of an amount equal to one-twelfth of the total amount  
38 determined pursuant to subsection A of this section shall be made to the  
39 state treasurer on or before the fifth day of each month. On request from  
40 the director of the Arizona health care cost containment system  
41 administration, the state treasurer shall require that up to three months'  
42 payments be made in advance, if necessary.

43           D. The state treasurer shall deposit the amounts paid pursuant to  
44 subsection C of this section and amounts withheld pursuant to subsection B

1 of this section in the Arizona health care cost containment system fund  
2 and the long-term care system fund established by section 36-2913, Arizona  
3 Revised Statutes.

4 E. If payments made pursuant to subsection C of this section exceed  
5 the amount required to meet the costs incurred by the Arizona health care  
6 cost containment system for the hospitalization and medical care of those  
7 persons defined as an eligible person pursuant to section 36-2901,  
8 paragraph 6, subdivisions (a), (b) and (c), Arizona Revised Statutes, the  
9 director of the Arizona health care cost containment system administration  
10 may instruct the state treasurer either to reduce remaining payments to be  
11 paid pursuant to this section by a specified amount or to provide to the  
12 counties specified amounts from the Arizona health care cost containment  
13 system fund and the long-term care system fund established by section  
14 36-2913, Arizona Revised Statutes.

15 F. The legislature intends that the Maricopa county contribution  
16 pursuant to subsection A of this section be reduced in each subsequent  
17 year according to the changes in the GDP price deflator. For the purposes  
18 of this subsection, "GDP price deflator" has the same meaning prescribed  
19 in section 41-563, Arizona Revised Statutes.

20 Sec. 18. Proposition 204 administration; exclusion; county  
21 expenditure limitations

22 County contributions for the administrative costs of implementing  
23 sections 36-2901.01 and 36-2901.04, Arizona Revised Statutes, that are  
24 made pursuant to section 11-292, subsection 0, Arizona Revised Statutes,  
25 are excluded from the county expenditure limitations.

26 Sec. 19. Competency restoration; exclusion; county  
27 expenditure limitation

28 County contributions made pursuant to section 13-4512, Arizona  
29 Revised Statutes, as amended by this act, are excluded from the county  
30 expenditure limitations.

31 Sec. 20. AHCCCS; risk contingency rate setting

32 Notwithstanding any other law, for the contract year beginning  
33 October 1, 2019 and ending September 30, 2020, the Arizona health care  
34 cost containment system administration may continue the risk contingency  
35 rate setting for all managed care organizations and the funding for all  
36 managed care organizations administrative funding levels that were imposed  
37 for the contract year beginning October 1, 2010 and ending September 30,  
38 2011.

39 Sec. 21. Department of health services; fees; increase;  
40 intent; rulemaking exemption

41 A. Notwithstanding any other law, the director of the department of  
42 health services may increase fees in fiscal year 2019-2020 for services  
43 provided by the bureau of radiation control in fiscal year 2019-2020.

1 B. The legislature intends that the revenue generated by the fees  
2 collected pursuant to subsection A of this section not exceed \$1,900,000.

3 C. The department of health services shall deposit monies received  
4 from any fees increased pursuant to subsection A of this section in the  
5 health services licensing fund established by section 36-414, Arizona  
6 Revised Statutes.

7 D. The department of health services is exempt from the rulemaking  
8 requirements of title 41, chapter 6, Arizona Revised Statutes, until  
9 July 1, 2020 for the purpose of increasing fees pursuant to this section.

10 Sec. 22. Health services lottery monies fund; use; fiscal  
11 year 2019-2020

12 Notwithstanding sections 5-572 and 36-108.01, Arizona Revised  
13 Statutes, monies in the health services lottery monies fund established by  
14 section 36-108.01, Arizona Revised Statutes, may be used for the purposes  
15 specified in the fiscal year 2019-2020 general appropriations act.

16 Sec. 23. AHCCCS; secure behavioral health residential  
17 facilities; report

18 On or before January 31, 2022, the Arizona health care cost  
19 containment system administration shall issue to the governor, the  
20 president of the senate and the speaker of the house of representatives a  
21 report that measures the outcomes over a twelve-month period of persons  
22 who have been determined to be seriously mentally ill and who reside in  
23 secure behavioral health residential facilities licensed pursuant to  
24 section 36-425.06, Arizona Revised Statutes, as added by this act. The  
25 report shall include an analysis of costs and effectiveness of the  
26 services provided in secure behavioral health residential facilities that  
27 takes into consideration the encounters of the seriously mentally ill  
28 residents related to inpatient care, emergency department visits,  
29 hospitalization, civil commitment proceedings, incarceration,  
30 homelessness, employment, community engagement and encounters with police  
31 and fire personnel, including petitioning and contact with crisis centers,  
32 citation in lieu of detention, jail bookings and other contact with first  
33 responders. The administration may contract with a third-party entity to  
34 collect the data and compile the report. The administration shall provide  
35 a copy of the report to the secretary of state.

36 Sec. 24. Intent; implementation of program

37 The legislature intends that for fiscal year 2019-2020 the Arizona  
38 health care cost containment system administration implement a program  
39 within the available appropriation.

APPROVED BY THE GOVERNOR MAY 31, 2019.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 31, 2019.

**D-3**

**DEPARTMENT OF PUBLIC SAFETY (R20-0301)**

Title 13, Chapter 10, Article 1, Determination of Alcohol Concentration

**Amend:** R13-10-101, R13-10-103, R13-10-104, R13-10-107, Exhibit A, Exhibit B, Exhibit C, Exhibit D

**New Section:** Exhibit I-1, Exhibit I-2



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** March 3, 2020

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

**FROM:** Council Staff

**DATE:** February 10, 2020

**SUBJECT: DEPARTMENT OF PUBLIC SAFETY (R20-0301)**  
Title 13, Chapter 10, Article 1, Determination of Alcohol Concentration

**Amend:** R13-10-101, R13-10-103, R13-10-104, R13-10-107, Exhibit A, Exhibit B, Exhibit C, Exhibit D

**New Section:** Exhibit I-1, Exhibit I-2

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### Summary:

This rulemaking from the Arizona Department of Public Safety (Department) seeks to amend rules related to adoption of the Intoxilyzer Model 9000 to test persons suspected of driving under the influence of alcohol. Additionally, this rulemaking makes changes to the definitions to reflect the new device and to procedures to reflect new and current in use devices. The Department indicates the Department is adopting the new Intoxilyzer 9000 while retaining older evidentiary breath-alcohol testing models, which gives agencies choice moving forward.

Additionally, this rulemaking removes time restrictions on permit renewals for Blood Alcohol Analyst, Breath Alcohol Operator, Breath Alcohol Quality Assurance Specialist, and Breath Testing Instructor permits to provide permit holders with additional time and flexibility to renew their permits.

This rulemaking also removes references to sections expired in 2016 pursuant to A.R.S. § 41-1056.

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?**

Yes. Under R13-10-103, the Scientific Analysis Bureau conducted tests on the Intoxilyzer Model 9000 for compliance with scientific standards related to breath-alcohol testing. The test data is included as an attachment to the Department's rulemaking.

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

The Department certifies breath-alcohol testing devices to combat drivers operating vehicles under the influence. The Department is adopting the new Intoxilyzer 9000 and is retaining older evidentiary breath-alcohol testing models giving agencies choice. The Department believes that as a scientific testing device, agencies are aware of costs associated with purchase and maintenance in order for the device to meet scientific standards and scrutiny in court proceedings. In 2017, there were 27,652 arrests by Arizona law enforcement agencies for driving under the influence (DUI) of alcohol. Of that, 3,747 were aggravated DUI, 23,905 were misdemeanor DUI, and 1,346 were under age 21 DUI. The average blood alcohol content was 0.144. Stakeholders are the Department, the general public, and Arizona law enforcement agencies that use the current approved devices listed in R13-10-103(E).

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 indicates that they are unable to identify any other less costly or less intrusive methods. The Department is adopting a device from the federal list based on laboratory testing by the Department as well as input from users. Based on the testing and input from users the Intoxilyzer 9000 was selected, tested and certified for evidentiary breath testing. The federal product list does not set accuracy requirements as those requirements vary from state to state based on court rulings and legislative requirements; therefore the Department sets the standards.

The Department believes the protection of the public from persons driving under the influence exceeds the costs associated with purchasing updated testing equipment and issuing permits.

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

The Department believes the rulemaking will result in a neutral cost to law enforcement agencies for testing devices. The Department did not remove older evidentiary breath testing devices from the approved list, but did add a new device. Given the older devices have been discontinued from the manufacturer, the cost to replace devices is a normal part of any ongoing scientific testing program. The cost of the new Intoxilyzer 9000 is approximately \$9000 per unit depending on each government entity's procurement process and negotiations with the vendor. Replacement of outdated, broken, no longer in production equipment is an expected and planned for program expense, according to the Department.

The Department indicates there may be substantial negative economic impact on families due to penalties and incarceration of persons convicted of DUI who may lose the ability to earn an income or the death of the DUI driver. The Department indicates that consumers, as tax payers, are directly affected through the appropriate and efficient use of public monies to purchase modern scientific test equipment to facilitate the removal of DUI drivers in turn reducing public safety costs, health care system costs, and impact to business and family economic status.

The Department is removing the 30-day permit renewal limit and allowing a permit holder to renew at any point. The Department believes that permit holders would benefit through the flexible ability to renew a permit without a restrictive time frame so as to remain a productive employee.

The Department does not believe that small businesses will be affected by this rulemaking.

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

No. There were no changes between the notice of proposed rulemaking and final rulemaking.

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

The Department indicates that it did not receive any public comments regarding this rulemaking. The Department indicates that it held an oral proceeding on December 17, 2019 and there were no public attendees.

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

Yes. Blood Alcohol Analysts, Breath Alcohol Operators, Breath Alcohol Quality Assurance Specialists, and Breath Testing Instructors must all have permits. However, the

Department indicates that it does not issue general permits as required by A.R.S. § 41-1037(A). Specifically, the Department indicates that evidentiary breath-testing devices are scientific devices that must meet standards recognized by the scientific community for court proceedings. The operators and maintainers of these devices are required to testify in a court of law on their training, skills, techniques and procedures to operate or maintain these devices. The Department indicates that, given the legal aspect that has an impact on the State's or defendant's case, a general permit cannot be issued.

Furthermore, A.R.S. § 28-1325(A) expressly authorizes the director to issue permits to operators who have received approved instruction and who have demonstrated their ability to accurately operate an approved breath testing device. A.R.S. § 28-1326(B) expressly authorizes the director to issue a permit to an analyst who has demonstrated the ability to accurately analyze blood or other bodily substances for alcohol concentration.

As such, the Department's permits are in compliance with A.R.S. § 41-1037(A)(2) and (3) in that the issuance of an alternative type of permit is specifically authorized by state statute and the issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements.

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

Not applicable. There are no corresponding federal laws.

**11. Conclusion**

The Department is conducting this rulemaking to adopt the Intoxilyzer Model 9000 to test persons suspected of driving under the influence of alcohol and makes changes to the definitions to reflect the new device and to procedures to reflect new and current in use devices.

Additionally, this rulemaking removes time restrictions on permit renewals for Blood Alcohol Analyst, Breath Alcohol Operator, Breath Alcohol Quality Assurance Specialist, and Breath Testing Instructor permits to provide permit holders with additional time and flexibility to renew their permits.

The Department accepts the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.



# ARIZONA DEPARTMENT OF PUBLIC SAFETY

2102 WEST ENCANTO BLVD. P.O. BOX 6638 PHOENIX, ARIZONA 85005-6638 (602) 223-2000

*"Courteous Vigilance"*

DOUGLAS A. DUCEY    FRANK L. MILSTEAD  
Governor                      Director

December 19, 2019

Ms. Nicole Sornsins, Chair  
The Governor's Regulatory Review Council  
100 N 15<sup>th</sup> Ave, Ste 402  
Phoenix, AZ 85007

Dear Ms. Sornsins,

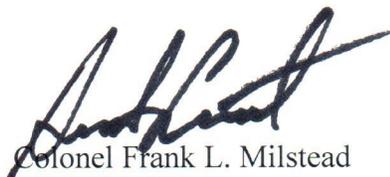
The Department of Public Safety submits a *Notice of Final Rulemaking* for Arizona Administrative Code Title 13, *Public Safety*, Chapter 10, *Department of Public Safety – Alcohol Testing*, Sections 101, 103, 104, 107, Exhibits A, B, C, D, I-1 and I-2 for review and approval by the Council.

The following information is provided pursuant to R1-6-201:

1. Close of Record Date: The rulemaking record was closed on December 18, 2019, pursuant to the *Notice of Proposed Rulemaking* following a period for public comment and an oral proceeding. The oral proceeding was held on December 17, 2019 with no attendees from the public and no written comments received. The notice was filed pursuant to A.R.S. § 41-1047 with the Arizona Rules Oversight Committee on December 19, 2019.
2. Relation to Five-Year Review Report: This rulemaking is related to a five-year review report approved by the Council in 2016.
3. Establishment of new fees: This rulemaking does not establish new fees.
4. Establishment of fee increase: This rulemaking does not establish a fee increase.
5. Request for immediate effective date under A.R.S. § 41-1032: The Department is not requesting an immediate effective date.
6. Evaluations of studies related to the rulemaking: No external studies related to the rulemaking were evaluated.

7. Necessity of Full-time Employees: The rulemaking does not require an increase in full-time employees to implement the rules.
8. List of Documents:
  - a. *Notice of Final Rulemaking* including the Preamble and rule text.
  - b. Department's rulemaking waiver request letter.
  - c. Governor's Office rulemaking waiver approval.
  - d. Economic, Small Business and Consumer Impact Statement.
  - e. Incorporated by reference 82 FR 50940-50944.
  - f. The Department's internal study.
  - g. Authorizing and implementing statutes.

Sincerely,



Colonel Frank L. Milstead  
Director

Enc. 7

**NOTICE OF FINAL RULEMAKING**  
**TITLE 13. PUBLIC SAFETY**  
**CHAPTER 10. DEPARTMENT OF PUBLIC SAFETY – ALCOHOL TESTING**

**PREAMBLE**

<b><u>1. Article, Part, or Section Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
R13-10-101	Amend
R13-10-103	Amend
R13-10-104	Amend
R13-10-107	Amend
Exhibit A	Amend
Exhibit B	Amend
Exhibit C	Amend
Exhibit D	Amend
Exhibit I-1	New
Exhibit I-2	New

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

Authorizing statute: A.R.S. § 41-1713(A)(4)

Implementing statute: A.R.S. §§ 28-1322(C), 1323, 1324, 1325, 1326(A)

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

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

The Department is not requesting an earlier effective date.

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

The Department is not requesting a later effective date.

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

Notice of Rulemaking Docket Opening: 25 A.A.R. 3080, October 18, 2019

Notice of Proposed Rulemaking: 25 A.A.R. 3224, November 1, 2019

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

Name: Jennifer Kochanski

Address: Arizona Department of Public Safety

Scientific Analysis Bureau, Crime Laboratory Manager

PO Box 6638, MD1150

Phoenix, AZ 85005-6638

Telephone:(602) 223-2795

E-mail: jenniferkochanski@azdps.gov

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

Article 10 is being amended to adopt the new Intoxilyzer Model 9000 which appears on the National Traffic Safety Administration's Conforming Products List of Evidential Breath Measurement Devices. The adoption of this scientific testing device will allow law enforcement officers in Arizona to continue to conduct investigations and tests on persons suspected of driving under the influence of alcohol furthering public safety. This rulemaking additionally makes changes to the definitions to reflect the new device; to procedures to reflect new and current in use devices; and, removes references to sections expired in 2016 pursuant to A.R.S. § 41-1056. This rulemaking removes time restrictions on permit renewals giving permit holders more time and flexibility to renew their permits.

This rulemaking is related to a five-year review report pursuant to A.R.S. § 41-1056 and approved by the Governor's Regulatory Review Council in 2016.

The Department received a rulemaking moratorium waiver pursuant to Executive Order 2019-01 from Ms. Jennifer Thomsen, Public Safety Advisor to the Governor's Office on September 17, 2019.

**7. A reference to any study relevant to the rule that the agency reviewed and proposes to**

**either rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

Under R13-10-103, the Scientific Analysis Bureau conducted tests on the Intoxilyzer Model 9000 for compliance with scientific standards related to breath-alcohol testing. The test data is included as an attachment to this rulemaking and can also be obtained by contacting Ms. Kochanski in Item #5 above.

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

This 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:**

The Department expects minimal economic impact to law enforcement agencies. The Department is adopting the new Intoxilyzer 9000 and is retaining older evidentiary breath-alcohol testing models giving agencies choice. As a scientific testing device, agencies are aware of costs associated with purchase and maintenance in order for the device to meet scientific standards and scrutiny in court proceedings. The Department does not expect itself or other agencies to hire FTEs to administer this rulemaking. Small businesses will be unaffected. Permit holders will benefit by having more time to renew a permit. The public will benefit through reduced negative personal and economic impact caused when an impaired driver causes a collision.

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

There are no changes between the proposed and final rulemakings.

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

The Department held a public comment meeting on December 17, 2019 pursuant to the *Notice of Proposed Rulemaking*. There were no public attendees at the meeting. The Department received no written public comments.

**12. All agency's shall list other matters prescribed by statute applicable to the specific**

**agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

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

The rules require a permit. Evidentiary breath-testing devices are scientific devices that must meet standards recognized by the scientific community for court proceedings. The operators and maintainers of these devices are required to testify in a court of law on their training, skills, techniques and procedures to operate or maintain these devices. Given the legal aspect that has an impact on the State's or defendant's case, a general permit cannot be issued.

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

There is no applicable federal law. The *Federal Register* does not give specifics on accuracy requirements as that varies from state to state depending on court rulings and legislative requirements.

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

The Department did not receive an analysis.

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

R13-10-103(F) – The Department is incorporating by reference the National Highway Traffic Safety Administration's Conforming Products List of Evidential Breath Measurement Devices in 82 FR 50940-50944, (November 2, 2017).

**14. Whether the rule previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-4-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

The rule was not previously made, amended, or repealed as an emergency rule.

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

**TITLE 13. PUBLIC SAFETY**

**CHAPTER 10. DEPARTMENT OF PUBLIC SAFETY – ALCOHOL TESTING**

**ARTICLE 1. DETERMINATION OF ALCOHOL CONCENTRATION**

Section

Section

R13-10-101 Definitions

R13-10-103 Breath-testing Devices

R13-10-104 Testing Procedures

R13-10-107 Application Processes

Exhibit A Application for Blood Alcohol Analyst Permit

Exhibit B Application for Breath Alcohol Operator Permit

Exhibit C Application for Breath Alcohol Quality Assurance Specialist Permit

Exhibit D Application for Breath Testing Instructor

Exhibit I-1 Operational Checklist Standard Operating Procedures Arizona Department of Public Safety Intoxilyzer Model 9000 Duplicate Breath Test

Exhibit I-2 Arizona Department of Public Safety Intoxilyzer Model 9000 Periodic Maintenance Standard Calibration Check and Standard Quality Assurance Procedure

## ARTICLE 1. DETERMINATION OF ALCOHOL CONCENTRATION

### R13-10-101. Definitions

In this Article, unless the context otherwise requires:

1. "Alcohol concentration" or "AC" means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.
2. "Analyst" means an individual who has been issued an analyst permit by the Department to use approved methods to make alcohol concentration determinations from blood or other bodily substances.
3. "Analyst permit" means a document issued by the Department indicating the permit holder has been found qualified to utilize an approved method in the determination of alcohol concentrations.
4. "Analytical procedure" means a series of operations utilized by an analyst when employing an approved method in the determination of alcohol concentration.
5. "Calibration Check" means an operation utilizing a standard alcohol concentration solution to determine whether a device is accurately measuring alcohol concentrations that is performed as a Standard Calibration Check Procedure by a Quality Assurance Specialist at least every 31 days or performed as Concurrent Calibration Check Procedures by an Operator within a successfully completed test sequence bracketing a duplicate breath test.
6. "Concurrent Calibration Check Procedure" means an operation performed by an Operator, utilizing a standard alcohol concentration solution, within a successfully completed test sequence to determine whether a device is accurately measuring alcohol concentration during a duplicate breath test.
7. "Concurrent Quality Assurance Procedure" means operations performed by an Operator, including a Concurrent Calibration Check Procedure and diagnostic checks, within a successfully completed test sequence to determine whether a device is accurately and properly measuring alcohol concentration during a duplicate breath test.
8. "Deprivation period" means at least a 15-minute period immediately prior to a duplicate breath test during which period the subject has not ingested any alcoholic beverages or other fluids, eaten, vomited, smoked or placed any foreign object in the mouth.
9. "Determination" means an analysis of a specimen of blood, breath, or other bodily substance and expressing the results of the analysis in terms of alcohol concentration.
10. "Device" means a breath testing instrument.
11. "Duplicate breath test" means two consecutive breath tests that immediately follow a deprivation period, agree within 0.020 AC of each other, and are conducted at least five and no more than 10 minutes apart.
12. "Instructor" means a person approved by the Department to provide breath test training to prospective Operators and Quality Assurance Specialists on a specific approved device.
13. "Method" means an analytical technique utilized by an analyst or a device to make an alcohol concentration determination (e.g. gas chromatography, infrared spectrophotometry, or specific fuel cell detection.)
14. "Operator" means a person who has been issued an Operator permit from the Department to operate a specific approved device for the purpose of determining an alcohol concentration from a specimen of breath and to perform the Concurrent Quality

- Assurance Procedures, Concurrent Calibration Check Procedures, and diagnostic checks to determine whether a device is operating accurately and properly.
15. "Operator Permit" means a document issued by the Department indicating that the permit holder has been found qualified to operate and perform the associated Quality Assurance Procedures on a specific approved device.
  16. "Periodic Maintenance" means a Quality Assurance Procedure consisting of either of the following, which determines whether a device is operating accurately and properly:
    - a. Standard Calibration Check Procedure and Standard Quality Assurance Procedure (these checks and procedures may be performed concurrently), or
    - b. Concurrent Calibration Check Procedures and Concurrent Quality Assurance Procedures performed within a successfully completed test sequence bracketing a duplicate breath test.
  17. "Preliminary breath test" means a pre-arrest breath test.
  18. "Preliminary breath tester" or "PBT" means any approved device used prior to an arrest for the purpose of obtaining a determination of alcohol concentration from a specimen of breath and includes any device included on the National Highway Traffic Safety Administration's Conforming Products List of Evidential Breath Measurement Devices as incorporated by reference in R13-10-103(F).
  19. "Procedure" means a series of operations used by an Operator or a Quality Assurance Specialist when employing an approved device in the determination of alcohol concentration or performing associated quality assurance testing.
  20. "Quality Assurance Procedure" means Periodic Maintenance consisting of either of the following, which determines whether a device is operating accurately and properly:
    - a. Standard Calibration Check Procedure and Standard Quality Assurance Procedure (these checks and procedures may be performed concurrently), or
    - b. Concurrent Calibration Check Procedures and Concurrent Quality Assurance Procedures performed within a successfully completed test sequence bracketing a duplicate breath test.
  21. "Quality Assurance Specialist" means a person who has been issued a Quality Assurance Specialist permit from the Department to perform the Standard Calibration Check Procedure and the Standard Quality Assurance Procedure to determine the accurate and proper operation of a specific approved device.
  22. "Quality Assurance Specialist permit" means a document issued by the Department indicating that the permit holder has been found qualified to perform the Standard Calibration Check Procedure and the Standard Quality Assurance Procedure on a specific approved device.
  23. "Standard Calibration Check Procedure" means operations performed by a Quality Assurance Specialist, at least every 31 days, to determine whether a device is accurately measuring alcohol concentration.
  24. "Standard Operational Procedure" means operations performed by an Operator for the purpose of determining an alcohol concentration from a specimen of breath.
  25. "Standard Quality Assurance Procedure" means operations performed by a Quality Assurance Specialist, at least every 90 days.

### **R13-10-103. Breath-testing Devices**

- A. The Director may approve devices used to determine alcohol concentration from breath after the Department successfully tests a typical model of the device for compliance with the standards in subsection (B).
- B. A device shall meet the following standards of performance:
  1. Breath specimens tested shall be alveolar in composition.
  2. The device shall be capable of analysis of a solution of known alcohol concentration with an accuracy limit of a systematic error of no more than  $\pm 0.005$  grams per 210 liters of breath or  $\pm 5$  percent, whichever is greater, and a precision limit of an average standard deviation of no more than 0.0042 grams per 210 liters of breath. The accuracy and precision of the device being evaluated shall be determined on the basis of 10 consecutive measurements at 4 alcohol vapor concentrations that are between 0.020 and 0.350 grams per 210 liters of breath, to include at least one value  $< 0.100$  and one value  $> 0.250$ .
  3. The device shall be capable of testing a breath sample that results in alcohol concentrations of less than 0.01 grams per 210 liters of breath when alcohol-free subjects are tested.
- C. The Department, upon specific findings that a device, method, or breath test procedure is inaccurate, unreliable, or is an unacceptable test for determining alcohol concentration or that its use has been discontinued in the state, shall disapprove in writing further use of the device, method, or procedure.
- D. The methods approved by the Director for use by a device to determine alcohol concentration are infrared spectrophotometry and specific fuel cell detection.
- E. The following devices are approved by the Director:

<b>Device/Model</b>	<b>Manufacturer</b>
Intoxilyzer Model 5000 with or without Vapor Recirculation and with or without Keyboard	CMI, Inc.
Intoxilyzer Model 5000EN	CMI, Inc.
Intoxilyzer Model 8000	CMI, Inc.
<u>Intoxilyzer Model 9000</u>	<u>CMI, Inc.</u>
RBT AZ (Alco Sensor AZ/RBT AZ)	Intoximeter, Inc.

- F. Products included on the National Highway Traffic Safety Administration's Conforming Products List of Evidential Breath Measurement Devices set forth in ~~69 FR 42237-42239 (July 14, 2004)~~ 82 FR 50940-50944 (November 2, 2017) are approved by the Director as preliminary breath testers to determine alcohol concentration. This document is incorporated by reference and does not include any later amendments or editions. A copy of this document is available from the Department and may be obtained from the National Highway Traffic Safety Administration's web site ([www.nhtsa.gov](http://www.nhtsa.gov)) or by contacting the U.S. Government Printing Office, 732 North Capitol Street NW, Washington, DC 20401.
- G. Devices listed in subsection (E) may be used to administer preliminary breath tests.

- H. Except when a device is used as a PBT or for other non-evidential testing purposes, an Operator permit and Standard Operational Procedure are required for the operation of devices listed in subsection (E).
- I. In addition to the devices approved in subsection (E), the Director may approve, in writing, a device and related Standard Operational and Quality Assurance Procedures after the device has been successfully tested for compliance with the standards in subsection (B) for use prior to and pending the device being added to subsection (E). The approval shall expire three years after its effective date unless subsection (E) is amended to include the approved device.
- J. In addition to devices approved as preliminary breath testers in subsection (F), the Director may approve in writing as a PBT a new device placed on subsequent National Highway Traffic Safety Administration's Conforming Products Lists of Evidential Breath Measurement Devices for use pending the new Conforming Products List being added to subsection (F).

#### **R13-10-104. Testing Procedures**

- A. Law enforcement agencies or individuals acting independently of law enforcement agencies who conduct alcohol concentration determinations by means of devices shall utilize a quality assurance program that is conducted by Quality Assurance Specialists or Operators and generate records of periodic maintenance. This quality assurance program shall include:
  1. Criteria for ensuring the accurate and proper operation of devices by the regular performance of Calibration Checks and Quality Assurance Procedures as referenced in subsections (A)(2) and (A)(3);
  2. Calibration Checks of devices that are performed within 31 days of each other as Standard Calibration Check Procedures or during a test sequence bracketing a duplicate breath test as Concurrent Calibration Check Procedures and recorded according to the requirements of the appropriate Quality Assurance Procedures set forth in Exhibits ~~E-2, E-3, F-2, F-3~~, G-2, G-3, G-6, ~~and H-2 and I-2~~ or as approved by the Director according to R13-10-103(I). These checks shall indicate that the device is capable of determining the value of a standard alcohol concentration solution with an accuracy limit of  $\pm 0.01$  grams per 210 liters of breath or  $\pm 10$  percent, whichever is greater;
  3. Quality Assurance Procedure checks of devices that are performed within 90 days of each other as Standard Quality Assurance Procedures or during a test sequence bracketing a duplicate breath test as Concurrent Quality Assurance Procedures, and recorded according to the requirements of the appropriate Quality Assurance Procedures set forth in Exhibits ~~E-4, E-5, F-4, F-5~~, G-4, G-5, G-6, H-3, ~~and H-4 and I-2~~ or as approved by the Director according to R13-10-103(I). These checks shall indicate that the device is capable of proper operation and is functioning as required by the Quality Assurance Procedures for the device;
  4. Standard alcohol concentration solutions, either liquid or gas, that are National Institute of Standards and Technology (NIST) traceable; and
  5. Records of Calibration Checks, Quality Assurance Procedures and maintenance or repairs for each device in use.
- B. An Operator shall utilize the Standard Operational Procedure approved by the Department for the device being operated in performing tests for the determination of alcohol concentration, as contained in Exhibits ~~E-1, E-6, F-1~~, G-1, G-6, ~~and H-1 and I-1~~ or as approved by the Director according to R13-10-103(I).

- C. Duplicate breath tests shall be administered at intervals of not less than five minutes nor more than 10 minutes. The results of both tests shall be within 0.020 alcohol concentration of each other. If the second test is not within 0.020 alcohol concentration of the first test, additional tests shall be administered until the results of two consecutive tests are within 0.020 alcohol concentration.

**R13-10-107. Application Processes**

- A. An applicant for an initial Analyst permit or the renewal of an existing Analyst permit shall complete the form shown as Exhibit A and submit it to the Department. ~~An application for renewal of an Analyst permit shall be submitted no later than 30 days prior to the date the current permit expires. If the applicant makes a written or verbal request and shows good cause, the Department shall extend this deadline.~~
- B. An applicant for an initial Operator permit or the renewal of an existing Operator permit shall complete the form shown as Exhibit B and submitted to the Department. ~~An application for renewal of an Operator permit shall be submitted no later than 30 days prior to the date the current permit expires. If the applicant makes a written or verbal request and shows good cause, the Department shall extend this deadline.~~
- C. An applicant for an initial Quality Assurance Specialist permit or the renewal of an existing Quality Assurance Specialist permit shall complete the form shown as Exhibit C and submitted to the Department. ~~An application for renewal of a Quality Assurance Specialist permit shall be submitted no later than 30 days prior to the date the current permit expires. If the applicant makes a written or verbal request and shows good cause, the Department shall extend this deadline.~~
- D. An applicant for an initial Instructor approval or the renewal of an existing Instructor approval shall complete the form shown as Exhibit D and submitted to the Department. ~~An application for renewal of an Instructor shall be submitted no later than 30 days prior to the date the current certificate expires. If the applicant makes a written or verbal request and shows good cause, the Department shall extend this deadline.~~

**Exhibit A. Application for Blood Alcohol Analyst Permit**

**APPLICATION FOR BLOOD ALCOHOL ANALYST PERMIT  
ARIZONA DEPARTMENT OF PUBLIC SAFETY**

Scientific Analysis Bureau  
2102 W Encanto Blvd  
Phoenix, Arizona 85009  
(602) 223-2394

Application for Analyst permit to perform analysis of blood or other bodily substances for alcohol concentration determinations.

**TO BE COMPLETED BY APPLICANT - PLEASE PRINT CLEARLY**  
(ALL ITEMS MUST BE COMPLETED OR APPLICATION WILL NOT BE ACCEPTED)

IS THIS APPLICATION FOR? INITIAL PERMIT \_\_\_\_ RENEWAL \_\_\_\_ PERMIT NUMBER \_\_\_\_\_

1. Name: \_\_\_\_\_  
(Full legal name) (~~Last First~~) (~~First Middle~~) (~~Middle Last~~) (Maiden)

Name: \_\_\_\_\_  
(As you would like it to appear on permit) (Last) (First)  
(Middle optional)

2. Date of Birth: \_\_\_\_\_  
(Month) (Day) (Year)

3. Employer: \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Phone) (Fax)

4. Email address: \_\_\_\_\_

5. Education: I have earned a degree from an accredited college or university with 15 or more semester credits or the equivalent of college chemistry, including at least 3 credits in organic chemistry. Yes \_\_\_\_ No \_\_\_\_  
College(s) attended \_\_\_\_\_  
(City & State) (Year Graduated) (Degree)

\_\_\_\_\_  
(City & State) (Year Graduated) (Degree)

6. Check the analytical method(s) for which you require an Analyst permit:

Gas Chromatography \_\_\_\_ Other: \_\_\_\_\_

I hereby certify that the information submitted in this application is true and correct.

\_\_\_\_\_  
(Signature of Applicant) (Date)



**Exhibit B. Application for Breath Alcohol Operator Permit**

**APPLICATION FOR BREATH ALCOHOL OPERATOR PERMIT  
ARIZONA DEPARTMENT OF PUBLIC SAFETY**

Scientific Analysis Bureau  
2102 W Encanto Blvd  
Phoenix, Arizona 85009  
(602) 223-2394

Application for an Operator permit to perform alcohol concentration determinations and associated quality assurance procedures on an approved device.

**TO BE COMPLETED BY APPLICANT - PLEASE PRINT CLEARLY**  
(ALL ITEMS MUST BE COMPLETED OR APPLICATION WILL NOT BE ACCEPTED)

IS THIS APPLICATION FOR? INITIAL PERMIT \_\_\_\_\_ RENEWAL \_\_\_\_\_

DO YOU HAVE AN OPERATOR PERMIT(S)? YES \_\_\_\_\_ NO \_\_\_\_\_

OPERATOR DEVICE(S) / PERMIT NUMBER(S) \_\_\_\_\_

1. Name: \_\_\_\_\_  
(Full Legal Name) (~~Last~~ First) (First Middle) (Middle-Last) (Maiden)

Name: \_\_\_\_\_  
(As you want it to appear on permit) (Last) (First)  
(Middle optional)

2. Employer: \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Phone) (Fax)

3. Email address: \_\_\_\_\_

4. Operator permit requested for what device(s): \_\_\_\_\_

I hereby certify that the information submitted in this application is true and correct.

\_\_\_\_\_  
(Signature of Applicant) Badge # (Date)

\*\*\*\*\*

**TO BE COMPLETED BY INSTRUCTOR**

1. Agency Conducting Training: \_\_\_\_\_

2. Date and Location of Training: \_\_\_\_\_  
(Date) (Location)

3. Arizona Department of Public Safety course approval number: \_\_\_\_\_

4. Did applicant successfully complete the course? Pass \_\_\_\_\_ Fail \_\_\_\_\_

---

(Signature of Instructor)

(Print Name)

(Date)

DPS Form Exh B (Rev ~~05~~19-1)

**Exhibit C. Application for Breath Alcohol Quality Assurance Specialist Permit**

**APPLICATION FOR BREATH ALCOHOL QUALITY ASSURANCE SPECIALIST PERMIT**

**ARIZONA DEPARTMENT OF PUBLIC SAFETY**

Scientific Analysis Bureau  
2102 W Encanto Blvd  
Phoenix, Arizona 85009  
(602) 223-2394

Application for a QAS permit to perform quality assurance procedures on an approved device.

**TO BE COMPLETED BY APPLICANT - PLEASE PRINT CLEARLY**  
(ALL ITEMS MUST BE COMPLETED OR APPLICATION WILL NOT BE ACCEPTED)

IS THIS APPLICATION FOR? INITIAL PERMIT \_\_\_\_\_ RENEWAL \_\_\_\_\_

DO YOU HAVE AN OPERATOR PERMIT(S)? YES \_\_\_\_\_ NO \_\_\_\_\_

OPERATOR DEVICE(S) / PERMIT NUMBER(S) \_\_\_\_\_

1. Name: \_\_\_\_\_  
(Full Legal Name) (~~Last~~ First) (First Middle) (~~Middle~~ Last) (Maiden)

Name: \_\_\_\_\_  
(As you want it to appear on permit) \_\_\_\_\_ (Last) \_\_\_\_\_ (First) \_\_\_\_\_  
(Middle optional)

2. Employer: \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Phone) (Fax)

3. Email address: \_\_\_\_\_

4. QAS permit requested for what device(s): \_\_\_\_\_

I hereby certify that the information submitted in this application is true and correct.

\_\_\_\_\_  
(Signature of Applicant) Badge # (Date)

\*\*\*\*\*

**TO BE COMPLETED BY INSTRUCTOR**

1. Agency Conducting Training: \_\_\_\_\_

2. Date and Location of Training: \_\_\_\_\_  
(Date) (Location)

3. Arizona Department of Public Safety course approval number: \_\_\_\_\_

4. Did applicant successfully complete the course? Pass \_\_\_\_\_ Fail \_\_\_\_\_

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(Signature of Instructor)

(Print Name)

(Date)

DPS Form Exh C (Rev ~~05~~19-1)

**Exhibit D. Application for Breath Testing Instructor**

**APPLICATION FOR BREATH TESTING INSTRUCTOR  
ARIZONA DEPARTMENT OF PUBLIC SAFETY**

Scientific Analysis Bureau  
2102 W Encanto Blvd  
Phoenix, Arizona 85009  
(602) 223-2394

Application for an Instructor certificate to provide Operator and QAS training on an approved device.

**TO BE COMPLETED BY APPLICANT - PLEASE PRINT CLEARLY**

(ALL ITEMS MUST BE COMPLETED OR APPLICATION WILL NOT BE ACCEPTED)

IS THIS APPLICATION FOR? INITIAL APPROVAL \_\_\_\_\_ RENEWAL \_\_\_\_\_

DO YOU HAVE AN OPERATOR PERMIT(S)? YES \_\_\_\_\_ NO \_\_\_\_\_

OPERATOR DEVICE(S) / PERMIT NUMBER(S)? \_\_\_\_\_

DO YOU HAVE QAS PERMIT(S)? YES \_\_\_\_\_ NO \_\_\_\_\_

QAS DEVICE(S) / PERMIT NUMBER(S) \_\_\_\_\_

1. Name: \_\_\_\_\_  
(Full Legal Name) (~~Last~~ First) (~~First~~ Middle) (~~Middle~~ Last) (Maiden)

Name: \_\_\_\_\_  
(As you want it to appear on certificate) \_\_\_\_\_ (Last) \_\_\_\_\_ (First) \_\_\_\_\_  
(Middle optional)

2. Employer: \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Phone) (Fax)

3. Email address: \_\_\_\_\_

4. Instructor certificate requested for what device: \_\_\_\_\_

I hereby certify that the information submitted in this application is true and correct.

\_\_\_\_\_  
(Signature of Applicant) (Date)

\*\*\*\*\*

**TO BE COMPLETED BY REGULATOR**

1. Arizona Department of Public Safety examination approval number: \_\_\_\_\_

2. Did applicant successfully attain Instructor approval? Pass \_\_\_\_\_ Fail \_\_\_\_\_

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(Signature of Regulator)

(Print Name)

(Date)

DPS Form Exh D (Rev ~~05~~19-1)

**EXHIBIT I-1**  
**OPERATIONAL CHECKLIST**  
**STANDARD OPERATIONAL PROCEDURE**

**ARIZONA DEPARTMENT OF PUBLIC SAFETY**  
**INTOXILYZER MODEL 9000**

**DUPLICATE BREATH TEST**

SUBJECT NAME \_\_\_\_\_ DATE \_\_\_\_\_

AGENCY \_\_\_\_\_ OPERATOR & BADGE \_\_\_\_\_

INTOXILYZER SERIAL # \_\_\_\_\_ DEPRIVATION BY \_\_\_\_\_

- 1. Ensure proper deprivation period
- 2. Push the start button on the screen
- 3. Follow automated prompts on the instrument display

Note: Duplicate breath tests shall be administered at intervals of not less than 5 minutes nor more than 10 minutes apart and the two consecutive tests shall agree within 0.020 alcohol concentration.

COMMENTS:

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SIGNATURE \_\_\_\_\_

DPS Form Exh I-1 (Iss 19-01)

**EXHIBIT I-2**  
**THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104 (A)**

**ARIZONA DEPARTMENT OF PUBLIC SAFETY**  
**INTOXILYZER MODEL 9000**

**PERIODIC MAINTENANCE, STANDARD CALIBRATION CHECK AND**  
**STANDARD QUALITY ASSURANCE PROCEDURE**

QA SPECIALIST \_\_\_\_\_ AGENCY \_\_\_\_\_

DATE \_\_\_\_\_ TIME \_\_\_\_\_

INTOXILYZER SERIAL # \_\_\_\_\_

1. Ensure that gas tank is attached and contains a standard alcohol concentration \_\_\_\_\_ AC.

**DIAGNOSTIC TESTS**

1. Clock time check  
 2. Date check

**OPERATIONAL TESTS**

1. Deficient Subject Test (Proper Sample Recognition):  
    Deficient Sample printed
2. Alcohol-free Subject Test (Proper Sample Recognition):  
    0. \_\_\_\_\_ AC
3. Mouth Alcohol Subject Test (Proper Sample Recognition):  
    Invalid Sample – Begin new deprivation period printed
4. Radio Frequency Interference Test (Error Recognition):  
    RFI Detect printed
5. Standard Calibration Check:  
    0. \_\_\_\_\_ AC
6. Air Blanks Completed
7. Timer Reset

Not a Successfully Completed Test Sequence will be printed.

Instrument is operating properly and accurately. YES \_\_\_\_\_ NO \_\_\_\_\_

**COMMENTS:**

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SIGNATURE \_\_\_\_\_

DPS Form Exh I-2 (Iss 19-01)

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

[Docket No. NHTSA–2017–0053]

**Highway Safety Programs; Conforming Products List of Evidential Breath Alcohol Measurement Devices**

**AGENCY:** National Highway Traffic Safety Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** This notice updates the Conforming Products List (CPL) published in the **Federal Register** on June 14, 2012 (77 FR 35747) for instruments that conform to the Model Specifications for Evidential Breath Alcohol Measurement Devices dated, September 17, 1993 (58 FR 48705). This notice also informs the public that all future updates to the CPL will be posted on NHTSA's Web site.

**DATES:** Applicable November 2, 2017.

**FOR FURTHER INFORMATION CONTACT:**

*For technical issues:* Dr. Randolph Atkins, Behavioral Research Division, NPD–310, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; Telephone; (202) 366–5597.

*For legal issues:* Megan Brown, Office of Chief Counsel, NCC–300, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; Telephone: (202) 366–1834.

**SUPPLEMENTARY INFORMATION:** On November 5, 1973, the National Highway Traffic Safety Administration (NHTSA) published the Standards for Devices to Measure Breath Alcohol (38 FR 30459). A Qualified Products List of Evidential Breath Measurement Devices comprised of instruments that met this standard was first issued on November 21, 1974 (39 FR 41399).

On December 14, 1984 (49 FR 48854), NHTSA converted this standard to Model Specifications for Evidential Breath Testing Devices (Model Specifications), and published a Conforming Products List (CPL) of instruments that were found to conform to the Model Specifications as Appendix D to that notice. Those instruments are identified on the CPL with an asterisk.

On September 17, 1993, NHTSA published a notice to amend the Model Specifications (58 FR 48705) and to update the CPL. That notice changed the alcohol concentration levels at which instruments are evaluated, from 0.000, 0.050, 0.101, and 0.151 BAC, to 0.000,

0.020, 0.040, 0.080, and 0.160 BAC, respectively. It also included a test for the presence of acetone and an expanded definition of alcohol to include other low molecular weight alcohols, *e.g.*, methyl or isopropyl. Since that time, the CPL has been annotated to indicate which instruments have been determined to meet the Model Specifications published in 1984, and which have been determined to meet the Model Specifications, as revised and published in 1993. Thereafter, NHTSA has periodically updated the CPL with those breath instruments found to conform to the Model Specifications. The most recent update to the CPL was published June 14, 2012 (77 FR 35747).

NHTSA published the 1974 Qualified Products List, the 1984 CPL and all succeeding updates to the CPL in the **Federal Register**. Future updates of the CPL will be posted on the NHTSA Web site (<https://www.nhtsa.dot.gov/dunk-driving/alcohol-measurement-devices>) rather than to the **Federal Register**. Online publication will make it easier for users to access the most recent CPL and will allow NHTSA to make more timely updates to the CPL. NHTSA will continue to publish any amendments to the Model Specifications in the **Federal Register**.

The CPL published today adds twelve (12) new instruments that have been evaluated and found to conform to the Model Specifications, as amended on September 17, 1993 for mobile and non-mobile use. One instrument is distributed by two different companies, so it has been listed twice. One manufacturer changed their legal name. One manufacturer added a new product option for USB and Ethernet connectivity. One manufacturer added a Bluetooth keyboard accessory to two (2) devices and a calibration accessory for seven (7) of its devices. These devices were found to conform with or without the accessories. Another seven (7) instruments are now being listed under a different distributor/manufacturer and those devices will be cross-referenced for legacy purposes. In alphabetical order by company, the new devices are:

(1) The “AlcoMate TS600” distributed by AK GlobalTech Corporation, Palisades Park, New Jersey. This device will be known as the Alcoscan ALP–1 outside of the U.S. The AlcoMate TS600 is a hand-held device with an electrochemical (EC) fuel cell sensor. This device is powered by internal batteries and is intended for mobile or stationary operations.

(2) The “Intoxilyzer 500” manufactured by CMI, Inc., Owensboro, Kentucky. This instrument is currently

listed on the CPL for Alcohol Screening Devices and will be removed when that CPL is updated. Improvements to the device's sampling system allow it to conform as an EBT. It is a hand-held instrument intended for use in mobile or stationary operations. It uses a fuel cell sensor and is powered by an internal battery. The Intoxilyzer 500 is also distributed as the Lion Alcolmeter 500 by Lion Laboratories outside the U.S., so it has been listed twice on the CPL, once under each of its distributors/manufacturers.

(3) The “Intoxilyzer 9000” manufactured by CMI, Inc., Owensboro, Kentucky. This is a bench-top device that is intended for use in mobile or stationary operations. This device uses an infrared (IR) sensor to measure ethanol concentration. The Intoxilyzer 9000 can be powered by either 110 volts alternate current (AC) or 12 volts direct current (DC).

(4) The “Alcotest 3820” manufactured by Draeger, Inc., Irving, Texas. The Alcotest 3820 is a hand-held device that uses an electrochemical (EC) fuel cell sensor to measure ethanol concentration. This instrument is powered by internal batteries and is intended for use in stationary or mobile operations.

(5) The “Alcotest 5510” manufactured by Draeger, Inc., Irving, Texas. The Alcotest 5510 is a hand-held device that uses an electrochemical (EC) fuel cell sensor to measure ethanol. This device is powered by internal batteries and is intended for use in mobile or stationary operations.

(6) The “Alcotest 5820” manufactured by Draeger, Inc., Irving, Texas. The Alcotest 5820 is a hand-held device that uses an electrochemical (EC) fuel cell sensor to measure ethanol. This device is powered by internal batteries and is intended for use in mobile or stationary operations.

(7) The “Alcotest 6820” manufactured by Draeger, Inc., Irving, Texas. The Alcotest 6820 is a hand-held device that uses an electrochemical (EC) fuel cell sensor to measure ethanol. This device is powered by internal batteries and is intended for use in mobile or stationary operations.

(8) The “AlcoQuant 6020 Plus” manufactured by EnviteC, Wismar, Germany and distributed by Honeywell GmbH, Fond du Lac, Wisconsin. The AlcoQuant 6020 Plus is a hand-held device with a fuel cell sensor. This device is powered by internal batteries and is intended for use in mobile and stationary operations.

(9) The Alco-Sensor FST manufactured by Intoximeters, Inc., Saint Louis, Missouri. The Alco-Sensor

FST is a hand-held Evidential Breath Tester that uses an electrochemical (EC) fuel cell sensor to measure ethanol concentration. This instrument is powered by internal batteries and is intended for use in stationary or mobile operations.

(10) The Intox DMT Dual Sensor manufactured by Intoximeters, Inc., Saint Louis, Missouri. The Intox DMT Dual Sensor is a bench-top Evidential Breath Tester that is intended for use in stationary or mobile operations. This device uses both an infrared (IR) sensor and an electrochemical (EC) fuel cell sensor. The Intox DMT Dual Sensor can be powered by either 110 volts AC or 12 volts DC.

(11) The "Intox EC/IR II.t" manufactured by Intoximeters, Inc, Saint Louis, Missouri. This is a bench-top device intended for use in mobile or stationary operations. This device uses both an electrochemical (EC) fuel cell sensor and an infrared (IR) sensor to measure ethanol concentrations. The Intox EC/IR II.t can be powered by either 110 volts AC or 12 volts DC.

(12) The "FC10Plus" manufactured by Lifeloc Technologies, Inc., Wheat Ridge, Colorado. This is a hand-held device that is intended for use in mobile or stationary operations. This device uses a fuel cell sensor and is powered by internal batteries.

This update indicates that two (2) devices (the Phoenix 6.0 and the FC20, manufactured by Lifeloc Technologies, Inc., Wheat Ridge, Colorado) come with Bluetooth keyboard support and five additional fields that users can use to enter additional information. With these features, these devices will be listed on the CPL as the "Phoenix 6.0BT" and the "FC20BT". This update indicates also that seven (7) devices manufactured by Lifeloc come with the EASYCAL calibration accessory. Those devices include the FC10, FC10Plus, FC20, FC20BT, EV30, Phoenix 6.0 and the Phoenix 6.0BT. The CPL specifies that each of these devices conforms to the model specifications "w/or without the EASYCAL accessory."

Intoximeters, Inc., Saint Louis, Missouri acquired the breath alcohol

testing business of National Patent Analytical Systems, Inc. (NPAS). Since there have been no changes to the devices other than ownership and a device name change, all six devices previously listed under NPAS (BAC DataMaster (with or without the Delta-1 accessory), BAC Verifier DataMaster (w/or without the Delta-1 accessory), DataMaster cdm (w/or without the Delta-1 accessory), DataMaster DMT w/ Fuel Cell option, DataMaster DMT w/ Rev A Fuel Cell option, and DataMaster DMT) will now be listed under both Intoximeters and NPAS. The NPAS DataMaster DMT will now be known as the Intoximeters Intox DMT. Accordingly, this device will be listed under Intoximeters under both names.

The CPL has been updated to reflect that Draeger Safety Diagnostics, Inc. will begin operating under the name Draeger, Inc. effective July 1, 2017 in order to align all sales and service operations for Draeger in the United States.

In accordance with the foregoing, the CPL is updated, as set forth below.

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES

Manufacturer/Distributor and model	Mobile	Non-mobile
AK GlobalTech Corporation, Palisades Park, New Jersey: AlcoMate TS600 (aka: Alcoscan ALP-1 outside the U.S.) .....	X	X
Alcohol Countermeasure Systems Corp., Toronto, Ontario, Canada: Alert J3AD * .....	X	X
Alert J4X.ec .....	X	X
PBA3000C .....	X	X
SAF'IR Evolution .....	X	X
BAC Systems, Inc., Ontario, Canada: Breath Analysis Computer * .....	X	X
CAMEC Ltd., North Shields, Tyne and Ware, England: IR Breath Analyzer * .....	X	X
CMI, Inc., Owensboro, Kentucky: Intoxilyzer Model:		
200 .....	X	X
200D .....	X	X
240 (aka: Lion Alcolmeter 400+ outside the U.S.) .....	X	X
300 .....	X	X
400 .....	X	X
400PA .....	X	X
500 (aka: Lion Alcolmeter 500 outside the U.S.) .....	X	X
600 (aka: Lion Alcolmeter 600 outside the U.S.) .....	X	X
1400 .....	X	X
4011 * .....	X	X
4011A * .....	X	X
4011AS * .....	X	X
4011AS-A * .....	X	X
4011AS-AQ * .....	X	X
4011 AW * .....	X	X
4011A27-10100 * .....	X	X
4011A27-10100 with filter * .....	X	X
5000 .....	X	X
5000 (w/Cal. Vapor Re-Circ.) .....	X	X
5000 (w/ <sup>3/8</sup> " ID Hose option) .....	X	X
5000CD .....	X	X
5000CD/FG5 .....	X	X
5000EN .....	X	X
5000 (CAL DOJ) .....	X	X
5000VA .....	X	X
8000 .....	X	X
9000 .....	X	X

## CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES—Continued

Manufacturer/Distributor and model	Mobile	Non-mobile
9000 (serial numbers 90–000500 and above) .....	X	X
PAC 1200* .....	X	X
S–D2 .....	X	X
S–D5 (aka: Lion Alcolmeter SD–5 outside the U.S.) .....	X	X
Draeger, Inc. (aka: Draeger Safety Diagnostics, Inc. or National Draeger) Irving, Texas:		
Alcotest Model:		
3820 .....	X	X
5510 .....	X	X
5820 .....	X	X
6510 .....	X	X
6810 .....	X	X
6820 .....	X	X
7010* .....	X	X
7110* .....	X	X
7110 MKIII .....	X	X
7110 MKIII–C .....	X	X
7410 .....	X	X
7410 Plus .....	X	X
7510 .....	X	X
9510 .....	X	X
Breathalyzer Model:		
900 .....	X	X
900A* .....	X	X
900BG* .....	X	X
7410 .....	X	X
7410–II .....	X	X
EnviteC, Wismar, Germany, distributed by Honeywell GmbH, Fond du Lac, Wisconsin:		
AlcoQuant 6020 .....	X	X
AlcoQuant 6020 Plus .....	X	X
Gall's Inc., Lexington, Kentucky:		
Alcohol Detection System–A.D.S. 500 .....	X	X
Guth Laboratories, Inc., Harrisburg, Pennsylvania:		
Alcotector BAC–100 .....	X	X
Alcotector C2H5OH .....	X	X
Guth 38 .....	X	X
Intoximeters, Inc., St. Louis, Missouri:		
Auto Intoximeter* .....	X	X
GC Intoximeter MK II* .....	X	X
GC Intoximeter MK IV* .....	X	X
Photo Electric Intoximeter* .....		X
Intoximeter Model:		
3000 .....	X	X
3000 (rev B1)* .....	X	X
3000 (rev B2)* .....	X	X
3000 (rev B2A)* .....	X	X
3000 (rev B2A) w/FM option* .....	X	X
3000 (Fuel Cell)* .....	X	X
3000 D* .....	X	X
3000 DFC* .....	X	X
Alcomonitor .....		X
Alcomonitor CC .....	X	X
Alco-Sensor III .....	X	X
Alco-Sensor III (Enhanced with Serial Numbers above 1,200,000) .....	X	X
Alco-Sensor IV .....	X	X
Alco-Sensor IV XL .....	X	X
Alco-Sensor V .....	X	X
Alco-Sensor V XL .....	X	X
Alco-Sensor AZ .....	X	X
Alco-Sensor FST .....	X	X
Intox DMT Dual Sensor .....	X	X
Intox EC/IR .....	X	X
Intox EC/IR II .....	X	X
Intox EC/IR II (Enhanced with serial number 10,000 or higher) .....		X
Intox EC/IR II.t .....	X	X
Portable Intox EC/IR .....	X	X
RBT–AZ .....	X	X
RBT–III .....	X	X
RBT III–A .....	X	X
RBT IV .....	X	X
RBT IV with CEM (cell enhancement module) .....	X	X
(Also Listed under National Patent Analytical Systems, Inc.) BAC DataMaster (with or without the Delta-1 accessory) .....	X	X

## CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES—Continued

Manufacturer/Distributor and model	Mobile	Non-mobile
BAC Verifier DataMaster (w/or without the Delta-1 accessory) .....	X	X
DataMaster cdm (w/or without the Delta-1 accessory) .....	X	X
DataMaster DMT w/Fuel Cell option .....	X	X
DataMaster DMT w/Rev A Fuel Cell option .....	X	X
DataMaster DMT (aka: Intox MT) .....	X	X
Intox DMT (aka: DataMaster DMT) .....	X	X
Komyo Kitagawa, Kogyo, K.K., Japan:		
Alcolyzer DPA-2* .....	X	X
Breath Alcohol Meter PAM 101B* .....	X	X
Lifelog Technologies, Inc., (formerly Lifeloc, Inc.), Wheat Ridge, Colorado:		
EV 30 (w/or without EASYCAL accessory) .....	X	X
FC 10 (w/or without EASYCAL accessory) .....	X	X
FC10Plus (w/or without EASYCAL accessory) .....	X	X
FC 20 (w/or without EASYCAL accessory) .....	X	X
FC20BT (w/or without EASYCAL accessory) .....	X	X
LifeGuard Pro .....	X	X
Phoenix .....	X	X
Phoenix 6.0 (w/or without EASYCAL accessory) .....	X	X
Phoenix 6.0BT (w/or without EASYCAL accessory) .....	X	X
Lion Laboratories, Ltd., Cardiff, Wales, United Kingdom:		
Alcolmeter Model:		
300 .....	X	X
400 .....	X	X
400+ (aka: Intoxilyzer 240 in the U.S.) .....	X	X
500 (aka: Intoxilyzer 500 in the U.S.) .....	X	X
600 (aka: Intoxilyzer 600 in the U.S.) .....	X	X
EBA* .....	X	X
SD-2* .....	X	X
SD-5 (aka: S-D5 in the U.S.) .....	X	X
Intoxilyzer Model:		
200 .....	X	X
200D .....	X	X
1400 .....	X	X
5000 CD/FG5 .....	X	X
5000 EN .....	X	X
Luckey Laboratories, San Bernardino, California:		
Alco-Analyzer Model:		
1000* .....		X
2000* .....		X
Nanopuls AB, Uppsala, Sweden:		
Evidenzer .....	X	X
National Patent Analytical Systems, Inc. (NPAS), Mansfield, Ohio:		
BAC DataMaster (with or without the Delta-1 accessory).		
BAC Verifier DataMaster (w/or without the Delta-1 accessory) .....	X	X
DataMaster cdm (w/or without the Delta-1 accessory) .....	X	X
DataMaster DMT (aka: Intox DMT) .....	X	X
DataMaster DMT w/Fuel Cell option SN: 555555 .....	X	X
DataMaster DMT w/Rev A Fuel Cell option SN: 100630 .....	X	X
Omicron Systems, Palo Alto, California:		
Intoxilyzer Model:		
4011* .....	X	X
4011AW* .....	X	X
PAS International, Fredericksburg, Virginia:		
Alcovisor Jupiter .....	X	X
Alcovisor Mercury .....	X	X
Mark V Alcovisor .....	X	X
Plus 4 Engineering, Minturn, Colorado:		
5000 Plus 4* .....	X	X
Seres, Paris, France:		
Alco Master .....	X	X
Alcopro .....	X	X
Siemans-Allis, Cherry Hill, New Jersey:		
Alcomat* .....	X	X
Alcomat F* .....	X	X
Smith and Wesson Electronics, Springfield, Massachusetts:		
Breathalyzer Model:		
900* .....	X	X
900A* .....	X	X
1000* .....	X	X
2000* .....	X	X
2000 (non-Humidity Sensor)* .....	X	X
Sound-Off, Inc., Hudsonville, Michigan:		

## CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES—Continued

Manufacturer/Distributor and model	Mobile	Non-mobile
AlcoData .....	X	X
Seres Alco Master .....	X	X
Seres Alcopro .....	X	X
Stephenson Corp.:		
Breathalyzer 900 * .....	X	X
Tokai-Denshi Inc., Tokyo, Japan:		
ALC-PRO II (US) .....	X	X
U.S. Alcohol Testing, Inc./Protection Devices, Inc., Rancho Cucamonga, California:		
Alco-Analyzer 1000 .....		X
Alco-Analyzer 2000 .....		X
Alco-Analyzer 2100 .....	X	X
Verax Systems, Inc., Fairport, New York:		
BAC Verifier * .....	X	X
BAC Verifier Datamaster .....	X	X
BAC Verifier Datamaster II * .....	X	X

\* Instruments marked with an asterisk (\*) meet the Model Specifications detailed in 49 FR 48854 (December 14, 1984) (*i.e.*, instruments tested at 0.000, 0.050, 0.101, and 0.151 BAC). Instruments not marked with an asterisk meet the Model Specifications detailed in 58 FR 48705 (September 17, 1993), and were tested at BACs = 0.000, 0.020, 0.040, 0.080, and 0.160. All instruments that meet the Model Specifications currently in effect (dated September 17, 1993) also meet the Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids.

**Authority:** 44 U.S.C. Section 3506(c)(2)(A).

Issued in Washington, DC, on October 30, 2017.

**Jeff Michael,**

*Associate Administrator, Research and Program Development.*

[FR Doc. 2017-23869 Filed 11-1-17; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF THE TREASURY

### Community Development Financial Institutions Fund

#### Funding Opportunity Title: Notice of Guarantee Availability (NOGA) Inviting Qualified Issuer Applications and Guarantee Applications for the Community Development Financial Institutions (CDFI) Bond Guarantee Program

**Announcement Type:** Announcement of opportunity to submit Qualified Issuer Applications and Guarantee Applications.

**Catalog of Federal Domestic Assistance (CFDA) Number:** 21.011.

**Key Dates:** Qualified Issuer Applications and Guarantee Applications may be submitted to the CDFI Fund starting on the date of publication of this NOGA. In order to be considered for the issuance of a Guarantee in FY 2018, Qualified Issuer Applications must be submitted by 11:59 p.m. Eastern Standard Time (EST) on January 9, 2018 and Guarantee Applications must be submitted by 11:59 p.m. EST on January 23, 2018. If applicable, CDFI Certification Applications must be received by the CDFI Fund by 11:59 p.m. EST on November 30, 2017. Under FY 2018 authority, which is contingent upon

Congressional authorization, Bond Documents and Bond Loan documents must be executed, and Guarantees will be provided, in the order in which Guarantee Applications are approved or by such other criteria that the CDFI Fund may establish, in its sole discretion, and in any event by September 30, 2018.

**Executive Summary:** This NOGA is published in connection with the CDFI Bond Guarantee Program, administered by the Community Development Financial Institutions Fund (CDFI Fund), the U.S. Department of the Treasury (Treasury). Through this NOGA, the CDFI Fund announces the availability of \$500 million of Guarantee Authority in FY 2018, contingent upon Congressional authorization. This NOGA explains application submission and evaluation requirements and processes, and provides agency contacts and information on CDFI Bond Guarantee Program outreach. Parties interested in being approved for a Guarantee under the CDFI Bond Guarantee Program must submit Qualified Issuer Applications and Guarantee Applications for consideration in accordance with this NOGA.

Capitalized terms used in this NOGA and not defined elsewhere are defined in the CDFI Bond Guarantee Program regulations (12 CFR 1808.102) and the CDFI Program regulations (12 CFR 1805.104).

#### I. Guarantee Opportunity Description

**A. Authority.** The CDFI Bond Guarantee Program was authorized by the Small Business Jobs Act of 2010 (Pub. L. 111-240; 12 U.S.C. 4713a) (the Act). Section 1134 of the Act amended the Riegle Community Development and

Regulatory Improvement Act of 1994 (12 U.S.C. 4701, *et seq.*) to provide authority to the Secretary of the Treasury (Secretary) to establish and administer the CDFI Bond Guarantee Program.

**B. Bond Issue size; Amount of Guarantee authority.** In FY 2018, the Secretary may guarantee Bond Issues having a minimum Guarantee of \$100 million each, up to an aggregate total of \$500 million, contingent upon Congressional authorization.

**C. Program summary.** The purpose of the CDFI Bond Guarantee Program is to support CDFI lending by providing Guarantees for Bonds issued for Eligible Community or Economic Development Purposes, as authorized by section 1134 and 1703 of the Act. The Secretary, as the Guarantor of the Bonds, will provide a 100 percent Guarantee for the repayment of the Verifiable Losses of Principal, Interest, and Call Premium of Bonds issued by Qualified Issuers. Qualified Issuers, approved by the CDFI Fund, will issue Bonds that will be purchased by the Federal Financing Bank. The Qualified Issuer will use 100 percent of Bond Proceeds to provide Bond Loans to Eligible CDFIs, which will use Bond Loan proceeds for Eligible Community and Economic Development Purposes, including providing Secondary Loans to Secondary Borrowers.

**D. Review of Guarantee Applications, in general.**

1. Qualified Issuer Applications submitted with Guarantee Applications will have priority for review over Qualified Issuer Applications submitted without Guarantee Applications. With the exception of the aforementioned prioritized review, all Qualified Issuer Applications and Guarantee

**ARIZONA DEPARTMENT OF PUBLIC SAFETY**  
**INTEROFFICE MEMORANDUM**



**FRANK L. MILSTEAD**  
DIRECTOR

**DATE:** March 4, 2019

**TO:** Robert Stephenson, Erin Boone, and Joe Slowinski, SAB Breath Alcohol Unit

**FROM:** Brooke D. Arnone, Quality Manager, SAB

**SUBJECT: INTOX 9000 OPERATOR, QAS, AND INSTRUCTOR QUALIFICATION**

**FOR:**  Action  Decision  Information  Signature

Pursuant to R13-10-106(E), if a device is newly approved and no Operator and Quality Assurance Specialist permits have been issued for the device, a person may qualify to be an Operator, Quality Assurance Specialist, and an Instructor for the specified device by completing a Department-administered, manufacturer-endorsed, Instructor training course.

On November 14-16, 2017, CMI, Inc., provided an *"Intoxilyzer 9000 Maintenance, Repair, and Instructor Course"* to you that included the following:

- Review of the theory of breath testing,
- Instruction on the operation of the device,
- Procedures for testing instrument accuracy and proper operation in accordance with Calibration Checks and Quality Assurance Procedures approved by the Department, and
- A comprehensive examination where a score of 90 percent or better was required.

Each of you has continued in your training with the Intoxilyzer 9000 by participating in the validation of the Intoxilyzer 9000 for use in Arizona.

Based on the information provided from the manufacturer's class, each of you qualifies to be an Operator, Quality Assurance Specialist, and Instructor for the Intoxilyzer 9000. This memo serves as your notice.



## ARIZONA DEPARTMENT OF PUBLIC SAFETY

2102 WEST ENCANTO BLVD. P.O. BOX 6638 PHOENIX, ARIZONA 85005-6638 (602) 223-2000

*"Courteous Vigilance"*

DOUGLAS A. DUCEY    FRANK L. MILSTEAD  
Governor                      Director

March 11, 2019

The Honorable Katie Hobbs  
Arizona Secretary of State  
1700 West Washington Street, Fl 7  
Phoenix, AZ 85007-2808

Dear Secretary Hobbs:

Pursuant to Arizona Revised Statute (A.R.S.) 28-1324, The Arizona Department of Public Safety (DPS) has the statutory responsibility to approve quantitative breath testing devices. These devices, outlined in the Arizona Administrative Code (A.A.C.), include both Evidential Breath Test devices (EBTs) and Preliminary Breath Test devices (PBTs).

Per A.A.C. R13-10-103(I), devices and related Standard Operational and Quality Assurance can be approved, in writing, by the DPS Director. New devices must be successfully tested for compliance with the standards listed in R13-10-103(B) for use prior to and pending the device's addition to R13-10-103(E).

Thus, in accordance with A.A.C. R13-10-103(I), this letter provides written approval for Intoxilyzer Model 9000, manufactured by CMI, Inc., to be used as an approved device in Arizona. The related Standard Operational and Quality Assurance Procedures are also approved for use in Arizona. The approval shall expire three years after its effective date unless R13-10-103(E) is amended to include the approved device.

If you have any questions or concerns, please direct them to my attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank L. Milstead".

Colonel Frank L. Milstead  
Director



# ARIZONA DEPARTMENT OF PUBLIC SAFETY

2102 WEST ENCANTO BLVD. P.O. BOX 6638 PHOENIX, ARIZONA 85005-6638 (602) 223-2000

*"Courteous Vigilance"*

DOUGLAS A. DUCEY FRANK L. MILSTEAD  
Governor Director

July 15, 2019

Honorable Katie Hobbs  
Arizona Secretary of State  
1700 West Washington Street, Fl 7  
Phoenix, AZ 85007-2808

Secretary of State Hobbs,

Per A.A.C. R13-10-103(I), Breath Testing Devices and related Standard Operational and Quality Assurance Procedures can be approved, in writing, by the DPS Director.

In late February, the Intoxilyzer 9000 and the related Standard Operational and Quality Assurance Procedures were approved for Breath Alcohol testing. Two Exhibits to be used as part of the related Standard Operational and Quality Assurance Procedures have also been updated, and these updated Exhibits are attached.

If you have any questions or concerns, please direct them to my attention.

Sincerely,

*TE Chung for*

Col. Frank L. Milstead, Director  
Arizona Department of Public Safety

R13-10-103

Section B

1. The Intoxilyzer 9000 requires a combination of time, pressure, breath volume and the sample to reach a level alcohol slope before a sample will be accepted. This ensures that an essentially alveolar breath composition is achieved.
2. See the attached documentation for the required 10 tests at 4 different alcohol concentrations between 0.02 and 0.350g/210L including at least one value less than 0.100g/210L and one value greater than 0.250g/210L. The accuracy of all 10 measurements at each level are within +/- 5% and the standard deviation for each level is less than 0.0042g/210L.

Note: Both wet bath and dry gas alcohol concentrations were used for the instrument approval and accuracy and precision testing. The first 10 results for 4 different alcohol concentrations were used for the R13-10-103 initial instrument approval process. In addition to the 4 levels submitted for instrument approval, 5 additional alcohol concentrations were checked. All 9 alcohol concentrations were tested a minimum of 150 times each throughout the software versions. Each individual test throughout the 9 different levels met the accuracy and precision requirements contained in this section and the levels submitted for approval were chosen to represent a range of values that met the above requirements.

3. Duplicate breath samples were delivered through the instrument subject test sequence to demonstrate the device shall be capable of testing a breath sample that results in alcohol concentrations of less than 0.001g/210L of breath when alcohol-free subjects are tested.

Note: The alcohol concentration is measured by the Intoxilyzer 9000 utilizing infrared spectrophotometry at 4 different wavelengths of light.

### R13-10-103. Breath-testing Devices

Initial instrument comparison data completed 2016

#2

Test #	Level 0.040 gas	Level 0.300 gas	Level 0.080 wet.0	Level 0.200 wet
1	0.043	0.305	0.077	0.196
2	0.044	0.305	0.077	0.195
3	0.042	0.306	0.078	0.196
4	0.043	0.306	0.078	0.195
5	0.043	0.306	0.078	0.195
6	0.043	0.306	0.078	0.197
7	0.043	0.306	0.078	0.196
8	0.043	0.305	0.079	0.197
9	0.042	0.307	0.079	0.198
10	0.043	0.305	0.079	0.197
AVG	0.0429	0.306	0.0781	0.1962
STDEV	0.0006	0.0007	0.0007	0.0010

No test outside of 5% or .005

All STDEV below .0042

**Software Version .20 validation/testing completed 3/2018**

Test #	Level 0.040 gas	Level 0.300 gas	Level 0.080 wet.0	Level 0.200 wet
1	0.043	0.299	0.083	0.200
2	0.042	0.300	0.084	0.199
3	0.041	0.300	0.084	0.200
4	0.043	0.301	0.083	0.200
5	0.042	0.301	0.083	0.200
6	0.042	0.300	0.083	0.200
7	0.043	0.301	0.083	0.199
8	0.044	0.300	0.083	0.200
9	0.043	0.299	0.083	0.200
10	0.042	0.301	0.082	0.200
AVG	0.0425	0.300	0.0831	0.200
STDEV	0.0008	0.0008	0.0006	0.0004

No test outside of 5% or .005

All STDEV below .0042

Software Version .26 validation/testing completed 9/2018				
Test #	Level 0.040 gas	Level 0.300 gas	Level 0.080 wet.0	Level 0.200 wet
1	0.042	**	0.081	0.198
2	0.041	**	0.080	0.197
3	0.042	**	0.080	0.198
4	0.041	**	0.080	0.198
5	0.041	**	0.079	0.198
6	0.042	**	0.080	0.198
7	0.041	**	0.080	0.197
8	0.041	**	0.080	0.197
9	0.041	**	0.080	0.197
10	0.042	**	0.080	0.197
AVG	0.0414		0.080	0.1975
STDEV	0.0005		0.0005	0.0005
No test outside of 5% or .005				
All STDEV below .0042				

\*\*0.300 dry gas not tested on .26 due to gas being on backorder

Software Version .32 validation/testing completed 10/2018

Test #	Level 0.040 gas	Level 0.300 gas	Level 0.080 wet.0	Level 0.200 wet
1	0.041	0.298	0.083	0.199
2	0.041	0.296	0.083	0.198
3	0.041	0.296	0.082	0.198
4	0.041	0.298	0.081	0.198
5	0.040	0.298	0.082	0.198
6	0.041	0.297	0.082	0.198
7	0.040	0.297	0.081	0.198
8	0.041	0.298	0.081	0.198
9	0.042	0.297	0.082	0.199
10	0.041	0.297	0.081	0.199
AVG	0.0409	0.2972	0.0818	0.1983
STDEV	0.0006	0.0008	0.0008	0.0005

No test outside of 5% or .005

All STDEV below .0042

**Software Version .36 validation/testing completed 12/2018**

Test #	Level 0.040 gas	Level 0.300 gas	Level 0.080 wet.0	Level 0.200 wet
1	0.044	0.304	0.080	0.199
2	0.043	0.304	0.080	0.198
3	0.043	0.304	0.079	0.197
4	0.044	0.304	0.079	0.198
5	0.044	0.304	0.079	0.198
6	0.044	0.305	0.079	0.197
7	0.044	0.305	0.078	0.197
8	0.043	0.305	0.078	0.198
9	0.043	0.304	0.079	0.197
10	0.043	0.304	0.078	0.198
AVG	0.0435	0.3043	0.0789	0.1977
STDEV	0.0005	0.0005	0.0007	0.0007
No test outside of 5% or .005				
All STDEV below .0042				

Software Version .37 validation/testing completed 1/2019				
Test #	Level 0.040 gas	Level 0.300 gas	Level 0.080 wet.0	Level 0.200 wet
1	0.041	0.298	0.082	0.200
2	0.04	0.297	0.081	0.200
3	0.041	0.297	0.080	0.199
4	0.041	0.297	0.081	0.199
5	0.041	0.298	0.081	0.199
6	0.041	0.297	0.080	0.199
7	0.042	0.298	0.081	0.198
8	0.042	0.298	0.080	0.199
9	0.041	0.298	0.080	0.199
10	0.041	0.298	0.081	0.199
AVG	0.0411	0.2976	0.0807	0.1991
STDEV	0.0006	0.0005	0.0007	0.0006
No test outside of 5% or .005				
All STDEV below .0042				



316 E. 9th St.  
Owensboro, KY 42303  
1-800-835-0690  
Fax: 270-685-6678  
www.alcoholtest.com

January 23, 2019

To: Brooke Arnone  
Quality Assurance  
Arizona Department of Public Safety  
2222 W. Encanto Blvd.  
Phoenix, AZ 85009

Re: Intoxilyzer 9000 Software Release

Dear Ms. Arnone:

The Intoxilyzer 9000 software that the Arizona Department of Public Safety Crime Laboratory has reviewed, tested, and approved for use in Arizona will be labeled as version 9439.01.00.

If you have any questions or need further explanation, please contact me.

Sincerely,

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

Jon Grantham  
Engineering Manager  
CMI, Inc.



# **Economic, Small Business and Consumer Impact Statement**

**Title 13.           Public Safety**

**Chapter 10.       Department of Public Safety - Alcohol Testing**

**September 25, 2019**

## PREAMBLE

### **1. An identification of the proposed rulemaking, including all of the following:**

#### **(a) The conduct and its frequency of occurrence that the rule is designed to change.**

The Department certifies breath-alcohol testing devices to combat drivers operating vehicles under the influence. In 2017, there were 27,652 arrests by Arizona law enforcement agencies for driving under the influence of alcohol. This rulemaking adopts the current model Intoxilyzer 9000 and retains previous versions for law enforcement to continue to conduct tests on impaired drivers.

#### **(b) The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed.**

The Department believes that not adopting the Intoxilyzer 9000 will cause harm to the public by prohibiting law enforcement officers from conducting tests to remove impaired drivers from the roadway. Additionally, previous models are no longer supported by the manufacturer resulting in devices that could be non-usable or open to additional scrutiny in court proceedings.

#### **(c) The estimated change in frequency of the targeted conduct expected from the rule change.**

The Department does not expect any change in frequency. The Department expects law enforcement officers will be able to conduct investigations and tests of suspected impaired driver as normal. The Department believes the added value of a new scientific testing device may reduce the need for retests, reduce errors, or reduce down time due to maintenance improving the efficiency of the criminal justice system.

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

The Department expects minimal economic impact to law enforcement agencies. The Department is adopting the new Intoxilyzer 9000 and is retaining older evidentiary breath-alcohol testing models giving agencies choice. As a scientific testing device, agencies are aware of costs associated with purchase and maintenance in order for the device to meet scientific standards and scrutiny in court proceedings. The Department does not expect itself or other agencies to hire FTEs to administer this rulemaking. Small businesses will be unaffected. Permit holders will benefit by having more time to renew a permit. The public will benefit through reduced negative personal and economic impact caused when an impaired driver causes a collision.

- 3. If the economic, small business and consumer impact summary accompanies a proposed rule or a proposed expedited rule, the name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement.**

Name: Mr. Scott Rex, Crime Laboratory Manager  
Scientific Analysis Bureau, Central Regional Crime Laboratory

Address: Arizona Department of Public Safety  
PO Box 6638, Mail Drop 1150  
Phoenix, AZ 85005-6638

Telephone:(602) 223-2339

E-mail: srex@azdps.gov

## MAIN BODY

### **1. An identification of the proposed rulemaking.**

This rulemaking is related to a five-year review report, pursuant to A.R.S. § 41-1056, heard and approved by the Governor's Regulatory Review Council on June 7, 2016.

### **2. An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking.**

Arizona law enforcement agencies can continue to use the current approved devices listed in R13-10-103(E). However, when those discontinued devices are no longer able to meet standards, agencies will need to purchase the new Intoxilyzer Model 9000. The cost is approximately \$9000 per unit depending on each government entity's procurement process and negotiations with the vendor.

The Department issues permits to breath-alcohol device operators, breath-alcohol quality assurance specialists and breath-alcohol testing instructors who will benefit from the removal of the 30-day limit to renew a permit. These persons will also benefit in the ability to use the new Intoxilyzer Model 9000.

The public in general will benefit by the potential increase in arrests and removal, prosecution and conviction of persons driving under the influence of alcohol on Arizona's roadway through a new modern test device and maintaining a pool of qualified permit holders to conduct the test.

### **3. A cost benefit analysis of the following:**

The Department believes the protection of the public from persons driving under the influence (DUI) exceeds any costs associated with purchasing updated testing equipment and issuing permits. In 2017, Arizona law enforcement agencies made a total of 27,652 arrests for DUI. Of that, 3,747 were aggravated DUI, 23,905 were misdemeanor DUI, 1,346 were under Age 21 DUI. The average blood alcohol content was 0.144.<sup>1</sup>

- a. The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the economic, small business and consumer impact statement shall notify the joint legislative budget committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council.**

---

<sup>1</sup> Reference: *State of Arizona Highway Safety Annual Report, Federal Fiscal Year 2018*, Prepared by the Arizona Governor's Office of Highway Safety.

The Department does not require new full-time employees to implement the rules nor will any Department incur any new costs associated with allowing for the new device and removing the 30-day permit renewal limit.

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

The Department believes the rulemaking will result in a neutral cost to law enforcement agencies for testing devices. The Department did not remove older evidentiary breath testing devices from the approved list, but did add a new device. Given the older devices have been discontinued from the manufacturer, the cost to replace devices is a normal part of any ongoing scientific testing program.

The Department believes the rulemaking will result in a minimal cost savings to law enforcement agencies by allowing a permit holder to renew at any point. This ability allows the agency to maintain the productivity of the employee.

**c. The probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditure of employers who are subject to the proposed rulemaking.**

The Department does not anticipate businesses will need to hire new employees to comply with these rules. The ability of the manufacturer to produce and distribute the devices is unaffected by the rulemaking. The manufacturer will benefit from sales of the new device. The Department is not able to predict how many units the manufacturer will immediately sell to agencies in Arizona.

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

The Department believes the alcohol testing rules will have various impacts.

First, employment will be positively affected through permit holders having more flexibility to renew expiring permits staying productive. General employment in the state will benefit from safer roadways due to improved State reputation for safety, reduced lost time from work through injury and reduced impact on employers and family by reduced potential deaths when a DUI driver is removed from the roadway.

Secondly, there may be substantial negative economic impact on families and employers due to penalties and incarceration of persons convicted of DUI who may lose the ability to earn an income or the death of the DUI driver. Employers would take on costs associated with lower production, lost time from work and potentially hiring new people. The DUI driver and their families may have reduced income from potential loss of employment, potential to seek government assistance funding, and loss of transportation and driving privileges at the least.

**5. A statement of the probable impact of the proposed rulemaking on small businesses. The statement shall include:**

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

The Department is not able to identify a small business directly associated to this rulemaking. The Department does not believe this rulemaking will have an impact on small business other than the loss of employees arrested for DUI or the loss of employees who were the victim of a DUI driver.

**b. The administrative and other costs required for compliance with the proposed rulemaking.**

The Department does not believe small businesses will be affected by this rulemaking and therefore will not incur the need to hire additional people nor incur additional outside expenses to comply with the rules.

**c. A description of the methods prescribed in section 41–1035 that the agency may use to reduce the impact on small businesses with reasons for the agency's decision to use or not to use each method.**

The Department believes there is no impact to small businesses and therefore it is not possible to evaluate alternate methods to lower the impact any further.

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

As the Department previously mentioned, the directly affected private persons are the permit holders who benefit through the flexible ability to renew a permit without a restrictive timeframe to remain a productive employee. Consumers, as tax payers, are directly affected through appropriate and efficient use of public monies to purchase modern scientific test equipment to facilitate the removal of DUI drivers in turn reducing public safety costs, health care system costs, and impact to business and family economic status.

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

The State and the Department will not see any impact to revenues. Replacement of outdated, broken, no longer in production equipment to new modern equipment is an expected and planned for program expense. The Department does not charge a fee for any of the permits and already has the ability to renew certificates whenever a permit holder submits for renewal resulting in no effect on revenue.

- 7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.**

The Department is unable to identify any other less costly or less intrusive methods. The Department is adopting a device from the federal product list. Eleven of the instruments on the list are handheld preliminary breath test devices and not normally used for evidentiary breath testing. Based on laboratory testing by the Department as well as input from users, the Intoxilyzer Model 9000 was selected, tested and certified for evidentiary breath testing. Any of the other instruments could be submitted for approval by another agency if desired, but as a laboratory system, the Department cannot possibly support multiple instruments from multiple vendors from a cost and manpower perspective for calibration, repair, training and decades of court testimony predicated on current regulations. The federal product list does not set accuracy requirements as those requirements vary from state to state based on court rulings and legislative requirements; therefore the Department sets the standards.

- 8. A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.**

The Department relied on internal testing data for type acceptance of the Intoxilyzer Model 9000. **A copy of the certification results is included as an attachment.**



## **Replacement Check List**

For rules filed within the  
3rd Quarter  
July 1- September 30, 2016

# THE ARIZONA ADMINISTRATIVE CODE

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

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## **Title 13. Public Safety**

### **Chapter 10. Department of Public Safety - Alcohol Testing**

Supplement Release Quarter: 16-3

#### **Sections, Parts, Exhibits, Tables or Appendices modified**

Exhibits: E-1 through E-6 and F-1 through F-5

REMOVE Supp. 06-2  
Pages: 1 - 31

REPLACE with Supp. 16-3  
Pages: 1 - 21

*The Council can answer questions about expired rules in Supp. 16-3:*

Agency: Governor's Regulatory Review Council  
Address: 100 N. 15th Ave #402  
Phoenix, AZ 85012-0250  
Telephone: Phoenix, AZ 85007  
Phone: (602) 542-2058

*Disclaimer: Please be advised the council can only answer questions about the expired Exhibits listed above.*

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**PUBLISHER**  
**Arizona Department of State**  
**Office of the Secretary of State, Public Services Division**

## 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  
PUBLIC SERVICES DIVISION  
September 30, 2016

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### **RULES**

A.R.S. § 41-1001(17) states: “‘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. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

### **ADMINISTRATIVE CODE SUPPLEMENTS**

Rules filed by an agency to be published in the Administrative Code are updated quarterly. 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 2016 is cited as Supp. 16-1.

### **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.

### **ARTICLES AND SECTIONS**

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

### **HISTORICAL NOTES AND EFFECTIVE DATES**

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

### **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 are 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 the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/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 Arizona Administrative Register online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were 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**

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. 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.

*Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.*

**TITLE 13. PUBLIC SAFETY**

**CHAPTER 10. DEPARTMENT OF PUBLIC SAFETY - ALCOHOL TESTING**

(Authority: A.R.S. §§ 28-1322 through 28-1326 and 41-1713)

*Editor’s Note: This Chapter, consisting of Article 1, Sections R13-10-101 through R13-10-109, Exhibits A through D, Exhibits E-1, through E-6, F-1 through F-5, G-1 through G-6, and H-1, through H-4, made by final rulemaking at 12 A.A.R. 1916, effective May 18, 2006 (Supp. 06-2).*

**ARTICLE 1. DETERMINATION OF ALCOHOL CONCENTRATION**

*Article 1, consisting of Sections R13-10-101 through R13-10-109, Exhibits A through D, and Exhibits E-1 through E-6, F-1 through F-5, G-1 through G-6, and H-1 through H-4, made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).*

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## ARTICLE 1. DETERMINATION OF ALCOHOL CONCENTRATION

### R13-10-101. Definitions

In this Article, unless the context otherwise requires:

1. "Alcohol concentration" or "AC" means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.
2. "Analyst" means an individual who has been issued an analyst permit by the Department to use approved methods to make alcohol concentration determinations from blood or other bodily substances.
3. "Analyst permit" means a document issued by the Department indicating the permit holder has been found qualified to utilize an approved method in the determination of alcohol concentrations.
4. "Analytical procedure" means a series of operations utilized by an analyst when employing an approved method in the determination of alcohol concentration.
5. "Calibration Check" means an operation utilizing a standard alcohol concentration solution to determine whether a device is accurately measuring alcohol concentrations that is performed as a Standard Calibration Check Procedure by a Quality Assurance Specialist at least every 31 days or performed as Concurrent Calibration Check Procedures by an Operator within a successfully completed test sequence bracketing a duplicate breath test.
6. "Concurrent Calibration Check Procedure" means an operation performed by an Operator, utilizing a standard alcohol concentration solution, within a successfully completed test sequence to determine whether a device is accurately measuring alcohol concentration during a duplicate breath test.
7. "Concurrent Quality Assurance Procedure" means operations performed by an Operator, including a Concurrent Calibration Check Procedure and diagnostic checks, within a successfully completed test sequence to determine whether a device is accurately and properly measuring alcohol concentration during a duplicate breath test.
8. "Deprivation period" means at least a 15-minute period immediately prior to a duplicate breath test during which period the subject has not ingested any alcoholic beverages or other fluids, eaten, vomited, smoked or placed any foreign object in the mouth.
9. "Determination" means an analysis of a specimen of blood, breath, or other bodily substance and expressing the results of the analysis in terms of alcohol concentration.
10. "Device" means a breath testing instrument.
11. "Duplicate breath test" means two consecutive breath tests that immediately follow a deprivation period, agree within 0.020 AC of each other, and are conducted at least five and no more than 10 minutes apart.
12. "Instructor" means a person approved by the Department to provide breath test training to prospective Operators and Quality Assurance Specialists on a specific approved device.
13. "Method" means an analytical technique utilized by an analyst or a device to make an alcohol concentration determination (e.g. gas chromatography, infrared spectrophotometry, or specific fuel cell detection.)
14. "Operator" means a person who has been issued an Operator permit from the Department to operate a specific approved device for the purpose of determining an alcohol concentration from a specimen of breath and to perform the Concurrent Quality Assurance Procedures, Concurrent Calibration Check Procedures, and diagnostic checks to determine whether a device is operating accurately and properly.
15. "Operator Permit" means a document issued by the Department indicating that the permit holder has been found qualified to operate and perform the associated Quality Assurance Procedures on a specific approved device.
16. "Periodic Maintenance" means a Quality Assurance Procedure consisting of either of the following, which determines whether a device is operating accurately and properly:
  - a. Standard Calibration Check Procedure and Standard Quality Assurance Procedure, or
  - b. Concurrent Calibration Check Procedures and Concurrent Quality Assurance Procedures performed within a successfully completed test sequence bracketing a duplicate breath test.
17. "Preliminary breath test" means a pre-arrest breath test.
18. "Preliminary breath tester" or "PBT" means any approved device used prior to an arrest for the purpose of obtaining a determination of alcohol concentration from a specimen of breath and includes any device included on the National Highway Traffic Safety Administration's Conforming Products List of Evidential Breath Measurement Devices as incorporated by reference in R13-10-103(F).
19. "Procedure" means a series of operations used by an Operator or a Quality Assurance Specialist when employing an approved device in the determination of alcohol concentration or performing associated quality assurance testing.
20. "Quality Assurance Procedure" means Periodic Maintenance consisting of either of the following, which determines whether a device is operating accurately and properly:
  - a. Standard Calibration Check Procedure and Standard Quality Assurance Procedure, or
  - b. Concurrent Calibration Check Procedures and Concurrent Quality Assurance Procedures performed within a successfully completed test sequence bracketing a duplicate breath test.
21. "Quality Assurance Specialist" means a person who has been issued a Quality Assurance Specialist permit from the Department to perform the Standard Calibration Check Procedure and the Standard Quality Assurance Procedure to determine the accurate and proper operation of a specific approved device.
22. "Quality Assurance Specialist permit" means a document issued by the Department indicating that the permit holder has been found qualified to perform the Standard Calibration Check Procedure and the Standard Quality Assurance Procedure on a specific approved device.
23. "Standard Calibration Check Procedure" means operations performed by a Quality Assurance Specialist, at least every 31 days, to determine whether a device is accurately measuring alcohol concentration.
24. "Standard Operational Procedure" means operations performed by an Operator for the purpose of determining an alcohol concentration from a specimen of breath.
25. "Standard Quality Assurance Procedure" means operations performed by a Quality Assurance Specialist, at least every 90 days.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

**R13-10-102. Analyst Methods; Approval of Additional Methods**

- A. An analyst shall use one of the following methods to analyze blood or other bodily substances to determine a person's alcohol concentration:
  1. Gas chromatography, or
  2. Another method that has been approved by the Director under the procedure in subsections (B) and (C).
- B. An applicant for an analyst permit may submit, with the permit application, a request that the Director approve a method other than a method approved under subsection (A)(1) or (2).
- C. For a method to be approved by the Director, the method's accuracy and reproducibility shall comply with the following standards:
  1. The test results of samples with a standard alcohol concentration shall agree with the established value within the limits of  $\pm 0.01$  grams per 100 milliliters of blood or  $\pm 10$  percent, whichever is greater.
  2. The accuracy and precision shall be determined on the basis of ten measurements at four alcohol concentrations between 0.020 and 0.350 grams per 100 milliliters of blood, to include at least one value  $< 0.100$  and one value  $> 0.250$ .

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

**R13-10-103. Breath-testing Devices**

- A. The Director may approve devices used to determine alcohol concentration from breath after the Department successfully tests a typical model of the device for compliance with the standards in subsection (B).
- B. A device shall meet the following standards of performance:
  1. Breath specimens tested shall be alveolar in composition.
  2. The device shall be capable of analysis of a solution of known alcohol concentration with an accuracy limit of a systematic error of no more than  $\pm 0.005$  grams per 210 liters of breath or  $\pm 5$  percent, whichever is greater, and a precision limit of an average standard deviation of no more than 0.0042 grams per 210 liters of breath. The accuracy and precision of the device being evaluated shall be determined on the basis of 10 consecutive measurements at 4 alcohol vapor concentrations that are between 0.020 and 0.350 grams per 210 liters of breath, to include at least one value  $< 0.100$  and one value  $> 0.250$ .
  3. The device shall be capable of testing a breath sample that results in alcohol concentrations of less than 0.01 grams per 210 liters of breath when alcohol-free subjects are tested.
- C. The Department, upon specific findings that a device, method, or breath test procedure is inaccurate, unreliable, or is an unacceptable test for determining alcohol concentration or that its use has been discontinued in the state, shall disapprove in writing further use of the device, method, or procedure.
- D. The methods approved by the Director for use by a device to determine alcohol concentration are infrared spectrophotometry and specific fuel cell detection.
- E. The following devices are approved by the Director:

Device/Model	Manufacturer
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Intoxilyzer Model 5000 with or without Vapor Recirculation and with or without Keyboard	CMI, Inc.
Intoxilyzer Model 5000EN	CMI, Inc.
Intoxilyzer Model 8000	CMI, Inc.
RBT AZ (Alco Sensor AZ/RBT AZ)	Intoximeter, Inc.

- F. Products included on the National Highway Traffic Safety Administration's Conforming Products List of Evidential Breath Measurement Devices set forth in 69 FR 42237-42239 (July 14, 2004) are approved by the Director as preliminary breath testers to determine alcohol concentration. This document is incorporated by reference and does not include any later amendments or editions. A copy of this document is available from the Department and may be obtained from the National Highway Traffic Safety Administration's web site ([www.nhtsa.gov](http://www.nhtsa.gov)) or by contacting the U.S. Government Printing Office, 732 North Capitol Street NW, Washington, DC 20401.
- G. Devices listed in subsection (E) may be used to administer preliminary breath tests.
- H. Except when a device is used as a PBT or for other non-evidential testing purposes, an Operator permit and Standard Operational Procedure are required for the operation of devices listed in subsection (E).
- I. In addition to the devices approved in subsection (E), the Director may approve, in writing, a device and related Standard Operational and Quality Assurance Procedures after the device has been successfully tested for compliance with the standards in subsection (B) for use prior to and pending the device being added to subsection (E). The approval shall expire three years after its effective date unless subsection (E) is amended to include the approved device.
- J. In addition to devices approved as preliminary breath testers in subsection (F), the Director may approve in writing as a PBT a new device placed on subsequent National Highway Traffic Safety Administration's Conforming Products Lists of Evidential Breath Measurement Devices for use pending the new Conforming Products List being added to subsection (F).

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

**R13-10-104. Testing Procedures**

- A. Law enforcement agencies or individuals acting independently of law enforcement agencies who conduct alcohol concentration determinations by means of devices shall utilize a quality assurance program that is conducted by Quality Assurance Specialists or Operators and generate records of periodic maintenance. This quality assurance program shall include:
  1. Criteria for ensuring the accurate and proper operation of devices by the regular performance of Calibration Checks and Quality Assurance Procedures as referenced in subsections (A)(2) and (A)(3);
  2. Calibration Checks of devices that are performed within 31 days of each other as Standard Calibration Check Procedures or during a test sequence bracketing a duplicate breath test as Concurrent Calibration Check Procedures and recorded according to the requirements of the appropriate Quality Assurance Procedures set forth in Exhibits E-2, E-3, F-2, F-3, G-2, G-3, G-6 and H-2 or as approved by the Director according to R13-10-103(I). These checks shall indicate that the device is capable of determining the value of a standard alcohol concentration

- solution with an accuracy limit of  $\pm 0.01$  grams per 210 liters of breath or  $\pm 10$  percent, whichever is greater;
3. Quality Assurance Procedure checks of devices that are performed within 90 days of each other as Standard Quality Assurance Procedures or during a test sequence bracketing a duplicate breath test as Concurrent Quality Assurance Procedures, and recorded according to the requirements of the appropriate Quality Assurance Procedures set forth in Exhibits E-4, E-5, F-4, F-5, G-4, G-5, G-6, H-3 and H-4 or as approved by the Director according to R13-10-103(I). These checks shall indicate that the device is capable of proper operation and is functioning as required by the Quality Assurance Procedures for the device;
  4. Standard alcohol concentration solutions, either liquid or gas, that are National Institute of Standards and Technology (NIST) traceable; and
  5. Records of Calibration Checks, Quality Assurance Procedures and maintenance or repairs for each device in use.
- B.** An Operator shall utilize the Standard Operational Procedure approved by the Department for the device being operated in performing tests for the determination of alcohol concentration, as contained in Exhibits E-1, E-6, F-1, G-1, G-6 and H-1 or as approved by the Director according to R13-10-103(I).
- C.** Duplicate breath tests shall be administered at intervals of not less than five minutes nor more than 10 minutes. The results of both tests shall be within 0.020 alcohol concentration of each other. If the second test is not within 0.020 alcohol concentration of the first test, additional tests shall be administered until the results of two consecutive tests are within 0.020 alcohol concentration.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

#### R13-10-105. Permits and Certificates

- A.** The Department shall issue Analyst permits to qualified applicants, in accordance with R13-10-106(A), who have satisfactorily demonstrated through proficiency testing as specified in R13-10-108(A) their proficiency in conducting an alcohol concentration determination by one or more of the methods listed in R13-10-102. The Analyst permit shall:
1. State the method of alcohol concentration determination the permit holder is approved to utilize and the type of specimen the permit holder is approved to analyze (blood or other bodily substances); and
  2. Be valid for one year.
- B.** An Analyst shall employ, in testing for alcohol concentration in matters arising under A.R.S. Title 28, Chapter 4, Article 3, the same analytical procedures as those employed by the analyst for proficiency testing.
- C.** The Department shall issue two categories of device permits.
1. Operator permits shall be issued to applicants who qualify under R13-10-106(B) or (E). This permit authorizes operation and performance of associated Quality Assurance Procedures, including Concurrent Calibration Check Procedures and Concurrent Quality Assurance Procedures, performed within a successfully completed test sequence bracketing a duplicate breath test on the device specified on the permit. Operator permits issued after the initial effective date of this Section shall be valid for five years from the date of issue. Permits issued to Operators before the initial effective date of this Section shall remain in effect and be valid for five years after the initial effective date of this Section.

2. Quality Assurance Specialist permits shall be issued to applicants who hold a valid Operator permit and who qualify as a Quality Assurance Specialist under R13-10-106(C) or (E). This Quality Assurance Specialist permit authorizes the holder to perform Quality Assurance Procedures, including Standard Calibration Check Procedures and Standard Quality Assurance Procedures, on the device specified on the permit. Quality Assurance Specialist permits issued after the initial effective date of this Section shall be valid for five years from the date of issue. Permits issued to Quality Assurance Specialists before the initial effective date of this Section shall remain in effect and be valid for five years after the initial effective date of this Section.
  3. Operator and Quality Assurance Specialist permits may be renewed by application as required by R13-10-107 and successful completion of a recertification course approved by the Department.
  4. The Department shall issue duplicate (replacement) permits upon request and upon verification of the qualifications set forth in R13-10-106.
- D.** Law enforcement agencies shall supply the Department, upon request, with a list of current Operator and Quality Assurance Specialist permit holders and shall update the list as required by the Department, but no more frequently than annually.
- E.** The Department shall issue Instructor certificates to qualified applicants who hold valid Operator and Quality Assurance Specialist permits and who qualify as an Instructor under R13-10-106(D) or (E). The Instructor certificate authorizes the holder to provide breath test training to prospective Operators and Quality Assurance Specialists on a specific approved device. Instructor certificates issued after the initial effective date of this Section shall be valid for five years from the date of issue. Instructor certificates issued before the initial effective date of this Section shall remain in effect and be valid for five years from the initial effective date of this Section. Instructor certificates may be renewed by application as required by R13-10-107 and successful completion of a recertification examination approved by the Department.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

#### R13-10-106. Qualifications

- A.** To qualify for an Analyst permit, a person shall hold a degree from a college or university accredited by a regional accrediting body recognized by the United States Department of Education and have earned 15 or more semester credits, or the equivalent, of chemistry, including three or more credits of organic chemistry.
- B.** To qualify for an Operator permit, a person shall:
1. Be employed by a law enforcement agency or laboratory that has access to a device for the person's use as set forth in R13-10-103; and
  2. Complete a course in the determination of alcohol concentration approved by the Department with a score of 80 percent or better. The Department shall approve courses taught by an Instructor if they contain the following:
    - a. Instruction on the effects of alcohol on the human body;
    - b. Instruction on and demonstration of the operational principles of the selected device, which shall include a functional description and detailed operational description of the method;

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- c. Instruction on the legal aspects of breath tests in general and on the particular method to be employed;
  - d. Concurrent Calibration Check Procedures (when applicable to the device) approved by the Department;
  - e. Concurrent Quality Assurance Procedures (when applicable to the device) approved by the Department;
  - f. Applicant participation with the appropriate device utilizing reference standards, testing of subjects, or other methods that will indicate the actual response of the device; and
  - g. Written and practical examination of the applicant for the purpose of determining the person's understanding of the course material and proficiency in operating the device.
- C. To qualify for a Quality Assurance Specialist permit, a person shall possess a valid Operator permit to operate the approved device and complete a course of training approved by the Department with a score of 80 percent or better. The Department shall approve courses taught by an Instructor if they contain the following:
- 1. Review of the theory of breath testing and the operation of the particular testing device;
  - 2. Standard Calibration Check Procedures approved by the Department;
  - 3. Standard Quality Assurance Procedures approved by the Department;
  - 4. Applicant participation with the appropriate device utilizing reference standards, testing of subjects, or other methods that will indicate the actual response of the device; and
  - 5. Written and practical examination of the applicant for the purpose of determining the person's understanding of the course material and proficiency in operating the device.
- D. To qualify as an Instructor, a person shall hold valid Operator and Quality Assurance Specialist permits on the device for which instruction is given. In addition, except as provided in subsection (E), all applicants shall complete a comprehensive instructor examination approved and administered by the Department with a score of 90 percent or better. The Department shall approve instructor examinations that include the following:
- 1. The theory of breath testing and the operation of the specific device, and
  - 2. Procedures for testing instrument accuracy and proper operation in accordance with Calibration Checks and Quality Assurance Procedures approved by the Department.
- E. If a device is newly approved and no Operator and Quality Assurance Specialist permits have been issued for the device, a person may qualify to be an Operator, Quality Assurance Specialist, and Instructor for the specific device by completing a Department-administered, manufacturer-endorsed, instructor training course and a comprehensive examination with a score of 90 percent or better. The Instructor training course shall include the following:
- 1. Review of the theory of breath testing,
  - 2. Instruction on the operation of the device, and
  - 3. Procedures for testing instrument accuracy and proper operation in accordance with Calibration Checks and Quality Assurance Procedures approved by the Department.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

**R13-10-107. Application Processes**

- A. An applicant for an initial Analyst permit or the renewal of an existing Analyst permit shall complete the form shown as Exhibit A and submit it to the Department. An application for renewal of an Analyst permit shall be submitted no later than 30 days prior to the date the current permit expires. If the applicant makes a written or verbal request and shows good cause, the Department shall extend this deadline.
- B. An applicant for an initial Operator permit or the renewal of an existing Operator permit shall complete the form shown as Exhibit B and submitted to the Department. An application for renewal of an Operator permit shall be submitted no later than 30 days prior to the date the current permit expires. If the applicant makes a written or verbal request and shows good cause, the Department shall extend this deadline.
- C. An applicant for an initial Quality Assurance Specialist permit or the renewal of an existing Quality Assurance Specialist permit shall complete the form shown as Exhibit C and submitted to the Department. An application for renewal of a Quality Assurance Specialist permit shall be submitted no later than 30 days prior to the date the current permit expires. If the applicant makes a written or verbal request and shows good cause, the Department shall extend this deadline.
- D. An applicant for an initial Instructor approval or the renewal of an existing Instructor approval shall complete the form shown as Exhibit D and submitted to the Department. An application for renewal of an Instructor shall be submitted no later than 30 days prior to the date the current certificate expires. If the applicant makes a written or verbal request and shows good cause, the Department shall extend this deadline.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

**R13-10-108. Examination and Quality Assurance Requirements for Analysts**

- A. The Department shall require an Analyst permit applicant to successfully demonstrate the applicant's proficiency in making alcohol concentration determinations from test specimens in accordance with subsection (B). The applicant shall be examined only on the methods that relate to the type of determination for which the applicant desires a permit.
- B. An applicant shall, before receiving an initial Analyst permit or renewal of an existing Analyst permit, participate in and successfully complete proficiency testing administered by the Department. An applicant shall successfully analyze samples by testing at least three suitable reference standards or control samples with a known alcohol concentration in the range of 0.00 to 0.40 grams per 100 milliliters of blood and having the results agree with the established value within the limits of  $\pm 0.01$  grams per 100 milliliters of blood or  $\pm 10$  percent, whichever is greater. Proficiency testing shall be administered by the Department as follows:
  - 1. An applicant shall correctly analyze all proficiency samples in the set provided by the Department.
  - 2. When returning the results of analyses to the Department, the applicant shall attach an affidavit attesting that the applicant analyzed the proficiency samples without help or input from any other person.
  - 3. An applicant failing to correctly analyze all proficiency samples in the set will be provided an opportunity to successfully analyze a second set of samples.

4. The Department shall deny the application of an applicant who declines or fails to correctly analyze the second set of proficiency samples and shall not issue a permit.
  5. An applicant who fails to successfully analyze the second set of proficiency samples and whose application is denied may reapply for an analyst's permit beginning 90 days from the date of denial.
- C.** An analyst who conducts alcohol concentration determinations shall implement and maintain a quality assurance program. This program shall be designed to ensure the validity of test results by providing for:
1. Chain of custody,
  2. Quality control,
  3. Analytical procedures,
  4. Documentation of test results, and
  5. Participation in proficiency testing.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

**R13-10-109. Revocation or Suspension of Permits; Appeals**

- A.** The Department may suspend or revoke a permit for any of the following reasons:
1. A false statement on the permit holder's application,
  2. The neglect or refusal to examine and report the results of sample specimens given the Analyst permit holder for proficiency testing purposes,
- B.** When a permit has been suspended or revoked in one or more of the approved methods or devices and there remain one or more methods or devices for which the permittee is approved that are not affected by the revocation or suspension, the permit holder shall return the suspended or revoked permit to the Department. The Department shall issue a replacement permit that shows only those approved methods or devices unaffected by the event leading to the suspension or revocation.
- C.** The provisions of A.R.S. Title 41, Chapter 6, Article 10 are applicable to denials, revocations, suspensions and administrative appeals.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Department of Public Safety - Alcohol Testing

Exhibit A. Application for Blood Alcohol Analyst Permit

APPLICATION FOR BLOOD ALCOHOL ANALYST PERMIT

ARIZONA DEPARTMENT OF PUBLIC SAFETY

Scientific Analysis Bureau
2102 W Encanto Blvd
Phoenix, Arizona 85009
(602) 223-2394

DO NOT WRITE
IN THIS AREA
Permit # \_\_\_\_\_
Date issued \_\_\_\_\_
Approved by \_\_\_\_\_

Application for Analyst permit to perform analysis of blood or other bodily substances for alcohol concentration determinations.

TO BE COMPLETED BY APPLICANT - PLEASE PRINT CLEARLY
(ALL ITEMS MUST BE COMPLETED OR APPLICATION WILL NOT BE ACCEPTED)

IS THIS APPLICATION FOR? INITIAL PERMIT \_\_\_\_\_ RENEWAL \_\_\_\_\_ PERMIT NUMBER \_\_\_\_\_

1. Name: \_\_\_\_\_
(Full legal name) (Last) (First) (Middle) (Maiden)

Name: \_\_\_\_\_
(As you would like it to appear on permit) (Last) (First) (Middle - optional)

2. Date of Birth: \_\_\_\_\_
(Month) (Day) (Year)

3. Employer: \_\_\_\_\_
(Name)
\_\_\_\_\_  
(Address)
\_\_\_\_\_  
(Phone) (Fax)

4. Email address: \_\_\_\_\_

5. Education: I have earned a degree from an accredited college or university with 15 or more semester credits or the equivalent of college chemistry, including at least 3 credits in organic chemistry. Yes \_\_\_\_\_ No \_\_\_\_\_

College(s) attended \_\_\_\_\_
(City & State) (Year Graduated) (Degree)
\_\_\_\_\_  
(City & State) (Year Graduated) (Degree)

6. Check the analytical method(s) for which you require an Analyst permit:
Gas Chromatography \_\_\_\_\_ Other: \_\_\_\_\_

I hereby certify that the information submitted in this application is true and correct.

\_\_\_\_\_  
(Signature of Applicant) (Date)

Historical Note

New Exhibit A made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Department of Public Safety - Alcohol Testing

Exhibit B. Application for Breath Alcohol Operator Permit

APPLICATION FOR BREATH ALCOHOL OPERATOR PERMIT

ARIZONA DEPARTMENT OF PUBLIC SAFETY

Scientific Analysis Bureau
2102 W Encanto Blvd
Phoenix, Arizona 85009
(602) 223-2394

DO NOT WRITE
IN THIS AREA
Permit #
Date issued
Approved by

Application for an Operator permit to perform alcohol concentration determinations and associated quality assurance procedures on an approved device.

TO BE COMPLETED BY APPLICANT - PLEASE PRINT CLEARLY
(ALL ITEMS MUST BE COMPLETED OR APPLICATION WILL NOT BE ACCEPTED)

IS THIS APPLICATION FOR? INITIAL PERMIT RENEWAL

DO YOU HAVE AN OPERATOR PERMIT(S)? YES NO

OPERATOR DEVICE(S) / PERMIT NUMBER(S)

1. Name: (Full Legal Name) (Last) (First) (Middle) (Maiden)

Name: (As you want it to appear on permit) (Last) (First) (Middle - optional)

2. Employer: (Name) (Address) (Phone) (Fax)

3. Email address:

4. Operator permit requested for what device(s):

I hereby certify that the information submitted in this application is true and correct.

(Signature of Applicant) Badge # (Date)

\*\*\*\*\*

TO BE COMPLETED BY INSTRUCTOR

1. Agency Conducting Training:

2. Date and Location of Training: (Date) (Location)

3. Arizona Department of Public Safety course approval number:

4. Did applicant successfully complete the course? Pass Fail

(Signature of Instructor) (Print Name) (Date)

DPS Form Exh B (Rev 05-1)

Historical Note

New Exhibit B made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Department of Public Safety - Alcohol Testing

Exhibit C. Application for Breath Alcohol Quality Assurance Specialist Permit

APPLICATION FOR BREATH ALCOHOL QUALITY ASSURANCE SPECIALIST PERMIT

ARIZONA DEPARTMENT OF PUBLIC SAFETY

Scientific Analysis Bureau
2102 W Encanto Blvd
Phoenix, Arizona 85009
(602) 223-2394

DO NOT WRITE
IN THIS AREA

Permit # \_\_\_\_\_
Date issued \_\_\_\_\_
Approved by \_\_\_\_\_

Application for a QAS permit to perform quality assurance procedures on an approved device.

TO BE COMPLETED BY APPLICANT - PLEASE PRINT CLEARLY
(ALL ITEMS MUST BE COMPLETED OR APPLICATION WILL NOT BE ACCEPTED)

IS THIS APPLICATION FOR? INITIAL PERMIT \_\_\_\_\_ RENEWAL \_\_\_\_\_

DO YOU HAVE AN OPERATOR PERMIT(S)? YES \_\_\_\_\_ NO \_\_\_\_\_

OPERATOR DEVICE(S) / PERMIT NUMBER(S) \_\_\_\_\_

1. Name: \_\_\_\_\_
(Full Legal Name) (Last) (First) (Middle) (Maiden)

Name: \_\_\_\_\_
(As you want it to appear on permit) (Last) (First) (Middle - optional)

2. Employer: \_\_\_\_\_
(Name)
\_\_\_\_\_(Address)
\_\_\_\_\_(Phone) \_\_\_\_\_(Fax)

3. Email address: \_\_\_\_\_

4. QAS permit requested for what device(s): \_\_\_\_\_

I hereby certify that the information submitted in this application is true and correct.

\_\_\_\_\_(Signature of Applicant) \_\_\_\_\_(Badge #) \_\_\_\_\_(Date)

\*\*\*\*\*

TO BE COMPLETED BY INSTRUCTOR

1. Agency Conducting Training: \_\_\_\_\_

2. Date and Location of Training: \_\_\_\_\_
(Date) (Location)

3. Arizona Department of Public Safety course approval number: \_\_\_\_\_

4. Did applicant successfully complete the course? Pass \_\_\_\_\_ Fail \_\_\_\_\_

\_\_\_\_\_(Signature of Instructor) \_\_\_\_\_(Print Name) \_\_\_\_\_(Date)

DPS Form Exh C (Rev 05-1)

Historical Note

New Exhibit C made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Exhibit D. Application for Breath Testing Instructor

APPLICATION FOR BREATH TESTING INSTRUCTOR

ARIZONA DEPARTMENT OF PUBLIC SAFETY

Scientific Analysis Bureau
2102 W Encanto Blvd
Phoenix, Arizona 85009
(602) 223-2394

Application for an Instructor certificate to provide Operator and QAS training on an approved device.

TO BE COMPLETED BY APPLICANT - PLEASE PRINT CLEARLY

(ALL ITEMS MUST BE COMPLETED OR APPLICATION WILL NOT BE ACCEPTED)

IS THIS APPLICATION FOR? INITIAL APPROVAL \_\_\_\_\_ RENEWAL \_\_\_\_\_

DO YOU HAVE AN OPERATOR PERMIT(S)? YES \_\_\_\_\_ NO \_\_\_\_\_

OPERATOR DEVICE(S) / PERMIT NUMBER(S)? \_\_\_\_\_

DO YOU HAVE QAS PERMIT(S)? YES \_\_\_\_\_ NO \_\_\_\_\_

QAS DEVICE(S) / PERMIT NUMBER(S) \_\_\_\_\_

1. Name: \_\_\_\_\_
(Full Legal Name) (Last) (First) (Middle) (Maiden)

Name: \_\_\_\_\_
(As you want it to appear on certificate) (Last) (First) (Middle-optional)

2. Employer: \_\_\_\_\_
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Phone) (Fax)

3. Email address: \_\_\_\_\_

4. Instructor certificate requested for what device: \_\_\_\_\_

I hereby certify that the information submitted in this application is true and correct.

\_\_\_\_\_  
(Signature of Applicant) (Date)

\*\*\*\*\*

TO BE COMPLETED BY REGULATOR

1. Arizona Department of Public Safety examination approval number: \_\_\_\_\_

2. Did applicant successfully attain Instructor approval? Pass \_\_\_\_\_ Fail \_\_\_\_\_

\_\_\_\_\_  
(Signature of Regulator) (Print Name) (Date)

DPS Form Exh D (Rev 05-1)

Historical Note

New Exhibit D made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

## Department of Public Safety - Alcohol Testing

**Exhibit E-1. Expired****Historical Note**

New Exhibit E-1 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).  
Exhibit E-1 expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2054, effective May 31, 2016 (Supp. 16-3).

**Exhibit E-2. Expired****Historical Note**

New Exhibit E-2 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).  
Exhibit E-2 expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2054, effective May 31, 2016 (Supp. 16-3).

**Exhibit E-3. Expired****Historical Note**

New Exhibit E-3 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).  
Exhibit E-3 expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2054, effective May 31, 2016 (Supp. 16-3).

**Exhibit E-4. Expired****Historical Note**

New Exhibit E-4 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).  
Exhibit E-4 expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2054, effective May 31, 2016 (Supp. 16-3).

**Exhibit E-5. Expired****Historical Note**

New Exhibit E-5 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).  
Exhibit E-5 expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2054, effective May 31, 2016 (Supp. 16-3).

**Exhibit E-6. Expired****Historical Note**

New Exhibit E-6 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Exhibit E-6 expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2054, effective May 31, 2016 (Supp. 16-3).

**Exhibit F-1. Expired****Historical Note**

New Exhibit F-1 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).  
Exhibit F-1 expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2054, effective May 31, 2016 (Supp. 16-3).

**Exhibit F-2. Expired****Historical Note**

New Exhibit F-2 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).  
Exhibit F-2 expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2054, effective May 31, 2016 (Supp. 16-3).

**Exhibit F-3. Expired****Historical Note**

New Exhibit F-3 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).  
Exhibit F-3 expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2054, effective May 31, 2016 (Supp. 16-3).

**Exhibit F-4. Expired****Historical Note**

New Exhibit F-4 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).  
Exhibit F-4 expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2054, effective May 31, 2016 (Supp. 16-3).

**Exhibit F-5. Expired****Historical Note**

New Exhibit F-5 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).  
Exhibit F-5 expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2054, effective May 31, 2016 (Supp. 16-3).

Exhibit G-1. Standard Operational Procedure, Intoxilyzer Model 8000

OPERATIONAL CHECKLIST
ARIZONA DEPARTMENT OF PUBLIC SAFETY
STANDARD OPERATIONAL PROCEDURE
INTOXILYZER MODEL 8000
DUPLICATE BREATH TEST

SUBJECT NAME \_\_\_\_\_ DATE \_\_\_\_\_

AGENCY \_\_\_\_\_ OPERATOR \_\_\_\_\_

INSTRUMENT SERIAL # \_\_\_\_\_ LOCATION \_\_\_\_\_

TEST RESULTS 0. \_\_\_\_\_ AC TIME \_\_\_\_\_
0. \_\_\_\_\_ AC TIME \_\_\_\_\_
0. \_\_\_\_\_ AC TIME \_\_\_\_\_

Immediately preceding administration of the tests, subject underwent at least a 15-minute deprivation period:

From \_\_\_\_\_ to \_\_\_\_\_ by \_\_\_\_\_
(Time) (Time) (Name)

- ( ) 1. Display reads "PUSH BUTTON TO START".
( ) 2. Push Start Test button.
( ) 3. Follow automated instructions on instrument display.
( ) 4. If test record reads "Successfully Completed Test Sequence" go to step 5
OR
If test record reads "Not a Successfully Completed Test Sequence", and subject will be tested again, remove test record and go to step 1
OR
If test record reads "Not a Successfully Completed Test Sequence", and subject will not be tested again, go to step 5
( ) 5. Remove test record.

Note: Duplicate breath tests shall be administered at intervals of not less than 5 minutes nor more than 10 minutes apart and the two consecutive tests shall agree within 0.020 alcohol concentration.

DPS Form Exh G-1 (Rev 05-1)

Historical Note

New Exhibit G-1 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Exhibit G-2. Standard Calibration Check Procedure, Intoxilyzer Model 8000

THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104(A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY
STANDARD QUALITY ASSURANCE PROCEDURES
INTOXILYZER MODEL 8000
STANDARD CALIBRATION CHECK PROCEDURE

QA SPECIALIST \_\_\_\_\_ AGENCY \_\_\_\_\_

DATE \_\_\_\_\_ TIME \_\_\_\_\_

INTOXILYZER SERIAL # \_\_\_\_\_ LOCATION \_\_\_\_\_

- ( ) 1. Ensure that gas tank is attached to instrument and contains a standard alcohol concentration solution \_\_\_\_\_ AC.
OR
Pour a standard alcohol concentration solution \_\_\_\_\_ AC, into a clean dry simulator and assemble the simulator. Ensure that a tight seal has been made. Turn on the simulator and allow temperature to reach 34° C ± 0.2° C
( ) 2. Intoxilyzer 8000 display reads "PUSH BUTTON TO START"
( ) 3. Go to the "Control Testing Menu". Select "D" for dry control test or "W" for wet control test. After selection is made press ENTER.
( ) 4. Air blank completed.
( ) 5. Calibration check completed. Test results 0. \_\_\_\_\_ AC.
( ) 6. Air blank completed.
( ) 7. Remove printed record. Attach the record to the completed checklist.

SIGNATURE \_\_\_\_\_

DPS Form Exh G-2 (Rev 05-01)

Historical Note

New Exhibit G-2 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

**Exhibit G-3. Standard Calibration Check Procedure Intoxilyzer, Model 8000 (Option P)**

**THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104(A)**

**ARIZONA DEPARTMENT OF PUBLIC SAFETY  
STANDARD QUALITY ASSURANCE PROCEDURES  
INTOXILYZER MODEL 8000  
STANDARD CALIBRATION CHECK PROCEDURE  
(OPTION P)**

1. a. Ensure dry gas tank is attached to instrument and contains a standard alcohol concentration solution alcohol standard.  
OR
- b. Pour a standard alcohol concentration solution into a clean dry simulator and assemble the simulator.  
Ensure that a tight seal has been made. Turn on the simulator and allow temperature to reach  $34^{\circ}\text{C} \pm 0.2^{\circ}\text{C}$
2. Intoxilyzer 8000 display reads "PUSH BUTTON TO START"
3. Go to the "Control Testing Menu". Select "D" for dry control test or "W" for wet control test. After selection is made press ENTER.
4. Air blank completed.
5. Standard Calibration Check completed.
6. Air blank completed.

DPS Form Exh G-3 (Rev 05-01)

**Historical Note**

New Exhibit G-3 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Exhibit G-4. Standard Quality Assurance Procedure Intoxilyzer, Model 8000

THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104(A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY
STANDARD QUALITY ASSURANCE PROCEDURES
INTOXILYZER MODEL 8000
STANDARD QUALITY ASSURANCE PROCEDURE

QA SPECIALIST \_\_\_\_\_ AGENCY \_\_\_\_\_

DATE \_\_\_\_\_ TIME \_\_\_\_\_

INTOXILYZER SERIAL # \_\_\_\_\_ LOCATION \_\_\_\_\_

( ) 1. Display Reads "PUSH BUTTON TO START"

DIAGNOSTIC TESTS

- ( ) 1. Clock time check.
( ) 2. Date check.

OPERATIONAL TESTS

- ( ) 1. Alcohol-free subject test result 0. \_\_\_\_\_ AC.
( ) 2. Error recognition logic system functioning.
Not a Successfully Completed Test Sequence printed
( ) 3. Proper sample recognition system.
Not a Successfully Completed Test Sequence printed
Deficient sample printed.
( ) 4. Standard Calibration Check standard 0. \_\_\_\_\_ AC. Result 0. \_\_\_\_\_ AC.

Instrument is operating properly and accurately. YES \_\_\_\_\_ NO \_\_\_\_\_

COMMENTS \_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

SIGNATURE \_\_\_\_\_

DPS Form Exh G-4 (Rev 05-01)

Historical Note

New Exhibit G-4 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

**Exhibit G-5. Standard Quality Assurance Procedure Intoxilyze, Model 8000 (Option P)****THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104(A)  
ARIZONA DEPARTMENT OF PUBLIC SAFETY****STANDARD QUALITY ASSURANCE PROCEDURES  
INTOXILYZER MODEL 8000****STANDARD QUALITY ASSURANCE PROCEDURE  
(OPTION P)**

Display Reads "Push Button to Start"

**DIAGNOSTIC TESTS**

1. Clock time check.
2. Date check.

**OPERATIONAL TESTS**

1. Alcohol-free subject test result.
2. Error recognition logic system functioning.  
Not a Successfully Completed Test Sequence printed or recorded.
3. Proper sample recognition system.  
Not a Successfully Completed Test Sequence printed or recorded.  
Deficient sample printed or recorded.
4. Standard alcohol concentration solution.

DPS Form Exh G-5 (Rev 05-01)

**Historical Note**

New Exhibit G-5 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Exhibit G-6. Standard Operational and Quality Assurance Procedure, Intoxilyzer Model 8000

THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104(A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD OPERATIONAL AND QUALITY ASSURANCE PROCEDURES  
INTOXILYZER MODEL 8000

DUPLICATE BREATH TEST WITH CONCURRENT QUALITY ASSURANCE PROCEDURES

SUBJECT NAME \_\_\_\_\_ DATE \_\_\_\_\_

AGENCY \_\_\_\_\_ OPERATOR \_\_\_\_\_

INSTRUMENT SERIAL # \_\_\_\_\_ LOCATION \_\_\_\_\_

SUBJECT TESTS		DIAGNOSTIC CHECKS		CALIBRATION CHECKS
0. _____ AC	TIME _____	_____ PASS	_____ FAIL	0. _____ AC
0. _____ AC	TIME _____	_____ PASS	_____ FAIL	0. _____ AC
0. _____ AC	TIME _____	_____	_____	

Immediately preceding administration of the tests, subject underwent at least a 15-minute deprivation period:

From \_\_\_\_\_ to \_\_\_\_\_ by \_\_\_\_\_  
(Time) (Time) (Name)

- ( ) 1. Display reads "PUSH BUTTON TO START".
- ( ) 2. Push Start Test button.
- ( ) 3. Follow automated instructions on instrument display.
- ( ) 4. If test record reads "Successfully Completed Test Sequence" go to step 5

OR

If test record reads "Not a Successfully Completed Test Sequence", and subject will be tested again, remove test record and go to step 1

OR

If test record reads "Not a Successfully Completed Test Sequence", and subject will not be tested again, go to step 5

- ( ) 5. Remove test record.

Note: A successfully completed test sequence includes the following:

- At least a 15-minute deprivation period.
- Successful concurrent diagnostic checks
- Successful Concurrent Calibration Check Procedures bracketing the duplicate breath test
- Duplicate breath test administered at intervals of not less than 5 minutes nor more than 10 minutes apart and the two consecutive tests agreeing within 0.020 alcohol concentration.

DPS Form Exh G-6 (Rev 05-01)

Historical Note

New Exhibit G-6 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Exhibit H-1. Standard Operational Procedure Alco Sensor RBT AZ

OPERATIONAL CHECKLIST

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD OPERATIONAL PROCEDURE  
ALCO SENSOR RBT AZ

DUPLICATE BREATH TEST

SUBJECT NAME \_\_\_\_\_ DATE \_\_\_\_\_

AGENCY \_\_\_\_\_ OPERATOR \_\_\_\_\_

LOCATION \_\_\_\_\_

RBT AZ SERIAL # \_\_\_\_\_ ALCO SENSOR AZ SERIAL # \_\_\_\_\_

TEST RESULTS	0. _____ AC	TIME _____
	0. _____ AC	TIME _____
	0. _____ AC	TIME _____

Immediately preceding administration of the tests, subject underwent at least a 15-minute deprivation period:

From \_\_\_\_\_ to \_\_\_\_\_ by \_\_\_\_\_  
(Time) (Time) (Name)

- ( ) 1. Depress RBT AZ ON button.
- ( ) 2. Depress zero set button, select subject or quick test.
- ( ) 3. Follow RBT AZ and AS AZ display instructions.
- ( ) 4. Enter case # &/or DL # if required.
- ( ) 5. Device temperature registers between 10° C and 40° C.
- ( ) 6.
  - a. If quick test, go to step 7.
  - b. If subject test, repeat steps 3 – 6 for duplicate test.
  - c. If the second subject test is not within 0.020 of the first test, repeat steps 3-6.
  - d. If the second subject test is within 0.020 of the first test, go to step 7.
  - e. If the third subject test, go to step 7.
- ( ) 7. Remove test record when printout is complete.
- ( ) 8. Turn off RBT AZ.

Note: Duplicate breath tests shall be administered at intervals of not less than 5 nor more than 10 minutes and the two consecutive tests shall agree within 0.020 alcohol concentration.

DPS Form Exh H-1 (Rev 05-01)

Historical Note

New Exhibit H-1 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Exhibit H-2. Standard Calibration Check Procedure Alco Sensor RBT AZ

THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104(A)
ARIZONA DEPARTMENT OF PUBLIC SAFETY
STANDARD QUALITY ASSURANCE PROCEDURES
ALCO SENSOR RBT AZ
STANDARD CALIBRATION CHECK PROCEDURE

AGENCY \_\_\_\_\_ DATE \_\_\_\_\_

QA SPECIALIST \_\_\_\_\_ LOCATION \_\_\_\_\_

RBT AZ SERIAL # \_\_\_\_\_ ALCO SENSOR AZ SERIAL # \_\_\_\_\_

- ( ) 1. Have a standard alcohol concentration solution ready. This may be a simulator (at 34° C ± 0.2° C) or a dry gas alcohol standard. Standard value: 0. \_\_\_\_\_ AC.
( ) 2. Depress RBT AZ ON button. Depress Time button. Enter PIN #. Depress zero button.
( ) 3. Follow RBT AZ and AS AZ display instructions.
( ) 4. Device temperature registers between 10° C and 40° C.
( ) 5. When AS AZ display reads "CHEK", introduce standard for 7 seconds; depress the MANUAL button on the AS AZ at 5 seconds (while continuing to introduce the standard for another 2 seconds.)
( ) 6. Test results 0. \_\_\_\_\_ AC.
( ) 7. Remove test record when printout is complete.
( ) 8. Turn off RBT AZ.

COMMENTS \_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

SIGNATURE \_\_\_\_\_

DPS Form Exh H-2 (Rev 05-01)

Historical Note

New Exhibit H-2 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Exhibit H-3. Standard Quality Assurance Procedure Alco Sensor RBT AZ

THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104(A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY
STANDARD QUALITY ASSURANCE PROCEDURES
ALCO SENSOR RBT AZ
STANDARD QUALITY ASSURANCE PROCEDURE

AGENCY \_\_\_\_\_ DATE \_\_\_\_\_

QA SPECIALIST \_\_\_\_\_ LOCATION \_\_\_\_\_

RBT AZ SERIAL # \_\_\_\_\_ ALCO-SENSOR AZ SERIAL # \_\_\_\_\_

- ( ) 1. Have a standard alcohol concentration solution ready. This may be a simulator (at 34° C ± 0.2° C) or a dry gas alcohol standard. Standard value: 0. \_\_\_\_\_ AC.
( ) 2. Depress RBT AZ ON button. Depress Time button. Enter PIN #. Depress zero button.
( ) 3. Follow RBT AZ and AS AZ display instructions.
( ) 4. Device temperature registers between 10° C and 40° C.
( ) 5. When AS AZ display reads "CHEK", introduce standard for 7 seconds; depress the MANUAL button on the AS AZ at 5 seconds (while continuing to introduce the standard for another 2 seconds.)
( ) 6. Test results 0. \_\_\_\_\_ AC.
( ) 7. Remove test record when printout is complete.
( ) 8. Turn off RBT AZ.
( ) 1. Date and time correct.
( ) 2. Alcohol-free subject test result 0. \_\_\_\_\_ AC.
( ) 3. Proper sample recognition system.
( ) 4. Fuel cell response time for a standard solution. Standard value: \_\_\_\_\_ AC. Time \_\_\_\_\_ sec.
( ) 5. Controls, displays, and printer worked correctly during the above quality assurance procedures.

COMMENTS \_\_\_\_\_

SIGNATURE \_\_\_\_\_

DPS Form Exh H-3 (Rev 05-01)

Historical Note

New Exhibit H-3 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

Exhibit H-4. Standard Calibration Procedure Alco Sensor RBT AZ

THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104(A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY
STANDARD QUALITY ASSURANCE PROCEDURES
ALCO SENSOR RBT AZ
CALIBRATION

AGENCY \_\_\_\_\_ DATE \_\_\_\_\_

QA SPECIALIST \_\_\_\_\_ LOCATION \_\_\_\_\_

RBT AZ SERIAL # \_\_\_\_\_ ALCO-SENSOR AZ SERIAL # \_\_\_\_\_

- ( ) 1. Have a standard alcohol concentration solution ready. This may be a simulator (at 34° C ± 0.2° C) or a dry gas alcohol standard. Standard value: 0. \_\_\_\_\_ AC.
( ) 2. Depress RBT AZ ON button.
( ) 3. Depress Time button, enter PIN #, depress #1 button.
( ) 4. Follow RBT AZ and AS AZ display instructions.
( ) 5. Device temperature registers between 23° C and 27° C.
( ) 6. After a blank reading of 0.000 is displayed and the standard value is displayed, depress F3.
( ) 7. When AS AZ display flashes "CAL", introduce standard for 7 seconds; depress the MANUAL button on the AS AZ at 5 seconds (while continuing to introduce the standard for another 2 seconds.)
( ) 8. Remove test record when printout is complete.
( ) 9. Run a calibration check on the Standard Calibration Check Procedure.
Test results: \_\_\_\_\_ AC.

COMMENTS \_\_\_\_\_

SIGNATURE \_\_\_\_\_

DPS Form Exh H-4 (Rev 05-01)

Historical Note

New Exhibit H-4 made by final rulemaking at 12 A.A.R. 1916, effective 9:00 a.m., May 18, 2006 (Supp. 06-2).

### 41-1713. Powers and duties of director; authentication of records

#### A. The director of the department shall:

1. Be the administrative head of the department.
2. Subject to the merit system rules, appoint, suspend, demote, promote or dismiss all other classified employees of the department on the recommendation of their respective division superintendent. The director shall determine and furnish the law enforcement merit system council established by section 41-1830.11 with a table of organization. The superintendent of each division shall serve at the concurrent pleasure of the director and the governor.
3. Except as provided in sections 12-119, 41-1304 and 41-1304.05, employ officers and other personnel as the director deems necessary for the protection and security of the state buildings and grounds in the governmental mall described in section 41-1362, state office buildings in Tucson and persons who are on any of those properties. Department officers may make arrests and issue citations for crimes or traffic offenses and for any violation of a rule adopted under section 41-796. For the purposes of this paragraph, security does not mean security services related to building operation and maintenance functions provided by the department of administration.
4. Make rules necessary for the operation of the department.
5. Annually submit a report of the work of the department to the governor and the legislature, or more often if requested by the governor or the legislature.
6. Appoint a deputy director with the approval of the governor.
7. Adopt an official seal that contains the words "department of public safety" encircling the seal of this state as part of its design.
8. Investigate, on receipt, credible evidence that a licensee or registrant has been arrested for, charged with or convicted of an offense that would preclude the person from holding a license or registration certificate issued pursuant to title 32, chapter 26.
9. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.
10. Adopt and administer the breath, blood or other bodily substances test rules pursuant to title 28, chapter 4.
11. Develop procedures to exchange information with the department of transportation for any purpose related to sections 28-1324, 28-1325, 28-1326, 28-1462 and 28-3318.
12. Collaborate with the state forester in presentations to legislative committees on issues associated with wildfire prevention, suppression and emergency management as provided by section 37-1302, subsection B.

#### B. The director may:

1. Issue commissions to officers of the department.
2. Request the cooperation of the utilities, communication media and public and private agencies and any sheriff or other peace officer in any county or municipality, within the limits of their respective jurisdictions when necessary, to aid and assist in the performance of any duty imposed by this chapter.

3. Cooperate with any public or private agency or person to receive or give necessary assistance and may contract for such assistance subject to legislative appropriation controls.
4. Utilize the advice of the board and cooperate with sheriffs, local police and peace officers within the state for the prevention and discovery of crimes, the apprehension of criminals and the promotion of public safety.
5. Acquire in the name of the state, either in fee or lesser estate or interest, all real or any personal property that the director considers necessary for the department's use, by purchase, donation, dedication, exchange or other lawful means. All acquisitions of personal property pursuant to this paragraph shall be made as prescribed in chapter 23 of this title unless otherwise provided by law.
6. Dispose of any property, real or personal, or any right, title or interest in the property, when the director determines that the property is no longer needed or necessary for the department's use. Disposition of personal property shall be as prescribed in chapter 23 of this title. The real property shall be sold by public auction or competitive bidding after notice published in a daily newspaper of general circulation, not less than three times, two weeks before the sale and subject to the approval of the director of the department of administration. When real property is sold, it shall not be sold for less than the appraised value as established by a competent real estate appraiser. Any monies derived from the disposal of real or personal property shall be deposited, pursuant to sections 35-146 and 35-147, in the Arizona highway patrol fund as authorized by section 41-1752, subsection B, paragraph 6.
7. Sell, lend or lease personal property directly to any state, county or local law enforcement agency. Personal property may be sold or leased at a predetermined price without competitive bidding. Any state, county or local law enforcement agency receiving personal property may not resell or lease the property to any person or organization except for educational purposes.
8. Dispose of surplus property by transferring the property to the department of administration for disposition to another state budget unit or political subdivision if the state budget unit or political subdivision is not a law enforcement agency.
9. Lease or rent personal property directly to any state law enforcement officer for the purpose of traffic safety, traffic control or other law enforcement related activity.
10. Sell for one dollar, without public bidding, the department issued handgun or shotgun to a department officer on duty related retirement pursuant to title 38, chapter 5, article 4. Any monies derived from the sale of the handgun or shotgun to the retiring department officer shall be deposited, pursuant to sections 35-146 and 35-147, in the Arizona highway patrol fund as authorized by section 41-1752, subsection B, paragraph 6.
11. Conduct state criminal history records checks for the purpose of updating and verifying the status of current licensees or registrants who have a license or certificate issued pursuant to title 32, chapter 26. The director shall investigate, on receipt, credible evidence that a licensee or registrant has been arrested for, charged with or convicted of an offense that would preclude the person from holding a registration certificate issued pursuant to title 32, chapter 26.
12. Grant a maximum of two thousand eighty hours of industrial injury leave to any sworn department employee who is injured in the course of the employee's duty, any civilian department employee who is injured in the course of performing or assisting in law enforcement or hazardous duties or any civilian department employee who was injured as a sworn department employee rehired after August 9, 2001 and would have been eligible pursuant to this paragraph and whose work-related injury prevents the employee from performing the normal duties of that employee's classification. This industrial injury leave is in addition to any vacation or sick leave earned or granted to the employee and does not affect the employee's eligibility for any other benefits, including workers' compensation. The employee is not eligible for payment pursuant to section 38-615 of industrial injury leave that is granted pursuant to this paragraph. Subject to approval by the law enforcement merit system council, the director shall adopt rules and procedures regarding industrial injury leave hours granted pursuant to this paragraph.

13. Sell at current replacement cost, without public bidding, the department issued badge of authority to an officer of the department on the officer's promotion or separation from the department. Any monies derived from the sale of the badge to an officer shall be deposited, pursuant to sections 35-146 and 35-147, in the department of public safety administration fund to offset replacement costs.

C. The director and any employees of the department that the director designates in writing may use the seal adopted pursuant to subsection A, paragraph 7 of this section to fully authenticate any department records and copies of these records. These authenticated records or authenticated copies of records shall be judicially noticed and shall be received in evidence by the courts of this state without any further proof of their authenticity.

28-1322. Preliminary breath tests; rules on approval of devices

- A. A law enforcement officer who has reasonable suspicion to believe that a person has committed a violation of section 28-1381 or 28-1382 may request that the person submit to a preliminary breath test or tests before an arrest.
- B. In addition to a breath test or tests, the officer may require that the person submit to further testing pursuant to section 28-1321.
- C. The director of the department of public safety shall adopt rules prescribing the approval of quantitative preliminary breath testing devices.

### 28-1323. Admissibility of breath test or other records

A. The results of a breath test administered for the purpose of determining a person's alcohol concentration are admissible as evidence in any trial, action or proceeding on establishing the following foundational requirements:

1. The test was performed using a quantitative breath testing device approved by the department of health services or the department of public safety. A properly authenticated certification by the department of health services or the department of public safety or judicial notice of department of health services or department of public safety rules is sufficient to establish this requirement.
2. The operator who conducted the test possessed a valid permit issued by the department of health services or the department of public safety to operate the device used to conduct the test.
3. Duplicate tests were administered and the test results were within 0.02 alcohol concentration of each other or an operator observed the person charged with the violation for twenty minutes immediately preceding the administration of the test.
4. The operator who conducted the test followed an operational checklist approved by the department of health services or the department of public safety for the operation of the device used to conduct the test. The testimony of the operator is sufficient to establish this requirement.
5. The device used to conduct the test was in proper operating condition. Records of periodic maintenance that show that the device was in proper operating condition are admissible in any proceeding as prima facie evidence that the device was in proper operating condition at the time of the test. Calibration checks with a standard alcohol concentration solution bracketing each person's duplicate breath test are one type of records of periodic maintenance that satisfies the requirements of this section. The records are public records.

B. Compliance with subsection A of this section is the only requirement for the admission in evidence of a breath test result.

C. The inability of any person to obtain manufacturer's schematics and software for a quantitative breath testing device that is approved as prescribed in subsection A of this section shall not affect the admissibility of the results of a breath test pursuant to this section.

D. Records that may be obtained or that are otherwise maintained pursuant to section 28-1327 are admissible as evidence in any trial, action or proceeding.

### 28-1324. Breath test rules

The director of the department of public safety shall adopt rules prescribing methods and procedures for the administration of breath tests to determine alcohol concentration. The rules shall include:

1. The approval of quantitative breath testing devices.
2. Procedures for ensuring the accuracy of results obtained from approved breath testing devices.
3. Qualifications for persons who conduct breath tests.
4. Qualifications for persons who instruct others in the operation of breath testing devices.

28-1325. Breath test operator permits

A. The director of the department of public safety shall issue permits to operators who have received approved instruction and who have demonstrated their ability to accurately operate an approved breath testing device.

B. The director of the department of public safety may revoke the permit of a person who fails to operate a breath testing device according to the rules adopted by the director of the department of public safety.

28-1326. Blood test; rules; permits

A. The director of the department of public safety shall adopt rules prescribing the approval of methods for the analysis of blood or other bodily substances to determine blood alcohol concentration.

B. The director of the department of public safety shall issue a permit to an analyst who has demonstrated the ability to accurately analyze blood or other bodily substances for alcohol concentration.

C. The director of the department of public safety may revoke the permit of an analyst who either:

1. Has demonstrated an inability to accurately analyze blood or other bodily substances for alcohol concentration.

2. Fails to analyze blood or other bodily substances for alcohol concentration according to rules adopted by the director of the department of health services.

**STATE BOARD OF PHARMACY (R20-0304)**  
Title 4, Chapter 23, Article 4, Professional Practices

**Amend:** R4-23-407



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** March 3, 2020

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

**FROM:** Council Staff

**DATE:** February 10, 2020

**SUBJECT:** STATE BOARD OF PHARMACY (R20-0304)  
Title 4, Chapter 23, Article 4, Professional Practices

**Amend:** R4-23-407

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### **Summary:**

Under Laws 2019, Chapter 4, the legislature amended A.R.S. § 36-2525, related to the Uniform Controlled Substances Act. The amendment indicates that beginning January 1, 2020, a Schedule II controlled substance that is an opioid may be dispensed only with an electronic prescription order as prescribed by federal law or regulation. The statutory amendment authorizes the State Board of Pharmacy (Board) to establish exceptions to electronic prescribing requirements for pharmacists and medical practitioners.

This rulemaking from the Board seeks to amend R4-23-407 to establish the authorized exceptions to the electronic prescribing requirements.

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

Yes. The Board cites both general and specific statutory authority for the 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 Board did not review or rely on any study in conducting this rulemaking.

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

The rulemaking establishes exceptions to the requirements that prescription orders for controlled substances that are opioids be electronically transmitted. The Board believes that the economic impact of the rulemaking will be minimal. It is federal and state law that requires a schedule II controlled substance that is an opioid be dispensed only with an electronic prescription order. The rulemaking establishes minor exceptions to this requirement to benefit pharmacists, medical practitioners, and the public.

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

The Board states that the purpose of the rulemaking is to make compliance with the electronic-transmission requirement less intrusive and costly for medical practitioners and pharmacists. They did not consider alternative methods.

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

The Board indicates that they incurred the cost of meeting with the Computerized Central Database Tracking System task force to establish exceptions to the electronic prescribing requirement and of conducting the rulemaking. The Board believes that they will have the benefit of removing a potential regulatory burden from medical practitioners who prescribe and pharmacists who dispense a controlled substance that is an opioid. No political subdivisions, consumers or private persons are directly affected by the rulemaking.

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

No. In response to a public comment, an additional exception to the electronic prescribing requirement was made to R4-23-407(H)(1) and (2) for individuals detained by or in custody of an Arizona or federal law enforcement agency. However, this change does not make the final rulemaking substantially different from the proposed rule as per A.R.S. § 41-1025.

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

The Board received one public comment from Jason Bezozo of Banner Health, requesting an additional exception to the electronic prescribing requirements be added for situations involving individuals detained by the U.S. Border Patrol or in the custody of the Arizona Department of Corrections. Specifically, Mr. Bezozo indicated in these situations, a written prescription order is provided for the individual because of uncertainty about where the prescription order will be dispensed. The Board adequately responded to this comment.

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

Not applicable.

**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 Board indicates that 21 CFR, Chapter II, Part 1311 applies to these rules. The Board indicates that the rules are not more stringent than federal law.

**11. Conclusion**

This rulemaking from the Board seeks to amend R4-23-407 to establish authorized exceptions to the electronic prescribing requirements set forth in A.R.S. § 36-2525. The Board is requesting an immediate effective date for these rules. Specifically, the Board indicates A.R.S. § 36-2525, establishes January 1, 2020, as the date by which prescription orders for controlled substances that are opioids must be electronically transmitted. Therefore, the Board argues an immediate effective date is necessary pursuant to A.R.S. § 41-1032(A)(2) to avoid a violation of federal law or regulation or state law, if the need for an immediate effective date is not created due to the agency's delay or inaction. Furthermore, the Board indicates that the rule reduces potential regulatory burdens by establishing exceptions to the electronic-transmission requirement that provide a benefit to the public and no associated penalty. As such, the Board argues an immediate effective date is applicable because the rule provides a benefit to the public and no penalty is associated with a violation of the rule pursuant to A.R.S. § 41-1032(A)(4). Council staff finds the Board has provided adequate justification for an immediate effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.



## Arizona State Board of Pharmacy

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Physical Address: 1616 W. Adams, Suite 120, Phoenix, AZ 85007  
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p) 602-771-2727 f) 602-771-2749 www.azpharmacy.gov

January 21, 2020

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

**Re: A.A.C. Title 4. Professions and Occupations  
Chapter 23. Board of Pharmacy**

Dear Ms. Sornsin:

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

- A. Close of record date: The rulemaking record was closed on January 14, 2020, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).
- B. Relation of the rulemaking to a five-year-review report: The rulemaking does not relate to a five-year-review report.
- C. New fee: The rulemaking does not establish a new fee.
- D. Fee increase: The rulemaking does not increase an existing fee.
- E. Immediate effective date: An immediate effective date is requested under A.R.S. § 41-1032(A)(2) and (4). An immediate effective date is needed because A.R.S. § 36-2525, which is the statute authorizing the rule, establishes January 1, 2020, as the date by which prescription orders for controlled substances that are opioids must be electronically transmitted. The rule reduces potential regulatory burdens by establishing exceptions to the electronic-transmission requirement that provide a benefit to the public and no associated penalty. The need for the immediate effective date was not caused by the Board's delay. The Board received an exemption from the EO2019-01 for the rulemaking on November 4, 2019, and filed both the Notice of Docket Opening and Notice of Proposed Rulemaking on November 22, 2019.
- F. Certification regarding studies: I certify that the preamble accurately discloses the Board did not review or rely on a study in its evaluation of or justification for the rule in this rulemaking.
- G. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that the rule in this rulemaking will not require a state agency to employ a new full-time employee. No notification was provided to JLBC.
- H. List of documents enclosed:
  - 1. Cover letter signed by the Executive Director;
  - 2. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
  - 3. Economic, Small Business, and Consumer Impact Statement;
  - 4. Public comment

Sincerely,

A handwritten signature in blue ink that reads "Kamlesh Gandhi".

Kamlesh Gandhi  
Executive Director

**NOTICE OF FINAL RULEMAKING**  
**TITLE 4. PROFESSIONS AND OCCUPATIONS**  
**CHAPTER 23. BOARD OF PHARMACY**

**PREAMBLE**

- |   |                                 |
|---|---------------------------------|
| <b><u>1. Articles, Parts, and Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
| R4-23-407   | Amend                           |
- 2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**  
Authorizing statute: A.R.S. §§ 32-1904(A)(1) and 36-2521  
Implementing statute: A.R.S. § 36-2525
- 3. The effective date for the rules:**  
The Board respectfully requests under A.R.S. § 41-1032(A)(2) and (4) that the rule be effective immediately when filed with the Office of the Secretary of State.
- a. If the agency selected a date earlier than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**  
An immediate effective date is needed under A.R.S. § 41-1032(A)(2) and (4) because A.R.S. § 36-2525, which is the statute authorizing the rule, establishes January 1, 2020, as the date by which prescription orders for controlled substances that are opioids must be electronically transmitted. The rule reduces potential regulatory burdens by establishing exceptions to the electronic-transmission requirement that provide a benefit to the public and no associated penalty. The need for the immediate effective date was not caused by the Board's delay. The Board received an exemption from the EO2019-01 for the rulemaking on November 4, 2019, and filed both the Notice of Docket Opening and Notice of Proposed Rulemaking on November 22, 2019.
- b. If the agency selected a date later than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**  
Not applicable
- 4. Citation to all related notices published in the Register to include the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**  
Notice of Rulemaking Docket Opening: 25 A.A.R. 3578, December 13, 2019  
Notice of Proposed Rulemaking: 25 A.A.R. 3553, December 13, 2019

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

Name: Kamlesh Gandhi

Address: 1616 W Adams Street, Suite 120  
Phoenix, AZ 85007

Telephone: (602) 771-2740

Fax: (602) 771-2749

E-mail: kgandhi@azpharmacy.gov

Website: www.azpharmacy.gov

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

Under Laws 2019, Chapter 4, the legislature amended A.R.S. § 36-2525, dealing with the Uniform Controlled Substances Act. The amendment indicates that beginning January 1, 2020, a schedule II controlled substance that is an opioid may be dispensed only with an electronic prescription order as prescribed by federal law or regulation. The statutory amendment authorizes the Board to establish exceptions to electronic prescribing requirements for pharmacists and medical practitioners. This rulemaking establishes the authorized exceptions. An exemption from EO2019-01 was provided by Emily Rajakovich, in the Governor's Office, by an e-mail dated November 4, 2019.

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

The Board did not review or rely on any study in its evaluation of or justification for any rule in this rulemaking.

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

Not applicable

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

The Board believes the economic impact of the rulemaking will be minimal. It is federal and state law that requires a schedule II controlled substance that is an opioid to be dispensed only with an electronic prescription order. The rulemaking establishes minor exceptions to this requirement to benefit both pharmacists and medical practitioners.

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

As described in item 11, an additional exception to the electronic prescribing requirement was made to R4-23-407(H)(1) and (2) in response to a comment from Jason Bezozo of Banner Health.

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

Jason Bezozo, of Banner Health, asked for an additional exception to the electronic prescribing requirements for situations involving an individual detained by the U.S. Border Patrol or in the custody of the Arizona Department of Corrections. In these situations, a written prescription order is provided for the individual because of uncertainty about where the prescription order will be dispensed.

Under the standards at A.R.S. § 41-1025(B), the change does not make the final rule substantially different from the proposed rule. The persons affected by the rule, medical practitioners and pharmacists, remain the same so had notice the rule would affect them. The subject matter of the rule, exceptions to the requirement that prescription orders for opioids be electronically transmitted, remains the same. The effect of the rule, Board-prescribed, limited, exceptions to the electronic prescribing requirement, remains the same.

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

Under A.R.S. § 36-2525(Q), the Board was required to consult with the Computerized Central Database Tracking System task force to establish the exceptions in this rulemaking. The Board consulted with the task force at a meeting on July 17, 2019.

**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 rule in the rulemaking requires a permit.

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

The rule is not more stringent than federal law. A.R.S. § 36-2525(D) indicates that beginning January 1, 2020, a schedule II controlled substance that is an opioid may be dispensed only with an electronic prescription order as prescribed by federal law or regulation. The applicable federal law is at 21 CFR, Chapter II, Part 1311.

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

No analysis was submitted.

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

None

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

The rule was not previously made, amended, or repealed as an emergency rule.

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

**TITLE 4. PROFESSIONS AND OCCUPATIONS**  
**CHAPTER 23. BOARD OF PHARMACY**  
**ARTICLE 4. PROFESSIONAL PRACTICES**

Section

R4-23-407. Prescription Requirements

## ARTICLE 4. PROFESSIONAL PRACTICES

### **R4-23-407. Prescription Requirements**

#### **A. No change**

1. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
  - f. No change
  - g. No change
  - h. No change
  - i. No change
  - j. No change
  - k. No change
  - l. No change

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

#### **B. No change**

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

#### **C. No change**

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

#### **D. No change**

#### **E. No change**

1. No change
2. No change

3. No change
4. No change
  - a. No change
    - i. No change
      - (1) No change
      - (2) No change
      - (3) No change
    - ii. No change
      - (1) No change
      - (2) No change
    - iii. No change
      - (1) No change
      - (2) No change
      - (3) No change
      - (4) No change
      - (5) No change
      - (6) No change
      - (7) No change
      - (8) No change
  - b. The transfer of original prescription order information for a Schedule III, IV, or V controlled substance meets the following conditions:
    - i. No change
    - ii. No change
      - (1) No change
      - (2) No change
    - iii. No change
      - (1) No change
      - (2) No change
      - (3) No change
      - (4) No change
      - (5) No change
      - (6) No change
      - (7) No change
      - (8) No change

- 5. No change
  - a. No change
  - b. No change
- 6. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
    - i. No change
      - (1) No change
      - (2) No change
      - (3) No change
      - (4) No change
    - ii. No change
      - (1) No change
      - (2) No change
      - (3) No change
      - (4) No change
      - (5) No change
      - (6) No change
      - (7) No change
      - (8) No change
  - e. No change
    - i. No change
      - (1) No change
      - (2) No change
      - (3) No change
      - (4) No change
      - (5) No change
    - ii. No change
  - f. No change

**F. No change**

- 1. No change
  - a. No change

- b. No change
  - i. No change
  - ii. No change
- c. No change
  - i. No change
  - ii. No change
  - iii. No change

- 2. No change
- 3. No change
- 4. No change
- 5. No change

**G.** No change

- 1. No change
- 2. For electronic transmission of a Schedule II, III, IV, or V controlled substance prescription order, the medical practitioner and pharmacy shall ensure ~~that~~ the transmission complies with any security or other requirements of federal law.
- 3. The medical practitioner and pharmacy shall ensure ~~that~~ all electronic transmissions comply with all the security requirements of state or federal law related to the privacy of protected health information.
- 4. In addition to the information required to be included on a prescription order as specified in A.R.S. § 32-1968, a medical practitioner shall ensure an electronically transmitted prescription order ~~shall include~~ includes:
  - a. No change
  - b. No change
- 5. No change
- 6. No change

**H.** Exceptions under A.R.S. § 36-2525 regarding electronic prescribing requirements:

- 1. Medical practitioner exceptions. A medical practitioner who is authorized to prescribe a controlled substance may furnish a written prescription order in accordance with R4-23-407 rather than an electronically transmitted prescription order if the prescription order is written:
  - a. In this state to be filled in a jurisdiction outside this state;
  - b. For a medication that requires compounding two or more ingredients;
  - c. For a medication that is not in the E-prescribing database;

- d. For an individual who is detained by or in custody of an Arizona or federal law enforcement agency; or
  - e. Under A.R.S. S 36-2525(N) or (O); and
- 2. Pharmacist exceptions. A pharmacist may dispense a controlled substance from a written rather than electronically transmitted prescription order if the prescription order:
  - a. Is written by a medical practitioner who is not licensed in this state but rather, is licensed in a jurisdiction outside this state. The pharmacist is not required to verify whether the medical practitioner is licensed;
  - b. Is written for a medication that requires compounding two or more ingredients;
  - c. Is written for a medication that is not in the E-prescribing database;
  - d. Is written for an individual who is detained by or in custody of an Arizona or federal law enforcement agency; or
  - e. Is received under A.R.S. § 36-2525(D).

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT<sup>1</sup>**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 23. BOARD OF PHARMACY**

1. Identification of the rulemaking:

Under Laws 2019, Chapter 4, the legislature amended A.R.S. § 36-2525, dealing with the Uniform Controlled Substances Act. The amendment indicates that beginning January 1, 2020, a schedule II controlled substance that is an opioid may be dispensed only with an electronic prescription order as prescribed by federal law or regulation. The statutory amendment authorizes the Board to establish exceptions to electronic prescribing requirements for pharmacists and medical practitioners. This rulemaking establishes the authorized exceptions. An exemption from EO2019-01 was provided by Emily Rajakovich, in the Governor's Office, by an e-mail dated November 4, 2019.

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

The rulemaking establishes exceptions to the requirement that prescription orders for controlled substances that are opioids be electronically transmitted. The electronic transmission requirement is designed to reduce opportunities for abusing prescription orders for opioids. However, there are limited circumstances when electronic transmission is not possible.

b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

Until the rulemaking is completed, there will be no exceptions to the requirement that prescription orders for opioids be electronically transmitted. This may be burdensome for medical practitioners, pharmacists, and the public.

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

When the rulemaking is completed, medical practitioners and pharmacists will know the limited circumstances under which a written, rather than electronic, prescription order for an opioid may be issued or dispensed.

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

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<sup>1</sup> If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).

The Board believes the economic impact of the rulemaking will be minimal. It is federal and state law that requires a schedule II controlled substance that is an opioid be dispensed only with an electronic prescription order. The rulemaking establishes minor exceptions to this requirement to benefit pharmacists, medical practitioners, and the public.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: Kamlesh Gandhi

Address: 1616 W Adams Street, Suite 120  
Phoenix, AZ 85007

Telephone: (602) 771-2740

Fax: (602) 771-2749

E-mail: kgandhi@azpharmacy.gov

Website: www.azpharmacy.gov

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

Medical practitioners, pharmacists, and the Board are directly affected by, bear the costs of, or directly benefit from the rulemaking.

There will be no cost from this rulemaking for a medical practitioner who issues or a pharmacist who dispenses from a written rather than electronic prescription order for a controlled substance that is an opioid. Medical practitioners routinely issue written prescription orders and pharmacists routinely dispense from written prescription orders. The rulemaking will benefit medical practitioners and pharmacists who are able to serve the public better in the limited circumstances when it is not possible to issue or dispense from an electronic prescription.

The Board incurred the cost of meeting with Computerized Central Database Tracking System task force to establish exceptions to the electronic prescribing requirement and of conducting the rulemaking. The Board will have the benefit of removing a potential regulatory burden from medical practitioners who prescribe and pharmacists who dispense a controlled substance that is an opioid.

5. Cost-benefit analysis:

- a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:  
The Board is the only state agency directly affected by the rulemaking. Its costs and benefits are described in item 4. The Board will not require additional full-time employees to implement or enforce the rule.
  - b. Costs and benefits to political subdivisions directly affected by the rulemaking:  
No political subdivision is directly affected by the rulemaking.
  - c. Costs and benefits to businesses directly affected by the rulemaking:  
Medical practitioners and pharmacists are businesses directly affected by the rulemaking. Their costs and benefits are described in item 4.
6. Impact on private and public employment:  
There will be no impact on private or public employment.
  7. Impact on small businesses<sup>2</sup>:  
Medical practitioners and pharmacists are small businesses subject to this rulemaking. There are no costs associated with complying with the rulemaking. The rule provides benefits to medical practitioners, pharmacists, and the public and there is no associated penalty. Because the impact is so minimal and is beneficial, there are no methods to reduce the impact.
  8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:  
No private persons or consumers are directly affected by the rulemaking.
  9. Probable effects on state revenues:  
There is no effect on state revenue.
  10. Less intrusive or less costly alternative methods considered:  
The purpose of the rulemaking is to make compliance with the electronic-transmission requirement less intrusive and costly for medical practitioners and pharmacists. No alternative methods were considered.

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<sup>2</sup> Small business has the meaning specified in A.R.S. § 41-1001(21).

**R4-23-407. Prescription Requirements**

**A. Prescription orders.** A pharmacist shall ensure that:

1. A prescription order the pharmacist uses to dispense a drug or device includes the following information:
  - a. Date of issuance;
  - b. Name and address of the patient for whom or the owner of the animal for which the drug or device is dispensed;
  - c. Drug name, strength, and dosage form or device name;
  - d. Name of the manufacturer or distributor of the drug or device if the prescription order is written generically or a substitution is made;
  - e. Prescribing medical practitioner's directions for use;
  - f. Date of dispensing;
  - g. Quantity prescribed and if different, quantity dispensed;
  - h. For a prescription order for a controlled substance, the medical practitioner's address and DEA number;
  - i. For a written prescription order, the medical practitioner's signature;
  - j. For an electronically transmitted prescription order, the medical practitioner's digital or electronic signature;
  - k. For an oral prescription order, the medical practitioner's name and telephone number; and
  - l. Name or initials of the dispensing pharmacist;
2. A prescription order is kept by the pharmacist or pharmacy permittee as a record of the dispensing of a drug or device for seven years from the date the drug or device is dispensed;
3. The dispensing of a drug or device complies with the packaging requirements of the official compendium and state and federal law; and
4. If the drug dispensed is a schedule II controlled substance that is an opioid, the drug is placed in a container that has a red cap and a warning label stating "CAUTION: OPIOID, Risk of Overdose and Addiction" or other similarly clear language indicating the possibility of overdose and addiction. Under delegation from the Board, the Executive Director may waive the red-cap requirement if implementing the requirement is not feasible because of the specific dosage form or packaging type.

**B. Prescription refills.** A pharmacist shall ensure that the following information is recorded on the back of a prescription order when it is refilled:

1. Date refilled,
2. Quantity dispensed,

3. Name or approved abbreviation of the manufacturer or distributor if the prescription order is written generically or a substitution is made, and
  4. The name or initials of the dispensing pharmacist.
- C.** Prescription order adaptation. Except for a prescription order for a controlled substance, a pharmacist, using professional judgment, may make the following adaptations to a prescription order if the pharmacist documents the adaptation in the patient's record:
1. Change the prescribed quantity if the prescribed quantity is not a package size commercially available from the manufacturer;
  2. Change the prescribed dosage form or directions for use if the change achieves the intent of the prescribing medical practitioner;
  3. Complete missing information on the prescription order if there is sufficient evidence to support the change; and
  4. Extend the quantity of a maintenance drug for the limited quantity necessary to achieve medication refill synchronization for the patient.
- D.** A pharmacist may furnish a copy of a prescription order to the patient for whom it is prescribed or to the authorized representative of the patient if the copy is clearly marked "COPY FOR REFERENCE PURPOSES ONLY" or other similar statement. A copy of a prescription order is not a valid prescription order and a pharmacist shall not dispense a drug or device from the information on a copy.
- E.** Transfer of prescription order information. For a transfer of prescription order information to be valid, a pharmacy permittee or pharmacist-in-charge shall ensure that:
1. Both the original and the transferred prescription order are maintained for seven years after the last dispensing date;
  2. The original prescription order information for a Schedule III, IV, or V controlled substance is transferred only as specified in 21 CFR 1306.25;
  3. The original prescription order information for a non-controlled substance drug is transferred without limitation only up to the number of originally authorized refills;
  4. For a transfer within Arizona:
    - a. The transfer of original prescription order information for a non-controlled substance drug meets the following conditions:
      - i. The transfer of information is communicated electronically, verbally, or by fax directly between:
        - (1) Two licensed pharmacists,
        - (2) A licensed pharmacist and a licensed intern, or

- (3) Two licensed interns;
- ii. The following information is recorded by the transferring pharmacist or intern:
  - (1) The word “void” is written on the face of the invalidated original prescription unless it is an electronic or oral transfer and the transferred prescription order information is invalidated in the transferring pharmacy’s computer system; and
  - (2) The name and identification code, number, or address and telephone number of the pharmacy to which the prescription is transferred, the name of the receiving pharmacist or intern, the date of transfer, and the name of the transferring pharmacist or intern is written on the back of the prescription or entered into the transferring pharmacy’s computer system; and
- iii. The following information is recorded by the receiving pharmacist or intern on the transferred prescription order:
  - (1) The word “transfer;”
  - (2) Date of issuance of the original prescription order;
  - (3) Original number of refills authorized on the original prescription order;
  - (4) Date of original dispensing;
  - (5) Number of valid refills remaining and the date of the last refill;
  - (6) Name and identification code, number, or address, telephone number, and original prescription number of the pharmacy from which the prescription is transferred;
  - (7) Name of the transferring pharmacist or intern; and
  - (8) Name of the receiving pharmacist or intern;
- b. The transfer of original prescription order information for a Schedule III, IV, or controlled substance meets the following conditions:
  - i. The transfer of information is communicated directly between two licensed pharmacists or interns electronically or verbally;
  - ii. The following information is recorded by the transferring pharmacist or intern:
    - (1) The word “void” is written on the face of the invalidated original prescription order unless it is an electronic or oral transfer and the transferred prescription order information is invalidated in the transferring pharmacy’s computer system; and
    - (2) The name, address, and DEA number of the pharmacy to which the prescription is transferred, the name of the receiving pharmacist, the date of transfer, and the name of the transferring pharmacist is written on the back of the prescription order or entered into the transferring pharmacy’s computer system; and

- iii. The following information is recorded by the receiving pharmacist on the transferred prescription order:
  - (1) The word “transfer;”
  - (2) Date of issuance of original prescription order;
  - (3) Original number of refills authorized on the original prescription order;
  - (4) Date of original dispensing;
  - (5) Number of valid refills remaining and the date of the last refill;
  - (6) Name, address, DEA number, and original prescription number of the pharmacy from which the prescription is transferred;
  - (7) Name of the transferring pharmacist; and
  - (8) Name of the receiving pharmacist;
5. For a transfer from out-of-state:
  - a. The transfer of original prescription order information for a non-controlled substance drug meets the conditions in subsections (E)(4)(a)(i) and (E)(4)(a)(iii); and
  - b. The transfer of original prescription order information for a Schedule III, IV, or V controlled substance meets the conditions in subsections (E)(4)(b)(i) and (E)(4)(b)(iii); and
6. For an electronic transfer, the electronic transfer of original prescription order information meets the following conditions:
  - a. The electronic transfer is between pharmacies owned by the same company using a common or shared database;
  - b. The electronic transfer of original prescription order information for a non-controlled substance drug is performed by a pharmacist or intern, pharmacy technician trainee, or pharmacy technician under the supervision of a pharmacist;
  - c. The electronic transfer of original prescription order information for a controlled substance is performed between two licensed pharmacists;
  - d. The electronic transfer of original prescription order information for a non-controlled substance drug meets the following conditions:
    - i. The transferring pharmacy’s computer system:
      - (1) Invalidates the transferred original prescription order information;
      - (2) Records the identification code, number, or address of the pharmacy to which the prescription order information is transferred;
      - (3) Records the name or identification code of the receiving pharmacist, intern, pharmacy technician trainee, or pharmacy technician; and
      - (4) Records the date of transfer; and

- ii. The receiving pharmacy's computer system;
    - (1) Records that a prescription transfer occurred;
    - (2) Records the date of issuance of the original prescription order;
    - (3) Records the original number of refills authorized on the original prescription order;
    - (4) Records the date of original dispensing;
    - (5) Records the number of valid refills remaining and the date of the last refill;
    - (6) Records the identification code, number, or address and original prescription number of the pharmacy from which the prescription is transferred;
    - (7) Records the name or identification code of the receiving pharmacist or intern, pharmacy technician trainee, or pharmacy technician; and
    - (8) Records the date of transfer;
  - e. The electronic transfer of original prescription order information for a controlled substance meets the following conditions:
    - i. The transferring pharmacy's computer system:
      - (1) Invalidates the transferred original prescription order information;
      - (2) Records the identification code, number, or address, and DEA number of the pharmacy to which the prescription order information is transferred;
      - (3) Records the name or identification code of the receiving pharmacist;
      - (4) Records the date of transfer; and
      - (5) Records the name or identification code of the transferring pharmacist; and
    - ii. The electronic prescription order information received by the computer system of the receiving pharmacy includes the information required in subsection (E)(4)(b)(iii); and
  - f. In addition to electronic documentation of a transferred prescription order in the computer system, an original prescription order containing the requirements of this Section is filed in compliance with A.R.S. § 32-1964.
- F.** Transmission of a prescription order from a medical practitioner to a pharmacy by fax.
- 1. A medical practitioner or medical practitioner's agent may transmit a prescription order for a Schedule III, IV, or V controlled substance, prescription-only drug, or nonprescription drug to a pharmacy by fax under the following conditions:
    - a. The prescription order is faxed only to the pharmacy of the patient's choice;
    - b. The faxed prescription order:
      - i. Contains all the information required for a prescription order in A.R.S. §§ 32-1968 and 36-2525; and

- ii. Is only faxed from the medical practitioner's practice location, except that a nurse in a hospital, long-term care facility, or inpatient hospice may send a fax of a prescription order for a patient of the facility; and
      - c. The faxed prescription order shall contain the following additional information:
        - i. The date the prescription order is faxed;
        - ii. The fax number of the prescribing medical practitioner or the facility from which the prescription order is faxed, and the telephone number of the facility; and
        - iii. The name of the person who transmits the fax, if other than the medical practitioner.
    2. A medical practitioner or medical practitioner's agent may fax a prescription order for a Schedule II controlled substance for information purposes only, unless the faxed prescription order meets the requirements of A.R.S. § 36-2525(F) and (G).
    3. A pharmacy may receive a faxed prescription order for a Schedule II controlled substance for information purposes only, except a faxed prescription order for a Schedule II controlled substance that meets the requirements of A.R.S. § 36-2525(F) and (G) may serve as the original written prescription order.
    4. To meet the seven-year record retention requirement of A.R.S. § 32-1964, a pharmacy shall receive a faxed prescription order on a plain paper or may make a photocopy of the faxed prescription order.
    5. A medical practitioner or the medical practitioner's agent may fax refill authorizations to a pharmacy if the faxed authorization includes the medical practitioner's telephone and fax numbers, the medical practitioner's signature or medical practitioner's agent's name, and date of authorization.
  - G.** Electronic transmission of a prescription order from a medical practitioner to a pharmacy.
    1. Unless otherwise prohibited by law, a medical practitioner or medical practitioner's agent may transmit a prescription order by electronic means, directly or through an intermediary, including an E-prescribing network, to the dispensing pharmacy as specified in A.R.S. § 32-1968.
    2. For electronic transmission of a Schedule II, III, IV, or V controlled substance prescription order, the medical practitioner and pharmacy shall ensure that the transmission complies with any security or other requirements of federal law.
    3. The medical practitioner and pharmacy shall ensure that all electronic transmissions comply with all the security requirements of state or federal law related to the privacy of protected health information.
    4. In addition to the information required to be included on a prescription order as specified in A.R.S. § 32-1968, an electronically transmitted prescription order shall include:

- a. The date of transmission; and
  - b. If the individual transmitting the prescription is not the medical practitioner, the name of the medical practitioner's authorized agent who transmits the prescription order.
5. A pharmacy receiving an electronically transmitted prescription order shall maintain the prescription order as specified in A.R.S. § 32-1964 or R4-23-408(H)(2).
6. A medical practitioner or medical practitioner's agent shall transmit an electronic prescription order only to the pharmacy of the patient's choice.

32-1904. Powers and duties of board; immunity

A. The board shall:

1. Make bylaws and adopt rules that are necessary to protect the public and that pertain to the practice of pharmacy, the manufacturing, wholesaling or supplying of drugs, devices, poisons or hazardous substances, the use of pharmacy technicians and support personnel and the lawful performance of its duties.
2. Fix standards and requirements to register and reregister pharmacies, except as otherwise specified.
3. Investigate compliance as to the quality, label and labeling of all drugs, devices, poisons or hazardous substances and take action necessary to prevent the sale of these if they do not conform to the standards prescribed in this chapter, the official compendium or the federal act.
4. Enforce its rules. In so doing, the board or its agents have free access, during the hours reported with the board or the posted hours at the facility, to any pharmacy, manufacturer, wholesaler, third-party logistics provider, nonprescription drug permittee or other establishment in which drugs, devices, poisons or hazardous substances are manufactured, processed, packed or held, or to enter any vehicle being used to transport or hold such drugs, devices, poisons or hazardous substances for the purpose of:
  - (a) Inspecting the establishment or vehicle to determine whether any provisions of this chapter or the federal act are being violated.
  - (b) Securing samples or specimens of any drug, device, poison or hazardous substance after paying or offering to pay for the sample.
  - (c) Detaining or embargoing a drug, device, poison or hazardous substance in accordance with section 32-1994.
5. Examine and license as pharmacists and pharmacy interns all qualified applicants as provided by this chapter.
6. Require each applicant for an initial license to apply for a fingerprint clearance card pursuant to section 41-1758.03. If an applicant is issued a valid fingerprint clearance card, the applicant shall submit the valid fingerprint clearance card to the board with the completed application. If an applicant applies for a fingerprint clearance card and is denied, the applicant may request that the board consider the application for licensure notwithstanding the absence of a valid fingerprint clearance card. The board, in its discretion, may approve an application for licensure despite the denial of a valid fingerprint clearance card if the board determines that the applicant's criminal history information on which the denial was based does not alone disqualify the applicant from licensure.
7. Issue duplicates of lost or destroyed permits on the payment of a fee as prescribed by the board.
8. Adopt rules to rehabilitate pharmacists and pharmacy interns as provided by this chapter.
9. At least once every three months, notify pharmacies regulated pursuant to this chapter of any modifications on prescription writing privileges of podiatrists, dentists, doctors of medicine, registered nurse practitioners, osteopathic physicians, veterinarians, physician assistants, optometrists and

homeopathic physicians of which it receives notification from the state board of podiatry examiners, state board of dental examiners, Arizona medical board, Arizona state board of nursing, Arizona board of osteopathic examiners in medicine and surgery, Arizona state veterinary medical examining board, Arizona regulatory board of physician assistants, state board of optometry or board of homeopathic and integrated medicine examiners.

10. Charge a permittee a fee, as determined by the board, for an inspection if the permittee requests the inspection.

11. Issue only one active or open license per individual.

12. Allow a licensee to regress to a lower level license on written explanation and review by the board for discussion, determination and possible action.

B. The board may:

1. Employ chemists, compliance officers, clerical help and other employees subject to title 41, chapter 4, article 4 and provide laboratory facilities for the proper conduct of its business.

2. Provide, by educating and informing the licensees and the public, assistance in curtailing abuse in the use of drugs, devices, poisons and hazardous substances.

3. Approve or reject the manner of storage and security of drugs, devices, poisons and hazardous substances.

4. Accept monies and services to assist in enforcing this chapter from other than licensees:

(a) For performing inspections and other board functions.

(b) For the cost of copies of the pharmacy and controlled substances laws, the annual report of the board and other information from the board.

5. Adopt rules for professional conduct appropriate to the establishment and maintenance of a high standard of integrity and dignity in the profession of pharmacy.

6. Grant permission to deviate from a state requirement for experimentation and technological advances.

7. Adopt rules for the training and practice of pharmacy interns, pharmacy technicians and support personnel.

8. Investigate alleged violations of this chapter, conduct hearings in respect to violations, subpoena witnesses and take such action as it deems necessary to revoke or suspend a license or a permit, place a licensee or permittee on probation or warn a licensee or permittee under this chapter or to bring notice of violations to the county attorney of the county in which a violation took place or to the attorney general.

9. By rule, approve colleges or schools of pharmacy.

10. By rule, approve programs of practical experience, clinical programs, internship training programs, programs of remedial academic work and preliminary equivalency examinations as provided by this chapter.

11. Assist in the continuing education of pharmacists and pharmacy interns.

12. Issue inactive status licenses as provided by this chapter.

13. Accept monies and services from the federal government or others for educational, research or other purposes pertaining to the enforcement of this chapter.

14. By rule, except from the application of all or any part of this chapter any material, compound, mixture or preparation containing any stimulant or depressant substance included in section 13-3401, paragraph 6, subdivision (c) or (d) from the definition of dangerous drug if the material, compound, mixture or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, provided that such admixtures are included in such combinations, quantity, proportion or concentration as to vitiate the potential for abuse of the substances that do have a stimulant or depressant effect on the central nervous system.

15. Adopt rules for the revocation, suspension or reinstatement of licenses or permits or the probation of licensees or permittees as provided by this chapter.

16. Issue a certificate of free sale to any person that is licensed by the board as a manufacturer for the purpose of manufacturing or distributing food supplements or dietary supplements as defined in rule by the board and that wants to sell food supplements or dietary supplements domestically or internationally. The application shall contain all of the following:

(a) The applicant's name, address, e-mail address, telephone and fax number.

(b) The product's full, common or usual name.

(c) A copy of the label for each product listed. If the product is to be exported in bulk and a label is not available, the applicant shall include a certificate of composition.

(d) The country of export, if applicable.

(e) The number of certificates of free sale requested.

17. Establish an inspection process to issue certificates of free sale or good manufacturing practice certifications. The board shall establish in rule:

(a) A fee to issue certificates of free sale.

(b) A fee to issue good manufacturing practice certifications.

(c) An annual inspection fee.

18. Delegate to the executive director the authority to:

(a) Void a license or permit application and deem all fees forfeited by the applicant if the applicant provided inaccurate information on the application. The applicant shall have the opportunity to correct the inaccurate information within thirty days after the initial application was reviewed by board staff and the applicant was informed of the inaccuracy.

(b) If the president or vice president of the board concurs after reviewing the case, enter into an interim consent agreement with a licensee or permittee if there is evidence that a restriction against the license or permit is needed to mitigate danger to the public health and safety. The board may subsequently formally adopt the interim consent agreement with any modifications the board deems necessary.

(c) Take no action or dismiss a complaint that has insufficient evidence that a violation of statute or rule governing the practice of pharmacy occurred.

(d) Request an applicant or licensee to provide court documents and police reports if the applicant or licensee has been charged with or convicted of a criminal offense. The executive director may do either of the following if the applicant or licensee fails to provide the requested documents to the board within thirty business days after the request:

(i) Close the application, deem the application fee forfeited and not consider a new application complete unless the requested documents are submitted with the application.

(ii) Notify the licensee of an opportunity for a hearing in accordance with section 41-1061 to consider suspension of the licensee.

(e) Pursuant to section 36-2604, subsection B, review prescription information collected pursuant to title 36, chapter 28, article 1.

C. At each regularly scheduled board meeting the executive director shall provide to the board a list of the executive director's actions taken pursuant to subsection B, paragraph 18, subdivisions (a), (c) and (d) of this section since the last board meeting.

D. The board shall develop substantive policy statements pursuant to section 41-1091 for each specific licensing and regulatory authority the board delegates to the executive director.

E. The executive director and other personnel or agents of the board are not subject to civil liability for any act done or proceeding undertaken or performed in good faith and in furtherance of the purposes of this chapter.

### 36-2521. Rules

The board may promulgate necessary and reasonable rules relating to the registration and control of the manufacture, distribution and dispensing of controlled substances within this state.

### 36-2525. Prescription orders; labels; packaging; definition

A. In addition to the requirements of section 32-1968 pertaining to prescription orders for prescription-only drugs, the prescription order for a controlled substance shall bear the name, address and federal registration number of the prescriber. A prescription order for a schedule II controlled substance drug other than a hospital drug order for a hospital inpatient shall contain only one drug order per prescription

blank. If authorized verbally by the prescriber, the pharmacist may make changes to a written or electronic schedule II controlled substance prescription order, except for any of the following:

1. The patient's name.
2. The prescriber's name.
3. The drug name.

B. The pharmacist must document on the original prescription order the changes that were made pursuant to the verbal authorization and record the time and date the authorization was granted.

C. A person who is registered to dispense controlled substances under this chapter must keep and maintain prescription orders for controlled substances as follows:

1. Prescription orders for controlled substances listed in schedules I and II must be maintained in a separate prescription file for controlled substances listed in schedules I and II only.
2. Prescription orders for controlled substances listed in schedules III, IV and V must be maintained either in a separate prescription file for controlled substances listed in schedules III, IV and V only or in a form that allows them to be readily retrievable from the other prescription records of the registrant. For the purposes of this paragraph, "readily retrievable" means that, when the prescription is initially filed, the face of the prescription is stamped in red ink in the lower right corner with the letter "C" in a font that is not less than one inch high and that the prescription is filed in the usual consecutively numbered prescription file for noncontrolled substance prescriptions. The requirement to stamp the hard copy prescription with a red "C" is waived if a registrant employs an electronic data processing system or other electronic recordkeeping system for prescriptions that permits identification by prescription number and retrieval of original documents by the prescriber's name, patient's name, drug dispensed and date filled.

D. Except in emergency situations in conformity with subsection E of this section, under the conditions specified in subsections F and G of this section or when dispensed directly by a medical practitioner to an ultimate user, a controlled substance in schedule II shall not be dispensed without either the written prescription order in ink or indelible pencil or typewritten and manually signed by the medical practitioner or an electronic prescription order as prescribed by federal law or regulation. Beginning January 1, 2020, a schedule II controlled substance that is an opioid may be dispensed only with an electronic prescription order as prescribed by federal law or regulation. A prescription order for a schedule II controlled substance shall not be dispensed more than ninety days after the date on which the prescription order was issued. Notwithstanding any other provision of this section, a pharmacy may sell and dispense a schedule II controlled substance prescribed by a medical practitioner who is located in another county in this state or in another state if the prescription was issued to the patient according to and in compliance with the applicable laws of the state of the prescribing medical practitioner and federal law. A prescription order for a schedule II controlled substance shall not be refilled. A pharmacist is not in violation of this subsection and may dispense a prescription order in the following circumstances:

1. During any time period in which an established electronic prescribing system or a pharmacy management system is not operational or available in a timely manner. If the electronic prescribing system or a pharmacy management system is not operational or available, the pharmacist may dispense a prescription order that is written for a schedule II controlled substance that is an opioid. The pharmacist must maintain a record, for a period of time prescribed by the board, of when the electronic prescribing system or pharmacy management system is not operational or available in a timely manner.

2. The prescription order for a schedule II controlled substance that is an opioid is in writing and indicates that the medical practitioner who issued the prescription order provided care for the patient in a veterans administration facility, a health facility on a military base, an Indian health services hospital or other Indian health service facility, or a tribal-owned clinic.

E. In emergency situations, emergency quantities of schedule II controlled substances may be dispensed on an oral prescription order of a medical practitioner. Such an emergency prescription order shall be immediately reduced to writing by the pharmacist and shall contain all the information required for schedule II controlled substances except for the manual signing of the order by the medical practitioner. Within seven days after authorizing an emergency oral prescription order, the prescribing medical practitioner shall cause a written prescription order manually signed for the emergency quantity prescribed to be delivered to the dispensing pharmacist or an electronic prescription order to be transmitted to the dispensing pharmacist. In addition to conforming to other requirements for prescription orders for schedule II controlled substances, the prescription order shall indicate electronically or have written on its face "authorization for emergency dispensing" and the date of the oral order. If the prescribing medical practitioner fails to deliver such an emergency prescription order within seven days in conformance with board rules, the pharmacist shall notify the board. Failure of the pharmacist to notify the board voids the authority conferred by this subsection to dispense without a prescription order of a medical practitioner that is electronic or that is written and manually signed.

F. Notwithstanding subsections D and N of this section, a patient's medical practitioner or the medical practitioner's agent may transmit to a pharmacy by fax a prescription order written for a schedule II controlled substance, including opioids, if the prescription order is any of the following:

1. To be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion.
2. For a resident of a long-term care facility.
3. For a patient who is enrolled in a hospice care program that is certified or paid for by medicare under title XVIII or a hospice program that is licensed by this state. The medical practitioner or the medical practitioner's agent must note on the prescription that the patient is a hospice patient.

G. A fax transmitted pursuant to subsection F of this section is the original written prescription order for purposes of this section and must be maintained as required by subsection C of this section.

H. Except when dispensed directly by a medical practitioner to an ultimate user, a controlled substance included in schedule III or IV that requires a prescription order as determined under state or federal laws shall not be dispensed without a written or oral prescription order of a medical practitioner or an electronic prescription order as prescribed by federal law or regulation. The prescription order shall not be filled or refilled more than six months after the date on which the prescription order was issued. A prescription order authorized to be refilled shall not be refilled more than five times. Additional quantities may only be authorized by the prescribing medical practitioner through issuance of a new prescription order that shall be treated by the pharmacist as a new and separate prescription order.

I. Except when dispensed directly by a medical practitioner to an ultimate user, a controlled substance that is included in schedule V and that requires a prescription order as determined under state or federal laws shall not be dispensed without a written or oral prescription order of a medical practitioner. The prescription order may be refilled as authorized by the prescribing medical practitioner but shall not be filled or refilled more than one year after the date of issuance.

J. A controlled substance that is listed in schedule III, IV or V and that does not require a prescription order as determined under state or federal laws may be dispensed at retail by a pharmacist or a pharmacy intern under the pharmacist's supervision without a prescription order to a purchaser who is at least eighteen years of age if all of the following are true:

1. It is for a legitimate medical purpose.
2. Not more than two hundred forty cubic centimeters (eight ounces) of any such controlled substance containing opium, nor more than one hundred twenty cubic centimeters (four ounces) of any other such controlled substance, nor more than forty-eight dosage units of any such controlled substance containing opium, nor more than twenty-four dosage units of any other controlled substance may be dispensed at retail to the same purchaser in any given forty-eight-hour period.
3. No more than one hundred dosage units of any single active ingredient ephedrine preparation may be sold, offered for sale, bartered or given away to any one person in any one thirty-day period.
4. The pharmacist or pharmacy intern requires every purchaser of a controlled substance under this subsection who is not known to that person to furnish suitable identification, including proof of age if appropriate.
5. A bound record book for dispensing controlled substances under this subsection is maintained by the pharmacist and contains the name and address of the purchaser, the name and quantity of the controlled substance purchased, the date of each purchase and the name or initials of the pharmacist or pharmacy intern who dispensed the substance to the purchaser. The book shall be maintained in conformity with the recordkeeping requirements of section 36-2523.

K. In the absence of a law requiring a prescription for a schedule V controlled substance, the board, by rules, may require, or remove the requirement of, a prescription order for a schedule V controlled substance.

L. The label on a container of a controlled substance that is directly dispensed by a medical practitioner or pharmacist and that is not for the immediate administration to the ultimate user, such as a bed patient in a hospital, shall bear the name and address of the dispensing medical practitioner or pharmacist, the serial number, the date of dispensing, the name of the prescriber, the name of the patient or, if an animal, the name of the owner of the animal and the species of the animal, the directions for use and cautionary statements, if any, contained in the prescription order or required by law. If the controlled substance is included in schedule II, III or IV, the label shall bear a transfer warning to the effect: "Caution: federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed". The container of a schedule II controlled substance that is an opioid that is directly dispensed by a pharmacist and that is not for the immediate administration to the ultimate user shall have a red cap and a warning label prescribed by the board about potential addiction. The board or the executive director, if delegated by the board, may waive the red cap requirement if implementing the requirement is not feasible because of the specific dosage form or packaging type.

M. Controlled substances in schedules II, III, IV and V may be dispensed as electronically transmitted prescriptions if the prescribing medical practitioner is all of the following:

1. Properly registered by the United States drug enforcement administration.
2. Licensed in good standing in the United States jurisdiction in which the medical practitioner practices.

3. Authorized to issue such prescriptions in the jurisdiction in which the medical practitioner is licensed.

N. Notwithstanding any other provision of this section, beginning January 1, 2020, each prescription order, except a prescription order under subsection F of this section, that is issued by a medical practitioner for a schedule II controlled substance that is an opioid shall be transmitted electronically to the dispensing pharmacy. A medical practitioner is not in violation of this subsection:

1. During any time in which an established electronic prescribing system or a pharmacy management system is not operational or available in a timely manner. If the electronic prescribing system or a pharmacy management system is not operational or available, the medical practitioner may write a prescription order for a schedule II controlled substance that is an opioid. The medical practitioner shall indicate on the written prescription order that the electronic prescribing system or pharmacy management system is not operational or available. The medical practitioner must maintain a record, for a period of time prescribed by the board, of when the electronic prescribing system or pharmacy management system is not operational or available in a timely manner.

2. If the medical practitioner writes a prescription order for a schedule II controlled substance that is an opioid that will be dispensed for the patient from a veterans administration facility, a health facility on a military base, an Indian health services hospital or other Indian health service facility, or a tribal-owned clinic.

O. The requirement in subsections D and N of this section for an electronic prescription order does not apply to a prescription order for a schedule II controlled substance that is an opioid that is issued for medication-assisted treatment for a substance use disorder.

P. The board, by rule, may provide additional requirements for prescribing and dispensing controlled substances.

Q. In consultation with the task force established pursuant to section 36-2603, the board may prescribe by rule additional exceptions to the electronic prescribing requirements specified in this section for both pharmacists and medical practitioners.

R. Notwithstanding subsections D and N of this section, a medical practitioner who is licensed pursuant to title 32, chapter 21 is not required to comply with the electronic prescribing requirements of subsections D and N of this section until the Arizona state veterinary medical examining board determines that electronic prescribing software is widely available for veterinarians and notifies the Arizona state board of pharmacy of that determination.

S. For the purposes of this section, "medication-assisted treatment" has the same meaning prescribed in section 32-3201.01.

**ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (R20-0305)**

Title 9, Chapter 34, Article 1, Request for Eligibility Hearing

**Amend:** R9-34-101



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** March 3, 2020

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

**FROM:** Council Staff

**DATE:** February 10, 2020

**SUBJECT:** ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (R20-0305)  
Title 9, Chapter 34, Article 1, Request for Eligibility Hearing

**Amend:** R9-34-101

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### **Summary:**

This rulemaking from the Arizona Health Care Cost Containment System (AHCCCS) seeks to amend R9-34-101 related to appeals of eligibility determinations made by AHCCCS. Specifically, AHCCCS seeks to clarify the process for requesting a State Fair Hearing regarding an adverse action affecting AHCCCS eligibility. This rulemaking does not limit previously available appeals based on specific eligibility determinations, but clarifies which appeals of eligibility determinations are handled by AHCCCs and which are handled by the Arizona Department of Economic Security.

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

Yes. AHCCCS cites both general and specific statutory authority for the 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?**

No. AHCCCS did not review or rely on any study in conducting this rulemaking.

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

Since the rulemaking is for clarifying purposes and does not change any eligibility determination appeals or their procedures, AHCCCS believes that there are no persons who will be directly negatively affected by the rulemaking. Rather, AHCCCS anticipates that the public and all stakeholders will directly benefit from the additional clarity provided in the rule.

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

AHCCCS does not anticipate any costs to be incurred by stakeholders with the rulemaking. Rather, AHCCCS anticipates that the clarification of the rulemaking will provide direct benefits for AHCCCS, the Department of Economic Security, taxpayers, small businesses, health care service providers, and the general public.

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

AHCCCS does not anticipate any costs to be incurred by AHCCCS, political subdivisions, taxpayers, small businesses, health care service providers, nor the general public. Rather, AHCCCS anticipates that the rule clarification will only benefit these stakeholders through clarification provided in the rule.

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

No. AHCCCS made no changes to the proposed rulemaking.

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

AHCCCS indicates that it did not receive any public comments regarding 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.

**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.

**11. Conclusion**

AHCCCS seeks to amend R9-34-101 related to appeals of eligibility determinations made by AHCCCS to clarify the process for requesting a State Fair Hearing regarding an adverse action affecting AHCCCS eligibility.

AHCCCS is requesting an immediate effective date for this rulemaking. Specifically, AHCCCS argues that the amendment to R6-34-101 provides a benefit to the public and a penalty is not associated with a violation of the rule pursuant to A.R.S. § 41-1032(A)(4). Council staff finds AHCCCS has provided adequate justification for an immediate effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.

January 21, 2020

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

Nicole Sorenson, Chair

Governor's Regulatory Review Council

100 North 15th Avenue, Suite 305

Phoenix, Arizona 85007

RE: R9-34-101 Rulemaking

Dear Ms. Sorenson:

- |    |  |           |
|----|--|-----------|
| 1. | The close of record date:  | 1/21/2020 |
| 2. | Does the rulemaking activity relate to a Five Year Review Report:    | No        |
| a. | If yes, the date the Council approved the Five Year Review Report:   | N/A       |
| 3. | Does the rule establish a new fee:                                   | No        |
| a. | If yes, what statute authorizes the fee:                             | N/A       |
| 4. | Does the rule contain a fee increase:                                | No        |
| 5. | Is an immediate effective date requested pursuant to A.R.S. 41-1032: | Yes       |

AHCCCS certifies that the preamble discloses a reference to any study relevant to the rule that the agency reviewed. AHCCCS certifies that the preamble states that it did not rely on any such study in the agency's evaluation of or justification for the rule.

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

The following documents are enclosed:

1. Notice of Final Rulemaking, including preamble, table of contents, and text of each rule;
2. An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055;
3. If applicable: The written comments received by the agency concerning the proposed rule and a written record, transcript, or minutes of any testimony received if the agency maintains a written record, transcript or minutes;
4. If applicable: Any analysis submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of business in other states;
5. If applicable: Material incorporated by reference;
6. General and specific statutes authorizing the rules, including relevant statutory definitions; and
7. If applicable: If a term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule, the statute or other rule referred to in the definition.

Sincerely,



Matthew Devlin  
Assistant Director

Attachments

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 34. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

PREAMBLE

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

R9-34-101

**Rulemaking Action:**

Amend

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

Authorizing statute: A.R.S. § 36-2903.01

Implementing statute: A.R.S. § 36-2903.01

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

As specified in A.R.S. § 41-1032(A)(4), the Administration requests an immediate effective date to provide a benefit to the public and a penalty is not associated with a violation of the rule. The Administration believes the rule meets this requirement because the rule is an update to align with the existing language of the AHCCCS State Plan and Interagency Agreements.

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

Notice of Rulemaking Docket Opening: 25 A.A.R. 3654, December 20, 2020.

Notice of Proposed Rulemaking: 25 A.A.R. 3611, December 20, 2020.

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

Name: Nicole Fries

Address: AHCCCS

Office of Administrative Legal Services

701 E. Jefferson, Mail Drop 6200

Phoenix, AZ 85034

Telephone: (602) 417-4232

Fax: (602) 253-9115

E-mail: AHCCCSRules@azahcccs.gov

Web site: [www.azahcccs.gov](http://www.azahcccs.gov)

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

This rulemaking amends R9-34-101 and is the first rule package of a broader rulemaking to amend the grievance and appeals system rules. This particular rulemaking will amend R9-34-101 to clarify the process for requesting a State Fair Hearing regarding an adverse action affecting AHCCCS eligibility. The broader grievance and appeals rulemaking, to be filed at a later date, will amend current AHCCCS regulations for the overall administrative grievance and appeals process, including the process for requesting an administrative hearing and will encompass eligibility-related matters as well as non-eligibility related matters such as member service appeals, provider claim disputes, contractor sanctions, provider terminations, and discharges of AHCCCS members from nursing facilities. Other subjects to be addressed in the broader grievance and appeals rulemaking include, but are not limited to, service authorization requests, grievance matters, issuance of notices of action and adverse benefit determinations, timeframes for resolution, and member protections. To enhance understanding by the public as well as participants, the rules will delineate the rights and responsibilities of participants in the grievance and appeals process as well as clarify operational processes, including the various steps of the dispute resolution process. Furthermore, the rulemakings will reduce ambiguity, in part, by delineating State grievance and appeals system requirements, including the dispute resolution process for providers and contractors, and by identifying the administrative entity responsible for particular evidentiary hearings. The grievance and appeals system rulemaking is necessary to update the rules with federal and state provisions and to accurately delineate the roles and responsibilities of the various entities involved in the grievance and appeals system, including the hearing process, and to enhance general understanding of the complex dispute resolution process. Failure to amend current rules will leave in place regulations which do not correctly set forth current requirements and operations, causing compliance issues and ambiguity. The proposed rulemaking will assist applicants, members, contractors, and providers to better understand the procedural and substantive aspects of the grievance and appeals process across the system, promote compliance, reduce confusion, improve efficiency, and align rules with State and federal provisions.

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

A study was not referenced or relied upon when revising these regulations.

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

This rulemaking does not diminish a previous grant of authority of a political subdivision.

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

The rulemaking does not change which state agencies handle which administrative appeals under eligibility determinations by the Administration for AHCCCS coverage. Since this is a clarifying change for the public, the Administration does not anticipate any economic, small business, or consumer impact.

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

No changes were made to the proposed rulemaking.

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

No comments were made regarding the rulemaking.

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

No other matters have been prescribed.

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

Not applicable

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

Not applicable

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

No analysis was submitted

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

A.R.S. Title 6, Chapter 9, Title 36, Chapter 29, Article 3.01, and Title 41, Chapter 6, as well as A.A.C. Chapter 22, Article 15, Chapter 28, Chapter 29, Chapter 30, and Chapter 34, Article 102.

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

Not applicable.

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

**ARTICLE 1. REQUEST FOR ELIGIBILITY HEARING**

**Sections**

R9-34-101.

~~Purpose~~ Application of Chapter

## ARTICLE 1. REQUEST FOR ELIGIBILITY HEARING

### **R9-34-101. Purpose Application of Chapter**

- A. This Article establishes the requirements and process for a petitioner to request a State Fair Hearing regarding an adverse action affecting AHCCCS eligibility. ~~Except for the adverse action in R9-34-102(A)(5), this Article does not apply to a person determined eligible by the Arizona Department of Economic Security under 9 A.A.C. 22, Article 14.~~
- B. This Article applies to appeals of eligibility determinations made by AHCCCS including determinations for the aged, blind, or disabled (A.A.C. Chapter 22, Article 15), the Arizona Long Term Care System (Chapter 28), the Medicare Cost Sharing Program (Chapter 29), the Medicare Part D Program (Chapter 30), and adverse actions regarding premiums and copayments described in R9-34-102(A)(5). Hearings on these appeals are conducted as described in this Article, A.R.S. § 36-2903.01(B)(4) and the Arizona Administrative Procedures Act in A.R.S. Title 41, Chapter 6.
- C. The Arizona Department of Economic Security conducts appeals of eligibility under the procedures in A.R.S. Title 6, Chapter 9 for those eligibility determinations made by the Department including:
1. When the request for a State Fair Hearing is made for an individual whose eligibility is determined using MAGI-based income,
  2. When the request for a State Fair Hearing is made on behalf of more than one person in the same household where at least one person's eligibility is based on MAGI-based income,
  3. When the request for State Fair Hearing of AHCCCS eligibility is made at or near the same time as a request for the administrative review of an eligibility determination arising from the same facts and circumstances for any other public assistance program administered by the Department of Economic Security.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 34. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

ARTICLE 1. REQUEST FOR ELIGIBILITY HEARING

R9-34-101

1. **Identification of rulemaking.**

This final rulemaking by the AHCCCS Administration amends existing AHCCCS appeal rule R9-34-101 to reflect the Administration's interagency agreement with the Department of Economic Security and State Plan with the Centers for Medicare and Medicaid Services. The objective this rulemaking is to clarify how appeals of eligibility are handled and by which state agency they are handled by, since both the Department of Economic Security and AHCCCS handle eligibility determinations for AHCCCS coverage. Following concern that the rules did not clarify this to a degree understandable by the public, AHCCCS undertook this rulemaking.

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

The rule is designed to clarify for members of the public and other stakeholders which state agencies are responsible for handling eligibility determination appeals. It is difficult to anticipate the frequency of confusion over the appeals

b. **The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:**

It is anticipated there will a decrease in confusion for members of the public and stakeholders.

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

It is anticipated there will be no change in frequency of the targeted conduct.

2. **Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rule making.**

Since this change is for clarifying purposes and does not substantively change any eligibility determination appeals or their procedures, there are no persons who will be directly negatively affected by the rulemaking, however the Administration hopes that the public will directly benefit from the additional clarity provided in the rule.

3. **Cost benefit analysis.**

a. **Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking including the number of new full-time employees necessary to implement and enforce the proposed rule:**

i. **Cost:**

The Administration anticipates no additional costs will be incurred by this rulemaking.

**ii. Benefit:**

The AHCCCS Administration, taxpayers, and providers will directly benefit from this rulemaking as the clarification will allow those involved in eligibility appeals to know which agency to contact regardless of being in receipt of an agency notice.

**iii. Need for additional Full-time Employees:**

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

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

The Administration does not anticipate any new costs to be incurred by the affected political subdivision, the Department of Economic Security.

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

The Administration anticipates no economic impact on public and private employment.

**5. Statement of probable impact of the proposed rule on small businesses. The statement shall include:**

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

No small businesses are subject to the rulemaking.

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

The Administration does not anticipate an impact on the small business community.

**c. Description of methods prescribed in section A.R.S. § 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency's decision to use or not use each method:**

**i. Establishing less stringent compliance or reporting requirements in the rule for small businesses;**

This rulemaking does not impose compliance or reporting requirements on small businesses.

**ii. Establishing less stringent schedules deadlines in the rule for compliance or reporting requirements for small businesses;**

This rulemaking does not impose compliance or reporting requirements on small businesses.

**iii. Consolidate or simplify the rule's compliance or reporting requirements for small businesses;**

This rulemaking does not impose compliance or reporting requirements on small businesses.

**iv. Establish performance standards for small businesses to replace design or operational standards in the rule; and**

This rulemaking does not establish performance standards for small businesses.

**v. Exempting small businesses from any or all requirements of the rule.**

Exempting small businesses is not applicable to this rulemaking.

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

It is anticipated that private persons and consumers of medical services provided by hospitals will benefit from an improved clarity of the rule following the effective date of the rulemaking.

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

It is anticipated that the rulemaking will not affect state revenues.

7. **Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.**

The Administration did not consider other alternatives because the revisions to the rule are the most cost effective and efficient method of by aligning the rule with existing interagency agreements and the AHCCCS State Plan.

8. **A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data.**

The Administration did not rely on any data for this rulemaking.

## TITLE 9. HEALTH SERVICES

CHAPTER 34. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
GRIEVANCE SYSTEM

*Editor's Note: New 9 A.A.C. 34 made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).*

## ARTICLE 1. REQUEST FOR ELIGIBILITY HEARING

*Article 1, consisting of R9-34-101 through R9-34-114, made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).*

## Section

- R9-34-101. Purpose
- R9-34-102. Definitions
- R9-34-103. Computation of Time
- R9-34-104. Petitioner's Rights
- R9-34-105. Who May File
- R9-34-106. Requesting a State Fair Hearing
- R9-34-107. Time-frame for Requesting a State Fair Hearing
- R9-34-108. Format and Contents of the Request for a State Fair Hearing
- R9-34-109. Notice of Hearing
- R9-34-110. Denial of a Request for a State Fair Hearing
- R9-34-111. AHCCCS Time-frame for Resolution of a State Fair Hearing
- R9-34-112. Withdrawal of a Request for a State Fair Hearing
- R9-34-113. Motion for Rehearing or Review
- R9-34-114. AHCCCS Coverage During the State Fair Hearing Process

## ARTICLE 2. APPEAL, GRIEVANCE, AND HEARING FOR AN ENROLLED PERSON

*Article 2, consisting of R9-34-201 through R9-34-225, made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).*

## Section

- R9-34-201. Purpose
- R9-34-202. Definitions
- R9-34-203. Computation of Time
- R9-34-204. Language and Format of the Notice of Action
- R9-34-205. Content of the Notice of Action
- R9-34-206. Contractor Notice of Action Time-frame for Service Authorization Requests
- R9-34-207. Contractor Notice of Action Time-frame for Service Termination, Suspension, or Reduction
- R9-34-208. Who May File
- R9-34-209. Enrollee Time-frame for Filing an Appeal or Grievance with the Contractor
- R9-34-210. Contractor General Requirements for Grievance or Appeal Process
- R9-34-211. Contractor Special Requirements for the Appeal Process
- R9-34-212. Contractor Time-frame for Standard Disposition of a Grievance
- R9-34-213. Contractor Time-frame for Standard Resolution of an Appeal
- R9-34-214. Contractor Process for an Expedited Resolution of an Appeal
- R9-34-215. Contractor Time-frame for an Expedited Appeal Resolution
- R9-34-216. Content of Contractor Notice of Appeal Resolution
- R9-34-217. Enrollee Request for a State Fair Hearing
- R9-34-218. AHCCCS Time-frame for Resolution of a State Fair Hearing
- R9-34-219. Enrollee's Request for an Expedited State Fair Hearing
- R9-34-220. AHCCCS Time-frame for Resolution of Expedited

- R9-34-221. State Fair Hearing
- R9-34-222. Withdrawal of a Request for a State Fair Hearing
- R9-34-223. Denial of a Request for a State Fair Hearing
- R9-34-224. Motion for Rehearing or Review
- R9-34-224. Continuation of Services While the Contractor Appeal and the State Fair Hearing are Pending
- R9-34-225. Reversed Appeal Resolutions

## ARTICLE 3. APPEAL AND HEARING FOR AN FFS MEMBER

*Article 3, consisting of R9-34-301 through R9-34-322, made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).*

## Section

- R9-34-301. Purpose
- R9-34-302. Definitions
- R9-34-303. Computation of Time
- R9-34-304. Language and Format of the Notice of Action
- R9-34-305. Content of the Notice of Action
- R9-34-306. Time-frame for Notice of Action for Service Authorization Requests
- R9-34-307. Time-frame for Notice of Action for Service Termination, Suspension, or Reduction
- R9-34-308. Who May File
- R9-34-309. Time-frame for Filing an Appeal
- R9-34-310. General Requirements for the Appeal Process
- R9-34-311. Special Requirements for the Appeal Process
- R9-34-312. Time-frame for Standard Resolution of an Appeal
- R9-34-313. Content of the Notice of Appeal Resolution
- R9-34-314. Request for a State Fair Hearing
- R9-34-315. Time-frame for Resolution of State Fair Hearing for a Standard Resolution of an Appeal
- R9-34-316. Request for Expedited Resolution of an Appeal
- R9-34-317. Time-frame for Resolution of Expedited State Fair Hearing
- R9-34-318. Withdrawal of a Request for a State Fair Hearing
- R9-34-319. Denial of a Request for a State Fair Hearing
- R9-34-320. Motion for Rehearing or Review
- R9-34-321. Continuation of Services While the Appeal and the State Fair Hearing are Pending
- R9-34-322. Reversed Appeal Resolutions

## ARTICLE 4. CLAIM DISPUTE

*Article 4, consisting of R9-34-401 through R9-34-409, made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).*

## Section

- R9-34-401. Purpose
- R9-34-402. Definitions
- R9-34-403. Computation of Time
- R9-34-404. Content of Claim Dispute
- R9-34-405. Filing a Claim Dispute for a Claim Involving a Member Enrolled with a Contractor
- R9-34-406. Filing a Claim Dispute from a Contractor for Reinsurance
- R9-34-407. Filing a Claim Dispute for a Claim Involving an FFS Member
- R9-34-408. Denial of a Request for a State Fair Hearing
- R9-34-409. Motion for Rehearing or Review

**ARTICLE 1. REQUEST FOR ELIGIBILITY HEARING**

*Article 1, consisting of R9-34-101 through R9-34-114, made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).*

**R9-34-101. Purpose**

This Article establishes the requirements and process for a petitioner to request a State Fair Hearing regarding an adverse action affecting eligibility. Except for the adverse action in R9-34-102(A)(5), this Article does not apply to a person determined eligible by the Arizona Department of Economic Security under 9 A.A.C. 22, Article 14.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-102. Definitions**

- A. “Adverse action” by AHCCCS means:
1. Denial of eligibility,
  2. Discontinuance of eligibility,
  3. The imposition of or increase in Arizona Long Term Care System (ALTCS) share of cost determined under A.A.C. R9-28-408 or R9-28-410,
  4. An eligibility determination that the petitioner claims is beyond the established time-frame, or
  5. The imposition of or increase in a premium or copayment.
- B. “AHCCCS” means the AHCCCS Administration as defined in A.R.S. § 36-2901.
- C. “Day” means calendar day unless otherwise specified.
- D. “Director” means the Director of the Arizona Health Care Cost Containment System Administration or designee.
- E. “Director’s Decision” means the final administrative decision under A.R.S. § 41-1092(5).
- F. “Filed” means the date that AHCCCS receives a request for a State Fair Hearing as established by a date stamp on the request or other record of receipt.
- G. “Petitioner” means applicant, member, or other representative who is described and discussed in A.A.C. R9-22-1501, R9-22-1704, R9-22-1903, R9-22-2004, R9-27-302, R9-28-401, R9-28-1303, R9-29-203, R9-31-302, R9-31-1702, or for an adverse action under subsection (A)(5), an applicant, member, or other representative under 9 A.A.C. 22, Article 14.
- H. “State Fair Hearing” means an administrative hearing under A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-103. Computation of Time**

- A. Computation of time begins the day after the date on the Notice of Adverse Action and includes all calendar days and the final day of the period. If the final day of the period is a weekend or legal holiday, the period is extended until the end of the next day that is not a weekend or a legal holiday.
- B. The 30-day time-frame for filing a request for a State Fair Hearing begins with the date the petitioner receives the Notice of Adverse Action.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-104. Petitioner’s Rights**

- AHCCCS shall allow a petitioner the right to:
1. A State Fair Hearing; and

2. Copies, at the petitioner’s expense, of any relevant document not protected from disclosure by law.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-105. Who May File**

A petitioner who requests a State Fair Hearing shall make the request according to this Article.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-106. Requesting a State Fair Hearing**

A petitioner may request a State Fair Hearing under this Article only for an adverse action.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-107. Time-frame for Requesting a State Fair Hearing**

A petitioner shall request a State Fair Hearing in writing with AHCCCS within 30 days after the petitioner receives the Notice of Adverse Action.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-108. Format and Contents of the Request for a State Fair Hearing**

A petitioner shall submit a written request for a State Fair Hearing to AHCCCS. The request shall contain the case name, the adverse action taken by AHCCCS, and the reason for the State Fair Hearing.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-109. Notice of Hearing**

AHCCCS shall mail a Notice of Hearing under A.R.S. § 41-1092.05 if AHCCCS receives a request for a State Fair Hearing that is timely and contains the information listed in R9-34-108.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-110. Denial of a Request for a State Fair Hearing**

AHCCCS shall deny a request for a State Fair Hearing upon written determination by AHCCCS that:

1. The request for a State Fair Hearing is untimely;
2. The request for a State Fair Hearing is not for an adverse action permitted under this Article;
3. The request for a State Fair Hearing is moot, as determined by AHCCCS, based on the factual circumstances of the case; or
4. The sole issue presented is a federal or state law requiring an automatic change adversely affecting some or all applicants or members.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-111. AHCCCS Time-frame for Resolution of a State Fair Hearing**

AHCCCS shall mail a Director’s Decision to the petitioner no later than 30 days after the date of the Administrative Law Judge’s rec-

ommended decision and within 90 days after the date that the petitioner filed the request for a State Fair Hearing not including days for continuances granted at the petitioner's request.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

#### R9-34-112. Withdrawal of a Request for a State Fair Hearing

- A. AHCCCS shall accept a written request for withdrawal if the written request for withdrawal is received from the petitioner before AHCCCS mails a Notice of Hearing under R9-34-109.
- B. If AHCCCS mailed a Notice of Hearing under R9-34-109, the petitioner shall send a written request for withdrawal to the Office of Administrative Hearings (OAH).

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

#### R9-34-113. Motion for Rehearing or Review

Under A.R.S. § 41-1092.09, the Director shall grant a rehearing or review for any of the following reasons materially affecting a petitioner's rights:

1. Irregularity in the proceedings of a State Fair Hearing that deprived a petitioner of a fair hearing;
2. Misconduct of AHCCCS, OAH, or a party;
3. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
4. The decision is the result of passion or prejudice;
5. The decision is not justified by the evidence or is contrary to law; or
6. Good cause is established for the nonappearance of a party at the hearing.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

#### R9-34-114. AHCCCS Coverage During the State Fair Hearing Process

- A. If a petitioner requests a State Fair Hearing because of an increase in the share-of-cost, premium, or copayment and the request is filed before the effective date of the increase, AHCCCS shall not enforce the increase until a Director's Decision is rendered that supports the increase.
- B. If a petitioner files a request for a State Fair Hearing for a discontinuance action before the effective date of the discontinuance, the petitioner shall continue to receive AHCCCS coverage until a Director's Decision is rendered. A petitioner may waive coverage while the Director's Decision is pending.
- C. A petitioner, eligible under 9 A.A.C. 22, Article 31, who requests AHCCCS coverage during the State Fair Hearing process, shall comply with the premium payment requirements under A.A.C. R9-31-1419.
- D. A petitioner whose benefits are continued shall be financially liable for all fee-for-service and capitation payments made by AHCCCS during a period of ineligibility, if a discontinuance decision is upheld under A.R.S. § 41-1092.08.
- E. If a petitioner requests a hearing regarding the termination of family planning services under A.A.C. R9-22-1424 or the guaranteed enrollment period under 9 A.A.C. 22, Article 17, the petitioner shall not continue to be AHCCCS eligible after the end of the designated time period under A.R.S. § 36-2907.04 and 42 U.S.C. 1396a(e)(2). If the termination of family planning services is overturned, the applicable effective date of AHCCCS coverage shall be set forth in the Director's Decision.

- F. If a denial of eligibility is overturned, the effective date of AHCCCS eligibility shall be set forth in the Director's Decision.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

### ARTICLE 2. APPEAL, GRIEVANCE, AND HEARING FOR AN ENROLLED PERSON

*Article 2, consisting of R9-34-201 through R9-34-225, made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).*

#### R9-34-201. Purpose

This Article establishes the grievance, appeal, and State Fair Hearing requirements for a person enrolled with an AHCCCS contractor. A contractor is responsible for any functions or responsibilities delegated under a subcontract. It is the contractor's responsibility to ensure that the subcontractor has the ability to perform the delegated activities.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

#### R9-34-202. Definitions

The following definitions apply for purposes of this Article:

1. "AHCCCS" means the AHCCCS Administration as defined in A.R.S. § 36-2901.
2. "Action" by a contractor means:
  - a. The denial or limited authorization of a requested service, including the type or level of service;
  - b. The reduction, suspension, or termination of a previously authorized service;
  - c. The denial, in whole or in part, of payment for a service;
  - d. The failure to provide a service in a timely manner as set forth in contract;
  - e. The failure of a contractor to act within the timeframes specified in this Article; or
  - f. For an enrollee residing in a rural area with only one contractor, the denial of an enrollee's request to exercise the enrollee's right to obtain services outside the contractor's network.
3. "Appeal" means a request for review of an action.
4. "Contractor" means contractor or program contractor as defined in A.R.S. § 36-2901, 36-2931, 36-2971 and 36-2981; the Comprehensive Medical Dental Program in the Department of Economic Security; and the Children's Rehabilitation Services and Behavioral Health Services in the Arizona Department of Health Services.
5. "Day" means calendar day unless otherwise specified.
6. "Director" means the Director of the Arizona Health Care Cost Containment System Administration or designee.
7. "Director's Decision" means the final administrative decision under A.R.S. § 41-1092(5).
8. "Enrollee" means a person eligible for AHCCCS under A.R.S. Title 36, Chapter 29 and who is enrolled with an AHCCCS contractor.
9. "Filed" means the date that the contractor or AHCCCS, whichever is applicable, receives the request as established by a date stamp on the request or other record of receipt.
10. "Grievance" means an expression of dissatisfaction about any matter other than an action. Possible subjects for grievances include, but are not limited to, the quality of care or services provided, and aspects of interpersonal

relationships such as rudeness of a provider or employee or failure to respect the enrollee's rights.

11. "Institution for Mental Disease" means an institution defined in 42 CFR 435.1009 and licensed by the Arizona Department of Health Services.
12. "Rural" has the same meaning as in A.R.S. § 36-2171.
13. "State Fair Hearing" means an administrative hearing under A.R.S. Title 41, Chapter 6, Article 10.
14. "Working day" means a Monday, Tuesday, Wednesday, Thursday, or Friday unless:
  - a. A legal holiday falls on Monday, Tuesday, Wednesday, Thursday, or Friday; or
  - b. A legal holiday falls on Saturday or Sunday and a contractor is closed for business the prior Friday or following Monday.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

#### R9-34-203. Computation of Time

- A. Computation of time in calendar days, begins the day after the act, event, or decision and includes all calendar days and the final day of the period. If the final day of the period is a weekend or legal holiday, the period is extended until the end of the next day that is not a weekend or a legal holiday.
- B. Computation of time in working days, begins the day after the act, event or decision and includes all working days.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

#### R9-34-204. Language and Format of the Notice of Action

A contractor shall ensure that the Notice of Action is in writing and meets the following language and format requirements:

1. The Notice of Action shall be available in each non-English language spoken by a significant number or percentage of enrollees or potential enrollees in the contractor's geographic service area as established by contract.
2. The Notice of Action shall explain that free oral interpretation services are available to explain the Notice of Action for all non-English languages.
3. The format of the Notice of Action is easily understood and available in alternative formats, such as braille, large font, or enhanced audio, and in an appropriate manner that takes into consideration the special needs of an enrollee.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

#### R9-34-205. Content of the Notice of Action

A contractor shall ensure that the Notice of Action explains the following:

1. The action the contractor has taken or intends to take;
2. The reasons for the action;
3. The enrollee's right to file an appeal with the contractor;
4. The procedures for exercising the rights specified in this Article;
5. The circumstances under which an expedited resolution is available and how to request it; and
6. The circumstances under which an enrollee has a right to have services continue pending resolution of the appeal, how to request that services be continued, and the circumstances under which the enrollee is liable for the costs of services.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

#### R9-34-206. Contractor Notice of Action Time-frame for Service Authorization Requests

- A. For an authorization decision, not covered under subsection (B), for a service requested on behalf of an enrollee, the contractor shall mail a Notice of Action within 14 calendar days following the receipt of the enrollee's request.
- B. For an authorization request in which the provider indicates or the contractor determines that following the time-frame in subsection (A) could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function, the contractor shall make an expedited authorization decision and mail the Notice of Action as expeditiously as the enrollee's health condition requires, but not later than three working days after receipt of the request for service.
- C. If the enrollee requests an extension of the time-frame in subsection (A) or (B), the contractor shall extend the time-frame up to an additional 14 days as requested by the enrollee.
- D. If the contractor needs additional information and the extension is in the best interest of the enrollee, the contractor shall extend the time-frame in subsection (A) or (B) up to an additional 14 days. If the contractor extends the time-frame, the contractor shall:
  1. Give the enrollee written notice of the reason for the decision to extend the time-frame and inform the enrollee of the right to file a grievance if the enrollee disagrees with the decision, and
  2. Issue and carry out the determination as expeditiously as the enrollee's health condition requires and no later than the date the extension expires.
- E. For service authorization decisions not reached within the maximum time-frame in this Section, the authorization shall be considered denied on the date that the time-frame expires.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

#### R9-34-207. Contractor Notice of Action Time-frame for Service Termination, Suspension, or Reduction

- A. For termination, suspension, or reduction of previously authorized AHCCCS covered service, a contractor shall send the Notice of Action at least 10 days before the date of the action except as provided in subsection (B) or (C).
- B. The contractor may mail the Notice of Action no later than the date of action if:
  1. The contractor has factual information confirming the death of an enrollee;
  2. The contractor receives a clear written statement signed by the enrollee that the enrollee no longer wishes services or the enrollee gives information to the contractor that requires termination or reduction of services and indicates that the enrollee understands that this shall be the result of supplying that information;
  3. The enrollee is age 21 through 64 and has resided in an Institution for Mental Disease for more than 30 days;
  4. The enrollee is an inmate of a public institution that does not receive federal financial participation;
  5. The enrollee's whereabouts are unknown and the post office returns mail, directed to the enrollee, to the contractor indicating no forwarding address; or
  6. The contractor establishes the fact that the enrollee has been accepted for Medicaid by another state.

- C. The contractor may shorten the period of advance notice to five days before the date of action if the contractor has verified facts indicating probable fraud by the enrollee.
- D. If the contractor denies payment to a provider, the contractor shall send the Notice of Action to the enrollee at the time of the action affecting the claim.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-208. Who May File**

- A. An enrollee shall file a grievance, an appeal, or request a State Fair Hearing according to this Article.
- B. An authorized representative, including a provider, acting on behalf of the enrollee, with the enrollee's written consent, may file an appeal or request a State Fair Hearing on behalf of an enrollee. A provider is permitted to file a grievance with a contractor at the contractor's discretion.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-209. Enrollee Time-frame for Filing an Appeal or Grievance with the Contractor**

- A. An enrollee shall file an appeal either orally or in writing with the contractor within 60 days after the date of the Notice of Action.
- B. The enrollee shall file a grievance either orally or in writing with the contractor.
- C. The enrollee shall file a grievance directly with the contractor. AHCCCS shall refer to the contractor any grievance filed with AHCCCS. An enrollee is not entitled to a State Fair Hearing on a grievance.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-210. Contractor General Requirements for Grievance or Appeal Process**

- A. A contractor shall provide reasonable assistance to enrollees in completing forms and taking other procedural steps. Reasonable assistance includes, but is not limited to, providing interpreter services and toll-free numbers that have adequate TTY/TTD (teletypewriter/telecommunications device for the deaf, and text telephone) and interpreter capability.
- B. The contractor shall acknowledge receipt of each grievance orally or in writing. The contractor shall acknowledge receipt of each appeal in writing.
- C. The contractor shall ensure that the individual who makes a decision on a grievance or an appeal was not involved in any previous level of review or decision-making.
- D. The contractor shall ensure that a health care professional who makes decisions on any of the following appeals or grievances has the appropriate clinical expertise in treating the enrollee's condition or disease:
  1. An appeal of a denial that is based on lack of medical necessity,
  2. A grievance regarding denial of expedited resolution of an appeal, or
  3. A grievance or appeal that involves clinical issues.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-211. Contractor Special Requirements for the Appeal Process**

- A. A contractor shall treat an oral inquiry seeking to appeal an action as an appeal.
- B. A resolution of an appeal by the contractor before a State Fair Hearing is an informal resolution under A.R.S. § 36-2903.01(B)(4).
- C. The contractor shall provide a reasonable opportunity for an enrollee to present evidence, and allegations of fact or law, in person and in writing. The contractor shall inform the enrollee of the limited time available for this in the case of an expedited resolution.
- D. The contractor shall provide the enrollee and representative the opportunity, before and during the appeal process, to examine the enrollee's case file, including medical records, documents, and records considered during the appeal process, not protected from disclosure by law.
- E. The contractor shall include, as a party to the appeal, the enrollee or the legal representative of a deceased enrollee's estate.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-212. Contractor Time-frame for Standard Disposition of a Grievance**

For disposition of a grievance, a contractor shall complete disposition and provide oral or written notice to the enrollee of the contractor's decision within 90 days after the day the contractor receives the grievance.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-213. Contractor Time-frame for Standard Resolution of an Appeal**

- A. For standard resolution of an appeal, a contractor shall resolve the appeal and mail the written Notice of Appeal Resolution to the enrollee within 30 days after the day the contractor receives the appeal.
- B. If the enrollee requests an extension of the 30-day time-frame in subsection (A), the contractor shall extend the time-frame up to an additional 14 days.
- C. If the contractor needs additional information and the extension is in the best interest of the enrollee, the contractor shall extend the time-frame in subsection (A) up to an additional 14 days. If the contractor extends the time-frame, the contractor shall:
  1. Give the enrollee written notice of the reason for the decision to extend the time-frame, and
  2. Issue and carry out the resolution as expeditiously as the enrollee's health condition requires and no later than the date the extension expires.
- D. If a Notice of Appeal Resolution is not sent within the time-frame in this Section, the appeal shall be considered denied on the date that the time-frame expires.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-214. Contractor Process for an Expedited Resolution of an Appeal**

- A. A contractor shall establish and maintain a review process for an expedited appeal. The contractor shall conduct an expedited appeal if:

1. The contractor receives a request for an appeal from an enrollee and the contractor determines that taking the time for a standard resolution could seriously jeopardize the enrollee's life or health, or ability to attain, maintain, or regain maximum function;
  2. The contractor receives a request for an expedited appeal from an enrollee supported with documentation from the provider that taking the time for a standard resolution could seriously jeopardize the enrollee's life or health, or ability to attain, maintain, or regain maximum function; or
  3. The contractor receives a request for an expedited appeal directly from a provider, with the enrollee's written consent, and the provider indicates that taking the time for a standard resolution could seriously jeopardize the enrollee's life or health, or ability to attain, maintain, or regain maximum function.
- B.** The contractor shall ensure that punitive action is not taken against a provider who requests an expedited resolution or who supports an enrollee's appeal.
- C.** If the contractor denies a request for expedited resolution of an appeal from an enrollee, the contractor shall:
1. Resolve the appeal within the time-frame in R9-34-213; and
  2. Make reasonable efforts to give the enrollee prompt oral notice of the denial, and follow up within two calendar days with a written notice.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-215. Contractor Time-frame for an Expedited Appeal Resolution**

- A.** For expedited resolution of an appeal, a contractor shall resolve the appeal and mail a written Notice of Appeal Resolution to the enrollee within three working days after the day the contractor receives the appeal. The contractor shall make reasonable efforts to provide prompt oral notice.
- B.** If the enrollee requests an extension of the three working day time-frame in subsection (A), the contractor shall extend the time-frame up to an additional 14 days.
- C.** If the contractor needs additional information and the extension is in the best interest of the enrollee, the contractor shall extend the time-frame in subsection (A) up to an additional 14 days. If the contractor extends the time-frame, the contractor shall:
1. Give the enrollee written notice of the reason for the decision to extend the time-frame, and
  2. Issue and carry out the determination as expeditiously as the enrollee's health condition requires and no later than the date the extension expires.
- D.** For resolution decisions not reached within the time-frame in this Section, the appeal shall be considered denied on the date that the time-frame expires.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-216. Content of Contractor Notice of Appeal Resolution**

- A.** A contractor shall ensure that the written Notice of Appeal Resolution includes the results of the resolution process and the date it was completed.
- B.** For an appeal not resolved wholly in favor of the enrollee, the Notice of Appeal Resolution shall contain:

1. The right to request a State Fair Hearing, and how to do so;
2. The right to request to receive services while the State Fair Hearing is pending, and how to make the request;
3. The factual and legal basis for the decision; and
4. That the enrollee shall be liable for the cost of continued services if the Director's Decision upholds the contractor's decision.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-217. Enrollee Request for a State Fair Hearing**

- A.** An enrollee may request a State Fair Hearing on the contractor's resolution of an appeal. The request shall be in writing, submitted to and received by the contractor, no later than 30 days after the date the enrollee receives the Notice of Appeal Resolution.
- B.** If an enrollee wants services to be continued pending a State Fair Hearing, the request to continue services shall be in writing and comply with R9-34-224.
- C.** AHCCCS shall mail a Notice of Fair Hearing under A.R.S. § 41-1092.05 if a timely request for a State Fair Hearing is received.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-218. AHCCCS Time-frame for Resolution of a State Fair Hearing**

AHCCCS shall mail a Director's Decision to the enrollee no later than 30 days after the date of the Administrative Law Judge's recommended decision and within 90 days after the date that the enrollee filed the appeal with the contractor, not including the number of days the enrollee took to file for a State Fair Hearing, and days for continuances granted at the enrollee's request.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-219. Enrollee's Request for an Expedited State Fair Hearing**

An enrollee may request an expedited State Fair Hearing on the contractor's resolution of an expedited appeal. The request shall be in writing, submitted to and received by the contractor no later than 30 days after the enrollee receives the contractor's Notice of Appeal Resolution.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-220. AHCCCS Time-frame for Resolution of an Expedited State Fair Hearing**

Within three working days after the date AHCCCS receives the case file and information from the contractor concerning an expedited appeal resolution, AHCCCS shall mail to the enrollee the AHCCCS Director's Decision which results from the State Fair Hearing and the Administrative Law Judge's Recommended Decision. AHCCCS shall make reasonable efforts to provide oral notice of the Director's Decision.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-221. Withdrawal of a Request for a State Fair Hearing**

- A. AHCCCS shall accept a written request for withdrawal if the written request for withdrawal is received from the enrollee before AHCCCS mails a Notice of a State Fair Hearing under A.R.S. § 41-1092, et seq.
- B. If AHCCCS mailed a Notice of Hearing under A.R.S. § 41-1092, et seq., an enrollee shall send a written request for withdrawal to the OAH.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-222. Denial of a Request for a State Fair Hearing**

AHCCCS shall deny a request for a State Fair Hearing under A.R.S. § 41-1092, et seq., upon written determination that:

1. The request for hearing is untimely;
2. The request for hearing is not for an action permitted under this Article;
3. The request for hearing is moot, as determined by AHCCCS, based on the factual circumstances of each case; or
4. The sole issue presented is a federal or state law requiring an automatic change adversely affecting some or all enrollees.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-223. Motion for Rehearing or Review**

Under A.R.S. § 41-1092.09, the Director shall grant a rehearing or review for any of the following reasons materially affecting an enrollee's rights:

1. Irregularity in the proceedings of a hearing that deprived an enrollee of a fair hearing;
2. Misconduct of AHCCCS, OAH, or a party;
3. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
4. The decision is the result of passion or prejudice;
5. The decision is not justified by the evidence or is contrary to law; or
6. Good cause is established for the nonappearance of the enrollee at the State Fair Hearing.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-224. Continuation of Services While the Contractor Appeal and the State Fair Hearing Are Pending**

- A. For the purposes of this Section, timely filing means filing on or before the later of the following:
1. Within 10 days after the date that the contractor mails the Notice of Action, or
  2. The effective date of the action as indicated in the Notice of Action.
- B. The contractor shall continue the enrollee's services if:
1. The enrollee files the appeal timely;
  2. The appeal involves the termination, suspension, or reduction of a previously authorized course of treatment;
  3. The services were ordered by an authorized provider;
  4. The original period covered by the original authorization has not expired; and
  5. The enrollee requests continuation of services.
- C. If, at the enrollee's request, the contractor continues or reinstates the enrollee's services while the appeal is pending, the contractor shall continue services until one of following occurs:

1. The enrollee withdraws the appeal;
  2. Ten days pass after the contractor mails the Notice of Appeal Resolution to the enrollee, unless the enrollee, within the 10-day time-frame, has requested in writing a State Fair Hearing with continuation of benefits until a Director's Decision is reached;
  3. AHCCCS mails a Director's Decision adverse to the enrollee; or
  4. The time-period or service limits of a previously authorized service have been met.
- D. If the Director's Decision upholds the contractor's action, the contractor may recover the cost of the services furnished to the enrollee while the appeal is pending if the services were furnished solely because of the requirements of this Section.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-225. Reversed Appeal Resolutions**

- A. If the contractor or the Director's Decision reverses a decision to deny, limit, or delay services that were not furnished while the appeal was pending, the contractor shall authorize or provide the disputed services promptly, and as expeditiously as the enrollee's health condition requires.
- B. If the contractor or the Director's Decision reverses a decision to deny authorization of services, and the enrollee received the disputed services while the appeal was pending, the contractor shall pay the provider for those services.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**ARTICLE 3. APPEAL AND HEARING FOR AN FFS MEMBER**

*Article 3, consisting of R9-34-301 through R9-34-322, made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).*

**R9-34-301. Purpose**

This Article establishes the appeal and State Fair Hearing requirements for an AHCCCS fee-for-service (FFS) member.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-302. Definitions**

- A. "Action" by AHCCCS or a tribal contractor means:
1. The denial or limited authorization of a requested service, including the type or level of service;
  2. The reduction, suspension, or termination of a previously authorized service;
  3. The failure to provide services in a timely manner as set forth in contract; or
  4. The failure of AHCCCS to act within the time-frames specified in this Article.
- B. "AHCCCS" means the AHCCCS Administration as defined in A.R.S. § 36-2901.
- C. "Appeal" means a request for review of an action.
- D. "Day" means calendar day unless otherwise specified.
- E. "Director" means the Director of the Arizona Health Care Cost Containment System Administration or designee.
- F. "Director's Decision" means the final administrative decision under A.R.S. § 41-1092(5).
- G. "FFS member" means an FFS member eligible for AHCCCS under A.R.S. Title 36, Chapter 29, and who is enrolled with AHCCCS on an FFS basis.

- H. “Filed” means the date that AHCCCS receives a request as established by a date stamp on the request or other record of receipt.
- I. “Institution for Mental Disease” means an institution defined in 42 CFR 435.1009 and licensed by the Arizona Department of Health Services.
- J. “State Fair Hearing” means an administrative hearing under A.R.S. Title 41, Chapter 6, Article 10.
- K. “Working day” means a Monday, Tuesday, Wednesday, Thursday, or Friday unless:
1. A legal holiday falls on Monday, Tuesday, Wednesday, Thursday, or Friday; or
  2. A legal holiday falls on Saturday or Sunday and a contractor is closed for business the prior Friday or following Monday.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-303. Computation of Time**

- A. Computation of time in calendar days begins the day after the act, event, or decision and includes all calendar days and the final day of the period. If the final day of the period is a weekend or legal holiday, the period is extended until the end of the next day that is not a weekend or a legal holiday.
- B. Computation of time for working day begins the day after the act, event, or decision and includes all working days.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-304. Language and Format of the Notice of Action**

The Notice of Action shall be in writing and meet the following language and format requirements:

1. The Notice of Action is available in each non-English language spoken by a significant number or percentage of FFS members as established by contract.
2. The Notice of Action shall explain that free oral interpretation services are available to explain the Notice of Action for all non-English languages.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-305. Content of the Notice of Action**

The Notice of Action explains the following:

1. The action AHCCCS has taken or intends to take;
2. The reasons for the action;
3. The factual and legal basis for the decision;
4. The FFS member’s right to file an appeal with AHCCCS;
5. The procedures for exercising the rights specified in this Section;
6. The circumstances under which an expedited resolution is available and how to request it; and
7. The circumstances under which an FFS member has a right to have services continue pending resolution of the appeal, how to request that services be continued, and the circumstances under which the FFS member shall be liable for the costs of these services.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-306. Time-frame for Notice of Action for Service Authorization Requests**

- A. For an authorization decision, not covered in subsection (B), for a service requested on behalf of the FFS member, AHCCCS shall mail a Notice of Action within 14 calendar days following receipt of the FFS member’s request.
- B. For authorization requests in which the provider indicates or AHCCCS determines that following the time-frame in subsection (A) could seriously jeopardize the FFS member’s life or health, or ability to attain, maintain, or regain maximum function, AHCCCS shall make an expedited authorization decision and provide notice as expeditiously as the FFS member’s health condition requires, but not later than three working days after receipt of the request for service.
- C. If the FFS member requests an extension of the time-frame in subsection (A) or (B), AHCCCS shall extend the time-frame up to an additional 14 days as requested by the FFS member.
- D. If AHCCCS needs additional information and the extension is in the best interest of the FFS member, AHCCCS shall extend the time-frame in subsection (A) or (B) up to an additional 14 days. If AHCCCS extends the time-frame, AHCCCS shall:
1. Give the FFS member written notice of the reason for the decision to extend the time-frame; and
  2. Mail and carry out the determination as expeditiously as the FFS member’s health condition requires and no later than the date the extension expires.
- E. For service authorization decisions not reached within the time-frames in this Section, the authorization shall be considered denied on the date that the time-frame expires.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-307. Time-frame for Notice of Action for Service Termination, Suspension, or Reduction**

- A. For termination, suspension, or reduction of previously authorized AHCCCS covered service, AHCCCS shall send the Notice of Action at least 10 days before the date of the action except as provided in subsection (B) or (C).
- B. AHCCCS may mail the Notice of Action no later than the date of action if:
1. AHCCCS has factual information confirming the death of an FFS member;
  2. AHCCCS receives a clear written statement signed by the FFS member that the FFS member no longer wishes services or the FFS member gives information that requires termination or reduction of services and indicates that the FFS member understands that this shall be the result of supplying that information;
  3. The FFS member is age 21 through 64 and has resided in an Institution for Mental Disease for more than 30 days;
  4. The FFS member is an inmate of a public institution that does not receive federal financial participation;
  5. The FFS member’s whereabouts are unknown and the post office returns mail, directed to the FFS member, to the contractor indicating no forwarding address; or
  6. AHCCCS establishes the fact that the FFS member has been accepted for Medicaid by another state.
- C. AHCCCS may shorten the period of advance notice to five days before the date of action if AHCCCS has verified facts indicating probable fraud by the FFS member.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-308. Who May File**

- A. An FFS member shall file an appeal or request a State Fair Hearing according to this Article.
- B. An authorized representative, including a provider acting on behalf of the FFS member with the FFS member's written consent, shall file an appeal or request a State Fair Hearing on behalf of an FFS member.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-309. Time-frame for Filing an Appeal**

An FFS member shall file an appeal either orally or in writing with AHCCCS within 60 days after the date the FFS member receives the Notice of Action.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-310. General Requirements for the Appeal Process**

- A. AHCCCS shall provide reasonable assistance to an FFS member in completing forms and taking other procedural steps. Reasonable assistance includes, but is not limited to, providing interpreter services and toll-free numbers that have adequate TTY/TTD (teletypewriter/telecommunications device for the deaf and text telephone) and interpreter capability.
- B. AHCCCS shall acknowledge receipt of each appeal in writing.
- C. AHCCCS shall ensure that the individual who makes a decision on an appeal was not involved in any previous level of review or decision-making.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-311. Special Requirements for the Appeal Process**

- A. AHCCCS shall provide that an oral inquiry seeking to appeal an action is treated as an appeal.
- B. A resolution of an appeal by AHCCCS before a State Fair Hearing is an informal resolution under A.R.S. § 36-2903.01(B)(4).
- C. AHCCCS shall provide a reasonable opportunity for the FFS member to present evidence and allegations of fact or law prior to issuance of an appeal resolution.
- D. AHCCCS shall provide the enrollee and representative the opportunity, before and during the appeals process, to examine the enrollee's case file, including medical records, documents not protected from disclosure by law, and records considered during the appeal process.
- E. AHCCCS shall schedule a hearing and mail a Notice of State Fair Hearing under A.R.S. § 41-1092.05 if AHCCCS receives a timely appeal and:
  1. The prior authorization request, as defined in 9 A.A.C. 22, Article 1, was reviewed by two independent medical professionals prior to mailing the Notice of Action; or
  2. The FFS member requests a State Fair Hearing for expedited resolution that meets the criteria in R9-34-316.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-312. Time-frame for Standard Resolution of an Appeal**

- A. For standard resolution of an appeal, AHCCCS shall resolve the appeal and mail written Notice of Appeal Resolution to the FFS member within 30 days after the day AHCCCS receives the appeal.

- B. If the FFS member requests an extension of the 30 day time-frame in subsection (A), AHCCCS shall extend the time-frame up to an additional 14 days if requested by the FFS member.
- C. If additional information is needed by AHCCCS and the extension is in the best interest of the FFS member, AHCCCS shall extend the time-frame in subsection (A) up to an additional 14 days. If AHCCCS extends the time-frame, AHCCCS shall:
  1. Give the FFS member written notice of the reason for the decision to extend the time-frame, and
  2. Mail and carry out the resolution as expeditiously as the FFS member's health condition requires and no later than the date the extension expires.
- D. For resolution decisions not reached within the time-frames in this Section, the appeal shall be considered denied on the date that the time-frames expires.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-313. Content of the Notice of Appeal Resolution**

- A. The written Notice of Appeal Resolution shall include the results of the resolution process and the date it was completed.
- B. For appeals not resolved wholly in favor of the FFS member, the Notice of Appeal Resolution shall contain,
  1. The right to request a State Fair Hearing, and how to do so,
  2. The right to request to receive services while the State Fair Hearing is pending, and how to make the request,
  3. The factual and legal basis for the decision; and
  4. That the FFS member shall be liable for the cost of continued services if the Director's Decision upholds AHCCCS' decision.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-314. Request for a State Fair Hearing**

- A. An FFS member may request a State Fair Hearing under AHCCCS' standard resolution of an appeal. The request shall be in writing, submitted to and received by AHCCCS, no later than 30 days after the FFS member receives the AHCCCS Notice of Appeal Resolution.
- B. If an FFS member wants services to be continued pending a State Fair Hearing, the request to continue services shall be in writing and comply with R9-34-321.
- C. AHCCCS shall mail a Notice of State Fair Hearing under A.R.S. § 41-1092.05 if AHCCCS receives a timely request for a State Fair Hearing under the requirements of this Article.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-315. Time-frame for Resolution of State Fair Hearing for a Standard Resolution of an Appeal**

AHCCCS shall mail a Notice of Final Decision to the FFS member no later than 30 days after the date the Administrative Law Judge sends the recommended decision to AHCCCS, and within 90 days after the date that the FFS member filed the appeal with AHCCCS, not including the days for continuances granted at the enrollee's request.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-316. Request for Expedited Resolution of an Appeal**

- A. AHCCCS shall mail a Notice of State Fair Hearing under A.R.S. § 41-1092.05 when AHCCCS receives an appeal request from an FFS member no later than 30 days after the FFS member receives the AHCCCS Notice of Action and:
1. AHCCCS determines that taking the time for a standard resolution could seriously jeopardize the FFS member's life, health, or ability to attain, maintain, or regain maximum function;
  2. The expedited appeal request is supported with documentation by the provider supporting that taking the time for a standard resolution could seriously jeopardize the FFS member's life or health, or ability to attain, maintain, or regain maximum function; or
  3. AHCCCS receives an expedited appeal request directly from the provider who indicates that taking the time for a standard resolution could seriously jeopardize the FFS member's life or health, or ability to attain, maintain, or regain maximum function.
- B. AHCCCS shall ensure that punitive action is not taken against a provider who requests an expedited resolution or who supports an FFS member's appeal.
- C. If AHCCCS denies a request for expedited resolution of an appeal from an FFS member, AHCCCS shall:
1. Resolve the appeal within the time-frame in R9-34-315, and
  2. Make reasonable efforts to give the FFS member prompt oral notice of the denial, and follow up within two calendar days with a written notice.
- D. If an FFS member wants services to be continued pending a State Fair Hearing, the request to continue services shall be in writing and comply with R9-34-321.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-317. Time-frame for Resolution of Expedited State Fair Hearing**

AHCCCS shall mail a written Hearing Decision to the FFS member within three working days after the date that the hearing has concluded.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-318. Withdrawal of a Request for a State Fair Hearing**

- A. AHCCCS shall accept a written request for withdrawal if the written request for withdrawal is received from the FFS member before AHCCCS mails a notice of hearing under A.R.S. § 41-1092 et seq.
- B. If AHCCCS mailed a notice of hearing under A.R.S. § 41-1092 et seq., an FFS member shall send a written request for withdrawal to OAH.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-319. Denial of a Request for a State Fair Hearing**

AHCCCS shall deny a request for hearing under A.R.S. § 41-1092 et seq., upon written determination that:

1. The request for hearing is untimely;
2. The request for hearing is not for an action permitted under this Article;
3. The request for State Fair Hearing is moot, as determined by AHCCCS, based on the factual circumstances of the case; or

4. The sole issue presented is a federal or state law requiring an automatic change adversely affecting some or all enrollees.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-320. Motion for Rehearing or Review**

Under A.R.S. § 41-1092.09, the Director shall grant a rehearing or review for any of the following reasons materially affecting an enrollee's rights:

1. Irregularity in the proceedings of a hearing that deprived an FFS member of a State Fair Hearing;
2. Misconduct of AHCCCS, OAH, or a party;
3. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
4. The decision is the result of passion or prejudice;
5. The decision is not justified by the evidence or is contrary to law; or
6. Good cause is established for the nonappearance of a party at the hearing.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-321. Continuation of Services While the Appeal and the State Fair Hearing are Pending**

- A. For the purposes of this Section, timely filing means filing on or before the later of the following:
1. Within 10 days from the date that AHCCCS mails the Notice of Action, or
  2. The intended effective date of AHCCCS' proposed action.
- B. AHCCCS shall continue the FFS member's services if:
1. The FFS member files the appeal timely;
  2. The appeal involves the termination, suspension, or reduction of a previously authorized course of treatment;
  3. An authorized provider ordered the services;
  4. The original period covered by the original authorization has not expired; and
  5. The FFS member requests continuation of services.
- C. If, at the FFS member's request, AHCCCS continues or reinstates the FFS member's services while the appeal is pending, AHCCCS shall continue the services until one of following occurs:
1. The FFS member withdraws the appeal;
  2. Ten days pass after AHCCCS mails the Notice of Appeal Resolution to the FFS member unless the FFS member within the 10-day time-frame has requested a State Fair Hearing in writing with continuation of benefits until a Director's Decision is reached;
  3. AHCCCS mails a hearing decision adverse to the FFS member; or
  4. The time-period or service limits of a previously authorized service have been met.
- D. If the Director's Decision upholds AHCCCS' action, the FFS member shall be liable for the cost of the services furnished to the FFS member while the appeal is pending, to the extent that the services were furnished solely because of the requirements of this Section.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-322. Reversed Appeal Resolutions**

- A. If the Director's Decision reverses a decision to deny, limit, or delay services that were not furnished while the appeal was pending, AHCCCS shall authorize or provide the disputed services promptly, and as expeditiously as the FFS member's health condition requires.
- B. If the Director's Decision reverses a decision to deny authorization of services, and the FFS member received the disputed services while the appeal was pending, AHCCCS shall pay the provider for those services.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**ARTICLE 4. CLAIM DISPUTE**

*Article 4, consisting of R9-34-401 through R9-34-409, made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).*

**R9-34-401. Purpose**

This Article establishes process and requirements for a provider or contractor to resolve a claim dispute or request a State Fair Hearing. A contractor is responsible for any functions or responsibilities delegated under a subcontract. It is the contractor's responsibility to ensure that the subcontractor has the ability to perform the delegated activities.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-402. Definitions**

- A. "AHCCCS" means the AHCCCS Administration as defined in A.R.S. § 36-2901.
- B. "Claim dispute" means a dispute involving a payment of a claim, denial of a claim, imposition of a sanction or reinsurance.
- C. "Contractor" means contractor or program contractor as defined in A.R.S. Title 36, Chapter 29; the Comprehensive Medical Dental Program in the Department of Economic Security; and the Children's Rehabilitation Services and Behavioral Health Services in the Arizona Department of Health Services.
- D. "Day" means calendar day unless otherwise specified.
- E. "Director" means the Director of the Arizona Health Care Cost Containment System Administration or designee.
- F. "Director's Decision" means the final administrative decision under A.R.S. § 41-1092(5).
- G. "FFS member" means an FFS member eligible for AHCCCS under A.R.S. Title 36, Chapter 29, and who is enrolled with AHCCCS on an FFS basis and not enrolled with an AHCCCS contractor.
- H. "Filed" means the date that AHCCCS receives a request as established by a date stamp on the request or other record of receipt.
- I. "State Fair Hearing" means an administrative hearing under A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-403. Computation of Time**

Computation of time for calendar day begins the day after the act, event, or decision and includes all calendar days and the final day of the period. If the final day of the period is a weekend or legal holiday, the period is extended until the end of the next day that is not a weekend or a legal holiday.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-404. Content of Claim Dispute**

A claim dispute shall specify in detail the factual and legal basis for the claim dispute and the relief requested. AHCCCS shall deny a claim dispute if the factual or legal basis is not detailed.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-405. Filing a Claim Dispute for a Claim Involving a Member Enrolled with a Contractor**

- A. For a claim for services rendered to a member enrolled with a contractor, the provider shall file a written claim dispute with the contractor under the timelines in A.R.S. § 36-2903.01(B)(4).
- B. The contractor shall mail a written Notice of Decision of the claim dispute to the provider no later than 30 days after the provider files the claim dispute with the contractor, unless the provider and contractor agree to a longer period.
- C. The contractor's written Notice of Decision shall include:
1. The date of the decision,
  2. The factual and legal basis for the decision,
  3. The provider's right to request a State Fair Hearing under A.R.S. § 41-1092, et seq., and
  4. The manner in which a request for a State Fair Hearing is filed under A.R.S. § 41-1092, et seq.
- D. A provider may request a State Fair Hearing on the contractor's Notice of Decision if:
1. The provider files a written request for a State Fair Hearing with the contractor no later than 30 days after the date the provider receives the contractor's written Notice of Decision, or
  2. The contractor does not render a written Notice of Decision within 30 days after the claim dispute is filed and the provider files a written request for a State Fair Hearing within 30 days after the date that the Notice of Decision should have been mailed.
- E. AHCCCS shall mail a Notice of Hearing under A.R.S. § 41-1092.05 to the parties if a contractor receives a timely request for hearing from the provider.
- F. AHCCCS shall mail a Director's Decision to the provider no later than 30 days after the date the Administrative Law Judge sends the OAH decision to AHCCCS.
- G. AHCCCS shall accept a written request for withdrawal if the written request for withdrawal is received from the provider before AHCCCS mails a Notice of Hearing under A.R.S. § 41-1092, et seq. If AHCCCS mailed a Notice of Hearing under A.R.S. § 41-1092, et seq., a provider shall send a written request for withdrawal to OAH.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-406. Filing a Claim Dispute From a Contractor for Reinsurance**

- A. A contractor shall file a written reinsurance claim dispute with AHCCCS under the timelines in A.R.S. § 36-2903.01(B)(4).
- B. AHCCCS shall mail a written Notice of Decision of the claim dispute for reinsurance to the contractor no later than 30 days after the contractor files the claim dispute with AHCCCS, unless AHCCCS and contractor agree to a longer period.
- C. AHCCCS' written Notice of Decision shall include:
1. The date of the decision,
  2. The factual and legal basis for the decision,

3. The contractor's right to request a State Fair Hearing under A.R.S. § 41-1092, et seq., and
  4. The manner in which a contractor is to file a State Fair Hearing request under A.R.S. § 41-1092 et seq.
- D.** A contractor may request a State Fair Hearing on AHCCCS' Notice of Decision if:
1. The contractor files a written request for a State Fair Hearing with AHCCCS no later than 30 days after the date the contractor receives the AHCCCS' written Notice of Decision regarding reinsurance, or
  2. AHCCCS does not render a written Notice of Decision regarding reinsurance within 30 days after the claim dispute is filed and the contractor files a written request for a State Fair Hearing within 30 days after the date that the Notice of Decision should have been mailed.
- E.** AHCCCS shall mail a notice of a State Fair Hearing under A.R.S. § 41-1092.05 if AHCCCS receives a timely request for a State Fair Hearing from the contractor.
- F.** AHCCCS shall mail a Director's Decision to the contractor no later than 30 days after the date the Administrative Law Judge sends the OAH decision to AHCCCS.
- G.** AHCCCS shall accept a written request for withdrawal if the written request for withdrawal is received from the contractor before AHCCCS mails a notice of hearing under A.R.S. § 41-1092, et seq. If AHCCCS mailed a Notice of Hearing under A.R.S. § 41-1092, et seq., a contractor shall send a written request for withdrawal to OAH.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-407. Filing a Claim Dispute for a Claim Involving an FFS Member**

- A.** For a claim for an FFS member, the provider shall file a written claim dispute with AHCCCS under the timelines in A.R.S. § 36-2903.01(B)(4).
- B.** AHCCCS shall mail a written Notice of Decision of the claim dispute to the provider no later than 30 days after the provider files the claim dispute with AHCCCS, unless AHCCCS and the provider agree to a longer period.
- C.** AHCCCS' written Notice of Decision shall include:
1. The date of the decision,
  2. The factual and legal basis for the decision,
  3. The provider's right to request a State Fair Hearing under A.R.S. § 41-1092, et seq., and
  4. The manner in which a provider is to file a State Fair Hearing request under A.R.S. § 41-1092 et seq.
- D.** A provider may request a State Fair Hearing on AHCCCS' Notice of Decision if:
1. The provider files a written request for a State Fair Hearing with AHCCCS no later than 30 days after the date the provider receives the AHCCCS' written Notice of Decision, or

2. AHCCCS does not render a written Notice of Decision within 30 days after the claim dispute is filed and the provider files a written request for a State Fair Hearing based on AHCCCS' failure or refusal to decide the claim dispute within 30 days after the date that the Notice of Decision should have been mailed.

- E.** AHCCCS shall mail a Notice of Hearing under A.R.S. § 41-1092.05 if AHCCCS receives a timely request for a State Fair Hearing from the provider.
- F.** AHCCCS shall mail a Director's Decision to the provider no later than 30 days after the date the Administrative Law Judge sends the OAH decision to AHCCCS.
- G.** AHCCCS shall accept a written request for withdrawal if the written request for withdrawal is received from the provider before AHCCCS mails a Notice of Hearing under A.R.S. § 41-1092 et seq. If AHCCCS mailed a Notice of Hearing under A.R.S. § 41-1092 et seq., a provider shall send a written request for withdrawal to OAH.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-408. Denial of a Request for a State Fair Hearing**

AHCCCS shall deny a request for hearing under A.R.S. § 41-1092, et seq., upon written determination that:

1. The request for hearing is untimely;
2. The request for hearing is not for an action permitted under this Article;
3. The provider or contractor waives the right to a hearing; or
4. The request for hearing is moot, as determined by AHCCCS, based on the factual circumstances of the case.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

**R9-34-409. Motion for Rehearing or Review**

Under A.R.S. § 41-1092.09, the Director shall grant a rehearing or review for any of the following reasons materially affecting a provider's rights:

1. Irregularity in the proceedings of a hearing that deprived a provider of a fair hearing;
2. Misconduct of AHCCCS, OAH, or a party;
3. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
4. The decision is the result of passion or prejudice;
5. The decision is not justified by the evidence or is contrary to law; or
6. Good cause is established for the nonappearance of a party at the hearing.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 828, effective April 3, 2004 (Supp. 04-1).

36-2903.01. Additional powers and duties; report; definition

A. The director of the Arizona health care cost containment system administration may adopt rules that provide that the system may withhold or forfeit payments to be made to a noncontracting provider by the system if the noncontracting provider fails to comply with this article, the provider agreement or rules that are adopted pursuant to this article and that relate to the specific services rendered for which a claim for payment is made.

B. The director shall:

1. Prescribe uniform forms to be used by all contractors. The rules shall require a written and signed application by the applicant or an applicant's authorized representative, or, if the person is incompetent or incapacitated, a family member or a person acting responsibly for the applicant may obtain a signature or a reasonable facsimile and file the application as prescribed by the administration.

2. Enter into an interagency agreement with the department to establish a streamlined eligibility process to determine the eligibility of all persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). At the administration's option, the interagency agreement may allow the administration to determine the eligibility of certain persons, including those defined pursuant to section 36-2901, paragraph 6, subdivision (a).

3. Enter into an intergovernmental agreement with the department to:

(a) Establish an expedited eligibility and enrollment process for all persons who are hospitalized at the time of application.

(b) Establish performance measures and incentives for the department.

(c) Establish the process for management evaluation reviews that the administration shall perform to evaluate the eligibility determination functions performed by the department.

(d) Establish eligibility quality control reviews by the administration.

(e) Require the department to adopt rules, consistent with the rules adopted by the administration for a hearing process, that applicants or members may use for appeals of eligibility determinations or redeterminations.

(f) Establish the department's responsibility to place sufficient eligibility workers at federally qualified health centers to screen for eligibility and at hospital sites and level one trauma centers to ensure that persons seeking hospital services are screened on a timely basis for eligibility for the system, including a process to ensure that applications for the system can be accepted on a twenty-four hour basis, seven days a week.

(g) Withhold payments based on the allowable sanctions for errors in eligibility determinations or redeterminations or failure to meet performance measures required by the intergovernmental agreement.

(h) Recoup from the department all federal fiscal sanctions that result from the department's inaccurate eligibility determinations. The director may offset all or part of a sanction if the department submits a corrective action plan and a strategy to remedy the error.

4. By rule establish a procedure and time frames for the intake of grievances and requests for hearings, for the continuation of benefits and services during the appeal process and for a grievance process at the contractor level. Notwithstanding sections 41-1092.02, 41-1092.03 and 41-1092.05, the administration shall develop rules to establish the procedure and time frame for the informal resolution of grievances and appeals. A grievance that is not related to a claim for payment of system covered services shall be filed in writing with and received by the administration or the prepaid capitated provider or program contractor not later than sixty days after the date of the adverse action, decision or policy implementation being grieved. A grievance that is related to a claim for payment of system covered services must be filed in writing and received by the administration or the prepaid capitated provider or program contractor within twelve months after the date of service, within twelve months

after the date that eligibility is posted or within sixty days after the date of the denial of a timely claim submission, whichever is later. A grievance for the denial of a claim for reimbursement of services may contest the validity of any adverse action, decision, policy implementation or rule that related to or resulted in the full or partial denial of the claim. A policy implementation may be subject to a grievance procedure, but it may not be appealed for a hearing. The administration is not required to participate in a mandatory settlement conference if it is not a real party in interest. In any proceeding before the administration, including a grievance or hearing, persons may represent themselves or be represented by a duly authorized agent who is not charging a fee. A legal entity may be represented by an officer, partner or employee who is specifically authorized by the legal entity to represent it in the particular proceeding.

5. Apply for and accept federal funds available under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) in support of the system. The application made by the director pursuant to this paragraph shall be designed to qualify for federal funding primarily on a prepaid capitated basis. Such funds may be used only for the support of persons defined as eligible pursuant to title XIX of the social security act or the approved section 1115 waiver.

6. At least thirty days before the implementation of a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

7. In addition to the cost sharing requirements specified in subsection D, paragraph 4 of this section:

(a) Charge monthly premiums up to the maximum amount allowed by federal law to all populations of eligible persons who may be charged.

(b) Implement this paragraph to the extent permitted under the federal deficit reduction act of 2005 and other federal laws, subject to the approval of federal waiver authority and to the extent that any changes in the cost sharing requirements under this paragraph would permit this state to receive any enhanced federal matching rate.

C. The director is authorized to apply for any federal funds available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state funds appropriated for the administration and operation of the system may be used as matching funds to secure federal funds pursuant to this subsection.

D. The director may adopt rules or procedures to do the following:

1. Authorize advance payments based on estimated liability to a contractor or a noncontracting provider after the contractor or noncontracting provider has submitted a claim for services and before the claim is ultimately resolved. The rules shall specify that any advance payment shall be conditioned on the execution before payment of a contract with the contractor or noncontracting provider that requires the administration to retain a specified percentage, which shall be at least twenty percent, of the claimed amount as security and that requires repayment to the administration if the administration makes any overpayment.

2. Defer liability, in whole or in part, of contractors for care provided to members who are hospitalized on the date of enrollment or under other circumstances. Payment shall be on a capped fee-for-service basis for services other than hospital services and at the rate established pursuant to subsection G of this section for hospital services or at the rate paid by the health plan, whichever is less.

3. Deputize, in writing, any qualified officer or employee in the administration to perform any act that the director by law is empowered to do or charged with the responsibility of doing, including the authority to issue final administrative decisions pursuant to section 41-1092.08.

4. Notwithstanding any other law, require persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 to be financially responsible for any cost sharing requirements established in a state plan or a section 1115 waiver and approved by the centers for medicare and

medicaid services. Cost sharing requirements may include copayments, coinsurance, deductibles, enrollment fees and monthly premiums for enrolled members, including households with children enrolled in the Arizona long-term care system.

E. The director shall adopt rules that further specify the medical care and hospital services that are covered by the system pursuant to section 36-2907.

F. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection shall consider the differences between rural and urban conditions on the delivery of hospitalization and medical care.

G. For inpatient hospital admissions and outpatient hospital services on and after March 1, 1993, the administration shall adopt rules for the reimbursement of hospitals according to the following procedures:

1. For inpatient hospital stays from March 1, 1993 through September 30, 2014, the administration shall use a prospective tiered per diem methodology, using hospital peer groups if analysis shows that cost differences can be attributed to independently definable features that hospitals within a peer group share. In peer grouping the administration may consider such factors as length of stay differences and labor market variations. If there are no cost differences, the administration shall implement a stop loss-stop gain or similar mechanism. Any stop loss-stop gain or similar mechanism shall ensure that the tiered per diem rates assigned to a hospital do not represent less than ninety percent of its 1990 base year costs or more than one hundred ten percent of its 1990 base year costs, adjusted by an audit factor, during the period of March 1, 1993 through September 30, 1994. The tiered per diem rates set for hospitals shall represent no less than eighty-seven and one-half percent or more than one hundred twelve and one-half percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1994 through September 30, 1995 and no less than eighty-five percent or more than one hundred fifteen percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1995 through September 30, 1996. For the periods after September 30, 1996 no stop loss-stop gain or similar mechanisms shall be in effect. An adjustment in the stop loss-stop gain percentage may be made to ensure that total payments do not increase as a result of this provision. If peer groups are used, the administration shall establish initial peer group designations for each hospital before implementation of the per diem system. The administration may also use a negotiated rate methodology. The tiered per diem methodology may include separate consideration for specialty hospitals that limit their provision of services to specific patient populations, such as rehabilitative patients or children. The initial per diem rates shall be based on hospital claims and encounter data for dates of service November 1, 1990 through October 31, 1991 and processed through May of 1992. The administration may also establish a separate reimbursement methodology for claims with extraordinarily high costs per day that exceed thresholds established by the administration.

2. For rates effective on October 1, 1994, and annually through September 30, 2011, the administration shall adjust tiered per diem payments for inpatient hospital care by the data resources incorporated market basket index for prospective payment system hospitals. For rates effective beginning on October 1, 1999, the administration shall adjust payments to reflect changes in length of stay for the maternity and nursery tiers.

3. Through June 30, 2004, for outpatient hospital services, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to the covered charges. Beginning on July 1, 2004 through June 30, 2005, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to covered charges. If the hospital increases its charges for outpatient services filed with the Arizona department of health services pursuant to chapter 4, article 3 of this title, by more than 4.7 percent for dates of service effective on or after July 1, 2004, the hospital specific cost-to-charge ratio will be reduced by the amount that it exceeds 4.7 percent. If charges exceed 4.7 percent, the effective date of the increased charges will be the effective date of the adjusted Arizona health care cost containment system cost-to-charge ratio. The administration shall develop the methodology for a capped fee-for-service schedule and a statewide cost-to-charge ratio. Any covered outpatient service not included in the capped fee-for-service schedule shall be reimbursed by applying the statewide cost-to-charge ratio that is based on the services not included in the capped fee-for-service schedule. Beginning on July 1, 2005, the administration shall reimburse clean claims with dates of service on or after July 1, 2005, based on the capped fee-for-service schedule or the statewide cost-to-charge

ratio established pursuant to this paragraph. The administration may make additional adjustments to the outpatient hospital rates established pursuant to this section based on other factors, including the number of beds in the hospital, specialty services available to patients and the geographic location of the hospital.

4. Except if submitted under an electronic claims submission system, a hospital bill is considered received for purposes of this paragraph on initial receipt of the legible, error-free claim form by the administration if the claim includes the following error-free documentation in legible form:

- (a) An admission face sheet.
- (b) An itemized statement.
- (c) An admission history and physical.
- (d) A discharge summary or an interim summary if the claim is split.
- (e) An emergency record, if admission was through the emergency room.
- (f) Operative reports, if applicable.
- (g) A labor and delivery room report, if applicable.

Payment received by a hospital from the administration pursuant to this subsection or from a contractor either by contract or pursuant to section 36-2904, subsection I is considered payment by the administration or the contractor of the administration's or contractor's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.

5. For services rendered on and after October 1, 1997, the administration shall pay a hospital's rate established according to this section subject to the following:

- (a) If the hospital's bill is paid within thirty days of the date the bill was received, the administration shall pay ninety-nine percent of the rate.
- (b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate.
- (c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate plus a fee of one percent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. In developing the reimbursement methodology, if a review of the reports filed by a hospital pursuant to section 36-125.04 indicates that further investigation is considered necessary to verify the accuracy of the information in the reports, the administration may examine the hospital's records and accounts related to the reporting requirements of section 36-125.04. The administration shall bear the cost incurred in connection with this examination unless the administration finds that the records examined are significantly deficient or incorrect, in which case the administration may charge the cost of the investigation to the hospital examined.

7. Except for privileged medical information, the administration shall make available for public inspection the cost and charge data and the calculations used by the administration to determine payments under the tiered per diem system, provided that individual hospitals are not identified by name. The administration shall make the data and calculations available for public inspection during regular business hours and shall provide copies of the data and calculations to individuals requesting such copies within thirty days of receipt of a written request. The administration may charge a reasonable fee for the provision of the data or information.

8. The prospective tiered per diem payment methodology for inpatient hospital services shall include a mechanism for the prospective payment of inpatient hospital capital related costs. The capital payment shall

include hospital specific and statewide average amounts. For tiered per diem rates beginning on October 1, 1999, the capital related cost component is frozen at the blended rate of forty percent of the hospital specific capital cost and sixty percent of the statewide average capital cost in effect as of January 1, 1999 and as further adjusted by the calculation of tier rates for maternity and nursery as prescribed by law. Through September 30, 2011, the administration shall adjust the capital related cost component by the data resources incorporated market basket index for prospective payment system hospitals.

9. For graduate medical education programs:

(a) Beginning September 30, 1997, the administration shall establish a separate graduate medical education program to reimburse hospitals that had graduate medical education programs that were approved by the administration as of October 1, 1999. The administration shall separately account for monies for the graduate medical education program based on the total reimbursement for graduate medical education reimbursed to hospitals by the system in federal fiscal year 1995-1996 pursuant to the tiered per diem methodology specified in this section. The graduate medical education program reimbursement shall be adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Subject to legislative appropriation, on an annual basis, each qualified hospital shall receive a single payment from the graduate medical education program that is equal to the same percentage of graduate medical education reimbursement that was paid by the system in federal fiscal year 1995-1996. Any reimbursement for graduate medical education made by the administration shall not be subject to future settlements or appeals by the hospitals to the administration. The monies available under this subdivision shall not exceed the fiscal year 2005-2006 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement, except for monies distributed for expansions pursuant to subdivision (b) of this paragraph.

(b) The monies available for graduate medical education programs pursuant to this subdivision shall not exceed the fiscal year 2006-2007 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Graduate medical education programs eligible for such reimbursement are not precluded from receiving reimbursement for funding under subdivision (c) of this paragraph. Beginning July 1, 2006, the administration shall distribute any monies appropriated for graduate medical education above the amount prescribed in subdivision (a) of this paragraph in the following order or priority:

(i) For the direct costs to support the expansion of graduate medical education programs established before July 1, 2006 at hospitals that do not receive payments pursuant to subdivision (a) of this paragraph. These programs must be approved by the administration.

(ii) For the direct costs to support the expansion of graduate medical education programs established on or before October 1, 1999. These programs must be approved by the administration.

(c) The administration shall distribute to hospitals any monies appropriated for graduate medical education above the amount prescribed in subdivisions (a) and (b) of this paragraph for the following purposes:

(i) For the direct costs of graduate medical education programs established or expanded on or after July 1, 2006. These programs must be approved by the administration.

(ii) For a portion of additional indirect graduate medical education costs for programs that are located in a county with a population of less than five hundred thousand persons at the time the residency position was created or for a residency position that includes a rotation in a county with a population of less than five hundred thousand persons at the time the residency position was established. These programs must be approved by the administration.

(d) The administration shall develop, by rule, the formula by which the monies are distributed.

(e) Each graduate medical education program that receives funding pursuant to subdivision (b) or (c) of this paragraph shall identify and report to the administration the number of new residency positions created by the funding provided in this paragraph, including positions in rural areas. The program shall also report information related to the number of funded residency positions that resulted in physicians locating their practices in this state. The administration shall report to the joint legislative budget committee by February 1 of each year on the number of new residency positions as reported by the graduate medical education programs.

(f) Local, county and tribal governments and any university under the jurisdiction of the Arizona board of regents may provide monies in addition to any state general fund monies appropriated for graduate medical education in order to qualify for additional matching federal monies for providers, programs or positions in a specific locality and costs incurred pursuant to a specific contract between the administration and providers or other entities to provide graduate medical education services as an administrative activity. Payments by the administration pursuant to this subdivision may be limited to those providers designated by the funding entity and may be based on any methodology deemed appropriate by the administration, including replacing any payments that might otherwise have been paid pursuant to subdivision (a), (b) or (c) of this paragraph had sufficient state general fund monies or other monies been appropriated to fully fund those payments. These programs, positions, payment methodologies and administrative graduate medical education services must be approved by the administration and the centers for medicare and medicaid services. The administration shall report to the president of the senate, the speaker of the house of representatives and the director of the joint legislative budget committee on or before July 1 of each year on the amount of money contributed and number of residency positions funded by local, county and tribal governments, including the amount of federal matching monies used.

(g) Any funds appropriated but not allocated by the administration for subdivision (b) or (c) of this paragraph may be reallocated if funding for either subdivision is insufficient to cover appropriate graduate medical education costs.

10. Notwithstanding section 41-1005, subsection A, paragraph 9, the administration shall adopt rules pursuant to title 41, chapter 6 establishing the methodology for determining the prospective tiered per diem payments that are in effect through September 30, 2014.

11. For inpatient hospital services rendered on or after October 1, 2011, the prospective tiered per diem payment rates are permanently reset to the amounts payable for those services as of October 1, 2011 pursuant to this subsection.

12. The administration shall adopt a diagnosis-related group based hospital reimbursement methodology consistent with title XIX of the social security act for inpatient dates of service on and after October 1, 2014. The administration may make additional adjustments to the inpatient hospital rates established pursuant to this section for hospitals that are publicly operated or based on other factors, including the number of beds in the hospital, the specialty services available to patients, the geographic location and diagnosis-related group codes that are made publicly available by the hospital pursuant to section 36-437. The administration may also provide additional reimbursement for extraordinarily high cost cases that exceed a threshold above the standard payment. The administration may also establish a separate payment methodology for specific services or hospitals serving unique populations.

H. The director may adopt rules that specify enrollment procedures, including notice to contractors of enrollment. The rules may provide for varying time limits for enrollment in different situations. The administration shall specify in contract when a person who has been determined eligible will be enrolled with that contractor and the date on which the contractor will be financially responsible for health and medical services to the person.

I. The administration may make direct payments to hospitals for hospitalization and medical care provided to a member in accordance with this article and rules. The director may adopt rules to establish the procedures by which the administration shall pay hospitals pursuant to this subsection if a contractor fails to make timely payment to a hospital. Such payment shall be at a level determined pursuant to section 36-2904, subsection H

or I. The director may withhold payment due to a contractor in the amount of any payment made directly to a hospital by the administration on behalf of a contractor pursuant to this subsection.

J. The director shall establish a special unit within the administration for the purpose of monitoring the third-party payment collections required by contractors and noncontracting providers pursuant to section 36-2903, subsection B, paragraph 10 and subsection F and section 36-2915, subsection E. The director shall determine by rule:

1. The type of third-party payments to be monitored pursuant to this subsection.

2. The percentage of third-party payments that is collected by a contractor or noncontracting provider and that the contractor or noncontracting provider may keep and the percentage of such payments that the contractor or noncontracting provider may be required to pay to the administration. Contractors and noncontracting providers must pay to the administration one hundred percent of all third-party payments that are collected and that duplicate administration fee-for-service payments. A contractor that contracts with the administration pursuant to section 36-2904, subsection A may be entitled to retain a percentage of third-party payments if the payments collected and retained by a contractor are reflected in reduced capitation rates. A contractor may be required to pay the administration a percentage of third-party payments that are collected by a contractor and that are not reflected in reduced capitation rates.

K. The administration shall establish procedures to apply to the following if a provider that has a contract with a contractor or noncontracting provider seeks to collect from an individual or financially responsible relative or representative a claim that exceeds the amount that is reimbursed or should be reimbursed by the system:

1. On written notice from the administration or oral or written notice from a member that a claim for covered services may be in violation of this section, the provider that has a contract with a contractor or noncontracting provider shall investigate the inquiry and verify whether the person was eligible for services at the time that covered services were provided. If the claim was paid or should have been paid by the system, the provider that has a contract with a contractor or noncontracting provider shall not continue billing the member.

2. If the claim was paid or should have been paid by the system and the disputed claim has been referred for collection to a collection agency or referred to a credit reporting bureau, the provider that has a contract with a contractor or noncontracting provider shall:

(a) Notify the collection agency and request that all attempts to collect this specific charge be terminated immediately.

(b) Advise all credit reporting bureaus that the reported delinquency was in error and request that the affected credit report be corrected to remove any notation about this specific delinquency.

(c) Notify the administration and the member that the request for payment was in error and that the collection agency and credit reporting bureaus have been notified.

3. If the administration determines that a provider that has a contract with a contractor or noncontracting provider has billed a member for charges that were paid or should have been paid by the administration, the administration shall send written notification by certified mail or other service with proof of delivery to the provider that has a contract with a contractor or noncontracting provider stating that this billing is in violation of federal and state law. If, twenty-one days or more after receiving the notification, a provider that has a contract with a contractor or noncontracting provider knowingly continues billing a member for charges that were paid or should have been paid by the system, the administration may assess a civil penalty in an amount equal to three times the amount of the billing and reduce payment to the provider that has a contract with a contractor or noncontracting provider accordingly. Receipt of delivery signed by the addressee or the addressee's employee is prima facie evidence of knowledge. Civil penalties collected pursuant to this subsection shall be deposited in the state general fund. Section 36-2918, subsections C, D and F, relating to the imposition, collection and enforcement of civil penalties, apply to civil penalties imposed pursuant to this paragraph.

L. The administration may conduct postpayment review of all claims paid by the administration and may recoup any monies erroneously paid. The director may adopt rules that specify procedures for conducting postpayment review. A contractor may conduct a postpayment review of all claims paid by the contractor and may recoup monies that are erroneously paid.

M. Subject to title 41, chapter 4, article 4, the director or the director's designee may employ and supervise personnel necessary to assist the director in performing the functions of the administration.

N. The administration may contract with contractors for obstetrical care who are eligible to provide services under title XIX of the social security act.

O. Notwithstanding any other law, on federal approval the administration may make disproportionate share payments to private hospitals, county operated hospitals, including hospitals owned or leased by a special health care district, and state operated institutions for mental disease beginning October 1, 1991 in accordance with federal law and subject to legislative appropriation. If at any time the administration receives written notification from federal authorities of any change or difference in the actual or estimated amount of federal funds available for disproportionate share payments from the amount reflected in the legislative appropriation for such purposes, the administration shall provide written notification of such change or difference to the president and the minority leader of the senate, the speaker and the minority leader of the house of representatives, the director of the joint legislative budget committee, the legislative committee of reference and any hospital trade association within this state, within three working days not including weekends after receipt of the notice of the change or difference. In calculating disproportionate share payments as prescribed in this section, the administration may use either a methodology based on claims and encounter data that is submitted to the administration from contractors or a methodology based on data that is reported to the administration by private hospitals and state operated institutions for mental disease. The selected methodology applies to all private hospitals and state operated institutions for mental disease qualifying for disproportionate share payments.

P. Disproportionate share payments made pursuant to subsection O of this section include amounts for disproportionate share hospitals designated by political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents. Subject to the approval of the centers for medicare and medicaid services, any amount of federal funding allotted to this state pursuant to section 1923(f) of the social security act and not otherwise spent under subsection O of this section shall be made available for distribution pursuant to this subsection. Political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents may designate hospitals eligible to receive disproportionate share payments in an amount up to the limit prescribed in section 1923(g) of the social security act if those political subdivisions, tribal governments or universities provide sufficient monies to qualify for the matching federal monies for the disproportionate share payments.

Q. Notwithstanding any law to the contrary, the administration may receive confidential adoption information to determine whether an adopted child should be terminated from the system.

R. The adoption agency or the adoption attorney shall notify the administration within thirty days after an eligible person receiving services has placed that person's child for adoption.

S. If the administration implements an electronic claims submission system, it may adopt procedures pursuant to subsection G of this section requiring documentation different than prescribed under subsection G, paragraph 4 of this section.

T. In addition to any requirements adopted pursuant to subsection D, paragraph 4 of this section, notwithstanding any other law, subject to approval by the centers for medicare and medicaid services, beginning July 1, 2011, members eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 shall pay the following:

1. A monthly premium of fifteen dollars, except that the total monthly premium for an entire household shall not exceed sixty dollars.

2. A copayment of five dollars for each physician office visit.
3. A copayment of ten dollars for each urgent care visit.
4. A copayment of thirty dollars for each emergency department visit.

U. Subject to the approval of the centers for medicare and medicaid services, political subdivisions of this state, tribal governments and any university under the jurisdiction of the Arizona board of regents may provide to the Arizona health care cost containment system administration monies in addition to any state general fund monies appropriated for critical access hospitals in order to qualify for additional federal monies. Any amount of federal monies received by this state pursuant to this subsection shall be distributed as supplemental payments to critical access hospitals.

V. For the purposes of this section, "disproportionate share payment" means a payment to a hospital that serves a disproportionate share of low-income patients as described by 42 United States Code section 1396r-4.

**CITIZENS CLEAN ELECTIONS COMMISSION (R20-0306)**  
Title 2, Chapter 20, Article 2, Compliance and Enforcement Procedures

**Amend:** R2-20-209



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** March 3, 2020

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

**FROM:** Council Staff

**DATE:** February 12, 2020

**SUBJECT:** **CITIZENS CLEAN ELECTIONS COMMISSION (R20-0306)**  
Title 2, Chapter 20, Article 2, Compliance and Enforcement Procedures

**Amend:** R2-20-209

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### **Summary:**

This regular rulemaking from the Citizens Clean Elections Commission (Commission) relates to a rule in Title 2, Chapter 20, Article 2, concerning Compliance and Enforcement Procedures. Specifically, the Commission seeks to amend R2-20-209 (Investigation) to clarify that the Commission's Executive Director shall conduct an investigation in a case where the Commission believes a violation of a statute or rule within its jurisdiction took place. Currently, the rule states that the Commission shall conduct such an investigation. The Commission also seeks to clarify the second part of this rule to say "investigation" rather than the "Commission's investigation".

The Commission states that this rule amendment is intended to make this rule clearer and more concise. The Commission indicates that currently, a reader must read multiple rules together to understand the Commission's investigation process in an enforcement matter. The Commission's Executive Director confirmed that the Commission's current investigation process is the responsibility of the Executive Director, and that this rule amendment would clarify that process in the rule. The applicable statutes can be read to support the delegation of the Commission's investigative authority to its Executive Director. Further, the Commission's

Executive Director advised Council staff that this rule amendment is in response to the Arizona Supreme Court's recent decision in *Horne v. Polk*, 242 Ariz. 226 (2017), where the Court held that "due process does not allow the same person to serve as an accuser, advocate, and final decisionmaker in an agency adjudication." *Id.* at 234. A copy of the Court's decision is included herein for the Council's review.

The Commission voted unanimously to make this rule immediately effective pursuant to A.R.S. § 16-956(D). If the Council approves this rulemaking, this rule amendment would be immediately effective upon the Commission filing its Certificate of Approval with the Secretary of State's office.

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

Yes. The Commission properly cites applicable general and specific statutory authority for this rule.

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

No. This rule 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:**

The Commission indicates that the rule amendment is designed to make the existing rule clearer and more concise. The Commission's view is that the rule is a clarifying and stylistic amendment and not one that can or will increase any agency cost. Stakeholders include the Commission and candidates for state and legislative office.

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 states that the amendment proposes the least intrusive, least burdensome and least costly way of achieving the statute rules and goals. They further indicated that without the clarification there may be more burden in the existing rule than in the amendment adopted and given effect by the Commission.

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

The Commission indicates that because the rule amendment does not substantively change the underlying Commission investigative process, there is no economic, small

business, or consumer impact. The Commission does not anticipate any additional Full Time Employees (FTEs), or additional cost, because the amendment is clarifying and stylistic and not one that can or will increase any cost. This rule amendment does not directly affect any political subdivisions. Businesses and small businesses are anticipated to benefit from the clarifications which could help to reduce compliance costs. The Commission states there are no probable costs on private persons or consumers.

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

No. The amended rule in the Notice of Final Rulemaking is not a substantial change from the amended rule in the Notice of Proposed Rulemaking.

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

Not applicable. 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. This rule does 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....”).

In addition to submitting this rulemaking package to Council staff, it is Council staff’s understanding that a copy of the draft Notice of Final Rulemaking was submitted to the Secretary of State’s office for publication and was published in the January 17, 2020 edition of the Administrative Register with an effective date of December 12, 2019. Notwithstanding publication of this Notice, it is Council staff’s opinion that the rules cannot be effective or enforced until they are given final approval by the Council pursuant to the APA.

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.azcleaselections.gov](http://www.azcleaselections.gov)

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February 10, 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. R2-20-209**

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 December 12, 2019.

I request approval by the Council.

In summary:

- The record closed on December 12, 2019.
- 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 December 12, 2019 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. §§ 16-941, -942, -956, -957.
- There are no cross-referenced definitions.

Please contact me with any questions.

Sincerely,

S/Thomas M. Collins  
Executive Director



- 2. Either directly incorporating the time and date of notarization or incorporating the time and date of notarization using a process of an approved time stamp provider;
  - 3. Affixing the notary's electronic signature.
- D.** Use of a notary service electronic certificate is not complete without: A notary public shall immediately notify an appropriate law enforcement agency and the Secretary of State on actual knowledge of the theft or vandalism of the notary public's electronic signature, electronic seal, or digital certificate. A notary public shall immediately notify the Secretary of State on actual knowledge of the unauthorized use by another person of the notary public's electronic signature, electronic seal, or digital certificate.
- 1. Presence of a date and time stamp from an approved time stamp token provider;
  - 2. Affixing the notary's electronic signature.

**R2-12-1206 R2-12-1207. Approval of Time Stamp Token Provider Journal**

Any person or entity that can provide a service that synchronizes time as defined in A.R.S. § 1-242 into a process using an electronic notary token or a notary service electronic certificate, where applicable, may be added to the list of approved time stamp token providers. All time stamp tokens that interact with electronic notary tokens and notary service electronic certificates need to meet the applicable technology standards required by A.R.S. § 41-132.

An electronic notary public shall keep a journal of all electronic notarial acts in bound paper form with the same form as required in A.R.S. § 41-319 and shall be under the sole control of the electronic notary public.

**R2-12-1207 R2-12-1208. Fees Requirements for Authenticating the Notarial Act**

Electronic notaries may charge the following fees: Electronic notarial acts need to fulfill certain basic requirements to ensure non-repudiation and the capability of being authenticated by the Secretary of State for purposes of issuing Apostilles and Certificates of Authentication. They are as follows:

- 1. Fee for an acknowledgment shall be not more than \$25. The fact of the notarial act, including the notary's identity, signature, and commission status, must be verifiable by the Secretary of State, and
- 2. Fee for an oath or affirmation shall be not more than \$25. The notarized electronic document will be rendered ineligible for authentication by the Secretary of State if it is improperly modified after the time of notarization, including any unauthorized alterations to the document content, the electronic notarial certificate, the notary public's electronic signature, and/or the notary public's official electronic seal.
- 3. Fee for a jurat shall be not more than \$25.
- 4. Fee for authorizing a notary service electronic certificate to a person shall be not more than \$50. This does not include any vendor fees or charges to the person for reception of the notary service electronic certificate.
- 5. Fee for any other notarial act shall be not more than \$25.

**R2-12-1208. Penalty Fee for Lack of Notice Repealed**

~~The penalty to be imposed upon an electronic notary for failure to provide signed notice as defined in the statute to the Secretary of State of each loss, theft, or compromise of the electronic notary's journal shall be \$10 per use of electronic notary token up to a maximum of \$500. When audit trail is not recoverable, the maximum of \$500 shall be imposed upon the electronic notary for each failure to provide proper notice of a loss, theft, or compromise of the electronic notary's journal.~~

**R2-12-1209. Civil Penalties Repealed**

- ~~**A.** The penalty to be imposed upon an electronic notary for failure to provide signed notice as defined in the statute to the Secretary of State of each loss, theft, or compromise of a notary service electronic certificate or of loss, theft or compromise of any materials or processes used in creating an electronic notary token or authorizing a notary service electronic certificate shall be \$10 per day, up to a maximum of \$500 for each failure to provide proper notice of a loss, theft, or compromise of a notary service electronic certificate or compromise of any materials or processes used in creating an electronic notary token.~~
- ~~**B.** The penalty to be imposed upon an electronic notary for each failure to provide signed notice as defined in the statute to the Secretary of State of a change of address shall be \$10 per day, up to a maximum of \$250 for each failure to provide proper notice of a change of address.~~
- ~~**C.** The penalty to be imposed upon an electronic notary for failure to deposit the notary's electronic notary journal and records as defined in the statute with the Secretary of State shall be \$50 for the first day and then \$10 per day up to a maximum of \$500.~~

**NOTICE OF FINAL RULEMAKING**

**TITLE 2. ADMINISTRATION**

**CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION**

[R19-291]

**PREAMBLE**

- 1. **Article, Part, or Section Affected (as applicable)**  
R2-20-209 **Rulemaking Action**  
Amend
- 2. **Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**  
Authorizing statute: A.R.S. § 16-956(A)(7)  
Implementing statute: A.R.S. §§ 16-941, 16-942, 16-956(A)(7), 16-957
- 3. **The effective date of the rule:**  
December 12, 2019
  - 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):**

Pursuant to A.R.S. § 16-956(C)-(D), the Commission determined unanimously at an open meeting that an immediate effective date was necessary for this rule. It is effective December 12, 2019. The Commission seeks to have rules effective before August 1 to avoid or minimize confusion and maximize the effectiveness of its candidate education efforts. In this case, the conflict between portions of this rule and the statute could cause confusion.

**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: 25 A.A.R. 3079, October 18, 2019  
Notice of Proposed Rulemaking: 25 A.A.R. 3055, October 18, 2019

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

Name: Thomas M. Collins  
Address: Citizens Clean Elections Commission  
1616 W. Adams, Suite 110  
Phoenix, AZ 85007  
Telephone: (602) 364-3477 (include area code when dialing)  
E-mail: ccec@azcleelections.gov  
Web site: azcleelections.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:**

R2-20-209: This amendment is designed to make the existing rule clearer and more concise. Currently, a reader must read multiple rules together to understand the Citizens Clean Elections investigation process in an enforcement matter after reason to believe a violation has occurred has been determined.

**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:**

Not applicable

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

Not applicable

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

Not applicable

**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 2. COMPLIANCE AND ENFORCEMENT PROCEDURES**

Section  
R2-20-209. Investigation

**ARTICLE 2. COMPLIANCE AND ENFORCEMENT PROCEDURES**

**R2-20-209. Investigation**

- A. The ~~Commission~~ Executive Director or any other person designated by the Executive Director shall conduct an investigation in any case in which the Commission finds reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur.
- B. The ~~Commission's~~ investigation may include, but is not limited to, field investigations, audits, and other methods of information gathering.

**Doug Ducey**  
Governor

**Thomas M. Collins**  
Executive Director



**Mark S. Kimble**  
Chair

**Steve M. Titla**  
**Damien R. Meyer**  
**Galen D. Paton**  
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***MEMORANDUM***

**To: Governor's Regulatory Review Council**

**From: Thomas M. Collins**

**Date: 1.24.20**

**Subject: Economic, Small Business and Consumer Impact Statement R2-20-209**

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1. An identification of the proposed rule making.

R2-20-209. 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.

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 agency benefits by having a clearer and more concise explanation of the investigation phase of its exercise of the authority vested in it by the Clean Elections Act.

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.

The agency has identified no probable cost on private persons or consumers. Rather this clarifying amendment may reduce compliance costs.

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. Indeed, absent the clarification there may be more burden in the existing rule than in the amendment adopted and given effect by the Commission.

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 to clarify the rules regarding a particular aspect of its enforcement procedures.

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

Editor’s Note: The Office of the Secretary of State, Administrative Rules Division, complied with its legal obligation to publish the Notice of Rule Expiration filed for Sections R2-20-109 and R2-20-111 under A.R.S. § 41-1011(C) and 41-1056(G) and (J)(2) in Supp. 17-2, version 2. As a courtesy to the Commission, the Office also published R2-20-109 and R2-20-111 as adopted and made by the Commission because it stated the Governor’s Regulatory Review Council did not have the authority to file such a notice. On December 14, 2017, the Commission “re-adopted” rules in the disputed Sections of R2-20-109 and R2-20-111; therefore, our Division has removed the expired rule Sections as published in Supp. 17-2, version 2. The Office will not interpret the legality of any actions made by the Commission or the Council as to whether the rules in R2-20-109 and R2-20-111 were effective at 23 A.A.R. 1761 or expired at 23 A.A.R. 1757 between the dates of June 7, and December 14, 2017. Those interested in that issue should consult counsel.

Editor’s Note: The Citizen’s Clean Elections Commission has filed a Notice of Public Information with the Office of the Secretary of State (Office) stating the Governor’s Regulatory Review Council (G.R.R.C.) “cannot effectively repeal the rules” in this Chapter. The Notice also states, “persons subject to the Act and Rules are advised that it is the Commission’s position [sic] that an action of G.R.R.C.... cannot relieve them of their obligations under the Act and Rules.” [published at 23 A.A.R. 1761] The Office has received a Notice of Rule Expiration from the G.R.R.C. stating R2-20-109 and R2-20-111 have automatically expired [published at 23 A.A.R. 1757]. Under A.R.S. § 41-1056(G), our Office publishes filed G.R.R.C. notices and has included the rule expiration in this Chapter. Since the Office is merely the publisher, it has not, nor will it interpret the legality of the G.R.R.C. authority to “effectively repeal rules.”

Editor’s Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 02-1).

Editor’s Note: This Chapter contains rules that were adopted under an exemption from the rulemaking provisions of the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 16-956(D). Exemption from A.R.S. Title 41, Chapter 6 means that these rules were not certified by the Attorney General or the Governor’s Regulatory Review Council. Because this Chapter contains rules that are exempt from the regular rulemaking process, the Chapter is printed on blue paper. The rules affected by this exemption appear throughout this Chapter.

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of Sections R2-20-101 through R2-20-113, repealed by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001; new Article 1, consisting of Sections R2-20-101 through R2-20-112, made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1).

Article 1, consisting of Sections R2-20-101 through R2-20-113, adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2).

Section
R2-20-101. Definitions ..... 3
R2-20-102. Repealed ..... 4
R2-20-103. Communications: Time and Method ..... 4
R2-20-104. Certification as a Participating Candidate ..... 4
R2-20-105. Certification for Funding ..... 5
R2-20-106. Distribution of Funds to Certified Candidates ..... 6
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**R2-20-207. Internally Generated Matters; Referrals**

- A. On the basis of information ascertained by the Commission in the normal course of carrying out its statutory responsibilities, or on the basis of a referral from an agency of the state, the Executive Director may recommend in writing that the Commission find reason to believe that a person or entity has committed or is about to commit a violation of a statute or rule over which the Commission has jurisdiction.
- B. If the Commission finds reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur, the Executive Director shall notify the respondent of the Commission's decision and shall include a copy of a staff report setting forth the legal basis and the alleged facts which support the Commission's action.

**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 13 A.A.R. 3524, effective January 1, 2008 (Supp. 07-3).

**R2-20-208. Complaint Processing; Notification**

- A. If the Commission, either after reviewing a complaint-generated recommendation as described in R2-20-206 and any response of a respondent submitted pursuant to R2-20-205, or after reviewing an internally-generated recommendation as described in R2-20-207, determines by an affirmative vote of at least three of its members that it has reason to believe that a respondent has violated a statute or rule over which the Commission has jurisdiction, the Commission shall notify such respondent of the Commission's finding, setting forth the sections of the statute or rule alleged to have been violated and the alleged factual basis supporting the finding. In accordance with A.R.S. § 16-957(A), the Commission shall serve on the respondent an order requiring compliance within 14 days. During that period, the respondent may provide any explanation to the Commission, comply with the order, or enter into a public administrative settlement with the Commission.
- B. If the Commission finds no reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred, or otherwise terminates its proceedings, the Executive Director shall so notify both the complainant and respondent.
- C. The complainant may bring an action in Superior Court in accordance with A.R.S. § 16-957(C) if the Commission finds there is no reason to believe a violation of a statute or rule over which the Commission has jurisdiction has occurred or otherwise terminates its proceedings.

**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). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1).

**R2-20-209. Investigation**

- A. The Commission shall conduct an investigation in any case in which the Commission finds reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur.
- B. The Commission's investigation may include, but is not limited to, field investigations, audits, and other methods of information gathering.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-210. Written Questions Under Order**

The Commission may issue an order requiring any person to submit sworn, written answers to written questions and may specify a date by which such answers must be submitted to the Commission.

**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 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3).

**R2-20-211. Subpoenas and Subpoenas Duces Tecum; Depositions**

- A. The Commission may authorize its Executive Director or Assistant Attorney General to issue subpoenas requiring the attendance and testimony of any person by deposition and to issue subpoenas duces tecum for the production of documentary or other tangible evidence in connection with a deposition or otherwise.
- B. If the Commission orders oral testimony to be taken by deposition or for documents to be produced, the subpoena shall so state and shall advise the deponent or person subpoenaed that all testimony will be under oath. The Commission may authorize its Executive Director to take a deposition and have the power to administer oaths.
- C. The deponent shall have the opportunity to review and sign depositions taken pursuant to this rule.

**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 13 A.A.R. 3524, effective January 1, 2008 (Supp. 07-3).

**R2-20-212. Repealed**

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-213. Motions to Quash or Modify a Subpoena**

- A. Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than five days after the date of receipt of such subpoena, apply to the Commission to quash or modify such subpoena, accompanying such application with a brief statement of the reasons therefore.
- B. The Commission may deny the application, quash the subpoena or modify the subpoena.
- C. The person subpoenaed and the Executive Director may agree to change the date, time, or place of a deposition or for the production of documents without affecting the force and effect of the subpoena, but such agreements shall be confirmed in writing.

**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 13 A.A.R. 3524, effective January 1, 2008 (Supp. 07-3).

**R2-20-214. The Probable Cause to Believe Recommendation; Briefing Procedures**

## 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.

16-941. Limits on spending and contributions for political campaigns

(Caution: 1998 Prop 105 applies)

A. Notwithstanding any law to the contrary, a participating candidate:

1. Shall not accept any contributions, other than a limited number of five-dollar qualifying contributions as specified in section 16-946 and early contributions as specified in section 16-945, except in the emergency situation specified in section 16-954, subsection F.
2. Shall not make expenditures of more than a total of five hundred dollars of the candidate's personal monies for a candidate for the legislature or more than one thousand dollars for a candidate for statewide office.
3. Shall not make expenditures in the primary election period in excess of the adjusted primary election spending limit.
4. Shall not make expenditures in the general election period in excess of the adjusted general election spending limit.
5. Shall comply with section 16-948 regarding campaign accounts and section 16-953 regarding returning unused monies to the citizens clean elections fund described in this article.

B. Notwithstanding any law to the contrary, a nonparticipating candidate shall not accept contributions in excess of an amount that is twenty per cent less than the limits specified in section 16-905, subsections A through E, as adjusted by the secretary of state pursuant to section 16-905, subsection H. Any violation of this subsection shall be subject to the civil penalties and procedures set forth in section 16-905, subsections J through M and section 16-924.

C. Notwithstanding any law to the contrary, a candidate, whether participating or nonparticipating:

1. If specified in a written agreement signed by the candidate and one or more opposing candidates and filed with the citizens clean elections commission, shall not make any expenditure in the primary or general election period exceeding an agreed-upon amount lower than spending limits otherwise applicable by statute.
2. Shall continue to be bound by all other applicable election and campaign finance statutes and rules, with the exception of those provisions in express or clear conflict with this article.

D. Notwithstanding any law to the contrary, any person who makes independent expenditures related to a particular office cumulatively exceeding five hundred dollars in an election cycle, with the exception of any expenditure listed in section 16-920 and any independent expenditure by an organization arising from a communication directly to the organization's members, shareholders, employees, affiliated persons and subscribers, shall file reports with the secretary of state in accordance with section 16-958 so indicating, identifying the office and the candidate or group of candidates whose election or defeat is being advocated and stating whether the person is advocating election or advocating defeat.

## 16-942. Civil penalties and forfeiture of office

(Caution: 1998 Prop. 105 applies)

- A. The civil penalty for a violation of any contribution or expenditure limit in section 16-941 by or on behalf of a participating candidate shall be ten times the amount by which the expenditures or contributions exceed the applicable limit.
- B. In addition to any other penalties imposed by law, the civil penalty for a violation by or on behalf of any candidate of any reporting requirement imposed by this chapter shall be one hundred dollars per day for candidates for the legislature and three hundred dollars per day for candidates for statewide office. The penalty imposed by this subsection shall be doubled if the amount not reported for a particular election cycle exceeds ten percent of the adjusted primary or general election spending limit. No penalty imposed pursuant to this subsection shall exceed twice the amount of expenditures or contributions not reported. The candidate and the candidate's campaign account shall be jointly and severally responsible for any penalty imposed pursuant to this subsection.
- C. Any campaign finance report filed indicating a violation of section 16-941, subsections A or B or section 16-941, subsection C, paragraph 1 involving an amount in excess of ten percent of the sum of the adjusted primary election spending limit and the adjusted general election spending limit for a particular candidate shall result in disqualification of a candidate or forfeiture of office.
- D. Any participating candidate adjudged to have committed a knowing violation of section 16-941, subsection A or subsection C, paragraph 1 shall repay from the candidate's personal monies to the fund all monies expended from the candidate's campaign account and shall turn over the candidate's campaign account to the fund.
- E. All civil penalties collected pursuant to this article shall be deposited into the fund.

## 16-957. Enforcement procedure

(Caution: 1998 Prop. 105 applies)

A. If the commission finds that there is reason to believe that a person has violated any provision of this article, the commission shall serve on that person an order stating with reasonable particularity the nature of the violation and requiring compliance within fourteen days. During that period, the alleged violator may provide any explanation to the commission, comply with the order, or enter into a public administrative settlement with the commission.

B. Upon expiration of the fourteen days, if the commission finds that the alleged violator remains out of compliance, the commission shall make a public finding to that effect and issue an order assessing a civil penalty in accordance with section 16-942, unless the commission publishes findings of fact and conclusions of law expressing good cause for reducing or excusing the penalty. The violator has fourteen days from the date of issuance of the order assessing the penalty to appeal to the superior court as provided in title 12, chapter 7, article 6.

C. Any candidate in a particular election contest who believes that any opposing candidate has violated this article for that election may file a complaint with the commission requesting that action be taken pursuant to this section. If the commission fails to make a finding under subsection A of this section within thirty days after the filing of such a complaint, the candidate may bring a civil action in the superior court to impose the civil penalties prescribed in this section.

**DEPARTMENT OF CHILD SAFETY (F20-0202)**  
Title 21, Chapter 8, Article 1, Life Safety Inspections



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** February 25, 2020

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

**FROM:** Council Staff

**DATE:** February 11, 2020

**SUBJECT:** Arizona Department of Child Safety  
Title 21, Chapter 8, Article 1

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This Five-Year-Review Report from the Department of Child Safety relates to rules in Title 21, Chapter 1, Article 1, regarding life safety inspections in foster homes, and child welfare agencies running residential group care facilities or shelters.

The rules in this chapter were created by final exempt rulemaking, and became effective in 2015. Therefore this is the first 5YRR on these rules.

### **Proposed Action**

The Department is proposing to amend the following rules to improve clarity, conciseness, understandability, effectiveness, enforcement and consistency with other rules and statutes:

**R21-8-103 - Frequency of Inspection and Inspection Area**

**R21-8-106 - Weapons and Firearms**

**R21-8-111 - Water and Plumbing Requirements**

**R21-8-113 - Pool Safety**

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes, the Department cites to both general and specific authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The rules under this Chapter became effective on January 24, 2015 under exempt rulemaking and no economic impact statement was included for review. The Department of Child Safety's (DCS) Office of Licensing and Regulation (OLR) oversees the licensing and regulation of foster homes and the foster home licensing agencies. In order to license foster homes, life safety inspections must be conducted for initial and renewed licensure. The Life Safety Inspection Unit completed 3,125 life safety inspections between 09/21/2018 and 09/21/2019. The Department indicates that this number includes inspections for initial and renewal applications, provider or agency relocations, consultations, new construction and pool fence inspections.

The stakeholders include: group homes, emergency shelters, foster home licensing agencies, foster care providers, child in out-of-home care, and DCS OLR.

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

The Department believes the rules impose the minimum cost and burden on those regulated by them. The Department has determined that any administrative cost associated with the rules are offset by ensuring the safety and protection of Arizona's children. The agency intends to revise the rules for clarity in the second quarter of 2021.

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

Yes, the Department indicates it received public comments during the rulemaking activities in 2015, and received two additional comments this year.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes, for the reasons mentioned in the report, the Department indicates the following rules could be amended to improve clarity, conciseness, understandability, and consistency with other rules and statutes.

- R21-8-111 - Water and Plumbing Requirements
- R21-8-113 - Pool Safety

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

Yes, the Department indicates that the rules are mostly enforced as written except, R21-8-111.

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 law, 42 U.S.C. 671.

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 the issuance of a regulatory permit or license.

9. **Conclusion**

As mentioned above, and for the reasons specified in the report, the Department is proposing to amend some of its rules to improve their overall clarity, conciseness, understandability, effectiveness, enforcement and consistency with other rules and statutes. The Department plans to submit a Notice of Rulemaking by April 2020.



**ARIZONA**  
DEPARTMENT  
*of* CHILD SAFETY

Mike Faust, Director  
Douglas A. Ducey, Governor

November 4, 2019

**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 8, Article 1, 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 8, Article 1 which is due on November 30, 2019.

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 "Mike 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 8. Department of Child Safety - Foster Home and Child Welfare Agency Facility Safety**

**Article 1. Life Safety Inspections**

**November 2019**

**1. Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. § 8-453(A)(5)

Specific Statutory Authority: A.R.S. §§ 8-504, 8-505, and 8-509

**2. The objective of each rule:**

Rule	Objective
R21-8-101. Definitions	The objective of this rule is to promote and facilitate uniform understanding of terminology used in this Article.
R21-8-102. Application	The objective of this rule is to identify the entities regulated as they apply to this Article.
R21-8-103. Frequency of Inspection and Inspection Area	The objective of this rule is to clarify when an inspection is conducted and identify areas inspected.
R21-8-104. General Condition and Cleanliness of the Premises	The objective of this rule is to establish the minimum standards for cleanliness and the general condition of a setting used to provide regulated care.
R21-8-105. Safeguarding of Hazards	The objective of this rule is to identify the safeguards providers are required to implement to reduce the risk of hazards.
R21-8-106. Weapons and Firearms	The objective of this rule is to establish the standards foster parents are required to follow pertaining to weapons and firearms.
R21-8-107. Animals	The objective of this rule is to identify the requirements a care provider must follow when there is an animal in the home or premises.
R21-8-108. Storage of Medication	The objective of this rule is to establish the requirement for the storage and safeguarding of all medication.

R21-8-109. Safe Appliances	The objective of this rule is to inform the care provider of their requirement to ensure the availability of specific appliances within a regulated setting, and to ensure such appliances are in safe working order.
R21-8-110. Electrical Safety	The objective of this rule is to inform the care provider of their responsibility to ensure electrical systems are appropriately used and are in safe working order.
R21-8-111. Water and Plumbing Requirements	The objective of this rule is to ensure the availability of specific plumbing systems within a regulated setting, and to ensure such systems are in safe working order.
R21-8-112. Fire Safety and Evacuation Plan Requirements	The objective of this rule is to identify the care provider's responsibility to establish fire safety precautions, equipment, and evacuation plans and procedures.
R21-8-113. Pool Safety	The objective of this rule is to establish the required safeguards when there is a pool.

3. **Are the rules effective in achieving their objectives?** Yes \_\_\_ No X

Rule	Explanation
R21-8-103. Frequency of Inspection and Inspection Area	R21-8-103(B) (3) provides a narrow timeframe for the Department and applicants to complete renewal Life Safety Inspections. In order for the renewal process to flow more effectively, the timeframe in this rule should be changed to four (4) months from three (3) months to allow DCS OLR to conduct inspections, along with possible re-inspections, prior to the expiration of the license.
R21-8-106. Weapons and Firearms	R21-8-106(B) allows foster parents, who are also in law enforcement, to request an exception to life safety standards as it pertains to carrying and storage of firearms on the premises. OLR has received verbal and one written feedback that the provisions in rule are not agreeable by some of the foster parents who contend that the Department's safety objectives can still be achieved if the rules were amended to allow firearms and ammunition to be stored in the same container.

4. **Are the rules consistent with other rules and statutes?** Yes \_\_\_ No X

Rule	Explanation
R21-8-113. Pool Safety	The pool fencing requirements under the rules in Title 6, Chapter 5, Article 74, requires all residential group care facilities and shelters with a pool to have a fence whereas this Chapter does not have this requirement. Additionally, the age of the children the facility/shelter provide services to and in which certain fencing criteria must be applied differs between Article 74 (younger than age 6) and this Article (younger than age 7).

	The rules in the Article also contains more fencing criteria than those specified in Article 74 and contains criteria not applicable to a residential group care facility. The Department relies on the directives outlined in Article 74 in addition to the criteria set forth in this Article. The Department proposes to amend the rule to clarify applicability.
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5. **Are the rules enforced as written?** Yes \_\_\_ No X

Rule	Explanation
R21-8-111. Water and Plumbing Requirements	R21-8-111(A) and (B) requires the provider have a continuous source of safe drinking water. The rule also requires the testing of non-municipal water. DCS OLR currently requests testing for five (5) specific contaminants. If the test results identifies one of those contaminants in the water, DCS OLR does not classify it as a violation; however, documents it as a concern that requires rectifying. DCS OLR proposes to amend this rule to include that when testing reveals unacceptable levels of contaminants, the facility or provider will be required to submit a plan for obtaining safe drinking water and such plan would require DCS OLR's approval.

6. **Are the rules clear, concise, and understandable?** Yes \_\_\_ No X

Rule	Explanation
R21-8-113. Pool Safety	R21-8-113(B)(2)(c) states that the openings for all vertical bars or wooden slats of a pool fence must measure less than 4 inches; however, the orientation of such components is irrelevant as this rule would also apply to horizontal components placed between 45 and 60 inches from the bottom of the fence. DCS proposes to amend the rule by removing the orientation of the components.
R21-8-113. Pool Safety	R21-8-113(A) and (B) are not clear on to whom and how the pool safety rules apply. DCS OLR proposes to amend the pool safety rules to clarify who these rules apply to and clearly identify what applies to family foster home and what applies to a residential group care facility.
R21-8-111. Water and Plumbing Requirements	The terms "continuous" and "non-municipal" are not clear. DCS OLR proposes to amend the rules by adding a definition for these terms. The term "contaminants" is also unclear and DCS OLR proposes to clarify this term in the DCS OLR policies and procedures.

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

The rules under this Chapter became effective on January 24, 2015 under exempt rulemaking. During the rulemaking activities in 2015, the Department received public comments through public meetings and through an on-line survey. Comments received during the exempt rulemaking are included in the Notice of Final Exempt Rulemaking published in 21A.A.R. 3517, December 25, 2015. Comments were also received during the public

comment period when the rules were amended and are included in the Notice of Final Rulemaking published in 23 A.A.R. 3548, December 29, 2017. Two additional written criticisms have been received this year.

Date	Received from	Comment and DCS response
September 18, 2019	Jarrod Winfrey	<p>Mr. Winfrey disagrees with the rule that requires firearms and ammunition be stored separately. Mr. Winfrey believes that given the nature of his job as a certified police officer, an alternative plan should be considered.</p> <p>DCS OLR worked on a safety plan with Mr. Winfrey. OLR works with families who are in law enforcement and with licensing agencies to determine if the active law enforcement person must carry their firearm at all times, on or off duty.</p>
April 23, 2019	Brandon Barber	<p>Mr. Barber disagrees with DCS OLR's interpretation of the rules pertaining to the pool fence, in particular, the space between bars (vertical and horizontal). Mr. Barber made modifications to the original pool fence by adding horizontal slats at the top of the fencing. Barber believes that with the modifications, his pool fence meets the "intent and literal verbiage of the pool fence regulations."</p> <p>DCS OLR conceded that the fence met the regulatory requirements; however, noted concerns with the material used. DCS OLR noted that the foster home licensing agency will inspect the integrity of the pool fence during routine monitoring.</p>

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

DCS Office of Licensing and Regulation (OLR) is authorized by Arizona Revised Statutes to license foster home and child welfare agencies. The purpose of regulating DCS foster homes and child welfare agencies is to protect vulnerable children receiving services through the establishment and enforcement of safe standards for care. A.R.S. § 8-504 requires the Department to inspect child welfare agencies and foster homes for sanitation, fire, and other actual and potential hazards. A component of licensing is the inspection of foster homes and the facilities under a child welfare agency which are used for the provision of services. The Life Safety Inspection Unit is a unit within DCS OLR which schedules and conducts these inspections. In addition to initial licensing, the Arizona Administrative Code also requires periodic inspections of the foster home and child welfare agency for renewal licensure, relocation of licensed settings, and for significant new construction. Inspections directly impact the health and well-being of clients.

The persons directly affected by, bear the costs of, or directly benefit from the rules includes the following: Child Welfare Agencies (Group homes, Emergency Shelters); Foster Home Licensing Agencies; Foster Care

Providers (Foster Homes); Children in out-of-home care; and DCS OLR. DCS contracts with Foster Home Licensing Agencies to manage the licensing process for Arizona's licensed foster care providers. The agencies, as contractors, are expected to ensure the foster care provider complies with this Chapter in between OLR inspections of the foster homes and to verify foster care providers correct deficiencies OLR identified. Foster care providers and child welfare agencies as a residential group care facility must comply with this Chapter.

### DCS OLR

DCS OLR consists of the Program Administrator, Policy Specialist, Quick Connect (database) Project Coordinator, three (3) administrative support staff, and three (3) specialized units. One (1) of these units is the Life Safety Inspection Unit, which enforces and monitors the rules in Chapter 8. The Life Safety Inspection Unit consists of six (6) full-time employees: one (1) Manager, one (1) Scheduler, and four (4) Life Safety Inspectors. This unit is responsible for the following functions:

- Schedules initial, renewal, amendment, and new construction Life-Safety Inspections for foster homes
- Schedules initial, renewal, amendment, and new construction Life Safety Inspections for residential group care facilities
- Provides technical assistance to foster parents, foster home licensing agencies, and residential group care facilities
- Provides trainings to foster home licensing agencies at least once per quarter
- Provides consultations upon request
- Conducts Life-Safety inspections of foster homes and residential group care facilities
- Schedules and conducts follow up inspections of foster homes and residential group care facilities, as needed
- Works with foster home licensing agencies, foster homes, and residential group care facilities when deficiencies are discovered

The Life Safety Inspection Unit completed 3,125 Life Safety Inspections between 09/21/2018 and 09/21/2019. This number includes inspections for initial and renewal applications, provider or agency relocations, consultations, new construction and pool fence inspections.

### Funding

The following funding information applies to OLR as a whole and is not specific to the functions of the Life-Safety Inspection Unit. In FY 19, DCS budgeted \$3.2M to OLR operations. This included 34 FTE, supplies, fingerprinting, overhead, etc. The funding source is both state General Fund and Federal funds. DCS OLR does not charge a fee for conducting inspections per this Chapter.

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 8, Article 1. The rules in this Chapter were made by final exempt rulemaking, published in 21 A.A.R. 3517, December 25, 2015 and became effective in January 24, 2016. The rules, specific to R21-8-112 and R21-8-113, were amended and became effective on December 12, 2017, published in 23 A.A.R. 3548, December 29, 2017.

**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. It is the Department's belief that any cost associated with the rules are offset by the greater benefit of ensuring the safety and protection of Arizona children. The Department does not charge a fee for conducting the inspections referenced in this Article.

**12. Are the rules more stringent than corresponding federal laws? Yes \_\_\_ No X**

Corresponding federal laws are: 42 U.S.C. 671. The rules 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 April 2020. This timeframe will allow the Department to request an exemption to the moratorium, dedicate the time needed to draft amendments, and engage stakeholders in providing informal as well as formal feedback prior to submission to Council.

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**ARTICLE 1. LIFE SAFETY INSPECTIONS****R21-8-101. Definitions**

The definitions in R21-6-101 apply to this Article, except the following terms are defined as:

1. "Animal or doggie door" means a small portal in a wall, window, or human door to allow pets to enter and exit a house on their own without a person to open the door.
2. "Home" means a foster home or Child Welfare Agency residential group care facility where the provider is licensed to provide care to a foster or privately placed child in a residential group care facility.
3. "Pool" means any natural or man-made body of water located at a home or on its premises that:
  - a. Could be used for swimming, recreational, therapeutic, or decorative purposes;
  - b. Is greater than 18 inches in depth; and
  - c. Includes swimming pools, spas, hot tubs, fountains, and fishponds.
4. "Pool enclosure" means a fence or barrier surrounding a pool and meets the requirements of R21-8-113(B)(2).
5. "Premises" means:
  - a. The home; and
  - b. The property surrounding the home that is owned, leased, or controlled by the provider.
6. "Provider" means a licensed foster parent or Child Welfare Agency residential group care facility, and applicants for these licenses.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3517, effective January 24, 2016 (Supp. 15-4). Amended by final rulemaking at 23 A.A.R. 3548, effective December 12, 2017 (Supp. 17-4).

**R21-8-102. Application**

This Article applies to:

1. All foster homes regulated under A.A.C. Title 21, Chapter 6; and
2. A Child Welfare Agency operating a residential group care facility or shelter care facility regulated under A.A.C. Title 6, Chapter 5, Article 74, but not a Child Welfare Agency operating an outdoor experience program.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3517, effective January 24, 2016 (Supp. 15-4).

**R21-8-103. Frequency of Inspection and Inspection Area**

- A. Each provider shall have a Life Safety Inspection of the premises.
- B. OLR shall inspect the premises:
  1. At initial licensure;
  2. Every two years; and
  3. Within three months prior to the renewal date of a license.
- C. The Life Safety Inspection shall include all rooms and dwellings on the premises in which a foster or child in a Child Welfare Agency residential group care facility resides or may have access to, including sheds, mobile homes, trailers, and cottages.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3517, effective January 24, 2016 (Supp. 15-4).

**R21-8-104. General Condition and Cleanliness of the Premises**

The provider shall ensure:

1. The interior is clean, sanitary, and disinfected to prevent, minimize, and control illness, infection, or injury.
2. The premises is maintained in good repair and does not constitute a hazard. Damage that constitutes a hazard includes:
  - a. Broken glass;
  - b. Surfaces that are rusted, have sharp or jagged edges, or have nails protruding;
  - c. Holes in walls, ceilings, or floors; or
  - d. Broken furniture, fixtures, appliances, or equipment.
3. Play areas and therapy equipment are stable, in good repair, and do not constitute a hazard.
4. Swing sets are securely anchored to the ground.
5. The premises are clean to the degree that the condition does not constitute a hazard. Conditions that constitute a hazard include:
  - a. Rotting food,
  - b. Stale or accumulated urine or feces, or
  - c. An accumulation of mold.
6. Garbage is removed from the premises at least once each week.
7. The premises and outside play areas are free of insect and rodent infestation, or the premises have an effective ongoing system to eliminate insects or rodents.
8. Water in a pool on the premises is maintained, is not stagnant, and is clear enough to see through the water to the bottom surface of the pool.
9. Excessive weeds and brush that pose a fire hazard are trimmed or removed.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3517, effective January 24, 2016 (Supp. 15-4).

**R21-8-105. Safeguarding of Hazards**

- A. The provider shall ensure:
  1. Highly toxic substances and materials are safeguarded in locked storage. Highly toxic substances include gasoline, lighter fluid, pesticides, radiator fluid, drain cleaner, ammonia, bleach, spray paint, turpentine, and other substances that can cause serious bodily harm or death if improperly used.
  2. Household cleaning supplies are safeguarded to prevent unsafe or improper use. Household cleaning supplies are substances that are not intended for ingestion, but generally will not cause serious bodily harm or death if improperly used. Examples of household cleaning supplies include spray cleaners, laundry detergent, furniture polish, and dishwasher detergent.
  3. Access to personal grooming supplies is not restricted unless the case plan or service plan for a foster child or child in a residential group care facility specifically restricts such access. Personal grooming supplies include toothpaste, hand-soap, shampoo, menstrual products, and deodorant.
  4. Ramps, bathtubs, and showers have slip-resistant surfaces.
  5. Handrails and grab-bars are securely attached and stationary.
  6. Skirting is intact around the base of the setting, if the setting is a mobile home.
  7. The child's access is prevented as appropriate, for his or her age and development, from all medications, poisonous materials, cleaning supplies, other hazardous materials, and alcoholic beverages.
  8. That the home maintains first aid supplies.

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- B.** OLR may require removal, repair, or safeguarding of physical and other hazards that are determined to be unsafe for a foster child or child in a residential group care facility, including a drained swimming pool and trampoline.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3517, effective January 24, 2016 (Supp. 15-4).

**R21-8-106. Weapons and Firearms**

- A.** The provider shall meet the following standards concerning weapons:
1. The provider shall store the following weapons in an inoperable condition in a locked area inaccessible to children:
    - a. Firearms;
    - b. Air guns, including BB guns;
    - c. Bows and cross-bows;
    - d. Stun guns;
    - e. Hunting slingshots;
    - f. Any other projectile weapon; and
    - g. Hunting knives.
  2. Firearms, ammunition, and other weapons, including cross-bows, stun guns, air guns, and hunting knives are safeguarded to prevent unsafe or improper use. In addition:
    - a. Firearms are unloaded, trigger locked, and kept in a tamper-proof, locked storage container made of unbreakable material; and
    - b. Ammunition is maintained in locked storage that is separate from firearms.
- B.** OLR may approve a provider who is a foster parent applicant or foster parent who is also a law enforcement official, to carry a firearm when the provider:
1. Obtains documentation that the jurisdiction requires him or her to have ready and immediate access to the weapons at all times;
  2. Supplies official documentation that he or she has been trained in the law enforcement protocols for the safe use and carrying of a firearm;
  3. Adopts and follows a safety plan approved by OLR and the licensing agency; and
  4. Stores the weapon according to the provisions of this Section when the weapon is not on their person.
- C.** Notwithstanding subsections (A) and (B), weapons are not permitted in a Child Welfare Agency residential group care facility or group foster home.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3517, effective January 24, 2016 (Supp. 15-4).

**R21-8-107. Animals**

- The home shall meet the following standards concerning animals:
1. Animals kept on the premises do not pose a hazard due to behavior, venom, or disease.
  2. OLR may require an assessment by a veterinarian to determine whether a pet poses a hazard if the animal displays signs of aggressive or abnormal behavior or of disease.
  3. The provider shall vaccinate any pets required to be vaccinated by state or tribal law against diseases that can transmit to humans, including rabies.
  4. All dogs older than six months have current rabies vaccination. Vaccination records are maintained in the home.

**Historical Note**

New Section made by final exempt rulemaking at 21

A.A.R. 3517, effective January 24, 2016 (Supp. 15-4).

**R21-8-108. Storage of Medication**

- A.** The provider shall ensure:
1. Medication is maintained in a securely fastened and locked storage, with the exception of the following:
    - a. Medication that may be accessed by a foster child, as specified in that individual's case plan or service plan; and
    - b. Medication that must be readily and immediately accessible, such as an asthma inhaler or an autoinjector such as an epinephrine autoinjector, known as an Epi-pen.
  2. Medication that may be unlocked under subsection (1)(a) or (1)(b) is safeguarded to prevent improper use.
  3. Medication that must be refrigerated is safeguarded in locked storage, without preventing access to refrigerated food. This may be accomplished by storing refrigerated medication in a locked box within the refrigerator.
- B.** A Child Welfare Agency provider shall safeguard medications using a double-lock system. A locked box stored inside a locked cabinet is an example of a double-lock system.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3517, effective January 24, 2016 (Supp. 15-4).

**R21-8-109. Safe Appliances**

- The provider shall ensure:
1. Safe and functioning appliances are available for food refrigeration and cooking, if applicable.
    - a. Safe and functioning refrigerators shall maintain food at or below a temperature of 41° F.
    - b. An outdoor cooking appliance that uses charcoal or gas shall not be used indoors.
  2. Electrical lighting is available in bedrooms, living areas, and rooms used to provide services.
    - a. Lighting is sufficient to perform normal activities, and
    - b. Light sockets are equipped with light bulbs or safely covered to prevent electrical shock.
  3. Adequate heating, cooling, and ventilation are available in bedrooms, living areas, and rooms used to provide services. Temperatures outside the range of 65° - 85° F are indicators of inadequate heating or cooling.
  4. At least one operable telephone is available on the premises unless OLR has approved an alternative system for communication. Telephone includes cellular phones, digital phones, and phones with traditional land lines.
  5. If the premises have a clothes dryer, the dryer is safely vented with a non-flammable vent hose.
  6. If a portable heater is on the premises, it has a protective covering to keep hands and objects away from the heating element and, it is:
    - a. Electric;
    - b. UL approved;
    - c. Equipped with a tip-over shut-off switch;
    - d. Placed at least three feet from curtains, paper, furniture, and any flammable object when in use;
    - e. Not used as the primary source for heat in the setting; and
    - f. Not used in bedrooms.
  7. A carbon monoxide detector-alarm is properly located according to manufacturer's instructions and functioning on each level of the premises that has an appliance or heating device using combustible fuel, including gas, oil, or wood. Such appliances or devices include fireplaces, wood stoves, gas stoves, and gas hot water heaters.

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**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3517, effective January 24, 2016 (Supp. 15-4).

**R21-8-110. Electrical Safety**

The provider shall ensure:

1. Electrical cords are in good condition; no broken or frayed cords are in use.
2. Electrical panels and outlets are in good condition; no wiring is exposed, and covers are in place.
3. Extension cords are not used on a permanent basis.
4. Electrical outlets are not overloaded.
5. Major appliances are plugged directly into grounded outlets. Major appliances include refrigerators, freezers, dishwashers, stoves, ovens, washers, and dryers.
6. Mid-sized appliances, which include computers, televisions, and stereo equipment, are plugged into:
  - a. Grounded outlets, or
  - b. Power strips or surge protectors that are plugged into grounded outlets.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3517, effective January 24, 2016 (Supp. 15-4).

**R21-8-111. Water and Plumbing Requirements**

- A. The provider shall ensure that a continuous source of safe drinking water is available to a foster child or child in a residential group care facility receiving care.
- B. The home must meet the following standards concerning water:
  1. If a home uses a non-municipal water source including private well water or another source of drinking water, the provider shall have the water tested for safety under subsection (B)(2).
  2. If the home's water is from any source other than an approved public water supply, the foster parent shall obtain a written water analysis report, showing that the water is within acceptable state and federal standards for drinking water for the age of the children in care. The provider shall obtain the analysis and report from a laboratory certified by the Arizona Department of Health Services as part of the initial licensing process and before each renewal.
- C. The provider shall ensure that the sewage disposal for the setting is functioning. If the setting has a septic tank, it shall be in good working order, with no visible signs of leakage on the ground.
- D. The provider shall ensure that at least one working toilet, wash basin, and shower or tub is available for every seven persons living or receiving care in the home at the same time.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3517, effective January 24, 2016 (Supp. 15-4).

**EMERGENCY RULEMAKING**

*Editor's Note: This emergency rulemaking was renewed at 23 A.A.R. 2946, effective October 2, 2017. An amendment was made to the original R21-8-112 as a final rulemaking effective December 12, 2017. Because both rules were filed in one supplement quarter the renewal of the emergency is being published for archival purposes in Supp. 17-4.*

**R21-8-112. Fire Safety and Evacuation Plan Requirements**

The provider shall ensure:

1. The premises is free of obvious fire hazards, such as defective heating equipment, or improperly stored flammable materials. Household heating equipment must be

equipped with appropriate safeguards, maintained as recommended by the manufacturer.

2. Flammables and combustibles are stored more than three feet from water heaters, furnaces, portable heaters, fireplaces, and wood-burning stoves.
3. If the premises has a working fireplace or wood-burning stove, it is protected by a fire screen sufficient to shield the room from open flames and flying embers.
4. A functioning fire extinguisher with a rating of "2A 10BC" or greater is available near the kitchen area. If the home has multiple levels at least one functioning fire extinguisher with a rating of "2A 10BC" or greater is available on each level.
5. At least one UL approved and working smoke detector is installed:
  - a. In the main living or program area of the setting;
  - b. In each bedroom, if overnight care is provided; and
  - c. On each level of a multiple-level setting.
6. A written emergency evacuation plan is developed and maintained in the home, to provide guidance on the safe and rapid evacuation of the home. An emergency evacuation plan shall:
  - a. Be reviewed with the child within 72 hours of placement in the home and posted in a prominent place in the home;
  - b. Identify multiple exits from the home;
  - c. Identify two routes of evacuation from each bedroom on every floor used by individuals residing in or receiving care in the home. At least one of the exit routes for these bedrooms shall lead directly to the outside of the home. If that exit leads into an area that serves as a pool enclosure;
    - i. An individual receiving care in the home shall not use that bedroom and;
    - ii. If the exit is a window, it shall be secured with a latching device located not less than 54 inches above the finished floor;
    - iii. If the exit is a door, it shall be locked at all times with a latch or lock located a minimum of 54 inches above the floor. If there is no quick release on the lock, it must comply with the provisions of R21-8-112(11), and the key shall be located a minimum of 54 inches above the floor.
    - iv. Bedroom doors that lead into an area that serves as a pool enclosure shall comply with R21-8-112(6)(c)(iii) and also be self-closing and self-latching. Such doors that are hinged shall also swing outward from the pool area.
  - d. Identify the location of fire extinguishers and fire evacuation equipment, including rope or chain ladders, and emergency lighting, as applicable;
  - e. Designate a safe central meeting place close to the home, known to the child, at a safe distance from potential danger;
  - f. Be maintained in the home to review with individuals residing in or receiving care in the home; and
  - g. Include the placement of equipment, such as a ladder, that can be safely used by the individuals residing in each upstairs bedroom that have been identified with fire exits.
7. All windows identified as fire exits, must have enough space for an adult to move through.
8. Each bedroom used by a foster or child in a residential group care facility receiving care or services has two exits the outside.

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- a. One exit shall be a path through the premises and leading to a door that opens to the outside. A garage door that opens either manually by lifting or with an automatic opener shall not be accepted as an exit.
  - b. Another exit shall be a window or door within the bedroom that opens directly to the outside.
9. Premises authorized to provide care or services to five or more children shall train staff and children in evacuation procedures and conduct emergency drills at least every three months as prescribed in this subsection.
    - a. Practice drills shall include actual evacuation of children to safe areas, outside, and beyond the home.
    - b. Drills shall be held at random times and under varying conditions to simulate the possible conditions in case of fire or other disaster.
    - c. All persons in the home shall participate in the drill.
    - d. Records shall be maintained for each emergency drill and shall include:
      - i. Date and time of drill;
      - ii. Total evacuation time;
      - iii. Exits used;
      - iv. Problems noted; and
      - v. Measures taken to ensure that a foster child or a child in a residential group home facility understand the purpose of a drill and his or her responsibilities during a drill.
  10. The exit routes for the home are clear of obstruction that could prevent safe and rapid evacuation.
  11. The locks on exterior doors and windows, including the front door, screen doors, and bars on windows, are equipped with a quick release mechanism. A quick release mechanism is a lock that can be opened from inside the setting without special knowledge (such as a combination) or equipment (such as a key). The Department may grant an exception to this requirement for a double-key deadbolt on a door if:
    - a. There is breakable glass within 40 inches of the interior locking mechanism;
    - b. There is another exit with a quick release mechanism on the same level of the premises; and
    - c. The key for the deadbolt is permanently maintained in a location that is:
      - i. Within six feet of the locking mechanism;
      - ii. Accessible to all household members;
      - iii. Reviewed with persons residing in or receiving care in the home; and
      - iv. Identified on the emergency evacuation plan, specified in subsection (6).
  12. The address for the home is posted and visible from the street, or the local emergency response team, such as the local fire department, is notified of the location of the home in writing, with a copy of this notification maintained in the home.
  13. Providers must maintain a comprehensive list of emergency telephone numbers, including poison control, and post those numbers in a prominent place in the home.
2. Flammables and combustibles are stored more than three feet from water heaters, furnaces, portable heaters, fireplaces, and wood-burning stoves.
  3. If the premises has a working fireplace or wood-burning stove, it is protected by a fire screen sufficient to shield the room from open flames and flying embers.
  4. A functioning fire extinguisher with a rating of "2A 10BC" or greater is available near the kitchen area. If the home has multiple levels at least one functioning fire extinguisher with a rating of "2A 10BC" or greater is available on each level.
  5. At least one UL approved and working smoke detector is installed:
    - a. In the main living or program area of the setting;
    - b. In each bedroom, if overnight care is provided; and
    - c. On each level of a multiple-level setting.
  6. A written emergency evacuation plan is developed and maintained in the home, to provide guidance on the safe and rapid evacuation of the home. An emergency evacuation plan shall:
    - a. Be reviewed with the child within 72 hours of placement in the home and posted in a prominent place in the home;
    - b. Identify multiple exits from the home;
    - c. Identify two routes of evacuation from each bedroom on every floor used by individuals residing in or receiving care in the home. At least one of the exit routes for these bedrooms shall lead directly to the outside of the home. If that exit leads into an area that serves as a pool enclosure, a child six years of age or less receiving care in the home shall not reside in that bedroom.
      - i. If the exit is a window, it shall be secured with a latching device located a minimum of 54 inches above the floor; or
      - ii. If the exit is a door, it shall be locked at all times with a latching device or lock located a minimum of 54 inches above the floor. If there is no quick release mechanism on the lock, it must comply with the provisions of R21-8-112(11), and a key for the deadbolt shall be located a minimum of 54 inches above the floor. Bedroom doors that lead into an area that serves as a pool enclosure shall comply with this Section and also be self-closing and self-latching. Such doors that are hinged shall also swing outward from the pool area.
    - d. Identify the location of fire extinguishers and fire evacuation equipment, including rope or chain ladders, and emergency lighting, as applicable;
    - e. Designate a safe central meeting place close to the home, known to the child, at a safe distance from potential danger;
    - f. Be maintained in the home to review with individuals residing in or receiving care in the home; and
    - g. Include the placement of equipment, such as a ladder, that can be safely used by the individuals residing in each upstairs bedroom that have been identified with fire exits.
  7. All windows identified as fire exits, must have enough space for an adult to move through.

**Historical Note**

Amended by emergency rulemaking at 23 A.A.R. 1040, effective April 14, 2017, for 180 days (Supp. 17-2).  
 Emergency renewed at 23 A.A.R. 2946, effective October 2, 2017 (Supp. 17-4).

**R21-8-112. Fire Safety and Evacuation Plan Requirements**

The provider shall ensure:

1. The premises is free of obvious fire hazards, such as defective heating equipment, or improperly stored flam-

## Department of Child Safety - Foster Home and Child Welfare Agency Facility Safety

8. Each bedroom used by a foster child or child in a residential group care facility receiving care or services has two exits to the outside.
  - a. One exit shall be a path through the premises and leading to a door that opens to the outside. A garage door that opens either manually by lifting or with an automatic opener shall not be accepted as an exit.
  - b. Another exit shall be a window or door within the bedroom that opens directly to the outside.
9. Premises authorized to provide care or services to five or more children shall train staff and children in evacuation procedures and conduct emergency drills at least every three months as prescribed in this subsection.
  - a. Practice drills shall include actual evacuation of children to safe areas, outside, and beyond the home.
  - b. Drills shall be held at random times and under varying conditions to simulate the possible conditions in case of fire or other disaster.
  - c. All persons in the home shall participate in the drill.
  - d. Records shall be maintained for each emergency drill and shall include:
    - i. Date and time of drill;
    - ii. Total evacuation time;
    - iii. Exits used;
    - iv. Problems noted; and
    - v. Measures taken to ensure that a foster child or a child in a residential group home facility understand the purpose of a drill and his or her responsibilities during a drill.
10. The exit routes for the home are clear of obstruction that could prevent safe and rapid evacuation.
11. The locks on exterior doors and windows, including the front door, screen doors, and bars on windows, are equipped with a quick release mechanism. A quick release mechanism is a lock that can be opened from inside the setting without special knowledge (such as a combination) or equipment (such as a key). The Department may grant an exception to this requirement for a double-key deadbolt on a door if:
  - a. There is breakable glass within 40 inches of the interior locking mechanism;
  - b. There is another exit with a quick release mechanism on the same level of the premises; and
  - c. The key for the deadbolt is permanently maintained in a location that is:
    - i. Within six feet of the locking mechanism;
    - ii. Accessible to all household members;
    - iii. Reviewed with persons residing in or receiving care in the home; and
    - iv. Identified on the emergency evacuation plan, specified in subsection (6).
12. The address for the home is posted and visible from the street, or the local emergency response team, such as the local fire department, is notified of the location of the home in writing, with a copy of this notification maintained in the home.
13. Providers must maintain a comprehensive list of emergency telephone numbers, including poison control, and post those numbers in a prominent place in the home.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3517, effective January 24, 2016 (Supp. 15-4).  
Section amended by final rulemaking at 23 A.A.R. 3548, with an immediate effective date of December 12, 2017

(Supp. 17-4).

**EMERGENCY RULEMAKING**

*Editor's Note: This emergency rulemaking was renewed at 23 A.A.R. 2946, effective October 2, 2017. An amendment was made to the original R21-8-113 as a final rulemaking effective December 12, 2017. Because both rules were filed in one supplement quarter the renewal of the emergency is being published for archival purposes in Supp. 17-4.*

**R21-8-113. Pool Safety**

- A. The provisions of this Section apply to each Child Welfare Agency residential group care facility and licensee.
- B. For a home that has a pool, and provides care to a child six years of age or less, or an individual with a Developmental Disability, the provider shall ensure the following:
  1. That the pool complies with A.R.S. § 36-1681 and all local municipal codes to the extent not inconsistent with this Section.
  2. A fence or barrier meeting the following requirements is maintained between the pool and the home, or any building used to provide care and supervision.
    - a. The exterior side of the fence or barrier is at least five feet high;
    - b. If the barrier is a chain link fence or lattice, each opening in the mesh measures less than 1 3/4 inches horizontally. Chicken wire and other light gauge wire are prohibited as a primary fencing material for the pool;
    - c. If the barrier is a fence constructed of vertical bars or wooden slats, the openings between bars or slats measure less than four inches;
    - d. The exterior side of the barrier is free of hand holds or foot holds or other means that could be used to climb over it and if it has a horizontal component spaced at least 45 inches, measured vertically;
    - e. The gate to the enclosure is locked, except when in use and there is an adult within the enclosure to supervise the pool and spa area;
    - f. The connection between the panels of the fence cannot be separated without a key or a tool;
    - g. The fence is secured to the ground or has sufficient tension to prevent the fence from being lifted more than four inches from the ground;
    - h. If the home or building to provide care or supervision constitutes part of the enclosure:
      - i. The enclosure does not interfere with safe egress from the home;
      - ii. A door from the home does not open within the pool enclosure, unless it is a bedroom door in a bedroom not occupied by an individual receiving care and such a door cannot be opened by a foster child or child in a residential group care facility because it is either locked as required in R21-8-112(6)(c)(iii) or inoperable. Any key shall not be accessible to a foster child or child in a residential group care facility;
      - iii. A window located in a room that is designated as a bedroom for a foster child or child in a residential group care facility shall not open into the pool enclosure or shall be permanently locked and not used for egress; and
      - iv. Other windows that open into the pool enclosure are secured as required in R21-8-122(c)(ii).
      - v. Animal or doggie doors shall not open directly into the pool enclosure.

## Department of Child Safety - Foster Home and Child Welfare Agency Facility Safety

3. A pool shall have its methods of access through the barrier equipped with a safety device, such as a bolt lock:
  - a. Gates should be self-closing and self-latching, maintained in good repair, and open out or away from the pool.
  - b. The gate latch is at least 54" above the ground and is equipped with a key or combination lock.
4. If the swimming pool cannot be emptied after each use, the pool must have a working pump and filtering system.
5. Hot tubs and spas must have safety covers that are locked when not in use.
6. Hot tubs and spas that are drained must be disconnected from the power and water source and have safety covers that are always locked.
- C. The Department shall not approve a locked cover in lieu of the fence required under subsection (B).
- D. After a fence has been inspected and approved by OLR as meeting the standards required under subsection (B), the provider shall ensure the fence is not dismantled or moved for as long as the provider is licensed by OLR.
- E. Regardless of the age of the foster child or child in a residential group care facility living in the home, if the pool is deeper than six feet, the care provider shall ensure the following rescue equipment is available in the pool area:
  1. A shepherd's crook attached to a pole; and
  2. A ring buoy attached to a rope that measures at least half of the distance across the pool plus 10 feet.
- F. A drained pool is a safety hazard. The provider shall comply with this Section or R21-8-105, if applicable.

**Historical Note**

Amended by emergency rulemaking at 23 A.A.R. 1040, effective April 14, 2017, for 180 days (Supp. 17-2).  
Emergency renewed at 23 A.A.R. 2946, effective October 2, 2017 (Supp. 17-4).

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    - a. The exterior side of the fence or barrier is at least five feet high;
    - b. If the barrier is a chain link fence or lattice, each opening in the mesh measures less than 1 3/4 inches horizontally. Chicken wire and other light gauge wire are prohibited as a primary fencing material for the pool;
    - c. If the barrier is a fence constructed of vertical bars or wooden slats, the openings between bars or slats measure less than four inches;
    - d. The exterior side of the barrier is free of hand holds or foot holds or other means that could be used to climb over it and if it has a horizontal component spaced at least 45 inches, measured vertically;
    - e. The gate to the enclosure is locked, except when in use and there is an adult within the enclosure to supervise the pool and spa area;
    - f. The connection between the panels of the fence cannot be separated without a key or a tool;
- g. The fence is secured to the ground or has sufficient tension to prevent the fence from being lifted more than four inches from the ground;
- h. If the home or building to provide care or supervision constitutes part of the enclosure:
  - i. The enclosure does not interfere with safe egress from the home;
  - ii. A door from the home does not open within the pool enclosure, unless it is a bedroom door in a bedroom not occupied by an individual six years of age or less receiving care and such a door cannot be opened by a foster child six years of age or less or child in a residential group care facility because it is either locked as required in R21-8-112(6)(c)(ii) or inoperable. Any key shall not be accessible to a foster child six years of age or less or child in a residential group care facility;
  - iii. A window located in a room that is designated as a bedroom for a foster child six years of age or less or child in a residential group care facility shall not open into the pool enclosure or shall be permanently locked and not used for egress; and
  - iv. Other windows that open into the pool enclosure are permanently secured to open no more than four inches; or as required in R21-8-112(6)(c)(i).
  - v. Animal or doggie doors shall not open directly into the pool enclosure.
3. A pool shall have its methods of access through the barrier equipped with a safety device, such as a bolt lock:
  - a. Gates should be self-closing and self-latching, maintained in good repair, and open out or away from the pool.
  - b. The gate latch is at least 54" above the ground and is equipped with a key or combination lock.
4. If the swimming pool cannot be emptied after each use, the pool must have a working pump and filtering system.
5. Hot tubs and spas must have safety covers that are locked when not in use.
6. Hot tubs and spas that are drained must be disconnected from the power and water source and have safety covers that are always locked.
- C. The Department shall not approve a locked cover in lieu of the fence required under subsection (B).
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- E. Regardless of the age of the foster child or child in a residential group care facility living in the home, if the pool is deeper than six feet, the care provider shall ensure the following rescue equipment is available in the pool area:
  1. A shepherd's crook attached to a pole; and
  2. A ring buoy attached to a rope that measures at least half of the distance across the pool plus 10 feet.
- F. A drained pool is a safety hazard. The provider shall comply with this Section or R21-8-105, if applicable.

**Historical Note**

New Section made by final exempt rulemaking at 21 A.A.R. 3517, effective January 24, 2016 (Supp. 15-4).  
Section amended by final rulemaking at 23 A.A.R. 3548, with an immediate effective date of December 12, 2017 (Supp. 17-4).

8-453. Powers and duties

A. The director shall:

1. Carry out the purposes of the department prescribed in section 8-451.
2. Provide transparency by being open and accountable to the public for the actions of the department.
3. Develop a data system that enables persons and entities that are charged with a responsibility relating to child safety to access all relevant information relating to an abused, neglected or abandoned child as provided by law.
4. Subject to title 41, chapter 4, article 4 and, as applicable, articles 5 and 6, employ deputy directors and other key personnel based on qualifications that are prescribed by the director.
5. Adopt rules to implement the purposes of the department and the duties and powers of the director.
6. Petition, as necessary to implement the case plan established under section 8-824 or 8-845, for the appointment of a guardian or a temporary guardian under title 14, chapter 5 for children who are in custody of the department pursuant to court order. Persons applying to be guardians or temporary guardians under this section shall be fingerprinted. A foster parent or certified adoptive parent already fingerprinted is not required to be fingerprinted again, if the foster parent or certified adoptive parent is the person applying to be the guardian or temporary guardian.
7. Cooperate with other agencies of this state, county and municipal agencies, faith-based organizations and community social services agencies, if available, to achieve the purposes of this chapter.
8. Exchange information, including case specific information, and cooperate with the department of economic security for the administration of the department of economic security's programs.
9. Administer child welfare activities, including:
  - (a) Cross-jurisdictional placements pursuant to section 8-548.
  - (b) Providing the cost of care of:
    - (i) Children who are in temporary custody, are the subject of a dependency petition or are adjudicated by the court as dependent and who are in out-of-home placement, except state institutions.
    - (ii) Children who are voluntarily placed in out-of-home placement pursuant to section 8-806.
    - (iii) Children who are the subject of a dependency petition or are adjudicated dependent and

who are in the custody of the department and ordered by the court pursuant to section 8-845 to reside in an independent living program pursuant to section 8-521.

(c) Providing services for children placed in adoption.

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

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

12. Coordinate with, contract with or assist other departments, agencies and institutions of this state and local and federal governments in the furtherance of the department's purposes, objectives and programs.

13. Accept and disburse grants, matching funds and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.

14. Collect monies owed to the department.

15. Act as an agent of the federal government in furtherance of any functions of the department.

16. Carry on research and compile statistics relating to the child welfare program throughout this state, including all phases of dependency.

17. Cooperate with the superior court in all matters related to this title and title 13.

18. Provide the cost of care and transitional independent living services for a person under twenty-one years of age pursuant to section 8-521.01.

19. Ensure that all criminal conduct allegations and reports of imminent risk of harm are investigated.

20. Ensure the department's compliance with the Indian child welfare act of 1978 (P.L. 95-608; 92 Stat. 3069; 25 United States Code sections 1901 through 1963).

21. Strengthen relationships with tribal child protection agencies or programs.

B. The director may:

1. Take administrative action to improve the efficiency of the department.

2. Contract with a private entity to provide any functions or services pursuant to this title.

3. Apply for, accept, receive and expend public and private gifts or grants of money or

property on the terms and conditions as may be imposed by the donor and for any purpose provided for by this title.

4. Reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business. Volunteers reimbursed for expenses are not eligible for workers' compensation under title 23, chapter 6.

C. The department shall administer individual and family services, including sections on services to children and youth and other related functions in furtherance of social service programs under the social security act, as amended, title IV, parts B and E, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services and other related federal acts and titles.

D. If the department has responsibility for the care, custody or control of a child or is paying the cost of care for a child, the department may serve as representative payee to receive and administer social security and veterans administration benefits and other benefits payable to the child. Notwithstanding any law to the contrary, the department:

1. Shall deposit, pursuant to sections 35-146 and 35-147, any monies it receives to be retained separate and apart from the state general fund on the books of the department of administration.

2. May use these monies to defray the cost of care and services expended by the department for the benefit, welfare and best interests of the child and invest any of the monies that the director determines are not necessary for immediate use.

3. Shall maintain separate records to account for the receipt, investment and disposition of monies received for each child.

4. On termination of the department's responsibility for the child, shall release any monies remaining to the child's credit pursuant to the requirements of the funding source or, in the absence of any requirements, shall release the remaining monies to:

(a) The child, if the child is at least eighteen years of age or is emancipated.

(b) The person who is responsible for the child if the child is a minor and not emancipated.

E. Subsection D of this section does not apply to benefits that are payable to or for the benefit of a child receiving services under title 36.

F. Notwithstanding any other law, a state or local governmental agency or a private entity is not subject to civil liability for the disclosure of information that is made in good faith to the department pursuant to this section.

G. Notwithstanding section 41-192, the department may employ legal counsel to provide legal advice to the director. The attorney general shall represent the department in any administrative or judicial proceeding pursuant to title 41, chapter 1, article 5.

H. The total amount of state monies that may be spent in any fiscal year by the department for foster care as provided in subsection A, paragraph 9, subdivision (b) of this section may not exceed the amount appropriated or authorized by section 35-173 for that purpose. This section does not impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

**8-504. Sanitation, fire and hazard inspection**

A. The division shall visit each child welfare agency and foster home and inspect the premises used for care of children for sanitation, fire and other actual and potential hazards. The division shall take action it deems necessary to carry out the duties imposed by this section including the denial of the application for licensure and the suspension or revocation of a license.

B. The division may delegate any additional inspection, examination or study provided for by this article, including inspection of premises for fire hazards, to an agency, department, political subdivision or governmental entity deemed appropriate by the division.

**8-505. Issuance of licenses; application; investigation; renewal**

A. The issuance of initial and renewal licenses for child welfare agencies shall be made by the division.

B. A child welfare agency shall not receive any child for care or maintenance or for placement in a foster home unless the agency is licensed by the division. Application for a license shall be made on a form prescribed by the division.

C. The division shall, before issuing a license to an agency, investigate the activities and standards of care of the agency, its financial stability, the character and training of the applicant, the need for such agency, and the adequacy of its intended services to insure the welfare of children. A provisional license may be issued to any agency whose services are needed but which is temporarily unable to conform to the established standards of care. If the applicant meets the standards as established by the division a regular license shall be issued for a period of one year.

D. Each license shall state in general terms the kind of child welfare service the licensee is authorized to undertake, the number of children that can be received if the licensee is a private agency, their ages and sex, and, if authorized to place and supervise children in foster homes, the geographical area the agency is equipped to serve.

E. Every license shall expire one year from the date of issuance, and may be renewed annually on application of the agency, except that provisional licenses may be issued for not more than six months from the date of issuance and may not be renewed.

8-509. Licensing of foster homes; renewal of license; provisional license; exemption from licensure; immunization requirements

A. The department shall license and certify foster homes. Licenses are valid for a period of two years.

B. The department shall not issue a license without satisfactory proof that the foster parent or parents have completed six actual hours of approved initial foster parent training as set forth in section 8-503 and that each foster parent and each other adult member of the household has a valid fingerprint clearance card issued pursuant to section 41-1758.07. The foster parent and each other adult member of the household must certify on forms that are provided by the department and that are notarized whether the foster parent or other adult member of the household is awaiting trial on or has ever been convicted of any of the criminal offenses listed in section 41-1758.07, subsections B and C in this state or similar offenses in another state or jurisdiction.

C. The department shall not renew a license without satisfactory proof that the foster parent or parents have completed twelve actual hours of approved ongoing foster parent training during the two-year period of licensure as set forth in section 8-503.

D. If the department determines that completing the training required in subsections B and C of this section would be a hardship to the foster parent or parents, the department may issue a provisional license for a period not to exceed six months. A provisional license may not be renewed.

E. Child welfare agencies that submit foster homes for licensing shall conduct an investigation of the foster home pursuant to licensing rules of the department. The department shall conduct investigations of all other foster homes. If the foster home meets all requirements set by the department, the agency shall submit an application stating the foster home's qualifications to the department. The agency may also recommend the types of licensing and certification to be granted to the foster home.

F. The department shall accept an adoptive home certification study as a licensing home study if the study has been updated within the past three months to include the information necessary to determine whether the home meets foster care licensing standards.

G. This section does not apply if the child is placed in a home by a means other than by court order and if the home does not receive compensation from this state or any political subdivision of this state.

H. The department may not prohibit a person operating a licensed foster home from applying for or receiving compensation as a foster home parent due to employment with this state.

I. The department shall not require a foster parent to immunize the foster parent's natural or adoptive children as a condition of foster home licensure.

J. A licensee may modify the renewal date of a license issued pursuant to this section by

submitting an application for modification of renewal date with the department on a form prescribed by the department. The licensee must specify the new month of renewal on the application. The modified renewal date must be before, but not more than six months earlier than, the existing renewal date.

K. The foster care review board shall review the cases of children placed by the department in foster homes licensed pursuant to this section as required by section 8-515.03.

**DEPARTMENT OF ENVIRONMENTAL QUALITY (F20-0304)**

Title 18, Chapter 8, All Articles, Department of Environmental Quality - Hazardous Waste Management



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** February 25, 2020

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

**FROM:** Council Staff

**DATE:** February 11, 2020

**SUBJECT:** Arizona Department of Environmental Quality  
Title 18, Chapter 8, Hazardous Waste Management

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This Five-Year-Review Report from the Department of Environmental Quality relates to rules in Title 18, Chapter 8, The rules cover the following:

**Article 1** - Remedial Action Requirements

**Article 2** - Hazardous Waste Management

In the last 5YRR of these rules the Department indicated it would amend one of its rules to fix a minor citation issue, and also proposed to amend two other rules to improve their clarity, conciseness, and understandability. The Department completed a rulemaking in February 2019 addressing the issues.

### **Proposed Action**

The Department is proposing to amend R18-8-262(G) to respond to a criticism received, relating to a logging requirement for small quantity generators that should also apply to large quantity generators. The Department plans to submit a Notice of Final Rulemaking to the Council by November 2020.

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes, the Department cites to both general and specific authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The rules in Chapter 8 of Title 18, A.A.C. affect 13 hazardous waste treatment, storage, and disposal facilities in Arizona, as well as 338 large quantity generators, 644 small quantity generators, 1,372 very small quantity generators, and 314 hazardous waste transporters. Waste generators exist in most industry categories, such as construction, demolition, and renovation; dry cleaning; education and vocational shops equipment repair; laboratories; metal plating shops; motor freight and railroad transportation; pesticide end users and application services; photo processing; printing; auto body shops; pharmacies; mining and most manufacturers.

The primary objective of the rules is to provide for the management, characterization, identification, listing, generation, transportation, treatment, storage, and disposal of hazardous waste in a manner that protects public health and the environment. A secondary objective is to receive and maintain authorization from EPA to implement the federal hazardous waste program in Arizona.

Stakeholders include the Department, the general public, and businesses involved in the aforementioned industries.

One of the predicted impacts of incorporating EPA's e-manifest rules was reduced manifest processing by the Department. As predicted in the previous economic impact statement (EIS), the Department has seen significant savings through the great reduction in paper manifests it receives (from 35,000 a year to less than 1,000), saving approximately \$58,000 a year.

Two fee-related rules were meant to address a \$1.4 million shortfall in the Department's budget in implementing the Hazardous Waste Program. The revenue received from the hazardous waste fees in FY 2019 was \$1.432 million, making the Program more self-sufficient.

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 primary benefits of the rulemaking relate to the dual objectives of protecting human health and the environment from hazardous waste, and ensuring that ADEQ's Hazardous Waste program meets EPA's standards for state authorization. The Department has determined that the benefits from the rules remain the same and greater than the costs of the rule, which have not changed significantly.

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

Yes. The Department indicates it received comments on these rules during the a rulemaking process in 2018. Additionally, the Department indicates it received a comment in 2019, asking why ADEQ was requiring inspection logs for small quantity generators but not large quantity generators. The Department properly responded to the comments, and is now proposing to amend the rule to address the issue.

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 for the most part 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?**

No. The Department indicates the rules are not more stringent than the 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?**

Yes, the Department indicates the rules are in compliance with A.R.S. § 41-1037.

9. **Conclusion**

As mentioned above, the Department is proposing to amend R18-8-262 (G), to address the issue addressed by a comment the Department received. The Department indicates it plans to complete a Notice of Final Rulemaking by November 2020. Council staff recommends approval of this report.



Janice K. Brewer  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007  
(602) 771-2300 • [www.azdeq.gov](http://www.azdeq.gov)



Henry R. Darwin  
Director

December 20, 2019

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

Ms. Nicole Sornsins, Chair  
Governor's Regulatory Review Council  
100 N. 15<sup>th</sup> Avenue, Suite 305  
Phoenix, AZ 85007

Re: Five Year Review Report for 18 A.A.C. 8-Hazardous Waste Management, all Articles

Dear Ms. Sornsins:

Pursuant to A.R.S. § 41-1056 and A.A.C. R1-6-301, the Arizona Department of Environmental Quality submits the attached five-year-review report for Chapter 8 of Title 18, Arizona Administrative Code, to the Governor's Regulatory Review Council. I have included copies of the rules that were reviewed, the authorizing statutes, and the economic impact statement previously prepared on the rules.

There is no rule in Chapter 8 for which review was omitted with the intention that the rule expire under A.R.S. § 41-1056(J). Also, Chapter 8 does not contain any rule for which review was omitted because the Council rescheduled the review of the rule under A.R.S. § 41-1056(H). I certify that this agency is in compliance with A.R.S. § 41-1091.

Please do not hesitate to contact us if there are any questions we can answer for you regarding this report. If you have any questions, please contact Mark Lewandowski at 771-2230. Thank you for your assistance in reviewing the Department's rules.

Sincerely,

Misael Cabrera  
Director

Attachments

Southern Regional Office  
400 West Congress Street • Suite 433 • Tucson, AZ 85701  
(520) 628-6733

*Printed on recycled paper*

**FIVE-YEAR REVIEW  
A.A.C. TITLE 18, CHAPTER 8  
DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE  
MANAGEMENT**

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- Table of proposed courses of action for 18 A.A.C 8

**OVERVIEW**

Chapter 8 of Title 18, A.A.C. contains 2 Articles and 13 rules that help implement federal and state hazardous waste requirements in the state of Arizona. These rules have allowed the United States Environmental Protection Agency (EPA) to authorize the Arizona Department of Environmental Quality (ADEQ) to implement the federal hazardous waste management program in Arizona. The rules in Article 2 are reviewed and amended regularly to incorporate new and changed text in the federal regulations implementing subtitle C of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). The single Article 1 rule provides cleanup levels for Article 2 soil cleanups. Since the last 5-year-review report, ADEQ completed 2 regular rulemakings affecting this Chapter 1. In addition, two rules were allowed to expire: R18-8-201, which updated fees and was only effective for a single fiscal year, and R18-8-269, which related to a state hazardous waste disposal facility that was partially constructed but never put into operation.

The rules in Chapter 8 affect 13 hazardous waste treatment, storage, and disposal facilities in Arizona, as well as 338 large quantity generators, and 644 small quantity generators. In addition, the count for the new EPA category, very small quantity generators, is 1372. There are 314 hazardous waste transporters. Generators exist in most industry categories, such as construction, demolition, and renovation; dry cleaning; educational & vocational shops; equipment repair; furniture manufacturing and refinishing; laboratories; metal plating shops, leather manufacturing;

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1 Hazardous Waste Amendments 2013 (eff. September 5, 2015) [21 A.A.R. 1246](#); Hazardous Waste Amendments 2018 (eff. Feb. 5, 2019) [25 A.A.R. 435](#).

motor freight and railroad transportation; pesticide end users and application services; photo processing; printing; textile manufacturing; auto body shops, pharmacies and mining.

Periodic review and amendments to these rule take place in order to fulfill the EPA's reauthorization requirement: states implementing the federal hazardous waste program incorporate changes in federal regulations through adoption of those changes into the state rules, typically within one or two years. EPA requires that states be periodically reauthorized to continue implementation of the federal hazardous waste program. Without authorization, EPA, rather than ADEQ, would administer the hazardous waste program in Arizona. ADEQ first received authorization to implement the RCRA program in 1985 and was last reauthorized in 2017. ADEQ seeks to continue to comply with the federal requirements for authorization in order to administer Arizona's hazardous waste program in lieu of the federal program. This requires regularly adopting changes to the state rules that reflect the recent amendments to federal RCRA regulations.

These periodic rule amendments must also comply with A.R.S. § 49-922, which requires ADEQ to adopt rules to establish a hazardous waste management program “equivalent to and consistent with” the federal hazardous waste regulations. Arizona’s hazardous waste rules are largely identical to the federal hazardous waste regulations because the Arizona rules principally incorporate the federal regulations by reference. Arizona's hazardous waste program has been effective as state law since 1984.

In 2015 and in 2019, ADEQ incorporated by reference recent federal regulations into its Arizona rules in order to receive continued authorization from EPA. The Article 2 rules undergo regular review and amendment by ADEQ as a single rule package with the goal of conforming to the federal hazardous waste regulations. This report reviews these Article 2 rules as a single group: R18-8-260, R18-8-261, R18-8-262, R18-8-263, R18-8-264, R18-8-265, R18-8-266, R18-8-268, R18-8-270, R18-8-271, R18-8-273 and R18-8-280

R18-8-101 is reviewed separately. It was last amended in 2019 to correct a citation and specifies Arizona's soil cleanup standards to be followed in the hazardous waste program. It is not submitted as part of Arizona's EPA-authorized program.

**I. Article 1. Remedial Action Requirements**

**A. R18-8-101. Remedial Action Requirements; Level and Extent of Cleanup:**

1. General and Specific Statutes Authorizing the Rule:

This rule is generally authorized by A.R.S. §§ 41-1003 and 49-104(B)(4), and is specifically authorized by A.R.S. § 49-152(A).

2. Objective of the Rule:

The objective of this rule is to clarify that, if soil remediation is otherwise required under 18 A.A.C. 8, Article 2, it shall be conducted in accordance with the soil remediation levels in 18 A.A.C. 7, Article 2.

3. Effectiveness of the Rule in Achieving its Objective:

The rule effectively achieves its objective.

4. Consistency of the Rule with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency:

This rule is consistent with state and federal statutes and rules. ADEQ used the following statutes and rules in determining this rule's consistency:

A.R.S. § 49-152

R18-7-201 through R18-7-210

42 U.S.C. 6921-6939e

40 CFR 124, 260 through 266, 268, 270 and 273, especially 40 CFR 264.101

5. Agency Enforcement Policy:

ADEQ currently enforces this rule; no problems with enforcement have been identified.

6. Clarity, Conciseness, and Understandability of the Rule:

The rule is clear, concise and understandable.

7. Summary of Written Criticisms of the Rule:

ADEQ has received no written criticisms of the rule since the last five year review.

8. Estimated Economic, Small Business and Consumer Impact as Compared to the Economic, Small Business and Consumer Impact Statement (EIS) Prepared on the Last Rulemaking:

The direct economic impact of R18-8-101 has not differed from that projected in the EIS issued in the 2019 rulemaking. The soil remediation levels in Chapter 7, Article 2 that are referenced in R18-8-101 have not changed since 2007.

9. Analysis of rule impact on state's business competitiveness.

No analysis was submitted for this rule.

10. Completion of previous proposed courses of action.

A minor citation issue that was described in the previous (2014) five year review report was fixed by a rulemaking effective on February 5, 2019.

11. Cost benefit conclusion after analysis; least burden and cost:

This rule clarifies that the soil cleanup standards from 18 A.A.C. 7, and applicable in other ADEQ programs, apply to hazardous waste corrective actions and helps provides consistency across all programs performing soil remediation. ADEQ is not aware of any costs directly attributable to this rule. ADEQ believes that the benefits from the consistency and predictability provided by this rule outweigh any costs of listing the applicability separately.

12. Stringency Compared to Corresponding Federal Law:

There is no corresponding federal law.

13. Compliance with A.R.S. § 41-1037.

The rule was not adopted after July 29, 2010 and does not require issuance of a regulatory permit, license or agency authorization.

14. Proposed Course of Action: None

## **II. ARTICLE 2. HAZARDOUS WASTE MANAGEMENT**

### **A. INFORMATION THAT IS IDENTICAL WITHIN GROUPS OF RULES**

R18-8-260; R18-8-261; R18-8-262; R18-8-263; R18-8-264; R18-8-265; R18-8-266; R18-8-268;  
R18-8-270; R18-8-271; R18-8-273; R18-8-280

1. General and Specific Statutes Authorizing the Article 2 Rules:

These hazardous waste rules are generally authorized by A.R.S. §§ 41-1003 and 49-104(B)(4), and are specifically authorized by A.R.S. §§ 49-104(B)(17) and 49-922.

2. Objectives of the Article 2 Rules:

The *primary objective* of the Article 2 rules is to provide for the management, characterization, identification, listing, generation, transportation, treatment, storage, and disposal of hazardous waste in a manner that protects public health and the environment in accordance with the applicable provisions of A.R.S. § 49-922 (while being no more stringent than federal rules in nonprocedural standards). A *secondary objective*, achieved through incorporation by reference of federal hazardous waste regulations, is to receive and maintain authorization from EPA to implement the federal hazardous waste program in Arizona (while being no less stringent than federal rules in analogous areas). The objective of R18-8-280, which does not incorporate federal regulations, is to supplement the incorporated rules to help ensure equivalency. R18-8-280 details how the Arizona program relates to inspections and compliance.

Two Article 2 rules have a financial and budgetary objective. R18-8-260 and R18-8-270 establish fees. R18-8-260(L) provides details for the transporter and generator registration fees set forth in A.R.S. § 49-929(A). R18-8-260(M) sets a per ton fee for hazardous waste generators pursuant to A.R.S. § 49-931. R18-8-270(G) sets application fees, maximum fees, and an hourly rate for the processing of treatment, storage, and disposal (TSD) facility permit actions pursuant to A.R.S. § 49-922(B)(5). This section also froze the fees after the one time increase.

### 3. Effectiveness of the Rules in Achieving their Objectives:

The Article 2 rules listed above effectively achieve their objectives. Hazardous waste in Arizona is being handled in a manner that protects the public health and the environment, without being more stringent than federal regulations in nonprocedural areas and Arizona has remained an authorized program. The current calculated compliance rate for annual on-site inspections is 85%, which is the highest in five years. Arizona's hazardous waste program was last reauthorized by EPA in 2017. The next Arizona Hazardous Waste rulemaking is scheduled for 2020 and will contain the change(s) proposed in this report.

### 4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency:

The rules in Chapter 8 are consistent with state and federal statutes and rules which are applicable to these hazardous waste activities. A.R.S. § 49-922 requires the ADEQ Director to

establish a hazardous waste management program for Arizona that is “equivalent to and consistent with” the federal hazardous waste regulations promulgated pursuant to the federal law. In addition, it provides that ADEQ shall not adopt a nonprocedural standard that is more stringent than or conflicts with those found in specified federal regulations. These rules are consistent with A.R.S. § 49-922.

Similarly, 42 U.S.C. 6926(b) provides that a state program, in order to be authorized to operate in lieu of the federal program, must be “equivalent to the Federal program” and “consistent with the Federal or State programs applicable in other States.” The regulations that implement equivalency and consistency are found in 40 CFR 271. In most recently issuing reauthorization to Arizona, EPA found that the Arizona rules are equivalent to and consistent with the federal statute and regulations.

Consistency and equivalency are achieved primarily because Arizona’s hazardous waste rules are largely identical to the federal regulations under the federal law (RCRA subtitle C, as amended by HSWA, and 40 CFR 271) due to the Arizona rules incorporating the federal regulations by reference. With regular amendments, these rules also fulfill EPA's reauthorization requirement that states implementing the hazardous waste management program incorporate amendments promulgated in the federal regulations through adoption of those changes into the state rules. [40 CFR 271.21(e)(2)]

R18-8-280, which does not incorporate any federal rules by reference, is consistent and equivalent with 40 CFR 271.15 and 271.16, as noted below:

“271.15 Requirements for compliance evaluation programs.

(b) State programs shall have inspection and surveillance procedures to determine, independent of information supplied by regulated persons, compliance or noncompliance with applicable program requirements.”

“271.16 Requirements for enforcement authority.

(a) Any State agency administering a program shall have available the following remedies for violations of State program requirements:

(3) To access or sue to recover in court civil penalties and to seek criminal remedies, including fines,”

ADEQ uses the following statutes and rules to determine that the subject rules are consistent: A.R.S. §§ 49-104(A)(16), 49-905 and 49-922

42 U.S.C. 6921 – 6939e

40 CFR 124, 260 through 266, 268, 270, 271, and 273.

5. Status of agency enforcement policy regarding the rules: All of the Article 2 rules in 18 A.A.C. 8 are currently enforced by ADEQ. ADEQ notes that the current calculated “in compliance” rate for annual on-site inspections is 82%. ADEQ’s enforcement record is reviewed by EPA as part of the reauthorization process. Federal rules governing compliance and enforcement of the Arizona hazardous waste program are at 40 CFR 271.15 and 271.16.

6. Clarity, conciseness, and understandability of the rules: The rules are clear, concise and understandable bearing in mind their unique structure, which of necessity combines two different sets of rules. The Arizona rules consist of incorporations by reference of applicable federal hazardous waste regulations, supplemented by changes, additions, and deletions uniquely applicable to Arizona. To aid understanding, brackets [ ] enclose the Arizona changes, as explained at R18-8-260(B). Although a more concise format would result if the federal regulations were incorporated without change, the Arizona changes clarify certain critical issues such as when “EPA” means “ADEQ”, and when “Administrator” means “Director” and when it doesn’t. The changes also add flexibility, efficiency, and enforceability and therefore add benefits in ways other than conciseness.

7. Written criticisms of the rule received within the last five years: In the last 5 years, ADEQ has amended these rules twice with a notice and comment rulemaking and also emailed a survey to stakeholders soliciting comments. No comments, oral or written, were received on ADEQ’s hazardous waste update package considered by GRRC in January, 2015. It did not contain any changes to fees and mainly updated federal incorporations by reference.

ADEQ opened the docket on a subsequent hazardous waste rulemaking in 2018. Questions and comments were received during several public meetings ADEQ held in 2018 on draft proposed rules for this Chapter. The questions related mainly to EPA’s e-manifest and generator improvement rules which ADEQ was proposing to incorporate. Those comments and questions

were adequately addressed since no comments were received during the formal comment period on the 2019 rule package.

A question was received in 2019 after that hazardous waste rulemaking was effective. The questioner asked why ADEQ was requiring inspection logs for small quantity generators but not large quantity generators. ADEQ determined that this was an oversight and that R18-8-262(G) should read “Any generator who must comply with 262.16 or 262.17 shall keep a written log of the inspections . . .” ADEQ responded that this was not intentional and would be corrected at the next opportunity.

In November of 2019, ADEQ emailed a survey to 3,100 stakeholders asking for comments on these Chapter 8 rules. ADEQ received a compliment, a question and two general criticisms that were not directed at any specific rule. One commenter noted how the latest incorporated EPA rules improved compliance systems, and a second asked if we would be incorporating EPA’s pharmaceuticals rule. (ADEQ has requested the Governor’s approval to go ahead with incorporating this and other EPA rules.)

The first criticism was that the rules are complex and complicated and that if ADEQ could streamline and simplify them, there would be significant benefits. A second criticism listed turnover in ADEQ’s Hazardous Waste employees, a lack of industry knowledge and understanding, and perceived “laissez faire operations out there.”

ADEQ recognizes that the rules are complex and complicated and has used every opportunity to make them less so. This issue is discussed under clarity, conciseness and understandability. ADEQ notes that the current calculated compliance rate for annual on-site inspections is 82%, which is the highest in five years.

#### 8. Current Economic, small business, and consumer impact of the rules as compared to the EIS at last rule adoption:

Less than a year has passed since the last rule adoption for this Chapter. In that last rule, one of the primary predicted impacts of incorporating EPA’s e-manifest rules was reduced manifest

processing by ADEQ. As predicted in that EIS, ADEQ has seen significant savings through the great reduction in paper manifests it receives (from 35,000 a year to less than 1,000) as a result. ADEQ estimates this has saved approximately \$58,000/year by eliminating two temporary positions, as well as allowing other staff to pursue other activities such as investigating unpaid registration fees.

However, this has not been due to paper manifest users switching to e-manifest, as expected. It has been due to generators continuing to use paper manifests and the paper manifests being submitted to EPA instead. This is in spite of the cost differential. (\$15 for a paper manifest versus \$5 for an e-manifest) The vast majority of Arizona receiving facilities are staying with paper manifests, so the originating manifest must also be paper. As a result of this, and limitations in the EPA database, ADEQ has not been able to track hazardous waste activity through the EPA database as well as expected.

In the economic impact statement (EIS) for the two fee related rules effective May 25, 2012, ADEQ described the proposed staffing necessary to implement an EPA approvable hazardous waste program and estimated an overall annual budget of \$3.3 million. That EIS further described how revenues and expenditures, including the elimination of General Fund appropriations, meant a shortfall of \$1.4 million based on fees collected in FY 10. The 2012 fee rule was designed to address that \$1.4 million shortfall, increase fee revenue from 357,000 to \$1.757 million, and make the Hazardous Waste program more self-sufficient. The authorizing legislation further stated that ADEQ could not later increase the fees by rule without specific legislative authority for the increase. ADEQ must provide to EPA the sources and amounts of program funding to carry out and demonstrate adequate resources to implement the program. (40 CFR 271.6(b)(3)) The revenue received for those hazardous waste fees in FY 19 was \$1.432 million and supports ADEQ continuing with the current fees.

R18-8-280 was also last amended in 2019 (EIS attached) and has had no change in economic impact since that time. The 2019 EIS listed 13 hazardous waste treatment, storage, and disposal facilities in Arizona regulated under these rules, as well as 338 large quantity generators, and 644 small quantity generators. In addition, the count for a new EPA category, very small quantity

generators, was 1372. There were 314 hazardous waste transporters. These numbers have not changed significantly in a year.

The primary economic benefits as described in the EIS for that rulemaking relate to the dual objectives of protecting human health and the environment from hazardous waste, and ensuring that ADEQ's Hazardous Waste program meets EPA's standards for state authorization.

ADEQ has determined that the benefits from the Article 2 rules remain the same and greater than the costs of the rules, which have not changed significantly.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

No such analysis was submitted for any rules in this Chapter.

10. Completion of previous proposed courses of action.

In the last five-year-review report, ADEQ discussed proposing two changes in the next Chapter 8 rulemaking to further improve clarity, conciseness, and understandability. The first change discussed was made in the last rulemaking. That change amended the first sentence in R18-8-260 as follows: "All federal regulations cited in this Article are those revised as of July 1, 2018, (and no future editions) unless otherwise noted, and are applicable only as incorporated by this Article. The objective for that change was eliminating the need for the frequently repeated parenthetical: "(as incorporated by R18-8-2nn)" which before the change occurred more than 200 times in Chapter 8. The second change under consideration would have replaced "DEQ" with "ADEQ" everywhere it occurs, more than 125 instances. Chapter 8 is the only Chapter in Title 18 that uses "DEQ" instead of "ADEQ". It was decided not to pursue that change in the last rulemaking due to the number of changes that were already being proposed. ADEQ will consider this change again when other changes in the rulemaking are fewer in number.

11. Cost benefit determination; least burden and cost.

A.R.S. § 41-1056(A)(9) requires ADEQ to determine that the probable benefits of the rules outweigh the probable costs of the rules and that the rules impose the least burden and cost

necessary to achieve the underlying regulatory objective. Ensuring that the Arizona hazardous waste program meets EPA standards means that Arizona rules may not be less stringent than EPA. Arizona statutes require the Arizona program to be no more stringent than EPA. Based on meeting these two stringency limits, the ADEQ rules impose the least burden and costs on those regulated by the rules to achieve the rules' objectives.

The primary economic benefits as described in the EIS for the last rulemaking relate to the dual objectives of protecting human health and the environment from hazardous waste, and ensuring that ADEQ's Hazardous Waste program meets EPA's standards for state authorization.

ADEQ has determined that the benefits from the Article 2 rules remain the same and greater than the costs of the rule, which have not changed significantly.

#### 12. Stringency compared to corresponding federal law

From 1984 to 2019, ADEQ hazardous waste rules contained several procedural requirements that were more stringent than EPA's. These more stringent procedural requirements were authorized by A.R.S. § 49-922, which, in directing ADEQ to adopt rules, prohibits only nonprocedural standards that are more stringent than EPA. In ADEQ's 2019 rulemaking, the following more stringent procedural requirements were removed:

- 1) Hazardous Waste Manifests. ADEQ required hazardous waste generators, transporters and TSD (treatment, storage or disposal) facilities to provide a copy of all hazardous waste manifests to ADEQ monthly. [See former R18-8-262(I) and (J); R18-8-263(C), R18-8-264(J) and R18-8-265(J).] Federal regulations governing distribution of copies of the manifest do not require manifests to be provided to the state. [See 40 CFR 262.21(f)(6)]
- 2) Annual Reports. Hazardous waste large quantity generators and TSD facilities were to submit reports (to ADEQ) annually rather than every two years as the federal regulations require. [See former R18-8-260(E)(3); R18-8-262(H), R18-8-264(I) and R18-8-265(I).] Small quantity generators also had to submit annual rather than biennial reports under R18-8-262(H).
- 3) Recyclers were required to submit annual reports to ADEQ rather than no reports at all. [R18-8-261(J)]

13. Compliance with A.R.S. § 41-1037.

The Article 2 rules require a regulatory permit for transportation, storage, and disposal (TSD) facilities. The rules comply with A.R.S. § 41-1037 because:

- 1) A specific alternative permit is authorized by state statute under A.R.S. § 49-922(B)(5) and;
- 2) General permits as defined as defined by A.R.S. § 41-1001 are not recognized under federal hazardous waste regulations with which ADEQ is required to be consistent.

It should be mentioned that ADEQ has already incorporated part of a federal hazardous waste general permit regulation that is similar to Arizona general permits. 40 CFR 270.60, "Permits by Rule", applies to 3 categories of facilities: 1) ocean disposal barges or vessels; 2) injection wells, and 3) publicly owned treatment works. Under the federal rule, these facilities are "deemed to have a RCRA permit if the conditions listed are met." Only the third facility category exists in Arizona, and ADEQ has incorporated the federal general permit for publicly owned treatment works in R18-8-270(A).

14. Proposed Course of Action:

Amend R18-8-262(G) to respond to a question/criticism on this subsection described on page 8, above, and relating to a logging requirement for small quantity generators that should also apply to large quantity generators.

**III. Article 3 through Article 16. Reserved, Expired, Repealed or Recodified**

**Table of proposed courses of action for 18 A.A.C 8**

<b>R18-8-262</b>	Add large quantity generators to logging requirement	November 2020

# Arizona Administrative CODE

18 A.A.C. 8 Supp. 19-2

www.azsos.gov

This Chapter contains a rule Section that was filed to be codified in the *Arizona Administrative Code* between the dates of January 1, 2019 through March 31, 2019.

Title 18



**ARD** Office of the Secretary of State  
**ADMINISTRATIVE RULES DIVISION**

## TITLE 18. ENVIRONMENTAL QUALITY

### CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

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 corrected in this supplement. The list provided contains quick links to the updated rules.

*Editor's Note: A correction was made to R18-8-270(B)(2) with the removal of subsections not related to amendments made at 25 A.A.R. 435 (Supp. 19-2).*

[R18-8-270. Hazardous Waste Permit Program ..... 16](#)

#### Questions about these rules? Contact:

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Telephone: (602) 771-2230, or (800) 234-5677, enter  
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E-mail: [lewandowski.mark@azdeq.gov](mailto:lewandowski.mark@azdeq.gov)

#### The release of this Chapter in Supp. 19-2 replaces Supp. 19-1, 1-29 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 18. ENVIRONMENTAL QUALITY**

**CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT**

*Editor's Note: Article 1 was exempt from the regular rulemaking process (Laws 1995, Ch. 232 § 5). However the Department was required to provide a notice of hearing and public hearing before adoption of this rule. The emergency rules were approved by the Attorney General. (Supp. 96-1). Editor's Note added to clarify exemptions of emergency adoption (Supp. 97-1). The Article was adopted permanently effective December 4, 1997 (Supp. 97-4).*

**ARTICLE 1. REMEDIAL ACTION REQUIREMENTS**

*Article 1, consisting of R18-8-101, adopted permanently through the regular rulemaking process, effective December 4, 1997 (Supp. 97-4).*

*Article 1, consisting of R18-8-101, adopted by emergency action effective March 22, 1996, pursuant to A.R.S. § 41-1026; in effect until permanent rules are adopted pursuant to Laws 1995, Chapter 232 § 5 (Supp. 96-1).*

Section	
R18-8-101.	Remedial Action Requirements; Level and Extent of Cleanup ..... 4

**ARTICLE 2. HAZARDOUS WASTES**

*Article 2, reserved Sections R18-8-202 through R18-8-258, now listed in in full, numerical order to maintain consistency in this Chapter.*

*Article 2 consisting of Section R18-8-273 adopted effective June 13, 1996 (Supp. 96-2).*

*Article 2 consisting of Sections R9-8-1860 through R9-8-1866, R9-8-1869 through R9-8-1871, and R9-8-1880 amended and renumbered as Article 2, Sections R18-8-260 through R18-8-266, R18-8-269 through R18-8-271, and R18-8-280 (Supp. 87-2).*

Section	
R18-8-201.	Expired ..... 4
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R18-8-203.	Reserved ..... 4
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ARTICLE 3. RECODIFIED

Title 18, Chapter 8, Article 3, consisting of Sections R18-8-301 through R18-8-305, R18-8-307, Table A, Exhibit 1, and Appendices A and B, recodified to Title 18, Chapter 13, Article 13, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Article 3, consisting of Sections R18-8-301 through R18-8-305, adopted effective August 16, 1993 (Supp. 93-3).

Article 3, consisting of Section R18-8-306, adopted again by emergency action effective May 26, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-2).

Article 3, consisting of Section R18-8-306, adopted by emergency action effective February 22, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency expired.

Section		
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ARTICLE 4. RECODIFIED

Title 18, Chapter 8, Article 4, consisting of Section R18-8-402, recodified to Title 18, Chapter 13, Article 9, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Article 17 consisting of Sections R9-8-1711 and R9-8-1717 renumbered as Article 4, Sections R18-8-401 and R18-8-402 (Supp. 87-3).

Section		
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ARTICLE 5. RECODIFIED

Title 18, Chapter 8, Article 5, consisting of Sections R18-8-502 through R18-8-512, recodified to Title 18, Chapter 13, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Article 4 consisting of Sections R9-8-411 through R9-8-416, R9-8-421, R9-8-426 through R9-8-428, and R9-8-431 through R9-8-433 renumbered as Article 5, Sections R18-8-501 through R18-8-513 (Supp. 87-3).

Section		
R18-8-501.	Expired .....	26
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ARTICLE 6. RECODIFIED

Existing Sections in Article 6 recodified to 18 A.A.C. 13, Article 11 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

Article 12 consisting of Sections R9-8-1211 through R9-8-1216, R9-8-1221 through R9-8-1225, R9-8-1231 through R9-8-1236, and R9-8-1241 through R9-8-1244 renumbered as Article 6, Sections R18-8-601 through R18-8-621 (Supp. 87-3).

Section		
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ARTICLE 7. RECODIFIED

18 A.A.C. 8, Article 7, consisting of Sections R18-8-701 through R18-8-710, recodified to Title 18, Chapter 13, Article 12, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Article 7, consisting of Sections R18-8-701 through R18-8-708, adopted permanently with changes effective July 6, 1993 (Supp. 93-3).

Article 7, consisting of Sections R18-8-709 and R18-8-710, adopted again by emergency action effective May 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-2). Emergency expired.

Article 7, consisting of Sections R18-8-709 and R18-8-710, adopted by emergency action effective February 5, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1).

Section		
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*Article 16, consisting of Sections R18-8-1601 through R18-8-*

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**ARTICLE 1. REMEDIAL ACTION REQUIREMENTS****R18-8-101. Remedial Action Requirements; Level and Extent of Cleanup**

- A. This Article is applicable to Chapter 8 of this Title.
- B. In any instance where soil remediation is done under this Chapter, it shall be conducted in accordance with 18 A.A.C. 7, Article 2.

**Historical Note**

Emergency rule adopted effective March 22, 1996, pursuant to A.R.S. §§ 49-152 and 41-1026; in effect until permanent rules are adopted (Supp. 96-1). Historical note revised to clarify exemptions of emergency adoption (Supp. 97-1 & Supp. 97-3). Adopted permanently through the regular rulemaking process, effective December 4, 1997 (Supp. 97-4). Amended by final rulemaking at 25 A.A.R. 435, effective February 5, 2019 (Supp. 19-1).

**ARTICLE 2. HAZARDOUS WASTES****R18-8-201. Expired****Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 846, effective July 1, 2010 (Supp. 10-2). Section expired pursuant to A.R.S. § 41-1056(J), at 22 A.A.R. 2983, effective September 15, 2016 (Supp. 16-2).

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 R18-8-257. Reserved  
 R18-8-258. Reserved  
 R18-8-259. Reserved

**R18-8-260. Hazardous Waste Management System: General**

- A. All Federal regulations cited in this Article are those revised as of July 1, 2018 (and no future editions), unless otherwise noted, and are applicable only as incorporated by this Article. 40 CFR 124, 260 through 266, 268, 270 and 273 or portions of these regulations, are incorporated by reference, as noted in the text. Federal statutes and regulations that are cited within 40 CFR 124, 260 through 270, and 273 that are not incorporated by reference may be used as guidance in interpreting federal regulatory language.
- B. Any reference or citation to 40 CFR 124, 260 through 266, 268, 270, and 273, or portions of these regulations, appearing in the body of this Article and regulations incorporated by reference, includes any modification to the CFR section made by this Article. When federal regulatory language that has been incorporated by reference has been amended, brackets [ ] enclose the new language. The subsection labeling in this Article may or may not conform to the Secretary of State's format-

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ting requirements, because the formatting reflects the structure of the incorporated federal regulations.

- C. All of 40 CFR 260, revised as of July 1, 2018, (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the Department of Environmental Quality (DEQ) with the exception of the following:
1. 40 CFR 260.1(b)(4) through (6), 260.20(a), 260.21, 260.22, 260.30, 260.31, 260.32, and 260.33;
  2. The revisions for standardized permits as published at 70 FR 53419; and
  3. The revisions to the solid waste definition as published at 73 FR 64668, 80 FR 1694, and 83 FR 24664. Copies of 40 CFR 260 are available at <https://www.eCFR.gov>. Copies of the Federal Register (FR) are available at <https://www.federalregister.gov/>.
- D. § 260.2, titled "Availability of information; confidentiality of information" is amended by the following:
1. § 260.2(a). Any information provided to [the DEQ] under [R18-8-260 through R18-8-266 and R18-8-268 shall] be made available to the public to the extent and in the manner authorized by the [Hazardous Waste Management Act (HWMA), A.R.S. § 49-921 et seq.; the Open Meeting Law, A.R.S. § 38-431 et seq.; the Public Records Statute, A.R.S. § 39-121 et seq.; the Administrative Procedure Act, A.R.S. § 41-1001 et seq.; and rules promulgated pursuant to the above-referenced statutes], as applicable.
  2. § 260.2(b) is replaced with the following:
    - a. The DEQ shall make a record or other information, such as a document, a writing, a photograph, a drawing, sound or a magnetic recording, furnished to or obtained by the DEQ pursuant to the HWMA and regulations promulgated thereunder, available to the public to the extent authorized by the Public Records Statute, A.R.S. §§ 39-121 et seq.; the Administrative Procedure Act, A.R.S. §§ 41-1001 et seq.; and the HWMA, A.R.S. §§ 49-921 et seq. Specifically, the DEQ shall disclose the records or other information to the public unless:
      - i. A statutory exemption authorizes the withholding of the information; or
      - ii. The record or other information contains a trade secret concerning processes, operations, style of work, or apparatus of a person, or other information that the Director determines is likely to cause substantial harm to the person's competitive position.
    - b. Notwithstanding subsection (a):
      - i. The DEQ shall make records and other information available to the EPA upon request without restriction;
      - ii. As required by the HWMA and regulations promulgated thereunder the DEQ shall disclose the name and address of a person who applies for, or receives, a HWM facility permit;
      - iii. The DEQ and any other appropriate governmental agency may publish quantitative and qualitative statistics pertaining to the generation, transportation, treatment, storage, or disposal of hazardous waste; and
      - iv. An owner or operator may expressly agree to the publication or to the public availability of records or other information.
    - c. A person submitting records or other information to the DEQ may claim that the information contains a confidential trade secret or other information likely to cause substantial harm to the person's competitive position. In the absence of such claim, the DEQ shall make the information available to the public on request without further notice. No claim of confidentiality may be asserted by any person with respect to information entered on a Hazardous Waste Manifest (EPA Form 8700-22), a Hazardous Waste Manifest Continuation Sheet (EPA Form 8700-22A), or an electronic manifest format that may be prepared and used in accordance with 40 CFR 262.20(a)(3). EPA will make any electronic manifest that is prepared and used in accordance with § 262.20(a)(3), or any paper manifest that is submitted to the system under §§ 264.71(a)(6) or 265.71(a)(6) available to the public under this section when the electronic or paper manifest is a complete and final document. Electronic manifests and paper manifests submitted to the system are considered by EPA to be complete and final documents and publicly available information after 90 days have passed since the delivery to the designated facility of the hazardous waste shipment identified in the manifest. A person making a claim of confidentiality shall assert the claim:
      - i. At the time the information is submitted to, or otherwise obtained by, the DEQ;
      - ii. By either stamping or clearly marking the words "confidential trade secret" or "confidential information" on each page of the material containing the information. The person may assert the claim only for those portions or pages that actually contain a confidential trade secret or confidential information; and
      - iii. During the course of a DEQ inspection, or other observation, pursuant to the administration of the HWMA Program, by clearly indicating to the inspector which specific processes, operations, styles of work, or apparatus constitute a trade secret. The inspector shall record the claim on the inspection report and the claimant shall sign the report.
    - d. The Director shall provide the claimant with an opportunity to submit written comments to demonstrate that the information constitutes a legitimate confidential trade secret or confidential information. The comments shall be limited to confidential use by the DEQ pursuant to A.R.S. § 49-928. Pertinent factors to be considered by the Director for making a determination of confidentiality, and that the claimant may address in the claimant's written comments, include the following:
      - i. Whether the information is proprietary;
      - ii. Whether the information has been disclosed to persons other than the employees, agents, or other representatives of the owner; and
      - iii. Whether public disclosure would harm the competitive position of the claimant.
    - e. The Director shall make a determination of each confidentiality claim using the following procedures:
      - i. When a claim of confidentiality is asserted for information submitted as part of a HWM facility permit application:
        - (1) The claimant shall submit written comments demonstrating the legitimacy of the claim of confidentiality; and
        - (2) The Director shall evaluate the confidentiali-

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- ality claim and notify the claimant of the result of that determination as part of the completeness review pursuant to R18-8-271(C).
- ii. When a claim of confidentiality is asserted for information submitted or obtained during an inspection, or for any other information submitted to or obtained by the DEQ pursuant to this Article, but not as part of a HWM facility permit application:
    - (1) The claimant may submit written comments demonstrating the legitimacy of the claim of a confidential trade secret or other confidential information within 10 working days of asserting the confidentiality claim; and
    - (2) If a request for disclosure is made, the Director shall evaluate the confidentiality claim and notify the claimant of the result of that determination. In all other instances, the Director may, on the Director's own initiative, evaluate the confidentiality claim and notify the claimant of the result of that determination within 20 working days after the time for submission of comments.
  - iii. When any person, hereinafter referred to as the "requestor," submits a request to the DEQ for public disclosure of records or information, the DEQ shall disclose the records or information to the requestor unless the information has been determined to be confidential by the Director, or is subject to a claim of confidentiality that is being considered for determination by the Director.
    - (1) If a confidentiality claim is under consideration by the Director, the requestor shall be notified that the information requested is under a confidentiality claim consideration and therefore is unavailable for public disclosure pending the Director's determination pursuant to subsection (D)(2)(e)(ii)(2).
    - (2) When a request for disclosure is made, the claimant shall be notified, within seven working days by certified mail with return receipt requested, that the information under a claim of confidentiality has been requested and is subject to the Director's determination pursuant to subsection (D)(2)(e)(ii)(2).
    - (3) If the Director disagrees with the confidentiality claim, the claimant shall have 20 working days to submit written comments either agreeing or disagreeing with the Director's evaluation.
    - (4) If a confidentiality claim is denied by the Director, the Director may request the attorney general to seek a court order authorizing disclosure pursuant to A.R.S. § 49-928.
  - f. Records or information determined by the Director to be legitimate confidential trade secrets or other confidential information shall not be disclosed by the DEQ at administrative proceedings pursuant to A.R.S. § 49-923(A) unless the following procedure is observed:
    - i. The DEQ shall notify both the claimant and the hearing officer of its intention to disclose the information at least 30 days prior to the hearing date. The DEQ shall send with the notice a copy of the confidential information that the DEQ intends to disclose;
    - ii. The claimant and the DEQ shall be allowed 10 days to present to the hearing officer comments concerning the disclosure of such information;
    - iii. The hearing officer shall determine whether the confidential information is relevant to the subject of the administrative proceeding and shall allow disclosure upon finding that the information is relevant to the subject of the administrative proceeding;
    - iv. The hearing officer may set conditions for disclosure of confidential and relevant information or the making of protective arrangements and commitments as warranted; and
    - v. The hearing officer shall give the claimant at least five days' notice before allowing disclosure of the information in the course of the administrative proceeding.
- E. § 260.10, titled "Definitions," is amended by adding all definitions from § 270.2 to this Section, including the following changes, applicable throughout this Article unless specified otherwise:
1. ["Acute Hazardous Waste" means waste found to be fatal to humans in low doses or, in the absence of data on human toxicity, that has been shown in studies to have an oral lethal dose (LD) 50 toxicity (rat) of less than 50 milligrams per kilogram, an inhalation lethal concentration (LC) 50 toxicity (rat) of less than 2 milligrams per liter, or a dermal LD 50 toxicity (rabbit) of less than 200 milligrams per kilogram or that is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible, illness.] and therefore are either listed in § 261.31 with the assigned hazard code of (H) or are listed in § 261.33(e).
  2. ["Application" means the standard United States Environmental Protection Agency forms for applying for a permit, including any additions, revisions or modifications to the forms. Application also includes the information required pursuant to §§ 270.14 through 270.29 (regarding the contents of a Part B HWM facility permit application).]
  3. ["Chapter" means "Article" except in § 264.52(b), see R18-8-264, and § 265.52(b), see R18-8-265.]
  4. ["Closure" means [, for facilities with effective hazardous waste permits, the act of securing a HWM facility pursuant to the requirements of R18-8-264. For facilities subject to interim status requirements, "closure" means the act of securing a HWM facility pursuant to the requirements of R18-8-265.]
  5. ["Concentration" means the amount of a substance in weight contained in a unit volume or weight.]
  6. ["Department" or "the DEQ" means the Arizona Department of Environmental Quality.]
  7. "Department of Transportation" or "DOT" means the U.S. Department of Transportation.
  8. ["Director" or "state Director" means the Director of the Department of Environmental Quality or an authorized representative, except in §§ 262.80 through 262.84, 268.5

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- through 268.6, 268.42(b), and 268.44 which are non-delegable to the state of Arizona.]
9. ["Draft permit" means a document prepared under § 124.6 indicating the Director's tentative decision to issue, deny, modify, revoke, reissue, or terminate a permit. A denial of a request for modification, revocation, reissuance or termination, as discussed in § 124.5, is not a draft permit.]
  10. ["Emergency permit" means a permit that is issued in accordance with § 270.61.]
  11. ["EPA," "Environmental Protection Agency," "United States Environmental Protection Agency," "U.S. EPA," "EPA HQ," "EPA Regions," and "Agency" mean the DEQ with the following exceptions:
    - a. Any references to EPA identification numbers;
    - b. Any references to EPA hazardous waste numbers;
    - c. Any reference to EPA test methods or documents;
    - d. Any reference to EPA forms;
    - e. Any reference to EPA publications;
    - f. Any reference to EPA manuals;
    - g. Any reference to EPA guidance;
    - h. Any reference to EPA Acknowledgment of Consent;
    - i. References in §§ 260.2(d); 260.4(a)(4); 260.10 (definitions of "Administrator," "EPA region," "Federal agency," "Person," and "Regional Administrator"); 260.11(a); 261, Appendix IX; 261.39(a)(5); 261.41; 262.21; 262.24(a)(3); 262.25; 262.32(b); Part 262, subpart H; 263.10(a) Note; 264.12(a)(2), 264.71(a)(3), 264.71(d), 265.12(a)(2), 265.71(a)(3), 265.71(d); 268.1(e)(3); 268.5, 268.6, 268.42(b), and 268.44, which are non-delegable to the state of Arizona; 270.1(a)(1); 270.1(b); 270.2 (definitions of "Administrator," "Approved program or Approved state," "Director," "Environmental Protection Agency," "EPA," "Final authorization," "Permit," "Person," "Regional Administrator," and "State/EPA agreement"); 270.3; 270.5; 270.10(e)(1) through (2); 270.11(a)(3); 270.32(a) and (c); 270.51; 270.72(a)(5) and (b)(5); 273.32(a)(3); 124.1(f); 124.5(d); 124.6(e); 124.10(c)(1)(ii); and 124.13.]
  12. ["Federal Register" means a daily or weekly major local newspaper of general circulation, within the area affected by the facility or activity, except in §§ 260.11(b) and 270.10(e)(2).]
  13. ["HWMA" or "State HWMA" means the State Hazardous Waste Management Act, A.R.S. § 49-921 et seq., as amended.]
  14. ["Hazardous Waste Management facility" or "HWM facility" means any facility or activity, including land or appurtenances thereto, that is subject to regulation under this Article.]
  15. ["Key employee" means any person employed by an applicant or permittee in a supervisory capacity or empowered to make discretionary decisions with respect to the solid waste or hazardous waste operations of the applicant or permittee. Key employee does not include an employee exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, or disposal of solid or hazardous waste.]
  16. ["National" means "state" in §§ 264.1(a) and 265.1(a).]
  17. ["Off-site" means any site that is not on-site.]
  18. ["Permit" means an authorization, license, or equivalent control document issued by the DEQ to implement the requirements of this Article. Permit includes "permit-by-rule" in § 270.60 and "emergency permit" in § 270.61, and it does not include interim status as in § 270.70 or any permit which has not yet been the subject of final action, such as a "draft permit" or a "proposed permit."]
  19. ["Permit-by-rule" means a provision of this Article stating that a facility or activity is considered to have a HWM facility permit if it meets the requirements of the provision.]
  20. ["Physical construction" means excavation, movement of earth, erection of forms or structures, or similar activity to prepare a HWM facility to accept hazardous waste.]
  21. ["RCRA," "Resource Conservation and Recovery Act," "Subtitle C of RCRA," "RCRA Subtitle C," or "Subtitle C" when referring either to an operating permit or to the federal hazardous waste program as a whole, mean the "State Hazardous Waste Management Act, A.R.S. § 49-921 et seq., as amended" with the following exceptions:
    - a. Any reference to a specific provision of "RCRA," "Resource Conservation and Recovery Act," "Subtitle C of RCRA," "RCRA Subtitle C," or "Subtitle C";
    - b. References in §§ 260.10 (definition of "Act or RCRA"); 260, Appendix I; 261, Appendix IX; Part 262, subpart H, 270.1(a)(2); 270.2, definition of "RCRA,"; and 270.51, "EPA-issued RCRA permit,".]
  22. [Following any references to a specific provision of "RCRA," "Resource Conservation and Recovery Act," or "Subtitle C," the phrase "or any comparable provisions of the state Hazardous Waste Management Act, A.R.S. § 49-921 et seq., as amended" shall be deemed to be added except in §§ 270.72(a)(5) and (b)(5).]
  23. ["RCRA § 3005(a) and (e)" means "A.R.S. § 49-922."]
  24. ["RCRA § 3007" means "A.R.S. § 49-922."]
  25. ["RCRA § 3008" means "A.R.S. §§ 49-921 through 49-926"]
  26. ["RCRA § 3010" means "A.R.S. § 49-922."]
  27. ["Recyclable Materials" mean hazardous wastes that are recycled.]
  28. ["Region" or "Region IX" means "state" or "state of Arizona."]
  29. ["Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements, such as actions, operations, or milestone events, leading to compliance with the HWMA and this Article.]

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30. ["Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.]
31. ["State," "authorized state," "approved state," or "approved program" means the state of Arizona with the following exceptions:  
References to §§ 260.10, definitions of "person," "state," and "United States,"; 262;  
264.143(e)(1);  
264.145(e)(1);  
264.147(a)(1)(ii);  
264.147(b)(1)(ii);  
264.147(g)(2);  
264.147(i)(4);  
265.143(d)(1);  
265.145(d)(1);  
265.147(a)(1)(ii);  
265.147(g)(2);  
265.147(i)(4); and  
270.2, definitions of "Approved program or Approved state," "Director," "Final authorization," "Person," and "state".]
32. ["The effective date of these regulations" means the following dates: "May 19, 1981," in §§ 265.112(a) and (d), 265.118(a) and (d), 265.142(a) and 265.144(a); "November 19, 1981," in §§ 265.112(d) and 265.118(d);]
33. ["TSD facility" means a "Hazardous Waste Management facility" or "HWM facility".]
- F.** § 260.10, titled "Definitions," as amended by subsection (E) also is amended as follows, with all definitions in § 260.10, applicable throughout this Article unless specified otherwise.
1. "Act" or ["the Act" means the state Hazardous Waste Management Act or HWMA, except in R18-8-261(B) and R18-8-262(B).]
  2. "Administrator," "Regional Administrator," "state Director," or "Assistant Administrator for Solid Waste and Emergency Response" mean the [Director or the Director's authorized representative, except in §§:  
260.10, in the definitions of "Administrator," "AES filing compliance date," "Electronic import-export reporting compliance date", "Regional Administrator," and "hazardous waste constituent";  
260.20  
260.41;  
261.41;  
261, Appendix IX;  
262.11(c);  
262.41;  
262.42;  
262.43;  
262, Subpart H;  
264.12(a);  
264.71;  
265.12(a);  
265.71;  
268.2(j);  
268.5, 268.6, 268.42(b), and 268.44, which are non-delegable to the state of Arizona;  
270.2, in the definitions of "Administrator", "Director", "Major facility", "Regional Administrator", and "State/EPA agreement";  
270.3;  
270.5;  
270.10(e)(1), (2), and (4);  
270.10(f) and (g);  
270.11(a)(3);  
270.14(b)(20);  
270.32(b)(2);  
270.51;  
124.5(d);  
124.6(e);  
124.10(b)].
3. "Facility" [or "activity" means:  
a. Any HWM facility or other facility or activity, including] all contiguous land, structures, appurtenances, and improvements on the land [which are] used for treating, storing, or disposing of hazardous waste, [that is subject to regulation under the HWMA program]. A facility may consist of several treatment, storage, or disposal operational units ([that is], one or more landfills, surface impoundments, or combinations of them).  
b. For the purposes of implementing corrective action under 40 CFR 264.101, all contiguous property under the control of the owner or operator seeking a permit under Subtitle C of RCRA. This definition also applies to facilities implementing corrective action under RCRA Section 3008(h).  
c. Notwithstanding paragraph (b) of this definition, a remediation waste management site is not a facility that is subject to 40 CFR 264.101, but is subject to corrective action requirements if the site is located within such a facility.
4. "Final closure" means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under parts 264 and 265 of this chapter are no longer conducted at the facility unless subject to the provisions in [§§ 262.15 and 262.17.]
5. "New HWM facility" or "new facility" means a HWM facility which began operation, or for which construction commenced, [after November 19, 1980].
6. "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, including a government corporation, [or a limited liability corporation], partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body, [state agency, or an agent or employee of a state agency].
7. "United States" or "U.S." means [Arizona except for the following:  
a. The definitions of "CRT exporter" and "recognized trader" in § 260.10.  
b. § 261.4(d)(4) and (e)(4).  
c. § 261.39(a)(5).  
d. Part 262, subpart H.  
e. All references in Part 263 except §§ 263.10(a) and 263.22(c).  
f. § 266.80.]
- G.** § 260.20(a), titled "General" pertaining to rulemaking petitions, is replaced by the following:  
Where the Administrator of EPA has granted a rulemaking petition pursuant to 40 CFR 260.20(a), 260.21, or 260.22, the Director may accept the Administrator's determination and amend the Arizona rules accordingly, if the Director determines the action to be consistent with the policies and purposes of the HWMA.
- H.** § 260.23, titled "Petitions to amend 40 CFR 273 to include additional hazardous wastes" pertaining to rulemaking petitions, is amended as follows: (a) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of part 273 of this chapter may petition

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tion for a regulatory amendment under this Section, 40 CFR 260.20(b) through (e), and Subpart G of 40 CFR 273.

- I.** § 260.30, titled “Non-waste determinations and variances from classification as a solid waste,” is replaced by the following: Any person wishing to submit a variance petition shall submit the petition, under this subsection, to the EPA. Where the administrator of EPA has granted a variance from classification as a solid waste under 40 CFR 260.30, 260.31, and 260.33, the director shall accept the determination, if the director determines the action is consistent with the policies and purposes of the HWMA.
- J.** § 260.32, titled “Variances to be classified as a boiler,” is replaced by the following:  
Any person wishing to submit a variance petition shall submit the petition, under this subsection, to the EPA. Where the administrator of EPA has granted a variance from classification as a boiler pursuant to 40 CFR 260.32 and 260.33, the director shall accept the determination, if the director determines the action is consistent with the policies and purposes of the HWMA.
- K.** 40 CFR 260.41, titled “Procedures for case-by-case regulation of hazardous waste recycling activities,” is amended by deleting the following from the end of paragraph (a):  
“or unless review by the Administrator is requested. The order may be appealed to the Administrator by any person who participated in the public hearing. The Administrator may choose to grant or to deny the appeal.”
- L.** As required by A.R.S. § 49-929, generators and transporters of hazardous waste shall register annually with DEQ and submit the appropriate registration fee, prescribed below, with their registration. After the effective date of this rule, all registrations shall be done through DEQ’s myDEQ portal. For registration, go to <http://www.azdeq.gov/mydeq>.
1. A hazardous waste transporter that picks up or delivers hazardous waste in Arizona shall pay \$200 by March 1 of the year following the date of the pick-up or delivery;
  2. A large-quantity generator that generated 1,000 kilograms or more of hazardous waste in any month of the previous calendar year shall pay \$300; or
  3. A small-quantity generator that generated 100 kilograms or more but less than 1,000 kilograms of hazardous waste in any month of the previous year shall pay \$100.
- M.** A person shall pay hazardous waste generation and disposal fees as required under A.R.S. § 49-931. The DEQ shall send an invoice to large-quantity generators quarterly and small-quantity generators, including very small quantity generators who become a small quantity generator due to an episodic event, annually. The person shall pay an invoice within 30 days of the postmark on the invoice. The following hazardous waste fees shall apply:
1. A person who generates hazardous waste that is shipped offsite shall pay \$67.50 per ton but not more than \$200,000 per generator site per year of hazardous waste generated;
  2. An owner or operator of a facility that disposes of hazardous waste shall pay \$270 per ton but not more than \$5,000,000 per disposal site per year of hazardous waste disposed; and
  3. A person who generates hazardous waste that is retained onsite for disposal or that is shipped offsite for disposal to a facility that is owned and operated by that generator shall pay \$27 per ton but not more than \$160,000 per generator site per year of hazardous waste disposed.

**Historical Note**

Adopted effective July 24, 1984 (Supp. 84-4). Amended subsections (A), (C), and (E) effective June 27, 1985

(Supp. 85-3). Amended subsections (A) and (C) effective August 5, 1986 (Supp. 86-4). Former Section R9-8-1860 renumbered as Section R18-8-260, and subsections (A) and (C) amended effective May 29, 1987 (Supp. 87-2). Amended subsections (D) and (E) effective December 1, 1988 (Supp. 88-4). Amended effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998; R18-8-260 corrected, text was inadvertently omitted (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1). Subsections in R18-8-260(F)(2) reinstated at request of the Department after a clerical error in 9 A.A.C. 816 omitted the subsections from the rule text, Office File No. M10-288, filed July 20, 2010 (Supp. 10-2). Amended by final rulemaking at 18 A.A.R. 1202, effective July 1, 2012 (Supp. 12-2). Amended by final rulemaking at 21 A.A.R. 1246, effective September 5, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 435, effective February 5, 2019 (Supp. 19-1).

**R18-8-261. Identification and Listing of Hazardous Waste**

- A.** All of 40 CFR 261 and accompanying appendices, revised as of July 1, 2018 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ with the exception of the following:
1. The revisions for standardized permits as published at 70 FR 53419; and
  2. The revisions to the solid waste definition as published at 73 FR 64668, 80 FR 1694, and 83 FR 24664; Copies of 40 CFR 261 are available at <https://www.eCFR.gov>. Copies of the Federal Register (FR) are available at <https://www.federalregister.gov/>.
- B.** In the above-adopted federal regulations “Section 1004(5) of RCRA” or “Section 1004(5) of the Act” means A.R.S. § 49-921(5).
- C.** § 261.4, titled “Exclusions,” paragraph (b)(6)(i), is amended as follows:
- (i) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in subpart D due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if [documentation is provided to the Director] by a waste generator or by waste generators that:
    - (A) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and
    - (B) The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

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- (C) The waste is typically and frequently managed in non-oxidizing environments.
- D. § 261.4, titled "Exclusions," paragraph (e)(1) is amended as follows:
- (1) Except as provided in paragraphs (e)(2) and (4) of this section, persons who generate or collect samples for the purpose of conducting treatability studies as defined in 40 CFR 260.10, are not subject to any requirement of 40 CFR parts 261 through 263 or to the notification requirements of Section 3010 of RCRA, nor are such samples included in the quantity determinations of [40 CFR 262.13 and 262.16(b)] when:
    - (i) The sample is being collected and prepared for transportation by the generator or sample collector; or
    - (ii) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or
    - (iii) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.
- E. § 261.4, titled "Exclusions," is amended by deleting the phrase "in the Region where the sample is collected" in paragraph (e)(3)iii.
- F. § 261.6, titled "Requirements for recyclable materials," paragraphs (a)(1) through (a)(3) are amended as follows:
- (a)(1) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of paragraphs (b) and (c) of this section, except for the materials listed in paragraphs (a)(2) and (a)(3) of this section. Hazardous wastes that are recycled [shall] be known as "recyclable materials."
  - (2) The following recyclable materials are not subject to the requirements of this section but are regulated under [40 CFR 266, subparts C through N] and all applicable provisions in parts 268, 270 and 124 of this chapter:
    - (i) Recyclable materials used in a manner constituting disposal (40 CFR part 266, subpart C);
    - (ii) Hazardous wastes burned (as defined in section 266.100(a)) in boilers and industrial furnaces that are not regulated under [40 CFR 264 or 265, subpart O] (40 CFR part 266, subpart H);
    - (iii) Recyclable materials from which precious metals are reclaimed (40 CFR part 266, subpart F);
    - (iv) Spent lead acid batteries that are being reclaimed (40 CFR part 266, subpart G).
  - (3) The following recyclable materials are not subject to regulation under [40 CFR 262 through 266, 268, 270, or 124] and are not subject to the notification requirements of section 3010 of RCRA:
    - (i) Industrial ethyl alcohol that is reclaimed except that exports and imports of such recyclable materials [shall] comply with the requirements of 40 CFR part 262, subpart H.
      - (A) A person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, [shall] comply with the requirements applicable to a primary exporter in [§ 262.83(b), (g) and (i),] export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in [subpart H] of part 262, and provide a copy of the EPA Acknowledgment of Consent to the shipment to the transporter transporting the shipment for export
      - (B) Transporters transporting a shipment for export may not accept a shipment if [the transporter] knows the shipment does not conform to the EPA Acknowledgment of Consent, [shall] ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment and [shall] ensure that [the EPA Acknowledgment of Consent] is delivered to the [subsequent transporter or] facility designated by the person initiating the shipment.
    - (ii) Scrap metal that is not excluded under § 261.4(a)(13);
    - (iii) Fuels produced from the refining of oil-bearing hazardous waste along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under § 261.4(a)(12);
    - (iv)(A) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under [A.R.S. § 49-801] and so long as no other hazardous wastes are used to produce the hazardous waste fuel;
      - (B) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining[,] production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under [A.R.S. § 49-801]; and
      - (C) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under [A.R.S. § 49-801].
- G. § 261.11, titled "Criteria for listing hazardous waste," paragraph (a) is amended as follows:
- (a) The [Director] shall list a solid waste as a hazardous waste only upon determining that the solid waste meets one of the following criteria:
    - (1) It exhibits any of the characteristics of hazardous waste identified in subpart C.
    - (2) It has been found to be fatal to humans in low doses or, in the absence of data on human toxicity, it has been shown in studies to have an oral LD 50 toxicity (rat) of less than 50 milligrams per kilogram, an inhalation LC 50 toxicity (rat) of less than 2 milligrams per liter, or a dermal LD 50 toxicity (rabbit) of less than 200 milligrams per kilogram or is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible, illness. (Waste listed in accordance with these criteria shall be designated Acute Hazardous Waste.)
    - (3) It contains any of the toxic constituents listed in Appendix VIII and, after considering the following

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factors, the [Director] concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed:

- (i) The nature of the toxicity presented by the constituent.
- (ii) The concentration of the constituent in the waste.
- (iii) The potential of the constituent or any toxic degradation product of the constituent to migrate from the waste into the environment under the types of improper management considered in (a)(3)(vii) of this [subsection].
- (iv) The persistence of the constituent or any toxic degradation product of the constituent.
- (v) The potential for the constituent or any toxic degradation product of the constituent to degrade into nonharmful constituents and the rate of degradation.
- (vi) The degree to which the constituent or any degradation product of the constituent bioaccumulates in ecosystems.
- (vii) The plausible types of improper management to which the waste could be subjected.
- (viii) The quantities of the waste generated at individual generation sites or on a regional or national basis.
- (ix) The nature and severity of the human health and environmental damage that has occurred as a result of the improper management of wastes containing the constituent.
- (x) Action taken by other governmental agencies or regulatory programs based on the health or environmental hazard posed by the waste or waste constituent.
- (xi) Such other factors as may be appropriate.

**H.** § 261.11, titled "Criteria for listing hazardous waste," paragraph (c) is amended as follows:

- (c) The Administrator will use the criteria for listing specified in this section to establish the exclusion limits referred to in [§ 262.13(c).]

**I.** § 261.30, titled "General", paragraph (d) is amended as follows:

- (d) The following hazardous wastes listed in § 261.31 are subject to the exclusion limits for acutely hazardous wastes established in [§ 261.13:] EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026 and F027.

**Historical Note**

Adopted effective July 24, 1984 (Supp. 84-4). Amended subsection (A) effective June 27, 1985 (Supp. 85-3). Amended subsections (A) and (E) effective August 5, 1986 (Supp. 86-4). Former Section R9-8-1861 renumbered as Section R18-8-261, and subsections (A), (D) and (F) amended effective May 29, 1987 (Supp. 87-2). Amended subsection (B) effective December 1, 1988 (Supp. 88-4). Amended effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6

A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 21 A.A.R. 1246, effective September 5, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 435, effective February 5, 2019 (Supp. 19-1).

**R18-8-262. Standards Applicable to Generators of Hazardous Waste**

- A.** All of 40 CFR 262, revised as of July 1, 2018, (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 262 are available at <https://www.eCFR.gov>.
- B.** In 40 CFR 262:
  - 1. ["Section 3008 of RCRA" means both section 3008 of RCRA and A.R.S. §§ 49-923, 49-924 and 49-925.]
  - 2. ["Section 2002(a) of the Act" means A.R.S. § 49-922.]
  - 3. ["Section 3002(6) of the Act" means A.R.S. § 49-922.]
- C.** § 262.10, titled "Purpose, scope, and applicability," paragraph (i) is amended as follows:
  - (i) [For the limited time period required to control, mitigate, or eliminate the immediate threat,] persons responding to an explosives or munitions emergency in accordance with 40 CFR 264.1(g)(8)(i)(D) or (iv), or 265.1(c)(11)(i)(D) or (iv), and 270.1(c)(3)(i)(D) or (iii) are not required to comply with the standards of this part. [As soon as the immediate response activities are completed, all standards of this part apply. For purposes of this rule, DEQ does not consider emergency response personnel to be generators of residuals resulting from immediate responses, unless they are also the owner of the object of an emergency response. The owner of the object of an emergency response, the owner of the property on which the object of an emergency rests or where the emergency response initiates, or the requestor for an emergency response is responsible for addressing any residual contamination that results from an emergency response.]
- D.** § 262.11, titled "Hazardous waste determination and record-keeping," paragraphs (d)(1) and (d)(2) are amended by deleting the following:
  - " , or an equivalent test method approved by the Administrator under 40 CFR 260.21,"
- E.** § 262.13, titled "Generator category determinations", paragraph (f)(1)(iii) is amended as follows:
  - (iii) If a very small quantity generator's wastes are mixed with used oil, the mixture is subject to 40 CFR 279 [(as incorporated by A.R.S. § 49-802)]. Any material produced from such a mixture by processing, blending, or other treatment is also [so regulated].
- F.** § 262.16, titled "Conditions for exemption for a small quantity generator that accumulates hazardous waste", paragraph (b)(9)(iv)(C) is amended as follows:
  - (C) In the event of a fire, explosion, or other release that could threaten human health outside the facility or when the small quantity generator has knowledge that a spill has reached surface water [or when a spill has discharged into a storm sewer or dry well, or such an event has resulted in any other discharge that may reach groundwater], the small quantity generator immediately [shall] notify the National Response Center (using their 24-hour

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toll-free number 800/424-8802) [and the DEQ (using their 24-hour number (602) 771-2330 or 800/234-5677)]. The report [shall contain] the following information:

- (1) The name, address, and [the EPA Identification Number] of the generator;
  - (2) Date, time, [location,] and type of incident (for example, spill or fire);
  - (3) Quantity and type of hazardous waste involved in the incident;
  - (4) Extent of injuries, if any; and
  - (5) Estimated quantity and disposition of recovered materials, if any.
- G.** Any generator who must comply with 40 CFR 262.16 shall keep a written log of the inspections of container, tank, drip pad, and containment building areas and for the containers, tanks, and other equipment located in these storage areas in accordance with 40 CFR 265.174, 265.195, 265.444, and 265.1101(c)(4). The inspection log shall be kept by the generator for three years from the date of the inspection. The generator shall ensure that the inspection log is filled in after each inspection and includes the following information: inspection date, inspector's name and signature, and remarks or corrections.
- H.** § 262.17, titled "Conditions for exemption for a large quantity generator that accumulates hazardous waste", paragraph (f)(1) is amended as follows:
- (1) The large quantity generator notifies [DEQ] at least 30 days prior to receiving the first shipment from a very small quantity generator(s) using EPA Form 8700-12; and
- I.** § 262.18, titled "EPA identification numbers and re-notification for small quantity generators and large quantity generators," paragraphs (a), (b) and (d) are amended as follows:
- (a) A generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the [DEQ].
  - (b) A generator who has not received an EPA identification number may obtain one by applying to the [DEQ] using EPA form 8700-12. [The completed form shall be submitted to DEQ through the myDEQ online portal.] Upon receiving the request, the [DEQ] will assign an EPA identification number to the generator.
  - (d) Re-notification. (1) A small quantity generator must re-notify [DEQ] starting in 2021 and every four years thereafter using EPA Form 8700-12. This re-notification must be submitted through the myDEQ online portal by September 1 of each year in which re-notifications are required.
  - (2) A large quantity generator must re-notify [DEQ] by March 1 of each even numbered year thereafter using EPA Form 8700-12. A large quantity generator may submit this re-notification as part of its Report required under § 262.41.
- J.** § 262.20, titled "General requirements", paragraph (a)(2) is amended as follows:
- (2) The revised manifest form and procedures in 40 CFR 260.10, 261.7, [262.16, 262.17, 262.20, 262.21, 262.27, 262.32, 262.83(c) through (e), 262.84,] shall not apply until September 5, 2006. The manifest form and procedures in 40 CFR 260.10, 261.7, [262.16, 262.17, 262.20, 262.21, 262.32, 262.83(c) through (e), 262.84,] contained in the 40 CFR, parts 260 to 265, edition revised as of July 1, 2004, shall be applicable until September 5, 2006.
- K.** § 262.212, titled "Making the hazardous waste determination at an on-site interim status or permitted treatment, storage or disposal facility", paragraph (e)(3) is amended as follows:
- (3) Count the hazardous waste toward the eligible academic entity's generator status, pursuant to [§ 262.13(c) and (d)] in the calendar month that the hazardous waste determination was made, and
- L.** § 262.265, titled "Emergency procedures", paragraph (d)(2) is amended as follows:
- (2) The emergency coordinator [shall] immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll free number 800/424-8802) [and the DEQ (using their 24-hour number (602) 771-2330 or 800/234-5677)]. The report [shall contain the following information:]
    - (i) The name, address, and [the EPA Identification Number] of the generator;
    - (ii) Date, time, [location,] and type of incident (for example, spill or fire);
    - (iii) Quantity and type of hazardous waste involved in the incident;
    - (iv) Extent of injuries, if any; and
    - (v) Estimated quantity and disposition of recovered materials, if any.]
- M.** A generator who accumulates ignitable, reactive, or incompatible waste shall comply with 40 CFR 265.17.

**Historical Note**

Adopted effective July 24, 1984 (Supp. 84-4). Amended subsection (A) effective June 27, 1985 (Supp. 85-3). Amended subsections (A) and (D) effective August 5, 1986 (Supp. 86-4). Former Section R9-8-1862 renumbered as R18-8-262, and amended effective May 29, 1987 (Supp. 87-2). Amended effective December 1, 1988 (Supp. 88-4). Amended effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 21 A.A.R. 1246, effective September 5, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 435, effective February 5, 2019 (Supp. 19-1).

**R18-8-263. Standards Applicable to Transporters of Hazardous Waste**

- A.** All of 40 CFR 263, revised as of July 1, 2018, (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 263 are available at <https://www.eCFR.gov>.
- B.** § 263.11, titled "EPA identification numbers," is amended by the following:
- (a) A transporter must not transport hazardous wastes without having received an EPA identification number from the [DEQ].
  - (b) A transporter who has not received an EPA identification number may obtain one by applying to the [DEQ] using

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EPA form 8700-12. [The completed form shall be submitted to DEQ through the myDEQ online portal.] Upon receiving the request, the [DEQ] will assign an EPA identification number to the transporter.

- C. § 263.30, titled “Immediate action,” paragraph (c)(2) is amended by the following:
- (2) Report in writing as required by 49 CFR 171.16 to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, DC 20590 [and send a copy to the DEQ, Hazardous Waste Unit, 1110 W. Washington St., Phoenix, AZ 85007.]

**Historical Note**

Adopted effective July 24, 1984 (Supp. 84-4). Amended subsection (A) effective June 27, 1985 (Supp. 85-3). Amended subsection (A) effective August 5, 1986 (Supp. 86-5). Former Section R9-8-1863 renumbered as R18-8-263, and subsection (A) amended effective May 29, 1987 (Supp. 87-2). Amended subsection (A) effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 21 A.A.R. 1246, effective September 5, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 435, effective February 5, 2019 (Supp. 19-1).

**R18-8-264. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities**

- A. All of 40 CFR 264 and accompanying appendices, revised as of July 1, 2018, (and no future editions), with the exception of §§ 264.1(d) and (f), 264.149, 264.150, and 264.301(i), is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 264 are available at <https://www.eCFR.gov>.
- B. § 264.1, titled “Purpose, scope and applicability,” paragraph (g)(1) is amended as follows:
- (1) The owner or operator of a facility [with operational approval from the Director] to manage [public, private,] municipal or industrial solid waste [pursuant to R18-13-312, A.R.S. §§ 49-104 and 49-762], if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under [R18-8-264] pursuant to § 262.14;
- C. § 264.1, titled “Purpose, scope, and applicability,” paragraph (g)(8)(i)(D) is amended as follows:
- (D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 40 CFR 260.10. [The DEQ Emergency Response Unit shall be notified as soon as possible, using the 24-hour number (602) 771-2330 or (800) 234-5677.]
- D. § 264.11, titled “Identification number,” is replaced by the following:
1. A facility owner or operator shall not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the DEQ.
  2. A facility owner or operator who has not received an EPA identification number may obtain one by applying to the DEQ using EPA form 8700-12. The completed form shall be submitted to DEQ through the myDEQ online portal. Upon receiving the request, the DEQ will assign an EPA identification number to the facility owner or operator.
- E. § 264.18, titled “Location standards,” paragraph (c) is amended by deleting the following:
- (c) “, except for the Department of Energy Waste Isolation Pilot Project in New Mexico.”
- F. § 264.56, titled “Emergency procedures,” paragraph (d)(2) is amended as follows:
- (2) [The emergency coordinator, or designee, shall] immediately notify [the DEQ at (602) 771-2330 or (800) 234-5677, extension 771-2330, and notify] either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll free number (800) 424-8802). The report [shall include the following]:
- (i) Name and telephone number of reporter;
  - (ii) Name and address of facility;
  - (iii) Time and type of incident (for example, release, fire);
  - (iv) Name and quantity of material(s) involved, to the extent known;
  - (v) The extent of injuries, if any; and
  - (vi) The possible hazards to human health, or the environment, outside the facility.
- G. § 264.93, titled “Hazardous constituents,” paragraph (c) is amended as follows:
- (c) In making any determination under [§ 264.93(b)] about the use of ground water in the area around the facility, the [Director shall] consider any identification of underground sources of drinking water and exempted aquifers made under [40 CFR] § 144.7, [and any identification of uses of ground water made pursuant to 18 A.A.C. 9 or 11].
- H. § 264.94, titled “Concentration limits,” paragraph (c) is amended as follows:
- (c) In making any determination under [§ 264.94(b)] about the use of ground water in the area around the facility, the [Director shall] consider any identification of underground sources of drinking water and exempted aquifers made under [40 CFR] 144.7, [and any identification of uses of ground water made pursuant to 18 A.A.C. 9 or 11].
- I. § 264.143, titled “Financial assurance for closure,” paragraph (h), and 264.145, titled “Financial assurance for post-closure care,” paragraph (h), are amended by replacing the third sentence in each citation with the following: “Evidence of financial assurance must be submitted to and maintained with the Director for those facilities located in Arizona.”
- J. § 264.147, titled “Liability requirements,” paragraphs (a)(1)(i) and (b)(1)(i) are amended by deleting the following from the fourth sentence in each citation: “, or Regional Administrators if the facilities are located in more than one Region.”
- K. § 264.151, titled “Wording of the instruments,” is adopted except any reference to “{of/for} the Regions in which the facilities are located” is deleted and “an agency of the United

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States Government” is deleted from the second paragraph of the Trust Agreements.

- L. § 264.301, titled “Design and operating requirements,” is amended by adding the following:

[The DEQ may require that hazardous waste disposed in a landfill operation be treated prior to landfilling to reduce the water content, water solubility, and toxicity of the waste. The decision by the DEQ shall be based upon the following criteria:

1. Whether the action is necessary to protect public health;
2. Whether the action is necessary to protect the groundwater, particularly where the groundwater is a source, or potential source, of a drinking water supply;
3. The type of hazardous waste involved and whether the waste may be made less hazardous through treatment;
4. The degree of water content, water solubility, and toxicity of the waste;
5. The existence or likelihood of other wastes in the landfill and the compatibility or incompatibility of the wastes with the wastes being considered for treatment;
6. Consistency with other laws, rules and regulations, but not necessarily limited to laws, rules, and regulations relating to landfills and solid wastes.]

- M. § 264.1030, titled “Applicability”, paragraph (b)(3) is amended as follows:

- (3) A unit that is exempt from permitting under the provisions of [40 CFR 262.17(a)] (i.e., a “90-day” tank or container) and is not a recycling unit under the provisions of 40 CFR 261.6.

- N. § 264.1050, titled “Applicability”, paragraph (b)(2) is amended as follows:

- (2) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of [40 CFR 262.17(a)] (i.e., a hazardous waste recycling unit that is not a “90-day” tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of 40 CFR part 270, or

#### Historical Note

Adopted effective July 24, 1984 (Supp. 84-4). Amended subsection (A) effective June 27, 1985 (Supp. 85-3). Amended subsection (A) effective August 5, 1986 (Supp. 86-4). Former Section R9-8-1864 renumbered as Section R18-8-264, and subsection (A) amended effective May 29, 1987 (Supp. 87-2). Amended subsection (B) effective December 1, 1988 (Supp. 88-4). Amended effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4).

Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 21 A.A.R. 1246, effective September 5, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 435, effective February 5, 2019 (Supp. 19-1).

#### R18-8-265. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

- A. All of 40 CFR 265 and accompanying appendices, revised as of July 1, 2018, (and no future editions), with the exception of §§ 265.1(c)(2), 265.1(c)(4), 265.149, 265.150, and 265.430, is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 265 are available at <https://www.eCFR.gov>.
- B. § 265.1, titled “Purpose, scope, and applicability,” paragraph (c)(5) is amended as follows:
- (5) The owner or operator of a facility [with operational approval from the Director] to manage [public, private,] municipal or industrial solid waste [pursuant to R18-13-312, A.R.S. §§ 49-104 and 49-762], if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under [R18-8-265, pursuant to § 261.5];
- C. § 265.1, titled “Purpose, scope, and applicability,” paragraph (c)(11)(i)(D) is amended as follows:
- (D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 40 CFR 260.10. [The DEQ Emergency Response Unit shall be notified as soon as possible, using the 24-hour number (602) 771-2330 or (800) 234-5677]
- D. § 265.11, titled “Identification number,” is replaced by the following:
1. A facility owner or operator shall not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the DEQ.
  2. A facility owner or operator who has not received an EPA identification number may obtain one by applying to the DEQ using EPA form 8700-12. The completed form shall be submitted to DEQ through the myDEQ online portal. Upon receiving the request, the DEQ shall assign an EPA identification number to the facility owner or operator.]
- E. § 265.18, titled “Location standards,” is amended by deleting the following:
- “, except for the Department of Energy Waste Isolation Pilot Project in New Mexico.”
- F. § 265.56, titled “Emergency procedures,” paragraph (d)(2) is amended as follows:
- (2) [The emergency coordinator, or designee, immediately shall] notify [the DEQ at (602) 771-2330 or 800/234-5677, and notify] either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll-free number 800/424-8802). The report [shall include the following]:
    - (i) Name and telephone number of the reporter;
    - (ii) Name and address of the facility;
    - (iii) Time and type of incident (for example, release, fire);
    - (iv) Name and quantity of material(s) involved, to the extent known;
    - (v) The extent of injuries, if any; and

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- (vi) The possible hazards to human health, or the environment, outside the facility.
- G.** § 265.71, titled "Use of the manifest system", is amended in the Comment following paragraph (c) as follows:  
Comment: The provisions of [§§ 262.15, 262.16 and 262.17] are applicable to the on-site accumulation of hazardous wastes by generators. Therefore, the provisions of [§§ 262.15, 262.16 and 262.17] only apply to owners or operators who are shipping hazardous waste which they generated at that facility.
- H.** § 265.90, titled "Applicability," paragraphs (a) and (d)(1), and § 265.93, titled "Preparation, evaluation, and response," paragraph (a), are amended by deleting the following phrase: "within one year"; and § 265.90, titled "Applicability," paragraph (d)(2), is amended by deleting the following phrase: "Not later than one year."
- I.** § 265.112(d), titled "Notification of partial closure and final closure," subparagraph (1) is amended as follows:
1. The owner or operator must submit the closure plan to the [Director] at least 180 days prior to the date on which [the owner or operator] expects to begin closure of the first surface impoundment, waste pile, land treatment, or landfill unit, [tank, container storage, or incinerator unit], or final closure if it involves such a unit, whichever [occurs earlier. The owner or operator with approved closure plans shall notify the Director] in writing at least 60 days prior to the date on which [the owner or operator expects] to begin closure of a surface impoundment, waste pile, landfill, or land treatment unit, or final closure of a facility [if it involves such a unit. The owner or operator] with approved closure plans must notify the [Director] in writing at least 45 days prior to the date on which [the owner or operator expects] to begin final closure of a facility with only tanks, container storage, or incinerator units.
- J.** §§ 265.143, titled "Financial assurance for closure," paragraph (g), and 265.145, titled "Financial assurance for post-closure care," paragraph (g), are amended by replacing the third sentence in each citation with the following: "Evidence of financial assurance must be submitted to and maintained with the Director for those facilities located in Arizona."
- K.** § 265.193, titled "Containment and detection of releases", is amended by adding the following:  
[For existing underground tanks and associated piping systems not yet retrofitted in accordance with § 265.193, the owner or operator shall ensure that:
1. A level is measured daily;
  2. A material balance is calculated and recorded daily; and
  3. A yearly test for leaks in the tank and piping system, using a method approved by the DEQ is performed.]

**Historical Note**

Adopted effective July 24, 1984 (Supp. 84-4). Amended subsection (A) effective June 27, 1985 (Supp. 85-3). Amended subsection (A) effective August 5, 1986 (Supp. 86-4). Former Section R9-8-1865 renumbered as Section R18-8-265, subsection (A) amended and a new subsection (I) added effective May 29, 1987 (Supp. 87-2). Amended subsection (B) effective December 1, 1988 (Supp. 88-4). Amended effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15,

1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 21 A.A.R. 1246, effective September 5, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 435, effective February 5, 2019 (Supp. 19-1).

**R18-8-266. Standards for the Management of Specific Hazardous Wastes and Specific Hazardous Waste Management Facilities**

- A.** All of 40 CFR 266 and accompanying appendices, revised as of July 1, 2018 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 266 are available at <https://www.eCFR.gov>.
- B.** § 266.100, titled "Applicability" paragraph (c) is amended as follows:
- (c) The following hazardous wastes and facilities are not subject to regulation under this subpart:
- (1) Used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in subpart C of part 261 of this chapter. Such used oil is subject to regulation under [A.R.S. §§ 49-801 through 49-818] rather than this subpart;
  - (2) Gas recovered from hazardous or solid waste landfills when such gas is burned for energy recovery;
  - (3) Hazardous wastes that are exempt from regulation under §§ 261.4 and 261.6(a)(3)(iii) and (iv) of this chapter, and hazardous wastes that are subject to the special requirements for [very] small quantity generators under [§§ 262.13 and 262.14] of this chapter; and
  - (4) Coke ovens, if the only hazardous waste burned is EPA Hazardous Waste No. K087, decanter tank tar sludge from coking operations.
- C.** § 266.108, titled "Small quantity on-site burner exemption" is amended in the Note following paragraph (c) as follows:  
Note: Hazardous wastes that are subject to the special requirements for small quantity generators under [§§ 262.13 and 262.14] of this chapter may be burned in an off-site device under the exemption provided by § 266.108, but must be included in the quantity determination for the exemption.

**Historical Note**

Adopted effective August 5, 1986 (Supp. 86-4). Former Section R9-8-1866 renumbered as Section R18-8-266, and amended effective May 29, 1987 (Supp. 87-2). Amended effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3).

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Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 21 A.A.R. 1246, effective September 5, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 435, effective February 5, 2019 (Supp. 19-1).

**R18-8-267. Reserved**

**R18-8-268. Land Disposal Restrictions**

All of 40 CFR 268 and accompanying appendices, revised as of July 1, 2018 (and no future editions), with the exception of Part 268, Subpart B, is incorporated by reference and on file with the DEQ. Copies of 40 CFR 268 are available at <https://www.eCFR.gov>.

**Historical Note**

Adopted effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 25 A.A.R. 435, effective February 5, 2019 (Supp. 19-1).

**R18-8-269. Expired**

**Historical Note**

Adopted effective July 24, 1984 (Supp. 84-4). Former Section R9-8-1869 renumbered without change as Section R18-8-269 (Supp. 87-2). Amended subsections (A) and (B) effective December 1, 1988 (Supp. 88-4). Amended effective December 2, 1994 (Supp. 94-4). Section expired pursuant to A.R.S. § 41-1056(J), at 23 A.A.R. 3428, effective October 10, 2017 (Supp. 17-4).

**R18-8-270. Hazardous Waste Permit Program**

- A. All of 40 CFR 270 and the accompanying appendices, revised as of July 1, 2018 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ with the exception of the following:
  1. §§ 270.1(a), 270.1(c)(1)(i), 270.3, 270.10(g)(1)(i), 270.60(a) and (b), and 270.64;
  2. The revisions for standardized permits as published at 70 FR 53419;
  3. The revisions to the solid waste definition as published at 73 FR 64668, 80 FR 1694, and 83 FR 24664. Copies of 40 CFR 270 are available at <https://www.eCFR.gov>. Cop-

ies of the Federal Register are available at <https://www.federalregister.gov>.

- B. § 270.1, titled “Purpose and scope of these regulations,” paragraph (b) is replaced by the following:
  1. [After the effective date of these regulations the treatment, storage, or disposal of any hazardous waste is prohibited except as follows:
    - a. As allowed under § 270.1(c)(2) and (3);
    - b. Under the conditions of a permit issued pursuant to these regulations; or
    - c. At an existing facility accorded interim status under the provisions of § 270.70.
  2. The direct disposal or discharge of hazardous waste into or onto any of the following is prohibited:
    - a. Waters of the state as defined in A.R.S. § 49-201, excluding surface impoundments as defined in § 260.10; and
    - b. Injection well, ditch, alleyway, storm drain, leach-field, or roadway.]
- C. § 270.1, titled “Purpose and scope of these regulations,” paragraph (c)(3)(i)(D) is amended as follows:
  - (D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 40 CFR 260.10. [The DEQ Emergency Response Unit shall be notified as soon as possible, using the 24-hour number (602) 771-2330 or (800) 234-5677.]
- D. § 270.10, titled “General application requirements,” paragraph (e)(2), is amended as follows:
  - (2) The [Director] may extend the date by which owners and operators of specified classes of existing [HWM facilities shall submit Part A of their permit application if the Administrator has published in the Federal Register that EPA is granting an extension under 40 CFR § 270.10(e)(2) for those classes of facilities.]
- E. § 270.10(g), titled “Updating permit applications,” subparagraph (1)(ii) is amended as follows:
  - (ii) With the [Director] no later than the effective date of regulatory provisions listing or designating wastes as hazardous in [the] state if the facility is treating, storing, or disposing of any of those newly listed or designated wastes; or
- F. § 270.10(g), titled “Updating permit applications,” subparagraph (1)(iii), is amended as follows:
  - (iii) As necessary to comply with provisions of § 270.72 for changes during interim [status]. Revised Part A applications necessary to comply with the provisions of § 270.72 [shall be filed with the [Director].]
- G. § 270.10, titled “General application requirements,” is amended by adding the following:
  1. When submitting an application for any of the license types in the Table below, an applicant shall remit to the DEQ an application fee as shown in the Table.

**Table - Hazardous Waste Permitting Application and Maximum Fees For Various License Types**

License Type	Application Fee	Maximum Fee
Permit for: Container Storage/Container Treatment	\$20,000	\$250,000
Permit for: Tank Storage/Tank Treatment	\$20,000	\$300,000
Permit for: Surface Impoundment	\$20,000	\$400,000

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Permit for: Incinerator/Boiler and Industrial Furnace (BIF)/Landfill/Miscellaneous Unit	\$20,000	\$500,000
Permit for: Waste Pile/Land Treatment/Drip Pad/Containment Building/Research, Development, and Demonstration	\$20,000	\$300,000
Corrective Action Permit/Remedial Action Plan (RAP) Approval	\$20,000	\$300,000
Post-Closure Permit	\$20,000	\$400,000
Closure of Container/Tank/Drip Pad/Containment Building	\$5,000/unit	\$100,000
Closure of Miscellaneous Unit/Incinerator/BIF/Surface Impoundment/Waste Pile/Land Treatment Unit/Landfill	\$5,000/unit	\$300,000
Class 1 Modification (requiring Director Approval)	\$1,000	\$50,000
Class 2 Modification	\$5,000	\$250,000
Class 3 Modification (for a permit with an Incinerator, BIF, Surface Impoundment, Waste Pile, Land Treatment Unit, or Landfill)	\$20,000	\$400,000
Class 3 Modification (for a permit without an Incinerator, BIF, Surface Impoundment, Waste Pile, Land Treatment Unit, or Landfill)	\$10,000	\$250,000

2. If the total cost of processing the application identified in the Table is less than the application fee listed in the Table, the DEQ shall refund the difference between the total cost and the amount listed in the Table to the applicant.
  - a. Permits and permit modifications other than post-closure permits and closure plans. If the total cost of processing the application is greater than the amount listed plus other amounts paid, the DEQ shall bill the applicant for the difference upon permit approval. The applicant shall pay the difference in full before the DEQ issues the permit.
  - b. Post-closure permits. If the total cost of processing the application is greater than the amount listed plus other amounts paid, the DEQ shall bill the applicant for the difference upon permit issuance. The applicant shall pay the difference in full within 45 days of the date of the bill.
  - c. Withdrawals. In the event of a valid withdrawal of the permit application by the applicant, if the total costs of processing the application are less than the amount paid, the DEQ shall refund the difference. If the total costs are greater than the amount paid, the DEQ shall bill the applicant for the difference, and the applicant shall pay the difference within 45 days of the date of the bill.
3. With an application for a closure plan for a facility, the applicant shall remit to the DEQ an application fee of \$5,000 for each hazardous waste management unit involved in the closure plan or \$20,000, whichever is less. If the total cost of processing the application, including review and approval of the closure report, is more than the application fee paid, the applicant shall be billed for the difference, and the difference shall be paid in full after the DEQ completes review and approval of the closure report and within 30 days of notification by the

- Director. If the reasonable cost is less than the fee paid by the applicant, the DEQ shall refund the difference within 30 days of the closure report review and approval. The maximum fee for a closure plan is shown in the Table.
4. The fee for a land treatment demonstration permit issued under § 270.63 for hazardous waste applies toward the \$20,000 permit fee for a Part B land treatment permit when the owner or operator seeks to treat or dispose of hazardous waste in land treatment units based on the successful treatment demonstration.
  5. The DEQ shall provide the applicant itemized bills at least semiannually for the expenses associated with evaluating the application and approving or denying the permit or permit modification. The following information shall be included in each bill:
    - a. The dates of the billing period;
    - b. After January 1, 2013, the date and number of review hours performed during the billing period itemized by employee name, position type and specifically describing:
      - i. Each review task performed,
      - ii. The facility and operational unit involved,
      - iii. The hourly rate;
    - c. A description and amount of review-related costs as described in subsection (G)(6)(b); and
    - d. The total fees paid to date, the total fees due for the billing period, the date when the fees are due, and the maximum fee for the project.
  6. Fees shall consist of processing charges and review-related costs as follows:
    - a. Processing charges. The DEQ shall calculate the processing charges using a rate of \$136 per hour, multiplied by the number of review hours used to evaluate and approve or deny the permit or permit modification.
    - b. Review-related costs means any of the following costs applicable to a specific application:
      - i. Per diem expenses,
      - ii. Transportation costs,
      - iii. Reproduction costs,
      - iv. Laboratory analysis charges performed during the review of the permit or permit modification,
      - v. Public notice advertising and mailing costs,
      - vi. Presiding officer expenses for public hearings on a permitting decision,
      - vii. Court reporter expenses for public hearings on a permitting decision,
      - viii. Facility rentals for public hearings on a permitting decision, and
      - ix. Other reasonable and necessary review-related expenses documented in writing by the DEQ and agreed to by the applicant.
    - c. Total itemized billings for an application shall not exceed the maximum amounts listed in the Table in this Section.
  7. A person may seek review of a bill by filing a written request for reconsideration with the Director.
    - a. The request shall specify, in detail, why the bill is in dispute and shall include any supporting documentation.
    - b. The written request for reconsideration shall be delivered to the Director in person, by mail, or by facsimile on or before the payment due date or within 35 days of the invoice date, whichever is later.

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8. The Director shall make a final decision on the request for reconsideration of the bill and mail a final written decision to the person within 20 working days after the date the Director receives the written request.
9. For the purposes of subsection (G), "review hours" means the hours or portions of hours that the DEQ's staff spends on a permit or permit modification. Review hours include the time spent by the project manager and technical review team members, and if requested by the applicant, the supervisor or unit manager.
- H.** § 270.12, titled "Confidentiality of information," paragraph (a) is amended as follows:
- (a) In accordance with [R18-8-260(D)(2)], any information submitted to [the DEQ] pursuant to these regulations may be claimed as confidential by the submitter. [Such a claim shall] be asserted at the time of submission in the manner prescribed [in R18-8-260(D)(2)(c)(ii)]. If no [such] claim is made at the time of submission, [the DEQ] may make the information available to the public without further notice. If a claim is asserted, the information [shall] be treated in accordance with the procedures in [R18-8-260(D)(2)(d) and (e).]
- I.** § 270.13, titled "Contents of Part A of the permit application," paragraph (k)(9) is amended as follows:
- (9) Other relevant environmental permits, including [any federal, state, county, city, or fire department] permits.
- J.** § 270.14, titled "Contents of Part B: General requirements," paragraph (b) is amended by adding the following:
- [(23) Any additional information required by the DEQ to evaluate compliance with facility standards and informational requirements of R18-8-264 and R18-8-270.
- (24)(i) A signed statement, submitted on a form supplied by the DEQ that demonstrates:
- (A) An individual owner or operator has sufficient reliability, expertise, integrity and competence to operate a HWM facility, and has not been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the permit application; or
- (B) In the case of a corporation or business entity, no officer, director, partner, key employee, other person, or business entity who holds 10% or more of the equity or debt liability has been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the permit application.
- ii. Failure to comply with subsection (i), the requirements of A.R.S. § 49-922(C)(1), and the requirements of § 270.43 and §§ 124.3(d) and 124.5(a), may cause the Director to refuse to issue a permit to a TSD facility pursuant to A.R.S. § 49-922(C) as amended, including requirements in § 270.43 and §§ 124.3(d) and 124.5(a).]
- K.** § 270.30, titled "Conditions applicable to all permits" paragraph (l)(10) is amended as follows:
- (10) Other noncompliance. The permittee shall report all instances of noncompliance not reported under [§ 270.30(l)(4),(5), and (6)] at the same time monitoring [(including annual)] reports are submitted. The reports shall contain the information listed in [§ 270.30(l)(6)].
- L.** § 270.30, titled "Conditions applicable to all permits" paragraph (l) is amended by adding the following:
- [All reports listed above shall be submitted to the Director in such a manner that the reports are received within the time periods required under this Article.]
- M.** § 270.32, titled "Establishing permit conditions," paragraph (a), is amended by deleting the following:
- "and 270.3 (considerations under Federal law)."
- N.** § 270.32, titled "Establishing permit conditions," paragraph (b) is amended by deleting the reference to 40 CFR 267.
- O.** § 270.32, titled "Establishing permit conditions," paragraph (c) is amended by deleting the second sentence.
- P.** § 270.42, titled "Permit modification at the request of permittee", paragraph (f)(3), is amended as follows:
- (3) An automatic authorization that goes into effect under paragraph (b)(6)(iii) or (v) of this section may be appealed under [Title 41, Chapter 6, Article 10, Arizona Revised Statutes.]
- Q.** § 270.51, titled "Continuation of expiring permits," paragraph (a) is amended by deleting the following:
- "under 5 USC 558(c)."
- R.** § 270.51, titled "Continuation of expiring permits," paragraph (d) is amended by replacing "EPA-issued" with "EPA, joint EPA/DEQ, or DEQ-issued."
- S.** § 270.65, titled "Research, development, and demonstration permits," is amended as follows:
- (a) The [Director] may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under part 264 or 266. [A research, development, and demonstration] permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits:
- (1) Shall provide for the construction of such facilities as necessary, and for operation of the facility for not longer than one year unless renewed as provided in paragraph (d) of this section, and
- (2) Shall provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the [Director] deems necessary for purposes of determining the efficacy and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment, and
- (3) Shall include such requirements as the [Director] deems necessary to protect human health and the environment [, including requirements regarding monitoring, operation, financial responsibility, closure, and remedial action, and such requirements as the Director] deems necessary regarding testing and providing of information [relevant] to the [Director] with respect to the operation of the facility.
- (b) For the purpose of expediting review and issuance of permits under this section, the [Director] may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements [, or add conditions to the permit in accordance with the permitting procedures set forth in R18-8-270 and R18-8-271.] except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of procedures regarding public participation.
- (c) The [Director] may order an immediate termination of all operations at the facility at any time [the Director] determines that termination is necessary to protect human health and the environment.
- (d) Any permit issued under this section may be renewed not more than three times. Each such renewal shall be for a period of not more than one year.

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T. § 270.110, titled “What must I include in my application for a RAP?,” is amended by adding paragraphs (j) and (k) as follows:

(j) A signed statement, submitted on a form supplied by DEQ that demonstrates:

- (1) An individual owner or operator has sufficient reliability, expertise, integrity and competence to operate a HWM facility, and has not been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the RAP application.
- (2) In the case of a corporation or business entity, no officer, director, partner, key employee, other person or business entity who holds 10% or more of the equity or debt liability has been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the RAP application.

(k) Failure to comply with subsection (j), the requirements of A.R.S. § 49-922(C)(1), and the requirements of § 270.43 and §§ 124.3(d) and 124.5(a), may cause the Director to refuse to issue a permit to a TSD facility pursuant to A.R.S. § 49-922(C) as amended, including requirements in § 270.43 and §§ 124.3(d) and 124.5(a).]

U. § 270.155 titled “May the decision to approve or deny my RAP application be administratively appealed?,” paragraph (a), is amended as follows:

(a) Any commenter on the draft RAP or notice of intent to deny, or any participant in any public hearing(s) on the draft RAP, may appeal the Director’s decision to approve or deny your RAP application [under Title 41, Chapter 6, Article 10, Arizona Revised Statutes.] Any person who did not file comments, or did not participate in any public hearing(s) on the draft RAP, may petition for administrative review only to the extent of the changes from the draft to the final RAP decision. Appeals of RAPs may be made to the same extent as for final permit decisions under § 124.15 of this chapter (or a decision under § 270.29 to deny a permit for the active life of a RCRA hazardous waste management facility or unit.)

#### Historical Note

Adopted effective July 24, 1984 (Supp. 84-4). Amended subsections (A) and (K) effective June 27, 1985 (Supp. 85-3). Amended subsection (A) effective August 5, 1986 (Supp. 86-4). Former Section R9-8-1870 renumbered as R18-8-270, subsection (A) amended and a new subsection (S) added effective May 29, 1987 (Supp. 87-2). Amended subsections (B) and (K) effective December 1, 1988 (Supp. 88-4). Amended effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14

A.A.R. 409, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 18 A.A.R. 1202, effective July 1, 2012 (Supp. 12-2). Amended by final rulemaking at 21 A.A.R. 1246, effective September 5, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 435, effective February 5, 2019 (Supp. 19-1). R18-8-271(B)(2) corrected at the request of the Department to reflect the final rulemaking amendments made at 25 A.A.R. 435 (Supp. 19-2).

#### R18-8-271. Procedures for Permit Administration

A. All of 40 CFR 124, revised as of July 1, 2018, (and no future editions), with the exception of §§ 124.1 (b) through (e), 124.2, 124.4, 124.16, 124.20, 124.21, and subparts C, D, and G, and with the exception of the revisions for standardized permits as published at 70 FR 53419, is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 124 are available at <https://www.eCFR.gov>. Copies of the Federal Register are available at <https://www.federalregister.gov>.

B. § 124.1, titled “Purpose and scope,” paragraph (a) is replaced by the following:

[This Section contains the DEQ procedures for issuing, modifying, revoking and reissuing, or terminating all hazardous waste management facility permits. This Section describes the procedures the DEQ shall follow in reviewing permit applications, preparing draft permits, issuing public notice, inviting public comment, and holding public hearings on draft permits. This Section also includes procedures for assembling an administrative record, responding to comments, issuing a final permit decision, and allowing for administrative appeal of the final permit decision. The procedures of this Section also apply to denial of a permit for the active life of a RCRA HWM facility or unit under § 270.29.]

C. § 124.3, titled “Application for a permit,” is replaced by the following:

[(a)(1)Any person who requires a permit under this Article shall complete, sign, and submit to the Director an application for each permit required under § 270.1. Applications are not required for RCRA permits-by-rule in § 270.60.

(2) The Director shall not begin processing a permit until the applicant has fully complied with the application requirements for that permit. (Refer to §§ 270.10 and 270.13).

(3) An applicant for a permit shall comply with the signature and certification requirements of § 270.11.

(b) Reserved.

(c) The Director shall review for completeness every application for a permit. Each application submitted by a new HWM facility shall be reviewed for completeness by the Director in the order of priority on the basis of hazardous waste capacity established in a list by the Director. The Director shall make the list available upon request. Upon completing the review, the Director shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Director shall list the information necessary to make the application complete. When the application is for an existing HWM facility, the Director shall specify in the notice of deficiency a date for submitting the necessary information. The Director shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Director may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material.

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Requests for additional information do not render an application incomplete.

- (d) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and the Director may take appropriate enforcement actions against an existing HWM facility pursuant to A.R.S. §§ 49-923, 49-924 and 49-925.
  - (e) If the Director decides that a site visit is necessary for any reason in conjunction with the processing of an application, the Director shall notify the applicant and schedule a date for a site visit.
  - (f) The effective date of an application is the date on which the Director notifies the applicant that the application is complete as provided in paragraph (c) of this subsection.
  - (g) For each application from a new HWM facility, the Director shall, no later than the effective date of the application, prepare and mail to the applicant a project decision schedule. The schedule shall specify target dates by which the Director intends to do the following:
    - (1) Prepare a draft permit or Notice of Intent to Deny;
    - (2) Give public notice;
    - (3) Complete the public comment period, including any public hearing;
    - (4) Make a decision to issue or deny a final permit; and
    - (5) Issue a final decision.
- D.** § 124.5, titled "Modification, revocation and reissuance, or termination of permits," is replaced by the following:
- (a) Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Director's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in §§ 270.41 or 270.43. All requests shall be in writing and shall contain facts or reasons supporting the request.
  - (b) If the Director decides the request is not justified, the Director shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings.
  - (c) Modification, revocation or reissuance of permits procedures.
    - (1) If the Director tentatively decides to modify or revoke and reissue a permit under §§ 270.41 or 270.42(c), the Director shall prepare a draft permit under § 124.6, incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the Director shall require the submission of a new application.
    - (2) In a permit modification under this [subsection], only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. The permit modification shall have the same expiration date as the unmodified permit. When a permit is revoked and reissued under this subsection, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.
    - (3) "Classes 1 and 2 modifications" as defined in § 270.42 are not subject to the requirements of this subsection.
  - (d) If the Director tentatively decides to terminate a permit under § 270.43, the Director shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under § 124.6. In the case of permits that are processed or issued jointly by both the DEQ and the EPA, a notice of intent to terminate shall not be issued if the Regional Administrator and the permittee agree to termination in the course of transferring permit responsibilities from the EPA to the state.
  - (e) The Director shall base all draft permits, including notices of intent to terminate, prepared under this subsection on the administrative record as defined in § 124.9.]
- E.** § 124.6, titled "Draft permits," is replaced by the following:
- (a) Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application.
  - (b) If the Director tentatively decides to deny the permit application, the Director shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under (e) of this subsection.
  - (c) Reserved.
  - (d) If the Director decides to prepare a draft permit, the Director shall prepare a draft permit that contains the following information:
    - (1) All conditions under §§ 270.30 and 270.32, unless not required under 40 CFR 264 and 265;
    - (2) All compliance schedules under § 270.33;
    - (3) All monitoring requirements under § 270.31; and
    - (4) Standards for treatment, storage, and/or disposal and other permit conditions under § 270.30.
  - (e) All draft permits prepared by the DEQ under this subsection shall be accompanied by a statement of basis (§ 124.7,) or fact sheet (§ 124.8,) and shall be based on the administrative record (§ 124.9,) publicly noticed (§ 124.10,) and made available for public comment (§ 124.11,). The Director shall give notice of opportunity for a public hearing (§ 124.12,) issue a final decision (§ 124.15,) and respond to comments (§ 124.17,).
- F.** § 124.7, titled "Statement of basis," is replaced by the following:
- The DEQ shall prepare a statement of basis for every draft permit for which a fact sheet under § 124.8 is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.
- G.** § 124.8, titled "Fact sheet," is replaced by the following:
- (a) The DEQ shall prepare a fact sheet for every draft permit for a new HWM facility, and for every draft permit that the Director finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person.
  - (b) The fact sheet shall include, when applicable:
    - (1) A brief description of the type of facility or activity that is the subject of the draft permit;
    - (2) The type and quantity of wastes, that are proposed to be or are being treated, stored, or disposed;
    - (3) Reserved.

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- (4) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by § 124.9;
- (5) Reasons why any requested variances or alternatives to required standards do or do not appear justified;
- (6) A description of the procedures for reaching a final decision on the draft permit including:
- (i) The beginning and ending dates of the comment period under §§ 124.10 and the address where comments will be received;
  - (ii) Procedures for requesting a hearing and the nature of that hearing; and
  - (iii) Any other procedures by which the public may participate in the final decision; and
- (7) Name and telephone number of a person to contact for additional information.
- (8) Reserved.
- H.** § 124.9 titled “Administrative record for draft permits” is replaced by the following:
- (a) The provisions of a draft permit prepared under § 124.6 shall be based on the administrative record defined in this subsection.
  - (b) For preparing a draft permit under § 124.6, the record consists of:
    - (1) The application, if required, and any supporting data furnished by the applicant, subject to paragraph (e) of this subsection;
    - (2) The draft permit or notice of intent to deny the application or to terminate the permit;
    - (3) The statement of basis under §§ 124.7 or fact sheet under § 124.8;
    - (4) All documents cited in the statement of basis or fact sheet; and
    - (5) Other documents contained in the supporting file for the draft permit.
    - (6) Reserved.
  - (c) Material readily available at the DEQ or published material that is generally available, and that is included in the administrative record under paragraphs (b) and (c) of this subsection, need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the fact sheet.
  - (d) This subsection applies to all draft permits when public notice was given after the effective date of these rules.
  - (e) All items deemed confidential pursuant to A.R.S. § 49-928 shall be maintained separately and not disclosed to the public.
- I.** § 124.10, titled “Public notice of permit actions and public comment period,” is replaced by the following:
- (a) Scope.
    - (1) The Director shall give public notice that the following actions have occurred:
      - (i) A permit application has been tentatively denied under § 124.6(b);
      - (ii) A draft permit has been prepared under § 124.6(d); and
      - (iii) A hearing has been scheduled under § 124.12.
    - (2) No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied under § 124.5(b). Written notice of that denial shall be given to the requester and to the permittee.
    - (3) Public notices may describe more than one permit or permit actions.
  - (b) Timing.
    - (1) Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under paragraph (a) of this subsection shall allow at least 45 days for public comment.
    - (2) Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)
  - (c) Methods. Public notice of activities described in paragraph (a)(1) of this subsection shall be given by the following methods:
    - (1) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this subparagraph may waive his or her rights to receive notice for any classes and categories of permits):
      - (i) An applicant;
      - (ii) Any other agency which the Director knows has issued or is required to issue a HWM facility permit or any other federal environmental permit for the same facility or activity;
      - (iii) Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected states (Indian Tribes). For purposes of this paragraph, and in the context of the Underground Injection Control Program only, the term State includes Indian Tribes treated as States;
      - (iv) Reserved.
      - (v) Reserved.
      - (vi) Reserved.
      - (vii) Reserved.
      - (viii) Reserved.
      - (ix) Persons on a mailing list developed by:
        - (A) Including those who request in writing to be on the list;
        - (B) Soliciting persons for “area lists” from participants in past permit proceedings in that area; and
        - (C) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state-funded newsletters, environmental bulletins, or state law journals. (The Director may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Director may delete from the list the name of any person who fails to respond to the request.); and
      - (x) (A) To any unit of local government having jurisdiction over the area where the facility is proposed to be located; and
        - (B) To each state agency having any authority under state law with respect to the construction or operation of the facility;
    - (2) By newspaper publication and radio announcement broadcast, as follows:
      - (i) Reserved.
      - (ii) For all permits, publication of a notice in a daily or weekly major local newspaper of gen-

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- eral circulation within the area affected by the facility or activity, at least once, and in accordance with the provisions of paragraph (b) of this subsection; and
- (iii) For all permits, a radio announcement broadcast over two local radio stations serving the affected area at least once during the period two weeks prior to the public hearing. The announcement shall contain:
- (A) A brief description of the nature and purpose of the hearing;
- (B) The information described in items (i), (ii), (iii), (iv), and (vii) of subparagraph (d)(1) of this subsection;
- (C) The date, time, and place of the hearing; and
- (D) Any additional information considered necessary or proper; or
- (3) Reserved.
- (4) Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.
- (d) (1) Each public notice issued under this Article shall contain the following minimum information:
- (i) Name and address of the office processing the permit action for which notice is being given;
- (ii) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by such permit;
- (iii) A brief description of the business conducted at the facility or activity described in the permit application;
- (iv) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the statement of basis or fact sheet;
- (v) A brief description of the comment procedures required by §§ 124.11 and 124.12 and the time and place of any hearing that shall be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;
- (vi) The location of the administrative record required by § 124.9, the times at which the record will be open for public inspection, and a statement that all data submitted by the applicant (except for confidential information pursuant to A.R.S. § 49-928) is available as part of the administrative record;
- (vii) The locations where a copy of the application and the draft permit may be inspected and the times at which these documents are available for public review; and
- (viii) Reserved.
- (ix) Any additional information considered necessary or proper.
- (2) Public notices for hearings. In addition to the general public notice described in paragraph (d)(1) of this subsection, the public notice of a hearing under § 124.12 shall contain the following information:
- (i) Reference to the date of previous public notices relating to the permit;
- (ii) Date, time, and place of the hearing; and
- (iii) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.
- (iv) Reserved.
- (e) In addition to the general public notice described in paragraph (d)(1) of this subsection, all persons identified in paragraphs (c)(1)(i), (ii), and (iii) of this subsection shall be mailed a copy of the fact sheet or statement of basis, the permit application (if any), and the draft permit (if any).
- J.** § 124.11, titled "Public comments and requests for public hearings," is replaced by the following:
- During the public comment period provided under § 124.10, any person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in § 124.17.
- K.** § 124.12, titled "Public hearings," is replaced by the following:
- [(a) (1) The Director shall hold a public hearing whenever the Director finds, on the basis of requests, a significant degree of public interest in a draft permit.
- (2) The Director may also hold a public hearing at the Director's discretion whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.
- (3) The Director shall hold a public hearing whenever written notice of opposition to a draft permit and a request for a hearing has been received within 45 days of public notice under § 124.10(b)(1). Whenever possible the Director shall schedule a hearing under this subsection at a location convenient to the nearest population center to the proposed facility.
- (4) Public notice of the hearing shall be given as specified in § 124.10.
- (b) Reserved.
- (c) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under § 124.10 shall automatically be extended to the close of any public hearing under this subsection. The hearing officer may also extend the comment period by so stating at the hearing.
- (d) A tape recording or written transcript of the hearing shall be made available to the public.
- (e) Reserved.]
- L.** § 124.13, titled "Obligation to raise issues and provide information during the public comment period," is replaced by the following:
- [All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (including any public hearing) under § 124.10. Any supporting materials that a commenter submits shall be included in full and shall not be incorporated by reference, unless they are already part of the administrative record in the same proceeding or consist of state or federal statutes and regula-

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tions, EPA documents of general applicability, or other generally available reference materials. Commenters shall make supporting material not already included in the administrative record available to the DEQ as directed by the Director.]

**M.** § 124.14, titled "Reopening of the public comment period," is replaced by the following:

- (a) (1) The Director may order the public comment period reopened if the procedures of this paragraph could expedite the decision-making process. When the public comment period is reopened under this paragraph, all persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must submit all reasonably available factual grounds supporting their position, including all supporting material, by a date, not less than 60 days after public notice under paragraph (a)(2) of this subsection, set by the Director. Thereafter, any person may file a written response to the material filed by any other person, by a date, not less than 20 days after the date set for filing of the material, set by the Director.
- (2) Public notice of any comment period under this paragraph shall identify the issues to which the requirements of § 124.14(a) apply.
- (3) On the Director's own motion or on the request of any person, the Director may direct that the requirements of paragraph (a)(1) of this subsection shall apply during the initial comment period where it reasonably appears that issuance of the permit will be contested and that applying the requirements of paragraph (a)(1) of this subsection will substantially expedite the decision-making process. The notice of the draft permit shall state whenever this has been done.
- (4) A comment period of longer than 60 days will often be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this subsection. Commenters may request longer comment periods and they shall be granted under § 124.10 to the extent they appear necessary.
- (b) If any data, information, or arguments submitted during the public comment period, including information or arguments required under § 124.13, appear to raise substantial new questions concerning a permit, the Director may take one or more of the following actions:
  - (1) Prepare a new draft permit, appropriately modified, under §§ 124.6;
  - (2) Prepare a revised statement of basis under § 124.7, a fact sheet or revised fact sheet under this § 124.8, and reopen the comment period under this subsection; or,
  - (3) Reopen or extend the comment period under § 124.10 to give interested persons an opportunity to comment on the information or arguments submitted.
- (c) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under § 124.10 shall define the scope of the reopening.
- (d) Reserved.
- (e) Public notice of any of the above actions shall be issued under §§ 124.10.

**N.** § 124.15, titled "Issuance and effective date of permit," is replaced by the following:

- (a) After the close of the public comment period under § 124.10 on a draft permit, the Director shall issue a final permit decision or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29. The Director shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a permit or a decision to terminate a permit. For purposes of this subsection, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.
- (b) A final permit decision or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29 becomes effective on the date specified by the Director in the final permit notice.
  - (1) Reserved.
  - (2) Reserved.
  - (3) Reserved.

**O.** § 124.17, titled "Response to comments," is replaced by the following:

- (a) At the time that any final decision to issue a permit is made under § 124.15, the Director shall issue a response to comments. This response shall:
  - (1) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and
  - (2) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.
- (b) Any documents cited in the response to comments shall be included in the administrative record for the final permit decision as defined in § 124.18. If new points are raised or new material supplied during the public comment period, the DEQ may document its response to those matters by adding new materials to the administrative record.
- (c) The response to comments shall be available to the public.

**P.** § 124.18, titled "Administrative record for final permit" is replaced by the following:

- (a) The Director shall base final permit decisions under § 124.15 on the administrative record defined in this subsection.
- (b) The administrative record for any final permit shall consist of the administrative record for the draft permit, and:
  - (1) All comments received during the public comment period provided under § 124.10, including any extension or reopening under § 124.14;
  - (2) The tape or transcript of any hearing(s) held under § 124.12;
  - (3) Any written materials submitted at such a hearing;
  - (4) The response to comments required by § 124.17 and any new material placed in the record under that subsection;
  - (5) Reserved.
  - (6) Other documents contained in the supporting file for the permit; and
  - (7) The final permit.
- (c) The additional documents required under (b) of this subsection shall be added to the record as soon as possible after their receipt or publication by the DEQ. The record shall be complete on the date the final permit is issued.

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- (d) This subsection applies to all final permits when the draft permit was subject to the administrative record requirement of § 124.9.
- (e) Material readily available at the DEQ, or published materials which are generally available and which are included in the administrative record under the standards of this subsection or of § 124.17, (“Response to comments”), need not be physically included in the same file as the rest of the record as long as the materials and their location are specifically identified in the statement of basis or fact sheet or in the response to comments.
- Q.** § 124.19, titled “Appeal of RCRA, UIC, and PSD permits,” is replaced by the following:  
A final permit decision (or a decision under § 270.29 to deny a permit for the active life of a RCRA hazardous waste management facility or unit issued under § 124.15 is an appealable agency action as defined in A.R.S. § 41-1092 and is subject to appeal under A.R.S. Title 41, Ch. 6, Art. 10.
- R.** § 124.31(a) titled “Pre-application public meeting and notice” is amended by deleting the following sentence:  
“For the purpose of this section only, ‘hazardous waste management units over which EPA has permit issuance authority’ refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR 271.”
- S.** § 124.32(a) titled “Public notice requirements at the application stage” is amended by deleting the following sentence:  
“For the purpose of this section only, ‘hazardous waste management units over which EPA has permit issuance authority’ refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR 271.”
- T.** § 124.33(a) titled “Information repository” is amended by deleting the following sentence:  
“For the purpose of this section only, ‘hazardous waste management units over which EPA has permit issuance authority’ refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR 271.”
- Historical Note**  
Adopted effective July 24, 1984 (Supp. 84-4). Amended subsection (A) effective June 27, 1985 (Supp. 85-3). Amended subsection (A) effective August 5, 1986 (Supp. 86-4). Former Section R9-8-1871 renumbered as R18-8-271; subsections (A), (C), (E), (I), (L) and (M) amended effective May 29, 1987 (Supp. 87-2). Amended subsection (C) effective December 1, 1988 (Supp. 88-4). Amended effective October 11, 1989 (Supp. 89-4). Amended effective August 14, 1991 (Supp. 91-3). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective December 7, 1995 (Supp. 95-4). Amended effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 4364, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5523, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 21 A.A.R. 1246, effective September 5, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 435, effective February 5, 2019 (Supp. 19-1).
- R18-8-272. Reserved**
- R18-8-273. Standards for Universal Waste Management**
- A.** All of 40 CFR 273, revised as of July 1, 2018 (and no future editions), is incorporated by reference and on file with the DEQ. Copies of 40 CFR 273 are available at <https://www.eCFR.gov>.
- B.** § 273.13, titled “Waste management”, paragraphs (c)(2)(iii) and (c)(2)(iv) are amended as follows:  
(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules from that containment device to a container that meets the requirements of [40 CFR 262.15 and 40 CFR 262.16;]  
(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of [40 CFR 262.15 and 40 CFR 262.16;]
- C.** § 273.33, titled “Waste management”, paragraphs (c)(2)(iii) and (c)(2)(iv) are amended as follows:  
(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks [from] broken ampules from that containment device to a container that meets the requirements of [40 CFR 262.15 and 40 CFR 262.16;]  
(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of [40 CFR 262.15 and 40 CFR 262.16;]
- Historical Note**  
Adopted effective June 13, 1996 (Supp. 96-2). Amended effective August 8, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4625, effective November 15, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3093, effective July 24, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 816, effective April 15, 2003 (Supp. 03-1). Amended by final rulemaking at 12 A.A.R. 3061, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 409, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 21 A.A.R. 1246, effective September 5, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 435, effective February 5, 2019 (Supp. 19-1).
- R18-8-274. Reserved**
- R18-8-275. Reserved**
- R18-8-276. Reserved**
- R18-8-277. Reserved**
- R18-8-278. Reserved**
- R18-8-279. Reserved**
- R18-8-280. Compliance**
- A.** Inspection and entry. For purposes of ensuring compliance with the provisions of HWMA, any person who generates, stores, treats, transports, disposes of, or otherwise handles haz-

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ardous wastes, including used oil that may be classified as hazardous waste pursuant to A.R.S. Title 49, Chapter 4, Article 7 shall, upon request of any officer, employee, or representative of the DEQ duly designated by the Director, furnish information pertaining to such wastes and permit such person at reasonable times:

1. To enter any establishment or other place maintained by such person where hazardous wastes are or have been generated, stored, treated, disposed, or transported from;
  2. To have access to, and to copy all records relating to such wastes;
  3. To inspect any facilities, equipment (including monitoring and control equipment), practices, and operations, relating to such wastes;
  4. To inspect, monitor, and obtain samples from such person of any such wastes and of any containers or labeling for such wastes; and
  5. To record any inspection by use of written, electronic, magnetic and photographic media.
- B. Penalties.** A person who violates HWMA or any permit, rule, regulation, or order issued pursuant to HWMA is subject to civil and/or criminal penalties pursuant to A.R.S. §§ 49-923 through 49-925, as amended. Nothing in this Article shall be construed to limit the Director's or Attorney General's enforcement powers authorized by law including but not limited to the seeking or recovery of any civil or criminal penalties.
- C.** A certification statement may be required on written submittals to the DEQ in response to Compliance Orders or in response to information requested pursuant to subsection (A) of this Section. In addition, the DEQ may request in writing that a certification statement appear in any written submittal to the DEQ. The certification statement shall be signed by a person authorized to act on behalf of the company or empowered to make decisions on behalf of the company on the matter contained in the document.
- D. Site assessment plan.**
1. The requirement to develop a site assessment plan shall be contained in a Compliance Order. The Director may require an owner or operator to develop a site assessment plan based on one or more of the following conditions:
    - a. Unauthorized disposal or discharges of hazardous waste or hazardous waste constituents which have not been remediated.
    - b. Results of environmental sampling by the DEQ that indicate the presence of a hazardous waste or hazardous waste constituents.
    - c. Visual observation of unauthorized disposal or discharges which cannot be verified pursuant to § 262.11, § 264.13, or § 265.13 as not containing a hazardous waste or hazardous waste constituents.
    - d. Other evidence of disposal or discharges of hazardous waste or hazardous waste constituents into the environment which have not been remediated.
  2. The site assessment plan shall describe in detail the procedures to determine the nature, extent and degree of hazardous waste contamination in the environment.
  3. The site assessment plan shall be approved by the DEQ before implementation.
  4. The site assessment shall be conducted and the results shall be submitted to the DEQ within the time limitations established by the DEQ.
  5. The DEQ may request in writing that a site assessment plan be conducted. The DEQ will review a voluntarily submitted site assessment plan if the plan satisfies the requirements listed in subsections (D)(2) through (4).

**Historical Note**

Adopted effective July 24, 1984 (Supp. 84-4). Amended subsection (B) effective June 27, 1985 (Supp. 85-3). Former Section R9-8-1880 renumbered as Section R18-8-280, and subsection (A) amended effective May 29, 1987 (Supp. 87-2). Amended subsection (B) effective December 1, 1988 (Supp. 88-4). Amended October 11, 1989 (Supp. 89-4). Amended effective October 6, 1992 (Supp. 92-4). Amended effective December 2, 1994 (Supp. 94-4). Amended effective June 13, 1996 (Supp. 96-2). Amended by final rulemaking at 25 A.A.R. 435, effective February 5, 2019 (Supp. 19-1).

**ARTICLE 3. RECODIFIED**

*Title 18, Chapter 8, Article 3, consisting of Sections R18-8-301 through R18-8-305, R18-8-307, Table A, Exhibit 1, and Appendices A and B, recodified to Title 18, Chapter 13, Article 13, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).*

**R18-8-301. Recodified****Historical Note**

Adopted effective August 16, 1993 (Supp. 93-3). Amended effective March 24, 1994 (Supp. 94-1). Section recodified to A.A.C. R18-13-1301, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-302. Recodified****Historical Note**

Adopted effective August 16, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1302, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-303. Recodified****Historical Note**

Adopted effective August 16, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1303, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-304. Recodified****Historical Note**

Adopted effective August 16, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1304, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-305. Recodified****Historical Note**

Adopted effective August 16, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1305, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-306. Repealed****Historical Note**

Emergency rule adopted effective February 22, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency expired. Emergency rule adopted again effective May 26, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-2). Emergency expired. Emergency rule adopted again effective August 30, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 2, 1993 (Supp. 93-4). The permanent rule that was adopted effective December 2, 1993, was inadvertently published without the changes the agency made. Those changes appear here. (Supp. 95-4). Section repealed by summary rulemaking with an interim effective date of July 16, 1999, filed in the Office of the Secre-

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tary of State June 25, 1999 (Supp. 99-2). Interim effective date of July 16, 1999 now the permanent effective date (Supp. 99-4).

**R18-8-307. Recodified****Historical Note**

Emergency rule adopted effective December 21, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-4). Permanent rule adopted with changes effective March 24, 1994 (Supp. 94-1). Section recodified to A.A.C. R18-13-1307, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**Table A. Recodified****Historical Note**

Emergency rule adopted effective December 21, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-4). Permanent rule adopted with changes effective March 24, 1994 (Supp. 94-1). Table A recodified to 18 A.A.C. 13, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**Exhibit 1. Recodified****Historical Note**

Emergency rule adopted effective December 21, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-4). Permanent rule adopted with changes effective March 24, 1994 (Supp. 94-1). Exhibit 1 recodified to 18 A.A.C. 13, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**Appendix A. Recodified****Historical Note**

Adopted effective August 16, 1993 (Supp. 93-3). Appendix A recodified to 18 A.A.C. 13, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**Appendix B. Recodified****Historical Note**

Adopted effective August 16, 1993 (Supp. 93-3). Appendix B recodified to 18 A.A.C. 13, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**ARTICLE 4. RECODIFIED**

*Title 18, Chapter 8, Article 4, consisting of Section R18-8-402, recodified to Title 18, Chapter 13, Article 9, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).*

**R18-8-401. Expired****Historical Note**

Adopted effective December 21, 1977 (Supp. 77-6). Former Section R9-8-1711 renumbered without change as Section R18-8-401 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

**R18-8-402. Recodified****Historical Note**

Adopted effective December 21, 1977 (Supp. 77-6). Former Section R9-8-1717 renumbered without change as Section R18-8-402 (Supp. 87-3). Section recodified to A.A.C. R18-13-902, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**ARTICLE 5. RECODIFIED**

*Title 18, Chapter 8, Article 5, consisting of Sections R18-8-502 through R18-8-512, recodified to Title 18, Chapter 13, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).*

**R18-8-501. Expired****Historical Note**

Former Section R9-8-411 renumbered without change as Section R18-8-501 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

**R18-8-502. Recodified****Historical Note**

Former Section R9-8-412 renumbered without change as Section R18-8-502 (Supp. 87-3). Section recodified to A.A.C. R18-13-302, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-503. Recodified****Historical Note**

Former Section R9-8-413 renumbered without change as Section R18-8-503 (Supp. 87-3). Section recodified to A.A.C. R18-13-303, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-504. Recodified****Historical Note**

Former Section R9-8-414 renumbered without change as Section R18-8-504 (Supp. 87-3). Section recodified to A.A.C. R18-13-304, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-505. Recodified****Historical Note**

Former Section R9-8-415 renumbered without change as Section R18-8-505 (Supp. 87-3). Section recodified to A.A.C. R18-13-305, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-506. Recodified****Historical Note**

Former Section R9-8-416 renumbered without change as Section R18-8-506 (Supp. 87-3). Section recodified to A.A.C. R18-13-306, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-507. Recodified****Historical Note**

Former Section R9-8-421 renumbered without change as Section R18-8-507 (Supp. 87-3). Section recodified to A.A.C. R18-13-307, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-508. Recodified****Historical Note**

Amended effective August 6, 1976 (Supp. 76-4). Former Section R9-8-426 renumbered without change as Section R18-8-508 (Supp. 87-3). Section recodified to A.A.C. R18-13-308, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-509. Recodified**

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Former Section R9-8-427 renumbered without change as Section R18-8-509 (Supp. 87-3). Section recodified to A.A.C. R18-13-309, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-510. Recodified****Historical Note**

Former Section R9-8-428 renumbered without change as Section R18-8-510 (Supp. 87-3). Section recodified to A.A.C. R18-13-310, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-511. Recodified****Historical Note**

Former Section R9-8-431 renumbered without change as Section R18-8-511 (Supp. 87-3). Section recodified to A.A.C. R18-13-311, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-512. Recodified****Historical Note**

Amended effective August 6, 1976 (Supp. 76-4). Correction in spelling, paragraph (5), "feeding"; former Section R9-8-432 renumbered without change as Section R18-8-512 (Supp. 87-3). Section recodified to A.A.C. R18-13-312, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-513. Expired****Historical Note**

Adopted effective March 14, 1979 (Supp. 79-2). Former Section R9-8-433 renumbered without change as Section R18-8-513 (Supp. 87-3). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

**ARTICLE 6. RECODIFIED**

*Existing Sections in Article 6 recodified to 18 A.A.C. 13, Article 11 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).*

**R18-8-601. Expired****Historical Note**

Former Section R9-8-1211 renumbered without change as Section R18-8-601 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

**R18-8-602. Recodified****Historical Note**

Former Section R9-8-1212 renumbered without change as Section R18-8-602 (Supp. 87-3). Section R18-8-602 recodified to R18-13-1102 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-603. Recodified****Historical Note**

Former Section R9-8-1213 renumbered without change as Section R18-8-603 (Supp. 87-3). Section R18-8-603 recodified to R18-13-1103 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-604. Recodified****Historical Note**

Former Section R9-8-1214 renumbered without change as Section R18-8-604 (Supp. 87-3). Section R18-8-604 recodified to R18-13-1104 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-605. Expired****Historical Note**

Former Section R9-8-1215 renumbered without change as Section R18-8-605 (Supp. 87-3). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

**R18-8-606. Recodified****Historical Note**

Former Section R9-8-1216 renumbered without change as Section R18-8-606 (Supp. 87-3). Section R18-8-606 recodified to R18-13-1106 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-607. Expired****Historical Note**

Former Section R9-8-1221 renumbered without change as Section R18-8-607 (Supp. 87-3). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

**R18-8-608. Recodified****Historical Note**

Former Section R9-8-1222 renumbered without change as Section R18-8-608 (Supp. 87-3). Section R18-8-608 recodified to R18-13-1108 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-609. Expired****Historical Note**

Former Section R9-8-1223 renumbered without change as Section R18-8-609 (Supp. 87-3). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

**R18-8-610. Expired****Historical Note**

Former Section R9-8-1224 renumbered without change as Section R18-8-610 (Supp. 87-3). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

**R18-8-611. Expired****Historical Note**

Former Section R9-8-1225 renumbered without change as Section R18-8-611 (Supp. 87-3). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

**R18-8-612. Recodified****Historical Note**

Former Section R9-8-1231 renumbered without change as Section R18-8-612 (Supp. 87-3). Section R18-8-612 recodified to R18-13-1112 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-613. Recodified****Historical Note**

Former Section R9-8-1232 renumbered without change as Section R18-8-613 (Supp. 87-3). Section R18-8-613

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recodified to R18-13-1113 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-614. Recodified****Historical Note**

Former Section R9-8-1233 renumbered without change as Section R18-8-614 (Supp. 87-3). Section R18-8-614 recodified to R18-13-1114 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-615. Recodified****Historical Note**

Former Section R9-8-1234 renumbered without change as Section R18-8-615 (Supp. 87-3). Section R18-8-615 recodified to R18-13-1115 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-616. Recodified****Historical Note**

Former Section R9-8-1235 renumbered without change as Section R18-8-616 (Supp. 87-3). Section R18-8-616 recodified to R18-13-1116 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-617. Recodified****Historical Note**

Former Section R9-8-1236 renumbered without change as Section R18-8-617 (Supp. 87-3). Section R18-8-617 recodified to R18-13-1117 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-618. Recodified****Historical Note**

Former Section R9-8-1241 renumbered without change as Section R18-8-618 (Supp. 87-3). Section R18-8-618 recodified to R18-13-1118 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-619. Recodified****Historical Note**

Former Section R9-8-1242 renumbered without change as Section R18-8-619 (Supp. 87-3). Section R18-8-619 recodified to R18-13-1119 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-620. Recodified****Historical Note**

Former Section R9-8-1243 renumbered without change as Section R18-8-620 (Supp. 87-3). Section R18-8-620 recodified to R18-13-1120 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-621. Expired****Historical Note**

Former Section R9-8-1244 renumbered without change as Section R18-8-621 (Supp. 87-3). Section expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 15, 2000 (Supp. 00-1).

**ARTICLE 7. RECODIFIED**

*18 A.A.C. 8, Article 7, consisting of Sections R18-8-701 through R18-8-710, recodified to Title 18, Chapter 13, Article 12, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).*

**R18-8-701. Recodified****Historical Note**

Adopted effective July 6, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1201, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-702. Recodified****Historical Note**

Adopted effective July 6, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1202, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-703. Recodified****Historical Note**

Adopted effective July 6, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1203, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-704. Recodified****Historical Note**

Adopted effective July 6, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1204, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-705. Recodified****Historical Note**

Adopted effective July 6, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1205, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-706. Recodified****Historical Note**

Adopted effective July 6, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1206, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-707. Recodified****Historical Note**

Adopted effective July 6, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1207, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-708. Recodified****Historical Note**

Adopted effective July 6, 1993 (Supp. 93-3). Section recodified to A.A.C. R18-13-1208, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-709. Recodified****Historical Note**

Emergency rule adopted effective February 5, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency rule adopted again effective May 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-2). Emergency expired (Supp. 93-3). Emergency rule permanently adopted without change effective February 1, 1994 (Supp. 94-1). Section recodified to A.A.C. R18-13-1209, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-8-710. Recodified****Historical Note**

Emergency rule adopted effective February 5, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency rule adopted again effective May 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-2). Emergency expired (Supp. 93-3).

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Emergency rule permanently adopted without change effective February 1, 1994 (Supp. 94-1). Section recodified to A.A.C. R18-13-1210, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**ARTICLE 8. RESERVED****ARTICLE 9. RESERVED****ARTICLE 10. RESERVED****ARTICLE 11. RESERVED****ARTICLE 12. RESERVED****ARTICLE 13. RESERVED****ARTICLE 14. RESERVED****ARTICLE 15. RESERVED****ARTICLE 16. RECODIFIED**

*Article 16, consisting of Sections R18-8-1601 through R18-8-1614, recodified to 18 A.A.C. 13, Article 16 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).*

**R18-8-1601. Recodified****Historical Note**

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1601 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-1602. Recodified****Historical Note**

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1602 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-1603. Recodified****Historical Note**

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1603 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-1604. Recodified****Historical Note**

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1604 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-1605. Recodified****Historical Note**

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1605 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-1606. Recodified****Historical Note**

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1606 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-1607. Recodified****Historical Note**

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1607 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-1608. Recodified****Historical note**

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1608 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-1609. Recodified****Historical Note**

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1609 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-1610. Recodified****Historical Note**

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1610 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-1611. Recodified****Historical Note**

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1611 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-1612. Recodified****Historical Note**

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1612 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-1613. Recodified****Historical Note**

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1613 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-8-1614. Recodified****Historical Note**

Adopted effective May 30, 1995 (Supp. 95-2). Section recodified to R18-13-1614 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

## **Statutes authorizing rules in 18 A.A.C. 8 (2019)**

A.R.S. §§ 41-1003, 49-104(B)(4), 49-104(B)(17), 49-152(A), and 49-922

### 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.

### 49-104. Powers and duties of the department and director

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.
2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.
3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.
4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.
5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.
6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.
7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.
8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.
9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.
10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients

and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.

11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. The department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.

12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.

13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.

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

15. 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.

16. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter. This paragraph does not adversely affect standards adopted by an Indian tribe under federal law.

17. Provide administrative and staff support for the oil and gas conservation commission.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.

2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.

3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.

4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.

5. Contract with other agencies, including laboratories, in furthering any department program.

6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.

7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at those places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of 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 health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection I, paragraph 10.

13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules may:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. The department may establish by rule a fee as a condition of licensure, including a maximum fee. As part of the rulemaking process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. The department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited,

pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on:

(a) The direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.

(b) The availability of other funds for the duties performed.

(c) The impact of the fees on the parties subject to the fees.

(d) The fees charged for similar duties performed by the department, other agencies and the private sector.

18. Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the applicable provisions of title 27, chapter 4 relating to the oil and gas conservation commission.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203, except that state agencies are exempt from paying those fees that are not associated with the dredge and fill permit program established pursuant to chapter 2, article 3.2 of this title. For services provided under the dredge and fill permit program, a state agency shall pay either:

(a) The fees established by the department under the dredge and fill permit program.

(b) The reasonable cost of services provided by the department pursuant to an interagency service agreement.

2. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

3. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

#### 49-152. Soil remediation standards; restrictions on property use

A. Notwithstanding any other remediation levels established under this title, the director shall approve remediation levels calculated in accordance with this subsection and shall accomplish the following for remediation of contaminated soil to protect public health and the environment in accordance with the applicable provisions of this title and section 33-434.01:

1. Establish predetermined risk based standards by rule. At a minimum, separate standards shall be established for residential and nonresidential exposure assumptions. Until risk based remediation standards are formally established by rule, the director shall establish interim standards adopting:

(a) The Arizona health based guidance levels developed by the department of health services to include a health based standard for total petroleum hydrocarbons as the standards for residential uses.

(b) The guidance levels in subdivision (a) of this paragraph modified to reflect the United States environmental protection agency published assumptions for exposures that are not residential as the standards for nonresidential uses. The initial adoption of these interim standards shall be effective by December 15, 1995 and shall be deemed emergency rules pursuant to section 41-1026.

2. Issue guidance on methods for calculating case-by-case, site specific risk based remediation levels in accordance with risk assessment methodologies that are accepted in the scientific community and shall not preclude the use of newly developed risk assessment methodologies that are accepted in the scientific community.

B. The owner of a property may elect to remediate the property to meet a site specific residential or nonresidential risk based remediation standard or a predetermined residential or nonresidential risk based remediation standard. The property is suitable for unrestricted use if it has been remediated without the use of engineering or institutional controls to meet either of the following:

1. The predetermined residential risk based remediation standard.

2. A site specific risk based hazard index equal to or less than one or a risk of carcinogenic health effects that is less than or equal to the range of risk levels set forth in 40 Code of Federal Regulations section 300.430(e)(2)(i)(A)(2), based on residential exposure.

C. If the owner has elected to use an engineering or institutional control to meet the standards prescribed in subsection B of this section, or if the owner has elected to leave contamination on the property that exceeds the applicable residential standard for the property, the owner shall record in each county where the property is located an institutional control that consists of a restrictive covenant that is labeled "declaration of environmental use restriction" pertaining to the area of the property necessary to protect the public health and the environment. A person who is conducting a remedial action, remediation, corrective action or response action that requires an institutional or engineering control and who is not the owner of the property shall obtain written consent from the owner before implementing the institutional control or constructing the engineering control. On implementation of the institutional or engineering control, the owner shall record a declaration of environmental use restriction in each county where the property is located. If the institutional control or engineering control will affect right-of-way that is owned, maintained or controlled by a public entity for public benefit, the person shall also obtain the public entity's written consent before implementing the institutional control or constructing the engineering control. The declaration of environmental use restriction shall limit by legal description:

1. The area of the property where the institutional control or engineering control shall be maintained.

2. The area of the property to be restricted to nonresidential use, because contamination remains on the property above the standards prescribed in subsection B, paragraph 1 or 2 of this section.

D. At the written request of the owner of property that is subject to a declaration of environmental use restriction, the director shall determine whether release or modification of the declaration of environmental use restriction is appropriate. If a release has been requested, the director shall make this determination within sixty days after the date of the property owner's request. If the director determines that release of the declaration of environmental use restriction is appropriate, the director shall record in each county where the property is located a notice releasing the declaration of environmental use restriction. The declaration of environmental use restriction is perpetual unless released pursuant to this section. The director shall determine that release of a declaration of environmental use restriction is appropriate if the property has been remediated, without the use of institutional controls or engineering controls, to either:

1. Meet predetermined risk based remedial standards for residential exposure assumptions.

2. Present a risk based hazard index equal to or less than one from noncancer health effects and a risk estimate of carcinogenic health effects equal to or less than the range of risk levels set forth in 40 Code of Federal Regulations section 300.430(e)(2)(i)(A)(2).

E. The department shall establish a repository in the department listing sites remediated under programs administered by the department under this title. The repository shall include the name and address of the owner of the property, when the remediation was conducted, the legal description and street address of the property, the applicability of section 33-434.01, the type of financial assurance mechanism that is being used, if applicable, and a description of the purpose of the declaration of environmental use restriction.

F. When recorded, an owner's declaration of environmental use restriction under subsection B of this section is a covenant that runs with and burdens the property, binds the owner and the owner's heirs, successors and assigns and inures to the benefit of the department and the state. If notice of the declaration of environmental use restriction that includes a specific description of the area of the property that is subject to the declaration of environmental use restriction is contained in the repository maintained by the department pursuant to subsection E of this section, a declaration of environmental use restriction may not be extinguished, limited or impaired through any of the following:

1. Issuance of a tax deed.

2. Foreclosure of a tax lien.

3. Foreclosure of any mortgage, deed of trust or other encumbrance or lien on the property.

4. Adverse possession.

5. Exercise of eminent domain.

6. Application of the doctrine of abandonment, the doctrine of waiver or any other common law doctrine.

G. Each party to a declaration of environmental use restriction shall incorporate the terms of the declaration of environmental use restriction into any lease, license or other agreement that is signed by the party and that grants a right with respect to the property that is subject to the declaration of environmental use restriction. The incorporation may be in full or by reference.

H. A declaration of environmental use restriction is sufficient if it contains all of the following information:

1. A legal description and the address of the area of the property that is subject to the declaration.

2. The date that remediation was completed and a map of the area of the property that is subject to the declaration.

3. A description of the environmental contaminants that were the subject of the remediation, remedial action, corrective action or response action.

4. A statement that more detailed information is available at the department, including the address at which that information will be maintained.

5. A notarized signature of a department official indicating approval of the declaration of environmental use restriction.

6. The notarized signature of the owner.

I. If institutional controls are used in addition to a declaration of environmental use restriction to satisfy the requirements of this section, the declaration of environmental use restriction, in addition to the information required by subsection H of this section, shall include all of the following:

1. A statement documenting any requirements for maintenance of the institutional control, including a description of the institutional control and the reason it must remain in place to protect public health and the environment.

2. A statement indicating that if any person desires to cancel or modify the institutional control in the future, the person must obtain prior written approval from the department pursuant to this section.

3. A statement acknowledging the department's right of access to the property at all reasonable times to verify that institutional controls are being maintained.

J. If engineering controls are used to satisfy the requirements of this section, the declaration of environmental use restriction, in addition to the information required by subsection H of this section, shall include all of the following:

1. A statement of all requirements for maintenance of the engineering control including a description of the control, the date it was constructed and the reason it must remain in place to protect public health and the environment.

2. A statement that if any person desires to change the engineering controls in the future that person shall obtain prior written approval from the department.

3. A statement acknowledging the department's right of access to the property at all reasonable times to verify that engineering controls are being maintained.

4. A brief description of the engineering control plan and financial assurance mechanism prescribed by section 49-152.01, if applicable.

K. When the declaration of environmental use restriction is recorded or modified, an owner electing to use institutional or engineering controls to satisfy the requirements of this section shall pay the department a fee established by rule. If the control is an institutional control, the owner shall submit to the department a written report once each calendar year regarding the status of the institutional control. If the control is an engineering control, the owner shall maintain the engineering control on the property to ensure that it continues to protect public health and the environment and shall inspect each engineering control at least once each calendar year. Within thirty days after each inspection, the owner shall submit to the department a written report that:

1. Describes the condition of the engineering control.

2. States the nature and cost of all restoration made to the engineering control during the calendar year.

3. Includes current photographs of the engineering control.

4. Describes the status of the financial assurance mechanism prescribed by section 49-152.01, if applicable, and a certification that the financial assurance mechanism is being maintained.

L. The department shall provide a copy of the declaration of environmental use restriction to the local jurisdiction with zoning and development plan approval for the property. The receipt of this copy does not create any new obligation or confer additional powers on the local jurisdiction. A declaration of environmental use restriction does not authorize a use of property that is otherwise prohibited by zoning ordinances or other ordinances or laws. A declaration of environmental use restriction may include activity limitations and use restrictions that would otherwise be permitted by zoning ordinances or other ordinances or laws.

M. The department shall adopt rules as necessary to implement this section. These rules may be combined with any rules necessary to implement section 49-158.

N. The department may enter on the property at all reasonable times to assess the condition of each engineering control. When the department enters on property to assess the condition of an engineering control, the department shall:

1. Provide twenty-four hours' advance notice of the entry to the property owner, if practicable.
2. Allow the owner or an authorized representative of the owner to accompany the department representative.
3. Present photographic identification on entry of the property.
4. Provide the owner or an authorized representative of the owner with notice of the right to have a duplicate sample or split of any sample taken during the inspection if the duplicate or split of any sample would not prohibit an analysis from being conducted or render an analysis inconclusive.

O. Nothing in this section shall preclude the department from initiating an action under other provisions of state or federal law.

#### 49-922. Department rules and standards; prohibited permittees

A. The director shall adopt rules to establish a hazardous waste management program equivalent to and consistent with the federal hazardous waste regulations promulgated pursuant to subtitle C of the federal act. Federal hazardous waste regulations may be adopted by reference. The director shall not adopt a nonprocedural standard that is more stringent than or conflicts with those found in 40 Code of Federal Regulations parts 260 through 268, 270 through 272, 279 and 124. The director shall not identify a waste as hazardous, if not so identified in the federal hazardous waste regulations, unless the director finds, based on all the factors in 40 Code of Federal Regulations section 261.11(a)(1), (2), or (3), that the waste may cause or significantly contribute to an increase in serious irreversible, or incapacitating reversible, illness or pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed or otherwise managed.

B. These rules shall establish criteria and standards for the characteristics, identification, listing, generation, transportation, treatment, storage and disposal of hazardous waste within this state. In establishing the standards the director shall, where appropriate, distinguish between new and existing facilities. The criteria and standards shall include requirements respecting:

1. Maintaining records of hazardous waste identified under this article and the manner in which the waste is generated, transported, treated, stored or disposed.

2. Submission of reports, data, manifests and other information necessary to ensure compliance with such standards.

3. The transportation of hazardous waste, including appropriate packaging, labeling and marking requirements and requirements respecting the use of a manifest system, which are consistent with the regulations of the state and United States departments of transportation governing the transportation of hazardous materials.

4. The operation, maintenance, location, design and construction of hazardous waste treatment, storage or disposal facilities, including such additional qualifications as to ownership, continuity of operation, contingency plans, corrective actions and abatement of continuing releases, monitoring and inspection programs, personnel training, closure and postclosure requirements and financial responsibility as may be necessary and appropriate.

5. Requiring a permit for a hazardous waste treatment, storage or disposal facility including the modification and termination of permits, the authority to continue activities and permits existing on July 27, 1983 consistent with the federal hazardous waste regulations, and the payment of reasonable fees. The director shall establish and collect reasonable fees from the applicant to cover the cost of administrative services and other expenses associated with evaluating the application and issuing or denying the permit. After the effective date of this amendment to this section, the director shall establish by rule an application fee to cover the cost of administrative services and other expenses associated with evaluating the application and issuing or denying the permit, including a maximum fee. As part of the rule making process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the director shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the hazardous waste management fund established by section 49-927.

6. Providing the right of entry for inspection and sampling to ensure compliance with the standards.

7. Providing for appropriate public participation in developing, revising, implementing, amending and enforcing any rule, guideline, information or program under this article consistent with the federal hazardous waste program.

C. The director may refuse to issue a permit for a facility for storage, treatment or disposal of hazardous waste to a person if any of the following applies:

1. The person fails to demonstrate sufficient reliability, expertise, integrity and competence to operate a hazardous waste facility.

2. The person has been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the permit application.

3. In the case of a corporation or business entity, if any of its officers, directors, partners, key employees or persons or business entities holding ten per cent or more of its equity or debt liability has been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the permit application.

D. Nothing in this article shall affect the validity of any existing rules adopted by the director that are equivalent to and consistent with the federal hazardous waste regulations until new rules for hazardous waste are adopted.

E. Nothing in this article shall authorize the regulation of small quantity generators as defined by 40 Code of Federal Regulations section 261.5 in a manner inconsistent with the federal hazardous waste regulations. However, the director may require reports of any small quantity generator or group of small quantity generators regarding the treatment, storage, transportation, disposal or management of hazardous waste if the hazardous waste of such generator or generators may pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed or otherwise managed.

**DEPARTMENT OF ENVIRONMENTAL QUALITY (F20-0305)**

Title 18, Chapter 13, All Articles, Solid Waste Management



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** February 25, 2020

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

**FROM:** Council Staff

**DATE:** February 11, 2020

**SUBJECT:** Arizona Department of Environmental Quality  
Title 18, Chapter 13, Solid Waste Management

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This Five-Year-Review Report from the Department of Environmental Quality relates to rules in Title 18, Chapter 13, The rules cover the following:

**Article 2** - Solid Waste Definitions

**Article 3** - Refuse, and Other Objectionable Wastes

**Article 5** - Requirements for Solid Waste Facilities Subject to Self-Certification

**Article 7** - Solid Waste Facility Plan Review Fees

**Article 8** - General Permits

**Article 11** - Collection, Transportation, and Disposal of Human Excreta

**Article 12** - Waste Tires

**Article 13** - Special Waste

**Article 14** - Biohazardous Medical Waste and Discarded Drugs

**Article 16** - Best Management Practices for Petroleum Contaminated Soil

**Article 21** - Solid Waste Landfill Registration Fees

In the last 5YRR of these rules the Department indicated it would amend several of its rules to improve their overall clarity. The Department did not complete the proposed changes.

## **Proposed Action**

The Department is proposing to amend the following rules to improve their clarity, conciseness, understandability, effectiveness, and consistency with other rules and statutes:

**R18-13-201** - Land Application of Biosolids Exemption  
**Article 3** - Refuse, and Other Objectionable Wastes  
**R18-13-1301** - Definitions  
**R18-13-1302** - Special Waste Generator Manifesting Requirements  
**R18-13-1303** - Special Waste Shipper Manifesting Requirements  
**R18-13-1304** - Special Waste Receiving Facility Manifesting Requirements  
**R18-13-1405** - Biohazardous Medical Waste Treated On Sit  
**R18-13-1409** - Transportation; Transporter License; Annual Fee  
**R18-13-1412** - Treatment Facilities; Design and Operation  
**R18-13-1417** - Disposal Facilities; Operation  
**R18-13-1418** - Discarded Drugs  
**R18-13-1420** - Additional Handling Requirements for Certain Wastes  
**R18-13-1601** - Definitions  
**R18-13-1603** - Exemptions  
**R18-13-1604** - Waste Determination  
**R18-13-1607** - Facility Approval; Application  
**R18-13-1608** - General Design and Performance Standards  
**R18-13-1610** - Temporary Treatment Facility  
**R18-13-1613** - Disposal

The Department plans to address the issues mentioned in the report, and complete a rulemaking by February 2021, with the exception of Article 3. DEQ plans to complete a rulemaking to amend Article 3, by December 2021. The Department indicates that the rules in Article 3 would benefit from modernization due to the age of the rules, and want to provide stakeholders and local authorities an opportunity to discuss the rules and determine which rules need to be retained as is, clarified or deleted.

**1. Has the agency analyzed whether the rules are authorized by statute?**

Yes, the Department cites to both general and specific authority for these rules.

**2. Summary of the agency's economic impact comparison and identification of stakeholders:**

In 2018, more than 7.2 million tons of waste were disposed of in Arizona's 69 solid waste landfills. In addition to those solid waste landfills, the Solid Waste Program regulates over 130 transfer stations, 130 tire collection sites, 36 state registered medical waste transporters, five medical waste treatment facilities, one approved medical waste disposal facility, two medical waste storage and transfer facilities, seven facilities that have

registered with alternative medical waste treatment technologies, 28 special waste transporters, and more than 250 closed solid waste facilities.

The new or increased solid waste fees in the 2012 rulemaking were established with the statutory objectives of self-sufficiency and replacement of the General Fund subsidy. At the time of the last five-year review, the fees had not been in place long enough to determine if these objectives were met. The results after 7 years of those fees are clearer. The revenues gained from these fees in fiscal year 2019 are as follows:

- Self-certifying waste facilities (Article 5): \$33,000
- Hourly rate for processing solid waste facility plans (Article 7): \$48,600
- Solid waste general permits (Article 8): \$0
- Septage hauler vehicles (Article 11): \$58,000
- Waste tire sites (Article 12): \$12,000
- Special waste fees (Article 13 and Article 16): \$363,610
- Biohazardous medical waste transporters (Article 14): \$37,500
- Landfill registrations (Article 21): \$358,000

In terms of overall staffing, the fees established in the 2012 rulemaking successfully implemented the statutory objectives of self-sufficiency and replacement of the General Fund subsidy, but left little room for turnover and other disruptions.

Stakeholders include the Department, the general public, and businesses affiliated with the aforementioned entities regulated by the Department.

**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?**

Legislature requires all of the fees to be both “fairly assessed” and based on “[t]he direct and indirect costs of the department’s relevant duties” ... “related to issuing licenses.” Given that the fees and other burdens are the least possible, and the rules meet the objectives and produce benefits set by the authorizing legislation, the Department continues to believe that the costs are exceeded by the benefits of the very basic protection of human health and the environment contained in Chapter 13.

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

Yes. The Department indicates it received comments relating to 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 that the following rules need to be amended to improve their clarity, conciseness, understandability, effectiveness, and consistency with other rules and statutes:

R18-13-201 - Land Application of Biosolids Exemption  
R18-13-302 - Definitions  
R18-13-303 - Responsibility  
R18-13-304 - Inspections  
R18-13-305 - Collection Requirement  
R18-13-306 - Notices  
R18-13-308 - Frequency of Collection  
R18-13-309 - Place of Collection  
R18-13-310 - Vehicles  
R18-13-311 - Disposal General  
R18-13-312 - Methods of Disposal  
R18-13-703 - Review of Bill  
R18-13-1103 - General Requirements; Licensing Fees  
R18-13-1301 - Definitions  
R18-13-1302 - Special Waste Generator Manifesting Requirements  
R18-13-1401 - Individual Section Review  
R18-13-1417 - Disposal Facilities; Operation  
R18-13-1418 - Discarded Drugs  
R18-13-1601 - Definitions  
R18-13-1607 - Facility Approval; Application  
R18-13-1610 - Temporary Treatment Facility

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

Yes, the Department indicates that the rules are for the most part enforced as written with the exception of:

R18-13-307 - Storage  
R18-13-308 - Frequency of Collection  
R18-13-310 - Vehicles  
R18-13-312 - Methods of Disposal  
R18-13-1409 - Transportation; Transporter License; Annual Fee

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 the rules are not more stringent than the corresponding federal law, 40 CFR 501, 40 CFR 503, and 40 CFR 257. 2010

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Yes, the Department indicates they are in compliance with A.R.S. § 41-1037.

## 9. Conclusion

As mentioned above, The Department is proposing to amend several rules to improve their clarity, conciseness, understandability, effectiveness, and consistency with other rules and statutes. The Department indicates it plans to complete a rulemaking to address the issues identified in the report by February 2021. The Department is planning to complete a separate rulemaking, to address the issues identified in the report relating to Article 3, by December 2021.

Council staff followed up with the Department and asked them to provide an explanation or justification for their proposed timeframes. The Department informed staff that due to the nature of the proposed changes, they want to allow stakeholders and local authorities an opportunity to discuss the rules and determine which rules need to be kept, deleted, or amended. Council staff recommends approval of this report.



Janice K. Brewer  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007  
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Henry R. Darwin  
Director

December 20, 2019

VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)  
Ms. Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
100 N. 15<sup>th</sup> Avenue, Suite 305  
Phoenix, AZ 85007

Re: Five Year Review Report for 18 A.A.C. 13-Solid Waste Management, all Articles

Dear Ms. Sornsin:

Pursuant to A.R.S. § 41-1056 and A.A.C. R1-6-301, the Arizona Department of Environmental Quality submits the attached five-year-review report for Chapter 13 of Title 18, Arizona Administrative Code, to the Governor's Regulatory Review Council. I have included copies of the rules that were reviewed, the authorizing statutes, and the economic impact statements previously prepared on the rules.

There is no rule in Chapter 13 for which review was omitted with the intention that the rule expire under A.R.S. § 41-1056(J). Also, Chapter 13 does not contain any rule for which review was omitted because the Council rescheduled the review of the rule under A.R.S. § 41-1056(H). I certify that this agency is in compliance with A.R.S. § 41-1091.

Please do not hesitate to contact us if there are any questions we can answer for you regarding this report. If you have any questions, please contact Mark Lewandowski at 771-2230. Thank you for your assistance in reviewing the Department's rules.

Sincerely,

Misael Cabrera  
Director

Attachments

Southern Regional Office  
400 West Congress Street • Suite 433 • Tucson, AZ 85701  
(520) 628-6733

*Printed on recycled paper*

**FIVE-YEAR REVIEW**  
**A.A.C. TITLE 18, CHAPTER 13**  
**DEPARTMENT OF ENVIRONMENTAL QUALITY - SOLID WASTE MANAGEMENT**

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## OVERVIEW

18 A.A.C. 13 has 11 Articles and 80 Sections and applies to various categories of solid waste through the Arizona Department of Environmental Quality (ADEQ). Since the last five-year-review report was submitted in December 2014, ADEQ has not completed any regular rulemakings affecting this Chapter. However, three Articles with five Sections were allowed to expire under A.R.S. § 41-1056(J).

### I. Article 2, Solid Waste Definitions; Exemptions

#### A. Information That Is Identical for All Sections in Article 2

1. General and Specific Statutes Authorizing the Rules: The rules in Article 2 are authorized generally by A.R.S. §§ 41-1003, 49-104(B)(4), 49-705, and 49-761(A). The specific statute authorizing these rules is A.R.S. § 49-701.01(C).

2. Objective and purpose: The purpose of this Article is to list the substances the Director exempts from the definition of solid waste found at A.R.S. § 49-701.01(A). The two rules in this Article were adopted as an exempt rulemakings as authorized in A.R.S. § 49-701.01(C), which allows any person to submit a petition to the Director to exempt a substance from the definition of solid waste. Under A.R.S. § 49-701.01(C), the petitioner must demonstrate to the director that the substance is unlikely to cause or substantially contribute to a threat to the public health or the environment.

3. Effectiveness of the rules in achieving their objective: The rules are effective.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: The rules in Article 2 are consistent with the rules and statutes of Arizona and the United States. See 40 CFR 501, State Sludge Management Program Regulations, and 40 CFR 503, Standards for the Use or Disposal of Sewage Sludge.

5. Status of Agency enforcement policy regarding the rules: All of the rules in Article 2 are currently enforced by the Department.

6. Clarity, conciseness, and understandability of the rules: The rules are clear, concise, and understandable.

7. Written criticisms of the rule received within the last five years: None received.

8. Current Economic, small business, and consumer impact of the rules as compared to the economic, small business, and consumer impact statement prepared at last rule adoption:

The rules in Article 2 did not require a cost benefit determination or an economic impact statement when promulgated because they were exempt from the requirements of Title 41, Chapter 6.

Article 2 contains an exemption from the definition of solid waste for biosolids applied according to state rules governing the land application of biosolids. This exemption avoids dual regulation of the land application of biosolids and therefore reduces unnecessary regulatory burdens. Article 2 also contains an exemption for small accidental releases of coal slurry from pipeline leaks. The impact of the exemptions in Article 2 is deregulatory, and continues to result in less regulatory cost. ADEQ believes that the benefits exceed the costs for these rules since they are deregulatory and there are no future ADEQ costs to maintaining the rules.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states: No analysis was submitted for either of the rules in Article 2.

10. Completion of previous proposed courses of action: In the last five-year review report on this Article, ADEQ noted incorrect citations in R18-13-201 that it would address when the moratorium expired. The incorrect citations still exist and are discussed in R18-13-201, below.

11. Cost benefit determination; least burden and cost: The rules in Article 2 did not require a cost benefit determination or an economic impact statement when promulgated. ADEQ believes that the benefits exceed the costs for these rules since they are deregulatory and there are no future ADEQ costs to maintaining the rules. Much of the legwork and research for the threat determination was completed by the petitioners. In addition, once the director found that the substance is unlikely to cause or substantially contribute to a threat to the

public health or the environment, the cost to the public is by definition determined to be zero or negligible. The burden and cost to ADEQ for the determinations and rulemakings in this Article were the least necessary to determine that the substances were unlikely to pose a threat.

12. Stringency Compared to Corresponding Federal Law: Provisions of federal law apply to sludge from wastewater treatment facilities, known as biosolids. ADEQ's only solid waste rule dealing with biosolids is R18-13-201. R18-13-201 exempts certain biosolids from the definition of solid waste and refers to rules in 18 A.A.C. 9. Biosolids were regulated by Chapter 13, Article 15 as late as 2001, but those rules were recodified to Chapter 9, Article 10, where they are administered by ADEQ's Water Quality Division. This rule is no more stringent than corresponding federal law. See 40 CFR 501, State Sludge Management Program Regulations, and 40 CFR 503, Standards for the Use or Disposal of Sewage Sludge.

13. For Rules Adopted After July 29, 2010 That Require the Issuance of a Regulatory Permit, License or Agency Authorization, Indicate Whether the Rule Complies with A.R.S. § 41-1037 (Related to Issuing General Permits) The rules in this Article were adopted before July 29, 2010.

14. Proposed course of action: ADEQ proposes to correct the citations in R18-13-201 in a regular rulemaking to be submitted to GRRC in February 2021.

## **B. Individual Section Review**

### **R18-13-201. Land Application of Biosolids Exemption**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is A.R.S. § 49-701.01(C).

2. Objective of the rule: The rule exempts biosolids originating from domestic sewage from the definition of solid waste when the biosolids are applied according to state rules governing the land application of biosolids. The exemption was based on a 1997 petition from Pima County Wastewater Management Department and avoids unnecessary overlapping environmental regulation under water quality and waste statutory authority.

6. Clarity, conciseness, and understandability of the rule: The rule is generally clear, concise, and understandable. However, the rule contains citations to Chapter 13, Article 15

that are incorrect due to the recodification of Article 15, which is now found at 18 A.A.C. 9, Article 10. This recodification corresponded to a shift of programmatic responsibility for regulating the land application of biosolids from the Waste Programs Division to the Water Quality Division.

10. Completion of previous proposed courses of action: The approved 2014 report stated that there was no proposed course of action due to the rulemaking moratorium.

12. Stringency Compared to Corresponding Federal Law: Provisions of federal law apply to sludge from wastewater treatment facilities, known as biosolids. ADEQ's only solid waste rule dealing with biosolids is R18-13-201, which exempts it as a solid waste and refers to applicable rules in 18 A.A.C. 9. Biosolids were regulated by Chapter 13, Article 15 as late as 2001, but those rules were recodified to Chapter 9, Article 10, where they are administered by ADEQ's Water Quality Division under a biosolids program approved by EPA. There is no corresponding federal law for the exemption from a solid waste definition.

14. Proposed course of action: ADEQ plans to correct the citations by regular rulemaking and expects to submit the rule to GRRC in February 2021.

### **R18-13-202. Coal Slurry Discharges from Pipeline Leaks Exemption**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is A.R.S. § 49-701.01(C).

2. Objective of the rule: The rule establishes an exemption from the definition of solid waste for certain accidental releases of coal slurry from pipeline leaks. Black Mesa Pipeline, Inc. petitioned the Department in 1999, to approve a statewide exemption for certain coal slurry discharges from pipelines. The Director determined that the discharges, under the conditions described in the rule, were unlikely to cause or substantially contribute to a threat to public health or the environment.

3. Effectiveness of the rule in achieving its objective: The pipeline for which this rule was requested was discontinued and removed in 2005 when the electric generating station for which it was built in 1970 (Mojave Generating Station in Laughlin, NV) was closed.

However, the right of way still exists and the pipeline was "removed" under rules that allow

some sections of the pipeline to remain. Although there are no other coal slurry pipelines in Arizona or in the United States, the rule is still effective for this pipeline.

8. Current Economic, small business, and consumer impact of the rules as compared to the economic, small business, and consumer impact statement prepared at last rule adoption:

This rule was adopted by an exempt rulemaking and no economic impact statement was prepared for the rule. The rule is a slight economic incentive for the pipeline to be restored or for a future coal industry partner to operate a coal slurry pipeline.

14. Proposed course of action: None.

## **II. Article 3, Refuse and Other Objectionable Wastes**

### **A. Information That Is Identical for All Sections in Article 3**

1. General and Specific Statutes Authorizing the Rules: The rules in Article 3 are authorized generally by A.R.S. §§ 41-1003, 49-104(B)(4), 49-705, and 49-761(A). The specific statute authorizing the rules is A.R.S. § 49-761(I).

2. Objective and purpose: This Article was originally adopted in 1964 under A.R.S. § 36-136, a statutory provision that broadly identified the public health authority to be exercised by the director of the Arizona Department of Health Services. This authority and the rules were transferred to ADEQ in 1986. The Article was created to regulate management of solid waste from its point of generation to its ultimate disposal. All eleven Article 3 sections were adopted before ADEQ's creation and have not been changed since. All eleven sections could be updated and modernized, if still relevant, or possibly removed if no longer relevant. More information is included for each rule in the individual section review.

3. Effectiveness of the rules in achieving their objective: Unless otherwise stated in an individual Section review, the rules in Article 3 are effective in achieving their individual objectives.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: Unless otherwise stated in an individual Section review, the rules in Article 3 are consistent with the rules and statutes of

Arizona and the United States.

5. Status of Agency enforcement policy regarding the rules: Unless otherwise stated in an individual Section review, the rules in Article 3 are currently enforced by the Department, and in some cases by counties through delegation agreements.

6. Clarity, conciseness, and understandability of the rules: Unless otherwise stated in an individual section review, the rules are clear, concise, and understandable.

7. Written criticisms of the rule received within the last five years: See R18-13-308.

8. Current Economic, small business, and consumer impact of the rules as compared to the economic, small business, and consumer impact statement prepared at last rule adoption: Article 3, Refuse and Other Objectionable Wastes, dates back to 1964 and has not been changed since. It was transferred to ADEQ in 1987. It is probable that none of the rules in this Article had such a statement prepared for them when they were adopted. If such a statement was prepared, it is unavailable. ADEQ enforces Article 3 throughout the state directly with its own employees and through delegation agreements between ADEQ and 13 of Arizona's 15 counties.

The variance procedure written into the rule at R18-13-308 has addressed economic need and changing conditions. Since 2006, ADEQ has issued 20 frequency of collection variances under R18-13-308. In each case, ADEQ determines that the submitted plan will address environmental health goals, and the variance allows the collection agency and ultimately the local government and citizens to save money.

Other than a general need for modernization, ADEQ has not noted any regulatory gap in Article 3. When the rules are modernized, they will be clarified, and put in modern language, but ADEQ expects that there will be no significant economic impacts for the regulated community, and only a moderate one for ADEQ based on rulemaking activities. ADEQ believes the economic impacts of Article 3 today are no greater than those when the Article was created in relation to the day to day and month to month expenses at that time. Article 3 still provides for sanitary conditions at premises, business establishments and industries,

storage of refuse, collection of refuse including frequency of collection, notices to homeowners about requirements for storage and collection of refuse, and standards for waste collection vehicles that are not addressed by any other more specific statutes or rules. As mentioned previously, many of these Article 3 duties are delegated to counties, with standards for enforcement and enforcement personnel placed in the delegation agreements. The costs associated with these requirements have been absorbed year to year by persons who generate, store, collect, transport or otherwise handle solid waste. ADEQ believes that the benefits of these rules exceed the costs.

There may be opportunities discovered for reducing the burdens on regulated entities as the modernization rulemaking for Article 3 takes place. ADEQ cannot state at this time that the current Article 3 rules place the least burden on persons regulated by the rules necessary to achieve their objectives and those of A.R.S. § 49-761(I).

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states: No analysis was submitted for any of the rules in Article 3.

10. Completion of previous proposed courses of action: The last approved five-year review report on this Article stated that there was “[n]o proposed course of action due to the rulemaking moratorium.”

11. Cost benefit determination; least burden and cost: The rules in Article 3 did not require this analysis or an economic impact statement when promulgated. See Appendix A.

12. Stringency Compared to Corresponding Federal Law: There is no corresponding federal law.

13. For Rules Adopted After July 29, 2010 That Require the Issuance of a Regulatory Permit, License or Agency Authorization, Indicate Whether the Rule Complies with A.R.S. § 41-1037 (Related to Issuing General Permits) The rules in this Article were adopted before July 29, 2010.

14. Proposed course of action: Article 3 contains numerous requirements for such items as

ashes, large dead animals and manure from pens, stables and yards. These may have been issues as Arizona and Phoenix were entering the second half of the twentieth century but they are no longer as relevant in parts of the state. Manure from industrial farming such as concentrated animal feedlot operations is covered only minimally. Enforcement of many Article 3 provisions is done by Arizona counties who are acting under delegation agreements with ADEQ. As described below, the Article contains rules that would benefit from modernization and to the extent relevant, clarification. After an exemption from the rulemaking moratorium, ADEQ plans to schedule discussions with stakeholders and local authorities to determine what parts of Article 3 need to be retained as is, clarified, or deleted. Due to the age of these rules, ADEQ believes it should update these rules in a rulemaking separate from other Chapter 13 Articles. ADEQ will submit a request to the Governor for such a rulemaking in 2020 and a rule to GRRC in December, 2021.

### **C. Individual Section Review**

#### **R18-13-302. Definitions**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-761(I).
2. Objective of the rule: The rule's objective is to provide definitions necessary for the administration of 18 A.A.C 13, Article 3.
3. Effectiveness of the rule in achieving the objective: The necessity for subdividing solid waste into various categories such as “garbage”, “refuse”, and “rubbish” should be reevaluated when this Article is updated.
6. Clarity, conciseness, and understandability of the rule: The definition of “approved” as “acceptable to the Department” causes other provisions in the Article to be vague. Consider deleting the definition and providing specificity as required in individual Sections. The same definition of “approved” was deleted by ADEQ from this Chapter’s Article 11 in 2003.
14. Proposed course of action: This Section could be updated and modernized, if still relevant, or removed if no longer relevant. ADEQ will submit a request to the Governor to update or remove this rule in 2020, hold stakeholder meetings in 2021, and submit a rulemaking to GRRC revising this Article in December, 2021.

### **R18-13-303. Responsibility**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-761(I).

2. Objective of the rule: The rule establishes responsibilities of owners, agents or occupants of premises for unsanitary or dangerous conditions related to onsite refuse or other objectionable waste.

3. Effectiveness of the rule in achieving the objective: This rule is only partially effective in achieving its objective because it needs to be clarified and modernized. It has been unchanged since at least 1980.

6. Clarity, conciseness, and understandability of the rule: Subsection (D) is not clear and understandable owing in part to the use of the undefined terms “dangerous” and “harmless”. Responsibility of the undefined “collection agency” for disposal of refuse accepted for collection is not covered directly.

14. Proposed course of action: This Section could be updated and modernized, if still relevant, or removed if no longer relevant. ADEQ will submit a request to the Governor to update or remove this rule in 2020, hold stakeholder meetings in 2021, and submit a rulemaking to GRRC revising this Article in December, 2021.

### **R18-13-304. Inspection**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-761(I).

2. Objective of the rule: The rule establishes authority to inspect all buildings or structures, processes, equipment or vehicles used for the storage, collection, transportation, disposal, or reclamation of refuse.

6. Clarity, conciseness, and understandability of the rule: The last “or” in the rule should probably be “of”.

14. Proposed course of action: This Section could be updated and modernized, if still relevant, or removed if no longer relevant. ADEQ will submit a request to the Governor to update or remove this rule in 2020, hold stakeholder meetings in 2021, and submit a rulemaking to GRRC revising this Article in December, 2021.

**R18-13-305. Collection Required**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-761(I).

2. Objective of the rule: The rule establishes what refuse is required to be accepted and what may be accepted at the discretion of the collection agency.

6. Clarity, conciseness, and understandability of the rule: Where “refuse collection service is available” is not clear. Subsection (A) appears to be minimum standards for operating a public or private collection service in Arizona and those standards may no longer be appropriate for statewide application.

14. Proposed course of action: This Section could be updated and modernized, if still relevant, or removed if no longer relevant. ADEQ will submit a request to the Governor to update or remove this rule in 2020, hold stakeholder meetings in 2021, and submit a rulemaking to GRRC revising this Article in December, 2021.

**R18-13-306. Notices**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-761(I).

2. Objective of the rule: The rule requires that collection agencies notify their customers about the requirements governing the storage and collection of refuse.

6. Clarity, conciseness, and understandability of the rule: “Collection agency” is undefined.

14. Proposed course of action: This Section could be updated and modernized, if still relevant, or removed if no longer relevant. ADEQ will submit a request to the Governor to update or remove this rule in 2020, hold stakeholder meetings in 2021, and submit a rulemaking to GRRC revising this Article in December, 2021.

**R18-13-307. Storage**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-761(I).

2. Objective of the rule: The rule establishes minimum requirements for the storage of refuse.

5. Status of Agency enforcement policy regarding the rules: R18-13-307(A) requires property owners to supply suitable containers for “refuse” or garbage. This is not enforced.

14. Proposed course of action: This Section could be updated and modernized, if still relevant, or removed if no longer relevant. ADEQ will submit a request to the Governor to update or remove this rule in 2020, hold stakeholder meetings in 2021, and submit a rulemaking to GRRC revising this Article in December, 2021.

### **R18-13-308. Frequency of Collection**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-761(I).

2. Objective of the rule: The rule establishes minimum requirements for the frequency of the collection of refuse and other objectionable wastes, and establishes conditions under which ADEQ may grant a variance from the twice weekly frequency requirement for the collection of garbage.

5. Status of Agency enforcement policy regarding the rules: ADEQ enforces this rule, with the exception of Maricopa and Pima counties, who are delegated the granting of refuse collection frequency variances for all commercial accounts and rural residential areas.

6. Clarity, conciseness, and understandability of the rule: “Collection agency” is undefined. Subsection (A) implies the collection agency has “rules” setting the frequency of collection. The procedure for the variance involves the collection agency, the local health department, the Department and a submitted plan. The rule could be modernized and clarified.

7. Written criticisms of the rule received within the last five years: In response to a five year review survey for this Chapter that ADEQ emailed to 3,300+ solid waste stakeholders on November 13, 2019, ADEQ received a comment to change the default requirement for garbage collection in this rule from twice a week to once a week.

No other written criticisms were received.

14. Proposed course of action: This Section could be updated and modernized, if still relevant, or removed if no longer relevant. ADEQ will submit a request to the Governor to update or remove this rule in 2020, hold stakeholder meetings in 2021, and submit a rulemaking to GRRC revising this Article in December, 2021.

### **R18-13-309. Place of Collection**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-761(I).
2. Objective of the rule: The rule establishes minimum requirements for the placement of refuse on a property for collection.
6. Clarity, conciseness, and understandability of the rule: “Collection agency” is undefined and is a confusing term. It is sometimes the local government in cooperation with the current “collection agency” that specifies the place of collection.
14. Proposed course of action: This Section could be updated and modernized, if still relevant, or removed if no longer relevant. ADEQ will submit a request to the Governor to update or remove this rule in 2020, hold stakeholder meetings in 2021, and submit a rulemaking to GRRC revising this Article in December, 2021.

### **R18-13-310. Vehicles**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-761(I).
2. Objective of the rule: The rule establishes minimum requirements for the construction, maintenance, and sanitary requirements of vehicles used for collection and transportation of garbage or refuse.
6. Clarity, conciseness, and understandability of the rule: It is sometimes the local government in cooperation with the current collection agency that sets standards for vehicles. Rule could clarify its applicability where local government has also acted.
14. Proposed course of action: This Section could be updated and modernized, if still relevant, or removed if no longer relevant. ADEQ will submit a request to the Governor to update or remove this rule in 2020, hold stakeholder meetings in 2021, and submit a rulemaking to GRRC revising this Article in December, 2021.

### **R18-13-311. Disposal; General**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in

this report, the specific statutory authority for this rule is at A.R.S. § 49-761(I).

2. Objective of the rule: The rule establishes general minimum requirements for disposal of refuse.

5. Status of Agency enforcement policy regarding the rules: Subsection (A) seems to prohibit disposal of refuse by any method not included in Article 3. Given the age of Article 3, ADEQ is not certain that this is being comprehensively enforced.

6. Clarity, conciseness, and understandability of the rule: The second sentence in subsection (A) is not clear. The reference to A.R.S. § 9-441 in subsection (C) is not clear because the statute no longer exists.

14. Proposed course of action: This Section could be updated and modernized, if still relevant, or removed if no longer relevant. ADEQ will submit a request to the Governor to update or remove this rule in 2020, hold stakeholder meetings in 2021, and submit a rulemaking to GRRC revising this Article in December, 2021.

#### **R18-13-312. Methods of Disposal**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-761(I).

2. Objective of the rule: The rule establishes requirements further regulating specific methods of disposal of refuse. The methods addressed include sanitary landfill, incineration, composting, garbage grinding, and manure disposal.

4. Consistency of the rule with state and federal statutes and rules: To the extent that this rule purports to apply to landfills, incinerators and composting facilities, it has been superseded by statutory provisions that now provide, in some detail, the manner in which ADEQ is to regulate "solid waste facilities." See A.R.S. § 49-761(A) through (H), (J) through (M); A.R.S. §§ 49-762, 49-762.01, 49-762.02, 49-762.03, 49-762.04, 49-762.05, 49-762.06, 49-762.07, and 49-762.08. ADEQ believes that A.R.S. § 49-761(I) may still authorize provisions relating to garbage grinding and manure disposal.

5. Status of Agency enforcement policy regarding the rules: ADEQ does not enforce the subsections on hog feeding or manure disposal.

6. Clarity, conciseness, and understandability of the rule: The reference to A.R.S. Title 24 in subsection (5)(c) is not clear since that Title has been repealed.

7. Written criticisms of the rule received within the last five years: In response to a five year review survey for this Chapter that ADEQ emailed to 3,300+ solid waste stakeholders on November 13-2019, ADEQ received a comment that it was not clear if industrial composting operations at concentrated animal feeding operations (CAFOs) are exempt from the requirements in R18-13-312(3).

14. Proposed course of action: This Section could be updated and modernized, if still relevant, or removed if no longer relevant. ADEQ will submit a request to the Governor to update or remove this rule in 2020, hold stakeholder meetings in 2021, and submit a rulemaking to GRRC revising this Article in December, 2021.

### **III. Article 5, Requirements for Solid Waste Facilities Subject to Self-Certification**

#### **A. Individual Section Review**

##### **R18-13-501. Solid Waste Facilities Requiring Self-Certification; Registration Fees**

1. Statute(s) authorizing the rule: In addition to the general authority for this rule in A.R.S. §§ 41-1003, 49-104(B)(4), 49-705, and 49-761(A), the specific authority is at A.R.S. § 49-762.05.

2. Objective of the rule: The rule establishes a registration process for this category of solid waste facilities with timelines and fees.

3. Effectiveness of the rule in achieving its objective: The rule was created in 2012 to codify a registration process and establish a fee. It has resulted in fees proportionately related to inspection of self-certified facilities and administration of the self-certification and registration program.

4. Consistency of the rule with state and federal statutes and rules: The rule is consistent with state statutes and rules. No federal laws apply.

5. Status of Agency enforcement policy regarding the rule: The rule is enforced.

6. Clarity, conciseness, and understandability of the rule: The rule is clear, concise and understandable.

8. Current Economic, small business, and consumer impact of the rule as compared to EIS at last rule adoption: There are 19 self-certification tire sites and a similar number of large transfer facilities in this category. ADEQ has determined that the fees collected are sufficient

for and proportionate to the resources needed for regulation of these sites and facilities. In addition, this fee is frozen by a legislative moratorium at A.R.S. § 49-762.05(H). See additional discussion in Appendix A.

11. Cost benefit determination; least burden and cost: As shown in Appendix A, the fees in this rule are the least possible, while the rule meets the objectives and produces the benefits set by the authorizing legislation. ADEQ believes that the costs are exceeded by the benefits of registration and oversight of transfer facilities and tire sites. See Appendix A.

13. Compliance with A.R.S. § 41-1037: This rule was adopted after July 29, 2010, but did not require issuance of a regulatory permit, license or agency authorization. By definition, these facilities do not need authorization, because they self-certify.

14. Proposed course of action: No change to the rule.

#### **IV. Article 7, Solid Waste Facility Review Fees**

##### **A. Information That Is Identical for All Sections in Article 7**

1. General and Specific Statutes Authorizing the Rules: The rules in Article 7 are authorized generally by A.R.S. §§ 41-1003, 49-104(B)(4), 49-705, and 49-761(A) and specifically by A.R.S. §§ 49-762.03(F) and 49-857(C).

2. Objective and purpose: The purpose of Article 7 is to establish fees and administrative mechanisms for collecting fees from applicants for solid waste facility plan approval. Owners and operators of solid waste land disposal facilities, which include non-municipal solid waste landfills, biosolids processing facilities, medical waste facilities, special waste facilities, municipal solid waste landfills, commercial or government-owned household waste composting facilities, and certain waste tire collection facilities are required to obtain facility plan approval from ADEQ under A.R.S. § 49-762. Under A.R.S. §§ 49-762.03(F) and 49-857(C), ADEQ is authorized to establish fees by rule, for the approval of the plan. Further information is included for each rule in the individual section review.

3. Effectiveness of the rules in achieving their objective: The rules in Article 7 are effective in achieving their individual objectives.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: The rules in Article 7 are consistent with the rules and statutes of Arizona and the United States.

5. Status of Agency enforcement policy regarding the rules: The rules in Article 7 are currently enforced by the Department.
6. Clarity, conciseness, and understandability of the rules: Unless otherwise stated in an individual section review, ADEQ has determined that the rules are clear, concise, and understandable.
7. Written criticisms of the rule received within the last five years: If a rule in Article 7 has received written criticism in the last five years, the criticisms are noted in the individual section review.
8. Current Economic, small business, and consumer impact of the rules as compared to the economic, small business, and consumer impact statement prepared at last rule adoption: ADEQ has performed dozens of plan approvals over the last five years. ADEQ has determined that the fees collected are sufficient for and proportionate to the resources needed for regulation of these sites and facilities. In addition, this fee is frozen by legislative moratorium. See additional discussion in Appendix A.
9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states: No analysis was submitted for any of the rules in Article 7.
10. Completion of previous proposed courses of action: In the last five-year review report on this Article, ADEQ noted an issue in R18-13-703 that it would address when the moratorium expired. The issue with this Section still exists and is discussed below.
11. Cost benefit determination; least burden and cost: As shown in Appendix A, the fees in these rules are the least possible, while the rule meets the objectives and produce the benefits set by the authorizing legislation. ADEQ believes that the costs are exceeded by the benefits of recovering the costs of reviewing solid waste facility plans. See Appendix A.
12. Stringency Compared to Corresponding Federal Law: There are no federal laws corresponding to the rules in Article 7.
13. For Rules Adopted After July 29, 2010 That Require the Issuance of a Regulatory Permit, License or Agency Authorization, Indicate Whether the Rule Complies with A.R.S. § 41-1037 (Related to Issuing General Permits) The rules in this Article do not require the issuance of a permit.
14. Proposed course of action: See R18-13-703.

## **B. Individual Section Review**

### **R18-13-701. Definitions**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762.03(F) and 49-857(C).
2. Objective of the rule: The rule's objective is to provide definitions necessary for the administration of the Article.

### **R18-13-702. Solid Waste Facility Plan Review Fees**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762.03(F), 49-762.06 and 49- 857(C).
2. Objective of the rule: The rule's objective is to provide plan review fee schedules and other provisions necessary for the administration and collection of plan review fees.
3. Effectiveness of the rule in achieving its objective: The rule was updated in 2012 to recover ADEQ's then current costs. ADEQ has studied revenues and expenditures under this rule to determine whether it has resulted in sufficient revenues to cover costs.
7. Written criticisms of the rule received in the last five years: None
8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption: ADEQ received a little over \$80,000 in fee revenue from this Section in FY 13 and in FY14. In FY 19, revenue from these activities was \$48,600. These revenues fluctuate based on who applies for plan approval in a given year. However, because the fees are per hour and based on ADEQ hours spent processing the plan approval, ADEQ has determined that the fees collected are currently sufficient for and proportionate to the resources needed for the duties related to these sites and facilities. In addition, this fee is frozen by legislative moratorium. (A.R.S. § 49-762.03(F)) See also Appendix A.
11. Cost benefit determination; least burden and cost: See Appendix A.
14. Proposed course of action: No change to the rule is necessary.

### **R18-13-703. Review of Bill**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-762.03(F) and A.R.S. § 49-857(C).
2. Objective of the rule: The rule's objective is to provide a process for informal review of a disputed bill for plan review fees.
4. Consistency of the rules with state and federal, statutes and rules: This Section contains procedural language and timelines for an informal review and final decision regarding a final bill “for plan review and issuance or denial of a solid waste facility plan approval”. The Section’s language directs the appeal of the Department’s final decision to statutes providing for judicial review of administrative actions and appears to bypass the Uniform Administrative Appeal Procedures in in Title 41, Chapter 6, Article 10. Subsection (B) should say the final decision is an appealable agency action and subject to review according to Title 41, Chapter 6, Article 10, Arizona Revised Statutes.
6. Clarity, conciseness, and understandability of the rule: In administering R18-13-703(B), the Department regards the Director's final decision on the correctness of a bill for plan review fees as an appealable agency action under A.R.S. Title 41, Chapter 6, Article 10, Uniform Administrative Appeals Procedures. ADEQ believes that the current rule could be clarified by indicating in the rule that the final decision is an appealable agency action.
10. Completion of previous proposed courses of action: In the last five year report, ADEQ also stated that the rule could be clarified by indicating that the final decision in subsection (B) was an appealable agency action. Through an oversight, this change was not proposed in ADEQ’s 2012 rulemaking amending this section. After close of comment, the change was deemed insufficiently related to the rulemaking’s focus on fees to make without additional notice and comment.
14. Proposed course of action: ADEQ will submit a rule to GRRC correcting the appeal citation in subsection (B) in February 2021.

## **V. Article 8, General Permits**

### **A. Information That Is Identical for All Sections in Article 8**

1. General and Specific Statutes Authorizing the Rules: The rules in Article 8 are authorized generally by A.R.S. §§ 41-1003, 49-104(B)(4), 49-705, and 49-761(A). The specific statute authorizing rule is A.R.S. § 49-706.

2. Objective and purpose: Included for each rule in the individual section review.
3. Effectiveness of the rules in achieving their objective: Both rules in Article 8 are effective in achieving their individual objectives.
5. Status of Agency enforcement policy regarding the rules: The rules in Article 8 are currently enforced by the Department.
6. Clarity, conciseness, and understandability of the rules: ADEQ believes that the rules are clear, concise, and understandable.
7. Written criticisms of the rule received within the last five years: No comments were received for this Article.
8. Current Economic, small business, and consumer impact of the rules as compared to the economic, small business, and consumer impact statement prepared at last rule adoption: ADEQ has issued one general permit, which is in R18-13-802. There are currently eight mining landfills authorized to operate under this general permit. ADEQ has determined that the fees collected to date are sufficient for and proportionate to the resources needed for regulation of these sites and facilities. In addition, this fee is frozen by legislative moratorium. (A.R.S. § 49-706(B)) See additional discussion in Appendix A.
9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states: No analysis was submitted for either of the rules in Article 8.
10. Completion of previous proposed courses of action: There were no proposed courses of action.
11. Cost benefit determination; least burden and cost: As shown in Appendix A, the fees in these rules are the least possible, while the rules meet the objectives and produce the benefits set by the authorizing legislation. ADEQ believes that the costs are exceeded by the benefits of regulation and oversight of solid waste landfills at mining sites. See Appendix A.
12. Stringency Compared to Corresponding Federal Law: There is no corresponding federal law.
14. Proposed course of action: No proposed course of action for either rule in this Article.

## **B. Individual Section Review**

### **R18-13-801. General Permit Fees**

1. Statute(s) authorizing the rule: A.R.S. § 49-706

2. Objective of the rule: This rule set up fees for solid waste general permits before any were specifically identified in order to avoid any extra steps involved in fee approval each time a solid waste general permit is established.

3. Effectiveness of the rule in achieving the objective: The rule is effective and has established the fee for the general permit in R18-13-802.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: There are no federal rules applicable to landfill fees. This rule is consistent with A.R.S. §§ 41-1008 and 49-706.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption: The first general permit (R18-13-802) was effective on November 9, 2014. ADEQ has determined that the fees collected are sufficient for and proportionate to the resources needed for regulation of these sites and facilities. In addition, this fee is frozen by legislative moratorium. (A.R.S. § 49-706(B)) See additional discussion in Appendix A.

11. Cost benefit determination; least burden and cost: See Appendix A.

13. For Rules Adopted After July 29, 2010 That Require the Issuance of a Regulatory Permit, License or Agency Authorization, Indicate Whether the Rule Complies with A.R.S. § 41-1037 (Related to Issuing General Permits): This rule was adopted after July 29, 2010, but did not require issuance of a regulatory permit, license or agency authorization.

## **R18-13-802. Disposal General Permit: Non-Municipal Solid Waste Landfills at Mining Operations**

1. Statute(s) authorizing the rule: A.R.S. § 49-706

2. Objective of the rule: The rule establishes a solid waste general permit under A.R.S. § 49-706 for a class of solid waste land disposal facilities that would otherwise need a solid waste facility plan under A.R.S. § 49-762.

3. Effectiveness of the rule in achieving the objective: This rule created a general permit and has been effective for approximately five years. At the time of this report, ADEQ has received and reviewed eight Notices of Intent to operate under the general permit. Those eight facilities are still operating. ADEQ believes the rule has been effective.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: The provisions of the general permit apply the solid waste standards in 40 CFR 257 and may not be more stringent. See A.R.S.

§49-761(C). They are thus equivalent to federal law.

8. Current Economic, small business, and consumer impact of the rule as compared to EIS at last rule adoption: No revenues were received from mining landfills authorized to operate under this rule in FY 19. The fees for this general permit are initial fees with no recurring annual fees. The initial fees for the eight current mining landfills were collected before FY 19.

11. Cost benefit determination; least burden and cost: When ADEQ adopted this rule and created this general permit in 2014, it determined that the benefits exceeded the costs since the mining landfills otherwise needed the more expensive plan approval under A.R.S. 49-762, and they were a good candidate for a general permit. ADEQ determined that the general permit imposed the least burden necessary by working with regulated entities, including the Arizona Mining Association, to make sure that the general permit contained appropriate requirements, and in such a way to provide maximum clarity and flexibility. See “Advantages of this General Permit” at 40 A.A.R. 2680, and the economic impact summary at 40 A.A.R. 2681. Nothing has changed to alter these determinations.

12. Stringency Compared to Corresponding Federal Law: The provisions of the general permit apply the solid waste standards of 40 CFR 257 and may not be more stringent. See A.R.S. §49-761(C). They are thus equivalent to federal law.

13. For Rules Adopted After July 29, 2010 That Require the Issuance of a Regulatory Permit, License or Agency Authorization, Indicate Whether the Rule Complies with A.R.S. § 41-1037 (Related to Issuing General Permits): This rule was adopted after July 29, 2010, and establishes a general permit.

## **VI. Article 11, Collection, Transportation, and Disposal of Human Excreta**

### **A. Information That Is Identical for All Sections in Article 11**

1. General and Specific Statutes Authorizing the Rules: The rules in Article 11 are authorized generally by A.R.S. §§ 41-1003, 49-104(B)(4), 49-705, and 49-761(A). The specific statute authorizing these rules is A.R.S. §§ 49-104(B)(14) and 49-104(B)(17).

2. Objective and purpose: Article 11 establishes requirements for persons who own or operate a vehicle or appurtenant equipment used to store, collect, transport, or dispose of sewage or human excreta that is removed from a septic tank or other on-site wastewater treatment facility, privy, sewage vault, or chemical toilet. ADEQ’s licensing records indicate that there are

approximately 631 licensed septic haulers subject to the requirements of Article 11. Other than the establishment of a license fee in 2012, the rules were last amended substantively in 2003. More information is included for each rule in the individual section review.

3. Effectiveness of the rules in achieving their objective: Unless otherwise stated in an individual section review, the rules in Article 11 are effective in achieving their individual objectives.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: Unless otherwise stated in an individual section review, ADEQ has determined that the rules in Article 11 are consistent with the rules and statutes of Arizona and the United States.

5. Status of Agency enforcement policy regarding the rules: Unless otherwise stated in an individual section review, the rules in Article 11 are currently enforced by the Department.

6. Clarity, conciseness, and understandability of the rules: Unless otherwise stated in an individual section review, ADEQ has determined that the rules are clear, concise, and understandable.

7. Written criticisms of the rule received within the last five years: None received.

8. Current Economic, small business, and consumer impact of the rules as compared to the economic, small business, and consumer impact statement prepared at last rule adoption: See Appendix A and R18-13-1103.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states: No analysis was submitted for any of the rules in Article 11.

10. Completion of previous proposed courses of action: In the last five-year review report there were no proposed courses of action for this Article.

11. Cost benefit determination; least burden and cost: As shown in Appendix A, the fees in these rules are the least possible, while the rules meet the objectives and produce the benefits set by the authorizing legislation. ADEQ believes that the costs are exceeded by the benefits of regulation and oversight of the collection, transportation, and disposal of human excreta. See R18-13-1103 and Appendix A.

12. Stringency Compared to Corresponding Federal Law: There is no corresponding federal law.

13. For Rules Adopted After July 29, 2010 That Require the Issuance of a Regulatory Permit,

License or Agency Authorization, Indicate Whether the Rule Complies with A.R.S. § 41-1037 (Related to Issuing General Permits) All of the rules in this Article were adopted before July 29, 2010 except for R18-13-1103, which was amended in 2012. A general permit would be technically infeasible for the licensing of septage hauling vehicles because the authorizing statute, A.R.S. § 49-104(B)(14), provides for the inspection of each vehicle. Whereas a general permit would list elements necessary and conditions prohibited for a vehicle transporting medical waste and allow the vehicle to be licensed upon the owner's statement that the vehicle qualified, the inspection by ADEQ personnel results in an approve or deny decision based on the presentation of that specific vehicle. Vehicle inspections require what is essentially an individual permit similar to a safety certificate on an elevator.

14. Proposed course of action: There are no proposed courses of action for this Article.

## **B. Individual Section Review**

### **R18-13-1102. Definitions**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-104(B)(14).
2. Objective of the rule: The rule establishes the definitions necessary to administer A.R.S. § 49-104(B)(14) and Article 11.

### **R18-13-1103. General Requirements; License Fees**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified for this Article, the specific statutory authority for this rule is at A.R.S. § 49-104(B)(14).
2. Objectives of the rule: The rule establishes the general requirements for vehicles and related equipment used to handle sewage or human excreta removed from septic tanks and other containers. The rule establishes vehicle requirements for a vehicle owner, including the procedure for obtaining a license, the terms of the license, and details regarding payment of a licensing fee.
3. Effectiveness of the rule in achieving its objective: The rule was amended in 2012 to establish a fee for the license, which was previously free. In FY 19, total fees collected under this rule were approximately \$58,000. The rule is effective at supporting regulation of the collection, transportation, and disposal of human excreta.
5. Status of Agency enforcement policy regarding the rule: Thirteen of the fifteen Arizona

counties share enforcement of the rules for the inspection of septage hauling vehicles with the State through county delegation agreements. These counties perform their own vehicle inspections using the ADEQ rules. No problems with enforcement.

6. Clarity, conciseness, and understandability of the rule: Subsection (B) uses the terms “health hazard” and “environmental nuisance” which could be clarified to make the rule clearer. However, there have been no enforcement problems related to these terms and no complaints from the counties.

7. Written criticisms of the rule received in the last five years: None

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption: Since establishing the database necessary for implementing these fees in November of 2014, the number of licensed septage hauler vehicles has changed from 542 to 631 at the end of FY 19. In the last five-year report, ADEQ anticipated that the fees collected would result in revenues lower than anticipated when compared to the time involved with the inspection of vehicles in some counties and the administration and oversight of the program. Fees collected by ADEQ for septage hauler vehicles totaled about \$58,000 in FY 19. In addition, some inspections are covered by counties with separate inspection fees. ADEQ has determined that the fees collected are sufficient for and proportionate to the resources needed for regulation of these sites and facilities. In addition, this fee is frozen by legislative moratorium. See A.R.S. § 49-104(B)(14); see also Appendix A.

In the last (2012) rulemaking, ADEQ agreed that most septage hauler vehicle owners are probably small businesses, but took issue with comments that the fees were “an unnecessary burden on a community already ravaged by the loss of jobs and homes” and “an insult to an already over taxed business community.” ADEQ cited a 2010 University of Arizona Cooperative Extension study indicating that the cost to have a tank pumped was \$150 to \$1000 and reasoned that the \$250 initial and \$75 annual fee was usually less than the fee charged to pump one tank. A 2018 update to the same study (AZ1159-2018) kept the cost for having a tank pumped at \$150 to \$1000. The ADEQ fees have remained the same as well. ADEQ is maintaining its determination that the fees will have limited to moderate impact on licensees and that the benefits of funding and having a statewide program exceed the costs.

11. Cost benefit determination; least burden and cost: In general, it is more efficient to delegate inspection and oversight of these vehicles to counties to minimize travel; either state inspectors traveling to a county that is not doing it (Yavapai) or for the vehicles and a driver to travel to Phoenix for the inspection. To ensure proper administration of this rule in all counties, State oversight is necessary. ADEQ believes that the fees it has established are the least necessary for this function and that the benefits of funding and having a statewide program exceed the costs. See also Appendix A.

13. For Rules Adopted After July 29, 2010 That Require the Issuance of a Regulatory Permit, License or Agency Authorization, Indicate Whether the Rule Complies with A.R.S. § 41-1037 (Related to Issuing General Permits). This rule was amended in 2012. However, a general permit would not be technically feasible (see A.R.S. § 41-1037(B)(3)) for the licensing of septage hauling vehicles because the authorizing statute, A.R.S. § 49-104(B)(14), provides for the inspection of each vehicle. Individual vehicle inspections requires what is essentially an individual permit.

#### **R18-13-1106. Inspection**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-104(B)(14).
2. Objective of the rule: The rule clarifies ADEQ's authority to inspect vehicles and related equipment used to handle sewage or human excreta removed from septic tanks and other containers to assure compliance with the Article.
5. Status of Agency enforcement policy regarding the rules: The enforcement of this and other Sections in this Article is shared with 13 of the 15 counties. The purpose of this delegation is to recognize county inspections as valid for the purpose of issuance of ADEQ septic licenses, and to ensure that inspections of septic haulers are conducted at least annually.

#### **R18-13-1112. Sanitary Requirements**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-104(B)(14).
2. Objective of the rule: The rule establishes more detailed sanitary requirements for vehicles and related equipment and disposal methods for sewage or human excreta removed

from septic tanks and other containers.

3. Effectiveness of the rule in achieving its objective: The rule continues to effectively achieve its objective.

5. Status of Agency enforcement policy regarding the rules: The enforcement of this and other Sections is shared with 13 of the 15 counties. This rule is listed specifically in the agreements.

#### **R18-13-1116. Suspension and Revocation**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-104(B)(14).

2. Objective of the rule: The rule establishes a process for suspending or revoking septage vehicle licenses.

5. Status of Agency enforcement policy regarding the rules: The enforcement of this and other Sections is shared with 13 of the 15 counties. This rule is listed specifically in the agreements.

#### **R18-13-1117. Reinstatement**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-104(B)(14).

2. Objective of the rule: The rule establishes a process for ADEQ to reinstate a suspended or revoked license for a vehicle or related equipment used to handle sewage or human excreta removed from septic tanks and other containers.

5. Status of Agency enforcement policy regarding the rules: The enforcement of this and other Sections is shared with 13 of the 15 counties. This rule is listed specifically in the agreements.

### **VII. Article 12, Waste Tires**

#### **A. Information That Is Identical for All Sections in Article 12**

1. General and Specific Statutes Authorizing the Rules: The rules in Article 12 are authorized generally by A.R.S. §§ 41-1003, 49-705, and 49-761(A). The specific statutes authorizing the rules is A.R.S. §§ 44-1304(A), (B), (C) and (F), 44-1306(A), and 49-104(B)(17).

2. Objective and purpose: The purpose of this Article is to address situations related to the handling and disposal of waste tires: 1) the burial of mining waste tires, 2) the use of waste tires as solid waste landfill cover, and 3) registration and fees for facilities in possession of certain quantities of used tires or waste tires. More information is included for each rule in the individual section review.

3. Effectiveness of the rules in achieving their objective: Unless otherwise stated in an individual section review, the rules in Article 12 are effective in achieving their individual objectives.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: ADEQ has determined that the rules in Article 12 are consistent with the rules and statutes of Arizona and the United States.

5. Status of Agency enforcement policy regarding the rules: Unless otherwise stated in an individual section review, all of the rules in Article 12 are currently enforced by the Department.

6. Clarity, conciseness, and understandability of the rules: Unless otherwise stated in an individual section review, ADEQ has determined that the rules are clear, concise, and understandable.

7. Written criticisms of the rule received within the last five years: If a rule in Article 12 has received written criticism in the last five years, it is noted in the individual section review.

8. Current Economic, small business, and consumer impact of the rules as compared to the economic, small business, and consumer impact statement prepared at last rule adoption: See Appendix A.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states: No analysis was submitted for any of the rules in Article 12.

10. Completion of previous proposed courses of action: ADEQ proposed no courses of action for this Article in the last five year review report.

11. Cost benefit determination; least burden and cost: As shown in Appendix A, the fees in these rules are the least possible, while the rules meet the objectives and produce the benefits set by the authorizing legislation. ADEQ believes that the costs are exceeded by the benefits of regulation and oversight of used and waste tires. See Appendix A.

12. Stringency Compared to Corresponding Federal Law: There is no corresponding federal

law.

13. For Rules Adopted After July 29, 2010 That Require the Issuance of a Regulatory Permit, License or Agency Authorization, Indicate Whether the Rule Complies with A.R.S. § 41-1037 (Related to Issuing General Permits) The rules in this Article were adopted before July 29, 2010.

14. Proposed course of action: None.

## **B. Individual Section Review**

### **R18-13-1201. Definitions**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 44-1304 and 44-1306.

2. Objective of the rule: The rule establishes definitions necessary to administer A.R.S. §§ 44-1301 through 1307 and Article 12.

### **R18-13-1202. Burial of Mining Waste Tires**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 44-1304 and 44-1306, and Laws 1992, Chap 300, § 17.

2. Objective of the rule: The rule requires a one-time notification to ADEQ prior to burial of mining waste tires. The rule also prescribes the circumstances under which the burial of mining waste tires may take place.

### **R18-13-1203. Cover Requirements**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 44-1304 and 44-1306.

2. Objective of the rule: The rule establishes the cover requirements for mining waste tires that are buried.

### **R18-13-1204. Annual Report**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified

in this report, the specific statutory authority for this rule is at A.R.S. §§ 44-1304 and 44-1306.

2. Objective of the rule: The rule requires that an operator of a mining facility file an annual report with the Department that provides information about each burial cell of mining waste tires that was established during the preceding year.

#### **R18-13-1205. Burial Cell Closure Certification**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 44-1304 and 44-1306.

2. Objective of the rule: The rule establishes a requirement that a mining facility operator file a certification with the Department within 30 days after placement of final cover on a mining waste tire burial cell.

#### **R18-13-1206. Storage**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 44-1304 and 44-1306.

2. Objective of the rule: The rule prohibits a mining facility from storing more than 500 mining waste tires without first obtaining Department approval to operate as a waste tire collection facility.

#### **R18-13-1207. Maintenance of Records**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 44-1304 and 44-1306.

2. Objective of the rule: The rule establishes a requirement that an operator maintain records indicating how many mining waste tires are buried in each burial cell for three years.

#### **R18-13-1208. Inspections**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 44-1304 and 44-

1306.

2. Objective of the rule: The rule establishes authority for the Department to inspect mining facilities to determine compliance with Article 12.

**R18-13-1210. Waste Tire Cover**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 44-1304 and 44-1306.

2. Objective of the rule: The rule requires that the use of waste tires as daily cover at a solid waste landfill is subject to the solid waste facility plan required under A.R.S. § 49-762 for that landfill. The rule further prohibits mining waste tires from being used as daily cover for more than two consecutive days.

**R18-13-1211. Registration of New Waste Tire Collection Sites; Fee**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 44-1303(B) and 44-1306.

2. Objective of the rule: The rule requires registration and basic operating procedures for new waste tire collection sites. It also defines terms used in the Section and establishes an initial (\$500) and an annual (\$75) registration fee.

3. Effectiveness of the rule in achieving its objective: The rule was amended in 2012 to establish a fee and has resulted in sufficient fees received to administer the tire site program.

8. Current economic, small business, and consumer impact of the rule as compared to the economic, small business, and consumer impact at the last rule adoption: ADEQ reported that it received \$13,800 and \$9,400 in fee revenue from R18-13-1211 in FYs 13 and 14 and the conclusion was that the revenues were sufficient to administer the tire programs. The revenue from this Section in FY 19 was \$5,000. At this time, ADEQ has not determined that the fees collected are sufficient for and proportionate to the resources needed for regulation of these sites and facilities. However, this fee is frozen by legislative moratorium. (A.R.S. § 44-1303(B)) ADEQ may use funds from other areas to cover these inspections as allowed by law. See A.R.S. § 49-837(B)(6). See also Appendix A.

11. Cost benefit determination; least burden and cost: See Appendix A.

13. Compliance with A.R.S. § 41-1037: This rule was adopted after July 29, 2010, and results in “issuance” of an agency authorization. The registration required by this rule before operation is an alternative type of authorization specifically authorized by state statute (A.R.S. § 44-1303(B)) but acts essentially as an authority to operate under a general permit.

**R18-13-1212. Registration of Outdoor Used Tire Sites; Fee**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority identified for this Article, the specific statutory authority for this rule is at A.R.S. §§ 44-1304.01(A)(8) and 44-1306.

2. Objective of the rule: The rule requires registration and basic operating procedures for certain outdoor used tire sites. It also defines terms used in the Section and establishes an initial (\$500) and annual (\$75) fee for registration.

3. Effectiveness of the rule in achieving its objective: The rule was amended in 2012 to establish a fee and ADEQ is collecting those fees.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption: In the last five year review report, ADEQ reported that it received \$20,600 and \$6,600 in fee revenue from this Section in FY 13 and 14 and the conclusion was that the revenues were sufficient to administer the tire programs. In FY 19 the tire revenues received by ADEQ from this Section were approximately \$7,000. At this time, ADEQ has not determined that the fees collected are sufficient for and proportionate to the resources needed for regulation of these sites and facilities. However, this fee is frozen by legislative moratorium. (A.R.S. § 44-1304.01(A)(8)) ADEQ may use funds from other areas to cover these inspections as allowed by law. See A.R.S. 49-837(B)(6). ADEQ is studying current projections of revenues and expenditures to determine if the amount received will be proportionate to its costs in the future. See also Appendix A.

13. Compliance with A.R.S. § 41-1037: This rule was adopted after July 29, 2010, and results in “issuance” of an agency authorization. The registration required by this rule before operation is an alternative type of authorization specifically authorized by state statute (A.R.S. § 44-1304.01) but acts essentially as an authority to operate under a general permit.

**R18-13-1213. Facilities Subject to More Than One Tire Site Registration; Single Fee**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 44-1306.

2. Objective of the rule: The rule ensures that tire sites that may be classified and required to pay a fee under more than one of three different rules, need only pay the highest fee. One site may otherwise be required to pay more than one fee under rules authorized by A.R.S. §§ 44-1303(B), 44-1304.01(A)(8) and 49-762.05(H).

3. Effectiveness of the rule in achieving the objective: This rule is effective in preventing duplicate fees. Nineteen self-certification tire facilities and 56 other tire sites ‘saved’ over \$50,000 in FY 13 and FY 14 by paying only a single fee.

13. Compliance with A.R.S. § 41-1037: This rule was adopted after July 29, 2010, but does not require issuance of an agency permit, license, or authorization.

## **VIII. Article 13, Special Waste**

### **A. Information That Is Identical for All Sections in Article 13**

1. General and Specific Statutes Authorizing the Rules: The rules in Article 13 are authorized generally by A.R.S. §§ 41-1003, 49-104(B)(4), 49-104(B)(17), 49-705, and 49-761(A). The specific statutes authorizing the rules are A.R.S. §§ 49-762, and 49-851 through 49-868.

2. Objective and purpose: The purpose of this Article is to provide the regulatory framework for the handling of special waste, a sub-category of solid waste.

Special waste is defined by A.R.S. § 49-851 as "a solid waste..., other than a hazardous waste, that requires special handling and management to protect public health and the environment" and which is listed, either in A.R.S § 49- 852, or by ADEQ in rule pursuant to A.R.S. § 49-854. A.R.S. § 49-852 lists two special wastes: waste that contains petroleum contaminated soils (PCS), and waste from shredding motor vehicles. A.R.S. § 49-854 authorizes ADEQ to designate additional special wastes, but ADEQ currently has not done so. There are no special wastes other than the two designated by statute.

Special waste is currently regulated by two Articles in Chapter 13. Article 13 was the first, created in 1994, and covers manifesting for both of the special wastes and Best Management Practices (BMPs) and generator fees for shredder residue. The second, Article 16, provides BMPs and generator fees for PCS, and they are discussed with that Article. More information is included for each rule in the individual section review.

3. Effectiveness of the rules in achieving their objective: Unless otherwise stated in an individual section review, the rules in Article 13 are effective in achieving their individual objectives.
4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: Unless otherwise stated in an individual section review, ADEQ has determined that the rules in Article 13 are consistent with the rules and statutes of Arizona and the United States.
5. Status of Agency enforcement policy regarding the rules: Unless otherwise stated in an individual section review, all of the rules in Article 13 are currently enforced by the Department.
6. Clarity, conciseness, and understandability of the rules: Unless otherwise stated in an individual section review, ADEQ has determined that the rules are clear, concise, and understandable.
7. Written criticisms of the rule received within the last five years: If a rule in Article 13 has received written criticism in the last five years, the criticisms are noted in the individual section review.
8. Current Economic, small business, and consumer impact of the rules as compared to the economic, small business, and consumer impact statement prepared at last rule adoption: See the discussion under R18-13-1307 and in Appendix A.
9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states: No analysis was submitted for any of the rules in Article 13.
10. Completion of previous proposed courses of action: In the last five-year review report on this Article, ADEQ noted issues in three of the Sections that it would address when the moratorium expired. The issues with these three Sections still exist and are discussed in R18-13-1302, R18-13-1303 and R18-13-1307 below.
11. Cost benefit determination; least burden and cost: As shown in Appendix A, the fees in these rules are the least possible, while the rules meet the objectives and produce the benefits set by the authorizing legislation. ADEQ believes that the costs are exceeded by the benefits of a manifest system for both special wastes and the regulation and oversight of generators of shredder residue. See Appendix A.
12. Stringency Compared to Corresponding Federal Law: There is no corresponding federal

law.

13. For Rules Adopted After July 29, 2010 That Require the Issuance of a Regulatory Permit, License or Agency Authorization, Indicate Whether the Rule Complies with A.R.S. § 41-1037 (Related to Issuing General Permits) The rules in this Article were adopted before July 29, 2010.

14. Proposed course of action: See R18-13-1301, R18-13-1302, R18-13-1303, and R18-13-1304 below.

## **B. Individual Section Review**

### **R18-13-1301. Definitions**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified for this Article, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.

2. Objective of the rule: The rule's objective is to set forth definitions of terms used in Article 13.

6. Clarity, conciseness, and understandability of the rule: In the “special waste manifest” definition, the reference to “Exhibit A” should be to “Appendix B”.

14. Proposed course of action: ADEQ plans to amend the incorrect citation in this Section in a rulemaking to be submitted to GRRC in February 2021.

### **R18-13-1302. Special Waste Generator Manifesting Requirements**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.

2. Objective of the rule: Manifests are multi-copy tracking documents that accompany the special waste from generation to its final determination. Copies are sent to ADEQ and provide the agency with notice of the location, nature and quantity of special waste generated and its movement thereafter. The rule's objective is to establish special waste generator identification numbers and manifesting requirements for both special wastes.

6. Clarity, conciseness, and understandability of the rule: The reference in subsection (A) to “Exhibit B” should be to “Appendix A”.

14. Proposed course of action: ADEQ plans to amend language in subsection (A) in a

rulemaking to be submitted to GRRC in February 2021.

#### **R18-13-1303. Special Waste Shipper Manifesting Requirements**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.

2. Objective of the rule: The rule's objective is to set forth special waste shipper and manifesting requirements for this Article and Article 16.

6. Clarity, conciseness, and understandability of the rule: In subsection (A), the reference to “Exhibit B” should be to “Appendix A” instead. In subsection (B), the obsolete reference to R18-8-302 should be replaced by a reference to R18-13-1302.

14. Proposed course of action: ADEQ plans to amend language in subsections (A) and (B) in a rulemaking to be submitted to GRRC in February 2021.

#### **R18-13-1304. Special Waste Receiving Facility Manifesting Requirements**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.

2. Objective of the rule: The rule's objective is to set forth manifesting requirements for special waste receiving facilities.

6. Clarity, conciseness, and understandability of the rule: In subsection (A), the reference to “Exhibit B” should be to “Appendix A” instead.

14. Proposed course of action: ADEQ plans to amend language in subsection (A) in a rulemaking to be submitted to GRRC in February 2021.

#### **R18-13-1305. Records**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.

2. Objective of the rule: The rule's objective is to set forth record retention requirements for special waste handlers.

#### **R18-13-1307. Best Management Practices for Waste from Shredding Motor Vehicles**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-761, 49-762, and 49-851 through 49-868.

2. Objective of the rule: The rule's objective is to set forth best management practices, including sampling protocols and fees, for waste from shredding motor vehicles.

3. Effectiveness of the rule in achieving its objective: ADEQ has determined that the current fees are sufficient for and proportionate to the resources needed for regulation of these sites and facilities.

4. Consistency of the rules with state and federal constitutions, statutes and rules:

Subsection (D) appears to prohibit shredder residue from being treated, recycled, sorted, stored or disposed at an out of state facility and is consistent with A.R.S. § 49-856(B)(3), but inconsistent with R18-13-1605(C) which appears to recognize that another special waste, petroleum contaminated soil, may be shipped to an out of state facility.

5. Status of agency enforcement policy regarding the rule: This Section is enforced. In the previous five year report, ADEQ mentioned potential ambiguities raised by the standard in subsection (C) prescribing a permeability coefficient for surfaces used by generators of motor vehicle shredder residue. No problems have been experienced.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption: In the last EIS, ADEQ reported that it was unclear whether the rule had resulted in sufficient and proportionate fees to administer the shredder residue part of the special waste program because revenue from special waste fees had fluctuated significantly. Combined special waste fee revenue (shredder residue and petroleum contaminated soil) were \$261,800 in FY 13 and \$65,500 in FY 14. In FY 2019, combined special waste fee revenue was \$363,610. ADEQ has determined that the current fees are sufficient for and proportionate to the resources needed for regulation of these sites and facilities. In addition, this fee is frozen by legislative moratorium. (A.R.S. § 49-855(C)(2)) See also Appendix A.

14. Proposed course of action: No change to the rule.

#### **Table A. Target Analyses and Sampling Frequency**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.

2. Objective of the rule: The Table A's objective is to list the constituents sought and the frequency of sampling when testing shredder residue piles as provided in R18-13-1307. Table A is referenced in R18-13-1307(A)(1)(a)(ii).

### **Exhibit 1. Selection of Sample Points, Shredder Waste Pile**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.

2. Objective of the rule: The rule's objective is to provide a visual aid for the selection of sample points in a shredder residue pile as described in R18-13-1307.

### **Appendix A. Application for Arizona Special Waste Identification Number**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.

2. Objective of the rule: The rule's objective is to provide the form for applying for the Arizona special waste identification number required by R18-13-1302.

### **Appendix B. Special Waste Manifest**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.

2. Objective of the rule: The rule's objective is to provide a special waste manifest form.

## **IX. Article 14, Biohazardous Medical Waste and Discarded Drugs**

### **A. Information That Is Identical for All Sections in Article 14**

1. General and Specific Statutes Authorizing the Rules: The rules in Article 14 are authorized generally by A.R.S. §§ 41-1003, 49-104(B)(4), 49-705, and 49-761(A). The specific statute authorizing the rules is A.R.S. § 49-761(D).

2. Objective and purpose: The purpose of Article 14 is to regulate persons who generate, transport, treat or dispose biohazardous medical waste and discarded drugs. Biohazardous medical waste is defined as cultures and stocks, waste human blood and blood products,

pathological wastes, medical sharps, and research animal waste associated with treatment, diagnosis or immunization. Household generators of biohazardous medical waste are exempt. Article 14 was enacted new in 1999 and not amended since except for the creation of the fee in R18-13-1409. More information is included for each rule in the individual section review.

3. Effectiveness of the rules in achieving their objective: Unless otherwise stated in an individual section review, the rules in Article 14 are effective in achieving their individual objectives.

4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: Unless otherwise stated in an individual Section review, ADEQ has determined that the rules in Article 14 are consistent with the rules and statutes of Arizona and the United States. The following were used in determining consistency:

- a. Some ADHS rules in 9 A.A.C. require various entities to comply with 18 A.A.C. 13, Article 14.
- b. Other ADHS rules in 9 A.A.C. require “hospital policies and procedures” that cover: Disposing of biohazardous medical waste; R9-10-230. Infection Control; R9-10-915. Infection Control
- c. 29 CFR Part 1910.1030, (“Bloodborne pathogens”, OSHA); 49 CFR 173.197, (“Regulated medical waste”, Transportation, Hazardous Materials Regulations)
- d. 40 CFR 266.505 (prohibits sewerage of hazardous waste pharmaceuticals, current R18-13-1418 is not clearly consistent, needs to be amended)

5. Status of Agency enforcement policy regarding the rules: Unless otherwise stated in an individual section review, all of the rules in Article 14 are currently enforced by the Department, and in the case of Maricopa County, through a delegation agreement.

6. Clarity, conciseness, and understandability of the rules: Unless otherwise stated in an individual section review, has determined that the rules are clear, concise, and understandable.

7. Written criticisms of the rule received within the last five years: None received.

8. Current Economic, small business, and consumer impact of the rules as compared to the economic, small business, and consumer impact statement (EIS) prepared at last rule adoption: See R18-13-1409 and Appendix A.

9. Any analysis submitted to the agency by another person regarding the rule’s impact on this

state’s business competitiveness as compared to the competitiveness of businesses in other states: No analysis was submitted for any of the rules in Article 14.

10. Completion of previous proposed courses of action: In the last five-year review report on this Article, ADEQ noted an incorrect citation in R18-13-1409 but did not propose a course of action “due to the rulemaking moratorium.”

11. Cost benefit determination; least burden and cost: As shown in Appendix A, the fees in these rules are the least possible, while the rules meet the objectives and produce the benefits set by the authorizing legislation. ADEQ believes that the costs are exceeded by the benefits of the regulation and oversight of biohazardous medical wastes and discarded drugs. See Appendix A.

12. Stringency Compared to Corresponding Federal Law: The rules in this Article are not more stringent than corresponding federal law.

13. For Rules Adopted After July 29, 2010 That Require the Issuance of a Regulatory Permit, License or Agency Authorization, Indicate Whether the Rule Complies with A.R.S. § 41-1037 (Related to Issuing General Permits) The rules in this Article were adopted before July 29, 2010 except for R18-13-1409.

14. Proposed course of action: If there is a proposed course of action for a rule, it is stated in the review of that rule.

## **B. Individual Section Review**

### **R18-13-1401. Definitions**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-761(D).

2. Objective of the rule: The rule defines terms used in Article 14.

6. Clarity, conciseness, and understandability of the rules: The definition of “medical sharps” contained in the definition of “biohazardous medical waste” is not clear when applied to the rule for medical sharps at R18-13-1419. ADEQ published a substantive policy statement in 2017 explaining ADEQ’s current interpretation of requirements for syringes without needles as biohazardous medical waste and medical sharps. See [https://static.azdeq.gov/legal/subs\\_medical\\_sharps.pdf](https://static.azdeq.gov/legal/subs_medical_sharps.pdf)

The definition of biohazardous medical waste/human pathologic waste could be clarified to exclude fingernails, hair and teeth. The issue could also be addressed with a substantive policy statement.

#### **R18-13-1402. Applicability**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-701(19) and 49-761(D).
2. Objective of the rule: The rule's objective is to describe the extent to which the Article is applicable.

#### **R18-13-1403. Exemptions; Partial Exemptions**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-701(19) and 49-761(D).
2. Objective of the rule: The rule's objective is to set forth exemptions and partial exemptions from this Article.

#### **R18-13-1404. Transition and Compliance Dates**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-701(19) and 49-761(D).
2. Objective of the rule: The rule's objective is to set forth transition provisions and compliance dates for the application of this Article.
3. Effectiveness of the rule in achieving its objective: Most of the subsections in this rule deal with events on or before or after “the effective date of this Article.” It is not certain whether any of these are still needed.
14. Proposed course of action. When ADEQ opens a rulemaking on this Article to be submitted to GRRC in February 2021, it will discuss with stakeholders whether some or all of this Section could be deleted.

#### **R18-13-1405. Biohazardous Medical Waste Treated On Site**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-701(19) and 49-761(D).

2. Objective of the rule: The rule sets forth treatment standards and other requirements for generators of biohazardous medical waste who treat the waste on site.

4. Consistency of the rules with state and federal statutes and rules: Subsection (C)(4) appears to prohibit non-hazardous incinerator ash from being disposed at an out of state landfill. Although this is required by statute for special waste (see A.R.S. 49-856(B)(3)), this may be an unnecessary restriction on interstate commerce for this material. It could be reworded like R18-13-1605(C), so that only when it is being disposed in Arizona, it has to be in a Department approved facility.

14. Proposed course of action: ADEQ plans to propose amended language in subsection (C)(4) to remove an interstate commerce restriction in a rulemaking to be submitted to GRRC in February 2021.

#### **R18-13-1406. Biohazardous Medical Waste Transported Off Site for Treatment**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-701(19) and 49-761 (D).

2. Objective of the rule: The rule's objective is to set forth practices, including tracking document requirements, to be followed by generators of biohazardous medical waste when the waste is transported for treatment off site.

#### **R18-13-1407. Packaging**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-701(19) and 49-761(D).

2. Objective of the rule: The rule specifies packaging requirements for generators who set out biohazardous medical waste for collection for off-site treatment or disposal.

#### **R18-13-1408. Storage**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified

in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-701(19) and 49-761(D).

2. Objective of the rule: The rule sets forth storage practices required for generators of biohazardous medical waste in storage areas.

### **R18-13-1409. Transportation; Transporter License; Annual Fee**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-761(D).

2. Objectives of the rule: The rule sets forth: 1) vehicle requirements and other procedures to be followed for the transportation of biohazardous medical waste, 2) the requirements for and procedure involved in obtaining a transporter license, and 3) the fees related to the license.

3. Effectiveness of the rule in achieving its objectives: The rule is effective in meeting the objectives above. The rule was amended in 2012 to establish licensing and vehicle inspection fees.

4. Consistency of the rules with state and federal statutes and rules: Subsections (G) and (H) contain procedural language and timelines for an informal review and final decision regarding a final bill “for the amendment, issuance, renewal or denial of a transporter license or vehicle inspections”. The language incorrectly directs the appeal of the Department’s final decision here to a statute providing for judicial review of final agency orders. The rule should say the final decision is an appealable agency action and subject to review according to Title 41, Chapter 6, Article 10.

Subsection (M)(3) appears to prohibit biohazardous medical wastes from being delivered to an out of state facility by limiting options to “Department-approved” facilities and is inconsistent with R18-13-1605(C) which allows a special waste, PCS, to be shipped to an out of state facility.

5. Status of Agency enforcement policy regarding the rules: ADEQ is not enforcing the \$750 licensing year fee for a renewal as referenced in subsection (D)(3)(b).

6. Clarity, conciseness, and understandability of the rule: The Department believes that the rule is clear, concise and understandable except as noted under consistency above.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption: In the last EIS, ADEQ noted that the \$22,800 received in FY 14 from

this rule appeared less than proportionate to the resources needed for regulation. In FY 19, ADEQ received \$25,270 from this rule. ADEQ has not determined that the fees collected are sufficient for and proportionate to the resources needed for regulation of these vehicles and facilities. However, this fee is frozen by legislative moratorium. (A.R.S. § 49-761(D)(2) See also Appendix A.

10. Completion of previous proposed courses of action. In the 2014 five-year review report for this Section, ADEQ noted that subsection (H) incorrectly specified that the Director's final decision on a billing dispute was subject to appeal pursuant to A.R.S. § 49-769. There was also a second inconsistency issue related to shipment to out-of-state facilities. ADEQ did not propose a course of action due to the rulemaking moratorium. See the current description of consistency issues and proposed courses of action in items 4 and 14 of this Section.

11. Cost benefit determination; least burden and cost: See Appendix A.

13. Compliance with A.R.S. § 41-1037: This rule was amended after July 29, 2010, and requires issuance of an agency authorization which is not a general permit. In the rule, a transporter can receive a license after 1) submitting information on a form approved by the Department, and 2) its vehicle(s) pass(es) a Department inspection. The Department believes that it would not be technically feasible to issue authority to operate to a medical waste transporter without an individual inspection of each vehicle and still meet its requirement to protect public health and the environment.

14. Proposed course of action: ADEQ intends to correct the citation in subsection (H), and clarify the other issue discussed under consistency in a rulemaking to be submitted to GRRC in February 2021.

#### **R18-13-1410. Storage, Transfer, Treatment, and Disposal Facilities; Facility Plan Approval**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-701(19), 49-761(D), 49-762, 49-762.03, 49-762.04, and 49-762.06.

2. Objective of the rule: The rule sets forth requirements, including facility plan approval, for persons who store, transfer, treat, or dispose of biohazardous medical waste.

#### **R18-13-1411. Storage and Transfer Facilities; Design and Operation**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified

in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-701(19), 49-761(D), 49-762, 49-762.03, 49-762.04, and 49-762.06.

2. Objective of the rule: The rule prescribes design and operation standards for storage and transfer facilities.

### **R18-13-1412. Treatment Facilities; Design and Operation**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, specific statutory authority for this rule exists at A.R.S. §§ 49-701(19), 49-761(D), 49-762, 49-762.03, 49-762.04, and 49-762.06.

2. Objective of the rule: The rule prescribes design and operation standards for treatment facilities.

3. Effectiveness of the rule in achieving its objective: As stated in the previous report, this rule does not include a requirement that a treatment facility be kept clean and have a cleaning schedule in place. Compare R18-13-1411(8). This basic requirement appears to have been overlooked in the initial rulemaking. Aside from this omission, the rule is effective in meeting its objective.

10. Completion of previous proposed course of action: ADEQ has not opened this rule to add a “clean facility” requirement as discussed under “Effectiveness” above.

14. Proposed course of action: Propose a “clean facility” requirement in a rule that ADEQ will submit to GRRC in February 2021.

### **R18-13-1413. Changes to Approved Medical Waste Facility Plans**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-701(19), 49-761(D), 49-762, 49-762.03, 49-762.04, and 49-762.06.

2. Objective of the rule: The rule sets requirements to be met in the event that a treatment facility owner or operator intends to make one of four categories of change to an approved medical waste facility plan.

### **R18-13-1414. Alternative Medical Waste Treatment Methods; Registration and Equipment Specifications**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-761(D).

2. Objective of the rule: The rule specifies registration requirements for manufacturers of alternative medical waste treatment methods who wish to sell their methods to potential treatment facilities in Arizona. As of July, 2018, eleven of these methods had been registered, with three of the eleven having expired.

#### **R18-13-1415. Treatment Standards; Quantification of Microbial Inactivation and Efficacy Testing Protocols**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-701(19) and 49-761(D).

2. Objective of the rule: The rule prescribes treatment standards to be achieved by alternative medical waste treatment methods.

#### **R18-13-1416. Recycled Materials**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-701(19) and 49-761(D).

2. Objective of the rule: The rule explains how generators of biohazardous medical waste may recycle portions of the waste.

#### **R18-13-1417. Disposal Facilities; Operation**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-701(19), 49-761(D), and 49-762.

2. Objective of the rule: The rule prescribes design and operational standards for municipal solid waste landfills that accept untreated medical waste.

6. Clarity, conciseness, and understandability of the rule: The rule's title is just "operation", but the text of the rule speaks of complying with "design and operational requirements."

14. Proposed course of action. When ADEQ opens a rulemaking on this Article to be submitted to GRRC in February 2021, it will discuss with stakeholders whether this Section covers both design and operation.

### **R18-13-1418. Discarded Drugs**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-701(19) and 49-761(D).
2. Objective of the rule: The rule prescribes what a generator can do with discarded drugs.
4. Consistency of the rules with state and federal statutes and rules: Subsection (B), permitting a generator to flush discarded drugs down a sanitary sewer “if allowed by the wastewater treatment authority”, is consistent with a recent federal rule which contains a “sewering ban” on hazardous waste pharmaceuticals. See 40 CFR 266.505, prohibiting healthcare facilities and others “from discharging hazardous waste pharmaceuticals to a sewer system that passes through to a publicly-owned treatment works.” (effective August 21, 2019) Subsection (B) is consistent only because “discarded drug” is defined in R18-13-1401 to not include hazardous waste. ADEQ believes this Section needs clarification, see below.
6. Clarity, conciseness, and understandability of the rule: Subsection (B) needs to be rewritten to more thoroughly explain what is legal in light of the new federal rule prohibiting sewerage of hazardous waste pharmaceuticals.
14. Proposed course of action: ADEQ plans to propose a new subsection (B) that will be consistent with the new federal pharmaceuticals rule and clarify whether discarded drugs can be flushed down the drain. The rulemaking should be submitted to GRRC in February 2021. In the meantime, ADEQ has begun an outreach strategy to let generators know of the federal sewerage ban.

### **R18-13-1419. Medical Sharps**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-701(19) and 49-761(D).
2. Objective of the rule: The rule sets forth requirements for the handling and treatment of medical sharps.
6. Clarity, conciseness, and understandability of the rule: ADEQ published a substantive policy statement in 2017 explaining ADEQ’s current interpretation of requirements for syringes without needles as biohazardous medical waste and medical sharps.

### **R18-13-1420. Additional Handling Requirements for Certain Wastes**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-701(19) and 49-761(D).
2. Objective of the rule: The rule prescribes additional requirements for handling and treating certain biohazardous medical wastes.
4. Consistency of the rules with state and federal statutes and rules: Subsection (A)(3)(b)(i) appears to prohibit certain wastes from being disposed in an out of state landfill and is inconsistent with R18-13-1605(C) which appears to allow a special waste, PCS, to be shipped to an out of state facility.
14. Proposed course of action. Clarify subsection (A)(3)(b)(i) in a rulemaking to be sent to GRRC in February 2021.

## **X. Article 16, Best Management Practices for Petroleum Contaminated Soil**

### **A. Information That Is Identical for All Sections in Article 16**

1. General and Specific Statutes Authorizing the Rules: The rules in Article 16 are authorized generally by A.R.S. §§ 41-1003, 49-104(B)(4), 49-104(B)(17), 49-705, and 49-761(A). The specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.
2. Objective and purpose: Article 16 provides best management practices and other procedures for handling petroleum contaminated soils (PCS), which is designated by statute as a special waste. As noted above for Article 13, special wastes are currently regulated by two Articles in this Chapter. Article 13 regulates registration and manifesting for both PCS and shredder residue, and provides best management practices (BMPs) for generators of shredder residue. Article 16 provides fees and BMPs for PCS only. More information is included for each rule in the individual section review.
3. Effectiveness of the rules in achieving their objective: Unless otherwise stated in an individual section review, the rules in Article 16 are effective in achieving their individual objectives.
4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the

Statutes or Rules Used in Determining the Consistency: Unless otherwise stated in an individual section review, ADEQ has determined that the rules in Article 16 are consistent with the rules and statutes of Arizona and the United States.

5. Status of Agency enforcement policy regarding the rules: Unless otherwise stated in an individual section review, the rules in Article 16 are currently enforced by the Department.

6. Clarity, conciseness, and understandability of the rules: Unless otherwise stated in an individual section review, the rules are clear, concise, and understandable.

7. Written criticisms of the rules received within the last five years: None.

8. Current Economic, small business, and consumer impact of the rules as compared to the economic, small business, and consumer impact statement prepared at last rule adoption: This comparison is presented for all Chapter 13 Articles in Appendix A, and in the case of R18-13-1606, in the individual section analysis.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states: No analysis was submitted for any of the rules in Article 16.

10. Completion of previous proposed courses of action: In the last approved five-year review report on the rules in Article 16, ADEQ stated that there were no proposed courses of action due to the rulemaking moratorium.

11. Cost benefit determination; least burden and cost: Except for the creation of a fee in R18-13-1606, the rules in Article 16 were last amended in 1995 and did not require this analysis or an economic impact statement when promulgated. As shown in Appendix A, the fees in these rules are the least possible, while the rules meet the objectives and produce the benefits set by the authorizing legislation. ADEQ believes that the costs are exceeded by the benefits of regulation and oversight of generators of petroleum contaminated soil. See R18-13-1606 and Appendix A.

12. Stringency Compared to Corresponding Federal Law: There is no corresponding federal law.

13. For Rules Adopted After July 29, 2010 That Require the Issuance of a Regulatory Permit, License or Agency Authorization, Indicate Whether the Rule Complies with A.R.S. § 41-1037 (Related to Issuing General Permits) The rules in this Article were adopted before July 29, 2010.

14. Proposed course of action: If there is a proposed course of action for a rule, it is stated in

the review of that rule.

## **B. Individual Section Review**

### **R18-13-1601. Definitions**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.

2. Objective of the rule: The rule defines terms used in Article 16.

4. Consistency of the rules with state and federal statutes and rules: Several definitions in this section need to be aligned with the newer definition of petroleum contaminated soils in A.R.S. § 49-851(A)(3). The discrepancy between the current statutory definition and the definitions in rule created confusion for those regulated by this Article, with the potential for unnecessary analyses being performed. ADEQ issued a position letter in 1998 and a substantive policy statement in 2008 that helped minimize the confusion.

6. Clarity, conciseness, and understandability of the rules: Although this rule's definition of PCS is not consistent with the statutory definition in terms of contaminants, the statute leaves unaddressed whether the residential or nonresidential SRLs are to be used in determining what is PCS. By addressing this issue in a 1998 position letter and a 2008 policy, ADEQ has minimized the confusion regarding what is PCS.

14. Proposed course of action: ADEQ will submit a rulemaking to GRRC clarifying these consistency and clarity issues in February 2021.

### **R18-13-1602. Applicability**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.

2. Objective of the rule: The rule's objective is to explain the applicability of the Article.

### **R18-13-1603. Exemptions**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851

through 49-868.

2. Objective of the rule: The rule's objective is to set forth exemptions pertinent to this Article.

4. Consistency of the rules with state and federal statutes and rules: The small quantity generator exemption formula in R18-13-1603(E) is inconsistent with the definition of petroleum contaminated soils in A.R.S. § 49-851(A)(3).

6. Clarity, conciseness, and understandability of the rules: Subsection (E) is not clear because the statutory definition of PCS in A.R.S. § 49-851(A)(3) does not use total petroleum hydrocarbons (TPH).

10. Completion of previous proposed courses of action: In the last approved five-year review report on the rules in Article 16, ADEQ stated that there were no proposed courses of action due to the rulemaking moratorium.

14. Proposed course of action: Fix the issues related to subsection (E) in a rulemaking submitted to GRRC in February of 2021.

#### **R18-13-1604. Waste Determination**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.

2. Objective of the rule: The rule's objective is to set forth procedures and requirements for determining the regulatory status of excavated soil contaminated with petroleum.

4. Consistency of the rules with state and federal statutes and rules: Language in this section, especially subsection (C), needs to be aligned with the definition of petroleum contaminated soils in A.R.S. § 49-851(A)(3). The discrepancy between the applicable statutory definition and the language in this section may create confusion for those regulated by this Article. ADEQ has issued a position letter and a substantive policy statement to help minimize confusion.

10. Completion of previous proposed courses of action: In the last approved five-year review report on the rules in Article 16, ADEQ stated that there were no proposed courses of action due to the rulemaking moratorium.

14. Proposed course of action: Fix the issues related to this Section in a rulemaking submitted to GRRC in February of 2021.

### **R18-13-1605. Transportation**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.
2. Objective of the rule: The rule's objective is to set forth the requirements applicable to transportation of PCS.
4. Consistency of the rules with state and federal statutes and rules: Subsection (C) appears to allow a special waste shipper to transport PCS to a special waste receiving facility outside of Arizona and is inconsistent with A.R.S. § 49-856(B)(3) which states that “[a] person who arranges for the treatment, storage or disposal of a special waste shall do so only at a facility approved by the director.” ADEQ does not propose to change the rule since it would not further an important state interest to prohibit PCS from being transported out of state.
14. Proposed course of action: No proposed course of action.

### **R18-13-1606. Fees**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-761, 49-762, 49-855(C)(2) and 49-863.
2. Objective of the rule: The rule's objective is to set forth:
  - a) A per ton fee that a generator pays for PCS received in this state, and.
  - b) A maximum fee per generator site per year.
3. Effectiveness of the rule in achieving its objective: The rule was amended in 2012 to update fee amounts. The new amounts have resulted in sufficient and proportionate fees for the administration of the PCS portion of the special waste program.
8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption: In 2012, ADEQ increased the fee it collects under this Section from \$2.00 per ton to \$4.50 per ton. In the last EIS, ADEQ reported that it was unclear whether the rule had resulted in sufficient and proportionate fees to administer the petroleum contaminated soil part of the special waste program because revenue from special waste fees had fluctuated significantly. Combined special waste fee revenue (shredder residue and petroleum contaminated soil) were \$261,800 in FY 13 and \$65,500 in FY 14. In FY 2019,

special waste fee revenue was \$363,610. ADEQ has determined that the current fees are sufficient for and proportionate to the resources needed for regulation of these sites and facilities. In addition, this fee is frozen by legislative moratorium. (A.R.S. § 49-855(C)(2)) See also Appendix A.

#### **R18-13-1607. Facility Approval; Application**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-761, 49-762, and 49-851 through 49-868.
2. Objective of the rule: The rule's objective is to set forth solid waste facility plan application and approval requirements for PCS treatment, storage and disposal facilities.
6. Clarity, conciseness, and understandability of the rules: Subsection (A) uses the word “only and appears to prohibit disposal at a facility out of state. It is not clear if it prohibits disposal of PCS at an out of state facility not approved by ADEQ.
14. Proposed course of action: Clarify subsection (A) to avoid seeming prohibition on out of state activities in a rulemaking to be submitted to GRRC in February 2021.

#### **R18-13-1608. General Design and Performance Standards**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.
2. Objective of the rule: The rule sets forth general design and performance standards for facilities that treat, store or dispose of PCS.
5. Status of agency enforcement policy regarding the rules: This Section is enforced. In the previous report, ADEQ mentioned enforcement difficulties with this standard. ADEQ no longer feels there is a problem. The standard itself could be relabeled a “permeability coefficient” which is the term used for the same standard in R18-13-1307(C).
10. Completion of previous proposed courses of action: In the last approved five-year review report on the rules in Article 16, ADEQ stated that there were no proposed courses of action due to the rulemaking moratorium.
14. Proposed course of action: None.

### **R18-13-1609. Treatment Facility**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.

2. Objective of the rule: The rule sets forth specific requirements for PCS treatment facilities in addition to the general requirements in R18-13-1608.

### **R18-13-1610. Temporary Treatment Facility**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, 49-762.03, and 49-762.04.

2. Objective of the rule: The rule sets forth requirements for temporary PCS treatment facilities.

6. Clarity, conciseness, and understandability of the rule: Subsections (B)(3) and (F) contains references to statutes that have been amended. The language in the original citations is now located at A.R.S. § 49-762.03(C) and A.R.S. § 49-762.04(A)(2).

14. Proposed course of action: Fix the issues related to this Section in a rulemaking submitted to GRRC in February of 2021.

### **R18-13-1611. Storage Facility**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.

2. Objective of the rule: The rule sets forth specific requirements for PCS storage facilities in addition to the general requirements in R18-13-1608.

### **R18-13-1612. Accumulation Sites**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762; and 49-851 through 49-868.

2. Objective of the rule: The rule sets forth requirements for PCS accumulation sites.

### **R18-13-1613. Disposal**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§49-762, and 49-851 through 49-868.
2. Objective of the rule: The rule sets forth specific requirements for PCS disposal facilities in addition to the general requirements in R18-13-1608.
5. Status of agency enforcement policy regarding the rules: This Section is enforced. In the previous report, ADEQ mentioned enforcement difficulties with the standard in subsection (B). ADEQ no longer feels there is a problem. The standard itself could be relabeled a “permeability coefficient” which is the term used for the same standard in R18-13-1307(C).
14. Proposed course of action: Change “hydraulic conductivity” to “permeability coefficient” in a rulemaking to be submitted to GRRC in February 2021.

### **R18-13-1614. Records**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. §§ 49-762, and 49-851 through 49-868.
2. Objective of the rule: The rule sets forth requirements for records retention by owners of PCS facilities.

## **XI. Article 21, Municipal Solid Waste Landfills**

### **A. Information That Is Identical for All Sections in Article 21**

1. General and Specific Statutes Authorizing the Rules: The rules in Article 21 are authorized generally by A.R.S. §§ 41-1003, 49-104(B)(4), 49-104(B)(17), 49-705, and 49-761(A). The specific statute authorizing the rule is A.R.S. § 49-747.
2. Objective and purpose: The purpose of Article 21 is to specify amounts and procedures related to annual registration fees for municipal solid waste landfills. More information is included for each rule in the individual section review.
3. Effectiveness of the rules in achieving their objective: The rules in Article 21 are effective in achieving their individual objectives.
4. Consistency of the Rules with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: There are no federal rules related to

landfill registration fees.

5. Status of Agency enforcement policy regarding the rules: The rules in Article 21 are currently enforced by the Department.

6. Clarity, conciseness, and understandability of the rules: The rules in Article 21 are clear, concise, and understandable.

7. Written criticisms of the rule received within the last five years: None.

8. Current Economic, small business, and consumer impact of the rules as compared to the economic, small business, and consumer impact statement prepared at last rule adoption: At the last adoption, in 2012, ADEQ noted that the fees for landfills owned by counties and cities had recently varied year to year due to legislative adjustments. In the past five years the fees have remained unchanged and provide landfill owners with a degree of certainty.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states: No analysis was submitted for any of the rules in Article 21.

10. Completion of previous proposed courses of action: In the last five-year review report on this Article, ADEQ noted that its newly deployed Revenue and Invoicing Collections System (RICS) would need to be synchronized with this Article. RICS adapted well to these fees and there has been no change to the rules.

11. Cost benefit determination; least burden and cost: As shown in Appendix A, the fees in these rules were balanced against the requirement to create a fee-based revenue system while setting fees sufficient for and proportionate to the resources needed for regulation of the other types of solid waste facilities. The rules meet the objectives and produce the benefits set by the authorizing legislation. ADEQ believes that the costs are exceeded by the benefits of landfill registration and a fee-based solid waste revenue system. See Appendix A.

12. Stringency Compared to Corresponding Federal Law: There is no corresponding federal law.

13. For Rules Adopted After July 29, 2010 That Require the Issuance of a Regulatory Permit, License or Agency Authorization, Indicate Whether the Rule Complies with A.R.S. § 41-1037 (Related to Issuing General Permits) The rules in this Article requiring registration were adopted before July 29, 2010. In addition, this registration, rather than a general permit, is specifically authorized by A.R.S. § 49-747.

14. Proposed course of action: None.

## **B. Individual Section Review**

### **R18-13-2101. Definitions**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-747.
2. Objective of the rule: The rule's objective is to define the terms used in this Article.

### **R18-13-2102. Annual Registration Fee for an Existing Solid Waste Landfill**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-747.
2. Objective of the rule: The rule's objective is to list the annual registration fees for existing municipal solid waste landfills of different sizes and types.
3. Effectiveness of the rule in achieving its objective: The rule was amended in 2012 to establish these registration fees in rule. (They were formerly in statute.) The fees resulted in about \$300,000 in FY 13 and FY 14. In FY 19 the amount was \$358,000. The rule is effective.
8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption: As anticipated in the last EIS for this rule, the registration fees received under this Section, along with the landfill disposal fees under A.R.S. § 49-836 are major contributors to the solid waste program. At the last adoption, ADEQ anticipated modest decreases in landfill and disposal fees due to recycling and other strategies for reducing waste. Given the recent market changes which have set off a nationwide reduction in recycling, ADEQ believes the landfill disposal and registration fees will increase moderately from year to year and will continue to support the bulk of Solid Waste Program activities.

### **R18-13-2103. Annual Landfill Registration: Due Date and Fees**

1. Statute(s) authorizing the rule: In addition to the general rulemaking authority specified in this report, the specific statutory authority for this rule is at A.R.S. § 49-747.
2. Objective of the rule: The rule's objective is to clarify the obligations of new landfill operators to pay the annual landfill registration fees.
14. Proposed course of action: None.

## APPENDIX A

### **The Estimated Economic, Small Business and Consumer Impact of ADEQ's Solid Waste Rules as Compared To the Economic, Small Business and Consumer Impact Statement (EIS) Prepared on the Last Making of the Rules**

This Appendix compares the current economic impacts of certain rules in this Article with those noted in the 2012 solid waste fee rulemaking. It also addresses relative costs and benefits and the issue of least burden possible given the rules' objectives for the 11 Articles that are part of this 5-year-review report.

In 2018, more than 7.2 million tons of waste was disposed in Arizona's 69 solid waste landfills (including two on Indian lands). In addition to those solid waste landfills, the Solid Waste Program regulates over 130 transfer stations, 130 tire collection sites, 36 state registered medical waste transporters, five medical waste treatment facilities, one approved medical waste disposal facility, two medical waste storage and transfer, seven facilities that have registered with alternative medical waste treatment technologies, 28 special waste transporters, and more than 250 closed solid waste facilities. More details can be found at <http://www.azdeq.gov/solidwaste>

For oversight and regulation of these facilities, ADEQ has limited staff. At the time of the 2012 solid waste fee rulemaking, the Solid Waste Program was operating with two plan reviewers and four inspectors, with three inspector vacancies. It is currently funded for three plan reviewers and six inspectors. ADEQ's believes that this is the minimum necessary staffing level for this program. In terms of overall staffing, the fees established in the 2012 rulemaking successfully implemented the statutory objectives of self-sufficiency and replacement of the General Fund subsidy, but left little room for turnover and other disruptions.

The new or increased solid waste fees in 2012 were established for self-certifying solid waste facilities (R18-13-501), solid waste general permits (R18-13-801), septage hauler vehicles (R18-13-1103), waste tire sites (R18-13-1211 and R18-13-1212), generators of auto shredder residue (R18-13-1307), biohazardous medical waste transporters (R18-13-1409), generators of petroleum contaminated soil (R18-13-1606), and landfill registrations (R18-13-2102). The

hourly rate for processing solid waste facility plans was increased in R18-13-702 from \$58.81 to \$122 per hour. In addition, Initial and Maximum fees for solid waste facility plans also increased. The economic impact statement that accompanied these rules covered nine of the current eleven Articles in Chapter 13 (5, 7, 8, 11, 12, 13, 14, 16, and 21.) At the time of the last five-year-review, the fees had not been in place long enough to determine if the objectives sought in the rulemaking and the goal of self-sufficiency were met. The results after 7 years of those fees are clearer.

In 2011, as directed by the legislature in HB 2705 (currently in A.R.S. § 49-104(B)(17)), all of these fees were to be based on “the direct and indirect costs of the Department’s relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing solid waste management licenses and permits and enforcing the requirements of the applicable regulatory program.” This was one criteria for how these fees were established.

In addition, HB 2705 set out an additional requirement: the fees should “be fairly assessed and impose the least burden and cost to the parties subject to the fees.” At the time of the 2012 rulemaking, ADEQ interpreted “fairly assessed” to mean that the amount of fees collected from any class of solid waste entities should be proportional to the “direct and indirect costs” that can be attributed to that class. (18 A.A.R. 1219)

Least Burden Possible: A relatively small share of FY 19 Solid Waste Program fees (\$200,000 from fees in Articles 5, 7, 8, 11, 12, and 14) are collected directly from smaller entities while a large share (\$2,800,000 from Article 21 landfill registration fees and A.R.S. § 49-836 landfill disposal fees) come from fees that are charged back to the population in general. Since the legislature requires all of the fees to be both “fairly assessed” and based on “[t]he direct and indirect costs of the department’s relevant duties” ... “related to issuing licenses”, it is not possible or fair to reduce the small entities’ share to less than the amount related to those duties. For example, ADEQ may not legally reduce the burden for small entities by increasing the landfill fees by a small percentage if the small entity fees would not be based on the costs of

issuing licenses. ADEQ believes the fees in the Articles that set fees for both small entities and landfills represent the least burden possible.

Landfill disposal fees, authorized under A.R.S. § 49-836, provide the largest share of Solid Waste Program funding, but the 2012 fees filled the gap created by removing the General Funds contribution. Landfill disposal fees are deposited in the Recycling Fund (A.R.S § 49-837), not the Solid Waste Fee fund (A.R.S § 49-881) but may be used for the Solid Waste Program. Recycling monies are regularly used to fund Solid Waste Program activities. Further information on the revenues from each fee in this Chapter is set out below. It should be noted that each fee in this Chapter is frozen by legislative moratorium. More information is in the individual section analysis.

Article 5. Revenues received under this Article in FY 19 totaled \$33,000. This amount was related to the registration of transfer stations, certain waste tire collection sites, and other miscellaneous solid waste facilities. The information that comes with the funds is as important as the funds, and assists the department in tracking various streams of solid waste in the state. The fees were based on the costs related to the issuance of the registrations and enforcement for this class of facilities and continue to be the least possible to achieve the objectives of fairness and proportionality to the Department's duties

Article 7. Article 7 fees are hourly and originate from reviewing new and modified facility plans. These fees totaled \$48,600 in FY 19. Since the fees are based on review costs related to each hour spent reviewing, ADEQ believes they are fairly assessed and represent the least burden possible.

Article 8. Only one general permit has been issued by ADEQ under this Article. It is a Disposal permit for mining landfills. Eight facilities have been authorized to operate under this general permit but there is only an initial fee and no annual fee. No new facilities were authorized to operate and no initial fees were received in FY 19 under this Article. ADEQ worked with stakeholders as these fees were set and still believes that they are the least burdensome possible to maintain fairness and relationship to ADEQ duties.

Article 11. ADEQ received \$58,000 in FY 2019 under this Article for 631 vehicles. This was about \$92 per vehicle. The amount is sufficient for a partial FTE and is intended to cover

administration of the program, which includes maintenance of the ADEQ database, administration and periodic negotiation and renewal of county delegation agreements, and investigation of occasional complaints. Since FY 2019, it has also covered ADEQ inspections of septage vehicles in Yavapai County because Yavapai County declined to take delegation of the septage vehicle program. In normal years, the fees are the least burdensome to achieve the objective, but should one or more counties continue to decline delegation, ADEQ may need to reevaluate the administration and/or funding for this Article.

Article 12. In the last five year review report, ADEQ noted the new fee revenue it received from waste and used tire sources was sufficient to administer those programs. In FY 19, tire revenues received by ADEQ were approximately \$5,000 and \$7,000. These fees barely cover the activities of the inspectors related to the approximately 130 tire collection sites. ADEQ may use funds from other areas to help cover these inspections as allowed by law. See A.R.S. 49-837(B)(6).

Article 14. In the 2012 amendment to this rule, ADEQ was unable to determine how many previously registered medical waste transporters were still actually operating because there was only a one-time registration required and the registration and vehicle inspection had been free. Once fees began to be charged for the license and for inspection of transporter vehicles, about one third of previously registered transporters did not obtain the new license. Unverified numbers for Fiscal Years 13 and 14 indicated that fee revenue from this Section was significantly less than estimated in the 2012 EIS for this rule. ADEQ now has a database showing which transporters and vehicles are actually operating. In FY2014, ADEQ received \$22,800 from combined inspection and license fees. At the time of this report, there were 43 medical waste transporters operating. In FY2019, ADEQ received approximately \$37,500 in combined license and inspection fees from medical waste transporters.

Article 13 and Article 16. These Articles established fees for generators of the two types of special waste, auto shredder residue and petroleum contaminated soils, respectively. As noted previously, the revenues received from these fees can fluctuate considerably from year to year. When the fees were established in 2012, ADEQ determined that the fees were fairly assessed and in an amount necessary to maintain effective and adequate special waste regulation. At the present time, in light of the fluctuation noted, ADEQ has no reason to change that determination.

Article 21. The rules were amended in 2012 to establish new registration fees in rule. They were formerly in statute. The fees resulted in about \$300,000 in FY 13 and FY 14. In FY 19 the amount was \$358,000. As anticipated in the last EIS for this rule, the registration fees received under this Section, along with the landfill disposal fees under A.R.S. § 49-836 are major contributors to the Solid Waste Program. In the last five-year report, ADEQ anticipated modest decreases in landfill registration fees and disposal fees due to recycling and other strategies for reducing waste. Given the recent market changes that have set off a nationwide reduction in recycling, ADEQ believes the landfill disposal and registration fees will increase moderately from year to year and will continue to support the bulk of Solid Waste Program activities.

Chapter 13 Cost/Benefit. Given that the fees and other burdens are the least possible for all but Article 3, and the rules meets the objectives and produce the benefits set by the authorizing legislation, ADEQ continues to believe that the costs are exceeded by the benefits of the very basic protection of human health and the environment contained in Chapter 13.

Table (next page)

**Table of proposed courses of action for 18 A.A.C 13**

<b>R18-13-201</b>	Update citations	February 2021
<b>18 A.A.C. 13, Article 3</b>	Update Article	December 2021
<b>R18-13-703(B)</b>	Correct appeal citation	February 2021
<b>R18-13-1301, 1302, 1303, 1304</b>	Fix incorrect references	February 2021
<b>R18-13-1401</b>	Substantive policy statement to clarify biohazardous medical waste excludes hair, fingernails and teeth	NA
<b>R18-13-1405(C)(4), 1409(M)(3), 1420(A)(3)(b)(i)</b>	Clarify apparent prohibition on shipment of medical waste out of state	February 2021
<b>R18-13-1409(H)</b>	Correct appeal citation	February 2021
<b>R18-13-1412</b>	Add clean facility requirement	February 2021
<b>R18-13-1417</b>	Coordinate title and text	February 2021
<b>R18-13-1418</b>	Clarify subsection (B) for consistency with federal rule	February 2021
<b>R18-13-1601, 1603, 1604</b>	Correct issues related to definition of PCS	February 2021
<b>R18-13-1607(A)</b>	Clarify in state vs out of state	February 2021
<b>R18-13-1608, 1610, 1613</b>	Correct citations, labeling of standard	February 2021



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

**TITLE 18. Environmental Quality**

**Chapter 13. Department of Environmental Quality - Solid Waste Management**

Sections, Parts, Exhibits, Tables or Appendices modified  
R18-13-2501

REMOVE Supp. 16-3  
Pages: 1 - 41

REPLACE with Supp. 17-4  
Pages: 1 - 41

*The Council can answer questions about EXPIRED rules in this Chapter:*

Name: Governor's Regulatory Review Council  
Address: 100 N 15th Ave #305  
Phoenix, AZ 85007  
Phone: (602) 542-2058

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

**PUBLISHER**  
**Arizona Department of State**  
**Office of the Secretary of State, Administrative Rules Division**

## 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  
December 31, 2017

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### **RULES**

A.R.S. § 41-1001(17) states: “‘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. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

### **ADMINISTRATIVE CODE SUPPLEMENTS**

Rules filed by an agency to be published in the Administrative Code are updated quarterly. 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 2017 is cited as Supp. 17-1.

### **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.

### **ARTICLES AND SECTIONS**

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

### **HISTORICAL NOTES AND EFFECTIVE DATES**

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

### **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 the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/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 Arizona Administrative Register online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were 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**

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. 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.

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*Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.*

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY - SOLID WASTE MANAGEMENT

Editor's Note: The Office of the Secretary of State publishes all Chapters on white paper (Supp. 01-2).

Editor's Note: This Chapter contains rules which were adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 49-701.01(C)(1) and (2). Exemption from A.R.S. Title 41, Chapter 6 means that the Department did not submit these rules to the Governor's Regulatory Review Council for review; the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and the Department was not required to hold public hearings on these rules.

ARTICLE 1. RESERVED

ARTICLE 2. SOLID WASTE DEFINITIONS; EXEMPTIONS

Article 2, consisting of Section R18-13-201, adopted effective July 27, 1998, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 98-3).

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ARTICLE 12. WASTE TIRES

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*Article 14, consisting of Sections R18-13-1401 through R18-13-1420, adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).*

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*Editor's Note: The recodification at 7 A.A.R. 2522 described below erroneously moved Sections into 18 A.A.C. 9, Article 9. Those Sections were actually recodified to 18 A.A.C. 9, Article 10. See the Historical Notes for more information (Supp. 01-4).*

*Article 15, consisting of Sections R18-13-1501 through R18-13-1514 and Appendix A, recodified to 18 A.A.C. 9, Article 9 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2).*

*Article 15, consisting of Sections R18-13-1501 through R18-13-1514 and Appendix A, adopted effective April 23, 1996 (Supp. 96-2).*

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*Article 16, consisting of Sections R18-13-1601 through R18-13-1614, recodified from 18 A.A.C. 8, Article 16 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).*

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**ARTICLE 17. RESERVED**

**ARTICLE 18. RESERVED**

**ARTICLE 19. RESERVED**

**ARTICLE 20. RESERVED**

**ARTICLE 21. SOLID WASTE LANDFILL REGISTRATION FEES**

*Article 21, consisting of Sections R18-13-2101 through R18-*

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13-2103, made by final rulemaking at 9 A.A.R. 1770, effective July 14, 2003 (Supp. 03-2).

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**ARTICLE 23. RESERVED**

**ARTICLE 24. RESERVED**

**ARTICLE 25. EXPIRED**

Article 25, consisting of Section R18-13-2501, expired at 23 A.A.R. 3429, effective October 10, 2017 (Supp. 17-4).

Article 25, consisting of Section R18-13-2501, adopted by final rulemaking at 5 A.A.R. 4654, effective November 15, 1999 (Supp. 99-4).

Section

R18-13-2501. Expired ..... 40

**ARTICLE 26. EXPIRED**

Article 26, consisting of Sections R18-13-2601 through R18-13-2604, expired at 16 A.A.R. 705, effective April 6, 2010 (Supp. 10-2).

Article 26, consisting of Sections R18-13-2601 through R18-13-2604, made by exempt rulemaking at 14 A.A.R. 4258, effective October 20, 2008 (Supp. 08-4).

Section

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**ARTICLE 27. EXPIRED**

Article 27 consisting of Sections R18-13-2701 through R18-13-2703, expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2984, effective September 15, 2016 (Supp. 16-3).

Article 27 consisting of Sections R18-13-2701 through R18-13-2703, made by exempt rulemaking at 16 A.A.R. 848, effective July 1, 2010 (Supp. 10-2).

Section

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**ARTICLE 1. RESERVED**

*Editor's Note: Article 2, consisting of Section R18-13-201, was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to A.R.S. § 49-701.01(C)(1) and (2). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit the rules to the Governor's Regulatory Review Council for review; and the Department was not required to hold public hearings on this Section (Supp. 98-3).*

**ARTICLE 2. SOLID WASTE DEFINITIONS; EXEMPTIONS**

*Editor's Note: The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act which means that these rules were not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and the agency was not required to hold public hearings on these rules (Supp. 98-3).*

**R18-13-201. Land Application of Biosolids Exemption**

- A. This Section applies only to biosolids as defined in R18-13-1501(7). The land application of biosolids, when placed on or applied to the land in full conformity with 18 A.A.C. 13, Article 15 and A.R.S. § 49-761(F), and if the site of land application has ceased to receive application of biosolids and all applicable site restrictions set by 18 A.A.C. have been satisfied, is exempt statewide from the definition of solid waste found at A.R.S. § 49-701.01(A). This exemption applies only when the biosolids and the soil to which it has been applied remain at the site of the application.
- B. This exemption does not alter or set any new standard for the soil remediation standards found at 18 A.A.C. 7, Article 2.

**Historical Note**

Adopted under and exemption from A.R.S. Title 41, Chapter 6, pursuant to A.R.S. § 49-701.01(C)(1) and (2), effective July 27, 1998 (Supp. 98-3). Amended by exempt rulemaking at 5 A.A.R. 4004, effective September 17, 1999 (Supp. 99-3).

**R18-13-202. Coal Slurry Discharges from Pipeline Leaks Exemption**

This Section applies only to coal slurry discharges onto the ground from pipeline leaks. Coal slurry discharges onto the ground from pipeline leaks are exempt statewide from the definition of solid waste prescribed in A.R.S. § 49-701.01(A) if both of the following conditions are met:

1. The discharge was the result of an accidental pipeline leak.
2. The thickness of the layer of coal slurry on the ground that resulted from the discharge is 3 inches or less.

**Historical Note**

New Section adopted by exempt rulemaking at 5 A.A.R. 4004, effective September 17, 1999 (Supp. 99-3).

**ARTICLE 3. REFUSE AND OTHER OBJECTIONABLE WASTES****R18-13-301. Reserved****R18-13-302. Definitions**

- A. "Approved" means acceptable to the Department.
- B. "Ashes" means residue from the burning of any combustible material.
- C. "Department" means the Department of Environmental Quality or a local health department designated by the Department of Environmental Quality.

- D. "Garbage" means all animal and vegetable wastes resulting from the processing, handling, preparation, cooking, and serving of food or food materials.
- E. "Manure" means animal excreta, including cleanings from barns, stables, corrals, pens, or conveyances used for stabling, transporting, or penning of animals or fowls.
- F. "Person" means the state, a municipality, district or other political subdivision, a cooperative, institution, corporation, company, firm, partnership or individual.
- G. "Refuse" means all putrescible and nonputrescible solid and semisolid wastes, except human excreta, but including garbage, rubbish, ashes, manure, street cleanings, dead animals, abandoned automobiles, and industrial wastes.
- H. "Rubbish" means nonputrescible solid wastes, excluding ashes, consisting of both combustible and noncombustible wastes, such as paper, cardboard, waste metal, tin cans, yard clippings, wood, glass, bedding, crockery and similar materials.

**Historical Note**

Section recodified from A.A.C. R18-8-502, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-303. Responsibility**

- A. The owner, agent, or the occupant of any premises, business establishment, or industry shall be responsible for the sanitary condition of said premises, business establishment, or industry. No person shall place, deposit, or allow to be placed or deposited on his premises or on any public street, road, or alley any refuse or other objectionable waste, except in a manner described in these rules.
- B. The owner, agent, or the occupant of any premises, business establishment, or industry shall be responsible for the storage and disposal of all refuse accumulated, by a method or methods described in these rules.
- C. The collection and disposal of all refuse not acceptable for collection by a collection agency is the responsibility of each occupant, business establishment, or industry where such refuse accumulates, and all such refuse shall be stored, collected, and disposed of in a manner approved by the Department.
- D. All dangerous materials and substances shall, where necessary, be rendered harmless prior to collection and disposal.

**Historical Note**

Section recodified from A.A.C. R18-8-503, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-304. Inspection**

Representatives of the Department shall make such inspections of any premises, container, process, equipment, or vehicle used for collection, storage, transportation, disposal, or reclamation or refuse as are necessary to ensure compliance with these rules.

**Historical Note**

Section recodified from A.A.C. R18-8-504, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-305. Collection Required**

- A. Where refuse collection service is available, the following refuse shall be required to be collected: Garbage, ashes, rubbish, and small dead animals which do not exceed 75 pounds in weight.
- B. The following refuse is not considered acceptable for collection but may be collected at the discretion of the collection

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agency where special facilities or equipment required for the collection and disposal of such wastes are provided:

1. Dangerous materials or substances, such as poisons, acids, caustics, infected materials, radioactive materials, and explosives.
2. Materials resulting from the repair, excavation, or construction of buildings and structures.
3. Solid wastes resulting from industrial processes.
4. Animals exceeding 75 pounds in weight, condemned animals, animals from a slaughterhouse, or other animals normally considered industrial waste.
5. Manure.

**Historical Note**

Section recodified from A.A.C. R18-8-505, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-306. Notices**

- A. All collection agencies shall provide each householder, or business establishment served, with a copy of the requirements governing the storage and collection of refuse which shall cover at least the following items:
  1. Definitions.
  2. Places to be served.
  3. Places not to be served.
  4. Scheduled day or days of collection.
  5. Materials acceptable for collection.
  6. Materials not acceptable for collection.
  7. Preparation of refuse for collection.
  8. Types and size of containers permitted.
  9. Points from which collections will be made.
  10. Necessary safeguards for collectors.
- B. All such notices governing storage and collection shall conform to these rules.

**Historical Note**

Section recodified from A.A.C. R18-8-506, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-307. Storage**

- A. All refuse shall be stored in accordance with the requirements of this Section. The owner, agent, or occupant of every dwelling, business establishment, or other premises where refuse accumulates shall provide a sufficient number of suitable and approved containers for receiving and storing of refuse, and shall keep all refuse therein, except as otherwise provided by this Chapter.
- B. Garbage shall be stored in durable, rust resistant, nonabsorbent, watertight, and easily cleanable containers, with close fitting covers and having adequate handles or bails to facilitate handling. The size of the container shall be determined by the collection agency.
- C. Rubbish and ashes shall be stored in durable containers. Bulky rubbish such as tree trimmings, newspapers, weeds, and large cardboard boxes shall be handled as directed by the collection agency. Where garbage separation is not required, containers for the storage of mixed rubbish and garbage shall meet the requirements specified in subsection (B) above.
- D. Containers for the storage of refuse shall be maintained in such a manner as to prevent the creation of a nuisance or a menace to public health. Containers that are broken or otherwise fail to meet the requirements of the rules shall be replaced, by the owner of said containers, with approved containers.
- E. Manure and droppings shall be removed from pens, stables, yards, cages, conveyances, and other enclosures as often as necessary to prevent a health hazard or the creation of a nuisance.

sance. All material removed shall be handled and stored in a manner that will maintain the premises nuisance free.

**Historical Note**

Section recodified from A.A.C. R18-8-507, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-308. Frequency of Collection**

- A. The frequency of collection shall be in accordance with rules of the collection agency but not less than that shown in the following schedules:
  1. Garbage only -- twice weekly.
  2. Refuse with garbage -- twice weekly.
  3. Rubbish and ashes -- as often as necessary to prevent nuisances and fly breeding.
- B. A variance from the required frequency rate may be granted to allow for the collection of garbage once weekly. The variance may be granted by the Department of Environmental Quality upon submission of an acceptable plan approved by the local health department demonstrating that no public health hazards or nuisances will exist and that fly breeding will be controlled by either biological, chemical, or mechanical means. The variance may be revoked whenever the Department of Environmental Quality determines that the circumstances warranting the variance no longer exist.

**Historical Note**

Section recodified from A.A.C. R18-8-508, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-309. Place of Collection**

- A. All refuse shall be properly placed on the premises for convenient collection as designated by the collection agency.
- B. Where alleys are provided, collection shall be made on the alley side of the premises.

**Historical Note**

Section recodified from A.A.C. R18-8-509, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-310. Vehicles**

- A. Vehicles used for collection and transportation of garbage, or refuse containing garbage, shall have covered, watertight, metal bodies of easily cleanable construction, shall be cleaned frequently to prevent a nuisance or insect breeding, and shall be maintained in good repair.
- B. Vehicles used for collection and transportation of refuse shall be loaded and moved in such a manner that the contents, including ashes, will not fall, leak, or spill therefrom. Where spillage does occur, it shall be picked up immediately by the collector and returned to the vehicle or container.
- C. Vehicles used for collection and transportation of rubbish or manure shall be of such construction as to prevent leakage or spillage, and shall provide a cover to prevent blowing of materials or creating a nuisance.

**Historical Note**

Section recodified from A.A.C. R18-8-510, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-311. Disposal; General**

- A. All refuse shall be disposed of by a method or methods included in these rules and shall include rodent, insect, and nuisance control at the place or places of disposal. Approval must be obtained from the Department for all new disposal sites and may change in the method of disposal prior to use.

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- B. Carcasses of large dead animals shall be buried or cremated, unless satisfactory arrangements have been made for disposal by rendering or other approved methods.
- C. All public "dumping grounds", provided in compliance with A.R.S. § 9-441, shall be maintained and operated in accordance with the requirements of these rules.
- D. Manure shall be disposed of by sanitary landfill, composting, incineration, or used as fertilizer in such a manner as not to create insect breeding or a nuisance.

**Historical Note**

Section recodified from A.A.C. R18-8-511, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-312. Methods of Disposal**

Approval must be obtained from the Department for any method or methods used for the disposal of refuse prior to the start of operations, and shall be accomplished by one or more of the methods listed below:

1. Sanitary landfill -- Consists of the disposal of refuse on land and the daily compaction and covering of the refuse with 6 to 12 inches of earth so as to prevent a health hazard or nuisance. The final compacted earth cover shall be a minimum of 2 feet in depth. Where sanitary landfill operations are proposed, the Department will require the following:
  - a. The landfill shall be located so that seepage will not create a health hazard, nuisance, or cause pollution of any watercourse or water bearing strata.
  - b. Adequate and proper surface drainage shall be provided to prevent ponding or erosion by rainwater of the finished fill.
  - c. Provision shall be made for the control of insects, rodents, wind blown refuse, and accidental fire.
  - d. Burning of refuse is prohibited.
  - e. An all weather access road is required.
  - f. Suitable equipment and operating personnel shall be provided.
  - g. Salvaging, if permitted, shall be rigidly controlled.
  - h. A variance from the daily compaction and covering requirement may be granted for sites serving less than 2,000 people by the Department of Environmental Quality upon submission of an acceptable plan approved by the local health department demonstrating that no public health hazards or nuisances will exist. The variance will allow for compaction and cover every two weeks at sites serving less than 500 people; weekly compaction and cover for sites serving from 500 to 1,000 people; and twice weekly compaction and cover for sites serving from 1,000 to 2,000 people. The variance may be revoked whenever the Department of Environmental Quality determines that the circumstances warranting the variance no longer exist.
2. Incineration -- Where incineration is to be employed, the plans and specifications, along with any other information necessary to evaluate the project, shall be submitted to the Department and approval received prior to construction. In addition, an approved method for the disposal of non-combustible refuse is required. Where incineration is proposed, the following items shall be provided.
  - a. The capacity of the incinerator shall be sufficient for the maximum production of refuse expected.
  - b. Noncombustible refuse shall be disposed of by methods approved by the Department.

- c. Skilled personnel to assure the proper operation and maintenance of the facilities in a nuisance-free manner.
3. Composting -- This method of disposal is acceptable to the Department under the following conditions:
  - a. That plans and specifications and other information necessary to evaluate the project are submitted to the Department and approval received prior to start of construction.
  - b. That provisions are made for the proper disposal of all refuse not considered suitable for composting.
  - c. Skilled personnel shall be provided to assure the proper operation and maintenance of the facilities in a nuisance-free manner.
4. Garbage grinding -- This method, involving the separate collection and disposal of garbage into a community sewerage system through commercial type grinders or mandatory community-wide installation of individual household grinders, will be acceptable to the Department provided that suitable means shall be provided for the disposal of all remaining refuse.
5. Hog feeding -- This method of disposal will only be approved under the following conditions:
  - a. The garbage is collected and stored in suitable containers.
  - b. Only approved type vehicles are used for collection.
  - c. All garbage is effectively heat-treated in accordance with Title 24, Chapter 7, Article 3 (A.R.S. §§ 24-941 through 24-949).
  - d. All remaining refuse, including nonedible garbage, is collected and disposed of separately by methods approved by the Department.
6. Manure disposal -- Manure shall be disposed of by sanitary landfill, composting, incinerating, or used as a fertilizer in such a manner as not to create insect breeding or a nuisance.

**Historical Note**

Section recodified from A.A.C. R18-8-512, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**ARTICLE 4. RESERVED****ARTICLE 5. REQUIREMENTS FOR SOLID WASTE FACILITIES SUBJECT TO SELF-CERTIFICATION****R18-13-501. Solid Waste Facilities Requiring Self-Certification; Registration Fees**

- A. The following solid waste facilities requiring self-certification under A.R.S. § 49-762.01 shall register with the Department and pay registration fees as provided in this Section by September 30, 2012, and annually thereafter by September 30th:
  1. A transfer facility with a daily throughput of more than 180 cubic yards, including a material recovery facility, but not including:
    - a. A material recovery facility where the incoming materials are primarily source separated recyclables; or
    - b. Community or neighborhood recycling bins including drop boxes, roll off containers, plastic containers used to collect residential, business, and/or governmental recyclable solid waste.
  2. A facility storing 5,000 or more waste tires on any one day and not required to obtain plan approval.
  3. A waste tire shredding and processing facility.
- B. Initial registration for a new facility. The owner or operator of a planned new facility identified in subsection (A) shall submit

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the following information to the Department before beginning construction:

1. The name of the solid waste facility.
  2. The name, mailing address and telephone number of each owner and operator of the solid waste facility.
  3. The physical location of the solid waste facility by physical address, latitude and longitude, or legal description. If none of these are practical, by driving directions from the nearest city or town.
  4. A brief description of operations, including waste management methods, types and volumes of waste handled, waste storage and treatment equipment, and the length of time the waste remains onsite.
  5. A diagram of the property showing its approximate size and the planned location of the solid waste facility or facilities.
  6. Documentation that the facility will comply with local zoning laws or, if the owner is an agency or political subdivision of this state, with A.R.S. § 49-767.
  7. Documentation that the facility has any other environmental permit that is required by statute.
  8. A copy of the public notice in a newspaper of general circulation in the area where the facility will be located stating the intent to construct and operate a new solid waste facility pursuant to A.R.S. § 49-762.05.
- C.** Initial and annual registration for an existing facility. The owner or operator of an existing facility shall submit the following information to the Department annually on a form approved by the Department and note any changes since the last registration:
1. The name of the solid waste facility.
  2. The name, address and telephone number of each owner and operator of the solid waste facility.
  3. The physical location of the solid waste facility by physical address, latitude and longitude, or legal description. If none of these are practical, by driving directions from the nearest city or town.
  4. A brief description of operations, including waste management methods, types and volumes of waste handled, waste storage and treatment equipment, and the length of time the waste remains onsite.
  5. A diagram of the property showing its approximate size and the location of the solid waste facility or facilities.
  6. Documentation that the facility remains in compliance with the most current local zoning laws or with A.R.S. § 49-767, as applicable.
  7. Documentation that the facility continues to hold any other environmental permit that is required by statute.
- D.** Self-certification. With each registration under subsection (B) or (C), the owner or operator shall certify that the information submitted is true, accurate, and complete to the best of the person's knowledge and belief.
- E.** Registration fees. The owner or operator of a transfer facility under subsection (A)(1) shall pay the Department \$1,000 for the initial registration of a new or existing facility, and \$500 for each annual registration thereafter. The owner or operator of a tire facility under subsection (A)(2) or (3) shall pay the Department \$1,000 for the initial registration of a new or existing facility, and \$250 for each annual registration thereafter.
- F.** As used in this Section:
1. "Department" means the Arizona Department of Environmental Quality.
  2. "Material recovery facility" means a transfer facility that collects, compacts, repackages, sorts, or processes commingled recyclable solid waste generated offsite for the purpose of recycling and transport, or where source sepa-

rated recyclable solid waste is processed for sale to various markets, and where the incoming materials are predominantly recyclable solid waste.

3. "Recyclable solid waste" means a product or material described in subsection (F)(3)(a) or (b), and for which subsection (F)(3)(c) is true:
  - a. A product with no useful life remaining for the purposes for which it was produced, or if useful life remains, the product will not, due to location, quantity, or owner choice, remain in use or be reused for a purpose for which it was produced.
  - b. A material that is a result of a process or activity whose purpose was to produce something else.
  - c. The product or material retains some economic value, with or without further processing, as a raw material or feedstock in some process other than incineration or combustion.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

**ARTICLE 6. RESERVED****ARTICLE 7. SOLID WASTE FACILITY PLAN REVIEW FEES****R18-13-701. Definitions**

In addition to the definitions provided in A.R.S. §§ 49-701, 49-701.01, and 49-851, and 18 A.A.C. 13, the following definitions apply in this Article:

1. "Aquifer Protection Permit" or "APP" means the permit that is required pursuant to A.R.S. § 49-241.
2. "MSWLF" means a municipal solid waste landfill as defined in A.R.S. § 49-701.
3. "Non-APP requirements for Non-MSWLFs" means 40 CFR 257 requirements and the restrictive covenant and location restrictions required in A.R.S. Title 49, Chapter 4.
4. "Non-MSWLF" means a landfill that is not a municipal solid waste landfill as defined in A.R.S. § 49-701.
5. "RD&D" means research, development, and demonstration.
6. "Review hours" means the hours or portions of hours that the Department's staff spends on a request for a plan review. Review hours include the time spent by the project manager and technical review team members, and if requested by the applicant, the supervisor or unit manager.
7. "Review-related costs" means any of the following costs applicable to a specific plan review:
  - a. Presiding officer services for public hearings on a plan review decision,
  - b. Court reporter services for public hearings on a plan review decision,
  - c. Facility rentals for public hearings on a plan review decision,
  - d. Charges for laboratory analyses performed during the plan review,
  - e. Other reasonable and necessary review-related expenses documented in writing by the Department and agreed to by an applicant.
8. "Solid waste facility plan" means a plan or the individual components of a plan, such as the design, operational, closure, or post-closure plan, or the demonstration of financial responsibility as required by A.R.S. § 49-770, submitted to the Department for review and plan approval.

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**Historical Note**

Adopted effective July 1, 1996; filed in the Office of the Secretary of State December 1, 1995 (Supp. 95-4). Amended effective May 15, 1997 (Supp. 97-2). Amended by exempt rulemaking at 8 A.A.R. 3747, effective November 1, 2002 (Supp. 02-3). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

**R18-13-702. Solid Waste Facility Plan Review Fees**

A. With each application submitted for approval pursuant to A.R.S. § 49-762.03, the applicant shall remit an initial fee in accordance with one of the fee tables in this subsection, unless otherwise provided in subsection (B). This subsection also lists the maximum fees that the Department will bill the applicant. All fees paid shall be payable to the state of Arizona. The Department shall deposit the fees paid into the Solid Waste Fee Fund established pursuant to A.R.S. § 49-881, unless otherwise authorized or required by law.

**Fee Tables**

Fees for Plan Review of New Solid Waste Facilities		
	Initial	Maximum
Solid Waste Landfills	\$20,000	\$200,000
Non-APP requirements for Non-MSWLFs operating under an APP	\$2,000	\$50,000
Other Solid Waste Facilities Subject to Plan Approval	\$10,000	\$100,000

Fees for Modifications to Solid Waste Facility Plans		
	Initial	Maximum
Solid Waste Landfills - Type IV	\$1,500	\$150,000
Solid Waste Landfills - Type IV - RD&D	\$15,000	\$150,000
Solid Waste Landfills - Type III	\$750	\$75,000
Other Solid Waste Facilities Subject to Plan Approval - Type IV	\$750	\$75,000
Other Solid Waste Facilities Subject to Plan Approval - Type III	\$500	\$50,000

Fees for Review of Financial Responsibility Plans for Solid Waste Facilities		
	Initial	Maximum
Annual Review for Solid Waste Landfills	\$600 Flat Fee	N/A
Other Solid Waste Facilities	\$200	\$5,000

B. The Department shall bill an applicant for plan review services, subject to an hourly rate, no more than monthly, but at least semi-annually. The following information shall be included in each bill:

1. The dates of the billing period;
2. After January 1, 2013, the date and number of review hours performed during the billing period itemized by employee name, position type and specifically describing:
  - a. Each review task performed,
  - b. The facility and operational unit involved, and
  - c. The hourly rate;
3. A description and amount of any other reasonable review-related cost; and

4. The total fees paid to date, the total fees due for the billing period, the date when the fees are due, and the maximum fee for the project.

- C. Within 30 days after the Department makes a final determination whether to approve or disapprove of the facility plan, or when an applicant withdraws or closes the application for review, the Department shall prepare and issue a final itemized bill of its review. If the Department determines that the actual cost of reviewing the plan is less than the initial fee and any interim fees paid, the Department shall refund the difference to the applicant within 30 days after the issuance of the approval or disapproval of the application. If the Department determines that the actual cost of plan review is greater than the corresponding amount listed, the Department shall list the amount that the applicant owes on the final itemized bill, except that the final itemized bill shall not exceed the applicable maximum fee specified in subsection (A). The applicant shall pay in full the amount due within 30 days of receipt of the final itemized bill.
- D. If the final bill is not paid within the 30 days, the Department shall mail a second notice to the applicant. Failure to pay the amount due within 60 days of receipt of the notice shall result in the Department initiation of proceedings for suspension of the approval, in accordance with A.R.S. § 49-782. The suspension shall continue until full payment is received at the Department. If full payment is not received at the Department within 365 days of the date of the approval, the approval shall be revoked in accordance with A.R.S. § 49-782. The Department shall not review any further plans for an entity which has not paid all fees due for a previous review of a solid waste facility plan.
- E. When determining actual cost under subsection (C), the Department shall use an hourly billing rate for all review hours spent working on the review of a plan, and add review-related costs which were incurred but are not included in the hourly billing rate.
- F. The hourly rate is \$122.00, beginning July 1, 2012, and shall remain in effect until it is either changed or repealed.

**Historical Note**

Adopted effective July 1, 1996; filed in the Office of the Secretary of State December 1, 1995 (Supp. 95-4). Corrected typographical error "facilities" in Schedules A, B, and C, to reflect Section filed in the Office of the Secretary of State December 1, 1995. Section amended effective May 15, 1997; except for special waste management plan component fees listed in Schedules A, B, and C, which become effective July 1, 1997 (Supp. 97-2). Amended by exempt rulemaking at 5 A.A.R. 3869, effective October 1, 1999 (Supp. 99-3). Amended by exempt rulemaking at 8 A.A.R. 3747, effective November 1, 2002 (Supp. 02-3). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

**R18-13-703. Review of Bill**

- A. An applicant who disagrees with the final bill received from the Department for plan review and issuance or denial of a solid waste facility plan approval under this Article may make a written request to the Director for a review of the bill and may pay the bill under protest. The request for review shall specify the matters in dispute and shall be received by the Department within 10 working days of the date of receipt of the final bill.
- B. Unless the Department and applicant agree otherwise, the review shall take place within 30 days of receipt by the Department of the request. The Director shall make a final decision as to whether the time and costs billed are correct and

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reasonable. The final decision shall be mailed to the applicant within 10 working days after the date of the review and is subject to appeal pursuant to A.R.S. § 49-769.

**Historical Note**

Adopted effective July 1, 1996; filed in the Office of the Secretary of State December 1, 1995 (Supp. 95-4). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

**R18-13-704. Repealed**

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 3747, effective November 1, 2002 (Supp. 02-3). Section repealed by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

**R18-13-705. Repealed**

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 3747, effective November 1, 2002 (Supp. 02-3). Section repealed by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

**R18-13-706. Repealed**

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 3747, effective November 1, 2002 (Supp. 02-3). Section repealed by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

**ARTICLE 8. GENERAL PERMITS**

**R18-13-801. General Permit Fees**

- A. The Department shall assess annual fees for operation under a general permit established in rule as described in the Table below.
- B. In addition to the technical requirements proposed for any general permit to be included in this Article, the Department shall propose the category to be assigned to the permit according to the Table below.
- C. An applicant shall pay the initial fee when approval to operate is requested. The Department shall bill an annual fee to facilities that have not notified the Department that they are no longer operating and have met the closure requirements of this Chapter.
- D. For the purpose of this Article, "complex" has the meaning in A.A.C. R18-1-501. "Standard" is any facility that is not complex.

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Category	Initial Fee	Annual Fee
Collection, Storage and Transfer-Standard	\$750	\$100
Collection, Storage and Transfer-Complex	\$7,500	\$1,000
Treatment-Standard	\$1,000	\$100
Treatment-Complex	\$10,000	\$1,000
Disposal	\$15,000	N/A

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

**R18-13-802. Disposal General Permit: Non-Municipal Solid Waste Landfills at Mining Operations**

- A. This general permit is adopted pursuant to A.R.S. § 49-706 as an alternative to plan approvals for facilities identified in A.R.S. § 49-762(A)(1). This general permit authorizes disposal of solid waste in a landfill at a mining operation if the landfill meets one of the following criteria:
  - 1. The landfill is identified as a discharging facility in an area-wide aquifer protection permit and is located within the pollutant management area developed for that permit; or
  - 2. The landfill is located within the pollutant management area of an area-wide aquifer protection permit but is exempt from the permit requirement because it contains only inert material as defined in A.R.S. § 49-201; or
  - 3. The landfill is located at a site qualifying as a groundwater protection permit facility as defined in A.R.S. § 49-241.01(C) and the site has submitted an administratively complete application for an aquifer protection permit that has not been denied. Landfills that are located at mining operations and that are subject to best management practices under A.R.S. § 49-762.02(6) are required to comply with those practices and do not require coverage under this general permit.
- B. Authorized and prohibited materials.
  - 1. Disposal of the following is allowed under this general permit:
    - a. Solid waste generated at the mining operation where the landfill is located; and
    - b. Incidental amounts of putrescible waste generated at the mining operation where the landfill is located. For the purposes of this Section, "putrescible waste" means solid waste which contains organic matter capable of being decomposed by microorganisms and of such a character and proportion as to be capable of attracting or providing food for birds.
  - 2. Disposal of the following is prohibited under this general permit:
    - a. Used oil as defined in A.R.S. § 49-801(3).
    - b. Human excreta as defined in R18-13-1102.
    - c. Special waste as defined in A.R.S. § 49-851(A)(5).
    - d. Biohazardous medical waste as defined in R18-13-1401.
    - e. Radioactive waste material regulated for disposal pursuant to Title 12, Chapter 1 of the Arizona Administrative Code.
    - f. Hazardous waste as defined in A.R.S. § 49-921(5), including hazardous waste generated by a conditionally exempt small quantity generator.
    - g. Bulk or noncontainerized liquid waste.
    - h. Waste containing polychlorinated biphenyls regulated for disposal pursuant to 40 CFR 761.
- C. A person may operate a landfill at a mining operation under this general permit if:
  - 1. Operation of the landfill complies with the requirements of this Section;
  - 2. The person files a Notice of Intent to Operate that complies with subsections (D) and (E);
  - 3. The person satisfies any requests for additional information from the Department regarding the Notice of Intent to Operate landfill operation and receives a written Authorization to Operate from the Director; and
  - 4. The person submits the applicable fee established in R18-13-801 for the Disposal category.
- D. Notice of Intent to Operate. An applicant shall submit to the Department a Notice of Intent to Operate under this general permit. The Notice shall contain:

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1. The name, address, and telephone number of the applicant;
  2. The name, address, and telephone number of a contact person familiar with the operation of the facility;
  3. The legal description of the landfill area, latitude and longitude coordinates, a detailed figure(s) showing both the existing landfill boundary and the anticipated future waste footprint of the landfill at the time of closure, and a map showing the location of the landfill within the mining operation;
  4. A description of how the applicant will meet the public access restrictions in subsection (H)(3);
  5. A description of how the applicant will meet the cover requirements in subsection (H)(4);
  6. A description of how the applicant will meet the methane requirements in subsection (H)(5). For landfills that have accepted waste prior to the effective date of this Section only, the applicant shall include recent methane monitoring sampling results from either:
    - a. One (1) measurement per acre of landfill waste footprint; or
    - b. A minimum of four (4) monitoring probes installed to the depth of refuse around the perimeter of the landfill and measured quarterly for the presence of methane gas for a period of one (1) year;
  7. A narrative description of the landfill, including whether the landfill is existing or planned, the acreage of the current and planned waste footprint, estimated disposal capacity in cubic yards, expected lifespan, projected rate of waste disposal in tons per day or per week, and sources of solid waste generation;
  8. A listing of any other federal or state environmental permits issued for or needed by the landfill, including any individual plan approval, APP, Groundwater Quality Protection Permit, or Notice of Disposal; and
  9. A signature on the Notice of Intent to Operate certifying that the applicant agrees to comply with all terms of this general permit.
- E.** Existing facility application deadline. Existing facilities that qualify for coverage under subsections (A)(1), (A)(2), or (A)(3) on the effective date of this rule shall submit a Notice of Intent to Operate within 2 years of the effective date of this rule to obtain coverage. The Director may extend this date in individual cases if the facility could not have submitted an administratively complete Notice in time with reasonable diligence.
- F.** Authorization review.
1. Inspection. The Department may inspect the facility to determine that the applicable terms of this general permit are being met.
  2. Authority to Operate issuance.
    - a. If the Department determines, based on its review and an inspection, if conducted, that the facility conforms to the requirements of this general permit, the Director shall issue an Authority to Operate.
    - b. The Authority to Operate authorizes the person to operate the landfill under the terms of this general permit.
  3. Authority to Operate denial. If the Department determines, based on its review and an inspection, if conducted, that the facility does not conform to the requirements of this general permit, the Director shall notify the person of the decision not to issue the Authority to Operate and the person shall not operate the landfill under this general permit. The notification shall inform the person of:
    - a. The reason for the denial with reference to the statute or rule on which the denial is based;
    - b. The person's right to appeal the denial, including the number of days the applicant has to file a protest challenging the denial and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and
    - c. The person's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.
- G.** Statutory requirements. The landfill shall be:
1. Located according to the applicable location restrictions in A.R.S. § 49-772; and
  2. Subject to a restrictive covenant recorded pursuant to A.R.S. § 49-771.
- H.** Operational requirements.
1. Inspect the landfill at least quarterly and after large storm events for overall integrity and condition of the facility, including stormwater diversions, and conduct maintenance and repairs as needed. For the purposes of this Section, a "large storm event" is defined as one-half inch of precipitation in any 24-hour period.
  2. Direct storm water runoff from surrounding areas away from the landfill.
  3. Restrict public access to the landfill or to the mining operation site by signs or physical barriers, including natural barriers.
  4. Apply cover at such frequencies and in such a manner as to control windblown dispersion of waste, reduce the risk of fire and impede disease vectors' access to the waste, taking into account the types and volumes of waste placed in the landfill, the frequency of disposal, and other relevant considerations. The Department may allow other techniques that are demonstrated to be equally protective as applying cover material.
  5. Concentrations of methane gas shall not exceed 25% of the lower explosive limit in facility structures within 100 feet of the landfill boundary and shall not exceed the lower explosive limit beyond the landfill boundary.
  6. Methane monitoring.
    - a. For landfills that have accepted waste prior to the effective date of this Section only, the applicant shall include recent methane monitoring data as described in subsection (D)(6) with the Notice of Intent to Operate.
      - i. If the data demonstrate that concentrations of methane gas do not exceed 25% of the lower explosive limit, then no methane monitoring is required in order to operate under this permit.
      - ii. If the data demonstrate that concentrations of methane gas exceed 25% of the lower explosive limit, then annual methane monitoring using one of the data gathering methods described in subsection (D)(6) is required in order to operate under this permit. Results of such annual methane monitoring shall be submitted to the Department.
        - (1) A person operating a landfill subject to annual methane monitoring may reduce monitoring to once every five years if the results of three consecutive annual sampling events demonstrate that concentrations of methane gas do not exceed 25% of the lower explosive limit.
        - (2) A person operating a landfill subject to annual methane monitoring may request

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the Department to reduce or eliminate such monitoring based on any other methods approved by the Department, including consideration of the potential for methane gas to be present in facility structures within 100 feet of the landfill boundary at concentrations exceeding 25% of the lower explosive limit.

- b. For landfills that have not accepted waste prior to the effective date of this Section, no methane monitoring is required in order to obtain coverage or operate under this permit.
7. Maintain an operating record that documents compliance with the conditions in this permit.
- I. Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:
  1. Landfill construction drawings and as-built plans, if available;
  2. The operating record required by subsection (H)(7); and
  3. Methane monitoring results, if any, obtained under subsection (H)(6).
- J. Reporting requirements. A permittee shall report the following to the Department:
  1. Methane monitoring concentrations that exceed those listed in subsection (H)(5) within 7 days of the determination.
  2. A change in ownership or expansion of the planned waste footprint as soon as practicable. These events shall require the filing of a new Notice of Intent to Operate.
- K. General applicability. Landfills covered under this general permit:
  1. Are not subject to rules adopted by the Department under A.R.S. § 49-761.
  2. Are exempt from the solid waste facility plan requirements in A.R.S. §§ 49-762.03 and 49-762.04 as provided in A.R.S. § 49-762(B).
- L. For the purposes of this Section, “mining” has the definition at A.R.S. § 27-301.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 2679, effective November 9, 2014 (Supp. 14-3).

**ARTICLE 9. SOLID WASTE MANAGEMENT PLANNING**

**R18-13-901. Reserved**

**R18-13-902. Expired**

**Historical Note**

Section recodified from A.A.C. R18-8-402, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2983, effective September 15, 2016 (Supp. 16-3).

**ARTICLE 10. RESERVED****ARTICLE 11. COLLECTION, TRANSPORTATION, AND DISPOSAL OF HUMAN EXCRETA**

*Article 11 recodified from existing Sections in 18 A.A.C. 8, Article 6 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).*

**R18-13-1101. Reserved**

**R18-13-1102. Definitions**

- A. “Chemical toilet” means a toilet with a watertight, impervious pail or tank that contains a chemical solution placed directly under the seat and a pipe or conduit that connects the riser to the tank.

- B. “Department” means the Department of Environmental Quality or a local health department designated by the Department.
- C. “Earth-pit privy” means a device for disposal of human excreta in a pit in the earth.
- D. “Human excreta” means human fecal and urinary discharges and includes any waste that contains this material.
- E. “License” means a stamp, seal, or numbered certificate issued by the Department.
- F. “Pail or can type privy” means a privy equipped with a watertight container, located directly under the seat for receiving deposits of human excreta, that provides for removal of a waste receptacle that can be emptied and cleaned.
- G. “Person” means the state, a municipality, district or other political subdivision, a cooperative, institution, corporation, company, firm, partnership, or individual.
- H. “Sewage” means the waste from toilets, baths, sinks, lavatories, laundries, and other plumbing fixtures in residences, institutions, public and business buildings, mobile homes, and other places of human habitation, employment, or recreation.

**Historical Note**

Recodified from R18-8-602 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

**R18-13-1103. General Requirements; License Fees**

- A. Any person owning or operating a vehicle or appurtenant equipment used to store, collect, transport, or dispose of sewage or human excreta that is removed from a septic tank or other onsite wastewater treatment facility; earth pit privy, pail or can type privy, or other type of privy; sewage vault; or fixed or transportable chemical toilet shall obtain a license for each vehicle from the Department. The person shall apply, in writing, on forms furnished by the Department and shall demonstrate that each vehicle is designed and constructed to meet the requirements of this Article.
- B. A person shall operate and maintain the vehicle and equipment so that a health hazard, environmental nuisance, or violation of a water quality standard established under 18 A.A.C. 11 is not created.
- C. License terms.
  1. For each vehicle newly licensed after June 30, 2012, the initial license fee shall be \$250 and shall be submitted with the license application. After initial licensure of a vehicle, the Department will renew the license annually after payment of a \$75 fee according to subsection (C)(3). The licensee shall submit the Department approved renewal form and annual license fee to the Department no later than 30 days before expiration.
  2. For those vehicles licensed before July 1, 2012, the initial license fee shall be \$75 and shall be paid within 30 days of receipt of an invoice from the Department. The license shall be valid for one year. The licensee shall submit the Department approved renewal form and the annual license fee of \$75 to the Department no later than 30 days before expiration.
  3. Each vehicle license may be renewed if:
    - a. The annual license fee is paid,
    - b. The owner or operator is in compliance with subsection (D),
    - c. The vehicle is operated by the same person for the same purpose, and
    - d. The vehicle is maintained according to this Article.
  4. The license is not transferable either from person to person or from vehicle to vehicle.

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5. The license holder shall ensure that the license number is plainly and durably inscribed in contrasting colors on the side door panels of the vehicle and the rear face of the tank in figures not less than 3 inches high, and that the numbers are legible at all times.
- D.** Any person owning or operating a vehicle or appurtenant equipment used to collect, store, transport, or dispose of sewage or human excreta shall obtain any required permit from the local county authority in each county in which the person proposes to operate.

**Historical Note**

Recodified from R18-8-603 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed; new Section made by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

**R18-13-1104. Repealed****Historical Note**

Recodified from R18-8-604 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

**R18-13-1105. Reserved****R18-13-1106. Inspection**

The Department may inspect vehicles and appurtenant equipment used to collect, store, transport, or dispose sewage or human excreta as necessary to assure compliance with this Article.

**Historical Note**

Recodified from R18-8-606 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

**R18-13-1107. Reserved****R18-13-1108. Repealed****Historical Note**

Recodified from R18-8-608 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

**R18-13-1109. Reserved****R18-13-1110. Reserved****R18-13-1111. Reserved****R18-13-1112. Sanitary Requirements**

- A.** A person owning or operating a vehicle or appurtenant equipment to collect, store, transport, or dispose of sewage or human excreta shall ensure that:
1. Sewage and human excreta is collected, stored, transported, and disposed of in a sanitary manner and does not endanger the public health or create an environmental nuisance;
  2. The vehicle is equipped with a leak-proof and fly-tight container that has a capacity of at least 750 gallons and all portable containers, pumps, hoses, tools, and other implements are stored within a covered and fly-tight enclosure when not in use;
  3. Contents intended for removal are transferred as quickly as possible by means of a portable fly-tight container or suction pump and hose to the transportation container.

4. The transportation container is tightly closed and made fly-tight immediately after the contents have been transferred,
  5. Portable containers are kept fly-tight while being transported to and from the vehicle,
  6. Any waste dropped or spilled in the process of collection is cleaned up immediately and the area disinfected;
  7. The vehicle, tools, and equipment are maintained in good repair at all times and, at the end of each day's work, all portable containers, transportation containers, suction pumps, hose, and other tools are cleaned and disinfected; and
  8. All wastes collected are disposed of according to the recommendations of the local county health department and that no change in the recommended method of disposal is made without its prior approval. The local county health department shall recommend disposal by one of the following methods:
    - a. At a designated point into a sewage treatment facility or sewage collection system with the approval of the owner or operator of the facility or system,
    - b. By burying all wastes from chemical toilets in an area approved by the local county health department, or
    - c. Into a sanitary landfill with approval of the owner or operator of the landfill and following any precautions designated by the owner and operator to protect the health of the workers and the public.
- B.** Open dumping is prohibited except in designated areas approved by the local county health department.

**Historical Note**

Recodified from R18-8-612 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

**R18-13-1113. Repealed****Historical Note**

Recodified from R18-8-613 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

**R18-13-1114. Repealed****Historical Note**

Recodified from R18-8-614 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

**R18-13-1115. Repealed****Historical Note**

Recodified from R18-8-615 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

**R18-13-1116. Suspension and Revocation**

- A.** If a Department inspection indicates that a licensed vehicle is not maintained and operated or work cannot be performed according to this Article, the Department shall notify the owner in writing of all violations noted.
- B.** The Department shall give the owner a reasonable period of time to correct the violations and comply with the provisions of this Article. If the owner fails to comply within the time limit specified, the Department may suspend or revoke the

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vehicle license based on the number and severity of violations. The Department shall follow the provisions of A.R.S. Title 41, Chapter, Article 10 in any suspension or revocation proceeding.

- C. The Department shall consider the revocation or suspension of a permit by a local health department for violation of this Article as grounds for revocation of the vehicle license. The local health department shall immediately suspend both the vehicle license and the permit issued by the local health department for gross violation of this Article if in the opinion of the local health department a serious health hazard or environmental nuisance exists.
- D. The owner of the vehicle whose license is suspended or revoked may appeal the final administrative decision as permitted under A.R.S. § 41-1092.08.

**Historical Note**

Recodified from R18-8-616 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

**R18-13-1117. Reinstatement**

Upon request of the vehicle owner, the Department may reinstate a suspended or revoked vehicle license following a Department reinspection and based on an evaluation of compliance with the requirements of this Article.

**Historical Note**

Recodified from R18-8-617 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

**R18-13-1118. Repealed****Historical Note**

Recodified from R18-8-618 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

**R18-13-1119. Repealed****Historical Note**

Recodified from R18-8-619 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

**R18-13-1120. Repealed****Historical Note**

Recodified from R18-8-620 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

**ARTICLE 12. WASTE TIRES****R18-13-1201. Definitions**

In addition to the definitions provided in A.R.S. § 44-1301, the following definitions apply in this Article:

“Aquifer protection permit” means an authorization issued by the Department under A.R.S. § 49-241 et seq.

“Burial cell” means an area where mining waste tires are placed in or on the land for burial.

“Mining” means activities dedicated to the exploration, extraction, beneficiation, and processing, including smelting and refining, of metallic ores.

“Mining facility” means any land, building, installation, structure, equipment, device, conveyance, or area dedicated to mining.

“Mining waste tire” means an off-road tire that is greater than three feet in outside diameter that was used in mining.

“Operator” means an owner, part owner, management agency, or lessee of a mining facility, a person responsible for the overall operation or control of a mining facility, or an authorized representative of the operator.

“Person” is defined in A.R.S. § 49-201.

“Waste tire cover” means waste tires that are chopped or shredded into pieces that do not exceed four inches in diameter used for cover at a solid waste landfill.

**Historical Note**

Section recodified from A.A.C. R18-8-701, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final rulemaking at 7 A.A.R. 5695, effective November 27, 2001 (Supp. 01-4).

**R18-13-1202. Burial of Mining Waste Tires**

- A. The operator shall file with the Director a one-time notice within 24 hours after commencement of burial of mining waste tires consisting of a map of the mining facility that clearly identifies the locations and dimensions of each burial cell and the estimated number of mining waste tires that will be buried in each cell. The operator shall identify each burial cell using an alphabetical or numeric identifier. If a mining facility uses a new burial cell not included in the commencement of burial notice, the operator shall notify the Department within 24 hours after commencement of burial in that cell.
- B. An operator shall only permit burial of mining waste tires in areas that are, or will be, included in an aquifer protection permit issued for the mining facility. An operator shall not permit burial of mining waste tires in leach areas unless prior to burial the Department issues an aquifer protection permit covering the leach area.
- C. An operator shall not permit a burial cell to be located within 10 feet of another burial cell.
- D. An operator shall not permit the burial of mining waste tires unless the tires are waste generated at the mining facility or another mining facility of the same owner.

**Historical Note**

Section recodified from A.A.C. R18-8-702, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final rulemaking at 7 A.A.R. 5695, effective November 27, 2001 (Supp. 01-4).

**R18-13-1203. Cover Requirements**

- A. The operator shall cover all mining industry off-road motor vehicle waste tires buried pursuant to this Article with a minimum of 6 inches of earthen material within 50 days of placement, or sooner if necessary, to prevent vector breeding or fire.
- B. The operator shall place final cover over the off-road motor vehicle waste tires within 180 days after placement of the last tire which will be buried in a cell. The final cover shall consist of earthen material which is at least 3 feet deep or which complies with the requirements of the aquifer protection permit for the area where the burial cell is located.
- C. The operator shall maintain final cover in compliance with this Section for as long as the mining industry off-road motor vehicle waste tires remain in the burial cell.

**Historical Note**

Section recodified from A.A.C. R18-8-703, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-1204. Annual Report**

By March 30 of each year, until a burial cell closure certification is filed with the Department, the operator of the mining facility shall file an annual report with the Director which documents the location of each burial cell established during the preceding calendar year, the alphabetical or numerical identifier of each burial cell, and the number of off-road motor vehicle waste tires which were placed in each burial cell for burial during the preceding calendar year. If no tires were placed in the burial cell for burial during the preceding year, the annual report shall so indicate.

**Historical Note**

Section recodified from A.A.C. R18-8-704, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-1205. Burial Cell Closure Certification**

An operator shall file with the Director a burial cell closure certification within 30 days after placing final cover over the mining waste tires under R18-13-1203(B). The certificate shall contain a statement by the operator that no additional tires will be buried in the burial cell and a statement by an Arizona registered engineer certifying that the cover requirements of R18-13-1203 have been met.

**Historical Note**

Section recodified from A.A.C. R18-8-705, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final rulemaking at 7 A.A.R. 5695, effective November 27, 2001 (Supp. 01-4).

**R18-13-1206. Storage**

At no time shall more than 500 mining industry off-road motor vehicle waste tires be stored at the mining facility outside of a burial cell unless the mining facility has Department approval to operate a waste tire collection facility, pursuant to A.R.S. §§ 44-1304 and 49-762.

**Historical Note**

Section recodified from A.A.C. R18-8-706, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-1207. Maintenance of Records**

For at least three years after the burial cell closure certification is filed with the Department, the mining facility operator shall maintain, at the mining facility, records which document the number of tires buried in each cell.

**Historical Note**

Section recodified from A.A.C. R18-8-707, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-1208. Inspections**

The Department may inspect a mining facility, during regular operating hours, to determine whether mining industry off-road motor vehicle waste tire burial is in compliance with this Article.

**Historical Note**

Section recodified from A.A.C. R18-8-708, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-1209. Repealed****Historical Note**

Section recodified from A.A.C. R18-8-709, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Section repealed by final rulemaking at 7 A.A.R. 5695, effective November 27, 2001 (Supp. 01-4).

**R18-13-1210. Waste Tire Cover**

Waste tires used as cover at a solid waste landfill shall be used according to the solid waste facility plan required by A.R.S. § 49-762. An operator shall not permit mining waste tires to be used as cover at a solid waste landfill for more than two consecutive days at a time.

**Historical Note**

Section recodified from A.A.C. R18-8-710, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final rulemaking at 7 A.A.R. 5695, effective November 27, 2001 (Supp. 01-4).

**R18-13-1211. Registration of New Waste Tire Collection Sites; Fee**

- A. A new waste tire collection site shall not begin operation after July 20, 2011, until the owner or operator registers with the Department. The owner or operator shall register on a form approved by the Department that includes a statement that the site is in compliance with A.R.S. § 49-762.07(F) and A.R.S. Title 44, Chapter 9, Article 8, as applicable. The owner or operator of a new waste tire collection site that begins operation after July 20, 2011, shall pay an initial registration fee of \$500 within 30 days of invoice receipt. For purposes of this Section, "new waste tire collection site" means a waste tire collection site as defined in A.R.S. § 44-1301 that did not operate as a collection site on or before July 20, 2011.
- B. The owner or operator shall pay a \$75 registration fee annually thereafter within 30 days of invoice receipt.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

**R18-13-1212. Registration of Outdoor Used Tire Sites; Fee**

- A. A person shall not store 100 or more used tires outdoors until the person registers with the Department. A person that stores 100 or more used tires outdoors after July 20, 2011, shall pay an initial registration fee of \$500 within 30 days of invoice receipt. The person shall register on a form approved by the Department that includes a statement that the site is in compliance with A.R.S. § 49-762.07(F) and A.R.S. Title 44, Chapter 9, Article 8, as applicable.
- B. A \$75 registration fee shall be paid annually thereafter within 30 days of invoice receipt.
- C. For the purposes of this Section:
1. "Used tire" means any tire which has been used for more than one day on a motor vehicle.
  2. "Outdoors" means other than inside a building with a weatherproof roof.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

**R18-13-1213. Facilities Subject to More Than One Tire Site Registration; Single Fee**

A person who is required to register a tire facility under more than one of the Sections listed in subsections (1) through (3) shall register and follow procedures under each Section, but is only required to pay the registration fees under the Section with the highest fees.

1. R18-13-1211.
2. R18-13-1212.

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3. R18-13-501.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

**ARTICLE 13. SPECIAL WASTE**

**R18-13-1301. Definitions**

In addition to the terms prescribed in A.R.S. § 49-851, the terms in this Article shall have the following meanings:

1. "Disposal" means discharging, depositing, injecting, dumping, spilling, leaking, or placing special waste into or on land or water so that the special waste or any constituent of the special waste may enter the environment, be emitted into the air, or discharged into any waters, including groundwater.
2. "Exception report" means a report that a generator shall submit to the Director which notifies the Director that the generator has not received a copy of the special waste manifest from the primary or alternate special waste receiving facility to which the special waste was sent pursuant to the generator's instructions on the special waste manifest, or from any special waste receiving facility to which special waste was sent.
3. "Generator" means a person whose act or process onsite produces a special waste listed in, or designated pursuant to, A.R.S. §§ 49-852, 49-854, and 49-855, or whose act or process first causes such special waste to be subject to regulation.
4. "Identification number" means an alphanumeric identifier issued by the Department to each generator, special shipper, and special waste receiving facility to be used on documents, as required pursuant to this Article, in conjunction with shipment of special waste.
5. "Off-site consignment" means a generator's delivery of materials or wastes for transport off-site to a special waste receiving facility within Arizona for treatment, storage, recycling, or disposal.
6. "Off-site" means any property located within Arizona that is not onsite as defined in A.R.S. § 49-851(3).
7. "Operator" means a person who owns and controls all or part of a special waste receiving facility, or who leases, operates, or controls such facility, a person responsible for the overall operation of such a facility, a management agency, or an authorized representative.
8. "Recycling" means recycling as defined in A.R.S. § 49-831(21).
9. "Shredder residue" means waste from the shredding of motor vehicles.
10. "Significant manifest discrepancy" means a difference of more than 10% by weight for bulk shipments, any variation in a piece count for a batch delivery, or any difference in the type of special waste received as compared to the type of special waste listed on the manifest.
11. "Special waste receiving facility" means an off-site location to which special waste is sent to be treated, recycled, stored, or disposed.
12. "Special waste manifest" means a form provided by the Department, shown as Exhibit A to this Article, and used to identify the origin, quantity, composition, routing, and destination of special waste during its transportation from a generator's facility to a special waste receiving facility.
13. "Special waste shipper" means a person who transports special waste for off-site treatment, recycling, storage, or disposal.

14. "Treatment" means any method, technique, or process designed to change the physical, chemical, or biological character or composition of special waste.

**Historical Note**

Section recodified from A.A.C. R18-8-301, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-1302. Special Waste Generator Manifesting Requirements**

- A. A generator shall request a generator identification number on a form provided by the Director, and shown as Exhibit B to this Article, prior to shipping special waste. Within 30 days of receiving the completed form, the Director shall issue the identification number to the generator.
- B. Prior to off-site consignment of special waste, the generator shall do all of the following:
  1. Complete and sign the "Generator" section of a special waste manifest.
  2. Obtain the handwritten signature of the special waste shipper on the special waste manifest.
  3. Retain the generator's copy of the special waste manifest.
  4. Give the special waste manifest and the remaining attached copies to the special waste shipper or forward it to the receiving facility.
- C. Within 14 days after shipment was accepted by a special waste shipper for off-site consignment, the generator shall submit to the Director one legible copy of each special waste manifest with the generator's section completed and containing signatures of the generator and special waste shipper.
- D. If, within 35 days after the date the waste was accepted by the initial special waste shipper, the generator does not receive a completed copy of this special waste manifest with the handwritten signature of the special waste receiving facility operator, the generator shall contact the special waste shipper and the special waste receiving facility operator to determine the status of the special waste.
- E. The generator shall submit an exception report to the Director if the generator does not receive a completed, signed, legible copy of the special waste manifest within 45 days of the date the waste was accepted by the initial special waste shipper for off-site consignment. The exception report shall contain both of the following:
  1. A cover letter, signed by the generator, which explains the efforts made to locate the special waste and the results of those efforts.
  2. A legible copy of the special waste manifest which was signed by the generator and the special waste shipper and retained by the generator.
- F. The generator shall retain a legible copy of each signed special waste manifest for at least three years from the date of acceptance of a shipment of special waste for off-site consignment.
- G. If a person is required to have a manifest, shipping paper or shipping record under federal law for the special waste, the federal manifest, shipping paper, or shipping record may be used in lieu of the Arizona special waste manifest form so long as the federal manifest, shipping paper, or shipping record includes all the information required on the Arizona special waste manifest form.

**Historical Note**

Section recodified from A.A.C. R18-8-302, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-1303. Special Waste Shipper Manifesting Requirements**

- A. A special waste shipper who receives special waste in Arizona for transport to a special waste receiving facility in Arizona shall request a special waste shipper identification number on a form provided by the Director and shown as Exhibit B to this Article. The Director shall issue an identification number within 30 days of receipt of the completed form.
- B. A special waste shipper shall:
1. Accept special waste for intrastate shipment to a special waste receiving facility only if the waste is accompanied by a special waste manifest which is completed and signed in accordance with the provisions of R18-8-302.
  2. Deliver the entire shipment of special waste to a special waste receiving facility as designated on the special waste manifest. If unable to deliver the special waste to the primary or alternate special waste receiving facility designated on the special waste manifest:
    - a. Return the special waste to the generator, or
    - b. Contact the generator and obtain instructions for an alternate special waste receiving facility and deliver the waste accordingly.
- C. Shipments of special waste between facilities owned by the same generator shall be exempt from the requirements of rules adopted pursuant to A.R.S. § 49-856.

**Historical Note**

Section recodified from A.A.C. R18-8-303, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-1304. Special Waste Receiving Facility Manifesting Requirements**

- A. A special waste receiving facility shall request an identification number on a form provided by the Director, and shown as Exhibit B to this Article, and obtain the number prior to receiving special waste. The Department shall issue the identification number within 30 days of receipt of the completed form.
- B. A special waste receiving facility shall receive only special waste for which it has a special waste manifest signed and dated by the generator and special waste shipper. In the "Facility" section of the special waste manifest, the operator of the special waste receiving facility shall do all of the following:
1. Enter the identification number.
  2. Sign and date each copy of a special waste manifest to certify that the type and amount of special waste, as stated on the special waste manifest, was received.
  3. Indicate on the special waste manifest any significant discrepancies between the description, volume, or weight of the special waste as stated on the special waste manifest and the special waste received.
- C. After completing the "Facility" portion of the special waste manifest, the operator of the special waste receiving facility shall send one legible copy each of the signed special waste manifest to the Director and the generator within 30 days of the delivery of the special waste.
- D. Upon discovery of a significant manifest discrepancy in the special waste manifest and the special waste received, the operator of the special waste receiving facility shall:
1. Contact the generator and special waste shipper to attempt to reconcile the discrepancy.
  2. If the discrepancy cannot be resolved within 15 days after receiving the waste, submit a letter to the Director, along with the special waste manifest within five days. The letter shall describe the significant manifest discrepancy and all attempts to reconcile it.

**Historical Note**

Section recodified from A.A.C. R18-8-304, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-1305. Records**

All records required by this Article shall be retained for at least three years. If notification of an enforcement action by the Department has been received, the records shall be retained until a final determination has been made in the matter or in accordance with the final determination.

**Historical Note**

Section recodified from A.A.C. R18-8-305, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-1306. Reserved****R18-13-1307. Best Management Practices for Waste from Shredding Motor Vehicles**

- A. A generator of shredder residue shall follow sampling protocol as follows or submit to the Department for review and approval, at least two weeks prior to the sampling event, an alternative written sampling plan which is consistent with requirements set forth in "Test Methods for Evaluating Solid Waste," EPA SW-846, 3rd Edition, Volume II, Chapter Nine, Sampling Plan, Physical/Chemical Method, EPA, Office of Solid Waste and Emergency Response, Washington, D.C., September 1986, and updated November 1990, and no future editions or amendments, ("EPA Sampling Plan"), herein incorporated by reference and on file with the Department and the Office of the Secretary of State:
1. Sample collection shall be done in accordance with one of the following:
    - a. Sampling procedure 1, consisting of both of the following steps:
      - i. The generator shall collect samples from a shredder residue sampling pile which shall consist of the average amount of shredder residue from eight hours of operation of the shredder. The shredder residue sampling pile shall be formed into a square shape for sampling purposes. Refer to Exhibit 1.
      - ii. One 2,000-gram sample shall be collected from each sample point as indicated in Exhibit 1. Samples from sample points A-1, B-1, and C-1 shall be collected from the top of the pile. Samples from sample points A-2, B-2, and C-2 shall be collected from the base of the pile. A sample from sample point C-3 shall be collected at the vertical midpoint at the center of the pile. The seven 2,000-gram samples shall be numbered consecutively. Three of the seven 2,000-gram samples shall then be chosen at random by selecting numbers from a calculator programmed to generate random numbers. The samples shall be analyzed for the constituents and at the frequencies listed in Table A of this Section.
    - b. Sampling procedure 2, consisting of both of the following steps:
      - i. The generator shall collect seven 2,000-gram samples during or immediately following the normal generation of shredder residue. For each sample, shredder residue shall be collected for 8 to 12 minutes, during which a minimum of 500 pounds shall be generated. This

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- process shall be performed seven times to create seven 500-pound amounts. Each 500-pound amount shall be formed into a square shape for sampling purposes. Refer to Exhibit 1.
- ii. Twenty 100-gram samples shall be collected from throughout each of the seven 500-pound piles generated. Upon completion of collection, all 20 samples from each of the seven 500-pound piles shall be combined together into seven separate 2,000-gram samples and numbered consecutively. Three of the seven 2,000-gram samples shall then be chosen at random by selecting numbers from a calculator programmed to generate random numbers. The samples shall be analyzed for the constituents and at the frequencies listed in Table A of this Section.
2. Each 2,000 grams of shredder residue collected shall include both large and small particles, in proportion to shredder residue generated. The generator shall use a container which is large enough to hold the entire amount of shredder residue collected from each sample point.
  3. The generator shall comply with requirements for sample preservation, temperature, and holding times, as set forth in the EPA Sampling Plan.
  4. Each one of the three 2,000-gram samples selected at random shall be divided into four equal 500-gram portions and a 200-gram subsample shall be taken from each of the four equal 500-gram portions. Each subsample shall then be passed through a 9.5mm screen. All particles which do not pass through the 9.5mm screen shall be hand cut until small enough to pass through the screen. All four 200-gram subsamples shall then be remixed together and redivided into four equal 200-gram portions. The following amounts shall be taken for constituent sampling:
    - a. 10-15 grams per 200-gram subsample for a total of 40-60 grams per 2,000-gram sample for Polychlorinated Biphenyls (PCB) analysis as set forth in subsection (A)(10).
    - b. 25 grams per 200-gram subsample for a total of 100 grams per sample for toxicity characteristic leaching procedure extractions for contaminants as set forth in 40 CFR 261.24, Table 1 (incorporated by reference in R18-8-261(A)), as set forth in subsection (A)(7).
    - c. 1.25 grams per 200-gram subsample for a total of 5 grams per 2,000-gram sample for extraction fluid determination.
  5. Each constituent sample shall be put into a container. Container labeling and chain-of-custody documentation shall be consistent with the requirements in the EPA Sampling Plan.
  6. The constituent samples shall be analyzed by a laboratory licensed by the Arizona Department of Health Services in accordance with A.R.S. § 36-495.
  7. Of the three samples selected at random, one sample amount required by subsection (A)(4)(b) shall be analyzed for the extractable heavy metals arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver, as set forth in 40 CFR 261.24, Table 1. The remaining two samples shall each be analyzed for extractable cadmium and lead.
  8. If the results of all three of the analyses for any extractable heavy metal in subsection (A)(7) above are below the Regulatory Level of the Maximum Concentration of Contaminants for the Toxicity Characteristic as set forth in 40 CFR 261.24, Table 1, the simple arithmetic mean of the extractable cadmium and lead and the single analysis for the remaining six extractable heavy metals shall be used to determine if the sampled shredder residue will be classified as hazardous waste.
  9. If the analyses of any one of three selected samples exceeds the regulatory level as set forth in 40 CFR 261.24, Table 1, an additional subsample from the sample in question shall be subjected to confirmation analysis. If the confirmation sample analysis totals are in excess of the regulatory level as set forth in 40 CFR 261.24, Table 1, the remaining four of the original seven samples shall be analyzed for those extractable heavy metals which exceed the regulatory level as set forth in 40 CFR 261.24, Table 1. The simple arithmetic mean of the results of all seven samples shall be used to determine if the sampled shredder residue will be classified as hazardous waste.
  10. The three samples selected at random shall be analyzed for PCB concentration in the amounts required by subsection (A)(4)(a). If the samples contain concentrations of PCB less than 50 mg/kg, the simple arithmetic mean of the three samples shall be used for reporting to the Director. If any one of the three samples contains concentrations of PCB greater than 50 mg/kg, an additional subsample from the sample in question shall be subjected to confirmation analysis. If the PCB concentration for that sample exceeds 50 mg/kg, the remaining four of the original seven samples shall be analyzed for PCB, in amounts required by subsection (A)(4)(a), and the simple arithmetic mean of all the samples shall be used to determine if the sampled shredder residue will be classified as hazardous waste.
- B. Shredder residue determined to be hazardous waste shall be managed in accordance with A.R.S. § 49-921 et seq. and R18-8-260 et seq.
  - C. The generator shall do all of the following:
    1. Secure the facility to prevent unauthorized entry;
    2. Cover or otherwise manage the shredder residue pile to prevent wind dispersal;
    3. Place the shredder residue pile on a surface with a permeability coefficient equal to or less than  $1 \times 10^{-7}$  cm/s;
    4. Design, construct, operate, and maintain a run-on control system capable of preventing flow onto the waste pile during peak discharge from, at a minimum, a 25-year storm;
    5. Design, construct, operate, and maintain a run-off management system to collect and control at a minimum, the water volume resulting from a 24-hour, 25-year storm;
    6. Provide collection and holding facilities for run-on and run-off control systems, which shall have a permeability coefficient equal to or less than  $1 \times 10^{-7}$  cm/s;
    7. Record the date accumulation of shredder residue begins.
  - D. Shredder residue shall be treated, recycled, sorted, stored, or disposed at a Department-approved special waste facility approved in accordance with A.R.S. § 49-857. A facility which seeks to become a special waste facility shall submit a special waste management plan to the Department to ensure compliance with subsection (C) of this Section.
  - E. A generator shall not store shredder residue for longer than 90 days. A special waste facility shall not store shredder residue for longer than one year.
  - F. The owner or operator of a special waste facility shall pay, to the Department, the fees required by A.R.S. §§ 49-855(C)(2) and 49-863 as follows:
    1. \$1.49 per cubic yard of uncompacted shredder residue; or

- 2. \$3.38 per cubic yard of compacted shredder residue received; or
- 3. \$4.50 per ton; and
- 4. Not more than \$45,000 per generator site per year for shredder residue that is transported to a facility regulated by the Department for treatment, storage or disposal.

(Supp. 00-3).

G. Shredder residue which has been determined to be nonhazardous pursuant to this Section shall be transported in accordance with the requirements for transportation of garbage as set forth in R18-13-310.

**Historical Note**

Section recodified from A.A.C. R18-8-307, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

**Table A. Target Analyses and Sampling Frequency**

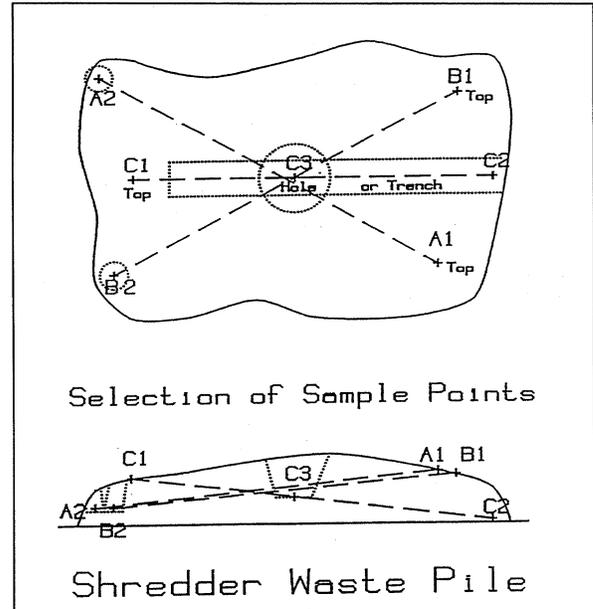
Constituents	Frequency
* TCLP Metals	Quarterly
* TCLP Volatiles	Annually
* TCLP Semi-volatiles	Annually
Polychlorinated Biphenyls (PCB)	Quarterly

\* Toxicity Characteristic Leaching Procedure (TCLP)

**Historical Note**

Table A recodified from 18 A.A.C. 8, Article 3, filed in the Office of the Secretary of State September 29, 2000

**Exhibit 1. Selection of Sample Points, Shredder Waste Pile**



**Historical Note**

Exhibit 1 recodified from 18 A.A.C. 8, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Appendix A. Application for Arizona Special Waste Identification Number

Please refer to the instructions on the accompanying page before completing this form.	<h1 style="margin: 0;">ADEQ</h1>	Application for Arizona Special Waste Identification Number	Date Received: (Do not write here official use only)
1. Mark Appropriate Box: <input type="checkbox"/> Generator <input type="checkbox"/> Shipper <input type="checkbox"/> Receiving Facility <input type="checkbox"/> Multiple			
2. Company/Agency Name			
3. Company/Agency Address (Physical Address, not P.O. Box or Route Number).			
4. Company/Agency Mailing Address (If different than above).			
5. Company/Agency Contact (Person to contact regarding special waste activities). Name:			
Job Title: _____ Phone Number: (   ) _____			
6. Company/Agency Contact Address.			
7. Name and Address of Company's/Agency's Legal Owner.			
Phone Number: (   ) _____			
Certification: I certify under penalty of law that I have personally examined and am familiar with the information submitted in this form and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of civil penalties.			
8. Signature: _____ 9. Name and Official Title: (Type or Print) _____ 10. Date Signed: _____			
11. Please list special wastes generated, transported, stored, or received by applicant.			

**Instructions for the Completion of the ADEQ Application for the Arizona Special Waste Identification Number.**

1. Place an "X" in the appropriate box indicating which type of operation you will be performing.
2. Enter the complete company/agency name.
3. Enter the complete address. Do not use P.O. Box or Route Number.
4. Enter the complete address if it is different than the address listed in item 3.
5. Enter the name, job title, and complete phone number of the person who will act as the company/agency contact.
6. Enter the complete address of the company/agency contact listed in item 5.
7. Enter the name, complete address, and phone number of the company's/agency's legal owner.
8. Enter the signature of the person who will assume the responsibility of completion of this form and its contents.
9. Enter the name and title of the responsible person listed in item 8.
10. Enter the date that the responsible person signed the document.
11. List all special wastes that the applicant generates, transports, stores, or receives.

**Historical Note**

Appendix A recodified from 18 A.A.C. 8, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

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Appendix B. Special Waste Manifest

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY  
SPECIAL WASTE MANIFEST

<b>G e n e r a t o r</b>	1. Generator's AZ ID No.		Emergency Response Notification Phone Number	
	3. Generator's Name and Mailing Address			
	Generator's Phone Number and Area Code			
	4. Transporter 1 Company Name and Mailing Address		Transporter's AZ ID No.	
			Transporter's Phone No.	
	5. Transporter 2 Company Name and Mailing Address		Transporter's AZ ID No.	
			Transporter's Phone No.	
	6. Primary Receiving Facility Name and Address (physical site location, if different)		Facility's AZ ID No.	
			Facility's Phone No.	
	7. Alternate Receiving Facility Name and Address (physical site location, if different)		Facility's AZ ID No.	
		Facility's Phone No.		
8. U.S. DOT description, (if applicable) (Non-DOT regulated materials enter shipping name, physical state and description of all contents of waste)		Containers No.	Total Quantity	Unit Wt/Vol
		Mark "X" if Haz Mat		
9. Additional information on transportation, treatment, storage, or disposal				
10. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled and are in all respects in proper condition for transport by highway according to applicable international and governmental regulations.				Date
Printed/Typed Name		Signature		
<b>T r a n s p o r t</b>	11. Transporter 1 Acknowledgment of Receipt of Materials			Date
	Printed/Typed Name		Signature	
	12. Transporter 2 Acknowledgment of Receipt of Materials			Date
	Printed/Typed Name		Signature	
<b>F a c i l i t y</b>	13. Discrepancy Indication Space			
	14. Facility Owner or Operator: Certification of receipt of special waste materials covered by this manifest except as noted in above item.			Date
	Printed/Typed Name		Signature	

## Department of Environmental Quality - Solid Waste Management

**Instructions for the Completion of the ADEQ Special Waste Manifest**

1. Enter the generator's Arizona Identification Number in box 1.
2. Enter the Emergency Response Notification Phone Number in box 2.
3. Enter the generator's name and complete mailing address, including city, state, and zip code, along with the generator's phone number, including the area code, in box 3.
4. Enter the transporter's name, transporter's Arizona identification number, and telephone number, including the area code, in box 4.
5. Complete this box if a second transporter is to be used to transport the special waste to the receiving facility, following the instructions outlined in number 4 in box 5.
6. Enter the name, address, and physical site location of the primary special waste receiving facility. In the appropriate spaces, include the facility's Arizona identification number and the telephone number, including the area code, in box 6.
7. Enter the name, address, and physical site location of the alternate special waste receiving facility. In the appropriate spaces, include the facility's Arizona identification number and the telephone number, including the area code, in box 7.
8. Enter United States Department of Transportation description (Including proper shipping name, hazard class, and identification number, if applicable) (For all non-Department of Transportation-regulated materials, enter the proper name, physical state, and description of all contents of the waste).

Mark an "X" in this column if waste is classified as a hazardous material.

**Container Number**

Enter the number of containers being shipped for each waste.

**Total Quantity**

Numerical value representing the number of containers multiplied by the container size. Answer will be listed in pounds, gallons, or cubic yards.

**Unit weight or volume**

P - Pounds

G - Gallons

Y - Cubic Yards

9. Use this space to indicate special transportation, treatment, storage, or disposal information. Emergency response telephone numbers or similar information may be included here in box 9.
10. Print or type the generator's name followed by their signature and date in box 10.
11. Print or type the primary transporter's name followed by their signature and date in box 11.
12. Print or type the secondary transporter's name followed by their signature and date in box 12.
13. Indicate significant discrepancies in this box. Significant manifest discrepancy is defined as "a difference of more than 10% by weight for bulk shipments, any variation in a piece count for batch deliveries, or an obvious difference in a special waste type is discovered by inspection or analysis between the type or amount of a special waste designated in a special waste manifest, and the type or amount received by a special waste receiving facility" in box 13.
14. Print or type the receiving facility's owner or operator name followed by their signature and date in box 14.

**Historical Note**

Appendix B recodified from 18 A.A.C. 8, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**ARTICLE 14. BIOHAZARDOUS MEDICAL WASTE AND DISCARDED DRUGS****R18-13-1401. Definitions**

In addition to the definitions in A.R.S. § 49-701, the following definitions apply in this Article:

1. "Administrative consent order" means a bilateral agreement between the consenting party and the Department. A bilateral agreement is not subject to administrative appeal.
2. "Alternative treatment technology" means a treatment method other than autoclaving or incineration, that achieves the treatment standards described in R18-13-1415.
3. "Approved medical waste facility plan" means the document that has been approved by the Department under A.R.S. § 49-762.04, and that authorizes the operator to accept biohazardous medical waste at its solid waste facility.
4. "Autoclaving," means using a combination of heat, steam, pressure, and time to achieve sterile conditions.
5. "Biohazardous medical waste" is composed of one or more of the following:
  - a. Cultures and stocks: Discarded cultures and stocks generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals.
  - b. Human blood and blood products: Discarded products and materials containing free-flowing blood or free-flowing blood components.
  - c. Human pathologic wastes: Discarded organs and body parts removed during surgery. Human pathologic wastes do not include the head or spinal column.
  - d. Medical sharps: Discarded sharps used in animal or human patient care, medical research, or clinical lab-

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- oratories. This includes hypodermic needles; syringes; pipettes; scalpel blades; blood vials; needles attached to tubing; broken and unbroken glassware; and slides and coverslips.
- e. Research animal wastes: Animal carcasses, body parts, and bedding of animals that have been infected with agents that produce, or may produce, human infection.
6. "Biologicals" means preparations made from living organisms or their products, including vaccines, cultures, or other biological products intended for use in diagnosing, immunizing, or treating humans or animals or in research pertaining to these activities.
  7. "Biological indicator" means a representative microorganism used to evaluate treatment efficacy.
  8. "Blood and blood products" means discarded human blood and any product derived from human blood, including but not limited to blood plasma, platelets, red or white blood corpuscles, and other derived products.
  9. "C.F.R." means the Code of Federal Regulations.
  10. "Chemotherapy waste" means any discarded material that has come in contact with an agent that kills or prevents the reproduction of malignant cells.
  11. "Dedicated vehicle" means a motor vehicle or trailer that is pulled by a motor vehicle used by a transporter for the sole purpose of transporting biohazardous medical waste.
  12. "Discarded drug" means any prescription medicine, over-the-counter medicine, or controlled substance, used in the diagnosis, treatment, or immunization of a human being or animal, that the generator intends to abandon. The term does not include hazardous waste or controlled substances regulated by the United States Drug Enforcement Agency.
  13. "Disposal facility" means a municipal solid waste landfill that has been approved by the Department under A.R.S. § 49-762.04 to accept untreated biohazardous medical waste for disposal.
  14. "Facility plan" has the meaning given to it in A.R.S. § 49-701.
  15. "Free flowing" means liquid that separates readily from any portion of a biohazardous medical waste under ambient temperature and pressure.
  16. "Generator" means a person whose act or process produces biohazardous medical waste, or a discarded drug, or whose act first causes medical waste or a discarded drug to become subject to regulation.
  17. "Hazardous waste" has the meaning prescribed in A.R.S. § 49-921.
  18. "Health care worker" means, with respect to R18-13-1403(B)(5), a person who provides health care services at an off-site location that is none of the following: a residence, a facility where health care is normally provided, or a facility licensed by the Arizona Department of Health Services.
  19. "Improper disposal of biohazardous medical waste" means the disposal by a person of untreated or inadequately treated biohazardous medical waste at any place that is not approved to accept untreated biohazardous medical waste.
  20. "Independent testing laboratory" means a testing laboratory independent of oversight activities by a provider of alternative treatment technology.
  21. "Medical sharps container" means a vessel that is rigid, puncture resistant, leak proof, and equipped with a locking cap.
  22. "Medical waste," as defined in A.R.S. § 49-701, means *"any solid waste which is generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals, and includes discarded drugs but does not include hazardous waste as defined in A.R.S. § 49-921 other than conditionally exempt small quantity generator waste."*
  23. "Medical waste treatment facility" or "treatment facility" means a solid waste facility approved by the Department under A.R.S. § 49-762.04 to accept and treat biohazardous medical waste from off-site generators.
  24. "Multi-purpose vehicle" means any motor vehicle operated by a health care worker, where the general purpose is the non-commercial transporting of people and the hauling of goods and supplies, but not solid waste. A multi-purpose vehicle is limited to hauling biohazardous medical waste generated off site by health workers in providing services. "Off site" for purposes of this definition means a location other than a hospital or clinic.
  25. "Off site" means a location that does not fall within the definition of "on site" contained in A.R.S. § 49-701.
  26. "Packaging" or "properly packaged" means the use of a container or a practice under R18-13-1407.
  27. "Putrescible waste" means waste materials capable of being decomposed rapidly by microorganisms.
  28. "Radioactive material" has the meaning under A.R.S. § 30-651.
  29. "Secure" means to lock out or otherwise restrict access to unauthorized personnel.
  30. "Spill" means either of the following:
    - a. Any release of biohazardous medical waste from its package while in the generator's storage area.
    - b. Any release of biohazardous medical waste from its package or the release of packaged biohazardous medical waste by the transporter at a place or site that is not a medical waste treatment or disposal facility.
  31. "Store" or "storage" means, in addition to the meaning under A.R.S. § 49-701, either of the following:
    - a. The temporary holding of properly packaged biohazardous medical waste by a generator in a designated accumulation area awaiting collection by a transporter.
    - b. The temporary holding of properly packaged biohazardous medical waste by a transporter or a treater at an approved medical waste storage facility or treatment facility.
  32. "Technology provider" means a person that manufactures, or a vendor who supplies alternative medical waste treatment technology.
  33. "Tracking document" means the written instrument that signifies acceptance of biohazardous medical waste by a transporter, or a transfer, storage, treatment, or disposal facility operator.
  34. "Transportation management plan" means the transporter's written plan consisting of both of the following:
    - a. The procedures used by the transporter to minimize the exposure to employees and the general public to biohazardous medical waste throughout the process of collecting, transporting, and handling.
    - b. The emergency procedures used by the transporter for handling spills or accidents.
  35. "Transporter" means a person engaged in the hauling of biohazardous medical waste from the point of generation

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- to a Department-approved storage facility or to a Department-approved treatment or disposal facility.
36. "Treat" or "treatment" means, with respect to the methods used to render biohazardous medical waste less infectious: incinerating, autoclaving, or using the alternative treatment technologies prescribed in this Article.
  37. "Treated medical waste" means biohazardous medical waste that has been treated and that meets the treatment standards of R18-13-1415. Treated medical waste that requires no further processing is considered solid waste.
  38. "Treater" means a person, also known as an operator, who receives solid waste facility plan approval for the purpose of operating a medical waste treatment facility to treat biohazardous medical waste that is generated off site.
  39. "Treatment certification statement" means the written document provided by either a generator who treats biohazardous medical waste on site or by a treater, to inform a solid waste disposal or recycling facility that biohazardous medical waste has been treated as prescribed in this Article, and therefore is no longer subject to regulation under this Article.
  40. "Treatment standards" mean the levels of microbial inactivation, prescribed in R18-13-1415, to be achieved for a specific type of biohazardous medical waste.
  41. "Universal biohazard symbol" or "biohazard symbol" means a representation that conforms to the design shown in 29 CFR 1910.145(f)(8)(ii) (Office of the Federal Register, National Archives and Records Administration, July 1, 1998) and which is incorporated by reference in this rule. This incorporation does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department of Environmental Quality and the Office of the Secretary of State.
  42. "Vehicle not dedicated to the transportation of biohazardous medical waste but which is engaged in commerce" means a motor vehicle or a trailer pulled by a motor vehicle whose primary purpose is the transporting of goods that are not solid waste or biohazardous medical waste and that is used by a transporter for the temporary transportation of biohazardous medical waste.
6. A person in possession of biohazardous medical waste if the waste does not meet the treatment standards in R18-13-1415.
  7. An operator of a Department-approved disposal facility who accepts untreated biohazardous medical waste.
  8. A person who generates medical sharps in the preparation of human remains.
  9. A person who generates medical sharps in the treatment of animals.
  10. A generator of discarded drugs not returned to the manufacturer.
- B.** The requirements for biohazardous medical waste set out for collection do not apply to the manner in which the generator collects, or handles biohazardous medical waste inside the generator's place of business.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

**R18-13-1403. Exemptions; Partial Exemptions****R18-13-1402. Applicability****A.** This Article applies to the following:

1. A generator who treats biohazardous medical waste on site, before disposing of it as treated medical waste, and to any equipment used for that purpose. Specific requirements for a generator who treats on site are prescribed in R18-13-1405.
  2. A generator who contracts with a medical waste treatment facility for the purpose of treating biohazardous medical waste. Specific requirements for such a generator are prescribed in R18-13-1406.
  3. A person who transports biohazardous medical waste and any motor vehicle used for that purpose.
  4. A medical waste treatment facility operator, a medical waste treatment facility, and any equipment used for medical waste treatment.
  5. A person who provides alternative medical waste treatment technology for the purpose of treatment, and to any technology used for treatment.
1. Law enforcement personnel handling biohazardous medical waste for law enforcement purposes.
  2. A person in possession of radioactive materials.
  3. A person who returns unused medical sharps to the manufacturer.
  4. A household generator residing in a private, public, or semi-public residence who generates biohazardous medical waste in the administration of self care or the agent of the household generator who administers the medical care. This exemption does not apply to the facility in which the person resides if that facility is licensed by the Arizona Department of Health Services.
  5. A generator that separates medical devices from the medical waste stream that are sent out for re-processing and returned to the generator.
  6. A person in possession of human bodies regulated by A.R.S. Title 36.
  7. A person who sends used medical sharps via the United States Postal Service or private shipping agent to a treatment facility.
- B.** The following are conditionally exempt from the requirements of this Article:
1. A person who prepares human corpses, remains, and anatomical parts that are intended for interment or cremation. However, if medical sharps are generated during the preparation of the human remains, they must be disposed of as prescribed by this Article.
  2. A person who operates an emergency rescue vehicle, an ambulance, or a blood service collection vehicle if the biohazardous medical waste is returned to the home facility for disposal. This facility is considered to be the point of generation for packaging, treatment, and disposal.
  3. A person who discharges discarded drugs and liquid and semi-liquid biohazardous medical wastes, excluding cultures and stocks, to the sanitary sewer system if the operator of the wastewater sewer system and treatment facility allows, permits, authorizes, or otherwise approves of the discharges.
  4. A person who possesses hazardous waste regulated by A.R.S. Title 49, Chapter 5.
  5. A health care worker who uses a multi-purpose vehicle in the conduct of routine business other than transporting waste, is exempt from the requirements of R18-13-1409

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if the health care worker complies with all of the following:

- a. Packages the biohazardous medical waste according to R18-13-1407.
  - b. Secures the packaged biohazardous medical waste within the vehicle so as to minimize spills.
  - c. Transports the biohazardous medical waste to the place of business or to a medical waste treatment or disposal facility.
  - d. Cleans the vehicle when it shows visible signs of contamination.
  - e. Secures the vehicle to prevent unauthorized contact with the biohazardous medical waste.
6. A person who transports biohazardous medical waste between multiple properties separated by a public thoroughfare and which is owned or operated by the same owner or governmental entity is exempt from the requirements of R18-13-1409 if the person complies with R18-13-1403(B)(5)(a) through (e).
7. A hospital that chooses to accept medical sharps from staff physicians who generate medical sharps in a private practice is exempt from the requirement to obtain facility plan approval as long as the hospital collects medical sharps for off-site treatment or disposal.
- C. The following are exempt from some of the requirements of this Article:
1. A generator who treats biohazardous medical waste on site and who accepts for treatment medical waste described in R18-13-1403(A)(4) is exempt from the requirement to obtain solid waste facility plan approval prescribed in R18-13-1410.
  2. A generator who self-hauls biohazardous medical waste to a Department-approved medical waste treatment, storage, transfer, or disposal facility is exempt from the requirements of R18-13-1409 if the generator complies with R18-13-1403(B)(5)(a) through (e).

#### Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

#### R18-13-1404. Transition and Compliance Dates

- A. Unless otherwise specified in subsections (B) through (H), the date for compliance with this Article by generators, transporters, treaters, providers of alternative medical waste technology, and persons in possession of untreated biohazardous medical waste is the effective date of this Article.
- B. A person who provides alternative medical waste treatment technology used by a generator before the effective date of this Article shall perform all of the following:
1. Register the alternative medical waste technology with the Department as prescribed in R18-13-1414 within 90 days after the effective date of this Article.
  2. Not provide alternative technology 90 days after the effective date of this Article unless a Departmental registration certificate is received.
  3. After receipt of the Departmental registration certificate, provide to all generators using the alternative treatment technology a copy of the registration certificate and the alternative technology manufacturer's specifications.
- C. A generator who utilizes alternative medical waste treatment technology before the effective date of this Article shall obtain, within 180 days after the effective date of this Article, the Departmental registration number and equipment specifications, described in R18-13-1414, from the technology provider. If documentation of Departmental registration is not on file with the generator, the Department shall classify biohaz-

ardous medical waste treated 180 days after the effective date of this Article using the unregistered alternative treatment technology as untreated biohazardous medical waste.

- D. A generator who utilizes incineration or autoclaving for onsite treatment of biohazardous medical waste before the effective date of this Article may continue to do so after the effective date if the treatment requirements of R18-13-1415 and the onsite treatment requirements of R18-13-1405 are met.
- E. A transporter of biohazardous medical waste in business on the effective date of this Article shall register, within 90 days after the effective date of this Article, as required in R18-13-1409(A).
- F. An operator of a medical waste storage facility, who has obtained approval for a solid waste facility under A.R.S. § 49-762.04 on or before the effective date of this Article, may continue to store biohazardous medical waste if the facility complies with the design and operation standards prescribed in R18-13-1411. The addition of a refrigeration unit is a Type II change as described in R18-13-1413(A)(2).
- G. An operator of a medical waste transfer facility shall obtain solid waste facility plan approval that meets the requirements of R18-13-1410 within 180 days after the effective date of this Article.
- H. An operator of a medical waste treatment facility who has obtained Departmental plan approval to operate a medical waste treatment facility on or before the effective date of this Article may continue to operate under that plan approval if both of the following are met:
1. The treater complies with the treatment standards of R18-13-1415 and the recordkeeping requirements of R18-13-1412, except as noted in the subsection below.
  2. If the treater determines that the waste is not being treated to the applicable treatment standards of R18-13-1415, the treater informs the Department within two working days after the date on the determination, and within 30 working days enters into an administrative consent order to bring the facility into compliance.
- I. An operator of an existing municipal solid waste landfill who intends to accept untreated biohazardous medical waste shall submit a notice of a Type III change and an amended facility plan within 180 days after the effective date of this Article.
- J. Notwithstanding subsection (H), if the Department determines that an updated solid waste facility plan is required, a treater shall submit an updated plan within 180 days after the date on the Department's determination. The treater may continue to operate under the conditions specified in subsection (H) of this Section while the Department reviews and determines whether to approve or deny the updated plan.
- K. After the effective date of this Article, solid waste facility plan approval under A.R.S. § 49-762.04 is required for a new medical waste treatment or disposal facility before construction.

#### Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

#### R18-13-1405. Biohazardous Medical Waste Treated On Site

- A. A person who treats biohazardous medical waste on site shall use incineration, autoclaving, or an alternative medical waste treatment method that meets the treatment standards prescribed in R18-13-1415.
- B. A generator who uses:
1. Incineration shall follow the requirements of subsections (C), (F), (G), and (H),
  2. Autoclaving shall follow the requirements of subsections (D), (F), (G) and (H), or

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3. An alternative treatment method shall follow the requirements of subsections (E), (F), (G), and (H).
- C.** A generator who incinerates biohazardous medical waste on site shall comply with all of the following requirements:
1. Obtain a permit if required by the local or state air quality agency having jurisdiction.
  2. Reduce the biohazardous medical waste, excluding metallic items, into carbonized or mineralized ash.
  3. Determine whether incinerator ash is hazardous waste as required by hazardous waste rules promulgated under A.R.S. Title 49, Chapter 5.
  4. Dispose of the non-hazardous waste incinerator ash at a Department-approved municipal solid waste landfill.
- D.** A generator who autoclaves biohazardous medical waste on site shall comply with all of the following requirements:
1. Further process by grinding, shredding, or any other process, any recognizable animals and human tissue, organs, or body parts, to render such waste non-recognizable and ensure effective treatment.
  2. Operate the autoclave at the manufacturer's specifications appropriate for the quantity and density of the load.
  3. Keep records of operational performance levels for six months after each treatment cycle. Operational performance level recordkeeping includes all of the following:
    - a. Duration of time for each treatment cycle.
    - b. The temperature and pressure maintained in the treatment unit during each cycle.
    - c. The method used to determine treatment parameters in the manufacturer's specifications.
    - d. The method in manufacturer's specifications used to confirm microbial inactivation and the test results.
    - e. Any other operating parameters in the manufacturer's specifications for each treatment cycle.
  4. Keep records of equipment maintenance for the duration of equipment use that include the date and result of all equipment calibration and maintenance.
- E.** A generator who uses an alternative treatment method on site shall comply with all of the following requirements:
1. Use only alternative treatment methods registered under R18-13-1414.
  2. Further process by grinding, shredding, or any other process, any recognizable animals and human tissue, organs, or body parts, to render this waste non-recognizable and ensure effective treatment.
  3. Follow the manufacturer's specifications for equipment operation.
  4. Supply upon request all of the following:
    - a. The Departmental registration number for the alternative medical waste treatment technology and the type of biohazardous medical waste that the equipment is registered to treat.
    - b. The equipment specifications that include all of the following:
      - i. The operating procedures for the equipment that enable the treater to comply with the treatment standards described in this Article for the type of waste treated.
      - ii. The instructions for equipment maintenance, testing, and calibration that enable the treater to comply with the treatment standards described in this Article for the type of waste treated.
  5. Maintain a training manual regarding the proper operation of the equipment.
  6. Maintain a treatment record consisting of a log of the volume of medical waste treated and a schedule of calibration and maintenance performed under the manufacturer's specifications.
  7. Maintain treatment records for six months after the treatment date for each load treated.
  8. Maintain the equipment specifications for the duration of equipment use.
- F.** A generator shall do all of the following:
1. Package the treated medical waste according to the waste collection agency's requirements;
  2. Attach to the package or container a label, placard, or tag with the following words: "This medical waste has been treated as required by the Arizona Department of Environmental Quality standards" before placing the treated medical waste out for collection as a general solid waste. The generator shall ensure that the treated medical waste meets the standards of R18-13-1415.
  3. Upon request of the solid waste collection agency or municipal solid waste landfill, provide a certification that the treated medical waste meets the standards of R18-13-1415.
  4. Make treatment records available for Departmental inspection upon request.
- G.** A generator of medical sharps shall handle medical sharps as prescribed in R18-13-1419.
- H.** A generator of chemotherapy waste, cultures and stocks, or animal waste shall handle that waste as prescribed in R18-13-1420.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

**R18-13-1406. Biohazardous Medical Waste Transported Off Site for Treatment**

- A.** A generator of biohazardous medical waste shall package the waste as prescribed in R18-13-1407 before self-hauling or before setting the waste out for collection by a transporter.
- B.** A generator shall obtain a copy of the tracking document signed by the transporter signifying acceptance of the biohazardous medical waste. A generator shall keep a copy of the tracking document for one year from the date of acceptance by the transporter. The tracking document shall contain all of the following information:
1. Name and address of the generator, transporter, and medical waste treatment, storage, transfer, or disposal facility, as applicable.
  2. Quantity of biohazardous medical waste collected by weight, volume, or number of containers.
  3. Identification number attached to bags or containers.
  4. Date the biohazardous medical waste is collected.
- C.** A generator of chemotherapy waste, cultures and stocks, or animal waste shall handle the waste as prescribed in R18-13-1420.
- D.** A generator of medical sharps shall handle the waste as prescribed in R18-13-1419.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

**R18-13-1407. Packaging**

- A.** A generator who sets biohazardous medical waste out for collection for off-site treatment or disposal shall package the biohazardous medical waste in either of the following:
1. A red disposable plastic bag that is:
    - a. Leak resistant,
    - b. Impervious to moisture,

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- c. Of sufficient strength to prevent tearing or bursting under normal conditions of use and handling,
  - d. Sealed to prevent leakage during transport,
  - e. Puncture resistant for sharps, and
  - f. Placed in a secondary container. This container shall be constructed of materials that will prevent breakage of the bag in storage and handling during collection and transportation and bear the universal biohazard symbol. The secondary container may be either disposable or reusable.
2. A reusable container that bears the universal biohazard symbol and that is:
- a. Leak-proof on all sides and bottom, closed with a fitted lid, and constructed of smooth, easily cleanable materials that are impervious to liquids and resistant to corrosion by disinfection agents and hot water, and
  - b. Used for the storage or transport of biohazardous medical waste and cleaned after each use unless the inner surfaces of the container have been protected by disposable liners, bags, or other devices removed with the waste. "Cleaning" means agitation to remove visible particles combined with one of the following:
    - i. Exposure to hot water at a temperature of at least 180 degrees Fahrenheit for a minimum of 15 seconds.
    - ii. Exposure to an EPA-approved chemical disinfectant used under established protocols and regulations.
    - iii. Any other method that the Department determines is acceptable, if the determination of acceptability is made in advance of the cleaning.
- B.** A generator shall handle any container used for the storage or transport of biohazardous medical waste that is not capable of being cleaned as described in subsection (A)(2)(b), or that is disposable packaging, as biohazardous medical waste.
- C.** A generator shall not use reusable containers described in subsection (A)(2) for any purpose other than the storage of biohazardous medical waste.
- D.** A generator shall not reuse disposable packaging and liners and shall manage such items as biohazardous medical waste.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

**R18-13-1408. Storage**

- A.** A generator may place a container of biohazardous medical waste alongside a container of solid waste if the biohazardous medical waste is identified and not allowed to co-mingle with the solid waste. The storage area shall not be used to store substances for human consumption or for medical supplies.
- B.** Once biohazardous medical waste has been packaged for shipment off site, a generator shall provide a storage area for biohazardous medical waste until the waste is collected and shall comply with both of the following requirements:
1. Secure the storage area in a manner that restricts access to, or contact with the biohazardous medical waste to authorized persons.
  2. Display the universal biohazard symbol and post warning signs worded as follows for medical waste storage areas: (in English) "CAUTION -- BIOHAZARDOUS MEDICAL WASTE STORAGE AREA -- UNAUTHORIZED PERSONS KEEP OUT" and (in Spanish) "PRECAUCION -- ZONA DE ALMACENAMIENTO DE DES-

PERDICIOS BIOLÓGICOS PELIGROSOS -- PROHIBIDA LA ENTRADA A PERSONAS NO AUTORIZADAS."

- C.** Beginning at the time the waste is set out for collection, a generator who stores biohazardous medical waste shall comply with all of the following requirements:
1. Keep putrescible biohazardous medical waste unrefrigerated if it does not create a nuisance. However, refrigerate at 40° F. or less putrescible biohazardous medical waste kept more than seven days.
  2. Store biohazardous medical waste for 90 days or less unless the generator has obtained facility plan approval under A.R.S. § 49-762.04 and is in compliance with the design and operational requirements prescribed in R18-13-1412.
  3. Keep the storage area free of visible contamination.
  4. Protect biohazardous medical waste from contact with water, precipitation, wind, or animals. A generator shall ensure that the waste does not provide a breeding place or a food source for insects or rodents.
  5. Handle spills by re-packaging the biohazardous medical waste, re-labeling the containers and cleaning any soiled surface as prescribed in R18-13-1407(A)(2)(b).
  6. Notwithstanding subsection (C)(1), if odors become a problem, a generator shall minimize objectionable odors and the off-site migration of odors. If the Department determines that a generator has not acted or adequately addressed the problem, the Department shall require the waste to be removed or refrigerated at 40° F or less.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

**R18-13-1409. Transportation; Transporter License; Annual Fee**

- A.** A transporter shall obtain a transporter license from the Department as provided under subsections (B), (C), and (D) below in addition to possessing a permit, license, or approval if required by a local health department, environmental agency, or other governmental agency with jurisdiction.
- B.** Beginning on July 1, 2012, a transporter shall pay an annual fee of \$750 for every calendar year according to the following schedule, except that no transporter shall pay more than one annual fee in any calendar year:
1. Transporters registered with the Department before July 1, 2012, shall pay by December 31st of each year until their registration expires and shall apply for a license according to subsections (C) and (D) of this Section no more than 60 days before their registration expires.
  2. Transporters who have been issued a license or renewal of a license under this Section and have paid the licensing year fee as provided in subsection (D) shall pay the annual fee by December 31st of each year thereafter.
  3. A transporter that has not been registered with the Department shall apply and obtain a license according to subsections (C) and (D) of this Section and pay an annual fee by December 31st of each year thereafter.
- C.** To apply for or to renew a transporter license, an applicant shall submit all of the following on a form approved by the Department:
1. The name, address, and telephone number of the transportation company or entity.
  2. All owners' names, addresses, and telephone numbers.
  3. All names, addresses, and telephone numbers of any agents authorized to act on behalf of the owner.

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4. A copy of either the certificate of disclosure required by A.R.S. § 49-109 or a written acknowledgment that this disclosure is not required.
  5. Photocopies or other evidence of the issuance of a permit, license, or approval if required by a local health department, environmental agency, or other governmental agency with jurisdiction.
  6. A copy of the transportation management plan that meets the requirements in subsection (I).
  7. A list identifying each dedicated vehicle.
  8. An application fee of \$2,000 which shall apply toward the licensing year fee in subsection (D)(3).
- D.** The Department may only issue a transporter license, including a renewal, after all of the following:
1. All of the items in subsection (C) have been received and determined to be correct and complete;
  2. A Department inspection of each transporting vehicle shows that the vehicle is in compliance with this Article; and
  3. The applicant has paid a licensing year fee consisting of:
    - a. An amount based on the expenses associated with inspecting each transporting vehicle, evaluating the application, and approving the license, minus the application fee. The amount shall be calculated using a rate of \$122 per hour, multiplied by the number of personnel hours used in these duties.
    - b. The annual fee of \$750 for the year as provided for in subsection (B).
    - c. The maximum fee for both subsections (D)(3)(a) and (b) shall be \$20,000.
- E.** A transporter license is valid for five years after issuance. To renew the license, the licensee shall submit an application under subsection (C) no later than 60 days before expiration. Renewals shall be issued after payment of a licensing year fee as provided in subsection (D)(3).
- F.** Amendments. After issuance, the licensee shall submit to the Department any change to the information listed in subsection (C) within 30 days of its occurrence. Vehicles may only be added to the license after a Department inspection shows that the vehicle is in compliance with this Article. Amendments to the transportation management plan or amendments adding vehicles shall be processed after payment of inspection fees and other expenses at the rate listed in subsection (D)(3), except that the application fee shall be \$100 and the maximum fee \$5,000.
- G.** An applicant who disagrees with the final bill received from the Department for the amendment, issuance, renewal or denial of a transporter license or vehicle inspections may make a written request to the Director for a review of the bill and may pay the bill under protest. The request for review shall specify the matters in dispute and shall be received by the Department within 10 working days of the date of receipt of the final bill.
- H.** Unless the Department and applicant agree otherwise, the review shall take place within 30 days of receipt by the Department of the request. The Director shall make a final decision as to whether the time and costs billed are correct and reasonable. The final decision shall be mailed to the applicant within 10 working days after the date of the review and is subject to appeal pursuant to A.R.S. § 49-769.
- I.** A person who transports biohazardous medical waste shall maintain in each transporting vehicle at all times a transportation management plan consisting of both of the following:
1. Routine procedures used to minimize the exposure of employees and the general public to biohazardous medical waste throughout the process of collecting, transporting, and handling.
  2. Emergency procedures used for handling spills or accidents.
- J.** A transporter who accepts biohazardous medical waste from a generator shall leave a copy of the tracking document described in R18-13-1406(B) with the person from whom the waste is accepted. A transporter shall ensure that a copy of the tracking document accompanies the person who has physical possession of the biohazardous medical waste. Upon delivery to a Department-approved transfer, storage, treatment, or disposal facility, the transporter shall obtain a copy of the tracking document, signed by a person representing the receiving facility, signifying acceptance of the biohazardous medical waste.
- K.** A transporter who transports biohazardous medical waste in a vehicle dedicated to the transportation of biohazardous medical waste shall ensure that the cargo compartment can be secured to limit access to authorized persons at all times except during loading and unloading. In addition, the cargo compartment shall be constructed in compliance with one of the following:
1. Have a fully enclosed, leak-proof cargo compartment consisting of a floor, sides, and a roof that are made of a non-porous material impervious to biohazardous medical waste and physically separated from the driver's compartment.
  2. Haul a fully enclosed, leak-proof cargo box made of a non-porous material impervious to biohazardous medical waste.
  3. Tow a fully enclosed leak-proof trailer made of a non-porous material impervious to biohazardous medical waste.
- L.** A person who transports biohazardous medical waste in a vehicle not dedicated to the transportation of biohazardous medical waste, but that is used longer than 30 consecutive days, shall comply with the following:
1. Subsections (A) and (I) through (M).
  2. Clean the vehicle as prescribed in R18-13-1407(A)(2)(b) before it is used for another purpose.
- M.** A person who transports biohazardous medical waste shall comply with all of the following:
1. Accept only biohazardous medical waste packaged as prescribed in R18-13-1407.
  2. Accept biohazardous medical waste only after providing the generator with a signed tracking form as prescribed in R18-13-1406(B), and keep a copy of the tracking document for one year.
  3. Deliver biohazardous medical waste to a Department-approved biohazardous medical waste storage, transfer, treatment, or disposal facility within 24 hours of collection or refrigerate the waste for not more than 90 days at 40° F or less until delivery.
  4. Not hold biohazardous medical waste longer than 96 hours in a refrigerated vehicle unless the vehicle is parked at a Department-approved facility.
  5. Not unload, reload, or transfer the biohazardous medical waste to another vehicle in any location other than a Department-approved facility, except in emergency situations. Combination vehicles or trailers may be uncoupled and coupled to another cargo vehicle or truck trailer as long as the biohazardous medical waste is not removed from the cargo compartment.
- N.** As used in this Section, "licensing year" means the calendar year in which the Department issues a license or a renewal of a license under this Section.

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**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).  
Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

**R18-13-1410. Storage, Transfer, Treatment, and Disposal Facilities; Facility Plan Approval**

- A.** A person shall obtain solid waste facility plan approval from the Department as prescribed in A.R.S. § 49-762.04 to construct any facility that will be used to store, transfer, treat, or dispose of biohazardous medical waste that was generated off site. Plan approval shall be obtained before starting construction of the medical waste treatment or disposal facility. This requirement also applies to solid waste facilities for which an operator self-certifies under A.R.S. § 49-762.05, if the facility also will receive biohazardous medical waste.
- B.** If an air quality permit is required for the facility under A.R.S. Title 49, Chapter 3, the person shall include evidence of that air quality permit, or evidence of an air quality permit application with the application for solid waste facility plan approval.
- C.** A person applying for facility plan approval shall ensure that the plan contains information demonstrating how the plan will comply with this Article.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

**R18-13-1411. Storage and Transfer Facilities; Design and Operation**

An operator of a storage facility or transfer facility shall comply with all of the following design and operation requirements:

1. Design the facility so that biohazardous medical waste is always handled and stored separately from other types of solid waste if accepted at the facility.
2. Display prominently the universal biohazard symbol as prescribed in R18-13-1401.
3. Construct the storage area from smooth, easily cleanable non-porous material that is impervious to liquids and resistant to corrosion by disinfecting agents and hot water.
4. Protect biohazardous medical waste from contact with water, precipitation, wind, or animals.
5. Specify in the application for facility plan approval the maximum storage time that biohazardous medical waste will remain at the facility. If the biohazardous medical waste will be stored for more than 24 hours, the operator shall equip the facility with a refrigerator to refrigerate the biohazardous medical waste. The operator of the facility shall maintain the temperature in the refrigerator at 40° F. or less.
6. Accept biohazardous medical waste only if it is accompanied by the tracking form. The operator shall sign the tracking form and keep a copy of the acceptance documentation for one year;
7. Accept biohazardous medical waste if it is packaged as described in R18-13-1407. If a biohazardous medical waste container is damaged or leaking, improperly labeled, or otherwise unacceptable, a transfer facility operator shall do one of the following:
  - a. Reject the waste and return it to the transporter.
  - b. Accept the waste and immediately repackage it as prescribed in R18-13-1407(A).
8. Clean the storage area daily as prescribed in R18-13-1407(A)(2).

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

**R18-13-1412. Treatment Facilities; Design and Operation**

- A.** An operator who applies for facility plan approval shall comply with all of the following:
1. Submit to the Department the following documentation:
    - a. Equipment specifications that identify the proper type of medical waste to be treated in the equipment and any design or equipment restrictions.
    - b. Manufacturer's specifications and operating procedures for the equipment that describe the type and volume of waste to be treated, monitoring data of the treatment process, and calibration and testing of the equipment, providing specific details about the capability of the equipment to achieve the treatment standards prescribed in R18-13-1415.
    - c. Instructions for equipment maintenance, testing, and calibration that ensure the equipment achieves the treatment standards prescribed in R18-13-1415.
    - d. Training manual for the equipment.
    - e. Written certification from the manufacturer stating that the equipment, when operated properly, is capable of achieving the treatment standards prescribed in R18-13-1415.
  2. Submit to the Department and have readily available at the facility, an operations procedure manual describing how the waste will be handled from the time it is accepted by the treater through the treatment process and final disposition of the treated waste. The operations procedure manual shall include all of the following:
    - a. Provisions for treating biohazardous medical waste within 24 hours of receipt or refrigerating immediately at 40° F. or less upon determination that treatment or disposal will not occur within 24 hours.
    - b. A contingency plan if the treatment equipment is out of service for an extended period of time. The plan shall address the manner and length of time for storage of the waste. An operator shall not store biohazardous medical waste more than 90 days. The plan shall be based on the capacity of the treatment equipment to treat all waste at the facility, including any backlog of stored waste and any new waste intake. If the 90-day time-frame will be exceeded, the operator shall either stop accepting waste until the backlog is treated, or contract with another treatment facility for treating the waste.
    - c. Procedures for handling hazardous chemicals, radioactive waste, and chemotherapy waste. The plan shall provide for scanning biohazardous medical waste with a Geiger counter and handling waste that measures above background level in a manner that complies with state and federal law.
  3. Have on hand written procedures stating that biohazardous medical waste is to be accepted from a transporter only if the waste is accompanied by a tracking form, and written procedures that require compliance with both of the following:
    - a. The treater or the treater's authorized agent shall sign the tracking document and keep a copy of the acceptance documentation for one year.
    - b. If a biohazardous medical waste container is damaged or leaking, improperly labeled, or otherwise unacceptable, a treater shall do one of the following:
      - i. Reject the waste and return it to the transporter.

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- ii. Accept the waste and transfer it directly from the transporting vehicle to the treatment processing unit.
  - iii. If the waste will not be treated immediately, repackage the waste for storage.
4. Assure that the facility is designed to meet both of the following requirements:
    - a. Any floor or wall surface in the processing area of the facility which may come into contact with bio-hazardous medical waste is constructed of a smooth, easily cleanable non-porous material that is impervious to liquids.
    - b. The floor surface in the treatment and storage area either has a curb of sufficient height to contain spills or slopes to a drain that connects to an approved sanitary sewage system, septic tank system, or collection device.
  5. Store biohazardous medical waste as required in R18-13-1408.
  6. Comply with all of the following if the treatment method is incineration:
    - a. Reduce the incinerated medical waste, excluding metallic items, into carbonized or mineralized ash by incineration.
    - b. Determine whether the ash is hazardous waste as required under R18-8-262.
  7. Conduct any autoclaving according to the manufacturer's specifications for the unit.
  8. Use only alternative medical waste treatment methods that achieve the treatment standards in R18-13-1415(A).
  9. Treat animal waste, chemotherapy waste, and cultures and stocks as prescribed in R18-13-1420.
  10. Treat medical sharps as prescribed in R18-13-1419.
  11. Keep records of equipment maintenance and operational performance levels for three years. The records shall include the date and result of all equipment calibration and maintenance. Operational performance level records shall indicate the duration of time for each treatment cycle and:
    - a. For steam treatment and microwaving treatment records, both the temperature and pressure maintained in the treatment unit during each cycle and the method used for confirmation of temperature and pressure.
    - b. For chemical treatment, a description of the solution used.
    - c. For incineration, the temperature maintained in the treatment unit during operation.
    - d. Any other operating parameters in the manufacturer's specifications.
    - e. A description of the treatment method used and a copy of the maintenance test results.
  12. Not open the red bag prior to treatment unless opening the bag is required to treat the contents. Transfer of the entire contents, when performed as part of the treatment process, is permitted.
- B.** The treater shall make treatment records available for Departmental inspection upon request.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

**R18-13-1413. Changes to Approved Medical Waste Facility Plans**

- A.** As required by A.R.S. § 49-762.06, before making any change to an approved facility plan a treatment facility owner or oper-

ator shall submit a notice to the Department stating which of the following categories of change is requested:

1. A Type I change to an approved medical waste facility plan is a change not described in subsection (A)(2), (3), or (4).
  2. A Type II change to an approved medical waste facility plan is a change in which treatment equipment is replaced with equal or like equipment, resulting in either no increase to treatment capacity or the addition of equipment that is not directly used in the treatment process.
  3. A Type III change to an approved medical waste facility plan is a change described by one of the following:
    - a. Treatment equipment is added, resulting in less than a 25% increase in treatment capacity.
    - b. The storage area is enlarged resulting in less than a 25% increase in storage capacity.
    - c. Treatment technology is changed.
  4. A Type IV change to an approved medical waste facility plan is a change described by one of the following:
    - a. Treatment equipment is added, resulting in a 25% or more increase in treatment capacity.
    - b. The storage area is enlarged resulting in a 25% or more increase in storage capacity.
    - c. Treatment equipment is added that requires an environmental permit.
    - d. An expansion of the treatment facility onto land not previously described in the approved plan.
- B.** As required by A.R.S. § 49-762.06, a treatment facility operator who has identified a change under subsection (A) shall comply with one of the following:
1. For a Type I change, make the change without notice to, or approval by the Department.
  2. For a Type II change, before making any change, provide written notification that describes the change to the Department. The addition of refrigeration units only for compliance with this Article is a Type II change for which no Departmental approval is required.
  3. For a Type III or Type IV change, submit an amended plan to the Department for approval before making any change. Departmental approval is required prior to making any change.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

**R18-13-1414. Alternative Medical Waste Treatment Methods: Registration and Equipment Specifications**

- A.** A manufacturer or its agent who applies for alternative medical waste treatment method registration shall submit to the Department all of the following:
1. The manufacturer or company name and address.
  2. The name, address, and telephone number of the person who submits the application.
  3. A description of the alternative medical waste treatment method.
  4. A list of any other states in which the treatment method is used, including a copy of any state approvals.
  5. A description of by-products generated as result of the alternative treatment method.
  6. A certification statement that the contents of the application are true and accurate to the knowledge and belief of the applicant.
  7. Written documentation demonstrating that the alternative medical waste treatment method is capable of compliance with the treatment standards in this Article for the type of waste treated. The manufacturer shall employ a labora-

tory independent of any oversight activities by the manufacturer to provide this analysis.

8. The manufacturer's equipment specifications for the alternative medical waste treatment method being registered, including all of the following:
    - a. Unit model number, or serial number.
    - b. Equipment specifications that identify the proper type of biohazardous medical waste to be treated by the equipment and any design or equipment restrictions.
    - c. Operating procedures for the equipment that ensure the equipment complies with the treatment standards prescribed in this Article for the type of waste treated.
    - d. Instructions for equipment maintenance, testing, and calibration that ensure the equipment complies with the treatment standards prescribed in this Article for the type of waste treated.
  9. Written documentation of registration if required by A.R.S. § 3-351.
- B.** The Department shall make a determination whether to approve the registration application. If the Department approves the application, it shall issue to the applicant a certification of registration containing an alternative medical waste treatment method registration number. Only an alternative technology method with a valid Department issued registration number meets the requirements of this Article.

#### Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

#### R18-13-1415. Treatment Standards, Quantification of Microbial Inactivation and Efficacy Testing Protocols

- A.** A treater using an alternative treatment technology shall ensure that treatment achieves either of the following treatment standards:
1. A 6 log<sub>10</sub> inactivation in the concentration of vegetative microorganisms.
  2. A 4 log<sub>10</sub> inactivation in the concentration of *Bacillus stearothermophilus* or *Bacillus subtilis* as is appropriate to the technology.
- B.** A treater utilizing an alternative treatment method shall conduct efficacy studies to demonstrate that the treatment mechanisms are capable of achieving the standards in subsection (A) through either of the following:
1. Mycobacterial species used as indicators of vegetative microorganisms:
    - a. *Mycobacterium phlei*, or
    - b. *Mycobacterium bovis* (BOG) (ATCC 35743)
  2. Spore suspensions of one of the following two bacterial species, as appropriate to the technology, used as biological indicators in efficacy tests of thermal, chemical, and irradiation treatment systems. Studies shall demonstrate a 4 log<sub>10</sub> reduction in the concentration of viable spores, through the use of an initial inoculum suspension of 5 log<sub>10</sub> or greater of:
    - a. *Bacillus stearothermophilus* (ATCC 7953), or
    - b. *Bacillus subtilis* (ATCC 19659).
- C.** A treater utilizing an alternative treatment method shall quantify microbial inactivation as follows:
1. Microbial inactivation, or "kill" efficacy is equated to "Log<sub>10</sub> Kill" that is defined as the difference between the logarithms of the number of viable test microorganisms before and after treatment. This definition is stated as:
 
$$\text{Log}_{10}\text{Kill} = \text{Log}_{10}(\text{cfu/g "I"}) - \text{Log}_{10}(\text{cfu/g "R"})$$
 where:

Log<sub>10</sub>Kill is equivalent to the term Log<sub>10</sub> reduction, "I" is the number of viable test microorganisms introduced into the treatment unit, "R" is the number of viable test microorganisms recovered from the treatment unit, and "cfu/g" are colony forming units per gram of waste solids.

2. For those treatment processes that can maintain the integrity of the biological indicator carrier of the desired microbiological test strain, biological indicators of the required strain and concentration may be used to demonstrate microbial inactivation. Quantification is evaluated by growth or no growth of the cultured biological indicator.
3. For those treatment mechanisms that cannot ensure or provide integrity of the biological indicator, quantitative measurement of microbial inactivation requires a two-step approach: Step 1 "Control" and Step 2 "Test". The purpose of Step 1 is to account for the reduction of test microorganisms due to loss by dilution or physical entrapment.
  - a. Step 1:
    - i. Use microbial cultures of a predetermined concentration necessary to ensure a sufficient microbial recovery at the end of this step.
    - ii. Add suspension to a standardized medical waste load that is to be processed under normal operating conditions without the addition of the treatment agent (that is, heat, chemicals).
    - iii. Collect and wash waste samples after processing to recover the biological indicator organisms in the sample.
    - iv. Plate the recovered microorganism suspensions to quantify microbial recovery. The number of viable microorganisms recovered serves as a baseline quantity for comparison to the number of recovered microorganisms from wastes processed with the treatment agent.
    - v. The required number of recovered viable indicator microorganisms from Step 1 must be equal to or greater than the number of microorganisms required to demonstrate the prescribed Log reduction, either a 6 Log<sub>10</sub> reduction for vegetative microorganisms or a 4 Log<sub>10</sub> reduction for bacterial spores. This can be defined by the following equation:
 
$$\text{Log}_{10}\text{RC} = \text{Log}_{10}\text{IC} - \text{Log}_{10}\text{NR}$$
 or
 
$$\text{Log}_{10}\text{NR} = \text{Log}_{10}\text{IC} - \text{Log}_{10}\text{RC}$$
 where:
 

Log<sub>10</sub>RC is greater than 6 for vegetative microorganisms and greater than 4 for bacterial spores and where:

Log<sub>10</sub>RC is the number of viable "control" microorganisms in colony forming units per gram of waste solids recovered in the non-treated, processed waste residue;

Log<sub>10</sub>IC is the number of viable "control" microorganisms in colony forming units per gram of waste solids introduced into the treatment unit;

Log<sub>10</sub>NR is the number of "control" microorganisms in colony forming units per gram of waste solids which were not recovered in the non-treated, processed waste residue. Log<sub>10</sub>NR

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represents an accountability factor for microbial loss.

- b. Step 2:
- i. Use microbial cultures of the same concentration as in Step 1.
  - ii. Add suspension to the standardized medical waste load that is to be processed under normal operating conditions with the addition of the treatment agent.
  - iii. Collect and wash waste samples after processing to recover the biological indicator organisms in the sample.
  - iv. Plate recovered microorganism suspensions to quantify microbial recovery.
  - v. From data collected from Step 1 and Step 2, the level of microbial inactivation, "Log<sub>10</sub> Kill", is calculated by employing the following equation:  

$$\text{Log}_{10}\text{Kill} = \text{Log}_{10}\text{IT} - \text{Log}_{10}\text{NR} - \text{Log}_{10}\text{RT}$$
 where:  
 Log<sub>10</sub>Kill is equivalent to the term Log<sub>10</sub> reduction;  
 Log<sub>10</sub>IT is the number of viable "Test" microorganisms in colony forming units per gram of waste solids introduced into the treatment unit.  

$$\text{Log}_{10}\text{IT} = \text{Log}_{10}\text{IC};$$
  
 Log<sub>10</sub>NR is the number of "Control" microorganisms in colony forming units per gram of waste solids which were not recovered in the non-treated, processed waste residue;  
 Log<sub>10</sub>RT is the number of viable "Test" microorganisms in colony forming units per gram of waste solids recovered in treated, processed waste residue.
- D. A treater shall employ the appropriate methodology to determine efficacy of the treatment technology following the protocols in subsection (C) that are congruent with the treatment method.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

**R18-13-1416. Recycled Materials**

- A. Once a generator places biohazardous medical waste in a red bag as required in R18-13-1407, a person shall not remove any of the biohazardous medical waste from the bag until the biohazardous medical waste has been treated as required in R18-13-1415.
- B. A generator of biohazardous medical waste intending to recycle any portion of the biohazardous medical waste shall segregate that portion of biohazardous medical waste from the portion of biohazardous medical waste that will not be recycled. The generator shall do either of the following:
1. Treat the biohazardous medical waste intended for recycling as required in R18-13-1415 before sending the treated medical waste to a recycler.
  2. Follow the requirements in R18-13-1406, R18-13-1407, and R18-13-1408, before either contracting with a transporter to haul or self-hauling the biohazardous medical waste to a treatment facility for treatment. After treatment, the treated medical waste may be sent to a recycler.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

**R18-13-1417. Disposal Facilities: Operation**

An operator of a municipal solid waste landfill that accepts untreated biohazardous medical waste shall comply with all the following in design and operational requirements:

1. Accept biohazardous medical waste only if packaged according to R18-13-1407.
2. Keep the biohazardous medical waste disposal area separate from the general purpose disposal area.
3. Clearly label the biohazardous medical waste disposal area, informing persons that the disposal area contains untreated medical waste.
4. Not drive directly over deposited medical waste. The operator shall achieve compaction by first spreading a layer of soil that is sufficiently thick to prevent compaction equipment from coming into direct contact with the waste, or dragging waste over the area.
5. Cover the biohazardous medical waste with 6 inches of compacted soil at the end of the working day or more often as necessary to prevent vector breeding and odors.
6. Not allow salvaging of untreated biohazardous medical waste from the landfill.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

**R18-13-1418. Discarded Drugs**

- A. A generator of discarded drugs not returned to the manufacturer shall destroy the drugs on site prior to placing the waste out for collection. A generator shall destroy the discarded drugs by any method that prevents the drug's use. If federal or state law prescribes a specific method for destruction of discarded drugs, the generator shall comply with that law.
- B. A generator of discarded drugs may flush them down a sanitary sewer if allowed by the wastewater treatment authority.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

**R18-13-1419. Medical Sharps**

Medical sharps shall be handled as follows:

1. A generator who treats biohazardous medical waste on site shall place medical sharps in a sharps container after rendering them incapable of creating a stick hazard by using an encapsulation agent or any other process that prevents a stick hazard. Medical sharps encapsulated or processed in this manner are considered to be solid waste.
2. A generator who ships biohazardous medical waste off site for treatment shall either:
  - a. Place medical sharps in a medical sharps container and follow the requirements of R18-13-1406, or
  - b. Package and send medical sharps to a treatment facility via a mail-back system as prescribed by the instructions provided by the mail-back system operator. An Arizona treatment facility shall render medical sharps incapable of creating a stick hazard by using an encapsulation agent or any other process that prevents a stick hazard.
3. A person operating a treatment facility who accepts medical sharps for treatment shall either:
  - a. Encapsulate medical sharps to prevent stick hazard, or
  - b. Use any other process that prevents a stick hazard.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

**R18-13-1420. Additional Handling Requirements for Certain**

**Wastes**

- A.** A person who treats the following biohazardous medical waste categories shall meet the following additional requirements:
1. Cultures and stocks shall be incinerated, autoclaved, or treated by an alternative medical waste treatment method that meets the treatment standards set forth in R18-13-1415(A) and packaged inside a watertight primary container with absorbent packing materials if shipped off site for treatment or disposal. The primary container shall be placed inside a secondary inner container that is then placed inside an outer container. If federal or state law prescribes specific requirements for packaging and transporting this waste, the treater shall comply with that law.
  2. Chemotherapy waste shall be incinerated or disposed of in either an approved solid waste or hazardous waste disposal facility.
  3. Experimental or research animal waste shall be handled as follows:
    - a. Autoclave bedding on site or package as described in R18-13-1407 for off-site treatment or landfilling.
    - b. Incinerate animal carcasses on site, or if taken off site for treatment, comply with one of the following requirements:
      - i. Package the waste in a leakproof, covered container, label the contents and send to an incinerator or a Department-approved landfill, or
      - ii. If treated by a method other than incineration, pre-process by grinding, then treat by a method that achieves the standards of R18-13-1415(A).
- B.** If a treater uses grinding in combination with another treatment method described in this Article, the treater shall conduct it in a closed system to prevent humans from being exposed to the release of the waste into the environment. If grinding is used for medical sharps, the grinding shall render the medical sharps incapable of creating a stick hazard.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

**ARTICLE 15. RECODIFIED**

*Editor's Note: The recodification at 7 A.A.R. 2522 described below erroneously moved Sections into 18 A.A.C. 9, Article 9. Those Sections were actually recodified to 18 A.A.C. 9, Article 10. See the Historical Notes for more information (Supp. 01-4).*

*Article 15, consisting of Sections R18-13-1501 through R18-13-1514 and Appendix A, recodified to 18 A.A.C. 9, Article 9 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2).*

**R18-13-1501. Recodified****Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-902 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1002 (Supp. 01-4).

**R18-13-1502. Recodified****Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-901 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1001 (Supp. 01-4).

**R18-13-1503. Recodified****Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section

recodified to R18-9-903 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1003 (Supp. 01-4).

**R18-13-1504. Recodified****Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-904 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1004 (Supp. 01-4).

**R18-13-1505. Recodified****Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-905 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1005 (Supp. 01-4).

**R18-13-1506. Recodified****Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-906 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1006 (Supp. 01-4).

**R18-13-1507. Recodified****Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-907 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1007 (Supp. 01-4).

**R18-13-1508. Recodified****Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-908 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1008 (Supp. 01-4).

**R18-13-1509. Recodified****Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-909 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1009 (Supp. 01-4).

**R18-13-1510. Recodified****Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-910 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1010 (Supp. 01-4).

**R18-13-1511. Recodified****Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-911 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1011 (Supp. 01-4).

**R18-13-1512. Recodified****Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-912 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section

actually recodified to R18-9-1012 (Supp. 01-4).

#### R18-13-1513. Recodified

##### Historical Note

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-913 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1013 (Supp. 01-4).

#### R18-13-1514. Recodified

##### Historical Note

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-914 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1014 (Supp. 01-4).

#### Appendix A. Recodified

##### Historical Note

Appendix A, "Procedures to Determine Annual Biosolids Application Rates", adopted effective April 23, 1996 (Supp. 96-2). Appendix A recodified to 18 A.A.C. 9, Article 9 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to 18 A.A.C. 9, Article 10 (Supp. 01-4).

### ARTICLE 16. BEST MANAGEMENT PRACTICES FOR PETROLEUM CONTAMINATED SOIL

*Article 16, consisting of Sections R18-13-1601 through R18-13-1614, recodified from 18 A.A.C. 8, Article 16 at 8 A.A.R. 5172, effective November 27, 2002; Section and subsection citations within this Article were also updated under A.R.S. § 41-1011(C) (Supp. 02-4).*

#### R18-13-1601. Definitions

In addition to definitions in A.R.S. § 49-851 and A.A.C. R18-13-1301, the terms in this Article shall have the following meanings:

1. "Accumulation site" means an area or site at which PCS from one or more points of generation under the control of the generator of PCS is accumulated for more than 12 hours but less than 90 days prior to treatment, storage, or disposal.
2. "Containment system" means a system designed to contain an accumulation of special waste which meets the design and performance standards in R18-13-1608 and either R18-13-1609 or R18-13-1611.
3. "Excavated" means removed from the earth by scraping or digging a hole or cavity in the earth's surface or otherwise removed from the earth's surface.
4. "Facility" or "special waste receiving facility" means a treatment facility, storage facility, or disposal facility which has been approved by the Director in accordance with A.R.S. § 49-857 or has qualified for Interim Use Facility status pursuant to A.R.S. § 49-858.
5. "Hazardous waste" means hazardous waste as defined in A.R.S. § 49-921(5).
6. "Non-fuel, non-solvent petroleum product" means a petroleum-based substance refined from virgin crude oil that is not used as a solvent or fuel including mineral oils and hydraulic oils.
7. "Non-regulated soils" means soils contaminated with total petroleum hydrocarbon (TPH) levels equal to or less than 100 mg/kg which are neither hazardous waste, PCS, nor solid waste PCS, and which do not constitute an environmental nuisance pursuant to A.R.S. §§ 49-141 through 49-144.
8. "PCS" means petroleum-contaminated soils, which are not hazardous waste or solid waste PCS, which are excavated for storage, treatment, or disposal, and which contain contaminants as described by any of the following:
  - a. TPH which exceeds concentrations of 5,000 mg/kg,
  - b. Benzene which exceeds concentrations of 0.13 mg/kg,
  - c. Toluene which exceeds concentrations of 200 mg/kg,
  - d. Ethylbenzene which exceeds concentrations of 68 mg/kg,
  - e. Total xylene which exceeds concentrations of 44 mg/kg.
9. "PCS disposal facility" means a site or special waste receiving facility at which the disposal of PCS has been approved by the Director pursuant to A.R.S. § 49-857 or has qualified for Interim Use Facility status pursuant to A.R.S. § 49-858.
10. "Petroleum" means petroleum as defined in A.R.S. § 49-1001(11).
11. "Point of compliance" means point of compliance as defined in A.R.S. § 49-244.
12. "Special waste shipper" means a person who transports special waste for off-site treatment, storage, or disposal.
13. "Solid waste PCS" means excavated soils contaminated with petroleum, which are not hazardous waste and which meet any of the following:
  - a. Have TPH concentrations which exceed 100 mg/kg but which are at or below 5,000 mg/kg;
  - b. Are soils contaminated with non-fuel, non-solvent petroleum products with a TPH which exceeds 100 mg/kg.
14. "Storage" means the holding of PCS for a period of more than 90 days but less than one year.
15. "Storage facility" means a special waste receiving facility which engages in storage and which has been approved by the Director pursuant to A.R.S. § 49-857 or has qualified for Interim Use Facility status pursuant to A.R.S. § 49-858.
16. "Temporary treatment facility" means an on-site treatment facility, or an off-site treatment facility owned or operated by the generator of PCS, where the PCS is treated to reduce TPH, benzene, toluene, ethylbenzene, or total xylene concentrations and which complies with the requirements of R18-13-1610.
17. "Total petroleum hydrocarbons" or "TPH" means the sum of the aliphatic and aromatic hydrocarbon constituents contained in petroleum, as determined through laboratory testing.
18. "Treatability study" means a study in which a special waste is subjected to a treatment process to determine any one or more of the following:
  - a. Whether the waste is amenable to the treatment process,
  - b. What pretreatment is required,
  - c. The optimal process conditions needed to achieve the desired treatment,
  - d. The efficiency of a treatment process,
  - e. The characteristics and volumes of residual contaminants from a particular treatment process,
  - f. Toxicological and health effects.
19. "Treatment facility" means a special waste receiving facility which has been approved by the Director pursuant to A.R.S. § 49-857 or has qualified for Interim Use Facility status pursuant to A.R.S. § 49-858, and at which PCS receives treatment to reduce TPH or benzene, toluene, ethylbenzene, or total xylene concentrations.

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**Historical Note**

Recodified from R18-8-1601 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-13-1602. Applicability**

- A. The Director declares that PCS, as defined in R18-13-1601(8), constitutes a special waste as defined in A.R.S. § 49-851(A)(9). Except as otherwise provided in this Section and R18-13-1603, PCS shall be treated, stored, and disposed of in accordance with this Article. PCS shall not be diluted with any material or substance for purposes of avoiding applicability of these rules.
- B. PCS which is used in a treatability study shall comply with all of the following:
  1. The owner or operator of the facility where a treatability study is to be conducted shall notify the Department of its intent to conduct a treatability study at least 30 days prior to the commencement of the treatability study.
  2. The total quantity of PCS used in the treatability study shall not exceed 5000 kilograms, unless evidence is provided which justifies the need for a larger quantity and permission to use a larger amount is granted by the Director.
  3. The owner or operator of the facility shall maintain records detailing the treatability study and the results obtained in accordance with R18-13-1614.
  4. The treatability study shall be completed and the PCS shall be removed from the site within one year from commencement of the study.
  5. Upon completion of the treatability study, the owner or operator of a facility shall dispose of the PCS used in the treatability study in accordance with this Article.
  6. Sampling of the PCS shall be conducted in accordance with R18-13-1604(B) and (C) before and after the treatability study is performed.
  7. The performance of the treatability study shall not result in an environmental nuisance pursuant to A.R.S. §§ 49-141 through 49-144.
- C. PCS which is excavated pursuant to the requirements of A.R.S. Title 49, Chapter 6, Underground Storage Tank Regulation, and which is not removed from the site, shall comply with the requirements of R18-13-1610 and R18-13-1612.
- D. PCS incorporated into asphalt for use in paving is not subject to other provisions of this Article if the owner or operator of the facility where the asphalt is produced does all of the following:
  1. Notifies the Department in writing at least 30 days prior to commencing such incorporation,
  2. Maintains records in accordance with R18-13-1614,
  3. Stores the PCS prior to incorporation in accordance with R18-13-1611,
  4. Uses only soil characterized as PCS based on TPH concentrations as set forth in R18-13-1601(8)(a).

**Historical Note**

Recodified from R18-8-1602 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-13-1603. Exemptions**

- A. Solid waste PCS are exempt from the provisions of this Article, except for the requirements in R18-13-1604, and are subject to A.R.S. § 49-761 et seq.
- B. Non-regulated soils are exempt from the provisions of this Article, except for the requirements in R18-13-1604, and are exempt from the requirements of A.R.S. § 49-761 et seq.
- C. Asphaltic cement which is not hazardous waste is exempt from the requirements of this Article.

- D. Soils which are contaminated with petroleum, which have been generated by households, and which are not hazardous waste, shall be exempt from the requirements of this Article.
- E. Soil characterized as PCS solely because the TPH concentration exceeds 5,000 mg/kg may be disposed in accordance with A.R.S. § 49-761 et seq. and shall be exempt from the requirements of this Article, except that the generator shall comply only with the requirements for accumulation sites in R18-13-1612, if either of the following conditions are met:
  1. The mathematical product of the TPH (mg/kg) and the number of tons excavated is less than 10,000.
  2. The mathematical product of the TPH (mg/kg) and the number of cubic yards excavated is less than 8,500.

**Historical Note**

Recodified from R18-8-1603 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-13-1604. Waste Determination**

- A. A generator of excavated soil contaminated with petroleum shall determine whether the soil is PCS, solid waste PCS, or non-regulated soil. The basis for the determination shall be maintained for at least three years and shall be made available to the Department upon request. The generator shall make such determination using either of the following methods:
  1. Testing the soil pursuant to subsection (B) of this Section. Laboratory analysis of these samples shall be performed by a laboratory licensed by the Arizona Department of Health Services. Approved testing methods, which identify concentrations for total recoverable extraction of contaminants, shall be used.
  2. Application of knowledge of the characteristics of the contaminated soil in light of the known or potential source of the contamination. The Department may require sampling to confirm the accuracy of applied knowledge.
- B. Sampling of soils contaminated with petroleum shall be performed in accordance with a site-specific written sampling plan which is consistent with the requirements set forth in either of the following:
  1. "Test Methods for Evaluating Solid Waste", EPA SW-846, 3rd Edition Volume II: Field Manual, Physical/Chemical Method, Chapter Nine (SW-846 Third Edition), 1986, Environmental Protection Agency, Washington, D.C. and no future editions or amendments, incorporated herein by reference and on file with the Department and the Office of the Secretary of State.
  2. "Quality Assurance Project Plan", Chapter 9, May 1991 Edition, Arizona Department of Environmental Quality, Phoenix, Arizona and no future editions or amendments incorporated herein by reference and on file with the Department and the Office of the Secretary of State.
- C. Where multiple samples are collected from a stockpile of contaminated soil generated from a single source, the stockpile shall be considered as PCS if the arithmetic mean of the TPH concentrations of the samples exceeds 5,000 mg/kg. A sample having a concentration of total petroleum hydrocarbons which is below the analytical method detection limit or reporting limit shall be assigned a concentration which is 1/2 of the reported analytical method detection limit or reporting limit.
- D. If soil excavated during the initial investigation of a site to determine the extent of contamination is PCS, the PCS may be returned into the excavation site from which the soil was removed if all of the following conditions are met:
  1. There is no freestanding liquid within the excavation, unless the State Fire Marshal or other jurisdictional fire

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authority directs otherwise, and the requirements of subsections (2) and (3) of this subsection are met.

2. The owner or operator provides notification to the Department that the PCS has been returned to the excavation within 14 days after the return of the PCS to the excavation.
3. The owner or operator completes a site characterization within 120 days and implements remediation within 150 days after the date the site characterization began.

**Historical Note**

Recodified from R18-8-1604 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-13-1605. Transportation**

- A. PCS transported to a special waste receiving facility in Arizona shall be transported by a special waste shipper which has met the requirements of R18-13-1303.
- B. A special waste shipper shall transport the PCS in closed containers pursuant to R18-13-1611(E) or shall ensure that any vehicle used to transport the PCS is loaded and covered in such a manner that the contents will not blow, fall, leak, or spill from the vehicle.
- C. A special waste shipper transporting PCS to a special waste receiving facility in Arizona, except a facility located on Indian country, shall deliver PCS to a special waste receiving facility approved by the Department.

**Historical Note**

Recodified from R18-8-1605 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-13-1606. Fees**

In accordance with A.R.S. §§ 49-855(C)(2) and 49-863, the treatment, storage, or disposal facility in this state that first receives a shipment of PCS shall remit to the Department a fee of \$4.50 per ton but not more than \$45,000 per generator site per year for PCS that is transported to the facility.

**Historical Note**

Recodified from R18-8-1606 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

**R18-13-1607. Facility Approval; Application**

- A. PCS shall be treated, stored, or disposed only at a PCS disposal facility, storage facility, treatment facility, or temporary treatment facility. A facility shall not be constructed or operated prior to obtaining written approval from the Department, except as provided for in A.R.S. § 49-858.
- B. The owner or operator of a PCS treatment, storage, or disposal facility shall submit an application to the Department which contains all of the information required in accordance with A.R.S. § 49-762.
- C. In addition to the requirements specified in A.R.S. § 49-762, the application shall contain all of the following:
  1. A vicinity map, in a scale not over 1:24,000, which shows where the facility is located with respect to the surroundings, including an indication of the use of the adjacent properties.
  2. An engineering report which includes all of the following:
    - a. Detailed plans and specifications for the entire facility including manufacturer's performance data and design features of treatment, pollution control, and monitoring equipment.
    - b. A site description which includes general information on the geology, hydrogeology, soils, and land

use. If a facility is located within the pollution management area of a facility for which an aquifer protection permit has been issued under A.R.S. § 49-241 et seq., then the applicant may resubmit or incorporate by reference the general information.

- c. A background soil sampling plan and results which characterize the site, including the rationale used to determine the locations, depths, and number of samples.
3. A site map, in a scale not to exceed 1:2,400, which clearly identifies where the PCS shall be deposited, containment berms, fencing and security measures, access roads, any improvements, wells, and location of surface water courses.
4. An operational plan which includes all of the following:
  - a. General description of the daily operations of the facility and the processes, techniques, or methods to be employed;
  - b. The source, amount, concentration of contaminants, and any other relevant information concerning the PCS to be handled;
  - c. The schedule for sampling the PCS during treatment to evaluate treatment methods;
  - d. Description of plans for final use and disposal of PCS and remediated soil, liners, piping, carbon canisters, and any other contaminated equipment;
  - e. Procedures to ensure that only waste which has been characterized is received and that hazardous waste is not received;
  - f. Procedures for random inspection of incoming loads to verify that only waste which has been characterized is accepted;
  - g. Procedures for collecting and managing run-off which comes in contact with PCS;
  - h. Procedures for recordkeeping of all inspection results, training of personnel, and sampling results;
  - i. Procedures to control public access, and prevent unauthorized entry and illegal dumping.
5. A contingency plan for emergency preparedness which describes alternatives for storage, treatment, or disposal.
6. A closure plan which includes:
  - a. A description of the steps necessary to close the facility, the specific proposed closure activities, and an implementation schedule;
  - b. Information on site conditions and characterization of the waste received during the life of the facility;
  - c. A description of the sampling plan utilized to sample background soil beneath the site following closure;
  - d. A description of plans for use of the land site after closure;
  - e. A description of post-closure care.
7. An affidavit that the proposed facility is in compliance with local zoning requirements in effect at the time the application is submitted.
- D. Following completion of construction of a facility and prior to placement of PCS on the site, the owner or operator shall submit to the Department a construction certification report, including as-built plans which indicate any changes to the design or operational plans for the facility.
- E. Plans required in accordance with this Section shall be sealed by a professional engineer registered in the state of Arizona, if required by statute.
- F. A facility shall be in compliance with all other applicable federal, state, and local approvals or permits which are required for the design, construction, and operation of the facility.

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**Historical Note**

Recodified from R18-8-1607 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-13-1608. General Design and Performance Standards**

- A.** A facility which receives PCS for treatment, storage, or disposal shall be designed and operated to ensure compliance with the following performance standards relating to aquifer protection:
1. Pollutants discharged shall in no event cause or contribute to a violation of Aquifer Water Quality Standards, at the applicable point of compliance, or, if the facility is a municipal solid waste landfill, it shall comply with the requirements of A.R.S. § 49-761.01(C).
  2. Any pollutant discharged shall not further degrade, at the applicable point of compliance, the quality of any aquifer that already violates an Aquifer Water Quality Standard for that pollutant.
- B.** A facility which receives PCS for treatment, storage, or disposal shall meet the general design criteria of either subsection (B)(1) or (2) as follows:
1. The PCS shall be held within a containment system designed and constructed to preclude the migration of contaminants into subsurface soil, groundwater, or surface water. The containment system shall meet the following criteria:
    - a. Maintain a maximum hydraulic conductivity of no more than  $1 \times 10^{-7}$  cm/sec;
    - b. Be designed to provide structural integrity throughout the life of the facility;
    - c. Be designed in accordance with the applicable design criteria set forth in subsection (C) of this Section and R18-13-1609 through R18-13-1613; or
  2. An alternative design shall contain, at a minimum, all of the following and shall demonstrate that the design will limit discharges listed in A.R.S. § 49-243(D) to the maximum extent practicable:
    - a. The hydrogeologic setting of the facility and the capacity of the liner and soils to preclude discharge to groundwater or surface water;
    - b. The operating methods, processes, or other alternatives to be used at the facility;
    - c. Additional factors which would influence the quality and mobility of the leachate produced and the potential for that leachate to migrate to groundwater or surface water.
- C.** A PCS treatment, storage, or disposal facility shall meet the following general design criteria:
1. The facility shall be designed to prevent run-on and run-off. The design shall provide run-on control for the peak discharge from a 24-hour, 25-year storm event. Run-off shall be collected and controlled for at least the water volume resulting from a 24-hour, 25-year storm event.
  2. The facility shall not restrict the flow of the 100-year floodplain, reduce temporary water storage capacity of the floodplain, or be maintained in a manner which results in a washout or inundation of the PCS.
  3. The owner or operator shall control public access and shall prevent unauthorized vehicular traffic and illegal dumping.
  4. The owner or operator shall manage any standing water that has come into contact with the PCS in accordance with rules promulgated pursuant to A.R.S. § 49-761 et seq.
- D.** A facility which manages PCS in accordance with the requirements of this Article shall be exempt from the aquifer protection permit requirements in accordance with A.R.S. § 49-250(B)(21).

- E.** A facility which has been issued an aquifer protection permit from the Department shall be exempt from the requirements of subsections (A) and (B) of this Section but shall comply with the requirements of subsection (C).

**Historical note**

Recodified from R18-8-1608 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-13-1609. Treatment Facility**

- A.** The owner or operator of a PCS treatment facility shall obtain approval from the Department prior to commencement of construction or operation and shall comply with all of the following:
1. Not dilute PCS as a method of treatment, except as allowed in the approved plan for the facility;
  2. Treat the PCS or, if the chosen treatment process fails to remediate the soil to below the regulatory thresholds, dispose of the PCS pursuant to R18-13-1613.
  3. Sample the treated soil and provide the results of the sampling to the Department within 45 days of completion of the treatment.
- B.** A PCS treatment facility designed in accordance with R18-13-1608(B)(1) shall comply with the following specific design criteria:
1. At a minimum, a containment system shall include a clay, synthetic, concrete, or asphalt liner component which is placed upon a foundation or prepared subgrade which supports the liner, and resists pressure gradients above and below the liner, to prevent failure due to settlement, compression, or uplift.
  2. During construction or installation of a containment system, liners and cover systems shall be inspected for uniformity, damage, and imperfections. Immediately after construction or installation is completed, and prior to placement of PCS within the containment system, the systems shall be checked for both of the following:
    - a. Synthetic liners and covers shall be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.
    - b. Concrete, asphalt, and soil-based liners and covers shall be inspected for imperfections including lenses, cracks, channels, root holes, or other structural non-uniformities that may cause an increase in the permeability of the liner or cover.
  3. The liner component shall consist of one of the following:
    - a. A synthetic liner which is compatible with the waste and which has a minimum 6" buffer layer of sand or soil between the liner and the PCS.
    - b. A compacted soil or admixed liner provided with a minimum 6" buffer layer of sand or soil between the liner and the PCS.
    - c. An asphalt or reinforced concrete liner which is not in the drainage area of a dry well and is free of unsealed cracks and seams.
  4. Aeration equipment shall be limited to the area above the buffer layers indicated in subsections (B)(2)(a) and (b).
  5. The owner or operator of the facility shall utilize protective measures to ensure containment system integrity during placement, treatment, or removal of the PCS.
  6. PCS stored at a treatment facility prior to treatment shall be stored in accordance with the requirements of R18-13-1611.

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**Historical Note**

Recodified from R18-8-1609 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-13-1610. Temporary Treatment Facility**

- A.** The owner or operator of a temporary treatment facility shall treat and remove all PCS from the temporary treatment facility within one year from the date of commencement of receipt of PCS for treatment. PCS shall not be diluted to meet any treatment requirement, except in accordance with the approved plan.
- B.** A temporary treatment facility shall obtain approval from the Department prior to commencing construction or operation. In lieu of the requirements of R18-13-1607(C), an application for approval shall contain all of the following:
1. An affidavit signed by the owner or operator of the temporary treatment facility which states that the facility will comply with the requirements of this Article;
  2. An affidavit that the proposed facility is in compliance with local zoning requirements in effect at the time the application is submitted;
  3. Application information required pursuant to A.R.S. § 49-762 for plan approval for temporary treatment facilities;
  4. A vicinity map, in a scale not over 1:24,000, which shows where the facility is located with respect to the surroundings, including an indication of the use of the adjacent properties;
  5. A site description which includes general information on the geology, hydrogeology, soils, and land use;
  6. A background soil sampling plan and results which characterize the site, including the rationale used to determine the locations, depths and number of samples;
  7. A site map, in a scale not to exceed 1:2,400, which clearly identifies where the PCS shall be deposited, containment berms, fencing and security measures, access roads, any improvements, wells, and location of surface water courses;
  8. An operational plan which includes all of the following:
    - a. General description of the daily operations of the facility and the processes, techniques, or methods to be employed;
    - b. The source, amount, concentration of contaminants, and any other relevant information concerning the PCS to be handled;
    - c. The schedule for sampling the PCS during treatment to evaluate treatment methods;
    - d. Description of plans for final use and disposal of PCS and remediated soil, liners, piping, carbon canisters, and any other contaminated equipment;
  9. A closure and post-closure care plan which includes both of the following:
    - a. A description of the steps necessary to close the facility, the specific proposed closure activities, and an implementation schedule;
    - b. A description of the sampling plan utilized to sample background soil beneath the site following closure.
- C.** A temporary treatment facility shall not be operated for more than one year unless a one-time extension is granted by the Department. The Department may grant an extension of up to one additional year if all of the following are met:
1. The inability to perform is caused by events beyond the control of the owner or operator, including acts of God, which include flood, tornado, earthquake, and causes beyond the owner's or operator's control including fire, explosion, unforeseen strikes or work stoppages, riot, sabotage, public enemy, war, requirements established by

courts of competent jurisdiction, and other governing law. Financial inability to perform shall not be justification for an extension.

2. The owner and operator submits to the Department verifiable documentation which includes all of the following:
    - a. A description of the circumstances causing any delay;
    - b. Evidence of the existence of the circumstance;
    - c. A description of past, present, and future measures taken or to be taken by the owner or operator to prevent or minimize any delay;
    - d. A timetable by which the owner and operator will resume and complete required performance.
  3. The request is received at least 60 days prior to the expiration of the year in which the facility first received PCS. Where the Department grants an extension, that extension shall be granted prior to the expiration of the deadline and communicated to the owner or operator in writing.
- D.** A temporary treatment facility shall meet the design criteria as specified in R18-13-1608 and R18-13-1609(B).
- E.** PCS stored at a temporary treatment facility prior to treatment shall be stored in accordance with the requirements of R18-13-1611.
- F.** In accordance with A.R.S. § 49-762(F), a temporary treatment facility shall be exempt from the notice and public hearing requirements set forth in A.R.S. § 49-762(L).

**Historical Note**

Recodified from R18-8-1610 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-13-1611. Storage Facility**

- A.** A shipment of PCS shall not be stored for a period exceeding one year from the date the PCS is received.
- B.** Each shipment of contaminated soil shall be identified by source and stored in a manner which does not allow commingling of different shipments until all sampling results have been obtained. PCS shall be stored within an approved containment system and shall not be commingled with treated soils.
- C.** A PCS storage facility shall obtain approval from the Department prior to commencement of construction or operation. A PCS storage facility designed in accordance with R18-13-1608(B)(1) shall comply with either of the following:
1. The containment system shall meet the requirements of R18-13-1609(B).
  2. The PCS shall be stored in tanks or containers which meet the requirements of subsection (E) of this Section.
- D.** A PCS storage area or each tank or container used for storage shall be marked as follows:
- CAUTION: CONTAINS PETROLEUM-CONTAMINATED SOIL  
GENERATOR NAME:  
GENERATOR ID#:  
ACCUMULATION START DATE:
- The owner or operator of the storage facility shall fill in the accumulation start date at the time the PCS is placed into storage. The letters shall be legible, not obstructed from view, on a high contrast background, and sufficiently durable to equal or exceed the duration of storage. Lettering size shall be 2.5 cm (1 inch) and in Sans Serif, Gothic, or Block style.
- E.** A tank or container used to store PCS shall meet all of the following requirements:
1. Prevent leakage of PCS and any free liquids from the tank or container;
  2. Be made of, or lined with, materials which will not react with the PCS;

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3. Be kept closed during storage except to add or remove PCS;
  4. Not be opened, handled, or stored in a manner which may rupture the tank or container or cause it to leak;
  5. Shall be inspected monthly by the owner or operator of the storage facility for leaks and for deterioration. A written record of the inspection shall be prepared at the time of the inspection and shall document corrective action, if any, taken as a result of the inspection.
- F. A PCS storage facility at which PCS is stored in piles shall comply with both of the following:
1. All storage piles shall be covered or otherwise managed to control wind dispersal of the PCS.
  2. Storage piles of PCS shall be inspected weekly and a written record of the inspection shall be prepared at the time of the inspection which documents any corrective action taken as a result of the inspection. The record shall document detection of any of the following:
    - a. Deterioration, malfunctions, or improper operation of run-on and run-off control systems;
    - b. Malfunctioning of wind dispersal control systems;
    - c. The presence of leachate in and the malfunctioning of any leachate collection and removal systems.

**Historical Note**

Recodified from R18-8-1611 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-13-1612. Accumulation Sites**

- A. PCS from one or more points of generation under the control of a single generator may be accumulated in an accumulation site under the control of that generator for up to 90 days prior to shipment of the PCS to a storage, disposal, or treatment facility.
- B. An accumulation site shall comply with the storage facility requirements set forth in R18-13-1611, except subsection (A) of that Section. An accumulation site shall not be required to comply with the requirements in R18-13-1607.
- C. While PCS is at an accumulation site, the owner or operator shall control public access and prevent unauthorized vehicular traffic and illegal dumping. PCS shall be managed to prevent the PCS from being exposed to storm water run-on or run-off.

**Historical Note**

Recodified from R18-8-1612 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-13-1613. Disposal**

- A. PCS shall be disposed at a special waste receiving facility which has been approved for the disposal of PCS, or at a hazardous waste management facility as defined in R18-13-260(E)(13).
- B. A PCS disposal facility designed in accordance with R18-13-1608(B)(1) shall comply with the following specific design criteria:
  1. The disposal facility shall be designed with a composite liner, as defined in subsection (B)(2), and a leachate collection system that is designed and constructed to maintain less than a 12-inch depth of leachate over the liner.
  2. For purposes of this Section, "composite liner" means a system consisting of two components: the upper component shall consist of a minimum 30-mil flexible membrane liner (FML) and the lower component shall consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than  $1 \times 10^{-7}$  cm/sec. FML components consisting of high density polyethylene (HDPE) shall be at least 60 mil thick. The FML compo-

nent shall be installed in direct and uniform contact with the compacted soil component.

**Historical Note**

Recodified from R18-8-1613 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-13-1614. Records**

Records required to be kept pursuant to this Article shall be maintained by the owner or operator and made available for inspection by the Director for a period of three years or longer during the course of an enforcement action or litigation.

**Historical Note**

Recodified from R18-8-1614 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**ARTICLE 17. RESERVED****ARTICLE 18. RESERVED****ARTICLE 19. RESERVED****ARTICLE 20. RESERVED****ARTICLE 21. SOLID WASTE LANDFILL REGISTRATION FEES**

*Article 21, consisting of Sections R18-13-2101 through R18-13-2103, made by final rulemaking at 9 A.A.R. 1770, effective July 14, 2003 (Supp. 03-2).*

**R18-13-2101. Definitions**

In addition to the definitions in A.R.S. §§ 49-701 and 49-701.01, for the purpose of this Article, the terms used in this Article have the following meanings:

1. "Defined time period" means the 12-month period that begins on July 1 of a calendar year and ends on June 30 of the following calendar year and consists of the actual number of calendar days in that 12-month period.
2. "Disposal fee invoice" means the quarterly landfill disposal fee invoice the Department mails to a landfill operator, on which the landfill operator indicates the amount of waste received and the amount of the disposal fees owed to the Department as required under A.R.S. § 49-836.
3. "Full quarter" means any of the standard fiscal quarters of the defined time period for which a municipal solid waste landfill accepted waste on or before the first day of the quarter and on or after the last day of that quarter.

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1770, effective July 14, 2003 (Supp. 03-2). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

**R18-13-2102. Annual Registration Fee for an Existing Solid Waste Landfill**

- A. An existing solid waste landfill, except those described in subsection (C), shall pay an annual registration fee within 30 days of receipt of an invoice from the Department according to the following:
  1. For municipal solid waste landfills that received less than 12,000 tons during the defined time period, \$1,250.
  2. For municipal solid waste landfills that received at least 12,000 tons but less than 60,000 tons during the defined time period, \$2,500.
  3. For municipal solid waste landfills that received at least 60,000 tons but less than 225,000 tons during the defined time period, \$7,500.
  4. For municipal solid waste landfills that received 225,000 tons or more during the defined time period, \$12,500.

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5. Non-municipal solid waste landfills shall pay a flat fee of \$3,750.
  6. Solid waste landfills that are closed to the public and that accept nonhazardous waste only shall pay a flat fee of \$3,750.
- B.** The Department shall determine the amount of waste received by a municipal solid waste landfill by one of the following methods:
1. For a municipal solid waste landfill that accepted waste over the entire defined time period:
    - a. As the reported tons of solid waste received on the disposal fee invoice; or
    - b. As the reported units of compacted or uncompacted solid waste received on the disposal fee invoice and reported under A.R.S. § 49-836(A)(1); or
  2. For a municipal solid waste landfill that accepted waste for only a portion of the defined time period, but no less than a full quarter, the Department shall project the total amount of waste that would have been received by the landfill over the entire defined time period, using one of the following methods:
    - a. For a municipal solid waste landfill that reported receiving waste for at least a full three quarters but less than the entire defined period, the amount of waste for the remaining quarter is the total amount of the waste reported for the full three quarters divided by three;
    - b. For a municipal solid waste landfill that reported receiving waste for at least a full two quarters but less than three quarters, the amount of waste for the remaining two quarters is the same as the total amount of waste reported for the two full quarters; or
    - c. For a municipal solid waste landfill that reported receiving waste for at least one full quarter but less than two quarters, the amount of waste for the remaining three quarters is the total of the amount of the waste reported for the full quarter multiplied by three.
- C.** For a municipal solid waste landfill that accepted waste for less than a full quarter, the annual landfill registration fee is \$1,250.

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1770, effective July 14, 2003 (Supp. 03-2). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

**R18-13-2103. Annual Landfill Registration: Due Date and Fees**

- A.** An operator of a new solid waste landfill shall register the solid waste landfill and pay the landfill registration fee as follows:
1. The operator shall pay the initial landfill registration fee within 30 days of the date that the Department approves the facility plan. The initial landfill registration fee is \$1,250.
  2. Registration is valid for one year, except if the landfill is initially registered during October, November, or December of a calendar year, the next landfill registration due date is December 31 of the following calendar year and each calendar year thereafter unless released from the annual landfill registration requirement as specified in subsection (C).
  3. The annual registration fee remains \$1,250 until the first annual registration period after the first full quarter of the defined time period.

- B.** After the first full quarter, the Department shall calculate the annual registration fee according to R18-13-2102, and specify the fee on the Department's annual landfill registration invoice for the solid waste landfill. The Department shall calculate and the solid waste landfill shall pay the annual landfill registration fee until the first registration period after the solid waste landfill stops accepting waste during a fiscal quarter of the defined time period.
- C.** From the time a solid waste landfill stops accepting waste as specified in subsection (B), until the owner or operator of the solid waste landfill is released from its obligation to provide financial assurance for closure as required by A.R.S. §§ 49-761 or 49-770, the annual registration fee is \$1,250.

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1770, effective July 14, 2003 (Supp. 03-2). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

**ARTICLE 22. RESERVED****ARTICLE 23. RESERVED****ARTICLE 24. RESERVED****ARTICLE 25. EXPIRED****R18-13-2501. Expired****Historical Note**

Section adopted by final rulemaking at 5 A.A.R. 4654, effective November 15, 1999 (Supp. 99-4). Section expired under A.R.S. § 41-1056(J), at 23 A.A.R. 3429, effective October 10, 2017 (Supp. 17-4).

**ARTICLE 26. EXPIRED****R18-13-2601. Expired****Historical Note**

Section made by exempt rulemaking at 14 A.A.R. 4258, effective October 20, 2008 (Supp. 08-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 705, effective April 6, 2010 (Supp. 10-2).

**R18-13-2602. Expired****Historical Note**

Section made by exempt rulemaking at 14 A.A.R. 4258, effective October 20, 2008 (Supp. 08-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 705, effective April 6, 2010 (Supp. 10-2).

**R18-13-2603. Expired****Historical Note**

Section made by exempt rulemaking at 14 A.A.R. 4258, effective October 20, 2008 (Supp. 08-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 705, effective April 6, 2010 (Supp. 10-2).

**R18-13-2604. Expired****Historical Note**

Section made by exempt rulemaking at 14 A.A.R. 4258, effective October 20, 2008 (Supp. 08-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 705, effective April 6, 2010 (Supp. 10-2).

**ARTICLE 27. EXPIRED****R18-13-2701. Expired****Historical Note**

New Section made by exempt rulemaking at 16 A.A.R.

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848, effective July 1, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1503, effective July 1, 2010 (Supp. 10-3). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2984, effective September 15, 2016 (Supp. 16-3).

**R18-13-2702. Expired**

**Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 848, effective July 1, 2010 (Supp. 10-2). Section expired

under A.R.S. § 41-1056(J) at 22 A.A.R. 2984, effective September 15, 2016 (Supp. 16-3).

**R18-13-2703. Expired**

**Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 848, effective July 1, 2010 (Supp. 10-2). Section and fee table expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2984, effective September 15, 2016 (Supp. 16-3).

## **Statutes authorizing rules in 18 A.A.C. 13 (2019)**

A.R.S. §§ 41-1003, 44-1303(B), 44-1304, 44-1304.01(A)(8), 44-1306, 49-104(B)(4), 49-104(B)(14), 49-104(B)(17), 49-701.01(C), 49-705, 49-706, 49-761, 49-762.03(F), 49-762.05, 49-762.06, 49-851 through 868

### **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.

### **44-1303. Waste tire collection sites; registration**

A. An owner or operator of a waste tire collection site, within six months after September 27, 1990, shall register with the department of environmental quality and provide the department with information concerning the site's location and size and the approximate number of waste tires that are stored at the site and shall initiate steps to comply with this article.

B. Any waste tire collection site that is established after the effective date of this amendment to this section shall register with the department before beginning operation and shall pay a registration fee. After the effective date of this amendment to this section, the director shall establish by rule a registration fee, including a maximum fee. As part of the rule making process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the director shall not increase that fee by rule without specific statutory authority for the increase. Registration fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

### **44-1304. Disposal of waste tires**

A. The disposal of waste tires in landfills and the incineration of those tires is prohibited, except as provided in subsection C or D of this section or in accordance with rules adopted by the director of the department of environmental quality. An owner or operator of a solid waste disposal site shall not knowingly accept waste tires for disposal.

B. A person shall not dispose of motor vehicle waste tires unless the waste tires are disposed of at a waste tire collection site or as provided in subsection C or D of this section or in accordance with rules adopted by the director of the department of environmental quality.

C. Off-road motor vehicle waste tires shall not be disposed of or reused except in accordance with the provisions of this article or rules adopted by the director of the department of environmental quality. In the absence of rules, off-road motor vehicle waste tires shall not be disposed of or put to beneficial use in a manner that results in an environmental nuisance pursuant to section 49-141. Mining industry

off-road motor vehicle waste tires may be disposed of by burial at a mining facility in the same manner permitted by rule in effect on February 1, 1996 until the director by rule determines on-site recycling methods that are technically feasible and economically practical.

D. The following are permissible methods of waste tire disposal:

1. Retreading or recapping.
2. Constructing collision barriers.
3. Controlling soil erosion or for flood control only if used in accordance with approved engineering practices.
4. Chopping or shredding for use as waste tire daily cover at a solid waste landfill.
5. Grinding for use in asphalt and as a raw material for other products.
6. Sludge composting.
7. Using as playground equipment.
8. Incinerating or using as a fuel or pyrolysis if permitted by laws, regulations or ordinances relating to burning or fuel.
9. Hauling to out-of-state collection or processing sites.
10. Tire monofills if tires are chopped or shredded.
11. Use as a building material for building construction in accordance with applicable city, town and county building codes.
12. Agricultural purposes as bumpers on agricultural equipment or as ballast to maintain covers at an agricultural site.

E. For purposes of subsection D, paragraph 10 of this section, "tire monofill" means a solid waste disposal facility or a part of a facility used for the exclusive purpose of the disposal of waste tires which are chopped, shredded or cut up for the purpose of disposal.

F. The director of the department of environmental quality, by rule, may authorize other methods of disposal of waste tires. If used as daily cover material for a solid waste landfill, the director shall specify the size of the parts into which the material must be cut.

G. Each county shall provide at least one designated waste tire collection site in the county to receive waste tires from a seller of motor vehicle tires or the seller's

designee complying with section 44-1302. Additional waste tire collection sites or disposal arrangements shall be established by the county as necessary for the disposal of waste tires as provided in subsection B of this section. All collection sites established under this subsection shall comply with applicable zoning and ordinance regulations. The county or private enterprise receiving waste tire fund monies from a county shall not impose a tire tipping fee and shall not refuse to accept waste tires from a seller of motor vehicle tires or the seller's designee complying with section 44-1302, unless provided for in section 44-1302, subsection H.

H. The director of the department of environmental quality shall issue or revise a permit required pursuant to title 49, chapter 3, article 2 for a facility that applies to the department of environmental quality for a permit or a revision to a permit to burn a tire derived fuel if the applicant can demonstrate that the burning of tire derived fuel will result in equal to or lower emissions than the burning of other types of fuel for which the department of environmental quality may issue permits and the applicant has met all requirements of titles I and V of the clean air act. Any tests involving tire derived fuel conducted by the United States environmental protection agency or any test results involving tire derived fuel approved by the United States environmental protection agency, including hazardous air pollutant studies, shall be accepted by the department of environmental quality. No duplicate testing by the applicant shall be required, except that the applicant shall meet all testing requirements under titles I and V of the clean air act. For purposes of this subsection, "clean air act" has the same meaning prescribed in section 49-401.01.

44-1304.01. Storage, disposal, discard or abandonment of used motor vehicle tires; registration fees; violation; classification; exception

A. It is unlawful to store one hundred or more used motor vehicle tires outdoors as follows:

1. In any fashion that exceeds twenty feet in height.
2. In a pile that is more than one hundred fifty feet from a twenty foot wide access route that allows fire control apparatus to approach the pile. Access routes between and around tire piles shall be at least twenty feet wide and maintained free of accumulations of rubbish, equipment or other materials. Access routes shall be spaced so that a maximum grid system unit of fifty feet by one hundred fifty feet is maintained.
3. Within three feet of any property line.
4. In any fashion that exceeds six feet in height if the used tires are stored between three and ten feet of any property line.
5. Within fifty feet of any area in which smoking of tobacco or any other substance by persons is permitted. "No smoking" signs shall be posted in suitable and conspicuous locations.

6. At any area in which the used motor vehicle tires are stored and in which electrical wiring, fixtures or appliances do not comply with the national electrical code.

7. Without placing class "2A-10BC" type fire extinguishers at well marked points throughout the storage area so that the travel distance from any point in the storage area to a fire extinguisher is not more than seventy-five feet.

8. Without prior registration of the site with the department of environmental quality. The registration shall be on a form approved by the department and shall include the site's location, the name of the owner of the property, the name of the owner or operator of the business storing the waste tires, if applicable, and the type and approximate quantity of waste tires stored at the site. For any waste tire collection site that is operating on September 26, 2008, the owner of the property shall register pursuant to this paragraph on or before November 25, 2008. For any person who stores one hundred or more used motor vehicle tires outdoors after the effective date of this amendment to this section, the operator shall pay a registration fee. After the effective date of this amendment to this section, the department shall establish by rule a registration fee, including a maximum fee. As part of the rule making process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the department shall not increase that fee by rule without specific statutory authority for the increase. Registration fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

B. A person who knowingly discards or abandons five hundred or more motor vehicle tires, discards or abandons any motor vehicle tires for commercial purposes except as provided in section 44-1304, or otherwise knowingly performs any act prohibited by subsection A of this section involving five hundred or more motor vehicle tires is guilty of a class 5 felony.

C. The attorney general may enforce this section.

D. For the purposes of this section, used motor vehicle tires do not include tires that have been recapped and have not yet been put back into service.

[44-1306. Department of environmental quality; rules; annual county report to the department](#)

A. The department of environmental quality shall adopt and enforce rules to carry out the provisions of this article.

B. Each county shall report by September 30 of each year to the department of environmental quality the following for the preceding fiscal year and provide a summary for each waste tire collection site:

1. The number of eligible waste tires collected each month at each collection site with a list of registered tire dealers delivering the tires to each collection site and the number of tires from each dealer.
2. The number of tires collected each month at each collection site from sources other than registered tire dealers.
3. The number of tires transported out of each collection site.
4. The estimated number of tires remaining at each collection site at the end of the preceding fiscal year.
5. Summaries of all manifests tracking the incoming and outgoing waste tires at each collection site.
6. The amount of monies received and expended pursuant to the waste tire program.

49-104. Powers and duties of the department and director

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.
2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.
3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.
4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.
5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.
6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.
7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.

8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.

9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.

10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.

11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. The department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.

12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.

13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.

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

15. 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.

16. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter. This paragraph does not adversely affect standards adopted by an Indian tribe under federal law.

17. Provide administrative and staff support for the oil and gas conservation commission.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.
2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.
3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.
4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.
5. Contract with other agencies, including laboratories, in furthering any department program.
6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.
7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.
8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.
9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.
10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at those places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of 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 health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection I, paragraph 10.

13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules may:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. The department may establish by rule a fee as a condition of licensure, including a maximum fee. As part of the rulemaking process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. The department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on:

(a) The direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.

(b) The availability of other funds for the duties performed.

(c) The impact of the fees on the parties subject to the fees.

(d) The fees charged for similar duties performed by the department, other agencies and the private sector.

18. Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the

applicable provisions of title 27, chapter 4 relating to the oil and gas conservation commission.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203, except that state agencies are exempt from paying those fees that are not associated with the dredge and fill permit program established pursuant to chapter 2, article 3.2 of this title. For services provided under the dredge and fill permit program, a state agency shall pay either:

(a) The fees established by the department under the dredge and fill permit program.

(b) The reasonable cost of services provided by the department pursuant to an interagency service agreement.

2. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

3. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

[49-701.01. Definition of solid waste; exemptions](#)

A. "Solid waste" means any garbage, trash, rubbish, waste tire, refuse, sludge from a waste treatment plant, water supply treatment plant or pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material.

B. The following are exempt from the definition of solid waste:

1. Hazardous waste regulated pursuant to chapter 5 of this title.
2. Waste that contains radioactive materials subject to the atomic energy act of 1954 (42 United States Code sections 2011 through 2297, 68 Stat. 919) or title 30, chapter 4.
3. Any discharge from a facility regulated pursuant to chapter 2, article 3 of this title.
4. Any discharge regulated pursuant to section 402 or 404 of the clean water act (33 United States Code sections 1342 and 1344).
5. Domestic sewage.
6. Discharges into a publicly or privately owned treatment works including the treatment works and the sewer collection system.
7. Irrigation waters.
8. Irrigation return flows.
9. Reclaimed wastewater from wastewater reuse facilities.
10. Leachate resulting from the direct natural infiltration of precipitation through undisturbed regolith or bedrock, if pollutants are not added by man.
11. Storm water.
12. Substances and materials that remain on site as specifically approved in a work plan or other approval by the department in the course of remedial or corrective actions undertaken pursuant to any of the following:
  - (a) Chapter 2, articles 3 and 5 of this title.
  - (b) Chapters 5 and 6 of this title.
  - (c) The comprehensive environmental response, compensation, and liability act of 1980 (P.L. 96-510; 94 Stat. 2767; 42 United States Code sections 9601 through 9675).

(d) The federal water pollution control act amendments of 1972 (P.L. 92-500; 86 Stat. 816; 33 United States Code sections 1251 through 1387).

(e) The resource conservation and recovery act of 1976 (P.L. 94-580; 90 Stat. 2795; 42 United States Code sections 6901 through 6992).

(f) Chapter 1, article 5 of this title.

13. Water used in gardening, lawn care, landscape maintenance and related activities.

14. Discharges from ponds used for watering livestock and wildlife.

15. Landscaping rubble used to reclaim land.

16. Mining industry off-road waste tires that are larger than three feet in outside diameter and that are buried at the site and rock, copper concentrate, leachate material, tailing and slag that are either of the following:

(a) Produced and maintained at the site of the mining or metallurgical operation.

(b) Not maintained at the site of a mining or metallurgical operation and that are consolidated at the site of a mining or metallurgical operation that is both of the following:

(i) Located within fifty miles of the materials' current off-site location, or, on written approval of the director, located at a site that is farther than fifty miles of the materials' current off-site location.

(ii) Regulated by a permit issued pursuant to chapter 2, article 3 of this title or by an approved work plan pursuant to chapter 1, article 5 of this title.

17. Inert material.

18. Effluent as defined in section 45-101.

19. Return flows from irrigated agriculture.

20. Materials that are generated on site and that are processed or reused on site if the following conditions are met:

(a) On-site processing or reuse of the materials is technically feasible.

(b) At least seventy-five per cent by weight or volume of the materials that are accumulated on site for processing or reuse each year are processed or reused in that same year.

(c) Materials that are accumulated on site for processing or reuse are managed in a manner that:

(i) Controls wind dispersion and other surface dispersion of the materials so that the materials do not create a public nuisance or pose an imminent and substantial endangerment to public health or the environment. Visible materials that are dispersed beyond the boundaries of the site shall be collected on a regular basis by the operator of the site.

(ii) Does not discharge hazardous substances as defined in section 49-281 to surface water, groundwater or subsurface soils in a manner that creates a public nuisance or poses an imminent and substantial endangerment to public health or the environment.

(iii) Controls vector breeding and fire hazards.

(iv) Controls public access to the materials by the use of reasonable measures.

C. Any person may petition the director to exempt a substance as solid waste by submitting a written request to the director. The request may be for a statewide or site-specific exemption. Within ninety days after receipt of a written request, the director shall determine whether to exempt the substance. The director's determination shall be based on a demonstration that the substance is unlikely to cause or substantially contribute to a threat to the public health or the environment. The procedure is as follows:

1. Within thirty days after the director's determination to add a substance on a site-specific basis, a notice of that determination shall be published in the Arizona administrative register. A site-specific determination is effective on the date of the director's determination.

2. Within thirty days after the director's determination to add a substance on a statewide basis, the director shall initiate rule making to add the substance to the list of exemptions. This rule making is exempt from the requirements of title 41, chapter 6, except for the requirements regarding public notice. The effective date for the final rule is the effective date for the exemption.

D. Nothing in this section shall affect the department's authority to require abatement of any environmental nuisance pursuant to chapter 1, article 3 of this title.

#### 49-705. Integration of solid waste programs

The director shall consider and integrate federal and state laws and rules and all of the programs authorized in this chapter and those other programs regulating solid waste management that are administered by the department for purposes of

administration and enforcement and shall avoid duplication and dual regulation to the maximum extent practicable.

49-706. Waste programs general permits; rules

A. The department may establish a general permit for any permit or license issued pursuant to this chapter. The general permit consists of the following:

1. The director may issue by rule a general permit for a defined class of facilities, activities or practices if all of the following apply:

(a) The cost of issuing individual permits or licenses cannot be justified by any environmental or public health benefit that may be gained from issuing individual permits.

(b) The facilities, activities or practices in the class are substantially similar in nature.

(c) The director is satisfied that appropriate conditions under a general permit for operating the facilities or conducting the activity or practice will meet the applicable requirements prescribed in this chapter for the facility, activity or practice.

2. In addition to other applicable enforcement actions, if a person is in substantial noncompliance with the conditions of a general permit, the director may revoke coverage under the general permit for that person and require that the person obtain an individual permit. A general permit may be revoked, modified or suspended by rule if the director determines that any of the conditions prescribed in paragraph 1 no longer apply.

3. Rules adopted pursuant to paragraph 1 may require a person seeking coverage under a general permit to notify the director of the person's intent to operate pursuant to the general permit and to pay the applicable fee established by the director by rule.

B. After the effective date of this amendment to this section, the director shall establish by rule fees for general permits pursuant to this section, including maximum fees. As part of the rule making process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the director shall not increase those fees by rule without specific statutory authority for the increase. Fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

49-761. Rule making authority for solid waste facilities; exemption; financial assurance; recycling facilities

A. The department shall adopt rules regarding the storage, processing, treatment and disposal of solid waste as prescribed by subsections B through M of this section. In adopting rules, the department shall consider the nature of the waste streams at the facilities to be regulated. The department shall also consider other applicable federal and state laws and rules in an effort to avoid practices or requirements that duplicate, are inconsistent with or will result in dual regulation with other applicable rules and laws. Facilities that obtain and maintain coverage under a general permit established by the department pursuant to section 49-706 are exempt from rules adopted pursuant to this section. In adopting rules for solid waste facilities, the director may include requirements for corrective actions in response to a release, as defined in section 49-281, from a solid waste facility that violates or results in a violation of any provision of this chapter, rule adopted pursuant to this chapter or solid waste facility plan approved pursuant to this chapter. These rules shall be consistent with section 49-762.08, subsection B, subsection C, paragraphs 1 and 2 and subsections D and E.

B. For purposes of administering 42 United States Code section 6945, as amended November 8, 1984, 40 C.F.R. part 258 is adopted by reference except as prescribed by paragraph 2 of this subsection. This subsection, as it applies to municipal solid waste landfills, governs if there is any conflict between this subsection and any other statute relating to solid waste. Municipal solid waste landfill facility plans submitted pursuant to section 49-762 shall comply with this subsection. In administering this subsection or in adopting or administering any rules adopted pursuant to this subsection, the department shall ensure that any discretion allowed to a director of an approved state pursuant to the federal regulations is maintained. The following apply to the department's administration of 42 United States Code section 6945 and to the department's adoption of rules for municipal solid waste landfills:

1. The department may adopt rules for municipal solid waste landfills. Rules adopted pursuant to this paragraph shall not be more stringent than or conflict with 40 C.F.R. part 258 for nonprocedural standards, except that the department may adopt aquifer protection standards that are more stringent than 40 C.F.R. part 258 if those standards are consistent with and no more stringent than standards developed pursuant to chapter 2, article 3 of this title, or if the standards are adopted pursuant to article 9 of this chapter. Rules adopted pursuant to this paragraph are effective on the concurrence of the administrator with this state's municipal solid waste landfill program.

2. 40 C.F.R. part 258, table I is not adopted in its entirety. The department shall use aquifer water quality standards that have been adopted by the department pursuant to section 49-223 and shall use those portions of table I that are more restrictive than the standards adopted pursuant to section 49-223.

C. The department shall adopt rules for those solid waste land disposal facilities that are not municipal solid waste landfills. Rules adopted pursuant to this subsection shall not be more stringent than or conflict with 40 C.F.R. part 257 for nonprocedural standards, except that the department may adopt aquifer protection

standards that are more stringent than 40 C.F.R. part 257 if these standards are consistent with and no more stringent than standards developed pursuant to chapter 2, article 3 of this title, or if the standards are adopted pursuant to article 9 of this chapter. In administering this subsection, the department shall ensure that any discretion allowed to a director of an approved state pursuant to the federal regulations is maintained in the department's rules. Aquifer protection provisions adopted pursuant to this subsection do not apply to an owner or operator of a solid waste facility if the owner or operator submits an administratively complete application for an aquifer protection permit pursuant to chapter 2, article 3 of this title before the date that the owner or operator is required to submit a solid waste facility plan.

D. The department shall adopt rules to define biohazardous medical waste and to regulate biohazardous medical waste and medical sharps to include all of the following:

1. A definition for biohazardous medical waste that includes wastes that contain material that is likely to transmit etiologic agents that have been shown to cause or contribute to increased human morbidity or mortality of epidemiologic significance. The department shall consult with the department of health services in making this determination.

2. Reasonably necessary rules regarding the storage, collection, transportation, treatment and disposal of biohazardous medical waste and medical sharps, beginning with the placement by the generator of the waste in containers for the purpose of waste collection. The department may require payment of a fee for the licensure of a transporter of biohazardous medical waste. After July 20, 2011, the department shall establish by rule a fee for the licensure of a transporter of biohazardous medical waste, including a maximum fee. As part of the rule making process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881. In the case of self-hauling of waste by the generator, all storage facilities under the generator's control and all waste handling practices including storage, treatment and transportation shall be in accordance with these rules. The department shall also adopt reasonably necessary rules regarding the tracking of biohazardous medical waste and medical sharps.

E. The department may adopt reasonably necessary rules regarding the storage, collection, transportation, treatment and disposal of nonbiohazardous medical waste beginning with the placement by the generator of the waste in containers for the purpose of waste collection. In the case of self-hauling of the waste by the generator, all storage facilities under the generator's control and all waste handling practices including storage, treatment and transportation shall be in accordance with these rules.

F. The department shall adopt rules for the application of sludge from a wastewater treatment facility to land for use as fertilizer or beneficial soil amendment. For the purposes of this subsection, "sludge" has the same meaning as sewage sludge as defined in 40 Code of Federal Regulations section 122.2 in effect on January 1, 1998.

G. The department shall adopt rules regarding the storage, processing, treatment or disposal of solid waste at solid waste facilities that are identified in section 49-762.01. The rules shall allow the owner or operator to certify compliance with the department's statutes and rules instead of obtaining a solid waste facility plan approval. The rules shall provide that the applicant at its option may request approval of a solid waste facility plan rather than certifying compliance.

H. The department shall issue by rule best management practices for the classes of solid waste facilities set forth in section 49-762.02.

I. The department shall adopt reasonably necessary rules establishing minimum standards for storing, collecting, transporting, disposing and reclaiming solid waste, including garbage, trash, rubbish, manure and other objectionable wastes. These rules shall provide for inspecting premises, containers, processes, equipment and vehicles, and for abating as environmental nuisances any premises, containers, processes, equipment or vehicles that do not comply with the minimum standards of these rules. The rules adopted pursuant to this subsection do not apply to sites that are either regulated by section 49-762, 49-762.01 or 49-762.02 or exempted by section 49-701, paragraph 29 or section 49-701.01. Notwithstanding any other provision of this subsection, rules adopted pursuant to this subsection shall apply to defining environmental nuisances pursuant to section 49-141.

J. The department shall adopt rules relating to financial assurance requirements. The rules shall indicate the types of financial assurance mechanisms to be required and the content, terms and conditions of each financial mechanism, including circumstances under which the department may take action on the financial assurance mechanism for facility closure, postclosure care if necessary and corrective action for known releases. The financial assurance mechanisms shall include all of the following:

1. Surety bond.
2. Certificate of deposit.
3. Trust fund with pay-in period.
4. Letter of credit.
5. Insurance policy.
6. Certificate of self-insurance.

7. Deposit with the state treasurer.

8. Evidence of ability to meet any of the following:

(a) Corporate financial test.

(b) Local government financial test.

(c) Corporate guarantee test.

(d) Local government guarantee test.

(e) Political subdivision financial test that shall require the department to consider the entity's bond rating, income stream, assets, liabilities and assessed valuation of taxable property.

9. Multiple financial assurance mechanisms.

10. Additional financial assurance mechanisms that may be acceptable to the director.

K. The department shall adopt rules that prescribe standards to be used in determining if a site is a recycling facility.

L. The director may adopt rules that prescribe standards to be used in determining if a solid waste facility includes significant solid waste transfer activities that warrant the facility's regulation as a transfer facility.

M. The department shall adopt facility design, construction, operation, closure and postclosure maintenance rules for biosolids processing facilities and household waste composting facilities that must obtain plan approval pursuant to section 49-762.

#### 49-762.03. Solid waste facility plan approval

A. Except as provided in subsections C and E of this section, the owner or operator of a solid waste facility identified in section 49-762 shall obtain the department's approval of a solid waste facility plan as follows:

1. For a new solid waste facility and before commencing construction of the solid waste facility, the owner or operator shall obtain approval of a solid waste facility plan that satisfies rules adopted by the director.

2. For an existing solid waste facility, the owner or operator shall file with the department a solid waste facility plan within one hundred eighty days after the effective date of rules adopted pursuant to section 49-761 that contain design and operation standards for that type of solid waste facility. An existing solid waste

facility may continue to operate while the department reviews the plan. For an existing public solid waste facility that is currently subject to rules that contain design and operation standards, the owner or operator shall file with the department a solid waste facility plan by October 1, 1996, if the facility has not received plan approval before that date.

B. For a solid waste facility subject to site approval pursuant to section 49-767, a solid waste facility plan shall not be submitted to the department until the site for the solid waste facility has been approved pursuant to section 49-767. For all new solid waste landfills, a solid waste facility plan shall provide evidence of compliance with or the inapplicability of city, town or county zoning ordinances.

C. The director shall grant temporary authorization to operate a new solid waste facility if in the director's opinion the solid waste facility is needed immediately and could not be properly planned in advance.

D. An owner or operator of more than one solid waste facility that conducts similar activities with similar waste streams may prepare and implement a single plan that covers all of its facilities if it has received prior approval from the director and has complied with rules regarding single plans that are adopted by the director.

E. The director by rule may exempt from some or all of the facility plan approval requirements those solid waste facilities that are located in unincorporated areas and that are used for disposal by any single family residence located on the same property or those solid waste facilities that do not present a threat to public health and safety and the environment.

F. The department shall collect from the applicant reasonable fees established by the director by rule for the approval of the plan, including costs for the processing, review, approval or disapproval of the plan. After the effective date of this amendment to this section, the director shall establish by rule fees for the approval of the plan, including costs for the processing, review, approval or disapproval of the plan and maximum fees. As part of the rule making process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the director shall not increase those fees by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

G. The department may contract with private consultants for the purposes of assisting the department in reviewing solid waste facility plan approvals to determine whether a facility meets the criteria of section 49-762.04. The department shall pay the consultant for the services rendered by the consultant from fees paid by the applicant. If the department contracts with a consultant under this section, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding section 49-881, fees collected by the department for

expedited plan review shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881 and used for payment of the costs of the consultant services. Fees received for the purpose of expedited plan review are not subject to appropriation.

**49-762.05. Self-certification procedures; rules**

A. The owner or operator of a solid waste facility identified in section 49-762.01 shall comply with the self-certification requirements prescribed by this section and rules adopted by the director.

B. The owner or operator of a new solid waste facility may be required by rule to submit some or all of the following information to the department before the start of construction:

1. Design and operational plans or other documents necessary to describe the design of the facility and the practices and methods that are or will be used to comply with the design and operation rules adopted by the director for that type of facility.

2. A demonstration of financial assurance in accordance with section 49-770.

3. A demonstration of compliance with either local zoning laws or section 49-767.

4. A demonstration of the issuance of other environmental permits that are required by statute.

5. A copy of the public notice in a newspaper of general circulation in the area in which a new solid waste facility will be located. The public notice shall state the intent to construct and operate a new solid waste facility pursuant to this subsection.

C. The owner or operator of an existing solid waste facility may be required by rule to submit some or all of the information described in subsection B, paragraphs 1 through 4 of this section within one hundred eighty days after the adoption of design and operation rules for that type of facility.

D. The owner or operator shall maintain all documents required by statute or rule at the solid waste facility or any other location as determined by rule, and those documents shall be made available for inspection pursuant to section 49-763.

E. An owner or operator making a substantial change to a solid waste facility shall submit documentation to the department before the start of construction stating that the facility will remain in compliance with the design and operation rules for that type of facility. The owner or operator of a solid waste facility that makes any changes in its compliance with subsection B, paragraph 2 or 3 of this section shall submit copies of those changes to the department.

F. A person making a submittal under this section shall certify in writing that the information submitted is true, accurate and complete to the best of the person's knowledge and belief.

G. Self-certified facilities identified in section 49-762.01 are not subject to the location restrictions of section 49-772.

H. The department shall collect from the applicant registration fees. After the effective date of this amendment to this section, the department shall establish by rule registration fees, including maximum fees. As part of the rule making process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the department shall not increase those fees by rule without specific statutory authority for the increase. Fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

I. An owner or operator of more than one solid waste facility identified in section 49-762.01 that conducts similar activities with similar waste streams may submit one self-certification filing for all such facilities if the owner or operator has received prior approval from the director and has complied with rules for self-certification that are adopted by the director.

#### 49-762.06. Changes to solid waste facilities and amended plans

A. The department shall adopt rules that establish the criteria to be used in determining the category type of a proposed change to a solid waste facility. The categories are as follows:

1. A type I change is an insignificant modification that does not require notification to the department. This includes changes to a facility that are not directly related to the physical management of solid waste or the replacement of equipment or structures with similar items.

2. A type II change is a minor modification that requires notification to the department. This includes changes to a facility that are directly related to the physical management of solid waste and that do not require detailed review by the department.

3. A type III change is a substantial change that does not require public notice. This includes changes that are significant, that require detailed review by the department and that are equally or more protective of the public health and environment, changes that are required by statute or regulation or other substantial changes that are not type IV changes.

4. A type IV change is a substantial change that requires public notice. This includes significant changes in the total storage, process, treatment or disposal capacity of the solid waste facility. A type IV change also includes a lateral expansion of an existing solid waste landfill or the addition of a process or a major

piece of equipment for which the net effect of the change will be an increase in discharges.

B. Before implementation, the director shall approve a type III or type IV change to the design or operation of an approved solid waste facility identified in section 49-762.

C. The owner or operator of an approved solid waste facility identified in section 49-762 shall submit a notice of any type II, type III or type IV change to the director. The notice shall describe the purpose and scope of the proposed change and shall state what category of change is requested. The director shall make the final determination of the category of change that is requested and whether an amended facility plan shall be submitted for a type III or type IV change. The director may request that additional information be submitted to assist in making the determination.

D. The determination required by subsection C of this section shall be made within the time limits prescribed by this subsection. If the director fails to make a determination within those time limits, the proposed change shall be deemed to be a type II change and in accordance with the facility's approved plan and may be implemented by the owner or operator without further review by the department. The time limits prescribed by this subsection do not apply if the proposed change conflicts with or is inconsistent with the requirements of 40 C.F.R. part 257 or 40 C.F.R. part 258. The time limits are as follows:

1. Fifteen days for solid waste facilities that are not landfills.
2. Thirty days for landfills that are not municipal solid waste landfills.
3. Sixty days for municipal solid waste landfills.

E. If the director determines that the change is a type IV change that requires a public notice, within thirty days after receipt of the amended plan the director shall give public notice of the substantial change as prescribed by section 49-762.04, subsection A, paragraph 2. If there is sufficient public interest as evidenced by written comments submitted pursuant to section 49-762.04, subsection A, paragraph 2 in opposition to the substantial change to the solid waste facility, the department shall hold a public hearing in accordance with the procedures in section 49-762.04, subsection A, paragraph 6. Testimony at a public hearing shall be limited to whether the substantial change to the plan meets the criteria prescribed in section 49-762.04, subsection A, paragraph 5. Testimony on the substantial change shall include the name and address of the person presenting the testimony and, if in writing, the signature of that person. The director shall issue a notice of any technical deficiencies and a responsiveness summary in accordance with section 49-762.04, subsection A, paragraph 8.

F. The director shall approve or deny the amended plan within ninety days after receipt of the amended plan. During the ninety day review period, the department

shall comply with the procedures prescribed by section 49-762.04, subsection A, paragraph 3 for new solid waste facilities. If a public hearing is to be held, the director has an additional thirty days to hold the public hearing, issue a responsiveness summary and approve or disapprove the amended plan. A person who has submitted a type II, III or IV change to a solid waste facility plan for department approval may extend these time limits for an additional thirty days on a written request from the department that changes to the solid waste facility plan or additional information is needed before the department can make a decision to approve or deny the plan.

#### 49-851. Definitions; applicability

A. In this article, unless the context otherwise requires:

1. "Best management practices" means a method or combination of methods that is used in the treatment, storage and disposal of a special waste and that achieves the maximum practical cost effective protection of public health or the environment.
2. "On site" means at or on the same or geographically contiguous property that may be divided by public or private right-of-way, provided the entrance and exit between the properties are at a crossroads intersection and access is by crossing as opposed to travel along the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way that that person controls and to which the public does not have access are also on-site property.
3. "Petroleum contaminated soils" means soils excavated for storage, treatment or disposal containing benzene, toluene, ethylbenzene, total xylenes, acenaphthylene, anthracene, benz(A)anthracene, benzo(A)pyrene, benzo(B)fluoranthene, benzo(K)fluoranthene, cyrysene, dibenz(A, H)anthracene, fluoranthene, fluorene, indenopyrene, naphthalene or pyrene in concentrations in excess of levels determined by the director pursuant to section 49-152 to protect the public health and the environment.
4. "Shipper" means a person who transports a special waste in commerce.
5. "Special waste" means a solid waste as defined in section 49-701.01, other than a hazardous waste, that requires special handling and management to protect public health or the environment and that is listed in section 49-852 or in rules adopted pursuant to section 49-855. Special waste does not include return flows from irrigated agriculture, medical waste, used oil or by-products of a regulated agricultural activity, as defined in section 49-201, that are subject to best management practices under section 49-247, by-products of livestock, range livestock and poultry as defined in section 3-1201, pesticide containers regulated pursuant to title 3, chapter 2, article 6 or waste that contains radioactive materials that are subject to a permit or regulation under the atomic energy act of 1954 (42 United States Code section 2011; 68 Stat. 919), as amended, or title 30, chapter 4.

6. "Storage" means the holding of special waste for a period of not more than one year unless a lesser period of time is designated by the director pursuant to best management practices rules. The director shall not designate a storage time of less than ninety days.

B. Defining or categorizing any material as a special waste under this article shall not affect the duty of care or breach of that duty for a cause of action for personal injury or for a workers' compensation claim arising from the handling of any materials.

49-852. Statutory list of special wastes; best management practices rules; applicability of hazardous waste designation

A. The following are designated as special wastes for purposes of this article:

1. Waste that contains petroleum contaminated soils.
2. Waste from shredding motor vehicles.

B. The director shall establish rules for best management practices for these special wastes pursuant to section 49-855.

C. Notwithstanding section 49-856, the wastes listed pursuant to subsection A of this section are required to comply with those manifest requirements within three months of the adoption of the best management practices.

49-854. Designation of special wastes; criteria; notice; rules

A. The director shall give public notice pursuant to title 41, chapter 6 of the decision to formally study a waste for possible designation as a special waste pursuant to the criteria established in subsection B of this section.

B. In determining whether a waste shall be designated as a special waste, the director shall consider the potential adverse effects on public health or the environment from the treatment, storage, transportation or disposal of each waste based upon:

1. The acute and chronic toxicity for those wastes including the human or animal data for the following exposures:

- (a) Aquatic.
- (b) Dermal.
- (c) Inhalation.
- (d) Oral.

2. The carcinogenic, mutagenic or teratogenic effects of those wastes on humans or other life forms.

3. The degree to which the wastes or degradation products of those wastes are persistent or bioaccumulative in the environment.

4. Information and studies from other states and the federal government if the committee or director finds them to be derived from standard protocols.

5. Other appropriate scientific data, environmental testing or analytical data.

C. The director shall give public notice pursuant to title 41, chapter 6 of the decision to designate or not to designate a waste as a special waste.

D. The director shall by rule, designate a waste as a special waste and adopt best management practices concerning the special waste pursuant to section 49-855 within eighteen months after giving public notice pursuant to subsection C of this section that a waste will be designated as a special waste.

E. The designation of a waste as a special waste and the adoption of best management practices pursuant to section 49-855 shall occur in the same rule making process.

**49-855. Best management practices; fee; criteria**

A. The director shall adopt, by rule, best management practices for the treatment, storage and disposal of each waste to be designated as a special waste pursuant to this article.

B. In adopting best management practices for a special waste, the director shall consider:

1. The availability, effectiveness, economic feasibility and technical feasibility of alternative handling or management technologies and practice.

2. The potential nature and severity of the effect on public health and the environment resulting from the special waste.

3. Circumstances under which the practices shall be applied including climatological, geological and hydrogeological conditions.

4. Consistency with other federal and state laws, rules and regulations in an effort to avoid practices or requirements that duplicate, are inconsistent with or result in dual regulation under other federal and state laws, rules and regulations.

C. The best management practices adopted by the director shall contain procedures necessary for the protection of public health and the environment for the

transportation, treatment, storage and disposal of special wastes. Additional items to be contained in the best management practices shall include at least:

1. A designated time of not less than ninety days beyond which a waste may not be stored.

2. A fee for each ton of special waste that is transported to a facility in this state for treatment, storage or disposal. After the effective date of this amendment to this section, the department shall establish by rule a fee for each ton of special waste that is transported to a facility in this state for treatment, storage or disposal, including a maximum fee. As part of the rule making process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

D. The director may adopt special waste best management practices that apply to the treatment, storage or disposal of those wastes that are not regulated as hazardous wastes under federal laws or regulations.

E. The director may enact special waste best management practices that are more stringent than federal laws or regulations that govern polychlorinated biphenyls pursuant to the toxic substances control act (15 United States Code section 2605) if the director determines in writing that:

1. The additional regulation is necessary to protect public health or the environment.

2. There is a scientific basis for the additional regulation based upon appropriate environment testing and analytical data.

3. The additional regulation is technically feasible.

F. Nothing in this section shall preclude the director from adopting best management practices under this article which incorporate management practices applicable to the treatment, storage or disposal of those wastes that are not regulated as hazardous wastes under federal laws or regulations.

#### **49-856. Special waste handling requirements; manifest; exemption**

A. The director shall adopt rules by September 1, 1993 that include an Arizona special waste manifest form designed to implement the provisions of this article.

B. Within three months of the adoption of best management practices for a special waste pursuant to section 49-855:

1. A person who generates, transports, offers for transportation or receives special waste for off-site treatment, recycling, storage or disposal shall comply with the rules adopted pursuant to subsection A of this section.

2. A person who transports a special waste that is defined as a hazardous material, hazardous substance or hazardous waste in 49 Code of Federal Regulations part 171 shall do so in accordance with the applicable motor carrier safety provisions of 49 United States Code appendix sections 1801 through 1819 and title 28, chapter 14.

3. A person who arranges for the treatment, storage or disposal of a special waste shall do so only at a facility approved by the director pursuant to section 49-857 or 49-858.

**49-857. Special waste management plans; director; approval; fee**

A. Except as provided in section 49-858, a facility that plans to manage special waste for treatment, storage or disposal shall apply for and obtain approval of the director.

B. The application shall include all of the following:

1. A complete solid waste facility plan pursuant to section 49-762 that includes a special waste management plan component that complies with best management practices adopted pursuant to section 49-855 for each special waste for that portion of the facility that is engaged in the treatment, storage or disposal of special waste.

2. Evidence of compliance with permit filing requirements pursuant to this title.

C. The director shall collect from the applicant a reasonable fee based on the state's total costs in processing the plan. The director may amend an existing rule or adopt a new rule to establish criteria for those costs. The rule making is exempt from title 41, chapter 6, except that the director shall provide for reasonable notice and a hearing. Monies from fees shall be deposited in the solid waste fee fund established by section 49-881.

D. A facility at which the treatment, storage or disposal of special waste occurs only as a result of an episodic release at that facility shall not be subject to the special waste management plan requirements of this section. The special waste shall be managed pursuant to applicable best management practices.

**49-857.01. Plan; approval; deadline; judicial review**

A. Within ninety days of receipt of the complete plan and other information prescribed by section 49-857, subsection B, the director shall approve in writing any plan or portion of a plan that complies with this article or shall deny in writing any plan or portion of a plan that does not comply with this article.

B. If the director denies a plan or a portion of a plan, the director shall notify the applicant in writing of the specific reasons for denial within ten days. The applicant has an additional ninety days from receipt of the written denial to file a modified plan addressing the specific deficiencies.

C. Within ninety days of receipt of a modified plan, the director shall approve or disapprove in writing the modified plan. The director may issue a compliance order to any applicant who has failed to submit a modified plan when required as prescribed by subsection B of this section or whose modified plan has been disapproved.

D. Any major modification from an approved plan is subject to review and approval by the director before implementation.

E. If the director fails to approve or disapprove the plan as prescribed by this section, the plan is deemed approved. Except as provided in section 41-1092.08, subsection H, the director's disapproval of a modified plan is subject to judicial review pursuant to title 12, chapter 7, article 6.

#### 49-858. Interim use facilities; special waste

A. A facility that is in operation on the effective date of best management practices rules that are applicable to that facility and that are adopted by the director pursuant to section 49-855 and that manages wastes designated as special waste pursuant to this article for treatment, storage or disposal may continue to manage special waste for treatment, storage or disposal if all of the following conditions are met:

1. Within sixty days after the effective date of adoption of the best management practices that are applicable to the facility, the facility submits a notice to the director that contains the following information:

(a) Facility name and mailing address.

(b) Legal description by township, range and section.

(c) Major design features.

(d) Type and volume of waste handled.

(e) Methods of waste management.

(f) Measures taken to protect the environment and measures taken to protect public health.

(g) A summary of permits from city, county, state and federal agencies.

2. The facility files an application containing the information required in section 49-857, subsection B within one hundred eighty days of the adoption of best management practices.

B. A generator may treat, store or dispose of special waste at a facility that is managed or operated by that generator and that is in operation on July 3, 1991 if the same conditions prescribed in subsection A of this section are met.

C. The process for plan approval and disapproval shall conform to section 49-857.01.

D. The director shall collect from the applicant a reasonable fee based on the state's total costs in processing the application. The director may amend an existing rule or adopt a new rule to establish criteria for those costs.

#### 49-859. Application to water quality permits

A. Neither the classification of a particular type of waste as a special waste nor the adoption or revision of the best management practices criteria constitutes a major modification to a facility with a groundwater quality protection permit or an aquifer protection permit unless that action otherwise meets the definition of new facility prescribed by section 49-201.

B. The director's approval of a special waste management plan either before or after the adoption of best management practices criteria does not constitute a major modification of a facility with a groundwater quality protection permit or an aquifer protection permit unless that action otherwise meets the definition of new facility prescribed by section 49-201.

#### 49-860. Annual reporting requirements; inspections

A. A shipper required to comply with the special waste manifesting procedures of this article shall report the following information to the department on or before March 1 of each year:

1. A shipping description of the special waste shipped during the preceding year.

2. The volume or weights of each type of special waste shipped during the preceding year.

3. The facility to which the special waste was shipped, identified by name, address, location and groundwater quality protection permit number or aquifer protection permit number, if applicable.

B. A facility or person that receives from off site a special waste for treatment, storage or disposal shall report the following information to the department on or before March 1 of each year:

1. The shipping descriptions of each special waste received during the preceding year.

2. The volume or weight of each type of special waste received during the preceding year.

3. For each special waste type, the identity by generator name, address, location, telephone number and amount of that special waste sent to the facility during the preceding year.

4. For each special waste type received, a description of the methods and practices used by the receiving facility or person to treat, store or dispose of the special waste.

C. Generators who treat, store or dispose of special waste shall keep records of the volume or weights of each type of special waste handled. Generators who treat, store or dispose of special waste shall report to the department on or before March 1 of each year for each facility:

1. The volume or weight of each type of special waste treated, stored or disposed of on site for the preceding year.

2. The volume or weight of each type of special waste treated, stored or disposed of off site for the preceding year.

3. For each type of special waste disposed, a description of the methods and practices used to minimize the amount or toxicity of the waste before disposal or reuse that constitutes disposal.

4. The volume or weight of waste received pursuant to section 49-863, subsection G.

D. The department may conduct inspections of facilities and records in order to enforce this section.

#### **49-861. Violation; classification; civil penalty**

A. Beginning January 1, 1993 a person who knowingly violates this article is guilty of a class 6 felony.

B. A person who violates any provision of this article or a rule or order adopted or issued pursuant to this article is subject to a civil penalty of not more than ten thousand dollars per day for each violation. In issuing any final order in any civil action brought under this section, the court may award costs of litigation including reasonable attorney and expert witness fees to any substantially prevailing party if the court determines that an award is appropriate.

C. The attorney general, at the request of the director, shall file an action in superior court to recover civil penalties provided by this section.

**49-862. Compliance orders; injunctive relief**

A. If the director has reasonable cause to believe that a person is violating this article or a rule adopted pursuant to this article, the director may serve on the person an order requiring compliance with that provision or rule. The order shall state with reasonable particularity the nature of the violation and shall specify either immediate compliance or a time period for compliance that the director determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable legal requirements. The alleged violator may request a hearing pursuant to title 41, chapter 6, article 10.

B. If the director has reasonable cause to believe that an order issued pursuant to this section is being violated or that a person is engaging in an act or practice that constitutes a violation for which he is authorized to issue an order pursuant to this section, the attorney general, at the request of the director, may apply to the superior court in the county in which the violation is occurring or in which the department has an office for a temporary restraining order, preliminary injunction or permanent injunction.

C. If the director has reasonable cause to believe that a person is engaging in an act or practice in violation of this article that causes an imminent and substantial endangerment to the public health or environment, whether or not the person has requested a hearing, the attorney general, at the request of the director, may apply to the superior court in the county in which the violation is occurring or in which the department has an office for a temporary restraining order, preliminary injunction or permanent injunction.

**49-863. Special waste management fee; exemption**

A. The director shall collect the fee established by section 49-855, subsection C from the special waste treatment, storage or disposal facility that first receives the waste. Any government entity that is required to collect a fee pursuant to this section may establish fees to recover the costs of collection and administration.

B. A generator who ships special waste for purposes of treatment, storage or disposal to a facility in this state that is not regulated by the department shall retain for three years accurate records of the special waste transported to a facility and shall pay a fee to the department at the same rate and in the same manner as provided in subsection A of this section.

C. Each operator or person who is required to pay a special waste management fee shall make the fee payment as determined by the department.

D. Each fee payment shall be accompanied by a form furnished by the department and completed by the operator. The form shall state the total volume or weight of

the special waste transported to or disposed at that facility during the payment period and shall provide any other information deemed necessary by the department. The operator shall sign the form.

E. If an operator or person fails to pay the fee as provided in subsection C of this section, that operator or person is additionally liable for interest on the unpaid amount at a rate prescribed by section 49-113.

F. Monies collected pursuant to this section shall be deposited in the solid waste fee fund established pursuant to section 49-881.

G. A generator who ships special waste for purposes of treatment, recycling, storage or disposal from a facility that is managed or operated by that generator to another facility that is managed or operated by that generator is exempt from the fee collected pursuant to this section.

H. A generator who treats, recycles, stores or disposes of special waste on site at a facility that is managed or operated by the generator is exempt from the fee collected pursuant to this section.

I. State agencies, including state universities, are not exempt from the fees prescribed in this section.

#### 49-865. Inspections

The department may conduct such inspections of facilities that manage special waste, including premises and equipment, as are necessary. The department shall give the management agency or the owner or operator of the facility the opportunity to have its representative accompany the inspector. Within forty-five days after the date of the inspection, the department shall provide to the facility owner or operator a copy of any inspection report produced as a result of an inspection of that facility that occurs as prescribed by this section.

#### 49-866. Orders; monitoring; pollution control devices

A. Except as otherwise provided in sections 49-422 and chapter 3, article 3 of this title, the director may require by order the installation of necessary monitoring and pollution control devices at a special waste facility if the requirements of subsection B of this section have been met.

B. Before issuing an order pursuant to subsection A of this section, the director shall determine in writing that all of the following conditions are met:

1. The special waste facility may adversely affect public health or the environment.

2. A monitoring, sampling or quantification method or a pollution control device is technically feasible for the subject contaminant and the special waste disposal facility.
3. An adequate scientific basis for the monitoring, sampling or quantification method or the pollution control device exists.
4. The monitoring, sampling or quantification method is reasonably accurate or the pollution control device is reasonably effective.
5. The cost of the method or device is reasonable in light of the use to be made of the data or the device.
6. The director has considered the relative cost and the relative accuracy or effectiveness of any alternative method or device that may be reasonable under the circumstances.

49-868. [Agency orders; appeal](#)

Any final agency order issued pursuant to this article is appealable pursuant to title 41, chapter 6, article 10.

**DEPARTMENT OF PUBLIC SAFETY (F20-0205)**

Title 13, Chapter 9, Articles 1-6, Department of Public Safety - Concealed Weapons Permits



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** March 3, 2020

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

**FROM:** Council Staff

**DATE:** February 11, 2020

**SUBJECT: DEPARTMENT OF PUBLIC SAFETY (F20-0205)**  
Title 13, Chapter 9, Articles 1-6, Department of Public Safety - Concealed Weapons Permits

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### Summary

This Five Year Review Report (5YRR) from the Department of Public Safety relates to rules in Title 13, Chapter 9, Articles 1-6 regarding Concealed Weapons Permits. The rules address the following:

- **Article 1: General Provisions;**
- **Article 2: Concealed Weapons Permit: Application; Renewal; Responsibilities;**
- **Article 3: Firearms-Safety Training: Organizations and Instructors;**
- **Article 4: Certificate of Firearms Proficiency;**
- **Article 5: LEOSA-Recognized Instructors; and**
- **Article 6: Hearings and Disciplinary Proceedings.**

In the previous 5YRR for these rules, which the Council approved in May 2015, the Department proposed to amend R13-9-101, R13-9-103, R13-9-104, Table 1, R13-9-201, R13-9-202, R13-9-205, R13-9-601, and R13-9-603 by December 2016, subject to it receiving an exemption from the rulemaking moratorium in place at that time. However, for the reasons stated

in this 5YRR, the Department did not complete the prior proposed course of action for these rules.

### **Proposed Action**

In the report, the Department initially proposed to seek an exemption to amend the following rules by July 2021, which the Department states is the expected completion date of a new online permit and payment system:

- **R9-13-101 (Definitions);**
- **R9-13-102 (Application and Processing Fees);**
- **R9-13-103 (Application Forms);**
- **R9-13-104 (Time-frames for Department Action on Applications);**
- **Table 1 (Time-frames for Department Action on Applications (in days));**
- **R9-13-201 (Concealed Weapons Permit Eligibility);**
- **R9-13-202 (Application for a Concealed Weapons Permit);**
- **R9-13-204 (Renewal of a Concealed Weapons Permit);**
- **R9-13-601 (Suspension and Revocation); and**
- **R9-13-603 (Rehearing or Review of Decision).**

In response to an inquiry from Council staff, the Department advised that it is revising its proposed course of action to make certain amendments R13-9-101, 103, 104, 201, 202, 204, 601, 603, and Table 1 through an expedited rulemaking. Included for the Council's consideration is a draft letter to the Governor's office requesting an exemption from Executive Order 2020-02 as well as a draft of the proposed rule changes. The Department advised Council staff that it is seeking permission and authorization internally to move forward with this request, and when it obtains permission from the Department's leadership and Director, will immediately move forward with submitting the exemption request to the Governor's office. However, the Department also advised Council staff that it plans to wait to complete other amendments until after the expected completion date of a new online permit and payment system in July 2021.

**1. Has the agency analyzed whether the rules are authorized by statute?**

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

**2. Summary of the agency's economic impact comparison and identification of stakeholders:**

The stakeholders include: the Department, permit holders, permit applicants, LEOSA (Law Enforcement Officers Safety Act of 2004) instructors, firearms safety training organizations, gun owners and the public.

In the 5YRR the Council approved on May 5, 2015, the Department concluded the economic impact statements prepared when the rules were made were accurate. The

Department completed no rulemakings since 2015, and received no information suggesting its previous conclusion regarding the accuracy of the economic impact statements was incorrect.

During FY2019, the Department collected \$6,835,487 in Concealed Weapons Permit fees. The most recent legislative appropriation for the Concealed Weapons Permit program is \$1,417,700.

There are currently 345,538 Concealed Weapons Permits issued in Arizona. During FY2019, there were 100,628 applicants for new permits.

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

The Department states that the benefits of the rules outweigh the costs to the State and the rules impose the least burden and cost to the regulated public. The fees are set at an amount necessary to allow the Department to meet its statutory obligation to self-fund the program. From FY2014 to FY2019, the number of concealed weapons permit holders increased more than 55%, from 222,397 to 345,538. The number of applications for new permits increased more than 200%. This suggests that the regulated population believes the benefits outweigh the costs and do not perceive the costs of compliance, which are minimal, to be a burden.

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

No. The Department did not receive any written criticisms of the rules over the last five years.

**5. Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The Department indicates that the rules reviewed are clear, concise, and understandable.

The Department identifies the following rules that are ineffective in achieving their objective(s), for the reasons stated in the report:

- **R13-9-101 (Definitions);**
- **R13-9-102 (Application and Processing Fees);**
- **R13-9-103 (Application Forms);**
- **R13-9-201 (Concealed Weapons Permit Eligibility);**
- **R13-9-202 (Application for a Concealed Weapons Permit);**
- **R13-9-204 (Renewal of a Concealed Weapons Permit);**
- **R13-9-601 (Suspension and Revocation); and**
- **R13-9-603 (Rehearing or Review of Decision).**

The Department identifies the following rules that are inconsistent with other rules and statutes, for the reasons stated in the report:

- **R13-9-101 (Definitions);**
- **R13-9-104 (Time-frames for Department Action on Applications);**
- **Table 1 (Time-frames for Department Action on Applications (in days));**
- **R13-9-201 (Concealed Weapons Permit Eligibility);**
- **R13-9-202 (Application for a Concealed Weapons Permit);**
- **R13-9-204 (Renewal of a Concealed Weapons Permit);**
- **R13-9-601 (Suspension and Revocation); and**
- **R13-9-603 (Rehearing or Review of Decision).**

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

Yes. The Department indicates that the rules are enforced consistent with the applicable statutes. The Department states that it has had no problems with this enforcement procedure.

**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?**

Except for the following rules, the rules reviewed in this report were adopted on January 31, 2009, and are thus exempt from A.R.S. § 41-1037:

- R13-9-101 (Definitions);
- R13-9-102 (Application and Processing Fees);
- R13-9-103 (Application Forms);
- R13-9-104 (Time-Frames for Department Action on Applications); and
- Table 1 (Time-Frames for Department Action on Application).

The rules identified above do not require the issuance of a regulatory permit, license, agency authorization.

**9. Conclusion**

In this 5YRR, the Department identifies several rules that need to be amended to improve their effectiveness and consistency with other rules and statutes. In response to an inquiry from Council staff, the Department proposes to make certain amendments to these rules

through expedited rulemaking, subject to internal Department approval. Council staff finds this revised proposed course of action to be acceptable. Council staff recommends approval of this report.



# ARIZONA DEPARTMENT OF PUBLIC SAFETY

2102 WEST ENCANTO BLVD. P.O. BOX 6638 PHOENIX, ARIZONA 85005-6638 (602) 223-2000

*"Courteous Vigilance"*

DOUGLAS A. DUCEY    FRANK L. MILSTEAD  
Governor                      Director

October 23, 2019

VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)  
Ms. Nicole Sornsins, Chair  
Governor's Regulatory Review Council  
100 North 15<sup>th</sup> Avenue, Suite 305  
Phoenix, Arizona 85007

**RE: Arizona Department of Public Safety Title 13, Chapter 9, Articles 1, 2, 4, 5, 6 Five Year Review Report**

Dear Ms. Sornsins:

Please find enclosed the Five Year Review Report of the Arizona Department of Public Safety for 13 A.A.C. 9 which is due on November 29, 2019.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Mr. Paul Swietek at (602) 223-2049 or [pswietek@azdps.gov](mailto:pswietek@azdps.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Frank L. Milstead".

Frank L. Milstead, Colonel  
Director



# **ARIZONA DEPARTMENT OF PUBLIC SAFETY**

## **ARIZONA ADMINISTRATIVE CODE FIVE YEAR REVIEW REPORT**

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<b>TITLE</b>	<b>13 – PUBLIC SAFETY</b>
<b>CHAPTER</b>	<b>9 – DEPARTMENT OF PUBLIC SAFETY-CONCEALED WEAPONS PERMITS</b>
<b>ARTICLES</b>	<b>1 – GENERAL PROVISIONS</b>
	<b>2 – CONCEALED WEAPONS PERMIT: APPLICATION; RENEWAL; RESPONSIBILITIES</b>
	<b>4 – CERTIFICATE OF FIREARMS PROFICIENCY</b>
	<b>5 – LEOSA-RECOGNIZED INSTRUCTORS</b>
	<b>6 – HEARINGS AND DISCIPLINARY PROCEEDINGS</b>

**October 23, 2019**

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## INTRODUCTION

In 1994, the Legislature enacted A.R.S. § 13-3112, which requires the Department of Public Safety to issue a permit to carry a concealed weapon to qualified individuals. The Department is required to make rules to implement and administer the Concealed Weapons Permit Program including establishing a reasonable fee for a permit.

Rules regarding the Concealed Weapons Permit Program were initially made in 1996. In 2007, the Department amended all of the rules to conform to statutory changes and agency practice. In 2008 the rules were amended again to conform to additional statutory changes. Since the rules were amended in 2008, the legislature has amended A.R.S. § 13-3112 five times (See Laws 2010, Chapter 59; Laws 2011, Chapter 85; Laws 2014, Chapter 12; Laws 2015, Chapter 52; and Laws 2018, Chapter 206). Key legislative changes include no longer requiring a permit applicant to complete a firearms safety training program authorized by the Department, eliminating the Department's authority to authorize organizations to provide firearms-safety training, eliminating the Department's authority to conduct background checks of firearms-safety instructors, expanding the definition of "qualified retired law enforcement officer," as used in LEOSA, to include municipal, county, and state prosecutors, and requiring the Department to submit reports electronically. The legislature also established the Concealed Weapons Permit Fund into which the Department is required to deposit initial and renewal application fees.

The legislature also amended A.R.S. § 13-3102 in 2010 (See Laws 2010, Chapter 59) to allow an individual to carry a concealed weapon without a permit. The only time an individual is required to carry a permit issued by the Department is when the individual is in actual possession of a concealed weapon and on the premises of an on-sale liquor retailer that has not posted a sign prohibiting possession of a concealed weapon (See A.R.S. § 4-229 and 4-244(29)).

## ANALYSIS OF INDIVIDUAL RULES

### **R13-9-101 DEFINITIONS**

1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 13-3112 states the Director shall adopt rules for the purpose of implementing and administering the program including fees related to the permits that are issued.

2. Objective

The objective of this rule is to define words that are used in the rules.

3. Effectiveness of the Rule in Achieving the Objective

The rule requires amendment under (5) to update the incorporated by reference document; under (10) and (11) to remove the reference to the firearms safety instructor that is no longer regulated; under (15) to remove the reference to live ammunition as the training course is no longer regulated; under (17) to remove the reference to organization which is no longer regulated; under (26) to better define resident/residency; and, under (27) to remove the responsible party term as the organization is no longer regulated.

4. Whether the Rule is Consistent with Statutes and other Rules

The Department determined the rule requires updates to the definitions to remove the references to organizations under (3)(c),(d) and (e) as the Department no longer regulates those entities. The statutory citation in (24) is incorrect.

5. Rule Enforcement

The Department enforces the rules in a manner consistent with statute. The Department has had no problems with this enforcement procedure.

6. Clarity, Conciseness, Understandability of the Rule

The rule is clear, concise and understandable.

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7. Written Criticisms of the Rule Received in the Last Five Years

The Department received no written criticism of the rules during the last five years.

8. Estimated Economic, Small Business and Consumer Impact of the Rule

The Department determined the EIS at the time of the rulemaking is still relevant for this rule.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis.

10. Previous Five-Year Review Process Course of Action

No action was taken on the previous report. The Department was uncertain whether it would pursue a rulemaking moratorium exemption and did not initiate a rulemaking since the rules were revised in 2015. Over the last five years, in the period since the last report, the Concealed Weapons Permit Unit was engaging in other prolonged and complex activities and internal restructuring that hindered opportunities for rulemaking. For example:

- The Unit was engaged with planning and moving to a new building.
- The Unit is planning to transition to an online web-based system. Funding was received in FY2020 and a vendor is being selected. As this new system will require significant rule changes for requesting or renewing a permit, the decision was to suspend rulemaking until the system specifications were finalized.
- The Unit conducted a LEAN process through the Government Transformation Office. A Kaizen was conducted and implemented to improve efficiencies which resulted in the removal of backlogs and one business day processing times.
- Three previous managers did not consider rulemaking to be a priority. The current manager recognizes rulemaking as a priority.
- There have been no major challenges to the current rule and the Department has been accommodating to requests; for example, a member of the public through the ombudsmen's office requested the Unit adopt permanent resident alien allowances similar to the Department of Transportation for a permit. The Department has adopted that request.

11. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined the benefits of the rules outweigh the costs to the State and the rules impose the least burden and cost to the regulated public as the definitions are effective in communicating their meaning.

12. Determination of the Rule's Stringency Against Federal Law

There is no applicable federal law.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.

This rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Current Five-Year Review Process Course of Action

The Department intends to amend this rule and seek a rulemaking exemption in July 2021 which is the expected completed date of a new, online permit and payment system.

## **R13-9-102 APPLICATION AND PROCESSING FEES**

### 1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 13-3112 states the Director shall adopt rules for the purpose of implementing and administering the program including fees related to the permits that are issued.

### 2. Objective

The objective of this rule is to specify the fees the Department charges for various activities associated with implementing the program.

### 3. Effectiveness of the Rule in Achieving the Objective

The rule is not effective as it needs amendment to allow for credit card transactions for point-of-sale and online payment methods and to remove certified checks.

### 4. Whether the Rule is Consistent with Statutes and other Rules

The rule is consistent with statutes and other rules.

### 5. Rule Enforcement

The Department enforces the rules in a manner consistent with statute. The Department has had no problems with this enforcement procedure.

### 6. Clarity, Conciseness, Understandability of the Rule

The Department determined the rule is clear, concise, and understandable.

### 7. Written Criticisms of the Rule Received in the Last Five Years

The Department received no written criticism of the rules during the last five years.

### 8. Estimated Economic, Small Business and Consumer Impact of the Rule

In a Five-Year Review Report (5YRR) approved by the Governor's Regulatory Review Council on May 5, 2015, the Department concluded the economic impact statements prepared when the rules were made were accurate. The Department has completed no

rulemakings since 2015 and has received no information suggesting its previous conclusion regarding the accuracy of the economic impact statements was incorrect.

During FY2019, the Department collected \$6,835,487 in Concealed Weapons Permit fees. Of this amount, \$762,229 was forwarded to the FBI for criminal background checks of applicants. The remainder was deposited in the state's general fund. The most recent legislative appropriation for the Concealed Weapons Permit program is \$1,417,700. This supports 15 FTEs who work on the program.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis.

10. Previous Five-Year Review Process Course of Action

The was no previous course of action proposed.

11. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined the benefits of the rules outweigh the costs to the State and the rules impose the least burden and cost to the regulated public. The fees are set at an amount necessary to allow the Department to meet its statutory obligation to self-fund the program. From FY2014 to FY2019, the number of concealed-weapons-permit holders increased more than 55 percent, from 222,397 to 345,538. The number of applications for new permits increased more than 200 percent. This suggests those regulated by the rules believe the benefits outweigh the costs and do not perceive the costs of compliance, which are minimal, to be a burden.

12. Determination of the Rule's Stringency Against Federal Law

There is no applicable federal law.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.

This rule does not require the issuance of a regulatory permit, license, or agency authorization and was adopted on January 31, 2009.

14. Current Five-Year Review Process Course of Action

The Department intends to amend this rule and seek a rulemaking exemption in July 2021 which is the expected completed date of a new, online permit and payment system.

## **R13-9-103 APPLICATION FORMS**

### 1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 13-3112 states the Director shall adopt rules for the purpose of implementing and administering the program including fees related to the permits that are issued.

### 2. Objective

The objective of this rule is to specify the application forms the Department uses to fulfill its statutory responsibility to implement the program and how to obtain the forms.

### 3. Effectiveness of the Rule in Achieving the Objective

The rule is not effective as the website address in (B) is incorrect and language regarding other locations where forms may be obtained is not valid. The forms are available only from the unit or online and not from other locations.

### 4. Whether the Rule is Consistent with Statutes and other Rules

The rule is consistent with statutes and other rules.

### 5. Rule Enforcement

The Department enforces the rules in a manner consistent with statute. The Department has had no problems with this enforcement procedure.

### 6. Clarity, Conciseness, Understandability of the Rule

The Department determined the rule is clear, concise, and understandable.

### 7. Written Criticisms of the Rule Received in the Last Five Years

The Department received no written criticism of the rules during the last five years.

### 8. Estimated Economic, Small Business and Consumer Impact of the Rule

In a Five-Year Review Report (5YRR) approved by the Governor's Regulatory Review Council on May 5, 2015, the Department concluded the economic impact statements prepared when the rules were made were accurate. The Department has completed no

rulemakings since 2015 and has received no information suggesting its previous conclusion regarding the accuracy of the economic impact statements was incorrect.

There are currently 345,538 Concealed Weapons Permits issued in Arizona. During FY2019, there were 100,628 applications for new permits.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis.

10. Previous Five-Year Review Process Course of Action

The Department indicated previously the website address was incorrect. No action was taken on the previous report. The Department was uncertain whether it would pursue a rulemaking moratorium exemption and did not initiate a rulemaking since the rules were revised in 2015. Over the last five years, in the period since the last report, the Concealed Weapons Permit Unit was engaging in other prolonged and complex activities and internal restructuring that hindered opportunities for rulemaking. For example:

- The Unit was engaged with planning and moving to a new building.
- The Unit is planning to transition to an online web-based system. Funding was received in FY2020 and a vendor is being selected. As this new system will require significant rule changes for requesting or renewing a permit, the decision was to suspend rulemaking until the system specifications were finalized.
- The Unit conducted a LEAN process through the Government Transformation Office. A Kaizen was conducted and implemented to improve efficiencies which resulted in the removal of backlogs and one business day processing times.
- Three previous managers did not consider rulemaking to be a priority. The current manager recognizes rulemaking as a priority.
- There have been no major challenges to the current rule and the Department has been accommodating to requests; for example, a member of the public through the ombudsmen's office requested the Unit adopt permanent resident alien allowances similar to the Department of Transportation for a permit. The Department has adopted that request.

11. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined the benefits of the rules outweigh the costs to the State and the rules impose the least burden and cost to the regulated public. This rule allows the applicant to obtain an application form online without having to contact the Department in-person. From FY2014 to FY2019, the number of concealed-weapons-permit holders increased more than 55 percent, from 222,397 to 345,538. The number of applications for new permits increased more than 200 percent. This suggests those regulated by the rules believe the benefits outweigh the costs and do not perceive the costs of compliance, which are minimal, to be a burden.

12. Determination of the Rule's Stringency Against Federal Law

There is no applicable federal law.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.

This rule does not require the issuance of a regulatory permit, license, or agency authorization and was adopted on January 31, 2009.

14. Current Five-Year Review Process Course of Action

The Department intends to amend this rule and seek a rulemaking exemption in July 2021 which is the expected completed date of a new, online permit and payment system.

## **R13-9-104 TIME-FRAMES FOR DEPARTMENT ACTION ON APPLICATIONS**

### 1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 13-3112 states the Director shall adopt rules for the purpose of implementing and administering the program including fees related to the permits that are issued.

### 2. Objective

The objective of this rule is to specify the time-frames within the Department will act on an application for a permit.

### 3. Effectiveness of the Rule in Achieving the Objective

The rule is effective in achieving the objective.

### 4. Whether the Rule is Consistent with Statutes and other Rules

The rule needs amendment to remove references to organizations as it no longer regulates them.

### 5. Rule Enforcement

The Department enforces the rules in a manner consistent with statute. The Department has had no problems with this enforcement procedure.

### 6. Clarity, Conciseness, Understandability of the Rule

The Department determined the rule is clear, concise, and understandable.

### 7. Written Criticisms of the Rule Received in the Last Five Years

The Department received no written criticism of the rules during the last five years.

### 8. Estimated Economic, Small Business and Consumer Impact of the Rule

In a Five-Year Review Report (5YRR) approved by the Governor's Regulatory Review Council on May 5, 2015, the Department concluded the economic impact statements prepared when the rules were made were accurate. The Department has completed no

rulemakings since 2015 and has received no information suggesting its previous conclusion regarding the accuracy of the economic impact statements was incorrect.

There are currently 345,538 Concealed Weapons Permits issued in Arizona. During FY2019, there were 100,628 applications for new permits.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis.

10. Previous Five-Year Review Process Course of Action

The Department indicated it was not able to meet the processing time-frames in the previous report. However, since the previous report the Department implemented efficiencies that now allow it to meet those timeframes. Therefore, no action is required to amend the rule.

11. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined the benefits of the rules outweigh the costs to the State and the rules impose the least burden and cost to the regulated public. The rule allows the regulated community to anticipate when the Department will complete its actions. From FY2014 to FY2019, the number of concealed-weapons-permit holders increased more than 55 percent, from 222,397 to 345,538. The number of applications for new permits increased more than 200 percent without complaint. This suggests those regulated by the rules believe the benefits outweigh the costs.

12. Determination of the Rule's Stringency Against Federal Law

There is no applicable federal law.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.

This rule does not require the issuance of a regulatory permit, license, or agency authorization and was adopted on January 31, 2009.

14. Current Five-Year Review Process Course of Action

The Department intends to amend this rule and seek a rulemaking exemption in July 2021 which is the expected completed date of a new, online permit and payment system.

**TABLE 1 TIME-FRAMES FOR DEPARTMENT ACTION ON APPLICATION**

1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 13-3112 states the Director shall adopt rules for the purpose of implementing and administering the program including fees related to the permits that are issued.

2. Objective

The objective of this rule is to specify the time-frames within the Department will act on an application for a permit.

3. Effectiveness of the Rule in Achieving the Objective

The rule is effective in achieving the objective.

4. Whether the Rule is Consistent with Statutes and other Rules

The table is inconsistent with statutes because it references organizations and firearm safety instructors and the Department no longer regulates them.

5. Rule Enforcement

The Department enforces the rules in a manner consistent with statute. The Department has had no problems with this enforcement procedure.

6. Clarity, Conciseness, Understandability of the Rule

The Department determined the rule is clear, concise, and understandable.

7. Written Criticisms of the Rule Received in the Last Five Years

The Department received no written criticism of the rules during the last five years.

8. Estimated Economic, Small Business and Consumer Impact of the Rule

In a Five-Year Review Report (5YRR) approved by the Governor's Regulatory Review Council on May 5, 2015, the Department concluded the economic impact statements prepared when the rules were made were accurate. The Department has completed no

rulemakings since 2015 and has received no information suggesting its previous conclusion regarding the accuracy of the economic impact statements was incorrect.

There are currently 345,538 Concealed Weapons Permits issued in Arizona. During FY2019, there were 100,628 applications for new permits.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis.

10. Previous Five-Year Review Process Course of Action

The Department indicated it was not able to meet the processing time-frames in the previous report. However, since the previous report the Department implemented efficiencies that now allow it to meet those timeframes. Therefore, no action is required to amend the rule.

11. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined the benefits of the rules outweigh the costs to the State and the rules impose the least burden and cost to the regulated public. This rule allows the regulated community to anticipate when the Department will complete its actions. From FY2014 to FY2019, the number of concealed-weapons-permit holders increased more than 55 percent, from 222,397 to 345,538. The number of applications for new permits increased more than 200 percent without complaint. This suggests those regulated by the rules believe the benefits outweigh the costs.

12. Determination of the Rule's Stringency Against Federal Law

There is no applicable federal law.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.

This rule does not require the issuance of a regulatory permit, license, or agency authorization and was adopted on January 31, 2009.

14. Current Five-Year Review Process Course of Action

The Department intends to amend this rule and seek a rulemaking exemption in July 2021 which is the expected completed date of a new, online permit and payment system.

## **R13-9-201 CONCEALED WEAPONS PERMIT ELIGIBILITY**

### 1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 13-3112 states the Director shall adopt rules for the purpose of implementing and administering the program including fees related to the permits that are issued.

### 2. Objective

The objective of this rule is to provide detail regarding eligibility for a permit.

### 3. Effectiveness of the Rule in Achieving the Objective

The rule requires all of (B) to be amended to state an applicant shall demonstrate competence with a firearm in accordance with A.R.S. § 13-3112(N)(1-8).

### 4. Whether the Rule is Consistent with Statutes and other Rules

The rule needs an amendment to properly reference A.R.S. § 13-3112(N)(1-8).

### 5. Rule Enforcement

The Department enforces the rules in a manner consistent with statute. The Department has had no problems with this enforcement procedure.

### 6. Clarity, Conciseness, Understandability of the Rule

The Department determined the rule is clear, concise, and understandable.

### 7. Written Criticisms of the Rule Received in the Last Five Years

The Department received no written criticism of the rules during the last five years.

### 8. Estimated Economic, Small Business and Consumer Impact of the Rule

In a Five-Year Review Report (5YRR) approved by the Governor's Regulatory Review Council on May 5, 2015, the Department concluded the economic impact statements prepared when the rules were made were accurate. The Department has completed no rulemakings since 2015 and has received no information suggesting its previous conclusion regarding the accuracy of the economic impact statements was incorrect.

There are currently 345,538 Concealed Weapons Permits issued in Arizona. During FY2019, there were 100,628 applications for new permits.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis.

10. Previous Five-Year Review Process Course of Action

The Department indicated the statutory reference was inconsistent. No action was taken on the previous report. The Department was uncertain whether it would pursue a rulemaking moratorium exemption and did not initiate a rulemaking since the rules were revised in 2015. Over the last five years, in the period since the last report, the Concealed Weapons Permit Unit was engaging in other prolonged and complex activities and internal restructuring that hindered opportunities for rulemaking. For example:

- The Unit was engaged with planning and moving to a new building.
- The Unit is planning to transition to an online web-based system. Funding was received in FY2020 and a vendor is being selected. As this new system will require significant rule changes for requesting or renewing a permit, the decision was to suspend rulemaking until the system specifications were finalized.
- The Unit conducted a LEAN process through the Government Transformation Office. A Kaizen was conducted and implemented to improve efficiencies which resulted in the removal of backlogs and one business day processing times.
- Three previous managers did not consider rulemaking to be a priority. The current manager recognizes rulemaking as a priority.
- There have been no major challenges to the current rule and the Department has been accommodating to requests; for example, a member of the public through the ombudsmen's office requested the Unit adopt permanent resident alien allowances similar to the Department of Transportation for a permit. The Department has adopted that request.

11. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined the benefits of the rules outweigh the costs to the State and the rules impose the least burden and cost to the regulated public. This rule enables an applicant to know the information on which the Department will base a decision regarding issuance of a permit. Making the determination based on state statute and prohibited possessor laws is a direct benefit to public safety by preventing certain people from carrying a concealed weapon. From FY2014 to FY2019, the number of concealed-weapons-permit holders increased more than 55 percent, from 222,397 to 345,538. The number of applications for new permits increased more than 200 percent without complaint. This suggests those regulated by the rules believe the benefits outweigh the costs.

12. Determination of the Rule's Stringency Against Federal Law

There is no applicable federal law.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.

This rule was adopted on January 31, 2009.

14. Current Five-Year Review Process Course of Action

The Department intends to amend this rule and seek a rulemaking exemption in July 2021 which is the expected completed date of a new, online permit and payment system.

## **R13-9-202 APPLICATION FOR A CONCEALED WEAPONS PERMIT**

### 1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 13-3112 states the Director shall adopt rules for the purpose of implementing and administering the program including fees related to the permits that are issued.

### 2. Objective

The objective of this rule is to specify the information required on an application for a permit.

### 3. Effectiveness of the Rule in Achieving the Objective

The rule requires amendment under (1)(g)(iii) to remove the current language and replace it with language the person is a documented permanent resident residing in Arizona; under (1)(g)(ix) removing all of the language regarding peace officers and detention officers; under (1)(h)(i) to include the applicant's signature attesting they are knowledgeable of Arizona firearm laws and have attended a safety course; under (2)(a) remove the 60 month requirement and replace it with a reference to A.R.S. § 13-3112(6)(a-d) for firearms demonstration competence; under (2)(b) delete the section as it is no longer required; under (2)(c)(ii) state that the card must be current and valid and must contain the issue and expiration date.

### 4. Whether the Rule is Consistent with Statutes and other Rules

The rule needs amendment to properly reference A.R.S. § 13-3112.

### 5. Rule Enforcement

The Department enforces the rules in a manner consistent with statute. The Department has had no problems with this enforcement procedure.

### 6. Clarity, Conciseness, Understandability of the Rule

The Department determined the rule is clear, concise, and understandable.

7. Written Criticisms of the Rule Received in the Last Five Years

The Department received no written criticism of the rules during the last five years.

8. Estimated Economic, Small Business and Consumer Impact of the Rule

In a Five-Year Review Report (5YRR) approved by the Governor's Regulatory Review Council on May 5, 2015, the Department concluded the economic impact statements prepared when the rules were made were accurate. The Department has completed no rulemakings since 2015 and has received no information suggesting its previous conclusion regarding the accuracy of the economic impact statements was incorrect.

There are currently 345,538 Concealed Weapons Permits issued in Arizona. During FY2019, there were 100,628 applications for new permits.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis.

10. Previous Five-Year Review Process Course of Action

The Department indicated the statutory reference was inconsistent and was not fully enforcing the rule. No action was taken on the previous report. The Department was uncertain whether it would pursue a rulemaking moratorium exemption and did not initiate a rulemaking since the rules were revised in 2015. Over the last five years, in the period since the last report, the Concealed Weapons Permit Unit was engaging in other prolonged and complex activities and internal restructuring that hindered opportunities for rulemaking. For example:

- The Unit was engaged with planning and moving to a new building.
- The Unit is planning to transition to an online web-based system. Funding was received in FY2020 and a vendor is being selected. As this new system will require significant rule changes for requesting or renewing a permit, the decision was to suspend rulemaking until the system specifications were finalized.
- The Unit conducted a LEAN process through the Government Transformation Office. A Kaizen was conducted and implemented to improve efficiencies which resulted in the removal of backlogs and one business day processing times.

- Three previous managers did not consider rulemaking to be a priority. The current manager recognizes rulemaking as a priority.
- There have been no major challenges to the current rule and the Department has been accommodating to requests; for example, a member of the public through the ombudsmen's office requested the Unit adopt permanent resident alien allowances similar to the Department of Transportation for a permit. The Department has adopted that request.

11. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined the benefits of the rules outweigh the costs to the State and the rules impose the least burden and cost to the regulated public. This rule allows the regulated community to anticipate when the Department will complete its actions. From FY2014 to FY2019, the number of concealed-weapons-permit holders increased more than 55 percent, from 222,397 to 345,538. The number of applications for new permits increased more than 200 percent without complaint. This suggests those regulated by the rules believe the benefits outweigh the costs.

12. Determination of the Rule's Stringency Against Federal Law

There is no applicable federal law.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.

This rule was adopted on January 31, 2009.

14. Current Five-Year Review Process Course of Action

The Department intends to amend this rule and seek a rulemaking exemption in July 2021 which is the expected completed date of a new, online permit and payment system.

## **R13-9-203 ISSUANCE OF A CONCEALED WEAPONS PERMIT**

### 1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 13-3112 states the Director shall adopt rules for the purpose of implementing and administering the program including fees related to the permits that are issued.

### 2. Objective

The objective of this rule is to specify the information the Department will place on a permit card.

### 3. Effectiveness of the Rule in Achieving the Objective

The rule is effective.

### 4. Whether the Rule is Consistent with Statutes and other Rules

The rule is consistent with statutes and other rules.

### 5. Rule Enforcement

The Department enforces the rules in a manner consistent with statute. The Department has had no problems with this enforcement procedure.

### 6. Clarity, Conciseness, Understandability of the Rule

The Department determined the rule is clear, concise, and understandable.

### 7. Written Criticisms of the Rule Received in the Last Five Years

The Department received no written criticism of the rules during the last five years.

### 8. Estimated Economic, Small Business and Consumer Impact of the Rule

In a Five-Year Review Report (5YRR) approved by the Governor's Regulatory Review Council on May 5, 2015, the Department concluded the economic impact statements prepared when the rules were made were accurate. The Department has completed no rulemakings since 2015 and has received no information suggesting its previous conclusion regarding the accuracy of the economic impact statements was incorrect.

There are currently 345,538 Concealed Weapons Permits issued in Arizona. During FY2019, there were 100,628 applications for new permits, of which 685 were denied because the applicant was not qualified.

During FY2019, the Department suspended 295 permits because the permit holder was no longer qualified to have the permit. Thirty-two permits were revoked, generally because the permit holder became a prohibited possessor.

There are currently 345,538 Concealed Weapons Permits issued in Arizona. During FY2019, there were 100,628 applications for new permits.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis.

10. Previous Five-Year Review Process Course of Action

There was no previous course of action.

11. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined the benefits of the rules outweigh the costs to the State and the rules impose the least burden and cost to the regulated public. This rule assists with enforcement by enabling law enforcement officers to evaluate whether or not a permit was issued to a person. From FY2014 to FY2019, the number of concealed-weapons-permit holders increased more than 55 percent, from 222,397 to 345,538. The number of applications for new permits increased more than 200 percent without complaint. This suggests those regulated by the rules believe the benefits outweigh the costs.

12. Determination of the Rule's Stringency Against Federal Law

There is no applicable federal law.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.

This rule was adopted on January 31, 2009.

14. Current Five-Year Review Process Course of Action

The Department does not intend to amend this rule.

## **R13-9-204 RENEWAL OF CONCEALED WEAPONS PERMIT**

### 1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 13-3112 states the Director shall adopt rules for the purpose of implementing and administering the program including fees related to the permits that are issued.

### 2. Objective

The objective of this rule is to specify the requirements for renewal of a permit, the manner the renewal application is made and consequences of failing to renew.

### 3. Effectiveness of the Rule in Achieving the Objective

The rule requires amendment to (B)(3) to specify a current, valid permanent resident card and the removal of the general language of any federally-issued document.

### 4. Whether the Rule is Consistent with Statutes and other Rules

The rule needs amendment to properly reference A.R.S. § 13-3112 that the person be a resident.

### 5. Rule Enforcement

The Department enforces the rules in a manner consistent with statute. The Department has had no problems with this enforcement procedure.

### 6. Clarity, Conciseness, Understandability of the Rule

The Department determined the rule is clear, concise, and understandable.

### 7. Written Criticisms of the Rule Received in the Last Five Years

The Department received no written criticism of the rules during the last five years.

### 8. Estimated Economic, Small Business and Consumer Impact of the Rule

In a Five-Year Review Report (5YRR) approved by the Governor's Regulatory Review Council on May 5, 2015, the Department concluded the economic impact statements prepared when the rules were made were accurate. The Department has completed no

rulemakings since 2015 and has received no information suggesting its previous conclusion regarding the accuracy of the economic impact statements was incorrect.

There are currently 345,538 Concealed Weapons Permits issued in Arizona. During FY2019, there were 100,628 applications for new permits.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis.

10. Previous Five-Year Review Process Course of Action

There was no previous course of action.

11. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined the benefits of the rules outweigh the costs to the State and the rules impose the least burden and cost to the regulated public. This enables permit holders to submit a timely and administratively complete renewal application and avoiding the permit expiring.

There are currently 345,538 Concealed Weapons Permits issued in Arizona. During FY2019, there were 100,628 applications for new permits, of which 685 were denied because the applicant was not qualified.

During FY2019, the Department suspended 295 permits because the permit holder was no longer qualified to have the permit. Thirty-two permits were revoked, generally because the permit holder became a prohibited possessor.

From FY2014 to FY2019, the number of concealed-weapons-permit holders increased more than 55 percent, from 222,397 to 345,538. The number of applications for new permits increased more than 200 percent without complaint. This suggests those regulated by the rules believe the benefits outweigh the costs.

12. Determination of the Rule's Stringency Against Federal Law

There is no applicable federal law.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.

This rule was adopted on January 31, 2009.

14. Current Five-Year Review Process Course of Action

The Department intends to amend this rule and seek a rulemaking exemption in July 2021 which is the expected completed date of a new, online permit and payment system.

## **R13-9-205 PERMIT HOLDER RESPONSIBILITIES**

### 1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 13-3112 states the Director shall adopt rules for the purpose of implementing and administering the program including fees related to the permits that are issued.

### 2. Objective

The objective of this rule is to provide information regarding a permit holder's responsibilities in addition to those specified in statute.

### 3. Effectiveness of the Rule in Achieving the Objective

The rule is effective.

### 4. Whether the Rule is Consistent with Statutes and other Rules

The rule is consistent with statutes and other rules.

### 5. Rule Enforcement

The Department enforces the rules in a manner consistent with statute. The Department has had no problems with this enforcement procedure.

### 6. Clarity, Conciseness, Understandability of the Rule

The Department determined the rule is clear, concise, and understandable.

### 7. Written Criticisms of the Rule Received in the Last Five Years

The Department received no written criticism of the rules during the last five years.

### 8. Estimated Economic, Small Business and Consumer Impact of the Rule

In a Five-Year Review Report (5YRR) approved by the Governor's Regulatory Review Council on May 5, 2015, the Department concluded the economic impact statements prepared when the rules were made were accurate. The Department has completed no rulemakings since 2015 and has received no information suggesting its previous conclusion regarding the accuracy of the economic impact statements was incorrect.

There are currently 345,538 Concealed Weapons Permits issued in Arizona. During FY2019, there were 100,628 applications for new permits, of which 685 were denied because the applicant was not qualified.

During FY2019, the Department suspended 295 permits because the permit holder was no longer qualified to have the permit. Thirty-two permits were revoked, generally because the permit holder became a prohibited possessor.

There are currently 345,538 Concealed Weapons Permits issued in Arizona. During FY2019, there were 100,628 applications for new permits.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis.

10. Previous Five-Year Review Process Course of Action

The Department on Page 11 of the 2015 report indicated Rule 2015 would be amended but the current management and staff could not find the reason for the amendment in the report. Therefore, no action was taken.

11. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined the benefits of the rules outweigh the costs to the State and the rules impose the least burden and cost to the regulated public. This enables permit holders to submit a timely and administratively complete renewal application and avoiding the permit expiring.

There are currently 345,538 Concealed Weapons Permits issued in Arizona. During FY2019, there were 100,628 applications for new permits, of which 685 were denied because the applicant was not qualified.

During FY2019, the Department suspended 295 permits because the permit holder was no longer qualified to have the permit. Thirty-two permits were revoked, generally because the permit holder became a prohibited possessor.

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From FY2014 to FY2019, the number of concealed-weapons-permit holders increased more than 55 percent, from 222,397 to 345,538. The number of applications for new permits increased more than 200 percent without complaint. This suggests those regulated by the rules believe the benefits outweigh the costs.

12. Determination of the Rule's Stringency Against Federal Law

There is no applicable federal law.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.

This rule was adopted on January 31, 2009.

14. Current Five-Year Review Process Course of Action

The Department does not intend to amend this rule.

## **R13-9-206 LOST, STOLEN, OR DAMAGED CONCEALED WEAPONS PERMIT**

### 1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 13-3112 states the Director shall adopt rules for the purpose of implementing and administering the program including fees related to the permits that are issued.

### 2. Objective

The objective of this rule is to provide information regarding the procedure for replacing a permit that has been lost, stolen, or damaged.

### 3. Effectiveness of the Rule in Achieving the Objective

The rule is effective.

### 4. Whether the Rule is Consistent with Statutes and other Rules

The rule is consistent with statutes and other rules.

### 5. Rule Enforcement

The Department enforces the rules in a manner consistent with statute. The Department has had no problems with this enforcement procedure.

### 6. Clarity, Conciseness, Understandability of the Rule

The Department determined the rule is clear, concise, and understandable.

### 7. Written Criticisms of the Rule Received in the Last Five Years

The Department received no written criticism of the rules during the last five years.

### 8. Estimated Economic, Small Business and Consumer Impact of the Rule

In a Five-Year Review Report (5YRR) approved by the Governor's Regulatory Review Council on May 5, 2015, the Department concluded the economic impact statements prepared when the rules were made were accurate. The Department has completed no rulemakings since 2015 and has received no information suggesting its previous conclusion regarding the accuracy of the economic impact statements was incorrect.

There are currently 345,538 Concealed Weapons Permits issued in Arizona. During FY2019, there were 100,628 applications for new permits, of which 685 were denied because the applicant was not qualified.

During FY2019, the Department suspended 295 permits because the permit holder was no longer qualified to have the permit. Thirty-two permits were revoked, generally because the permit holder became a prohibited possessor.

There are currently 345,538 Concealed Weapons Permits issued in Arizona. During FY2019, there were 100,628 applications for new permits.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis.

10. Previous Five-Year Review Process Course of Action

No previous action was indicated.

11. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined the benefits of the rules outweigh the costs to the State and the rules impose the least burden and cost to the regulated public. This process enables a permit holder of a lost, stolen, or damaged permit to know how to obtain a replacement.

There are currently 345,538 Concealed Weapons Permits issued in Arizona. During FY2019, there were 100,628 applications for new permits, of which 685 were denied because the applicant was not qualified.

During FY2019, the Department suspended 295 permits because the permit holder was no longer qualified to have the permit. Thirty-two permits were revoked, generally because the permit holder became a prohibited possessor.

From FY2014 to FY2019, the number of concealed-weapons-permit holders increased more than 55 percent, from 222,397 to 345,538. The number of applications for new

permits increased more than 200 percent without complaint. This suggests those regulated by the rules believe the benefits outweigh the costs.

12. Determination of the Rule's Stringency Against Federal Law

There is no applicable federal law.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.

This rule was adopted on January 31, 2009.

14. Current Five-Year Review Process Course of Action

The Department does not intend to amend this rule.

## **R13-9-208 CHANGE IN NAME OF PERMIT HOLDER**

### 1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 13-3112 states the Director shall adopt rules for the purpose of implementing and administering the program including fees related to the permits that are issued.

### 2. Objective

The objective of this rule is to prescribe the procedure for obtaining a permit when the permit holder's name has changed.

### 3. Effectiveness of the Rule in Achieving the Objective

The rule is effective.

### 4. Whether the Rule is Consistent with Statutes and other Rules

The rule is consistent with statutes and other rules.

### 5. Rule Enforcement

The Department enforces the rules in a manner consistent with statute. The Department has had no problems with this enforcement procedure.

### 6. Clarity, Conciseness, Understandability of the Rule

The Department determined the rule is clear, concise, and understandable.

### 7. Written Criticisms of the Rule Received in the Last Five Years

The Department received no written criticism of the rules during the last five years.

### 8. Estimated Economic, Small Business and Consumer Impact of the Rule

In a Five-Year Review Report (5YRR) approved by the Governor's Regulatory Review Council on May 5, 2015, the Department concluded the economic impact statements prepared when the rules were made were accurate. The Department has completed no rulemakings since 2015 and has received no information suggesting its previous conclusion regarding the accuracy of the economic impact statements was incorrect.

There are currently 345,538 Concealed Weapons Permits issued in Arizona. During FY2019, there were 100,628 applications for new permits, of which 685 were denied because the applicant was not qualified.

During FY2019, the Department suspended 295 permits because the permit holder was no longer qualified to have the permit. Thirty-two permits were revoked, generally because the permit holder became a prohibited possessor.

There are currently 345,538 Concealed Weapons Permits issued in Arizona. During FY2019, there were 100,628 applications for new permits.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis.

10. Previous Five-Year Review Process Course of Action

No previous action was indicated.

11. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined the benefits of the rules outweigh the costs to the State and the rules impose the least burden and cost to the regulated public. This process enables a permit holder whose name has changed to know how to obtain a revised permit.

There are currently 345,538 Concealed Weapons Permits issued in Arizona. During FY2019, there were 100,628 applications for new permits, of which 685 were denied because the applicant was not qualified.

During FY2019, the Department suspended 295 permits because the permit holder was no longer qualified to have the permit. Thirty-two permits were revoked, generally because the permit holder became a prohibited possessor.

From FY2014 to FY2019, the number of concealed-weapons-permit holders increased more than 55 percent, from 222,397 to 345,538. The number of applications for new

permits increased more than 200 percent without complaint. This suggests those regulated by the rules believe the benefits outweigh the costs.

12. Determination of the Rule's Stringency Against Federal Law

There is no applicable federal law.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.

This rule was adopted on January 31, 2009.

14. Current Five-Year Review Process Course of Action

The Department does not intend to amend this rule.

## **R13-9-401 CERTIFICATE OF FIREARMS PROFICIENCY ELIGIBILITY**

### 1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 13-3112 states the Director shall adopt rules for the purpose of implementing and administering the program including fees related to the permits that are issued.

### 2. Objective

The objective of this rule is to list the eligibility requirements for an individual to obtain a LEOSA-authorized certificate of firearms proficiency.

### 3. Effectiveness of the Rule in Achieving the Objective

The rule is effective.

### 4. Whether the Rule is Consistent with Statutes and other Rules

The rule is consistent with statutes and other rules.

### 5. Rule Enforcement

The Department enforces the rules in a manner consistent with statute. The Department has had no problems with this enforcement procedure.

### 6. Clarity, Conciseness, Understandability of the Rule

The Department determined the rule is clear, concise, and understandable.

### 7. Written Criticisms of the Rule Received in the Last Five Years

The Department received no written criticism of the rules during the last five years.

### 8. Estimated Economic, Small Business and Consumer Impact of the Rule

In a Five-Year Review Report (5YRR) approved by the Governor's Regulatory Review Council on May 5, 2015, the Department concluded the economic impact statements prepared when the rules were made were accurate. The Department has completed no rulemakings since 2015 and has received no information suggesting its previous conclusion regarding the accuracy of the economic impact statements was incorrect.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis.

10. Previous Five-Year Review Process Course of Action

No previous action was indicated.

11. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined the benefits of the rules outweigh the costs to the State and the rules impose the least burden and cost to the regulated public. This enables a potential applicant to know whether qualifications are met and facilitates the decision to apply.

In FY2019, 1,669 certificates were issued.

12. Determination of the Rule's Stringency Against Federal Law

There is no applicable federal law. LEOSA does not mandate the Department to take any action. A.R.S. § 13-3112(T) creates the condition where the Department may issue certificates in reference to LEOSA.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.

This rule was adopted on January 31, 2009.

14. Current Five-Year Review Process Course of Action

The Department does not intend to amend this rule.

## **R13-9-402 APPLICATION FOR A CERTIFICATE OF FIREARMS PROFICIENCY**

### 1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 13-3112 states the Director shall adopt rules for the purpose of implementing and administering the program including fees related to the permits that are issued.

### 2. Objective

The objective of this rule is to list the information an applicant is required to provide with an application for a certificate of firearms proficiency.

### 3. Effectiveness of the Rule in Achieving the Objective

The rule is effective.

### 4. Whether the Rule is Consistent with Statutes and other Rules

The rule is consistent with statutes and other rules.

### 5. Rule Enforcement

The Department enforces the rules in a manner consistent with statute. The Department has had no problems with this enforcement procedure.

### 6. Clarity, Conciseness, Understandability of the Rule

The Department determined the rule is clear, concise, and understandable.

### 7. Written Criticisms of the Rule Received in the Last Five Years

The Department received no written criticism of the rules during the last five years.

### 8. Estimated Economic, Small Business and Consumer Impact of the Rule

In a Five-Year Review Report (5YRR) approved by the Governor's Regulatory Review Council on May 5, 2015, the Department concluded the economic impact statements prepared when the rules were made were accurate. The Department has completed no rulemakings since 2015 and has received no information suggesting its previous conclusion regarding the accuracy of the economic impact statements was incorrect.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis.

10. Previous Five-Year Review Process Course of Action

No previous action was indicated.

11. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined the benefits of the rules outweigh the costs to the State and the rules impose the least burden and cost to the regulated public. This enables a potential applicant to know the information on which the Department will base a decision regarding issuance of a LEOSA-authorized certificate of firearms proficiency.

In FY2019, 1,669 certificates were issued.

The Department does not deny a LEOSA certificate. LEOSA certificates are valid for one year and the Department only validates the person completed their firearms qualification as specified by the Arizona Peace Officer Standards and Training Board.

12. Determination of the Rule's Stringency Against Federal Law

There is no applicable federal law. LEOSA does not mandate the Department to take any action. A.R.S. § 13-3112(T) creates the condition where the Department may issue certificates in reference to LEOSA.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.

This rule was adopted on January 31, 2009.

14. Current Five-Year Review Process Course of Action

The Department does not intend to amend this rule.

## **R13-9-403 ISSUANCE OF A CERTIFICATE OF FIREARMS PROFICIENCY**

### 1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 13-3112 states the Director shall adopt rules for the purpose of implementing and administering the program including fees related to the permits that are issued.

### 2. Objective

The objective of this rule is to list the information the Department will put on a certificate of firearms proficiency.

### 3. Effectiveness of the Rule in Achieving the Objective

The rule is effective.

### 4. Whether the Rule is Consistent with Statutes and other Rules

The rule is consistent with statutes and other rules.

### 5. Rule Enforcement

The Department enforces the rules in a manner consistent with statute. The Department has had no problems with this enforcement procedure.

### 6. Clarity, Conciseness, Understandability of the Rule

The Department determined the rule is clear, concise, and understandable.

### 7. Written Criticisms of the Rule Received in the Last Five Years

The Department received no written criticism of the rules during the last five years.

### 8. Estimated Economic, Small Business and Consumer Impact of the Rule

In a Five-Year Review Report (5YRR) approved by the Governor's Regulatory Review Council on May 5, 2015, the Department concluded the economic impact statements prepared when the rules were made were accurate. The Department has completed no rulemakings since 2015 and has received no information suggesting its previous conclusion regarding the accuracy of the economic impact statements was incorrect.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis.

10. Previous Five-Year Review Process Course of Action

No previous action was indicated.

11. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined the benefits of the rules outweigh the costs to the State and the rules impose the least burden and cost to the regulated public. This assists with enforcement by enabling law enforcement officers to evaluate whether a certificate of firearms proficiency has actually been issued by the Department.

In FY2019, 1,669 certificates were issued.

The Department does not deny a LEOSA certificate. LEOSA certificates are valid for one year and the Department only validates the person completed their firearms qualification as specified by the Arizona Peace Officer Standards and Training Board.

12. Determination of the Rule's Stringency Against Federal Law

There is no applicable federal law. LEOSA does not mandate the Department to take any action. A.R.S. § 13-3112(T) creates the condition where the Department may issue certificates in reference to LEOSA.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.

This rule was adopted on January 31, 2009.

14. Current Five-Year Review Process Course of Action

The Department does not intend to amend this rule.

## **R13-9-404 RENEWAL OF A CERTIFICATE OF FIREARMS PROFICIENCY**

### 1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 13-3112 states the Director shall adopt rules for the purpose of implementing and administering the program including fees related to the permits that are issued.

### 2. Objective

The objective of this rule is to establish when a certificate of firearms proficiency expires, the procedure for renewing the certificate, and the consequences of failing to renew timely.

### 3. Effectiveness of the Rule in Achieving the Objective

The rule is effective.

### 4. Whether the Rule is Consistent with Statutes and other Rules

The rule is consistent with statutes and other rules.

### 5. Rule Enforcement

The Department enforces the rules in a manner consistent with statute. The Department has had no problems with this enforcement procedure.

### 6. Clarity, Conciseness, Understandability of the Rule

The Department determined the rule is clear, concise, and understandable.

### 7. Written Criticisms of the Rule Received in the Last Five Years

The Department received no written criticism of the rules during the last five years.

### 8. Estimated Economic, Small Business and Consumer Impact of the Rule

In a Five-Year Review Report (5YRR) approved by the Governor's Regulatory Review Council on May 5, 2015, the Department concluded the economic impact statements prepared when the rules were made were accurate. The Department has completed no

rulemakings since 2015 and has received no information suggesting its previous conclusion regarding the accuracy of the economic impact statements was incorrect.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis.

10. Previous Five-Year Review Process Course of Action

No previous action was indicated.

11. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined the benefits of the rules outweigh the costs to the State and the rules impose the least burden and cost to the regulated public. This enables certificate holders to submit a timely and administratively complete renewal application and avoid having the certificate expire.

The Department does not track instructor statistics for reporting purposes due to the use of an antiquated system that does not readily supply information in this area.

12. Determination of the Rule's Stringency Against Federal Law

There is no applicable federal law. LEOSA does not mandate the Department to take any action. A.R.S. § 13-3112(T) creates the condition where the Department may issue certificates in reference to LEOSA.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.

This rule was adopted on January 31, 2009.

14. Current Five-Year Review Process Course of Action

The Department does not intend to amend this rule.

## **R13-9-405 CERTIFICATE HOLDER RESPONSIBILITIES**

### 1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 13-3112 states the Director shall adopt rules for the purpose of implementing and administering the program including fees related to the permits that are issued.

### 2. Objective

The objective of this rule is to inform a certificate holder of the responsibility to carry the certificate when in actual possession of a concealed weapon and to show the certificate and photographic identification upon request of a peace officer.

### 3. Effectiveness of the Rule in Achieving the Objective

The rule is effective.

### 4. Whether the Rule is Consistent with Statutes and other Rules

The rule is consistent with statutes and other rules.

### 5. Rule Enforcement

The Department enforces the rules in a manner consistent with statute. The Department has had no problems with this enforcement procedure.

### 6. Clarity, Conciseness, Understandability of the Rule

The Department determined the rule is clear, concise, and understandable.

### 7. Written Criticisms of the Rule Received in the Last Five Years

The Department received no written criticism of the rules during the last five years.

### 8. Estimated Economic, Small Business and Consumer Impact of the Rule

In a Five-Year Review Report (5YRR) approved by the Governor's Regulatory Review Council on May 5, 2015, the Department concluded the economic impact statements prepared when the rules were made were accurate.

9. Analysis of the State’s Business Competitiveness as Compared to Other States  
The Department has not received any business comparative analysis.
10. Previous Five-Year Review Process Course of Action  
No previous action was indicated.
11. Determination of Probable Benefits Outweighing the Probable Costs  
The Department determined the benefits of the rules outweigh the costs to the State and the rules impose the least burden and cost to the regulated public. The responsibilities specified protect the integrity of the LEOSA certificate of firearms proficiency program and enable a certificate holder to comply with the law.
12. Determination of the Rule’s Stringency Against Federal Law  
There is no applicable federal law. LEOSA does not mandate the Department to take any action. A.R.S. § 13-3112(T) creates the condition where the Department may issue certificates in reference to LEOSA.
13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.  
This rule was adopted on January 31, 2009.
14. Current Five-Year Review Process Course of Action  
The Department does not intend to amend this rule.

## **R13-9-501 APPLICATION FOR RECOGNITION AS A LEOSA INSTRUCTOR**

### 1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 13-3112 states the Director shall adopt rules for the purpose of implementing and administering the program including fees related to the permits that are issued.

### 2. Objective

The objective of this rule is to establish the procedure by which a POST-certified firearms instructor can become recognized by the Department as an instructor of applicants for a LEOSA certificate of firearms proficiency.

### 3. Effectiveness of the Rule in Achieving the Objective

The rule is effective.

### 4. Whether the Rule is Consistent with Statutes and other Rules

The rule is consistent with statutes and other rules.

### 5. Rule Enforcement

The Department enforces the rules in a manner consistent with statute. The Department has had no problems with this enforcement procedure.

### 6. Clarity, Conciseness, Understandability of the Rule

The Department determined the rule is clear, concise, and understandable.

### 7. Written Criticisms of the Rule Received in the Last Five Years

The Department received no written criticism of the rules during the last five years.

### 8. Estimated Economic, Small Business and Consumer Impact of the Rule

In a Five-Year Review Report (5YRR) approved by the Governor's Regulatory Review Council on May 5, 2015, the Department concluded the economic impact statements prepared when the rules were made were accurate. The Department has completed no

rulemakings since 2015 and has received no information suggesting its previous conclusion regarding the accuracy of the economic impact statements was incorrect.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis.

10. Previous Five-Year Review Process Course of Action

No previous action was indicated.

11. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined the benefits of the rules outweigh the costs to the State and the rules impose the least burden and cost to the regulated public. This enables a POST-certified firearms instructor to submit an administratively complete application.

12. Determination of the Rule's Stringency Against Federal Law

There is no applicable federal law. LEOSA does not mandate the Department to take any action. A.R.S. § 13-3112(T) creates the condition where the Department may issue certificates in reference to LEOSA.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.

This rule was adopted on January 31, 2009.

14. Current Five-Year Review Process Course of Action

The Department does not intend to amend this rule.

## **R13-9-502 LEOSA INSTRUCTOR RESPONSIBILITIES**

### 1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 13-3112 states the Director shall adopt rules for the purpose of implementing and administering the program including fees related to the permits that are issued.

### 2. Objective

The objective of this rule is to list the responsibilities of an individual recognized by the Department as a LEOSA instructor.

### 3. Effectiveness of the Rule in Achieving the Objective

The rule is effective.

### 4. Whether the Rule is Consistent with Statutes and other Rules

The rule is consistent with statutes and other rules.

### 5. Rule Enforcement

The Department enforces the rules in a manner consistent with statute. The Department has had no problems with this enforcement procedure.

### 6. Clarity, Conciseness, Understandability of the Rule

The Department determined the rule is clear, concise, and understandable.

### 7. Written Criticisms of the Rule Received in the Last Five Years

The Department received no written criticism of the rules during the last five years.

### 8. Estimated Economic, Small Business and Consumer Impact of the Rule

In a Five-Year Review Report (5YRR) approved by the Governor's Regulatory Review Council on May 5, 2015, the Department concluded the economic impact statements prepared when the rules were made were accurate. The Department has completed no rulemakings since 2015 and has received no information suggesting its previous conclusion regarding the accuracy of the economic impact statements was incorrect.

9. Analysis of the State’s Business Competitiveness as Compared to Other States  
The Department has not received any business comparative analysis.
10. Previous Five-Year Review Process Course of Action  
No previous action was indicated.
11. Determination of Probable Benefits Outweighing the Probable Costs  
The Department determined the benefits of the rules outweigh the costs to the State and the rules impose the least burden and cost to the regulated public. The responsibilities specified protect the integrity of the LEOSA instructor program and enable a recognized LEOSA instructor to comply with the law.
12. Determination of the Rule’s Stringency Against Federal Law  
There is no applicable federal law. LEOSA does not mandate the Department to take any action. A.R.S. § 13-3112(T) creates the condition where the Department may issue certificates in reference to LEOSA.
13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.  
This rule was adopted on January 31, 2009.
14. Current Five-Year Review Process Course of Action  
The Department does not intend to amend this rule.

## **R13-9-601    SUSPENSION AND REVOCATION**

### 1.    Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 13-3112 states the Director shall adopt rules for the purpose of implementing and administering the program including fees related to the permits that are issued.

### 2.    Objective

The objective of this rule is to prescribe the circumstances under which and the procedure by which the Department will suspend or revoke a permit or authorization as a firearms-safety training organization or instructor.

### 3.    Effectiveness of the Rule in Achieving the Objective

The rule requires amendment to remove (B) and under (D), (E), (F) and (G)(2-3) remove the reference to the occupation/organization as it is no longer regulated.

### 4.    Whether the Rule is Consistent with Statutes and other Rules

The rule is not consistent with A.R.S. § 31-3112 due to the language regarding the occupation and organization no longer regulated.

### 5.    Rule Enforcement

The Department enforces the rules in a manner consistent with statute. The Department has had no problems with this enforcement procedure.

### 6.    Clarity, Conciseness, Understandability of the Rule

The Department determined the rule is clear, concise, and understandable.

### 7.    Written Criticisms of the Rule Received in the Last Five Years

The Department received no written criticism of the rules during the last five years.

### 8.    Estimated Economic, Small Business and Consumer Impact of the Rule

In a Five-Year Review Report (5YRR) approved by the Governor's Regulatory Review Council on May 5, 2015, the Department concluded the economic impact statements

prepared when the rules were made were accurate. The Department has completed no rulemakings since 2015 and has received no information suggesting its previous conclusion regarding the accuracy of the economic impact statements was incorrect. There are currently 345,538 Concealed Weapons Permits issued in Arizona. During FY2019, there were 100,628 applications for new permits, of which 685 were denied because the applicant was not qualified.

During FY2019, the Department suspended 295 permits because the permit holder was no longer qualified to have the permit. Thirty-two permits were revoked, generally because the permit holder became a prohibited possessor.

There are currently 345,538 Concealed Weapons Permits issued in Arizona. During FY2019, there were 100,628 applications for new permits.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis.

10. Previous Five-Year Review Process Course of Action

The previous report indicated the rule required amendment to remove language to the occupation and organization no longer regulated. No action was taken on the previous report. The Department was uncertain whether it would pursue a rulemaking moratorium exemption and did not initiate a rulemaking since the rules were revised in 2015. Over the last five years, in the period since the last report, the Concealed Weapons Permit Unit was engaging in other prolonged and complex activities and internal restructuring that hindered opportunities for rulemaking. For example:

- The Unit was engaged with planning and moving to a new building.
- The Unit is planning to transition to an online web-based system. Funding was received in FY2020 and a vendor is being selected. As this new system will require significant rule changes for requesting or renewing a permit, the decision was to suspend rulemaking until the system specifications were finalized.

- The Unit conducted a LEAN process through the Government Transformation Office. A Kaizen was conducted and implemented to improve efficiencies which resulted in the removal of backlogs and one business day processing times.
- Three previous managers did not consider rulemaking to be a priority. The current manager recognizes rulemaking as a priority.
- There have been no major challenges to the current rule and the Department has been accommodating to requests; for example, a member of the public through the ombudsmen's office requested the Unit adopt permanent resident alien allowances similar to the Department of Transportation for a permit. The Department has adopted that request.

11. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined the benefits of the rules outweigh the costs to the State and the rules impose the least burden and cost to the regulated public. This enables permit holders to avoid being subject to discipline.

There are currently 345,538 Concealed Weapons Permits issued in Arizona. During FY2019, there were 100,628 applications for new permits, of which 685 were denied because the applicant was not qualified.

During FY2019, the Department suspended 295 permits because the permit holder was no longer qualified to have the permit. Thirty-two permits were revoked, generally because the permit holder became a prohibited possessor.

From FY2014 to FY2019, the number of concealed-weapons-permit holders increased more than 55 percent, from 222,397 to 345,538. The number of applications for new permits increased more than 200 percent without complaint. This suggests those regulated by the rules believe the benefits outweigh the costs.

12. Determination of the Rule's Stringency Against Federal Law

There is no applicable federal law.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.

This rule was adopted on January 31, 2009.

14. Current Five-Year Review Process Course of Action

The Department intends to amend this rule and seek a rulemaking exemption in July 2021 which is the expected completed date of a new, online permit and payment system.

## **R13-9-602 HEARING PROCEDURES**

### 1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 13-3112 states the Director shall adopt rules for the purpose of implementing and administering the program including fees related to the permits that are issued.

### 2. Objective

The objective of this rule is to prescribe the hearing procedure used by the Department.

### 3. Effectiveness of the Rule in Achieving the Objective

The rule is effective.

### 4. Whether the Rule is Consistent with Statutes and other Rules

The rule is consistent with statutes and other rules.

### 5. Rule Enforcement

The Department enforces the rules in a manner consistent with statute. The Department has had no problems with this enforcement procedure.

### 6. Clarity, Conciseness, Understandability of the Rule

The Department determined the rule is clear, concise, and understandable.

### 7. Written Criticisms of the Rule Received in the Last Five Years

The Department received no written criticism of the rules during the last five years.

### 8. Estimated Economic, Small Business and Consumer Impact of the Rule

In a Five-Year Review Report (5YRR) approved by the Governor's Regulatory Review Council on May 5, 2015, the Department concluded the economic impact statements prepared when the rules were made were accurate. The Department has completed no rulemakings since 2015 and has received no information suggesting its previous conclusion regarding the accuracy of the economic impact statements was incorrect.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis.

10. Previous Five-Year Review Process Course of Action

No previous action was indicated.

11. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined the benefits of the rules outweigh the costs to the State and the rules impose the least burden and cost to the regulated public. This enables a permit holder to prepare for a disciplinary hearing.

In the last five years, three hearings were held and the Department's decision was affirmed in all three cases.

12. Determination of the Rule's Stringency Against Federal Law

There is no applicable federal law.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.

This rule was adopted on January 31, 2009.

14. Current Five-Year Review Process Course of Action

The Department does not intend to amend this rule.

## **R13-9-603 REHEARING OR REVIEW OF DECISION**

### 1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Director may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 13-3112 states the Director shall adopt rules for the purpose of implementing and administering the program including fees related to the permits that are issued.

### 2. Objective

The objective of this rule is to specify the procedures and standards for requesting a rehearing or review of a Department decision.

### 3. Effectiveness of the Rule in Achieving the Objective

The rule requires amendment under (B) to remove the reference to the occupation/organization as it is no longer regulated.

### 4. Whether the Rule is Consistent with Statutes and other Rules

The rule is not consistent with A.R.S. § 31-3112 due to the language regarding the occupation and organization no longer regulated.

### 5. Rule Enforcement

The Department enforces the rules in a manner consistent with statute. The Department has had no problems with this enforcement procedure.

### 6. Clarity, Conciseness, Understandability of the Rule

The Department determined the rule is clear, concise, and understandable.

### 7. Written Criticisms of the Rule Received in the Last Five Years

The Department received no written criticism of the rules during the last five years.

### 8. Estimated Economic, Small Business and Consumer Impact of the Rule

In a Five-Year Review Report (5YRR) approved by the Governor's Regulatory Review Council on May 5, 2015, the Department concluded the economic impact statements prepared when the rules were made were accurate. The Department has completed no

rulemakings since 2015 and has received no information suggesting its previous conclusion regarding the accuracy of the economic impact statements was incorrect.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis.

10. Previous Five-Year Review Process Course of Action

The previous report indicated the rule required amendment to remove language to the occupation and organization no longer regulated. No action was taken on the previous report. The Department was uncertain whether it would pursue a rulemaking moratorium exemption and did not initiate a rulemaking since the rules were revised in 2015. Over the last five years, in the period since the last report, the Concealed Weapons Permit Unit was engaging in other prolonged and complex activities and internal restructuring that hindered opportunities for rulemaking. For example:

- The Unit was engaged with planning and moving to a new building.
- The Unit is planning to transition to an online web-based system. Funding was received in FY2020 and a vendor is being selected. As this new system will require significant rule changes for requesting or renewing a permit, the decision was to suspend rulemaking until the system specifications were finalized.
- The Unit conducted a LEAN process through the Government Transformation Office. A Kaizen was conducted and implemented to improve efficiencies which resulted in the removal of backlogs and one business day processing times.
- Three previous managers did not consider rulemaking to be a priority. The current manager recognizes rulemaking as a priority.
- There have been no major challenges to the current rule and the Department has been accommodating to requests; for example, a member of the public through the ombudsmen's office requested the Unit adopt permanent resident alien allowances similar to the Department of Transportation for a permit. The Department has adopted that request.

11. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined the benefits of the rules outweigh the costs to the State and the rules impose the least burden and cost to the regulated public. This enables permit holders to be aware of procedures to request a rehearing and the procedures the Department will follow.

In the last five years, no re-hearings were requested.

12. Determination of the Rule's Stringency Against Federal Law

There is no applicable federal law.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.

This rule was adopted on January 31, 2009.

14. Current Five-Year Review Process Course of Action

The Department intends to amend this rule and seek a rulemaking exemption in July 2021 which is the expected completed date of a new, online permit and payment system.



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

**TITLE 13. Department of Public Safety**  
**Chapter 09. Department of Public Safety - Concealed Weapons Permits**

Correction: Expired Rule Removed  
R13-9-302

REMOVE Supp. 15-2  
Pages: 1 - 9

REPLACE with Supp. 17-4  
Pages: 1 - 9

*The Council can answer questions about EXPIRED rules in this Chapter:*

Name: Governor's Regulatory Review Council  
Address: 100 N 15th Ave #305  
Phoenix, AZ 85007  
Phone: (602) 542-2058

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

**PUBLISHER**  
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**Office of the Secretary of State, Administrative Rules Division**

## 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  
December 31, 2017

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### **RULES**

A.R.S. § 41-1001(17) states: “‘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. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

### **ADMINISTRATIVE CODE SUPPLEMENTS**

Rules filed by an agency to be published in the Administrative Code are updated quarterly. 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 2017 is cited as Supp. 17-1.

### **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.

### **ARTICLES AND SECTIONS**

Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering system separated into subsections.

### **HISTORICAL NOTES AND EFFECTIVE DATES**

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

### **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 the introduction of a chapter can be found at the Secretary of State’s website, [www.azsos.gov/services/legislative-filings](http://www.azsos.gov/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 Arizona Administrative Register online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the Administrative Register link.

In the Administrative Code the Office includes editor’s notes at the beginning of a chapter indicating that certain rulemaking Sections were 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**

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. 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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*Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.*

**TITLE 13. PUBLIC SAFETY**

**CHAPTER 9. DEPARTMENT OF PUBLIC SAFETY - CONCEALED WEAPONS PERMITS**

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*Article 2, consisting of Sections R13-9-201 thru R13-9-208, made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4).*

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*Article 3, consisting of Sections R13-9-301 thru R13-9-309, made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4).*

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*Article 4, consisting of Sections R13-9-401 and R13-9-402, made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4).*

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*Article 5, consisting of Sections R13-9-501 and R13-9-502, made by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1).*

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**ARTICLE 1. GENERAL PROVISIONS****R13-9-101. Definitions**

In this Chapter, unless otherwise specified:

1. “Adequate documentation” has the same meaning as prescribed in A.R.S. § 13-3112(E)(6).
2. “Administrative completeness review time-frame” has the same meaning as prescribed in A.R.S. § 41-1072.
3. “Applicant” means an individual or organization that submits an application form and the required fee to the Department for:
  - a. A Concealed Weapons Permit,
  - b. Renewal of a Concealed Weapons Permit,
  - c. Firearms-safety instructor authorization,
  - d. Renewal of firearms-safety instructor authorization,
  - e. Firearms-safety training organization authorization,
  - f. A certificate of firearms proficiency, or
  - g. Recognition as a firearms-proficiency instructor.
4. “Certificate of firearms proficiency” means a document issued by the Department to an individual who meets the requirements of LEOSA.
5. “Classifiable fingerprints” means fingerprint impressions that meet the criteria of the Federal Bureau of Investigation, as contained in Form FD-258 (Rev. 5-11-99), published by the U.S. Government Printing Office. This form is incorporated by reference and available from the Department and the FBI (Attn: Logistical Support Unit, CJIS Division, 1000 Custer Hollow Road, Clarksburg, WV 26306) or online at [www.bookstore.gpo.gov](http://www.bookstore.gpo.gov). The material incorporated by reference contains no future editions or amendments.
6. “Completion certificate” means adequate documentation that an individual completed an eight-hour, Department-authorized, firearms-safety training program.
7. “Department” means the Department of Public Safety.
8. “Director” means the Director of the Arizona Department of Public Safety.
9. “Firearm” has the same meaning as prescribed in A.R.S. § 13-3101.
10. “Firearms-safety instructor” means an individual who is authorized under this Chapter to conduct firearms-safety training.
11. “Firearms-safety training program” means a course of instruction in the safe and lawful use of a firearm that is authorized by the Department and meets the requirements of A.R.S. § 13-3112(O).
12. “Honorably retired peace officer” means an individual who separates from a law enforcement agency after at least 10 years of service, receives a medical, disability, or regular retirement pension or annuity as a result of qualifying years of service as a peace officer, and has a letter from the law enforcement agency confirming these facts.
13. “LEOSA” means the federal Law Enforcement Officers Safety Act of 2004.
14. “LEOSA instructor” means an individual who is certified by POST as a firearms instructor and authorized by the Department to provide training to individuals seeking a certificate of firearms proficiency.
15. “Live ammunition” means a cartridge consisting of a case, primer, propellant powder, and a single metallic projectile, no less than 30 grain, and with a velocity more than 500 feet per second when fired. Live ammunition does not include simulated, marking, or rubber projectile ammunition.
16. “NRA” means the National Rifle Association.
17. “Organization” means a person or entity legally established under all applicable federal, state, city, and county law and authorized to conduct business in Arizona that is authorized by the Department to teach a Department-authorized firearms-safety training program to applicants.

18. “Original application” means a form referenced in this Chapter that is not a copy and contains the original signature of an applicant.
19. “Party” has the same meaning as prescribed in A.R.S. § 41-1001.
20. “Peace officer” has the same meaning as prescribed in A.R.S. § 13-105.
21. “Permit” means an identification card issued by the Department that authorizes the named holder to carry concealed weapons subject to the requirements of A.R.S. § 13-3112 and this Chapter.
22. “Permit holder” means an individual who has a Department-issued permit to carry concealed weapons.
23. “POST” means the Arizona Peace Officer Standards and Training Board.
24. “Prohibited possessor” has the same meaning as prescribed in A.R.S. § 13-3101(6) and means any individual to whom it is unlawful to sell or otherwise dispose of a firearm under 18 U.S.C. 922(d) or (g).
25. “Qualified retired officer” means a qualified retired law enforcement officer as defined by 18 U.S.C. 926C(c).
26. “Resident” has the same meaning as prescribed in A.R.S. § 28-2001.
27. “Responsible party” means an individual who is responsible for administration of an authorized firearms-safety training organization and who serves as the contact between the organization and the Department.
28. “Substantive review time-frame” has the same meaning as prescribed in A.R.S. § 41-1072.
29. “Weapon” has the same meaning as deadly weapon as defined in A.R.S. § 13-3101.

**Historical Note**

Adopted effective January 12, 1996 (Supp. 96-1). Amended by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-4).

**R13-9-102. Application and Processing Fees**

- A. Under the authority provided by A.R.S. § 13-3112, the Department establishes and shall collect the following fees:
  1. New Concealed Weapons Permit – \$43;
  2. Renewal of a Concealed Weapons Permit – \$43;
  3. Certificate of firearms proficiency – \$20;
  4. Replacing a lost, stolen, or damaged permit or certificate – \$10;
  5. Name change on a permit or certificate – \$10.
- B. The Department shall collect a fee in an amount necessary to cover the cost of federal and state fingerprint processing for criminal history record checks from all applicants required under this Chapter to submit fingerprints for a criminal history record check.
- C. An applicant shall submit the required fees by a cashier’s or certified check or money order made payable to the Arizona Department of Public Safety. The Department does not accept credit cards or personal checks. All fees are non-refundable unless A.R.S. § 41-1077 applies.

**Historical Note**

Adopted effective January 12, 1996 (Supp. 96-1). Section repealed; new Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-4).

**R13-9-103. Application Forms**

- A. The Department shall provide and an applicant shall use an application form for:

## Department of Public Safety – Concealed Weapons Permits

1. An initial Concealed Weapons Permit or renewal of the permit,
  2. A firearms-safety instructor authorization or renewal of the authorization,
  3. Authorization of a firearms-safety training organization,
  4. A certificate of firearms proficiency, or
  5. Authorization as a LEOSA instructor.
- B.** Application forms may be obtained from the Concealed Weapons Permit Unit of the Department or online at [www.azdps.gov/ccw](http://www.azdps.gov/ccw). Upon request, the Concealed Weapons Permit Unit shall advise an individual or organization of other locations where application forms may be obtained.
- Historical Note**
- Adopted effective January 12, 1996 (Supp. 96-1). Section repealed; new Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-4).
- R13-9-104. Time-frames for Department Action on Applications**
- A.** For the purpose of compliance with A.R.S. § 41-1072 et seq., the Department establishes the time-frames listed in Table 1. Under A.R.S. § 41-1073(E)(2), the Department is not establishing a time-frame for issuance of the following licenses because the Department shall grant or deny each license within seven days after receipt of an application:
1. Authorization of a firearms-safety training organization under R13-9-302,
  2. A certificate of firearms proficiency under R13-9-402, and
  3. Recognition as a LEOSA instructor under R13-9-501.
- B.** An administratively complete application consists of all the information and documents listed in:
1. R13-9-202 for a Concealed Weapons Permit,
  2. R13-9-204 for renewal of a Concealed Weapons Permit,
  3. R13-9-308 for a firearms-safety instructor authorization, or
  4. R13-9-309 for renewal of a firearms-safety instructor authorization.
- C.** The administrative completeness review time-frame listed in Table 1 begins on the date the Department receives an application.
1. If the application is not administratively complete when received, the Department shall send a notice of deficiency to the applicant. The Department shall include in the deficiency notice a list of the documents and information needed to complete the application.
  2. From the date of the deficiency notice, the applicant shall submit to the Department, within the time for response to a deficiency notice provided in Table 1, the missing documents and information. The time-frame for the Department to finish the administrative completeness review is suspended from the date of the deficiency notice until the date the Department receives the missing documents and information.
3. The Department and applicant may agree in writing to extend the time in subsection (C)(2) upon written request by the applicant before the end of the time.
  4. If the applicant fails to provide the missing documents and information within the time allowed, the Department shall close the applicant's file. If an individual whose file is closed wants to be considered further for a permit or approval, the individual shall submit a new application under R13-9-202, R13-9-204, R13-9-308, or R13-9-309.
- D.** The substantive review time-frame listed in Table 1 begins on the date that the Department determines an application is administratively complete.
1. During the substantive review time-frame, the Department may make one comprehensive written request for additional information. The Department and applicant may agree in writing to allow the Department to make a supplemental request for additional information.
  2. From the date of the comprehensive request for additional information, the applicant shall submit to the Department, within the time for response to a comprehensive request provided in Table 1, the additional information. The time-frame for the Department to finish the substantive review of the application is suspended from the date of the comprehensive request for additional information until the Department receives the additional information.
  3. The Department and applicant may agree in writing to extend the time in subsection (D)(2) upon written request by the applicant before the end of the time.
  4. If the applicant fails to provide the additional information within the time allowed, the Department shall close the applicant's file. If an individual whose file is closed wants to be considered further for a permit or approval, the individual shall submit a new application under R13-9-202, R13-9-204, R13-9-308, or R13-9-309.
- E.** When the substantive review is complete, the Department shall inform the applicant in writing of its decision whether to grant or deny a permit or authorization to the applicant.
- F.** The Department shall deny a permit, certificate, authorization, or recognition if it determines that the applicant does not meet all criteria required by statute and rule.
1. The Department shall include in its notice of denial the information required under A.R.S. § 41-1092.03(A).
  2. Under A.R.S. § 13-3112(H), an individual who is denied a Concealed Weapons Permit may submit additional documentation to the Department within 20 days of receipt of the notice of denial and the Department shall reconsider its denial.
  3. An applicant who is denied a permit, certificate, authorization, or recognition may appeal the Department's decision under A.R.S. Title 41, Chapter 6, Article 10.
- G.** The Department shall grant a permit, certificate, authorization, or recognition if it determines that the applicant meets all criteria required by statute and rule.
- Historical Note**
- Adopted effective January 12, 1996 (Supp. 96-1). Section repealed; new Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-4).

**Table 1. Time-frames for Department Action on Applications (in days)**

Application Type	Administrative Review Time-frame	Time for Response to Deficiency Notice	Substantive Review Time-frame	Time for Response to Comprehensive Request	Over-all Time-frame
Concealed Weapons Permit R13-9-202	14	40	46	20	60
Renewal of Concealed Weapons Permit R13-9-204	14	40	46	20	60
Authorization of Firearms-safety Instructor R13-9-308	14	40	46	20	60
Renewal of Authorization of Firearms-safety Instructor R13-9-309	14	40	46	20	60

**Historical Note**

Table 1 made by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-4).

January 1, 2005 (Supp. 04-4).

**R13-9-105. Repealed**

**Historical Note**

Adopted effective January 12, 1996 (Supp. 96-1). Section repealed by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4).

**R13-9-106. Repealed**

**Historical Note**

Adopted effective January 12, 1996 (Supp. 96-1). Section repealed by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4).

**R13-9-107. Repealed**

**Historical Note**

Adopted effective January 12, 1996 (Supp. 96-1). Section repealed by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4).

**R13-9-108. Repealed**

**Historical Note**

Adopted effective January 12, 1996 (Supp. 96-1). Section repealed by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4).

**R13-9-109. Repealed**

**Historical Note**

Adopted effective January 12, 1996 (Supp. 96-1). Section repealed by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4).

**R13-9-110. Repealed**

**Historical Note**

Adopted effective January 12, 1996 (Supp. 96-1). Section repealed by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4).

**R13-9-111. Repealed**

**Historical Note**

Adopted effective January 12, 1996 (Supp. 96-1). Section repealed by final rulemaking at 10 A.A.R. 4752, effective

**R13-9-112. Repealed**

**Historical Note**

Adopted effective January 12, 1996 (Supp. 96-1). Section repealed by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4).

**R13-9-113. Repealed**

**Historical Note**

Adopted effective January 12, 1996 (Supp. 96-1). Section repealed by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4).

**ARTICLE 2. CONCEALED WEAPONS PERMIT: APPLICATION; RENEWAL; RESPONSIBILITIES**

**R13-9-201. Concealed Weapons Permit Eligibility**

- A. Except as provided in subsection (B), an applicant for a Concealed Weapons Permit shall meet all requirements under A.R.S. § 13-3112(E), and not currently be a prohibited possessor under state or federal law.
- B. An applicant is exempt from the training requirement in A.R.S. § 13-3112(E)(6) if the applicant:
  1. Is an active federally credentialed law enforcement officer;
  2. Is an active POST-certified peace officer;
  3. Is an active county detention officer and weapons certified by the officer’s employing agency; or
  4. Is an honorably retired federal, state, or local peace officer with at least 10 years of active service.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-4).

**R13-9-202. Application for a Concealed Weapons Permit**

To obtain a Concealed Weapons Permit, an applicant who is eligible under R13-9-201 shall:

1. Submit to the Department an original application, using a form available from the Department, that includes the following information:
  - a. Full legal name;
  - b. County of residence and residential address, including zip code, or descriptive location of residence if an address is not assigned;

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- c. Mailing address if different from residential address;
  - d. Social Security number (optional);
  - e. Contact telephone numbers;
  - f. Descriptive information about the applicant including race, gender, height, weight, eye and hair colors, and date and place of birth;
  - g. A statement of whether the applicant:
    - i. Is a citizen of the United States;
    - ii. Was born outside of the United States or one of its territories;
    - iii. Has satisfactorily completed the firearms-safety training program;
    - iv. Is currently under indictment for a felony offense;
    - v. Has ever been convicted of a felony offense, and if so, whether the conviction was expunged, set aside, or vacated, or whether the applicant's civil rights were restored;
    - vi. Is currently under indictment for a misdemeanor domestic violence offense;
    - vii. Has ever been convicted for a misdemeanor domestic violence offense and if so, whether the conviction was expunged, set aside, or vacated;
    - viii. Has been discharged from the United States Armed Forces under dishonorable conditions;
    - ix. Suffers from a mental illness and has ever been adjudicated mentally incompetent or committed to a mental institution by court order; and
    - x. Is an active-duty POST-certified Arizona peace officer, federally credentialed peace officer, weapons-certified county detention officer, or honorably retired federal, state, or local peace officer with at least 10 years of service; and
  - h. The applicant's dated signature attesting that the information provided in the application is true to the best of the applicant's knowledge.
2. In addition to the application form required under subsection (1), an applicant shall:
- a. Submit adequate documentation obtained within the last 60 months; or
  - b. If exempt from the training requirement under A.R.S. § 13-3112(E)(6), submit a letter on official letterhead of the agency employing or from which the applicant is honorably retired that:
    - i. States that the applicant's duties are or were primarily the investigation and apprehension of individuals suspected of violating criminal laws; and
    - ii. Includes the applicant's name, job title or position, dates of employment, current employment status, and the name and telephone number of an individual who can verify the information provided;
  - c. Submit a copy of one of the following if born outside the United States or one of its territories or if not a citizen of the United States:
    - i. Certificate of naturalization,
    - ii. Both the front and back of a permanent resident alien card, USCIS Form I-94, or other federally issued document authorizing the applicant to be in the United States,
    - iii. Record of birth abroad to an American citizen,
    - iv. Record of birth to Armed Service personnel, or
    - v. Passport issued by the United States;
  - d. Submit two full sets of classifiable fingerprints; and
  - e. Submit the fees required under R13-9-102(A) and (B).
- Historical Note**
- New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-4).
- R13-9-203. Issuance of a Concealed Weapons Permit**
- A. If an applicant meets the requirements of A.R.S. § 13-3112 and this Chapter and is not currently a prohibited possessor under state or federal law, the Department shall issue to the applicant a Concealed Weapons Permit containing:
    - 1. The permit holder's legal name, as shown on the application;
    - 2. The permit holder's date of birth;
    - 3. The permit holder's physical description, including race, gender, height, weight, and hair and eye colors;
    - 4. A permit number;
    - 5. The dates of issuance and expiration; and
    - 6. The title of the permit, "State of Arizona Concealed Weapons Permit."
  - B. The Department shall mail the permit to the residential or mailing address shown on the application.
- Historical Note**
- New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-4).
- R13-9-204. Renewal of Concealed Weapons Permit**
- A. A Concealed Weapons Permit expires five years after it is issued. If a Concealed Weapons Permit expires, the former permit holder shall not unlawfully carry a concealed weapon until the former permit holder applies for and is issued a new Concealed Weapons Permit.
  - B. To renew a Concealed Weapons Permit, the permit holder shall, no more than 90 days before or 60 days after the date of expiration:
    - 1. Submit to the Department the application required under R13-9-202(1);
    - 2. Submit the fee required under R13-9-102(A);
    - 3. If not a citizen of the United States, submit a copy of the front and back of the federally issued document that authorizes the permit holder to be in the United States; and
  - C. If a former permit holder fails to comply with subsection (B), the former permit holder may obtain a new Concealed Weapons Permit only by complying with all provisions of R13-9-202.
  - D. If a permit holder is a member of the United States armed forces, Arizona national guard, or reserves of any military establishment of the United States and is on federal active duty and deployed overseas at the time the permit holder's Concealed Weapons Permit expires, the permit holder may renew the permit by complying with subsection (B) within 90 days after the end of the overseas deployment. To renew a permit under this subsection, the permit holder shall include evidence of the deployment with the renewal application.
- Historical Note**
- New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R.

4658, effective January 31, 2009 (Supp. 08-4).

**R13-9-205. Permit Holder Responsibilities**

- A. Upon request of any peace officer, a permit holder who is in actual possession of a concealed weapon shall present the permit to the peace officer for inspection. If the permit does not include a photograph of the permit holder, the permit holder shall also present one of the following types of official photographic identification:
1. Driver license issued by any state,
  2. Military identification card,
  3. Identification license issued under A.R.S. § 28-3165, or
  4. Passport.
- B. A permit holder shall not deface, alter, mutilate, reproduce, lend, transfer, or sell a permit.
- C. To ensure timely communication from the Department, a permit holder shall provide notice to the Department within 10 days after a change of address.
- D. A permit holder shall inform the Department by telephone within 72 hours if the permit holder is arrested or indicted for an offense that would make the permit holder unqualified under A.R.S. § 13-3112 or if the permit holder becomes a prohibited possessor.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1).

**R13-9-206. Lost, Stolen, or Damaged Concealed Weapons Permit**

- A. A permit holder whose Concealed Weapons Permit is lost, stolen, or damaged shall notify the Department in writing within 10 days of determining that the permit is lost, stolen, or damaged. When advised of a lost, stolen, or damaged permit, the Department shall invalidate the permit. The permit holder shall not carry a concealed weapon until the Department issues a replacement permit.
- B. The Department shall issue a replacement permit to a permit holder who:
1. Submits a written request;
  2. Submits the fee specified in R13-9-102; and
  3. Returns the permit if it is damaged.
- C. The Department shall ensure that the replacement permit has the same expiration date as the lost, stolen, or damaged permit.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-4).

**R13-9-207. Repealed**

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Section repealed by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1).

**R13-9-208. Change in Name of Permit Holder**

- A. A permit holder whose name is legally changed shall provide written notice to the Department and request a revised Concealed Weapons Permit within 10 days of the name change. The permit holder shall ensure that the written request for a revised Concealed Weapons Permit:
1. Contains both the previous and new names,
  2. Is accompanied by a copy of the court document or marriage certificate authorizing the name change, and

3. Includes the fee specified in R13-9-102.

- B. Within 15 working days after receipt of a request for a revised permit, the Department shall mail the revised permit to the permit holder.
- C. The Department shall ensure that a revised permit has the same expiration date as the previous permit.
- D. Upon receipt of a revised permit, the permit holder shall return the previous permit to the Department.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-4).

**ARTICLE 3. FIREARMS-SAFETY TRAINING: ORGANIZATIONS AND INSTRUCTORS**

**R13-9-301. Repealed**

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Section repealed by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1).

**R13-9-302. Expired**

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-4). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 795, effective March 27, 2015; expired Section removed in Supp. 17-4.

**R13-9-303. Repealed**

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Section repealed by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1).

**R13-9-304. Repealed**

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Section repealed by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1).

**R13-9-305. Expired**

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-4). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 795, effective March 27, 2015 (Supp. 15-2).

**R13-9-306. Repealed**

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Section repealed by final rulemaking at 13 A.A.R. 550, effective April 7, 2007

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(Supp. 07-1).

**R13-9-307. Expired****Historical Note**

New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-4). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 795, effective March 27, 2015 (Supp. 15-2).

**R13-9-308. Expired****Historical Note**

New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-4). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 795, effective March 27, 2015 (Supp. 15-2).

**R13-9-309. Expired****Historical Note**

New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-4). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 795, effective March 27, 2015 (Supp. 15-2).

**R13-9-310. Expired****Historical Note**

New Section made by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-4). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 795, effective March 27, 2015 (Supp. 15-2).

**ARTICLE 4. CERTIFICATE OF FIREARMS PROFICIENCY****R13-9-401. Certificate of Firearms Proficiency Eligibility**

To be eligible to receive a LEOSA-authorized certificate of firearms proficiency from the Department, an individual shall:

1. Be a resident of Arizona; and
2. Be a qualified retired law enforcement officer. An individual is a qualified retired law enforcement officer if the individual:
  - a. Is retired in good standing from service with a public agency as a law enforcement officer for a reason other than mental instability;
  - b. While in service as a law enforcement officer, was authorized by law to engage in or supervise the prevention, detection, investigation, prosecution, or incarceration of a person for any violation of law, and had statutory powers of arrest;
  - c. Was regularly employed as a law enforcement officer for a total of 15 years or more or, if employed as a law enforcement officer for fewer than 15 years, retired after any applicable probationary period of service due to a service-connected disability, as determined by the agency;
  - d. Has a non-forfeitable right to benefits under the retirement plan of the agency;
  - e. Meets the training and qualification standards of an active-duty law enforcement officer in Arizona;

- f. Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
- g. Is not prohibited by federal law from possessing a firearm.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Former R13-9-401 renumbered to R13-9-601; new R13-9-401 made by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1).

**R13-9-402. Application for a Certificate of Firearms Proficiency**

To obtain a certificate of firearms proficiency, an applicant who is eligible under R13-9-401 shall submit:

1. An original application, using a form available from the Department, which provides the following information about the applicant:
  - a. Full legal name;
  - b. Residential address or descriptive location of residence if an address is not assigned;
  - c. Mailing address if different from the residential address;
  - d. Social Security number (optional);
  - e. Telephone number;
  - f. E-mail address;
  - g. Descriptive information including race, gender, height and weight, eye and hair colors, and date and place of birth;
  - h. Name and address of the law enforcement agency from which the applicant is retired; and
  - i. The applicant's dated signature affirming that the information provided is true and accurate;
2. Documentation that the applicant met the requirement under R13-9-401(2)(e) within the last 12 months;
3. A copy of photographic identification from a law enforcement agency indicating that the applicant is retired from the agency;
4. A letter from the law enforcement agency from which the applicant is retired that:
  - a. Is on agency letterhead,
  - b. Includes the applicant's name, rank, employee or badge number, dates of employment, and retired status; and
  - c. Provides the name and telephone number of an individual within the agency who can verify the information provided; and
5. The fee required under R13-9-102.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 4752, effective January 1, 2005 (Supp. 04-4). Former R13-9-402 renumbered to R13-9-603; new R13-9-402 made by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-4).

**R13-9-403. Issuance of a Certificate of Firearms Proficiency**

The Department shall issue a certificate of firearms proficiency to an individual who is eligible under R13-9-401 and submits the information and documents required under R13-9-402. The Department shall ensure that the certificate of firearms proficiency contains:

1. The following information about the certificate holder:
  - a. Legal name as shown on the application submitted under R13-9-402;
  - b. Birth date;

- c. Physical description including race, gender, height and weight, and eye and hair colors; and
  - d. Name of the law enforcement agency from which retired;
2. The statement, “Retired Law Enforcement Officer,” following the certificate holder’s name;
  3. A certificate number;
  4. The date of qualification;
  5. The title “Retired Law Enforcement Officer’s Certificate of Firearms Proficiency”; and
  6. A brief statement on the reverse side identifying the certificate and its purpose.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-4).

**R13-9-404. Renewal of a Certificate of Firearms Proficiency**

- A. A certificate of firearms proficiency expires one year after the date of qualification.
- B. To renew a certificate of firearms proficiency before it expires, the certificate holder shall comply with the requirements in R13-9-402(1), (2), and (5).
- C. If a certificate of firearms proficiency expires, the former certificate holder may obtain a new certificate only by complying with all of the requirements in R13-9-402.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-4).

**R13-9-405. Certificate Holder Responsibilities**

- A. A certificate holder who is in actual possession of a concealed weapon shall also be in possession of:
  1. Photographic identification issued by a law enforcement agency indicating that the certificate holder is a retired law enforcement officer; and
  2. The certificate of firearms proficiency issued under R13-9-403.
- B. On request by any peace officer, a certificate holder who is in actual possession of a concealed weapon shall present the documents listed in subsection (A).

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1).

**ARTICLE 5. LEOSA-RECOGNIZED INSTRUCTORS****R13-9-501. Application for Recognition as a LEOSA Instructor**

- A. To be recognized as a LEOSA instructor, an individual shall:
  1. Be certified as a firearms instructor by POST; and
  2. Submit an application, available from the Department, which provides the following information about the applicant:
    - a. Name,
    - b. Mailing address,
    - c. Telephone number,
    - d. E-mail address,
    - e. Social Security number (optional), and
    - f. Name of the law enforcement agency with which the applicant is or was employed.
- B. After receiving the application required under subsection (A)(2) and confirming that the applicant is certified by POST as a firearms instructor, the Department shall recognize the

applicant as a LEOSA instructor and assign a LEOSA-instructor number.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-4).

**R13-9-502. LEOSA Instructor Responsibilities**

An individual recognized by the Department as a LEOSA instructor shall:

1. Comply with all POST firearms-certification rules and requirements when performing firearms-qualification services for a retired law enforcement officer;
2. Complete the documentation required under R13-9-402(2) for a retired law enforcement officer who successfully completes the firearms-qualification requirement;
3. Maintain for five years the following information about a retired law enforcement officer to whom firearms-qualification services are provided:
  - a. Name and age of the retired law enforcement officer at the time firearms-qualification services are provided;
  - b. Date and number of hours that the retired law enforcement officer received firearms-qualification services;
  - c. Physical location at which firearms-qualification services were provided;
  - d. Name of LEOSA instructor and LEOSA-instructor number; and
  - e. Whether the retired law enforcement officer passed, failed, or withdrew from the firearms qualification; and
4. Provide notice to the Department within 10 days:
  - a. Of a change in mailing address or telephone number;
  - b. Of a change in the information regarding the LEOSA instructor posted on the Department’s web site;
  - c. If the individual no longer wants to be recognized as a LEOSA instructor; and
  - d. If the individual’s POST certification as a firearms instructor is suspended or revoked.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1).

**ARTICLE 6. HEARINGS AND DISCIPLINARY PROCEEDINGS****R13-9-601. Suspension and Revocation**

- A. If a permit holder is arrested or indicted for an offense that would disqualify the permit holder under A.R.S. § 13-3112 or if the permit holder is a prohibited possessor, the Department shall immediately suspend and seize the permit. The Department shall restore the permit under the conditions specified in A.R.S. § 13-3112(C).
- B. If an authorized firearms-safety instructor becomes a prohibited possessor under state or federal law, the Department shall immediately suspend the authorization of the firearms-safety instructor.
- C. If a permit holder is convicted of an offense that disqualifies the permit holder under A.R.S. § 13-3112, the Department shall revoke the permit. The Department shall restore the permit under the conditions specified in A.R.S. § 13-3112(C).
- D. After providing notice and an opportunity for hearing, the Department shall suspend or revoke a permit or Department authorization if the Department determines that the permit

## Department of Public Safety – Concealed Weapons Permits

holder or authorized firearms-safety training organization or firearms-safety instructor:

1. Failed to maintain all conditions specified in A.R.S. § 13-3112 and this Chapter; or
  2. Provided false, incomplete, or misleading information to the Department.
- E.** If the Department revokes a permit or authorization, the affected individual or firearms-safety training organization shall not apply for another permit or authorization for at least two years from the date of revocation.
- F.** If the Department determines that emergency action is required to suspend a permit or Department authorization, the Department shall send a notice of summary suspension by certified mail to the last known address of the individual or firearms-safety training organization. The Department shall ensure that the notice includes all requirements under A.R.S. § 41-1092 et seq.
- G.** Upon receipt of a notice of a summary suspension or final administrative decision suspending or revoking a permit or authorization:
1. The permit holder shall not unlawfully carry a concealed weapon and shall return the permit to the Department within five working days;
  2. The firearms-safety instructor shall immediately stop conducting firearms-safety training, and a firearms-safety training organization shall ensure that a suspended or revoked firearms-safety instructor teaching for the organization immediately stops conducting firearms-safety training for applicants for Concealed Weapons Permits; and
  3. The firearms-safety training organization shall immediately stop sponsoring firearms-safety training for applicants for Concealed Weapons Permits.
- H.** The Department shall require that a permit be surrendered or seize a permit when required to do so under law.

**Historical Note**

Section R13-9-601 renumbered from R13-9-401 and amended by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 4658, effective January 31, 2009 (Supp. 08-4).

**R13-9-602. Hearing Procedures**

The Department shall conduct all hearings according to the procedures in A.R.S. Title 41, Chapter 6, Article 10 and the rules issued by the Office of Administrative Hearings.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1).

**R13-9-603. Rehearing or Review of Decision**

- A.** The Department shall provided for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10 and the rules issued by the Office of Administrative Hearings.
- B.** Within 30 days after the Department enters a final administrative decision, the affected individual or firearms-safety training organization may, but is not required to, file a motion for rehearing or review of the decision.
- C.** A party may amend a motion for rehearing or review at any time before the Department rules on the motion.

- D.** The Department may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
1. Irregularity in the proceedings of the Department or any order or abuse of discretion that deprived the moving party of a fair hearing;
  2. Misconduct by the Department, its staff, or an administrative law judge;
  3. Accident or surprise that could not have been prevented by ordinary prudence;
  4. Newly discovered evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
  5. Excessive penalty;
  6. 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
  7. The findings of fact or decision is not justified by the evidence or is contrary to law.
- E.** The Department 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 in subsection (D). An order modifying a decision or granting a rehearing or review shall specify with particularity the grounds for the order. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order.
- F.** Not later than 15 days after the date of a decision, and after giving the parties notice and an opportunity to be heard, the Department may, on its own initiative, order a rehearing or review of its decision for any reason it might have granted a rehearing or review on motion of a party. The Department may grant a motion for rehearing or review, timely served, for a reason not stated in the motion. An order granting a rehearing or review shall specify the grounds on which the rehearing or review is granted.
- G.** When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may serve opposing affidavits within 15 days after service of the motion. This period may be extended by the Department for a maximum of 20 days for good cause as described in subsection (H) or upon written stipulation of the parties. Reply affidavits may be permitted.
- H.** The Department may extend all time limits listed in this Section upon a showing of good cause. A party demonstrates good cause by showing that the grounds for the party's motion or other action could not have been known in time, using reasonable diligence, and a ruling on the motion will:
1. Further administrative convenience, expedition, or economy; or
  2. Avoid undue prejudice to any party.
- I.** If, in a particular decision, the Department makes a specific finding that the immediate effectiveness of the decision is necessary for preservation of the public health, safety, or welfare, the decision may be issued as a final decision without an opportunity for rehearing or review. If an application for judicial review of the decision is made, it shall be made under A.R.S. § 12-901 et seq.

**Historical Note**

Section R13-9-603 renumbered from R13-9-402. Section repealed; new Section made by final rulemaking at 13 A.A.R. 550, effective April 7, 2007 (Supp. 07-1).

### Funding Issue #10 – Public Service Portal

In keeping with Governor Ducey’s direction to operate at the speed of business, DPS plans to provide all fee-based public services via a Public Service Portal. The Department is completing a draft Project Investment Justification (PIJ) for submission to Arizona Strategic Enterprises Technology (ASET). If all goes well, the portal may be operational by the end of FY 2020.

Most of the funding for the project would come from non-appropriated funds which derive their revenue from user fees. However, the Concealed Weapons Permit Unit (CWPU) would require an appropriation from its fund to pay for related costs.

	<b>FY 2020</b>	<b>FY 2021</b>	<b>On-going</b>
Phase I Development (Non-Approp. Units)	\$2,048,000		
Phase II Development (CWPU)		527,200	
Licensing and Maintenance (Non-Approp. Units)		954,300	954,300
Licensing and Maintenance (CWPU)		245,700	245,700
<b>TOTAL</b>	<b>\$2,048,000</b>	<b>\$1,727,200</b>	<b>\$1,200,000</b>

If the project is approved and funded, DPS would proceed with Phase I development in FY 2020. This would build the necessary framework for services relating to non-criminal justice fingerprint-based fingerprint checks, security guard and private investigator licensing, public records requests, department records requests, and student transportation services. If funds are appropriated, Phase II would provide the framework for concealed weapons permit applications to be received on-line in FY 2021.

## Funding Issue Detail

Agency: Department of Public Safety

Issue: 10 Public Service Portal

Program: Criminal Information and Licensing  
Fund: PS2518-A Concealed Weapons Permit Fund (Appropriated)

Calculated ERE: \$0.00  
Uniform Allowance: \$0.00

Expenditure Categories	FY 2021
FTE	0.0
Personal Services	0.0
Employee Related Expenses	0.0
<b>Subtotal Personal Services and ERE:</b>	<b>0.0</b>
Professional & Outside Services	0.0
Travel In-State	0.0
Travel Out-of-State	0.0
Food	0.0
Aid to Organizations & Individuals	0.0
Other Operating Expenditures	772.9
Equipment	0.0
Capital Outlay	0.0
Debt Services	0.0
Cost Allocation	0.0
Transfers	0.0
<b>Program / Fund Total:</b>	<b>772.9</b>

Program: Criminal Information and Licensing  
Fund: PS2433-N Fingerprint Clearance Card Fund (Non-Appropriated)

Calculated ERE: \$0.00  
Uniform Allowance: \$0.00

Expenditure Categories	FY 2021
FTE	0.0
Personal Services	0.0
Employee Related Expenses	0.0
<b>Subtotal Personal Services and ERE:</b>	<b>0.0</b>
Professional & Outside Services	0.0
Travel In-State	0.0
Travel Out-of-State	0.0
Food	0.0
Aid to Organizations & Individuals	0.0
Other Operating Expenditures	(494.8)
Equipment	0.0
Capital Outlay	0.0
Debt Services	0.0
Cost Allocation	0.0
Transfers	0.0
<b>Program / Fund Total:</b>	<b>(494.8)</b>

Program: Criminal Information and Licensing  
Fund: PS2278-N DPS Records Processing Fund (Non-Appropriated)

Calculated ERE: \$0.00  
Uniform Allowance: \$0.00

Expenditure Categories	FY 2021
FTE	0.0
Personal Services	0.0
Employee Related Expenses	0.0
<b>Subtotal Personal Services and ERE:</b>	<b>0.0</b>

### **Funding Issue #11 – CWPU Tracking System Maintenance and Operating**

As appropriated for FY 2020, the Concealed Weapons Permit Unit (CWPU) will contract to construct a new internal database for tracking permits and applications. The new system is estimated to cost \$410,000. The annual maintenance payment to the contractor is estimated to be \$100,000. DPS requests the appropriation of this amount from the Conceal Weapons Permit Fund for FY 2021 and annually thereafter.

In addition, the Department has installed an automated phone-tree system and plans to purchase two printers to produce low-volume replacement permits for walk-in customers. Combined, these products will have annual maintenance costs of \$6,000. DPS requests the appropriation of this amount beginning in FY 2021.

## Funding Issue Detail

Agency: Department of Public Safety

Issue: 10 Public Service Portal

Professional & Outside Services	0.0
Travel In-State	0.0
Travel Out-of-State	0.0
Food	0.0
Aid to Organizations & Individuals	0.0
Other Operating Expenditures	(414.8)
Equipment	0.0
Capital Outlay	0.0
Debt Services	0.0
Cost Allocation	0.0
Transfers	0.0

**Program / Fund Total:** (414.8)

Program: Criminal Information and Licensing  
Fund: PS2490-N DPS Licensing Fund (Non-Appropriated)

Calculated ERE: \$0.00  
Uniform Allowance: \$0.00

Expenditure Categories	FY 2021
FTE	0.0
Personal Services	0.0
Employee Related Expenses	0.0
<b>Subtotal Personal Services and ERE:</b>	<b>0.0</b>
Professional & Outside Services	0.0
Travel In-State	0.0
Travel Out-of-State	0.0
Food	0.0
Aid to Organizations & Individuals	0.0
Other Operating Expenditures	(52.7)
Equipment	0.0
Capital Outlay	0.0
Debt Services	0.0
Cost Allocation	0.0
Transfers	0.0

**Program / Fund Total:** (52.7)

Issue: 11 CWPU Tracking System Maintenance and Operating

Program: Criminal Information and Licensing  
Fund: PS2518-A Concealed Weapons Permit Fund (Appropriated)

Calculated ERE: \$15.10  
Uniform Allowance: \$0.00

Expenditure Categories	FY 2021
FTE	0.0
Personal Services	31.1
Employee Related Expenses	7.1
<b>Subtotal Personal Services and ERE:</b>	<b>38.2</b>
Professional & Outside Services	0.0
Travel In-State	0.0
Travel Out-of-State	0.0
Food	0.0
Aid to Organizations & Individuals	0.0
Other Operating Expenditures	106.0
Equipment	0.0
Capital Outlay	0.0

## **Funding Issue #12 – Cloud First Initiative**

Per the State's Cloud First Initiative, DPS is preparing to move as many computer operations as possible into the cloud. The Department has multiple systems that will need to be moved, so this the project will occur in phases. With funding, phase I could occur in FY 2021 at an estimated cost of \$2,874,400. Of this, \$820,200 would represent one-time costs, with the remainder on-going for hosting, licensing, and other costs.

Additional conversion and hosting costs would occur beginning in year 2 and beyond. For example, phase I costs do not include the cost of hosting the Criminal Justice Information System or the conversion and hosting costs for the Arizona Fingerprint Identification System or the Department's facial recognition system.

The complete Project Investment Justification and additional work by the Arizona Enterprise System Technology (ASET) group will provide more information on this project.

## Funding Issue Detail

Agency: Department of Public Safety

Issue: 11 CWPU Tracking System Maintenance and Operating

Debt Services	0.0
Cost Allocation	0.0
Transfers	0.0

Program / Fund Total: 144.2

Program: Criminal Information and Licensing  
Fund: AA1000-A General Fund (Appropriated)

Calculated ERE: (\$15.10)  
Uniform Allowance: \$0.00

Expenditure Categories	FY 2021
FTE	0.0
Personal Services	(31.1)
Employee Related Expenses	(7.1)
<b>Subtotal Personal Services and ERE:</b>	<b>(38.2)</b>
Professional & Outside Services	0.0
Travel In-State	0.0
Travel Out-of-State	0.0
Food	0.0
Aid to Organizations & Individuals	0.0
Other Operating Expenditures	0.0
Equipment	0.0
Capital Outlay	0.0
Debt Services	0.0
Cost Allocation	0.0
Transfers	0.0
<b>Program / Fund Total:</b>	<b>(38.2)</b>

Issue: 12 Cloud First Initiative

Program: Communications and Information Technology  
Fund: AA1000-A General Fund (Appropriated)

Calculated ERE: \$0.00  
Uniform Allowance: \$0.00

Expenditure Categories	FY 2021
FTE	0.0
Personal Services	0.0
Employee Related Expenses	0.0
<b>Subtotal Personal Services and ERE:</b>	<b>0.0</b>
Professional & Outside Services	820.2
Travel In-State	0.0
Travel Out-of-State	0.0
Food	0.0
Aid to Organizations & Individuals	0.0
Other Operating Expenditures	2,004.2
Equipment	50.0
Capital Outlay	0.0
Debt Services	0.0
Cost Allocation	0.0
Transfers	0.0
<b>Program / Fund Total:</b>	<b>2,874.4</b>



# ARIZONA DEPARTMENT OF PUBLIC SAFETY

2102 WEST ENCANTO BLVD. P.O. BOX 6638 PHOENIX, ARIZONA 85005-6638 (602) 223-2000

*“Courteous Vigilance”*

DOUGLAS A. DUCEY Governor FRANK L. MILSTEAD Director

February 12, 2020

**DRAFT**

The Honorable Douglas A. Ducey  
Governor of Arizona  
1700 West Washington Street  
Phoenix, Arizona 85007

Dear Governor Ducey:

In accordance with Executive Order 2020-02, *Moratorium on Rulemaking to Promote Job Creation and Economic Development; Implementation of Licensing Reform Policies*, the Department of Public Safety is requesting approval to conduct an expedited rulemaking for the purpose of revising 13 A.A.C. 9, *Concealed Weapons Permits*, Sections R13-9-101, 103, 104, 201, 202, 204, 601, 603 and Table 1. The justification for this request is to: (1)(f) comply with a state statutory requirement and (1)(j) eliminate rules which are antiquated, redundant or otherwise no longer necessary for the operation of state government.

The Department intends to conduct an expedited rulemaking under A.R.S. § 41-1027(A)(1), (3), (4) and (6) to amend or repeal rules made obsolete by repeal or supersession of an agency’s statutory authority, update a website address, clarifies language of a rule without changing its effect, updates an incorporated by reference federal document and amends rules that are outdated and no longer necessary for the operation of state government. This rulemaking does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated.

Since the rules were last amended in 2008, the Legislature has amended A.R.S. § 13-3112 five times (See Laws 2010, Chapter 59; Laws 2011, Chapter 85; Laws 2014, Chapter 12; Laws 2015, Chapter 52; and Laws 2018, Chapter 206). All of 13 A.A.C. 9, Article 3 was repealed in 2015. Key legislative changes include no longer requiring a permit applicant to complete a firearms safety training program authorized by the Department, eliminating the Department’s authority to authorize organizations to provide firearms-safety training and eliminating the Department’s authority to conduct background checks of firearms-safety instructors.

R13-9-101, Definitions

Definition 3: remove the references to organizations under (c), (d) and (e) as they are no longer statutorily regulated.

Definition 5: update the revision date of the incorporated by reference Federal Bureau of Investigation fingerprint card.

Definitions 10 and 11: remove the reference to the firearms safety instructor as they are no longer statutorily regulated.

Definition 15: remove the reference to live ammunition as the training course is no longer statutorily regulated.

Definition 16: remove the reference to the National Rifle Association as it is not used in the rules.

Definition 17: remove the reference to organizations as they are no longer statutorily regulated.

Definition 24: update the incorrect statutory citations.

Definition 27: remove the reference to responsible party in relation to organizations as they are no longer statutorily regulated.

Renumber the definitions accordingly.

#### R13-9-103

The rule requires amendment to remove references to instructors and organizations as they are no longer regulated.

The Department's website address requires updating.

#### R13-9-104

The rule requires amendment to remove reference to organizations as they are no longer statutorily regulated.

#### Table 1

The rule requires amendment to remove references to organizations and firearm safety instructors as they are no longer statutorily regulated.

#### R13-9-201

The rule requires amendment to update the statutory citation.

#### R13-9-202

The rule requires amendment to remove all references under (1)(g)(x) to peace officers and detention officers as they are no longer statutorily regulated. A.R.S. 31-3112(N)(4) now covers this issue.

The rule requires amendment under (2)(a) to remove the 60 month requirement and replace it with the updated statutory reference of A.R.S. § 13-3112(E)(6)(a-d) or (N)(1-8). The statute changed from 60 months to "Has ever demonstrated..."

The rule requires amendment to remove (2)(b) regarding honorably retired peace officers as it is now covered under the new statutory reference A.R.S. § 31-3112(N)(4).

R13-9-204

The rule requires amendment to reference A.R.S. § 13-3112(E) which states the conditions under which the Department may issue a permit.

R13-9-601

The rule requires amendments to remove Paragraph (B) and under Paragraphs (D), (E), (F) and (G)(2-3) to remove the reference to the occupation/organization as they are no longer statutorily regulated.

R13-9-603

The rule requires amendment to remove the reference to the organization as they are no longer statutorily regulated.

Draft rules are enclosed. This waiver request is limited to only the rules listed. The Department was unable to find alternatives to address the amendments outside of rulemaking. The Department determined a rulemaking to address the amendments is in the best interests of not only the state of Arizona, but the citizens of Arizona.

My staff and I are available to answer any questions or provide additional information.

Sincerely,

**DRAFT ONLY – IN PROCESS OF OBTAINING APPROVALS**

Frank L. Milstead, Colonel  
Director

Enc 1

## DRAFT

### R13-9-101. Definitions

In this Chapter, unless otherwise specified:

1. “Adequate documentation” has the same meaning as prescribed in A.R.S. § 13-3112(E)(6).
2. “Administrative completeness review time-frame” has the same meaning as prescribed in A.R.S. § 41-1072.
3. “Applicant” means an individual or organization that submits an application form and the required fee to the Department for:
  - a. A Concealed Weapons Permit,
  - b. Renewal of a Concealed Weapons Permit,
  - ~~c. Firearms safety instructor authorization,~~
  - ~~d. Renewal of firearms safety instructor authorization,~~
  - ~~e. Firearms safety training organization authorization,~~
  - ~~f.c.~~ A certificate of firearms proficiency, or
  - ~~g.d.~~ Recognition as a firearms-proficiency instructor.
4. “Certificate of firearms proficiency” means a document issued by the Department to an individual who meets the requirements of LEOSA.
5. “Classifiable fingerprints” means fingerprint impressions that meet the criteria of the Federal Bureau of Investigation, as contained in Form FD-258 (~~Rev. 5-11-99~~) (Rev. 5-15-17), published by the U.S. Government Printing Office. This form is incorporated by reference and available from the Department and the FBI (Attn: Logistical Support Unit, CJIS Division, 1000 Custer Hollow Road, Clarksburg, WV 26306) or online at [www.bookstore.gpo.gov](http://www.bookstore.gpo.gov). The material incorporated by reference contains no future editions or amendments.
6. “Completion certificate” means adequate documentation that an individual completed an eight-hour, Department-authorized, firearms-safety training program.
7. “Department” means the Department of Public Safety.
8. “Director” means the Director of the Arizona Department of Public Safety.
9. “Firearm” has the same meaning as prescribed in A.R.S. § 13-3101.
- ~~10. “Firearms safety instructor” means an individual who is authorized under this Chapter to conduct firearms safety training.~~
- ~~11. “Firearms safety training program” means a course of instruction in the safe and lawful use of a firearm that is authorized by the Department and meets the requirements of A.R.S. § 13-3112(O).~~
- ~~12.~~10. “Honorably retired peace officer” means an individual who separates from a law enforcement agency after at least 10 years of service, receives a medical, disability, or regular retirement pension or annuity as a result of qualifying years of service as a peace officer, and has a letter from the law enforcement agency confirming these facts.
- ~~13.~~11. “LEOSA” means the federal Law Enforcement Officers Safety Act of 2004.
- ~~14.~~12. “LEOSA instructor” means an individual who is certified by POST as a firearms instructor and authorized by the Department to provide training to individuals seeking a certificate of firearms proficiency.
- ~~15. “Live ammunition” means a cartridge consisting of a case, primer, propellant powder, and a single metallic projectile, no less than 30 grain, and with a velocity more than 500 feet per second when fired. Live ammunition does not include simulated, marking, or rubber projectile ammunition.~~
- ~~16. “NRA” means the National Rifle Association.~~
- ~~17. “Organization” means a person or entity legally established under all applicable federal, state, city, and county law and authorized to conduct business in Arizona that is authorized by the Department to teach a Department authorized firearms safety training program to applicants.~~
- ~~18.~~13. “Original application” means a form referenced in this Chapter that is not a copy and contains the original signature of an applicant.
- ~~19.~~14. “Party” has the same meaning as prescribed in A.R.S. § 41-1001.

- ~~20-15.~~ “Peace officer” has the same meaning as prescribed in A.R.S. § 13-105.
- ~~24-16.~~ “Permit” means an identification card issued by the Department that authorizes the named holder to carry concealed weapons subject to the requirements of A.R.S. § 13-3112 and this Chapter.
- ~~22-17.~~ “Permit holder” means an individual who has a Department-issued permit to carry concealed weapons.
- ~~23-18.~~ “POST” means the Arizona Peace Officer Standards and Training Board.
- ~~24-19.~~ “Prohibited possessor” has the same meaning as prescribed in ~~A.R.S. § 13-3101(6)~~ A.R.S. § 13-3101(7) and means any individual to whom it is unlawful to sell or otherwise dispose of a firearm under 18 U.S.C. 922(d) or (g).
- ~~25-20.~~ “Qualified retired officer” means a qualified retired law enforcement officer as defined by 18 U.S.C. 926C(c).
- ~~26-21.~~ “Resident” has the same meaning as prescribed in A.R.S. § 28-2001.
- ~~27.~~ “Responsible party” means ~~an individual who is responsible for administration of an authorized firearms safety training organization and who serves as the contact between the organization and the Department.~~
- ~~28-22.~~ “Substantive review time-frame” has the same meaning as prescribed in A.R.S. § 41-1072.
- ~~29-23.~~ “Weapon” has the same meaning as deadly weapon as defined in A.R.S. § 13-3101.

### **R13-9-103. Application Forms**

- A. The Department shall provide and an applicant shall use an application form for:
- ~~1.~~ An initial Concealed Weapons Permit or renewal of the permit,
  - ~~2.~~ ~~A firearms safety instructor authorization or renewal of the authorization,~~
  - ~~3.~~ ~~Authorization of a firearms safety training organization,~~
  - ~~4-2.~~ A certificate of firearms proficiency, or
  - ~~5-3.~~ Authorization as a LEOSA instructor.
- B. Application forms may be obtained from the Concealed Weapons Permit Unit of the Department or online at ~~www.azdps.gov/cew~~ www.azdps.gov/services/public/cwp. Upon request, the Concealed Weapons Permit Unit shall advise an individual or organization of other locations where application forms may be obtained.

### **R13-9-104. Time-frames for Department Action on Applications**

- A. For the purpose of compliance with A.R.S. § 41-1072 et seq., the Department establishes the time-frames listed in Table 1. Under A.R.S. § 41-1073(E)(2), the Department is not establishing a time-frame for issuance of the following licenses because the Department shall grant or deny each license within seven days after receipt of an application:
- ~~1.~~ ~~Authorization of a firearms safety training organization under R13-9-302,~~
  - ~~2-1.~~ A certificate of firearms proficiency under R13-9-402, and
  - ~~3-2.~~ Recognition as a LEOSA instructor under R13-9-501.
- B. An administratively complete application consists of all the information and documents listed in:
1. R13-9-202 for a Concealed Weapons Permit, or
  2. R13-9-204 for renewal of a Concealed Weapons Permit.
  - ~~3.~~ ~~R13-9-308 for a firearms safety instructor authorization, or~~
  - ~~4.~~ ~~R13-9-309 for renewal of a firearms safety instructor authorization.~~
- C. The administrative completeness review time-frame listed in Table 1 begins on the date the Department receives an application.

1. If the application is not administratively complete when received, the Department shall send a notice of deficiency to the applicant. The Department shall include in the deficiency notice a list of the documents and information needed to complete the application.
  2. From the date of the deficiency notice, the applicant shall submit to the Department, within the time for response to a deficiency notice provided in Table 1, the missing documents and information. The time-frame for the Department to finish the administrative completeness review is suspended from the date of the deficiency notice until the date the Department receives the missing documents and information.
  3. The Department and applicant may agree in writing to extend the time in subsection (C)(2) upon written request by the applicant before the end of the time.
  4. If the applicant fails to provide the missing documents and information within the time allowed, the Department shall close the applicant's file. If an individual whose file is closed wants to be considered further for a permit or approval, the individual shall submit a new application under R13-9-202 or R13-9-204, ~~R13-9-308, or R13-9-309.~~
- D.** The substantive review time-frame listed in Table 1 begins on the date that the Department determines an application is administratively complete.
1. During the substantive review time-frame, the Department may make one comprehensive written request for additional information. The Department and applicant may agree in writing to allow the Department to make a supplemental request for additional information.
  2. From the date of the comprehensive request for additional information, the applicant shall submit to the Department, within the time for response to a comprehensive request provided in Table 1, the additional information. The time-frame for the Department to finish the substantive review of the application is suspended from the date of the comprehensive request for additional information until the Department receives the additional information.
  3. The Department and applicant may agree in writing to extend the time in subsection (D)(2) upon written request by the applicant before the end of the time.
  4. If the applicant fails to provide the additional information within the time allowed, the Department shall close the applicant's file. If an individual whose file is closed wants to be considered further for a permit or approval, the individual shall submit a new application under R13-9-202 or R13-9-204, ~~R13-9-308, or R13-9-309.~~
- E.** When the substantive review is complete, the Department shall inform the applicant in writing of its decision whether to grant or deny a permit or authorization to the applicant.
- F.** The Department shall deny a permit, certificate, authorization, or recognition if it determines that the applicant does not meet all criteria required by statute and rule.
1. The Department shall include in its notice of denial the information required under A.R.S. § 41-1092.03(A).
  2. Under A.R.S. § 13-3112(H), an individual who is denied a Concealed Weapons Permit may submit additional documentation to the Department within 20 days of receipt of the notice of denial and the Department shall reconsider its denial.
  3. An applicant who is denied a permit, certificate, authorization, or recognition may appeal the Department's decision under A.R.S. Title 41, Chapter 6, Article 10.
- G.** The Department shall grant a permit, certificate, authorization, or recognition if it determines that the applicant meets all criteria required by statute and rule.

**Table 1. Time-frames for Department Action on Applications (in days)**

Application Type	Administrative Review Time-frame	Time for Response to Deficiency Notice	Substantive Review Time-frame	Time for Response to Comprehensive Request	Over-all Time-frame

Concealed Weapons Permit R13-9-202	14	40	46	20	60
Renewal of Concealed Weapons Permit R13-9-204	14	40	46	20	60
<del>Authorization of Firearms safety Instructor R13-9-308</del>	<del>14</del>	<del>40</del>	<del>46</del>	<del>20</del>	<del>60</del>
<del>Renewal of Authorization of Firearms safety Instructor R13-9-309</del>	<del>14</del>	<del>40</del>	<del>46</del>	<del>20</del>	<del>60</del>

**ARTICLE 2. CONCEALED WEAPONS PERMIT: APPLICATION; RENEWAL;  
RESPONSIBILITIES**

**R13-9-201. Concealed Weapons Permit Eligibility**

- ~~A.~~ Except as provided in subsection (B), an applicant for a Concealed Weapons Permit shall meet all requirements under A.R.S. § 13-3112(E) and (N), and not currently be a prohibited possessor under state or federal law.
- ~~B.~~ ~~An applicant is exempt from the training requirement in A.R.S. § 13-3112(E)(6) if the applicant:~~
- ~~1. Is an active federally credentialed law enforcement officer;~~
  - ~~2. Is an active POST certified peace officer;~~
  - ~~3. Is an active county detention officer and weapons certified by the officer's employing agency; or~~
  - ~~4. Is an honorably retired federal, state, or local peace officer with at least 10 years of active service.~~

**R13-9-202. Application for a Concealed Weapons Permit**

To obtain a Concealed Weapons Permit, an applicant who is eligible under R13-9-201 shall:

1. Submit to the Department an original application, using a form available from the Department, that includes the following information:
  - a. Full legal name;
  - b. County of residence and residential address, including zip code, or descriptive location of residence if an address is not assigned;
  - c. Mailing address if different from residential address;
  - d. Social Security number (optional);
  - e. Contact telephone numbers;
  - f. Descriptive information about the applicant including race, gender, height, weight, eye and hair colors, and date and place of birth;
  - g. A statement of whether the applicant:
    - i. Is a citizen of the United States;
    - ii. Was born outside of the United States or one of its territories;
    - iii. Has satisfactorily completed the firearms-safety training program;

- iv. Is currently under indictment for a felony offense;
  - v. Has ever been convicted of a felony offense, and if so, whether the conviction was expunged, set aside, or vacated, or whether the applicant's civil rights were restored;
  - vi. Is currently under indictment for a misdemeanor domestic violence offense;
  - vii. Has ever been convicted for a misdemeanor domestic violence offense and if so, whether the conviction was expunged, set aside, or vacated;
  - viii. Has been discharged from the United States Armed Forces under dishonorable conditions;
  - ix. Suffers from a mental illness and has ever been adjudicated mentally incompetent or committed to a mental institution by court order; and
  - ~~x. Is an active duty POST certified Arizona peace officer, federally credentialed peace officer, weapons certified county detention officer, or honorably retired federal, state, or local peace officer with at least 10 years of service; and~~
  - h. The applicant's dated signature attesting that the information provided in the application is true to the best of the applicant's knowledge.
2. In addition to the application form required under subsection (1), an applicant shall:
- a. Submit adequate documentation ~~obtained within the last 60 months~~ under A.R.S. § 31-3112(E)(6)(a-d) or (N)(1-8); or
  - ~~b. If exempt from the training requirement under A.R.S. § 13-3112(E)(6), submit a letter on official letterhead of the agency employing or from which the applicant is honorably retired that;~~
    - ~~i. States that the applicant's duties are or were primarily the investigation and apprehension of individuals suspected of violating criminal laws; and~~
    - ~~ii. Includes the applicant's name, job title or position, dates of employment, current employment status, and the name and telephone number of an individual who can verify the information provided;~~
  - ~~c. d.~~ Submit a copy of one of the following if born outside the United States or one of its territories or if not a citizen of the United States:
    - i. Certificate of naturalization,
    - ii. Both the front and back of a permanent resident alien card, USCIS Form I-94, or other federally issued document authorizing the applicant to be in the United States,
    - iii. Record of birth abroad to an American citizen,
    - iv. Record of birth to Armed Service personnel, or
    - v. Passport issued by the United States;
  - ~~d. e.~~ Submit two full sets of classifiable fingerprints; and
  - ~~e. f.~~ Submit the fees required under R13-9-102(A) and (B).

### **R13-9-204. Renewal of Concealed Weapons Permit**

- A.** A Concealed Weapons Permit expires five years after it is issued. If a Concealed Weapons Permit expires, the former permit holder shall not unlawfully carry a concealed weapon until the former permit holder applies for and is issued a new Concealed Weapons Permit.
- B.** To renew a Concealed Weapons Permit, the permit holder shall, no more than 90 days before or 60 days after the date of expiration:
  - 1. Submit to the Department the application required under R13-9-202(1);
  - 2. Submit the fee required under R13-9-102(A);
  - 3. If not a citizen of the United States, submit a copy of the front and back of the federally issued document that authorizes the permit holder to be in the United States; and
- C.** The permit holder shall be in compliance with A.R.S. § 31-3112(E).
- ~~C. D.~~** If a former permit holder fails to comply with subsection (B), the former permit holder may obtain a new Concealed Weapons Permit only by complying with all provisions of R13-9-202.

~~D.E.~~ If a permit holder is a member of the United States armed forces, Arizona national guard, or reserves of any military establishment of the United States and is on federal active duty and deployed overseas at the time the permit holder's Concealed Weapons Permit expires, the permit holder may renew the permit by complying with subsection (B) within 90 days after the end of the overseas deployment. To renew a permit under this subsection, the permit holder shall include evidence of the deployment with the renewal application.

## ARTICLE 6. HEARINGS AND DISCIPLINARY PROCEEDINGS

### R13-9-601. Suspension and Revocation

A. If a permit holder is arrested or indicted for an offense that would disqualify the permit holder under A.R.S. § 13-3112 or if the permit holder is a prohibited possessor, the Department shall immediately suspend and seize the permit. The Department shall restore the permit under the conditions specified in A.R.S. § 13-3112(C).

~~B. If an authorized firearms safety instructor becomes a prohibited possessor under state or federal law, the Department shall immediately suspend the authorization of the firearms safety instructor.~~

~~C.B.~~ If a permit holder is convicted of an offense that disqualifies the permit holder under A.R.S. § 13-3112, the Department shall revoke the permit. The Department shall restore the permit under the conditions specified in A.R.S. § 13-3112(C).

~~D.C.~~ After providing notice and an opportunity for hearing, the Department shall suspend or revoke a permit or Department authorization if the Department determines that the permit holder ~~or authorized firearms safety training organization or firearms safety instructor~~:

1. Failed to maintain all conditions specified in A.R.S. § 13-3112 and this Chapter; or
2. Provided false, incomplete, or misleading information to the Department.

~~E.D.~~ If the Department revokes a permit or authorization, the affected individual ~~or firearms safety training organization~~ shall not apply for another permit or authorization for at least two years from the date of revocation.

~~F.E.~~ If the Department determines that emergency action is required to suspend a permit or Department authorization, the Department shall send a notice of summary suspension by certified mail to the last known address of the individual ~~or firearms safety training organization~~. The Department shall ensure that the notice includes all requirements under A.R.S. § 41-1092 et seq.

~~G.F.~~ Upon receipt of a notice of a summary suspension or final administrative decision suspending or revoking a permit or authorization, the permit holder shall not unlawfully carry a concealed weapon and shall return the permit to the Department within five business days:

- ~~1. The permit holder shall not unlawfully carry a concealed weapon and shall return the permit to the Department within five working days;~~
- ~~2. The firearms safety instructor shall immediately stop conducting firearms safety training, and a firearms safety training organization shall ensure that a suspended or revoked firearms safety instructor teaching for the organization immediately stops conducting firearms safety training for applicants for Concealed Weapons Permits; and~~
- ~~3. The firearms safety training organization shall immediately stop sponsoring firearms safety training for applicants for Concealed Weapons Permits.~~

~~H.G.~~ The Department shall require that a permit be surrendered or seize a permit when required to do so under law.

### R13-9-603. Rehearing or Review of Decision

A. The Department shall ~~provided~~ provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10 and the rules issued by the Office of Administrative Hearings.

- B.** Within 30 days after the Department enters a final administrative decision, the affected individual ~~or~~ ~~firearms safety training organization~~ may, but is not required to, file a motion for rehearing or review of the decision.
- C.** A party may amend a motion for rehearing or review at any time before the Department rules on the motion.
- D.** The Department may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
  - 1. Irregularity in the proceedings of the Department or any order or abuse of discretion that deprived the moving party of a fair hearing;
  - 2. Misconduct by the Department, its staff, or an administrative law judge;
  - 3. Accident or surprise that could not have been prevented by ordinary prudence;
  - 4. Newly discovered evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
  - 5. Excessive penalty;
  - 6. 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
  - 7. The findings of fact or decision is not justified by the evidence or is contrary to law.
- E.** The Department 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 in subsection (D). An order modifying a decision or granting a rehearing or review shall specify with particularity the grounds for the order. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order.
- F.** Not later than 15 days after the date of a decision, and after giving the parties notice and an opportunity to be heard, the Department may, on its own initiative, order a rehearing or review of its decision for any reason it might have granted a rehearing or review on motion of a party. The Department may grant a motion for rehearing or review, timely served, for a reason not stated in the motion. An order granting a rehearing or review shall specify the grounds on which the rehearing or review is granted.
- G.** When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may serve opposing affidavits within 15 days after service of the motion. This period may be extended by the Department for a maximum of 20 days for good cause as described in subsection (H) or upon written stipulation of the parties. Reply affidavits may be permitted.
- H.** The Department may extend all time limits listed in this Section upon a showing of good cause. A party demonstrates good cause by showing that the grounds for the party's motion or other action could not have been known in time, using reasonable diligence, and a ruling on the motion will:
  - 1. Further administrative convenience, expedition, or economy; or
  - 2. Avoid undue prejudice to any party.
- I.** If, in a particular decision, the Department makes a specific finding that the immediate effectiveness of the decision is necessary for preservation of the public health, safety, or welfare, the decision may be issued as a final decision without an opportunity for rehearing or review. If an application for judicial review of the decision is made, it shall be made under A.R.S. § 12-901 et seq.

**BOARD OF BEHAVIORAL HEALTH EXAMINERS (F20-0206)**  
Title 4, Chapter 6, Articles 1-11, Board of Behavioral Health Examiners



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** March 3, 2020

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

**FROM:** Council Staff

**DATE:** February 11, 2020

**SUBJECT:** **BOARD OF BEHAVIORAL HEALTH EXAMINERS (F20-0206)**  
Title 4, Chapter 6, Articles 1-11, Board of Behavioral Health Examiners

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### Summary

This Five Year Review Report (5YRR) from the Board of Behavioral Health Examiners (Board) relates to rules in Title 4, Chapter 6, Articles 1-11 regarding the Board of Behavioral Health Examiners. The rules address the following:

- **Article 1: Definitions;**
- **Article 2: General Provisions;**
- **Article 3: Licensure**
- **Article 4: Social Work;**
- **Article 5: Counseling;**
- **Article 6: Marriage and Family Therapy;**
- **Article 7: Substance Abuse Counseling;**
- **Article 8: License Renewal and Continuing Education;**
- **Article 9: Appeal of Licensure or License Renewal Ineligibility;**
- **Article 10: Disciplinary Process; and**
- **Article 11: Standards of Practice.**

The Board includes an introduction section to its 5YRR, where it includes its licensee counts and provides an overview of its recent rulemaking activity. The Board submitted the

previous 5YRR for these rules in January 2015, and the Council approved the previous report in April 2015. At the time the previous 5YRR was submitted, the Board was in the process of conducting an exempt rulemaking in response to significant statutory changes that the Legislature enacted in Laws 2013, Ch. 242. Therefore, the previous proposed course of action included the items the Board was going to address in the exempt rulemaking.

The Board filed the Notice of Exempt Rulemaking in October 2015 with an effective date of November 1, 2015 (21 A.A.R. 2630). The Board describes the changes to the rules in the 2015 Notice of Exempt Rulemaking in this 5YRR.

### **Proposed Action**

The Board requested an exemption from the previous rulemaking moratorium (Executive Order 2019-01) on September 19, 2019 to conduct a rulemaking to amend the rules to do the following: (1) expand the options for non-independent licensees to obtain clinical supervision from behavioral health professionals outside their discipline; (2) modify the curriculum requirements for licensure for substance abuse counselors; (3) provide clarification regarding the tutorials approved by the Board; (4) clarify the process of applying for an independent licensure by exam with a non-independent license earned through the endorsement process; (5) reduce fees collected by the Board; (6) update the telepractice rule to align with national trends; and (7) other technical corrections found since the last rulemaking.

In an email response on September 19, 2019, the Governor's office asked for more information about the rulemaking and allowed the Board to begin informal rulemaking/drafting for the Governor's office to review. The Board responded via email on September 24, 2019 that it would begin its informal rulemaking conversations and when it was closer to having language drafted, would send it to the Governor's office for review. The Board advised Council staff that the Board would decide on the specifics of proposed rule language at its Board meeting on Friday, February 14, 2020 and proceed accordingly. The email correspondence between the Board and the Governor's office is included as part of the Board's 5YRR submission.

**1. Has the agency analyzed whether the rules are authorized by statute?**

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

**2. Summary of the agency's economic impact comparison and identification of stakeholders:**

The stakeholders include: The Board of Behavioral Health Examiners, the Board's licensees, license applicants, regionally accredited colleges or universities, clients of licensees, and the public.

Because the current rules were adopted through an exempt rulemaking, an EIS was not prepared. However, the Board states that it has consistently reduced regulatory burdens on applicants and licensees and has decreased fees where possible.

The Board has seen a 15% increase in applications received for the last several years, which it states are attributable to the reduced regulatory burdens.

**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 rules are necessary to ensure behavioral health professionals have the necessary education, experience and training to provide adequate treatment. The Board's objective is to reduce the burden of regulation where possible while increasing the benefits to public health and safety, and establishing fees that are fair and adequately maintain Board operations. The Department states that the benefits of the rules outweigh the costs to the State and the rules impose the least burden and cost to the regulated public.

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

Yes. The Board filed a Notice of Final Exempt Rulemaking in 2015 and again in 2016, and a Notice of Final Rulemaking in 2018. The Board received and responded to numerous public comments in connection with those rulemakings, which the Board summarizes in this 5YRR.

**5. Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The Board states that the rules are mostly clear, concise, and understandable, except for the following rules, for the reasons stated in the report:

- **R4-6-211** (Direct Supervision: Supervised Work Experience: General);
- **R4-6-214** (Clinical Supervisor Educational Requirements);
- **R4-6-304** (Application for a License by Endorsement); and
- **R4-6-802** (Continuing Education).

The Board states that the rules are mostly consistent with other rules and statutes, except for **R4-6-304** (Application for a License by Endorsement), which needs to be amended due to the recently amended A.R.S. 32-4302 (Out-of-state applicants; residents; military spouses; licensure; certification; exceptions).

The Board indicates that the rules are effective in achieving their objectives.

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

Yes. The Board indicates that the rules are mostly enforced as written, except for R4-6-304 (Application for a License by Endorsement). This rule references two statutes, A.R.S. § 32-3274 (Licensure by endorsement) and 32-4302 (Out-of-state applicants; residents; military spouses; licensure; certification; exceptions), which establish the requirements for licensure for applicants licensed in another state.

One of the requirements in both of these statutes is that the applicant's state(s) of licensure verify that the applicant does not have unresolved or pending complaints. The Board states that an increasing number of states will not release this information until a final disposition of the complaint. Under Arizona law, A.R.S. § 32-3214(A) (Board actions; public access to records; website; compliance deadline), pending complaints/investigations may not be disclosed to the public.

Due to the difficulty in obtaining the release of information from other states, the Board decided to issue licenses based on applicants' signed attestation that they are not the subject of a pending investigation by any state regulatory board or credentialing authority.

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?**

Yes. The Board states that it issues licenses pursuant to its statutes to individuals qualifying for licensure. The type of license that the Board issues falls under an enumerated exception to the general permit requirement in A.R.S. § 41-1037.

9. **Conclusion**

Council staff finds that the rules are mostly clear, concise, understandable, and effective. The Board identifies issues with the rules in this report, and identified specific amendments it would like to make in its request to the Governor's office. Notably, this request included a proposal to reduce a fee(s). The Board advised Council staff that it recently received permission to eliminate the Board's Issuance Fee from the Governor's Office of Strategic Planning and Budgeting.

Council staff finds that the Board completed a sufficient analysis of its rules pursuant to A.R.S. § 41-1056. As discussed above, the Board has already initiated an informal rulemaking process, and expects to proceed with seeking an exemption from the rulemaking moratorium after its Board meeting on February 14, 2020. Council staff recommends approval of this report.



STATE OF ARIZONA  
BOARD OF BEHAVIORAL HEALTH EXAMINERS  
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Board Website: [www.azbbhe.us](http://www.azbbhe.us)  
Email Address: [information@azbbhe.us](mailto:information@azbbhe.us)

DOUGLAS A. DUCEY  
Governor

TOBI ZAVALA  
Executive Director

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November 22, 2019

VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)  
Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
100 North 15<sup>th</sup> Ave, Suite 305  
Phoenix, AZ 85007

RE: Arizona Board of Behavioral Health Examiners  
A.A.C. Title 4, Chapter 6, Articles 1 through 11  
Five-year Review Report

Dear Ms. Sornsin,

Pursuant to A.R.S. § 41-1056, following is the Five-year Review Report of the Arizona Board of Behavioral Health Examiners ("Board") for Arizona Administrative Code Title 4, Chapter 6 which is due under an approved extension by November 29, 2019.

The Board hereby certifies it is in compliance with A.R.S. § 41-1091. Should there be any questions, please contact Donna Dalton at (602) 542-1811 or [donna.dalton@azbbhe.us](mailto:donna.dalton@azbbhe.us).

Sincerely,

A handwritten signature in cursive script, appearing to read "Tobi Zavala".

Tobi Zavala  
Executive Director  
(602) 542-1617  
[Tobi.zavala@azbbhe.us](mailto:Tobi.zavala@azbbhe.us)



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DOUGLAS A. DUCEY  
Governor

TOBI ZAVALA  
Executive Director

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## ATTACHMENTS

ATTACHMENT A	Five-year Review Report
ATTACHMENT B	A.A.C. Title 4, Chapter 6
ATTACHMENT C	A.R.S. Title 32, Chapter 33
ATTACHMENT D	Governor's office approval for informal rulemaking

# ATTACHMENT

A



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DOUGLAS A. DUCEY  
Governor

TOBI ZAVALA  
Executive Director

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# ARIZONA BOARD OF BEHAVIORAL HEALTH EXAMINERS

Arizona Administrative Code

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

Five-year Review Report

November 2019

## INTRODUCTION

The Arizona Board of Behavioral Health Examiners (“Board”) was established by law in 1989 to certify professionals in the fields of Social Work, Professional Counseling, Marriage and Family Therapy, and Substance Abuse Counseling. Voluntary certification changed to mandatory licensure on July 1, 2004.

As of November 2019, the Board’s licensee counts are as follows:

Licensed Baccalaureate Social Worker	104
Licensed Master Social Worker	2578
Licensed Clinical Social Worker	2486
Licensed Associate Counselor	1670
Licensed Professional Counselor	3340
Licensed Associate Marriage and Family Therapist	213
Licensed Marriage and Family Therapist	510
Licensed Substance Abuse Technician	42
Licensed Associate Substance Abuse Counselor	286
Licensed Independent Substance Abuse Counselor	<u>1023</u>
Total Licensees as of November 22, 2019	12252

The Board’s previous five-year review report was submitted in January of 2015. At that time, the Board was in an exempt rulemaking period and was working on proposed rules to meet the updated statutory requirements in Laws 2013, Ch. 242 which significantly changed the statutes that govern the Board. The Board was granted an exemption from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, through November 1, 2015. The Notice of Final Exempt Rulemaking (“NFER 2015”) was filed in October of 2015 with an effective date of November 1, 2015. NFER 2015 modified regulations in every Article in Title 4, Chapter 6, Arizona Administrative Code. Changes of note included:

- Eliminating the Credentialing Committees and establishing Academic Review Committees
- Eliminating reciprocal licensure and replacing it with licensure by endorsement
- Adopting rules for regionally accredited colleges and universities with unaccredited programs to submit their curricula for review and approval
- Modifying the clinical supervisor requirements during the period of supervised work experience to require hours from the same discipline

- Updating the clinical supervision requirements and establishing a process to request exemptions
- Defining the process to be included on the registry of individuals who have met the educational requirements to provide clinical supervision and clarifying the training required
- Adopting the Board's fees in rule
- Updating the license by exam and license by endorsement requirements
- Expanding the examinations accepted for social work licensure
- Allowing for the provision of psychoeducation as part of the supervised work experience
- The Board shall not act on a complaint that is received anonymously or in which the alleged unprofessional conduct occurred more than seven years ago
- Updating the curriculum requirements for licensure
- Expanding the opportunities to complete post-degree coursework to meet curriculum requirements
- Defining the process of synchronizing license expiration dates
- Modifying the continuing education requirements to include a tutorial on the Board's rules and statutes
- Adding a regulation regarding telepractice

Laws 2015, Chapter 154 further revised the Board's statutes and extended the Board's rulemaking exemption through November 1, 2016, so the Board did an additional exempt rulemaking to provide clarification to NFER 2015 and make technical corrections to reduce burdens for applicants and licensees regulated by the Board. A Notice of Final Exempt Rulemaking ("NFER 2016") was filed in October of 2016 with an effective date of November 1, 2016. NFER 2016 modified regulations in Title 4, Chapter 6, Articles 1-8, Arizona Administrative Code including:

- Requiring applicants and licensees to maintain contact information for all places of employment
- Clarified individuals eligible to provide direct supervision
- Clarified the amount of individual and group clinical supervision hours needed for licensure

- Expanded the ability for supervisees to hire outside clinical supervisors
- Established a continuing education clock hour value for the Board approved tutorials
- Clarified the requirements for licensure by endorsement
- Extended the term of temporary licenses to allow for additional time to test
- Allowed for granting extensions to the testing period for licensure
- Clarified the curriculum requirements for marriage and family therapy and substance abuse counselor licensure

In April of 2017, the Board received a petition pursuant to A.R.S. § 41-1093.02(A) from an individual who believed they were harmed by the Board’s regulations A.A.C. R4-6-210(3) and R4-6-211(A) which established the guidelines for practice restrictions for non-independent level licensees, and the settings in which they can work under direct supervision.

The Board reviewed the petition at its meetings in September, October and November of 2017, and voted to move forward with the rulemaking process to modify A.A.C. R4-6-211. In November of 2017, the Board requested and was granted an exemption to the rulemaking moratorium to accomplish several regulatory updates:

- Modify A.A.C. R4-6-306 to expire rather than revoke a temporary license issued to an applicant upon their failure to take or pass the required exam
- Modify A.A.C. R4-6-211 to establish the requirements for supervision of masters level non-independent licensees to practice in which they have ownership interest
- Modify multiple references in rule to allow for additional digital records/signatures/notifications as permitted by statute
- Develop an exemption for supervised work experience acquired outside of Arizona so the Board may consider it based on meeting the other state’s requirements
- Revisions necessitated by statutory changes
- Technical corrections discovered since the previous rulemaking

In March of 2018, the Board requested and was granted approval to expand the scope of the exempt rulemaking to include the reduction of three Board fees.

The Notice of Final Rulemaking (“NFR 2018”) was filed in November of 2018, with an effective date of January 12, 2019.

**Arizona Board of Behavioral Health Examiners**  
**5 YEAR REVIEW REPORT**  
**A.A.C. Title 4. Professions and Occupations**  
**Chapter 6. Board of Behavioral Health Examiners**  
**Submitted for November 2019**

**1. Authorization of the rule by existing statutes:**

General Statutory Authority: A.R.S. § 32-3253(A)(1)

Specific Statutory Authority:

Rule	Authorizing Statute
R4-6-101. Definitions	A.R.S. § 32-3253
R4-6-201. Board Meetings; Elections	A.R.S. § 32-3253
R4-6-203. Academic Review Committee Meetings; Elections	A.R.S. § 32-3262
R4-6-205. Change of Contact Information	A.R.S. § 32-3276
R4-6-206. Change of Name	A.R.S. § 32-3253
R4-6-207. Confidential Records	A.R.S. §§ 32-3253 and 32-3282
R4-6-208. Conviction of a Felony or Prior Disciplinary Action	A.R.S. §§ 32-3251(16) and 32-3275
R4-6-209. Deadline Extensions	A.R.S. §§ 32-3253, 32-3277, and 41-1073
R4-6-210. Practice Limitations	A.R.S. §§ 32-3253, 32-3279, 32-3291, 32-3292, 32-3303, 32-3313 and 32-3321
R4-6-211. Direct Supervision; Supervised Work Experience: General	A.R.S. §§ 32-3253, 32-3279, 32-3291, 32-3292, 32-3303, 32-3313 and 32-3321
R4-6-212. Clinical Supervision Requirements	A.R.S. §§ 32-3253, 32-3293, 32-3301, 32-3311 and 32-3321
R4-6-212.01. Exemptions to Clinical Supervision Requirements	A.R.S. §§ 32-3253, 32-3293, 32-3301, 32-3311 and 32-3321
R4-6-213. Registry of Clinical Supervisors	A.R.S. § 32-3253
R4-6-214. Clinical Supervisor Educational Requirements	A.R.S. § 32-3253

Rule	Authorizing Statute
R4-6-215. Fees and Charges	A.R.S. §§ 32-3253 and 32-3272
R4-6-216. Foreign Equivalency Determination	A.R.S. §§ 32-3253, 32-3291, 32-3292, 32-3293, 32-3301, 32-3311 and 32-3321
R4-6-301. Application for a License by Examination	A.R.S. §§ 32-3253, 32-3275, 32-3280, 41-1080(A), 25-320(P), and 25-502(K)
R4-6-302. Licensing Time-frames	A.R.S. §§ 41-1073 and 32-3253(A)(3)
Table 1. Time Frames (in Days)	A.R.S. §§ 41-1073 and 32-3253(A)(3)
R4-6-304. Application for a License by Endorsement	A.R.S. §§ 32-3274 and 32-4302
R4-6-305. Inactive Status	A.R.S. § 32-3278
R4-6-306. Application for a Temporary License	A.R.S. § 32-3279
R4-6-307. Approval of an Educational Program	A.R.S. § 32-3253
R4-6-401. Curriculum	A.R.S. §§ 32-3291, 32-3292, and 32-3293
R4-6-402. Examination	A.R.S. §§ 32-3291, 32-3292, and 32-3293
R4-6-403. Supervised Work Experience for Clinical Social Worker Licensure	A.R.S. § 32-3293
R4-6-404. Clinical Supervision for Clinical Social Worker Licensure	A.R.S. § 32-3293
R4-6-501. Curriculum	A.R.S. §§ 32-3301 and 32-3303
R4-6-502. Examination	A.R.S. §§ 32-3301 and 32-3303
R4-6-503. Supervised Work Experience for Professional Counselor Licensure	A.R.S. § 32-3301
R4-6-504. Clinical Supervision for Professional Counselor Licensure	A.R.S. § 32-3301
R4-6-505. Post-degree Programs	A.R.S. §§ 32-3301 and 32-3303
R4-6-601. Curriculum	A.R.S. §§ 32-3311 and 32-3313
R4-6-602. Examination	A.R.S. §§ 32-3311 and 32-3313
R4-6-603. Supervised Work Experience for Marriage and Family Therapy Licensure	A.R.S. § 32-3311

Rule	Authorizing Statute
R4-6-604. Clinical Supervision for Marriage and Family Therapy Licensure	A.R.S. § 32-3311
R4-6-605. Post-degree Programs	A.R.S. §§ 32-3311 and 32-3313
R4-6-701. Licensed Substance Abuse Technician Curriculum	A.R.S. § 32-3321
R4-6-702. Licensed Associate Substance Abuse Counselor Curriculum	A.R.S. § 32-3321
R4-6-703. Licensed Independent Substance Abuse Counselor Curriculum	A.R.S. § 32-3321
R4-6-704. Examination	A.R.S. § 32-3321
R4-6-705. Supervised Work Experience for Substance Abuse Counselor Licensure	A.R.S. § 32-3321
R4-6-706. Clinical Supervision for Substance Abuse Counselor Licensure	A.R.S. § 32-3321
R4-6-707. Post-degree Programs	A.R.S. § 32-3321
R4-6-801. Renewal of Licensure	A.R.S. §§ 32-3273 and 32-4301
R4-6-802. Continuing Education	A.R.S. § 32-3273
R4-6-803. Continuing Education Documentation	A.R.S. § 32-3273
R4-6-901. Appeal Process for Licensure Ineligibility	A.R.S. §§ 32-3253, 32-3275, and 41-1092
R4-6-902. Appeal Process for Licensure Renewal Ineligibility	A.R.S. §§ 32-3253, 32-3275, and 41-1092
R4-6-1001. Disciplinary Process	A.R.S. §§ 32-3253, 32-3281 and 32-3282
R4-6-1002. Review or Rehearing of a Board Decision	A.R.S. §§ 32-3253, 32-3281 and 32-3282
R4-6-1101. Consent for Treatment	A.R.S. § 32-3253
R4-6-1102. Treatment Plan	A.R.S. § 32-3253
R4-6-1103. Client Record	A.R.S. §§ 32-3253, 12-2293, and 12-2297
R4-6-1104. Financial and Billing Records	A.R.S. § 32-3253
R4-6-1105. Confidentiality	A.R.S. §§ 32-3253 and 32-3283

Rule	Authorizing Statute
R4-6-1106. Telepractice	A.R.S. § 32-3253

**2. The objective of each rule:**

Rule	Objective
R4-6-101. Definitions	The objective of this rule is to provide uniform definitions of the words used in the Board's rules to ensure the rules are clear and understandable.
R4-6-201. Board Meetings; Elections	The objective of this rule is to mandate when and how often the Board will meet, how meetings are convened, that a quorum is necessary to conduct official business, and how officers are elected.
R4-6-203. Academic Review Committee Meetings; Elections	The objective of this rule is to mandate when and how often each Academic Review Committee will meet, how meetings are convened, that a quorum is necessary to conduct official business, and how officers are elected.
R4-6-205. Change of Contact Information	The objective of this rule is to require licensees and applicants for licensure to notify the Board in writing within 30 days of any change of home or employment contact information.
R4-6-206. Change of Name	The objective of this rule is to require licensees and applicants for licensure to notify the Board in writing within 30 days of any name change.
R4-6-207. Confidential Records	The objective of this rule is to designate Board and Committee records which are confidential and not open to public inspection and provide guidance regarding the limited access that may be available to inspect those records.
R4-6-208. Conviction of a Felony or Prior Disciplinary Action	The objective of this rule is to designate the factors the Board shall consider to determine whether a felony conviction or prior disciplinary action will result in the Board issuing disciplinary sanctions, denying a renewal application, or refusing to issue a license.
R4-6-209. Deadline	The objective of this rule is to establish how deadlines contained

Rule	Objective
Extensions	in the Board rules may be extended.
R4-6-210. Practice Limitations	The objective of this rule is to set the practice limitation for licensees not allowed to practice independently.
R4-6-211. Direct Supervision: Supervised Work Experience: General	The objective of this rule is to establish the practice settings for licensees restricted from practicing independently, and the requirements for acquiring supervised work experience to be used in achieving independent level licensure.
R4-6-212. Clinical Supervision Requirements	The objective of this rule is to establish the minimum requirements for clinical supervision for an applicant for independent level licensure.
R4-6-212.01. Exemptions to Clinical Supervision Requirements	The objective of this rule is to establish an exemption process for an applicant seeking clinical supervision from a supervisor precluded by the rule from providing the clinical supervision.
R4-6-213. Registry of Clinical Supervisors	The objective of this rule is to establish the requirements to be included on the registry of licensees who have met the educational requirements to provide supervision.
R4-6-214. Clinical Supervisor Educational Requirements	The objective of this rule is to establish the educational requirements for individuals providing clinical supervision to applicants for independent level licensure.
R4-6-215. Fees and Charges	The objective of this rule is to establish the Board's fees and charges, and the method of payment permitted.
R4-6-216. Foreign Equivalency Determination	The objective of this rule is to establish the requirements for a qualifying degree earned in a foreign country and the process to have the degree evaluated for equivalency of educational standards.
R4-6-301. Application for a License by Examination	The objective of this rule is to establish the processes required for licensure applications for applicants qualifying by education and examination.
R4-6-302. Licensing Time Frames	The objective of this rule is to establish overall, administrative, and substantive time frames for the types of licenses issued by

Rule	Objective
	the Board.
R4-6-304. Application for a License by Endorsement	The objective of this rule is to establish the standards under which an applicant with a license to practice behavioral health in another jurisdiction may qualify for a license by endorsement.
R4-6-305. Inactive Status	The objective of this rule is to establish the requirements for a licensee to place their license on inactive status and postpone renewal of licensure.
R4-6-306. Application for a Temporary License	The objective of this rule is to establish the standards under which an applicant for licensure may be granted a temporary license to practice pending completion of the application and examination process.
R4-6-307. Approval of an Educational Program	The objective of this rule is to establish the process under which regionally accredited colleges or universities with academic programs not otherwise accredited may submit their programs to be reviewed to determine if they are consistent with the curriculum requirements for licensure.
R4-6-401. Curriculum	The objective of this rule is to establish the curriculum requirements for social work licensure.
R4-6-402. Examination	The objective of this rule is to establish the examination requirements for social work licensure.
R4-6-403. Supervised Work Experience for Clinical Social Worker Licensure	The objective of this rule is to clarify the supervised work experience requirements for clinical social worker licensure.
R4-6-404. Clinical Supervision for Clinical Social Worker Licensure	The objective of this rule is to clarify the clinical supervision requirements for clinical social worker licensure.
R4-6-501. Curriculum	The objective of this rule is to establish the curriculum requirements for counseling licensure.
R4-6-502. Examination	The objective of this rule is to establish the examination requirements for counseling licensure.

Rule	Objective
R4-6-503. Supervised Work Experience for Professional Counselor Licensure	The objective of this rule is to clarify the supervised work experience requirements for professional counselor licensure.
R4-6-504. Clinical Supervision for Professional Counselor Licensure	The objective of this rule is to clarify the clinical supervision requirements for professional counselor licensure.
R4-6-505. Post-degree Programs	The objective of this rule is to clarify the amount of coursework that can be taken after attaining a master's degree to qualify for counseling licensure.
R4-6-601. Curriculum	The objective of this rule is to establish the curriculum requirements for marriage and family therapy licensure.
R4-6-602. Examination	The objective of this rule is to establish the examination requirements for marriage and family therapy licensure.
R4-6-603. Supervised Work Experience for Marriage and Family Therapy Licensure	The objective of this rule is to clarify the supervised work experience requirements for marriage and family therapy licensure.
R4-6-604. Clinical Supervision for Marriage and Family Therapy Licensure	The objective of this rule is to clarify the clinical supervision requirements for marriage and family therapy licensure.
R4-6-605. Post-degree Programs	The objective of this rule is to clarify the amount of coursework that can be taken after attaining a master's degree to qualify for marriage and family therapy licensure.
R4-6-701. Licensed Substance Abuse Technician Curriculum	The objective of this rule is to establish the curriculum requirements for substance abuse technician licensure.
R4-6-702. Licensed Associate Substance Abuse Counselor Curriculum	The objective of this rule is to establish the curriculum requirements for associate substance abuse counselor licensure.
R4-6-703. Licensed Independent Substance Abuse Counselor Curriculum	The objective of this rule is to establish the curriculum requirements for independent substance abuse counselor licensure.

Rule	Objective
R4-6-704. Examination	The objective of this rule is to establish the examination requirements for substance abuse licensure.
R4-6-705. Supervised Work Experience for Substance Abuse Counselor Licensure	The objective of this rule is to clarify the supervised work experience requirements for associate substance abuse counselor licensure and independent substance abuse counselor licensure.
R4-6-706. Clinical Supervision for Substance Abuse Counselor Licensure	The objective of this rule is to clarify the clinical supervision requirements for associate substance abuse counselor licensure and independent substance abuse counselor licensure
R4-6-707. Post-degree Programs	The objective of this rule is to clarify the amount of coursework that can be taken after attaining the degree required to qualify for substance abuse licensure.
R4-6-801. Renewal of Licensure	The objective of this rule is to establish the process for licensees to renew their licensure.
R4-6-802. Continuing Education	The objective of this rule is to establish the general continuing education requirements for licensure renewal.
R4-6-803. Continuing Education Documentation	The objective of this rule is to establish the continuing education documentation requirements for licensure renewal.
R4-6-901. Appeal Process for Licensure Ineligibility	The objective of this rule is to establish an appeal process for applicants with regard to licensure application denial.
R4-6-902. Appeal Process for Licensure Renewal Ineligibility	The objective of this rule is to establish the process for licensees to appeal Board decisions denying renewal eligibility.
R4-6-1001. Disciplinary Process	The objective of this rule is to establish the disciplinary process for unprofessional practices by licensees and applicants.
R4-6-1002. Review or Rehearing of a Board Decision	The objective of this rule is to establish the process for review or rehearing of a Board decision after a formal administrative hearing.
R4-6-1101. Consent for Treatment	The objective of this rule is to establish the requirements for the minimum elements to be contained in a consent for treatment.
R4-6-1102. Treatment Plan	The objective of this rule is to establish the requirements for the minimum elements to be contained in a treatment plan.

Rule	Objective
R4-6-1103. Client Record	The objective of this rule is to establish the requirements for the minimum elements to be contained in a client record.
R4-6-1104. Financial and Billing Records	The objective of this rule is to establish the requirements for the minimum elements to be contained in the financial and billing records for a client.
R4-6-1105. Confidentiality	The objective of this rule is to designate client records which are confidential and not open to public inspection and provide guidance regarding release of those records.
R4-6-1106. Telepractice	The objective of this rule is to establish guidelines for telepractice.

3. **Are the rules effective in achieving their objectives?** Yes X No \_\_\_

Each rule is effective in achieving its objective.

4. **Are the rules consistent with other rules and statutes?** Mostly Yes

All of the rules except the following are consistent with other state and federal rules and statutes:

Rule	Explanation
R4-6-304. Application for a License by Endorsement	This Section refers to A.R.S. § 32-3274 to establish the requirements for licensure by endorsement for applicants licensed in another state. With the recently enacted A.R.S. § 32-4302, this rule needs to be amended to account for another path to licensure for applicants licensed in another state.

5. **Are the rules enforced as written?** Mostly Yes

All of the rules except the following are enforced as written:

Rule	Explanation
R4-6-304. Application for a License by	This Section refers to A.R.S. §§ 32-3274 and 32-4302 to establish the requirements for licensure for applicants licensed in another state. One of the requirements in both statutes is that the

Rule	Explanation
Endorsement	applicants' state(s) of licensure verify that the applicant does not have unresolved or pending complaints. The Board is finding an increasing number of states will not release this information until a final disposition of the complaint. In Arizona, A.R.S. § 32-3214(A) mandates that pending complaints/investigations may not be disclosed to the public. Because of the difficulty in enforcing other states' release of information, the Board has opted to issue licenses based on the applicants' signed attestation that they are not the subject of a pending investigation by any state regulatory board or other credentialing authority.

**6. Are the rules clear, concise, and understandable?**

**Mostly Yes**

All of the rules except the following are clear, concise, and understandable:

Rule	Explanation
R4-6-211. Direct Supervision: Supervised Work Experience: General	This rule was modified in NFR 2018 to establish the requirements for supervision of masters level non-independent licensees to practice in which they have ownership interest. As the rule has been implemented, additional clarification is needed.
R4-6-214. Clinical Supervisor Educational Requirements	In NFER 2015, the educational requirements for clinical supervisors were modified (among other things) to be 6 hours in a two year period to 6 hours in a three year period and completion of a "Board approved tutorial". The rule does not fully clarify the change and has caused confusion. In addition, the Board has approved a tutorial for endorsement licensure and licensure renewal, and a separate tutorial to meet the Clinical Supervisor Educational Requirements (above). This will be clarified in an upcoming rulemaking.
R4-6-304. Application for a License by Endorsement	The rule refers to the requirement for an applicant to complete a "Board approved tutorial". The Board has approved a tutorial for endorsement licensure and licensure renewal, and a separate tutorial to meet the Clinical Supervisor Educational Requirements (above). This will be clarified in an upcoming rulemaking.

Rule	Explanation
R4-6-802. Continuing Education	The rule refers to the requirement for an applicant to complete a “Board approved tutorial”. The Board has approved a tutorial for endorsement licensure and licensure renewal, and a separate tutorial to meet the Clinical Supervisor Educational Requirements (above). This will be clarified in an upcoming rulemaking.

7. **Has the agency received written criticisms of the rules within the last five years? Yes X**

FEEDBACK RECEIVED WITH NFER 2015

COMMENT	BOARD’S ANALYSIS	BOARD’S RESPONSE
R4-6-101. Definition of direct supervision: Remove “immediate” from definition because it implies the supervisee has access to the direct supervisor in a matter of time rather than responsibility.	The Board agrees with the comment.	The word “immediate” was deleted from the definition of direct supervision.
R4-6-101. Definition of clinical supervision: Add “and educate” to the phrase “...qualified to evaluate, guide, and direct all behavioral health services...”	The definition is about “clinical supervision.” It is not about the supervisor providing the supervision. The Board believes the definition is adequate.	No change
R4-6-101. Definition of clinical supervisor: Change the definition to read: “Means an individual who is licensed and educationally qualified as per R4-6-214 and provides oversight, education, and assessment to	The definition of “clinical supervisor” references the definition of “clinical supervision.” The definition of “clinical supervision” contains the information requested.	No change

COMMENT	BOARD'S ANALYSIS	BOARD'S RESPONSE
a supervisee.”		
<p>R4-6-101.Definition of supervised work experience: It is good that the rules require a link between clinical supervision and supervised work experience. Unfortunately, many agencies in position to provide clinical supervision do not require those providing the clinical supervision to have the training required to be qualified to provide the clinical supervision.</p>	<p>The concern is outside the Board's ability to influence.</p>	<p>No change</p>
<p>R4-6-207(B). Confidential Records: Delete this subsection, which allows a licensee to view an investigative file so close to the time the Board will consider a complaint against the licensee. Also cite statute regarding Board's authorization to redact confidential information.</p>	<p>The Board believes subsection (B) more appropriately belongs in R4-6-1001.</p>	<p>Subsection (B) was moved and is now subsection (C) of R4-6-1001. The statute cited in the lead to the subsection references the Board's authority to redact information.</p>
<p>R4-6-212(A)(2). Clinical Supervision Requirements: If psychiatric nurses are not allowed to provide clinical</p>	<p>The Board agrees with the comment.</p>	<p>Psychiatrists were removed from the listed of qualified individuals under this subsection. Both</p>

COMMENT	BOARD'S ANALYSIS	BOARD'S RESPONSE
<p>supervision, psychiatrists should also not be allowed to provide clinical supervision because they lack treatment experience.</p>		<p>psychiatrists and psychiatric nurses were added to R4-6-212.01 as individuals for whom an exemption from the clinical supervision requirements could be granted.</p>
<p>R4-6-212(D). Clinical Supervision Requirements: Two hours of face-to-face clinical supervision in a six-month period is too little. The requirement should align with that of DHS, which requires one hour of face-to-face supervision for every 40 hours worked.</p>	<p>This is a minimum standard. More face-to-face clinical supervision is allowed.</p>	<p>No change</p>
<p>R4-6-212(D). Clinical Supervision Requirements: Increase the number of hours of clinical supervision allowed by videoconference and telephone. This is important in rural areas where supervision is hard to locate.</p>	<p>The Board understands the concern and agrees that increasing the hours of clinical supervision allowed by videoconference and telephone is appropriate.</p>	<p>The hours of clinical supervision allowed by videoconference and telephone was increased to 90 from 70.</p>
<p>R4-6-212(D). Clinical Supervision Requirements: Require one face-to-face session between the clinical supervisor and supervisee</p>	<p>This is an option for any clinical supervisor but the Board believes it is not a necessary requirement.</p>	<p>No change</p>

COMMENT	BOARD'S ANALYSIS	BOARD'S RESPONSE
before any hours are conducted by electronic means.		
R4-6-212(D)(4). Clinical Supervision Requirements: A clinical supervision session should be 15 minutes rather than 30 minutes, especially in a crisis situation.	The Board believes 30 minutes per clinical supervision session is the minimum necessary for the needed observation, guidance, and learning to occur.	No change
R4-6-212(F). Clinical Supervision Requirements: Add a provision that the Board may accept hours of clinical supervision from more than four supervisors if death or disability of a supervisor made it necessary to obtain hours from another supervisor. Limiting hours to four supervisors does not consider the high rate of turnover in staff at behavioral health agencies.	The Board agrees with the concern.	R4-6-212(F) was changed to allow clinical supervision by up to six supervisors.
R4-6-212(G). Clinical Supervision Requirements: The percentage of hours of clinical supervision obtained in individual sessions should be increased.	This is a minimum standard. Additional hours of individual clinical supervision are acceptable.	No change

COMMENT	BOARD'S ANALYSIS	BOARD'S RESPONSE
The percentage of hours obtained with one or two supervisees should be changed to "Not more than 75 percent...."	The Board agrees.	The suggested change was made to R4-6-212(G)(2).
R4-6-212.01. Exemptions to the Clinical Supervision Requirements: Advance Practice Nurses should be considered for exemption.	The Board agrees.	The exemption was added.
R4-6-213. Registry of Clinical Supervisors: Requests the Board add a provision that gives licensees an idea of when their supervision will be reviewed.	The Board believes including a clinical supervisor on the registry does not require a time frame expectation.	No change
R4-6-214. Clinical Supervision Educational Requirements: Having to pass a jurisprudence examination every three years is burdensome; hours of CE should be substituted for the jurisprudence examination; changing from a two year to a three year renewal of clinical supervision qualification complicates the process.	It is important that licensees know the applicable statutes and rules. However, to reduce the regulatory burden, the Board decided to change jurisprudence examination to a Board-approved tutorial that must be completed every three years.	The requirement that licensees take a jurisprudence examination was changed to a Board-approved tutorial that must be completed every three years.
R4-6-214(A)(1). Clinical Supervision Educational	Because of the important role played by clinical	No change

COMMENT	BOARD'S ANALYSIS	BOARD'S RESPONSE
<p>Requirements: The 12 hours of required education should include the required training regarding statutes and rules.</p> <p>Twelve hour courses are not offered often enough.</p>	<p>supervisors, the Board believes the required education is minimal. The Board did, however, change the jurisprudence examination to a Board-approved tutorial.</p> <p>The training does not have to be obtained in one course.</p>	<p>No change</p>
<p>R4-6-307(H). Approval of an Educational Program: The requirement to notify the Board when course objectives change is burdensome. Universities use a percentage to track significant changes.</p>	<p>The Board understands the concern and clarified the requirement.</p>	<p>The subsection was amended to require notice to the Board only if more than 25 percent of course competencies or learning objectives change.</p>
<p>R4-6-403(A), R4-6-503(A), R4-6-603(A) and R4-6-705(A). Supervised Work Experience for ... Licensure: Delete the following sentence, "Supervised work experience in the practice of ... is limited to the use of psychotherapy for the purpose of assessing, diagnosing, and treating individuals, couples,</p>	<p>The Board agrees.</p>	<p>The sentence was deleted.</p>

COMMENT	BOARD'S ANALYSIS	BOARD'S RESPONSE
families, and groups.”		
<p>R4-6-404(B) and R4-6-504(B). Clinical Supervision for ... Licensure:  Recommends leaving the hours of clinical supervision required to be supervised by a LCSW or LPC at 25 or fewer. Most supervisors are licensed counselors so the requirement is hard to meet.</p> <p>Requiring so many hours of supervision by provided from the same discipline will have an economic impact on agencies because they will need to contract out more supervision.</p>	<p>The Board believes it is important that supervision is provided by someone licensed in the field for which application is going to be made. The requirement allows 50 percent of the supervision to be provided by someone licensed in another field and R4-6-212.01 provides a procedure for obtaining an exemption to the clinical supervision requirements.</p> <p>The Board believes any economic impact will be minimal</p>	<p>No change</p> <p>No change</p>
<p>R4-6-404(B), R4-6-504(B), and R4-6-604(B). Clinical Supervision for ... Licensure:  An LCSW, LPC, and LMFT approved as a supervisor should be able to supervise any of three disciplines.</p>	<p>The Board believes it is important that supervision is provided by someone licensed in the field for which application is going to be made. The requirement allows 50 percent of the supervision to be provided</p>	<p>No change</p>

COMMENT	BOARD'S ANALYSIS	BOARD'S RESPONSE
	by someone licensed in another field and R4-6-212.01 provides a procedure for obtaining an exemption to the clinical supervision requirements.	
R4-6-501. Curriculum: Requiring catalogs is outdated. Some universities no longer publish hard-copy catalogs.	The Board agrees.	The requirement was changed to require only a university-published description of a course.
R4-6-601(B) and R4-6-701(B). Curriculum: Indicate that the core content is to include but is not limited to the areas listed.	The Board agrees.	The phrase was added throughout the subsection.
R4-6-604(B). Clinical Supervision for Marriage and Family Therapy Licensure: Rather than requiring that 75 percent of supervision be provided by a LMFT, allow supervision to be provided by a LMFT or another licensed discipline with a national supervision certification.	The Board believes it is important that supervision is provided by someone licensed in the field for which application is going to be made. R4-6-212.01 provides a procedure for obtaining an exemption to the clinical supervision requirements.	No change
R4-6-702(D)(2). Licensed Associate Substance Abuse Counselor Curriculum: Amend the sentence to read, "Met the curriculum	The Board agrees.	The word "curriculum" was added to the subsection.

COMMENT	BOARD'S ANALYSIS	BOARD'S RESPONSE
requirements with a bachelor's degree at the time the LSAT license was issued.”		
R4-6-703(E)(2). Licensed Independent Substance Abuse Counselor Curriculum: Amend the sentence to read, “Met the curriculum requirements with a master's degree at the time the LASAC license was issued.”	The Board agrees.	The word “curriculum” was added to the subsection.
R4-6-704(A)(2) and (B)(2). Examination: Even though the acronym does not work, the NAADAC is now called the Association of Addiction Professionals.	The comment is correct.	In both places, the rule was amended to read, “...NAADAC, the Association for Addiction Professionals.”
R4-6-801. Renewal of License: Allow licensees to certify compliance with the CE requirement rather than have a staff person review all classes individually.	Ensuring compliance with the CE requirement is an important way the Board protects public health and safety.	No change
R4-6-1106. Telepractice: Recommends adding “except as otherwise provided by statute” to allow for future interstate compacts.	The Board agrees.	The phrase was added to both subsections (A) and (B).
R4-6-1106(B). Telepractice:	The Board believes the	No change

<b>COMMENT</b>	<b>BOARD'S ANALYSIS</b>	<b>BOARD'S RESPONSE</b>
Practice occurs where the professional is. This provision is not legally defensible.	provision is necessary to protect clients/patients.	
A.R.S. § 32-3253(C) and (D): The Board should establish in rule a program for impaired professionals; the Board does not need a rule regarding a program for impaired professionals. The Nursing Board has had a program for more than a decade and it is not in rule.	Statute provides that the Board may enter into stipulated agreement with an impaired licensee. No rule is necessary.	No change
The Board should count medical social work in a nephrology setting towards supervised work experience in clinical social work.	The Board believes clinical experience is missing from this work.	No change

**FEEDBACK RECEIVED WITH NFER 2016**

<b>COMMENT</b>	<b>BOARD'S ANALYSIS</b>	<b>BOARD'S RESPONSE</b>
R4-6-205. Change of Contact Information: Clarified "office addresses and telephone numbers" to "Address and telephone number for all places of employment"	The Board agrees with the comment.	Language changed.
R4-6-212.01(1)(b). Exemptions to the Clinical Supervision Requirements:	The Board agrees with the comment.	Removed requirement (i) and revised (ii) and (iii).

COMMENT	BOARD'S ANALYSIS	BOARD'S RESPONSE
Previous language was too stringent regarding a written contract.		
R4-6-214(C). Clinical Supervisor Educational Requirements: Proposed language did not flow correctly and could be misinterpreted.	The Board agrees with the comment.	The language was reorganized however no substance was changed.
R4-6-304(3). Application for a License by Endorsement: "An individual who can independently verify" did not clarify who could provide verification of supervised work experience.	The Board agrees with the comment.	The verification should be from an individual whose objective assessment is not limited by a relationship with the applicant.
R4-6-306(A)(3)(c). Application for a Temporary License: Previous rulemaking inadvertently left out the word "regulatory" as a requirement when looking at another state for a temporary license.	The Board agrees with the comment.	An applicant for a license by examination may be eligible for a temporary license if they are licensed or certified by another state behavioral health regulatory entity.
R4-6-601(B). Curriculum: Clarify that three courses must collectively include the competencies not three individual courses.	The Board agrees with the comment.	Language revised to provide clarity and update competencies.
R4-6-802(C). Continuing Education: Need to clarify	The Board agrees with the comment.	Continuing education requirements clarified to

<b>COMMENT</b>	<b>BOARD'S ANALYSIS</b>	<b>BOARD'S RESPONSE</b>
that the Board approved tutorial on statutes and rules cannot be used to meet the requirement for 3 clock hours in behavioral health ethics or mental health law.		reflect Board approved tutorial is in addition to the 3 clock hours in behavioral health ethics or mental health law.
R4-6-1106(C)(2)(b). Telepractice: Need to clarify "physical location of the client during the session"	The Board believes physical location is specific enough.	No change

**FEEDBACK RECEIVED WITH NFR 2018**

<b>COMMENT</b>	<b>BOARD'S ANALYSIS</b>	<b>BOARD'S RESPONSE</b>
R4-6-211. Direct Supervision: Supervised Work Experience: General: There needs to be tighter controls on the supervisor and supervisee responsibilities and clarification on the Board's ability to approve the agreement between the two parties. There should be clarification that when supervision is discontinued by either party, there needs to be appropriate supervision established in a reasonable time frame, or the supervisee ceases practicing.	The Board agrees with the comment.	Language changed.

OTHER FEEDBACK RECEIVED (NOT RELATED TO A PUBLISHED RULEMAKING)

COMMENT	BOARD'S ANALYSIS	BOARD'S RESPONSE
<p>R4-6-504. Clinical Supervision for Professional Counselor Licensure: Supervisees should be able to receive supervision from the most qualified supervisors regardless of licensure type.</p>	<p>The Board agrees the current limitations on clinical supervision is creating a hardship for some supervisees who cannot find an appropriate supervisor or qualify for an exemption.</p>	<p>Begin informal rulemaking to consider other solutions to be incorporated into rule.</p>
<p>R4-6-701 through R4-6-703. Curriculum for Substance Abuse Counselor Licensure: The curriculum is so specific, it is hard for people to find education to meet it which restricts opportunities to increase the pool of licensed substance abuse professionals.</p>	<p>The Board agrees the curriculum changes in NFER 2015 have caused additional challenges to those trying to meet substance abuse licensure requirements.</p>	<p>Begin informal rulemaking to consider other solutions to be incorporated into rule.</p>
<p>R4-6-211. Direct Supervision: Supervised Work Experience: General: The new regulations allowing lower level licensees to do supervised private practice is unfair and irresponsible.</p>	<p>The Board feels it has put appropriate restrictions in place.</p>	<p>The success of supervised private practice will be analyzed for an upcoming rulemaking to determine if clarification is needed.</p>
<p>R4-6-215. Fees: The Board's fees are too high.</p>	<p>The Board is working with OSPB to determine if further lowering of fees is feasible.</p>	<p>Consider in upcoming rulemaking.</p>

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

The majority of current rules were made under exempt rulemaking, so an EIS was not prepared, however with the sweeping legislative changes and subsequent rulemakings in NFER 2015 and NFER 2016, the Board has consistently reduced regulatory burdens on applicants and licensees, eliminated antiquated processes where possible and decreased fees. The EIS submitted with NFR 2018 indicated that those rule changes again reduced regulatory burdens and reduced fees for applicants and licensees, including:

- Removing several requirements for licensure by endorsement, which expanded licensure opportunities for applicants licensed in another state.
- The issuance fee was reduced which benefits applicants for licensure, and renewal fees were reduced which benefits active licensees.
- For applicants applying by examination, a third testing attempt was added which benefits those who fail to pass the exam in two attempts.
- Allowing for additional opportunities for the public and applicants/licensees to interact electronically with the Board.
- Allow greater flexibility to licensees limited to practicing under direct supervision, specifically allowing non-independent level licensees to acquire supervised work experience toward independent licensure in an entity that they own or manage which was previously prohibited. This allows more licensees to open small businesses for private practice of behavioral health.

The Board has seen an increase in applications received of over 15% for the last several years which can be attributed to the reduced regulatory burdens. This influx in licensed behavioral health professionals increases the Arizona qualified workforce and expands the public's access to mental health treatment.

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

No analysis has been submitted.

**10. Has the agency completed the course of action indicated in the agency's previous five-year review report? Yes X No**

All courses of action mentioned in the 2015 five-year review report were incorporated into rule in the exempt rulemaking package effective on November 1, 2015 including:

- Establishing Academic Review Committees and removal of the Credentialing Committees
- Changing the Board's authority to grant reciprocal licenses to licensure by endorsement
- Increasing the composition of the Board from eight members to twelve.
- Requiring the Board to adopt rules for regionally accredited colleges and universities with unaccredited programs to submit their curricula for review and approval.
- Requiring the Board to establish an Impaired Professional Program.
- The Board shall maintain a registry of individuals who have met the educational requirements to provide clinical supervision.
- Allowing for an applicant to withdraw an application unless the Board has sent notification that an investigation has been initiated.
- The Board shall not act on a complaint that is received anonymously or in which the alleged unprofessional conduct occurred more than seven years ago.
- Substantial changes to the curriculum required for licensure in counseling.

**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 persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

These rules are necessary to protect the health and safety of the public. Behavioral health professionals are in increasing demand and work with a very vulnerable population. As such, the rules are necessary to ensure behavioral health professionals have the necessary education, experience and training to provide adequate treatment. The rules also provide for review of criminal background checks to ensure the Board doesn't license those who pose a threat to clients.

The Board has been working with OSPB to develop revenue projections based on fee reductions set forth in NFR 2018 and also additional fee reductions in the proposed rulemaking described in the above paragraph. The Board's objective is to reduce the burden

of regulation where possible while increasing the benefits to public health and safety, and establishing fees that are fair, and adequately maintain Board operations.

**12. Are the rules more stringent than corresponding federal laws? Yes    No   X**

There is not a corresponding 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 Board does not issue general permits, but issues licenses as required by the Board's statutes to individuals qualifying for licensure, so this provision does not apply to the Board's rules. Thus A.R.S. § 41-1037 does not apply.

**14. Proposed course of action:**

The Board received preliminary approval from the Governor's office to proceed with informal rulemaking/drafting, and expects to open a docket in January 2020. The goal of the proposed rulemaking will be to reduce the regulatory burdens while still achieving the same regulatory objectives, and/or comply with a state statutory requirement. A copy of the preliminary approval is attached to this report for GRRC consideration.

# **ATTACHMENT**

**B**

*Arizona Administrative Code*

Board of Behavioral Health Examiners

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS**

**ARTICLE 1. DEFINITIONS**

Section

R4-6-101. Definitions

**ARTICLE 2. GENERAL PROVISIONS**

Section

R4-6-201. Board Meetings; Elections

R4-6-202. Repealed

R4-6-203. Academic Review Committee Meetings; Elections

R4-6-204. Repealed

R4-6-205. Change of Contact Information

R4-6-206. Change of Name

R4-6-207. Confidential Records

R4-6-208. Conviction of a Felony or Prior Disciplinary Action

R4-6-209. Deadline Extensions

R4-6-210. Practice Limitations

R4-6-211. Direct Supervision; Supervised Work Experience: General

R4-6-212. Clinical Supervision Requirements

R4-6-212.01. Exemptions to Clinical Supervision Requirements

R4-6-213. Registry of Clinical Supervisors

R4-6-214. Clinical Supervisor Educational Requirements

R4-6-215. Fees and Charges

R4-6-216. Foreign Equivalency Determination

**ARTICLE 3. LICENSURE**

Section

R4-6-301. Application for a License by Examination

R4-6-302. Licensing Time-frames

Table 1. Time Frames (in Days)

R4-6-303. Repealed

R4-6-304. Application for a License by Endorsement

R4-6-305. Inactive Status

R4-6-306. Application for a Temporary License

R4-6-307. Approval of an Educational Program

**ARTICLE 4. SOCIAL WORK**

Section

R4-6-401. Curriculum

R4-6-402. Examination

R4-6-403. Supervised Work Experience for Clinical Social Worker Licensure

R4-6-404. Clinical Supervision for Clinical Social Worker Licensure

R4-6-405. Repealed

## **ARTICLE 5. COUNSELING**

### Section

- R4-6-501. Curriculum
- R4-6-502. Examination
- R4-6-503. Supervised Work Experience for Professional Counselor Licensure
- R4-6-504. Clinical Supervision for Professional Counselor Licensure
- R4-6-505. Post-degree Programs

## **ARTICLE 6. MARRIAGE AND FAMILY THERAPY**

### Section

- R4-6-601. Curriculum
- R4-6-602. Examination
- R4-6-603. Supervised Work Experience for Marriage and Family Therapy Licensure
- R4-6-604. Clinical Supervision for Marriage and Family Therapy Licensure
- R4-6-605. Post-degree Programs
- R4-6-606. Repealed

## **ARTICLE 7. SUBSTANCE ABUSE COUNSELING**

### Section

- R4-6-701. Licensed Substance Abuse Technician Curriculum
- R4-6-702. Licensed Associate Substance Abuse Counselor Curriculum
- R4-6-703. Licensed Independent Substance Abuse Counselor Curriculum
- R4-6-704. Examination
- R4-6-705. Supervised Work Experience for Substance Abuse Counselor Licensure
- R4-6-706. Clinical Supervision for Substance Abuse Counselor Licensure
- R4-6-707. Post-degree Programs

## **ARTICLE 8. LICENSE RENEWAL AND CONTINUING EDUCATION**

### Section

- R4-6-801. Renewal of Licensure
- R4-6-802. Continuing Education
- R4-6-803. Continuing Education Documentation
- R4-6-804. Repealed

## **ARTICLE 9. APPEAL OF LICENSURE OR LICENSE RENEWAL INELIGIBILITY**

### Section

- R4-6-901. Appeal Process for Licensure Ineligibility
- R4-6-902. Appeal Process for Licensure Renewal Ineligibility

## **ARTICLE 10. DISCIPLINARY PROCESS**

### Section

- R4-6-1001. Disciplinary Process
- R4-6-1002. Review or Rehearing of a Board Decision

## **ARTICLE 11. STANDARDS OF PRACTICE**

### Section

R4-6-1101. Consent for Treatment

R4-6-1102. Treatment Plan

R4-6-1103. Client Record

R4-6-1104. Financial and Billing Records

R4-6-1105. Confidentiality

R4-6-1106. Telepractice

## ARTICLE 1. DEFINITIONS

### R4-6-101. Definitions

- A. The definitions at A.R.S. § 32-3251 apply to this Chapter. Additionally, the following definitions apply to this Chapter, unless otherwise specified:
1. “Applicant” means:
    - a. An individual requesting a license by examination, temporary license, or a license by endorsement by submitting a completed application packet to the Board; or
    - b. A regionally accredited college or university seeking Board approval of an educational program under R4-6-307.
  2. “Application packet” means the required documents, forms, fees, and additional information required by the Board of an applicant.
  3. “ARC” means an academic review committee established by the Board under A.R.S. § 32-3261(A).
  4. “Assessment” means the collection and analysis of information to determine an individual’s behavioral health treatment needs.
  5. “ASWB” means the Association of Social Work Boards.
  6. “Behavioral health entity” means any organization, agency, business, or professional practice, including a for-profit private practice, which provides assessment, diagnosis, and treatment to individuals, groups, or families for behavioral health related issues.
  7. “Behavioral health service” means the assessment, diagnosis, or treatment of an individual’s behavioral health issue.
  8. “CACREP” means the Council for Accreditation of Counseling and Related Educational Programs.
  9. “Client record” means collected documentation of the behavioral health services provided to and information gathered regarding a client.
  10. “Clinical social work” means social work involving clinical assessment, diagnosis, and treatment of individuals, couples, families, and groups.
  11. “Clinical supervision” means direction or oversight provided either face to face or by videoconference or telephone by an individual qualified to evaluate, guide, and direct all behavioral health services provided by a licensee to assist the licensee to develop and improve the necessary knowledge, skills, techniques, and abilities to allow the licensee to engage in the practice of behavioral health ethically, safely, and competently.
  12. “Clinical supervisor” means an individual who provides clinical supervision.
  13. “COAMFTE” means the Commission on Accreditation for Marriage and Family Therapy Education.
  14. “Clock hour” means 60 minutes of instruction, not including breaks or meals.
  15. “Contemporaneous” means documentation is made within 10 business days.
  16. “Continuing education” means training that provides an understanding of current developments, skills, procedures, or treatments related to the practice of behavioral health, as determined by the Board.
  17. “Co-occurring disorder” means a combination of substance use disorder or addiction and a mental or personality disorder.
  18. “CORE” means the Council on Rehabilitation Education.
  19. “Counseling related coursework” means education that prepares an individual to provide behavioral health services, as determined by the ARC.
  20. “CSWE” means Council on Social Work Education.

21. “Date of service” means the postmark date applied by the U.S. Postal Service to materials addressed to an applicant or licensee at the address the applicant or licensee last placed on file in writing with the Board.
22. “Day” means calendar day.
23. *“Direct client contact” means the performance of therapeutic or clinical functions related to the applicant’s professional practice level of psychotherapy that includes diagnosis, assessment and treatment and that may include psychoeducation for mental, emotional and behavioral disorders based primarily on verbal or nonverbal communications and intervention with, and in the presence of, one or more clients. A.R.S. § 32-3251.*
24. “Direct supervision” means responsibility and oversight for all services provided by a supervisee as prescribed in R4-6-211.
25. “Disciplinary action” means any action taken by the Board against a licensee, based on a finding that the licensee engaged in unprofessional conduct, including refusing to renew a license and suspending or revoking a license.
26. “Documentation” means written or electronic supportive evidence.
27. “Educational program” means a degree program in counseling, marriage and family therapy, social work, or substance use or addiction counseling that is:
  - a. Offered by a regionally accredited college or university, and
  - b. Not accredited by an organization or entity recognized by the Board.
28. “Electronic signature” means an electronic sound, symbol, or process that is attached to or logically associated with a record and that is executed or adopted by an individual with the intent to sign the record.
29. “Family member” means a parent, sibling, half-sibling, child, cousin, aunt, uncle, niece, nephew, grandparent, grandchild, and present and former spouse, in-law, stepchild, stepparent, foster parent, or significant other.
30. “Gross negligence” means careless or reckless disregard of established standards of practice or repeated failure to exercise the care that a reasonable practitioner would exercise within the scope of professional practice.
31. “Inactive status” means the Board has granted a licensee the right to suspend behavioral health practice temporarily by postponing license renewal for a maximum of 48 months.
32. “Independent contractor” means a licensed behavioral health professional whose contract to provide services on behalf of a behavioral health entity qualifies for independent contractor status under the codes, rules, and regulations of the Internal Revenue Service of the United States.
33. “Independent practice” means engaging in the practice of marriage and family therapy, professional counseling, social work, or substance abuse counseling without direct supervision.
34. *“Indirect client service” means training for, and the performance of, functions of an applicant’s professional practice level in preparation for or on behalf of a client for whom direct client contact functions are also performed, including case consultation and receipt of clinical supervision. Indirect client service does not include the provision of psychoeducation. A.R.S. § 32-3251.*
35. “Individual clinical supervision” means clinical supervision provided by a clinical supervisor to one supervisee.
36. “Informed consent for treatment” means a written document authorizing treatment of a client that:
  - a. Contains the requirements of R4-6-1101;
  - b. Is dated and signed by the client or the client’s legal representative, and
  - c. Beginning on July 1, 2006, is dated and signed by an authorized representative of the behavioral health entity.
37. “Legal representative” means an individual authorized by law to act on a client’s behalf.

38. “License” means written authorization issued by the Board that allows an individual to engage in the practice of behavioral health in Arizona.
39. “License period” means the two years between the dates on which the Board issues a license and the license expires.
40. “NASAC” means the National Addiction Studies Accreditation Commission.
41. *“Practice of behavioral health” means the practice of marriage and family therapy, professional counseling, social work and substance abuse counseling pursuant to this Chapter. A.R.S. § 32-3251.*
42. *“Practice of marriage and family therapy” means the professional application of family systems theories, principles and techniques to treat interpersonal relationship issues and nervous, mental and emotional disorders that are cognitive, affective or behavioral. The practice of marriage and family therapy includes:*
  - a. *Assessment, appraisal and diagnosis.*
  - b. *The use of psychotherapy for the purpose of evaluation, diagnosis and treatment of individuals, couples, families and groups. A.R.S. § 32-3251.*
43. *“Practice of professional counseling” means the professional application of mental health, psychological and human development theories, principles and techniques to:*
  - a. *Facilitate human development and adjustment throughout the human life span.*
  - b. *Assess and facilitate career development.*
  - c. *Treat interpersonal relationship issues and nervous, mental and emotional disorders that are cognitive, affective or behavioral.*
  - d. *Manage symptoms of mental illness.*
  - e. *Assess, appraise, evaluate, diagnose and treat individuals, couples, families and groups through the use of psychotherapy. A.R.S. § 32-3251.*
44. *“Practice of social work” means the professional application of social work theories, principles, methods and techniques to:*
  - a. *Treat mental, behavioral and emotional disorders.*
  - b. *Assist individuals, families groups and communities to enhance or restore the ability to function physically, socially, emotionally, mentally and economically.*
  - c. *Assess, appraise, diagnose, evaluate and treat individuals, couples, families and groups through the use of psychotherapy. A.R.S. § 32-3251.*
45. *“Practice of substance abuse counseling” means the professional application of general counseling theories, principles and techniques as specifically adapted, based on research and clinical experience, to the specialized needs and characteristics of persons who are experiencing substance abuse, chemical dependency and related problems and to the families of those persons. The practice of substance abuse counseling includes the following as they relate to substance abuse and chemical dependency issues:*
  - a. *Assessment, appraisal, and diagnosis.*
  - b. *The use of psychotherapy for the purpose of evaluation, diagnosis and treatment of individuals, couples, families and groups. A.R.S. § 32-3251.*
46. “Progress note” means contemporaneous documentation of a behavioral health service provided to an individual that is dated and signed or electronically acknowledged by the licensee.
47. *“Psychoeducation” means the education of a client as part of a treatment process that provides the client with information regarding mental health, emotional disorders or behavioral health.” A.R.S. § 32-3251.*
48. “Quorum” means a majority of the members of the Board or an ARC. Vacant positions do not reduce the quorum requirement.
49. “Regionally accredited college or university” means approved by the:
  - a. New England Association of Schools and Colleges,
  - b. Middle States Commission on Higher Education,
  - c. North Central Association,

- d. Northwest Commission on Colleges and Universities,
  - e. Southern Association of Colleges and Schools, or
  - f. Western Association of Schools and Colleges.
50. “Significant other” means an individual whose participation a client considers to be essential to the effective provision of behavioral health services to the client.
51. “Supervised work experience” means practicing clinical social work, marriage and family therapy, professional counseling, or substance abuse counseling for remuneration or on a voluntary basis under direct supervision and while receiving clinical supervision as prescribed in R4-6-212 and Articles 4 through 7.
52. “*Telepractice*” means providing behavioral health services through interactive audio, video or electronic communication that occurs between a behavioral health professional and the client, including any electronic communication for evaluation, diagnosis and treatment, including distance counseling, in a secure platform, and that meets the requirements of telemedicine pursuant to A.R.S. § 36-3602. A.R.S. § 32-3251.
53. “Treatment” means the application by a licensee of one or more therapeutic practice methods to improve, eliminate, or manage a client’s behavioral health issue.
54. “Treatment goal” means the desired result or outcome of treatment.
55. “Treatment method” means the specific approach a licensee used to achieve a treatment goal.
56. “Treatment plan” means a description of the specific behavioral health services that a licensee will provide to a client that is documented in the client record, and meets the requirements found in R4-6-1102.
- B. For the purposes of this Chapter, notifications or communications required to be “written” or “in writing” may be transmitted or received by mail, electronic transmission, facsimile transmission or hand delivery and may not be transmitted or received orally. Documents requiring a signature may include a written signature or electronic signature as defined in subsection (A)(28).

## **ARTICLE 2. GENERAL PROVISIONS**

### **R4-6-201. Board Meetings; Elections**

- A.** The Board:
- 1. Shall meet at least annually in June and elect the officers specified in A.R.S. §32-3252(E);
  - 2. Shall fill a vacancy that occurs in an officer position at the next Board meeting; and
  - 3. May hold additional meetings:
    - a. As necessary to conduct the Board’s business; and
    - b. If requested by the Chair, a majority of the Board members, or upon written request from two Board members.
- B.** The Board shall conduct official business only when a quorum is present.
- C.** The vote of a majority of the Board members present is required for Board action.

### **R4-6-202. Repealed**

### **R4-6-203. Academic Review Committee Meetings; Elections**

- A.** Each ARC:
- 1. Shall meet at least annually in June and elect a Chair and Secretary;
  - 2. Shall fill a vacancy that occurs in an officer position at the next ARC meeting; and
  - 3. May hold additional meetings:
    - a. As necessary to conduct the ARC’s business; and
    - b. If requested by the Chair of the ARC, a majority of the ARC, or upon written request from two members of the ARC.
- B.** An ARC shall conduct official business only when a quorum is present.

C. The vote of a majority of the ARC members present is required for ARC action.

**R4-6-204. Repealed**

**R4-6-205. Change of Contact Information**

- A. The Board shall communicate with a licensee or applicant using the contact information provided to the Board including:
1. Home address and telephone number,
  2. Address and telephone number for all places of employment,
  3. Mobile telephone number, and
  4. E-mail address.
- B. To ensure timely communication with the Board, a licensee or applicant shall notify the Board in writing within 30 days after any change of the licensee's or applicant's contact information listed in subsection (A). The licensee or applicant shall ensure that the written notice provided to the Board includes the new contact information.

**R4-6-206. Change of Name**

A licensee or an applicant shall notify the Board in writing within 30 days after the applicant's or licensee's name is changed. The applicant or licensee shall attach to the written notice:

1. A copy of a legal document that establishes the name change; or
2. A copy of two forms of identification, one of which includes a picture of the applicant or licensee, reflecting the changed name.

**R4-6-207. Confidential Records**

- A. Except as provided in A.R.S. § 32-3282, the following records are confidential and not open to public inspection:
1. Minutes of executive session;
  2. Records classified as confidential by other laws, rules, or regulations;
  3. College or university transcripts, licensure examination scores, medical or mental health information, and professional references of applicants except that the individual who is the subject of the information may view or copy the records or authorize release of these records to a third party.
  4. Records for which the Board determines that public disclosure would have a significant adverse effect on the Board's ability to perform its duties or would otherwise be detrimental to the best interests of the state. When the Board determines that the reason justifying the confidentiality of the records no longer exists, the record shall be made available for public inspection and copying; and
  5. All investigative materials regarding any pending or resolved complaint.
- B. As provided under A.R.S. § 39-121, a person wanting to inspect Board records that are available for public inspection may do so at the Board office by appointment.

**R4-6-208. Conviction of a Felony or Prior Disciplinary Action**

The Board shall consider the following factors to determine whether a felony conviction or prior disciplinary action will result in imposing disciplinary sanctions including refusing to renew the license of a licensee or to issue a license to an applicant:

1. The age of the licensee or applicant at the time of the felony conviction or when the prior disciplinary action occurred;
2. The seriousness of the felony conviction or prior disciplinary action;
3. The factors underlying the conduct that led to the felony conviction or imposition of disciplinary action;
4. The length of time since the felony conviction or prior disciplinary action;
5. The relationship between the practice of the profession and the conduct giving rise to the felony conviction or prior disciplinary action;
6. The licensee's or applicant's efforts toward rehabilitation;
7. The assessments and recommendations of qualified professionals regarding the licensee's or applicant's rehabilitative efforts;

8. The licensee's or applicant's cooperation or non-cooperation with the Board's background investigation regarding the felony conviction or prior disciplinary action; and
9. Other factors the Board deems relevant.

**R4-6-209. Deadline Extensions**

- A. Deadlines established by date of service may be extended a maximum of two times by the chair of the Board or the chair of the ARC if a written request is postmarked or delivered to the Board no later than the required deadline.
- B. The Board shall not grant an extension for deadlines regarding renewal submission or late renewal submission.
- C. If a deadline falls on a Saturday, Sunday, or official state holiday, the Board considers the next business day the deadline.

**R4-6-210. Practice Limitations**

The following licensees shall not engage in the independent practice of behavioral health but rather, shall practice behavioral health only under direct supervision as prescribed in R4-6-211:

1. Licensed baccalaureate social worker,
2. Licensed master social worker,
3. Licensed associate counselor,
4. Licensed associate marriage and family therapist,
5. Licensed substance abuse technician,
6. Licensed associate substance abuse counselor, or
7. Temporary licensee.

**R4-6-211. Direct Supervision: Supervised Work Experience: General**

- A. A licensee subject to practice limitations pursuant to R4-6-210 shall practice in an entity with responsibility and clinical oversight of the behavioral health services provided by the licensee.
- B. A masters level licensee working under direct supervision who operates or manages their own entity with immediate responsibility for the behavioral health services provided by the licensee shall provide the following to the board for approval prior to providing behavioral health services:
  1. The name of their clinical supervisor who meets the following:
    - a. Is independently licensed by the board in the same discipline as the supervisee, and who has practiced as an independently licensed behavioral health professional for a minimum of two years beyond the supervisor's licensure date;
    - b. Is in compliance with the clinical supervisor educational requirements specified in R4-6-214;
    - c. Is not prohibited from providing clinical supervision by a board consent agreement; and
  2. A copy of the agreement between the clinical supervisor and supervisee demonstrating:
    - a. The supervisee and supervisor will meet individually for one hour for every 20 hours of direct client contact provided, to include an onsite meeting every 60 days;
    - b. Supervisee's clients will be notified of clinical supervisor's involvement in their treatment and the means to contact the supervisor;
    - c. Supervision reports will be submitted to the board every six months;
    - d. A 30 day notice is required prior to either party terminating the agreement;
    - e. The supervisor and supervisee will notify the board within 10 days of the agreement termination date; and
    - f. The supervisee will cease practicing within 60 days of the agreement termination date until such time as a subsequent agreement is provided to the board and approved.
- C. To meet the supervised work experience requirements for licensure, direct supervision shall:
  1. Meet the specific supervised work experience requirements contained in Articles 4,5,6, and 7;
  2. Be acquired after completing the degree required for licensure and receiving certification or licensure from a state regulatory entity;
  3. Be acquired before January 1, 2006, if acquired as an unlicensed professional practicing under an exemption provided in A.R.S. § 32-3271;

4. Involve the practice of behavioral health; and
  5. Be for a term of no fewer than 24 months.
- D.** An applicant who acquired supervised work experience outside of Arizona may submit that experience for approval as it relates to the qualifications of the supervisor and the entity in which the supervision was acquired. The board may accept the supervised work experience as it relates to the supervisor and the entity if it met the requirements of the state in which the supervised work experience occurred. Nothing in this provision shall apply to the supervision requirements set forth in R4-6-403, R4-6-503, R4-6-603 and R4-6-705.
- E.** If the Board determines that an applicant engaged in unprofessional conduct related to services rendered while acquiring hours under supervised work experience, including clinical supervision, the Board shall not accept the hours to satisfy the requirements of R4-6-403, R4-6-503, R4-6-603, or R4-6-706. Hours accrued before and after the time during which the conduct that was the subject of the finding of unprofessional conduct occurred, as determined by the Board, may be used to satisfy the requirements of R4-6-403, R4-6-503, R4-6-603, or R4-6-706 so long as the hours are not the subject of an additional finding of unprofessional conduct.

**R4-6-212. Clinical Supervision Requirements**

- A.** The Board shall accept hours of clinical supervision submitted by an applicant if the clinical supervision meets the requirements specified in R4-6-404, R4-6-504, R4-6-604, or R4-6-706, as applicable to the license for which application is made, and was provided by one of the following:
1. A clinical social worker, professional counselor, independent marriage and family therapist, or independent substance abuse counselor who:
    - a. Holds an active and unrestricted license issued by the Board, and
    - b. Has complied with the educational requirements specified in R4-6-214;
  2. A mental health professional who holds an active and unrestricted license issued under A.R.S. Title 32, Chapter 19.1 as a psychologist and has complied with the educational requirements specified in R4-6-214; or
  3. An individual who:
    - a. Holds an active and unrestricted license to practice behavioral health,
    - b. Is providing behavioral health services in Arizona:
      - i. Under a contract or grant with the federal government under the authority of 25 U.S.C. § 450-450(n) or § 1601-1683, or
      - ii. By appointment under 38 U.S.C. § 7402 (8-11), and
    - c. Has complied with the educational requirements specified in R4-6-214.
- B.** Unless an exemption was obtained under R4-6-212.01, the Board shall accept hours of clinical supervision submitted by an applicant if the clinical supervision was provided by an individual who:
1. Was qualified under subsection (A), and
  2. Was employed by the behavioral health entity at which the applicant obtained hours of clinical supervision.
- C.** The Board shall accept hours of clinical supervision submitted by an applicant if the clinical supervision includes all of the following:
1. Reviewing ethical and legal requirements applicable to the supervisee’s practice, including unprofessional conduct as defined in A.R.S. § 32-3251;
  2. Monitoring the supervisee’s activities to verify the supervisee is providing services safely and competently;
  3. Verifying in writing that the supervisee provides clients with appropriate written notice of clinical supervision, including the means to obtain the name and telephone number of the supervisee’s clinical supervisor;
  4. Contemporaneously written documentation by the clinical supervisor of at least the following for each clinical supervision session:
    - a. Date and duration of the clinical supervision session;
    - b. Description of topics discussed. Identifying information regarding clients is not required;
    - c. Beginning on July 1, 2006, name and signature of the individual receiving clinical supervision;
    - d. Name and signature of the clinical supervisor and the date signed; and

- e. Whether the clinical supervision occurred on a group or individual basis;
  - 5. Maintaining the documentation of clinical supervision required under subsection (C)(4) for at least seven years;
  - 6. Verifying that clinical supervision was not acquired from a family member as prescribed in R4-6-101(A)(29);
  - 7. Conducting on-going compliance review of the supervisee's clinical documentation to ensure the supervisee maintains adequate written documentation;
  - 8. Providing instruction regarding:
    - a. Assessment,
    - b. Diagnosis,
    - c. Treatment plan development, and
    - d. Treatment;
  - 9. Rating the supervisee's overall performance as at least satisfactory, using a form approved by the Board; and
  - 10. Complying with the discipline-specific requirements in Articles 4 through 7 regarding clinical supervision.
- D.** The Board shall accept hours of clinical supervision submitted by an applicant for licensure if:
- 1. At least two hours of the clinical supervision were provided in a face-to-face setting during each six-month period;
  - 2. No more than 90 hours of the clinical supervision were provided by videoconference and telephone.
  - 3. No more than 15 of the 90 hours of clinical supervision provided by videoconference and telephone were provided by telephone; and
  - 4. Each clinical supervision session was at least 30 minutes long.
- E.** Effective July 1, 2006, the Board shall accept hours of clinical supervision submitted by an applicant if at least 10 of the hours involve the clinical supervisor observing the supervisee providing treatment and evaluation services to a client. The clinical supervisor may conduct the observation:
- 1. In a face-to-face setting,
  - 2. By videoconference,
  - 3. By teleconference, or
  - 4. By review of audio or video recordings.
- F.** The Board shall accept hours of clinical supervision submitted by an applicant from a maximum of six clinical supervisors.
- G.** The Board shall accept hours of clinical supervision obtained by an applicant in both individual and group sessions, subject to the following restrictions:
- 1. At least 25 of the clinical supervision hours involve individual supervision, and
  - 2. Of the minimum 100 hours of clinical supervision required for licensure, the Board may accept:
    - a. Up to 75 of the clinical supervision hours involving a group of two supervisees; and
    - b. Up to 50 of the clinical supervision hours involving a group of three to six supervisees.
- H.** If an applicant provides evidence that a catastrophic event prohibits the applicant from obtaining documentation of clinical supervision that meets the standard specified in subsection (C), the Board may consider alternate documentation.

**R4-6-212.01. Exemptions to the Clinical Supervision Requirements**

The Board shall accept hours of clinical supervision submitted by an applicant if the clinical supervision meets the requirements specified in R4-6-212 and R4-6-404, R4-6-504, R4-6-604, or R4-6-706, as applicable to the license for which application is made, unless an exemption is granted as follows:

- 1. An individual using supervised work experience acquired in Arizona may apply to the Board for an exemption from the following requirements:
  - a. Qualifications of the clinical supervisor. The Board may grant an exemption to the supervisor qualification requirements in R4-6-212(A) and R4-6-404, R4-6-504, R4-6-604, or R4-6-706, as applicable to the license for which application is made, if the Board determines the behavioral health professional who provided or will provide the clinical supervision has education, training, and

experience necessary to provide clinical supervision and has complied with the educational requirements specified in R4-6-214 and:

- i. A qualified supervisor is not available because of the size and geographic location of the professional setting in which the clinical supervision will occur; or
  - ii. The behavioral health professional who provided or will provide the clinical supervision holds an active and unrestricted license issued under A.R.S. Title 32 as a physician under Chapter 13 or 17 with certification in psychiatry or addiction medicine or as a nurse practitioner under Chapter 15 with certification in mental health;
- b. Employment of clinical supervisor. The Board may grant an exemption to the requirement in R4-6-212(B) regarding employment of the supervisor by the behavioral health entity at which the supervisee obtains hours of clinical supervision if the supervisee provides verification that:
- i. The supervisor and behavioral health entity have a written contract providing the supervisor the same access to the supervisee's clinical records provided to employees of the behavioral health entity, and
  - ii. Supervisee's clients authorized the release of their clinical records to the supervisor; and
- c. Discipline-specific changes. The Board may grant an exemption to a requirement in R4-6-404, R4-6-504, R4-6-604, or R4-6-706, as applicable to the license for which application is made, that changed on November 1, 2015, and had the effect of making the clinical supervision previously completed or completed no later than October 31, 2017, non-compliant with the clinical supervision requirements. If the Board grants an exemption under this subsection, the Board shall evaluate the applicant's clinical supervision using the requirements in existence before November 1, 2015.
2. An individual using supervised work experience acquired outside of Arizona may apply to the Board for an exemption from the supervision requirements in R4-6-404, R4-6-504, R4-6-604, or R4-6-706, as applicable to the license for which application is made. The Board may grant an exemption for supervised work experience acquired outside of Arizona if the Board determines that the behavioral health professional providing the supervision met one of the following:
- a. Complied with the educational requirements specified in R4-6-214,
  - b. Complied with the clinical supervisor requirements of the state in which the supervision occurred, or
  - c. Was approved to provide supervision to the applicant by the state in which the supervision occurred.

#### **R4-6-213. Registry of Clinical Supervisors**

- A. The Board shall maintain a registry of individuals who have met the educational requirements to provide supervision that are specified in R4-6-214.
- B. To be included on the registry of clinical supervisors, an individual shall submit the following to the Board:
1. A registration form approved by the Board;
  2. Evidence of being qualified under R4-6-212(A); and
  3. Documentation of having completed the education required under R4-6-214.
- C. The Board shall include an individual who complies with subsection (B) on the registry of clinical supervisors. To remain on the registry of clinical supervisors, an individual shall submit the following to the Board:
1. A registration form approved by the Board;
  2. Evidence of being qualified under R4-6-212(A); and
  3. Documentation of having completed the continuing education required under R4-6-214.
- D. If the Board notified an individual before November 1, 2015, that the Board determined the individual was qualified to provide clinical supervision, the Board shall include the individual on the registry maintained under subsection (A). To remain on the registry of clinical supervisors, the individual shall comply with subsection (C).

#### **R4-6-214. Clinical Supervisor Educational Requirements**

- A. The Board shall consider hours of clinical supervision submitted by an applicant only if the individual who provides the clinical supervision is qualified under R4-6-212(A) and complies with the following:
1. Completes one of the following:

- a. At least 12 hours of training that meets the standard specified in R4-6-802(D), addresses clinical supervision, and includes the following:
    - i. Role and responsibilities of a clinical supervisor;
    - ii. Skills in providing effective oversight of and guidance to supervisees who diagnose, create treatment plans, and treat clients;
    - iii. Supervisory methods and techniques; and
    - iv. Fair and accurate evaluation of a supervisee's ability to plan and implement clinical assessment and treatment;
  - b. An approved clinical supervisor certification from the National Board for Certified Counselors/Center for Credentialing and Education;
  - c. A clinical supervisor certification from the International Certification and Reciprocity Consortium; or
  - d. A clinical member with an approved supervisor designation from the American Association of Marriage and Family Therapy; and
2. Beginning January 1, 2018, completes a three clock hour Board-approved tutorial on Board statutes and rules.
- B.** Through December 31, 2017, the Board shall consider hours of clinical supervision submitted by an applicant if the individual who provided the clinical supervision was licensed at an independent level, qualified under R4-6-212(A), and the supervision was provided during the first two years the individual was licensed at the independent level.
1. For the Board to continue to accept hours of clinical supervision provided by the individual described under subsection (B), the individual shall have obtained at least 12 hours of training described in subsection (A)(1)(a):
    - a. Before the individual's license expired for the first time; or
    - b. Before providing supervision if the 12 hours of training described in subsection (A)(1)(a) were obtained after the individual's license expired;
  2. For the Board to continue to accept hours of clinical supervision provided by the individual described under subsection (B)(1), the individual shall have obtained at least six hours of training described in subsection (A)(1)(a) before the individual's license expires again and during each subsequent license period expiring before January 1, 2018;
  3. For the Board to continue to accept hours of clinical supervision provided by the individual described under subsection (B)(2), the individual shall comply fully with subsection (C) before the individual's license expires for the first time on or after January 1, 2018.
- C.** To continue providing clinical supervision, an individual qualified under subsection (A)(1)(a) shall, at least every three years, complete a minimum of nine hours of continuing training that:
1. Meets the standard specified in R4-6-802(D);
  2. Concerns clinical supervision;
  3. Addresses the topics listed in subsection (A)(1)(a); and
  4. Beginning January 1, 2018, includes three clock hours of a Board-approved tutorial on Board statutes and rules.
- D.** To continue providing clinical supervision, an individual qualified under subsections (A)(1)(b) through (d) shall:
1. Provide documentation that the national certification or designation was renewed before it expired, and
  2. Beginning January 1, 2018, complete a three clock hour Board-approved tutorial on Board statutes and rules.

**R4-6-215. Fees and Charges**

- A.** Under the authority provided by A.R.S. § 32-3272, the Board establishes and shall collect the following fees:
1. Application for license by examination: \$250;
  2. Application for license by endorsement: \$250;
  3. Issuance of license: \$100;
  4. Application for a temporary license: \$50;
  5. Application for approval of educational program: \$500;
  6. Application for approval of an educational program change: \$250

7. Biennial renewal of first area of licensure: \$325;
  8. Biennial renewal of each additional area of licensure if all licenses are renewed at the same time: \$163;
  9. Late renewal penalty: \$100 in addition to the biennial renewal fee;
  10. Inactive status request: \$100; and
  11. Late inactive status request: \$100 in addition to the inactive status request fee.
- B.** The Board shall charge the following amounts for the services it provides:
1. Issuing a duplicate license: \$25;
  2. Criminal history background check: \$40;
  3. Paper copy of records: \$.50 per page after the first four pages;
  4. Electronic copy of records: \$25;
  5. Copy of a Board meeting audio recording: \$20;
  6. Verification of licensure: \$20 per discipline or free if downloaded from the Board's web site;
  7. Board's rules and statutes book: \$10 or free if downloaded from the Board's web site;
  8. Mailing list of licensees: \$150, and
  9. Returned check due to insufficient funds: \$50.
- C.** The application fees in subsections (A)(1) and (2) are non-refundable. Other fees established in subsection (A) are not refundable unless the provisions of A.R.S. § 41-1077 apply.
- D.** The Board shall accept payment of fees and charges as follows:
1. For an amount of \$40 or less, a personal or business check;
  2. For amounts greater than \$40, a certified check, cashier's check, or money order; and
  3. By proof of online payment by credit card for the following:
    - a. All fees in subsection (A);
    - b. The charge in subsection (B)(2) for a criminal history background check; and
    - c. The charge in subsection (B)(8) for a mailing list of licensees.
- E.** An applicant shall make payment for a criminal history background check separate from payment for other fees and charges.

**R4-6-216. Foreign Equivalency Determination**

The Board shall accept as qualification for licensure a degree from an institution of higher education in a foreign country if the degree is substantially equivalent to the educational standards required in this Chapter for professional counseling, marriage and family therapy, and substance abuse counseling licensure. To enable the Board to determine whether a foreign degree is substantially equivalent to the educational standards required in this Chapter, the applicant shall, at the applicant's expense, have the foreign degree evaluated by an entity approved by the Board.

**ARTICLE 3. LICENSURE**

**R4-6-301. Application for a License by Examination**

An applicant for a license by examination shall submit a completed application packet that contains the following:

1. A statement by the applicant certifying that all information submitted in support of the application is true and correct;
2. Identification of the license for which application is made;
3. The license application fee required under R4-6-215;
4. The applicant's name, date of birth, social security number, and contact information;
5. Each name or alias previously or currently used by the applicant;
6. The name of each college or university the applicant attended and an official transcript for all education used to meet requirements;
7. Verification of current or previous licensure or certification from the licensing or certifying entity as follows:
  - a. Any license or certification ever held in the practice of behavioral health; and
  - b. Any professional license or certification not identified in subsection (7)(a) held in the last 10 years;
8. Background information to enable the Board to determine whether, as required under A.R.S. § 32-3275(A)(3), the applicant is of good moral character;
9. A list of every entity for which the applicant has worked during the last 7 years;

10. If the relevant licensing examination was previously taken, an official copy of the score the applicant obtained on the examination;
11. A report of the results of a self-query of the National Practitioner Data Bank;
12. Documentation required under A.R.S. § 41-1080(A) showing that the applicant's presence in the U.S. is authorized under federal law;
13. A completed and legible fingerprint card for a state and federal criminal history background check and payment as prescribed under R4-6-215 if the applicant has not previously submitted a full set of fingerprints to the Board, or verification that the applicant holds a current fingerprint card issued by the Arizona Department of Public Safety; and
14. Other documents or information requested by the Board to determine the applicant's eligibility.

**R4-6-302. Licensing Time Frames**

- A. The overall time frames described in A.R.S. § 41-1072 for each type of license granted by the Board are listed in Table 1. The person applying for a license and the ARC may agree in writing to extend the substantive review and overall time frames up to 25 percent of the overall time frame.
- B. The administrative completeness review time frame described in A.R.S. § 41-1072 begins when the Board receives an application packet.
  1. If the application packet is not complete, the Board shall send the applicant a written notice specifying the missing document or incomplete information. The administrative completeness review and overall time frames are suspended from the date the notice is served until the date the Board receives the deficient information from the applicant.
  2. An applicant may assume an application packet is complete when the Board sends the applicant a written notice of administrative completeness or when the administrative completeness time frame specified in Table 1 expires.
- C. An applicant shall submit all of the deficient information specified in the notice provided under subsection (B)(1) within 60 days after the deficiency notice is served.
  1. If an applicant cannot submit all deficient information within 60 days after the deficiency notice is served, the applicant may obtain a 60-day extension by submitting a written notice to the Board postmarked or delivered before expiration of the 60 days.  
The written notice of extension shall document the reasons the applicant is unable to meet the 60-day deadline.
  2. An applicant who requires an additional extension shall submit to the Board a written request that is delivered or postmarked before expiration of the initial extension and documents the reasons the applicant requires an additional extension. The Board shall notify the applicant in writing of its decision to grant or deny the request for an extension.
  3. If an applicant fails to submit all of the deficient information within the required time, the Board shall administratively close the applicant's file with no recourse to appeal. To receive further consideration for licensure, an applicant whose file is administratively closed shall submit a new application and fee.
- D. The substantive review time frame described in A.R.S. § 41-1072 begins on the date the administrative completeness time frame is complete as described under subsection (B)(2).
  1. If an application is referred to the ARC for substantive review and the ARC finds that additional information is needed, the ARC shall provide a comprehensive written request for additional information to the applicant. The substantive review and overall time frames are suspended from the date the comprehensive written request for additional information is served until the applicant provides all information to the Board.
  2. As provided under A.R.S. § 41-1075(A), the ARC and the applicant may agree in writing to allow the ARC to make additional supplemental requests for information. If the ARC issues an additional supplemental request for information, the substantive review and overall time frames are suspended from the date of the additional supplemental request for information until the applicant provides the information to the Board.
  3. An applicant shall submit all of the information requested under subsection (D)(1) within 60 days after the comprehensive request for additional information is served. If the ARC issues an additional comprehensive request for information under subsection (D)(2), the applicant shall submit the additional

information within 60 days after the additional comprehensive request for information is served. If the applicant cannot submit all requested information within the time provided, the applicant may obtain an extension under the terms specified in subsection (C)(2).

4. If an applicant fails to submit all of the requested information within the time provided under subsection (D)(3), the Board shall administratively close the applicant's file with no recourse to appeal. To receive further consideration for licensure, an applicant whose file is administratively closed shall submit a new application and fee.
- E.** An applicant may withdraw an application for licensure under the terms specified in A.R.S. § 32-3275(D).
- F.** After the substantive review of an application is complete:
  1. If the applicant is found ineligible for licensure, a recommendation shall be made to the Board that the applicant be denied licensure;
  2. If the applicant is found eligible for licensure, a recommendation shall be made to the Board that the applicant be granted licensure;
- G.** After reviewing the recommendation made under subsection (F), the Board shall send a written notice to an applicant that either:
  1. Grants a license to an applicant who meets the qualifications and requirements in A.R.S. Title 32, Chapter 33 and this Chapter; or
  2. Denies a license to an applicant who fails to meet the qualifications and requirements in A.R.S. Title 32, Chapter 33 and this Chapter. The Board shall ensure that the written notice of denial includes the information required under A.R.S. § 41-1092.03.
- H.** If a time frame's last day falls on a Saturday, Sunday, or an official state holiday, the Board considers the next business day the time frame's last day.

**Table 1. Time Frames (in Days)**

Type of License	Statutory Authority	Overall Time Frame	Administrative Completeness Time Frame	Substantive Review Time Frame
License by Examination	A.R.S. § 32-3253 A.R.S. § 32-3275	270	90	180
Temporary License	A.R.S. § 32-3253 A.R.S. § 32-3279	90	30	60
License by Endorsement	A.R.S. § 32-3253 A.R.S. § 32-3274	270	90	180
License Renewal	A.R.S. § 32-3253 A.R.S. § 32-3273	270	90	180

**R4-6-303. Repealed**

**R4-6-304. Application for a License by Endorsement**

An applicant who meets the requirements specified under A.R.S. § 32-3274 for a license by endorsement shall submit a completed application packet, as prescribed in R4-6-301, and the following:

1. The name of one or more other jurisdictions where the applicant is certified or licensed as a behavioral health professional by a state or federal regulatory entity, and has been for at least three years;
2. A verification of each certificate or license identified in subsection (1) by the state regulatory entity issuing the certificate or license that includes the following:
  - a. The certificate or license number issued to the applicant by the state regulatory entity;
  - b. The issue and expiration date of the certificate or license;
  - c. Whether the applicant has been the subject of disciplinary proceedings by a state regulatory entity including whether there are any unresolved complaints pending against the applicant; and
  - d. Whether the certificate or license is active and in good standing;

3. If applying at a practice level listed in A.R.S. § 32-3274(B), include:
  - a. An official transcript as prescribed in R4-6-301(6); and
  - b. If applicable, a foreign degree evaluation prescribed in R4-6-216 or R4-6-401; and
4. Documentation of completion of the Board-approved tutorial on Board statutes and rules.

#### **R4-6-305. Inactive Status**

- A.** A licensee seeking inactive status shall submit:
  1. A written request to the Board before expiration of the current license, and
  2. The fee specified in R4-6-215 for inactive status request.
- B.** To be placed on inactive status after license expiration, a licensee shall, within three months after the date of license expiration, comply with subsection (A) and submit the fee specified in R4-6-215 for late request for inactive status.
- C.** The Board shall grant a request for inactive status to a licensee upon receiving a written request for inactive status. The Board shall grant inactive status for a maximum of 24 months.
- D.** The Board shall not grant a request for inactive status that is received more than three months after license expiration.
- E.** Inactive status does not change:
  1. The date on which the license of the inactive licensee expires, and
  2. The Board's ability to start or continue an investigation against the inactive licensee.
- F.** To return to active status, a licensee on inactive status shall:
  1. Comply with all renewal requirements prescribed under R4-6-801; and
  2. Establish to the Board's satisfaction that the licensee is competent to practice safely and competently. To assist with determining the licensee's competence, the Board may order a mental or physical evaluation of the licensee at the licensee's expense.
- G.** Upon a showing of good cause, the Board shall grant a written request for modification or reduction of the continuing education requirement received from a licensee on inactive status. The Board shall consider the following to show good cause:
  1. Illness or disability,
  2. Active military service, or
  3. Any other circumstance beyond the control of the licensee.
- H.** The Board may, upon a written request filed before the expiration of the original 24 months of inactive status and for good cause, as described in subsection (G), permit an inactive licensee to remain on inactive status for one additional period not to exceed 24 months. To return to active status after being placed on a 24-month extension of inactive status, a licensee shall, comply with the requirements in subsection (F) and complete an additional 30 hours of continuing education during the 24-month extension.
- I.** A licensee on inactive status shall not engage in the practice of behavioral health.

#### **R4-6-306. Application for a Temporary License**

- A.** To be eligible for a temporary license, an applicant shall:
  1. Have applied under R4-6-301 for a license by examination or R4-6-304 for a license by endorsement,
  2. Have submitted an application for a temporary license using a form approved by the Board and paid the fee required under R4-6-215, and
  3. Be one of the following:
    - a. Applying for a license by endorsement;
    - b. Applying for a license by examination, not currently licensed or certified by a state behavioral health regulatory entity, and:
      - i. Within 12 months after obtaining a degree from the education program on which the applicant is relying to meet licensing requirements,
      - ii. Has completed all licensure requirements except passing the required examination, and
      - iii. Has not previously taken the required examination; or
    - c. Applying for a license by examination and currently licensed or certified by another state behavioral health regulatory entity.
- B.** An individual is not eligible for a temporary license if the individual:

1. Is the subject of a complaint pending before any state behavioral health regulatory entity,
  2. Has had a license or certificate to practice a health care profession suspended or revoked by any state regulatory entity,
  3. Has a criminal history or history of disciplinary action by a state behavioral health regulatory entity unless the Board determines the history is not of sufficient seriousness to merit disciplinary action, or
  4. Has been previously denied a license by the Board.
- C.** A temporary license issued to an applicant expires one year after issuance by the Board.
- D.** A temporary license issued to an applicant who has not previously passed the required examination for licensure expires immediately if the temporary licensee:
1. Fails to take the required examination by the expiration date of the temporary license; or
  2. Takes but fails the required examination.
- E.** A temporary licensee shall provide written notice and return the temporary license to the Board if the temporary licensee fails the required examination.
- F.** An applicant who is issued a temporary license shall practice as a behavioral health professional only under direct supervision. The temporary license may contain restrictions as to time, place, and supervision that the Board deems appropriate.
- G.** The Board shall issue a temporary license only in the same discipline for which application is made under subsection (A).
- H.** The Board shall not extend the time of a temporary license or grant an additional temporary license based on the application submitted under subsection (A).
- I.** A temporary licensee is subject to disciplinary action by the Board under A.R.S. § 32-3281. A temporary license may be summarily revoked without a hearing under A.R.S. § 32-3279(C)(4).
- J.** If the Board denies a license by examination or endorsement to a temporary licensee, the temporary licensee shall return the temporary license to the Board within five days of receiving the Board's notice of the denial.
- K.** If a temporary licensee withdraws the license application submitted under R4-6-301 for a license by examination or R4-6-304 for a license by endorsement, the temporary license expires.

**R4-6-307. Approval of an Educational Program**

- A.** To obtain the Board's approval of an educational program, an authorized representative of the regionally accredited college or university shall submit:
1. An application, using a form approved by the Board;
  2. The fee prescribed under R4-6-215; and
  3. Documentary evidence that the educational program is consistent with the curriculum standards specified in A.R.S. Title 32, Chapter 33, and this Chapter.
- B.** The Board shall review the application materials for administrative completeness and determine whether additional information is necessary.
1. If the application packet is incomplete, Board shall send a written deficiency notice to the applicant specifying the missing or incomplete information. The applicant shall provide the additional information within 60 days after the deficiency notice is served.
  2. The applicant may obtain a 60-day extension of time to provide the deficient information by submitting a written request to the Board before expiration of the time specified in subsection (B)(1).
  3. If an applicant fails to provide the deficient information within the time specified in the written notice or as extended under subsection (B)(2), the Board shall administratively close the applicant's file with no recourse to appeal. To receive further consideration for approval of an educational program, an applicant whose file is administratively closed shall comply with subsection (A).
- C.** When an application for approval of an educational program is administratively complete, the ARC shall substantively review the application packet.
1. If the ARC finds that additional information is needed, the ARC shall provide a written comprehensive request for additional information to the applicant.
  2. The applicant shall provide the additional information within 60 days after the comprehensive request of additional information is served.
  3. If an applicant fails to provide the additional information within the time specified under subsection (C)(2), the Board shall administratively close the applicant's file with no recourse to appeal. To receive

further consideration for approval of an educational program, an applicant whose file is administratively closed shall comply with subsection (A).

- D.** After the ARC determines the substantive review is complete:
1. If the ARC finds the applicant's educational program is eligible for approval, the ARC shall recommend to the Board that the educational program be approved.
  2. If the ARC finds the applicant's educational program is ineligible for approval, the ARC shall send written notice to the applicant of the finding of ineligibility with an explanation of the basis for the finding. An applicant may appeal a finding of ineligibility for educational program approval using the following the procedure:
    - a. Submit to the ARC a written request for an informal review meeting within 30 days after the notice of ineligibility is served. If the applicant does not request an informal review meeting within the time provided, the ARC shall recommend to the Board that the educational program be denied approval and the applicant's file be closed with no recourse to appeal.
    - b. If the ARC receives a written request for an informal review meeting within the 30 days provided, the ARC shall schedule the informal review meeting and provide at least 30 days' notice of the informal review meeting to the applicant.
    - c. At the informal review meeting, the ARC shall provide the applicant an opportunity to present additional information regarding the curriculum of the educational program.
    - d. When the informal review is complete, the ARC shall make a second finding whether the educational program is eligible for approval and send written notice of the second finding to the applicant.
    - e. An applicant that receives a second notice of ineligibility under subsection (D)(2)(d), may appeal the finding by submitting to the Board, within 30 days after the second notice is served, a written request for a formal administrative hearing under A.R.S. Title 41, Chapter 6, Article 10.
    - f. The Board shall either refer a request for a formal administrative hearing to the Office of Administrative Hearings or schedule the hearing before the Board. If no request for a formal administrative hearing is made under subsection (D)(2)(e), the ARC shall recommend to the Board that the educational program be denied approval and the applicant's file be closed with no recourse to appeal.
    - g. If a formal administrative hearing is held before the Office of Administrative Hearings, the Board shall review the findings of fact, conclusions of law, and recommendation of the Administrative Law Judge and issue an order either granting or denying approval of the educational program.
    - h. If a formal administrative hearing is held before the Board, the Board shall issue findings of fact and conclusions of law and issue an order either granting or denying approval of the educational program.
    - i. The Board shall send the applicant a copy of the findings of fact, conclusions of law, and order.
- E.** The Board shall add an approved educational program to the list of approved educational programs that the Board maintains.
- F.** The Board's approval of an educational program is valid for five years unless the accredited college or university makes a change to the educational program that is inconsistent with the curriculum standards specified in A.R.S. Title 32, Chapter 33, and this Chapter.
- G.** An authorized representative of a regionally accredited college or university with a Board-approved educational program shall certify annually, using a form available from the Board, that there have been no changes to the approved educational program.
- H.** If a regionally accredited college or university makes one of the following changes to an approved educational program, the regionally accredited college or university shall notify the Board within 60 days after making the change and request approval of the educational program change under subsection (I):
1. Change to more than 25 percent of course competencies;
  2. Change to more than 25 percent of course learning objectives;
  3. Addition of a course in one of the core content areas specified in R4-6-501, R4-6-601, or R4-6-701; or
  4. Deletion of a course in one of the core content areas specified in R4-6-501, R4-6-601, or R4-6-701.
- I.** To apply for approval of an educational program change, an authorized representative of the regionally accredited college or university shall submit:
1. An approved educational program change form available from the Board;
  2. The fee prescribed under R4-6-215; and

3. Documentary evidence that the change to the approved educational program is consistent with the curriculum standards specified in A.R.S. Title 32, Chapter 33, and this Chapter.
- J. To maintain approved status of an educational program after five years, an authorized representative of the regionally accredited college or university shall make application under subsection (A).
- K. The Board shall process the materials submitted under subsections (I) and (J) using the procedure specified in subsections (B) through (D).
- L. Unless an educational program is currently approved by the Board under this Section, the regionally accredited college or university shall not represent that the educational program is Board approved in any program or marketing materials.

## **ARTICLE 4. SOCIAL WORK**

### **R4-6-401. Curriculum**

- A. An applicant for licensure as a baccalaureate social worker shall have a baccalaureate degree in social work from a regionally accredited college or university in a program accredited by the CSWE or an equivalent foreign degree as determined by the Foreign Equivalency Determination Service of the CSWE.
- B. An applicant for licensure as a master or clinical social worker shall have a master or higher degree in social work from a regionally accredited college or university in a program accredited by the CSWE or an equivalent foreign degree as determined by the Foreign Equivalency Determination Service of the CSWE.

### **R4-6-402. Examination**

- A. To be licensed as a baccalaureate social worker, an applicant shall receive a passing score on the bachelors, masters, advanced generalist, or clinical examination offered by ASWB.
- B. To be licensed as a master social worker, an applicant shall receive a passing score on the masters, advanced generalist, or clinical examination offered by ASWB.
- C. Except as specified in subsection (G)(2), to be licensed as a clinical social worker, an applicant shall receive a passing score on the clinical examination offered by ASWB.
- D. An applicant for baccalaureate, master, or clinical social worker licensure shall receive a passing score on an approved examination for the level of licensure requested within 12 months after receiving written examination authorization from the Board. An applicant shall not take an approved licensure examination more than three times during the 12-month testing period.
- E. If an applicant does not receive a passing score on an approved licensure examination within the 12 months referenced in subsection (D), the Board shall close the applicant's file with no recourse to appeal. To receive further consideration for licensure, an applicant whose file is closed shall submit a new application and fee.
- F. The Board may grant a one-time 90-day examination extension request to an applicant who demonstrates good cause as specified under R4-6-305(G).
- G. To be licensed by endorsement as a clinical social worker, an applicant shall receive a passing score on:
  1. The clinical examination offered by ASWB; or
  2. The advanced generalist examination offered by ASWB if the applicant:
    - a. Was licensed as a clinical social worker before July 1, 2004;
    - b. Met the examination requirement of the state being used to qualify for licensure by endorsement; and
    - c. Has been licensed continuously at the same level since passing the examination.

### **R4-6-403. Supervised Work Experience for Clinical Social Worker Licensure**

- A. An applicant for clinical social worker licensure shall demonstrate completion of at least 3200 hours of supervised work experience in the practice of clinical social work in no less than 24 months. Supervised work experience in the practice of clinical social work shall include:
  1. At least 1600 hours of direct client contact involving the use of psychotherapy;
  2. No more than 400 of the 1600 hours of direct client contact are in psychoeducation;
  3. At least 100 hours of clinical supervision as prescribed under R4-6-212 and R4-6-404; and
  4. For the purpose of licensure, no more than 1600 hours of indirect client contact related to psychotherapy services.

- B. For any month in which an applicant provides direct client contact, the applicant shall obtain at least one hour of clinical supervision.
- C. An applicant may submit more than the required 3200 hours of supervised work experience for consideration by the Board.
- D. During the period of required supervised work experience specified in subsection (A), an applicant for clinical social worker licensure shall practice behavioral health under the limitations specified in R4-6-210.
- E. There is no supervised work experience requirement for licensure as a baccalaureate or master social worker.

**R4-6-404. Clinical Supervision for Clinical Social Worker Licensure**

- A. An applicant for clinical social worker licensure shall demonstrate that the applicant received at least 100 hours of clinical supervision that meet the requirements specified in subsection (B) and R4-6-212 during the supervised work experience required under R4-6-403.
- B. The Board shall accept hours of clinical supervision for clinical social worker licensure if the hours required under subsection (A) meet the following:
  - 1. At least 50 hours are supervised by a clinical social worker licensed by the Board, and
  - 2. The remaining hours are supervised by an individual qualified under R4-6-212(A), or
  - 3. The hours are supervised by an individual for whom an exemption was obtained under R4-6-212.01.
- C. The Board shall not accept hours of clinical supervision for clinical social worker licensure provided by a substance abuse counselor.

**R4-6-405. Repealed**

**ARTICLE 5. COUNSELING**

**R4-6-501. Curriculum**

- A. An applicant for licensure as an associate or professional counselor shall have a master's or higher degree with a major emphasis in counseling from:
  - 1. A program accredited by CACREP or CORE that consists of at least 60 semester or 90 quarter credit hours, including a supervised counseling practicum as prescribed under subsection (E);
  - 2. An educational program previously approved by the Board under A.R.S. § 32-3253(A)(14) that consists of at least 60 semester or 90 quarter credit hours, including a supervised counseling practicum as prescribed under subsection (E); or
  - 3. A program from a regionally accredited college or university that consists of at least 60 semester or 90 quarter credit hours, meets the requirements specified in subsections (C) and (D), and includes a supervised counseling practicum as prescribed under subsection (E).
- B. To assist the Board to evaluate a program under subsection (A)(3), an applicant who obtained a degree from a program under subsection (A)(3) shall attach the following to the application required under R4-6-301:
  - 1. Published college or university course descriptions for the year and semester enrolled for each course submitted to meet curriculum requirements,
  - 2. Verification, using a form approved by the Board, of completing the supervised counseling practicum required under subsection (E); and
  - 3. Other documentation requested by the Board.
- C. The Board shall accept for licensure the curriculum from a program not accredited by CACREP or CORE if the curriculum includes at least 60 semester or 90 quarter credit hours in counseling-related coursework, of which at least three semester or 4 quarter credit hours are in each of the following eight core content areas:
  - 1. Professional orientation and ethical practice: Studies that provide a broad understanding of professional counseling ethics and legal standards, including but not limited to:
    - a. Professional roles, functions, and relationships;
    - b. Professional credentialing;
    - c. Ethical standards of professional organizations; and
    - d. Application of ethical and legal considerations in counseling;
  - 2. Social and cultural diversity: Studies that provide a broad understanding of the cultural context of relationships, issues, and trends in a multicultural society, including but not limited to:

- a. Theories of multicultural counseling, and
  - b. Multicultural competencies and strategies;
3. Human growth and development: Studies that provide a broad understanding of the nature and needs of individuals at all developmental stages, including but not limited to:
    - a. Theories of individual and family development across the life-span, and
    - b. Theories of personality development;
  4. Career development: Studies that provide a broad understanding of career development and related life factors, including but not limited to:
    - a. Career development theories, and
    - b. Career decision processes;
  5. Helping relationship: Studies that provide a broad understanding of counseling processes, including but not limited to:
    - a. Counseling theories and models,
    - b. Essential interviewing and counseling skills, and
    - c. Therapeutic processes;
  6. Group work: Studies that provide a broad understanding of group development, dynamics, counseling theories, counseling methods and skills, and other group work approaches, including but not limited to:
    - a. Principles of group dynamics,
    - b. Group leadership styles and approaches, and
    - c. Theories and methods of group counseling;
  7. Assessment: Studies that provide a broad understanding of individual and group approaches to assessment and evaluation, including but not limited to:
    - a. Diagnostic process including differential diagnosis and use of diagnostic classification systems such as the Diagnostic and Statistical Manual of Mental Disorders and the International Classification of Diseases,
    - b. Use of assessment for diagnostic and intervention planning purposes, and
    - c. Basic concepts of standardized and non-standardized testing; and
  8. Research and program evaluation: Studies that provide a broad understanding of recognized research methods and design and basic statistical analysis, including but not limited to:
    - a. Qualitative and quantitative research methods, and
    - b. Statistical methods used in conducting research and program evaluation.
- D.** In evaluating the curriculum required under subsection (C), the Board shall assess whether a core content area is embedded or contained in more than one course. The applicant shall provide information the Board requires to determine whether a core content area is embedded in multiple courses. The Board shall not accept a core content area embedded in more than two courses unless the courses are succession courses. The Board shall allow subject matter in a course to qualify in only one core content area.
- E.** The Board shall accept a supervised counseling practicum that is part of a master's or higher degree program if the supervised counseling practicum meets the following standards:
1. Consists of at least 700 clock hours in a professional counseling setting,
  2. Includes at least 240 hours of direct client contact,
  3. Provides an opportunity for the supervisee to perform all activities associated with employment as a professional counselor,
  4. Oversight of the counseling practicum is provided by a faculty member, and
  5. Onsite supervision is provided by an individual approved by the college or university.
- F.** The Board shall require that an applicant for professional counselor licensure who received a master's or higher degree before July 1, 1989, from a program that did not include a supervised counseling practicum complete three years of post-master's or higher degree work experience in counseling under direct supervision. One year of a doctoral-clinical internship may be substituted for one year of supervised work experience.
- G.** The Board shall accept for licensure only courses that the applicant completed with a passing grade.
- H.** The Board shall deem that an applicant who holds an active associate counselor license issued by the Board and in good standing meets the curriculum requirements for professional counselor licensure.

**R4-6-502. Examination**

- A.** The Board approves the following examinations for applicants for counselor licensure:
  - 1. National Counselor Examination for Licensure and Certification offered by the National Board for Certified Counselors,
  - 2. National Clinical Mental Health Counseling Examination offered by the National Board for Certified Counselors, and
  - 3. Certified Rehabilitation Counselor Examination offered by the Commission on Rehabilitation Counselor Certification.
- B.** An applicant for counselor licensure shall receive a passing score on an approved licensure examination.
- C.** An applicant shall pass an approved examination within 12 months after receiving written examination authorization from the Board. An applicant shall not take an examination more than three times during the 12-month testing period.
- D.** If an applicant does not receive a passing score as required under subsection (B) within the 12 months referenced in subsection (C), the Board shall close the applicant's file with no recourse to appeal. To receive further consideration for licensure, an applicant whose file is closed shall submit a new application and fee.
- E.** The Board may grant a one-time 90-day examination extension request to an applicant who demonstrates good cause as specified under R4-6-305(G).

**R4-6-503. Supervised Work Experience for Professional Counselor Licensure**

- A.** An applicant for professional counselor licensure shall demonstrate completion of at least 3200 hours of supervised work experience in the practice of professional counseling in no less than 24 months. The applicant shall ensure that the supervised work experience includes:
  - 1. At least 1600 hours of direct client contact involving the use of psychotherapy;
  - 2. No more than 400 of the 1600 hours of direct client contact are in psychoeducation;
  - 3. At least 100 hours of clinical supervision as prescribed under R4-6-212 and R4-6-504; and
  - 4. For the purpose of licensure, no more than 1600 hours of indirect client contact related to psychotherapy services.
- B.** For any month in which an applicant provides direct client contact, the applicant shall obtain at least one hour of clinical supervision.
- C.** An applicant may submit more than the required 3200 hours of supervised work experience for consideration by the Board.
- D.** During the period of supervised work experience specified in subsection (A), an applicant for professional counselor licensure shall practice behavioral health under the limitations specified in R4-6-210.
- E.** There is no supervised work experience requirement for licensure as an associate counselor.

**R4-6-504. Clinical Supervision for Professional Counselor Licensure**

- A.** An applicant for professional counselor licensure shall demonstrate that the applicant received at least 100 hours of clinical supervision that meet the requirements specified in subsection (B) and R4-6-212 during the supervised work experience required under R4-6-503.
- B.** The Board shall accept hours of clinical supervision for professional counselor licensure if:
  - 1. At least 50 hours are supervised by a professional counselor licensed by the Board, and
  - 2. The remaining hours are supervised by an individual qualified under R4-6-212(A), or
  - 3. The hours are supervised by an individual for whom an exemption was obtained under R4-6-212.01.
- C.** The Board shall not accept hours of clinical supervision provided by a substance abuse counselor for professional counselor licensure.

**R4-6-505. Post-degree Programs**

An applicant who has a master's or higher degree with a major emphasis in counseling but does not meet all curriculum requirements specified in R4-6-501 may take post-graduate courses from a regionally accredited college or university to remove the curriculum deficiencies as follows:

1. An applicant whose degree did not consist of 60 semester or 90 quarter credit hours may take graduate or higher level counseling-related courses to meet the curriculum requirement;
2. An applicant whose degree did not include the eight core content areas specified in R4-6-501(C) may take graduate or higher level courses to meet the core content requirement; and
3. An applicant whose practicum did not meet the requirements specified in R4-6-501(E) may obtain additional graduate level supervised practicum hours.

## **ARTICLE 6. MARRIAGE AND FAMILY THERAPY**

### **R4-6-601. Curriculum**

- A.** An applicant for licensure as an associate marriage and family therapist or a marriage and family therapist shall have a master's or higher degree from a regionally accredited college or university in a behavioral health science program that :
1. Is accredited by COAMFTE;
  2. Was previously approved by the Board under A.R.S. § 32-3253(A)(14); or
  3. Includes at least three semester or four quarter credit hours in each of the number of courses specified in the six core content areas listed in subsection (B).
- B.** A program under subsection (A)(3) shall include:
1. Marriage and family studies: Three courses from a family systems theory orientation that collectively contain at minimum the following elements:
    - a. Introductory family systems theory;
    - b. Family development;
    - c. Family systems, including marital, sibling, and individual subsystems; and
    - d. Gender and cultural issues;
  2. Marriage and family therapy: Three courses that collectively contain at minimum the following elements:
    - a. Advanced family systems theory and interventions;
    - b. Major systemic marriage and family therapy treatment approaches;
    - c. Communications; and
    - d. Sex therapy;
  3. Human development: Three courses that may integrate family systems theory that collectively contain at minimum the following elements:
    - a. Normal and abnormal human development;
    - b. Human sexuality; and
    - c. Psychopathology and abnormal behavior;
  4. Professional studies: One course including at minimum:
    - a. Professional ethics as a therapist, including legal and ethical responsibilities and liabilities; and
    - b. Family law;
  5. Research: One course in research design, methodology, and statistics in behavioral health science; and
  6. Supervised practicum: Two courses that supplement the practical experience gained under subsection (D).
- C.** In evaluating the curriculum required under subsection (B), the Board shall assess whether a core content area is embedded or contained in more than one course. The applicant shall provide information the Board requires to determine whether a core content area is embedded in multiple courses. The Board shall not accept a core content area embedded in more than two courses unless the courses are succession courses. The Board shall allow subject matter in a course to qualify in only one core content area.
- D.** A program's supervised practicum shall meet the following standards:
1. Provides an opportunity for the enrolled student to provide marriage and family therapy services to individuals, couples, and families in an educational or professional setting under the direction of a faculty member or supervisor designated by the college or university;
  2. Includes at least 300 client-contact hours provided under direct supervision;
  3. Has supervision provided by a designated licensed marriage and family therapist.
- E.** An applicant may submit a written request to the ARC for an exemption from the requirement specified in subsection (D)(3). The request shall include the name of the behavioral health professional proposed by the applicant to act as supervisor of the practicum, a copy of the proposed supervisor's transcript and curriculum

vitae, and any additional documentation requested by the ARC. The ARC shall grant the exemption if the ARC determines the proposed supervisor is qualified by education, experience, and training to provide supervision.

- F. The Board shall deem an applicant who holds an active associate marriage and family therapist license issued by the Board and in good standing meets the curriculum requirements for marriage and family therapist licensure.

#### **R4-6-602. Examination**

- A. The Board approves the marriage and family therapy licensure examination offered by the Association of Marital and Family Therapy Regulatory Boards.
- B. An applicant for associate marriage and family therapist or marriage and family therapist licensure shall receive a passing score on the approved licensure examination.
- C. An applicant shall pass the approved examination within 12 months after receiving written examination authorization from the Board. An applicant shall not take the examination more than three times during the 12-month testing period.
- D. If an applicant does not receive a passing score as required under subsection (B) within the 12 months referenced in subsection (C), the Board shall close the applicant's file with no recourse to appeal. To receive further consideration for licensure, an applicant whose file is closed shall submit a new application and fee.
- E. The Board may grant a one-time 90-day examination extension request to an applicant who demonstrates good cause as specified under R4-6-305(G).

#### **R4-6-603. Supervised Work Experience for Marriage and Family Therapy Licensure**

- A. An applicant for licensure as a marriage and family therapist shall demonstrate completion of at least 3200 hours of supervised work experience in the practice of marriage and family therapy in no less than 24 months. The applicant shall ensure that the supervised work experience includes:
  - 1. At least 1600 hours of direct client contact involving the use of psychotherapy:
    - a. At least 1000 of the 1600 hours of direct client contact are with couples or families; and
    - b. No more than 400 of the 1600 hours of direct client contact are in psychoeducation and at least 60 percent of psychoeducation hours are with couples or families;
  - 2. At least 100 hours of clinical supervision as prescribed under R4-6-212 and R4-6-604; and
  - 3. For the purpose of licensure, no more than 1600 hours of indirect client contact related to psychotherapy services.
- B. For any month in which an applicant provides direct client contact, the applicant shall obtain at least one hour of clinical supervision.
- C. An applicant may submit more than the required 3200 hours of supervised work experience for consideration by the Board.
- D. During the period of supervised work experience specified in subsection (A), an applicant for marriage and family therapist licensure shall practice behavioral health under the limitations specified in R4-6-210.
- E. There is no supervised work experience requirement for licensure as an associate marriage and family therapist.

#### **R4-6-604. Clinical Supervision for Marriage and Family Therapy Licensure**

- A. An applicant for marriage and family therapy licensure shall demonstrate that the applicant received at least 100 hours of clinical supervision that meets the requirements specified in subsection (B) and R4-6-212 during the supervised work experience required under R4-6-603.
- B. The Board shall accept hours of clinical supervision for marriage and family therapist licensure if:
  - 1. The hours are supervised by an individual who meets the educational requirements under R4-6-214;
  - 2. At least 75 of the hours are supervised by a marriage and family therapist licensed by the Board, and
  - 3. The remaining hours are supervised by one or more of the following:
    - a. A professional counselor licensed by the Board;
    - b. A clinical social worker licensed by the Board;
    - c. A marriage and family therapist licensed by the Board; or
    - d. A psychologist licensed under A.R.S. Title 32, Chapter 19.1; or

4. The hours are supervised by an individual for whom an exemption is obtained under R4-6-212.01.
- C. The Board shall not accept hours of clinical supervision provided by a substance abuse counselor for marriage and family therapy licensure.

**R4-6-605. Post-degree Programs**

An applicant who has a master's or higher degree in a behavioral health science but does not meet all curriculum requirements specified in R4-6-601 may take post-graduate courses from a regionally accredited college or university to remove the curriculum deficiencies if:

1. The deficiencies constitute no more than 12 semester or 16 quarter credit hours; and
2. Courses taken to remove the deficiencies are at a graduate or higher level.

**R4-6-606. Repealed**

**ARTICLE 7. SUBSTANCE ABUSE COUNSELING**

**R4-6-701. Licensed Substance Abuse Technician Curriculum**

- A. An applicant for licensure as a substance abuse technician shall have:
1. An associate's or bachelor's degree from a regionally accredited college or university in a program accredited by NASAC;
  2. An associate's or bachelor's degree from a regionally accredited college or university in an educational program previously approved by the Board under A.R.S. § 32-3253(A)(14); or
  3. An associate's or bachelor's degree from a regionally accredited college or university in a behavioral health science program that includes coursework from the seven core content areas listed in subsection (B).
- B. An associate's or bachelor's degree under subsection (A)(3), shall include at least three semester or four quarter credit hours in each of the following core content areas:
1. Psychopharmacology, including but limited to:
    - a. Nature of psychoactive chemicals;
    - b. Behavioral, psychological, physiological, and social effects of psychoactive substance use;
    - c. Symptoms of intoxication, withdrawal, and toxicity;
    - d. Toxicity screen options, limitations, and legal implications; and
    - e. Use of pharmacotherapy for treatment of addiction;
  2. Models of treatment and relapse prevention: Including but not limited to philosophies and practices of generally accepted and scientifically supported models of:
    - a. Treatment,
    - b. Recovery,
    - c. Relapse prevention, and
    - d. Continuing care for addiction and other substance use related problems;
  3. Group work: Group dynamics and processes as they relate to addictions and substance use disorders;
  4. Working with diverse populations: Issues and trends in a multicultural and diverse society as they relate to substance use disorder and addiction;
  5. Co-occurring disorders, including but not limited to:
    - a. Symptoms of mental health and other disorders prevalent in individuals with substance use disorders or addictions;
    - b. Screening and assessment tools used to detect and evaluate the presence and severity of co-occurring disorders; and
    - c. Evidence-based strategies for managing risks associated with treating individuals who have co-occurring disorders;
  6. Ethics, including but not limited to:
    - a. Legal and ethical responsibilities and liabilities;
    - b. Standards of professional behavior and scope of practice;
    - c. Client rights, responsibilities, and informed consent; and
    - d. Confidentiality and other legal considerations in the practice of behavioral health; and

7. Assessment, diagnosis, and treatment. Use of assessment and diagnosis to develop appropriate treatment interventions for substance use disorders or addictions.
- C. The Board shall waive the education requirement in subsection (A) for an applicant requesting licensure as a substance abuse technician if the applicant demonstrates all of the following:
1. The applicant provides services under a contract or grant with the federal government under the authority of 25 U.S.C. § 450 – 450(n) or § 1601 – 1683;
  2. The applicant has obtained at least the equivalent of a high school diploma;
  3. Because of cultural considerations, obtaining the degree required under subsection (A) would be an extreme hardship for the applicant; and
  4. The applicant has completed at least 6400 hours of supervised work experience in substance abuse counseling, as prescribed in R4-6-705(C), in no less than 48 months within the seven years immediately preceding the date of application.
- D. In evaluating the curriculum required under subsection (B), the Board shall assess whether a core content area is embedded or contained in more than one course. The applicant shall provide information the Board requires to determine whether a core content area is embedded in multiple courses. The Board shall not accept a core content area embedded in more than two courses unless the courses are succession courses. The Board shall allow subject matter in a course to qualify in only one core content area.
- E. An applicant for licensure as a substance abuse technician who completed the applicant's educational training before the effective date of this Section or no later than October 31, 2017, may request that the Board evaluate the applicant's educational training using the standards in effect before the effective date of this Section.

**R4-6-702. Licensed Associate Substance Abuse Counselor Curriculum**

- A. An applicant for licensure as an associate substance abuse counselor shall have one of the following:
1. A bachelor's degree from a regionally accredited college or university in a program accredited by NASAC and supervised work experience that meets the standards specified in R4-6-705(A);
  2. A master's or higher degree from a regionally accredited college or university in a program accredited by NASAC;
  3. A bachelor's degree from a regionally accredited college or university in a behavioral health science program that meets the core content standards specified in R4-6-701(B) and supervised work experience that meets the standards specified in R4-6-705(A);
  4. A master's or higher degree from a regionally accredited college or university in a behavioral health science program that meets the core content standards specified in R4-6-701(B) and includes at least 300 hours of supervised practicum as prescribed under subsection (C); or
  5. A bachelor's degree from a regionally accredited college or university in an educational program previously approved by the Board under A.R.S. § 32-3253(A)(14) and supervised work experience that meets the standards specified in R4-6-705(A); or
  6. A master's or higher degree from a regionally accredited college or university in an educational program previously approved by the Board under A.R.S. § 32-3253(A)(14) and includes at least 300 hours of supervised practicum as prescribed under subsection (C).
- B. In evaluating the curriculum required under subsection (A)(3) or (4), the Board shall assess whether a core content area is embedded or contained in more than one course. The applicant shall provide information the Board requires to determine whether a core content area is embedded in multiple courses. The Board shall not accept a core content area embedded in more than two courses unless the courses are succession courses. The Board shall allow subject matter in a course to qualify in only one core content area.
- C. Supervised practicum. A supervised practicum shall integrate didactic learning related to substance use disorders with face-to-face, direct counseling experience. The counseling experience shall include intake and assessment, treatment planning, discharge planning, documentation, and case management activities.
- D. The Board shall deem an applicant to meet the curriculum requirements for associate substance abuse counselor licensure if the applicant:
1. Holds an active and in good standing substance abuse technician license issued by the Board; and
  2. Met the curriculum requirements with a bachelor's degree when the substance abuse technician license was issued.

- E. An applicant for licensure as an associate substance abuse counselor who completed the applicant's educational training before the effective date of this Section or no later than October 31, 2017, may request that the Board evaluate the applicant's educational training using the standards in effect before the effective date of this Section.

#### **R4-6-703. Licensed Independent Substance Abuse Counselor Curriculum**

- A. An applicant for licensure as an independent substance abuse counselor shall have a master's or higher degree from a regionally accredited college or university in one of the following:
  - 1. A program accredited by NASAC;
  - 2. A behavioral health science program that meets the core content standards specified in R4-6-701(B) and includes at least 300 hours of supervised practicum as prescribed under subsection (D); or
  - 3. An educational program previously approved by the Board under A.R.S. § 32-3253(A)(14) that includes at least 300 hours of supervised practicum as prescribed under subsection (D).
- B. In addition to the degree requirement under subsection (A), an applicant for licensure as an independent substance abuse counselor shall complete the supervised work experience requirements prescribed under R4-6-705(B).
- C. In evaluating the curriculum required under subsection (A)(2), the Board shall assess whether a core content area is embedded or contained in more than one course. The applicant shall provide information the Board requires to determine whether a core content area is embedded in multiple courses. The Board shall not accept a core content area embedded in more than two courses unless the courses are succession courses. The Board shall allow subject matter in a course to qualify in only one core content area.
- D. Supervised practicum. A supervised practicum shall integrate didactic learning related to substance use disorders with face-to-face, direct counseling experience. The counseling experience shall include intake and assessment, treatment planning, discharge planning, documentation, and case management activities.
- E. The Board shall deem an applicant to meet the curriculum requirements for independent substance abuse counselor licensure if the applicant:
  - 1. Holds an active and in good standing associate substance abuse counselor license issued by the Board; and
  - 2. Met the curriculum requirements with a master's degree when the associate substance abuse counselor license was issued.
- F. An applicant for licensure as an independent substance abuse counselor who completed the applicant's educational training before the effective date of this Section or no later than October 31, 2017, may request that the Board evaluate the applicant's educational training using the standards in effect before the effective date of this Section.

#### **R4-6-704. Examination**

- A. The Board approves the following licensure examinations for an applicant for substance abuse technician licensure:
  - 1. Alcohol and Drug Counselor and Advanced Alcohol and Drug Counselor Examinations offered by the International Certification and Reciprocity Consortium, and
  - 2. Level I or higher examinations offered by the NAADAC, the Association of Addiction Professionals.
- B. The Board approves the following licensure examinations for an applicant for associate or independent substance abuse counselor licensure:
  - 1. Advanced Alcohol and Drug Counselor Examination offered by the International Certification and Reciprocity Consortium,
  - 2. Level II or higher examinations offered by the NAADAC, the Association of Addiction Professionals, and
  - 3. Examination for Master Addictions Counselors offered by the National Board for Certified Counselors.
- C. For an applicant for associate or independent substance abuse counselor licensure who received written examination authorization from the Board before the effective date of this Section, the Board shall accept an examination listed in subsection (A) through expiration of the written examination authorization provided by the Board.

- D. The Board shall deem an applicant for independent substance abuse counselor licensure as meeting the examination requirements if all of the following apply:
  - 1. The applicant has an active associate substance abuse counselor license;
  - 2. The applicant passed a written examination listed in subsection (A) before November 1, 2015; and
  - 3. The applicant submitted an application to the Board on or after November 1, 2015.
- E. An applicant shall pass an approved examination within 12 months after receiving written examination authorization from the Board. An applicant shall not take an approved examination more than three times during the 12-month testing period.
- F. If an applicant does not receive a passing score on an approved licensure examination within the 12 months referenced in subsection (D), the Board shall close the applicant's file with no recourse to appeal. To receive further consideration for licensure, an applicant whose file is closed shall submit a new application and fee.
- G. The Board may grant a one-time 90-day examination extension request to an applicant who demonstrates good cause as specified under R4-6-305(G).

#### **R4-6-705. Supervised Work Experience for Substance Abuse Counselor Licensure**

- A. An applicant for associate substance abuse counselor licensure who has a bachelor's degree and is required under R4-6-702(A) to participate in a supervised work experience shall complete at least 3200 hours of supervised work experience in substance abuse counseling in no less than 24 months. The applicant shall ensure that the supervised work experience relates to substance use disorder and addiction and meets the following standards:
  - 1. At least 1600 hours of direct client contact involving the use of psychotherapy related to substance use disorder and addiction issues,
  - 2. No more than 400 of the 1600 hours of direct client contact are in psychoeducation,
  - 3. For the purpose of licensure, no more than 1600 hours of indirect client contact related to psychotherapy services,
  - 4. At least 100 hours of clinical supervision as prescribed under R4-6-212 and R4-6-706, and
  - 5. At least one hour of clinical supervision in any month in which the applicant provides direct client contact.
- B. An applicant for independent substance abuse counselor licensure shall demonstrate completion of at least 3200 hours of supervised work experience in substance abuse counseling in no less than 24 months. The applicant shall ensure that the supervised work experience meets the standards specified in subsection (A).
- C. An applicant for substance abuse technician qualifying under R4-6-701(C) shall complete at least 6400 hours of supervised work experience in no less than 48 months. The applicant shall ensure that the supervised work experience includes:
  - 1. At least 3200 hours of direct client contact;
  - 2. Using psychotherapy to assess, diagnose, and treat individuals, couples, families, and groups for issues relating to substance use disorder and addiction; and
  - 3. At least 200 hours of clinical supervision as prescribed under R4-6-212 and R4-6-706.
- D. An applicant may submit more than the required number of hours of supervised work experience for consideration by the Board.
- E. During the period of required supervised work experience, an applicant for substance abuse licensure shall practice behavioral health under the limitations specified in R4-6-210.
- F. There is no supervised work experience requirement for an applicant for licensure as:
  - 1. A substance abuse technician qualifying under R4-6-701(A), or
  - 2. An associate substance abuse counselor qualifying under R4-6-702(A) with a master's or higher degree.

#### **R4-6-706. Clinical Supervision for Substance Abuse Counselor Licensure**

- A. During the supervised work experience required under R4-6-705, an applicant for substance abuse counselor licensure shall demonstrate that the applicant received, for the level of licensure sought, at least the number of hours of clinical supervision specified in R4-6-705 that meets the requirements in subsection (B) and R4-6-212.
- B. The Board shall accept hours of clinical supervision for substance abuse licensure if the focus of the supervised hours relates to substance use disorder and addiction and:

1. At least 50 hours are supervised by an independent substance abuse counselor licensed by the Board, and
2. The remaining hours are supervised by an individual qualified under R4-6-212(A), or
3. The hours are supervised by an individual for whom an exemption was obtained under R4-6-212.01.

#### **R4-6-707. Post-degree Programs**

An applicant who has a behavioral health science degree from a regionally accredited college or university but does not meet all curriculum requirements specified in R4-6-701, R4-6-702, or R4-6-703 may take post-graduate courses from a regionally accredited college or university to remove the curriculum deficiencies. The Board shall accept a post-graduate course from a regionally accredited college or university to remove a curriculum deficiency if the course meets the following requirement, as applicable:

1. For an applicant who has an associate's or bachelor's degree, an undergraduate or higher level course; or
2. For an applicant who has a master's degree, a graduate or higher level course.

### **ARTICLE 8. LICENSE RENEWAL AND CONTINUING EDUCATION**

#### **R4-6-801. Renewal of Licensure**

- A. Under A.R.S. § 32-3273, a license issued by the Board under A.R.S. Title 32, Chapter 33 and this Chapter is renewable every two years. A licensee who has more than one license may request in writing that the Board synchronize the expiration dates of the licenses. The licensee shall pay any prorated fees required to accomplish the synchronization.
- B. A licensee holding an active license to practice behavioral health in this state shall complete 30 clock hours of continuing education as prescribed under R4-6-802 between the date the Board received the licensee's last renewal application and the next license expiration date. A licensee may not carry excess continuing education hours from one license period to the next.
- C. To renew licensure, a licensee shall submit the following to the Board on or before the date of license expiration or as specified in A.R.S. § 32-4301:
  1. A renewal application form, approved by the Board. The licensee shall ensure that the renewal form:
    - a. Includes a list of 30 clock hours of continuing education that the licensee completed during the license period;
    - b. If the documentation previously submitted under R4-6-301(12) was a limited form of work authorization issued by the federal government, includes evidence that the work authorization has not expired; and
    - c. Is signed by the licensee attesting that all information submitted is true and correct;
  2. Payment of the renewal fee as prescribed in R4-6-215; and
  3. Other documents requested by the Board to determine that the licensee continues to meet the requirements under A.R.S. Title 32, Chapter 33 and this Chapter.
- D. The Board may audit a licensee to verify compliance with the continuing education requirements under subsection (B). A licensee shall maintain documentation verifying compliance with the continuing education requirements as prescribed under R4-6-803.
- E. A licensee whose license expires may have the license reinstated by complying with subsection (C) and paying a late renewal penalty within 90 days of the license expiration date. A license reinstated under this subsection is effective with no lapse in licensure.

#### **R4-6-802. Continuing Education**

- A. A licensee who maintains more than one license may apply the same continuing education hours for renewal of each license if the content of the continuing education relates to the scope of practice of each license.
- B. For each license period, a licensee may report a maximum of:
  1. Ten clock hours of continuing education for first-time presentations by the licensee that deal with current developments, skills, procedures, or treatments related to the practice of behavioral health. The licensee may claim one clock hour for each hour spent preparing, writing, and presenting information;
  2. Six clock hours of continuing education for attendance at a Board meeting where the licensee is not:
    - a. A member of the Board,
    - b. The subject of any matter on the agenda, or

- c. The complainant in any matter that is on the agenda; and
- 3. Ten clock hours of continuing education for service as a Board or ARC member.
- C. For each license period, a licensee shall report:
  - 1. A minimum of three clock hours of continuing education sponsored, approved, or offered by an entity listed in subsection (D) in:
    - a. Behavioral health ethics or mental health law, and
    - b. Cultural competency and diversity; and
  - 2. Beginning January 1, 2018, in addition to the requirement under subsection (C)(1), complete a three clock hour Board-approved tutorial on Board statutes and rules.
- D. A licensee shall participate in continuing education that relates to the scope of practice of the license held and to maintaining or improving the skill and competency of the licensee. The Board has determined that in addition to the continuing education listed in subsections (B) and (C), the following continuing education meets this standard:
  - 1. Activities sponsored or approved by national, regional, or state professional associations or organizations in the specialties of marriage and family therapy, professional counseling, social work, substance abuse counseling, or in the allied professions of psychiatry, psychiatric nursing, psychology, or pastoral counseling;
  - 2. Programs in behavioral health sponsored or approved by a regionally accredited college or university;
  - 3. In-service training, courses, or workshops in behavioral health sponsored by federal, state, or local social service agencies, public school systems, or licensed health facilities or hospitals;
  - 4. Graduate or undergraduate courses in behavioral health offered by a regionally accredited college or university. One semester-credit hour or the hour equivalent of one semester hour equals 15 clock hours of continuing education;
  - 5. Publishing a paper, report, or book that deals with current developments, skills, procedures, or treatments related to the practice of behavioral health. For the license period in which publication occurs, the licensee may claim one clock hour for each hour spent preparing and writing materials; and
  - 6. Programs in behavioral health sponsored by a state superior court, adult probation department, or juvenile probation department.
- E. The Board has determined that a substance abuse technician, associate substance abuse counselor, or an independent substance abuse counselor shall ensure that at least 20 of the 30 clock hours of continuing education required under R4-6-801(B) are in the following categories:
  - 1. Pharmacology and psychopharmacology,
  - 2. Addiction processes,
  - 3. Models of substance use disorder and addiction treatment,
  - 4. Relapse prevention,
  - 5. Interdisciplinary approaches and teams in substance use disorder and addiction treatment,
  - 6. Substance use disorder and addiction assessment and diagnostic criteria,
  - 7. Appropriate use of substance use disorder and addiction treatment modalities,
  - 8. Substance use disorder and addiction as it related to diverse populations,
  - 9. Substance use disorder and addiction treatment and prevention,
  - 10. Clinical application of current substance use disorder and addiction research, or
  - 11. Co-occurring disorders.

**R4-6-803. Continuing Education Documentation**

- A. A licensee shall maintain documentation of continuing education for 24 months following the date of the license renewal.
- B. The licensee shall retain the following documentation as evidence of participation in continuing education:
  - 1. For conferences, seminars, workshops, and in-service training presentations, a signed certificate of attendance or a statement from the provider verifying the licensee's participation in the activity, including the title of the program, name, address, and telephone number of the sponsoring organization, names of presenters, date of the program, and clock hours involved;

2. For first-time presentations by a licensee, the title of the program, name, address, and telephone number of the sponsoring organization, date of the program, syllabus, and clock hours required to prepare and make the presentation;
3. For a graduate or undergraduate course, an official transcript;
4. For an audited graduate or undergraduate course, an official transcript; and
5. For attendance at a Board meeting, a signed certificate of attendance prepared by the Board.

#### **R4-6-804 Repealed**

### **ARTICLE 9. APPEAL OF LICENSURE OR LICENSURE RENEWAL INELIGIBILITY**

#### **R4-6-901. Appeal Process for Licensure Ineligibility**

- A. An applicant for licensure may be found ineligible because of unprofessional conduct or failure to meet licensure requirements.
- B. If the ARC finds an applicant is ineligible because of failure to meet licensure requirements:
  1. The ARC shall send a written notice of the finding of ineligibility to the applicant with an explanation of the basis for the finding.
  2. An applicant who wishes to appeal the finding of ineligibility shall submit a written request for an informal review meeting to the ARC within 30 days after the notice of ineligibility is served. If an informal review meeting is not requested within the time provided, the ARC shall recommend to the Board that licensure be denied and the licensee's file be closed with no recourse to appeal.
  3. If a request for an informal review meeting is received within the 30 days provided under subsection (B)(2), the ARC shall schedule the informal review meeting and provide at least 30-days' notice to the applicant. At the informal review meeting, the ARC shall allow the applicant to present additional information regarding the applicant's qualifications for licensure.
  4. When the review is complete, the ARC shall make a second finding whether the applicant is eligible for licensure. The ARC shall send written notice of this second finding to the applicant with an explanation of the basis for the finding.
  5. If the ARC again finds the applicant is ineligible for licensure, an applicant who wishes to appeal the second finding of ineligibility shall submit a written request to the Board for a formal administrative hearing under the Administrative Procedure Act. A.R.S. Title 41, Chapter 6, Article 10, within 30 days after the second notice of ineligibility is served. The Board shall either refer the request for a formal administrative hearing to the Office of Administrative Hearings or schedule the formal administrative hearing before the Board. If a formal administrative hearing is not requested within 30 days, the ARC shall recommend to the Board that licensure be denied and the applicant's file be closed with no recourse to appeal.
  6. If the formal administrative hearing is held before the Office of Administrative Hearings, the Board shall review the findings of fact, conclusions of law, and recommendation and issue an order either to grant or deny licensure.
  7. If the formal administrative hearing is held before the Board, the Board shall issue the findings of fact and conclusions of law and shall issue an order either to grant or deny licensure.
  8. The Board shall send the applicant a copy of the final findings of fact, conclusions of law, and order. An applicant who is denied licensure following a formal administrative hearing is required to exhaust the applicant's administrative remedies as described in R4-6-1002 before seeking judicial review of the Board's final administrative decision.
- C. If the Board receives a complaint against an applicant while the applicant is under review for licensure, the Board shall review the complaint in accordance with the procedures in R4-6-1001. The Board shall not take final action on an application while a complaint is pending against the applicant.

#### **R4-6-902. Appeal Process for Licensure Renewal Ineligibility**

- A. A licensee who applies for licensure renewal may be found ineligible because of failure to meet licensure renewal requirements.

- B.** If the Board finds an applicant for licensure renewal is ineligible because of failure to meet licensure renewal requirements:
1. The Board shall send a written notice of the finding of ineligibility to the licensee with an explanation of the basis for the finding.
  2. A licensee who wishes to appeal the finding of ineligibility for licensure renewal shall submit a written request for an informal review meeting to the Board within 30 days after the notice of ineligibility is served. If an informal review meeting is not requested within the time provided, the Board shall deny licensure renewal and close the licensee's file with no recourse to appeal.
  3. If a request for an informal review meeting is received within the 30 days provided under subsection (B)(2), the Board shall schedule the informal review meeting and provide at least 30-days' notice to the licensee. At the informal review meeting, the Board shall allow the licensee to present additional information regarding the licensee's qualifications for renewal.
  4. When the informal review meeting is complete, the Board shall make a second finding whether the licensee meets renewal requirements. The Board shall send written notice of this second finding to the licensee with an explanation of the basis for the finding.
  5. If the Board again finds the licensee is ineligible for licensure renewal, a licensee who wishes to appeal the second finding of ineligibility shall submit a written request to the Board for a formal administrative hearing under the Administrative Procedure Act, A.R.S. Title 41, Chapter 6, Article 10, within 30 days after the second notice of ineligibility is served. The Board shall either refer the request for a formal administrative hearing to the Office of Administrative Hearings or schedule the formal administrative hearing before the Board. If a formal administrative hearing is not requested within 30 days, the Board shall deny licensure renewal and close the licensee's file with no recourse to appeal.
  6. If the formal administrative hearing is held before the Office of Administrative Hearings, the Board shall review the findings of fact, conclusions of law, and recommendation and issue an order either to grant or deny licensure renewal.
  7. If the formal administrative hearing is held before the Board, the Board shall issue the findings of fact and conclusions of law and issue an order either to grant or deny licensure renewal.
  8. The Board shall send the licensee a copy of the final findings of fact, conclusions of law, and order. A licensee who is denied licensure renewal following a formal administrative hearing is required to exhaust the licensee's administrative remedies as described in R4-6-1002 before seeking judicial review of the Board's final administrative decision.

## **ARTICLE 10. DISCIPLINARY PROCESS**

### **R4-6-1001. Disciplinary Process**

- A.** If the Board receives a written complaint alleging a licensee is or may be incompetent, guilty of unprofessional practice, or mentally or physically unable to engage in the practice of behavioral health safely, the Board shall send written notice of the complaint to the licensee and require the licensee to submit a written response within 30 days from the date of service of the written notice of the complaint.
- B.** The Board shall conduct all disciplinary proceedings according to A.R.S. §§ 32-3281 and 3282 and Title 41, Chapter 6, Article 10.
- C.** As provided under A.R.S. § 32-3282(B), a licensee who is the subject of a complaint, or the licensee's designated representative, may review the complaint investigative file at the Board office at least five business days before the meeting at which the Board is scheduled to consider the complaint. The Board may redact confidential information before making the investigative file available to the licensee.
- D.** If the Board determines that disciplinary action is appropriate, the Board shall consider factors including, but not limited to, the following when determining the appropriate discipline:
1. Prior disciplinary offenses;
  2. Dishonest or self-serving motive;
  3. Pattern of misconduct; multiple offenses;
  4. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the Board;

5. Submission of false evidence, false statements, or other deceptive practices during the investigative or disciplinary process;
6. Refusal to acknowledge wrongful nature of conduct; and
7. Vulnerability of the victim.

**R4-6-1002. Review or Rehearing of a Board Decision**

- A. The Board shall provide for a rehearing or review of its decisions under A.R.S. Title 41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.
- B. Except as provided in subsection (I), a party is required to file a motion for rehearing or review of a Board decision to exhaust the party's administrative remedies. A party that has exhausted the party's administrative remedies may apply for judicial review of the final order issued by the Board in accordance with A.R.S. § 12-901 et seq.
- C. When a motion for rehearing or review is based on affidavits, the affidavits shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits.
- D. A party may amend a motion for rehearing or review at any time before the Board rules on the motion.
- E. An aggrieved party may seek a review or rehearing of a Board decision by submitting a written request for a review or rehearing to the Board within 30 days after service of the decision. The request shall specify the grounds for a review or rehearing. The Board shall grant a request for a review or rehearing for any of the following reasons materially affecting the rights of an aggrieved party:
  1. Irregularity in the administrative proceedings or any abuse of discretion that deprived the aggrieved party of a fair hearing;
  2. Misconduct of the Board, its staff, an administrative law judge, or any 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. Excessive penalties;
  6. Decision, findings of fact, or conclusions not justified by the evidence or contrary to law; or
  7. Errors regarding the admission or rejection of evidence or errors of law that occurred at the hearing or during the progress of the proceedings.
- F. The Board may affirm or modify the decision or grant a rehearing to any party on all or part of the issues for any of the reasons listed in subsection (E). An order modifying a decision or granting a rehearing shall specify with particularity the grounds for the order. The rehearing, if granted, shall be limited to the matters specified by the Board.
- G. No later than 30 days after a decision is rendered, the Board may order a rehearing or review on its own initiative, for any reason it might have granted relief on motion of a party.
- H. If the Board grants a request for rehearing, the Board shall hold the rehearing within 60 days after the date on the order granting the rehearing.
- I. If the Board makes a specific finding that a particular decision needs to be effective immediately to preserve 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 Board may issue the decision as a final order without an opportunity for a rehearing or review.

**ARTICLE 11. STANDARDS OF PRACTICE**

**R4-6-1101. Consent for Treatment**

A licensee shall:

1. Provide treatment to a client only in the context of a professional relationship based on informed consent for treatment;
2. Document in writing for each client the following elements of informed consent for treatment:
  - a. Purpose of treatment;
  - b. General procedures to be used in treatment, including benefits, limitations, and potential risks;
  - c. The client's right to have the client's records and all information regarding the client kept confidential and an explanation of the limitations on confidentiality;

- d. Notification of the licensee's supervision or involvement with a treatment team of professionals;
  - e. Methods for the client to obtain information about the client's records;
  - f. The client's right to participate in treatment decisions and in the development and periodic review and revision of the client's treatment plan;
  - g. The client's right to refuse any recommended treatment or to withdraw consent to treatment and to be advised of the consequences of refusal or withdrawal; and
  - h. The client's right to be informed of all fees that the client is required to pay and the licensee's refund and collection policies and procedures; and
3. Obtain a dated and signed informed consent for treatment from a client or the client's legal representative before providing treatment to the client and when a change occurs in an element listed in subsection (2) that might affect the client's consent for treatment; and
  4. Obtain a dated and signed informed consent for treatment from a client or the client's legal representative before audio or video taping the client or permitting a third party to observe treatment provided to the client.

#### **R4-6-1102. Treatment Plan**

A licensee shall:

1. Work jointly with each client or the client's legal representative to prepare an integrated, individualized, written treatment plan, based on the licensee's provisional or principal diagnosis and assessment of behavior and the treatment needs, abilities, resources, and circumstances of the client, that includes:
  - a. One or more treatment goals;
  - b. One or more treatment methods;
  - c. The date when the client's treatment plan will be reviewed;
  - d. If a discharge date has been determined, the aftercare needed;
  - e. The dated signature of the client or the client's legal representative; and
  - f. The dated signature of the licensee;
2. Review and reassess the treatment plan:
  - a. According to the review date specified in the treatment plan as required under subsection (1)(c); and
  - b. At least annually with the client or the client's legal representative to ensure the continued viability and effectiveness of the treatment plan and, where appropriate, add a description of the services the client may need after terminating treatment with the licensee;
3. Ensure that all treatment plan revisions include the dated signature of the client or the client's legal representative and the licensee;
4. Upon written request, provide a client or the client's legal representative an explanation of all aspects of the client's condition and treatment; and
5. Ensure that a client's treatment is in accordance with the client's treatment plan.

#### **R4-6-1103. Client Record**

**A.** A licensee shall ensure that a client record is maintained for each client and:

1. Is protected at all times from loss, damage, or alteration;
2. Is confidential;
3. Is legible and recorded in ink or electronically recorded;
4. Contains entries that are dated and include the printed name and signature or electronic signature of the individual making the entry;
5. Is current and accurate;
6. Contains original documents and original signature, initials, or authentication; and
7. Is disposed of in a manner that protects client confidentiality.

**B.** A licensee shall ensure that a client record contains the following, if applicable:

1. The client's name, address, and telephone number;
2. Information or records provided by or obtained from another person regarding the client;
3. Written authorization to release the client's record or information;
4. Progress notes;
5. Informed consent to treatment;

6. Contemporaneous documentation of:
    - a. Treatment plan and all revisions to the treatment plan;
    - b. Requests for client records and resolution of the requests;
    - c. Release of any information in the client record;
    - d. Contact with the client or another individual that relates to the clients health, safety, welfare, or treatment; and
    - e. Behavioral health services provided to the client;
  7. Other information or documentation required by state or federal law.
  8. Financial records, including:
    - a. Records of financial arrangements for the cost of providing behavioral health services;
    - b. Measures that will be taken for nonpayment of the cost of behavioral health services provided by the licensee.
- C.** A licensee shall make client records in the licensee's possession promptly available to another health professional and the client or the client's legal representative in accordance with A.R.S. § 12-2293.
- D.** A licensee shall make client records of a minor client in the licensee's possession promptly available to the minor client's parent in accordance with A.R.S. § 25-403.06.
- E.** A licensee shall retain records in accordance with A.R.S. § 12-2297.
- F.** A licensee shall ensure the safety and confidentiality of any client records the licensee creates, maintains, transfers, or destroys whether the records are written, taped, computerized, or stored in any other medium.
- G.** A licensee shall ensure that a client's privacy and the confidentiality of information provided by the client is maintained by subordinates, including employees, supervisees, clerical assistants, and volunteers.
- H.** A licensee shall ensure that each progress note includes the following:
1. The date a behavioral health service was provided;
  2. The time spent providing the behavioral health service;
  3. If counseling services were provided, whether the counseling was individual, couples, family, or group; and
  4. The dated signature of the licensee who provided the behavioral health service.

#### **R4-6-1104. Financial and Billing Records**

A licensee shall:

1. Make financial arrangements with a client or the client's legal representative, third-party payer, or supervisee that are reasonably understandable and conform to accepted billing practices;
2. Before entering a therapeutic relationship, clearly explain to a client or the client's legal representative, all financial arrangements related to professional services, including the use of collection agencies or legal measures for nonpayment;
3. Truthfully represent financial and billing facts to a client or the client's legal representative, third-party payer, or supervisee regarding services rendered; and
4. Maintain billing records, separate from clinical documentation, which correspond with the client record.

#### **R4-6-1105. Confidentiality**

- A.** A licensee shall release or disclose client records or any information regarding a client only:
1. In accordance with applicable federal or state law that authorizes release or disclosure; or
  2. With written authorization from the client or the client's legal representative.
- B.** A licensee shall ensure that written authorization for release of client records or any information regarding a client is obtained before a client record or any information regarding a client is released or disclosed unless otherwise allowed by state or federal law.
- C.** Written authorization includes:
1. The name of the person disclosing the client record or information;
  2. The purpose of the disclosure;
  3. The individual, agency, or entity requesting or receiving the record or information;
  4. A description of the client record or information to be released or disclosed;
  5. A statement indicating authorization and understanding that authorization may be revoked at any time;
  6. The date or circumstance when the authorization expires, not to exceed 12 months;

7. The date the authorization was signed; and
  8. The dated signature of the client or the client's legal representative.
- D.** A licensee shall ensure that any written authorization to release a client record or any information regarding a client is maintained in the client record.
- E.** If a licensee provides behavioral health services to multiple members of a family, each legally competent, participating family member shall independently provide written authorization to release client records regarding the family member. Without authorization from a family member, the licensee shall not disclose the family member's client record or any information obtained from the family member.

**R4-6-1106. Telepractice**

- A.** Except as otherwise provided by statute, an individual who provides counseling, social work, marriage and family therapy, or substance abuse counseling via telepractice to a client located in Arizona shall be licensed by the Board.
- B.** Except as otherwise provided by statute, a licensee who provides counseling, social work, marriage and family therapy, or substance abuse counseling via telepractice to a client located outside Arizona shall comply with not only A.R.S. Title 32, Chapter 33, and this Chapter but also the laws and rules of the jurisdiction in which the client is located.
- C.** An individual who provides counseling, social work, marriage and family therapy, or substance abuse counseling via telepractice shall:
1. In addition to complying with the requirements in R4-6-1101, document the limitations and risks associated with telepractice, including but not limited to the following:
    - a. Inherent confidentiality risks of electronic communication,
    - b. Potential for technology failure,
    - c. Emergency procedures when the licensee is unavailable, and
    - d. Manner of identifying the client when using electronic communication that does not involve video;
  2. In addition to complying with the requirements in R4-6-1103, include the following in the progress note required under R4-6-1103(H):
    - a. Mode of session, whether interactive audio, video, or electronic communication; and
    - b. Physical location of the client during the session.

# **ATTACHMENT**

**C**

# L A W S

## Arizona Revised Statutes Title 32 – Professions and Occupations Chapter 33 – Behavioral Health Professionals

### Article 1 Board of Behavioral Health Examiners

- 32-3251. Definitions
- 32-3252. Board of behavioral health examiners; appointment; qualifications; terms; compensation; immunity; training program
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- 32-3301. Licensed professional counselor; licensure; requirements

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**Article 7 Marriage and Family Therapy**

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**Article 8 Substance Abuse Counseling**

32-3321. Licensed substance abuse technician; licensed associate substance abuse counselor; licensed independent substance abuse counselor; licensure; qualifications; supervision

## ARTICLE 1 BOARD OF BEHAVIORAL HEALTH EXAMINERS

### **32-3251. Definitions**

In this chapter, unless the context otherwise requires:

1. "Board" means the board of behavioral health examiners.
2. "Client" means a patient who receives behavioral health services from a person licensed pursuant to this chapter.
3. "Direct client contact" means, the performance of therapeutic or clinical functions related to the applicant's professional practice level of psychotherapy that includes diagnosis, assessment and treatment and that may include psychoeducation for mental, emotional and behavioral disorders based primarily on verbal or nonverbal communications and intervention with, and in the presence of, one or more clients.
4. "Equivalent" means comparable in content and quality but not identical.
5. "Indirect client service" means training for, and the performance of, functions of an applicant's professional practice level in preparation for or on behalf of a client for whom direct client contact functions are also performed, including case consultation and receipt of clinical supervision. Indirect client service does not include the provision of psychoeducation.
6. "Letter of concern" means a nondisciplinary written document sent by the board to notify a licensee that, while there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.
7. "Licensee" means a person who is licensed pursuant to this chapter.
8. "Practice of behavioral health" means the practice of marriage and family therapy, professional counseling, social work and substance abuse counseling pursuant to this chapter.
9. "Practice of marriage and family therapy" means the professional application of family systems theories, principles and techniques to treat interpersonal relationship issues and nervous, mental and emotional disorders that are cognitive, affective or behavioral. The practice of marriage and family therapy includes:
  - (a) Assessment, appraisal and diagnosis.
  - (b) The use of psychotherapy for the purpose of evaluation, diagnosis and treatment of individuals, couples, families and groups.
10. "Practice of professional counseling" means the professional application of mental health, psychological and human development theories, principles and techniques to:
  - (a) Facilitate human development and adjustment throughout the human life span.
  - (b) Assess and facilitate career development.
  - (c) Treat interpersonal relationship issues and nervous, mental and emotional disorders that are cognitive, affective or behavioral.
  - (d) Manage symptoms of mental illness.
  - (e) Assess, appraise, evaluate, diagnose and treat individuals, couples, families and groups through the use of psychotherapy.
11. "Practice of social work" means the professional application of social work theories, principles, methods and techniques to:
  - (a) Treat mental, behavioral and emotional disorders.
  - (b) Assist individuals, families, groups and communities to enhance or restore the ability to function physically, socially, emotionally, mentally and economically.
  - (c) Assess, appraise, diagnose, evaluate and treat individuals, couples, families and groups through the use of psychotherapy.
12. "Practice of substance abuse counseling" means the professional application of general counseling theories, principles and techniques as specifically adapted, based on research and clinical experience, to the specialized needs and characteristics of persons who are experiencing substance abuse, chemical dependency and related problems and to the families of those persons. The practice of substance abuse counseling includes the following as they relate to substance abuse and chemical dependency issues:
  - (a) Assessment, appraisal and diagnosis.
  - (b) The use of psychotherapy for the purpose of evaluation, diagnosis and treatment of individuals, couples, families and groups.
13. "Psychoeducation" means the education of a client as part of a treatment process that provides the client with information regarding mental health, emotional disorders or behavioral health.
14. "Psychotherapy" means a variety of treatment methods developing out of generally accepted theories about human behavior and development.
15. "Telepractice" means providing behavioral health services through interactive audio, video or electronic communication that occurs between the behavioral health professional and the client, including any electronic communication for evaluation, diagnosis and treatment, including distance counseling, in a secure platform, and that meets the requirements of telemedicine pursuant to section 36-3602.

16. "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere:
- (a) Being convicted of a felony. Conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the conviction.
  - (b) Using fraud or deceit in connection with rendering services as a licensee or in establishing qualifications pursuant to this chapter.
  - (c) Making any oral or written misrepresentation of a fact:
    - (i) To secure or attempt to secure the issuance or renewal of a license.
    - (ii) In any statements provided during an investigation or disciplinary proceeding by the board.
    - (iii) Regarding the licensee's skills or the value of any treatment provided or to be provided.
  - (d) Making any false, fraudulent or deceptive statement connected with the practice of behavioral health, including false or misleading advertising by the licensee or the licensee's staff or a representative compensated by the licensee.
  - (e) Securing or attempting to secure the issuance or renewal of a license by knowingly taking advantage of the mistake of another person or the board.
  - (f) Engaging in active habitual intemperance in the use of alcohol or active habitual substance abuse.
  - (g) Using a controlled substance that is not prescribed for use during a prescribed course of treatment.
  - (h) Obtaining a fee by fraud, deceit or misrepresentation.
  - (i) Aiding or abetting a person who is not licensed pursuant to this chapter to purport to be a licensed behavioral health professional in this state.
  - (j) Engaging in conduct that the board determines is gross negligence or repeated negligence in the licensee's profession.
  - (k) Engaging in any conduct or practice that is contrary to recognized standards of ethics in the behavioral health profession or that constitutes a danger to the health, welfare or safety of a client.
  - (l) Engaging in any conduct, practice or condition that impairs the ability of the licensee to safely and competently practice the licensee's profession.
  - (m) Engaging or offering to engage as a licensee in activities that are not congruent with the licensee's professional education, training or experience.
  - (n) Failing to comply with or violating, attempting to violate or assisting in or abetting the violation of any provision of this chapter, any rule adopted pursuant to this chapter, any lawful order of the board, or any formal order, consent agreement, term of probation or stipulated agreement issued under this chapter.
  - (o) Failing to furnish information within a specified time to the board or its investigators or representatives if legally requested by the board.
  - (p) Failing to conform to minimum practice standards as developed by the board.
  - (q) Failing or refusing to maintain adequate records of behavioral health services provided to a client.
  - (r) Providing behavioral health services that are clinically unjustified or unsafe or otherwise engaging in activities as a licensee that are unprofessional by current standards of practice.
  - (s) Terminating behavioral health services to a client without making an appropriate referral for continuation of care for the client if continuing behavioral health services are indicated.
  - (t) Disclosing a professional confidence or privileged communication except as may otherwise be required by law or permitted by a legally valid written release.
  - (u) Failing to allow the board or its investigators on demand to examine and have access to documents, reports and records in any format maintained by the licensee that relate to the licensee's practice of behavioral health.
  - (v) Engaging in any sexual conduct between a licensee and a client or former client.
  - (w) Providing behavioral health services to any person with whom the licensee has had sexual contact.
  - (x) Exploiting a client, former client or supervisee. For the purposes of this subdivision, "exploiting" means taking advantage of a professional relationship with a client, former client or supervisee for the benefit or profit of the licensee.
  - (y) Engaging in a dual relationship with a client that could impair the licensee's objectivity or professional judgment or create a risk of harm to the client. For the purposes of this subdivision, "dual relationship" means a licensee simultaneously engages in both a professional and nonprofessional relationship with a client that is avoidable and not incidental.
  - (z) Engaging in physical contact between a licensee and a client if there is a reasonable possibility of physical or psychological harm to the client as a result of that contact.
  - (aa) Sexually harassing a client, former client, research subject, supervisee or coworker. For the purposes of this subdivision, "sexually harassing" includes sexual advances, sexual solicitation, requests for sexual favors, unwelcome comments or gestures or any other verbal or physical conduct of a sexual nature.

- (bb) Harassing, exploiting or retaliating against a client, former client, research subject, supervisee, coworker or witness or a complainant in a disciplinary investigation or proceeding involving a licensee.
- (cc) Failing to take reasonable steps to inform potential victims and appropriate authorities if the licensee becomes aware during the course of providing or supervising behavioral health services that a client's condition indicates a clear and imminent danger to the client or others.
- (dd) Failing to comply with the laws of the appropriate licensing or credentialing authority to provide behavioral health services by electronic means in all governmental jurisdictions where the client receiving these services resides.
- (ee) Giving or receiving a payment, kickback, rebate, bonus or other remuneration for a referral.
- (ff) Failing to report in writing to the board information that would cause a reasonable licensee to believe that another licensee is guilty of unprofessional conduct or is physically or mentally unable to provide behavioral health services competently or safely. This duty does not extend to information provided by a licensee that is protected by the behavioral health professional-client privilege unless the information indicates a clear and imminent danger to the client or others or is otherwise subject to mandatory reporting requirements pursuant to state or federal law.
- (gg) Failing to follow federal and state laws regarding the storage, use and release of confidential information regarding a client's personal identifiable information or care.
- (hh) Failing to retain records pursuant to section 12-2297.
- (ii) Violating any federal or state law, rule or regulation applicable to the practice of behavioral health.
- (jj) Failing to make client records in the licensee's possession available in a timely manner to another health professional or licensee on receipt of proper authorization to do so from the client, a minor client's parent, the client's legal guardian or the client's authorized representative.
- (kk) Failing to make client records in the licensee's possession promptly available to the client, a minor client's parent, the client's legal guardian or the client's authorized representative on receipt of proper authorization to do so from the client, a minor client's parent, the client's legal guardian or the client's authorized representative.
- (ll) Being the subject of the revocation, suspension, surrender or any other disciplinary sanction of a professional license, certificate or registration or other adverse action related to a professional license, certificate or registration in another jurisdiction or country, including the failure to report the adverse action to the board. The action taken may include refusing, denying, revoking or suspending a license or certificate, the surrendering of a license or certificate, otherwise limiting, restricting or monitoring a licensee or certificate holder or placing a licensee or certificate holder on probation.
- (mm) Engaging in any conduct that results in a sanction imposed by an agency of the federal government that involves restricting, suspending, limiting or removing the licensee's ability to obtain financial remuneration for behavioral health services.
- (nn) Violating the security of any licensure examination materials.
- (oo) Using fraud or deceit in connection with taking or assisting another person in taking a licensure examination.

**32-3252. Board of behavioral health examiners; appointment; qualifications; terms; compensation; immunity; training program**

- A. The board of behavioral health examiners is established consisting of the following members appointed by the governor:
  - 1. The following professional members:
    - (a) Two members who are licensed in social work pursuant to this chapter, at least one of whom is a licensed clinical social worker.
    - (b) Two members who are licensed in counseling pursuant to this chapter, at least one of whom is a licensed professional counselor.
    - (c) Two members who are licensed in marriage and family therapy pursuant to this chapter, at least one of whom is a licensed marriage and family therapist.
    - (d) Two members who are licensed in substance abuse counseling pursuant to this chapter, at least one of whom is a licensed independent substance abuse counselor.
  - 2. Four public members.
- B. Before appointment by the governor, a prospective member of the board shall submit a full set of fingerprints to the governor for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.
- C. Each professional board member shall:
  - 1. Be a resident of this state for not less than one year before appointment.
  - 2. Be an active licensee in good standing.

3. Have at least five years of experience in an area of behavioral health licensed pursuant to this chapter.
- D. Each public member shall:
1. Be a resident of this state for not less than one year before appointment.
  2. Be at least twenty-one years of age.
  3. Not be licensed or eligible for licensure pursuant to this chapter unless the public member has been retired from active practice for at least five years.
  4. Not currently have a substantial financial interest in an entity that directly provides behavioral health services.
  5. Not have a household member who is licensed or eligible for licensure pursuant to this chapter unless the household member has been retired from active practice for at least five years.
- E. The term of office of board members is three years to begin and end on the third Monday in January. A member shall not serve more than two full consecutive terms.
- F. The board shall annually elect a chairman and secretary-treasurer from its membership.
- G. Board members are eligible to receive compensation of not more than eighty-five dollars for each day actually and necessarily spent in the performance of their duties.
- H. Board members and personnel are personally immune from suit with respect to all acts done and actions taken in good faith and in furtherance of the purposes of this chapter.
- I. Each board member must complete a twelve-hour training program that emphasizes responsibilities for administrative management, licensure, judicial processes and temperament within one year after appointment to the board.

**32-3253. Powers and duties**

- A. The board shall:
1. Adopt rules consistent with and necessary or proper to carry out the purposes of this chapter.
  2. Administer and enforce this chapter, rules adopted pursuant to this chapter and orders of the board.
  3. Issue a license by examination, endorsement or temporary recognition to, and renew the license of, each person who is qualified to be licensed pursuant to this chapter. The board must issue or deny a license within one hundred eighty days after the applicant submits a completed application.
  4. Establish fees by rule.
  5. Collect fees and spend monies.
  6. Keep a record of all persons who are licensed pursuant to this chapter, actions taken on all applications for licensure, actions involving renewal, suspension, revocation or denial of a license or probation of licensees and the receipt and disbursal of monies.
  7. Adopt an official seal for attestation of licensure and other official papers and documents.
  8. Conduct investigations and determine on its own motion whether a licensee or an applicant has engaged in unprofessional conduct, is incompetent or is mentally or physically unable to engage in the practice of behavioral health.
  9. Conduct disciplinary actions pursuant to this chapter and board rules.
  10. Establish and enforce standards or criteria of programs or other mechanisms to ensure the continuing competence of licensees.
  11. Establish and enforce compliance with professional standards and rules of conduct for licensees.
  12. Engage in a full exchange of information with the licensing and disciplinary boards and professional associations for behavioral health professionals in this state and other jurisdictions.
  13. Subject to section 35-149, accept, expend and account for gifts, grants, devises and other contributions, money or property from any public or private source, including the federal government. Monies received under this paragraph shall be deposited, pursuant to sections 35-146 and 35-147, in special funds for the purpose specified, which are exempt from the provisions of section 35-190 relating to lapsing of appropriations.
  14. Adopt rules regarding the application for and approval of educational curricula of regionally accredited colleges or universities with a program not otherwise accredited by an organization or entity recognized by the board that are consistent with the requirements of this chapter and maintain a list of those programs. Approvals are valid for a period of five years if no changes of curricula are made that are inconsistent with the requirements of this chapter or board rule.
  15. Maintain a registry of licensees who have met the educational requirements to provide supervision as required pursuant to this chapter to applicants in the same profession.
  16. Adopt rules to allow approval of persons who wish to provide supervision pursuant to this chapter and who are not licensed by the board and who are licensed in a profession other than the profession in which the applicant is seeking licensure.
  17. Recognize not more than four hundred hours of psychoeducation for work experience required pursuant to sections 32-3293, 32-3301, 32-3311 and 32-3321.
  18. Adopt rules regarding the use of telepractice.

19. If an applicant is required to pass an examination for licensure, allow the applicant to take the examination three times during a twelve-month period.
- B. The board may join professional organizations and associations organized exclusively to promote the improvement of the standards of the practice of behavioral health, protect the health and welfare of the public or assist and facilitate the work of the board.
- C. The board may enter into stipulated agreements with a licensee for the confidential treatment, rehabilitation and monitoring of chemical dependency or psychiatric, psychological or behavioral health disorders in a program provided pursuant to subsection D of this section. A licensee who materially fails to comply with a program shall be terminated from the confidential program. Any records of the licensee who is terminated from a confidential program are no longer confidential or exempt from the public records law, notwithstanding any law to the contrary. Stipulated agreements are not public records if the following conditions are met:
  1. The licensee voluntarily agrees to participate in the confidential program.
  2. The licensee complies with all treatment requirements or recommendations, including participation in approved programs.
  3. The licensee refrains from professional practice until the return to practice has been approved by the treatment program and the board.
  4. The licensee complies with all monitoring requirements of the stipulated agreement, including random bodily fluid testing.
  5. The licensee's professional employer is notified of the licensee's chemical dependency or medical, psychiatric, psychological or behavioral health disorders and participation in the confidential program and is provided a copy of the stipulated agreement.
- D. The board shall establish a confidential program for the monitoring of licensees who are chemically dependent or who have psychiatric, psychological or behavioral health disorders that may impact their ability to safely practice and who enroll in a rehabilitation program that meets the criteria prescribed by the board. The licensee is responsible for the costs associated with rehabilitative services and monitoring. The board may take further action if a licensee refuses to enter into a stipulated agreement or fails to comply with the terms of a stipulated agreement. In order to protect the public health and safety, the confidentiality requirements of this subsection do not apply if a licensee does not comply with the stipulated agreement.
- E. The board shall audio record all meetings and maintain all audio and video recordings or stenographic records of interviews and meetings for a period of three years from when the record was created.

**32-3254. Board of behavioral health examiners fund**

- A. A board of behavioral health examiners fund is established. Pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of all monies received by the board in the state general fund and deposit the remaining ninety per cent in the board of behavioral health examiners fund.
- B. All monies deposited in the board of behavioral health examiners fund are subject to section 35-143.01.

**32-3255. Executive director; compensation; duties**

- A. On or after January 31, 2014 and subject to title 41, chapter 4, article 4, the board shall appoint an executive director who shall serve at the pleasure of the board. The executive director is eligible to receive compensation set by the board within the range determined under section 38-611.
- B. The executive director shall:
  1. Perform the administrative duties of the board.
  2. Subject to title 41, chapter 4, article 4, employ personnel as the executive director deems necessary, including professional consultants and agents necessary to conduct investigations. An investigator must complete a nationally recognized investigator training program within one year after the date of hire. Until the investigator completes this training program, the investigator must work under the supervision of an investigator who has completed a training program.

**32-3256. Executive director; complaints; dismissal; review**

- A. If delegated by the board, the executive director may dismiss a complaint if the investigative staff's review indicates that the complaint is without merit and that dismissal is appropriate.
- B. At each regularly scheduled board meeting, the executive director shall provide to the board a list of each complaint the executive director dismissed pursuant to subsection A of this section since the last board meeting.
- C. A person who is aggrieved by an action taken by the executive director pursuant to subsection A of this section may file a written request that the board review that action. The request must be filed within thirty-five days after that person is provided written notification of the executive director's action. At the next regular board meeting, the board shall review the executive director's action and, on review, shall approve, modify or reject the executive director's action.

**32-3257. Written notifications and communications; methods of transmission**

For the purposes of this Chapter, notifications or communications required to be written or in writing may be transmitted or received by mail, electronic transmission, facsimile transmission or hand delivery and shall not be transmitted or received orally.

**ARTICLE 2 ACADEMIC REVIEW COMMITTEES**

**32-3261. Academic review committees; members; appointment; qualifications; terms; compensation; immunity; training**

- A. The board shall establish an academic review committee for each professional area licensed pursuant to this chapter to do the following:
1. Review applications referred to the committee by the board or the executive director to determine whether an applicant, whose curriculum has not been approved pursuant to section 32-3253, subsection A, paragraph 14 or whose program is not accredited by an organization or entity approved by the board, has met the educational requirements of this chapter or board rules.
  2. On referral by the executive director, make recommendations to the board regarding whether an applicant has met the requirements of supervised work experience required for licensure pursuant to this chapter or board rules.
  3. Make specific findings concerning an application's deficiencies.
  4. Review applications and make recommendations to the board for curriculum approval applications made pursuant to section 32-3253, subsection A, paragraph 14.
  5. At the request of the board, make recommendations regarding examinations required pursuant to this chapter.
  6. Review applications for and make determinations regarding exemptions related to clinical supervision requirements.
- B. If an application is referred to an academic review committee for review and the academic review committee finds that additional information is needed from the applicant, the academic review committee shall provide a comprehensive written request for additional information to the applicant.
- C. An academic review committee shall be composed of three members who have been residents of this state for at least one year before appointment, at least one of whom is licensed in the professional area pursuant to this chapter and have five years of experience in the applicable profession. At least one member must have served within the previous ten years as core or full-time faculty at a regionally accredited college or university in a program related to the applicable profession and have experience in the design and development of the curriculum of a related program. If qualified, a faculty member may serve on more than one academic review committee. A board member may not be appointed to serve on an academic review committee.
- D. Committee members shall initially be appointed by the board. From and after January 1, 2016, the governor shall appoint the committee members. A committee member who is initially appointed by the board may be reappointed by the governor. A committee member who is initially appointed by the board shall continue to serve until appointed or replaced by the governor.
- E. Committee members serve at the pleasure of the governor for terms of three years. A member shall not serve more than two full consecutive terms.
- F. Committee members are eligible to receive compensation of not more than eighty-five dollars for each day actually and necessarily spent in the performance of their duties.
- G. An academic review committee shall annually elect a chairman and secretary from its membership.
- H. Committee members are personally immune from suit with respect to all acts done and actions taken in good faith and in furtherance of the purposes of this chapter.
- I. Committee members shall receive at least five hours of training as prescribed by the board within one year after the member is initially appointed and that includes instruction in ethics and open meeting requirements.

**ARTICLE 3 LICENSURE**

**32-3271. Exceptions to licensure; jurisdiction**

- A. This chapter does not apply to:
1. A person who is currently licensed, certified or regulated pursuant to another chapter of this title and who provides services within the person's scope of practice if the person does not claim to be licensed pursuant to this chapter.
  2. A person who is not a resident of this state if the person:

- (a) Performs behavioral health services in this state for not more than ninety days in any one calendar year as prescribed by board rule.
  - (b) Is authorized to perform these services pursuant to the laws of the state or country in which the person resides or pursuant to the laws of a federally recognized tribe.
  - (c) Informs the client of the limited nature of these services and that the person is not licensed in this state.
3. A rabbi, priest, minister or member of the clergy of any religious denomination or sect if the activities and services that person performs are within the scope of the performance of the regular or specialized ministerial duties of an established and legally recognizable church, denomination or sect and the person performing the services remains accountable to the established authority of the church, denomination or sect.
  4. A member run self-help or self-growth group if no member of the group receives direct or indirect financial compensation.
  5. A behavioral health technician or behavioral health paraprofessional who is employed by an agency licensed by the department of health services.
  6. A person contracting with the supreme court or a person employed by or contracting with an agency under contract with the supreme court who is otherwise ineligible to be licensed or who is in the process of applying to be licensed under this chapter as long as that person is in compliance with the supreme court contract conditions regarding professional counseling services and practices only under supervision.
  7. A person who is employed by the department of economic security or the department of child safety and who practices social work, marriage and family therapy, substance abuse counseling, counseling and case management within the scope of the person's job duties and under direct supervision by the employer department.
  8. A student, intern or trainee who is pursuing a course of study in social work, counseling, marriage and family therapy, substance abuse counseling or case management in a regionally accredited institution of higher education or training institution if the person's activities are performed under qualified supervision and are part of the person's supervised course of study.
  9. A person who is practicing social work, counseling and case management and who is employed by an agency licensed by the department of economic security or the department of child safety.
  10. A paraprofessional employed by the department of economic security or by an agency licensed by the department of economic security.
  11. A Christian Science practitioner if all of the following are true:
    - (a) The person is not providing psychotherapy.
    - (b) The activities and services the person performs are within the scope of the performance of the regular or specialized duties of a Christian Science practitioner.
    - (c) The person remains accountable to the established authority of the practitioner's church.
  12. A person who is not providing psychotherapy.
- B. A person who provides services pursuant to subsection A, paragraph 2 is deemed to have agreed to the jurisdiction of the board and to be bound by the laws of this state.

**32-3272. Fees**

- A. For issuance of a license pursuant to this chapter, including application fees, the board shall establish and charge reasonable fees not to exceed five hundred dollars.
- B. For renewal of a license pursuant to this chapter, the board shall establish and charge reasonable fees not to exceed five hundred dollars. The board shall not increase fees pursuant to this subsection more than twenty-five dollars each year.
- C. The board by rule may adopt a fee for applications for approval of educational curricula pursuant to section 32-3253, subsection A, paragraph 14.
- D. The board shall establish fees to produce monies that approximate the cost of maintaining the board.
- E. The board shall waive the application fee for an independent level license if an applicant has paid the fee for an initial or renewal associate level license in this state and within ninety days after payment of the fee the applicant applies for an independent level license.

**32-3273. License renewal; continuing education**

- A. Except as provided in section 32-4301, a license issued pursuant to this chapter is renewable every two years by paying the renewal fee prescribed by the board and submitting documentation prescribed by the board by rule of completion of relevant continuing education experience as determined by the board during the previous twenty-four-month period.
- B. The board shall send notice in writing of required relevant continuing education experience to each licensee at least ninety days before the renewal date.

- C. A licensee must satisfy the continuing education requirements that are prescribed by the board by rule and that are designed to provide the necessary understanding of ethics, cultural competency, current developments, skills, procedures and treatments related to behavioral health and to ensure the continuing competence of licensees. The board shall adopt rules to prescribe the manner of documenting compliance with this subsection.
- D. At the request of a licensee who has been issued two or more licenses, the board shall establish the same renewal dates for those licenses. The board may prorate any fees due as necessary to synchronize the dates.

**32-3274. Licensure by endorsement**

- A. The board may issue a license by endorsement to a person in that person's behavioral health discipline if the person is licensed or certified by the regulatory agency of one or more other states or federal jurisdictions at a substantially equivalent or higher practice level as determined by the board, pays the fee prescribed by the board and meets all of the following requirements:
  - 1. The person is currently licensed or certified in behavioral health by the regulatory agency of one or more other states or federal jurisdictions and each license or certification is current and in good standing.
  - 2. The person has been licensed or certified for at least three years in one or more jurisdictions in the discipline and practice level for which an application is submitted. The practice level of the jurisdictions must be substantially equivalent, as determined by the board, to the practice level for which the application is submitted.
  - 3. The person meets the basic requirements for licensure prescribed by section 32-3275.
  - 4. The person submits to the board all of the following:
    - (a.) A listing of every jurisdiction in the United States in which the person has been licensed or certified in the practice of behavioral health and any disciplinary action taken by any regulatory agency or any instance in which a license has been surrendered in lieu of discipline.
    - (b.) Verification of licensure or certification from every jurisdiction in which the person is licensed or certified for the discipline and practice level for which the person applies.
    - (c.) Any other procedural application requirements adopted by the board in rule.
- B. In addition to the requirements of subsection A of this section, a person seeking license by endorsement for the following practice levels must have earned a master's or higher degree in the applicable field of practice granted by a regionally accredited college or university:
  - 1. Licensed clinical social worker.
  - 2. Licensed professional counselor.
  - 3. Licensed marriage and family therapist.
  - 4. Licensed independent substance abuse counselor.
- C. Except for licenses by endorsement issued in the practice levels prescribed in subsection B of this section, a person issued a license pursuant to this section shall practice behavioral health only under the direct supervision of a licensee.
- D. The board by rule may prescribe a procedure to issue licenses pursuant to this section.

**32-3275. Requirements for licensure; withdrawal of application**

- A. An applicant for licensure must meet all of the following requirements:
  - 1. Submit an application as prescribed by the board.
  - 2. Be at least twenty-one years of age.
  - 3. Be of good moral character. The board's standard to determine good moral character shall not violate federal discrimination laws.
  - 4. Pay all applicable fees prescribed by the board.
  - 5. Have the physical and mental capability to safely and competently engage in the practice of behavioral health.
  - 6. Not have committed any act or engaged in any conduct that would constitute grounds for disciplinary action against a licensee pursuant to this chapter.
  - 7. Not have had a professional license or certificate refused, revoked, suspended or restricted by this state or any other regulatory jurisdiction in the United States or any other country for reasons that relate to unprofessional conduct.
  - 8. Not have voluntarily surrendered a professional license or certificate in this state or another regulatory jurisdiction in the United States or any other country while under investigation for conduct that relates to unprofessional conduct.
  - 9. Not have a complaint, allegation or investigation pending before the board or another regulatory jurisdiction in the United States or another country that relates to unprofessional conduct. If an applicant has any such complaint, allegation or investigation pending, the board shall suspend the

application process and may not issue or deny a license to the applicant until the complaint, allegation or investigation is resolved.

- B. Before the board considers denial of a license based on a deficiency pursuant to subsection A, paragraph 5, 6, 7 or 8 of this section, the applicant shall be given thirty-five days' notice of the time and place of the meeting. At the time of the meeting, the applicant may provide in person, by counsel or in written form information and evidence related to any deficiency relating to subsection A, paragraph 5, 6, 7 or 8 of this section, including any evidence that the deficiency has been corrected or monitored or that a mitigating circumstance exists. In any notice of denial, the board shall provide notice of the applicant's right to a hearing pursuant to Title 41, Chapter 6, Article 10.
- C. If the board finds that an applicant is subject to subsection A, paragraphs 5, 6, 7 and 8 of this section, the board may determine to its satisfaction that the conduct or condition has been corrected, monitored and resolved and may issue a license. If the conduct or condition has not been resolved, the board may determine to its satisfaction that mitigating circumstances exist that prevent its resolution and may issue a license.
- D. An applicant for licensure may withdraw the application unless the board has sent to the applicant notification that the board has initiated an investigation concerning professional misconduct. Following that notification the applicant may request that the board review the applicant's request to withdraw the application. In considering the request the board shall determine whether it is probable that the investigation would result in an adverse action against the applicant.
- E. After a final board order of denial has been issued, the board shall report the denial if required by the health care quality improvement act of 1986 (42 United States Code Chapter 117). For the purposes of this subsection and except as required by federal law, "final board order" means:
  - 1. For an applicant who seeks a hearing pursuant to title 41, chapter 6, article 10, when a final administrative decision has been made.
  - 2. For an applicant who does not timely file a notice of appeal, after the time for the filing expires pursuant to section 41-1092.03.

**32-3276. Notice of address and telephone number changes; penalties**

- A. A licensee must provide the board with the licensee's current home address and telephone number and office address and telephone number and promptly and in writing inform the board of any change in this information.
- B. The board may assess the costs it incurs in locating a licensee and impose a penalty of not to exceed one hundred dollars against a licensee who does not notify the board pursuant to subsection A of this section within thirty days after the change of address or telephone number.

**32-3277. Expired licenses; reinstatement**

- A. A person who does not renew a license is ineligible to practice pursuant to this chapter.
- B. The board may reinstate an expired license if the person submits an application for reinstatement within ninety days after the expiration of the license. The application must document to the board's satisfaction that the applicant has met the renewal requirements prescribed by this chapter and include a late renewal penalty prescribed by the board by rule.

**32-3278. Inactive license**

- A. The board by rule may establish procedures for a licensee to delay renewal of the license for good cause and to place the licensee on inactive status. A person on inactive status shall not practice behavioral health or claim to be a licensee.
- B. A licensee on inactive status may request reinstatement of the license to active status by submitting a license renewal application.

**32-3279. Probationary and temporary licenses**

- A. If an applicant does not meet the basic requirements for licensure prescribed in section 32-3275, the board may issue a probationary license that is subject to any of the following:
  - 1. A requirement that the licensee's practice be supervised.
  - 2. A restriction on the licensee's practice.
  - 3. A requirement that the licensee begin or continue medical or psychiatric treatment.
  - 4. A requirement that the licensee participate in a specified rehabilitation program.
  - 5. A requirement that the licensee abstain from alcohol and other drugs.
- B. If the board offers a probationary license, the board shall notify the applicant in writing of the:
  - 1. Applicant's specific deficiencies.
  - 2. Probationary period.
  - 3. Applicant's right to reject the terms of probation.

4. Applicant's right to a hearing on the board's denial of the application.
- C. The board by rule may prescribe a procedure to issue temporary licenses. At a minimum, these rules must include the following provisions:
  1. A person issued a temporary license may practice behavioral health only under the direct supervision of a licensee.
  2. A temporary license expires on the date specified by the board and not more than one year after the date of issuance.
  3. A temporary license may contain restrictions as to time, place and supervision that the board deems appropriate.
  4. The board may summarily revoke a temporary license without a hearing.
  5. The board's denial of a licensure application terminates a temporary license.

### **32-3280. Fingerprinting**

- A. An applicant for licensure under this article other than for a temporary license must submit a full set of fingerprints to the board, at the applicant's own expense, for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.
- B. The board shall waive the records check required in subsection A of this section for an applicant who provides evidence acceptable to the board that the applicant holds a valid fingerprint clearance card issued by the department of public safety.

## **ARTICLE 4 REGULATION**

### **32-3281. Disciplinary action; investigations; hearings; civil penalty; timely complaints; burden of proof**

- A. The board, on its own motion or on a complaint, may investigate any evidence that appears to show that a licensee is or may be incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to safely engage in the practice of behavioral health. A motion by the board to initiate an investigation shall be made at an open and properly noticed board meeting and shall include the basis on which the investigation is being initiated and the name of the board member making the motion. The board's vote on the motion to initiate an investigation shall be recorded. As part of its investigation, the board may hold an investigational meeting pursuant to this chapter. Any person may, and a licensee and any entity licensed by the department of health services shall, report to the board any information that would cause a reasonable licensee to believe that another licensee is guilty of unprofessional conduct or is physically or mentally unable to provide behavioral health services competently or safely. Any person or entity that reports or provides information to the board in good faith is not subject to an action for civil damages. It is an act of unprofessional conduct for any licensee to fail to report as required by this section. The board shall report to the department of health services any entity licensed by the department of health services that fails to report as required by this section. For complaints related to conduct that is inconsistent with professional standards or ethics, scope of practice or standard of care, the board may consult with one or more licensed or retired behavioral health professionals of the same profession as the licensee to review complaints and make recommendations to the board.
- B. On determination of reasonable cause the board shall require, at the licensee's own expense, any combination of mental, physical or psychological examinations, assessments or skills evaluations necessary to determine the licensee's competence or ability to safely engage in the practice of behavioral health and conduct necessary investigations, including investigational interviews between representatives of the board and the licensee, to fully inform the board with respect to any information filed with the board under subsection A of this section. These examinations may include biological fluid testing. The board may require the licensee, at the licensee's expense, to undergo assessment by a rehabilitative, retraining or assessment program approved by the board.
- C. If the board finds, based on the information received pursuant to subsection A or B of this section, that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the board may restrict, limit or order a summary suspension of a license pending proceedings for revocation or other action. If the board takes action pursuant to this subsection, it must also serve the licensee with a written notice that states the charges and that the licensee is entitled to a formal hearing before the board or an administrative law judge within sixty days.
- D. If after completing an investigation the board finds that the information provided is not of sufficient seriousness to merit disciplinary action against the licensee, the board shall either:
  1. Dismiss the complaint if, in the opinion of the board, the complaint is without merit.
  2. File a letter of concern and dismiss the complaint. The licensee may file a written response with the board within thirty days after the licensee receives the letter of concern.

3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.
- E. A complaint dismissed by the board pursuant to subsection D, paragraph 1 of this section is not a complaint of unprofessional conduct and shall not be disclosed by the board as a complaint on the licensee's complaint history.
- F. If after completing its investigation the board believes that the information is or may be true, the board may enter into a consent agreement with the licensee to limit or restrict the licensee's practice or to rehabilitate the licensee, protect the public and ensure the licensee's ability to safely engage in the practice of behavioral health. A consent agreement may also require the licensee to successfully complete a board approved rehabilitative, retraining or assessment program.
- G. If the board finds that the information provided pursuant to subsection A of this section is or may be true, the board may request a formal interview with the licensee. If the licensee refuses the invitation for a formal interview or accepts and the results indicate that grounds may exist for revocation or suspension of the licensee's license for more than twelve months, the board shall issue a formal complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. If after completing a formal interview the board finds that the protection of the public requires emergency action, the board may order a summary suspension of the licensee's license pending formal revocation proceedings or other action authorized by this section.
- H. If after completing the formal interview the board finds the information provided is not of sufficient seriousness to merit suspension for more than twelve months or revocation of the license, the board may take the following actions:
  1. Dismiss if, in the opinion of the board, the information is without merit.
  2. File a letter of concern and dismiss the complaint. The licensee may file a written response with the board within thirty days after the licensee receives the letter of concern.
  3. Issue a decree of censure. A decree of censure is an official action against the licensee's license and may include a requirement for restitution of fees to a client resulting from violations of this chapter or rules adopted pursuant to this chapter.
  4. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the licensee concerned. Probation may include temporary suspension not to exceed twelve months, restriction of the licensee's license to practice behavioral health, a requirement for restitution of fees to a client or education or rehabilitation at the licensee's own expense. If a licensee fails to comply with the terms of probation, the board shall serve the licensee with a written notice that states that the licensee is subject to a formal hearing based on the information considered by the board at the formal interview and any other acts or conduct alleged to be in violation of this chapter or rules adopted by the board pursuant to this chapter, including noncompliance with the terms of probation or a consent agreement.
  5. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.
- I. If the board finds that the information provided in subsection A or G of this section warrants suspension or revocation of a license issued under this chapter, the board shall initiate formal proceedings pursuant to title 41, chapter 6, article 10.
- J. In a formal interview pursuant to subsection G of this section or in a hearing pursuant to subsection I of this section, the board in addition to any other action may impose a civil penalty not to exceed one thousand dollars for each violation of this chapter or a rule adopted under this chapter.
- K. A letter of concern is a public document.
- L. A licensee who after a formal hearing is found by the board to be guilty of unprofessional conduct, to be mentally or physically unable to safely engage in the practice of behavioral health or to be professionally incompetent is subject to censure, probation as provided in this section, suspension of license or revocation of license or any combination of these, including a stay of action, and for a period of time or permanently and under conditions as the board deems appropriate for the protection of the public health and safety and just in the circumstance. The board may charge all costs incurred in the course of the investigation and formal hearing to the licensee it finds is in violation of this chapter. The board shall deposit, pursuant to sections 35-146 and 35-147, monies collected pursuant to this subsection in the board of behavioral health examiners fund established by section 32-3254.
- M. If the board during the course of any investigation determines that a criminal violation may have occurred involving the delivery of behavioral health services, the board shall make the evidence of violations available to the appropriate criminal justice agency for its consideration.
- N. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies collected from civil penalties paid pursuant to this chapter in the state general fund.

- O. Notice of a complaint and hearing is effective by a true copy of the notice being sent by certified mail to the licensee's last known address of record in the board's files. Notice of the complaint and hearing is complete on the date of its deposit in the mail.
- P. In determining the appropriate disciplinary action under this section, the board shall consider all previous nondisciplinary and disciplinary actions against a licensee.
- Q. The board may defer action with regard to an impaired licensee who voluntarily signs an agreement, in a form satisfactory to the board, agreeing to practice restrictions and treatment and monitoring programs deemed necessary by the board to protect the public health and safety. A licensee who is impaired and who does not agree to enter into an agreement with the board is subject to other action as provided pursuant to this chapter.
- R. Subject to an order duly entered by the board, a person whose license to practice behavioral health has been suspended or restricted pursuant to this chapter, whether voluntarily or by action of the board, may at reasonable intervals apply to the board for reinstatement of the license. The person shall submit the application in writing and in the form prescribed by the board. After conducting an investigation and hearing, the board may grant or deny the application or modify the original finding to reflect any circumstances that have changed sufficiently to warrant modification. The board may require the applicant to pass an examination or complete board imposed continuing education requirements or may impose any other sanctions the board deems appropriate for reentry into the practice of behavioral health.
- S. A person whose license is revoked, suspended or not renewed must return the license to the offices of the board within ten days after notice of that action.
- T. The board may enforce a civil penalty imposed pursuant to this section in the superior court in Maricopa county.
- U. For complaints being brought before the full board, the information released to the public regarding an ongoing investigation must clearly indicate that the investigation is a pending complaint and must include the following statement: Pending complaints represent unproven allegations. On investigation, many complaints are found to be without merit or not of sufficient seriousness to merit disciplinary action against the licensee and are dismissed.
- V. The board shall not act on its own motion or on any complaint received by the board in which an allegation of unprofessional conduct or any other violation of this chapter against a professional who holds an Arizona license occurred more than four years before the complaint is received by the board. The time limitation does not apply to:
  - 1. Malpractice settlements or judgments, allegations of sexual misconduct or an incident or occurrence that involved a felony, diversion of a controlled substance or impairment while practicing by the licensee.
  - 2. The board's consideration of the specific unprofessional conduct related to the licensee's failure to disclose conduct or a violation as required by law.
- W. The board shall not open an investigation if identifying information regarding the complainant is not provided.
- X. Except for disciplinary matters prescribed by section 32-3251, paragraph 16, subdivision (v), the board has the burden of proof by clear and convincing evidence for disciplinary matters brought pursuant to this chapter.

**32-3282. Right to examine and copy evidence; summoning witnesses and documents; taking testimony; right to counsel; confidentiality**

- A. In connection with information received pursuant to section 32-3281, subsection A, the board or the board's authorized agents or employees at all reasonable times have access to, for the purpose of examination, and the right to copy any psychotherapy notes, documents, reports, records or other physical evidence of any person being investigated, or the reports, records and any other documents maintained by and in possession of any hospital, clinic, physician's office, laboratory, pharmacy or health care institution as defined in section 36-401 or any other public or private agency, if the psychotherapy notes, documents, reports, records or evidence relate to the specific complaint.
- B. For the purpose of all investigations and proceedings conducted by the board:
  - 1. The board on its own initiative may issue subpoenas compelling the attendance and testimony of witnesses or demanding the production for examination or copying of documents or any other physical evidence if the evidence relates to the unauthorized practice of behavioral health or to the competence, unprofessional conduct or mental or physical ability of a licensee to safely practice. Within five days after the service of a subpoena on any person requiring the production of any evidence in that person's possession or under that person's control, the person may petition the board to revoke, limit or modify the subpoena. The board shall revoke, limit or modify a subpoena if in its opinion the evidence required does not relate to unlawful practices covered by this chapter or is not relevant to the charge that is the subject matter of the hearing or investigation or the subpoena does

not describe with sufficient particularity the physical evidence required to be produced. Any member of the board and any agent designated by the board may administer oaths, examine witnesses and receive evidence.

2. Any person appearing before the board may be represented by counsel.
  3. The board shall make available to the licensee who is the subject of the investigation, or the licensee's designated representative, for inspection at the board's office the investigative file at least five business days before a board meeting at which the board considers the complaint. The board may redact any confidential information before releasing the file to the licensee.
  4. The superior court, on application by the board or by the person subpoenaed, has jurisdiction to issue an order either:
    - (a) Requiring the person to appear before the board or the board's authorized agent to produce evidence relating to the matter under investigation.
    - (b) Revoking, limiting or modifying the subpoena if in the court's opinion the evidence demanded does not relate to unlawful practices covered by this chapter or is not relevant to grounds for disciplinary action that are the subject matter of the hearing or investigation or the subpoena does not describe with sufficient particularity the physical evidence required to be produced. Any failure to obey an order of the court may be punished by the court as contempt.
- C. Records, including clinical records, reports, files or other reports or oral statements relating to examinations, findings or treatments of clients, any information from which a client or the client's family might be identified or information received and records kept by the board as a result of the investigation procedure prescribed by this chapter are not available to the public.
- D. This section and any other law that makes communications between a licensee and the licensee's client a privileged communication do not apply to investigations or proceedings conducted pursuant to this chapter. The board and the board's employees, agents and representatives shall keep in confidence the names of any clients whose records are reviewed during the course of investigations and proceedings pursuant to this chapter.

**32-3283. Confidential relationship; privileged communications; clients with legal guardians; treatment decisions**

- A. The confidential relationship between a client and a licensee, including a temporary licensee, is the same as between an attorney and a client. Unless a client waives this privilege in writing or in court testimony, a licensee shall not voluntarily or involuntarily divulge information that is received by reason of the confidential nature of the behavioral health professional-client relationship.
- B. A licensee shall divulge to the board information the board requires in connection with any investigation, public hearing or other proceeding.
- C. The behavioral health professional-client privilege does not extend to cases in which the behavioral health professional has a duty to:
  1. Inform victims and appropriate authorities that a client's condition indicates a clear and imminent danger to the client or others pursuant to this chapter.
  2. Report information as required by law.
- D. A client's legal guardian may make treatment decisions on behalf of the client, except that the client receiving services is the decision maker for issues:
  1. That directly affect the client's physical or emotional safety, such as sexual or other exploitative relationships.
  2. That the guardian agrees to specifically reserve to the client.
  3. Where the right to seek behavioral health services without parental or guardian consent is established by state or federal law.

**32-3284. Cease and desist orders; injunctions**

- A. The board may issue a cease and desist order or request that an injunction be issued by the superior court to stop a person from engaging in the unauthorized practice of behavioral health or from violating or threatening to violate a statute, rule or order that the board has issued or is empowered to enforce. If the board seeks an injunction to stop the unauthorized practice of behavioral health, it is sufficient to charge that the respondent on a day certain in a named county engaged in the practice of behavioral health without a license and without being exempt from the licensure requirements of this chapter. It is not necessary to show specific damages or injury. The cease and desist order must state the reason for its issuance and give notice of the person's right to request a hearing under applicable procedures prescribed in title 41, chapter 6, article 10.
- B. Violation of an injunction shall be punished as for contempt of court.

**32-3285. Judicial review**

Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

**32-3286. Unlawful practice; unlawful use of title; violation; classification; civil penalty; exception**

- A. Except as prescribed in section 32-3271, a person not licensed pursuant to this chapter shall not engage in the practice of behavioral health.
- B. A person not licensed pursuant to this chapter shall not use any of the following designations or any other designation that indicates licensure status, including abbreviations, or claim to be licensed pursuant to this chapter:
  - 1. Licensed professional counselor.
  - 2. Licensed associate counselor.
  - 3. Licensed marriage and family therapist.
  - 4. Licensed associate marriage and family therapist.
  - 5. Licensed clinical social worker.
  - 6. Licensed master social worker.
  - 7. Licensed baccalaureate social worker.
  - 8. Licensed independent substance abuse counselor.
  - 9. Licensed associate substance abuse counselor.
  - 10. Licensed substance abuse technician.
- C. A person who violates this chapter or board rules by engaging in the unlicensed practice of behavioral health or claiming to be licensed pursuant to this chapter is guilty of a class 2 misdemeanor and is subject to a civil penalty of not more than five hundred dollars for each offense.
- D. Each day that a violation is committed constitutes a separate offense.
- E. All fees received for services described in this section shall be refunded by the person found guilty pursuant to this section.
- F. Notwithstanding subsection A of this section and based on circumstances presented to the board, the board may sanction a person's failure to timely renew a license while continuing to engage in the practice of behavioral health as an administrative violation rather than as a violation of this section or grounds for unprofessional conduct and may impose a civil penalty of not more than five hundred dollars. The board shall deposit, pursuant to sections 35-146 and 35-147, monies collected pursuant to this subsection in the state general fund.

**ARTICLE 5 SOCIAL WORK**

**32-3291. Licensed baccalaureate social worker; licensure; qualifications; supervision**

- A. A person who wishes to be licensed by the board to engage in the practice of social work as a licensed baccalaureate social worker shall:
  - 1. Furnish documentation as prescribed by the board by rule that the person has earned a baccalaureate degree in social work from a regionally accredited college or university in a program accredited by the council on social work education or a degree from a foreign school based on a program of study that the board determines is substantially equivalent.
  - 2. Pass an examination approved by the board.
- B. A licensed baccalaureate social worker shall only engage in clinical practice under direct supervision as prescribed by the board.

**32-3292. Licensed master social worker; licensure; qualifications; supervision**

- A. A person who wishes to be licensed by the board to engage in the practice of social work as a licensed master social worker shall:
  - 1. Furnish documentation satisfactory to the board that the person has earned a master's or higher degree in social work from a regionally accredited college or university in a program accredited by the council on social work education or a degree from a foreign school based on a program of study that the board determines is substantially equivalent.
  - 2. Pass an examination approved by the board.
- B. A licensed master social worker shall only engage in clinical practice under direct supervision as prescribed by the board.

**32-3293. Licensed clinical social worker; licensure; qualifications**

A person who wishes to be licensed by the board to engage in the practice of social work as a licensed clinical social worker shall:

- 1. Furnish documentation as prescribed by the board by rule that the person has:

- (a) Earned a master's or higher degree in social work from a regionally accredited college or university in a program accredited by the council on social work education or a degree from a foreign school based on a program of study that the board determines is substantially equivalent.
  - (b) Received at least three thousand two hundred hours of post-master's degree experience in not less than twenty-four months under supervision that meets the requirements prescribed by the board by rule. The three thousand two hundred hours must include at least one thousand six hundred hours of direct client contact, not more than one thousand six hundred hours of indirect client service and at least one hundred hours of clinical supervision as prescribed by the board by rule. For the direct client contact hours, not more than four hundred hours may be in psychoeducation. The board by rule may prescribe the number of hours required for functions related to direct client contact and indirect client service.
2. Pass an examination approved by the board.

## ARTICLE 6 COUNSELING

### **32-3301. Licensed professional counselor; licensure; requirements**

- A. A person who wishes to be licensed by the board to engage in the practice of professional counseling as a licensed professional counselor shall:
  1. Meet the education requirements of subsection B of this section and the work experience requirements of subsection F of this section.
  2. Pass an examination approved by the board.
- B. An applicant for licensure shall furnish documentation as prescribed by the board by rule that the person has received a master's or higher degree with a major emphasis in counseling from a regionally accredited college or university in a program of study that includes at least sixty semester credit hours or ninety quarter credit hours at one of the following:
  1. A program accredited by the council for the accreditation of counseling and related educational programs or the national council on rehabilitation education.
  2. A program with a curriculum that has been approved by the board pursuant to section 32-3253.
  3. A program with a curriculum meeting requirements as prescribed by the board by rule.
- C. A program that is not accredited by the council for the accreditation of counseling and related educational programs or the national council on rehabilitation education must require seven hundred hours of supervised clinical hours and twenty-four semester hours or thirty-two quarter hours in courses in the following eight core content areas as prescribed by the board by rule:
  1. Professional orientation and ethical practice.
  2. Social and cultural diversity.
  3. Human growth and development.
  4. Career development.
  5. Helping relationships.
  6. Group work.
  7. Assessment.
  8. Research and program evaluation.
- D. Credit hours offered above those prescribed pursuant to subsection C of this section must be in studies that provide a broad understanding in counseling related subjects as prescribed by the board by rule.
- E. The board may accept equivalent coursework in which core content area subject matter is embedded or contained within another course, including another subject matter.
- F. An applicant for licensure shall furnish documentation as prescribed by the board by rule that the applicant has received at least three thousand two hundred hours in at least twenty-four months in post-master's degree work experience in the practice of professional counseling under supervision that meets the requirements prescribed by the board by rule. An applicant may use a doctoral-clinical internship to satisfy the requirement for one year of work experience under supervision.
- G. The three thousand two hundred hours required pursuant to subsection F of this section must include at least one thousand six hundred hours of direct client contact, not more than one thousand six hundred hours of indirect client service and at least one hundred hours of clinical supervision as prescribed by the board by rule. For the direct client contact hours, not more than four hundred hours may be in psychoeducation. The board by rule may prescribe the number of hours required for functions related to direct client contact and indirect client service.
- H. An applicant who is deficient in hours required pursuant to subsection B of this section may satisfy those requirements by successfully completing post-master's degree coursework.
- I. An applicant who completed a degree before July 1, 1989 and whose course of study did not include a practicum may substitute a one-year doctoral-clinical internship or an additional year of documented post-master's degree work experience in order to satisfy the requirements of subsection B of this section.

**32-3303. Licensed associate counselor; licensure; requirements; supervision**

- A. A person who wishes to be licensed by the board to engage in the practice of professional counseling as a licensed associate counselor shall satisfy the requirements of section 32-3301, subsections B, H and I and pass an examination approved by the board.
- B. A licensed associate counselor shall only practice under direct supervision as prescribed by the board.

**ARTICLE 7 MARRIAGE AND FAMILY THERAPY**

**32-3311. Licensed marriage and family therapist; licensure; qualifications**

- A. A person who wishes to be licensed by the board to engage in the practice of marriage and family therapy as a licensed marriage and family therapist shall furnish documentation as prescribed by the board by rule that the person has:
  - 1. Earned a master's or doctorate degree in behavioral science, including, but not limited to, marriage and family therapy, psychology, sociology, counseling and social work, granted by a regionally accredited college or university in a program accredited by the commission on accreditation for marriage and family therapy education or a degree based on a program of study that the board determines is substantially equivalent.
  - 2. Completed three thousand two hundred hours of post-master's degree experience in not less than twenty-four months in the practice of marriage and family therapy under supervision that meets the requirements prescribed by the board by rule, including at least one thousand hours of clinical experience with couples and families, at least one thousand six hundred hours of direct client contact and not more than one thousand six hundred hours of indirect client service. For the direct client contact hours, not more than four hundred hours may be in psychoeducation. The board by rule may prescribe the number of hours required for functions related to direct client contact and indirect client service.
  - 3. Passed an examination approved by the board.
- B. The curriculum for the master's or doctorate degree in behavioral science accepted by the board pursuant to subsection A, paragraph 1 of this section shall include a specified number of graduate courses as prescribed by the board by rule and shall be consistent with national standards of marriage and family therapy. Part of this course of study may be taken in a post-master's degree program as approved by the board.
- C. The one thousand hours of clinical experience required by subsection A, paragraph 2 of this section shall include a combination of one hundred hours of group or individual supervision in the practice of marriage and family therapy. The one thousand hours may include one year in an approved marriage and family internship program.

**32-3313. Licensed associate marriage and family therapist; licensure; requirements; supervision**

- A. A person who wishes to be licensed by the board to engage in the practice of marriage and family therapy as a licensed associate marriage and family therapist shall satisfy the requirements of section 32-3311, subsection A, paragraphs 1 and 3 and subsection B.
- B. A licensed associate marriage and family therapist shall only practice under direct supervision as prescribed by the board.

**ARTICLE 8 SUBSTANCE ABUSE COUNSELING**

**32-3321. Licensed substance abuse technician; licensed associate substance abuse counselor; licensed independent substance abuse counselor; licensure; qualifications; supervision**

- A. A person who wishes to be licensed by the board to engage in the practice of substance abuse counseling as a licensed substance abuse technician shall present documentation as prescribed by the board by rule that the person has:
  - 1. Received one of the following:
    - (a) An associate degree in chemical dependency or substance abuse with an emphasis on counseling that meets the requirements as prescribed by the board by rule from a regionally accredited college or university.
    - (b) Beginning January 1, 2009, a bachelor's degree in a behavioral science with an emphasis on counseling that meets the requirements as prescribed by the board by rule from a regionally accredited college or university.
  - 2. Passed an examination approved by the board.

- B. A licensed substance abuse technician shall only practice under direct supervision as prescribed by the board.
- C. The board may waive the education requirement for an applicant requesting licensure as a substance abuse technician if the applicant provides services pursuant to contracts or grants with the federal government under the authority of Public Law 93-638 (25 United States Code sections 450 through 450(n)) or Public Law 94-437 (25 United States Code sections 1601 through 1683). A person who becomes licensed as a substance abuse technician pursuant to this subsection shall only provide substance abuse services to those persons who are eligible for services pursuant to Public Law 93-638 (25 United States Code sections 450 through 450(n)) or Public Law 94-437 (25 United States Code section 1601 through 1683).
- D. A person who wishes to be licensed by the board to engage in the practice of substance abuse counseling as a licensed associate substance abuse counselor shall present evidence as prescribed by the board by rule that the person has:
  - 1. Received one of the following:
    - (a) A bachelor's degree in a behavioral science with an emphasis on counseling that meets the requirements as prescribed by the board by rule from a regionally accredited college or university and present documentation as prescribed by the board by rule that the applicant has received at least three thousand two hundred hours of work experience in not less than twenty-four months in substance abuse counseling under supervision that meets the requirements prescribed by the board by rule. The three thousand two hundred hours must include a minimum of one thousand six hundred hours of direct client contact and not more than one thousand six hundred hours of indirect client service. For the direct client contact hours, not more than four hundred hours may be in psychoeducation. The board by rule may prescribe the number of hours required for functions related to direct client contact and indirect client service.
    - (b) A master's or a higher degree in a behavioral science with an emphasis on counseling as prescribed by the board by rule from a regionally accredited college or university.
  - 2. Passed an examination approved by the board.
- E. A licensed associate substance abuse counselor shall only practice under direct supervision as prescribed by the board.
- F. A person who wishes to be licensed by the board to engage in the practice of substance abuse counseling as a licensed independent substance abuse counselor shall:
  - 1. Have received a master's or higher degree in a behavioral science with an emphasis on counseling, in a program that is approved by the board pursuant to section 32-3253 or that meets the requirements as prescribed by the board by rule, from a regionally accredited college or university.
  - 2. Present documentation as prescribed by the board by rule that the applicant has received at least three thousand two hundred hours of work experience in not less than twenty-four months in substance abuse counseling under supervision that meets the requirements as prescribed by the board by rule. The three thousand two hundred hours must include at least one thousand six hundred hours of direct client contact and not more than one thousand six hundred hours of indirect client service. For the direct client contact hours, not more than four hundred hours may be in psychoeducation. The board by rule may prescribe the number of hours required for functions related to direct client contact and indirect client service.
  - 3. Pass an examination approved by the board.

# **ATTACHMENT**

**D**



Donna Dalton &lt;donna.dalton@azbbhe.us&gt;

## Re: Request for exemption

1 message

**Donna Dalton** <donna.dalton@azbbhe.us>  
 To: Emily Rajakovich <erajakovich@az.gov>  
 Cc: Tobi Zavala <tobi.zavala@azbbhe.us>

Tue, Sep 24, 2019 at 11:46 AM

Emily,

Thank you for your response. We will begin our informal rulemaking conversations and also loop in OSPB regarding the potential fee reductions. As we are closer to having initial language drafted, we will send over to your office for your review.

Thanks,

*Donna Dalton*  
 Deputy Director



**STATE OF ARIZONA**  
**BOARD OF BEHAVIORAL HEALTH EXAMINERS**  
 1740 W. Adams Street, Suite 3600, Phoenix, AZ 85007  
 Phone: 602-542-1811 Fax: 602-364-0890  
 Email: [donna.dalton@azbbhe.us](mailto:donna.dalton@azbbhe.us)  
 Board Website: [www.azbbhe.us](http://www.azbbhe.us)

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On Thu, Sep 19, 2019 at 4:18 PM Emily Rajakovich <erajakovich@az.gov> wrote:

Hi Donna-

Thank you so for submitting this request. I've reviewed these with our office and appreciate the direction of reducing burdens and clarifying rules. Before I am able to approve do you have a draft of the actual language changes I can review and approve? I will also need to share fee reductions with OSPB, as any fee proposal needs their approval, too. Please send along the fee reduction plan when you have a moment. You may engage in informal rulemaking/drafting to put the language together for my final review.

Emily Rajakovich

On Mon, Aug 26, 2019 at 2:04 PM Donna Dalton <donna.dalton@azbbhe.us> wrote:

Emily,

The Arizona Board of Behavioral Health Examiners ("Board") respectfully requests written approval, pursuant to Executive Order 2019-01, for an exemption to the rulemaking moratorium. The Board would like to proceed with a rulemaking to accomplish several goals related to regulations:

1. Expand the options for non-independent licensees to obtain clinical supervision from behavioral health professionals outside their discipline.
2. Modify the curriculum requirements for licensure for substance abuse counselors.
3. Provide clarification regarding the tutorials approved by the Board.

4. Clarify the process of applying for an independent licensure by exam with a non-independent license earned through the endorsement process.
5. Reduce fees collected by the Board.
6. Update the telepractice rule to align with national trends.
7. Other technical corrections found since the last rulemaking.

Pursuant to Executive Order 2019-01(2)(b) and (f), the Board believes the proposed rules will reduce the regulatory burden while still achieving the same regulatory objective, and/or comply with a state statutory requirement.

Thanks,

*Donna Dalton*

Deputy Director



STATE OF ARIZONA

BOARD OF BEHAVIORAL HEALTH EXAMINERS

1740 W. Adams Street, Suite 3600, Phoenix, AZ 85007

Phone: 602-542-1811 Fax: 602-364-0890

Email: [donna.dalton@azbbhe.us](mailto:donna.dalton@azbbhe.us)

Board Website: [www.azbbhe.us](http://www.azbbhe.us)

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--

**Emily Rajakovich | Office of Arizona Governor Doug Ducey**

Director, Boards and Commissions

O. (602) 542-1308

[www.azgovernor.gov](http://www.azgovernor.gov)

**BOARD OF FINGERPRINTING (F20-0204)**

Title 13, Chapter 11, All Articles, Board of Fingerprinting



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** March 3, 2020

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

**FROM:** Council Staff

**DATE:** February 10, 2020

**SUBJECT: BOARD OF FINGERPRINTING (F20-0204)**  
Title 13, Chapter 11, All Articles, Board of Fingerprinting

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### Summary

This Five-Year Review Report (5YRR) from the Arizona Board of Fingerprinting (Board) relates to all rules in Title 13, Chapter 11, related to the fingerprint clearance card system. This system is designed to standardize the process for conducting employment or license-related criminal background checks.

This report was originally due by July 2019. However, the Board received a 120-day extension pursuant to R1-6-303(A) and the report was submitted in November 2019 and is now before the Council.

In the last 5YRR for these rules, approved by the Council in March 2015, the Board proposed to amend the following seven rules to improve their clarity, conciseness, and understandability:

- R13-11-102
- R13-11-104
- R13-11-106
- R13-11-107
- R13-11-108

- R13-11-109
- R13-11-113

However, the Board indicates that it did not complete the prior proposed course of action due to the fact that the Board hired a new executive director, experienced a large increase in the number of applications received, and experienced a staffing shortage. The Board indicates that under those circumstances, the Board determined that addressing the issues identified in the previous 5YRR “were not the best use of scarce time and other resources.”

### **Proposed Action**

The Board indicates that it intends to complete a rulemaking to address all the issues identified in the report, and outlined below, before the end of June 2020. The Board notes that it is exempt from the procedures of the Arizona Administrative Procedure Act pursuant to A.R.S. § 41-619.53(A)(2). Therefore, the Board indicates that it will obtain an exception from the rulemaking moratorium, prepare a notice of final exempt rulemaking, and file the notice with the Secretary of State’s office.

#### **1. Has the agency analyzed whether the rules are authorized by statute?**

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

#### **2. Summary of the agency’s economic impact comparison and identification of stakeholders:**

Under A.R.S. § 41-691.53(A)(2), all Board rulemakings are exempt from the Arizona Administrative Procedures Act. As a result, the Board has never prepared an economic, small business, and consumer impact statement.

The Board is currently authorized by A.R.S. § 41-619.53(A)(2) to determine good cause exceptions and central registry exceptions. During FY 2019 the Board received 3,650 applications for a good cause exception and 64 applications for a central registry exception. An exception was granted to 3,490 after an expedited review of the application and attached materials and 142 applicants were referred for an administrative hearing. During FY 2019 the Board collected \$1,194,697 in fees.

The Board believes that the economic costs associated with the rules being reviewed are minimal. The rules do impose a cost on individuals who apply for a good cause or central registry exception, in that they must prepare an application, have the application notarized, assemble supporting materials, prepare a written statement, and submit to the Board. The Board believes that while the requirements are time consuming, the cost is minimal. The applicants receive the benefit of potentially obtaining a fingerprint clearance card by exception.

Stakeholders include the Board and applicants who apply for a fingerprint clearance card good cause or central registry exception.

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

The Board determined that the benefits of the rules, which are substantial for individuals who need a fingerprint clearance card to obtain employment and who have a record of a precluding offense for which an exception may be provided, outweigh the minimal cost of making the application.

The Board states that the \$7 fee for an exception is minimal but a review by the Arizona Auditor General office dated October 2019 noted the Board's fund balance greatly exceeds the Board's operating expenditures and suggested the Board evaluate the \$7 fee. The auditor's report indicates that the Board's revenues totaled nearly \$1.2 million in fiscal year 2019, while its total expenditures were approximately \$550,000. The Arizona Auditor General's report indicated that the Board agreed with the findings and indicated that the audit recommendations would be implemented.

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

The Board indicates it has not received any written criticism of the rules in the last five years.

**5. Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

The Board indicates that the rules are mostly clear, concise, understandable, and effective except for the following rules:

- **R13-11-102:** Rather than indicate the definitions in A.R.S. § 41-619.51 apply to the rules, some of the statutory terms are defined in R13-11-102. However, the rule definitions are not the same as the statutory definitions, which potentially creates confusion.
- **R13-11-104:** Written in passive language.
- **R13-11-106, R13-11-108, and R13-11-110:** Use the term "reasonable diligence." The term "reasonable evidence" is used in R13-11-110. Both terms are subjective and open to interpretation.
- **R13-11-106 and R13-11-107:** Instruct an applicant to submit a written request but provide no information regarding when the written request must be submitted.
- **R13-11-108:** The heading for this rule is not accurate. The rule addresses failure to appear at a hearing rather than hearing procedure.
- **R13-11-113:** The first sentence refers to a fee for a good cause exception but does not specify a fee for a central registry exception. As used in this subsection, the word "applicant" refers to an applicant for a fingerprint clearance card rather than an applicant for an exception so is inconsistent with R13-11-102(1).

The Board indicates that the rules are mostly consistent with other rules and statutes except that, while A.R.S. § 41-619.55(I) grants the Board authority to issue interim exceptions in accordance with the rules, the Board does not have a rule regarding an interim exception. However, the Board does have standards and issues interim exceptions on rare occasions. The Board indicates it intends to make a rule specifying the standards used to issue an interim exception.

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

The Board indicates that the rules are mostly enforced as written. However, the Board also indicates a report by the Arizona Auditor General dated October 2019 indicated the Board made decisions regarding some applicants without ensuring all documentation required under R13-11-104 was submitted. A copy of the October 2019 report from the Arizona Auditor General is included with the materials for this report.

**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 Board does not issue a regulatory permit, license, or other authorization.

**9. Conclusion**

As outlined above, the Board has identified several rules to amend and a potential rule to add to clarify and codify an existing agency practice. The Board indicates that it intends to complete a rulemaking to address all the issues identified in the report before the end of June 2020. Council staff recommends approval of this report.

Garnett Burns  
Chair

Mark Koch  
Vice Chair



Douglas A. Ducey  
Governor

Matthew A. Scheller  
Executive Director

---

**ARIZONA BOARD OF FINGERPRINTING**

Post Office Box 6129 • Phoenix, Arizona 85005-6129 • Telephone (602) 265-0135 • Fax (602) 265-6240  
www.fingerprint.az.gov • info@fingerprint.az.gov

November 19, 2019

**VIA EMAIL: grrc@azdoa.gov**

Nicole Sornsins, Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

**RE: Board of Fingerprinting  
Five-year-review Report  
A.A.C. Title 13, Chapter 11, Article 1**

Dear Ms Sornsins:

The Five-year-review Report of the Board of Fingerprinting for 13 A.A.C. 11, Article 1 is enclosed. The report is due on November 30, 2019 under an extension.

The Board of Fingerprinting certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Matthew Scheller at 602-265-3747 or matthew.scheller@fingerprint.az.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matthew Scheller".

Matthew Scheller  
Executive Director

**Five-year-review Report**  
**A.A.C. Title 13. Public Safety**  
**Chapter 11. Board of Fingerprinting**  
**January 14, 2020**

INTRODUCTION

The Arizona Board of Fingerprinting was established by Laws 1998, Ch. 270, § 27, and is currently statutorily authorized by A.R.S. § 41-619.53(A)(2) to determine:

- Good cause exceptions by considering applications from individuals whose fingerprint clearance cards have been denied or suspended by the Arizona Department of Public Safety and who are trying to demonstrate they are rehabilitated and not recidivists, and
- Central registry exceptions by considering applications from individuals who are listed in a set of Department of Child Safety databases called the Central Registry, have been disqualified after a central registry background check, and are trying to demonstrate they are rehabilitated and not recidivists.

The fingerprint clearance card system is designed to standardize the process for conducting employment or licensure-related criminal background checks. A clearance card is automatically issued if an applicant has not been convicted of or is not awaiting trial for certain precluding criminal offenses. Statute defines two categories of precluding criminal offenses. The first are offenses for which an exception can be granted by the Board of Fingerprinting. The second are offenses for which an exception cannot be granted.

During FY2019, the Board received 3,650 applications for a good cause exception and 64 applications for a central registry exception. An exception was granted to 3,490 after an expedited review of the application and attached materials and 142 applicants were referred for an administrative hearing. Following the hearing, 100 additional applicants were granted an exception and 42 were denied. During FY2019, there were four requests to review or rehear a decision made by the Board. The Board currently has seven FTEs. During FY2019, the

Board collected \$1,194,697 in fees. The fees collected by the Board are continuously appropriated to the Board.

Statute that generally authorizes the agency to make rules: A.R.S. § 41-619.53(A)(2)

1. Specific statute authorizing the rule:

R13-11-102. Definitions: A.R.S. § 41-619.53(A)(3)

R13-11-104. Application Requirements: A.R.S. §§ 41-619.55 and 41-619.57

R13-11-105. Expedited Review: A.R.S. §§ 41-619.55 and 41-619.57

R13-11-106. Request to Vacate, Reschedule, or Continue Hearing; Reconvening a Hearing:  
A.R.S. §§ 41-619.55 and 41-619.57

R13-11-107. Telephonic Testimony: A.R.S. §§ 41-619.55 and 41-619.57

R13-11-108. Hearings: A.R.S. §§ 41-619.55 and 41-619.57

R13-11-109. Ex Parte Communications: A.R.S. §§ 41-619.55 and 41-619.57

R13-11-110. Rehearing or Review of Decision: A.R.S. § 41-1092.09

R13-11-113. Fees: A.R.S. § 41-619.53(A)(5)

2. Objective of the rules:

R13-11-102. Definitions: The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition.

R13-11-104. Application Requirements: The objective of the rule is to specify the documents required to be submitted as part of an application for an exception.

R13-11-105. Expedited Review: The objective of the rule is to specify the factors considered when reviewing an application for an exception and the consequences of granting or denying the exception under the expedited review process.

R13-11-106. Request to Vacate, Reschedule, or Continue Hearing; Reconvening a Hearing:  
The objective of the rule is to inform an applicant how to request that a scheduled hearing be vacated, rescheduled, or continued.

R13-11-107. Telephonic Testimony: The objective of the rule is to inform an applicant how to request telephonic testimony at a hearing and the standards the Board uses when granting or denying a request.

R13-11-108. Hearings: The objective of the rule is to inform an applicant of the consequences of failing to appear at a scheduled hearing.

R13-11-109. Ex Parte Communications: The objective of the rule is to state the prohibition against ex parte communications, identify the individuals to whom the prohibition applies, and state the consequences of an ex parte communication.

R13-11-110. Rehearing or Review of Decision: The objective of this rule is to specify the procedures and standards for requesting a rehearing or review of a Board decision.

R13-11-113. Fees: The objective of the rule is to specify the fee the Board established for applications for exceptions.

3. Are the rules effective in achieving their objectives? Yes
  
4. Are the rules consistent with other rules and statutes? Mostly yes  
Under A.R.S. § 41-619.55(I) the Board is authorized to issue an interim exception in accordance with its rules. The Board, which has standards and issues an interim exception on rare occasions, does not have a rule regarding an interim exception. The Board plans to make a rule specifying the standards used to issue an interim exception.
  
5. Are the rules enforced as written? Mostly yes  
A report by the Arizona Auditor General dated October 2019 indicated the Board made decisions regarding some applications without ensuring all documentation required under R13-11-104 was submitted.

6. Are the rules clear, concise, and understandable? Mostly yes

Rather than indicate the definitions in A.R.S. § 41-619.51 apply to the rules, some of the statutory terms are defined in R13-11-102. However, the rule definitions are not the same as the statutory definitions, which potentially creates confusion.

R13-11-104 is written in passive language.

R13-11-106, R13-11-108, and R13-11-110 use the term “reasonable diligence.” The term “reasonable evidence” is used in R13-11-110. Both terms are subjective and open to interpretation.

R13-11-106 and R13-11-107 instruct an applicant to submit a written request but provide no information regarding when the written request must be submitted.

The heading of R13-11-108 is not accurate. The rule addresses failure to appear at a hearing rather than hearing procedure.

The first sentence of R13-11-113 refers to a fee for a good cause exception but does not specify a fee for a central registry exception. As used in this subsection, the word “applicant” refers to an applicant for a fingerprint clearance card rather than an applicant for an exception so is inconsistent with R13-11-102(1).

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

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

Under A.R.S. § 41-619.53(A)(2), all Board rulemakings are exempt from the Arizona Administrative Procedure Act. As a result, the Board has never prepared an economic, small business, and consumer impact statement. The following is an analysis of the economic impact of each rule.

R13-11-102. Definitions: The economic impact of this rule is positive because the rule provides clarity for those who use the rules.

R13-11-104. Application Requirements: This rule imposes economic costs on individuals who apply for a good cause or central registry exception. The individuals must prepare an application, have the application notarized, assemble supporting materials, prepare a written statement, and submit to the Board. These requirements are time consuming but otherwise, the cost is minimal. Those making application have the benefit of potentially obtaining a fingerprint clearance card by exception.

R13-11-105. Expedited Review: Most of the cost of this rule is on the Board which is required by statute to conduct an expedited review of every application within 20 days of receiving the application. An expedited review is based on the materials submitted with the application. The Board is generally able to grant an exception based on the expedited review. This is economically beneficial to the applicant who is able to obtain a fingerprint clearance card without going through a formal hearing. It is also beneficial to the Board because it avoids the cost of conducting a formal hearing.

R13-11-106. Request to Vacate, Reschedule, or Continue Hearing; Reconvening a Hearing: The cost of this rule is minimal and applies only to an individual who is not granted an exception during the expedited review and must go to a formal hearing and wishes to have the formal hearing vacated, rescheduled, or continued. The minimal cost consists only of making a written request. The rule has the economic benefit of informing both the individual and the Board of the standards applicable to acting on a request.

R13-11-107. Telephonic Testimony: The cost of this rule is minimal and applies only to an individual who is not granted an exception during the expedited review and must go to a formal hearing and wishes to have evidence submitted telephonically at the formal hearing. The minimal cost consists only of making a written request and assuming the cost of the telephonic appearance. The rule has the economic benefit of informing both the individual and the Board of the circumstances under which telephonic testimony will be allowed.

R13-11-108. Hearings: The cost of this rule is minimal and applies only to an individual who fails to appear at a formal hearing. It has the benefit of informing the individual of the opportunity to demonstrate good cause for failing to appear.

R13-11-109. Ex Parte Communications: The cost of this rule is minimal and applies primarily to those involved in the hearing process regarding an application for exception. The rule reinforces the prohibition of ex parte communications and explains actions to be taken to correct receipt of ex parte communications. The rule has the benefit of ensuring due process for an applicant.

R13-11-110. Rehearing or Review of Decision: The cost of this rule is minimal and applies only to individuals who are disappointed in a Board decision. The cost involves making a written request to the Board. The rule has the benefit of specifying the grounds on which the Board will base a decision and provides a time frame for submitting a request.

R13-11-113. Fees: The \$7 fee for an exception is minimal. The fee is charged to everyone who makes application for a fingerprint clearance card rather than only those who apply for an exception because the exception process is not considered separate from the fingerprint clearance card process. Obtaining an exception is not an appeal of the denial of a fingerprint clearance card but rather, as assessment of whether the applicant has demonstrated the applicant is rehabilitated and not a recidivist. In a recently completed audit and review, the Arizona Auditor General noted the Board's fund balance greatly exceeds the Board's operating expenditures and suggested the Board evaluate the \$7 fee.

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

10. Has the agency completed the course of action indicated in the agency's previous 5YRR? No

Since the previous 5YRR, the Board has hired a new executive director and experienced both a large increase in the number of applications received and staffing shortage. Under those

circumstances, the Board determined addressing the minor issues identified in the previous 5YRR was not the best use of scarce time and other resources.

11. A determination after analysis that the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

The Board determined the benefits of the rules, which are substantial for individuals who need a fingerprint clearance card to obtain employment and who have a record of a precluding offense for which an exception may be provided, outweigh the minimal cost of making application. The primary cost of making application for an exception is the time required to complete the application form, have it notarized, assemble supporting documentation, and prepare a written statement. The \$7 fee, which is charged to everyone who applies for a fingerprint clearance card, is minimal.

12. Are the rules more stringent than corresponding federal laws? No

There are no corresponding federal laws.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037: Yes

The Board does not issue a regulatory permit, license, or other authorization.

14. Proposed course of action:

The Board intends to complete a rulemaking addressing all issues identified in this 5YRR before the end of June 2020. Because the Board is exempt from the procedures in the Arizona Administrative Procedure Act (See A.R.S. § 41-619.53(A)(2)), the Board has only to obtain an exemption from Executive Order 2019-01, prepare a notice of final exempt rulemaking, and file the notice with the Office of the Secretary of State.

# Arizona Board of Fingerprinting

Board granted or denied most good-cause and central registry exceptions we reviewed in accordance with statute and rule but should ensure it collects all required application materials

Performance Audit and  
Sunset Review

October 2019  
Report 19-114

A Report to the Arizona Legislature

Lindsey A. Perry  
Auditor General





The Arizona Office of the Auditor General's mission is to provide independent and impartial information and specific recommendations to improve the operations of State and local government entities. To this end, the Office provides financial audits and accounting services to the State and political subdivisions, investigates possible misuse of public monies, and conducts performance audits and special reviews of school districts, State agencies, and the programs they administer.

## The Joint Legislative Audit Committee

Senator **Rick Gray**, Chair  
Senator **Lupe Contreras**  
Senator **Andrea Dalessandro**  
Senator **David C. Farnsworth**  
Senator **David Livingston**  
Senator **Karen Fann** (ex officio)

Representative **Anthony T. Kern**, Vice Chair  
Representative **John Allen**  
Representative **Timothy M. Dunn**  
Representative **Mitzi Epstein**  
Representative **Jennifer Pawlik**  
Representative **Rusty Bowers** (ex officio)

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**MELANIE M. CHESNEY**  
DEPUTY AUDITOR GENERAL

**ARIZONA AUDITOR GENERAL**  
**LINDSEY A. PERRY**

**JOSEPH D. MOORE**  
DEPUTY AUDITOR GENERAL

October 2, 2019

Members of the Arizona Legislature

The Honorable Doug Ducey, Governor

Mr. Matthew Scheller, Executive Director  
Arizona Board of Fingerprinting

Transmitted herewith is the Auditor General's report, *A Performance Audit and Sunset Review of the Arizona Board of Fingerprinting*. This report is in response to a September 19, 2018, resolution of the Joint Legislative Audit Committee. The performance audit was conducted as part of the sunset review process prescribed in Arizona Revised Statutes §41-2951 et seq. I am also transmitting within this report a copy of the Report Highlights to provide a quick summary for your convenience.

As outlined in its response, the Arizona Board of Fingerprinting agrees with all the findings and plans to implement all the recommendations.

My staff and I will be pleased to discuss or clarify items in the report.

Sincerely,

Lindsey Perry, CPA, CFE  
Auditor General

cc: Arizona Board of Fingerprinting members



## Arizona Board of Fingerprinting

**CONCLUSION:** The Arizona Board of Fingerprinting (Board) determines good-cause exceptions for individuals whose fingerprint clearance card the Arizona Department of Public Safety (DPS) has denied or suspended and who are trying to demonstrate that they are rehabilitated and not recidivists. It also determines central registry exceptions for individuals disqualified from employment based on substantiated allegations of child abuse or neglect and who are trying to demonstrate that they are rehabilitated and not recidivists. The Board granted or denied most exceptions we reviewed in accordance with statute and rule, although it lacked required documentation in some instances and should develop and implement a process to ensure it has received, reviewed, and retained all required application materials. Additionally, the Board should monitor its workload and assess whether additional staff might be needed, analyze its current revenues and costs to determine whether its fee should be adjusted, and develop and implement policies and procedures for addressing potential conflicts of interest.

### Board granted or denied most exceptions we reviewed in accordance with statute and rule but lacked required application materials in some instances

We reviewed the Board's documentation for a judgmental sample of 30 good-cause exception applications and 10 central registry exception applications it received in calendar year 2018. Based on our review, the Board granted or denied 36 of 40 exceptions in accordance with its statutes and rules. However, the Board granted 4 exceptions for which it lacked documentation of some required application materials, such as the applicant's notarized signature, a second letter of reference, and documentation of the status of meeting all court obligations or sentencing conditions. Although the Board did not have all required materials for these 4 applications, it based its determinations on other documents demonstrating that the applicants were rehabilitated and not recidivists, such as criminal history reports, written statements from the applicants explaining their criminal charges, and documentation of meeting court obligations.

4 of 40 exceptions were missing some required application materials



#### Recommendation

The Board should develop and implement a checklist for staff use to ensure that all required application materials are received, reviewed, and retained.

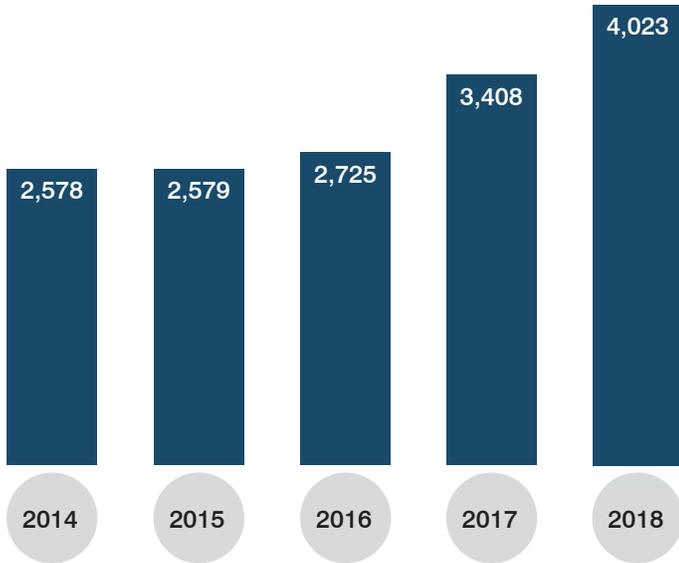
### Board should monitor and assess staffing needs if workload continues to increase

The Board has experienced an increase in the number of good-cause exception applications received in calendar years 2017 and 2018 (see figure on next page). Although the Board has been able to meet its statutory time frames for reviewing applications, it reported that the increasing workload has been challenging for staff to keep up with and makes it difficult for staff to take annual leave. The Board has sufficient revenues to hire additional staff if needed.

#### Recommendation

If the number of good-cause exception applications continues to increase, the Board should monitor the impact to its operations and assess whether additional staff are needed to handle its increasing workload and continue meeting its statutory time frames.

**Number of good-cause exception applications received**  
**Calendar years 2014 through 2018**



**Board should review and revise its fee, if necessary**

The Board has statutory authority to establish fees and charges a \$7 fee that DPS collects as part of the total \$67 application fee for a fingerprint clearance card. However, the Board collects more revenue than it needs to operate. For example, the Board's revenues totaled nearly \$1.2 million in fiscal year 2019, while its total expenditures were approximately \$550,000. As a result, the Board's fund balance has been growing, indicating that the Board's \$7 fee may be too high given the current number of applicants for a fingerprint clearance card and the Board's costs for processing the good-cause exception applications it receives.

**Recommendation**

The Board should analyze its revenues and costs to determine whether the \$7 fee should be adjusted, document its analysis and determination, and establish and implement a process for periodically reviewing the appropriateness of its fee.

**Board has not ensured compliance with State conflict-of-interest laws**

The Board has not implemented policies and procedures for ensuring compliance with State laws that require public officers and employees of public agencies, including Board members, to avoid conflicts of interest that might influence or affect their official conduct. These laws require certain interests to be disclosed in a public agency's official records, either through a signed document or the agency's official minutes. Public officers/employees must then refrain from participating in matters related to disclosed interests. In addition, public agencies are required to maintain a special file of all documents necessary to memorialize such disclosures and make this file available for public inspection. The Board does not have a process to address potential conflicts of interest in accordance with these laws.

**Recommendation**

The Board should develop and implement policies and procedures for addressing potential conflicts of interest in accordance with State laws.



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The Office of the Auditor General has conducted a performance audit and sunset review of the Arizona Board of Fingerprinting (Board). This report addresses the statutory sunset factors and includes a review of the Board's processes for reviewing good-cause and central registry exception applications, setting its fee, disclosing conflicts of interest, and complying with annual reporting requirements.

## Mission and responsibilities

The Board was established in 1999 to consider good-cause exception requests from individuals whose fingerprint clearance card (see textbox) the Arizona Department of Public Safety (DPS) has denied or suspended and who are trying to demonstrate that they are rehabilitated and not recidivists. In 2012, the Board's authority was expanded to include considering exception requests from individuals disqualified from employment because of substantiated allegations of child abuse or neglect listed in the Arizona Department of Child Safety's (DCS) central registry database.<sup>1</sup> These individuals may obtain a central registry exception if they demonstrate that they are rehabilitated and not recidivists. The Board's mission is to fairly, expeditiously, and responsibly determine good-cause exceptions and central registry exceptions for applicants.

### Fingerprint clearance card system

The fingerprint clearance card system was designed to consolidate and standardize the process for conducting employment or licensure-related criminal background checks.<sup>1</sup> Statute requires a card for some types of professional licensure, certification, and State jobs, such as those that involve working with children or vulnerable adults. These include teachers, those who provide services to persons with developmental disabilities, and nursing home employees. DPS issues a card if the applicant has not been convicted of or is not awaiting trial for certain precluding criminal offenses. Statute identifies 2 categories of precluding criminal offenses:

- Appealable precluding offenses, which are eligible for a good-cause exception. Examples include theft, forgery, shoplifting, and possession of narcotics.
- Nonappealable precluding offenses, which are not eligible for a good-cause exception. Examples include murder, sexual assault, sexual abuse of a minor or vulnerable adult, and child abuse.

The card is valid for 6 years, but if a cardholder is subsequently arrested for a precluding offense during this time period, DPS is authorized to suspend the card.

<sup>1</sup> Prior to the creation of the card system, applicable State agencies were individually responsible for deciding how to treat the criminal records of people applying for licensure, certification, or employment to work with vulnerable populations and could apply different standards to determine whether to provide clearance to the applicant or to people with similar backgrounds.

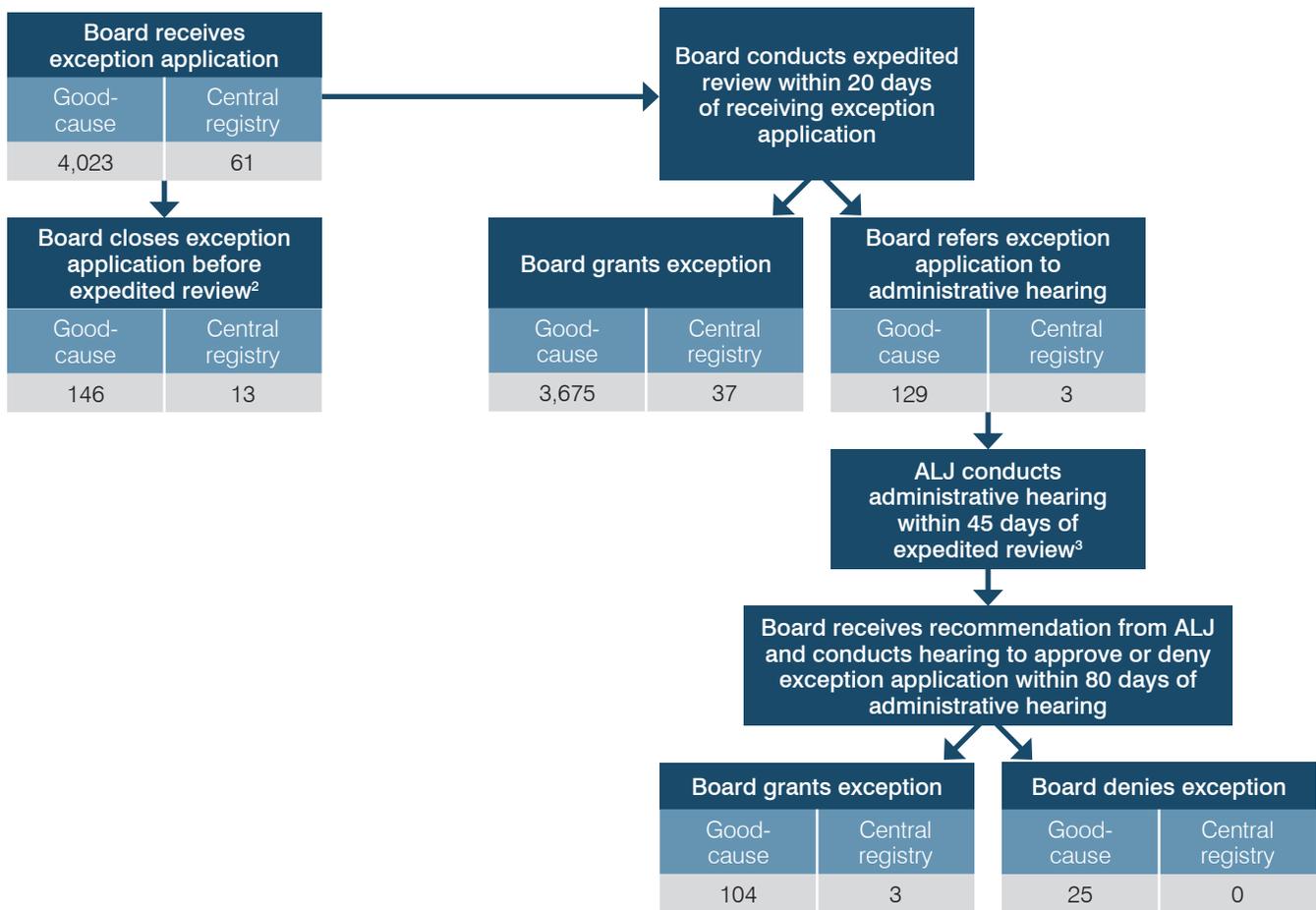
Source: Auditor General staff analysis of Arizona Revised Statutes (A.R.S.) §§41-619.51 and 41-1758 et seq. and information provided by Board staff.

## Exception review process

Statute establishes the requirements for granting good-cause and central registry exceptions. The Board's process for reviewing exception requests incorporates these requirements and is described in the following bullets. Figure 1 (see page 2) summarizes this process and provides the number of exception applications the Board received, and the number of exceptions granted and denied in calendar year 2018.

<sup>1</sup> Certain persons (contractors, subcontractors, their employees, and childcare workers) who provide direct services to children or vulnerable adults (such as individuals with developmental disabilities and nursing home residents) may be required to have a background check through the central registry.

**Figure 1**  
**Board's exception review process, number of applications received, and exceptions granted and denied<sup>1</sup>**  
**Calendar year 2018**



<sup>1</sup> Of the applications received, 73 good-cause applications and 8 central registry applications were in process, including incomplete applications that required the applicant to submit additional materials and applications that were scheduled for administrative or Board hearings. These applications were not included in the number of applications the Board granted or denied.

<sup>2</sup> Board staff may close an application before the Board's expedited review because either the applicant had been convicted of a nonappealable precluding offense; the applicant withdrew the application; or, for good-cause exception applications, DPS issued a fingerprint clearance card after initially denying or suspending the card. DPS might initially deny a card because of a recent arrest but later approve the card if the individual is not convicted of a crime.

<sup>3</sup> ALJ stands for administrative law judge.

Source: Auditor General staff review of A.R.S. §41-619 et seq. and analysis of Board data.

- **Application received**—Individuals whose fingerprint clearance cards that DPS denies or suspends for an appealable precluding offense may apply for a good-cause exception from the Board. DPS notifies individuals regarding their eligibility for an exception when it denies or suspends the fingerprint clearance card. Similarly, individuals who fail a central registry check required for employment with certain State agencies may apply for a central registry exception from the Board.<sup>2</sup> DCS notifies these individuals that they may apply for an exception.

<sup>2</sup> A.R.S. §8-804 directs DCS to conduct central registry background checks as 1 factor in determining the qualifications of persons applying to become a licensed, certified, or registered caregiver, such as a foster parent or childcare provider for 4 or fewer children, or seeking State employment, including contractors and their employees, in a position providing direct services to children or vulnerable adults.

The Board has established specific application requirements for good-cause and central registry exceptions in rule (see textbox for examples) and has developed separate applications for each exception type, which are available on the Board's website.

## Examples of application requirements

- A notarized application.
- Two letters of reference.
- Police reports for charges that occurred 5 years or less prior to card denial or suspension.
- Documents from the appropriate court showing the applicant has met all judicially imposed obligations or sentencing conditions, or, if not yet fully met, a written statement from the applicant indicating the status of his/her efforts to meet the obligations.
- A written statement from the applicant explaining each criminal charge and/or each incident leading to a substantiated allegation of abuse or neglect.

Source: Arizona Administrative Code R13-11-104.

- **Expedited review**—Per statute, the Board is required to hold an expedited review of all exception requests within 20 days of receiving an application.<sup>3</sup> The purpose of this review is for the Board to consider whether the applicant has shown to the Board's satisfaction that he/she is successfully rehabilitated and not a recidivist and, for good-cause exceptions, is not awaiting trial on or has not been convicted of committing a nonappealable precluding offense. Statute requires the Board to consider specific criteria for each exception type (see textbox).

### Criteria for considering good-cause exceptions

1. The extent of the person's criminal record.
2. The length of time that has elapsed since the offense was committed.
3. The nature of the offense.
4. Any applicable mitigating circumstances.
5. The degree to which the person participated in the offense.
6. The extent of the person's rehabilitation, including:
  - a. Completion of probation, parole or community supervision.
  - b. Whether the person paid restitution or other compensation for the offense.
  - c. Evidence of positive action to change criminal behavior, such as completion of a drug treatment program or counseling.
  - d. Personal references attesting to the person's rehabilitation.

Source: A.R.S. §§41-619.55 and 41-619.57.

### Criteria for considering central registry exceptions

1. The extent of the person's central registry records.
2. The length of time that has elapsed since the abuse or neglect occurred.
3. The nature of the abuse or neglect.
4. Any applicable mitigating circumstances.
5. The degree to which the person participated in the abuse or neglect.
6. The extent of the person's rehabilitation, including:
  - a. Evidence of positive action to change the person's behavior, such as completion of counseling or a drug treatment, domestic violence, or parenting program.
  - b. Personal references attesting to the person's rehabilitation.

To help prepare for the Board's expedited review, Board staff will review the application to ensure it includes all required materials and request the associated criminal-history records from DPS or the central registry report from DCS, as applicable. If the application is missing required materials, Board staff will send the applicant a letter explaining what is missing and establish a time frame to submit the missing materials. Once the Board has received all required materials, Board staff will review the application against the statutory criteria and prepare a summary for the Board's expedited review. This summary includes a recommendation that the

<sup>3</sup> A.R.S. §§41-619.55(A) and 41-619.57(A).

Board either approve the exception or refer the applicant to an administrative hearing if the application does not provide sufficient evidence of rehabilitation.

At an expedited review, the Board can either grant the exception or refer the request to an administrative hearing to obtain further information from an applicant. The applicant is not present for this review, and the Board cannot deny an exception request unless it first holds an administrative hearing. Per A.R.S. §41-619.53(B), a majority plus an additional member of the members present must vote to grant an exception request.

- **Administrative hearing**—If the Board refers an applicant to an administrative hearing, Board staff will send the applicant a formal notice indicating the hearing date and time. Per statute, the hearing must be conducted within 45 days of the expedited review.<sup>4</sup> A Board-employed ALJ conducts the hearing, which applicants must attend and can present additional evidence and testimony to support his/her claim of being rehabilitated. The ALJ will consider the additional evidence using the same statutory criteria and develop a recommendation that the Board either approve or deny the exception request.
- **Board hearing**—After the ALJ makes a recommendation to the Board, Board staff will notify the applicant of the ALJ's recommendation and the date and time the Board will meet to consider the recommendation and make a final decision. Per A.R.S. §41-1061(A), the Board must give applicants this notice at least 20 days before the hearing. During that time, the applicant has a final opportunity to submit a written response and additional evidence before the Board hearing. The applicant does not have to attend but is entitled to be present at the Board hearing. Per Board policy, an applicant is not permitted to speak or present new evidence at that hearing because he/she was provided an opportunity to provide written comment and additional evidence prior to the hearing. Per statute, the Board must grant or deny an exception request within 80 days after the administrative hearing.<sup>5</sup> As with the expedited review, a majority plus an additional member of the members present must vote to grant an exception request, per A.R.S. §41-619.53(B). If denied an exception, an applicant can request either a rehearing by the Board or appeal to the Arizona Superior Court.

In accordance with statute, if the Board grants an exception for an applicant, it will send a letter to DPS or the hiring State agency notifying the agency that the exception has been granted.<sup>6</sup> The Board approved exceptions for nearly all the applications it received in calendar year 2018; fewer than 1 percent of applicants were denied an exception.

## Staffing and organization

Per A.R.S. §41-619.52, the Board comprises 1 representative from 6 agencies (for a total of 6 members): DCS, Arizona Department of Economic Security (DES), Arizona Department of Education (ADE), Arizona Department of Health Services (DHS), Arizona Department of Juvenile Corrections (ADJC), and Arizona Supreme Court.<sup>7</sup> Board members are appointed by, and serve at the pleasure of, the heads of each agency, and are required to have a valid fingerprint clearance card. Each agency may also designate an alternate member who may substitute for the designated member if he/she cannot perform his/her Board duties. As of June 2019, 3 agencies had designated alternate members: DCS, ADE, and DHS.

During fiscal year 2019, the Board had 5.5 full-time equivalent (FTE) staff positions, Board staff including an executive director (1 FTE), investigator (1 FTE), administrative assistant (1 FTE), and 3 ALJs (2.5 FTEs).

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<sup>4</sup> A.R.S. §§41-619.55(B) and 41-619.57(B).

<sup>5</sup> A.R.S. §§41-619.55(E) and 41-619.57(E).

<sup>6</sup> A.R.S. §§41-619.55(F) and 41-619.57(F).

<sup>7</sup> The 6 agencies that appoint members to the Board include the 5 agencies that required fingerprint clearance cards when the system was initially established and DCS, which had been part of DES until it was made a separate agency in 2014. Additional entities have since implemented fingerprint clearance card requirements such as the Arizona Department of Real Estate and the Arizona State Board of Pharmacy.

## Budget

The Board does not receive any State General Fund appropriations. Rather, its revenues consist entirely of a \$7 fee that DPS collects as part of the total \$67 application fee for a fingerprint clearance card. The Board's fee revenues are then transferred from DPS and deposited into the Board's fund. Monies in the fund are continuously appropriated, meaning the Board receives its revenues independent of any appropriation from the Legislature. As shown in Table 1, the Board's revenues totaled nearly \$1.2 million in fiscal year 2019. Most of the Board's expenditures are for personnel costs. As shown in Table 1, the Board's fund balance has been increasing, and its fiscal year 2019 ending fund balance totaled more than \$3.5 million (see Sunset Factor 2, page 9, for additional information about the Board's increasing fund balance and our recommendation that the Board review and adjust its fee, as needed). Laws 2019, Ch. 264, appropriated approximately \$2.7 million from the Board's fund to DPS in fiscal year 2020 for the construction of a radio communication tower and remote housing replacement.

**Table 1**  
**Schedule of revenues, expenditures, and changes in fund balance**  
**Fiscal years 2017 through 2019**  
(Unaudited)

	2017	2018	2019
<b>Revenues</b>			
Licensing fees <sup>1</sup>	\$1,031,709	\$1,135,337	\$1,194,697
<b>Total net revenues</b>	<b>1,031,709</b>	<b>1,135,337</b>	<b>1,194,697</b>
<b>Expenditures</b>			
Payroll and related benefits	481,079	480,620	452,197
Professional and outside services <sup>2</sup>	28,453	11,924	10,480
Other operating <sup>3</sup>	79,698	87,046	85,956
Furniture, equipment, and software	2,319	9,519	845
<b>Total expenditures</b>	<b>591,549</b>	<b>589,109</b>	<b>549,478</b>
Net change in fund balance	440,160	546,228	645,219
Fund balance, beginning of year	1,923,005	2,363,165	2,909,393
<b>Fund balance, end of year</b>	<b>\$2,363,165</b>	<b>\$2,909,393</b>	<b>\$3,554,612<sup>4</sup></b>

<sup>1</sup> Licensing fees comprise a \$7 fee charged to all applicants who apply for a fingerprint clearance card, in accordance with A.R.S. §41-619.53.

<sup>2</sup> Professional and outside services primarily include services the Board incurred for database upgrades and enhancements, document destruction, and security and language interpreters at Board meetings.

<sup>3</sup> Other operating expenditures comprise various expenditures such as rental, telecommunications, office supplies, postage, and data processing costs.

<sup>4</sup> Laws 2019, Ch. 264, appropriated approximately \$2.7 million from the Board's fund to DPS in fiscal year 2020 for the construction of a radio communication tower and remote housing replacement.

Source: Auditor General staff analysis of the Arizona Financial Information System *Accounting Event Transaction File* for fiscal years 2017 through 2019 and the *State of Arizona Annual Financial Report* for fiscal years 2017 and 2018.





In accordance with A.R.S. §41-2954, the Legislature should consider the following factors in determining whether to continue or terminate the Board. The sunset factor analysis includes 4 recommendations for the Board.

**Sunset factor 1: The objective and purpose in establishing the Board and the extent to which the objective and purpose are met by private enterprises in other states.**

The Board was established by Laws 1998, Ch. 270, to consider good-cause exceptions for individuals whose fingerprint clearance card the Arizona Department of Public Safety (DPS) has denied or suspended and who are trying to demonstrate that they are rehabilitated and not recidivists. Laws 2012, Ch. 188, extended the Board's authority to include considering central registry exceptions for individuals disqualified from employment based on substantiated allegations of child abuse or neglect and who are trying to demonstrate that they are rehabilitated and not recidivists. The Board's mission is to fairly, expeditiously, and responsibly determine good-cause and central registry exceptions for applicants.

We did not identify any states that met the Board's objective and purpose through private enterprises. Additionally, because dissemination of criminal history information is restricted, which is key information the Board uses to perform its duties, privatization of the Board's functions would require changes to State and federal laws.

**Sunset factor 2: The extent to which the Board has met its statutory objective and purpose and the efficiency with which it has operated.**

The Board has generally met its statutory objective and purpose but should improve in one area. Specifically, we found that the Board:

- **Granted or denied most exceptions we reviewed in accordance with statute and rule, although it lacked required documentation in some instances**—We reviewed the Board's documentation for 30 good-cause exception applications and 10 central registry exception applications it received in calendar year 2018.<sup>8</sup> Based on our review, the Board granted or denied 36 of 40 exceptions in accordance with its statutes and rules. However, 4 of the 40 exception applications lacked documentation of some required application materials (see the Introduction, page 3, for textbox of examples of application materials required by rule). Specifically:
  - 1 application for a good-cause exception was missing the last page of the application, which contains the applicant's notarized signature, and second letter of reference.
  - 1 application for a good-cause exception was missing a second letter of reference. The application included what appeared to be 2 letters of reference, one a reference form and the other a letter, but they were both from the same individual.
  - 2 applications were missing either court documentation or a written statement from the applicant regarding the status of meeting all obligations or sentencing conditions.

<sup>8</sup> To select this sample, we judgmentally selected a box of good-cause exception applications and a box of central registry applications the Board maintains. We reviewed the first 30 good-cause exception applications and 10 central registry exception applications from these records. The Board received 4,023 good-cause exception applications and 61 central registry exception applications in calendar year 2018.

- One of these applications was for a central registry exception from an individual who had previously been granted a good-cause exception for 2 misdemeanor marijuana possession convictions on the applicant's criminal record.
- The second application was for a good-cause exception from an individual who was in the process of meeting court obligations related to a drug-paraphernalia-possession conviction and who had no previous criminal record. Although documentation was missing, Board staff had noted in the Board's database that the applicant had met the court obligations. Board staff indicated this note may have resulted from an undocumented phone call to the applicant.

Although the Board did not have all required application materials for these 4 applications, it had documentation demonstrating that the applicants were rehabilitated and not recidivists. For example, for the 2 applications without a second letter of reference, the Board had criminal history reports, court documentation or written statements of meeting court obligations, written statements from the applicants explaining each criminal charge, and a letter of reference for each applicant. For the 2 applications without court documentation or written statements of meeting court obligations, the Board had criminal history reports, written statements from the applicants explaining each criminal charge, and 2 letters of reference for each applicant. The Board also had a central registry report and written statement of the incident leading to a substantiated allegation of abuse or neglect for the central registry exception application and a police report for the good-cause exception application. Although the Board made a determination for these 4 applications without all required application materials, it lacks a process to ensure it has received, reviewed, and retained all required application materials.

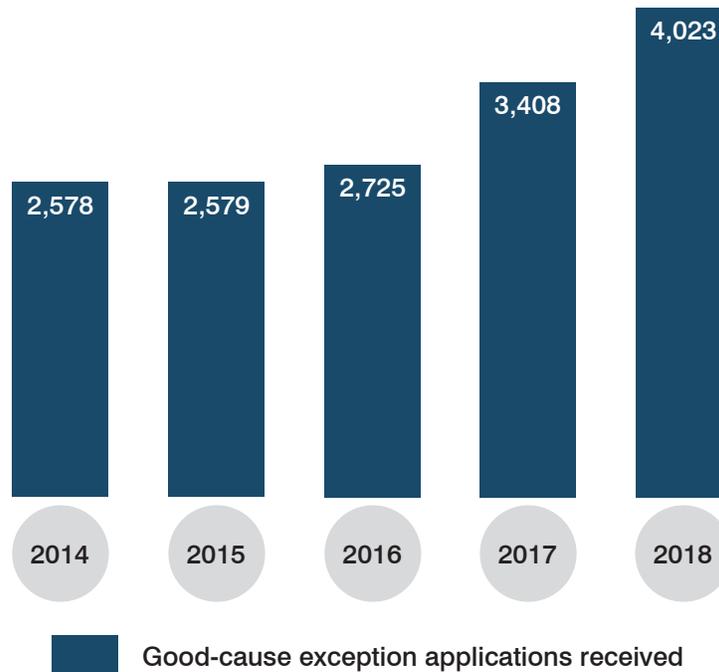
- **Granted or denied exceptions in accordance with statutory time frames for all but 1 of 40 applications we reviewed**—As discussed in the Introduction (see pages 1 through 5), statute prescribes specific time frames for various steps in the Board's review process. The Board met these time frames for all but 1 of the 40 applications we reviewed. For the 1 application that did not meet the time frame, the Board completed its expedited review of the application within 25 days rather than the required 20 days. According to Board staff, the staff member who prepares exception applications for expedited review was on leave, and the substitute staff member missed this application when preparing applications for the Board's next expedited review. Additionally, according to Board data, the Board met its time frames for 99.8 percent of exception applications it reviewed in calendar year 2018.
- **Met statutory annual reporting requirements for 2017 and 2018**—A.R.S. §41-619.54(D) requires the Board to report, on or before December 1 each year, the number of good-cause and central registry exceptions applied for and granted during the 12-month period ending September 30. Statute also specifies other requirements for this report, such as reporting information by the type of job/licensure for which a fingerprint clearance card is needed and the type of offense in the applicants' criminal histories. We reviewed the Board's 2017 and 2018 annual reports and found that the Board complied with all the statutory reporting requirements.

We also identified 2 recommendations for the Board. Specifically, the Board should:

- **Monitor and assess whether additional staff might be needed to handle its increasing workload**—As shown in Figure 2 (see page 9), the Board has experienced an increase in the number of good-cause exception applications in calendar years 2017 and 2018.<sup>9</sup> Although the Board has been able to meet its statutory time frames for reviewing applications, it reported that the increasing workload has been challenging for staff to keep up with and makes it difficult for staff to take annual leave. If the number of good-cause exception applications continues to increase, the Board should monitor the impact to its operations and assess whether additional staff are needed to handle its increasing workload and continue meeting its statutory time frames. The Board has sufficient revenues to hire additional staff if needed (see next bullet).

<sup>9</sup> This increase correlates with an increase in the annual number of fingerprint clearance card applications that DPS has received.

**Figure 2**  
**Number of good-cause exception applications received**  
**Calendar years 2014 through 2018**



Source: Auditor General staff analysis of Board data.

- Review and revise its fee, if necessary**—The Board has statutory authority to establish fees and charges a \$7 fee that DPS collects as part of the total \$67 application fee for a fingerprint clearance card. Prior to July 2008, the Board’s fee was \$3, but the Board voted to increase the fee in May 2008 because it had increased its staff, moved into a larger facility, incurred one-time and long-term costs associated with newly established statutory time frame requirements for reviewing applications, and had been operating at a deficit.

However, the Board collects more revenue than it needs to operate. For example, as shown in Table 1 on page 5, the Board’s revenues totaled nearly \$1.2 million in fiscal year 2019, while its total expenditures were approximately \$550,000. As a result, the Board’s fund balance has been growing. The Board’s fund balance grew from approximately \$1.3 million at the end of fiscal year 2013 to more than \$3.5 million at the end of fiscal year 2019. This increase in the Board’s fund balance indicates that the Board’s \$7 fee may be too high given the current number of applicants for a fingerprint clearance card and the Board’s costs for processing the applications it receives. This would likely be the case even if the Board were to hire additional staff to address its increasing workload, as discussed in the prior bullet. Government fee-setting standards and guidance state that user fees should be determined based on the costs of providing a service and that fees should be reviewed periodically to ensure they are aligned with program costs.<sup>10,11</sup>

**Recommendations**

The Board should:

1. Develop and implement a checklist for staff use to ensure that all required application materials are received, reviewed, and retained.

<sup>10</sup> Joint Legislative Committee on Performance Evaluation and Expenditure Review. (2002). *State agency fees: FY 2001 collections and potential new fee revenues*. Jackson, MS.

<sup>11</sup> U.S. Government Accountability Office. (2008). *Federal user fees: A design guide*. Washington, DC.

2. If the number of good-cause exception applications continues to increase, monitor the impact to its operations and assess whether additional staff are needed to handle its increasing workload and continue meeting its statutory time frames.
3. Analyze its current revenues and costs to determine whether the \$7 fee should be adjusted (and document its analysis and determination), and establish and implement a process for periodically reviewing the appropriateness of its fee.

**Board response:** As outlined in its [response](#), the Board agrees with the findings and will implement the recommendations.

### **Sunset factor 3: The extent to which the Board serves the entire State rather than specific interests.**

The Board serves the entire State by determining good-cause exceptions and central registry exceptions for applicants throughout Arizona.

However, the Board has not implemented policies and procedures for ensuring compliance with State laws that require public officers and employees of public agencies, including Board members, to avoid conflicts of interest that might influence or affect their official conduct.<sup>12</sup> These laws require certain interests to be disclosed in a public agency's official records, either through a signed document or the agency's official minutes. Public officers/employees must then refrain from participating in matters related to disclosed interests. In addition, public agencies are required to maintain a special file of all documents necessary to memorialize such disclosures and make this file available for public inspection. The Board does not have a process to address potential conflicts of interest in accordance with these laws.

### **Recommendation**

The Board should:

4. Develop and implement policies and procedures for addressing potential conflicts of interest in accordance with State laws, including requiring Board members and employees to disclose certain interests in the Board's official records, either through a signed document maintained in a special file or the Board's official minutes.

**Board response:** As outlined in its [response](#), the Board agrees with the finding and will implement the recommendation.

### **Sunset factor 4: The extent to which rules adopted by the Board are consistent with the legislative mandate.**

The Board's enabling statutes provide it with general authority to adopt rules to perform all its activities. Various statutes require the Board to adopt specific rules. Our review of these statutes and the Board's rules indicates that the Board has adopted rules when required to do so.

### **Sunset factor 5: The extent to which the Board has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.**

A.R.S. §41-619.53(A)(2) exempts the Board from the rulemaking requirements of the Administrative Procedures Act (APA). However, the Board reported that it has sought input on proposed rules and followed most of the APA's rulemaking requirements, such as providing opportunities for public input by publishing notices of proposed rulemaking in the Arizona Administrative Register, allowing the public to submit written comments on proposed rule changes for 30 days after it published the notice, and considering public comments received.

The Board's meetings for considering good-cause and central registry exception applications are exempt from the State's open meeting laws. Specifically, A.R.S. §41-619.54(A through C) make all good-cause and central registry exception documentation, determinations, and hearings confidential. The Board holds periodic business

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<sup>12</sup> A.R.S. §38-501 et seq.

meetings that are subject to open meeting laws, but we were unable to test the Board's compliance with these requirements because the Board did not hold any such meetings during this audit.

The Board also provides information to the public through its website, including the applications for exceptions, helpful resources for submitting applications, application status information for applicants, Board meeting agendas and minutes, and the Board's annual report.

**Sunset factor 6: The extent to which the Board has been able to investigate and resolve complaints that are within its jurisdiction.**

The Board has no statutory authority or responsibility to investigate and resolve complaints.

**Sunset factor 7: The extent to which the Attorney General or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.**

The Attorney General serves as the Board's legal advisor and provides legal services as the Board requires, according to A.R.S. §41-192(A)(1).

**Sunset factor 8: The extent to which the Board has addressed deficiencies in its enabling statutes that prevent it from fulfilling its statutory mandate.**

The Board reported that there are no deficiencies in its enabling statutes that prevent it from fulfilling its statutory mandate. According to the Board, it did not request any legislation during the 2019 legislative session.

**Sunset factor 9: The extent to which changes are necessary in the laws of the Board to adequately comply with the factors listed in this sunset law.**

We did not identify any statutory changes that are necessary to help the Board adequately comply with the factors listed in the sunset law.

**Sunset factor 10: The extent to which the termination of the Board would significantly affect the public health, safety, or welfare.**

Terminating the Board would not significantly harm the general public health, safety, or welfare, although it might result in fewer people qualifying for certain jobs/licenses. Without the Board, individuals denied a fingerprint clearance card or disqualified after a central registry check would not have a process for demonstrating that they are rehabilitated and not recidivists, unless the Board's functions were transferred to 1 or more State agencies. However, as discussed in the Introduction (see textbox, page 1), the Board was created as part of the fingerprint clearance card system to consolidate and standardize the process for conducting employment or licensure-related criminal background checks. Prior to the creation of the card system, applicable State agencies were individually responsible for deciding how to treat the criminal records of people applying for licensure, certification, or employment to work with vulnerable populations and could apply different standards to determine whether to provide clearance to the applicant or to people with similar backgrounds.

**Sunset factor 11: The extent to which the level of regulation exercised by the Board compares to other states and is appropriate and whether less or more stringent levels of regulation would be appropriate.**

This factor does not apply because the Board is not a regulatory agency.

**Sunset factor 12: The extent to which the Board has used private contractors in the performance of its duties as compared to other states and how more effective use of private contractors could be accomplished.**

The Board does not use private contractors to perform its primary duties related to good-cause and central registry exceptions. However, it contracts for database services, document destruction, and security and language interpreters at Board meetings. We did not identify other states that had an agency similar to the Board and did not identify any additional areas where the Board should consider using private contractors.





## SUMMARY OF RECOMMENDATIONS

### Auditor General makes 4 recommendations to the Board

The Board should:

1. Develop and implement a checklist for staff use to ensure that all required application materials are received, reviewed, and retained (see Sunset Factor 2, pages 7 through 10, for more information).
2. If the number of good-cause exception applications continues to increase, monitor the impact to its operations and assess whether additional staff are needed to handle its increasing workload and continue meeting its statutory time frames (see Sunset Factor 2, pages 7 through 10, for more information).
3. Analyze its current revenues and costs to determine whether the \$7 fee should be adjusted (and document its analysis and determination), and establish and implement a process for periodically reviewing the appropriateness of its fee (see Sunset Factor 2, pages 7 through 10, for more information).
4. Develop and implement policies and procedures for addressing potential conflicts of interest in accordance with State laws, including requiring Board members and employees to disclose certain interests in the Board's official records, either through a signed document maintained in a special file or the Board's official minutes (see Sunset Factor 3, page 10, for more information).





## Objectives, scope, and methodology

The Office of the Auditor General has conducted a performance audit and sunset review of the Board pursuant to a September 19, 2018, resolution of the Joint Legislative Audit Committee. The audit was conducted as part of the sunset review process prescribed in A.R.S. §41-2951 et seq. This report addresses the statutory sunset factors and includes a review of the Board's processes for reviewing good-cause and central registry exception applications, setting its fee, disclosing conflicts of interest, and complying with annual reporting requirements.

We used various methods to study the issues in this audit. These methods included reviewing Board statutes, rules, policies and procedures, and the exception application forms; interviewing Board staff, the Board chair, and DPS staff; and reviewing information from the Board's website. In addition, we used the following methods to address the audit objectives:

- To determine whether the Board issued good-cause exceptions and central registry exceptions to qualified applicants in a timely manner, we reviewed samples of the 4,023 good-cause exception applications and 61 central registry exception applications the Board received in calendar year 2018. Specifically, we judgmentally selected a box of good-cause exception applications and a box of central registry exception applications maintained by the Board. We reviewed the first 30 good-cause exception applications and 10 central registry exception applications from these records. Additionally, we analyzed Board data to further check for compliance with statutorily required time frames for processing exception applications.
- To determine whether the Board appropriately established fees, we interviewed Board staff and reviewed Board meeting minutes and rulemaking packets. Additionally, we reviewed best practices for fee setting from the Mississippi Joint Legislative Committee on Performance Evaluation and Expenditure Review and the U.S. Government Accountability Office.<sup>13,14</sup>
- To obtain other information for the Introduction, we reviewed Board records regarding the number of good-cause exception applications and central registry exception applications received in calendar year 2018. In addition, we compiled and analyzed unaudited information from the Arizona Financial Information System *Accounting Event Transaction File* for fiscal years 2017 through 2019 and the *State of Arizona Annual Financial Report* for fiscal years 2017 and 2018.
- Our work on internal controls included reviewing the Board's policies and procedures for ensuring compliance with Board statutes and rules and, where applicable, testing its compliance with these policies and procedures. Conclusions on this work are included in Sunset Factors 2 and 3 (see pages 7 through 10). In addition, we assessed the reliability of the Board's database information for performing audit work. Specifically, we interviewed Board staff, reviewed database controls, and compared information in the database against exception application files. Through this work, we determined that the Board's database was sufficiently reliable for audit purposes.

We conducted this performance audit and sunset review of the Board in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient,

<sup>13</sup> Joint Legislative Committee on Performance Evaluation and Expenditure Review. (2002). *State agency fees: FY 2001 collections and potential new fee revenues*. Jackson, MS.

<sup>14</sup> U.S. Government Accountability Office. (2008). *Federal user fees: A design guide*. Washington, DC.

appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We express our appreciation to the Board and its staff for their cooperation and assistance throughout the audit.

# BOARD RESPONSE

Garnett Burns  
Chair

Mark Koch  
Vice Chair



Douglas A. Ducey  
Governor

Matthew A. Scheller  
Executive Director

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**ARIZONA BOARD OF FINGERPRINTING**

Post Office Box 6129 • Phoenix, Arizona 85005-6129 • Telephone (602) 265-0135 • Fax (602) 265-6240  
www.fingerprint.az.gov • info@fingerprint.az.gov

September 18, 2019

Ms. Lindsey Perry, Auditor General  
Office of the Auditor General  
2910 N 44<sup>th</sup> St., Suite 410  
Phoenix, AZ 85018

Dear Ms. Perry:

The Arizona Board of Fingerprinting (Board) respectfully submits its response to the performance audit and sunset review of the Board by the Office of the Auditor General (AG). We would like to thank the AG staff for their professional conduct and guidance offered to the Board staff during the audit process.

The Board concurs with the findings and recommendations resulting from the audit. We continually strive to perform at the highest levels possible and welcome any constructive feedback to help us to improve our processes. The Board will ensure that the findings and recommendations are addressed and implemented expeditiously.

The Board looks forward to building on our successes and providing outstanding service to the public and the State of Arizona. We will use the input from the audit to make improvements in our operations and maintain our very high standards.

Sincerely,

Matthew A. Scheller  
Executive Director

Enclosure

c: Board Members and Alternates

**Sunset Factor 2:** The extent to which the Board has met its statutory objective and purpose and the efficiency with which it has operated.

**Recommendation 1:** The Board should develop and implement a checklist for staff use to ensure that all required application materials are received, reviewed, and retained.

Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will create a checklist for staff to ensure that all required application materials are received, reviewed, and retained.

**Recommendation 2:** If the number of good-cause exception applications continues to increase, the Board should monitor the impact to its operations and assess whether additional staff are needed to handle its increasing workload and continue meeting its statutory time frames.

Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: As of July 1, 2019, the Board has created and filled an Office Manager position and filled its Administrative Assistant II position. Both of these positions will enable the Board to handle its increasing workload and ensure that the Board continues to meet its demanding statutory time frames.

**Recommendation 3:** The Board should analyze its current revenues and costs to determine whether the \$7 fee should be adjusted (and document its analysis and determination) and establish and implement a process for periodically reviewing the appropriateness of its fee.

Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board is reviewing its Rules and the current fee that is collected as part of the application fee for a fingerprint clearance card. A process will be implemented to periodically review the appropriateness of the fee.

**Sunset Factor 3:** The extent to which the Board serves the entire State rather than specific interests.

**Recommendation 4:** The Board should develop and implement policies and procedures for addressing potential conflicts of interest in accordance with State laws, including requiring Board members and employees to disclose certain interests in the Board's official records, either through a signed document maintained in a special file or the Board's official minutes.

Board Response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will develop a policy and procedure for addressing potential conflicts of interest in accordance with State laws.



## TITLE 13. PUBLIC SAFETY

## CHAPTER 11. BOARD OF FINGERPRINTING

(Authority: A.R.S. §§ 41-619.53(A)(2) and 41-619.55(A)(1))

*Title 13, Chapter 11, consisting of Sections R13-11-101 through R13-11-105, adopted by exempt rulemaking at 5 A.A.R. 3087, effective August 19, 1999 (Supp. 99-3).*

## ARTICLE 1. BOARD OF FINGERPRINTING

## Section

R13-11-102.	Definitions
R13-11-104.	Application Requirements
R13-11-105.	Expedited Review
R13-11-106.	Request to Vacate, Reschedule, or Continue Hearing; Reconvening a Hearing
R13-11-107.	Telephonic Testimony
R13-11-108.	Hearings
R13-11-109.	Ex Parte Communications
R13-11-110.	Rehearing or Review of Decision
R13-11-113.	Fees

## ARTICLE 1. BOARD OF FINGERPRINTING

**R13-11-102. Definitions**

In this Article, the following definitions apply, unless the context otherwise requires:

1. "Applicant" means a person who applies for a good cause exception under A.R.S. § 41-619.55 or a central registry exception under A.R.S. § 41-619.57.
2. "Board" means the Board of Fingerprinting.
3. "Central registry exception" means notification to the Department of Economic Security or the Department of Health Services, as appropriate, pursuant to A.R.S. § 41-619.57 that the person is not disqualified because of a central registry check conducted pursuant to A.R.S. § 8-804.
4. "Central registry exception application" means all the documents required by A.A.C. R13-11-104(B).
5. "CPS" means Child Protective Services.
6. "DES" means the Department of Economic Security.
7. "DES notice" means the notice of disqualification because of a central registry background check that the Department of Economic Security sends to an applicant under A.R.S. § 8-804(H).
8. "DPS" means the Department of Public Safety.
9. "DPS notice" means the notice of denial or suspension of a fingerprint clearance card that the Department of Public Safety sends to a fingerprint clearance card applicant under A.R.S. § 41-1758.04.
10. "Expedited review" means an examination by the Board, without the applicant being present and in accordance with R13-11-105, of the documents an applicant submits.
11. "Good cause exception" means the issuance of a fingerprint clearance card to an applicant under A.R.S. § 41-619.55.
12. "Good cause exception application" means all of the documents required by A.A.C. R13-11-104(A).
13. "Hearing officer" means an administrative law judge or other person appointed by the Board to determine good cause exceptions or central registry exceptions.

**Historical Note**

New Section adopted by exempt rulemaking at 5 A.A.R. 3087, effective August 19, 1999 (Supp. 99-3). Former Section R13-11-102 renumbered to R13-11-103; new Section R13-11-102 made by exempt rulemaking at 9 A.A.R. 3744, effective August 1, 2003 (Supp. 03-3). Amended by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3). Amended by exempt rulemaking at 13 A.A.R. 3435, effective September 19, 2007 (Supp. 07-3). Amended by exempt rulemaking at 18 A.A.R. 2146, effective August 8, 2012 (Supp. 12-3). Amended by exempt rulemaking at 18 A.A.R. 2564, effective September 25, 2012 (Supp. 12-3).

**R13-11-104. Application Requirements**

**A.** Good cause exception application. A good cause exception application shall consist of both the criminal history information provided by DPS and the following materials submitted by an applicant to the Board:

1. The good cause exception application form prescribed by the Board. This form shall be notarized.
2. Two letters of reference on forms prescribed by the Board that meet the following requirements:
  - a. Both letters of reference shall be from individuals who have known the applicant for at least one year; and
  - b. At least one letter of reference shall be from the applicant's current or former employer or from an individual who has known the applicant for at least three years.
3. If the DPS notice indicates that DPS could not determine the disposition of a charge, documents from the appropriate court showing the disposition of the charge or showing that records pertaining to the applicant either do not exist or have been purged.
4. For any charges that occurred five years or less prior to the date on the DPS notice, regardless of whether the charges were listed on the DPS notice, the police report for each charge and documents from the appropriate court showing the disposition of the charge.
5. For every criminal conviction, regardless of whether the offenses were listed on the DPS notice, documents from the appropriate court showing that the applicant has met all judicially imposed obligations or sentencing conditions or that records pertaining to the applicant either do not exist or have been purged. If the applicant has not met all judicially imposed obligations or sentencing conditions, the applicant shall provide a written statement indicating or documents from the appropriate court showing the status of the applicant's efforts toward meeting the obligations.
6. A statement written by the applicant that explains each charge, regardless of whether the charges were listed on the DPS notice.

**B.** Central registry exception application. A central registry exception application shall consist of the criminal history information

provided by DPS, the redacted CPS report and investigative information provided by DES, and the following materials submitted by an applicant to the Board:

1. The central registry exception application form prescribed by the Board. This form shall be notarized.
  2. Two letters of reference on forms prescribed by the Board that meet the following requirements:
    - a. Both letters of reference shall be from individuals who have known the applicant for at least one year; and
    - b. At least one letter of reference shall be from the applicant's current or former employer or from an individual who has known the applicant for at least three years.
  3. If the applicant has had any criminal charges:
    - a. Documents from the appropriate court showing the disposition of the criminal charges or showing that records pertaining to the applicant either do not exist or have been purged.
    - b. For any charges that occurred five years or less prior to the date on the DES notice, the police report for each charge and documents from the appropriate court showing the disposition of each charge.
    - c. For every criminal conviction, documents from the appropriate court showing that the applicant has met all judicially imposed obligations or sentencing conditions or that records pertaining to the applicant either do not exist or have been purged. If the applicant has not met all judicially imposed obligations or sentencing conditions, the applicant shall provide a written statement indicating or documents from the appropriate court showing the status of the applicant's efforts toward meeting the obligations.
    - d. A statement written by the applicant that explains each criminal charge.
  4. A statement written by the applicant that explains each incident that led to a substantiated allegation of child abuse or neglect.
  5. If CPS assigned a case plan to the applicant, the current CPS case plan or documentation from CPS showing that the case plan is unavailable.
- C. The Board or its hearing officer may accept any other documents an applicant submits, as allowed by A.R.S. § 41-1062.

#### Historical Note

New Section adopted by exempt rulemaking at 5 A.A.R. 3087, effective August 19, 1999 (Supp. 99-3). Former Section R13-11-104 renumbered to R13-11-105; new Section R13-11-104 renumbered from R13-11-103 by exempt rulemaking at 9 A.A.R. 3744, effective August 1, 2003 (Supp. 03-3). Former Section R13-11-104 renumbered to R13-11-109; new Section R13-11-104 made by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3). Amended by exempt rulemaking at 13 A.A.R. 3435, effective September 19, 2007 (Supp. 07-3). Amended by exempt rulemaking at 18 A.A.R. 2146, effective August 8, 2012 (Supp. 12-3).

#### R13-11-105. Expedited Review

- A. Within 20 days of receiving an application, the Board shall conduct an expedited review. When determining whether the applicant should receive a good cause exception or central registry exception under an expedited review, the Board shall consider the following:
1. The criteria listed in A.R.S. § 41-619.55(E) for good cause exception applications or A.R.S. § 41-619.57(E) for central registry exception applications; and
  2. Whether the documentation submitted in support of a good cause exception application or central registry exception application is sufficient to allow the Board to grant a good cause exception or central registry exception, or whether the Board requires further documentation or oral testimony.
- B. If the Board determines that the applicant is eligible for a good cause exception or central registry exception under an expedited review, the Board shall grant the applicant a good cause exception.
- C. If the Board determines that an applicant is not eligible for a good cause exception or central registry exception under an expedited review, the Board shall direct the Board's executive director to schedule a hearing. The Board's executive director shall give the applicant reasonable notice of the hearing in accordance with A.R.S. § 41-1061. The hearing shall take place within 45 days after the expedited review.

#### Historical Note

New Section adopted by exempt rulemaking at 5 A.A.R. 3087, effective August 19, 1999 (Supp. 99-3). Former Section R13-11-105 renumbered to R13-11-106; new Section R13-11-105 renumbered from R13-11-104 by exempt rulemaking at 9 A.A.R. 3744, effective August 1, 2003 (Supp. 03-3). Section repealed; new Section made by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3). Amended by exempt rulemaking at 13 A.A.R. 3435, effective September 19, 2007 (Supp. 07-3). Amended by exempt rulemaking at 18 A.A.R. 2146, effective August 8, 2012 (Supp. 12-3).

#### R13-11-106. Request to Vacate, Reschedule, or Continue Hearing; Reconvening a Hearing

- A. An applicant who wishes to request that the Board or its hearing officer vacate or reschedule a hearing shall submit a written request to the Board.
- B. The Board or its hearing officer shall give an applicant written notification if a hearing has been vacated or rescheduled.
- C. Vacating a hearing. The Board or its hearing officer may vacate a hearing if:
1. The applicant no longer requires a good cause exception or central registry exception;
  2. The applicant withdraws the application by submitting a written notice to the Board; or
  3. Facts demonstrate to the Board or its hearing officer that it is appropriate to vacate the hearing if the action will further administrative convenience, expedience, and economy and does not conflict with law or cause undue prejudice to any party.
- D. Rescheduling a hearing. The Board or its hearing officer may reschedule a hearing if:
1. The applicant shows that attending the calendared hearing would cause excessive or undue prejudice or hardship.
  2. The applicant shows that attending the calendared hearing would be impossible, using reasonable diligence.
  3. Facts demonstrate to the Board or its hearing officer that it is appropriate to reschedule the hearing for the purpose of administrative convenience, expedience, and economy and does not conflict with law or cause undue prejudice to any party.
- E. Continuing a hearing. When ruling on a motion to continue a hearing, the Board or its hearing officer shall consider such factors as:
1. The reasons for continuing the hearing; and
  2. Whether the continuance will cause undue prejudice to any party.
- F. Reconvening a hearing. The Board or its hearing officer may recess a hearing and reconvene at a future date by a verbal ruling.

#### Historical Note

New Section R13-11-106 renumbered from R13-11-105 by exempt rulemaking at 9 A.A.R. 3744, effective August 1, 2003 (Supp. 03-3). Former Section R13-11-106 renumbered to R13-11-110; new Section R13-11-106 made by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3). Amended by exempt rulemaking at 18 A.A.R. 2146, effective August 8, 2012 (Supp. 12-3).

#### R13-11-107. Telephonic Testimony

- A. An applicant who wishes to submit or have a witness submit telephonic testimony at the hearing shall submit a written request to the Board.
- B. The Board or its hearing officer may allow the applicant or the applicant's witness to submit telephonic testimony at the hearing if:
  1. Personal attendance by the applicant or the applicant's witness at the hearing will present an undue hardship for the applicant or the applicant's witness;
  2. Telephonic presence will not cause undue prejudice to any party; and
  3. The applicant or the applicant's witness assumes the cost of testifying telephonically.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 3744, effective August 1, 2003 (Supp. 03-3). Former Section R13-11-107 renumbered to R13-11-111; new Section R13-11-107 made by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3). Amended by exempt rulemaking at 18 A.A.R. 2146, effective August 8, 2012 (Supp. 12-3).

**R13-11-108. Hearings**

- A. Absent good cause, if the applicant fails to appear at a hearing, the Board may deny the good cause exception application or central registry exception application for failure to appear at the hearing. An applicant demonstrates good cause by showing that the applicant could not have been present at the hearing or requested that the hearing be rescheduled pursuant to R13-11-106, using reasonable diligence. An applicant's failure to inform the Board of a change in address shall not constitute grounds for good cause. The Board shall determine whether good cause exists.
- B. The Board shall grant or deny a good cause exception or central registry exception within 80 days of the hearing.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3). Amended by exempt rulemaking at 13 A.A.R. 3435, effective September 19, 2007 (Supp. 07-3). Amended by exempt rulemaking at 18 A.A.R. 2146, effective August 8, 2012 (Supp. 12-3).

**R13-11-109. Ex Parte Communications**

- A. In any good cause exception or central registry exception case, except to the extent required for disposition of *ex parte* matters as authorized by law:
  1. No interested person outside the Board may make or knowingly cause to be made to any Board members, hearing officer, or other employee or consultant who may reasonably be expected to be involved in the decisional process of the proceeding, an *ex parte* communication relevant to the merits of the proceeding;
  2. No Board member, hearing officer, or other employee or consultant who is or may be reasonably expected to be involved in the decisional process of the proceeding, may make or knowingly cause to be made to any interested person outside the Board an *ex parte* communication relevant to the merits of the determination.
- B. A Board member, hearing officer, or other employee or consultant who is or may be reasonably expected to be involved in the decisional process of the proceeding, who receives, makes, or knowingly causes to be made a communication prohibited by R13-11-109(A), must place on the record of the proceeding and serve on all parties to the proceeding:
  1. All prohibited written communications;
  2. Memoranda stating the substance of all prohibited oral communications; and
  3. All written responses, and memoranda stating the substance of all oral responses, to the communications described in (1) and (2) of this subsection.
- C. Upon receipt of a communication made or knowingly caused to be made by a party in violation of this Section, the Board or its hearing officer may require the party to show cause why his or her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the violation.
- D. The provisions of this Section apply beginning when the application for a good cause exception or central registry exception is filed.
- E. For the purposes of this Section:
  1. "Person outside the Board" means any person other than a Board member, employee or consultant of the Board, or attorney representing the Board in its adjudicatory role.
  2. "*Ex parte* communication" means an oral or written communication not on the administrative record and not the subject of reasonable prior notice to all parties.

**Historical Note**

Section renumbered from R13-11-104 and amended by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3). Former R13-11-109 renumbered to R13-11-111; new R13-11-109 made by exempt rulemaking at 12 A.A.R. 4898, effective December 6, 2006 (Supp. 06-4). Amended by exempt rulemaking at 18 A.A.R. 2146, effective August 8, 2012 (Supp. 12-3). Amended by exempt rulemaking at 18 A.A.R. 2564, effective September 25, 2012 (Supp. 12-3).

**R13-11-110. Rehearing or Review of Decision**

- A. An applicant may seek a review or rehearing of a Board decision that results from an administrative hearing by submitting a written request for a review or rehearing to the Board within 30 days from the date of service of the decision. The Board shall grant a request for review or rehearing for any of the following reasons materially affecting the rights of the applicant:
  1. The findings of fact, conclusions of law, or decision are not supported by the evidence or are contrary to law;
  2. The applicant was deprived of a fair hearing due to irregularity in the proceedings, abuse of discretion, or misconduct by the hearing officer;
  3. Newly discovered material evidence exists that could have a bearing on the decision and that, with reasonable diligence, could not have been discovered and produced earlier; or
  4. Error in admission or rejection of evidence or other errors of law occurring at the hearing.
- B. The request must specify the grounds for a review or rehearing and must provide reasonable evidence that the applicant's rights were materially affected.
- C. The Board may grant a rehearing or review for any of the reasons in subsection (A). The Board or its hearing officer may take additional testimony; amend or make new findings of fact and conclusions of law; and affirm, modify, or reverse the original decision.
- D. A rehearing or review, if granted, must be a rehearing or review only of the issue upon which the decision is found erroneous. An order granting or denying a rehearing or review must specify the basis for the order.

**Historical Note**

Section renumbered from R13-11-106 and amended by exempt rulemaking at 9 A.A.R. 4449, effective September 26, 2003 (Supp. 03-3). Former R13-11-110 renumbered to R13-11-112; new R13-11-110 made by exempt rulemaking at 12 A.A.R. 4898, effective

December 6, 2006 (Supp. 06-4). Amended by exempt rulemaking at 13 A.A.R. 3435, effective September 19, 2007 (Supp. 07-3).  
Amended by exempt rulemaking at 18 A.A.R. 2146, effective August 8, 2012 (Supp. 12-3).

**R13-11-113. Fees**

- A.** DPS shall collect proper fees for good cause exceptions from all applicants and shall transmit the fees to the state Treasurer. A fee of \$7.00 is established for good cause exceptions and central registry exceptions.
- B.** Fees shall be paid in addition to and in the same payment as fees paid to DPS for a fingerprint clearance card application.

**Historical Note**

Section R13-11-113 renumbered from R13-11-111 by exempt rulemaking at 12 A.A.R. 4898, effective December 6, 2006 (Supp. 06-4).  
Amended by exempt rulemaking at 18 A.A.R. 2564, effective September 25, 2012 (Supp. 12-3).

As of October 14, 2019

41-619.51. Definitions

(L19, Ch. 135, sec. 2)

In this article, unless the context otherwise requires:

1. "Agency" means the supreme court, the department of economic security, the department of child safety, the department of education, the department of health services, the department of juvenile corrections, the department of emergency and military affairs, the department of public safety, the department of transportation, the state real estate department, the department of financial institutions, the Arizona game and fish department, the Arizona department of agriculture, the board of examiners of nursing care institution administrators and assisted living facility managers, the state board of dental examiners, the Arizona state board of pharmacy or the board of physical therapy or the state board of technical registration.

2. "Board" means the board of fingerprinting.

3. "Central registry exception" means notification to the department of economic security, the department of child safety or the department of health services, as appropriate, pursuant to section 41-619.57 that the person is not disqualified because of a central registry check conducted pursuant to section 8-804.

4. "Expedited review" means an examination, in accordance with board rule, of the documents an applicant submits by the board or its hearing officer without the applicant being present.

5. "Good cause exception" means the issuance of a fingerprint clearance card to an employee pursuant to section 41-619.55.

6. "Person" means a person who is required to be fingerprinted pursuant to this article or who is subject to a central registry check and any of the following:

(a) Section 3-314.

(b) Section 8-105.

(c) Section 8-322.

(d) Section 8-463.

- (e) Section 8-509.
- (f) Section 8-802.
- (g) Section 8-804.
- (h) Section 15-183.
- (i) Section 15-503.
- (j) Section 15-512.
- (k) Section 15-534.
- (l) Section 15-763.01.
- (m) Section 15-782.02.
- (n) Section 15-1330.
- (o) Section 15-1881.
- (p) Section 17-215.
- (q) Section 28-3228.
- (r) Section 28-3413.
- (s) Section 32-122.02.
- (t) Section 32-122.05.
- (u) Section 32-122.06.
- (v) Section 32-1232.
- (w) Section 32-1276.01.
- (x) Section 32-1284.
- (y) Section 32-1297.01.
- (z) Section 32-1904.

- (aa) Section 32-1941.
- (bb) Section 32-2022.
- (cc) Section 32-2108.01.
- (dd) Section 32-2123.
- (ee) Section 32-2371.
- (ff) Section 32-3620.
- (gg) Section 32-3668.
- (hh) Section 32-3669.
- (ii) Section 36-207.
- (jj) Section 36-411.
- (kk) Section 36-425.03.
- (ll) Section 36-446.04.
- (mm) Section 36-594.01.
- (nn) Section 36-594.02.
- (oo) Section 36-882.
- (pp) Section 36-883.02.
- (qq) Section 36-897.01.
- (rr) Section 36-897.03.
- (ss) Section 36-3008.
- (tt) Section 41-619.53.
- (uu) Section 41-1964.
- (vv) Section 41-1967.01.

(ww) Section 41-1968.

(xx) Section 41-1969.

(yy) Section 41-2814.

(zz) Section 46-141, subsection A or B.

(aaa) Section 46-321.

**41-619.52. Board of fingerprinting; organization; meetings**

A. The board of fingerprinting is established consisting of the following members:

1. A representative of the supreme court who is appointed by the chief justice of the supreme court.

2. A representative of the department of economic security who is appointed by the director of the department of economic security.

3. A representative of the department of education who is appointed by the superintendent of public instruction.

4. A representative of the department of health services who is appointed by the director of the department of health services.

5. A representative of the department of juvenile corrections who is appointed by the director of the department of juvenile corrections.

6. A representative of the department of child safety who is appointed by the director of the department of child safety.

B. At its initial meeting and annually thereafter, the board shall elect a chairperson and vice-chairperson from among its members and any other officers that are deemed necessary or advisable.

C. The board shall meet at least once each calendar quarter and additionally as the chairperson deems necessary. A majority of the members constitutes a quorum for the transaction of business.

D. Board members:

1. Serve at the pleasure of the appointing authority.

2. Are not eligible for compensation but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

3. Shall have a valid fingerprint clearance card issued pursuant to section 41-1758.07.

E. The chief justice, the superintendent of public instruction or a department director may designate an alternate member to represent a member who is appointed pursuant to subsection A by the chief justice, the superintendent of public instruction or a department director, respectively.

**41-619.53. Board of fingerprinting; powers and duties; personnel; liability**

A. The board of fingerprinting shall:

1. Determine good cause exceptions pursuant to section 41-619.55 and central registry exceptions pursuant to section 41-619.57. The board may appoint a hearing officer to recommend that an applicant be granted or denied a good cause exception or central registry exception after the hearing officer conducts an expedited review, a good cause exception hearing or a central registry exception hearing.

2. Adopt rules to implement this article, including rules to establish good cause exceptions for the issuance of fingerprint clearance cards pursuant to sections 41-1758.03 and 41-1758.07 and central registry exceptions pursuant to section 8-804. This rule making is exempt from the requirements of chapter 6 of this title.

3. Administer and enforce this article and rules adopted pursuant to this article.

4. Furnish a copy of its rules, on request, to all applicants who petition the board for a good cause exception pursuant to sections 41-1758.03 and 41-1758.07 or a central registry exception pursuant to section 8-804 and, on request, to licensees, contract providers and state agencies.

5. Establish fees.

B. In order to grant a good cause exception or a central registry exception, a majority plus an additional member, of the members present, must vote to approve the application. If the board grants a good cause exception, the board shall request in writing that the department of public safety issue a card to the applicant. If the board grants a central registry exception, the board shall notify the department of child safety, the department of economic security or the department of health services, as appropriate, in writing.

C. Subject to chapter 4, article 4 of this title, the board may employ clerical, professional and technical personnel subject to fee monies that are collected and to the budget that is approved by the board members and shall prescribe personnel duties and determine personnel compensation. Personnel employed by the board must have a valid fingerprint clearance card issued pursuant to section 41-1758.07. If the applicant is denied a fingerprint clearance card, in order to be employed by the board, the board must grant a good cause exception pursuant to this article by a unanimous vote.

D. In making any recommendation to the board to grant or deny a good cause exception or central registry exception, the hearing officer shall consider all of the reasons and criteria prescribed in section 41-619.55, subsection E or section 41-619.57, subsection E.

E. Members and employees of the board are not liable for acts done or actions taken by any board member or employee if the members or employees act in good faith following the requirements of this article.

41-619.54. Confidentiality of criminal record and central registry information; exception; reporting

A. All criminal history record information and central registry information that is maintained by the board is confidential, except that criminal history record information and central registry information may be disclosed pursuant to a determination for a good cause exception pursuant to section 41-619.55 or pursuant to a central registry exception pursuant to section 41-619.57.

B. Persons who are present at a good cause exception hearing or a central registry exception hearing shall not discuss or share any criminal history record information or central registry information outside of the good cause exception hearing.

C. Except as provided in subsection D of this section, criminal history record information, central registry information, good cause exception determinations and hearings and central registry exception determinations and hearings are exempt from title 39, chapter 1.

D. On or before December 1 of each year the board shall report the number of applications for a good cause exception and for a central registry exception and the number of good cause exceptions and central registry exceptions that were granted for the twelve month period ending September 30. The report shall itemize the number of applications and the number of applications granted for each of the sections listed in section 41-619.51, paragraph 5. For each of these sections, the report shall further

itemize each offense listed in section 41-1758.03, subsections B and C and section 41-1758.07, subsections B and C for which a good cause exception was applied for and for which a good cause exception was granted. The board shall provide a copy of the report to the governor, the speaker of the house of representatives and the president of the senate.

41-619.55. Good cause exceptions; expedited review; hearing; revocation

A. The board shall determine good cause exceptions. The board shall determine a good cause exception after an expedited review or after a good cause exception hearing. The board shall conduct an expedited review within twenty days after receiving an application for a good cause exception.

B. Within forty-five days after conducting an expedited review, the board shall hold a good cause exception hearing if the board determines that the applicant does not qualify for a good cause exception under an expedited review but is qualified to apply for a good cause exception and the applicant submits an application for a good cause exception within the time limits prescribed by rule.

C. When determining whether a person is eligible to receive a good cause exception under an expedited review, the board shall consider whether the person has shown to the board's satisfaction that the person is not awaiting trial on or has not been convicted of committing any of the offenses listed in section 41-1758.03, subsection B or section 41-1758.07, subsection B or that the person is successfully rehabilitated and is not a recidivist. Before granting a good cause exception under an expedited review, the board shall consider all of the criteria listed in subsection E of this section.

D. The following persons shall be present during good cause exception hearings:

1. The board or its hearing officer.
2. The person who requested the good cause exception hearing. The person may be accompanied by a representative at the hearing.

E. The board may grant a good cause exception at a hearing if the person shows to the board's satisfaction that the person is not awaiting trial on or has not been convicted of committing any of the offenses listed in section 41-1758.03, subsection B or section 41-1758.07, subsection B or that the person is successfully rehabilitated and is not a recidivist. Notwithstanding any other law, the board may require applicants to disclose evidence regarding substantiated allegations of child or vulnerable adult abuse or neglect for consideration in determining an applicant's successful rehabilitation. If the applicant fails to appear at the hearing without good cause, the

board may deny a good cause exception. The board shall grant or deny a good cause exception within eighty days after the good cause exception hearing. Before granting a good cause exception at a hearing the board shall consider all of the following in accordance with board rule:

1. The extent of the person's criminal record.
2. The length of time that has elapsed since the offense was committed.
3. The nature of the offense.
4. Any applicable mitigating circumstances.
5. The degree to which the person participated in the offense.
6. The extent of the person's rehabilitation, including:
  - (a) Completion of probation, parole or community supervision.
  - (b) Whether the person paid restitution or other compensation for the offense.
  - (c) Evidence of positive action to change criminal behavior, such as completion of a drug treatment program or counseling.
  - (d) Personal references attesting to the person's rehabilitation.

F. If the board grants a good cause exception to a person, the board shall request in writing that the department of public safety issue a fingerprint clearance card to the person.

G. The board's staff, under the direction of the executive director of the board, shall review reports it receives of the arrest, charging or conviction of a person for offenses listed in sections 41-1758.03 and 41-1758.07 who previously received a fingerprint clearance card. Except as provided by subsection J of this section, the executive director shall report any arrest, charge or conviction of a prohibited crime to the state agencies listed on the applicant's fingerprint clearance card application.

H. The board may request in writing that the department of public safety revoke a person's fingerprint clearance card pursuant to section 41-1758.04 if the person received a fingerprint clearance card and the person is subsequently convicted of an offense listed in section 41-1758.03, subsection B or C or section 41-1758.07, subsection B or C.

I. Pending the outcome of a good cause exception determination, the board or its hearing officer may issue interim approval in accordance with board rule to continue working to a good cause exception applicant.

J. If the board's staff, under the direction of the executive director, receives a report of an arrest, charging or conviction of a prohibited crime for a person who previously received a fingerprint clearance card pursuant to section 15-1881, the executive director shall not report this information to the state agency that is listed on the applicant's fingerprint clearance card application but shall notify the person issued the fingerprint clearance card of the report.

K. The board is exempt from chapter 6, article 10 of this title.

L. A person who is required to obtain a fingerprint clearance card pursuant to section 41-619.52 is not eligible to receive a good cause exception pursuant to this section.

#### 41-619.56. Board of fingerprinting fund

A. The board of fingerprinting fund is established consisting of monies appropriated by the legislature and fees established by the board pursuant to section 41-619.53. The board shall administer the fund subject to legislative appropriation. Monies in the fund are continuously appropriated for the purposes provided in this article.

B. Monies deposited in the fingerprinting fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

#### 41-619.57. Central registry exceptions; expedited review; hearing

A. The board shall determine central registry exceptions for each substantiated report pursuant to section 8-804. The board shall determine a central registry exception after an expedited review or after a central registry exception hearing. The board shall conduct an expedited review within twenty days after receiving an application for a central registry exception.

B. Within forty-five days after conducting an expedited review, the board shall hold a central registry exception hearing if the board determines that the applicant does not qualify for a central registry exception under an expedited review but is qualified to apply for a central registry exception and the applicant submits an application for a central registry exception within the time limits prescribed by rule.

C. When determining whether a person is eligible to receive a central registry exception pursuant to section 8-804, the board shall consider whether the person has

shown to the board's satisfaction that the person is successfully rehabilitated and is not a recidivist. Before granting a central registry exception under expedited review, the board shall consider all of the criteria listed in subsection E of this section.

D. The following persons shall be present during central registry exception hearings:

1. The board or its hearing officer.
2. The person who requested the central registry exception hearing. The person may be accompanied by a representative at the hearing.

E. The board may grant a central registry exception at a hearing if the person shows to the board's satisfaction that the person is successfully rehabilitated and is not a recidivist. The board may consider the person's criminal record in determining if a person has been successfully rehabilitated. If the applicant fails to appear at the hearing without good cause, the board may deny a central registry exception. The board shall grant or deny a central registry exception within eighty days after the central registry exception hearing. Before granting a central registry exception at a hearing the board shall consider all of the following in accordance with board rule:

1. The extent of the person's central registry records.
2. The length of time that has elapsed since the abuse or neglect occurred.
3. The nature of the abuse or neglect.
4. Any applicable mitigating circumstances.
5. The degree to which the person participated in the abuse or neglect.
6. The extent of the person's rehabilitation, including:
  - (a) Evidence of positive action to change the person's behavior, such as completion of counseling or a drug treatment, domestic violence or parenting program.
  - (b) Personal references attesting to the person's rehabilitation.

F. If the board grants a central registry exception to a person, the board shall notify the department of child safety, the department of economic security or the department of health services, as appropriate, in writing.

G. A person who is granted a central registry exception is not entitled to have the person's report and investigation outcome purged from the central registry except as required pursuant to section 8-804, subsections H and I.

H. Pending the outcome of a central registry exception determination, a central registry exception applicant may not provide direct services to children pursuant to title 36, chapter 7.1.

I. The board is exempt from chapter 6, article 10 of this title.