

**D-1**

**DEPARTMENT OF HEALTH SERVICES (R20-0905)**

Title 9, Chapter 7, Article 13, License and Registration Fees

**Amend:** R9-7-1302, R9-7-1303, R9-7-1304, R9-7-1306

**Repeal:** R9-7-1307, Table 1

**New Section:** Table 13.1, Table 13.2



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** September 1, 2020, October 6, 2020, and November 3, 2020

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

**FROM:** Council Staff

**DATE:** August 10, 2020, revised October 13, 2020

**SUBJECT: DEPARTMENT OF HEALTH SERVICES (R20-0905)**  
Title 9, Chapter 7, Article 13, License and Registration Fees

**Amend:** R9-7-1302, R9-7-1303, R9-7-1304, R9-7-1306

**Repeal:** R9-7-1307, Table 1

**New Section:** Table 13.1, Table 13.2

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### Summary:

**NOTE:** *This rulemaking was previously considered at the September 1, 2020 Council Meeting, where the Council voted to table consideration of the rulemaking to the September 29, 2020 Study Session and October 6, 2020 Council Meeting. At the October 6, 2020 Council Meeting, the Council voted to again table consideration of this rulemaking to the October 27, 2020 Study Session and November 3, 2020 Council Meeting. Prior to the October 6, 2020 Council Meeting, the Department submitted revised rulemaking documents, including a revised Economic, Small Business, and Consumer Impact Statement (EIS). The following memorandum includes updated information from the revised EIS, as analyzed by the Governor's Office of Economic Opportunity (OEO). The changes in the revised documents the Department submitted are highlighted in yellow.*

This regular rulemaking from the Department of Health Services (Department) relates to rules in Title 9, Chapter 7, Article 13, regarding license and registration fees for radiation control. In this rulemaking, the Department seeks to increase the fees it charges in connection

with its responsibility over the control of ionizing and non-ionizing radiation. The Department assumed responsibility for regulating the use of ionizing and non-ionizing radiation pursuant to recent statutory changes (Laws 2017, Ch. 313, and Laws 2018, Ch. 234). Since assuming this responsibility, the Department discovered that the existing fees are insufficient to cover the Department's cost in carrying out this function.

The Department received an exemption from the rulemaking moratorium on April 4, 2019 to conduct this rulemaking to increase the fees and make other changes to the rules to clarify requirements.

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?**

Yes. In this rulemaking, the Department proposes to increase fees.

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

The Department states that it did not review or rely on any study in conducting this rulemaking. However, the Department states that it did review the fees that the U.S. Nuclear Regulatory Commission and other states charge, according to their respective websites.

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

As of December 31, 2019 the Department has issued 353 licenses to persons who use, store, or dispose of source of radiation and 7,812 registrations to entities with a total of 20,982 devices that are sources of radiation, for a total of 8,165 licenses or registrations issued. Under the fees in the current rules, the Department receives revenue of approximately \$1,700,000.

Since assuming responsibility for the control of ionizing radiation and regulation over those using, storing, or disposing of sources of radiation in 2017, the Department's expenses have consistently been more than the revenue received. The fees specified in the new rules are projected to create nearly \$4 million in revenue, which would be sufficient to cover the shortfall and allow the Department to continue to protect public health.

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's shortfall of revenue to cover expenses has reached the point where the Department has to increase fees or reduce regulatory activities. Such reduction in regulatory activity could include not inspecting facilities or investigating complaints in a timely manner, not being able to detect unsafe environmental conditions, and taking much more time to resolve problems with applications and to issue licenses or registrations. The Department believes this reduction in regulatory oversight may result in harm to the health and safety of the public, as well as causing a burden on the regulated community, businesses that contract with regulated entities, employees of a regulated entity or a business contracting with a regulated entity, patients and their families, and the general public. The fees specified in the new rules would be sufficient to cover the shortfall and allow the Department to continue to protect public health. They are also in line with the fees charged in other states.

The Department determined that there are no less intrusive or less costly alternatives for achieving the purpose of the rule.

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

The Department identifies stakeholders as the Department; licensees or registrants who use, store, or dispose of sources of radiation; businesses that contract with licensees or registrants to perform activities covered under the rules in Chapter 7; employees of licensees or registrants or entities that contract with licensees or registrants; patients and their families; and the general public.

The Department believes that the increase in licensing costs caused by the new fees may result in a licensee incurring a minimal-to-substantial burden, depending on the type of license or licenses the licensee receives. The Department anticipates that one hospital with 85 registered X-ray machines may incur a substantial burden from the increase of the registration fee from \$125 to \$195 per device. Fewer than 40 registrants are expected to incur a moderate burden from the increased fees, while the Department believes that all registrants would incur a minimal burden from the fee increases in the new rules. The Department expects licensees and registrants to receive a significant benefit from improvements in the data system to be used for receiving and processing applications and communicating with licensees and registrants and from increased number of well-trained surveyors, which may result in shorter processing times for applications and amendments, as well as improved communication and answers to questions.

Businesses that contract with licensees or registrants to perform activities covered under the rules in 9 A.A.C. 7 may incur up to a moderate increase in contracting costs if a licensee or registrant passes along a portion of the fee increase to a business with which it contracts. However, because the fee increases will allow the Department to continue to provide adequate oversight of sources of radiation in Arizona, the Department believes

that these businesses may also receive a significant benefit from the oversight in ensuring the safe use of sources of radiation.

Patients who receive diagnostic or therapeutic procedures at licensed facilities may also receive a significant benefit from increased safety due to the Department's continued oversight. If a facility passes any increased costs on to patients, these patients could incur a minimal burden from the increased fees

The Department believes that the health and safety of the general public are protected by continued oversight by the Department of ionizing or non-ionizing radiation, and that the general public may receive a significant benefit from the fee changes.

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

The Department states that it made minor technical changes to the rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking, as described in Item 10 of the Preamble. Upon review, Council staff agrees. These changes do not result in rules that are "substantially different" under A.R.S. § 41-1025.

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

Yes. The Department received two written comments on this rulemaking. The first comment was from the Health System Alliance of Arizona (HSAA) in opposition to the proposed fee increases. The second comment was from the Arizona Hospital and Healthcare Association (AzHHA) also in opposition to the proposed fee increases. The Department adequately responded to both comments. Copies of the comments received are included for the Council's review.

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

Under A.R.S. Title 30, Chapter 4, Article 2, as amended by Laws 2017, Ch. 313, the Department is authorized to issue licenses and registrations for sources of ionizing radiation and those persons using these sources. As the Department indicates, the rules refer to both general and specific permits. The general permits are for certain levels of radioactive material and the specific permits are issued by rule for quantities and uses that are specific to the user and their training or scope of practice.

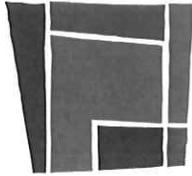
**10. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

The Department states that the only corresponding federal law is 10 CFR 170. The Department states that the rules are not more stringent than corresponding federal law.

## 11. **Conclusion**

In this regular rulemaking, the Department seeks to increase the fees it charges in connection with its role in regulating the use of ionizing and non-ionizing radiation. It proposes to increase the fees to address a revenue shortfall that it discovered upon assuming responsibility for these rules pursuant to recent statutory changes. Council staff finds that the Department's justification is adequate and that the Department submitted a thorough Economic, Small Business, and Consumer Impact Statement (EIS).

In the revised rulemaking document submitted, the Department is requesting a standard 60-day delayed effective date for this rulemaking. However, at the October 6, 2020 Council Meeting, the Department advised that due to this rulemaking being considered at multiple Council Meetings, it would likely need to request an immediate effective date. Council staff recommends approval of this rulemaking, and encourages the Council to discuss with the Department whether it still seeks an immediate effective date, and if so, the specific basis for an immediate effective date pursuant to A.R.S. § 41-1032.



# ARIZONA DEPARTMENT OF HEALTH SERVICES

## POLICY & INTERGOVERNMENTAL AFFAIRS

July 20, 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. 7, Article 13, Regular Rulemaking

Dear Ms. Sornsin:

1. The close of record date: July 13, 2020
2. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:  
The rulemaking for 9 A.A.C. 7, Article 13, does not relate to a five-year-review report.
3. Whether the rulemaking establishes a new fee and, if so, the statute authorizing the fee:  
The rulemaking does not establish a new fee.
4. Whether the rulemaking contains a fee increase:  
The rulemaking does contain a fee increase.
5. Whether an immediate effective date is requested pursuant to A.R.S. 41-1032:  
No, the Department is requesting the normal 60-day delay after approval for the effective date for the rules.

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

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

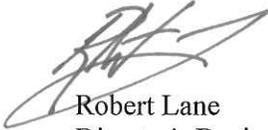
The following documents are enclosed:

- a. Notice of Final Rulemaking, including the Preamble, Table of Contents, and text of the rule;

- b. An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055; and
- c. General and specific statutes authorizing the rules.

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

Sincerely,



Robert Lane  
Director's Designee

RL:rms

Enclosures

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

**NOTICE OF FINAL RULEMAKING**  
**TITLE 9. HEALTH SERVICES**  
**CHAPTER 7. DEPARTMENT OF HEALTH SERVICES**  
**RADIATION CONTROL**

**PREAMBLE**

- 1. Article, Part, or Section Affected (as applicable) Rulemaking Action**
- |            |             |
|------------|-------------|
| R9-7-1302  | Amend       |
| R9-7-1303  | Amend       |
| R9-7-1304  | Amend       |
| R9-7-1306  | Amend       |
| Table 13.1 | New Section |
| R9-7-1307  | Repeal      |
| Table 1    | Repeal      |
| Table 13.2 | New Section |
- 2. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
- Authorizing Statutes: A.R.S. §§ 30-654(B)(5) and 36-136(G)  
Implementing Statutes: A.R.S. §§ 30-654, 30-656, 30-671, 30-672, 30-686, and 30-721
- 3. The effective date of the rules:**
- The Arizona Department of Health Services (Department) requests an effective date at the normal 60 days after approval.
- 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: 26 A.A.R. 762, April 24, 2020  
Notice of Proposed Rulemaking: 26 A.A.R. 1157, June 12, 2020
- 5. The agency's contact person who can answer questions about the rulemaking:**
- Name: Brian D. Goretzki, Chief, Bureau of Radiation Control  
Address: Arizona Department of Health Services  
Public Health Licensing Services  
4814 South 40th Street  
Phoenix, AZ 85040  
Telephone: (602) 255-4840  
Fax: (602) 437-0705

E-mail: Brian.Goretzki@azdhs.gov  
or  
Name: Robert Lane, Office Chief  
Address: Arizona Department of Health Services  
Office of Administrative Counsel and Rules  
150 N. 18th Ave., Suite 200  
Phoenix, AZ 85007  
Telephone: (602) 542-1020  
Fax: (602) 364-1150  
E-mail: Robert.Lane@azdhs.gov

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

Arizona Revised Statutes (A.R.S.) § 30-654(B)(5) requires rulemaking deemed necessary to administer A.R.S. Title 30, Chapter 4, Control of Ionizing Radiation. Laws 2017, Ch. 313, and Laws 2018, Ch. 234, made the Arizona Department of Health Services (Department) responsible for administering A.R.S. Title 30, Chapter 4, and specified the duties and authority of the Department. To clarify that the Department had assumed responsibility for regulating the use and users of ionizing and non-ionizing radiation, the Department recodified the rules related to radiation control that had been in Arizona Administrative Code (A.A.C.) Title 12, Chapter 1, into A.A.C. Title 36, Chapter 7, only making changes to refer to the Department or for cross-references. However, upon assuming responsibility for the control of ionizing and non-ionizing radiation, the Department discovered that the fees specified in the rules were insufficient to cover the expenses incurred by the Department in carrying out this function. Therefore, after receiving an exception from the rulemaking moratorium established by Executive Order 2018-02, the Department is now revising the rules in 9 A.A.C. 7, Article 13, to increase fees to cover the shortfall and making other corresponding changes to the rules to clarify requirements. The Department anticipates these changes will ensure sufficient funding for the Department to continue regulating the use and users of ionizing radiation in an efficient manner to protect the health and safety of Arizona's citizens. The new rules will conform to rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

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

The Department did not review or rely on any study for this rulemaking. However, the Department did review the fees charged by the U.S. Nuclear Regulatory Commission and by other states, as shown on their websites.

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

Not applicable

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

The Department anticipates that the rulemaking, which is increasing fees that have remained the same for over 10 years, may affect the Department; licensees or registrants who use, store, or dispose of sources of radiation; businesses that contract with licensees or registrants to perform activities covered under the rules in Chapter 7; employees of licensees or registrants or entities that contract with licensees or registrants; patients and their families; and the general public. Annual costs/revenues changes are designated as minimal when more than \$0 and \$2,000 or less, moderate when between \$2,000 and \$10,000, and substantial when \$10,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification.

As of December 31, 2019, the Department has issued 353 licenses to persons who use, store, or dispose of sources of radiation and 7,812 registrations to entities with a total of 20,982 devices that are sources of radiation, for a total of 8,165 licenses or registrations issued. Under the fees in the current rules, the Department receives revenue of approximately \$1,700,000. Of this amount, \$300,000 is deposited into the state general fund according to A.R.S. § 30-654(C). Of the remaining \$1,400,000, 90% (about \$1,260,000) is deposited into the health services licensing fund, established according to A.R.S. § 36-414, for use by the Department, and another 10% (about \$140,000) into the state general fund according to A.R.S. § 30-654(C).

Since assuming responsibility for the control of ionizing radiation and regulation over those using, storing, or disposing of sources of radiation in 2017, the Department's expenses have consistently been more than the revenue received, and this shortfall has reached the point where the Department has to increase fees or reduce regulatory activities. Such reduction in regulatory activity could include not inspecting facilities or investigating complaints in a timely manner, not being able to detect unsafe environmental conditions, and taking much more time to resolve problems with applications and to issue licenses or registrations. The Department believes this reduction in regulatory oversight may result in harm to the health and safety of the public, as well as causing a burden on the regulated community, businesses that contract with regulated entities,

employees of a regulated entity or a business contracting with a regulated entity, patients and their families, and the general public. The fees specified in the new rules would be sufficient to cover the shortfall and allow the Department to continue to protect public health. They are also in line with the fees charged by other states. Therefore, the Department would receive a substantial benefit from the fee increase.

The Department licenses a wide variety of entities, including industrial businesses, academic institutions, medical/veterinary facilities, laboratories, and governmental entities, and these may range from a large national or international corporation to a small company. The Department believes that the increase in licensing costs caused by the new fees may result in a licensee incurring a minimal-to-substantial burden, depending on the type of license or licenses the licensee receives. The Department issues registrations to entities that use devices that are sources of radiation, including X-ray devices, particle accelerators, tanning devices, class 3b or class 4 lasers, or radiofrequency devices. Some fees are based on the type of facility, while others are based on the number of devices. The Department anticipates that one hospital with 85 registered X-ray machines may incur a substantial burden from the increase of the registration fee from \$125 to \$195 per device. Fewer than 40 other registrants are expected to incur a moderate burden from the increased fees, while the Department believes that all other registrants would incur a minimal burden from the fee increases in the new rules. The Department expects licensees and registrants to receive a significant benefit from improvements in the data system to be used for receiving and processing applications and communicating with licensees and registrants and from increased numbers of well-trained surveyors, which may result in shorter processing times for applications and amendments, as well as improved communication and answers to questions.

Businesses that contract with licensees or registrants to perform activities covered under the rules in 9 A.A.C. 7 may incur up to a moderate increase in contracting costs if a licensee or registrant passes along a portion of the fee increase to a business with which it contracts. However, because the fee increases will allow the Department to continue to provide adequate oversight of sources of radiation in Arizona, the Department believes that these businesses may also receive a significant benefit from the oversight in ensuring the safe use of sources of radiation. Continued oversight by the Department may improve compliance and provide a safer work environment for an employee of a licensee or registrant or an entity employing a licensee or registrant. Therefore, the Department anticipates that such an employee may receive a significant benefit from the new rules. Patients who receive diagnostic or therapeutic procedures at facilities licensed under the rules in 9 A.A.C. 7 or with equipment registered under the rules and their families may also receive a significant benefit from increased safety due to the Department's

continued oversight. If a facility passes any increased costs on to patients, these patients could incur a minimal burden from the increased fees. Similarly, the Department believes that the health and safety of the general public are protected by continued oversight by the Department of ionizing or non-ionizing radiation, and that the general public may receive a significant benefit from the fee changes.

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

A typographical error in Table 13.2 was corrected so the same fees as specified in Table 1 of the current rules were displayed in the second column of the Table, rather than the first column being duplicated. The Department also clarified that the fee listed in Table 13.1 for category F12 is per facility, rather than per device. **At the request of the Council, the Department also reduced the fees for some categories of registrants.** No other changes were made to the rules between the proposed rulemaking and the final rulemaking.

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

Two written comments were received about the rulemaking during the public comment period and are summarized below, together with the Department’s responses. The Department held an oral proceeding for the proposed rules on July 13, 2020, which no stakeholder/member of the public attended or participated in telephonically.

Comment	Department’s Response
<p>A comment was received from the Health System Alliance of Arizona (HSAA), “an advocacy organization representing integrated health systems across the state.” While recognizing that the fee increases that are part of the rulemaking are being made “to align license and registration fees to the cost of administering the Department’s Radiation Control Program” and that these fees have not been increased since 2008, HSAA does not support the fee increases. The comment stated that hospitals will incur losses due to COVID-19 and requests that the implementation of the fee increases be delayed while additional discussions take place.</p>	<p>The Department thanks the commenters for recognizing the Department’s need for the additional funding to enable the continued regulation of sources of radiation and their users. While the Department sympathizes with the health care industry and is doing all it can to mitigate the expenses being incurred due to COVID-19, such as funding 26 nurses to relieve the stress on hospital personnel, the Department cannot delay the implementation of the fee increase, which will average about \$6,200 for a hospital.</p> <p>These fees are paid on an annual basis and are due by January 1 each year, with penalties imposed if not paid by April. Between 30 and 40% of licensees and registrants pay the fees before January 1. By delaying the effective date even to January 1, any licensee or registrant paying the fee for 2021 before the effective date would be expected to pay the current fee, and the revenue generated would not cover expenses.</p> <p>The Department recognized the shortfall between revenue and expenses shortly after assuming authority over this regulatory activity in 2017 and has tried since</p>
<p>A comment was received from the Arizona Hospital and Healthcare Association (AzHHA) representing “more than 80 hospital, healthcare, and affiliated health system members.” AzHHA recognized that the fees “support an indispensable public safety function,” have not been increased “for over a decade,” and “are currently insufficient</p>	

<p>to cover the department’s expenses in regulating the use and users of radiation in the state.”  However, AzHHA stated that “any fee increase on hospitals and healthcare providers constitutes a hardship” and requests that “ADHS defer the imposition of the proposed radiation control fee increases that affect hospitals and other health care providers.”</p>	<p>then to improve efficiency and decrease costs. The Department has already delayed the fee increase by a year, while continuing to work to minimize expenses so the fee increase could be as small as possible. The Department cannot afford to cover another year of the shortfall and does not plan to change the rule or the planned effective date, with a normal 60-day delay, based on the comments.</p>
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**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:**

According to A.R.S. Title 30, Chapter 4, Article 2, as amended by Laws 2017, Ch. 313, the Department is authorized to issue licenses and registrations for sources of ionizing radiation and those persons using these sources. This licensing and registration must be compatible with requirements in the Agreement. The rules refer to permits both general and specific. The general permit applies to certain levels of radioactive material, and specific permits are issued by rule for quantities and uses that are specific to the user and their training or scope of practice.

**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 rules are not more stringent than 10 CFR 170, the only applicable federal law.

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

No business competitiveness analysis was received by the Department.

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

Not applicable

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

Not applicable

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

**TITLE 9. HEALTH SERVICES**  
**CHAPTER 7. RADIATION CONTROL**  
**ARTICLE 13. LICENSE AND REGISTRATION FEES**

Section

R9-7-1302.	License and Registration Categories
R9-7-1303.	Fee for Initial License and Initial Registration
R9-7-1304.	Annual Fees for Licenses and Registrations
R9-7-1306.	<del>Table of Application Fees and Annual Fees</del>
<u>Table 13.1.</u>	<u>Table of Fees</u>
R9-7-1307.	<del>Special License Fees</del> <u>Repealed</u>
Table 1.	<del>Small Entity Fees</del> <sup>+</sup> <u>Repealed</u>
<u>Table 13.2.</u>	<u>Small Entity Fees</u>

## ARTICLE 13. LICENSE AND REGISTRATION FEES

### R9-7-1302. License and Registration Categories

- A. Category A licenses are those specific licenses ~~which~~ that authorize a school, college, university, or other teaching facility to possess and use radioactive materials for instructional or research purposes.
1. A broad academic class A license is any category A license ~~which~~ that meets the specifications of R9-7-310(A)(1).
  2. A broad academic class B license is any category A license other than a broad academic class A license ~~which~~ that meets the specifications of R9-7-310(A)(2).
  3. A broad academic class C license is any category A license other than a broad academic class A or B license ~~which~~ that meets the specifications of R9-7-310(A)(3).
  4. A limited academic license is any category A license ~~which~~ that authorizes only those radioisotopes, forms, and quantities individually specified in the license.
- B. Category B licenses are those specific or general licenses ~~which~~ that authorize the application of radioactive material or the radiation from it to a human being for medical diagnostic, therapeutic, or research purposes, or the use of radioactive material in medical laboratory testing. Except for a type B6, general medical license, the Department shall not combine a category B license with a license of any other category.
1. A broad medical license is any category B license ~~which~~ that meets the specifications of R9-7-310(A)(1) and meets the requirements of 9 A.A.C. 7, Article 7. A broad medical license may authorize any medical use other than teletherapy.
  2. A medical materials class A license is any specific category B license other than a broad medical license, ~~which~~ that authorizes the use of radiopharmaceuticals and sealed sources containing radioactive materials for a therapeutic purpose in quantities ~~which~~ that require hospitalization of the patient for radiation safety purposes. The license may authorize other radioactive materials and other medical uses, except teletherapy.
  3. A medical materials class B license is any specific category B license ~~which~~ that authorizes the diagnostic or therapeutic use, other than teletherapy, of radioactive materials only in limited quantities such that the patient need not be hospitalized for radiation safety purposes.
  4. A medical materials class C license is any specific category B license ~~which~~ that authorizes possession of specified radioisotopes only in the form of sealed sources for treatment of the eye or skin or for use in diagnostic medical imaging devices.

5. A medical teletherapy license is a specific category B license ~~which~~ that solely authorizes radioisotopes in the form of multi-curie sealed sources for use in external beam therapy. The Department shall not combine a medical teletherapy license with any other type of category B license.
  6. A general medical license is ~~a registration of one that authorizes~~ the use of radioactive material pursuant to R9-7-306(D) or R9-7-306(E). A general medical license may be combined into a broad medical, medical materials class A, or medical materials class B license.
- C. Category C licenses are those specific or general licenses ~~authorizing~~ that authorize the use of radioactive materials in any activity other than those authorized by a category A, B, or D license. Except as specifically authorized in this Section, the Department shall not combine a category C license with any other type of license.
1. A broad industrial class A license is any category C license ~~which~~ that meets the specifications of R9-7-310(A)(1). The Department may combine a broad industrial class A license with any other category C license except industrial radiography, open field irradiator, or well logging licenses.
  2. A broad industrial class B license is any category C license other than a broad industrial class A license ~~which~~ that meets the specifications of R9-7-310(A)(2). The Department may combine a broad industrial class B license with any other category C license except industrial radiography, open field irradiator, or well logging licenses.
  3. A broad industrial class C license is any category C license other than a broad industrial class A or B license ~~which~~ that meets the specifications of R9-7-310(A)(3). The Department may combine a broad industrial class C license with any other category C license except industrial radiography, open field irradiator, or well logging licenses.
  4. A limited industrial license is a specific category C license ~~authorizing~~ that authorizes the possession of the radioactive materials authorized in R9-7-305(A), or R9-7-306(A), (C), or (F) for uses authorized in those subsections, but in quantities greater than authorized by those subsections.
  5. A portable gauge license is a specific category C license ~~which~~ that authorizes radioactive materials in the form of sealed sources for use in measuring or gauging devices designed and manufactured to be transported to the location of use. The Department may combine a portable gauge license with any broad scope industrial license or a fixed gauge class A license.

6. A fixed gauge class A license is a specific category C license ~~which~~ that authorizes the possession of 50 or more measuring or gauging devices containing radioactive materials, where each device is permanently mounted for use at a single location.
7. A fixed gauge class B license is a specific category C license ~~which~~ that authorizes the possession of 1 through 49 measuring or gauging devices containing radioactive materials, where each device is permanently mounted for use at a single location.
8. A leak detector license is a specific category C license ~~which~~ that authorizes the use of radioisotopes in the form of a gas to test hermetic seals on electronic packages.
9. A gas chromatograph license is a specific category C license ~~which~~ that authorizes the use of radioactive materials as ionization sources in gas chromatography or electron capture devices.
10. A general industrial license ~~means a registration of~~ is one that authorizes the use of a material, source, or device generally licensed pursuant to R9-7-305 or R9-7-306, except R9-7-305(B), R9-7-306(D), or R9-7-306(E).
11. An industrial radiography class A license is a specific category C license ~~which~~ that authorizes industrial radiography using sealed radioisotope sources at specific facilities identified in the license conditions or at temporary field job sites.
12. An industrial radiography class B license is a specific category C license ~~which~~ that authorizes industrial radiography using sealed radioisotope sources only at specific facilities identified in the license conditions.
13. An open field irradiator license is a specific category C license ~~authorizing that~~ authorizes the use of radioisotopes in the form of sealed sources not permanently mounted within a shielding container, for irradiation of materials.
14. A self-shielded irradiator license is a specific category C license ~~authorizing that~~ authorizes the use of radioisotopes in the form of sealed sources for irradiation of materials in a shielding device from which the sources are not removed during irradiation. The Department may combine a self-shielded irradiator license with any broad license.
15. A well logging license is a specific category C license ~~which~~ that authorizes the use of radioactive material in sealed or unsealed sources for wireline services or field tracer studies.
16. A research and development license is a specific category C license ~~which~~ that authorizes a licensee to utilize radioactive material in unsealed and sealed form for industrial,

scientific, or biomedical research, not including administration of radiation or radioactive material to human beings.

17. A laboratory license is a specific category C license ~~which~~ that authorizes a licensee to perform specific in-vitro or in-vivo medical or veterinary testing, while possessing quantities of radioactive material greater than the general license quantities authorized in R9-7-306.

**D.** Category D licenses are the following specific or general radioactive material licenses. Except for type D4, general industrial; type D5, depleted uranium; type D8 and D9, health physics; and type D14, additional facilities licenses, the Department shall not combine a category D license with any other license.

1. A distribution license is one ~~which~~ that authorizes the commercial distribution of radioactive materials or radioisotopes in products to persons holding an appropriate general or specific license. The Department shall ensure that a distribution license does not:
  - a. Authorize distribution of radiopharmaceuticals or distribution to persons exempt from regulatory control, or
  - b. Authorize any other use of the radioactive material. An appropriate category C license is required for possession of radioisotopes and their incorporation into products.
2. A nuclear pharmacy license is one ~~which~~ that authorizes the preparation, compounding, packaging, or dispensing of radiopharmaceuticals for use by other licensees.
3. A nuclear laundry license is one ~~authorizing~~ that authorizes the collection and cleaning of items contaminated with radioactive materials.
4. A general industrial gauging device license is ~~a registration~~ one that authorizes the use of a gauging device in accordance with R9-7-306(A). The Department may combine a general industrial gauging device license with a ~~Class~~ class A, B, or C broad industrial, limited industrial, portable gauge, or ~~Class~~ class A or B fixed gauge license.
5. A general depleted uranium ~~general~~ license is ~~a registration of~~ one that authorizes the use of the general license authorized pursuant to R9-7-305(C) or the use of depleted uranium as a concentrated mass or as shielding for another radiation source within a device or machine. The Department may combine a general depleted uranium ~~general~~ license with a medical teletherapy; ~~Class~~ class A, B, or C broad industrial; portable gauge; ~~Class~~ class A or B fixed gauge; ~~Class~~ class A or B industrial radiography; or self-shielded irradiator

license. For ~~registration~~ licensing purposes, an applicant shall follow the ~~registration~~ instructions requirements in R9-7-305(C).

6. A veterinary medicine license is one ~~which~~ that authorizes the use of radioactive materials for specific applications in veterinary medicine as authorized in the license.
7. A general veterinary medicine license is a ~~registration of one~~ that authorizes the use of the general license authorized in R9-7-306(E) in veterinary medicine.
8. A health physics class A license is one ~~which~~ that authorizes the use of radioactive materials for performing instrument calibrations, processing leak test or environmental samples, or providing radiation dosimetry services.
9. A health physics class B license is one ~~which~~ that authorizes only the collection, possession, and transfer of radioactive materials in the form of leak test samples for processing by others.
10. A secondary uranium recovery license is one ~~which~~ that authorizes the extraction of natural uranium or thorium from an ore stream or tailing ~~which~~ that is being or has been processed primarily for the extraction of another mineral. The Department shall not combine a secondary uranium recovery license with any other license.
11. A low-level, radioactive waste disposal facility license is a license that is issued for a “disposal facility,” as that term is used in R9-7-439 and R9-7-442, ~~which~~ that has a closure or long-term care plan and is constructed and operated according to the requirements in 10 CFR 61, revised January 1, 2015, incorporated by reference, ~~and~~ available under R9-7-101. ~~This incorporated material contains~~ and containing no future editions or amendments.
12. A waste processor class A license is one ~~authorizing~~ that authorizes the incineration, compaction, repackaging, or any other treatment or processing of low-level radioactive waste prior to transfer to another person authorized to receive or dispose of the waste. The Department shall not combine a waste processor class A license with any other license.
13. A waste processor class B license is one ~~which~~ that authorizes a waste broker to receive prepackaged, low-level radioactive waste from other licensees; combine the waste into shipments; and transfer the waste without treating or processing the waste in any manner and without repackaging except to place damaged or leaking packages into overpacks. The Department shall not combine a waste processor class B license with any other license.

14. An additional ~~facility~~ storage and use site license is an endorsement, by license condition to an existing specific license, authorizing one or more additional separate facilities where radioactive material may be stored or used for a period exceeding six months.
15. A possession-only license is a license of any other category ~~which that~~ authorizes only the possession in storage, but no use of, the authorized materials. A license ~~which that~~ has been suspended as an enforcement action is not considered a possession-only license.
16. A reciprocal license is ~~the registration of~~ the general license authorized by R9-7-320. This license is subject to a special fee as provided by ~~R9-7-1307~~ R9-7-1306(C) but is exempt from annual fees.
17. Reserved
18. An “unclassified” radioactive material license is one ~~authorizing that authorizes~~ authorizes radioisotopes, physical or chemical forms, possession limits, or uses not included in any other type of license specified in this Section.
19. A NORM commercial disposal site license is one that authorizes the receipt of waste material contaminated with naturally occurring radioactive material from other licensees for permanent disposal, provided the concentration of the radioactive material does not exceed 74kBq (2,000 picocuries)/gram.

**E.** Category E registrations are those that register the possession of x-ray machine(s) under 9 A.A.C. 7, Article 2. The Department shall not combine ~~Category~~ category E registrations with any other registration.

1. An X-ray machine class A registration is one authorizing the possession of X-ray machines in a hospital or other facility offering inpatient care.
2. An X-ray machine class B registration is one authorizing the possession of X-ray machines in a medical, osteopathic, or chiropractic office or clinic not offering inpatient care; or the possession of X-ray machines in a school, college, university, or other teaching facility.
3. An X-ray machine class C registration is one authorizing the possession of X-ray machines in dental, podiatry, ~~and~~ or veterinarian offices or clinics.
4. An industrial radiation machine registration is one authorizing the possession of X-ray machines, or the possession of particle accelerators not capable of producing a high radiation area, in a nonmedical facility.
5. An accelerator facility registration is one authorizing the possession and operation of one or more particle accelerators of any kind capable of accelerating any particle and producing a high radiation area.

6. A An “other” ionizing radiation machine, “other,” registration is one authorizing possession or use of an ionizing radiation machine not included in any other category specified in subsection (E).
- F. Category F registrations are those that register ~~nonionizing~~ non-ionizing radiation producing sources regulated under 9 A.A.C. 7, Article 14. The Department shall not combine ~~Category~~ category F registrations with any other registration categories that have a difference in fee per unit.
1. A tanning registration authorizes the commercial operation of ~~any number of~~ one or more tanning booths, beds, cabinets, or other devices in a single establishment.
  2. A Class A laser registration authorizes the operation of one to 10 laser devices subject to R9-7-1433.
  3. A Class B laser registration authorizes the operation of 11 to 49 laser devices subject to R9-7-1433.
  4. A Class C laser registration authorizes operation of 50 or more laser devices subject to R9-7-1433.
  5. A laser light show or laser demonstration registration authorizes the operation of a laser device subject to R9-7-1441.
  6. A medical laser registration authorizes the operation of one or more laser devices subject to R9-7-1440.
  7. A Class II surgical device registration authorizes the operation of one or more Class II surgical devices subject to R9-7-1438. A device is designated as a Class II surgical device by the USFDA and is labeled as such by the manufacturer.
  8. A ~~medical~~ cosmetic radiofrequency device registration authorizes the operation of one or more medical radiofrequency devices for non-ionizing cosmetic procedures.
  9. A class A industrial radiofrequency device registration authorizes the operation of one to five radiofrequency ~~heat sealers or industrial microwave ovens~~ devices.
  10. A class B industrial radiofrequency device registration authorizes the operation of six to 20 radiofrequency ~~heat sealers or industrial microwave ovens~~ devices.
  11. A class C industrial radiofrequency device registration authorizes the operation more than 20 radiofrequency ~~heat sealers or industrial microwave ovens~~ devices.
  12. A ~~class A~~ medical radiofrequency device registration authorizes the operation of one or ~~two more medical~~ radiofrequency ~~diathermy or electrocoagulation units not used in non-~~ ionizing cosmetic devices for non-ionizing, non-cosmetic procedures.

- 13. ~~A class B medical radiofrequency device registration authorizes the operation of three to nine radiofrequency diathermy or electrocoagulation units not used in non-ionizing cosmetic procedures.~~
- 14. ~~A class C medical radiofrequency device registration authorizes the operation of 10 to 19 radiofrequency diathermy or electrocoagulation units not used in non-ionizing cosmetic procedures.~~
- 15. ~~A class D medical radiofrequency device registration authorizes the operation of 20 or more radiofrequency diathermy or electrocoagulation units not used in non-ionizing cosmetic procedures.~~
- 16.13. An “other” ~~nonionizing~~ non-ionizing radiation device registration authorizes the operation of a ~~nonionizing~~ non-ionizing radiation device or other device not included in any other category specified in subsection (F).

**R9-7-1303. Fee for Initial License and Initial Registration**

An applicant shall remit for a new license or new registration the appropriate fee as prescribed in R9-7-1306 and Table 13.1.

**R9-7-1304. Annual Fees for Licenses and Registrations**

- A. Each license or registration issued by the Department shall identify the category by a letter and number corresponding to the appropriate subsection of R9-7-1302 or the category and type listed in R9-7-1306 Table 13.1.
- B. Except for ~~types D16 and D17~~ as specified in R9-7-1306(C), (D), and (E), each licensee or registrant shall submit payment of the annual fee in the amount prescribed in ~~R9-7-1306(A)~~ Table 13.1 on or before January 1 of each year. This single annual fee will cover any and all renewals, amendments, and regular inspections of the license during the forthcoming calendar year.
- C. If a licensee or registrant fails to pay the annual fee by January 1, the license is not current.
- D. If a licensee or registrant fails to pay the annual fee by April 1, the Department shall apply administrative sanction provisions of ~~9 A.A.C. 7,~~ Article 12 of this Chapter.
- E. A licensee who is required to pay an annual fee under this Article may qualify as a small entity and pay the reduced annual fee in Table 13.2 if the licensee has the following characteristics:
  - 1. For a business not engaged in manufacturing or a not-for-profit organization, having a three-year average of gross annual receipts of \$6.5 million or less;
  - 2. For an entity engaged in manufacturing, having an annual average of no more than 500 employees;
  - 3. For a government jurisdiction, not including publicly supported educational institutions, having no more than 50,000 residents in the jurisdiction;

4. For a publicly supported educational institution, having no more than 50,000 faculty, staff, and students; and

5. For an educational institution that is not publicly supported, having no more than 500 faculty and staff.

**F.** A licensee who seeks to establish status as a small entity for the purpose of paying an annual fee in Table 13.2, rather than the annual fee in Table 13.1, shall file with the Department a certification statement annually on Department Form 333, accessed through the Department website at <https://azdhs.gov/documents/licensing/radiation-regulatory/forms/ram-small-entity-form.pdf>, for each license under which the licensee is billed.

**G.** If a licensee qualifies as a small entity and provides the Department with ~~proper~~ the certification required in subsection (F) along with its annual fee payment, the licensee may pay the applicable reduced annual fees as fee shown in Table 1 to this Article 13.2. Failure to file a small entity certification, according to subsection (F), in a timely manner may result in the denial of any ~~refund~~ the licensee being required to pay the applicable fee in Table 13.1.

**R9-7-1306. Table of Application Fees and Annual Fees**

A. The application ~~fee and~~ or annual fee for each category and type ~~are~~ is shown in Table ~~13-1~~ 13.1.

**Table 13-1**

<b>Category</b>	<b>Type</b>	<b>Annual Fee</b>
A1	<del>Broad academic Class A</del>	\$5,800
A2	<del>Broad academic Class B</del>	\$5,800
A3	<del>Broad academic Class C</del>	\$5,800
A4	<del>Limited academic</del>	\$1,000
B1	<del>Broad medical</del>	\$11,000
B2	<del>Medical materials class A</del>	\$1,900
B3	<del>Medical materials class B</del>	\$1,900
B4	<del>Medical materials class C</del>	\$1,900
B5	<del>Medical teletherapy</del>	\$5,200
B6	<del>General medical</del>	\$250
C1	<del>Broad industrial class A</del>	\$11,400
C2	<del>Broad industrial class B</del>	\$11,400
C3	<del>Broad industrial class C</del>	\$3,200
C4	<del>Limited industrial</del>	\$700
C5	<del>Portable gauge</del>	\$1,000
C6	<del>Fixed gauge class A</del>	\$1,000

C7	Fixed-gauge class B	\$1,000
C8	Leak detector	\$1,330
C9	Gas chromatograph	\$1,000
C10	General industrial	No Fee
C11	Industrial Radiography class A	\$5,500
C12	Industrial Radiography class B	\$5,500
C13	Open field irradiator	\$3,000
C14	Shelf-shielded irradiator	\$1,500
C15	Well logging	\$2,000
C16	Research and development	\$2,100
C17	Laboratory	\$1,000
D1	Distribution	\$2,600
D2	Nuclear Pharmacy	\$4,600
D3	Nuclear laundry	\$10,300
D4	General industrial (with fee)	\$300
D5	General depleted uranium	\$200
D6	Veterinary medicine	\$1,000
D7	General veterinary medicine	\$200
D8	Health physics class A	\$3,200
D9	Health physics class B	\$1,000
D10	Secondary uranium recovery	\$5,100
D11	Low-level radioactive waste disposal site	(3)
D12	Waste processor class A	\$4,600
D13	Waste processor class B	\$3,600
D14	Additional storage and use site	(1)
D15	Possession only	(2)
D16	Reciprocal	(3)
D17	Reserved	
D18	Unclassified	Full Cost
D19	NORM commercial disposal site	\$600,000
E1	X-ray machine class A (per tube)	\$75
E2	X-ray machine class B (per tube)	\$51
E3	X-ray machine class C (per tube)	\$42

E4	Industrial radiation machine (per device)	\$42
E5	Accelerator facility	\$750
E6	Other ionizing radiation machine	Full cost
F1	Tanning device (per device)	\$28
F2	Class A (1 to 10 laser devices)	\$175
F3	Class B (11 to 49 laser devices)	\$408
F4	Class C (50 or more laser devices)	\$699
F5	Laser light show or laser demonstration	\$408
F6	Medical laser (per laser device)	\$47
F7	Class II surgical (per device)	\$47
F8	Medical RF surgical and cosmetic (per device)	\$47
F9	Class A industrial (1 to 5 radiofrequency devices)	\$70
F10	Class B industrial (6 to 20 radiofrequency devices)	\$210
F11	Class C industrial (more than 20 radiofrequency devices)	\$349
F12	Class A medical (1 or 2 non-cosmetic radiofrequency devices) (per device)	\$0
F13	Class B medical (3 to 9 non-cosmetic radiofrequency devices) (per device)	\$0
F14	Class C medical (10 to 19 non-cosmetic radiofrequency devices) (per device)	\$0
F15	Class D medical (20 or more non-cosmetic radiofrequency devices) (per device)	\$0
F16	Other nonionizing radiation device or other device	Full Cost

Notes:

- (1) An additional 30% of the annual base fee is added to the annual base fee for each additional site.
- (2) The fee is 50% of the annual base fee for the category under which the radioactive material will be stored.
- (3) See R9-7-1307.

**B.** The fee for a category D11 license, for a low-level radioactive waste disposal site, is \$6,000,000 for years one through five. Based on data gathered during the first five years, the Department shall set a reasonable fee after consideration of the following factors:

1. Unrecovered costs that the Department may charge under A.R.S. § 30-654(B)(18), and

2. Actual costs incurred by the Department in regulating the licensee.
- C.** The fee for a category D16 license, providing reciprocal recognition under R9-7-320 of a radioactive materials license issued by the NRC or another Agreement state, is half of the annual fee for an Arizona license of the appropriate category and type. If there is no Arizona license of the appropriate category and type, the Department shall assess the “Full Cost” fee according to subsection (D) or (E), as applicable. The fee is due and payable at the time reciprocity is requested, and the general license does not become current until the fee is paid.
- B.D.** ~~The application fee for a licensee or registrant is the annual fee as shown in R9-7-1306.~~ “Full Cost” for an application fee is based on professional personnel time for preparation, travel, onsite inspection, any reports, review of findings, and preparation of the license or registration or denial charged at \$99 per hour and mileage charged at 44.5¢ per mile. The Department shall assess the licensee or registrant 90% of the estimated full cost of issuing the license or registration. The Department will assess for any remaining costs when it is prepared to issue the license, registration, denial, or if Department costs for the requested activity exceed \$10,000.
- C.E.** ~~The annual fee for a licensee or registrant for which the scheduled fee is~~ “Full Cost” for an annual fee is based on professional personnel time for preparation, travel, onsite inspection, preparation of reports, review of findings, and preparation for any inspections or completion of any amendments to the license, registration or denials charged at \$99 per hour and mileage charged at 44.5¢ per mile for the preceding 12 months.

**Table 13.1. Table of Fees**

<u>Category</u>	<u>Type</u>	<u>Application/Annual Fee</u>
<u>A1</u>	<u>Broad academic class A</u>	<u>\$10,000</u>
<u>A2</u>	<u>Broad academic class B</u>	<u>\$10,000</u>
<u>A3</u>	<u>Broad academic class C</u>	<u>\$10,000</u>
<u>A4</u>	<u>Limited academic</u>	<u>\$2,500</u>
<u>B1</u>	<u>Broad medical</u>	<u>\$20,000</u>
<u>B2</u>	<u>Medical materials class A</u>	<u>\$4,000</u>
<u>B3</u>	<u>Medical materials class B</u>	<u>\$4,000</u>
<u>B4</u>	<u>Medical materials class C</u>	<u>\$4,000</u>
<u>B5</u>	<u>Medical teletherapy</u>	<u>\$8,000</u>
<u>B6</u>	<u>General medical</u>	<u>\$500</u>
<u>C1</u>	<u>Broad industrial class A</u>	<u>\$20,000</u>
<u>C2</u>	<u>Broad industrial class B</u>	<u>\$20,000</u>
<u>C3</u>	<u>Broad industrial class C</u>	<u>\$6,000</u>
<u>C4</u>	<u>Limited industrial</u>	<u>\$1,500</u>

<u>C5</u>	<u>Portable gauge</u>	<u>\$2,000</u>
<u>C6</u>	<u>Fixed gauge class A</u>	<u>\$2,000</u>
<u>C7</u>	<u>Fixed gauge class B</u>	<u>\$2,000</u>
<u>C8</u>	<u>Leak detector</u>	<u>\$2,000</u>
<u>C9</u>	<u>Gas chromatograph</u>	<u>\$2,000</u>
<u>C10</u>	<u>General industrial</u>	<u>\$300</u>
<u>C11</u>	<u>Industrial radiography class A</u>	<u>\$10,000</u>
<u>C12</u>	<u>Industrial radiography class B</u>	<u>\$10,000</u>
<u>C13</u>	<u>Open field irradiator</u>	<u>\$10,000</u>
<u>C14</u>	<u>Shelf-shielded irradiator</u>	<u>\$5,000</u>
<u>C15</u>	<u>Well logging</u>	<u>\$5,000</u>
<u>C16</u>	<u>Research and development</u>	<u>\$5,000</u>
<u>C17</u>	<u>Laboratory</u>	<u>\$3,000</u>
<u>D1</u>	<u>Distribution</u>	<u>\$5,000</u>
<u>D2</u>	<u>Nuclear pharmacy</u>	<u>\$10,000</u>
<u>D3</u>	<u>Nuclear laundry</u>	<u>\$25,000</u>
<u>D4</u>	<u>General industrial gauging device</u>	<u>\$500</u>
<u>D5</u>	<u>General depleted uranium</u>	<u>\$200</u>
<u>D6</u>	<u>Veterinary medicine</u>	<u>\$2,000</u>
<u>D7</u>	<u>General veterinary medicine</u>	<u>\$500</u>
<u>D8</u>	<u>Health physics class A</u>	<u>\$5,000</u>
<u>D9</u>	<u>Health physics class B</u>	<u>\$3,000</u>
<u>D10</u>	<u>Secondary uranium recovery</u>	<u>\$8,000</u>
<u>D11</u>	<u>Low-level radioactive waste disposal facility</u>	<u>According to R9-7-1306(B)</u>
<u>D12</u>	<u>Waste processor class A</u>	<u>\$10,000</u>
<u>D13</u>	<u>Waste processor class B</u>	<u>\$8,000</u>
<u>D14</u>	<u>Additional storage and use site</u>	<u>30% of the applicable fee for each additional site</u>
<u>D15</u>	<u>Possession-only</u>	<u>50% of the applicable fee for the category under which storage will occur</u>
<u>D16</u>	<u>Reciprocal</u>	<u>According to R9-7-1306(C)</u>
<u>D17</u>	<u>Reserved</u>	
<u>D18</u>	<u>Unclassified radioactive material</u>	<u>Full Cost, according to R9-7-1306(D) or (E)</u>
<u>D19</u>	<u>NORM commercial disposal site</u>	<u>\$600,000</u>
<u>E1</u>	<u>X-ray machine class A (per tube)</u>	<u>\$195</u>
<u>E2</u>	<u>X-ray machine class B (per tube)</u>	<u>\$145</u>
<u>E3</u>	<u>X-ray machine class C (per tube)</u>	<u>\$95</u>
<u>E4</u>	<u>Industrial radiation machine (per device)</u>	<u>\$95</u>
<u>E5</u>	<u>Accelerator facility</u>	<u>\$2,500</u>
<u>E6</u>	<u>Other ionizing radiation machine</u>	<u>Full Cost, according to R9-7-1306(D) or (E)</u>

<u>F1</u>	<u>Tanning device (per device)</u>	<u>\$50</u>
<u>F2</u>	<u>Class A laser (1 to 10 laser devices)</u>	<u>\$300</u>
<u>F3</u>	<u>Class B laser (11 to 49 laser devices)</u>	<u>\$600</u>
<u>F4</u>	<u>Class C laser (50 or more laser devices)</u>	<u>\$1,000</u>
<u>F5</u>	<u>Laser light show or laser demonstration</u>	<u>\$500</u>
<u>F6</u>	<u>Medical laser (per laser device)</u>	<u>\$100</u>
<u>F7</u>	<u>Class II surgical device (per device)</u>	<u>\$100</u>
<u>F8</u>	<u>Cosmetic radiofrequency device (per device)</u>	<u>\$100</u>
<u>F9</u>	<u>Class A industrial (1 to 5 radiofrequency devices)</u>	<u>\$150</u>
<u>F10</u>	<u>Class B industrial (6 to 20 radiofrequency devices)</u>	<u>\$350</u>
<u>F11</u>	<u>Class C industrial (more than 20 radiofrequency devices)</u>	<u>\$600</u>
<u>F12</u>	<u>Medical radiofrequency (one or more device)</u>	<u>\$100</u>
<u>F13</u>	<u>Other non-ionizing radiation device</u>	<u>Full Cost, according to R9-7-1306(D) or (E)</u>

**R9-7-1307. Special License Fees Repealed**

- A.** ~~The fee for a Type D16 license providing reciprocal recognition under R9-7-320 of a radioactive materials license issued by the U.S. NRC or another state is half of the annual fee for an Arizona license of the appropriate type. The fee is due and payable at the time reciprocity is requested, and the general license does not become current until the fee is paid.~~
- B.** ~~For a low-level radioactive waste disposal site the initial application fee is \$6,000,000. The annual fee for the second through fifth years is \$6,000,000. The Department shall promulgate a new fee rule for years subsequent to year five. Based on data gathered during the first five years, the Department shall set a reasonable fee after consideration of the following factors:~~
- ~~1. Unrecovered costs which the Department may charge under A.R.S. § 30-654(B)(18).~~
  - ~~2. Actual costs incurred by the Department.~~

**Table 1. Small Entity Fees<sup>1</sup> Repealed**

~~Small Businesses Not Engaged in Manufacturing and Small Not-for-profit Organizations (Gross Annual Receipts, three-year average):~~

<del>&gt;\$6.5 million</del>	<del>Pay the fee listed in R9-7-1306</del>
<del>\$350,000 to \$6.5 million</del>	<del>\$2,200</del>
<del>&lt;\$350,000</del>	<del>\$500</del>

~~Manufacturing Entities that Have an Annual Average of 500 Employees or Less:~~

>500 employees	Pay the fee listed in R9-7-1306
35 to 500 employees	\$2,200
<35 employees	\$500

Small Government Jurisdictions (including publicly supported educational institutions) (Population in Jurisdiction):

>50,000	Pay the fee listed in R9-7-1306
20,000 to 50,000	\$2,200
<20,000	\$500

Educational Institutions that Are Not State or Publicly Supported, and Have 500 Employees or Less:

>500 employees	Pay the fee listed in R9-7-1306
35 to 500 employees	\$2,200
<35 employees	\$500

†A licensee who seeks to establish status as a small entity for the purpose of paying the annual fees required under R9-7-1304 as shown in R9-7-1306 must file a certification statement with the Department each year. The licensee must file the required certification on Department Form 333 for each license under which it was billed. Department Form 333 can be accessed through the Department website at <http://www.azdhs.gov/licensing/radiation-regulatory/index.php>. For licensees who cannot access the Department website, Department Form 333 may be obtained by writing to the Department or by telephoning the Department at (602) 255-4845.

**Table 13.2. Small Entity Fees**

<u>Licensee qualifying as a small entity under R9-7-1304(E)(1)</u>	
<u>Gross Annual Receipts</u>	<u>Fee</u>
<u>\$350,000 to \$6.5 million</u>	<u>\$2,200</u>
<u>&lt;\$350,000</u>	<u>\$500</u>
<u>Licensee qualifying as a small entity under R9-7-1304(E)(2)</u>	
<u>Number of Employees</u>	<u>Fee</u>
<u>35 to 500 employees</u>	<u>\$2,200</u>
<u>&lt;35 employees</u>	<u>\$500</u>
<u>Licensee qualifying as a small entity under R9-7-1304(E)(3)</u>	
<u>Number of Residents</u>	<u>Fee</u>
<u>20,000 to 50,000</u>	<u>\$2,200</u>

<u>&lt;20,000</u>	<u>\$500</u>
Licensee qualifying as a small entity under R9-7-1304(E)(4)	
<u>Number of Faculty, Staff, and Students</u>	<u>Fee</u>
<u>20,000 to 50,000</u>	<u>\$2,200</u>
<u>&lt;20,000</u>	<u>\$500</u>
Licensee qualifying as a small entity under R9-7-1304(E)(5)	
<u>Number of Faculty and Staff</u>	<u>Fee</u>
<u>35 to 500 employees</u>	<u>\$2,200</u>
<u>&lt;35 employees</u>	<u>\$500</u>



ARIZONA DEPARTMENT  
OF HEALTH SERVICES

**TITLE 9. HEALTH SERVICES**

**CHAPTER 7. DEPARTMENT OF HEALTH SERVICES**

**RADIATION CONTROL**

**ARTICLE 13. LICENSE AND REGISTRATION FEES**

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

**JULY 2020**

**Revised October 2020**

# ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

## TITLE 9. HEALTH SERVICES

### CHAPTER 7. DEPARTMENT OF HEALTH SERVICES

#### RADIATION CONTROL

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

Arizona Revised Statutes (A.R.S.) § 30-654 requires the Arizona Department of Health Services (Department) to adopt rules deemed necessary to administer A.R.S. Title 30, Chapter 4, Control of Ionizing Radiation, and to prescribe by rule fees to be charged to categories of licensees and registrants of radiation sources. The fees cover costs associated with processing an application for licensing or registration, for renewal or amendment of the license or registration, and for monitoring and inspecting the licensee's or registrant's activities and facilities. Upon assuming responsibility for oversight of ionizing or non-ionizing radiation in Arizona, under Laws 2017, Ch. 313, and Laws 2018, Ch. 234, the Department discovered that the fees specified in the current rules, which have been in effect since 2008, were insufficient to cover the expenses incurred by the Department in carrying out these functions. Therefore, after receiving an exception from the rulemaking moratorium established by Executive Order 2018-02, the Department is increasing fees in 9 A.A.C. 7, Article 13, to cover the shortfall and making other corresponding or clarifying changes to the rules. The Department anticipates these changes will ensure sufficient funding for the Department to continue regulating the use, storage, and disposal of sources of radiation in an efficient manner to protect the health and safety of Arizona's citizens.

#### 2. **Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rules**

- The Department
- Licensees or registrants who use, store, or dispose of sources of radiation
- Businesses that contract with licensees or registrants to perform activities covered under the rules in Chapter 7
- Employees of licensees or registrants
- Patients and their families
- General public

#### 3. **Cost/Benefit Analysis**

This analysis includes costs and benefits associated with the increase in license and registration fees for the use, storage, and disposal of sources of radiation under the rules in 9 A.A.C. 7. The current fees, as shown in Attachment A, had been established in the rules in 12 A.A.C. 1 for over 10 years, before Laws 2017, Ch. 313, and Laws 2018, Ch. 234, made the Department responsible for

implementing and enforcing these rules and the rules were recodified into 9 A.A.C. 7 without any changes to fees. The Department is increasing the fees to meet the expenses incurred by the Department when it assumed responsibility for regulating sources of radiation, as shown in Attachments A and B. Annual cost/revenue changes are designated as minimal when \$2,000 or less, moderate when between \$2,000 and \$10,000, and substantial when \$10,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not readily subject to quantification. A summary of the economic impact of the rules is given in the Table below, while the economic impact is explained more fully in the paragraphs following the Table.

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
<b>A. State and Local Government Agencies</b>			
Department	Increasing fees Having rules that are clearer and easier to understand	None Minimal	Substantial Minimal
Public colleges, universities, and other teaching facilities that are licensees or registrants	Increasing fees Having rules that are clearer and easier to understand	Minimal-to-moderate None	None Significant
Cities, municipalities, or other agencies that are licensees or registrants	Increasing fees Having rules that are clearer and easier to understand	Minimal None	None Significant
Court buildings, correctional facilities, airports, and other facilities using X-ray devices	Increasing fees Having rules that are clearer and easier to understand	Minimal None	None Significant
<b>B. Privately Owned Businesses</b>			
Businesses that are licensees or registrants	Increasing fees Having rules that are clearer and easier to understand	Minimal-to-moderate None	None-to-substantial Significant
Businesses that contract with licensees or registrants	Increasing fees Ensuring the safe use of sources of radiation	Minimal-to-moderate None	None Significant
<b>C. Consumers</b>			
Employees of licensees or registrants or of those businesses contracting with a licensee or registrant	Having rules that are clearer and easier to understand Ensuring the safe use of sources of radiation	None None	Significant Significant
Patients and their families	Ensuring the safe use of sources of radiation	None-to-minimal	Significant
General public	Ensuring the safe use of sources of radiation	None	Significant

- **The Department**

The Department licenses persons who use, store, or dispose of sources of radiation under an Agreement negotiated between Arizona and the U.S. Atomic Energy Commission (now the U.S. Nuclear Regulatory Commission (NRC)) in 1967. Under the terms of the Agreement, Arizona is required to have, implement, and enforce rules consistent with requirements of the NRC. The Department, pursuant to A.R.S. §§ 30-654 and 30-656, has been delegated the authority to act on behalf of the State in carrying out the terms of the Agreement. If the Department does not comply with the terms of the Agreement in any material way, Arizona may be in jeopardy of losing its authority (primacy) to regulate sources of radiation. If Arizona were to lose primacy, any business that uses, stores, or disposes of specific sources of radiation in Arizona would need to obtain a license through the NRC. As shown in Attachment C, the cost for obtaining a license from the NRC is much higher than the new fees being adopted through this rulemaking. The Department also registers equipment or devices that are sources of radiation.

As of December 31, 2019, the Department has issued 353 licenses to persons who use, store, or dispose of sources of radiation and 7,812 registrations to entities with a total of 20,982 devices that are sources of radiation, for a total of 8,165 licenses or registrations issued. The current fees for these licenses and registrations are shown in Attachment A, along with the number of such licenses/registrations for each type of license/registration in CY 2019. The types of licenses issued are described in R9-7-1302(A) through (D), while the types of registrations issued are described in R9-7-1302(E) and (F). For some types of licenses, the fee depends on factors that vary greatly, so no fee is listed in the rules. Instead, the fee for a license is based on some other factor. For example, the fee associated with the license authorizing a licensee to store and use radioactive material at an additional site is based on the fee for the licensee's primary site, and the fee for possession only, without use, is based on what would be assessed to a licensee that was also using the radioactive material. The fee for a reciprocal license for a person licensed by the NRC or another Agreement state is based on the fee that would be charged if the Department issued the primary license. The three-year average of revenue from reciprocal licenses is approximately \$45,600 per year, while the three-year average revenue generated from licensing additional sites is approximately \$77,200. The Department currently has issued no licenses for possession only.

While most fees are being increased through this rulemaking, some are not. These include the fee for a general depleted uranium license, of which there is one licensee, and the fee for a license as a disposal site, of which none are in Arizona. The Department would also not expect to receive additional revenue from a licensee assessed at "Full cost." Currently, there is only one licensee assessed at "Full cost," and that licensee pays approximately \$1,000 in fees per year. The Department is also not increasing the amount that a small entity would pay, since the new Table 13.2 clarifies fees

without changing the amounts from those in Table 1 in the current rules. The number of licensees using the small-entity fees varies from year to year, averaging about 30 per year, and this use causes a reduction in the amount of revenue received by the Department each year between \$100,000 and \$125,000. With the fee increase, the use of this fee reduction mechanism could increase, which could result in a revenue reduction of between \$200,000 and \$250,000 per year.

As shown in Attachment A, the current fees in the Table should have generated approximately \$1,688,600 for CY 2019. Fees from reciprocal licenses, licensing additional sites, and “Full cost” licenses totaled approximately \$123,800, while the use of small entity fees reduced the expected revenue by approximately \$112,500 to approximately \$1,700,000. Of this amount, \$300,000 would have been deposited into the state general fund according to A.R.S. § 30-654(C). Of the remaining \$1,400,000, 90% (about \$1,260,000) would have been deposited into the health services licensing fund, established according to A.R.S. § 36-414, for use by the Department for Program activities, and another 10% (about \$140,000) would have been deposited into the state general fund according to A.R.S. § 30-654(C). On top of this fee revenue, the Department receives \$220,000 through a grant from the U.S. Food and Drug Administration (FDA) to ensure that mammography facilities in Arizona meet minimum national quality standards to ensure safe, reliable, and accurate mammography.

As shown in Attachment C, Arizona’s current fees for licenses are much lower than the fees in neighboring states, and the new fees are in line with or lower than these fees. As shown in Attachment D, Arizona’s current registration fees for X-ray equipment or devices are in line with or lower than the fees in neighboring states. Not many states regulate nonionizing-radiation-producing equipment and devices, such as tanning beds, lasers, and radiofrequency devices, with some of those only regulating one type. When compared with the fees assessed by those states, the new fees, as shown in Attachment D, are in line with or lower than these fees.

The Department expects to receive approximately \$3,792,460 in revenue from the fees in the Table, plus about another \$250,000 from reciprocal licenses, licensing additional sites, and “Full cost” licenses. With the fee increases, the Department does not know whether additional licensees will seek to establish status as a small entity for the purpose of paying reduced fees, but anticipates that some will. If no additional licensees pay the small entity fee, rather than the applicable fee in Table 13.1, the Department anticipates revenue to be reduced by approximately \$225,000 due to the use of small-entity fees, although this amount could increase by more than \$100,000 if additional licensees qualify as small-entities and pay the reduced fee. Thus, total revenue under the new fees is expected to be approximately \$3,800,000. Again, approximately \$650,000 (\$300,000 + \$350,000) from this amount would be transferred to the general fund under A.R.S. § 30-654(C), leaving between \$3,150,000 and \$3,160,000 in funds with which to run the Program. In addition to the fee revenue, the Department

expects to receive about \$220,000 through the FDA grant to ensure that mammography facilities in Arizona meet minimum national quality standards.

Since assuming responsibility for oversight of ionizing or non-ionizing radiation in Arizona and the regulation of persons who use, store, or dispose of sources of radiation and of these sources of radiation, the Department's expenses have consistently been more than the revenue received, despite efforts to reduce costs through streamlining processes to make them more effective. These processes included beginning to accept online payments of annual fees and initiating some electronic records for X-ray and non-ionizing devices. As shown in Attachment B, the Department incurred expenses of \$2,754,716 in SFY 2020, and had to cover a shortfall of approximately \$1,274,765 using other resources. For example, personnel paid through other licensing programs were reassigned to carry out duties associated with the oversight of ionizing or non-ionizing radiation; supplies bought with funds from other licensing programs were used for carrying out activities covered under A.R.S. Title 30, Chapter 4, and 9 A.A.C. 7; and the Department did not collect from the Program the \$470,742 of indirect fees assessed to cover Department-wide expenses. Except for the purchase on one piece of critical equipment, the Department also had to postpone the purchase of replacements for outdated or inoperable equipment to monitor for the presence of radioactivity, some of which is over 30 years old. This situation cannot continue indefinitely, and has reached the point where the Department has to increase fees or reduce regulatory activities, which could include not conducting inspections or investigating complaints in a timely manner, being unable to adequately detect the presence of radioactivity or dispose of radioactive waste, and spending more time processing applications. The Department believes this reduction in regulatory oversight may result in harm to the health and safety of the public, as well as causing a burden on the regulated community. With the fee increase described in Attachment A, the Department anticipates generating approximately **\$1,900,000 in additional fees each year for use by the Department**, which should be sufficient to cover the shortfall, make needed improvements to the data system, make other purchases that had been deferred due to lack of funding, and allow the Department to continue to protect public health. Therefore, the Department would receive a substantial benefit from the fee increase.

The Department intends to use the funds as described in Attachment B. With the approximately **\$1,516,000 plus \$637,000 (ERE)** budgeted for personnel, the Department plans to use the additional **\$370,000** to fill three existing positions left vacant due to insufficient funding, reallocate the funding for the salaries of other existing personnel to better reflect their duties, and cover other personnel costs, with no new FTEs being requested. The personnel members filling the unfilled existing positions would be Health Physicists, two functioning as surveyors and one as the Health Physics Laboratory Manager. The full-time duties of the surveyors would be to conduct inspections of facilities using or storing equipment or devices emitting ionizing radiation or facilities using devices

producing non-ionizing radiation, to address concerns in an Auditor General's report from September 29, 2015, and manage enforcement. The anticipated cost for the surveyors, including ERE, would be approximately \$75,000 each. The duties of the Health Physics Laboratory Manager include conducting, directing, and supervising the analysis of samples collected during inspections or to monitor for the presence of radioactivity in consumer products or the environment. The anticipated cost for the Health Physics Laboratory Manager, including ERE, would be approximately \$95,000. Therefore, the anticipated increase in expenses for these personnel would be approximately \$245,000, including ERE. Additional funding for surveying facilities is also being budgeted.

Other funds would be allocated to cover costs that had to be postponed due to the funding shortage. The Department anticipates needing approximately \$40,000 annually to pay for disposal of radioactive waste, which has been building up due to insufficient funding for disposal. Some of this waste is generated from Department activities throughout the year, while the rest would be collected as part of the Department's response to public health and safety incidents. Another approximately \$8,000 in additional funding is needed to purchase radiation detection equipment and personnel protective equipment for staff, as well as radioactive standards and computers. When responsibility for oversight of ionizing or non-ionizing radiation in Arizona rested with the Arizona Radiation Regulatory Agency, licenses and registrations had been recorded in an obsolete database, and paper applications were used. There was no way to contact regulated persons electronically. Since then, the Department has begun transitioning to more up-to-date recordkeeping methods. However, funding constraints have limited progress. The Department anticipates using approximately \$90,000 for software development, enhancement, and maintenance to allow for electronic submission of applications and more effective methods to communicate with regulated persons, including the introduction of e-mail contact.

The Department plans to use \$10,000 for staff training, which includes the small amount that had been expended under the current budget. The training would encompass how to license/register and inspect all types of users of ionizing and non-ionizing radiation, and could include training in the safety aspects of industrial radiography, environmental monitoring for radioactivity, irradiator technology, root cause/incident investigation, brachytherapy and gamma knife, diagnostic and nuclear medicine, residual radiation, air sampling for radioactive materials, and visual sampling. In addition, staff require training on survey/investigation tools used nationally, such as MILDOS, used when performing routine radiological impact and compliance evaluations for various uranium recovery operations; the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) and the Multi-Agency Radiation Survey and Assessment of Materials and Equipment (MARSAME) manual, which provide technical information on survey approaches; and the Mammography Quality Standards Act (MQSA), which specifies uniform quality standards for mammography facilities across the

country. The latter is necessary to allow the Department to perform activities required in the FDA grant.

When the Department inspects a facility, monitors the decommissioning of a site, or investigates an incident, samples may be collected, which have to be analyzed to determine what is happening and whether health and safety are being protected. The Department also tests air, water, soil, milk, and vegetation for the presence of radioactivity. The Department maintains a radiologic laboratory to perform this testing. Much of the analytic equipment used for testing is very outdated, with some more than 30 years old, and needs replacement. Since the cost of each piece of analytic equipment is likely to be in excess of \$50,000, the Department plans to use an average of approximately \$70,000 per year to purchase analytic equipment that is more modern, accurate, and precise to protect health and safety.

As part of this rulemaking, the Department is also making changes to clarify the current rules to improve readability and make the rules more understandable. These changes include moving requirements for special license fees, now in R9-7-1307(A) and (B), into the Section describing application fees and annual fees as R9-7-1306(C) and (B), respectively; including information currently in “Notes” for the Table in R9-7-1306(A) into Table 13.1; and consolidating information about small entity fees into R9-7-1302. The Department believes that these changes may reduce confusion on the part of the regulated community and reduce the time spent by staff in answering questions about the rules. Therefore, although the Department may initially incur minimal costs to explain the changes to the new rules, the Department anticipates that these changes may also provide a minimal benefit to the Department.

- **Licensees and registrants who use, store, and/or dispose of sources of radiation, including public and private entities and individuals**

As shown in Attachment A and in R9-7-1302(A), (B), (C) and (D), the Department licenses a wide variety of entities. Licensees include industrial businesses, academic institutions, medical/veterinary facilities, laboratories, and governmental entities, and may range from a large national or international corporation to a small company. Some licenses are very specific and cannot be combined with any other licenses, while other types of licenses can be combined together, with the licensee only paying the highest fee associated with the license types that were combined. However, if a single licensee holds several licenses that cannot be combined, rather than or as well as others that can be combined, the licensee would pay the total of the fees for each specific license, in addition to the highest fee for the combined licenses, if applicable. Thus, a licensee could incur a higher increase in licensing costs than would be predicted by analyzing the cost increase for individual categories of licenses.

Of the 353 licenses issued by the Department in CY 2019 to persons who use, store, or dispose of sources of radiation, two were to facilities with broad industrial class A or B licenses (under R9-7-1302(C)(1) and (2)) and four were to facilities with broad medical licenses (under R9-7-1302(B)(1)).

These licensees pay the highest current fees of \$11,400 and \$11,000, respectively, and under the new fees would both pay fees of \$20,000. Thus, they will have the largest fee increases of \$8,600 and \$9,000, respectively. Together with 181 other licensees, these licensees are expected to incur a moderate cost burden due to the new rules. There are no entities currently licensed as a nuclear laundry (under R9-7-1302(D)(3)), a licensee of which would incur a substantial increase of \$14,700 if such a license were issued. Therefore, the Department anticipates that every other licensee will incur a minimal cost increase due to the new rules. The Department believes that cities, municipalities, or other agencies that are licensees, including those using portable gauges to measure moisture and compaction levels in soil and asphalt density in paving mixes, would be among those having a minimal increase in costs.

A licensee would be required to obtain a license from the NRC if Arizona lost primacy due to the inability to adequately regulate sources of radiation. As shown in Attachment C, the fees charged by the NRC are significantly higher than the new fees being made through this rulemaking. For example, the new fee for a broad medical license is \$21, 900 less than a licensee would pay the NRC for the same license. A licensee with an industrial radiography license would pay \$20,200 more than the new fee for a license from the NRC, while a license under R9-7-1302(B)(5) costs \$18,100 more from the NRC. Therefore, the Department believes that the rulemaking, through allowing the Department to retain primacy, may provide up to a substantial benefit to a licensee who would otherwise need to obtain a license through the NRC.

The Department issued 7,812 registrations to entities that use a total of 20,982 devices that are sources of radiation, including X-ray devices, particle accelerators, tanning devices, class 3b or class 4 lasers, or radiofrequency devices, as shown in Attachment A. These fees are assessed separately from any licensing fees. Of fees for registrations, the largest single increase is for particle accelerator facilities, for which requirements are specified in 9 A.A.C.7, Article 9. The Department has issued 68 registrations for particle accelerator facilities (under R9-7-1302(E)(5)), for which the current fee is \$750 and the new fee is \$2,500. Thus, each of these facilities would be expected to incur a minimal cost increase of \$1,750 due to the new fees.

Hospitals and other health care institutions providing inpatient services currently pay \$75 to register an X-ray machine tube. Under the new rules, the fee increases to \$195 per tube, for an increase of \$120 per tube. Based on registrations as of December 31, 2019, one large hospital, which has 85 X-ray machine tubes would incur a substantial increase in fees of \$10,200, while 36 registrants would incur a moderate increase and 46 would incur a minimal increase. Other health care institutions and private offices, as well academic institutions, will pay an increased fee of \$145 per tube, up from \$51 under the current rules. Of these, two are expected to incur a moderate cost increase of \$2,538 and \$2,068, respectively, based on the number of X-ray machine tubes currently registered. The

Department anticipates that the rest of the 1,836 registrants under R9-7-1302(E)(2) would incur a minimal cost increase, with 1,190 incurring a cost increase of less than \$100 and another 416 paying less than \$500 more. Dental, podiatry, and veterinary offices currently pay a \$42 registration fee for X-ray machines and will pay \$95 under the new rules, an increase of \$53. Under the new rules, all 3,249 registrants would incur a minimal cost increase, with the greatest being a \$1,060 increase for a large facility with 20 X-ray machine tubes. Court buildings, correctional facilities, airports, and other facilities using X-ray devices will also pay \$95 under the new rules, an increase of \$53 from the current \$42 fee. Of 431 such registrants, all are expected to incur a minimal fee increase.

The Department also registers devices producing nonionizing radiation, with requirements for the users of these devices in Article 14 of the Chapter. A total of 1,035 tanning devices are registered to 191 facilities, which currently pay \$28 per tanning device. Under the new rules, a registrant would pay a \$50 fee, an increase of \$22. The Department believes that all these registrants would incur a minimal fee increase. Users of class 3b or class 4 lasers are also required to register with the Department. Requirements related to health and safety are tiered, based on the number of lasers a registrant has, as are fees. The fees for these registrants are currently \$175, \$408, and \$699 and would increase to \$300, \$600, and \$1,000, respectively. Therefore, the Department anticipates that these registrants would incur a minimal increase in costs due to the rulemaking, as would users of medical lasers and Class II surgical devices.

Radiofrequency devices produce electromagnetic waves that are used for a variety of purposes in industrial and agricultural applications and for medical and cosmetic procedures. These may range from using the thermal energy of the nonionizing radiation in a very targeted manner to destroy cancer cells, deaden nerves to relieve pain through microneedling, remove scar tissue, treat acne, or tighten skin. In other uses, radiofrequency devices can destroy microorganisms in food-processing industries, control insects in agricultural products, act as industrial microwave ovens or dryers, or produce high temperatures in metals for arc-welding applications. The Department currently charges registration fees, as specified in R9-7-1306(A), to users of radiofrequency devices under R9-7-1302(F)(8) through (11), but not to users of medical radiofrequency devices under R9-7-1302(F)(12) through (15).

Industrial users of radiofrequency devices registered under R9-7-1302(F)(9) through (11) currently pay a fee per facility, based on the number of devices and would continue to do so, with facilities having one to five devices paying \$80 more than the current fee, those having six to 20 devices paying \$140 more, and those large facilities with more than 20 devices paying \$251 more. The Table in R9-7-1306 shows that a registrant of a “Medical RF surgical and cosmetic” device under R9-7-1302(F)(8) currently pays a fee of \$47 per device, in contrast with a “Class A medical,” “Class B medical,” “Class C medical,” or “Class D medical” device, for which no fee is paid by a registrant. The descriptions of these types of registrations may cause confusion on the part of the reader, so the Department has

revised the descriptions and combined types of registrations, as shown in R9-7-1302(F) and Table 13.1. Now, a radiofrequency device used for cosmetic purposes would more clearly be registered under R9-7-1302(F)(8), and a facility using radiofrequency devices for medical procedures, regardless of their number, would register under R9-7-1302(F)(12). The operator of a radiofrequency device used for cosmetic purposes would almost always be a medical assistant, cosmetologist, or aesthetician with limited training, who would be subject to more review by the Department to ensure that training was adequate and appropriate to the procedures to be performed. Under the new rules, a registrant of a radiofrequency device used for cosmetic purposes would pay a fee of \$100 per device, an increase of \$53 per device over the current fee. Because a radiofrequency device for medical procedures will always be used by a health professional who is subject to less Department review of operator credentialing requirements and no fee had been assessed under the current rules, a registrant under R9-7-1302(F)(12) would now pay a facility fee of \$100. Thus, the Department believes that all registrants of radiofrequency devices would incur a minimal cost increase due to the new rules.

Because the changes to the rules help improve their clarity, the Department believes that those regulated under the rules may find them easier to understand and comply with. In addition, the fee increases will allow the Department to institute more up-to-date systems for receiving and processing applications and communicating with licensees and registrants. The increased revenue will also allow the Department to hire and train surveyors to reduce the time to process applications or amendments or to get questions answered. Therefore, those regulated under the rules may see a shorter processing time for applications and amendments, as well as improved communication and answers to questions. Therefore, the Department believes that the new rules may provide a significant benefit to regulated entities.

- **Businesses that contract with licensees or registrants to perform activities covered under the rules in 9 A.A.C. 7**

Because there are so many different types of entities licensed or registered under these rules, and so many different types of devices registered, a wide variety of businesses may contract with a licensee or registrant to perform activities covered under the rules in Chapter 7. It is possible that a licensee or registrant may pass along a portion of the fee increase to a business with which it contracts, to offset the increase. If that were to occur, the Department anticipates that the business could incur up to a moderate increase in contracting costs. However, because the fee increases will allow the Department to continue to provide adequate oversight of sources of radiation in Arizona, the Department believes that these businesses may also receive a significant benefit from the oversight in ensuring the safe use of sources of radiation.

- **Employees of licensees or registrants or entities that contract with regulated entities**

An employee of a licensee or registrant would likely be the first to experience harm if the licensee or registrant had not instituted adequate protections or was not following the requirements in the rules. An employee of a business that contracts with a licensee or registrant to provide services regulated under the rules in Chapter 7 may also be harmed if the contractor were not complying with the rules in the Chapter. By clarifying rule requirements, this rulemaking may enable a licensee or registrant to better comply with requirements. The oversight by the Department, which the new fees will allow to continue, may improve compliance and provide a safer work environment for an employee of a licensee or registrant or of an entity that contracts with a regulated entity. Therefore, the Department anticipates that such an employee may receive a significant benefit from the new rules.

- **Patients and their families**

Every day, thousands of patients in Arizona receive diagnostic or therapeutic procedures at facilities licensed under the rules in 9 A.A.C. 7 or with equipment registered under the rules. These patients rely on the oversight provided by the Department to ensure that the facility applying ionizing or non-ionizing radiation has adequate administrative controls in place to ensure safe operation. These may include ensuring that the equipment is operating according to manufacturer's specifications, that personnel are well-trained, and that the facility is adhering to the general premise of using radiation "As Low As Reasonably Achievable." By enabling the Department to continue providing adequate oversight over facilities licensed or registered under the rules in 9 A.A.C. 7, the Department anticipates that the fee increase may provide a significant benefit to a patient. It is possible that a facility may pass through any increased cost incurred by them as increased fees for services provided at the facility, but the Department believes these fee increases would be at most minimal.

- **General public**

Similarly, the Department believes that the health and safety of the general public are protected by continued oversight by the Department of ionizing or non-ionizing radiation in Arizona and the regulation of persons who use, store, or dispose of sources of radiation and of these sources of radiation under the rules in 9 A.A.C. 7. Therefore, the Department expects that the general public may receive a significant benefit from the fee changes due to knowing that adequate regulation is continuing.

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

Public and private employment in the State of Arizona is not expected to be affected due to the changes in the rules.

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

**a. Identification of the small businesses subject to the rules**

Small businesses that may be affected by the rule changes include small businesses that use, store, or dispose of sources of radiation, as described in paragraph 3.

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

The Department is unaware of any additional cost associated with this rulemaking that is not already covered by the current rules or described in paragraph 3.

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

The Department already has in place a mechanism by which small entities may pay reduced fees, as specified in R9-7-1304. These fees are not being increased as part of the rulemaking, and the Department does not know of any additional methods to reduce the impact on small businesses.

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

There are minimal, if any, costs to the public from these rules, as described in paragraph 3.

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

Since 10% of the increased revenue generated by the fee increase would be deposited into the general fund according to A.R.S. § 30-654, the Department anticipates that the general fund would receive approximately an extra \$200,000 per year due to the fee increase.

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

There are no less intrusive or less costly alternatives for achieving the purpose of the rule.

**8. A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data**

The data upon which these estimates were based comes from financial systems maintained by state governmental agencies, are subject to audit, and are, therefore, considered acceptable data.

## Attachment A Fees in Chapter 7

Type of License/Registration	Current Fee	Number	Current Revenue	New Fee	Anticipated New Revenue
Broad academic class A	\$5,800	2	\$11,600	\$10,000	\$20,000
Broad academic class B	\$5,800	0	\$0	\$10,000	\$0
Broad academic class C	\$5,800	0	\$0	\$10,000	\$0
Limited academic	\$1,000	3	\$3,000	\$2,500	\$7,500
Broad medical	\$11,000	4	\$44,000	\$20,000	\$80,000
Medical materials class A	\$1,900	37	\$70,300	\$4,000	\$148,000
Medical materials class B	\$1,900	122	\$231,800	\$4,000	\$488,000
Medical materials class C	\$1,900	0	\$0	\$4,000	\$0
Medical teletherapy	\$5,200	1	\$5,200	\$8,000	\$8,000
General medical	\$250	3	\$750	\$500	\$1,500
Broad industrial class A	\$11,400	2	\$22,800	\$20,000	\$40,000
Broad industrial class B	\$11,400	0	\$0	\$20,000	\$0
Broad industrial class C	\$3,200	0	\$0	\$6,000	\$0
Limited industrial	\$700	22	\$15,400	\$1,500	\$33,000
Portable gauge	\$1,000	83	\$83,000	\$2,000	\$166,000
Fixed gauge class A	\$1,000	11	\$11,000	\$2,000	\$22,000
Fixed gauge class B	\$1,000	10	\$10,000	\$2,000	\$20,000
Leak detector	\$1,330	1	\$1,330	\$2,000	\$2,000
Gas chromatograph	\$1,000	0	\$0	\$2,000	\$0
General industrial	\$100	19	\$1,900	\$300	\$5,700
Industrial radiography class A	\$5,500	4	\$22,000	\$10,000	\$40,000
Industrial radiography class B	\$5,500	0	\$0	\$10,000	\$0
Open field irradiator	\$3,000	0	\$0	\$10,000	\$0
Shelf-shielded irradiator	\$1,500	1	\$1,500	\$5,000	\$5,000
Well logging	\$2,000	2	\$4,000	\$5,000	\$10,000
Research and development	\$2,100	2	\$4,200	\$5,000	\$10,000
Laboratory	\$1,000	1	\$1,000	\$3,000	\$3,000
Distribution	\$2,600	4	\$10,400	\$5,000	\$20,000

Attachment A Fees in Chapter 7

Nuclear pharmacy	\$4,600	5	\$23,000	\$10,000	\$50,000
Nuclear laundry	\$10,300	0	\$0	\$25,000	\$0
General industrial gauging device	\$300	0	\$0	\$500	\$0
General depleted uranium	\$200	1	\$200	\$200	\$200
Veterinary medicine	\$1,000	8	\$8,000	\$2,000	\$16,000
General veterinary medicine	\$200	0	\$0	\$500	\$0
Health physics class A	\$3,200	4	\$12,800	\$5,000	\$20,000
Health physics class B	\$1,000	0	\$0	\$3,000	\$0
Secondary uranium recovery	\$5,100	0	\$0	\$8,000	\$0
Low-level radioactive waste disposal facility	\$6,000,000	0	\$0	\$6,000,000	\$0
Waste processor class A	\$4,600	0	\$0	\$10,000	\$0
Waste processor class B	\$3,600	0	\$0	\$8,000	\$0
Additional storage and use site (each additional site)	30% of base		This changes from year to year. It is calculated based on if a licensee has more than one use site as of January 1. They are required to pay the fee during the year if they add an additional site to their license.		
Possession-only	50% of base				
Reciprocal	50% of annual		This changes from year to year based upon if companies come into the state to do work. They have to apply for reciprocity.		
Reserved					
Unclassified radioactive material	Full Cost (\$99 per hour plus 44.5 cents per mile)	1	This changes from year to year and is calculated as specified in R9-7-1306.		
NORM commercial disposal site	\$600,000	0	\$0	\$600,000	\$0
X-ray machine class A (per tube)	\$75	1,527	\$114,525	\$195	\$297,765
X-ray machine class B (per tube)	\$51	3,065	\$156,315	\$145	\$444,425
X-ray machine class C (per tube)	\$42	11,452	\$480,984	\$95	\$1,087,940
Industrial radiation machine (per device)	\$42	964	\$40,488	\$95	\$91,580
Accelerator facility	\$750	68	\$51,000	\$2,500	\$170,000
Other ionizing radiation machine	Full Cost (\$99 per hour plus 44.5 cents per mile)	0	If any person were licensed/registered under this type, the fee would change from year to year and be calculated as specified in R9-7-1306.		

Attachment A Fees in Chapter 7

Tanning device (per device)	\$28	1,035	\$28,980	\$50	\$51,750
Class A laser (1 to 10 laser devices)	\$175	91	\$15,925	\$300	\$27,300
Class B laser (11 to 49 laser devices)	\$408	41	\$16,728	\$600	\$24,600
Class C laser (50 or more laser devices)	\$699	19	\$13,281	\$1,000	\$19,000
Laser light show or laser demonstration	\$408	24	\$9,792	\$500	\$12,000
Medical laser (per laser device)	\$47	1,685	\$79,195	\$100	\$168,500
Class II surgical device (per device)	\$47	1,514	\$71,158	\$100	\$151,400
Cosmetic radiofrequency device (per device)	\$47	54	\$2,538	\$100	\$5,400
Class A industrial (1 to 5 radiofrequency devices)	\$70	12	\$840	\$150	\$1,800
Class B industrial (6 to 20 radiofrequency devices)	\$210	20	\$4,200	\$350	\$7,000
Class C industrial (more than 20 radiofrequency devices)	\$349	10	\$3,490	\$600	\$6,000
Medical radiofrequency device (one or more)	\$0	103	\$0	\$100	\$10,300
Other non-ionizing radiation device	Full Cost (\$99 per hour plus 44.5 cents per mile)	0	If any person were licensed/registered under this type, the fee would change from year to year and be calculated as specified in R9-7-1306.		
<b>Fee Revenue</b>			<b>\$1,688,619</b>	<b>(+ other revenue)</b>	<b>\$3,792,460</b>

<b>Additional revenue from: Reciprocal licenses</b>	<b>\$45,633</b>		<b>\$90,000</b>
<b>Licensing of additional sites</b>	<b>\$77,193</b>		<b>\$150,000</b>
<b>Full cost</b>	<b>\$1,000</b>		<b>\$1,000</b>
<b>Subtotal Current Revenue</b>	<b>\$1,812,445</b>	<b>Subtotal New Revenue</b>	<b>\$4,033,460</b>
<b>Small-entity fee reduction (Avg):</b>	<b>\$112,500</b>	<b>Small-entity fee reduction (Projected):</b>	<b>\$225,000</b>
<b>Total Current Revenue</b>	<b>\$1,699,945</b>	<b>Total Revenue</b>	<b>\$3,808,460</b>
<b>A.R.S. 30-654(C) Specific Transfer Out</b>	<b>\$300,000</b>	<b>Transfer Out</b>	<b>\$300,000</b>
<b>Remaining Current Revenue</b>	<b>\$1,399,945</b>	<b>Remaining New Revenue</b>	<b>\$3,508,460</b>
<b>90% of Remaining (Program Revenue)</b>	<b>\$1,259,951</b>	<b>90% of Remaining</b>	<b>\$3,157,614</b>
<b>Shortfall Amount (From Attachment B)</b>	<b>\$1,274,765</b>	<b>Program Revenue, including Grant Funding</b>	<b>\$3,377,614</b>

## Attachment B Fees in Chapter 7

	<b>SFT 2020 EXPENDITURES</b>	<b>NEW BUDGETED AMOUNT</b>	<b>DIFFERENCE</b>	<b>USES OF EXTRA FUNDING</b>
Personal Services	\$1,256,727	\$1,516,434	\$259,707	2 surveyors + Lab manager; reallocate funds for other staff
Employee Related Expenditure	\$525,336	\$636,915	\$111,579	
Professional & Outside Services	\$1,375	\$95,000	\$93,625	Computer system development and maintenance
Travel In-State	\$28,077	\$30,000	\$1,923	Additional surveying
Travel Out-of-State	\$3,888	\$10,000	\$6,112	Staff training to keep up expertise and certification
Other Operating Expenditures	\$380,281	\$420,000	\$39,719	Waste disposal
Capital Equipment	\$56,120	\$69,302	\$13,182	Replace laboratory equipment
Non-Capital Equipment	\$32,170	\$40,000	\$7,830	Purchase computers, radiation detection equipment, PPE
Transfers Out *	\$470,742	\$559,879	\$89,137	Indirect
<b>TOTAL</b>	<b>\$2,754,716</b>	<b>\$3,377,530</b>	<b>\$622,814</b>	

Attachment B Fees in Chapter 7

<b>Shortfall</b>	<b>\$1,274,765</b>
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Attachment C

	Arizona (Current)	Arizona (Proposed)	NRC	California <sup>1</sup>	Nevada	Texas	Colorado	New Mexico <sup>2</sup>	Washington
Broad academic Class A	\$5,800.00	\$10,000.00	\$15,300.00	\$37,290.00	\$8,800.00	\$23,810.00	\$15,690.00	\$17,300.00	\$36,288.00
Broad academic Class B	\$5,800.00	\$10,000.00	\$15,300.00	\$20,622.00	\$8,800.00	\$23,800.00	\$15,690.00	\$17,300.00	\$16,773.00
Broad academic Class C	\$5,800.00	\$10,000.00	\$15,300.00	\$13,036.00	\$8,800.00	\$23,800.00	\$15,690.00	\$17,300.00	\$13,478.00
Limited academic	\$1,000.00	\$2,500.00	\$14,900.00	\$4,502.00	\$1,320.00		\$7,145.00		
Broad medical	\$11,000.00	\$20,000.00	\$41,900.00	\$37,290.00	\$13,851.00	\$23,800.00	\$35,350.00	\$13,560.00	\$36,288.00
Medical materials class A	\$1,900.00	\$4,000.00	\$15,300.00	\$7,347.00	\$5,051.00	\$8,950.00	\$7,910.00	\$3,815.00	\$9,126.00
Medical materials class B	\$1,900.00	\$4,000.00	\$15,300.00	\$4,502.00	\$5,051.00	\$4,060.00	\$7,910.00	\$3,815.00	\$6,608.00
Medical materials class C	\$1,900.00	\$4,000.00	\$15,300.00	\$3,554.00	\$5,051.00	\$3,410.00	\$7,910.00	\$3,815.00	\$1,474.00
Medical teletherapy	\$5,200.00	\$8,000.00	\$26,100.00	\$11,140.00	\$5,051.00	\$9,910.00	\$18,890.00	\$10,075.00	\$3,032.00
General medical	\$250.00	\$500.00				\$3,410.00			
Broad industrial class A	\$11,400.00	\$20,000.00	\$25,300.00	\$37,290.00	\$23,800.00	\$9,410.00	\$33,785.00	\$17,300.00	\$36,288.00
Broad industrial class B	\$11,400.00	\$20,000.00	\$25,300.00	\$20,622.00	\$23,800.00	\$8,160.00	\$33,785.00	\$17,300.00	\$16,773.00
Broad industrial class C	\$3,200.00	\$6,000.00	\$15,300.00	\$13,036.00	\$23,800.00	\$4,230.00	\$33,785.00	\$4,140.00	\$13,478.00
Limited industrial	\$700.00	\$1,500.00	\$2,900.00	\$4,502.00	\$1,760.00	\$1,410.00	\$9,070.00		
Portable gauge	\$1,000.00	\$2,000.00	\$10,000.00	\$2,606.00	\$1,320.00	\$3,240.00	\$4,740.00	\$2,240.00	\$1,511.00
Fixed gauge class A	\$1,000.00	\$2,000.00	\$10,000.00	\$2,606.00	\$1,100.00	\$3,410.00	\$4,740.00	\$2,240.00	\$1,647.00
Fixed gauge class B	\$1,000.00	\$2,000.00	\$10,000.00	\$2,606.00	\$1,100.00	\$3,410.00	\$4,740.00	\$2,240.00	\$1,647.00
Leak detector	\$1,330.00	\$2,000.00	\$2,900.00	\$2,606.00	\$1,760.00	\$2,130.00	\$4,740.00	\$2,240.00	\$1,038.00
Gas chromatograph	\$1,000.00	\$2,000.00	\$10,000.00	\$2,606.00	\$496.00	\$2,130.00	\$4,740.00	\$2,240.00	\$1,038.00
General industrial	\$100.00	\$300.00	\$2,900.00	\$500.00	\$1,000.00				
Industrial Radiography class A	\$5,500.00	\$10,000.00	\$30,200.00	\$11,140.00	\$5,500.00	\$17,870.00	\$17,650.00	\$9,630.00	\$14,311.00
Industrial Radiography class B	\$5,500.00	\$10,000.00	\$30,200.00	\$11,140.00	\$5,500.00	\$8,490.00	\$17,650.00		\$10,675.00
Open field irradiator	\$3,000.00	\$10,000.00	\$88,000.00	\$11,140.00		\$28,900.00	\$29,080.00	\$9,695.00	\$15,298.00
Shelf-shielded irradiator	\$1,500.00	\$5,000.00	\$11,900.00	\$9,243.00	\$1,650.00	\$4,690.00	\$5,305.00	\$2,260.00	\$2,878.00
Well logging	\$2,000.00	\$5,000.00	\$14,600.00	\$5,451.00	\$3,300.00	\$5,920.00	\$13,485.00	\$6,530.00	\$7,010.00
Research and development	\$2,100.00	\$4,000.00	\$14,900.00	\$7,347.00	\$1,320.00	\$5,970.00	\$7,145.00	\$3,230.00	
Laboratory	\$1,000.00	\$3,000.00	\$2,900.00	\$2,606.00	\$1,760.00	\$1,800.00	\$4,740.00		\$7,300.00
Distribution	\$2,600.00	\$5,000.00	\$11,600.00		\$2,200.00	\$4,230.00	\$5,215.00		\$13,713.00
Nuclear Pharmacy	\$4,600.00	\$10,000.00	\$17,800.00	\$11,140.00	\$6,600.00	\$8,160.00	\$17,210.00	\$10,270.00	\$10,721.00
Nuclear laundry	\$10,300.00	\$25,000.00	\$35,200.00	\$11,140.00			\$24,410.00	\$12,410.00	\$18,284.00
General industrial	\$300.00	\$500.00	\$3,100.00		\$1,000.00	\$2,980.00			\$912.00
General depleted uranium	\$200.00	\$200.00	\$2,900.00		\$1,000.00	\$2,980.00			
Veterinary medicine	\$1,000.00	\$2,000.00	\$10,000.00	\$3,554.00	\$1,760.00	\$2,980.00	\$7,910.00		\$4,605.00
General veterinary medicine	\$200.00	\$300.00	\$10,000.00		\$1,760.00	\$2,980.00	\$4,740.00		
Health physics class A	\$3,200.00	\$5,000.00	\$10,000.00	\$7,347.00	\$2,200.00	\$4,410.00	\$4,740.00	\$3,420.00	\$2,583.00
Health physics class B	\$1,000.00	\$3,000.00	\$10,000.00	\$3,554.00	\$1,760.00	\$1,950.00	\$4,740.00		\$2,583.00
Secondary uranium recovery	\$5,100.00	\$8,000.00	\$49,200.00						
Low-level radioactive waste disposal site	\$6,000,000.00	\$6,000,000.00							
Waste processor class A	\$4,600.00	\$10,000.00	\$18,400.00		\$2,200.00	\$9,650.00	\$14,275.00	\$7,480.00	\$18,720.00 + actual
Waste processor class B	\$3,600.00	\$8,000.00	\$10,500.00		\$2,200.00	\$9,650.00	\$11,865.00	\$5,530.00	\$18,721.00 + actual

Note 1: California license fees are based on maximum requested possession activity and number of use locations, not license type. Dollar amounts listed in table are based on average activity possessed by those license types in Arizona.

## Attachment C

Note 2: New Mexico charges a fee for each category type that a licensee possesses. For example, this means that a medical licensee could be charged multiple fees if they possess each type of radioactive material(i.e. diagnostic, therapy, irradiator, etc.)

Attachment D

**Type of License/Registration**

X-ray tube		Current Fee	New Fee	California	Nevada	Texas	Utah	Colorado
X-ray machine class A (per tube)	Hospital	\$75	\$200	\$319	\$500	\$940-\$1,910	\$145	\$170
X-ray machine class B (per tube)	Medical, non-hospital	\$51	\$150	\$319	\$150	\$600	\$140	\$170
	Educational			\$256	\$150	\$600	\$105	\$170
	Dental			\$118	\$150	\$420	\$45	\$170
X-ray machine class C (per tube) , ,	Veterinary	\$42	\$100	\$256	\$150	\$420	\$105	\$170
	Podiatry			\$256	\$150	\$420	\$105	\$170
Industrial radiation machine (per device)		\$42	\$100	\$256	\$200	\$290-\$1,910	\$105	\$170

Laser or Radiofrequency device	Current Fee	New Fee	Maine	Oregon	Texas1	Illinois	New York
Tanning device (per device)	\$28	\$50	\$50/facility + \$20/tanning bed	\$150/tanning bed	\$230-400	-	-
Class A (1 to 10 laser devices)	\$175	\$250	-	-	\$230-600	\$50/laser	\$600/laser (3-years)
Class B (11 to 49 laser devices)	\$408	\$500	-	-	\$230-600	\$50/laser	\$600/laser (3-years)
Class C (50 or more laser devices)	\$699	\$750	-	-	\$230-600	\$50/laser	\$600/laser (3-years)
Laser light show or laser demonstration	\$408	\$500	-	-	\$230-600	\$50/laser	\$600/laser (3-years)
Medical laser (per laser device)	\$47	\$100	-	-	\$230-600	\$50/laser	\$600/laser (3-years)
Class II surgical (per device)	\$47	\$100	-	-	\$230-600	-	-
Medical RF surgical and cosmetic (per device)	\$47	\$100	-	-	\$230-400	-	-
Class A industrial (1 to 5 radiofrequency devices)	\$70	\$100	-	-	\$230-400	-	-
Class B industrial (6 to 20 radiofrequency devices)	\$210	\$250	-	-	\$230-400	-	-
Class C industrial (more than 20 radiofrequency devices)	\$349	\$500	-	-	\$230-400	-	-
Class A medical (1 or 2 non-cosmetic radiofrequency devices) (per facility)	\$0	\$100	-	-	\$230-400	-	-
Class B medical (3 to 9 non-cosmetic radiofrequency devices) (per facility)	\$0	\$100	-	-	\$230-400	-	-
Class C medical (10 to 19 non-cosmetic radiofrequency devices) (per facility)	\$0	\$100	-	-	\$230-400	-	-
Class D medical (20 or more non-cosmetic radiofrequency devices) (per facility)	\$0	\$100	-	-	\$230-400	-	-

Note 1. \$230/facility for human, research, academic, and veterinary purposes; \$400/facility for industrial, services, and entertainment



July 13, 2020

Dr. Cara M. Christ, M.D., M.S.  
Director  
Arizona Department of Health Services  
150 North 18th Avenue  
Phoenix, Arizona 85007

***RE: Notice of Proposed Rulemaking: Radiation Control Fees***

Dear Dr. Christ:

On behalf of the Arizona Hospital and Healthcare Association (AzHHA) and our more than 80 hospital, healthcare, and affiliated health system members, thank you for the opportunity to offer comments on the Arizona Department of Health Services' (ADHS) Notice of Proposed Rulemaking: Radiation Control Fees (Notice of Rulemaking Docket Opening: 26 A.A.R. 762, April 24, 2020). AzHHA represents general acute care, rural, specialty, post-acute care, federal, tribal, and public hospitals, as well as affiliated healthcare partners. Our members are united with the common goals of improving healthcare delivery, access, and quality of care throughout the state. We submit these comments in furtherance of these goals.

AzHHA recognizes that the radiation control fees support an indispensable public safety function. We understand that fees have not been increased for over a decade and that the fees are currently insufficient to cover the department's expenses in regulating the use and users of radiation in the state. While we remain respectful of those facts, at this juncture, any fee increase on hospitals and healthcare providers constitutes a hardship.

AzHHA's national partner, the American Hospital Association, has estimated that hospitals' total losses in 2020 will approximate \$323 billion due to COVID-19. These losses do not account for currently increasing case rates in certain states, like Arizona, or potential subsequent surges of the pandemic later in the year. Arizona's hospitals are under a great deal of financial strain due to this public health emergency and will be for the foreseeable future. In particular, the pandemic is proving to be a very serious threat to the financial viability of rural hospitals, which were already operating on razor thin margins. Put plainly, hospitals are in dire need of financial assistance and are unable to absorb any additional losses at this time.

Consequently, AzHHA must respectfully request that ADHS defer the imposition of the proposed radiation control fee increases that affect hospitals and other health care providers. We would welcome the opportunity to engage with ADHS regarding alternative approaches to ensuring the financial solvency of the radiation control program.

Cara M. Christ, M.D., M.S.

July 13, 2020

Page 2

We greatly value the partnership between ADHS and the states' hospitals, and we look forward to continuing to work with you to achieve our shared goals of promoting the health of Arizonans and ensuring that all have access to optimal health care during this public health emergency.

Thank you for your consideration, and we look forward to hearing from you.

Sincerely,

A handwritten signature in cursive script, appearing to read "A. Alameddin".

Ann-Marie Alameddin  
President and Chief Executive Officer  
Arizona Hospital and Healthcare Association



# Health System Alliance of Arizona

July 13, 2020

Dr. Cara Christ  
Arizona Department of Health Services  
150 N. 18<sup>th</sup> Avenue  
Phoenix, Arizona 85007

Dear Dr. Christ:

On behalf of the Health System Alliance of Arizona (Alliance), an advocacy organization representing integrated health systems across the state, I am writing to offer our comments in response to the Notice of Proposed Rulemaking: Radiation Control Fees.

The members of the Alliance support the continued mission of the Department, to protect and promote public health in Arizona, and the important role it plays in inspecting and monitoring safety standards in health care facilities. We understand that the goal of this rulemaking is to align license and registration fees to the cost of administering the Department's Radiation Control Program. We also understand that these fees have not been adjusted since 2008. Unfortunately, as proposed, this rule represents a significant fee increase that will place an undue burden on the hospital industry during a financial crisis. For this reason, we cannot support this proposed rule as promulgated.

As noted, the fee increases proposed in this rulemaking are significant. The burden of paying most of these fees will fall on the hospital industry, which has been devastated by the COVID-19 pandemic. In fact, a recent American Hospital Association report has forecasted that by the end of this year, hospitals and hospital systems across this country will incur more than \$300 billion in losses due to COVID-19. Of this, only a fraction will be recovered through CARES Act and other federal crisis dollars. It will take years for our industry to recover financially from this crisis and we will rely on the partnership of our private and public counterparts throughout this recovery process.

We remain very respectful of the financial constraints facing the Department and would respectfully request that implementation of the provisions in the rule impacting hospitals be delayed. This will allow the opportunity for the Department and hospitals to engage in a dialogue about alternative approaches to this rulemaking that would ensure long-term solvency for the Radiation Control Program, while also minimizing impacts to the healthcare industry during the present crisis.

We appreciate your consideration and look forward to the continued discussion. Please do not hesitate to contact me if I can answer any questions.

Respectfully,

A handwritten signature in black ink, reading "Jennifer A. Carusetta". The signature is written in a cursive, flowing style.

Jennifer A. Carusetta  
Executive Director  
Health System Alliance of Arizona

## CHAPTER 7. DEPARTMENT OF HEALTH SERVICES - RADIATION CONTROL

D13	365	90	455
D14	90	30	120
D15	40	20	60
D16	20	10	30
D17	40	20	60
D18	90	30	120
D19	365	120	485
E1	40	20	60
E2	40	20	60
E3	40	20	60
E4	40	20	60
E5	90	30	120
E6	90	30	120
F1	40	20	60
F2	40	20	60
F3	40	20	60
F4	40	20	60
F5	20	10	30
F6	40	20	60
F7	40	20	60
F8	40	20	60
F9	40	20	60
F10	40	20	60
F11	40	20	60
F12	40	20	60
F13	40	20	60
F14	40	20	60
F15	40	20	60
F16	90	30	120

Footnote: “administrative completeness review time-frame”; “substantive review time-frame,” and “overall time-frame” are defined in A.R.S. § 41-1072.

**Historical Note**

New Article 12, Table 1, recodified from 12 A.A.C. 1, Article 12, Table 1 at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

**ARTICLE 13. LICENSE AND REGISTRATION FEES****R9-7-1301. Definition**

“Combined” means the Department has granted authorized activities contained in two or more license types in a single license document, requiring the payment of a single license fee for the more expensive license of the planned combination.

**Historical Note**

New Section R9-7-1301 recodified from R12-1-1301 at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

**R9-7-1302. License and Registration Categories**

**A.** Category A licenses are those specific licenses which authorize a school, college, university, or other teaching facility to possess and use radioactive materials for instructional or research purposes.

1. A broad academic class A license is any category A license which meets the specifications of R9-7-310(A)(1).
2. A broad academic class B license is any category A license other than a broad academic class A license which meets the specifications of R9-7-310(A)(2).

3. A broad academic class C license is any category A license other than a broad academic class A or B license which meets the specifications of R9-7-310(A)(3).

4. A limited academic license is any category A license which authorizes only those radioisotopes, forms, and quantities individually specified in the license.

**B.** Category B licenses are those specific or general licenses which authorize the application of radioactive material or the radiation from it to a human being for medical diagnostic, therapeutic, or research purposes, or the use of radioactive material in medical laboratory testing. Except for a type B6, general medical license, the Department shall not combine a category B license with a license of any other category.

1. A broad medical license is any category B license which meets the specifications of R9-7-310(A)(1) and meets the requirements of 9 A.A.C. 7, Article 7. A broad medical license may authorize any medical use other than teletherapy.

2. A medical materials class A license is any specific category B license other than a broad medical license, which authorizes the use of radiopharmaceuticals and sealed sources containing radioactive materials for a therapeutic purpose in quantities which require hospitalization of the

## CHAPTER 7. DEPARTMENT OF HEALTH SERVICES - RADIATION CONTROL

- patient for radiation safety purposes. The license may authorize other radioactive materials and other medical uses, except teletherapy.
3. A medical materials class B license is any specific category B license which authorizes the diagnostic or therapeutic use, other than teletherapy, of radioactive materials only in limited quantities such that the patient need not be hospitalized for radiation safety purposes.
  4. A medical materials class C license is any specific category B license which authorizes possession of specified radioisotopes only in the form of sealed sources for treatment of the eye or skin or for use in diagnostic medical imaging devices.
  5. A medical teletherapy license is a specific category B license which solely authorizes radioisotopes in the form of multi-curie sealed sources for use in external beam therapy. The Department shall not combine a medical teletherapy license with any other type of category B license.
  6. A general medical license is a registration of the use of radioactive material pursuant to R9-7-306(D) or R9-7-306(E). A general medical license may be combined into a broad medical, medical materials class A, or medical materials class B license.
- C.** Category C licenses are those specific or general licenses authorizing the use of radioactive materials in any activity other than those authorized by a category A, B, or D license. Except as specifically authorized in this Section, the Department shall not combine a category C license with any other type of license.
1. A broad industrial class A license is any category C license which meets the specifications of R9-7-310(A)(1). The Department may combine a broad industrial class A license with any other category C license except industrial radiography, open field irradiator, or well logging licenses.
  2. A broad industrial class B license is any category C license other than a broad industrial class A license which meets the specifications of R9-7-310(A)(2). The Department may combine a broad industrial class B license with any other category C license except industrial radiography, open field irradiator, or well logging licenses.
  3. A broad industrial class C license is any category C license other than a broad industrial class A or B license which meets the specifications of R9-7-310(A)(3). The Department may combine a broad industrial class C license with any other category C license except industrial radiography, open field irradiator, or well logging licenses.
  4. A limited industrial license is a specific category C license authorizing the possession of the radioactive materials authorized in R9-7-305(A), or R9-7-306(A), (C), or (F) for uses authorized in those subsections, but in quantities greater than authorized by those subsections.
  5. A portable gauge license is a specific category C license which authorizes radioactive materials in the form of sealed sources for use in measuring or gauging devices designed and manufactured to be transported to the location of use. The Department may combine a portable gauge license with any broad scope industrial license or a fixed gauge class A license.
  6. A fixed gauge class A license is a specific category C license which authorizes the possession of 50 or more measuring or gauging devices containing radioactive materials, where each device is permanently mounted for use at a single location.
  7. A fixed gauge class B license is a specific category C license which authorizes the possession of 1 through 49 measuring or gauging devices containing radioactive materials, where each device is permanently mounted for use at a single location.
  8. A leak detector license is a specific category C license which authorizes the use of radioisotopes in the form of a gas to test hermetic seals on electronic packages.
  9. A gas chromatograph license is a specific category C license which authorizes the use of radioactive materials as ionization sources in gas chromatography or electron capture devices.
  10. A general industrial license means a registration of the use of a material, source, or device generally licensed pursuant to R9-7-305 or R9-7-306, except R9-7-305(B), R9-7-306(D), or R9-7-306(E).
  11. An industrial radiography class A license is a specific category C license which authorizes industrial radiography using sealed radioisotope sources at specific facilities identified in the license conditions or at temporary field job sites.
  12. An industrial radiography class B license is a specific category C license which authorizes industrial radiography using sealed radioisotope sources only at specific facilities identified in the license conditions.
  13. An open field irradiator license is a specific category C license authorizing the use of radioisotopes in the form of sealed sources not permanently mounted within a shielding container, for irradiation of materials.
  14. A self-shielded irradiator license is a specific category C license authorizing the use of radioisotopes in the form of sealed sources for irradiation of materials in a shielding device from which the sources are not removed during irradiation. The Department may combine a self-shielded irradiator license with any broad license.
  15. A well logging license is a specific category C license which authorizes the use of radioactive material in sealed or unsealed sources for wireline services or field tracer studies.
  16. A research and development license is a specific category C license which authorizes a licensee to utilize radioactive material in unsealed and sealed form for industrial, scientific, or biomedical research, not including administration of radiation or radioactive material to human beings.
  17. A laboratory license is a specific category C license which authorizes a licensee to perform specific in-vitro or in-vivo medical or veterinary testing, while possessing quantities of radioactive material greater than the general license quantities authorized in R9-7-306.
- D.** Category D licenses are the following specific radioactive material licenses. Except for type D4, general industrial; type D5, depleted uranium; type D8 and D9, health physics; and type D14, additional facilities licenses, the Department shall not combine a category D license with any other license.
1. A distribution license is one which authorizes the commercial distribution of radioactive materials or radioisotopes in products to persons holding an appropriate general or specific license. The Department shall ensure that a distribution license does not:
    - a. Authorize distribution of radiopharmaceuticals or distribution to persons exempt from regulatory control, or
    - b. Authorize any other use of the radioactive material. An appropriate category C license is required for

## CHAPTER 7. DEPARTMENT OF HEALTH SERVICES - RADIATION CONTROL

- possession of radioisotopes and their incorporation into products.
2. A nuclear pharmacy license is one which authorizes the preparation, compounding, packaging, or dispensing of radiopharmaceuticals for use by other licensees.
  3. A nuclear laundry license is one authorizing the collection and cleaning of items contaminated with radioactive materials.
  4. A general industrial license is a registration of a gauging device in accordance with R9-7-306(A). The Department may combine a general industrial license with a Class A, B, or C broad industrial, limited industrial, portable gauge, or Class A or B fixed gauge license.
  5. A depleted uranium general license is a registration of the use of the general license authorized pursuant to R9-7-305(C) or the use of depleted uranium as a concentrated mass or as shielding for another radiation source within a device or machine. The Department may combine a depleted uranium general license with a medical teletherapy; Class A, B, or C broad industrial; portable gauge; Class A or B fixed gauge; Class A or B industrial radiography; or self-shielded irradiator license. For registration purposes an applicant shall follow the registration instructions in R9-7-305(C).
  6. A veterinary medicine license is one which authorizes the use of radioactive materials for specific applications in veterinary medicine as authorized in the license.
  7. A general veterinary medicine license is a registration of the use of the general license authorized in R9-7-306(E) in veterinary medicine.
  8. A health physics class A license is one which authorizes the use of radioactive materials for performing instrument calibrations, processing leak test or environmental samples, or providing radiation dosimetry services.
  9. A health physics class B license is one which authorizes only the collection, possession, and transfer of radioactive materials in the form of leak test samples for processing by others.
  10. A secondary uranium recovery license is one which authorizes the extraction of natural uranium or thorium from an ore stream or tailing which is being or has been processed primarily for the extraction of another mineral. The Department shall not combine a secondary uranium recovery license with any other license.
  11. A low-level, radioactive waste disposal facility license is a license that is issued for a "disposal facility," as that term is used in R9-7-439 and R9-7-442, which has a closure or long-term care plan and is constructed and operated according to the requirements in 10 CFR 61, revised January 1, 2015, incorporated by reference, and available under R9-7-101. This incorporated material contains no future editions or amendments.
  12. A waste processor class A license is one authorizing the incineration, compaction, repackaging, or any other treatment or processing of low-level radioactive waste prior to transfer to another person authorized to receive or dispose of the waste. The Department shall not combine a waste processor class A license with any other license.
  13. A waste processor class B license is one which authorizes a waste broker to receive prepackaged, low-level radioactive waste from other licensees; combine the waste into shipments; and transfer the waste without treating or processing the waste in any manner and without repackaging except to place damaged or leaking packages into overpacks. The Department shall not combine a waste processor class B license with any other license.
  14. An additional facility license is an endorsement, by license condition to an existing specific license, authorizing one or more additional separate facilities where radioactive material may be stored or used for a period exceeding six months.
  15. A possession-only license is a license of any other category which authorizes only the possession in storage, but no use of, the authorized materials. A license which has been suspended as an enforcement action is not considered a possession-only license.
  16. A reciprocal license is the registration of the general license authorized by R9-7-320. This license is subject to a special fee as provided by R9-7-1307 but is exempt from annual fees.
  17. Reserved
  18. An "unclassified" radioactive material license is one authorizing radioisotopes, physical or chemical forms, possession limits, or uses not included in any other type of license specified in this Section.
  19. A NORM commercial disposal site license is one that authorizes the receipt of waste material contaminated with naturally occurring radioactive material from other licensees for permanent disposal, provided the concentration of the radioactive material does not exceed 74kBq (2,000 picocuries)/gram.
- E.** Category E registrations are those that register the possession of x-ray machine(s) under 9 A.A.C. 7, Article 2. The Department shall not combine Category E registrations with any other registration.
1. An X-ray machine class A registration is one authorizing the possession of X-ray machines in a hospital or other facility offering inpatient care.
  2. An X-ray machine class B registration is one authorizing the possession of X-ray machines in a medical, osteopathic, or chiropractic office or clinic not offering inpatient care; or the possession of X-ray machines in a school, college, university, or other teaching facility.
  3. An X-ray machine class C registration is one authorizing the possession of X-ray machines in dental, podiatry, and veterinarian offices or clinics.
  4. An industrial radiation machine registration is one authorizing the possession of X-ray machines, or the possession of particle accelerators not capable of producing a high radiation area, in a nonmedical facility.
  5. An accelerator facility registration is one authorizing the possession and operation of one or more particle accelerators of any kind capable of accelerating any particle and producing a high radiation area.
  6. A radiation machine, "other," is one authorizing possession or use of an ionizing radiation machine not included in any other category specified in subsection (E).
- F.** Category F registrations are those that register nonionizing radiation producing sources regulated under 9 A.A.C. 7, Article 14. The Department shall not combine Category F registrations with any other registration categories that have a difference in fee per unit.
1. A tanning registration authorizes the commercial operation of any number of tanning booths, beds, cabinets, or other devices in a single establishment.
  2. A Class A laser registration authorizes the operation of one to 10 laser devices subject to R9-7-1433.
  3. A Class B laser registration authorizes the operation of 11 to 49 laser devices subject to R9-7-1433.
  4. A Class C laser registration authorizes operation of 50 or more laser devices subject to R9-7-1433.

CHAPTER 7. DEPARTMENT OF HEALTH SERVICES - RADIATION CONTROL

- 5. A laser light show registration authorizes the operation of a laser device subject to R9-7-1441.
- 6. A medical laser registration authorizes the operation of one or more laser devices subject to R9-7-1440.
- 7. A Class II surgical device registration authorizes the operation of one or more Class II surgical devices subject to R9-7-1438. A device is designated as a Class II surgical device by the USFDA and is labeled as such by the manufacturer.
- 8. A medical radiofrequency device registration authorizes the operation of one or more medical radiofrequency devices.
- 9. A class A industrial radiofrequency device registration authorizes the operation of one to five radiofrequency heat sealers or industrial microwave ovens.
- 10. A class B industrial radiofrequency device registration authorizes the operation of six to 20 radiofrequency heat sealers or industrial microwave ovens.
- 11. A class C industrial radiofrequency device registration authorizes the operation more than 20 radiofrequency heat sealers or industrial microwave ovens.
- 12. A class A medical radiofrequency device registration authorizes the operation of one or two radiofrequency diathermy or electrocoagulation units not used in non-ionizing cosmetic procedures.
- 13. A class B medical radiofrequency device registration authorizes the operation of three to nine radiofrequency diathermy or electrocoagulation units not used in non-ionizing cosmetic procedures.
- 14. A class C medical radiofrequency device registration authorizes the operation of 10 to 19 radiofrequency diathermy or electrocoagulation units not used in non-ionizing cosmetic procedures.
- 15. A class D medical radiofrequency device registration authorizes the operation of 20 or more radiofrequency diathermy or electrocoagulation units not used in non-ionizing cosmetic procedures.
- 16. An "other" nonionizing radiation device authorizes the operation of a nonionizing radiation device or other device not included in any other category specified in subsection (F).

**Historical Note**

New Section R9-7-1302 recodified from R12-1-1302 at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

**R9-7-1303. Fee for Initial License and Initial Registration**

An applicant shall remit for a new license or new registration the appropriate fee as prescribed in R9-7-1306.

**Historical Note**

New Section R9-7-1303 recodified from R12-1-1303 at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

**R9-7-1304. Annual Fees for Licenses and Registrations**

- A. Each license or registration issued by the Department shall identify the category by a letter and number corresponding to the appropriate subsection of R9-7-1302 or category type listed in R9-7-1306.
- B. Except for types D16 and D17, each licensee or registrant shall submit payment of the annual fee in the amount prescribed in R9-7-1306(A) on or before January 1 of each year. This single annual fee will cover any and all renewals, amendments, and regular inspections of the license during the forthcoming calendar year.
- C. If a licensee or registrant fails to pay the annual fee by January 1, the license is not current.

- D. If a licensee or registrant fails to pay the annual fee by April 1, the Department shall apply administrative sanction provisions of 9 A.A.C. 7, Article 12.
- E. A licensee who is required to pay an annual fee under this Article may qualify as a small entity. If a licensee qualifies as a small entity and provides the Department with proper certification along with its annual fee payment, the licensee may pay reduced annual fees as shown in Table 1 to this Article. Failure to file a small entity certification in a timely manner may result in the denial of any refund.

**Historical Note**

New Section R9-7-1304 recodified from R12-1-1304 at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

**R9-7-1305. Method of Payment**

- A. An applicant licensee or registrant shall pay fees by check or money order, payable to the "State of Arizona" at the address shown on the application, license, registration, or renewal notice.
- B. Once a license or registration has been issued, no portion of the application fee or any annual fee will be refunded.

**Historical Note**

New Section R9-7-1305 recodified from R12-1-1305 at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

**R9-7-1306. Table of Fees**

- A. The application and annual fee for each category and type are shown in Table 13-1.

Table 13-1

Category	Type	Annual Fee
A1	Broad academic Class A	\$5,800
A2	Broad academic Class B	\$5,800
A3	Broad academic Class C	\$5,800
A4	Limited academic	\$1,000
B1	Broad medical	\$11,000
B2	Medical materials class A	\$1,900
B3	Medical materials class B	\$1,900
B4	Medical materials class C	\$1,900
B5	Medical teletherapy	\$5,200
B6	General medical	\$250
C1	Broad industrial class A	\$11,400
C2	Broad industrial class B	\$11,400
C3	Broad industrial class C	\$3,200
C4	Limited industrial	\$700
C5	Portable gauge	\$1,000
C6	Fixed gauge class A	\$1,000
C7	Fixed gauge class B	\$1,000
C8	Leak detector	\$1,330
C9	Gas chromatograph	\$1,000
C10	General industrial	No Fee
C11	Industrial Radiography class A	\$5,500
C12	Industrial Radiography class B	\$5,500
C13	Open field irradiator	\$3,000
C14	Self-shielded irradiator	\$1,500
C15	Well logging	\$2,000
C16	Research and development	\$2,100
C17	Laboratory	\$1,000

## CHAPTER 7. DEPARTMENT OF HEALTH SERVICES - RADIATION CONTROL

D1	Distribution	\$2,600	F14	Class C medical (10 to 19 non-cosmetic radiofrequency devices) (per device)	\$0
D2	Nuclear Pharmacy	\$4,600			
D3	Nuclear laundry	\$10,300	F15	Class D medical (20 or more non-cosmetic radiofrequency devices) (per device)	\$0
D4	General industrial (with fee)	\$300			
D5	General depleted uranium	\$200	F16	Other nonionizing radiation device or other device	Full Cost
D6	Veterinary medicine	\$1,000			
D7	General veterinary medicine	\$200			
D8	Health physics class A	\$3,200	Notes:	(1) An additional 30% of the annual base fee is added to the annual base fee for each additional site.	
D9	Health physics class B	\$1,000		(2) The fee is 50% of the annual base fee for the category under which the radioactive material will be stored.	
D10	Secondary uranium recovery	\$5,100		(3) See R9-7-1307.	
D11	Low-level radioactive waste disposal site	(3)	B.	The application fee for a licensee or registrant is the annual fee as shown in R9-7-1306. "Full Cost" is based on professional personnel time for preparation, travel, onsite inspection, any reports, review of findings, and preparation of the license or registration or denial charged at \$99 per hour and mileage charged at 44.5¢ per mile. The Department shall assess the licensee or registrant 90% of the estimated full cost of issuing the license or registration. The Department will assess for any remaining costs when it is prepared to issue the license, registration, denial, or if Department costs for the requested activity exceed \$10,000.	
D12	Waste processor class A	\$4,600	C.	The annual fee for a licensee or registrant for which the scheduled fee is "Full Cost" is based on professional personnel time for preparation, travel, onsite inspection, preparation of reports, review of findings, and preparation for any inspections or completion of any amendments to the license, registration or denials charged at \$99 per hour and mileage charged at 44.5¢ per mile for the preceding 12 months.	
D13	Waste processor class B	\$3,600			
D14	Additional storage and use site	(1)			
D15	Possession only	(2)			
D16	Reciprocal	(3)			
D17	Reserved				
D18	Unclassified	Full Cost			
D19	NORM commercial disposal site	\$600,000			
E1	X-ray machine class A (per tube)	\$75			
E2	X-ray machine class B (per tube)	\$51			
E3	X-ray machine class C (per tube)	\$42			
E4	Industrial radiation machine (per device)	\$42			
E5	Accelerator facility	\$750			
E6	Other ionizing radiation machine	Full Cost			
F1	Tanning device (per device)	\$28			
F2	Class A (1 to 10 laser devices)	\$175			
F3	Class B (11 to 49 laser devices)	\$408			
F4	Class C (50 or more laser devices)	\$699			
F5	Laser light show or laser demonstration	\$408			
F6	Medical laser (per laser device)	\$47			
F7	Class II surgical (per device)	\$47			
F8	Medical RF surgical and cosmetic (per device)	\$47			
F9	Class A industrial (1 to 5 radiofrequency devices)	\$70			
F10	Class B industrial (6 to 20 radiofrequency devices)	\$210			
F11	Class C industrial (more than 20 radiofrequency devices)	\$349			
F12	Class A medical (1 or 2 non-cosmetic radiofrequency devices) (per device)	\$0			
F13	Class B medical (3 to 9 non-cosmetic radiofrequency devices) (per device)	\$0			

**Historical Note**

New Section R9-7-1306 and Table 13.1 recodified from R12-1-1306 and Table 13.1 at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

**R9-7-1307. Special License Fees**

- A. The fee for a Type D16 license providing reciprocal recognition under R9-7-320 of a radioactive materials license issued by the U.S. NRC or another state is half of the annual fee for an Arizona license of the appropriate type. The fee is due and payable at the time reciprocity is requested, and the general license does not become current until the fee is paid.
- B. For a low-level radioactive waste disposal site the initial application fee is \$6,000,000. The annual fee for the second through fifth years is \$6,000,000. The Department shall promulgate a new fee rule for years subsequent to year five. Based on data gathered during the first five years, the Department shall set a reasonable fee after consideration of the following factors:
1. Unrecovered costs which the Department may charge under A.R.S. § 30-654(B)(18).
  2. Actual costs incurred by the Department.

**Historical Note**

New Section R9-7-1307 recodified from R12-1-1307 at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

**R9-7-1308. Fee for Requested Inspections**

- A. A licensee or registrant may request an inspection of its facility at any time. The Department shall assess the licensee or registrant the full cost of the inspection, based on personnel time for preparation, travel, onsite inspection, review of findings, and preparation of a report, charged at \$99 per hour and mileage charged at 44.5¢ per mile.
- B. The fee specified in this Section does not apply to:

CHAPTER 7. DEPARTMENT OF HEALTH SERVICES - RADIATION CONTROL

1. Regular inspections as scheduled by the Department,
2. Enforcement reinspections conducted to ensure the correction of violations or safety hazards, or
3. Inspections requested by workers pursuant to R9-7-1007.

**Historical Note**

New Section R9-7-1308 recodified from R12-1-1308 at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

**R9-7-1309. Abandonment of License or Registration Application**

- A. Any license or registration application for which the applicant has been provided a written notification of deficiencies in the application and for which the applicant does not make a written attempt to supply the requested information or request an extension in writing within 90 days of the date of the written notice of deficiencies, is considered abandoned and will not be processed.
- B. If an applicant does not act in the time-frame specified in subsection (A), the applicant shall submit a new application with the appropriate fee.

**Historical Note**

New Section R9-7-1309 recodified from R12-1-1309 at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

**Table 1. Small Entity Fees<sup>1</sup>**

Small Businesses Not Engaged in Manufacturing and Small Not-for-profit Organizations (Gross Annual Receipts, three-year average):

>\$6.5 million	Pay the fee listed in R9-7-1306
\$350,000 to \$6.5 million	\$2,200
<\$350,000	\$500

Manufacturing Entities that Have an Annual Average of 500 Employees or Less:

>500 employees	Pay the fee listed in R9-7-1306
35 to 500 employees	\$2,200
<35 employees	\$500

Small Government Jurisdictions (including publicly supported educational institutions) (Population in Jurisdiction):

>50,000	Pay the fee listed in R9-7-1306
20,000 to 50,000	\$2,200
<20,000	\$500

Educational Institutions that Are Not State or Publicly Supported, and Have 500 Employees or Less:

>500 employees	Pay the fee listed in R9-7-1306
35 to 500 employees	\$2,200
<35 employees	\$500

<sup>1</sup>A licensee who seeks to establish status as a small entity for the purpose of paying the annual fees required under R9-7-1304 as shown in R9-7-1306 must file a certification statement with the Department each year. The licensee must file the required certification on Department Form 333 for each license under which it was billed. Department Form 333 can be accessed through the Department website at <http://www.azdhs.gov/licensing/radiation-regulatory/index.php>. For licensees who cannot access the Department website, Department Form 333 may be obtained by writing to the Department or by telephoning the Department at (602) 255-4845.

**Historical Note**

New Article 13, Table 1, recodified from 12 A.A.C. 1, Article 13, Table 1 at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

**ARTICLE 14. REGISTRATION OF NONIONIZING RADIATION SOURCES AND STANDARDS FOR PROTECTION AGAINST NONIONIZING RADIATION**

**R9-7-1401. Registration of Nonionizing Radiation Sources and Service Providers**

- A. A person shall not use a nonexempt nonionizing radiation source, unless the source is registered by the Department.
- B. A person who possesses a nonexempt nonionizing source shall submit to the Department an application for registration within 30 days of its first use.
  1. A person who possesses a nonexempt source listed in R9-7-1302(F) shall register the source with the Department.
  2. A person applying for the registration of a nonexempt source shall use an application form provided by the Department.
  3. An applicant shall provide the information identified in Appendix B of this Article.
- C. A registrant shall notify the Department within 30 days of any change to the information contained in the registration, or sale of a source that results in termination of the activities conducted under the registration.
- D. In addition to the application form, an applicant shall remit the applicable registration fee, specified in R9-7-1306.
- E. A person who is operating more than one facility, where one or more nonexempt nonionizing sources are used, shall apply for a separate registration for each facility.
- F. A person in the business of installing or servicing nonexempt nonionizing sources shall apply to the Department for registration 30 days before furnishing the service. The person shall apply for registration on a form furnished by the Department and shall provide the information required by A.R.S. § 30-672.01.

**Historical Note**

New Section R9-7-1401 recodified from R12-1-1401 at 24 A.A.R. 813, effective March 22, 2018 (Supp. 18-1).

**R9-7-1402. Definitions**

General definitions:

“Controlled area” means any area to which human access is restricted for the purpose of protection from nonionizing radiation.

“Direct supervision” means that a licensed practitioner supervises the use of a source for medical purposes while the practitioner is present inside the facility where the source is being used.

“Indirect supervision” means: for lasers or IPL devices used for hair removal procedures, there is at a minimum, responsible supervision and control by a licensed practitioner who is easily accessible by telecommunication.

“Licensed practitioner” (See R9-7-102)

“Medical director” means a licensed practitioner, as defined in R9-7-102, who delegates a laser, IPL, or other light-emitting medical device procedure to a non-physician and is qualified to perform the procedure within the scope of practice of the license.

“Nonexempt nonionizing source” means any system or device that contains a nonionizing source listed in R9-7-1302(F).

## Statutory Authority for Rules in 9 A.A.C. 7, Article 13

### **30-654. Powers and duties of the department**

A. The department may:

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

B. The department shall:

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

12. Adopt rules that are applicable to the shipment of radioactive materials in conformity with and compatible with those established by the United States nuclear regulatory commission, the department of transportation, the United States treasury department and the United States postal service.

13. In individual cases, impose additional requirements to protect health and safety or grant necessary exemptions that will not jeopardize health or safety, or both.

14. Make recommendations to the governor and furnish such technical advice as required on matters relating to the utilization and regulation of sources of radiation.

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

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

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

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

C. All fees collected under subsection B, paragraph 17 of this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

### **30-656. Authority for governor to enter into agreements with federal government; effect on federal licenses**

A. The governor, on behalf of this state, may enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to sources of radiation and the assumption of the responsibilities by this state.

B. Any person that, on the effective date of an agreement entered into under subsection A of this section, possesses a license issued by the federal government shall be deemed to possess a like license issued under this chapter, which shall expire either ninety days after receipt from the department of a notice of expiration of the license or on the date of expiration specified in the federal license, whichever is earlier.

### **30-671. Radiation protection standards**

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

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

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

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

- B. The department may require registration or licensing of other sources of radiation if deemed necessary to protect public health or safety.
- C. The department may exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements set forth in this section if it finds that exempting such sources of radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.
- D. The director may suspend or revoke, in whole or in part, any license issued under subsection A of this section if the licensee or an officer, agent or employee of the licensee:
1. Violates this chapter or rules of the department adopted pursuant to this chapter.
  2. Has been, is or may continue to be in substantial violation of the requirements for licensure of the radiation source and as a result the health or safety of the general public is in immediate danger.
- E. If the licensee, or an officer, agent or employee of the licensee, refuses to allow the department or its employees or agents to inspect the licensee's premises, such an action shall be deemed reasonable cause to believe that a substantial violation under subsection D, paragraph 2 of this section exists.
- F. A license may not be suspended or revoked under this chapter without affording the licensee notice and an opportunity for a hearing as provided in title 41, chapter 6, article 10.
- G. The department shall not require persons who are licensed in this state to practice as a dentist, physician assistant, chiropractor or veterinarian or licensed in this state to practice medicine, surgery, osteopathic medicine, chiropractic or naturopathic medicine to obtain any other license to use a diagnostic x-ray machine, but these persons are governed by their own licensing acts.
- H. Persons who are licensed by the federal communications commission with respect to the activities for which they are licensed by that commission are exempt from this chapter.
- I. Rules adopted pursuant to this chapter may provide for recognition of other state or federal licenses as the department deems desirable, subject to such registration requirements as the department prescribes.
- J. Any licenses issued by the department shall state the nature, use and extent of use of the source of radiation. If at any time after a license is issued the licensee desires any change in the nature, use or extent, the licensee shall seek an amendment or a new license under this section.
- K. The department shall prescribe by rule requirements for financial security as a condition for licensure under this article. The department shall deposit all amounts posted, paid or forfeited as financial security in the radiation regulatory and perpetual care fund established by section 30-694.
- L. Persons applying for licensure shall provide notice to the city or town where the applicant proposes to operate as part of the application process.
- M. Any facility that provides diagnostic or screening mammography examinations by or under the direction of a person who is exempt from further licensure under subsection G of this section shall obtain certification by the department. The department shall prescribe by rule the requirements of certification in order to ensure the accuracy and safety of diagnostic and screening mammography.

### **30-686. Appeal; hearing**

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

### **30-721. Adoption and text of compact**

The southwestern low-level radioactive waste disposal compact is adopted and enacted into law as follows:

#### **Article 1. Compact Policy and Formation**

The party states hereby find and declare all of the following:

(A) The United States Congress, by enacting the low-level radioactive waste policy act, Public Law 96-573, as amended by the low-level radioactive waste policy amendments act of 1985 (42 U.S.C. sec. 2021b to 2021j, incl.),

has encouraged the use of interstate compacts to provide for the establishment and operation of facilities for regional management of low-level radioactive waste.

(B) It is the purpose of this compact to provide the means for such a cooperative effort between or among party states to protect the citizens of the states and the states' environments.

(C) It is the policy of party states to this compact to encourage the reduction of the volume of low-level radioactive waste requiring disposal within the compact region.

(D) It is the policy of the party states that the protection of the health and safety of their citizens and the most ecological and economical management of low-level radioactive wastes can be accomplished through cooperation of the states by minimizing the amount of handling and transportation required to dispose of these wastes and by providing facilities that serve the compact region.

(E) Each party state, if an agreement state pursuant to section 2021 of title 42 of the United States Code, or the nuclear regulatory commission if not an agreement state, is responsible for the primary regulation of radioactive materials within its jurisdiction.

## **Article 2. Definitions**

As used in this compact, unless the context clearly indicates otherwise, the following definitions apply:

(A) "Commission" means the southwestern low-level radioactive waste commission established in article 3 of this compact.

(B) "Compact region" or "region" means the combined geographical area within the boundaries of the party states.

(C) "Disposal" means the permanent isolation of low-level radioactive waste pursuant to requirements established by the nuclear regulatory commission and the environmental protection agency under applicable laws, or by a party state if that state hosts a disposal facility.

(D) "Generate," when used in relation to low-level radioactive waste, means to produce low-level radioactive waste.

(E) "Generator" means a person whose activity, excluding the management of low-level radioactive waste, results in the production of low-level radioactive waste.

(F) "Host county" means a county, or other similar political subdivision of a party state, in which a regional disposal facility is located or being developed.

(G) "Host state" means a party state in which a regional disposal facility is located or being developed. The state of California is the host state under this compact for the first thirty years from the date the California regional disposal facility commences operations.

(H) "Institutional control period" means that period of time in which the facility license is transferred to the disposal site owner in compliance with the appropriate regulations for long-term observation and maintenance following the postclosure period.

(I) "Low-level radioactive waste" means regulated radioactive material that meets all of the following requirements:

(1) The waste is not high-level radioactive waste, spent nuclear fuel, or by-product material (as defined in section 11e(2) of the atomic energy act of 1954 (42 U.S.C. sec. 2014(e) (2))).

(2) The waste is not uranium mining or mill tailings.

(3) The waste is not any waste for which the federal government is responsible pursuant to subdivision (b) of section 3 of the low-level radioactive waste policy amendments act of 1985 (42 U.S.C. sec. 2021c(b)).

(4) The waste is not an alpha emitting transuranic nuclide with a half-life greater than five years and with a concentration greater than one hundred nanocuries per gram, or plutonium-241 with a concentration greater than three thousand five hundred nanocuries per gram, or curium-242 with a concentration greater than twenty thousand nanocuries per gram.

(J) "Management" means collection, consolidation, storage, packaging, or treatment.

(K) "Major generator state" means a party state which generates ten per cent of the total amount of low-level radioactive waste produced within the compact region and disposed of at the regional disposal facility. If no party

state other than California generates at least ten per cent of the total amount, "major generator state" means the party state which is second to California in the amount of waste produced within the compact region and disposed of at the regional disposal facility.

(L) "Operator" means a person who operates a regional disposal facility.

(M) "Party state" means any state that has become a party in accordance with article 7 of this compact.

(N) "Person" means an individual, corporation, partnership, or other legal entity, whether public or private.

(O) "Postclosure period" means that period of time after completion of closure of a disposal facility during which the licensee shall observe, monitor, and carry out necessary maintenance and repairs at the disposal facility to assure that the disposal facility will remain stable and will not need ongoing active maintenance. This period ends with the beginning of the institutional control period.

(P) "Regional disposal facility" means a nonfederal low-level radioactive waste disposal facility established and operated under this compact.

(Q) "Site closure and stabilization" means the activities of the disposal facility operator taken at the end of the disposal facility's operating life to assure the continued protection of the public from any residual radioactive or other potential hazards present at the disposal facility.

(R) "Transporter" means a person who transports low-level radioactive waste.

(S) "Uranium mine and mill tailings" means waste resulting from mining and processing of ores containing uranium.

### **Article 3. The Commission**

(A) There is hereby established the southwestern low-level radioactive waste commission.

(1) The commission shall consist of one voting member from each party state to be appointed by the governor, confirmed by the senate of that party state, and to serve at the pleasure of the governor of each party state, and one voting member from the host county. The appointing authority of each party state shall notify the commission in writing of the identity of the member and of any alternates. An alternate may act in the member's absence.

(2) The host state shall also appoint that number of additional voting members of the commission which is necessary for the host state's members to compose at least fifty-one per cent of the membership on the commission. The host state's additional members shall be appointed by the host state governor and confirmed by the host state senate. If there is more than one host state, only the state in which is located the regional disposal facility actively accepting low-level radioactive waste pursuant to this compact may appoint these additional members.

(3) If the host county has not been selected at the time the commission is appointed, the governor of the host state shall appoint an interim local government member, who shall be an elected representative of a local government. After a host county is selected, the interim local government member shall resign and the governor shall appoint the host county member pursuant to paragraph (4).

(4) The governor shall appoint the host county member from a list of at least seven candidates compiled by the board of supervisors of the host county.

(5) In recommending and appointing the host county member pursuant to paragraph (4), the board of supervisors and the governor shall give first consideration to recommending and appointing the member of the board of supervisors in whose district the regional disposal facility is located or being developed. If the board of supervisors of the host county does not provide a list to the governor of at least seven candidates from which to choose, the governor shall appoint a resident of the host county as the host county member.

(6) The host county member is subject to confirmation by the senate of that party state and shall serve at the pleasure of the governor of the host state.

(B) The commission is a legal entity separate and distinct from the party states and shall be so liable for its actions. Members of the commission shall not be personally liable for actions taken in their official capacity. The liabilities of the commission shall not be deemed liabilities of the party states.

(C) The commission shall conduct its business affairs pursuant to the laws of the host state and disputes arising out of commission action shall be governed by the laws of the host state. The commission shall be located in the capital city of the host state in which the regional disposal facility is located.

(D) The commission's records shall be subject to the host state's public records law, and the meetings of the commission shall be open and public in accordance with the host state's open meeting law.

(E) The commission members are public officials of the appointing state and shall be subject to the conflict of interest laws, as well as any other law, of the appointing state. The commission members shall be compensated according to the appointing state's law.

(F) Each commission member is entitled to one vote. A majority of the commission constitutes a quorum. Unless otherwise provided in this compact, a majority of the total number of votes on the commission is necessary for the commission to take any action.

(G) The commission has all of the following duties and authority:

(1) The commission shall do, pursuant to the authority granted by this compact, whatever is reasonably necessary to ensure that low-level radioactive wastes are safely disposed of and managed within the region.

(2) The commission shall meet at least once a year and otherwise as business requires.

(3) The commission shall establish a compact surcharge to be imposed upon party state generators. The surcharge shall be based upon the cubic feet of low-level radioactive waste and the radioactivity of the low-level radioactive waste and shall be collected by the operator of the disposal facility. The host state shall set, and the commission shall impose, the surcharge after congressional approval of the compact. The amount of the surcharge shall be sufficient to establish and maintain at a reasonable level funds for all of the following purposes:

(a) The activities of the commission and commission staff.

(b) At the discretion of the host state, a third-party liability fund to provide compensation for injury to persons or property during the operational, closure, stabilization, and postclosure and institutional control periods of the regional disposal facility. This subparagraph does not limit the responsibility or liability of the operator, who shall comply with any federal or host state statutes or regulations regarding third-party liability claims.

(c) A local government reimbursement fund, for the purpose of reimbursing the local government entity or entities hosting the regional disposal facility for any costs or increased burdens on the local governmental entity for services, including, but not limited to, general fund expenses, the improvement and maintenance of roads and bridges, fire protection, law enforcement, monitoring by local health officials, and emergency preparation and response related to the hosting of the regional disposal facility.

(4) The surcharges imposed by the commission for purposes of subparagraphs (b) and (c) of paragraph (3) and surcharges pursuant to paragraph (3) of subdivision (E) of article 4 shall be transmitted on a monthly basis to the host state for distribution to the proper accounts.

(5) The commission shall establish a fiscal year which conforms to the fiscal years of the party states to the extent possible.

(6) The commission shall keep an accurate account of all receipts and disbursements. An annual audit of the books of the commission shall be conducted by an independent certified public accountant, and the audit report shall be made a part of the annual report of the commission.

(7) The commission shall prepare and include in the annual report a budget showing anticipated receipts and disbursements for the subsequent fiscal year.

(8) The commission may accept any grants, equipment, supplies, materials, or services, conditional or otherwise, from the federal or state government. The nature, amount and condition, if any, of any donation, grant, or other resources accepted pursuant to this paragraph and the identity of the donor or grantor shall be detailed in the annual report of the commission. However, the host state shall receive, for the uses specified in subparagraph (E) of paragraph (2) of subsection (d) of section 2021e of title 42 of the United States Code, any payments paid from the special escrow account for which the secretary of energy is trustee pursuant to subparagraph (A) of paragraph (2) of subsection (d) of section 2021e of title 42 of the United States Code.

(9) The commission shall submit communications to the governors and to the presiding officers of the legislatures of the party states regarding the activities of the commission, including an annual report to be submitted on or before January 15 of each year. The commission shall include in the annual report a review of, and recommendations for, low-level radioactive waste disposal methods which are alternative technologies to the shallow land burial of low-level radioactive waste.

- (10) The commission shall assemble and make available to the party states, and to the public, information concerning low-level radioactive waste management needs, technologies, and problems.
- (11) The commission shall keep a current inventory of all generators within the region, based upon information provided by the party states.
- (12) The commission shall keep a current inventory of all regional disposal facilities, including information on the size, capacity, location, specific low-level radioactive wastes capable of being managed, and the projected useful life of each regional disposal facility.
- (13) The commission may establish advisory committees for the purpose of advising the commission on the disposal and management of low-level radioactive waste.
- (14) The commission may enter into contracts to carry out its duties and authority, subject to projected resources. No contract made by the commission shall bind a party state.
- (15) The commission shall prepare contingency plans, with the cooperation and approval of the host state, for the disposal and management of low-level radioactive waste in the event that any regional disposal facility should be closed.
- (16) The commission may sue and be sued and, when authorized by a majority vote of the members, may seek to intervene in an administrative or judicial proceeding related to this compact.
- (17) The commission shall be managed by an appropriate staff, including an executive director. Notwithstanding any other provision of law, the commission may hire or retain, or both, legal counsel.
- (18) The commission may, subject to applicable federal and state laws, recommend to the appropriate host state authority suitable land and rail transportation routes for low-level radioactive waste carriers.
- (19) The commission may enter into an agreement to import low-level radioactive waste into the region only if both of the following requirements are met:
- (a) The commission approves the importation agreement by a two-thirds vote of the commission.
- (b) The commission and the host state assess the affected regional disposal facilities' capability to handle imported low-level radioactive wastes and any relevant environmental or economic factors, as defined by the host state's appropriate regulatory authorities.
- (20) The commission may, upon petition, allow an individual generator, a group of generators, or the host state of the compact, to export low-level radioactive wastes to a low-level radioactive waste disposal facility located outside the region. The commission may approve the petition only by a two-thirds vote of the commission. The permission to export low-level radioactive wastes shall be effective for that period of time and for the amount of low-level radioactive waste, and subject to any other term or condition, which may be determined by the commission.
- (21) The commission may approve, only by a two-thirds vote of the commission, the exportation outside the region of material, which otherwise meets the criteria of low-level radioactive waste, if the sole purpose of the exportation is to process the material for recycling.
- (22) The commission shall, not later than ten years before the closure of the initial or subsequent regional disposal facility, prepare a plan for the establishment of the next regional disposal facility.

#### **Article 4. Rights, Responsibilities, and Obligations of Party States**

- (A) There shall be regional disposal facilities sufficient to dispose of the low-level radioactive waste generated within the region.
- (B) Low-level radioactive waste generated within the region shall be disposed of at regional disposal facilities and each party state shall have access to any regional disposal facility without discrimination.
- (C) (1) Upon the effective date of this compact, the state of California shall serve as the host state and shall comply with the requirements of subdivision (E) for at least thirty years from the date the regional disposal facility begins to accept low-level radioactive waste for disposal. The extension of the obligation and duration shall be at the option of the state of California. If the state of California does not extend this obligation, the party state, other than the state of California, which is the largest major generator state shall then serve as the host state for the second regional disposal facility. The obligation of a host state which hosts the second regional disposal facility shall also run for thirty years from the date the second regional disposal facility begins operations.

- (2) The host state may close its regional disposal facility when necessary for public health or safety.
- (D) The party states of this compact cannot be members of another regional low-level radioactive waste compact entered into pursuant to the low-level radioactive waste policy act, as amended by the low-level radioactive waste policy amendments act of 1985 (42 U.S.C. secs. 2021b to 2021j, incl.).
- (E) A host state shall do all of the following:
- (1) Cause a regional disposal facility to be developed on a timely basis.
  - (2) Ensure by law, consistent with any applicable federal laws, the protection and preservation of public health and safety in the siting, design, development, licensing, regulation, operation, closure, decommissioning, and long-term care of the regional disposal facilities within the state.
  - (3) Ensure that charges for disposal of low-level radioactive waste at the regional disposal facility are reasonably sufficient to do all of the following:
    - (a) Ensure the safe disposal of low-level radioactive waste and long-term care of the regional disposal facility.
    - (b) Pay for the cost of inspection, enforcement, and surveillance activities at the regional disposal facility.
    - (c) Assure that charges are assessed without discrimination as to the party state of origin.
  - (4) Submit an annual report to the commission on the status of the regional disposal facility including projections of the facility's anticipated future capacity.
  - (5) The host state and the operator shall notify the commission immediately upon the occurrence of any event which could cause a possible temporary or permanent closure of a regional disposal facility.
- (F) Each party state is subject to the following duties and authority:
- (1) To the extent authorized by federal law, each party state shall develop and enforce procedures requiring low-level radioactive waste shipments originating within its borders and destined for a regional disposal facility to conform to packaging and transportation requirements and regulations. These procedures shall include, but are not limited to, all of the following requirements:
    - (a) Periodic inspections of packaging and shipping practices.
    - (b) Periodic inspections of low-level radioactive waste containers while in the custody of transporters.
    - (c) Appropriate enforcement actions with respect to violations.
  - (2) A party state may impose a surcharge on the low-level radioactive waste generators within the state to pay for activities required by paragraph (1).
  - (3) To the extent authorized by federal law, each party state shall, after receiving notification from a host state that a person in a party state has violated packaging, shipping, or transportation requirements or regulations, take appropriate actions to ensure that these violations do not continue. Appropriate actions may include, but are not limited to, requiring that a bond be posted by the violator to pay the cost of repackaging at the regional disposal facility and prohibit future shipments to the regional disposal facility.
  - (4) Each party state shall maintain a registry of all generators within the state that may have low-level radioactive waste to be disposed of at a regional disposal facility, including, but not limited to, the amount of low-level radioactive waste and the class of low-level radioactive waste generated by each generator.
  - (5) Each party state shall encourage generators within its borders to minimize the volume of low-level radioactive waste requiring disposal.
  - (6) Each party state may rely on the good faith performance of the other party states to perform those acts which are required by this compact to provide regional disposal facilities, including the use of the regional disposal facilities in a manner consistent with this compact.
  - (7) Each party state shall provide the commission with any data and information necessary for the implementation of the commission's responsibilities, including taking those actions necessary to obtain this data or information.
  - (8) Each party state shall agree that only low-level radioactive waste generated within the jurisdiction of the party states shall be disposed of in the regional disposal facility, except as provided in paragraph (19) of subdivision (G) of article 3.

(9) Each party state shall agree that if there is any injury to persons or property resulting from the operation of a regional disposal facility, the damages resulting from the injury may be paid from the third-party liability fund pursuant to subparagraph (b) of paragraph (3) of subdivision (G) of article 3, only to the extent that the damages exceed the limits of liability insurance carried by the operator. No party state, by joining this compact, assumes any liability resulting from the siting, operation, maintenance, long-term care, or other activity relating to a regional facility, and no party state shall be liable for any harm or damage resulting from a regional facility not located within the state.

#### **Article 5. Approval of Regional Facilities**

A regional disposal facility shall be approved by the host state in accordance with its laws. This compact does not confer any authority on the commission regarding the siting, design, development, licensure, or other regulation, or the operation, closure, decommissioning, or long-term care of, any regional disposal facility within a party state.

#### **Article 6. Prohibited Acts and Penalties**

(A) No person shall dispose of low-level radioactive waste within the region unless the disposal is at a regional disposal facility, except as otherwise provided in paragraphs (20) and (21) of subdivision (G) of article 3.

(B) No person shall dispose of or manage any low-level radioactive waste within the region unless the low-level radioactive waste was generated within the region, except as provided in paragraphs (19), (20), and (21) of subdivision (G) of article 3.

(C) Violations of this section shall be reported to the appropriate law enforcement agency within the party state's jurisdiction.

(D) Violations of this section may result in prohibiting the violator from disposing of low-level radioactive waste in the regional disposal facility, as determined by the commission or the host state.

#### **Article 7. Eligibility, Entry into Effect, Congressional Consent, Withdrawal, Exclusion**

(A) The states of Arizona, North Dakota, South Dakota, and California are eligible to become parties to this compact. Any other state may be made eligible by a majority vote of the commission and ratification by the legislatures of all of the party states by statute, and upon compliance with those terms and conditions for eligibility which the host state may establish. The host state may establish all terms and conditions for the entry of any state, other than the states named in this subparagraph, as a member of this compact.

(B) Upon compliance with the other provisions of this compact, an eligible state may become a party state by legislative enactment of this compact or by executive order of the governor of the state adopting this compact. A state becoming a party state by executive order shall cease to be a party state upon adjournment of the first general session of its legislature convened after the executive order is issued, unless before the adjournment the legislature enacts this compact.

(C) A party state, other than the host state, may withdraw from the compact by repealing the enactment of this compact, but this withdrawal shall not become effective until two years after the effective date of the repealing legislation. If a party state which is a major generator of low-level radioactive waste voluntarily withdraws from the compact pursuant to this subdivision, that state shall make arrangements for the disposal of the other party states' low-level radioactive waste for a time period equal the period of time it was a member of this compact. If the host state withdraws from the compact, the withdrawal shall not become effective until five years after the effective date of the repealing legislation.

(D) A party state may be excluded from this compact by a two-thirds vote of the commission members, acting in a meeting, if the state to be excluded has failed to carry out any obligations required by compact.

(E) This compact shall take effect upon the enactment by statute by the legislatures of the state of California and at least one other eligible state and upon the consent of Congress and shall remain in effect until otherwise provided by federal law. This compact is subject to review by Congress and the withdrawal of the consent of Congress every five years after its effective date, pursuant to federal law.

#### **Article 8. Construction and Severability**

(A) The provisions of this compact shall be broadly construed to carry out the purposes of the compact, but the sovereign powers of a party state shall not be infringed unnecessarily.

(B) This compact does not affect any judicial proceeding pending on the effective date of this compact.

(C) If any provision of this compact or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the compact which can be given effect without the invalid provision or application, and to this end the provisions of this compact are severable.

(D) Nothing in this compact diminishes or otherwise impairs the jurisdiction, authority, or discretion of either of the following:

- (1) The nuclear regulatory commission pursuant to the atomic energy act of 1954, as amended (42 U.S.C. sec. 2011 et seq.).
- (2) An agreement state under section 274 of the atomic energy act of 1954, as amended (42 U.S.C. sec. 2021).

(E) Nothing in this compact confers any new authority on the states or commission to do any of the following:

- (1) Regulate the packaging or transportation of low-level radioactive waste in a manner inconsistent with the regulations of the nuclear regulatory commission or the United States department of transportation.
- (2) Regulate health, safety, or environmental hazards from source, by-product, or special nuclear material.
- (3) Inspect the activities of licensees of the agreement states or of the nuclear regulatory commission.

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

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.

**D-2**

**STATE LAND DEPARTMENT (R20-1101)**

Title 12, Chapter 5, Articles 1 and 2, State Land Department

**Amend:** R12-5-101, R12-5-103, R12-5-104, R12-5-105, R12-5-106, R12-5-107,  
R12-5-201, R12-5-210, R12-5-211, R12-5-212, R12-5-215



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** November 3, 2020

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

**FROM:** Council Staff

**DATE:** October 5, 2020

**SUBJECT: STATE LAND DEPARTMENT (R20-1101)**  
Title 12, Chapter 5, Articles 1 and 2, State Land Department

**Amend:** R12-5-101, R12-5-103, R12-5-104, R12-5-105, R12-5-106, R12-5-107,  
R12-5-201, R12-5-210, R12-5-211, R12-5-212, R12-5-215

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### **Summary:**

This regular rulemaking from the State Land Department (Department) relates to rules in Title 12, Chapter 5, Articles 1 (General Provisions) and 2 (Practice and Procedure in Administrative Hearings for Protesting Auctions Before the Arizona Land Commissioner). As the Department states, this rulemaking proposes to update and clarify language, reduce redundancies, conform the rules to the Department's operations, and reduce burdens on the Department's customers. To reduce the burdens on the Department's customers, the Department proposes to amend the rules to allow for electronic submission of certain applications (R12-5-104) and to allow payment of certain fees by credit card (R12-5-107).

While the Department's cover letter indicates that this rulemaking does not relate to a Five Year Review Report (5YRR), certain rule amendments, including the two cited above, were proposed in the last 5YRR for these rules, which the Council approved in November 2018. The previous 5YRR for these rules is included with these materials for the Council Members' review.

The Department received an exemption from Executive Order 2020-02 to conduct this rulemaking on May 21, 2020.

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

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

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

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

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

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

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

The proposed rulemaking updates and clarifies language, reduces redundancies, conforms the rules to the Department's operations, and reduces the burden on the Department's customers. The proposed changes should make the rules more understandable by the Department's customers and the general public and alleviate regulatory burdens on customers.

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 did not identify any less costly or alternative methods that would still achieve the same purposes.

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

The stakeholders are the Department, the Department's customers, and the general public.

The Department anticipates to receive a minimal benefit from the proposed rule changes, primarily in the form of increased efficiencies due to the electronic processing of applications and the ability to receive credit card payments for certain fees.

The Department's customers will see the following benefits from the proposed rule changes: (1) increased efficiencies in the Department's processing of electronic applications instead of paper applications; (2) the ability to pay certain fees with credit cards; and (3) the reduction in penalty and interest fees charged to businesses by

changing the receipt date for payments to the postmarked date instead of the date of receipt by the Department.

The general public benefits from the rulemaking because it makes the rules easier to understand.

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

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

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

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

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

No. The rules do not require a permit.

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 or regulation to these rules.

11. **Conclusion**

In this rulemaking, the Department seeks to update and modernize its rules, while also reducing the burdens on its customers. Council staff finds that if approved, the amended rules would be more clear, concise, understandable, and effective. Council staff further notes the Department's efforts to reduce a regulatory burden on its customers and to implement a course of action for these rules proposed in their last 5YRR. The Department is requesting the standard 60-day delayed effective date for these rules. Council staff recommends approval of this rulemaking.

Douglas A. Ducey  
Governor



Lisa A. Atkins  
Commissioner

## Arizona State Land Department

1616 West Adams, Phoenix, AZ 85007  
(602) 542-4631

September 24, 2020

Arizona Department of Administration  
Governor's Regulatory Review Council  
100 North 15<sup>th</sup> Avenue, Suite 402  
Phoenix, AZ 85007

Attn: Nicole Sornsin, Chairperson

RE: Arizona State Land Department's Proposed Rulemaking

Dear Chairwoman Sornsin:

The Arizona State Land Department ("Department") submits for Council approval the accompanying package for its proposed rulemaking of rules within Title 12, Chapter 5, Articles 1 and 2 of the Arizona Administrative Code. In accordance with A.A.C. R1-6-201(A)(1), the Department attests to the following:

- a. The close of record was August 18, 2020;
- b. This proposed rulemaking is independent of the Department's Five-Year Rule Review process and has been processed as a regular rulemaking, although aspects of the proposed rules have been analyzed as a part of the Department's Five-Year Rule Review process;
- c. The proposed rules do not establish any new fees;
- d. The proposed rules do not increase any existing fees;
- e. The Department is not requesting an immediate effective date;
- f. The preamble discloses that the Department did not refer to any study to evaluate or justify the proposed rulemaking;
- g. No new full-time employees are required to implement and enforce the proposed rules; and
- h. Enclosed with this letter are the following:
  1. The Office of the Governor's exemption from Executive Order 2020-02,
  2. Memo to Chuck Podolak, Natural Resources Policy Advisor to Governor Ducey, requesting an exemption from Executive Order 2020-02,
  3. Notice of Final Rulemaking,
  4. Economic Impact Statement, and
  5. A copy of A.R.S. 37-132.

Should you have any questions, please do not hesitate to contact Angela Calabresi, Administrative Counsel, at (602) 542-2632 or [acalabresi@azland.gov](mailto:acalabresi@azland.gov).

Sincerely,

Lisa A. Atkins  
State Land Commissioner

Enclosures

**NOTICE OF FINAL RULEMAKING**  
**TITLE 12. NATURAL RESOURCES**  
**CHAPTER 5. STATE LAND DEPARTMENT**

**PREAMBLE**

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

R12-5-101	Amend
R12-5-103	Amend
R12-5-104	Amend
R12-5-105	Amend
R12-5-106	Amend
R12-5-107	Amend
R12-5-201	Amend
R12-5-210	Amend
R12-5-211	Amend
R12-5-212	Amend
R12-5-215	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. § 37-132

Implementing statute: A.R.S. § 37-132

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

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

Not applicable.

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

Not applicable.

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

Notice of Rulemaking Docket Opening: Volume 26 A.A.R. 1323

Notice of Proposed Rulemaking: Volume 26 A.A.R. 1305

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

Name: Angela M. Calabresi  
Address: Arizona State Land Department  
Commissioner's Office  
1616 W. Adams Street  
Phoenix, AZ 85007  
Telephone: (602) 542-2632  
(602) 679-9412  
E-mail: [acalabresi@azland.gov](mailto:acalabresi@azland.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 updates and clarifies language, reduces redundancies, conforms the rules to the Department's operations, and reduces the burden on the Department's customers. The rules conform to the format and style requirements of the Governor's Regulatory Review Council and Secretary of State's Office.

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

The Department did not review or rely on any study in the preparation of this proposed 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:**

This proposed rulemaking does not diminish a statewide grant of authority of a political subdivision of this State.

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

The Department anticipates that these proposed rules will have a minimal impact on the Department and be beneficial to small businesses and consumers. The Department anticipates that the proposed changes in this rulemaking will allow the Department's customers and the general public to more easily understand and to more efficiently engage with the Department. The changes proposed will affect the Department's daily interactions with its customers.

**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:**

The Department did not receive any 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:**

No other matters are 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:**

The rules do not require a permit.

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

There are no federal laws or regulations applicable to the rules.

**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 has not received any such analysis.

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

Not applicable.

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

Not applicable.

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

**TITLE 12. NATURAL RESOURCES**  
**CHAPTER 5. STATE LAND DEPARTMENT**  
**ARTICLE 1. GENERAL PROVISIONS**

Section

- R12-5-101. Definitions
- R12-5-103. Records; Correction of Errors; Public Docket; Removal of Records
- R12-5-104. Application Forms; Legal Status; Submission of Applications; Applications Confer No Rights
- R12-5-105. Manner of Signing Documents before the Department
- R12-5-106. Assignments; Subleases
- R12-5-107. Fees; Remittances

**ARTICLE 2. PRACTICE AND PROCEDURE IN ADMINISTRATIVE HEARINGS FOR PROTESTING AUCTIONS BEFORE THE ARIZONA STATE LAND COMMISSIONER**

Section

- R12-5-201. Applicability
- R12-5-210. Service; Proof of Service
- R12-5-211. Subpoenas
- R12-5-212. Procedure at Hearing
- R12-5-215. Stipulations

**ARTICLE 1. GENERAL PROVISIONS**

**R12-5-101. Definitions**

- ~~A.~~ Unless the context otherwise requires, a word, term, or phrase that is defined in A.R.S. Title 27, Chapter 2 or Title 37 has the same meaning when used in ~~Articles 1 through 9, 11, 17 through 22, 24, and 25~~ of this Chapter.
- B.** Except as otherwise ~~provided in subsection (A), stated,~~ the following definitions of words, terms, and phrases apply to ~~Articles 1 through 9, 11, 17 through 22, 24, and 25~~ of this Chapter.
  1. “Best interest of the state” means best interest of the Trust.
  2. “Common mineral materials and products” means cinders, sand, gravel and associated rock, fill-dirt, common clay, disintegrated granite, boulders and loose float

rock, waste rock, and materials of similar occurrence commonly used as aggregate road material, rip-rap, ballast, borrow, or fill for general construction and similar purposes.

3. “Contiguous” means two parcels of land that have at least part of one side in common or have a corner touching.

4. “Grantee” means the holder of a right-of-way and includes the holder of an approved assignment of a right-of-way other than an assignment for the purpose of granting a security interest.

~~5. “Hearing officer” means the Commissioner or a hearing officer appointed by the Commissioner and includes the Deputy Commissioner or any officer of the Department.~~

~~6.~~ 5. “Lease” means any validly executed document that entitles the lessee to surface or subsurface use or occupancy of State land. ~~“Lease” includes any validly assigned lease other than~~ excluding an assignment for the purposes of granting a security interest.

~~7.~~ 6. “Lessee” means the holder of a lease ~~and includes the holder of an approved assignment of a lease other than~~ excluding an assignment for the purpose of granting a security interest, ~~and a permittee or grantee of a right of way.~~

~~8.~~ 7. “Lessor” means the Department.

~~9.~~ 8. “Natural product” means any material or substance occurring in its native state that when extracted, is subject to depletion and includes water, vegetation, common mineral products and materials that are severable from the land, except geothermal resources and those substances subject to the mineral exploration permit and mineral leasing laws of this State.

~~10.~~ 9. “Non-conflicted application” means an application for the use of State land that is not conflicted by one or more applications for the same use of the land filed within the time-frame for a conflicting application to be filed under A.R.S. § 37-284.

~~11.~~ 10. “Party” means a person or agency named or admitted as a party in a proceeding or someone seeking to intervene and may include the Department.

~~12.~~ 11. “Permit” means any Department-issued document that entitles the permittee to surface or subsurface use or occupancy of State land. ~~“Permit” includes a validly assigned permit other than,~~ excluding an assignment for the purposes of granting a security interest.

~~13.~~ 12. “Permittee” means the holder of a permit ~~and includes the holder of an approved assignment of a permit, where assignments are provided by law, other than~~ excluding an assignment for the purpose of granting a security interest.

~~14.~~ 13. “Person” ~~means a corporation, company, partnership, firm, association or society, as well as a natural person. When the word “person” is used to designate the party whose property may be the subject of a criminal or public offense, the term includes the United States, this state, or any territory, state or country, or any political subdivision of this state that may lawfully own any property, or a public or private corporation, or partnership or association. When the word “person” is used to designate the violator or offender of any law, it includes~~ corporation, partnership or association of persons. has the same meaning as prescribed in A.R.S. § 1-215.

~~15.~~ 14. “Public Records” means the area designated by the Commissioner within the offices of the Department for the submission of all documents to be filed with the Department.

~~16.~~ 15. “Right-of-way” means a right of use and passage over, through, or beneath the surface of State land, for an express purpose ~~and~~ or to travel to a specific location.

~~17.~~ 16. “Special Land Use Permit” means a Department-issued document that entitles a permittee to occupy or use State lands for an express purpose, not otherwise expressly provided for by law, and for a specific duration.

~~18.~~ 17. “Sublease” means an agreement; approved by the Commissioner, except when it is not expressly required in a Lease to be preapproved, between a lessee and a third person to lease the property where the lessee retains an interest in the lease.

**R12-5-103. Records; Correction of Errors; Public Docket; Removal of Records**

- A. Record. The Department shall stamp every document and other object physically filed in the Department to record date and time of receipt. When a document is electronically filed, the electronic record shall serve to record the date and time of receipt. A filed document or other object constitutes a part of the record and is available for public inspection, except as prohibited by statute, at any time during the office hours of the Department.
- B. Correction of errors. On the Commissioner’s own initiative or upon request by a party, the Commissioner may correct a manifest typographical or clerical error in a decision, order, instrument, or other record of the Department resulting from oversight or omission. The

Commissioner shall provide notice of any correction in the form the Commissioner deems appropriate.

- C. Public docket. A person may obtain a copy of a public docket, maintained by the Department pursuant A.R.S. § 37-102(F), listing the matters pending before the Department by requesting a copy in person at the Phoenix Office ~~in person~~ or by mail or e-mail. The Department shall charge to cover the costs of copying a public docket in accordance with A.R.S. § 39-121.01.
- D. Removal of papers. A person shall not remove an instrument, document, or other paper or object on file with the Department from the Department, except as authorized by the Commissioner, the Commissioner's duly appointed deputy or employee or by order of a court of competent jurisdiction.

**R12-5-104. Application Forms; Legal Status; Submission of Applications; Applications Confer No Rights**

- A. Forms ~~supplied~~. A person shall submit an application, report, or other document required by statute or this Chapter to be filed with the Department upon a form prescribed ~~and furnished~~ by the Department. The Department shall accept for filing other instruments, such as corporation papers, liens or mortgages, powers of attorney, affidavits of heirship, death certificates, and other legal documents.
- B. Required information as to legal status. A corporation, limited partnership, ~~or~~ association, or other entity authorized to conduct business in this state that is applying to purchase, lease, or sublease State lands or any interest in State lands shall state in its application that it is authorized to conduct business in this state.
- C. Submission of application, report, document, or other instrument. A person shall submit an application, report, document, or other instrument electronically or otherwise to the Department ~~Department's Phoenix Office to the attention of Public Records~~ along with payment of any ~~the~~ required fee.
- D. Application confers no rights. A pending application to lease, purchase, or use State land confers no rights to the applicant.
  - 1. The Department may allow a lessee who files a conflicted or non-conflicted application for renewal of an existing lease to remain in possession or continue to occupy or use the land in accordance with the provisions of the lease sought to be renewed until

the application to renew is granted or denied. ~~The Department shall grant permission for interim use if:~~

- a. The ~~rental~~ rent is current;
  - b. The lessee is in possession, or otherwise occupies or uses the land; and
  - c. The lessee is in good standing under the lease sought to be renewed.
2. A lessee who remains in possession or continues to occupy or use the land in accordance with the provisions of the lease with the Department's permission under this Section shall pay any ~~rental~~ rent or other monies owed, such as penalty and interest on delinquent rent or irrigation district assessments.

**R12-5-105. Manner of Signing Documents before the Department**

A. A person shall sign a document requiring signature in the same manner as the person's name appears of record with the Department or in the manner in which the person is requesting the Department issue a new document.

B. If a document is executed for the benefit of:

1. One individual, the document shall be signed by that individual or by an authorized representative of the individual;
2. More than one individual, the document shall be signed by each individual or by the individual's authorized representative; or
3. A business entity or an association of any kind, the document shall be signed by an authorized representative of the entity or association.

~~C. The Department shall not accept the signature of an authorized representative unless the individual, business entity, or association files with the Department written authority for the authorized representative to sign.~~

**R12-5-106. Assignments; Subleases**

A. A person shall not assign or sublease any right, entitlement, or interest, in whole or in part, in State land, or possession, occupancy, or right to remove anything, in whole or in part, from State land unless:

1. The person has made application for the assignment or sublease; and
2. The Commissioner has approved the assignment or sublease in writing, unless a lease expressly permits otherwise.

- B. In addition to the conditions and provisions of the lease sought to be subleased, any approved sublease is subject to further conditions and provisions as the Commissioner may determine are necessary to further the best interest of the Trust, including but not limited to provisions relating to ownership of improvements on the lease and disposition of proceeds relating to the improvements.
- C. The Department may cancel a lease if a sublessee violates a provision of a lease.
- D. The Department shall hold the lessee and sublessee jointly and severally liable for damages arising out of a violation of a provision of a lease.
- E. The Department shall not approve a sublease of a sublease for State land.

**R12-5-107. Fees; Remittances**

- A. A person shall pay fees and other remittances, except for filing fees outlined in R12-5-1201, to the Department by cash, money order, bank draft, or check payable to the “Arizona State Land Department.” A person shall pay filing fees pursuant to R12-5-1201 to the Department by cash, credit card, money order, bank draft, or check payable to the “Arizona State Land Department”.
- B. A person shall pay all billing statements issued by the Department, whether relating to rent, royalty, or other monies owed to the Department, within 30 days of the date of issuance, unless otherwise specified on the billing statement. If payment is not postmarked ~~does not arrive in the Department’s Phoenix Office~~ or is not electronically received on or before the close of business on the due date, the Department shall assess penalty and interest as required by law.
- ~~C. The Department is not responsible for any payment not personally hand delivered and receipted for by the Cashier in the Department’s Phoenix Office. The Department shall not credit any payment not received.~~

**ARTICLE 2. PRACTICE AND PROCEDURE IN ADMINISTRATIVE HEARINGS FOR PROTESTING AUCTIONS BEFORE THE ARIZONA STATE LAND COMMISSIONER**

**R12-5-201. Applicability**

This Article applies to ~~an administrative~~ a hearing resulting from a protest of an auction pursuant to A.R.S. § 37-301, hereinafter referred to in this Article as “a hearing.”

**R12-5-210. Service; Proof of Service**

- A. After a notice of hearing is issued, a copy of every paper filed by a party, or person seeking to intervene, shall be served on all parties to the hearing, or the party's counsel if the party is represented, at the same time the paper is filed. Service is complete at the time of personal service or on the date mailed if served by certified or regular mail addressed to the last address of record in the hearing file.
- B. The following is evidence that service is complete:
1. If personally served, an affidavit of personal service, sworn to by the person serving the paper and stating that the server personally served the paper on the person to whom it was directed, where service was made, and the date of service;
  2. If served by certified mail, the return receipt signed by the party served or someone authorized to act on behalf of the party served; or
  3. If served by regular mail, either a statement subscribed on the paper filed with the Department, or an affidavit indicating the date mailed and listing those to whom it was mailed.
- C. The Department shall serve the notice of hearing decision and final order, either by personal service or by certified mail. The Department or a party shall serve all other papers by regular or certified mail or by personal service.
- D. When a party is represented by an attorney, service shall be made on the attorney. If a notice of hearing shows service on the Attorney General, all papers served thereafter shall be served on the Assistant Attorney General named on the notice of hearing or who later appears on behalf of the Department, or, if no Assistant Attorney General is named, on the Attorney General, ~~Civil~~ State Government Division, Chief Counsel, Natural Resources Section.

**R12-5-211. Subpoenas**

- A. The hearing officer may issue subpoenas for witnesses to appear and testify at the hearing or to produce books, records, documents, and other evidence, or both, on the hearing officer's own volition or at the request of a party.
- B. A request for a hearing subpoena shall be in writing, filed with the hearing officer, and served on each party at least seven days before the date set for hearing and state:
1. The caption of the hearing, the case number, and the date, time, and place where the witness is expected to appear and testify;
  2. The name and address of the witness or custodian of records subpoenaed; and

3. The documents, ~~if any~~, subpoenaed, if any.
- C. The hearing officer shall grant the request if the hearing officer determines there is reasonable need, such as relevant facts expected to be established by the person or document subpoenaed, and the production of documents is not unduly repetitious or burdensome.
  - D. A party or person subpoenaed may file an objection to the subpoena with the hearing officer. The party or person shall file the objection within five days after service of the subpoena, or on the first day of the hearing, whichever is earlier.
  - E. The party requesting the subpoena shall prepare the subpoena and cause it to be served upon the person to whom the subpoena is directed. A person who is not a party and is at least 18 years of age may serve a subpoena. The person shall serve the subpoena by delivering a copy to the person to be served. The person serving the subpoena shall provide proof of service by filing with the hearing officer a certified statement of the date and manner of service and the name of the person served.

**R12-5-212. Procedure at Hearing**

- A. The hearing officer shall preside over the hearing, ~~giving~~ and shall give all parties the opportunity to testify, respond, present evidence, argument, and witnesses, conduct examination and cross-examination, and submit rebuttal evidence. The hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. The hearing officer shall make rulings necessary to prevent argumentative, repetitive, or irrelevant questioning and to expedite questioning to the extent consistent with the disclosure of all relevant testimony and information.
- B. If all parties agree, and if each party has an opportunity to participate in the entire proceeding, the hearing officer may conduct all or part of the hearing by telephone or other electronic means, ~~if each party has an opportunity to participate in the entire proceeding~~.
- C. A hearing is open to the public, except if the hearing is required to be closed according to an express provision of law. The Department shall make a hearing conducted by telephone or other electronic means available to the public by the opportunity to view or listen to the tape of the hearing, and to inspect any transcript of the hearing that has been prepared and filed with the Department.
- D. The hearing officer may exclude from participation or observation a person whose conduct at the hearing is disruptive or shows contempt for the proceedings.

**R12-5-215. Stipulations**

Parties to a hearing may agree, in writing, to any issue addressed in the hearing, including matters of procedure, subject to the approval of the hearing officer. If approved by the hearing officer, an agreement on matters of procedure or substance ~~substantive matters~~ is binding upon the parties to the stipulation. The hearing officer may require presentation of evidence for proof of stipulated facts. No agreement by the parties on substantive matters is binding upon the Department unless incorporated into the decision of the Commissioner.

## Economic, Small Business and Consumer Impact Statement

### Title 12. Natural Resources

#### Chapter 5. Arizona State Land Department

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

This proposed rulemaking updates and clarifies language, reduces redundancies, conforms the rules to the Department's operations, and reduces the burden on the Department's customers. The proposed changes should make the rules more easily understandable by the Department's customers and the general public and alleviate regulatory burden on customers.

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

The Department, its customers, and the general public will benefit from the proposed rulemaking.

**3. Cost benefit analysis:**

**a. The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking, including new full-time employees necessary to implement and enforce the proposed rule.**

The Department anticipates a minimal benefit due to the proposed rule changes, primarily in the form of increased efficiencies due to the electronic processing of applications and the ability to receive credit card payments for certain fees. The Department does not anticipate any new full-time employees will be necessary to implement and enforce the proposed rules. The Department does not anticipate any direct costs or benefits to other agencies, except where other agencies are customers of the Department in which case those customers should benefit from increased efficiencies in processing and access to electronic applications and credit card payments.

**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 does not anticipate any direct costs or benefits to any political subdivision of this State, except where those political subdivisions are customers

of the Department in which case those customers should benefit from increased efficiencies in processing and access to electronic applications and credit card payments.

**c. The probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking.**

The Department does not believe these changes will have a direct cost for business. Instead, they should make the rules easier to understand for the general public and provide consistency with the Department's operations for its customers. Also, the changes should provide benefits to its customers, many of whom are businesses, in the form of: increased efficiencies in the Department's processing of electronic applications instead of paper applications; the ability to pay certain fees with credit cards; and the reduction in penalty and interest fees charged to businesses by changing the receipt date for payments to the postmarked date instead of the date of receipt by the Department.

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

The Department does not anticipate any probable impact on private and public employment due to the proposed rule changes.

**5. A statement of the probable impact of the proposed rulemaking on small businesses, including:**

**a. An identification of the small businesses subject to the proposed rulemaking.**

The Department's customers include various types of small businesses, so the benefits identified in paragraph 3(c) above should accrue to those small businesses.

**b. The administrative and other costs required for compliance with the proposed rulemaking.**

The Department does not anticipate any administrative or other costs required for compliance with the proposed rule changes.

- c. **A description of the methods that may be used to reduce the impact on small businesses, with reasons for the agency’s decision to use or not to use each method.**

The Department has not identified any additional methods to reduce the impact of the proposed rule changes on small businesses.

- d. **The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.**

The Department’s customers who are individuals should benefit in the same manner as businesses, which benefits are identified in paragraph 3(c) above.

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

The Department does not believe this rulemaking will have an impact on state 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 non-selected alternatives.**

The Department did not identify any less costly or alternative methods that would still achieve the same needs.

- 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 primary intentions of this rulemaking are to improve clarity, reduce redundancies, conform the rules to Department operations, and reduce regulatory burden. There was no data compiled or analyzed to develop these changes.

## CHAPTER 5. STATE LAND DEPARTMENT

## ARTICLE 1. GENERAL PROVISIONS

**R12-5-101. Definitions**

- A.** Unless the context otherwise requires, a word, term, or phrase that is defined in A.R.S. Title 27 or 37 has the same meaning when used in Articles 1 through 9, 11, 17 through 22, 24, and 25 of this Chapter.
- B.** Except as otherwise provided in subsection (A), the following words, terms, and phrases apply to Articles 1 through 9, 11, 17 through 22, 24, and 25 of this Chapter.
1. "Best interest of the state" means best interest of the Trust.
  2. "Common mineral materials and products" means cinders, sand, gravel and associated rock, fill-dirt, common clay, disintegrated granite, boulders and loose float rock, waste rock, and materials of similar occurrence commonly used as aggregate road material, rip-rap, ballast, borrow, or fill for general construction and similar purposes.
  3. "Contiguous" means two parcels of land that have at least part of one side in common or have a corner touching.
  4. "Grantee" means the holder of a right-of-way and includes the holder of an approved assignment of a right-of-way other than an assignment for the purpose of granting a security interest.
  5. "Hearing officer" means the Commissioner or a hearing officer appointed by the Commissioner and includes the Deputy Commissioner or any officer of the Department.
  6. "Lease" means any validly executed document that entitles the lessee to surface or subsurface use or occupancy of State land. "Lease" includes any validly assigned lease other than an assignment for the purposes of granting a security interest.
  7. "Lessee" means the holder of a lease and includes the holder of an approved assignment of a lease other than an assignment for the purpose of granting a security interest, and a permittee or grantee of a right-of-way.
  8. "Lessor" means the Department.
  9. "Natural product" means any material or substance occurring in its native state that when extracted, is subject to depletion and includes water, vegetation, common mineral products and materials that are severable from the land, except geothermal resources and those substances subject to the mineral exploration permit and mineral leasing laws of this State.
  10. "Non-conflicted application" means an application for the use of State land that is not conflicted by one or more applications for the same use of the land filed within the time-frame for a conflicting application to be filed under A.R.S. § 37-284.
  11. "Party" means a person or agency named or admitted as a party in a proceeding or someone seeking to intervene and may include the Department.
  12. "Permit" means any Department-issued document that entitles the permittee to surface or subsurface use or occupancy of State land. "Permit" includes a validly assigned permit other than an assignment for the purposes of granting a security interest.
  13. "Permittee" means the holder of a permit and includes the holder of an approved assignment of a permit, where assignments are provided by law, other than an assignment for the purpose of granting a security interest.
  14. "Person" means a corporation, company, partnership, firm, association or society, as well as a natural person. When the word "person" is used to designate the party whose property may be the subject of a criminal or public offense, the term includes the United States, this state, or

any territory, state or country, or any political sub-division of this state that may lawfully own any property, or a public or private corporation, or partnership or association. When the word "person" is used to designate the violator or offender of any law, it includes corporation, partnership or association of persons.

15. "Public Records" means the area designated by the Commissioner within the offices of the Department for the submission of all documents to be filed with the Department.
16. "Right-of-way" means a right of use and passage over, through, or beneath the surface of State land, for an express purpose and to travel to a specific location.
17. "Special Land Use Permit" means a Department-issued document that entitles a permittee to occupy or use State lands for an express purpose, not otherwise expressly provided for by law, and for a specific duration.
18. "Sublease" means an agreement, approved by the Commissioner, between a lessee and a third person to lease the property where the lessee retains an interest in the lease.

**Historical Note**

Original rule, Ch. I (Supp. 76-4). Section R12-5-101 renumbered from Section R12-5-01 (Supp. 93-3). Section repealed, new Section adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-102. Computation or Extension of Time**

- A.** Computation of time. In computing any time period prescribed or allowed under this Chapter, except a time period prescribed under Article 2 of this Chapter, the Department shall exclude the day from which the designated time period begins to run. The computation of time includes intermediate Saturdays, Sundays, and legal holidays. The last day of the period is included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or a legal holiday. When the time period is 10 days or less, the Department shall exclude Saturdays, Sundays, and legal holidays.
- B.** Extension of time. At the Commissioner's initiative, or upon request, the Commissioner may extend any time period to perform or complete any ordered or required action. The Commissioner shall extend a time period only if the person making a request shows good cause for the extension.

**Historical Note**

Original rule, Subchapter A, Ch. II (Supp. 76-4). Section R12-5-102 renumbered from Section R12-5-02 (Supp. 93-3). Section repealed effective August 2, 1994 (Supp. 94-3). New Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-103. Records; Correction of Errors; Public Docket; Removal of Records**

- A.** Record. The Department shall stamp every document and other object filed in the Department to record date and time of receipt. A filed document or other object constitutes a part of the record and is available for public inspection, except as prohibited by statute, at any time during the office hours of the Department.
- B.** Correction of errors. On the Commissioner's own initiative or upon request by a party, the Commissioner may correct a manifest typographical or clerical error in a decision, order, instrument, or other record of the Department resulting from oversight or omission. The Commissioner shall provide notice

## CHAPTER 5. STATE LAND DEPARTMENT

of any correction in the form the Commissioner deems appropriate.

- C. Public docket. A person may obtain a copy of a public docket, maintained by the Department pursuant A.R.S. § 37-102(F), listing the matters pending before the Department by requesting a copy at the Phoenix Office in person or by mail or e-mail. The Department shall charge to cover the costs of copying a public docket in accordance with A.R.S. § 39-121.01.
- D. Removal of papers. A person shall not remove an instrument, document, or other paper or object on file with the Department from the Department, except as authorized by the Commissioner, the Commissioner's duly appointed deputy or employee or by order of a court of competent jurisdiction.

**Historical Note**

Adopted effective May 13, 1977 (Supp. 77-3). Correction, omission from subsection (A) in Supp. 77-3 (Supp. 77-6). Section R12-5-103 renumbered from Section R12-5-03 (Supp. 93-3). Section repealed effective August 2, 1994 (Supp. 94-3). New Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-104. Application Forms; Legal Status; Submission of Applications; Applications Confer No Rights**

- A. Forms supplied. A person shall submit an application, report, or other document required by statute or this Chapter to be filed with the Department upon a form prescribed and furnished by the Department. The Department shall accept for filing other instruments, such as corporation papers, liens or mortgages, powers of attorney, affidavits of heirship, death certificates, and other legal documents.
- B. Required information as to legal status. A corporation, limited partnership, or association authorized to conduct business in this state that is applying to purchase, lease, or sublease State lands or any interest in State lands shall state in its application that it is authorized to conduct business in this state.
- C. Submission of application, report, document, or other instrument. A person shall submit an application, report, document, or other instrument to the Department's Phoenix Office to the attention of Public Records along with payment of the required fee.
- D. Application confers no rights. A pending application to lease, purchase, or use State land confers no rights to the applicant.
  1. The Department may allow a lessee who files a conflicted or non-conflicted application for renewal of an existing lease to remain in possession or continue to occupy or use the land in accordance with the provisions of the lease sought to be renewed until the application to renew is granted or denied. The Department shall grant permission for interim use if:
    - a. The rental is current;
    - b. The lessee is in possession, or otherwise occupies or uses the land; and
    - c. The lessee is in good standing under the lease sought to be renewed.
  2. A lessee who remains in possession with the Department's permission under this Section shall pay any rental or other monies owed, such as penalty and interest on delinquent rent or irrigation district assessments.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-105. Manner of Signing Documents before the Department**

- A. A person shall sign a document requiring signature in the same manner as the person's name appears of record with the Department or in the manner in which the person is requesting the Department issue a new document.
- B. If a document is executed for the benefit of:
  1. One individual, the document shall be signed by that individual or by an authorized representative of the individual;
  2. More than one individual, the document shall be signed by each individual or by the individual's authorized representative; or
  3. A business entity or an association of any kind, the document shall be signed by an authorized representative of the entity or association.
- C. The Department shall not accept the signature of an authorized representative unless the individual, business entity, or association files with the Department written authority for the authorized representative to sign.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-106. Assignments; Subleases**

- A. A person shall not assign or sublease any right, entitlement, or interest, in whole or in part, in State land, or possession, occupancy, or right to remove anything, in whole or in part, from State land unless:
  1. The person has made application for the assignment or sublease; and
  2. The Commissioner has approved the assignment or sublease in writing.
- B. In addition to the conditions and provisions of the lease sought to be subleased, any approved sublease is subject to further conditions and provisions as the Commissioner may determine are necessary to further the best interest of the Trust, including but not limited to provisions relating to ownership of improvements on the lease and disposition of proceeds relating to the improvements.
- C. The Department may cancel a lease if a sublessee violates a provision of a lease.
- D. The Department shall hold the lessee and sublessee jointly and severally liable for damages arising out of a violation of a provision of a lease.
- E. The Department shall not approve a sublease of a sublease for State land.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-107. Fees; Remittances**

- A. A person shall pay fees and other remittances to the Department by cash, money order, bank draft, or check payable to the "Arizona State Land Department."
- B. A person shall pay all billing statements issued by the Department, whether relating to rent, royalty, or other monies owed to the Department, within 30 days of the date of issuance, unless otherwise specified on the billing statement. If payment does not arrive in the Department's Phoenix Office on or before the close of business on the due date, the Department shall assess penalty and interest as required by law.
- C. The Department is not responsible for any payment not personally hand delivered and receipted for by the Cashier in the Department's Phoenix Office. The Department shall not credit any payment not received.

## CHAPTER 5. STATE LAND DEPARTMENT

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-108. Predecision Administrative Hearing**

The Commissioner may initiate a predecision administrative hearing to investigate an issue, gather information, or review facts to assist the Commissioner in the decision-making process before issuing a decision on any matter pending before the Department.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-109. Rejection of Hearing Request**

The Commissioner shall reject any request for a hearing under A.R.S. Title 41, Chapter 6 that the Commissioner determines not to be subject to A.R.S. Title 41, Chapter 6.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**ARTICLE 2. PRACTICE AND PROCEDURE IN ADMINISTRATIVE HEARINGS FOR PROTESTING AUCTIONS BEFORE THE ARIZONA STATE LAND COMMISSIONER**

**R12-5-201. Applicability**

This Article applies to an administrative hearing resulting from a protest of an auction pursuant to A.R.S. § 37-301, hereinafter referred to in this Article as “a hearing.”

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-202. Appointment of Hearing Officer**

- A. The Commissioner may serve as the hearing officer or may appoint a hearing officer to conduct a hearing under A.R.S. § 37-301.
- B. If a hearing officer, for any reason, cannot continue to preside at the hearing, the Commissioner shall appoint a new hearing officer.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-203. Ex Parte Communications**

A party shall not communicate on matters substantive to the hearing, either directly or indirectly, with the hearing officer, the Commissioner, the Deputy Commissioner, or any member of the Commissioner’s staff involved in the decision-making process unless:

1. All parties are present; or
2. It is during a scheduled proceeding where an absent party fails to appear after proper notice under R12-5-210.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-204. Failure to Appear**

If a party fails to appear at a hearing, the hearing officer may vacate the hearing or allow the appearing party to present evidence.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-205. Representation**

A party may participate in a hearing in person or through an attorney, except that a corporation shall be represented by an attorney. A partnership may appear through any partner, an association through a key administrator or other executive officer, and an agency or a political subdivision or unit of a political subdivision may appear through an employee.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-206. Notice of Hearing**

- A. Upon determination by the Commissioner that a hearing will be held, the Department shall issue a notice of hearing that contains:
  1. A caption referencing the Department’s case number, a brief description of the matter to be heard, the name or names of the parties and their status, or both;
  2. The date, time, and place of the hearing;
  3. A reference to the particular sections of the statutes and rules under which the hearing is to be held;
  4. A short, plain statement of the matter to be heard;
  5. The name, mailing address, and telephone number of the hearing officer;
  6. The names and mailing addresses of persons to whom notice is being given; and
  7. Any other information required by statute or rule.
- B. An applicant for sale or long-term lease of State Trust land is a party to an administrative hearing conducted under A.R.S. § 37-301.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-207. Hearing Record**

- A. After the notice of hearing is issued, the hearing file shall be available for inspection at the Department’s Public Records Office, Phoenix, during regular business hours.
- B. Hearings shall be electronically recorded or stenographically reported by the Department. The hearing officer shall designate the official record of the proceedings. If a hearing is recorded electronically, the tapes shall be available for review in the Department’s Public Records Office, Phoenix, during regular business hours. The cost for copies of tapes shall be paid by the person requesting them. The Department shall maintain the original transcript of the official record of the proceeding, if available, as part of the hearing file.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-208. Consolidation**

When multiple protests of the same auction are pending before the Department, the Department may consolidate the protests into a single hearing.

## CHAPTER 5. STATE LAND DEPARTMENT

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-209. Filing**

All papers filed with the Department in a hearing shall be typewritten or legibly written on paper no larger than 8 1/2 by 11 inches, include the name and address of the party or individual filing the paper, be properly captioned and designate the title and case number, state the name and address of each party served with a copy, and be signed by the party or, if represented, by the party's attorney. The signature certifies that the signer has read the paper, that to the best of the signer's knowledge, information, and belief there is good ground to support its contents, and that it is not filed for delay.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-210. Service; Proof of Service**

- A. After a notice of hearing is issued, a copy of every paper filed by a party, or person seeking to intervene, shall be served on all parties to the hearing, or the party's counsel if the party is represented, at the same time the paper is filed. Service is complete at the time of personal service or on the date mailed if served by certified or regular mail addressed to the last address of record in the hearing file.
- B. The following is evidence that service is complete:
  1. If personally served, an affidavit of personal service, sworn to by the person serving the paper and stating that the server personally served the paper on the person to whom it was directed, where service was made, and the date of service;
  2. If served by certified mail, the return receipt signed by the party served or someone authorized to act on behalf of the party served; or
  3. If served by regular mail, either a statement subscribed on the paper filed with the Department, or an affidavit indicating the date mailed and listing those to whom it was mailed.
- C. The Department shall serve the notice of hearing decision and final order, either by personal service or by certified mail. The Department or a party shall serve all other papers by regular or certified mail or by personal service.
- D. When a party is represented by an attorney, service shall be made on the attorney. If a notice of hearing shows service on the Attorney General, all papers served thereafter shall be served on the Assistant Attorney General named on the notice of hearing or who later appears on behalf of the Department, or, if no Assistant Attorney General is named, on the Attorney General, Civil Division, Chief Counsel, Natural Resources Section.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-211. Subpoenas**

- A. The hearing officer may issue subpoenas for witnesses to appear and testify at the hearing or to produce books, records, documents, and other evidence, or both, on the hearing officer's own volition or at the request of a party.
- B. A request for a hearing subpoena shall be in writing, filed with the hearing officer, and served on each party at least seven days before the date set for hearing and state:
  1. The caption of the hearing, the case number, and the date, time, and place where the witness is expected to appear and testify;
  2. The name and address of the witness or custodian of records subpoenaed; and
  3. The documents, if any, subpoenaed.

- C. The hearing officer shall grant the request if the hearing officer determines there is reasonable need, such as relevant facts expected to be established by the person or document subpoenaed, and the production of documents is not unduly repetitious or burdensome.
- D. A party or person subpoenaed may file an objection to the subpoena with the hearing officer. The party or person shall file the objection within five days after service of the subpoena, or on the first day of the hearing, whichever is earlier.
- E. The party requesting the subpoena shall prepare the subpoena and cause it to be served upon the person to whom the subpoena is directed. A person who is not a party and is at least 18 years of age may serve a subpoena. The person shall serve the subpoena by delivering a copy to the person to be served. The person serving the subpoena shall provide proof of service by filing with the hearing officer a certified statement of the date and manner of service and the name of the person served.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-212. Procedure at Hearing**

- A. The hearing officer shall preside over the hearing, giving all parties the opportunity to testify, respond, present evidence, argument, witnesses, conduct examination and cross-examination, and submit rebuttal evidence. The hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. The hearing officer shall make rulings necessary to prevent argumentative, repetitive, or irrelevant questioning and to expedite questioning to the extent consistent with the disclosure of all relevant testimony and information.
- B. If all parties agree, the hearing officer may conduct all or part of the hearing by telephone or other electronic means, if each party has an opportunity to participate in the entire proceeding.
- C. A hearing is open to the public, except if the hearing is required to be closed according to an express provision of law. The Department shall make a hearing conducted by telephone or other electronic means available to the public by the opportunity to view or listen to the tape of the hearing, and to inspect any transcript of the hearing that has been prepared and filed with the Department.
- D. The hearing officer may exclude from participation or observation a person whose conduct at the hearing is disruptive or shows contempt for the proceedings.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-213. Evidence**

- A. All witnesses shall testify under oath or affirmation. All parties shall have the right to present oral or documentary evidence and to conduct cross-examination as required for a full and true disclosure of the facts. The hearing officer shall receive evidence, rule upon offers of proof, and exclude evidence the hearing officer determines to be irrelevant, immaterial, or unduly repetitious. The hearing officer shall admit the kind of

## CHAPTER 5. STATE LAND DEPARTMENT

evidence on which reasonably prudent people would rely, even if the evidence would be inadmissible in a civil court trial.

- B.** Unless otherwise ordered by the hearing officer, a party shall not present documentary evidence larger than 8 1/2 by 11 inches. The submitting party shall identify documentary exhibits by number or letter and party and shall furnish a copy of each exhibit to each party present. If evidence offered by a party appears in a larger work that contains other information, the party shall plainly designate the portion offered. If the evidence offered is in a volume of a length that would unnecessarily encumber the record, the hearing officer shall not receive the book, paper, or document in evidence but the evidence may be marked for identification and, if properly authenticated, the designated portion may be read into or photocopied for the record. All documentary evidence offered is subject to appropriate and timely objection.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-214. Judicial Notice; Technical Facts**

When conducting a hearing, the hearing officer may take notice of judicially cognizable facts as permitted under the Arizona Rules of Evidence. The Commissioner or the hearing officer may take judicial notice of generally recognized technical or scientific facts within the Commissioner's, the hearing officer's, or the Department's specialized knowledge. The Commissioner or the hearing officer may use experience, technical competence, and specialized knowledge in the evaluation of any information and evidence submitted in a hearing.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-215. Stipulations**

Parties to a hearing may agree, in writing, to any issue addressed in the hearing, including matters of procedure, subject to the approval of the hearing officer. If approved by the hearing officer, an agreement on matters of procedure or substantive matters is binding upon the parties to the stipulation. The hearing officer may require presentation of evidence for proof of stipulated facts. No agreement by the parties on substantive matters is binding upon the Department unless incorporated into the decision of the Commissioner.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-216. Recommended Decision**

If a hearing officer other than the Commissioner presides at a hearing, the hearing officer shall prepare a recommended decision for the Commissioner within 10 days of the close of the hearing, or no later than eight days before the auction date, whichever is earlier.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-217. Decision**

The Commissioner's decision shall include separate findings of fact and conclusions of law. The Commissioner's decision shall also include policy reasons for the decision if it is an exercise of the Commissioner's discretion, including the reason for the remedy ordered.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-218. Rehearing of Decision**

- A.** As specified A.R.S. § 37-301(C), a request for rehearing shall be filed with the State Land Commissioner, State Land Department, Phoenix, and shall specify the particular grounds for rehearing. A rehearing of the decision may be granted for any of the following reasons materially affecting the requesting party's rights:
1. Irregularity in the proceedings or any order or abuse of discretion that deprived the requesting party of a fair hearing;
  2. Misconduct of the Commissioner, Departmental employees, the hearing officer, or the prevailing party;
  3. Accident or surprise that could not have been prevented by ordinary prudence;
  4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
  5. Excessive or insufficient remedies;
  6. Error in the admission or rejection of evidence or other errors of law; or
  7. The decision is not justified by the evidence or is contrary to law.

- B.** On review of the request for rehearing, the Commissioner may affirm the decision or grant a rehearing. An order granting a rehearing shall specify with particularity the grounds on which the rehearing is granted, and the rehearing shall cover only those matters specified. All parties to the hearing may participate as parties at any rehearing.

**Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-219. Repealed****Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-220. Repealed****Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-221. Repealed****Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**R12-5-222. Repealed****Historical Note**

Adopted effective August 2, 1994 (Supp. 94-3). Section repealed by final rulemaking at 11 A.A.R. 92, effective February 5, 2005 (Supp. 04-4).

**ARTICLE 3. SELECTIONS, INVESTIGATIONS, CLASSIFICATIONS AND APPRAISALS****R12-5-301. Expired**

[Arizona Revised Statutes Annotated](#)  
[Title 37. Public Lands \(Refs & Annos\)](#)  
[Chapter 1. State Agencies and Officers \(Refs & Annos\)](#)  
[Article 2. State Land Commissioner](#)

A.R.S. § 37-132

## § 37-132. Powers and duties

Effective: September 29, 2012

[Currentness](#)

A. The commissioner shall:

1. Exercise and perform all powers and duties vested in or imposed upon the department, and prescribe such rules as are necessary to discharge those duties.
2. Exercise the powers of surveyor-general except for the powers of the surveyor-general exercised by the treasurer as a member of the selection board pursuant to [§ 37-202](#).
3. Make long-range plans for the future use of state lands in cooperation with other state agencies, local planning authorities and political subdivisions.
4. Promote the infill and orderly development of state lands in areas beneficial to the trust and prevent urban sprawl or leapfrog development on state lands.
5. Classify and appraise all state lands, together with the improvements on state lands, for the purpose of sale, lease or grant of rights-of-way. The commissioner may impose such conditions and covenants and make such reservations in the sale of state lands as the commissioner deems to be in the best interest of the state trust. The provisions of this paragraph are subject to hearing procedures pursuant to title 41, chapter 6, article 10<sup>1</sup> and, except as provided in [§ 41-1092.08, subsection H](#), are subject to judicial review pursuant to title 12, chapter 7, article 6.<sup>2</sup>
6. Have authority to lease for grazing, agricultural, homesite or other purposes, except commercial, all land owned or held in trust by the state.
7. Have authority to lease for commercial purposes and sell all land owned or held in trust by the state, but any such lease for commercial purposes or any such sale shall first be approved by the board of appeals.
8. Except as otherwise provided, determine all disputes, grievances or other questions pertaining to the administration of state lands.

9. Appoint deputies and other assistants and employees necessary to perform the duties of the department and assign their duties subject to title 41, chapter 4, article 4<sup>3</sup> and require of them such surety bonds as the commissioner deems proper. The compensation of the deputy, assistants or employees shall be as determined pursuant to [§ 38-611](#).

10. Make a written report to the governor annually, not later than September 1, disclosing in detail the activities of the department for the preceding fiscal year, and publish it for distribution. The report shall include an evaluation of auctions of state land leases held during the preceding fiscal year considering the advantages and disadvantages to the state trust of the existence and exercise of preferred rights to lease reclassified state land.

11. Withdraw state land from surface or subsurface sales or lease applications if the commissioner deems it to be in the best interest of the trust. This closure of state lands to new applications for sale or lease does not affect the rights that existing lessees have under law for renewal of their leases and reimbursement for improvements.

**B. The commissioner may:**

1. Take evidence relating to, and may require of the various county officers information on, any matter that the commissioner has the power to investigate or determine.

2. Under such rules as the commissioner adopts, use private real estate brokers to assist in any sale or long-term lease of state land and pay, from fees collected under [§ 37-107, subsection B](#), paragraph 1, a commission to a broker that is licensed pursuant to title 32, chapter 20<sup>4</sup> and that provides the purchaser or lessee at auction. The purchaser or lessee at auction is not eligible to receive a commission pursuant to this subsection. A commission shall not be paid on a sale or a long-term lease if the purchaser or lessee is a political subdivision of this state.

3. Require a permittee, lessee or grantee to post a surety bond or any form of collateral deemed sufficient by the commissioner for performance or restoration purposes. The commissioner shall use the proceeds of a bond or collateral only for the purposes determined at the time the bond or collateral is posted. For agricultural lessees, the commissioner may require collateral as follows:

(a) As security for payment of the annual assessments levied by the irrigation district in which the state land is located if the lessee has a history of late payments or defaults. The amount of the collateral required shall not exceed the annual assessment levied by the irrigation district.

(b) As security for payment of rent, if an extension of time for payment is requested or if the lessee has a history of late payments of rent. The collateral shall be submitted at the time any extension of time for payment is requested. The amount of the collateral required shall not exceed the annual amount of rent for the land.

(c) A surety bond shall be required only if the commissioner determines that other forms of collateral are insufficient.

4. Withhold market and economic analyses, preliminary engineering, site and area studies and appraisals that are collected during the urban planning process from public viewing before they are submitted to local planning and zoning authorities.

5. Withhold from public inspection proprietary information received during lease negotiations. The proprietary information shall be released to public inspection unless the release may harm the competitive position of the applicant and the information could not have been obtained by other legitimate means.

6. Issue permits for short-term use of state land for specific purposes as prescribed by rule.

7. Contract with a third party to sell recreational permits. A third party under contract pursuant to this paragraph may assess a surcharge for its services as provided in the contract, in addition to the fees prescribed pursuant to [§ 37-107](#).

8. Close urban lands to specific uses as prescribed by rule if necessary for dust abatement, to reduce a risk from hazardous environmental conditions that pose a risk to human health or safety or for remediation purposes.

9. Notwithstanding subsection A, paragraph 4 of this section, authorize, in the best interest of the trust, the extension of public services and facilities either:

(a) That are necessary to implement plans of the local governing body, including plans adopted or amended pursuant to [§ 9-461.06](#) or [11-805](#).

(b) Across state lands that are either:

(i) Classified as suitable for conservation pursuant to [§ 37-312](#).

(ii) Sold or leased at auction for conservation purposes.

C. The commissioner or any deputy or employee of the department shall not have, own or acquire, directly or indirectly, any state lands or the products on any state lands, any interest in or to such lands or products, or improvements on leased state lands, or be interested in any state irrigation project affecting state lands.

#### **Credits**

Amended by Laws 1970, Ch. 204, § 142; Laws 1971, Ch. 166, § 1; Laws 1972, Ch. 156, § 2; Laws 1981, 1st S.S., Ch. 1, § 5; Laws 1982, Ch. 121, § 1; Laws 1983, Ch. 288, § 1; [Laws 1989, Ch. 171, § 1](#); [Laws 1992, Ch. 190, § 1](#); [Laws 1992, Ch. 357, § 1](#); [Laws 1993, Ch. 169, § 3, eff. April 20, 1993](#); [Laws 1994, Ch. 177, § 3](#); [Laws 1997, Ch. 221, § 167](#); [Laws 1997, Ch. 249, § 1](#); [Laws 1999, Ch. 209, § 1](#); [Laws 2000, Ch. 10, § 1](#); [Laws 2000, Ch. 113, § 158](#); [Laws 2002, Ch. 336, § 2](#); [Laws 2003, Ch. 69, § 2](#); [Laws 2010, Ch. 243, § 6](#); [Laws 2010, Ch. 244, § 27, eff. Oct. 1, 2011](#); [Laws 2011, Ch. 238, § 34, eff. Oct. 1, 2011](#); [Laws 2012, Ch. 321, § 86, eff. Sept. 29, 2012](#).

[Notes of Decisions \(40\)](#)

Footnotes

[1](#) Section 41-1092 et seq.

[2](#) Section 12-901 et seq.

[3](#) Section 41-741 et seq.

[4](#) Section 32-2101 et seq.

A. R. S. § 37-132, AZ ST § 37-132

Current through the Second Regular Session of the Fifty-Fourth Legislature (2020)

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End of Document

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**ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**

Title 9, Chapter 22, Article 7, Standards for Payments

**Amend:** R9-22-712.35, R9-22-712.61, R9-22-712.71



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** November 3, 2020

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

**FROM:** Council Staff

**DATE:** October 9, 2020

**SUBJECT:** **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**  
Title 9, Chapter 22, Article 7, Standards for Payments

**Amend:** R9-22-712.35, R9-22-712.61, R9-22-712.71

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### **Summary:**

This regular rulemaking from the Arizona Health Care Cost Containment System (AHCCCS) seeks to amend three rules in Title 9, Chapter 22, Article 7, Standards for Payments. Specifically, AHCCCS seeks to amend AHCCCS payment rules R9-22-712.35, R9-22-712.61, and R9-22-712.71 to reflect the AHCCCS's upcoming Differential Adjusted Payments (DAP) initiatives, previously known as Value Based Purchasing (VBP), which reward quality outcomes and reduce growth in the cost of health care. AHCCCS indicates that because the DAP initiatives delineated in existing AHCCCS rules will expire on September 30, 2020, the rules that are the subject of this rulemaking will take effect during the contract year of October 1, 2020 through September 30, 2021. The objective of DAP delineated in this rulemaking is to reward hospital providers that have taken designated actions to improve patients' care experience, improve members' health, and reduce the growth of the cost of care. Hospitals which satisfy the requirements delineated in rule will receive increased payments from the AHCCCS Administration and Contractors for inpatient and outpatient services.

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

AHCCCS cites both general and specific statutory authority for these rules.

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

AHCCCS indicates this rulemaking does not establish a new fee or contain a fee increase.

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

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

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

The proposed rulemaking will amend and clarify rules specifying requirements for receipt of DAP for qualifying hospitals for both inpatient and outpatient services for the time period of October 1, 2020 through September 30, 2021. This rulemaking expands qualification for DAP payments to additional categories of hospitals if they meet certain reporting requirements. The proposed rulemaking will authorize AHCCCS to continue rewarding innovative activities and broaden the reach of the present model, emphasizing improved patient care and reduced growth in the cost of care. AHCCCS anticipates that the DAP rulemaking will result in approximately \$84 million of additional payments for the contract year October 1, 2020 through September 30, 2021 to 135 providers.

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

AHCCCS did not consider other alternatives because the revisions to the rule are the most cost effective and efficient method of complying with federal law and state law as well as the State's fiduciary responsibility to Arizona taxpayers.

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

AHCCCS, taxpayers, and hospital providers are identified as stakeholders of this rulemaking. AHCCCS, taxpayers, and hospital providers will directly benefit from this rulemaking as the payment model will reward efficient utilization of services. Hospital providers which participate in the health information exchange will benefit by receiving a higher rate of reimbursement for medical services. From October 1, 2020 through September 30, 2021, AHCCCS anticipates \$84 million to be distributed to hospital providers. In addition, patients are expected to experience improved care while the State and taxpayers will be positively affected by the more efficient delivery of health care services and the reduced growth in the cost of care.

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

AHCCCS indicates there were no changes between the Notice of Proposed Rulemaking and Notice of Final Rulemaking.

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

AHCCCS indicates it did not receive any public comments related to this rulemaking.

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

The rules do not require a permit, license, or agency authorization.

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

AHCCCS indicates the rules comply with 42 CFR 438.6 and are not more stringent than federal law.

11. **Conclusion**

AHCCCS states the proposed DAP rules represent AHCCCS's expanding efforts to enhance accountability of the health care delivery system. AHCCCS states the proposed rulemaking will amend and clarify rules specifying requirements for receipt of DAP for qualifying hospitals for both inpatient and outpatient services for the time period of October 1, 2020 through September 30, 2021. AHCCCS states this rulemaking expands qualification for DAP payments to additional categories of hospitals if they meet certain reporting requirements. AHCCCS states the proposed rulemaking will authorize AHCCCS to continue rewarding innovative activities and broaden the reach of the present model, emphasizing improved patient care and reduced growth in the cost of care.

AHCCCS is requesting an immediate effective date pursuant to A.R.S. § 41-1032(A)(4) in that the rule provides a benefit to the public and a penalty is not associated with a violation of the rule. Council staff believes AHCCCS has provided sufficient justification for an immediate effective date.

Council staff recommends approval of this rulemaking.

September 15, 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: R9-22-712.35, R9-22-712.61 and R9-22-712.75 Rulemaking

Dear Ms. Sorenson:

- |    |  |           |
|----|--|-----------|
| 1. | The close of record date:  | 9/14/2020 |
| 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 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. General and specific statutes authorizing the rules, including relevant statutory definitions; and

Sincerely,



Matthew Devlin

Assistant Director

**NOTICE OF FINAL RULEMAKING**  
**TITLE 9. HEALTH SERVICES**  
**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION**

**PREAMBLE**

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

R9-22-712.35

R9-22-712.61

R9-22-712.71

**Rulemaking Action:**

Amend

Amend

Amend

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

Authorizing statute: A.R.S. § 36-2903.01(A)

Implementing statute: A.R.S. § 36-2903.01(G)(12)

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

As specified in A.R.S. § 41-1032(A)(4), the agency requests an immediate effective date to provide a benefit to the public and a penalty is not associated with a violation of the rule.

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

Notice of Rulemaking Docket Opening: 26 A.A.R. 1633, Friday, August 14, 2020.

Notice of Proposed Rulemaking: 26 A.A.R. 1617, Friday, August 14, 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

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

AHCCCS Differential Adjusted Payment (DAP) initiatives are strategically designed to reward quality outcomes and reduce growth in the cost of health care. The objective of DAP delineated in this proposed rulemaking is to reward hospital providers that have taken designated actions to improve patients' care experience, improve members' health, and reduce the growth of the cost of care. Hospitals which satisfy the requirements delineated in rule will receive increased payments from the AHCCCS Administration and Contractors for inpatient and outpatient services. The proposed DAP rules represent the AHCCCS Administration's expanding efforts to enhance accountability of the health care delivery system. The proposed rulemaking will amend and clarify rules specifying requirements for receipt of DAP for qualifying hospitals for both inpatient and outpatient services for the time period of October 1, 2020 through September 30, 2021. This rulemaking expands qualification for DAP payments to additional categories of hospitals if they meet certain reporting requirements. The proposed rulemaking will authorize AHCCCS to continue rewarding innovative activities and broaden the reach of the present model, emphasizing improved patient care and reduced growth in the cost of care.

**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:**

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:**

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 Administration anticipates that the DAP rulemaking will result in approximately \$84 million of additional payments for the contract year October 1, 2020 through September 30, 2021 to 135 providers.

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

There were no changes between the proposed and final rulemaking.

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

No comments were made by the public.

**12. Other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules.**

There are no other matters prescribed by statute applicable to rulemaking specific to this agency, to this specific

rule, or to this class of rules.

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

The rule does not require the provider to obtain a permit or a general permit.

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

The rule must comply with 42 CFR 438.6 and is not more stringent than federal law.

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

No such analysis was submitted.

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

The rule does not include any incorporation by reference of materials as specified in statute.

**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:**

## ARTICLE 7. STANDARDS FOR PAYMENTS

### Sections

R9-22-712.35.	Outpatient Hospital Reimbursement: Adjustments to Fees
R9-22-712.61.	DRG Payments: Exceptions
R9-22-712.71.	Final DRG Payment

## ARTICLE 7. STANDARDS FOR PAYMENTS

### **R9-22-712.35. Outpatient Hospital Reimbursement: Adjustments to Fees**

- A.** For all claims with a begin date of service on or before September 30, 2011, AHCCCS shall increase the Outpatient Capped Fee-for-service Schedule established under R9-22-712.20 (except for laboratory services and out-of-state hospital services) for the following hospitals submitting any claims:
1. By 48 percent for public hospitals on July 1, 2005, and hospitals that were public anytime during the calendar year 2004;
  2. By 45 percent for hospitals in counties other than Maricopa and Pima with more than 100 Medicare PPS beds during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective;
  3. By 50 percent for hospitals in counties other than Maricopa and Pima with 100 or less Medicare PPS beds during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective;
  4. By 115 percent for hospitals designated as Critical Access Hospitals or hospitals that have not been designated as Critical Access Hospitals but meet the criteria during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective;
  5. By 113 percent for a Freestanding Children's Hospital with at least 110 pediatric beds during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective; or
  6. By 14 percent for a University Affiliated Hospital which is a hospital that has a majority of the members of its board of directors appointed by the Board of Regents during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective.
- B.** For all claims with a begin date of service on or after October 1, 2011, AHCCCS shall increase the Outpatient Capped Fee-for-service Schedule (except for laboratory services, and out-of-state hospital services) for the following hospitals. A hospital shall receive an increase from only one of the following categories:
1. By 73 percent for public hospitals;
  2. By 31 percent for hospitals in counties other than Maricopa and Pima with more than 100 licensed beds as of October 1 of that contract year;
  3. By 37 percent for hospitals in counties other than Maricopa and Pima with 100 or fewer licensed beds as of October 1 of that contract year;
  4. By 100 percent for hospitals designated as Critical Access Hospitals or hospitals that have not been designated as Critical Access Hospitals but meet the critical access criteria;
  5. By 78 percent for a Freestanding Children's Hospital with at least 110 pediatric beds as of October 1 of that contract year; or
  6. By 41 percent for a University Affiliated Hospital, this is a hospital that has a majority of the members of its board of directors appointed by the Arizona Board of Regents.
- C.** In addition to subsections (A) and (B), an Arizona Level 1 trauma center as defined by R9-22-2101 shall receive a 50 percent increase to the Outpatient Capped Fee-for-service Schedule (except for laboratory services and out-of-state hospital services) for Level 2 and 3 emergency department procedures.
- D.** Hospitals with greater than 100 pediatric beds not receiving an increase under subsection (B) shall receive an 18 percent increase to the Outpatient Capped Fee-for-service Schedule (except for laboratory services, and out-of-state hospital services).
- E.** For outpatient services with dates of service from October 1, ~~2019-2020~~ through September 30, ~~2020-2021~~, the payment otherwise required for outpatient hospital services provided by qualifying hospitals shall be increased by a percentage established by the administration. The percentage is published on the Administration's public website as part of its fee schedule subsequent to the public notice published no

later than September 1, ~~2019-2020~~. A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype.

1. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria in a, b, c, d, or e:
  - a. By May ~~27-45, 2019~~ 2020, a hospital which did not receive Differential Adjusted Payments from October 1, ~~2018~~ 2019 through September 30, ~~2019~~ 2020, submits a Letter of Intent to AHCCCS and a qualifying Health Information Exchange (HIE) organization in which the hospital agrees to achieve all of the following:
    - i. ~~By July 31, 2019~~ May 27, 2020, ~~execute an agreement with a qualifying HIE organization~~ the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
    - ii. ~~By October 31, 2019~~ June 1, 2020, ~~approve and authorize a formal scope of work with a qualifying HIE to develop and implement the data exchange necessary to meet the requirements in subsections (E)(1)(c) and (E)(1)(d)~~ the hospital must electronically submit the following actual patient identifiable information to the production environment of qualifying HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department;
    - iii. ~~By March 31, 2020~~ August 1, 2020, ~~electronically submit admission, discharge, and transfer information (including data from the hospital emergency department) to a qualifying HIE~~ the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
    - iv. ~~By June 30, 2020~~ September 1, 2020, ~~electronically submit laboratory, radiology, transcription, and medication information, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination to a qualifying HIE~~ or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
    - v. ~~By September 1, 2020~~, or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
    - vi. Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;

- vii. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;
  - viii. By November 1, 2020, the hospital must approve and authorize a formal scope of work (SOW) with a qualifying HIE organization to initiate and complete a Phase 1 data quality improvement effort, as defined by the qualifying HIE organization in collaboration with the qualifying HIE organization;
  - ix. By January 1, 2021, the hospital must complete the Phase 1 initial data quality profile with a qualifying HIE organization;
  - x. By May 1, 2021, the hospital must complete the Phase 1 final data quality profile with a qualifying HIE organization;
- b. By May 15, 2020, a hospital which received Differential Adjusted Payments October 1, 2018 through September 30, 2019, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:
- i. By July 1, 2020, submit actual patient identifiable immunization data to the production environment of a qualifying HIE organization; the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
  - ii. By October 1, 2020, approve and authorize a formal scope of work with a qualifying HIE organization to initiate and complete a data quality profile to be produced by a qualifying HIE organization; the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department, laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instruction, active medication, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
  - iii. By December 31, 2020, complete the initial data quality profile with a qualifying HIE organization or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
  - iv. By March 31, 2020, complete the data quality scope of work by producing the final data quality profile with a qualifying HIE organization or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
  - v. Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;

- vi. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;
- vii. By November 1, 2020, the hospital must approve and authorize a formal SOW to initiate and complete a Phase 2 data quality improvement effort, as defined by the qualifying HIE organization and in collaboration with the qualifying HIE organization;
- viii. By January 1, 2021, the hospital must complete the Phase 2 initial data quality profile with a qualifying HIE organization;
- ix. By May 1, 2021, the hospital must complete the Phase 2 final data quality profile with a qualifying HIE organization;
- x. Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases;
  - (1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on July 2019 data, to the final data quality profile, based on March 2020 data.
  - (2) Meet a minimum performance standard of at least 60% based on March 2020 data.
  - (3) If performance meets or exceeds an upper threshold of 90% based on March 2020 data the hospital meets the criteria. Regardless of the percentage improvement from the baseline measurements;
- c. Meet or exceed the statewide average on ~~April 30, 2019~~ May 12, 2019 for the Severe Sepsis/Septic Shock (SEP-1) performance measure from the Medicare Hospital Compare website;
- d. ~~By April 30, 2019, be~~ Be a participant in the Improving Pediatric Sepsis Outcomes collaborative in 2020;
- e. ~~By May 1, 2019 hold a Pediatric Prepared Emergency Care certification from the Arizona Chapter of the American Academy of Pediatrics;~~ For dates of services from October 1, 2020 through September 30, 2021, hospitals subject to APR-DRG reimbursement (Provider Type 02) may qualify for a DAP on codes J7296-J7298, J7300-J7301, and J7307 billed on the 1500 or UB-04 forms for long-acting reversible contraception devices.

2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets ~~the~~ this criteria, ~~specified in a, b, or c:~~

- a. By May 1 ~~5~~ 27, ~~2019~~ 2020, a hospital which received Differential Adjusted Payments October 1, ~~2018~~ 2019 through September 30, ~~2019~~ 2020, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:
  - i.a. By July 1 ~~May 27~~, ~~2019~~ 2020, ~~submit actual patient identifiable immunization data to the production environment of a qualifying HIE organization~~ the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
  - ii.b. By ~~October 1~~ June 1, ~~2019~~ 2020, ~~approve and authorize a formal scope of work with a qualifying HIE organization to initiate and complete a data quality profile to be produced by a qualifying HIE organization~~ the hospital must electronically

submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department, laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;

- iii-c. By ~~December 31~~September 1, 2019~~2020~~, complete the initial data quality profile with a qualifying HIE organization or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
- iv-d. By ~~March 31~~September 1, 2020 complete the data quality scope of work by producing the final data quality profile with a qualifying HIE organization or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
- b. ~~Have a Level I-IV trauma center and be located less than five miles from Interstate 10;~~
- e. ~~By May 1, 2019 hold a Pediatric Prepared Emergency Care certification from the Arizona Chapter of the American Academy of Pediatrics.~~
- e. Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;
- f. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;
- g. By November 1, 2020, the hospital must approve and authorize a formal SOW to initiate and complete a Phase 2 data quality improvement effort, as defined by the qualifying HIE organization and in collaboration with the qualifying HIE organization;
- h. By January 1, 2021, the hospital must complete the Phase 2 initial data quality profile with a qualifying HIE organization;
- i. By May 1, 2021, the hospital must complete the Phase 2 final data quality profile with a qualifying HIE organization;
- j. Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases:
  - i. Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on July 2019 data, to the final data quality profile, based on March 2020 data;
  - ii. Meet a minimum performance standard of at least 60% based on March 2020 data;
  - iii. If performance meets or exceeds an upper threshold of 90% based on March 2020 data the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements;

3. A hospital designated as type: hospital, subtype: long term, psychiatric, or rehabilitation by the Arizona Department of Health Services Division of Licensing Services will qualify for an increase if it meets the criteria specified in a, b, c, d, or e:
- a. By ~~May 15~~May 27, 2019~~2020~~, a hospital which did receive Differential Adjusted Payments from October 1, ~~2018~~2019 through September 30, ~~2019~~2020, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:
    - i. ~~By July 31~~May 27, 2019~~2020~~, ~~execute an agreement with a qualifying HIE organization~~the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
    - ii. ~~By October 31~~June 1, 2019~~2020~~, ~~approve and authorize a formal scope of work with a qualifying HIE to develop and implement the data exchange necessary to meet the requirements in subsections (E)(1)(c) and (E)(1)(d)~~ the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department;
    - iii. ~~By March 31~~August 1, 2020, ~~electronically submit admission, discharge, and transfer information (including data from the hospital emergency department) to a qualifying HIE~~the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
    - iv. ~~By June 30~~September 1, 2020, ~~electronically submit laboratory, radiology, transcription, and medication information, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination to a qualifying HIE~~or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
    - v. ~~By September 1, 2020 or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;~~
    - vi. ~~Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;~~
    - vii. ~~By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the~~

- qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;
- viii. By November 1, 2020, the hospital must approve and authorize a formal SOW with a qualifying HIE organization to initiate and complete a Phase 1 data quality improvement effort, as defined by the qualifying HIE organization and in collaboration with the qualifying HIE organization;
  - ix. By January 1, 2021, the hospital must complete the Phase 1 initial data quality profile with a qualifying HIE organization;
  - x. By May 1, 2021, the hospital must complete the Phase 1 final data quality profile with a qualifying HIE organization;
- b. ~~By May 15, 2019~~ By May 27, 2020, a hospital which received Differential Adjusted Payments October 1, ~~2018~~ 2019 through September 30, ~~2019~~ 2020, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:
- ~~i. By July 1, 2019, submit actual patient identifiable immunization data to the production environment of a qualifying HIE organization;~~
  - ~~ii. By October 1, 2019, approve and authorize a formal scope of work with a qualifying HIE organization to initiate and complete a data quality profile to be produced by a qualifying HIE organization;~~
  - ~~iii. By December 31, 2019, complete the initial data quality profile with a qualifying HIE organization;~~
  - ~~iv. By March 31, 2020 complete the data quality scope of work by producing the final data quality profile with a qualifying HIE organization;~~
  - i. By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
  - ii. By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department, laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
  - iii. By September 1, 2020 or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
  - iv. By September 1, 2020 or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
  - v. Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;

- vi. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;
- vii. By November 1, 2020, the hospital must approve and authorize a formal SOW to initiate and complete a Phase 2 data quality improvement effort, as defined by the qualifying HIE organization and in collaboration with a qualifying HIE organization
- viii. By January 1, 2021, the hospital must complete the Phase 2 initial data quality profile with a qualifying HIE organization;
- ix. By May 1, 2021, the hospital must complete the Phase 2 final data quality profile with a qualifying HIE organization;
- x. Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to DAP increases;
  - (1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on July 2019 data, to the final data quality profile, based on March 2020 data.
  - (2) Meet a minimum performance standard of at least 60% based on March 2020 data.
  - (3) If performance meets or exceeds an upper threshold of 90% based on March 2020 data the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.
- c. On ~~April 30, 2019~~ May 12, 2020 is identified as a Medicare Annual Payment Update recipients on the QualityNet.org website;
- d. On ~~April 30, 2019~~ May 12, 2020 meets or falls below the national average for the rate of pressure ulcers that are new or worsened from the Medicare Long Term Hospital Compare website;
- e. On ~~April 30, 2019~~ May 12, 2020 meets or falls below the national average for the rate of pressure ulcers that are new or worsened from the Medicare Inpatient Rehabilitation Facility Compare website.

4. A hospital designated as type: hospital by the Arizona Department of Health Services Division of Licensing Services and is owned and/or operated by Indian Health Services (HIS) or under Tribal authority will qualify for an increase if it meets this criteria. By May 27, 2020, a hospital submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:

- a. By May 27, 2020, the facility must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
- b. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf;
- c. By December 1, 2020, the facility must approve and authorize a formal SOW with a qualifying HIE organization to develop and implement the data exchange necessary to meet the requirements of Milestones iv, v and vi;
- d. By April 1, 2021 the facility must electronically submit actual patient identifiable information to the production environment of a qualifying HIE organization, including admission, discharge, and transfer information (generally known as ADT information),

including data from the hospital emergency department if the facility has an emergency department;

- e. By June 1, 2021 the facility must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
- f. If the facility has ambulatory and/or behavioral health practices, then no later than June 1, 2021 the facility must submit actual patient identifiable information to the production environment of a qualifying HIE, including registration, encounter summary, and SMI data elements as defined by the qualifying HIE organization.

- F. If a hospital submits a Letter of Intent to AHCCCS and received the Differential Adjusted Payments October 1, ~~2018~~2019 through September 30, ~~2019~~2020, but fails to achieve or maintain one or more of the required criteria by the specified date, that hospital will be ineligible to receive any Differential Adjusted Payments for dates of service from October 1, ~~2019~~2020 through September 30, ~~2020~~2021 if a Differential Adjusted Payment is available at that time.
- G. Fee adjustments made under subsection (A), (B), (C), (D), and (E) are on file with AHCCCS and current adjustments are posted on AHCCCS' website.

### **R9-22-712.61. DRG Payments: Exceptions**

- A.** Notwithstanding section R9-22-712.60, claims for inpatient services from the following hospitals shall be paid on a per diem basis, including provisions for outlier payments, where rates and outlier thresholds are included in the capped fee schedule published by the Administration on its website and available for inspection during normal business hours at 701 E. Jefferson, Phoenix, Arizona. If the covered costs per day on a claim exceed the published threshold for a day, the claim is considered an outlier. Outliers will be paid by multiplying the covered charges by the outlier CCR. The outlier CCR will be the sum of the urban or rural default operating CCR appropriate to the location of the hospital and the statewide capital cost-to-charge ratio in the data file established as part of the Medicare Inpatient Prospective Payment System by CMS. The resulting amount will be the total reimbursement for the claim. There is no provision for outlier payments for hospitals described under subsection (A)(3).
1. Hospitals designated as type: hospital, subtype; rehabilitation in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website in March of each year;
  2. Hospitals designated as type: hospital, subtype: long term in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for March of each year;
  3. Hospitals designated as type: hospital, subtype; psychiatric in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for March of each year;
- B.** Notwithstanding section R9-22-712.60, claims for inpatient services that are covered by a RBHA or TRBHA, where the principal diagnosis on the claim is a behavioral health diagnosis, shall be reimbursed as prescribed by a per diem rate described by a fee schedule established by the Administration; however, if the principal diagnosis is a physical health diagnosis, the claim shall be processed under the DRG methodology described in this section, even if behavioral health services are provided during the inpatient stay.
- C.** Notwithstanding section R9-22-712.60, claims for services associated with transplant services shall be paid in accordance with the contract between the AHCCCS administration and the transplant facility.
- D.** Notwithstanding section R9-22-712.60, claims from an IHS facility or 638 Tribal provider shall be paid the all-inclusive rate on a per visit basis in accordance with the rates published annually by IHS in the federal register.
- E.** For hospitals that have contracts with the Administration for the provision of transplant services, inpatient days associated with transplant services are paid in accordance with the terms of the contract.
- F.** For inpatient services with a date of admission from October 1, ~~2019-2020~~ through September 30, ~~2020-2021~~, provided by a hospital in subsection (A) that qualifies, the administration shall pay the hospital an Inpatient Differential Adjusted Payment equal to the sum of the payment otherwise provided for in subsection (A) plus the product of the amount otherwise provided for in subsection (A) and a percentage published on the Administration's public website as part of its fee schedule, subsequent to a public notice published no later than September 1, ~~2019-2020~~. A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype.
1. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria in a, b, c, d, or e:
    - a. By May ~~15~~~~27~~, ~~2019~~~~2020~~, a hospital which did not receive Differential Adjusted Payments from October 1, ~~2018~~~~2019~~ through September 30, ~~2019~~~~2020~~, submits a Letter of Intent to AHCCCS and a qualifying Health Information Exchange (HIE) organization in which the hospital agrees to achieve all of the following:
      - i. ~~By July 31, 2019~~May 27, 2020, ~~execute an agreement with a qualifying HIE organization~~the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE,

in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;

- ii. By ~~October 31, 2019~~ June 1, 2020, approve and authorize a formal scope of work with a qualifying HIE to develop and implement the data exchange necessary to meet the requirements in subsections (E)(1)(c) and (E)(1)(d) the hospital must electronically submit the following actual patient identifiable information to the production environment of qualifying HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department;
- iii. By ~~March 31, 2020~~ August 1, 2020, electronically submit admission, discharge, and transfer information (including data from the hospital emergency department) to a qualifying HIE the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
- iv. By ~~June 30, 2020~~ September 1, 2020, electronically submit laboratory, radiology, transcription, and medication information, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination to a qualifying HIE or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
- v. By September 1, 2020, or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
- vi. Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;
- vii. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;
- viii. By November 1, 2020, the hospital must approve and authorize a formal scope of work (SOW) with a qualifying HIE organization to initiate and complete a Phase 1 data quality improvement effort, as defined by the qualifying HIE organization in collaboration with the qualifying HIE organization;
- ix. By January 1, 2021, the hospital must complete the Phase 1 initial data quality profile with a qualifying HIE organization;
- x. By May 1, 2021, the hospital must complete the Phase 1 final data quality profile with a qualifying HIE organization;

- b. By May ~~15~~<sup>27</sup>, ~~2019~~<sup>2020</sup>, a hospital which received Differential Adjusted Payments October 1, ~~2018~~<sup>2019</sup> through September 30, ~~2019~~<sup>2020</sup>, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:
- i. ~~By July 1~~<sup>By May 27</sup>, ~~2019~~<sup>2020</sup>, ~~submit actual patient identifiable immunization data to the production environment of a qualifying HIE organization~~<sup>the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;</sup>
  - ii. ~~By October~~<sup>By June 1</sup>, ~~2019~~<sup>2020</sup>, ~~approve and authorize a formal scope of work with a qualifying HIE organization to initiate and complete a data quality profile to be produced by a qualifying HIE organization~~<sup>the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department, laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instruction, active medication, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;</sup>
  - iii. ~~By December 31~~<sup>By September 1</sup>, ~~2019~~<sup>2020</sup>, ~~complete the initial data quality profile with a qualifying HIE organization~~<sup>or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;</sup>
  - iv. ~~By March 31~~<sup>By September 1</sup>, ~~2020~~<sup>2020</sup>, ~~complete the data quality scope of work by producing the final data quality profile with a qualifying HIE organization~~<sup>or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;</sup>
  - v. ~~Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;~~
  - vi. ~~By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;~~
  - vii. ~~By November 1, 2020, the hospital must approve and authorize a formal SOW to initiate and complete a Phase 2 data quality improvement effort, as defined by the qualifying HIE organization and in collaboration with the qualifying HIE organization;~~
  - viii. ~~By January 1, 2021, the hospital must complete the Phase 2 initial data quality profile with a qualifying HIE organization;~~
  - ix. ~~By May 1, 2021, the hospital must complete the Phase 2 final data quality profile with a qualifying HIE organization;~~

- x. Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases;
    - (1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on July 2019 data, to the final data quality profile, based on March 2020 data.
    - (2) Meet a minimum performance standard of at least 60% based on March 2020 data.
    - (3) If performance meets or exceeds an upper threshold of 90% based on March 2020 data the hospital meets the criteria. Regardless of the percentage improvement from the baseline measurements;
  - c. Meet or exceed the statewide average on ~~April 30, 2019~~ May 12, 2020 for the Severe Sepsis/Septic Shock (SEP-1) performance measure from the Medicare Hospital Compare website;
  - d. By ~~April 30, 2019~~ Be a participant in the Improving Pediatric Sepsis Outcomes collaborative in 2020;
  - e. By ~~May 1, 2019~~ hold a Pediatric Prepared Emergency Care certification from the Arizona Chapter of the American Academy of Pediatrics; For dates of services from October 1, 2020 through September 30, 2021, hospitals subject to APR-DRG reimbursement (Provider Type 02) may qualify for a DAP on codes J7296-J7298, J7300-J7301, and J7307 billed on the 1500 or UB-04 forms for long-acting reversible contraception devices.
2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets the criteria specified in a, b, or c:
- a. By ~~May 15, 2019~~ 2020, a hospital which received Differential Adjusted Payments October 1, ~~2018~~ 2019 through September 30, ~~2019~~ 2020, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:
    - i. By ~~July 1~~ May 27, 2019 2020, submit actual patient identifiable immunization data to the production environment of a qualifying HIE organization the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
    - ii. By ~~October 1~~ June 1, 2019 2020, approve and authorize a formal scope of work with a qualifying HIE organization to initiate and complete a data quality profile to be produced by a qualifying HIE organization the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department, laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
    - iii. By ~~December 31~~ September 1, 2019 2020, complete the initial data quality profile with a qualifying HIE organization or within 30 days of initiating COVID-19 lab

- testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
- ~~iv.~~ By ~~March 31~~September 1, 2020 complete the data quality scope of work by producing the final data quality profile with a qualifying HIE organization or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
  - ~~b.~~ Have a Level I-IV trauma center and be located less than five miles from Interstate 10;
  - ~~e.~~ By May 1, 2019 hold a Pediatric Prepared Emergency Care certification from the Arizona Chapter of the American Academy of Pediatrics.
  - ~~v.~~ Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;
  - ~~vi.~~ By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;
  - ~~vii.~~ By November 1, 2020, the hospital must approve and authorize a formal SOW to initiate and complete a Phase 2 data quality improvement effort, as defined by the qualifying HIE organization and in collaboration with the qualifying HIE organization;
  - ~~viii.~~ By January 1, 2021, the hospital must complete the Phase 2 initial data quality profile with a qualifying HIE organization;
  - ~~ix.~~ By May 1, 2021, the hospital must complete the Phase 2 final data quality profile with a qualifying HIE organization;
  - ~~x.~~ Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases:
    - ~~(1)~~ Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on July 2019 data, to the final data quality profile, based on March 2020 data;
    - ~~(2)~~ Meet a minimum performance standard of at least 60% based on March 2020 data;
    - ~~(3)~~ If performance meets or exceeds an upper threshold of 90% based on March 2020 data the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements;

### **R9-22-712.71. Final DRG Payment**

The final DRG payment is the sum of the final DRG base payment, the final DRG outlier add-on payment, and the Differential Adjusted Payment.

1. The final DRG base payment is an amount equal to the product of the covered day adjusted DRG base payment and a hospital-specific factor established to limit the financial impact to individual hospitals of the transition from the tiered per diem payment methodology and to account for improvements in documentation and coding that are expected as a result of the transition.
2. The final DRG outlier add-on payment is an amount equal to the product of the covered day adjusted DRG outlier add-on payment and a hospital-specific factor established to limit the financial impact to individual hospitals of the transition from the tiered per diem payment methodology and to account for improvements in documentation and coding that are expected as a result of the transition.
3. The factor for each hospital and for each federal fiscal year is published as part of the AHCCCS capped fee schedule and is available on the AHCCCS administration's website and is on file for public inspection at the AHCCCS administration located at 701 E. Jefferson Street, Phoenix, Arizona.
4. For inpatient services with a date of discharge from October 1, ~~2019~~2020 through September 30, ~~2020~~2021, the Inpatient Differential Adjusted Payment is the sum of the final DRG base payment and the final DRG outlier add-on payment multiplied by a percentage published on the Administration's public website as part of its fee schedule, subsequent to the public notice published no later than September 1, ~~2019~~2020. A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype.
  - a. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria in a, b, c, d, or e:
    - i. By ~~May 15~~May 27, 2019~~2020~~, a hospital which did not receive Differential Adjusted Payments from October 1, ~~2018~~2019 through September 30, ~~2019~~2020, submits a Letter of Intent to AHCCCS and a qualifying Health Information Exchange (HIE) organization in which the hospital agrees to achieve all of the following:
      - ~~A-(1)~~ By ~~July 31, 2019~~May 27, 2020, ~~execute an agreement with a qualifying HIE organization~~the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
      - ~~B-(2)~~ By ~~October 31, 2019~~June 1, 2020, ~~approve and authorize a formal scope of work with a qualifying HIE to develop and implement the data exchange necessary to meet the requirements in subsections (E)(1)(c) and (E)(1)(d)~~the hospital must electronically submit the following actual patient identifiable information to the production environment of qualifying HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department;
      - ~~C-(3)~~ By ~~March 31, 2020~~August 1, 2020, ~~electronically submit admission, discharge, and transfer information (including data from the hospital emergency department) to a qualifying HIE~~the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new

- prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
- ~~D.~~(4) By ~~June 30, 2020~~September 1, 2020, electronically submit laboratory, radiology, transcription, and medication information, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination to a qualifying HIE or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
- (5) By September 1, 2020, or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
- (6) Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;
- (7) By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;
- (8) By November 1, 2020, the hospital must approve and authorize a formal scope of work (SOW) with a qualifying HIE organization to initiate and complete a Phase 1 data quality improvement effort, as defined by the qualifying HIE organization in collaboration with the qualifying HIE organization;
- (9) By January 1, 2021, the hospital must complete the Phase 1 initial data quality profile with a qualifying HIE organization;
- (10) By May 1, 2021, the hospital must complete the Phase 1 final data quality profile with a qualifying HIE organization;
- ii. By May ~~15~~27, ~~2019~~2020, a hospital which received Differential Adjusted Payments October 1, ~~2018~~2019 through September 30, ~~2019~~2020, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:
- ~~A.~~(1) By ~~July 1~~May 27, ~~2019~~2020, ~~submit actual patient identifiable immunization data to the production environment of a qualifying HIE organization~~the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
- ~~B.~~(2) By ~~October~~June 1, ~~2019~~2020, approve and authorize a formal scope of work with a qualifying HIE organization to initiate and complete a data quality profile to be produced by a qualifying HIE organizationthe hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department,

laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instruction, active medication, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;

~~C.~~(3) By ~~December 31~~September 1, 2019~~2020~~, complete the initial data quality profile with a qualifying HIE organization or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;

~~D.~~(4) By ~~March 31~~September 1, 2020 complete the data quality scope of work by producing the final data quality profile with a qualifying HIE organization or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;

(5) Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;

(6) By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;

(7) By November 1, 2020, the hospital must approve and authorize a formal SOW to initiate and complete a Phase 2 data quality improvement effort, as defined by the qualifying HIE organization and in collaboration with the qualifying HIE organization;

(8) By January 1, 2021, the hospital must complete the Phase 2 initial data quality profile with a qualifying HIE organization;

(9) By May 1, 2021, the hospital must complete the Phase 2 final data quality profile with a qualifying HIE organization;

(10) Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases;

(a) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on July 2019 data, to the final data quality profile, based on March 2020 data.

(b) Meet a minimum performance standard of at least 60% based on March 2020 data.

(c) If performance meets or exceeds an upper threshold of 90% based on March 2020 data the hospital meets the criteria. Regardless of the percentage improvement from the baseline measurements;

iii. Meet or exceed the statewide average on ~~April 30~~May 12, 2019~~2020~~ for the Severe Sepsis/Septic Shock (SEP-1) performance measure from the Medicare Hospital Compare website;

iv. By ~~April 30, 2019, be~~Be a participant in the Improving Pediatric Sepsis Outcomes collaborative in 2020;

v. By May 1, 2019 hold a Pediatric Prepared Emergency Care certification from the Arizona Chapter of the American Academy of Pediatrics; For dates of services from October 1, 2020 through September 30, 2021, hospitals subject to APR-DRG reimbursement

(Provider Type 02) may qualify for a DAP on codes J7296-J7298, J7300-J7301, and J7307 billed on the 1500 or UB-04 forms for long-acting reversible contraception devices.

- b. -A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if ~~it meets the~~criteria specified in a, b, or c:

~~i. By May 15, 2019~~By May 27, 2020, a hospital which received Differential Adjusted Payments October 1, ~~2018~~2019 through September 30, ~~2019~~2020, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:

~~(1)~~i. By ~~July 1~~May 27, 2020, ~~submit actual patient identifiable immunization data to the production environment of a qualifying HIE organization~~the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;

~~(2)~~ii. By ~~October 1~~June 1, 2020, ~~approve and authorize a formal scope of work with a qualifying HIE organization to initiate and complete a data quality profile to be produced by a qualifying HIE organization~~the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department, laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;

~~(3)~~iii. By ~~December 31~~September 1, 2020, ~~complete the initial data quality profile with a qualifying HIE organization~~or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;

~~(4)~~iv. By ~~March 31~~September 1, 2020 ~~complete the data quality scope of work by producing the final data quality profile with a qualifying HIE organization~~or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;

~~ii. Have a Level I-IV trauma center and be located less than five miles from Interstate 10;~~

~~iii. By May 1, 2019 hold a Pediatric Prepared Emergency Care certification from the Arizona Chapter of the American Academy of Pediatrics.~~

~~v. Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;~~

~~vi. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;~~

- vii. By November 1, 2020, the hospital must approve and authorize a formal SOW to initiate and complete a Phase 2 data quality improvement effort, as defined by the qualifying HIE organization and in collaboration with the qualifying HIE organization;
- viii. By January 1, 2021, the hospital must complete the Phase 2 initial data quality profile with a qualifying HIE organization;
- ix. By May 1, 2021, the hospital must complete the Phase 2 final data quality profile with a qualifying HIE organization;
- x. Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases:
  - (1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on July 2019 data, to the final data quality profile, based on March 2020 data;
  - (2) Meet a minimum performance standard of at least 60% based on March 2020 data;
  - (3) If performance meets or exceeds an upper threshold of 90% based on March 2020 data the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements;

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

**TITLE 9. HEALTH SERVICES**

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION**

**ARTICLE 7. STANDARDS FOR PAYMENTS**

**R9-22-712.35, R9-22-712.61, R9-22-712.71**

**1. Identification of rulemaking.**

This final rulemaking by the AHCCCS Administration amends existing AHCCCS payment rules R9-22-712.35, R9-22-712.61, and R9-22-712.71 to reflect the Agency's upcoming Differential Adjusted Payments (DAP) initiatives, previously know as Value Based Purchasing (VBP), which reward quality outcomes and reduce growth in the cost of health care. Because the DAP initiatives delineated in existing AHCCCS rules will expire on September 30, 2020, the rules that are the subject of this rulemaking will take effect during the contract year of October 1, 2020 through September 30, 2021. The objective of DAP delineated in this rulemaking is to reward hospital providers that have taken designated actions to improve patients' care experience, improve members' health, and reduce the growth of the cost of care. Hospitals which satisfy the requirements delineated in rule will receive increased payments from the AHCCCS Administration and Contractors for inpatient and outpatient services.

The following summarizes the amendments in this rulemaking:

**R9-22-712.35. Outpatient Hospital Reimbursement: Adjustments to Fees.** Dates have been updated to reflect the applicability of DAP for qualifying outpatient services for the upcoming contract year. Requirements for qualification for DAP payments have been updated.

**R9-22-712.61. DRG Payments: Exceptions.** Dates have been updated to reflect the applicability of DAP for qualifying inpatient hospital services for hospitals reimbursed using the DRG methodology for the upcoming contract year. Requirements for such hospitals to qualify for inpatient DAP payments are also delineated in this rule.

**R9-22-712.71. Final DRG Payment.** Dates have been updated to reflect the applicability of DAP for qualifying inpatient hospital services for hospitals reimbursed using the DRG methodology for the upcoming contract year. Requirements for such hospitals to qualify for inpatient DAP payments are also delineated in this rule.

a. **The conduct and its frequency of occurrence that the rule is designed to change:**

The rule is designed to incentivize hospital participation in the state's health information exchange (HIE) which are expected to enhance quality of care and reduced growth in the cost of care.

b. **The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:**

It is expected that the change in hospital behavior will improve patient care experience, improve patient health, and reduce the growth in the cost of health care.

c. **The estimated change in frequency of the targeted conduct expected from the rule change:**

It is anticipated that hospitals which participate in the health information exchange in order to receive increased payments through the DAP initiative will continue to do so going forward.

2. **Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rule making.**

The State, taxpayers, and providers will directly benefit from this rulemaking as the payment model will reward efficient utilization of services. Hospital providers which participate in the health information exchange will benefit by receiving a higher rate of reimbursement for medical services. In addition, patients are expected to experience improved care while the State and taxpayers will be positively affected by the more efficient delivery of health care services and the reduced growth in the cost of care.

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 that the DAP rulemaking will result in approximately \$84 million of additional payments for the contract year October 1, 2020 through September 30, 2021 to 135 providers.

ii. **Benefit:**

The AHCCCS Administration, taxpayers, and providers will directly benefit from this rulemaking as the DAP payments incentivize improved patient care, innovation, efficient delivery of services, and the reduction in the growth of the costs of health care.

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.**

This rulemaking does not directly affect political subdivisions.

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

The 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.**

Of the 135 licensed hospitals in Arizona, 2 hospitals satisfy the definition of small businesses.

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

The Administration does not anticipate an impact on the small business community because providers do not incur additional costs for participating in the state's health information exchange.

**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. Participation in the state's health information exchange is voluntary and will result in increased funding for medical services under this rule.

**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. Participation in the state's health information exchange are voluntary and will result in increased funding for medical services under this rule.

**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. Participation in the state's health information exchange is voluntary and will result in increased funding for medical services under this rule.

**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 patient care experience, improved health outcomes, and a reduction in the growth of medical care costs.

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 complying with federal law and state law as well as the State's fiduciary responsibility to Arizona taxpayers.

8. **A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data.**

The Administration did not rely on any data for this rulemaking.

## CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

- A. AHCCCS shall calculate a statewide CCR for a service where a specific fee cannot be determined under R9-22-712.20.
- B. For claims with a begin date of service on or before September 30, 2011, the statewide CCR shall be calculated based on the costs and covered charges associated with a service under subsection (A) for all Arizona hospitals, using the method specified in R9-22-712.20(A)(3).
- C. For all claims with a begin date of service on or after October 1, 2011, the statewide CCR calculation shall equal either the CMS Medicare Outpatient Urban Cost-to-charge Ratio or the CMS Medicare Outpatient Rural Cost-to-charge Ratio published by CMS for the state of Arizona. AHCCCS shall use the urban cost-to-charge ratio for hospitals located in a county of 500,000 residents or more and for out-of-state hospitals. AHCCCS shall use the rural cost-to-charge ratio for hospitals located in a county of fewer than 500,000 residents. On October 1st of each year, AHCCCS shall adjust urban and rural CCRs to the CCRs as published by CMS in the *Federal Register* on or before August 1st of that year.
- D. To determine the payment amount for procedures where a specific fee is not determined under R9-22-712.20, the statewide CCR is multiplied by the covered charges.
- E. Reductions to payments for outpatient hospital services not listed in the AHCCCS Outpatient Capped Fee-For-Service Schedule. Outpatient hospital services not listed in the AHCCCS Outpatient Capped Fee-For-Service Schedule with dates of service on or after October 1, 2011, shall be reimbursed at 95 percent of the rate published by CMS pursuant to subsection (C) of this Section.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 17 A.A.R. 1460, effective October 1, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 1914, effective July 18, 2012 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 3315, effective November 30, 2013 (Supp. 13-4).

**R9-22-712.31. Reserved**

**R9-22-712.32. Reserved**

**R9-22-712.33. Reserved**

**R9-22-712.34. Reserved**

**R9-22-712.35. Outpatient Hospital Reimbursement: Adjustments to Fees**

- A. For all claims with a begin date of service on or before September 30, 2011, AHCCCS shall increase the Outpatient Capped Fee-for-service Schedule established under R9-22-712.20 (except for laboratory services and out-of-state hospital services) for the following hospitals submitting any claims:
1. By 48 percent for public hospitals on July 1, 2005, and hospitals that were public anytime during the calendar year 2004;
  2. By 45 percent for hospitals in counties other than Maricopa and Pima with more than 100 Medicare PPS beds during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective;
  3. By 50 percent for hospitals in counties other than Maricopa and Pima with 100 or less Medicare PPS beds during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective;
  4. By 115 percent for hospitals designated as Critical Access Hospitals or hospitals that have not been designated as Critical Access Hospitals but meet the criteria during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective;
5. By 113 percent for a Freestanding Children's Hospital with at least 110 pediatric beds during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective; or
6. By 14 percent for a University Affiliated Hospital which is a hospital that has a majority of the members of its board of directors appointed by the Board of Regents during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective.
- B. For all claims with a begin date of service on or after October 1, 2011, AHCCCS shall increase the Outpatient Capped Fee-for-service Schedule (except for laboratory services, and out-of-state hospital services) for the following hospitals. A hospital shall receive an increase from only one of the following categories:
1. By 73 percent for public hospitals;
  2. By 31 percent for hospitals in counties other than Maricopa and Pima with more than 100 licensed beds as of October 1 of that contract year;
  3. By 37 percent for hospitals in counties other than Maricopa and Pima with 100 or fewer licensed beds as of October 1 of that contract year;
  4. By 100 percent for hospitals designated as Critical Access Hospitals or hospitals that have not been designated as Critical Access Hospitals but meet the critical access criteria;
  5. By 78 percent for a Freestanding Children's Hospital with at least 110 pediatric beds as of October 1 of that contract year; or
  6. By 41 percent for a University Affiliated Hospital, this is a hospital that has a majority of the members of its board of directors appointed by the Arizona Board of Regents.
- C. In addition to subsections (A) and (B), an Arizona Level 1 trauma center as defined by R9-22-2101 shall receive a 50 percent increase to the Outpatient Capped Fee-for-service Schedule (except for laboratory services and out-of-state hospital services) for Level 2 and 3 emergency department procedures.
- D. Hospitals with greater than 100 pediatric beds not receiving an increase under subsection (B) shall receive an 18 percent increase to the Outpatient Capped Fee-for-service Schedule (except for laboratory services, and out-of-state hospital services).
- E. For outpatient services with dates of service from October 1, 2019 through September 30, 2020, the payment otherwise required for outpatient hospital services provided by qualifying hospitals shall be increased by a percentage established by the Administration. The percentage is published on the Administration's public website as part of its fee schedule subsequent to the public notice published no later than September 1, 2019. A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype.
1. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria in subsections (E)(1)(a), (b), (c), (d), or (e):
    - a. By May 15, 2019, a hospital which did not receive Differential Adjusted Payments from October 1, 2018 through September 30, 2019, submits a Letter of Intent to AHCCCS and a qualifying Health Information Exchange (HIE) organization in which the hospital agrees to achieve all of the following:
      - i. By July 31, 2019, execute an agreement with a qualifying HIE organization;

## CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

- ii. By October 31, 2019, approve and authorize a formal scope of work with a qualifying HIE to develop and implement the data exchange necessary to meet the requirements in subsections (E)(1)(c) and (E)(1)(d);
  - iii. By March 31, 2020, electronically submit admission, discharge, and transfer information (including data from the hospital emergency department) to a qualifying HIE;
  - iv. By June 30, 2020, electronically submit laboratory, radiology, transcription, and medication information, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination to a qualifying HIE;
- b. By May 15, 2019, a hospital which received Differential Adjusted Payments October 1, 2018 through September 30, 2019, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:
- i. By July 1, 2019, submit actual patient identifiable immunization data to the production environment of a qualifying HIE organization;
  - ii. By October 1, 2019, approve and authorize a formal scope of work with a qualifying HIE organization to initiate and complete a data quality profile to be produced by a qualifying HIE organization;
  - iii. By December 31, 2019, complete the initial data quality profile with a qualifying HIE organization;
  - iv. By March 31, 2020 complete the data quality scope of work by producing the final data quality profile with a qualifying HIE organization;
- c. Meet or exceed the statewide average on April 30, 2019 for the Severe Sepsis/Septic Shock (SEP-1) performance measure from the Medicare Hospital Compare website;
- d. By April 30, 2019, be a participant in the Improving Pediatric Sepsis Outcomes collaborative;
- e. By May 1, 2019 hold a Pediatric-Prepared Emergency Care certification from the Arizona Chapter of the American Academy of Pediatrics;
2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets the criteria specified in subsections (E)(2)(a), (b), or (c):
- a. By May 15, 2019, a hospital which received Differential Adjusted Payments October 1, 2018 through September 30, 2019, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:
    - i. By July 1, 2019, submit actual patient identifiable immunization data to the production environment of a qualifying HIE organization;
    - ii. By October 1, 2019, approve and authorize a formal scope of work with a qualifying HIE organization to initiate and complete a data quality profile to be produced by a qualifying HIE organization;
  - iii. By December 31, 2019, complete the initial data quality profile with a qualifying HIE organization;
  - iv. By March 31, 2020 complete the data quality scope of work by producing the final data quality profile with a qualifying HIE organization;
- b. By May 15, 2019, a hospital which received Differential Adjusted Payments October 1, 2018 through September 30, 2019, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:
- i. By July 31, 2019, execute an agreement with a qualifying HIE organization;
  - ii. By October 31, 2019, approve and authorize a formal scope of work with a qualifying HIE to develop and implement the data exchange necessary to meet the requirements in subsections (E)(1)(c) and (E)(1)(d);
  - iii. By March 31, 2020, electronically submit admission, discharge, and transfer information (including data from the hospital emergency department) to a qualifying HIE;
  - iv. By June 30, 2020, electronically submit laboratory, radiology, transcription, and medication information, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination to a qualifying HIE;
- b. By May 15, 2019, a hospital which received Differential Adjusted Payments October 1, 2018 through September 30, 2019, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:
- i. By July 1, 2019, submit actual patient identifiable immunization data to the production environment of a qualifying HIE organization;
  - ii. By October 1, 2019, approve and authorize a formal scope of work with a qualifying HIE organization to initiate and complete a data quality profile to be produced by a qualifying HIE organization;
  - iii. By December 31, 2019, complete the initial data quality profile with a qualifying HIE organization;
  - iv. By March 31, 2020, complete the data quality scope of work by producing the final data quality profile with a qualifying HIE organization;
- c. On April 30, 2019 is identified as a Medicare Annual Payment Update recipients on the QualityNet.org website;

## CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

- d. On April 30, 2019 meets or falls below the national average for the rate of pressure ulcers that are new or worsened from the Medicare Long Term Hospital Compare website;
  - e. On April 30, 2019 meets or falls below the national average for the rate of pressure ulcers that are new or worsened from the Medicare Inpatient Rehabilitation Facility Compare website.
- F.** If a hospital submits a Letter of Intent to AHCCCS and received the Differential Adjusted Payments October 1, 2018 through September 30, 2019, but fails to achieve or maintain one or more of the required criteria by the specified date, that hospital will be ineligible to receive any Differential Adjusted Payments for dates of service from October 1, 2019 through September 30, 2020 if a Differential Adjusted Payment is available at that time.
- G.** Fee adjustments made under subsections (A), (B), (C), (D), and (E) are on file with AHCCCS and current adjustments are posted on AHCCCS' website.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 3584, effective October 1, 2007 (Supp. 07-4). Amended by final rulemaking at 14 A.A.R. 1439, effective May 31, 2008 (Supp. 08-2). Amended by final rulemaking at 17 A.A.R. 1460, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4). Amended by final rulemaking at 23 A.A.R. 2338, effective October 1, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 2851, effective October 1, 2018 (Supp. 18-3). Amended by final rulemaking at 25 A.A.R. 3114, effective October 1, 2019 (Supp. 19-4).

**R9-22-712.36. Reserved****R9-22-712.37. Reserved****R9-22-712.38. Reserved****R9-22-712.39. Reserved****R9-22-712.40. Outpatient Hospital Reimbursement: Annual and Periodic Update**

- A.** Procedure codes. When procedure codes are issued by CMS and added to the Current Procedural Terminology published by the American Medical Association, AHCCCS shall add to the Outpatient Capped Fee-for-Service Schedule the new procedure codes for covered outpatient services and shall either assign the default CCR under R9-22-712.40(F)(2), the Medicare rate, or calculate an appropriate fee.
- B.** APC changes. AHCCCS may reassign procedure codes to new or different APC groups when APC groups are revised by CMS. AHCCCS may reassign procedure codes to a different APC group than Medicare. If AHCCCS determines that utilization of a procedure code within the Medicare program is substantially different from utilization of the procedure code in the AHCCCS program, AHCCCS may choose not to assign the procedure code to any APC group. For procedure codes not grouped into an APC by Medicare, AHCCCS may assign the code to an APC group when AHCCCS determines that the cost and resources associated with the non-assigned code are substantially similar to those in the APC group.
- C.** Annual update for Outpatient Hospital Fee Schedule. Beginning October 1, 2006, through September 30, 2011, AHCCCS shall adjust outpatient fee schedule rates:

1. Annually by multiplying the rates effective during the prior year by the Global Insight Prospective Hospital Market Basket Inflation Index; or
2. In a particular year the director may substitute the increases in subsection (C)(1) by calculating the dollar value associated with the inflation index in subsection (C)(1), and applying the dollar value to adjust rates at varying levels.

**D.** Reductions to the Outpatient Capped Fee-For-Service Schedule. Claims paid using the Outpatient Capped Fee-For-Service Schedule with dates of service on or after October 1, 2011, shall be reimbursed at 95 percent of the rates in effect on September 30, 2011, subject to the annual adjustments to procedure codes and APCs under this Section.

**E.** Rebase. AHCCCS shall rebase the outpatient fees every five years.

**F.** Statewide CCR:

1. For begin dates of service on or before September 30, 2011, the statewide CCR calculated in R9-22-712.30 shall be recalculated at the time of rebasing. When rebasing, AHCCCS may recalculate the statewide CCR based on the costs and charges for services excluded from the outpatient hospital fee schedule.
2. For begin dates of service on or after October 1, 2011, the statewide CCR shall be set under R9-22-712.30(C).

**G.** Other Updates. In addition to the other updates provided for in this Section, the Administration may adjust the Outpatient Capped Fee-For-Service Fee Schedule and the Statewide CCR to the extent necessary to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the geographic area.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 3584, effective October 1, 2007 (Supp. 07-4). Amended by final rulemaking at 14 A.A.R. 1439, effective May 31, 2008 (Supp. 08-2). Amended by final rulemaking at 17 A.A.R. 1460, effective October 1, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 1914, effective July 18, 2012 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 3315, effective November 30, 2013 (Supp. 13-4). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.41. Reserved****R9-22-712.42. Reserved****R9-22-712.43. Reserved****R9-22-712.44. Reserved****R9-22-712.45. Outpatient Hospital Reimbursement: Outpatient Payment Restrictions**

- A.** AHCCCS shall not reimburse hospitals for emergency room treatment, observation hours, or other outpatient hospital services performed on an outpatient basis if the member is admitted as an inpatient to the same hospital directly from the emergency room, observation, or other outpatient department.
- B.** AHCCCS shall include payment for the emergency room, observation, and other outpatient hospital services provided to the member before the hospital admission in the AHCCCS Inpatient Tiered Per Diem Capped Fee-For-Service Schedule under Article 7 of this Chapter.
- C.** Same day admit and discharge.

## CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

1. For discharges before September 30, 2014. Same day admit and discharge claims that qualify for either the maternity or nursery tiers shall be paid based on the lesser of the rate for the maternity or nursery tier, or the outpatient hospital fee schedule.
2. For discharge dates on and after October 1, 2014. Same day admit and discharge claims are paid for through the outpatient fee schedule.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.46. Reserved****R9-22-712.47. Reserved****R9-22-712.48. Reserved****R9-22-712.49. Reserved****R9-22-712.50. Outpatient Hospital Reimbursement: Billing**

To receive appropriate reimbursement, hospitals shall:

1. Bill outpatient hospital services on the CMS approved Uniform Billing Form or in electronic format using the appropriate HIPAA transaction.
2. Follow the UB Manual Guidelines, as published by the National Uniform Billing Committee, and use the appropriate revenue code and procedure code combination as prescribed by AHCCCS and on file and online with AHCCCS.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2).

**R9-22-712.51. Reserved****R9-22-712.52. Reserved****R9-22-712.53. Reserved****R9-22-712.54. Reserved****R9-22-712.55. Reserved****R9-22-712.56. Reserved****R9-22-712.57. Reserved****R9-22-712.58. Reserved****R9-22-712.59. Reserved****R9-22-712.60. Diagnosis Related Group Payments**

- A. Inpatient hospital services with discharge dates on or after October 1, 2014, shall be reimbursed using the diagnosis related group (DRG) payment methodology described in this Section and sections R9-22-712.61 through R9-22-712.81.
- B. Payments made using the DRG methodology shall be the sole reimbursement to the hospital for all inpatient hospital services and related supplies provided by the hospital. Services provided in the emergency room, observation area, or other outpatient departments that are directly followed by an inpatient admission to the same hospital are not reimbursed separately. Are reimbursed through the DRG methodology and not reimbursed separately.
- C. Each claim for an inpatient hospital stay shall be assigned a DRG code and a DRG relative weight based on the All Patient Refined Diagnosis Related Group (APR-DRG) classification system established by 3M Health Information Systems. The applicable version of the APR-DRG classification system shall be available on the agency's website.

- D. Payments for inpatient hospital services reimbursed using the DRG payment methodology are subject to quick pay discounts and slow pay penalties under A.R.S. 36-2904.
- E. Payments for inpatient hospital services reimbursed using the DRG payment methodology are subject to the Urban Hospital Reimbursement Program under R9-22-718.
- F. For purposes of this Section and sections R9-22-712.61 through R9-22-712.81:
  1. "DRG National Average length of stay" means the national arithmetic mean length of stay published in the All Patient Refined Diagnosis Related Group (APR-DRG) classification established by 3M Health Information Systems.
  2. "Length of stay" means the total number of calendar days of an inpatient stay beginning with the date of admission through discharge, but not including the date of discharge (including the date of a discharge to another hospital, i.e., a transfer) unless the member expires.
  3. "Medicare" means Title XVIII of the Social Security Act, 42 U.S.C. 1395 *et seq.*
  4. "Medicare labor share" means a hospital's labor costs as a percentage of its total costs as determined by CMS for purposes of the Medicare Inpatient Prospective Payment System.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

**R9-22-712.61. DRG Payments: Exceptions**

- A. Notwithstanding R9-22-712.60, claims for inpatient services from the following hospitals shall be paid on a per diem basis, including provisions for outlier payments, where rates and outlier thresholds are included in the capped fee schedule published by the Administration on its website and available for inspection during normal business hours at 701 E. Jefferson, Phoenix, Arizona. If the covered costs per day on a claim exceed the published threshold for a day, the claim is considered an outlier. Outliers will be paid by multiplying the covered charges by the outlier CCR. The outlier CCR will be the sum of the urban or rural default operating CCR appropriate to the location of the hospital and the statewide capital cost-to-charge ratio in the data file established as part of the Medicare Inpatient Prospective Payment System by CMS. The resulting amount will be the total reimbursement for the claim. There is no provision for outlier payments for hospitals described under subsection (A)(3).
  1. Hospitals designated as type: hospital, subtype; rehabilitation in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website in March of each year;
  2. Hospitals designated as type: hospital, subtype; long term in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for March of each year;
  3. Hospitals designated as type: hospital, subtype; psychiatric in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for March of each year;
- B. Notwithstanding R9-22-712.60, claims for inpatient services that are covered by a RBHA or TRBHA, where the principal

## CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

diagnosis on the claim is a behavioral health diagnosis, shall be reimbursed as prescribed by a per diem rate described by a fee schedule established by the Administration; however, if the principal diagnosis is a physical health diagnosis, the claim shall be processed under the DRG methodology described in this Section, even if behavioral health services are provided during the inpatient stay. Inpatient claims covered by an AHCCCS payer which is not a RBHA or TRBHA, with a principal diagnosis of behavioral health, will be reimbursed under the DRG methodology as administrative days for claims with principal diagnosis of behavioral health meeting inpatient medical criteria with dates of discharge on and after October 1, 2018, consistent with R9-22-712.75(A)(2).

- C. Notwithstanding R9-22-712.60, claims for services associated with transplant services shall be paid in accordance with the contract between the AHCCCS Administration and the transplant facility.
- D. Notwithstanding R9-22-712.60, claims from an IHS facility or 638 Tribal provider shall be paid the all-inclusive rate on a per visit basis in accordance with the rates published annually by IHS in the Federal Register.
- E. For hospitals that have contracts with the Administration for the provision of transplant services, inpatient days associated with transplant services are paid in accordance with the terms of the contract.
- F. For inpatient services with a date of admission from October 1, 2019 through September 30, 2020, provided by a hospital in subsection (A) that qualifies, the Administration shall pay the hospital an Inpatient Differential Adjusted Payment equal to the sum of the payment otherwise provided for in subsection (A) plus the product of the amount otherwise provided for in subsection (A) and a percentage published on the Administration's public website as part of its fee schedule, subsequent to a public notice published no later than September 1, 2019. A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype.
1. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria in subsection (F)(1)(a), (i) through (iv); (F)(1)(b), (i) through (iv); (F)(1)(c); (F)(1)(d); or (F)(1)(e):
    - a. By May 15, 2019, a hospital which did not receive Differential Adjusted Payments from October 1, 2018 through September 30, 2019, submits a Letter of Intent to AHCCCS and a qualifying Health Information Exchange (HIE) organization in which the hospital agrees to achieve all of the following:
      - i. By July 31, 2019, execute an agreement with a qualifying HIE organization;
      - ii. By October 31, 2019, approve and authorize a formal scope of work with a qualifying HIE to develop and implement the data exchange necessary to meet the requirements in subsections (E)(1)(c) and (E)(1)(d);
      - iii. By March 31, 2020, electronically submit admission, discharge, and transfer information (including data from the hospital emergency department) to a qualifying HIE;
      - iv. By June 30, 2020, electronically submit laboratory, radiology, transcription, and medication information, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during

the stay, active allergies, and discharge destination to a qualifying HIE;

- b. By May 15, 2019, a hospital which received Differential Adjusted Payments October 1, 2018 through September 30, 2019, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:
    - i. By July 1, 2019, submit actual patient identifiable immunization data to the production environment of a qualifying HIE organization;
    - ii. By October 1, 2019, approve and authorize a formal scope of work with a qualifying HIE organization to initiate and complete a data quality profile to be produced by a qualifying HIE organization;
    - iii. By December 31, 2019, complete the initial data quality profile with a qualifying HIE organization;
    - iv. By March 31, 2020, complete the data quality scope of work by producing the final data quality profile with a qualifying HIE organization;
  - c. Meet or exceed the statewide average on April 30, 2019 for the Severe Sepsis/Septic Shock (SEP-1) performance measure from the Medicare Hospital Compare website;
  - d. By April 30, 2019, be a participant in the Improving Pediatric Sepsis Outcomes collaborative;
  - e. By May 1, 2019, hold a Pediatric-Prepared Emergency Care certification from the Arizona Chapter of the American Academy of Pediatrics;
2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets the criteria specified in subsection (F)(2)(a), (i) through (iv); (F)(2)(b); or (F)(2)(c):
    - a. By May 15, 2019, a hospital which received Differential Adjusted Payments October 1, 2018 through September 30, 2019, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:
      - i. By July 1, 2019, submit actual patient identifiable immunization data to the production environment of a qualifying HIE organization;
      - ii. By October 1, 2019, approve and authorize a formal scope of work with a qualifying HIE organization to initiate and complete a data quality profile to be produced by a qualifying HIE organization;
      - iii. By December 31, 2019, complete the initial data quality profile with a qualifying HIE organization;
      - iv. By March 31, 2020, complete the data quality scope of work by producing the final data quality profile with a qualifying HIE organization;
    - b. Have a Level I-IV trauma center and be located less than five miles from Interstate 10;
    - c. By May 1, 2019, hold a Pediatric-Prepared Emergency Care certification from the Arizona Chapter of the American Academy of Pediatrics.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4). Amended by final rulemaking at 23 A.A.R.

## CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

one to the number of AHCCCS covered days and dividing the result by the DRG National Average length of stay. The number of AHCCCS covered days is equal to the number of days the member is eligible during the inpatient stay.

3. If the covered day reduction factor unadjusted is greater than one, then the covered day reduction factor final is one; otherwise, the covered day reduction factor final is equal to the covered day reduction factor unadjusted.
4. The covered day adjusted DRG base payment is an amount equal to the product of the unadjusted DRG base payment and the covered day reduction factor final.
5. The covered day adjusted DRG outlier add-on payment is an amount equal to the product of the unadjusted DRG outlier add-on payment and the covered day reduction factor final.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.70. Covered Day Adjusted DRG Base Payment and Covered Day Adjusted Outlier Add-on Payment for FES members**

In addition to the covered day reduction factor in R9-22-712.69, a covered day reduction factor unadjusted is determined for an inpatient stay during which an FES member receives services for the treatment of an emergency medical condition and also receives services once the condition no longer meets the criteria as an emergency medical condition described in R9-22-217.

1. A covered day reduction factor unadjusted is calculated by adding one to the AHCCCS covered days and dividing the result by the DRG National Average length of stay. The number of AHCCCS covered days is equal to the number of inpatient days during which an FES member receives services for an emergency medical condition as described in R9-22-217. For purposes of this adjustment, any portion of a day during which the FES member receives treatment for an emergency medical condition is counted as an AHCCCS covered day.
2. If the covered day reduction factor unadjusted is greater than one, then the covered day reduction factor final is one; otherwise, the covered day reduction factor final is equal to the covered day reduction factor unadjusted.
3. The covered day adjusted DRG base payment is an amount equal to the product of the unadjusted DRG base payment and the covered day reduction factor final.
4. The covered day adjusted DRG outlier add-on payment is an amount equal to the product of the unadjusted DRG outlier add-on payment and the covered day reduction factor final.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.71. Final DRG Payment**

The final DRG payment is the sum of the final DRG base payment, the final DRG outlier add-on payment, and the Differential Adjusted Payment.

1. The final DRG base payment is an amount equal to the product of the covered day adjusted DRG base payment and a hospital-specific factor established to limit the financial impact to individual hospitals of the transition from the tiered per diem payment methodology and to account for improvements in documentation and coding that are expected as a result of the transition.

2. The final DRG outlier add-on payment is an amount equal to the product of the covered day adjusted DRG outlier add-on payment and a hospital-specific factor established to limit the financial impact to individual hospitals of the transition from the tiered per diem payment methodology and to account for improvements in documentation and coding that are expected as a result of the transition.

3. The factor for each hospital and for each federal fiscal year is published as part of the AHCCCS capped fee schedule and is available on the AHCCCS Administration's website and is on file for public inspection at the AHCCCS Administration located at 701 E. Jefferson Street, Phoenix, Arizona.

4. For inpatient services with a date of discharge from October 1, 2019 through September 30, 2020, the Inpatient Differential Adjusted Payment is the sum of the final DRG base payment and the final DRG outlier add-on payment multiplied by a percentage published on the Administration's public website as part of its fee schedule, subsequent to the public notice published no later than September 1, 2019. A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype.

a. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria in subsection (4)(a), (i), (ii), (iii), (iv), or (v):

i. By May 15, 2019, a hospital which did not receive Differential Adjusted Payments from October 1, 2018 through September 30, 2019, submits a Letter of Intent to AHCCCS and a qualifying Health Information Exchange (HIE) organization in which the hospital agrees to achieve all of the following:

- (1) By July 31, 2019, execute an agreement with a qualifying HIE organization;
- (2) By October 31, 2019, approve and authorize a formal scope of work with a qualifying HIE to develop and implement the data exchange necessary to meet the requirements in subsections (E)(1)(c) and (E)(1)(d);
- (3) By March 31, 2020, electronically submit admission, discharge, and transfer information (including data from the hospital emergency department) to a qualifying HIE;
- (4) By June 30, 2020, electronically submit laboratory, radiology, transcription, and medication information, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination to a qualifying HIE;

ii. By May 15, 2019, a hospital which received Differential Adjusted Payments October 1, 2018 through September 30, 2019, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:

- (1) By July 1, 2019, submit actual patient

## CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

- identifiable immunization data to the production environment of a qualifying HIE organization;
- (2) By October 1, 2019, approve and authorize a formal scope of work with a qualifying HIE organization to initiate and complete a data quality profile to be produced by a qualifying HIE organization;
  - (3) By December 31, 2019, complete the initial data quality profile with a qualifying HIE organization;
  - (4) By March 31, 2020, complete the data quality scope of work by producing the final data quality profile with a qualifying HIE organization;
- iii. Meet or exceed the statewide average on April 30, 2019 for the Severe Sepsis/Septic Shock (SEP-1) performance measure from the Medicare Hospital Compare website;
  - iv. By April 30, 2019, be a participant in the Improving Pediatric Sepsis Outcomes collaborative;
  - v. By May 1, 2019, hold a Pediatric-Prepared Emergency Care certification from the Arizona Chapter of the American Academy of Pediatrics;
- b. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets the criteria specified in subsections (4)(b)(i), (ii) or (iii):
    - i. By May 15, 2019, a hospital which received Differential Adjusted Payments October 1, 2018 through September 30, 2019, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:
      - (1) By July 1, 2019, submit actual patient identifiable immunization data to the production environment of a qualifying HIE organization;
      - (2) By October 1, 2019, approve and authorize a formal scope of work with a qualifying HIE organization to initiate and complete a data quality profile to be produced by a qualifying HIE organization;
      - (3) By December 31, 2019, complete the initial data quality profile with a qualifying HIE organization;
      - (4) By March 31, 2020, complete the data quality scope of work by producing the final data quality profile with a qualifying HIE organization;
    - ii. Have a Level I-IV trauma center and be located less than five miles from Interstate 10;
    - iii. By May 1, 2019, hold a Pediatric-Prepared Emergency Care certification from the Arizona Chapter of the American Academy of Pediatrics.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4). Amended by final rulemaking at 23 A.A.R. 2338, effective October 1, 2017 (Supp. 17-3). Amended by final rulemaking at 23 A.A.R. 2896, effective January

1, 2018 (Supp. 17-4). Amended by final rulemaking at 24 A.A.R. 2851, effective October 1, 2018 (Supp. 18-3). Amended by final rulemaking at 25 A.A.R. 3114, effective October 31, 2019 (Supp. 19-4).

**R9-22-712.72. DRG Reimbursement: Enrollment Changes During an Inpatient Stay**

- A. If a member's enrollment changes during an inpatient stay, including changing enrollment from fee-for-service to a contractor, or vice versa, or changing from one contractor to another contractor, the contractor with whom the member is enrolled on the date of discharge shall be responsible for reimbursing the hospital for the entire length of stay under the DRG payment rules in sections R9-22-712.60 through R9-22-712.81. If the member is eligible but not enrolled with a contractor on the date of discharge, then the AHCCCS administration shall be responsible for reimbursing the hospital for the entire length of stay under the DRG payment rules in sections R9-22-712.60 through R9-22-712.81.
- B. When a member's enrollment changes during an inpatient stay, the hospital shall use the date of enrollment with the payer responsible on the date of discharge as the "from" date of service on the claim regardless of the date of admission.
- C. Interim claims submitted to a payer other than the payer responsible on the day of discharge shall be processed in the same manner as other interim claims as described in R9-22-712.76.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

**R9-22-712.73. DRG Reimbursement: Inpatient Stays for Members Eligible for Medicare**

If the hospital receives less than the full Medicare payment for a member eligible for benefits under Part A of Medicare because the member has exceeded the maximum benefit permitted under Part A of Medicare, the hospital shall submit a separate claim for services performed after the date the maximum Medicare Part A benefit is exceeded. The claim may include all diagnosis codes for the entire inpatient stay, but the hospital is only required to include revenue codes, surgical procedure codes, service units, and charges for services performed after the date the Medicare Part A benefit is exceeded. A claim so submitted shall be reimbursed using the DRG payment methodology.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.74. DRG Reimbursement: Third Party Liability**

DRG payments are subject to reduction based on cost avoidance under Section R9-22-1003 and other rules regarding first-and third-party liability under Article 10 of this Chapter including cost avoidance for claims for ancillary services covered under Part B of Medicare.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.75. DRG Reimbursement: Payment for Administrative Days**

- A. Categories of Administrative Days. Administrative days fall into one of two categories, either subsection (A)(1) or (A)(2).
  1. Administrative days due to lack of appropriate placement options and not meeting inpatient medical criteria.

36-2903.01. Additional powers and duties; report; definition

A. The director of the Arizona health care cost containment system administration may adopt rules that provide that the system may withhold or forfeit payments to be made to a noncontracting provider by the system if the noncontracting provider fails to comply with this article, the provider agreement or rules that are adopted pursuant to this article and that relate to the specific services rendered for which a claim for payment is made.

B. The director shall:

1. Prescribe uniform forms to be used by all contractors. The rules shall require a written and signed application by the applicant or an applicant's authorized representative, or, if the person is incompetent or incapacitated, a family member or a person acting responsibly for the applicant may obtain a signature or a reasonable facsimile and file the application as prescribed by the administration.

2. Enter into an interagency agreement with the department to establish a streamlined eligibility process to determine the eligibility of all persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). At the administration's option, the interagency agreement may allow the administration to determine the eligibility of certain persons, including those defined pursuant to section 36-2901, paragraph 6, subdivision (a).

3. Enter into an intergovernmental agreement with the department to:

(a) Establish an expedited eligibility and enrollment process for all persons who are hospitalized at the time of application.

(b) Establish performance measures and incentives for the department.

(c) Establish the process for management evaluation reviews that the administration shall perform to evaluate the eligibility determination functions performed by the department.

(d) Establish eligibility quality control reviews by the administration.

(e) Require the department to adopt rules, consistent with the rules adopted by the administration for a hearing process, that applicants or members may use for appeals of eligibility determinations or redeterminations.

(f) Establish the department's responsibility to place sufficient eligibility workers at federally qualified health centers to screen for eligibility and at hospital sites and level one trauma centers to ensure that persons seeking hospital services are screened on a timely basis for eligibility for the system, including a process to ensure that applications for the system can be accepted on a twenty-four hour basis, seven days a week.

(g) Withhold payments based on the allowable sanctions for errors in eligibility determinations or redeterminations or failure to meet performance measures required by the intergovernmental agreement.

(h) Recoup from the department all federal fiscal sanctions that result from the department's inaccurate eligibility determinations. The director may offset all or part of a sanction if the department submits a corrective action plan and a strategy to remedy the error.

4. By rule establish a procedure and time frames for the intake of grievances and requests for hearings, for the continuation of benefits and services during the appeal process and for a grievance process at the contractor level. Notwithstanding sections 41-1092.02, 41-1092.03 and 41-1092.05, the administration shall develop rules to establish the procedure and time frame for the informal resolution of grievances and appeals. A grievance that is not related to a claim for payment of system covered services shall be filed in writing with and received by the administration or the prepaid capitated provider or program contractor not later than sixty days after the date of the adverse action, decision or policy implementation being grieved. A grievance that is related to a claim for payment of system covered services must be filed in writing and received by the administration or the prepaid capitated provider or program contractor within twelve months after the date of service, within twelve months

after the date that eligibility is posted or within sixty days after the date of the denial of a timely claim submission, whichever is later. A grievance for the denial of a claim for reimbursement of services may contest the validity of any adverse action, decision, policy implementation or rule that related to or resulted in the full or partial denial of the claim. A policy implementation may be subject to a grievance procedure, but it may not be appealed for a hearing. The administration is not required to participate in a mandatory settlement conference if it is not a real party in interest. In any proceeding before the administration, including a grievance or hearing, persons may represent themselves or be represented by a duly authorized agent who is not charging a fee. A legal entity may be represented by an officer, partner or employee who is specifically authorized by the legal entity to represent it in the particular proceeding.

5. Apply for and accept federal funds available under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) in support of the system. The application made by the director pursuant to this paragraph shall be designed to qualify for federal funding primarily on a prepaid capitated basis. Such funds may be used only for the support of persons defined as eligible pursuant to title XIX of the social security act or the approved section 1115 waiver.

6. At least thirty days before the implementation of a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

7. In addition to the cost sharing requirements specified in subsection D, paragraph 4 of this section:

(a) Charge monthly premiums up to the maximum amount allowed by federal law to all populations of eligible persons who may be charged.

(b) Implement this paragraph to the extent permitted under the federal deficit reduction act of 2005 and other federal laws, subject to the approval of federal waiver authority and to the extent that any changes in the cost sharing requirements under this paragraph would permit this state to receive any enhanced federal matching rate.

C. The director is authorized to apply for any federal funds available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state funds appropriated for the administration and operation of the system may be used as matching funds to secure federal funds pursuant to this subsection.

D. The director may adopt rules or procedures to do the following:

1. Authorize advance payments based on estimated liability to a contractor or a noncontracting provider after the contractor or noncontracting provider has submitted a claim for services and before the claim is ultimately resolved. The rules shall specify that any advance payment shall be conditioned on the execution before payment of a contract with the contractor or noncontracting provider that requires the administration to retain a specified percentage, which shall be at least twenty percent, of the claimed amount as security and that requires repayment to the administration if the administration makes any overpayment.

2. Defer liability, in whole or in part, of contractors for care provided to members who are hospitalized on the date of enrollment or under other circumstances. Payment shall be on a capped fee-for-service basis for services other than hospital services and at the rate established pursuant to subsection G of this section for hospital services or at the rate paid by the health plan, whichever is less.

3. Deputize, in writing, any qualified officer or employee in the administration to perform any act that the director by law is empowered to do or charged with the responsibility of doing, including the authority to issue final administrative decisions pursuant to section 41-1092.08.

4. Notwithstanding any other law, require persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 to be financially responsible for any cost sharing requirements established in a state plan or a section 1115 waiver and approved by the centers for medicare and

medicaid services. Cost sharing requirements may include copayments, coinsurance, deductibles, enrollment fees and monthly premiums for enrolled members, including households with children enrolled in the Arizona long-term care system.

E. The director shall adopt rules that further specify the medical care and hospital services that are covered by the system pursuant to section 36-2907.

F. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection shall consider the differences between rural and urban conditions on the delivery of hospitalization and medical care.

G. For inpatient hospital admissions and outpatient hospital services on and after March 1, 1993, the administration shall adopt rules for the reimbursement of hospitals according to the following procedures:

1. For inpatient hospital stays from March 1, 1993 through September 30, 2014, the administration shall use a prospective tiered per diem methodology, using hospital peer groups if analysis shows that cost differences can be attributed to independently definable features that hospitals within a peer group share. In peer grouping the administration may consider such factors as length of stay differences and labor market variations. If there are no cost differences, the administration shall implement a stop loss-stop gain or similar mechanism. Any stop loss-stop gain or similar mechanism shall ensure that the tiered per diem rates assigned to a hospital do not represent less than ninety percent of its 1990 base year costs or more than one hundred ten percent of its 1990 base year costs, adjusted by an audit factor, during the period of March 1, 1993 through September 30, 1994. The tiered per diem rates set for hospitals shall represent no less than eighty-seven and one-half percent or more than one hundred twelve and one-half percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1994 through September 30, 1995 and no less than eighty-five percent or more than one hundred fifteen percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1995 through September 30, 1996. For the periods after September 30, 1996 no stop loss-stop gain or similar mechanisms shall be in effect. An adjustment in the stop loss-stop gain percentage may be made to ensure that total payments do not increase as a result of this provision. If peer groups are used, the administration shall establish initial peer group designations for each hospital before implementation of the per diem system. The administration may also use a negotiated rate methodology. The tiered per diem methodology may include separate consideration for specialty hospitals that limit their provision of services to specific patient populations, such as rehabilitative patients or children. The initial per diem rates shall be based on hospital claims and encounter data for dates of service November 1, 1990 through October 31, 1991 and processed through May of 1992. The administration may also establish a separate reimbursement methodology for claims with extraordinarily high costs per day that exceed thresholds established by the administration.

2. For rates effective on October 1, 1994, and annually through September 30, 2011, the administration shall adjust tiered per diem payments for inpatient hospital care by the data resources incorporated market basket index for prospective payment system hospitals. For rates effective beginning on October 1, 1999, the administration shall adjust payments to reflect changes in length of stay for the maternity and nursery tiers.

3. Through June 30, 2004, for outpatient hospital services, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to the covered charges. Beginning on July 1, 2004 through June 30, 2005, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to covered charges. If the hospital increases its charges for outpatient services filed with the Arizona department of health services pursuant to chapter 4, article 3 of this title, by more than 4.7 percent for dates of service effective on or after July 1, 2004, the hospital specific cost-to-charge ratio will be reduced by the amount that it exceeds 4.7 percent. If charges exceed 4.7 percent, the effective date of the increased charges will be the effective date of the adjusted Arizona health care cost containment system cost-to-charge ratio. The administration shall develop the methodology for a capped fee-for-service schedule and a statewide cost-to-charge ratio. Any covered outpatient service not included in the capped fee-for-service schedule shall be reimbursed by applying the statewide cost-to-charge ratio that is based on the services not included in the capped fee-for-service schedule. Beginning on July 1, 2005, the administration shall reimburse clean claims with dates of service on or after July 1, 2005, based on the capped fee-for-service schedule or the statewide cost-to-charge

ratio established pursuant to this paragraph. The administration may make additional adjustments to the outpatient hospital rates established pursuant to this section based on other factors, including the number of beds in the hospital, specialty services available to patients and the geographic location of the hospital.

4. Except if submitted under an electronic claims submission system, a hospital bill is considered received for purposes of this paragraph on initial receipt of the legible, error-free claim form by the administration if the claim includes the following error-free documentation in legible form:

- (a) An admission face sheet.
- (b) An itemized statement.
- (c) An admission history and physical.
- (d) A discharge summary or an interim summary if the claim is split.
- (e) An emergency record, if admission was through the emergency room.
- (f) Operative reports, if applicable.
- (g) A labor and delivery room report, if applicable.

Payment received by a hospital from the administration pursuant to this subsection or from a contractor either by contract or pursuant to section 36-2904, subsection I is considered payment by the administration or the contractor of the administration's or contractor's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.

5. For services rendered on and after October 1, 1997, the administration shall pay a hospital's rate established according to this section subject to the following:

- (a) If the hospital's bill is paid within thirty days of the date the bill was received, the administration shall pay ninety-nine percent of the rate.
- (b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate.
- (c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate plus a fee of one percent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. In developing the reimbursement methodology, if a review of the reports filed by a hospital pursuant to section 36-125.04 indicates that further investigation is considered necessary to verify the accuracy of the information in the reports, the administration may examine the hospital's records and accounts related to the reporting requirements of section 36-125.04. The administration shall bear the cost incurred in connection with this examination unless the administration finds that the records examined are significantly deficient or incorrect, in which case the administration may charge the cost of the investigation to the hospital examined.

7. Except for privileged medical information, the administration shall make available for public inspection the cost and charge data and the calculations used by the administration to determine payments under the tiered per diem system, provided that individual hospitals are not identified by name. The administration shall make the data and calculations available for public inspection during regular business hours and shall provide copies of the data and calculations to individuals requesting such copies within thirty days of receipt of a written request. The administration may charge a reasonable fee for the provision of the data or information.

8. The prospective tiered per diem payment methodology for inpatient hospital services shall include a mechanism for the prospective payment of inpatient hospital capital related costs. The capital payment shall

include hospital specific and statewide average amounts. For tiered per diem rates beginning on October 1, 1999, the capital related cost component is frozen at the blended rate of forty percent of the hospital specific capital cost and sixty percent of the statewide average capital cost in effect as of January 1, 1999 and as further adjusted by the calculation of tier rates for maternity and nursery as prescribed by law. Through September 30, 2011, the administration shall adjust the capital related cost component by the data resources incorporated market basket index for prospective payment system hospitals.

9. For graduate medical education programs:

(a) Beginning September 30, 1997, the administration shall establish a separate graduate medical education program to reimburse hospitals that had graduate medical education programs that were approved by the administration as of October 1, 1999. The administration shall separately account for monies for the graduate medical education program based on the total reimbursement for graduate medical education reimbursed to hospitals by the system in federal fiscal year 1995-1996 pursuant to the tiered per diem methodology specified in this section. The graduate medical education program reimbursement shall be adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Subject to legislative appropriation, on an annual basis, each qualified hospital shall receive a single payment from the graduate medical education program that is equal to the same percentage of graduate medical education reimbursement that was paid by the system in federal fiscal year 1995-1996. Any reimbursement for graduate medical education made by the administration shall not be subject to future settlements or appeals by the hospitals to the administration. The monies available under this subdivision shall not exceed the fiscal year 2005-2006 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement, except for monies distributed for expansions pursuant to subdivision (b) of this paragraph.

(b) The monies available for graduate medical education programs pursuant to this subdivision shall not exceed the fiscal year 2006-2007 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Graduate medical education programs eligible for such reimbursement are not precluded from receiving reimbursement for funding under subdivision (c) of this paragraph. Beginning July 1, 2006, the administration shall distribute any monies appropriated for graduate medical education above the amount prescribed in subdivision (a) of this paragraph in the following order or priority:

(i) For the direct costs to support the expansion of graduate medical education programs established before July 1, 2006 at hospitals that do not receive payments pursuant to subdivision (a) of this paragraph. These programs must be approved by the administration.

(ii) For the direct costs to support the expansion of graduate medical education programs established on or before October 1, 1999. These programs must be approved by the administration.

(c) The administration shall distribute to hospitals any monies appropriated for graduate medical education above the amount prescribed in subdivisions (a) and (b) of this paragraph for the following purposes:

(i) For the direct costs of graduate medical education programs established or expanded on or after July 1, 2006. These programs must be approved by the administration.

(ii) For a portion of additional indirect graduate medical education costs for programs that are located in a county with a population of less than five hundred thousand persons at the time the residency position was created or for a residency position that includes a rotation in a county with a population of less than five hundred thousand persons at the time the residency position was established. These programs must be approved by the administration.

(d) The administration shall develop, by rule, the formula by which the monies are distributed.

(e) Each graduate medical education program that receives funding pursuant to subdivision (b) or (c) of this paragraph shall identify and report to the administration the number of new residency positions created by the funding provided in this paragraph, including positions in rural areas. The program shall also report information related to the number of funded residency positions that resulted in physicians locating their practices in this state. The administration shall report to the joint legislative budget committee by February 1 of each year on the number of new residency positions as reported by the graduate medical education programs.

(f) Local, county and tribal governments and any university under the jurisdiction of the Arizona board of regents may provide monies in addition to any state general fund monies appropriated for graduate medical education in order to qualify for additional matching federal monies for providers, programs or positions in a specific locality and costs incurred pursuant to a specific contract between the administration and providers or other entities to provide graduate medical education services as an administrative activity. Payments by the administration pursuant to this subdivision may be limited to those providers designated by the funding entity and may be based on any methodology deemed appropriate by the administration, including replacing any payments that might otherwise have been paid pursuant to subdivision (a), (b) or (c) of this paragraph had sufficient state general fund monies or other monies been appropriated to fully fund those payments. These programs, positions, payment methodologies and administrative graduate medical education services must be approved by the administration and the centers for medicare and medicaid services. The administration shall report to the president of the senate, the speaker of the house of representatives and the director of the joint legislative budget committee on or before July 1 of each year on the amount of money contributed and number of residency positions funded by local, county and tribal governments, including the amount of federal matching monies used.

(g) Any funds appropriated but not allocated by the administration for subdivision (b) or (c) of this paragraph may be reallocated if funding for either subdivision is insufficient to cover appropriate graduate medical education costs.

10. Notwithstanding section 41-1005, subsection A, paragraph 9, the administration shall adopt rules pursuant to title 41, chapter 6 establishing the methodology for determining the prospective tiered per diem payments that are in effect through September 30, 2014.

11. For inpatient hospital services rendered on or after October 1, 2011, the prospective tiered per diem payment rates are permanently reset to the amounts payable for those services as of October 1, 2011 pursuant to this subsection.

12. The administration shall adopt a diagnosis-related group based hospital reimbursement methodology consistent with title XIX of the social security act for inpatient dates of service on and after October 1, 2014. The administration may make additional adjustments to the inpatient hospital rates established pursuant to this section for hospitals that are publicly operated or based on other factors, including the number of beds in the hospital, the specialty services available to patients, the geographic location and diagnosis-related group codes that are made publicly available by the hospital pursuant to section 36-437. The administration may also provide additional reimbursement for extraordinarily high cost cases that exceed a threshold above the standard payment. The administration may also establish a separate payment methodology for specific services or hospitals serving unique populations.

H. The director may adopt rules that specify enrollment procedures, including notice to contractors of enrollment. The rules may provide for varying time limits for enrollment in different situations. The administration shall specify in contract when a person who has been determined eligible will be enrolled with that contractor and the date on which the contractor will be financially responsible for health and medical services to the person.

I. The administration may make direct payments to hospitals for hospitalization and medical care provided to a member in accordance with this article and rules. The director may adopt rules to establish the procedures by which the administration shall pay hospitals pursuant to this subsection if a contractor fails to make timely payment to a hospital. Such payment shall be at a level determined pursuant to section 36-2904, subsection H

or I. The director may withhold payment due to a contractor in the amount of any payment made directly to a hospital by the administration on behalf of a contractor pursuant to this subsection.

J. The director shall establish a special unit within the administration for the purpose of monitoring the third-party payment collections required by contractors and noncontracting providers pursuant to section 36-2903, subsection B, paragraph 10 and subsection F and section 36-2915, subsection E. The director shall determine by rule:

1. The type of third-party payments to be monitored pursuant to this subsection.
2. The percentage of third-party payments that is collected by a contractor or noncontracting provider and that the contractor or noncontracting provider may keep and the percentage of such payments that the contractor or noncontracting provider may be required to pay to the administration. Contractors and noncontracting providers must pay to the administration one hundred percent of all third-party payments that are collected and that duplicate administration fee-for-service payments. A contractor that contracts with the administration pursuant to section 36-2904, subsection A may be entitled to retain a percentage of third-party payments if the payments collected and retained by a contractor are reflected in reduced capitation rates. A contractor may be required to pay the administration a percentage of third-party payments that are collected by a contractor and that are not reflected in reduced capitation rates.

K. The administration shall establish procedures to apply to the following if a provider that has a contract with a contractor or noncontracting provider seeks to collect from an individual or financially responsible relative or representative a claim that exceeds the amount that is reimbursed or should be reimbursed by the system:

1. On written notice from the administration or oral or written notice from a member that a claim for covered services may be in violation of this section, the provider that has a contract with a contractor or noncontracting provider shall investigate the inquiry and verify whether the person was eligible for services at the time that covered services were provided. If the claim was paid or should have been paid by the system, the provider that has a contract with a contractor or noncontracting provider shall not continue billing the member.

2. If the claim was paid or should have been paid by the system and the disputed claim has been referred for collection to a collection agency or referred to a credit reporting bureau, the provider that has a contract with a contractor or noncontracting provider shall:

- (a) Notify the collection agency and request that all attempts to collect this specific charge be terminated immediately.

- (b) Advise all credit reporting bureaus that the reported delinquency was in error and request that the affected credit report be corrected to remove any notation about this specific delinquency.

- (c) Notify the administration and the member that the request for payment was in error and that the collection agency and credit reporting bureaus have been notified.

3. If the administration determines that a provider that has a contract with a contractor or noncontracting provider has billed a member for charges that were paid or should have been paid by the administration, the administration shall send written notification by certified mail or other service with proof of delivery to the provider that has a contract with a contractor or noncontracting provider stating that this billing is in violation of federal and state law. If, twenty-one days or more after receiving the notification, a provider that has a contract with a contractor or noncontracting provider knowingly continues billing a member for charges that were paid or should have been paid by the system, the administration may assess a civil penalty in an amount equal to three times the amount of the billing and reduce payment to the provider that has a contract with a contractor or noncontracting provider accordingly. Receipt of delivery signed by the addressee or the addressee's employee is prima facie evidence of knowledge. Civil penalties collected pursuant to this subsection shall be deposited in the state general fund. Section 36-2918, subsections C, D and F, relating to the imposition, collection and enforcement of civil penalties, apply to civil penalties imposed pursuant to this paragraph.

L. The administration may conduct postpayment review of all claims paid by the administration and may recoup any monies erroneously paid. The director may adopt rules that specify procedures for conducting postpayment review. A contractor may conduct a postpayment review of all claims paid by the contractor and may recoup monies that are erroneously paid.

M. Subject to title 41, chapter 4, article 4, the director or the director's designee may employ and supervise personnel necessary to assist the director in performing the functions of the administration.

N. The administration may contract with contractors for obstetrical care who are eligible to provide services under title XIX of the social security act.

O. Notwithstanding any other law, on federal approval the administration may make disproportionate share payments to private hospitals, county operated hospitals, including hospitals owned or leased by a special health care district, and state operated institutions for mental disease beginning October 1, 1991 in accordance with federal law and subject to legislative appropriation. If at any time the administration receives written notification from federal authorities of any change or difference in the actual or estimated amount of federal funds available for disproportionate share payments from the amount reflected in the legislative appropriation for such purposes, the administration shall provide written notification of such change or difference to the president and the minority leader of the senate, the speaker and the minority leader of the house of representatives, the director of the joint legislative budget committee, the legislative committee of reference and any hospital trade association within this state, within three working days not including weekends after receipt of the notice of the change or difference. In calculating disproportionate share payments as prescribed in this section, the administration may use either a methodology based on claims and encounter data that is submitted to the administration from contractors or a methodology based on data that is reported to the administration by private hospitals and state operated institutions for mental disease. The selected methodology applies to all private hospitals and state operated institutions for mental disease qualifying for disproportionate share payments.

P. Disproportionate share payments made pursuant to subsection O of this section include amounts for disproportionate share hospitals designated by political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents. Subject to the approval of the centers for medicare and medicaid services, any amount of federal funding allotted to this state pursuant to section 1923(f) of the social security act and not otherwise spent under subsection O of this section shall be made available for distribution pursuant to this subsection. Political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents may designate hospitals eligible to receive disproportionate share payments in an amount up to the limit prescribed in section 1923(g) of the social security act if those political subdivisions, tribal governments or universities provide sufficient monies to qualify for the matching federal monies for the disproportionate share payments.

Q. Notwithstanding any law to the contrary, the administration may receive confidential adoption information to determine whether an adopted child should be terminated from the system.

R. The adoption agency or the adoption attorney shall notify the administration within thirty days after an eligible person receiving services has placed that person's child for adoption.

S. If the administration implements an electronic claims submission system, it may adopt procedures pursuant to subsection G of this section requiring documentation different than prescribed under subsection G, paragraph 4 of this section.

T. In addition to any requirements adopted pursuant to subsection D, paragraph 4 of this section, notwithstanding any other law, subject to approval by the centers for medicare and medicaid services, beginning July 1, 2011, members eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 shall pay the following:

1. A monthly premium of fifteen dollars, except that the total monthly premium for an entire household shall not exceed sixty dollars.

2. A copayment of five dollars for each physician office visit.
3. A copayment of ten dollars for each urgent care visit.
4. A copayment of thirty dollars for each emergency department visit.

U. Subject to the approval of the centers for medicare and medicaid services, political subdivisions of this state, tribal governments and any university under the jurisdiction of the Arizona board of regents may provide to the Arizona health care cost containment system administration monies in addition to any state general fund monies appropriated for critical access hospitals in order to qualify for additional federal monies. Any amount of federal monies received by this state pursuant to this subsection shall be distributed as supplemental payments to critical access hospitals.

V. For the purposes of this section, "disproportionate share payment" means a payment to a hospital that serves a disproportionate share of low-income patients as described by 42 United States Code section 1396r-4.

**DEPARTMENT OF HEALTH SERVICES**

Title 9, Chapter 10, Department of Health Services - Health Care Institutions: Licensing

**Amend:** R9-10-306, R9-10-406, R9-10-706, R9-10-1011, R9-10-1305,  
R9-10-1405, R9-10-1705, R9-10-1903, R9-10-1909, R9-10-1910,  
R9-10-1911



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

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**MEETING DATE:** November 3, 2020

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

**FROM:** Council Staff

**DATE:** October 14, 2020

**SUBJECT: DEPARTMENT OF HEALTH SERVICES (R20-1102)**  
Title 9, Chapter 10, Department of Health Services - Health Care Institutions:  
Licensing

**Amend:** R9-10-306, R9-10-406, R9-10-706, R9-10-1011, R9-10-1305,  
R9-10-1405, R9-10-1705, R9-10-1903, R9-10-1909, R9-10-1910,  
R9-10-1911

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### Summary:

This expedited rulemaking from the Department of Health Services (Department) seeks to amend rules in Title 9, Chapter 10, relating to Health Care Institutions and Licensing. Pursuant to A.R.S. §§ 36-405 and 36-406, the Department is required 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.

The purpose of this rulemaking is to amend the rules to make them consistent with Laws 2019, Ch. 215 §4. These laws require the Department to allow "a person who is employed at a health care institution that provides behavioral health services, who is *not* a licensed behavioral health professional and who is at least eighteen years of age to provide behavioral health or other related health care services pursuant to all applicable department rules." Currently the rules require personnel members to be at least eighteen years of age *and licensed* under A.R.S. Title 32. In this rulemaking, the Department also seeks to address issues identified in the recent Five-Year Review Report (5YRR) for these rules, which the Council approved in February 2020.

The Department received an exemption from the rulemaking moratorium to conduct this expedited rulemaking on July 30, 2020.

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

Yes. The Department states that it is conducting this expedited rulemaking pursuant to A.R.S. § 41-1027(A)(1), (6), and (7). The Department states that this expedited rulemaking adopts requirements implementing Laws 2019, Chapter 215, § 4 and seeks to implement a course of action proposed in a five year review report (5YRR). The Council approved a 5YRR on these rules in February 2020. Upon review of this statute and the Department's 5YRR on these rules, Council staff agrees that this rulemaking meets the criteria for expedited rulemaking.

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?**

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

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

The Department did not receive any comments 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. No changes were made between the proposed expedited rulemaking and the 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?**

The Department asserts that 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.” The Department states, because a health care institution license is specific to the licensee, class or subclass of health care institution, facility location, and scope of services provided, a general permit is not applicable.

It appears the Department is asserting “[t]he issuance of an alternative type of permit, license or authorization is specifically authorized by state statute” and “[t]he issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements.” See A.R.S. § 41-1037(A)(2)-(3).

However, Council staff believes it is possible the licenses being issued qualify as general permits. Under A.R.S. 41-1001(11) a “general permit” is defined as “a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing.”

Under R9-10-102(C), the Department “review[s] a proposed health care institution’s scope of services to determine whether the requested health care institution class or subclass is appropriate” when issuing a license. Upon review of this rule, it appears the Department authorizes licenses similarly to general permits, based on “facilities, activities or practices in a class that are substantially similar in nature.” Due to the various class designations that the Department uses to issue permits, there is some ambiguity whether a specific or general permit is necessary.

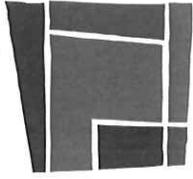
Council staff encourages the council to discuss with the Department if this permit is general or specific.

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

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

**9. Conclusion**

In this expedited rulemaking, the Department seeks to amend the rules relating to Health Care Institutions and Licensing to make them consistent with Laws 2019, Chapter 215, § 4. Further, the Department seeks to implement a proposed course of action from its recent 5YRR on these rules. Council staff finds that as amended, the rules would be more clear, concise, understandable, effective, and consistent with other rules and statutes. If approved, this rulemaking would be effective immediately upon the Department filing its Certificate of Approval and rulemaking with the Secretary of State. Council staff recommends approval of this expedited rulemaking.



# ARIZONA DEPARTMENT OF HEALTH SERVICES

## POLICY & INTERGOVERNMENTAL AFFAIRS

September 2, 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

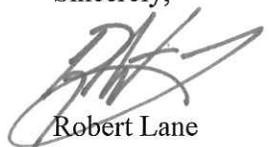
Dear Ms. Sornsin:

1. The close of record date: August 31, 2020
  2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):  
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. The rulemaking adopts requirements implementing Laws 2019, Ch. 215, § 4, and makes other changes described in a five-year-review report that was approved by the Governor's Regulatory Review Council on February 4, 2020 to reduce the administrative burden of the rules. Thus, the rulemaking complies with criteria for expedited rulemaking under A.R.S. § 41-1027(A)(1), (6), and (7).
  3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:  
Some of the changes being made by the rulemaking relate to a five-year-review report approved by the Council on February 4, 2020.
- The Department certifies that the Preamble of this rulemaking discloses a reference to any study relevant to the rule that the Department reviewed and either did or did not rely on in its evaluation of or justification for the rule.
4. A list of all items enclosed:
    - a. Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule
    - b. Statutory authority

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

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

Sincerely,

A handwritten signature in black ink, appearing to be 'RL', written over a horizontal line.

Robert Lane  
Director's Designee

RL:rms

Enclosures



Phoenix, AZ 85007

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

or

Name: Robert Lane, 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: Robert.Lane@azdhs.gov

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

Arizona Revised Statutes (A.R.S.) § 36-132(A)(1) requires the Arizona Department of Health Services (Department) to protect the health of the people in Arizona. In order to ensure public health, safety, and welfare, A.R.S. §§ 36-405 and 36-406 require the Department to adopt rules establishing minimum standards and requirements for construction, modification, and licensure of health care institutions. The Department has adopted rules to implement these statutes in Arizona Administrative Code Title 9, Chapter 10. Laws 2019, Ch. 215, § 4 requires the Department to allow “a person who is employed at a health care institution that provides behavioral health services, who is not a licensed behavioral health professional and who is at least eighteen years of age to provide behavioral health or other related health care services pursuant to all applicable department rules.” After receiving an exception from the rulemaking moratorium established by Executive Order 2020-02, the Department is revising the rules in 9 A.A.C. Title 10 to comply with requirements in Laws 2019, Ch. 215, § 4. The Department is also making changes described in a five-year-review report that was approved by the Governor’s Regulatory Review Council on February 4, 2020. 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. The revised rules conform to rulemaking format and style requirements of the Governor’s Regulatory Review Council and the Office of the Secretary of State.

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

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

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

Not applicable

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

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

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

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

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

No comments were received about this rulemaking.

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

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

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

A.R.S. § 36-407 prohibits a person from establishing, conducting, or maintaining “a health care institution or any class or subclass of health care institution unless that person holds a current and valid license issued by the [D]epartment specifying the class or subclass of health care institution the person is establishing, conducting or maintaining.”

A health care institution license is specific to the licensee, class or subclass of health care institution, facility location, and scope of services provided. As such, a general permit is not applicable and is not used.

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

Not applicable

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

No business competitiveness analysis was received by the Department.

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

Not applicable

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

The rule was not previously made as an emergency rule.

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

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

**ARTICLE 3. BEHAVIORAL HEALTH INPATIENT FACILITIES**

Section

R9-10-306. Personnel

**ARTICLE 4. NURSING CARE INSTITUTIONS**

Section

R9-10-406. Personnel

**ARTICLE 7. BEHAVIORAL HEALTH RESIDENTIAL FACILITIES**

Section

R9-10-706. Personnel

**ARTICLE 10. OUTPATIENT TREATMENT CENTERS**

Section

R9-10-1011. Behavioral Health Services

**ARTICLE 13. BEHAVIORAL HEALTH SPECIALIZED TRANSITIONAL FACILITY**

Section

R9-10-1305. Personnel Requirements and Records

**ARTICLE 14. SUBSTANCE ABUSE TRANSITIONAL FACILITIES**

Section

R9-10-1405. Personnel

**ARTICLE 17. UNCLASSIFIED HEALTH CARE INSTITUTIONS**

Section

R9-10-1705. Personnel

**ARTICLE 19. COUNSELING FACILITIES**

Section

R9-10-1903. Administration

R9-10-1909. Counseling

R9-10-1910. Physical Plant, Environmental Services, and ~~Equipment~~ Safety Standards

R9-10-1911. Integrated Information

### ARTICLE 3. BEHAVIORAL HEALTH INPATIENT FACILITIES

#### R9-10-306. Personnel

A. An administrator shall ensure that:

1. A personnel member, ~~an employee, or a student~~ is at least 18 years old;
  - a. ~~At least 21 years old, or~~
  - b. ~~At least 18 years old and is licensed or certified under A.R.S. title 32 and providing services within the personnel member's scope of practice;~~
2. ~~An employee is at least 18 years old;~~
3. ~~A student is at least 18 years old;~~ and
4. A volunteer is at least 21 years old.

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 physical health services or behavioral health services expected to be provided by the personnel member according to the established job description, and
    - ii. The acuity of the patients receiving physical health services or behavioral 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 physical health services and behavioral 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 physical health services or behavioral 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 physical health services or behavioral 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;
- 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 a personnel member, or an employee, a volunteer, or a student who has or is expected to have direct interaction with a participant for more than eight hours in a week, provides evidence of freedom from infectious tuberculosis:
  - 1. On or before the date the individual begins providing services at or on behalf of the behavioral health inpatient facility, and
  - 2. As specified in R9-10-113.
- F. 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 employee'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 qualifications and on-going training for each type of restraint or seclusion used, as required in R9-10-316;
    - 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 R9-10-303(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 (D).

**G.** 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 inpatient facility, and
  - b. For at least 24 months after the last date the individual provided services in or for the behavioral health inpatient facility; and
- 2. For a personnel member who has not provided physical health services or behavioral health services at or for the behavioral health inpatient facility during the previous 12 months, provided to the Department within 72 hours after the Department's request.

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

- 1. A plan to provide orientation specific to the duties of a personnel member, an employee, a volunteer, and a student is developed, documented, and implemented;
- 2. A personnel member completes orientation before providing 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 clinical director develops, documents, and implements a plan 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.

**I.** An administrator shall ensure that a behavioral health inpatient facility has a daily staffing schedule that:

- 1. Indicates the date, scheduled work hours, and name of each employee assigned to work, including on-call personnel members;
- 2. Includes documentation of the employees who work each calendar day and the hours worked by each employee; and

3. Is maintained for at least 12 months after the last date on the daily staffing schedule.

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

1. A physician or registered nurse practitioner is present on the behavioral health inpatient facility's premises or on-call,

2. A registered nurse is present on the behavioral health inpatient facility's premises, and

3. A registered nurse who provides direction for the nursing services provided at the behavioral health inpatient facility is present at the behavioral health inpatient facility at least 40 hours every week.

## ARTICLE 4. NURSING CARE INSTITUTIONS

### R9-10-406. Personnel

- A. An administrator shall ensure that:
- ~~1.~~ A a behavioral health technician ~~is at least 21 years old, and or~~
  - ~~2.~~ A behavioral health paraprofessional is at least ~~21~~ 18 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 physical health services or behavioral health services expected to be provided by the personnel member according to the established job description, and
      - ii. The acuity of the residents receiving physical health services or behavioral 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 physical health services and behavioral 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 physical health services or behavioral 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 physical health services or behavioral 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;
  3. Sufficient personnel members are present on a nursing care institution's premises with the qualifications, skills, and knowledge necessary to:
    - a. Provide the services in the nursing care institution's scope of services,

- b. Meet the needs of a resident, and
  - c. Ensure the health and safety of a resident.
- C. Except as provided in R9-10-415, an administrator shall ensure that, if a personnel member provides social services that require a license under A.R.S. Title 32, Chapter 33, Article 5, the personnel member is licensed under A.R.S. Title 32, Chapter 33, Article 5.
- D. An administrator shall ensure that an individual who is a licensed baccalaureate social worker, master social worker, associate marriage and family therapist, associate counselor, or associate substance abuse counselor is under direct supervision as defined in 4 A.A.C. 6, Article 1.
- E. An administrator shall ensure that a personnel member or an employee or volunteer who has or is expected to have direct interaction with a resident for more than eight hours a week provides evidence of freedom from infectious tuberculosis:
  - 1. On or before the date the individual begins providing services at or on behalf of the nursing care institution, and
  - 2. As specified in R9-10-113.
- F. An administrator shall ensure that a personnel record is maintained for each personnel member, employee, volunteer, or student that includes:
  - 1. The individual's name, date of birth, and contact telephone number;
  - 2. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and
  - 3. Documentation of:
    - a. The individual's qualifications including skills and knowledge applicable to the individual's job duties;
    - b. The individual's education and experience applicable to the individual's job duties;
    - c. The individual's compliance with the requirements in A.R.S. § 36-411;
    - d. Orientation and in-service education as required by policies and procedures;
    - e. The individual's license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures;
    - 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 R9-10-303(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 (E); and
- j. If the individual is a nutrition and feeding assistant:
  - i. Completion of the nutrition and feeding assistant training course required in R9-10-116, and
  - ii. A nurse's observations required in R9-10- 423(C)(6).

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

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

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

- 1. A plan to provide orientation specific to the duties of a personnel member, an employee, a volunteer, and a student is developed, documented, and implemented;
- 2. A personnel member completes orientation before providing 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 plan to provide in-service education specific to the duties of a personnel member is developed, documented, and implemented;
- 5. A personnel member's in-service education is documented, to include:
  - a. The personnel member's name,
  - b. The date of the training, and
  - c. The subject or topics covered in the training.
- 5. A work schedule of each personnel member is developed and maintained at the nursing care institution for at least 12 months after the date of the work schedule.

**I.** An administrator shall designate a qualified individual to provide:

- 1. Social services, and

2. Recreational activities.

## ARTICLE 7. BEHAVIORAL HEALTH RESIDENTIAL FACILITIES

### R9-10-706. Personnel

A. An administrator shall ensure that:

1. A personnel member, ~~an employee, or a student~~ is at least 18 years old;
  - a. ~~At least 21 years old, or~~
  - b. ~~At least 18 years old and is licensed or certified under A.R.S. title 32 and providing services within the personnel member's scope of practice;~~
2. ~~An employee is at least 18 years old;~~
3. ~~A student is at least 18 years old;~~ and
4. A volunteer is at least 21 years old.

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;
  - 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, and 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 R9-10-303(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 at 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 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.

## ARTICLE 10. OUTPATIENT TREATMENT CENTERS

### R9-10-1011. Behavioral Health Services

- A.** An administrator of an outpatient treatment center that is authorized to provide behavioral health services shall ensure that:
1. The outpatient treatment center does not provide a behavioral health service the outpatient treatment center is not authorized to provide;
  2. The behavioral health services provided by or at the outpatient treatment center:
    - a. Are provided under the direction of a behavioral health professional; and
    - b. Comply with the requirements:
      - i. For behavioral health paraprofessionals and behavioral health technicians; in R9-10-115, and
      - ii. For an assessment, in subsection (B);
  3. A personnel member who provides behavioral health services is at least 18 years old;
    - a. ~~At least 21 years of age; or~~
    - b. ~~At least 18 years of age and is licensed or certified under A.R.S. Title 32 and providing services within the personnel member's scope of practice; and~~
  4. If an outpatient treatment center provides behavioral health services to a patient who is less than 18 years of age, the owner and an employee or a volunteer comply with the fingerprint clearance card requirements in A.R.S. § 36-425.03.
- B.** An administrator of an outpatient treatment center that is authorized to provide behavioral health services shall ensure that:
1. Except as provided in subsection (B)(2), a behavioral health assessment for a patient is completed before treatment for the patient is initiated;
  2. If a behavioral health assessment that complies with the requirements in this Section is received from a behavioral health provider other than the outpatient treatment center or the outpatient treatment center has a medical record for the patient that contains an assessment that was completed within 12 months before the date of the patient's current admission:
    - a. The patient's assessment information is reviewed and updated if additional information that affects the patient's assessment is identified, and
    - b. The review and update of the patient's assessment information is documented in the patient's medical record within 48 hours after the review is completed;
  3. If a behavioral health assessment is conducted by a:

- a. Behavioral health technician or a registered nurse, within 72 hours a behavioral health professional certified or licensed to provide the behavioral health services needed by the patient reviews and signs the behavioral health assessment to ensure that the behavioral health assessment identifies the behavioral health services needed by the patient; or
  - b. Behavioral health paraprofessional, a behavioral health professional certified or licensed to provide the behavioral health services needed by the patient supervises the behavioral health paraprofessional during the completion of the behavioral health assessment and signs the behavioral health assessment to ensure that the assessment identifies the behavioral health services needed by the patient;
4. A behavioral health assessment:
- a. Documents a patient's:
    - i. Presenting issue;
    - ii. Substance abuse history;
    - iii. Co-occurring disorder;
    - iv. Medical condition and history;
    - v. Legal history, including:
      - (1) Custody,
      - (2) Guardianship, and
      - (3) Pending litigation;
    - vi. Criminal justice record;
    - vii. Family history;
    - viii. Behavioral health treatment history; and
    - ix. Symptoms reported by the patient and referrals needed by the patient, if any;
  - b. Includes:
    - i. Recommendations for further assessment or examination of the patient's needs;
    - ii. The behavioral health services, physical health services, or ancillary services that will be provided to the patient; and
    - iii. The signature and date signed of the personnel member conducting the behavioral health assessment; and
  - c. Is documented in patient's medical record;

5. A patient is referred to a medical practitioner if a determination is made that the patient requires immediate physical health services or the patient's behavioral health issue may be related to the patient's medical condition;
  6. A request for participation in a patient's behavioral health assessment is made to the patient or the patient's representative;
  7. An opportunity for participation in the patient's behavioral health assessment is provided to the patient or the patient's representative;
  8. Documentation of the request in subsection (B)(6) and the opportunity in subsection (B)(7) is in the patient's medical record;
  9. A patient's behavioral health assessment information is documented in the medical record within 48 hours after completing the assessment;
  10. If information in subsection (B)(4)(a) is obtained about a patient after the patient's behavioral health assessment is completed, an interval note, including the information, is documented in the patient's medical record within 48 hours after the information is obtained;
  11. Counseling is:
    - a. Offered as described in the outpatient treatment center's scope of services,
    - b. Provided according to the frequency and number of hours identified in the patient's assessment, and
    - c. Provided by a behavioral health professional or a behavioral health technician;
  12. 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
  13. Each counseling session is documented in the patient'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.
- C. An administrator of an outpatient treatment center authorized to provide behavioral health services may request to provide any of the following to individuals required to attend by a referring court:

1. DUI screening,
2. DUI education,
3. DUI treatment, or
4. Misdemeanor domestic violence offender treatment.

**D.** An administrator of an outpatient treatment center authorized to provide the services in subsection (C):

1. Shall comply with the requirements for the specific service in 9 A.A.C. 20, and
2. May have a behavioral health technician who has the appropriate skills and knowledge established in policies and procedures provide the services.

## ARTICLE 13. BEHAVIORAL HEALTH SPECIALIZED TRANSITIONAL FACILITY

### R9-10-1305. Personnel Requirements and Records

- A.** An administrator shall ensure that a personnel member:
1. Is at least ~~21~~ 18 years ~~of age~~ old; and
  2. Either:
    - a. Holds a valid fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1; or
    - b. Submits to the administrator a copy of a fingerprint clearance card application showing that the personnel member submitted the application to the fingerprint division of the Department of Public Safety under A.R.S. § 41-1758.02 within seven working days after becoming a personnel member.
- B.** An administrator shall ensure that each personnel member submits to the administrator a copy of the individual's valid fingerprint clearance card:
1. Except as provided in subsection (A)(2)(b), before the personnel member's starting date of employment; and
  2. Each time the fingerprint clearance card is issued or renewed.
- C.** If a personnel member holds a fingerprint clearance card that was issued before the individual became a personnel member, an administrator shall:
1. Contact the Department of Public Safety within seven working days after the individual becomes a personnel member to determine whether the fingerprint clearance card is valid; and
  2. Make a record of this determination, including the name of the personnel member, the date of the contact with the Department of Public Safety, and whether the fingerprint clearance card is valid
- D.** An administrator shall ensure:
1. The qualifications, skills, and knowledge required for each type of personnel member:
    - a. Are based on:
      - i. The type of physical health services or behavioral health services expected to be provided by the personnel member according to the established job description, and
      - ii. The acuity of the patients receiving physical health services or behavioral 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 physical health services and behavioral 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 physical health services or behavioral 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 physical health services or behavioral 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. Personnel members are present on a behavioral health specialized transitional facility's premises with the qualifications, skills, and knowledge necessary to:
    - a. Provide the services in the behavioral health specialized transitional facility's scope of services,
    - b. Meet the needs of a patient, and
    - c. Ensure the health and safety of a patient.
- E.** An administrator shall comply with the requirements for behavioral health technicians and behavioral health paraprofessionals in R9-10-115.
- F.** An administrator shall ensure that a personnel member or an employee or volunteer who has or is expected to have direct interaction with a patient for more than eight hours a week, provides evidence of freedom from infectious tuberculosis:
- 1. On or before the date the individual begins providing service at or on behalf of the behavioral health specialized transition 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 individual is a behavioral health technician, clinical oversight required in R9-10-115;
  - f. Cardiopulmonary resuscitation training, if required for the individual according to this Article or policies and procedures;
  - g. First aid training, if required for the individual according to this Article or policies and procedures; and
  - h. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (F).

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

1. Throughout an individual's period of providing services in or for the behavioral health specialized transitional facility; and
2. For at least 24 months after the last date the individual provided services in or for the behavioral health specialized transitional facility.

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

1. A plan to provide orientation specific to the duties of a personnel member, an employee, a volunteer, and a student is developed, documented, and implemented
2. A personnel member completes orientation before providing 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 plan to provide in-service education specific to the duties of a personnel member is developed, documented and implemented; 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.

**ARTICLE 14. SUBSTANCE ABUSE TRANSITIONAL FACILITIES**

**R9-10-1405. 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~~ If providing behavioral health services, at least 18 years old;
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 participants receiving behavioral health services or physical health services from the personnel member according to the established job description;
  - b. Include:
    - i. 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;
    - 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 behavioral health services or physical health services, and
    - b. According to policies and procedures;
  3. An emergency medical care technician complies with the requirements in 9 A.A.C. 25 for certification and medical direction;
  4. A substance abuse transitional facility has sufficient personnel members with the qualifications, education, experience, skills, and knowledge necessary to:
    - a. Provide the behavioral health services and physical health services in the substance abuse transitional facility's scope of services,
    - b. Meet the needs of a participant, and
    - c. Ensure the health and safety of a participant;
  5. A written plan is developed and implemented to provide orientation specific to the duties of a personnel member;
  6. A personnel member's orientation is documented, to include:
    - a. The personnel member's name,
    - b. The date of the orientation, and
    - c. The subject or topics covered in the orientation;
  7. In addition to the training required in subsections (B)(1) and (B)(5), a written plan is developed and implemented to provide a personnel member with in-service education specific to the duties of the personnel member;
  8. A personnel member's skills and knowledge are verified and documented:
    - a. Before providing services related to participant care, and
    - b. At least once every 12 months after the date the personnel member begins providing services related to participant care; and
  9. An individual's in-service education and, if applicable, training in how to respond to a participant's sudden, intense, or out-of-control behavior 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.
- C. 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 receives direct supervision as defined in A.A.C. R4-6-101.

- D.** An administrator shall ensure that a personnel member, or an employee, a volunteer, or a student who has or is expected to have direct interaction with a participant for more than eight hours in a week, provides evidence of freedom from infectious tuberculosis:
1. On or before the date the individual begins providing services at or on behalf of the substance abuse transitional facility, and
  2. As specified in R9-10-113 .
- E.** An administrator shall comply with the requirements for behavioral health technicians and behavioral health paraprofessionals in R9-10-115.
- F.** An administrator shall ensure that a personnel record is maintained for a personnel member, employee, volunteer, or student that contains:
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 completion of the training required in subsection (B)(8), if applicable;
    - 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 subsection (H) or policies and procedures;
    - h. First aid training, if required for the individual according to subsection (H) or policies and procedures; and
    - i. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (D).
- G.** An administrator shall ensure that personnel records are:
1. Maintained:

- a. Throughout an individual's period of providing services at or for a substance abuse transitional facility, and
    - b. For at least 24 months after the last date the individual provided services at or for a substance abuse transitional facility; and
  2. For a personnel member who has not provided physical health services or behavioral health services at or for the substance abuse transitional facility during the previous 12 months, provided to the Department within 72 hours after the Department's request.
- H.** An administrator shall ensure at least one personnel member who is present at the substance abuse transitional facility during hours of facility operation has first-aid and cardiopulmonary resuscitation training certification specific to the populations served by the facility.
- I.** An administrator shall ensure that:
  1. At least one personnel member is present and awake at a substance abuse transitional facility at all times when a participant is on the premises;
  2. In addition to the personnel member in subsection (I)(1), at least one personnel member is on-call and available to come to the substance abuse transitional facility if needed;
  3. A substance abuse transitional facility has sufficient personnel members to provide general participant supervision and treatment and sufficient personnel members or employees to provide ancillary services to meet the scheduled and unscheduled needs of each participant;
  4. There is a daily staffing schedule that:
    - a. Indicates the date, scheduled work hours, and name of each individual assigned to work, including on-call individuals;
    - b. Includes documentation of the employees who work each day and the hours worked by each employee; and
    - c. Is maintained for at least 12 months after the last date on the documentation;
  5. A behavioral health professional is present on the substance abuse transitional facility's premises or on-call; and
  6. A registered nurse is present on the substance abuse transitional facility's premises or on-call.

**ARTICLE 17. UNCLASSIFIED HEALTH CARE INSTITUTIONS**

**R9-10-1705. 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~~ If providing behavioral health services, at least 18 years old;
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 participants receiving behavioral health services or physical health services from the personnel member according to the established job description;
  - b. Include:
    - i. The specific skills and knowledge necessary for the personnel member to provide the expected physical health services and behavioral 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 physical health services or behavioral 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 physical health services or behavioral 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;
  - 3. Sufficient personnel members are present on a health care institution's premises with the qualifications, skills, and knowledge necessary to:
    - a. Provide the services in the health care institution's scope of services,
    - b. Meet the needs of a patient, and
    - c. Ensure the health and safety of a patient.
- C.** An administrator shall ensure that:
  - 1. A plan to provide orientation specific to the duties of a personnel member, employee, volunteer, and 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 plan to provide in-service education specific to the duties of a personnel member is developed;
  - 5. A personnel member's in-service education is documented, to include:
    - a. The personnel member's name,
    - b. The date of the training, and
    - c. The subject or topics covered in the training; and
  - 6. A work schedule of each personnel member is developed and maintained at the health care institution for at least 12 months after the date of the work schedule.
- D.** An administrator shall ensure that a personnel member, or an employee, a volunteer, or a student who has or is expected to have direct interaction with a patient, provides evidence of freedom from infectious tuberculosis:
  - a. On or before the date the individual begins providing services at or on behalf of the unclassified healthcare institution, and
  - b. As specified in R9-10-113.
- E.** 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 health care institution provides services to children, the individual's compliance with the fingerprinting requirements in A.R.S. § 36-425.03;
  - f. Cardiopulmonary resuscitation training, if required for the individual according to R9-10-1702(C)(2)(1);
  - g. First aid training, if required for the individual according to this Article or policies and procedures; and
  - h. Evidence of freedom from infectious tuberculosis, if the individual is required to provide evidence of freedom according to subsection (D).

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

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

**G.** An administrator shall ensure that at least one personnel member who is present at the health care institution during the hours of the health care institution operation has first-aid training and cardiopulmonary resuscitation certification specific to the populations served by the health care institution.

## ARTICLE 19. COUNSELING FACILITIES

### **R9-10-1903. Administration**

- A.** A governing authority shall:
1. Consist of one or more individuals accountable for the organization, operation, and administration of a counseling facility;
  2. Establish, in writing:
    - a. A counseling 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 R9-10-1904;
  5. Review and evaluate the effectiveness of the quality management program in R9-10-1904 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 premises for more than 30 calendar days, or
    - b. Not present on the 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 an administrator and identify the name and qualifications of the new administrator.
- B.** An administrator:
1. Is directly accountable to the governing authority for the daily operation of the counseling facility and all services provided by or at the counseling facility;
  2. Has the authority and responsibility to manage the counseling facility; and
  3. Except as provided in subsection (A)(6), designates in writing, an individual who is present on the counseling facility's premises and accountable for the counseling facility when the administrator is not available.
- C.** An administrator or the administrator of the counseling facility's affiliated outpatient treatment center shall establish policies and procedures to protect the health and safety of a patient that:
1. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience, for personnel members, employees, volunteers, and students;
  2. Cover orientation and in-service education for personnel members, employees, volunteers, and students;

3. Include how a personnel member may submit a complaint relating to services provided to a patient;
4. Cover the requirements in Title 36, Chapter 4, Article 11;
5. Cover patient screening, admission, assessment, discharge planning, and discharge;
6. Cover medical records;
7. Cover the provision of counseling and any services listed in the counseling facility's scope of services;
8. Include when general consent and informed consent are required;
9. Cover telemedicine, if applicable;
10. Cover specific steps for:
  - a. A patient or a patient's representative to file a complaint, and
  - b. A counseling facility to respond to a complaint; and
11. Cover how personnel members will respond to a patient's sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual.

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

1. Policies and procedures established according to subsection (C) are documented and implemented;
2. Counseling facility policies and procedures are:
  - a. Reviewed at least once every three years and updated as needed, and
  - b. Available to personnel members and employees;
3. Unless otherwise stated:
  - a. Documentation required by this Article is maintained and 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 counseling facility, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the counseling facility;
4. The following are conspicuously posted:
  - a. The current license for the counseling facility issued by the Department;
  - b. The name, address, and telephone number of the Department;
  - c. A notice that a patient may file a complaint with the Department about the counseling facility;
  - d. A list of patient rights;
  - e. A map for evacuating the facility; and

- f. A notice identifying the location on the premises where current license inspection reports required in A.R.S. § 36-425(H), with patient information redacted, are available;
  - 5. Patient follow-up instructions are:
    - a. Provided, orally or in written form, to a patient or the patient's representative before the patient leaves the counseling facility unless the patient leaves against a personnel member's advice; and
    - b. Documented in the patient's medical record; and
  - 6. Cardiopulmonary resuscitation training includes a demonstration of the individual's ability to perform cardiopulmonary resuscitation.
- E.** If abuse, neglect, or exploitation of a patient is alleged or suspected to have occurred before the patient was admitted or while the patient is not on the premises and not receiving services from a counseling facility's employee or personnel member, an administrator shall report the alleged or suspected abuse, neglect, or exploitation of the patient as follows:
- 1. For a patient 18 years of age or older, according to A.R.S. § 46-454; or
  - 2. For a patient under 18 years of age, according to A.R.S. § 13-3620.
- F.** If an administrator has a reasonable basis, according to A.R.S. §§ 13-3620 or 46-454, to believe that abuse, neglect, or exploitation has occurred on the premises or while a patient is receiving services from a counseling facility's employee or personnel member, an administrator shall:
- 1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
  - 2. Report the suspected abuse, neglect, or exploitation of the patient as follows:
    - a. For a patient 18 years of age or older, according to A.R.S. § 46-454; or
    - b. For a patient 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 (F)(1); and
    - c. The report in subsection (F)(2);
  - 4. Maintain the documentation in subsection (F)(3) for at least 12 months after the date of the report in subsection (F)(2);
  - 5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in subsection (F)(2):
    - a. The dates, times, and description of the suspected abuse, neglect, or exploitation;

- b. A description of any injury to the patient related to the suspected abuse or neglect and any change to the patient's physical, cognitive, functional, or emotional condition;
  - c. The names of witnesses to the suspected abuse, neglect, or exploitation; and
  - d. The actions taken by the administrator to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and
6. Maintain a copy of the documented information required in subsection (F)(5) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.

**R9-10-1909. Counseling**

**A.** An administrator of a counseling facility shall ensure that:

- 1. Counseling provided at the counseling facility is provided under the direction of a behavioral health professional;
- 2. A personnel member who provides counseling is at least 18 years old;
  - a. ~~At least 21 years of age, or~~
  - b. ~~At least 18 years of age and is licensed or certified under A.R.S. Title 32 and providing services within the personnel member's scope of practice; and~~
- 3. If a counseling facility provides counseling to a patient who is less than 18 years of age, an employee or a volunteer and the owner comply with the fingerprint clearance card requirements in A.R.S. § 36-425.03.

**B.** An administrator of a counseling facility shall ensure that:

- 1. Before counseling for a patient is initiated, there is a behavioral health assessment for the patient that complies with the requirements in this Section that is:
  - a. Available:
    - i. In the patient's medical record maintained by the counseling facility;
    - ii. If the counseling facility is an affiliated counseling facility, in the patient's integrated medical record; or
    - iii. If the counseling facility has an affiliated outpatient treatment center, in the patient's integrated medical record maintained by the counseling facility's affiliated outpatient treatment center; and
  - b. Either:
    - i. Completed by a personnel member at the counseling facility; ~~and or~~
    - e-ii. Obtained from a behavioral health provider other than the counseling facility; ~~or~~

2. A behavioral health assessment, obtained from a behavioral health provider other than the counseling facility or available in a medical record or integrated medical record, was completed within 12 months before the date of the patient's current admission;
3. If a behavioral health assessment is obtained from a behavioral health provider other than the counseling facility or is available as stated in subsection (B)(1)(a), the information in the behavioral health assessment is reviewed and updated if additional information that affects the patient's behavioral health assessment is identified;
4. The review and update of the patient's assessment information in subsection (B)(3) is documented in the patient's medical record within 48 hours after the review is completed;
5. If a behavioral health assessment is conducted by a:
  - a. Behavioral health technician or a registered nurse, within 72 hours after the behavioral health assessment is conducted, a behavioral health professional certified or licensed to provide the counseling needed by the patient reviews and signs the behavioral health assessment to ensure that the behavioral health assessment identifies the counseling needed by the patient; or
  - b. Behavioral health paraprofessional, a behavioral health professional certified or licensed to provide the counseling needed by the patient supervises the behavioral health paraprofessional during the completion of the behavioral health assessment and signs the behavioral health assessment to ensure that the assessment identifies the counseling needed by the patient;
6. A behavioral health assessment:
  - a. Documents a patient's:
    - i. Presenting issue;
    - ii. Substance use history;
    - iii. Co-occurring disorder;
    - iv. Medical condition and history;
    - v. Legal history, including:
      - (1) Custody,
      - (2) Guardianship, and
      - (3) Pending litigation;
    - vi. Criminal justice record;
    - vii. Family history;
    - viii. Behavioral health treatment history; and

- ix. Symptoms reported by the patient or the patient's representative and referrals needed by the patient, if any;
  - b. Includes:
    - i. Recommendations for further assessment or examination of the patient's needs;
    - ii. A description of the counseling, including type, frequency, and number of hours, that will be provided to the patient; and
    - iii. The signature and date signed of the personnel member conducting the behavioral health assessment; and
  - c. Is documented in patient's medical record;
7. A patient is referred to a medical practitioner if a determination is made that the patient requires immediate physical health services or the patient's behavioral health issue may be related to the patient's medical condition;
  8. A request for participation in a patient's behavioral health assessment is made to the patient or the patient's representative;
  9. An opportunity for participation in the patient's behavioral health assessment is provided to the patient or the patient's representative;
  10. Documentation of the request in subsection (B)(8) and the opportunity in subsection (B)(9) is in the patient's medical record;
  11. A patient's behavioral health assessment information is documented in the medical record within 48 hours after completing the assessment;
  12. If information in subsection (B)(6)(a) is obtained about a patient after the patient's behavioral health assessment is completed, an interval note, including the information, is documented in the patient's medical record within 48 hours after the information is obtained;
  13. Counseling is:
    - a. Offered as described in the counseling facility's scope of services;
    - b. Provided according to the type, frequency, and number of hours identified in the patient's assessment; and
    - c. Provided by a behavioral health professional or a behavioral health technician;
  14. A personnel member providing counseling to address 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
  15. Each counseling session is documented in the patient'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.
- C. An administrator may ~~request authorization to~~ provide any of the following, according to the applicable requirements in 9 A.A.C. 20, to individuals required to attend by a referring court, if approved by the Department to provide the services:
- 1. DUI screening,
  - 2. DUI education,
  - 3. DUI treatment, or
  - 4. Misdemeanor domestic violence offender treatment.
- D. An administrator of a counseling facility authorized to provide the services in subsection (C):
- 1. Shall comply with the requirements for the specific service in 9 A.A.C. 20, and
  - 2. May have a behavioral health technician who has the appropriate skills and knowledge established in policies and procedures provide the services.

**R9-10-1910. Physical Plant, Environmental Services, and ~~Equipment~~ Safety Standards**

- A. An administrator shall ensure that a counseling facility has either:
- 1. Both of the following:
    - a. A smoke detector installed in each hallway of the counseling facility that is:
      - i. Maintained in an operable condition;
      - ii. Either battery operated or, if hard-wired into the electrical system of the outpatient treatment center, has a back-up battery; and
      - iii. Tested monthly; and
    - b. A portable, operable fire extinguisher, labeled as rated at least 2A-10-BC by the Underwriters Laboratories, that:
      - i. Is available at the counseling facility;
      - ii. Is mounted in a fire extinguisher cabinet or placed on wall brackets so that the top handle of the fire extinguisher is not over five feet from the floor and the bottom of the fire extinguisher is at least four inches from the floor;

- iii. If a disposable fire extinguisher, is replaced when its indicator reaches the red zone; and
    - iv. If a rechargeable fire extinguisher, is serviced at least once every 12 months and has a tag attached to the fire extinguisher that specifies the date of the last servicing and the name of the servicing person; or
  - 2. Both of the following that are tested and serviced at least once every 12 months:
    - a. A fire alarm system installed according to the National Fire Protection Association 72: National Fire Alarm and Signaling Code, incorporated by reference in R9-10-104.01, that is in working order; and
    - b. A sprinkler system installed according to the National Fire Protection Association 13: Standard for the Installation of Sprinkler Systems, incorporated by reference in R9-10-104.01, that is in working order.
- B.** An administrator shall ensure that documentation of a test required in subsection (A) is maintained for at least 12 months after the date of the test.
- C.** An administrator shall ensure that on a counseling facility's premises:
  - 1. Exit signs are illuminated, if the local fire jurisdiction requires illuminated exit signs;
  - 2. Corridors and exits are kept clear of any obstructions;
  - 3. A patient can exit through any exit during hours of clinical operation;
  - 4. An extension cord is not used instead of permanent electrical wiring; and
  - 5. Each electrical outlet and electrical switch has a cover plate that is in good repair.
- D.** 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.
- E.** An administrator shall ensure that:
  - 1. A counseling facility's premises are:
    - a. Sufficient to provide the counseling facility's scope of services;
    - b. Cleaned and disinfected to prevent, minimize, and control illness and infection; and
    - c. Free from a condition or situation that may cause an individual to suffer physical injury;
  - 2. If a bathroom is on the premises, the bathroom contains:
    - a. A working sink with running water,

- b. A working toilet that flushes and has a seat,
  - c. Toilet tissue,
  - d. Soap for hand washing,
  - e. Paper towels or a mechanical air hand dryer,
  - f. Lighting, and
  - g. A means of ventilation;
3. If a bathroom is not on the premises, a bathroom is:
- a. Available for a patient's use,
  - b. Located in a building in contiguous proximity to the counseling facility, and
  - c. Free from a condition or situation that may cause an individual using the bathroom to suffer a physical injury; and
4. A tobacco smoke-free environment is maintained on the premises.

**R9-10-1911. Integrated Information**

- A.** An administrator of an affiliated outpatient treatment center may maintain the following information, required in this Article for a counseling facility for which the affiliated outpatient treatment center provides administrative support, integrated with information required in 9 A.A.C. 10, Article 10 for the outpatient treatment center:
- 1. Quality management plan, documented incidents, and reports required in R9-10-1904;
  - 2. Contracted services information in R9-10-1905;
  - 3. Orientation plan, in-service education plan, and personnel records in R9-10-1906; and
  - 4. Medical records in R9-10-1908.
- B.** An administrator of an affiliated counseling facility that shares administrative support with one or more other affiliated counseling facilities may maintain the information in subsections (A)(1) through (A)(4) integrated with information maintained by the other affiliated counseling facilities.
- C.** If an administrator of an affiliated outpatient treatment center or an affiliated counseling facility maintains integrated information according to subsection (A) or (B), the administrator shall develop, document, and implement a method to ensure that:
- 1. If the quality management plan is integrated, the incidents documented, concerns identified, and changes or actions taken are identified for each facility;
  - 2. If a person provides contracted services at more than one facility, the types of services the person provides at each facility is identified in the contract information;
  - 3. If an orientation plan is applicable to more than one facility, the orientation a personnel member is expected to obtain for each facility is identified in the orientation plan;

4. If an in-service education plan is applicable to more than one facility, the in-service education a personnel member is expected to obtain for each facility is identified in the ~~orientation~~ in-service education plan;
5. If a personnel member provides counseling at more than one facility, the following is identified in the personnel member's record:
  - a. The days and hours the personnel member provides counseling for each facility;
  - b. If the personnel member's job description is different for each facility:
    - i. Each job description for the personnel member; and
    - ii. Verification of the skills and knowledge to provide counseling according to each of the personnel member's job descriptions; and
  - c. If a personnel member is a behavioral health technician, documentation of the clinical oversight provided to the personnel member, based on the number and acuity of the patients to whom the personnel member provided counseling at each facility; and
6. If a patient receives counseling at more than one facility, the counseling received and any information related to the counseling received at each facility is identified in the patient's medical record.

**D.** An administrator of a counseling facility receiving administrative support from an affiliated outpatient treatment center or an affiliated counseling facility shall ensure that if the counseling facility:

1. Has integrated information, the integrated information is provided to the Department for review within two hours after the Department's request:
  - a. In a written or electronic format at the counseling facility's premises; or
  - b. Electronically directly to the Department.
2. No longer receives or shares administrative support that includes integrating the information in subsection (A), the information for the counseling facility required in this Article is maintained by the counseling facility and provided to the Department according to the requirements in this Article.

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

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

**R9-10-305. 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**

New Section R9-10-305 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).

**R9-10-306. Personnel**

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

1. A personnel member is:
  - a. At least 21 years old, or
  - b. At least 18 years old and is licensed or certified under A.R.S. Title 32 and providing services within the personnel member's scope of practice;
2. An employee is at least 18 years old;
3. A student is at least 18 years old; and
4. A volunteer is at least 21 years old.

**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 physical health services or behavioral health services expected to be provided by the personnel member according to the established job description, and
    - ii. The acuity of the patients receiving physical health services or behavioral 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 physical health services and behavioral 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 physical health services or behavioral 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 physical health services or behavioral 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 inpatient facility's premises with the qualifications, skills, and knowledge necessary to:

- a. Provide the services in the behavioral health inpatient facility's scope of services,
- b. Meet the needs of a patient, and
- c. Ensure the health and safety of a patient.

**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 a personnel member or an employee, volunteer, or student who has or is expected to have direct interaction with a patient, 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 inpatient facility, and
2. As specified in R9-10-113.

**F.** 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 employee's job duties;
  - b. The individual's education and experience applicable to the employee'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 qualifications and on-going training for each type of restraint or seclusion used, as required in R9-10-316;
  - 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 R9-10-303(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 (E).

**G.** 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 inpatient facility, and
  - b. For at least 24 months after the last date the individual provided services in or for the behavioral health inpatient facility; and
2. For a personnel member who has not provided physical health services or behavioral health services at or for the behavioral health inpatient facility during the previous 12 months, provided to the Department within 72 hours after the Department's request.

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

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

1. A plan to provide orientation specific to the duties of a personnel member, an employee, a volunteer, and a student is developed, documented, and implemented;
  2. A personnel member completes orientation before providing 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 clinical director develops, documents, and implements a plan 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.
- I.** An administrator shall ensure that a behavioral health inpatient facility has a daily staffing schedule that:
1. Indicates the date, scheduled work hours, and name of each employee assigned to work, including on-call personnel members;
  2. Includes documentation of the employees who work each calendar day and the hours worked by each employee; and
  3. Is maintained for at least 12 months after the last date on the daily staffing schedule.
- J.** An administrator shall ensure that:
1. A physician or registered nurse practitioner is:
    - a. Present on the behavioral health inpatient facility's premises; or
    - b. On-call and:
      - i. Available through telemedicine, or
      - ii. On the premises within 30 minutes after a request to come to the behavioral health inpatient facility;
  2. A registered nurse is present on the behavioral health inpatient facility's premises;
  3. A registered nurse who provides direction for the nursing services provided at the behavioral health inpatient facility is present at the behavioral health inpatient facility at least 40 hours every week; and
  4. The types and numbers of personnel members required according to the acuity plan in R9-10-315(A)(3) are present in each unit in the behavioral health inpatient facility.

**Historical Note**

New Section R9-10-306 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

**R9-10-307. Admission; Assessment**

Except as provided in R9-10-315(E) or (F), an administrator shall ensure that:

1. A patient is admitted based upon the patient's presenting behavioral health issue and treatment needs and the behavioral health inpatient facility's ability and authority to provide physical health services, behavioral health services, and ancillary services consistent with the patient's treatment needs;
2. A patient is admitted on the order of a medical practitioner or clinical director;
3. A medical practitioner or clinical director, authorized by policies and procedures to accept a patient for admission, is available;
4. Except in an emergency or as provided in subsections (6) and (7), general consent is obtained from a patient or, if applicable, the patient's representative before or at the time of admission;
5. The general consent obtained in subsection (4) or the lack of consent in an emergency is documented in the patient's medical record;
6. General consent is not required from a patient receiving a court-ordered evaluation or court-ordered treatment;
7. General consent is not required from a patient receiving treatment according to A.R.S. § 36-512;
8. A medical practitioner performs a medical history and physical examination on a patient within 30 calendar days before admission or within 24 hours after admission and documents the medical history and physical examination in the patient's medical record within 24 hours after admission;
9. If a medical practitioner performs a medical history and physical examination on a patient before admission, the medical practitioner enters an interval note into the patient's medical record within seven calendar days after admission;
10. Except when a patient needs crisis services, a behavioral health assessment of a patient is completed to determine the acuity of the patient's behavioral health issue and to identify the behavioral health services needed by the patient before treatment for the patient is initiated and whenever the patient has a significant change in condition or experiences an event that affects treatment;
11. 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 under A.R.S. Title 32 to provide the behavioral health services needed by the patient, reviews and signs the behavioral health assessment to ensure that the behavioral health assessment identifies the behavioral health services needed by and the acuity of the patient; or
  - b. Behavioral health paraprofessional, a behavioral health professional, certified or licensed under A.R.S. Title 32 to provide the behavioral health services needed by the patient, supervises the behavioral health paraprofessional during the completion of the behavioral health assessment and signs the behavioral health assessment to ensure that the behavioral health assessment identifies the behavioral health services needed by and the acuity of the patient;
12. When a patient is admitted, a registered nurse:
  - a. Conducts a nursing assessment of a patient's medical condition and history;
  - b. Determines whether the:
    - i. Patient requires immediate physical health services, and
    - ii. Patient's behavioral health issue may be related to the patient's medical condition and history;
  - c. Determines the acuity of the patient's medical condition;
  - d. Documents the patient's nursing assessment and the determinations required in subsection (12)(b) and (c) in the patient's medical record; and
  - e. Signs the patient's medical record;
13. A behavioral health assessment:

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

2. Designate a personnel member who is responsible for the personal accounts;
3. Maintain a complete and separate accounting of each personal account;
4. Obtain written authorization from the resident or the resident's representative for a personal account transaction;
5. Document an account transaction and provide a copy of the documentation to the resident or the resident's representative upon request and at least every three months;
6. Transfer all money from the resident's personal account in excess of \$50.00 to an interest-bearing account and credit the interest to the resident's personal account; and
7. Within 30 calendar days after the resident's death, transfer, or discharge, return all money in the resident's personal account and a final accounting to the resident, the resident's representative, or the probate jurisdiction administering the resident's estate.

- J.** If a petty cash fund is established for use by residents, the administrator shall ensure that:
1. The policies and procedures established according to subsection (C)(1)(o) include:
    - a. A prescribed cash limit of the petty cash fund, and
    - b. The hours of the day a resident may access the petty cash fund; and
  2. A resident's written acknowledgment is obtained for a petty cash transaction.

**Historical Note**

New Section R9-10-403 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

**R9-10-404. 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**

New Section R9-10-404 made by exempt rulemaking at

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

**R9-10-405. 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**

New Section R9-10-405 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).

**R9-10-406. Personnel**

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

1. A behavioral health technician is at least 21 years old, and
2. A behavioral health paraprofessional 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 physical health services or behavioral health services expected to be provided by the personnel member according to the established job description, and
    - ii. The acuity of the residents receiving physical health services or behavioral 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 physical health services and behavioral 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 physical health services or behavioral 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 physical health services or behavioral 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 nursing care institution's premises with the qualifications, skills, and knowledge necessary to:
  - a. Provide the services in the nursing care institution's scope of services,
  - b. Meet the needs of a resident, and
  - c. Ensure the health and safety of a resident.

**C.** Except as provided in R9-10-415, an administrator shall ensure that, if a personnel member provides social services that require a license under A.R.S. Title 32, Chapter 33, Arti-

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

- cle 5, the personnel member is licensed under A.R.S. Title 32, Chapter 33, Article 5.
- D.** An administrator shall ensure that an individual who is a licensed baccalaureate social worker, master social worker, associate marriage and family therapist, associate counselor, or associate substance abuse counselor is under direct supervision as defined in 4 A.A.C. 6, Article 1.
- E.** An administrator shall ensure that a personnel member or an employee or volunteer who has or is expected to have direct interaction with a resident for more than eight hours a week provides evidence of freedom from infectious tuberculosis:
1. On or before the date the individual begins providing services at or on behalf of the nursing care institution, and
  2. As specified in R9-10-113.
- F.** An administrator shall ensure that a personnel record is maintained for each personnel member, employee, volunteer, or student that includes:
1. The individual's name, date of birth, and contact telephone number;
  2. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and
  3. Documentation of:
    - a. The individual's qualifications, including skills and knowledge applicable to the individual's job duties;
    - b. The individual's education and experience applicable to the individual's job duties;
    - c. The individual's compliance with the requirements in A.R.S. § 36-411;
    - d. Orientation and in-service education as required by policies and procedures;
    - e. The individual's license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures;
    - 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 R9-10-403(C)(1)(e);
    - h. First aid training, if required for the individual according to this Article or policies and procedures;
    - i. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (E); and
    - j. If the individual is a nutrition and feeding assistant:
      - i. Completion of the nutrition and feeding assistant training course required in R9-10-116, and
      - ii. A nurse's observations required in R9-10-423(C)(6).
- G.** An administrator shall ensure that personnel records are:
1. Maintained:
    - a. Throughout the individual's period of providing services in or for the nursing care institution, and
    - b. For at least 24 months after the last date the individual provided services in or for the nursing care institution; and
  2. For a personnel member who has not provided physical health services or behavioral health services at or for the nursing care institution during the previous 12 months, provided to the Department within 72 hours after the Department's request.
- H.** An administrator shall ensure that:
1. A plan to provide orientation specific to the duties of a personnel member, an employee, a volunteer, and a student is developed, documented, and implemented;
  2. A personnel member completes orientation before providing physical health services or behavioral 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 plan to provide in-service education specific to the duties of a personnel member is developed, documented, and implemented;
  5. A personnel member's in-service education is documented, to include:
    - a. The personnel member's name,
    - b. The date of the training, and
    - c. The subject or topics covered in the training; and
  6. A work schedule of each personnel member is developed and maintained at the nursing care institution for at least 12 months after the date of the work schedule.
- I.** An administrator shall designate a qualified individual to provide:
1. Social services, and
  2. Recreational activities.

**Historical Note**

New Section R9-10-406 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-407. Admission**

An administrator shall ensure that:

1. A resident is admitted only on a physician's order;
2. The physician's admitting order includes the nursing care institution services required to meet the immediate needs of a resident, such as medication and food services;
3. At the time of a resident's admission, a registered nurse conducts or coordinates an initial assessment on a resident to ensure the resident's immediate needs for nursing care institution services are met;
4. A resident's needs do not exceed the medical services and nursing services available at the nursing care institution as established in the nursing care institution's scope of services;
5. Before or at the time of admission, a resident or the resident's representative:
  - a. Receives a documented agreement with the nursing care institution that includes rates and charges,
  - b. Is informed of third-party coverage for rates and charges,
  - c. Is informed of the nursing care institution's refund policy, and
  - d. Receives written information concerning the nursing care institution's policies and procedures related to a resident's health care directives;
6. Within 30 calendar days before admission or 10 working days after admission, a medical history and physical examination is completed on a resident by:
  - a. A physician, or
  - b. A physician assistant or a registered nurse practitioner designated by the attending physician;
7. Except as specified in subsection (8), 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;
8. A resident who transfers from a nursing care institution to another nursing care institution is not required to be rescreened for tuberculosis or provide another written

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

- 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.
- 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.

**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 (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

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

- 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;
    - g. If the individual is a behavioral health technician, clinical oversight required in R9-10-115;
    - h. Cardiopulmonary resuscitation training, if required for the individual according to R9-10-703(C)(1)(e);
    - i. First aid training, if required for the individual according to this Article or policies and procedures; and
    - 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:

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

- 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.
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;
  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;
  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;

**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). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3). Amended by final expedited rulemaking at 26 A.A.R. 551, with an immediate effective date of March 3, 2020 (Supp. 20-1).

**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. 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;
  5. The general consent obtained in subsection (A)(3) is documented in the resident's medical record;
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,

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

- iii. The patient is taking the medication at the time stated on the medication container label; or
  - e. Observing the patient while the patient 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 patient is:
    - a. In compliance with an order, and
    - b. Documented in the patient'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;
  3. If pharmaceutical services are provided:
    - a. The pharmaceutical services are provided under the direction of a pharmacist;
    - b. The pharmaceutical services comply with ARS Title 36, Chapter 27; A.R.S. Title 32, Chapter 18; and 4 A.A.C. 23; and
    - c. A copy of the pharmacy license is provided to the Department upon request.
- E.** When medication is stored at an outpatient treatment center, an administrator shall ensure that:
1. Medication is stored in a separate locked room, closet, or self-contained unit used only for medication storage;
  2. Medication is stored according to the instructions on the medication container; and
  3. Policies and procedures are established, documented, and implemented 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 patients 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 patient's adverse reaction to a medication to the medical practitioner who ordered the medication and, if applicable, the outpatient treatment center's clinical director.
- Historical Note**
- New Section made by final rulemaking at 14 A.A.R. 294, effective March 8, 2008 (Supp. 08-1). Section 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).
- R9-10-1011. Behavioral Health Services**
- A.** An administrator of an outpatient treatment center that is authorized to provide behavioral health services shall ensure that:
1. The outpatient treatment center does not provide a behavioral health service the outpatient treatment center is not authorized to provide;
  2. The behavioral health services provided by or at the outpatient treatment center:
    - a. Are provided under the direction of a behavioral health professional; and
    - b. Comply with the requirements:
      - i. For behavioral health paraprofessionals and behavioral health technicians, in R9-10-115, and
      - ii. For an assessment, in subsection (B);
  3. A personnel member who provides behavioral health services is:
    - a. At least 21 years of age; or
    - b. At least 18 years of age and is licensed or certified under A.R.S. Title 32 and providing services within the personnel member's scope of practice; and
  4. If an outpatient treatment center provides behavioral health services to a patient who is less than 18 years of age, the owner and an employee or a volunteer comply with the fingerprint clearance card requirements in A.R.S. § 36-425.03.
- B.** An administrator of an outpatient treatment center that is authorized to provide behavioral health services shall ensure that:
1. Except as provided in subsection (B)(2), a behavioral health assessment for a patient is completed before treatment for the patient is initiated;
  2. If a behavioral health assessment that complies with the requirements in this Section is received from a behavioral health provider other than the outpatient treatment center or the outpatient treatment center has a medical record for the patient that contains an assessment that was completed within 12 months before the date of the patient's current admission:
    - a. The patient's assessment information is reviewed and updated if additional information that affects the patient's assessment is identified, and
    - b. The review and update of the patient's assessment information is documented in the patient's medical record within 48 hours after the review is completed;
  3. If a behavioral health assessment is conducted by a:
    - a. Behavioral health technician or a registered nurse, within 72 hours a behavioral health professional certified or licensed to provide the behavioral health services needed by the patient reviews and signs the behavioral health assessment to ensure that the behavioral health assessment identifies the behavioral health services needed by the patient; or
    - b. Behavioral health paraprofessional, a behavioral health professional certified or licensed to provide

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

- the behavioral health services needed by the patient supervises the behavioral health paraprofessional during the completion of the behavioral health assessment and signs the behavioral health assessment to ensure that the assessment identifies the behavioral health services needed by the patient;
4. A behavioral health assessment:
    - a. Documents a patient's:
      - i. Presenting issue;
      - ii. Substance abuse history;
      - iii. Co-occurring disorder;
      - iv. Medical condition and history;
      - v. Legal history, including:
        - (1) Custody,
        - (2) Guardianship, and
        - (3) Pending litigation;
      - vi. Criminal justice record;
      - vii. Family history;
      - viii. Behavioral health treatment history; and
      - ix. Symptoms reported by the patient and referrals needed by the patient, if any;
    - b. Includes:
      - i. Recommendations for further assessment or examination of the patient's needs;
      - ii. The behavioral health services, physical health services, or ancillary services that will be provided to the patient; and
      - iii. The signature and date signed of the personnel member conducting the behavioral health assessment; and
    - c. Is documented in patient's medical record;
  5. A patient is referred to a medical practitioner if a determination is made that the patient requires immediate physical health services or the patient's behavioral health issue may be related to the patient's medical condition;
  6. A request for participation in a patient's behavioral health assessment is made to the patient or the patient's representative;
  7. An opportunity for participation in the patient's behavioral health assessment is provided to the patient or the patient's representative;
  8. Documentation of the request in subsection (B)(6) and the opportunity in subsection (B)(7) is in the patient's medical record;
  9. A patient's behavioral health assessment information is documented in the medical record within 48 hours after completing the assessment;
  10. If information in subsection (B)(4)(a) is obtained about a patient after the patient's behavioral health assessment is completed, an interval note, including the information, is documented in the patient's medical record within 48 hours after the information is obtained;
  11. Counseling is:
    - a. Offered as described in the outpatient treatment center's scope of services,
    - b. Provided according to the frequency and number of hours identified in the patient's assessment, and
    - c. Provided by a behavioral health professional or a behavioral health technician;
  12. 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
  13. Each counseling session is documented in the patient'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.
- C. An administrator of an outpatient treatment center authorized to provide behavioral health services may request to provide any of the following to individuals required to attend by a referring court:
    1. DUI screening,
    2. DUI education,
    3. DUI treatment, or
    4. Misdemeanor domestic violence offender treatment.
  - D. An administrator of an outpatient treatment center authorized to provide the services in subsection (C):
    1. Shall comply with the requirements for the specific service in 9 A.A.C. 20, and
    2. May have a behavioral health technician who has the appropriate skills and knowledge established in policies and procedures provide the services.

**Historical Note**

Adopted as an emergency effective November 17, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Former Section R9-10-1011 adopted as an emergency now adopted and amended as a permanent rule effective February 15, 1984 (Supp. 84-1). Repealed by summary action, interim effective date July 21, 1995 (Supp. 95-3). The proposed summary action repealing R9-10-1011 was remanded by the Governor's Regulatory Review Council which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 97-1). Section repealed by final rulemaking at 5 A.A.R. 1222, effective April 5, 1999 (Supp. 99-2). New Section made by final rulemaking at 14 A.A.R. 294, effective March 8, 2008 (Supp. 08-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-1012. Behavioral Health Observation/Stabilization Services**

- A. An administrator of an outpatient treatment center that is authorized to provide behavioral health observation/stabilization services shall ensure that:
  1. Behavioral health observation/stabilization services are available 24 hours a day, every calendar day;
  2. Behavioral health observation/stabilization services are provided in a designated area that:
    - a. Is used exclusively for behavioral health observation/stabilization services;
    - b. Has the space for a patient to receive privacy in treatment and care for personal needs; and
    - c. For every 15 observation chairs or less, has at least one bathroom that 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 means of ventilation;

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

Adopted with changes effective November 25, 1992 (Supp. 92-4). Section R9-10-1303 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).

**R9-10-1304. 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**

Emergency rule adopted effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency rule adopted again effective August 27, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Adopted without change effective November 25, 1992 (Supp. 92-4). Section R9-10-1304 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).

**R9-10-1305. Personnel Requirements and Records**

A. An administrator shall ensure that a personnel member:

1. Is at least 21 years of age; and
2. Either:
  - a. Holds a valid fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1; or
  - b. Submits to the administrator a copy of a fingerprint clearance card application showing that the personnel member submitted the application to the fingerprint division of the Department of Public Safety under A.R.S. § 41-1758.02 within seven working days after becoming a personnel member.

B. An administrator shall ensure that each personnel member submits to the administrator a copy of the individual's valid fingerprint clearance card:

1. Except as provided in subsection (A)(2)(b), before the personnel member's starting date of employment; and
2. Each time the fingerprint clearance card is issued or renewed.

C. If a personnel member holds a fingerprint clearance card that was issued before the individual became a personnel member, an administrator shall:

1. Contact the Department of Public Safety within seven working days after the individual becomes a personnel member to determine whether the fingerprint clearance card is valid; and
2. Make a record of this determination, including the name of the personnel member, the date of the contact with the

Department of Public Safety, and whether the fingerprint clearance card is valid.

D. 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 physical health services or behavioral health services expected to be provided by the personnel member according to the established job description, and
      - ii. The acuity of the patients receiving physical health services or behavioral 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 physical health services and behavioral 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 physical health services or behavioral 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 physical health services or behavioral 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. Personnel members are present on a behavioral health specialized transitional facility's premises with the qualifications, skills, and knowledge necessary to:
    - a. Provide the services in the behavioral health specialized transitional facility's scope of services,
    - b. Meet the needs of a patient, and
    - c. Ensure the health and safety of a patient.
- E. An administrator shall comply with the requirements for behavioral health technicians and behavioral health paraprofessionals in R9-10-115.
- F. An administrator shall ensure that a personnel member or an employee or volunteer who has or is expected to have direct interaction with a patient for more than eight hours a week, provides evidence of freedom from infectious tuberculosis:
1. On or before the date the individual begins providing service at or on behalf of the behavioral health specialized transition 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, ending date;
  3. A copy of the individual's fingerprint clearance card; and
  4. Documentation of:
    - a. The individual's qualifications including skills and knowledge applicable to the individual's job duties;

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

- b. The individual's education and experience applicable to the individual's job duties;
  - c. The individual's 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 individual is a behavioral health technician, clinical oversight required in R9-10-115;
  - f. Cardiopulmonary resuscitation training, if required for the individual according to this Article or policies and procedures;
  - g. First aid training, if required for the individual according to this Article or policies and procedures; and
  - h. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (F).
- H.** An administrator shall ensure that personnel records are maintained:
- 1. Throughout an individual's period of providing services in or for the behavioral health specialized transitional facility; and
  - 2. For at least 24 months after the last date the individual provided services in or for the behavioral health specialized transitional facility.
- I.** An administrator shall ensure that:
- 1. A plan to provide orientation specific to the duties of a personnel member, an employee, a volunteer, and a student is developed, documented, and implemented;
  - 2. A personnel member completes orientation before providing 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 plan to provide in-service education specific to the duties of a personnel member is developed, documented and implemented; 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.

**Historical Note**

Emergency rule adopted effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency rule adopted again effective August 27, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Adopted with changes effective November 25, 1992 (Supp. 92-4). Section R9-10-1305 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).

**R9-10-1306. Admission Requirements**

- A.** An administrator shall ensure that, before a patient is admitted to the behavioral health specialized transitional facility, a court of competent jurisdiction has ordered the patient to be:
- 1. Detained under A.R.S. § 36-3705(B) or § 36-3713(B); or
  - 2. Committed under A.R.S. § 36-3707.
- B.** An administrator shall ensure that, at the time a patient is admitted to the behavioral health specialized transitional facility:
- 1. The administrator receives a copy of the court order for the patient to be detained at or committed to the behavioral health specialized transitional facility,
  - 2. The patient's possessions are taken to the bedroom to which the patient has been assigned, and
  - 3. The patient is provided with a written list and verbal explanation of the patient's rights and responsibilities.
- C.** Within seven calendar days after a patient is admitted to the behavioral health specialized transitional facility, a medical director shall ensure that:
- 1. A medical history is taken from and a physical examination performed on the patient;
  - 2. Except as specified in subsection (C)(3), a patient provides evidence of freedom from infectious tuberculosis as required in R9-10-113;
  - 3. A patient is not required to be retested for tuberculosis or provide another written statement by a physician, physician assistant, or registered nurse practitioner as specified in R9-10-113(1) if:
    - a. Fewer than 12 months have passed since the patient was tested for tuberculosis or since the date of the written statement, and
    - b. The documentation of freedom from infectious tuberculosis required in subsection (C)(2) accompanies the patient at the time of the patient's admission to the behavioral health specialized transitional facility; and
  - 4. An assessment for the patient is completed:
    - a. According to the behavioral health specialized transitional facility's policies and procedures;
    - b. That includes the patient's:
      - i. Legal history, including criminal justice record;
      - ii. Behavioral health treatment history;
      - iii. Medical conditions and history; and
      - iv. Symptoms reported by the patient and referrals needed by the patient, if any; and
    - c. That includes:
      - i. Recommendations for further assessment or examination of the patient's needs,
      - ii. The physical health services or ancillary services that will be provided to the patient until the patient's treatment plan is completed; and
      - iii. The signature of the personnel member conducting the assessment and the date signed.

**Historical Note**

Emergency rule adopted effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency rule adopted again effective August 27, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Adopted with changes effective November 25, 1992

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

A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).  
Section R9-10-1403 renumbered to R9-10-1402; new  
Section R9-10-1403 renumbered from R9-10-1404 and  
amended by exempt rulemaking at 20 A.A.R. 1409, pur-  
suant to Laws 2013, Ch. 10, § 13; effective July 1, 2014  
(Supp. 14-2).

**R9-10-1404. Contracted Services**

An administrator shall ensure that:

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

**Historical Note**

Adopted effective February 1, 1994 (Supp. 94-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).  
Section R9-10-1404 renumbered to R9-10-1403; new Section R9-10-1404 renumbered from R9-10-1405 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).

**R9-10-1405. 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 participants receiving behavioral health services or physical health services from the personnel member according to the established job description;
  - b. Include:
    - i. The specific skills and knowledge necessary for the personnel member to provide the expected behavioral health services and 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 behavioral health services or physical health services, and
  - b. According to policies and procedures;
3. An emergency medical care technician complies with the requirements in 9 A.A.C. 25 for certification and medical direction;
  4. A substance abuse transitional facility has sufficient personnel members with the qualifications, education, experience, skills, and knowledge necessary to:
    - a. Provide the behavioral health services and physical health services in the substance abuse transitional facility's scope of services,
    - b. Meet the needs of a participant, and
    - c. Ensure the health and safety of a participant;
  5. A written plan is developed and implemented to provide orientation specific to the duties of a personnel member;
  6. A personnel member's orientation is documented, to include:
    - a. The personnel member's name,
    - b. The date of the orientation, and
    - c. The subject or topics covered in the orientation;
  7. In addition to the training required in subsections (B)(1) and (B)(5), a written plan is developed and implemented to provide a personnel member with in-service education specific to the duties of the personnel member;
  8. A personnel member receives training in how to respond to a participant's sudden, intense, or out-of-control behavior to prevent harm to the participant or another individual:
    - a. Before providing services related to participant care, and
    - b. At least once every 12 months after the date the personnel member begins providing services related to participant care; and
  9. An individual's in-service education and, if applicable, training in how to respond to a participant's sudden, intense, or out-of-control behavior 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.
- C.** 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 receives direct supervision as defined in A.A.C. R4-6-101.
- D.** An administrator shall ensure that a personnel member, or an employee, a volunteer, or a student who has or is expected to have direct interaction with a participant for more than eight hours in a week, provides evidence of freedom from infectious tuberculosis:
  1. On or before the date the individual begins providing services at or on behalf of the substance abuse transitional facility, and
  2. As specified in R9-10-113.
- E.** An administrator shall comply with the requirements for behavioral health technicians and behavioral health paraprofessionals in R9-10-115.
- F.** An administrator shall ensure that a personnel record is maintained for a personnel member, employee, volunteer, or student that contains:
  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

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

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 completion of the training required in subsection (B)(8), if applicable;
    - 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 subsection (H) or policies and procedures;
    - h. First aid training, if required for the individual according to subsection (H) or policies and procedures; and
    - i. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (D).
  - G. An administrator shall ensure that personnel records are:
    1. Maintained:
      - a. Throughout an individual's period of providing services at or for a substance abuse transitional facility, and
      - b. For at least 24 months after the last date the individual provided services at or for a substance abuse transitional facility; and
    2. For a personnel member who has not provided physical health services or behavioral health services at or for the substance abuse transitional facility during the previous 12 months, provided to the Department within 72 hours after the Department's request.
  - H. An administrator shall ensure at least one personnel member who is present at the substance abuse transitional facility during hours of facility operation has first-aid and cardiopulmonary resuscitation training certification specific to the populations served by the facility.
  - I. An administrator shall ensure that:
    1. At least one personnel member is present and awake at a substance abuse transitional facility at all times when a participant is on the premises;
    2. In addition to the personnel member in subsection (I)(1), at least one personnel member is on-call and available to come to the substance abuse transitional facility if needed;
    3. A substance abuse transitional facility has sufficient personnel members to provide general participant supervision and treatment and sufficient personnel members or employees to provide ancillary services to meet the scheduled and unscheduled needs of each participant;
    4. There is a daily staffing schedule that:
      - a. Indicates the date, scheduled work hours, and name of each individual assigned to work, including on-call individuals;
      - b. Includes documentation of the employees who work each day and the hours worked by each employee; and
      - c. Is maintained for at least 12 months after the last date on the documentation;
    5. A behavioral health professional is present on the substance abuse transitional facility's premises or on-call; and
    6. A registered nurse is present on the substance abuse transitional facility's premises or on-call.
- Historical Note**
- Adopted effective February 1, 1994 (Supp. 94-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1405 renumbered to R9-10-1404; new Section R9-10-1405 renumbered from R9-10-1406 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).
- R9-10-1406. Admission; Assessment**
- An administrator shall ensure that:
1. A participant is admitted based upon the participant's presenting behavioral health issue and treatment needs and the substance abuse transitional facility's ability and authority to provide behavioral health services or physical health services consistent with the participant's needs;
  2. General consent is obtained from a participant or the participant's representative before or at the time of admission;
  3. The general consent obtained in subsection (2) is documented in the participant's medical record;
  4. An assessment of a participant is completed or updated by an emergency medical care technician or a registered nurse;
  5. If an assessment is completed or updated by an emergency medical care technician, a registered nurse reviews the assessment within 24 hours after the completion of the assessment to ensure that the assessment identifies the behavioral health services and physical health services needed by the participant;
  6. If an assessment that complies with the requirements in this Section is received from a behavioral health provider other than the substance abuse transitional facility or the substance abuse transitional facility has a medical record for the participant that contains an assessment that was completed within 12 months before the date of the participant's current admission:
    - a. The participant's assessment information is reviewed and updated if additional information that affects the participant's assessment is identified, and
    - b. The review and update of the participant's assessment information is documented in the participant's medical record within 48 hours after the review is completed;
  7. An assessment:
    - a. Documents a participant's:
      - i. Presenting issue;
      - ii. Substance abuse history;
      - iii. Co-occurring disorder;
      - iv. Medical condition and history;
      - v. Behavioral health treatment history;
      - vi. Symptoms reported by the participant; and
      - vii. Referrals needed by the participant, if any;
    - b. Includes:
      - i. Recommendations for further assessment or examination of the participant's needs,
      - ii. The behavioral health services and physical health services that will be provided to the participant, and

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

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

**Historical Note**

Adopted effective July 6, 1994 (Supp. 94-3). 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).

**R9-10-1704. Contracted Services**

An administrator shall ensure that:

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

**Historical Note**

Adopted effective July 6, 1994 (Supp. 94-3). 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).

**R9-10-1705. 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 physical health services or behavioral health services expected to be provided by

the personnel member according to the established job description, and

- ii. The acuity of the patients receiving physical health services or behavioral 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 physical health services and behavioral 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 physical health services or behavioral 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 physical health services or behavioral 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;
3. Sufficient personnel members are present on a health care institution's premises with the qualifications, skills, and knowledge necessary to:
- a. Provide the services in the health care institution's scope of services,
  - b. Meet the needs of a patient, and
  - c. Ensure the health and safety of a patient.

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

1. A plan to provide orientation specific to the duties of a personnel member, employee, volunteer, and 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 plan to provide in-service education specific to the duties of a personnel member is developed;
5. A personnel member's in-service education is documented, to include:
  - a. The personnel member's name,
  - b. The date of the training, and
  - c. The subject or topics covered in the training; and
6. A work schedule of each personnel member is developed and maintained at the health care institution for at least 12 months after the date of the work schedule.

**D.** An administrator shall ensure that a personnel member, or an employee, a volunteer, or a student who has or is expected to have direct interaction with a patient, provides evidence of freedom from infectious tuberculosis:

- a. On or before the date the individual begins providing services at or on behalf of the unclassified healthcare institution, and
- b. As specified in R9-10-113.

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

- E. 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 health care institution provides services to children, the individual's compliance with the fingerprinting requirements in A.R.S. § 36-425.03;
    - f. Cardiopulmonary resuscitation training, if required for the individual according to R9-10-1702(C)(2)(1);
    - g. First aid training, if required for the individual according to this Article or policies and procedures; and
    - h. Evidence of freedom from infectious tuberculosis, if the individual is required to provide evidence of freedom according to subsection (D).
- F. An administrator shall ensure that personnel records are:
1. Maintained:
    - a. Throughout an individual's period of providing services in or for the health care institution, and
    - b. For at least 24 months after the last date the individual provided services in or for the health care institution; and
  2. For a personnel member who has not provided physical health services or behavioral health services at or for the health care institution during the previous 12 months, provided to the Department within 72 hours after the Department's request.
- G. An administrator shall ensure that at least one personnel member who is present at the health care institution during the hours of the health care institution operation has first-aid training and cardiopulmonary resuscitation certification specific to the populations served by the health care institution.

**Historical Note**

Adopted effective July 6, 1994 (Supp. 94-3). 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).

**R9-10-1706. 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 patient;
  2. According to policies and procedures:
    - a. An evaluation of the patient is conducted before and after the transport,
    - b. Information in the patient'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 patient or the patient's representative; and
3. Documentation in the patient'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 personnel member accompanying the patient 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 patient by the patient or the patient's representative,
3. Transportation provided by an outside entity that was arranged for a patient by the patient or the patient's representative, or
4. A transport to another licensed health care institution in an emergency.

**C. Except for a transfer of a patient due to an emergency, an administrator shall ensure that:**

1. A personnel member coordinates the transfer and the services provided to the patient;
2. According to policies and procedures:
  - a. An evaluation of the patient is conducted before the transfer;
  - b. Information in the patient'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 patient or the patient's representative; and
3. Documentation in the patient'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 patient during a transfer.

**Historical Note**

Adopted effective July 6, 1994 (Supp. 94-3). 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).

**R9-10-1707. Patient Rights**

- A. An administrator shall ensure that:
1. The requirements in subsection (B) and the patient rights in subsection (C) are conspicuously posted on the premises;
  2. At the time of admission, a patient or the patient's representative receives a written copy of the requirements in subsection (B) and the patient rights in subsection (C); and
  3. Policies and procedures include:
    - a. How and when a patient or the patient's representative is informed of patient rights in subsection (C), and
    - b. Where patient rights are posted as required in subsection (A)(1).
- B. An administrator shall ensure that:

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

4. If the counseling facility has an affiliated outpatient treatment center:
  - a. The affiliated outpatient treatment center's name; and
  - b. Either:
    - i. The license number assigned to the affiliated outpatient treatment center by the Department; or
    - ii. If the affiliated outpatient treatment center is not currently licensed, the:
      - (1) Street address of the affiliated outpatient treatment center, and
      - (2) Date the affiliated outpatient treatment center submitted to the Department an application for a health care institution license;
5. Whether the counseling facility is sharing administrative support with an affiliated counseling facility; and
6. If the counseling facility is sharing administrative support with an affiliated counseling facility, for each affiliated counseling facility sharing administrative support with the counseling facility:
  - a. The affiliated counseling facility's name; and
  - b. Either:
    - i. The license number assigned to the affiliated counseling facility by the Department; or
    - ii. If the affiliated counseling facility is not currently licensed, the:
      - (1) Street address of the affiliated counseling facility, and
      - (2) Date the affiliated counseling facility submitted to the Department an application for a health care institution license.

**Historical Note**

New Section made by exempt rulemaking at 20 A.A.R. 3535, pursuant to Laws 2014, Ch. 233, § 5; effective January 1, 2015 (Supp. 14-4). Amended by final rulemaking at 25 A.A.R. 1583, effective October 1, 2019 (Supp. 19-3).

**R9-10-1903. Administration**

- A. A governing authority shall:
  1. Consist of one or more individuals accountable for the organization, operation, and administration of a counseling facility;
  2. Establish, in writing:
    - a. A counseling 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 R9-10-1904;
  5. Review and evaluate the effectiveness of the quality management program in R9-10-1904 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 premises for more than 30 calendar days, or
    - b. Not present on the 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 an administrator and identify the name and qualifications of the new administrator.
- B. An administrator:
  1. Is directly accountable to the governing authority for the daily operation of the counseling facility and all services provided by or at the counseling facility;
  2. Has the authority and responsibility to manage the counseling facility; and
  3. Except as provided in subsection (A)(6), designates in writing, an individual who is present on the counseling facility's premises and accountable for the counseling facility when the administrator is not available.
- C. An administrator or the administrator of the counseling facility's affiliated outpatient treatment center shall establish policies and procedures to protect the health and safety of a patient that:
  1. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience, for personnel members, employees, volunteers, and students;
  2. Cover orientation and in-service education for personnel members, employees, volunteers, and students;
  3. Include how a personnel member may submit a complaint relating to services provided to a patient;
  4. Cover the requirements in Title 36, Chapter 4, Article 11;
  5. Cover patient screening, admission, assessment, discharge planning, and discharge;
  6. Cover medical records;
  7. Cover the provision of counseling and any services listed in the counseling facility's scope of services;
  8. Include when general consent and informed consent are required;
  9. Cover telemedicine, if applicable;
  10. Cover specific steps for:
    - a. A patient or a patient's representative to file a complaint, and
    - b. A counseling facility to respond to a complaint; and
  11. Cover how personnel members will respond to a patient's sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual.
- D. An administrator shall ensure that:
  1. Policies and procedures established according to subsection (C) are documented and implemented;
  2. Counseling facility policies and procedures are:
    - a. Reviewed at least once every three years and updated as needed, and
    - b. Available to personnel members and employees;
  3. Unless otherwise stated:
    - a. Documentation required by this Article is maintained and 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 counseling facility, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the counseling facility;
  4. The following are conspicuously posted:
    - a. The current license for the counseling facility issued by the Department;
    - b. The name, address, and telephone number of the Department;
    - c. A notice that a patient may file a complaint with the Department about the counseling facility;
    - d. A list of patient rights;
    - e. A map for evacuating the facility; and
    - f. A notice identifying the location on the premises where current license inspection reports required in

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

A.R.S. § 36-425(H), with patient information redacted, are available;

5. Patient follow-up instructions are:
    - a. Provided, orally or in written form, to a patient or the patient's representative before the patient leaves the counseling facility unless the patient leaves against a personnel member's advice; and
    - b. Documented in the patient's medical record; and
  6. Cardiopulmonary resuscitation training includes a demonstration of the individual's ability to perform cardiopulmonary resuscitation.
- E.** If abuse, neglect, or exploitation of a patient is alleged or suspected to have occurred before the patient was admitted or while the patient is not on the premises and not receiving services from a counseling facility's employee or personnel member, an administrator shall report the alleged or suspected abuse, neglect, or exploitation of the patient as follows:
1. For a patient 18 years of age or older, according to A.R.S. § 46-454; or
  2. For a patient under 18 years of age, according to A.R.S. § 13-3620.
- F.** If an administrator has a reasonable basis, according to A.R.S. §§ 13-3620 or 46-454, to believe that abuse, neglect, or exploitation has occurred on the premises or while a patient is receiving services from a counseling facility's employee or personnel member, an administrator shall:
1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
  2. Report the suspected abuse, neglect, or exploitation of the patient as follows:
    - a. For a patient 18 years of age or older, according to A.R.S. § 46-454; or
    - b. For a patient 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 (F)(1); and
    - c. The report in subsection (F)(2);
  4. Maintain the documentation in subsection (F)(3) for at least 12 months after the date of the report in subsection (F)(2);
  5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in subsection (F)(2):
    - a. The dates, times, and description of the suspected abuse, neglect, or exploitation;
    - b. A description of any injury to the patient related to the suspected abuse or neglect and any change to the patient's physical, cognitive, functional, or emotional condition;
    - c. The names of witnesses to the suspected abuse, neglect, or exploitation; and
    - d. The actions taken by the administrator to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and
  6. Maintain a copy of the documented information required in subsection (F)(5) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.

**Historical Note**

New Section made by exempt rulemaking at 20 A.A.R. 3535, pursuant to Laws 2014, Ch. 233, § 5; effective January 1, 2015 (Supp. 14-4).

**R9-10-1904. Quality Management**

An administrator shall ensure that:

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

**Historical Note**

New Section made by exempt rulemaking at 20 A.A.R. 3535, pursuant to Laws 2014, Ch. 233, § 5; effective January 1, 2015 (Supp. 14-4).

**R9-10-1905. 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**

New Section made by exempt rulemaking at 20 A.A.R. 3535, pursuant to Laws 2014, Ch. 233, § 5; effective January 1, 2015 (Supp. 14-4).

**R9-10-1906. Personnel**

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 counseling expected to be provided by the personnel member according to the established job description, and
    - ii. The acuity of the patients expected to be receiving the counseling 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 counseling 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 counseling listed in the established job description, and

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

2. To receive counseling that supports and respects the patient's individuality, choices, strengths, and abilities;
  3. To receive privacy during counseling;
  4. To review, upon written request, the patient's own medical record according to A.R.S. §§ 12-2293, 12-2294, and 12-2294.01;
  5. To receive a referral to another health care institution if the counseling facility is not authorized or not able to provide the behavioral health services needed by the patient;
  6. To participate or have the patient's representative participate in the development of, or decisions concerning, the counseling provided to the patient;
  7. To participate or refuse to participate in research or experimental treatment; and
  8. To receive assistance from a family member, the patient's representative, or other individual in understanding, protecting, or exercising the patient's rights.
3. Documentation of general consent and, if applicable, informed consent for counseling by the patient or the patient's representative;
  4. If applicable, the name and contact information of the patient's representative and:
    - a. If the patient is 18 years of age or older or an emancipated minor, the document signed by the patient consenting for the patient's representative to act on the patient's behalf; or
    - b. If the patient'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;
  5. Documentation of medical history;
  6. Orders;
  7. Assessment;
  8. Interval notes;
  9. Progress notes;
  10. Documentation of counseling provided to the patient;
  11. The name of each individual providing counseling;
  12. Disposition of the patient upon discharge;
  13. Documentation of the patient's follow-up instructions provided to the patient;
  14. A discharge summary; and
  15. If applicable, documentation of any actions taken to control the patient's sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual.

**Historical Note**

New Section made by exempt rulemaking at 20 A.A.R. 3535, pursuant to Laws 2014, Ch. 233, § 5; effective January 1, 2015 (Supp. 14-4).

**R9-10-1908. Medical Records**

- A.** An administrator shall ensure that:
1. A medical record is established and maintained for each patient according to A.R.S. Title 12, Chapter 13, Article 7.1;
  2. An entry in a patient'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 patient'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 patient's medical record is available to an individual:
    - a. Authorized according to policies and procedures to access the patient's medical record;
    - b. If the individual is not authorized according to policies and procedures, with the written consent of the patient or the patient's representative; or
    - c. As permitted by law; and
  6. A patient's medical record is protected from loss, damage, or unauthorized use.
- B.** If a counseling facility maintains patients' 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 medical record is recorded by the computer's internal clock.
- C.** An administrator shall ensure that a patient's medical record contains:
1. Patient information that includes:
    - a. The patient's name and address, and
    - b. The patient's date of birth;
  2. A diagnosis or reason for counseling;

**Historical Note**

New Section made by exempt rulemaking at 20 A.A.R. 3535, pursuant to Laws 2014, Ch. 233, § 5; effective January 1, 2015 (Supp. 14-4).

**R9-10-1909. Counseling**

- A.** An administrator of a counseling facility shall ensure that:
1. Counseling provided at the counseling facility is provided under the direction of a behavioral health professional;
  2. A personnel member who provides counseling is:
    - a. At least 21 years of age, or
    - b. At least 18 years of age and is licensed or certified under A.R.S. Title 32 and providing services within the personnel member's scope of practice; and
  3. If a counseling facility provides counseling to a patient who is less than 18 years of age, an employee or a volunteer and the owner comply with the fingerprint clearance card requirements in A.R.S. § 36-425.03.
- B.** An administrator of a counseling facility shall ensure that:
1. Before counseling for a patient is initiated, there is a behavioral health assessment for the patient that complies with the requirements in this Section that is:
    - a. Available:
      - i. In the patient's medical record maintained by the counseling facility;
      - ii. If the counseling facility is an affiliated counseling facility, in the patient's integrated medical record; or
      - iii. If the counseling facility has an affiliated outpatient treatment center, in the patient's integrated medical record maintained by the counseling facility's affiliated outpatient treatment center;
    - b. Completed by a personnel member at the counseling facility; and

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

- c. Obtained from a behavioral health provider other than the counseling facility; or
  2. A behavioral health assessment, obtained from a behavioral health provider other than the counseling facility or available in a medical record or integrated medical record, was completed within 12 months before the date of the patient's current admission;
  3. If a behavioral health assessment is obtained from a behavioral health provider other than the counseling facility or is available as stated in subsection (B)(1)(a), the information in the behavioral health assessment is reviewed and updated if additional information that affects the patient's behavioral health assessment is identified;
  4. The review and update of the patient's assessment information in subsection (B)(3) is documented in the patient's medical record within 48 hours after the review is completed;
  5. If a behavioral health assessment is conducted by a:
    - a. Behavioral health technician or a registered nurse, within 72 hours after the behavioral health assessment is conducted, a behavioral health professional certified or licensed to provide the counseling needed by the patient reviews and signs the behavioral health assessment to ensure that the behavioral health assessment identifies the counseling needed by the patient; or
    - b. Behavioral health paraprofessional, a behavioral health professional certified or licensed to provide the counseling needed by the patient supervises the behavioral health paraprofessional during the completion of the behavioral health assessment and signs the behavioral health assessment to ensure that the assessment identifies the counseling needed by the patient;
  6. A behavioral health assessment:
    - a. Documents a patient's:
      - i. Presenting issue;
      - ii. Substance use history;
      - iii. Co-occurring disorder;
      - iv. Medical condition and history;
      - v. Legal history, including:
        - (1) Custody,
        - (2) Guardianship, and
        - (3) Pending litigation;
      - vi. Criminal justice record;
      - vii. Family history;
      - viii. Behavioral health treatment history; and
      - ix. Symptoms reported by the patient or the patient's representative and referrals needed by the patient, if any;
    - b. Includes:
      - i. Recommendations for further assessment or examination of the patient's needs;
      - ii. A description of the counseling, including type, frequency, and number of hours, that will be provided to the patient; and
      - iii. The signature and date signed of the personnel member conducting the behavioral health assessment; and
    - c. Is documented in patient's medical record;
  7. A patient is referred to a medical practitioner if a determination is made that the patient requires immediate physical health services or the patient's behavioral health issue may be related to the patient's medical condition;
  8. A request for participation in a patient's behavioral health assessment is made to the patient or the patient's representative;
  9. An opportunity for participation in the patient's behavioral health assessment is provided to the patient or the patient's representative;
  10. Documentation of the request in subsection (B)(8) and the opportunity in subsection (B)(9) is in the patient's medical record;
  11. A patient's behavioral health assessment information is documented in the medical record within 48 hours after completing the assessment;
  12. If information in subsection (B)(6)(a) is obtained about a patient after the patient's behavioral health assessment is completed, an interval note, including the information, is documented in the patient's medical record within 48 hours after the information is obtained;
  13. Counseling is:
    - a. Offered as described in the counseling facility's scope of services;
    - b. Provided according to the type, frequency, and number of hours identified in the patient's assessment; and
    - c. Provided by a behavioral health professional or a behavioral health technician;
  14. A personnel member providing counseling to address 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
  15. Each counseling session is documented in the patient'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.
- C.** An administrator may request authorization to provide any of the following to individuals required to attend by a referring court:
1. DUI screening,
  2. DUI education,
  3. DUI treatment, or
  4. Misdemeanor domestic violence offender treatment.
- D.** An administrator of a counseling facility authorized to provide the services in subsection (C):
1. Shall comply with the requirements for the specific service in 9 A.A.C. 20, and
  2. May have a behavioral health technician who has the appropriate skills and knowledge established in policies and procedures provide the services.

**Historical Note**

New Section made by exempt rulemaking at 20 A.A.R. 3535, pursuant to Laws 2014, Ch. 233, § 5; effective January 1, 2015 (Supp. 14-4).

**R9-10-1910. Physical Plant, Environmental Services, and Equipment Standards**

- A.** An administrator shall ensure that a counseling facility has either:
1. Both of the following:
    - a. A smoke detector installed in each hallway of the counseling facility that is:
      - i. Maintained in an operable condition;

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

- ii. Either battery operated or, if hard-wired into the electrical system of the outpatient treatment center, has a back-up battery; and
- iii. Tested monthly; and
- b. A portable, operable fire extinguisher, labeled as rated at least 2A-10-BC by the Underwriters Laboratories, that:
  - i. Is available at the counseling facility;
  - ii. Is mounted in a fire extinguisher cabinet or placed on wall brackets so that the top handle of the fire extinguisher is not over five feet from the floor and the bottom of the fire extinguisher is at least four inches from the floor;
  - iii. If a disposable fire extinguisher, is replaced when its indicator reaches the red zone; and
  - iv. If a rechargeable fire extinguisher, is serviced at least once every 12 months and has a tag attached to the fire extinguisher that specifies the date of the last servicing and the name of the servicing person; or
- 2. Both of the following that are tested and serviced at least once every 12 months:
  - a. A fire alarm system installed according to the National Fire Protection Association 72: National Fire Alarm and Signaling Code, incorporated by reference in R9-10-104.01, that is in working order; and
  - b. A sprinkler system installed according to the National Fire Protection Association 13: Standard for the Installation of Sprinkler Systems, incorporated by reference in R9-10-104.01 that is in working order.
- B.** An administrator shall ensure that documentation of a test required in subsection (A) is maintained for at least 12 months after the date of the test.
- C.** An administrator shall ensure that on a counseling facility's premises:
  - 1. Exit signs are illuminated, if the local fire jurisdiction requires illuminated exit signs;
  - 2. Corridors and exits are kept clear of any obstructions;
  - 3. A patient can exit through any exit during hours of clinical operation;
  - 4. An extension cord is not used instead of permanent electrical wiring; and
  - 5. Each electrical outlet and electrical switch has a cover plate that is in good repair.
- D.** 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.
- E.** An administrator shall ensure that:
  - 1. A counseling facility's premises are:
    - a. Sufficient to provide the counseling facility's scope of services;
    - b. Cleaned and disinfected to prevent, minimize, and control illness and infection; and
    - c. Free from a condition or situation that may cause an individual to suffer physical injury;
  - 2. If a bathroom is on the premises, the bathroom contains:
    - a. A working sink with running water,
    - b. A working toilet that flushes and has a seat,
    - c. Toilet tissue,
    - d. Soap for hand washing,
    - e. Paper towels or a mechanical air hand dryer,
    - f. Lighting, and
    - g. A means of ventilation;
- 3. If a bathroom is not on the premises, a bathroom is:
  - a. Available for a patient's use,
  - b. Located in a building in contiguous proximity to the counseling facility, and
  - c. Free from a condition or situation that may cause an individual using the bathroom to suffer a physical injury; and
- 4. A tobacco smoke-free environment is maintained on the premises.

**Historical Note**

New Section made by exempt rulemaking at 20 A.A.R. 3535, pursuant to Laws 2014, Ch. 233, § 5; effective January 1, 2015 (Supp. 14-4). Amended by final expedited rulemaking, at 25 A.A.R. 3481 with an immediate effective date of November 5, 2019 (Supp. 19-4).

**R9-10-1911. Integrated Information**

- A.** An administrator of an affiliated outpatient treatment center may maintain the following information, required in this Article for a counseling facility for which the affiliated outpatient treatment center provides administrative support, integrated with information required in 9 A.A.C. 10, Article 10 for the outpatient treatment center:
  - 1. Quality management plan, documented incidents, and reports required in R9-10-1904;
  - 2. Contracted services information in R9-10-1905;
  - 3. Orientation plan, in-service education plan, and personnel records in R9-10-1906; and
  - 4. Medical records in R9-10-1908.
- B.** An administrator of an affiliated counseling facility that shares administrative support with one or more other affiliated counseling facilities may maintain the information in subsections (A)(1) through (A)(4) integrated with information maintained by the other affiliated counseling facilities.
- C.** If an administrator of an affiliated outpatient treatment center or an affiliated counseling facility maintains integrated information according to subsection (A) or (B), the administrator shall develop, document, and implement a method to ensure that:
  - 1. If the quality management plan is integrated, the incidents documented, concerns identified, and changes or actions taken are identified for each facility;
  - 2. If a person provides contracted services at more than one facility, the types of services the person provides at each facility is identified in the contract information;
  - 3. If an orientation plan is applicable to more than one facility, the orientation a personnel member is expected to obtain for each facility is identified in the orientation plan;
  - 4. If an in-service education plan is applicable to more than one facility, the in-service education a personnel member is expected to obtain for each facility is identified in the orientation plan;
  - 5. If a personnel member provides counseling at more than one facility, the following is identified in the personnel member's record:
    - a. The days and hours the personnel member provides counseling for each facility;
    - b. If the personnel member's job description is different for each facility:
      - i. Each job description for the personnel member; and

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

- ii. Verification of the skills and knowledge to provide counseling according to each of the personnel member's job descriptions; and
  - c. If a personnel member is a behavioral health technician, documentation of the clinical oversight provided to the personnel member, based on the number and acuity of the patients to whom the personnel member provided counseling at each facility; and
  - 6. If a patient receives counseling at more than one facility, the counseling received and any information related to the counseling received at each facility is identified in the patient's medical record.
- D.** An administrator of a counseling facility receiving administrative support from an affiliated outpatient treatment center or an affiliated counseling facility shall ensure that if the counseling facility:
- 1. Has integrated information, the integrated information is provided to the Department for review within two hours after the Department's request:
    - a. In a written or electronic format at the counseling facility's premises; or
    - b. Electronically directly to the Department.
  - 2. No longer receives or shares administrative support that includes integrating the information in subsection (A), the information for the counseling facility required in this Article is maintained by the counseling facility and provided to the Department according to the requirements in this Article.

**Historical Note**

New Section made by exempt rulemaking at 20 A.A.R. 3535, pursuant to Laws 2014, Ch. 233, § 5; effective January 1, 2015 (Supp. 14-4).

**ARTICLE 20. PAIN MANAGEMENT CLINICS****R9-10-2001. Definitions**

In addition to the definitions in R9-10-101, the following definitions apply in this Article, unless otherwise specified:

- 1. "Order" means to issue written, verbal, or electronic instructions for a specific dose of a specific medication in a specific quantity and route of administration to be obtained and administered to a patient in a health care institution.
- 2. "Physician" means an individual licensed as a physician according to A.R.S. Title 32, Chapter 13, 14, or 17.

**Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3020, effective January 1, 2019 (Supp. 18-4).

**R9-10-2002. Application and Documentation Submission Requirements**

- A.** An applicant shall submit an application for licensure that meets the requirements in A.R.S. § 36-422 and 9 A.A.C. 10, Article 1.
- B.** An applicant or licensee shall submit to the Department:
  - 1. The applicable fees required in R9-10-106(C), and
  - 2. The documentation required according to 36-448.02(C)(1).

**Historical Note**

New Section made by final rulemaking at 24 A.A.R. 3020, effective January 1, 2019 (Supp. 18-4).

**R9-10-2003. Administration**

- A.** A licensee is responsible for the organization and management of a pain management clinic.
- B.** A licensee shall:
  - 1. Adopt policies and procedures for the administration and operation of a pain management clinic;
  - 2. Designate a medical director who:
    - a. Is licensed:
      - i. As a physician according to A.R.S. Title 32, Chapter 13 or 17; or
      - ii. As a nurse practitioner according to A.R.S. Title 32, Chapter 15 with advanced pain management certification from a nationally recognized accreditation or certification entity; and
    - b. May be the same individual as the licensee;
  - 3. Ensure that there are a sufficient number of personnel members and employees with the required knowledge and qualifications to:
    - a. Meet the requirements of this Article,
    - b. Ensure the health and safety of a patient, and
    - c. Meet the needs of a patient based on the patient's medical evaluation; and
  - 4. Ensure the following are conspicuously posted on the premises:
    - a. The current pain management clinic license issued by the Department;
    - b. The current telephone number and address of the unit in the Department responsible for licensing the pain management clinic;
    - c. An evacuation map posted in all hallways; and
    - d. A phone number for:
      - i. An opioid assistance and referral hotline, and
      - ii. A poison control hotline.

**C.** A medical director shall ensure that:

- 1. Pain management services are provided under the direction of:
    - a. A physician, or
    - b. A nurse practitioner licensed according to A.R.S. Title 32, Chapter 15 with advanced pain management certification from a nationally recognized accreditation or certification entity;
  - 2. A record that includes cardiopulmonary resuscitation training is maintained for each personnel member, employee, volunteer, or student who is required by policies and procedures to obtain cardiopulmonary resuscitation training; and
  - 3. A personnel member certified in cardiopulmonary resuscitation is available on the pain management clinic's premises while patients are present.
- D.** A medical director shall ensure that policies and procedures are established, documented, and implemented to protect the health and safety of a patient that:
- 1. Cover personnel member qualifications, duties, and responsibilities, including who may order, prescribe, or administer an opioid and the required knowledge and qualifications of those personnel members;
  - 2. Cover cardiopulmonary resuscitation training, including:
    - a. The method and content of cardiopulmonary resuscitation training, including a demonstration of an individual's ability to perform cardiopulmonary resuscitation;
    - b. The qualifications required for an individual to provide cardiopulmonary resuscitation training;
    - c. The time-frame for renewal of cardiopulmonary resuscitation training; and
    - d. The documentation that verifies that an individual has received cardiopulmonary resuscitation training;
  - 3. Cover the storage, accessibility, disposal, and documentation of a medication;
  - 4. Cover the prescribing or ordering of an opioid:

## Statutory Authority for Rules in 9 A.A.C. 10, Article 19

### **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.

(as accessed at <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/36/00405-02.htm> on August 20, 2020)

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

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

(from Laws 2019, Ch. 215, § 4, accessed at: <https://www.azleg.gov/legtext/54Leg/1R/laws/0215.pdf>)

Sec. 4. Title 36, chapter 4, article 1, Arizona Revised Statutes, 32 is amended by adding section 36-405.02, to read:

36-405.02. Behavioral health and other related health care services; employees; age; rules

THE DEPARTMENT SHALL ALLOW A PERSON WHO IS EMPLOYED AT A HEALTH CARE INSTITUTION THAT PROVIDES BEHAVIORAL HEALTH SERVICES, WHO IS NOT A LICENSED BEHAVIORAL HEALTH PROFESSIONAL AND WHO IS AT LEAST EIGHTEEN YEARS OF AGE TO PROVIDE BEHAVIORAL HEALTH OR OTHER RELATED HEALTH CARE SERVICES PURSUANT TO ALL APPLICABLE DEPARTMENT RULES. THE DIRECTOR SHALL ADOPT RULES CONSISTENT WITH THIS SECTION.

**36-406. Powers and duties of the department**

In addition to its other powers and duties:

1. The department shall:

- (a) Administer and enforce this chapter and the rules, regulations and standards adopted pursuant thereto.
- (b) Review, and may approve, plans and specifications for construction or modification or additions to health care institutions regulated by this chapter.
- (c) Have access to books, records, accounts and any other information of any health care institution reasonably necessary for the purposes of this chapter.
- (d) Require as a condition of licensure that nursing care institutions and assisted living facilities make vaccinations for influenza and pneumonia available to residents on site on a yearly basis. The department shall prescribe the manner by which the institutions and facilities shall document compliance with this subdivision, including documenting residents who refuse to be immunized. The department shall not impose a violation on a licensee for not making a vaccination available if there is a shortage of that vaccination in this state as determined by the director.

2. The department may:

- (a) Make or cause to be made inspections consistent with standard medical practice of every part of the premises of health care institutions which are subject to the provisions of this chapter as well as those which apply for or hold a license required by this chapter.
- (b) Make studies and investigations of conditions and problems in health care institutions, or any class or subclass thereof, as they relate to compliance with this chapter and rules, regulations and standards adopted pursuant thereto.
- (c) Develop manuals and guides relating to any of the several aspects of physical facilities and operations of health care institutions or any class or subclass thereof for distribution to the governing authorities of health care institutions and to the general public.

**36-407. Prohibited acts; required acts**

A. A person shall not establish, conduct or maintain in this state a health care institution or any class or subclass of health care institution unless that person holds a current and valid license issued by the department specifying the class or subclass of health care institution the person is establishing, conducting or maintaining. The license is valid only for the establishment, operation and maintenance of the class or subclass of health care institution, the type of services and, except for emergency admissions as prescribed by the director by rule, the licensed capacity specified by the license.

B. The licensee shall not imply by advertising, directory listing or otherwise that the licensee is authorized to perform services more specialized or of a higher degree of care than is authorized by this chapter and the underlying rules for the particular class or subclass of health care institution within which the licensee is licensed.

C. The licensee may not transfer or assign the license. A license is valid only for the premises occupied by the institution at the time of its issuance.

D. The licensee shall not personally or through an agent offer or imply an offer of rebate or fee splitting to any person regulated by title 32 or chapter 17 of this title.

E. The licensee shall submit an itemized statement of charges to each patient.

F. A health care institution shall refer a patient who is discharged after receiving emergency services for a drug-related overdose to a behavioral health services provider.

**36-422. 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.

### **36-425.03. Children's behavioral health programs; personnel; fingerprinting requirements; exemptions; definitions**

A. Except as provided in subsections B, C and D of this section, children's behavioral health program personnel, including volunteers, shall submit the form prescribed in subsection E of this section to the employer and shall have a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1 or, within seven working days after employment or beginning volunteer work, shall apply for a fingerprint clearance card.

B. The following persons are exempt from the fingerprinting requirements of this section:

1. When under the direct visual supervision and in the presence of children's behavioral health program personnel who have a valid fingerprint clearance card:

- (a) Except as provided in subsection C of this section, parents, foster parents, kinship foster care parents and guardians who participate in group activities that include their children who are receiving behavioral health services from a children's behavioral health program if they are not employees of the children's behavioral health program.
- (b) A volunteer who provides services to children receiving behavioral health services.
- (c) An employee or contractor who is eligible pursuant to section 41-1758.07, subsection C to petition the board of fingerprinting for a good cause exception and who provides documentation of having applied for a good cause exception pursuant to section 41-619.55 but who has not yet received a decision.
- (d) A person who is not providing medical services, nursing services, behavioral health services, health-related services, home health services or supportive services and who is either not an employee or contractor or not on the premises on a regular basis.
2. Hospital medical staff members, employees, contractors and volunteers who are not present in an area of the hospital authorized by the department for providing children's behavioral health services.
- C. A parent, foster parent, kinship foster care parent or guardian of a child who is receiving behavioral health services from a children's behavioral health program is not required to be fingerprinted or supervised for purposes of this section if the person is in the presence of or participating with only the person's own child.
- D. Applicants and employees who are fingerprinted pursuant to section 15-512 or 15-534 are exempt from the fingerprinting requirements of subsection A of this section.
- E. Children's behavioral health program personnel shall certify on forms that are provided by the department and notarized that they are not awaiting trial on or have never been convicted of or admitted in open court or pursuant to a plea agreement to committing any of the offenses listed in section 41-1758.03, subsection B or C in this state or similar offenses in another state or jurisdiction.
- F. Forms submitted pursuant to subsection E of this section are confidential.
- G. Employers of children's behavioral health program personnel shall make documented, good faith efforts to contact previous employers of children's behavioral health program personnel to obtain information or recommendations that may be relevant to an individual's fitness for employment in a children's behavioral health program.
- H. A person who is awaiting trial on or who has been convicted of or who has admitted in open court or pursuant to a plea agreement to committing a criminal offense listed in section 41-1758.03, subsection B is prohibited from working in any capacity in a children's behavioral health program that requires or allows contact with children.
- I. A person who is awaiting trial on or who has been convicted of or who has admitted in open court or pursuant to a plea agreement to committing a criminal offense listed in section 41-1758.03, subsection C shall not work in a children's behavioral health program in any capacity that requires or allows the employee to provide direct services to children unless the person has applied for and received the required fingerprint clearance card pursuant to title 41, chapter 12, article 3.1.
- J. The department of health services shall accept a certification submitted by a United States military base or a federally recognized Indian tribe that either:
1. Personnel who are employed or who will be employed and who provide services directly to children have not been convicted of, have not admitted committing or are not awaiting trial on any offense prescribed in subsection H of this section.
  2. Personnel who are employed or who will be employed to provide services directly to children have been convicted of, have admitted committing or are awaiting trial on any offense prescribed in subsection I of this section if the personnel provide these services while under direct visual supervision.
- K. The employer shall notify the department of public safety if the employer receives credible evidence that a person who possesses a valid fingerprint clearance card either:
1. Is arrested for or charged with an offense listed in section 41-1758.03, subsection B.
  2. Falsified information on the form required by subsection E of this section.

L. For the purposes of this section:

1. "Children's behavioral health program" means a program provided in a health care institution that is licensed by the department to provide children's behavioral health services.
2. "Children's behavioral health program personnel" means an owner, employee or volunteer who works at a children's behavioral health program.
3. "Direct visual supervision" means continuous visual oversight of the supervised person that does not require the supervisor to be in a superior organizational role to the person being supervised.

**BOARD OF NURSING**

Title 4, Chapter 19, Board of Nursing

**Amend:** R4-19-101, R4-19-102, R4-19-207, R4-19-208, R4-19-209, R4-19-210, R4-19-216, R4-19-301, R4-19-304, R4-19-305, R4-19-308, R4-19-501, R4-19-502, R4-19-503, R4-19-504, R4-19-505, R4-19-506, R4-19-507, R4-19-508, R4-19-511, R4-19-512, R4-19-513, R4-19-514, R4-19-604, R4-19-804, R4-19-806, R4-19-809, R4-19-815

**Renumber:** R4-19-501, R4-19-503



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** November 3, 2020

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

**FROM:** Council Staff

**DATE:** October 19, 2020

**SUBJECT: BOARD OF NURSING (R20-1104)**  
Title 4, Chapter 19, Articles 1, 2, 3, 5, 6 and 8

**Amend:** R4-19-101, R4-19-102, R4-19-207, R4-19-208, R4-19-209,  
R4-19-210, R4-19-216, R4-19-301, R4-19-304, R4-19-305,  
R4-19-308, R4-19-501, R4-19-502, R4-19-503, R4-19-504,  
R4-19-505, R4-19-506, R4-19-507, R4-19-508, R4-19-511,  
R4-19-512, R4-19-513, R4-19-514, R4-19-604, R4-19-804,  
R4-19-806, R4-19-809, R4-19-815

**Renumber:** R4-19-501, R4-19-503

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### **Summary:**

This regular rulemaking from the Arizona Board of Nursing seeks to amend 28 rules in Title 4, Chapter 19, regarding licensing, training and certification, and scope of practice. Specifically, the Board seeks to provide nurses with earlier access to temporary licenses after submitting their fingerprints, prior to receiving background check results. Additionally, the amendments seek to expand the scope of Clinical Nurse Specialists to prescribing and dispensing drugs and devices, and permits the Executive Director to extend provisional approval to advanced practice registered nursing programs prior to application review by the Board. Last, the amendments remove the requirement for paper copy submissions to the Board and clarify "address of record" language.

The Board is requesting an immediate effective date pursuant to A.R.S. § 41-1032(A)(1), (A)(4), and (A)(5). The Board asserts that the amendments will provide a public health benefit, include no penalties, and are less stringent than current rule requirements.

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

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

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

The Board indicates that this rulemaking does not establish a new fee or contain a fee increase.

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

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

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

The Board indicates that the rules amendments are meant to reduce regulatory burdens, implement statutory changes, and reduce paperwork by eliminating the need to submit paper copies of some documents. Stakeholders include the Board, patients, and health care facilities. The Board anticipates minimal to no economic impact from the proposed amendments.

The Board regulates approximately 97,500 Registered Nurses ("RNs"), 9,533 Registered Nurse Practitioners, 10,713 Licensed Practical Nurses ("LPNs"), 9,218 Licensed Nursing Assistants ("LNAs"), 19,516 Certified Nursing Assistants ("CNAs"), 169 Clinical Nurse Specialists ("CNSs"), 290 Certified Nurse Midwives ("CNMs"), 1,004 Certified Registered Nurse Anesthetists, and 23 Certified Medical Assistants ("CMAs"). The Board regulates approximately five LPN programs, 31 RN programs, 101 CNA programs, 2 CMA programs and 13 refresher programs.

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 there are no less intrusive or costly alternatives to the rulemaking.

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

The Board is not proposing any changes that would increase any licensing/certification or other application fees. The Board believes that the improved electronic communications and elimination of paper filing requirements may reduce administrative and mailing

costs. The Board also indicated that technical changes improve clarity and benefit all stakeholders. No significant impact on public or private employment is expected.

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

Between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking, the Board made a technical correction to R4-19-508 to add references to Certified Nurse Midwives and Certified Nurse Specialists every time the Registered Nurse Practitioner is mentioned. This change does not result in a rule that is “substantially different” pursuant to A.R.S. § 41-1025.

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

The Board indicates it received no comments regarding the rulemaking. Furthermore, the Board states that no one attended the oral proceeding on August 18, 2020.

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

The Board asserts all of the related licenses, certificates and approvals addressed in Articles 2, 3, 5, and 8 can be considered general permits under § 41-1001(10). The Board complies with A.R.S. § 41-1037.

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

The Board indicates that Federal laws 42 CFR 483.150, 483.151, 483.152, 483.154, 483.156, and 483.158 contain the federal minimum requirements for nursing assistant programs and inclusion on the nursing assistant register. The Board states that except for proof of legal presence, which is required under A.R.S. § 41-1080, the requirements to be listed on the nursing assistant registry are no more stringent than minimal federal requirements.

11. **Conclusion**

In this regular rulemaking, the Board seeks to reduce regulatory burdens, implement statutory changes, and reduce paperwork as discussed above. The Board is requesting an immediate effective date pursuant to A.R.S. § 41-1032(A)(1), (A)(4), and (A)(5). Upon review of this statute, Council staff agrees that the Board cited the correct bases for an immediate effective date for this rulemaking. Council staff recommends approval of this rulemaking with an immediate effective date.



**Doug Ducey**  
Governor

**Joey Ridenour**  
Executive Director

## *Arizona State Board of Nursing*

*1740 West Adams Street, Suite 2000*

*Phoenix, AZ 85007-2607*

**Phone: (602) 771-7800**

**Homepage: <http://www.azbn.gov>**

September 1, 2020

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

**Re: Final Rulemaking: Title 4, Chapter 19. Articles 1, 2, 3, 5, 6, and 8**

Enclosed are the final rules from the articles identified, above, that have been approved by the Arizona State Board of Nursing (Board) subject to the approval of the Governor's Regulatory Review Council (Council) pursuant to A.R.S. § 41-1052. The Board engaged in this rulemaking to implement new legislation, increase speed of issuing temporary licenses and provisional approvals, and overall reduce regulatory burdens on its regulated populations.

As required by the Administrative Procedure Act, the Notice of Docket Opening on this rulemaking was filed with the Secretary of State and published in the Arizona Administrative Register (Register), along with the Notice of Proposed Rulemaking, on July 17, 2020. The Board held an oral proceeding on August 18, 2020, with no persons other than Board staff in attendance. The record closed at 2:00 p.m. on August 18, 2020. No written or oral comments were received during any comment period. There is one technical correction that does not alter the original intent of the rule, for R4-19-208, between the proposed and final rulemaking.

The Board did not review any study to either rely or not rely on to justify this rulemaking. No new employees will be necessary to implement or enforce the rules in this package.

Supporting documentation is enclosed, including the Notice of Final Rulemaking; Economic, Small Business, and Consumer Impact Statement; the current rules; Governor's Exemption from the informal and formal Rulemaking Moratoria; and enabling statutes.

In transmitting these final rules, I hereby certify that the referenced rule action is within the power of the Board of Nursing and any legislative standards, and was done in compliance with all appropriate procedures to the best of my knowledge, including disclosure of relevant studies in the preamble.

Sincerely,

Handwritten signature of Joey Ridenour in cursive script.

Joey Ridenour, R.N., M.N., F.A.A.N.  
Executive Director

Enclosures: Notice of Final Rulemaking, Economic Impact Statement, Current Rules, Exemption from Rulemaking Moratorium; and enabling statutes

**Doug Ducey**  
Governor



**Joey Ridenour**  
Exec. Director

## ***Arizona Board of Nursing***

1740 W. Adams Street, Suite 2000  
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**Secure Email:** <https://www.virtro.com/secure-email/>

October 19, 2020

Governor's Regulatory Review Council  
Arizona Department of Administration  
100 N. 15th Av STE 305  
Phoenix, Arizona 85007

**Re: Supplemental Information for - Final Rulemaking: Title 4, Chapter 19. Articles 1, 2, 3, 5, 6 and 8, Originally Submitted on October 19, 2020**

To the Governor's Regulatory Review Council:

At the request of GRRC staff, the following information is provided to supplement the original cover letter for this Final Rulemaking from the Arizona State Board of Nursing, originally submitted to GRRC staff on September 1, 2020.

- a. The close of record (COR) was: **August 18, 2020, immediately following the Oral Proceeding.**
- b. Whether the rulemaking activity relates to a five year rule report and, if applicable, the date the report was approved by council: **This rulemaking activity does not relate to a five year rule report.**
- c. Whether the rule establishes a new fee and, if it does, citation of the statute expressly authorizing the new fee: **This rulemaking does not establish a new fee.**
- d. Whether the rule contains a fee increase: **This rulemaking does not include a fee increase.**
- e. Whether an immediate effective date is requested for the rule under A.R.S. § 41-1032: **An immediate effective date is requested, pursuant to A.R.S. § 41-1032(A)(1), (A)(4), and (A)(5), to preserve the public health and safety, to provide a public benefit and a penalty is not associated with the rule, and to adopt rules that are less stringent that do not affect public health or safety. The complete explanations are in the Notice of Final Rulemaking.**

- f. A certification that the preamble discloses a reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule: **There were no studies reviewed, relied upon, or justifying the rulemaking.**
- g. If one or more full-time employees are necessary to implement and enforce the rule, a certification that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule: **No new employees are necessary to implement or enforce this rulemaking.**
- h. A list of all documents enclosed in the original submission:
  - 1. **Notice of Final Rulemaking**
  - 2. **Economic Impact Statement**
  - 3. **Revised Rules**
  - 4. **Current Rules**
  - 5. **Exemption from the Governor's Formal and Informal Rulemaking Moratoria**
  - 6. **Enabling and Implementing Statutes**

Thank you for your consideration.

Sincerely,

Handwritten signature of Joey Ridenour in cursive script.

Joey Ridenour, R.N., M.N., F.A.A.N.  
Executive Director

**NOTICE OF FINAL RULEMAKING**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 19. BOARD OF NURSING**

**PREAMBLE**

<b><u>1.</u></b>	<b><u>Articles, Parts and Sections Affected</u></b>	<b><u>Rulemaking Action</u></b>
	R4-19-101	Amend
	R4-19-102	Amend
	R4-19-207	Amend
	R4-19-208	Amend
	R4-19-209	Amend
	R4-19-210	Amend
	R4-19-216	Amend
	R4-19-301	Amend
	R4-19-304	Amend
	R4-19-305	Amend
	R4-19-308	Amend
	R4-19-501	Amend, renumber
	R4-19-502	Amend

R4-19-503	Amend, renumber
R4-19-504	Amend
R4-19-505	Amend
R4-19-506	Amend
R4-19-507	Amend
R4-19-508	Amend
R4-19-511	Amend
R4-19-512	Amend
R4-19-513	Amend
R4-19-514	Amend
R4-19-604	Amend
R4-19-804	Amend
R4-19-806	Amend
R4-19-809	Amend
R4-19-815	Amend

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

Authorizing statutes: A.R.S. §§; 32-1606 (A)(1).

Implementing statutes: A. R. S. §§ 32-1601 (3), (5), (6), (7), (8), (9), (10), (12), (14), (15), (16), (21), (22), (23), (26); 32-1605.01(B)(1), (3), (4), (5), (8); 32-1606(B)(1), (2), (3), (5), (8), (10), (12), (13), (16), (18), (21), (22), (27); 32-1609; 32-1634(A)(28); 32-1634.04; 32-1635; 32-1635.01; 32-1636(D); 32-1640; 32-1644; 32-1651; 32-1660; 32-1663(G); 32-1663.01(A)(2); 32-1921(A)(1); and 32-3226.

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

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

Pursuant to A.R.S. § 41-1032(A)(1), (A)(4), and (A)(5), the Board seeks an immediate effective date for this rulemaking package, related to protecting the public health, by providing nurses with earlier access to temporary licenses so that they will be available to care for patients after they have submitted their fingerprints for background checks, but not requiring that the results be received prior to receiving a temporary license. (R4-19-304.) This amendment will provide a public health benefit, there is no penalty associated with the amendment, and this is less stringent than current rule requirements.

Similarly, the provisional advanced nursing program approval by Executive Director process, delineated in the proposed amendments to R4-19-503, will also provide for a public benefit by providing nursing education more efficiently, without a penalty, and in a less stringent manner than current rule, pursuant to A.R.S. § 41-1032(A)(4).

The other proposed amendments are also intended to create public benefits without penalties, pursuant to A.R.S. § 41-1032(A)(1) and (A)(4), including expanding the scope of the clinical nurse specialist (“CNS”) to include prescribing, issuing prescribing permits to certified registered nurse anesthetists pursuant to statutory authority implementing statutory changes to licensee address submission requirements and categorization of CNS and certified nurse midwives, and some other, technical changes. None of the proposed changes add any penalties, or increase any costs.

Pursuant to A.R.S. § 41-1032(A)(5), the Board intends to eliminate regulated parties’ requirements to submit paper documents to the Board.

Regarding public notice, the Secretary of State published the proposed rules in the register (see below), and the Board posted the proposed rules on its website and held an

oral proceeding on August 18, 2020. No persons attended the oral proceeding, and no public comments have been submitted to the Board.

- 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):**

N/A.

- 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:**

Volume 26, Issue 29, beginning on page 1399, published July 17, 2020.

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

Name: Joey Ridenour RN, MS, FAAN

Executive Director

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Telephone: 602-771-7801

Fax: 602-771-7888

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

**R4-19-101. Definitions**

The Board approved amending this Section to include a definition of “advance practice registered nurse” for clarity throughout Arizona Administrative Code, Title 4, Chapter 19.

**R4-19-102. Time-frames for Licensure, Certification, or Approval**

The Board seeks to amend this section to align the references to address from the current “mailing address” to the new “address of record”, which is defined in and consistent with new legislation, codified in A.R.S. § 32-3226.

**R4-19-207. New Programs, Proposal Approval; Provisional Approval**

The Board seeks to amend this section to reduce burdens on regulated parties by eliminating the requirement for submission to the Board of paper copies of documents.

**R4-19-208. Full Approval of a New Nursing Program**

The Board seeks to amend this section to reduce burdens on regulated parties by eliminating the requirement for submission to the Board of paper copies of documents.

**R4-19-209. Nursing Program Change**

The Board seeks to amend this section to reduce burdens on regulated parties by eliminating the requirement for submission to the Board of paper copies of documents.

**R4-19-210. Renewal of Approval of Nursing Programs Not Accredited by a National Nursing Accrediting Agency**

The Board seeks to amend this section to reduce burdens on regulated parties by eliminating the requirement for submission to the Board of paper copies of documents.

**R4-19-216. Approval of a Refresher Program**

The Board seeks to amend this section to reduce burdens on regulated parties by eliminating the requirement for submission to the Board of paper copies of documents.

**R4-19-301. Licensure by Examination**

The Board seeks to amend this section to align the references to address from the current “mailing address” to the new “address of record”, which is defined in and consistent with new legislation, codified in A.R.S. § 32-3226.

**R4-19-304. Temporary License**

The Board seeks to amend this section to expedite processing temporary license applications to reduce regulatory burdens on stakeholders. By maintaining the applicant’s requirement to submit fingerprints, but reducing the requirement to receive the report back from law enforcement, which can sometimes cause delays, the Board maintains a balance of public protection and efficiency to stakeholders, so that they may begin work earlier.

**R4-19-305. License Renewal**

The Board seeks to amend this section to align the references to address from the current “mailing address” to the new “address of record”, which is defined in and consistent with A.R.S. § 32-3226.

**R4-19-308. Change of Name or Address**

The Board seeks to amend this section to align the references to address from the current “mailing address” to the new “address of record”, which is defined in and consistent with

A.R.S. § 32-3226. The Board is requiring licensees and applicants to submit a residential address due to nurse licensure compact requirements for “primary state of residence”, and because most licensees and applicants already submit residential addresses. The Board does not anticipate this will be an increased burden on its regulated parties.

**R4-19-501. Roles and Population Foci of Advanced Practice Registered Nursing (APRN); Certification Programs**

Adding certified nurse midwife (CNM) as a separate APRN category, rather than as a subcategory under registered nurse practitioner (RNP). Consistent with legislative changes to A.R.S. §§ 32-1601(5) and 32-1636(D).

**R4-19-502. Requirements for APRN Programs**

Adding certified nurse midwife (CNM) as a separate APRN category, rather than as a subcategory under registered nurse practitioner (RNP). Consistent with changes to A.R.S. §§ 32-1601(5) and 32-1636(D).

**R4-19-503. Application for Approval of an Advanced Practice Registered Nursing Program; Approval by Board; Provisional Approval by Executive Director**

Adding certified nurse midwife (CNM) as a separate APRN category, rather than as a subcategory under registered nurse practitioner (RNP). Consistent with changes to A.R.S. §§ 32-1601(5) and 32-1636(D).

Also, section (F) will permit the Executive Director to issue a provisional approval to APRN nursing programs, which is intended to reduce regulatory burdens by allowing APRN nursing programs that have submitted complete applications and appear to meet

criteria to begin to operate in Arizona between Board meetings, rather than to necessarily wait for full Board approval.

**R4-19-504. Notice of Deficiency; Unprofessional APRN Program Conduct**

Amendment limited to title, clarification that programs included in this rules are “APRN” programs.

**R4-19-505. Requirements for Initial APRN Certification**

These proposed amendments include the “address of record” language update to match A.R.S. § 32-3226, adding CNM as a separate APRN category, and some technical edits that are non-substantive.

**R4-19-506. Expiration of APRN Certificate; Practice Requirement; Renewal**

Proposed amendments include adding CNM as a separate APRN category, and consistency in use of “APRN” acronym.

**R4-19-507. Temporary Advanced Practice Certificate; Temporary Prescribing and Dispensing Authority**

Proposed amendments include adding CNM as a separate APRN category, consistency in use of “APRN” acronym, and adding clinical nurse specialists (CNS) as eligible to obtain temporary prescribing and dispensing authority, pursuant to A.R.S. § 32-1651, *inter alia*.

**R4-19-508. Standards Related to ~~Registered Nurse Practitioner~~ RNP, CNM, and CNS  
Scope of Practice**

Proposed amendments include adding CNM and CNS as APRN categories authorized to perform other functions as APRNs, including prescribing.

**R4-19-511. Prescribing and Dispensing Authority; Prohibited Acts**

Proposed amendments to this section, similar to sections 507 and 508, including adding CNM and CNS as separate categories; authorizing CNM and CNS to perform functions previously limited to RNPs; specifically adding CNS prescribing limitations referencing A.R.S. § 32-1651; and authorizing CRNAs to obtain prescribing-only certificates, consistent with A.R.S. § 32-1634.04, and other applicable laws.

**R4-19-512. Prescribing Drugs and Devices**

Proposed amendments add CNM and CNS to RNP as authorized APRNs eligible to be authorized to prescribe drugs and devices, with applicable limitations for CNS.

**R4-19-513. Dispensing Drugs and Devices**

Proposed amendments add CNM and CNS to RNP as authorized APRNs eligible to be authorized to dispense drugs and devices, with applicable limitations for CNS.

**R4-19-514. Standards Related to Clinical Nurse Specialist Scope of Practice**

Proposed technical amendment, and clarification of expanded eligibility of CNS to prescribe, order, administer and dispense therapeutic measures, pursuant to A.R.S. § 32-1651, *inter alia*.

**R4-19-604. Notice of Hearing; Response**

The Board seeks to amend this section to align the references to address from the current “mailing address” to the new “address of record”, which is defined in and consistent with A.R.S. § 32-3226.

**R4-19-804. Initial Approval and Re-Approval of Training Programs**

Proposed technical amendment to title; elimination of requirement to submit paper documents to ease regulatory burden on regulated parties.

**R4-19-806. Initial Nursing Assistant Licensure (LNA) and Medication Assistant Certification**

The Board seeks to amend this section to align the references to address from the current “mailing address” to the new “address of record”, which is defined in and consistent with A.R.S. § 32-3226.

**R4-19-809. Nursing Assistant Licensure and Medication Assistant Certificate Renewal**

The Board seeks to amend this section to align the references to address from the current “mailing address” to the new “address of record”, which is defined in and consistent with A.R.S. § 32-3226.

**R4-19-815. Reissuance or Subsequent Issuance of a Nursing Assistant License or Medication Assistant Certificate**

Proposed technical amendment to add term “licensure” to current “certification”. “Certification” refers to medication assistants and “licensure” is applicable to licensed nursing assistants, consistent with licensed nursing assistant existing title.

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

There are no studies that Board either relied on or did not rely on in its evaluation or justification for the rules.

**8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules 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 does not anticipate a substantial economic impact from the majority of the amendments in this rulemaking. The Board regulates approximately 97,500 Registered Nurses (“RNs”), 9,533 Registered Nurse Practitioners, 10,713 Licensed Practical Nurses (“LPNs”), 9,218 Licensed Nursing Assistants (“LNAs”), 19,516 Certified Nursing Assistants (“CNAs”), 169 Clinical Nurse Specialists, 290 Certified Nurse Midwives, 1004 Certified Registered Nurse Anesthetists, and 23 Certified Medical Assistants (“CMAs”). The Board regulates approximately five LPN programs, 31 RN programs, 101 CNA programs, 2 CMA programs and 13 refresher programs.

The Board, regulated parties and the public are all expected to benefit from increased speed in processing applications, additional prescribing certificates and authority to the CNSs, and the clarity and reduced regulatory burden of this rulemaking.

The following amendments are not expected to have a substantial economic impact on the Board, regulated parties, or the general public.

- R4-19-101 was amended to provide a definition of “APRN” and is not expected to have any economic impact.

- R4-19-102 was amended to conform address terminology with new statutory language (A.R.S. § 32-3226) and is not expected to have any economic impact.
- R4-19-207 amendments may produce a minimal economic benefit for programs by decreasing costs associated with producing paper copies of documents for the Board.
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- R4-19-210 amendments may produce a minimal economic benefit for programs by decreasing costs associated with producing paper copies of documents for the Board.
- R4-19-216 amendments may produce a minimal economic benefit for programs by decreasing costs associated with producing paper copies of documents for the Board.
- R4-19-301 – was amended to conform address terminology with new statutory language (A.R.S. § 32-3226) and is not expected to have any economic impact.
- R4-19-304 – is expected to have a positive economic impact by allowing applicants to being to work sooner on a temporary license, which may also benefit Arizona employers including small businesses.

- R4-19-305 – was amended to conform address terminology with new statutory language (A.R.S. § 32-3226) and is not expected to have any economic impact.
- R4-19-308 - was amended to conform address terminology with new statutory language (A.R.S. § 32-3226), clarify that licensees and applicants still need to submit residential addresses, and is not expected to have any economic impact.
- R4-19-501 – amendments include adding CNM as a separate APRN category, consistent with statute, and CNMs were already practicing as APRNs. This is a clarification but is not anticipated to have any economic impact.
- R4-19-502 – again, clarifying that CNM is a separate APRN category, and not expected to have any economic input.
- R4-19-503 – adding CNM as a separate APRN category, which is not expected to have any economic input. Proposed amendments would also permit the Executive Director to issue provisional approval pending application review by the Board, which is expected to have a minimal economic benefit by permitting programs to operate earlier in Arizona.
- R4-19-504 – title change only, which is not expected to create any economic impact.
- R4-19-505 – proposed changes to “address of record” language and technical edits that are not expected to create any economic impact.
- R4-19-506 – no economic impact anticipate with clarification of CNM as a separate APRN category and technical change regarding use of acronyms in the rules.

- R4-19-507 – again clarifying that CNM is a separate APRN category, and use of acronyms, that are not expected to have any economic impact. The proposed addition of CNS as being eligible to obtain temporary prescribing and dispensing authority is expected to create a modest economic benefit to the CNS certificate holders and their businesses or employers.
- R4-19-508 – same as above, section 507.
- R4-19-511 – same as above, section 507 and 508, and adding clarifications related to CRNA prescribing. This is expected to have a positive economic impact for the APRN categories that will now be eligible and/or have clarity with their prescribing authority.
- R4-19-512 and 513 – these proposed amendments are anticipated to have a positive economic impact, as described above, in section 507.
- R4-19-514 – anticipated positive economic benefit, as described above, in section 507. Technical amendment not anticipated to cause any economic impact.
- R4-19-604 – proposed change of wording related to “address of record” not anticipated to create any economic impact.
- R4-19-804 - amendments may produce a minimal economic benefit for applicants by decreasing costs associated with producing paper copies of documents for the Board.
- R4-19-806 - proposed change of wording related to “address of record” not anticipated to create any economic impact.

- R4-19-809 – proposed change of wording related to “address of record” not anticipated to create any economic impact.
- R4-19-815 – the proposed technical amendment is not anticipated to create any economic impact.

**10. The agency’s contact person who can answer questions about the economic, small business, and consumer impact statement:**

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Executive Director

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Website: [azbn.gov](http://azbn.gov)

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

A technical correction was made to R4-19-508 to add references to the CNM and CNS to all times the RNP is mentioned, rather than just the first time. This was the original intent of the amendment in the proposed rulemaking, and is simply a logical, technical correction.

A second change was made to paragraph (3)(a) of the instant Notice of Final Rulemaking, on page 3, related to the request for immediate effective date, by adding specific citations to the statutory sections of A.R.S. § 41-1032 that the Board asserts support its request.

Finally, page numbers were inserted in the instant Notice.

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

The Board did not receive any comments regarding the rulemaking.

**13. 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 statute applicable to the Board or this specific class of rules.

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

This rulemaking does not require a permit however the rules in Articles 2, 3, 5, and 8 relate to issuing licenses, certificates and approvals all of which can be considered a general permit under § 41-1001(10).

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

Federal laws (42 CFR 483.150, 42 CFR 483.151, 42 CFR 483.152, 42 CFR 483.154, 42 CFR 483.156, 42 CFR 483.158) contain the federal minimum requirements for nursing assistant programs and inclusion on the nursing assistant register. Except for proof of legal presence, as required under A.R.S. §41-1080, the requirements to be listed on the nursing assistant registry are no more stringent than minimal federal 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:**

No analysis was submitted

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

There is no material incorporated by reference.

**15. 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 of the rules included in this Final Rulemaking were amended pursuant to emergency rulemaking.

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

## ARTICLE 1. DEFINITIONS AND TIME-FRAMES

### R4-19-101. Definitions

“Abuse” means a misuse of power or betrayal of trust, respect, or intimacy by a nurse, nursing assistant, or applicant that causes or is likely to cause physical, mental, emotional, or financial harm to a client.

“Administer” means the direct application of a medication to the body of a patient by a nurse, whether by injection, inhalation, ingestion, or any other means.

“Admission cohort” means a group of students admitted at the same time to the same curriculum in a regulated nursing, nursing assistant, or advanced practice nursing program or entering the first clinical course in a regulated program at the same time. “Same time” means on the same date or within a narrow range of dates pre-defined by the program.

“Advance practice registered nurse (APRN)” means either a registered nurse practitioner (RNP), certified nurse midwife (CNM), certified registered nurse anesthetist (CRNA), or clinical nurse specialist (CNS), certified by the Board.

“Applicant” means a person seeking licensure, certification, prescribing, or prescribing and dispensing privileges, or an entity seeking approval or re-approval, if applicable, of a:

- CNS or RNP nursing program,
- Credential evaluation service,
- Nursing assistant training program,
- Nursing program,
- Nursing program change, or
- Refresher program.

“Approved national nursing accrediting agency” means an organization recognized by the United States Department of Education as an accrediting agency for a nursing program.

“Assign” means a nurse designates nursing activities to be performed by another nurse that are consistent with the other nurse’s scope of practice.

“Certificate or diploma in practical nursing” means the document awarded to a graduate of an educational program in practical nursing.

“Certified medication assistant” means a certified nursing assistant who meets Board qualifications and is additionally certified by the Board to administer medications under A.R.S. § 32-1650 et. seq.

“CES” means credential evaluation service.

“Client” means a recipient of care and may be an individual, family, group, or community.

“Clinical instruction” means the guidance and supervision provided by a nursing, nursing assistant or medication assistant program faculty member while a student is providing client care.

“CMA” means certified medication assistant.

“CNA” means a certified nursing assistant, as defined in A.R.S § 32-1601(4).

“CNS” means clinical nurse specialist, as defined in A.R.S. § 32-1601(7).

“Collaborate” means to establish a relationship for consultation or referral with one or more licensed physicians on an as-needed basis. Supervision of the activities of a registered nurse practitioner by the collaborating physician is not required.

“Contact hour” means a unit of organized learning, which may be either clinical or didactic and is either 60 minutes in length or is otherwise defined by an accrediting agency recognized by the Board.

“Continuing education activity” means a course of study related to nursing practice that is awarded contact hours by an accrediting agency recognized by the Board, or academic credits in nursing or medicine by a regionally or nationally accredited college or university.

“CRNA” means a certified registered nurse anesthetist as defined in A.R.S. § 32-1601(5).

“DEA” means the federal Drug Enforcement Administration.

“Dispense” means to deliver a controlled substance or legend drug to an ultimate user.

“Dual relationship” means a nurse or CNA simultaneously engages in both a professional and nonprofessional relationship with a patient or resident or a patient’s or resident’s family that is avoidable, non-incident, and results in the patient or resident or the patient’s or resident’s family being exploited financially, emotionally, or sexually.

“Eligibility for graduation” means that the applicant has successfully completed all program and institutional requirements for receiving a degree or diploma but is delayed in receiving the degree or diploma due to the graduation schedule of the institution.

“Endorsement” means the procedure for granting an Arizona nursing license to an applicant who is already licensed as a nurse in another state or territory of the United States and has passed an exam as required by A.R.S. §§ 32-1633 or 32-1638 or an Arizona nursing assistant or medication assistant certificate to an applicant who is already listed on a nurse aide register or certified as a medication assistant in another state or territory of the United States.

“Episodic nursing care” means nursing care at nonspecific intervals that is focused on the current needs of the individual.

“Failure to maintain professional boundaries” means any conduct or behavior of a nurse or CNA that, regardless of the nurse’s or CNA’s intention, is likely to lessen the benefit of care to a patient or resident or a patient’s or resident’s family or places the patient, resident or the patient’s or resident’s family at risk of being exploited financially, emotionally, or sexually.

“Family,” as applied to R4-19-511, means individuals who are related by blood, marriage, adoption, legal guardianship, or domestic partnership, or who are cohabitating or romantically involved.

“Full approval” means the status granted by the Board when a nursing program, after graduation of its first class, demonstrates the ability to provide and maintain a program in accordance with the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter.

“Good standing” means the license of a nurse, or the certificate of a nursing assistant, is current, and the nurse or nursing assistant is not presently subject to any disciplinary action, consent order, or settlement agreement.

“Independent nursing activities” means nursing care within an RN’s scope of practice that does not require authorization from another health professional.

“Initial approval” means the permission, granted by the Board, to an entity to establish a nursing assistant training program, after the Board determines that the program meets the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter.

“Licensure by examination” means the granting of permission to practice nursing based on an individual’s passing of a prescribed examination and meeting all other licensure requirements.

“LPN” means licensed practical nurse.

“NCLEX” means the National Council Licensure Examination.

“Nurse” means a licensed practical or registered nurse.

“Nursing diagnosis” means a clinical judgment, based on analysis of comprehensive assessment data, about a client’s response to actual and potential health problems or life processes. Nursing diagnosis statements include the actual or potential problem, etiology or risk factors, and defining characteristics, if any.

“Nursing process” means applying problem-solving techniques that require technical and scientific knowledge, good judgment, and decision-making skills to assess, plan, implement, and evaluate a plan of care.

“Nursing program” means a formal course of instruction designed to prepare its graduates for licensure as registered or practical nurses.

“Nursing program administrator” means a nurse educator who meets the requirements of A.R.S. Title 32, Chapter 15 and this Chapter and has the administrative responsibility and authority for the direction of a nursing program.

“Nursing program faculty member” means an individual working full or part time within a nursing program who is responsible for either developing, implementing, teaching, evaluating, or updating nursing knowledge, clinical skills, or curricula.

“Nursing-related activities or duties” means client care tasks for which education is provided by a basic nursing assistant training program.

“P & D” means prescribing and dispensing.

“Parent institution” means the educational institution in which a nursing program, nursing assistant training program or medication assistant program is conducted.

“Patient” means an individual recipient of care.

“Pharmacology” means the science that deals with the study of drugs.

“Physician” means a person licensed under A.R.S. Title 32, Chapters 7, 8, 11, 13, 14, 17, or 29, or by a state medical board in the United States.

“Preceptor” means a licensed nurse or other health professional who meets the requirements of A.R.S. Title 32, Chapter 15 and this Chapter who instructs, supervises and evaluates a licensee, clinical nurse specialist, nurse practitioner or pre-licensure nursing student, for a defined period.

“Preceptorship” means a clinical learning experience by which a learner enrolled in a nursing program, nurse refresher program, clinical nurse specialist, or registered nurse practitioner program or as part of a Board order provides nursing care while assigned to a health professional who holds a license or certificate equivalent to or higher than the level of the learner’s program or in the case of a nurse under Board order, meets the qualifications in the Board order.

“Prescribe” means to order a medication, medical device, or appliance for use by a patient.

“Private business” means any individual or sole proprietorship, partnership, limited liability partnership, limited liability company, corporation or other legal business entity.

“Proposal approval” means that an institution has met the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter to proceed with an application for provisional approval to establish a pre-licensure nursing program in Arizona.

“Provisional approval” means that an institution has met the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter to implement a pre-licensure nursing program in Arizona.

“Refresher program” means a formal course of instruction designed to provide a review and update of nursing theory and practice.

“Register” means a listing of Arizona certified nursing assistants maintained by the Board that includes the following about each nursing assistant:

- Identifying demographic information;
- Date placed on the register;
- Date of initial and most recent certification, if applicable; and
- Status of the nursing assistant certificate, including findings of abuse, neglect, or misappropriation of property made by the Arizona Department of Health Services, sanctions imposed by the United States Department of Health and Human Services, and disciplinary actions by the Board.

“Resident” means a patient who receives care in a long-term care facility or other residential setting.

“RN” means registered nurse.

“RNP” means a registered nurse practitioner as defined in A.R.S. § 32-1601(20).

“SBTPE” means the State Board Test Pool Examination.

“School nurse” means a registered nurse who is certified under R4-19-309.

“Secure examination” means a written test given to an examinee that:

- Is administered under conditions designed to prevent cheating;
- Is taken by an individual examinee without access to aides, textbooks, other students or any other material that could influence the examinee’s score; and,
- After opportunity for examinee review, is either never used again or stored such that only designated employees of the educational institution are permitted to access the test.

“Self-study” means a written self-evaluation conducted by a nursing program to assess the compliance of the program with the standards listed in Article 2.

“Standards related to scope of practice” means the expected actions of any nurse who holds the identified level of licensure.

“Substance use disorder” means misuse, dependence or addiction to alcohol, illegal drugs or other substances.

“Supervision” means the direction and periodic consultation provided to an individual to whom a nursing task or patient care activity is delegated.

“Unlicensed assistive personnel” or “UAP” means a CNA or any other unlicensed person, regardless of title, to whom nursing tasks are delegated.

“Verified application” means an affidavit signed by the applicant attesting to the truthfulness and completeness of the application and includes an oath that applicant will conform to ethical professional standards and obey the laws and rules of the Board.

#### **R4-19-102. Time-frames for Licensure, Certification, or Approval**

##### **A. In this Section:**

1. “Administrative completeness” or “administratively complete” means Board receipt of all application components required by statute or rule and necessary to begin the substantive review time-frame.

2. "Application packet" means an application form provided by the Board and the documentation necessary to establish an applicant's qualifications for licensure, certification, or approval.
  3. "Comprehensive written request for additional information" means written communication after the administrative completeness time-frame by the Board to an applicant in person or at the mailing address of record or electronic address identified on the application notifying the applicant that additional information, including missing documents is needed before the Board can grant the license. The written communication shall:
    - a. Contain a list of information required by statute or rule and necessary to complete the application or grant the license, and
    - b. Inform the applicant that the request suspends the running of days within the time-frame, and
    - c. Be effective on the date of issuance which is:
      - i. The date of its postmark, if mailed;
      - ii. The date of delivery, if delivered in person by a Board employee or agent; or
      - iii. The date of delivery to the electronic address if delivered electronically.
  4. "Deficiency notice" means written communication by the Board to an applicant in person or at the mailing address of record or electronic address identified on the application notifying the applicant that additional information, including missing documents, is needed to complete the application. The written communication shall:
    - a. Contain a list of information required by statute or rule and necessary to complete the application or grant the license;
    - b. Inform the applicant that the request suspends the running of days within the time-frame; and
    - c. Be effective on the date of issuance which is:
      - i. The date of its postmark, if mailed;
      - ii. The date of delivery, if delivered in person by a Board employee or agent; or
      - iii. The date of delivery to the electronic address if delivered electronically.
  5. "Notice of administrative completeness" means written communication by the Board to an applicant in person or at the mailing address of record or electronic address identified on the application notifying the applicant the application contains all information required by statute or rule to complete the application.
  6. "Overall time-frame" has the same meaning as A.R.S. § 41-1072(2).
  7. "Substantive review time-frame" has the same meaning as A.R.S. § 41-1072(3).
- B.** In computing the time-frames in this Section, the day of the act or event from which the designated period begins to run is not included. The last day of the period is included unless it is a Saturday, Sunday, or official state holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or official state holiday.
- C.** For each type of licensure, certification, or approval issued by the Board, the overall time-frame described in A.R.S. § 41-1072(2) is listed in Table 1. An applicant may submit a written request to the Board for an extension of time in which to provide a complete application. The request for an extension of time shall be submitted to the Board office before the deadline for submission of a complete application and shall state the reason that the applicant is unable to comply with the time-frame requirements in Table 1 and the amount of additional time requested. The Board may grant an extension of time based on whether the Executive Director of the Board finds that the applicant is unable to comply within the time-frame due to circumstances beyond the applicant's control and that the additional information can reasonably be supplied during the extension of time.
- D.** For each type of licensure, certification, or approval issued by the Board, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is listed in Table 1 and begins to run when the Board receives an application packet.
1. If the application packet is not administratively complete, the Board shall send a deficiency notice to the applicant. The time for the applicant to respond to a deficiency notice begins to run on the date the deficiency notice is issued.
    - a. The deficiency notice shall list each deficiency.
    - b. The applicant shall submit to the Board the missing information listed in the deficiency notice within the period specified in Table 1 for responding to a deficiency notice. The time-frame for the Board to complete the administrative review is suspended until the Board receives the missing information.
    - c. If an applicant fails to provide the missing information listed in the deficiency notice within the period specified in Table 1, the Board shall close the applicant's file and send a notice to the applicant by U.S. mail and electronically, if an electronic address is included in the application.
    - d. If the applicant is the subject of an investigation, the Board may continue to process the application. Failure of the applicant to supply the requested information may result in denial of the license or certificate based on information gathered during the investigation.
  2. If the application packet is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.
  3. If the Board issues a license, certificate, or approval during the administrative completeness review time-frame, the Board shall not send a separate written notice of administrative completeness.
- E.** For each type of licensure, certification, or approval issued by the Board, the substantive review time-frame described in A.R.S. § 41-1072(3) is listed in Table 1 and begins to run on the date the notice of administrative completeness is issued.

1. During the substantive review time-frame, an applicant may make a request to withdraw an application packet. The Board may deny the request to withdraw an application packet if the applicant is the subject of an investigation, based on information gathered during the investigation.
2. If an applicant discloses or the Board receives allegations of unprofessional conduct as described in A.R.S. § 32-1601 or this Chapter, the Board shall review the allegations and may investigate the applicant. The Board may require the applicant to provide additional information as prescribed in subsection (E)(3) based on its assessment of whether the conduct is or might be harmful or dangerous to the health of a client or the public.
3. During the substantive review time-frame, the Board may make one comprehensive written request for additional information. The applicant shall submit the additional information within the period specified in Table 1. The time-frame for the Board to complete the substantive review of the application packet is suspended from the date the comprehensive written request for additional information is issued until the Board receives the additional information.
4. If the applicant fails to provide the additional information identified in the comprehensive written request for additional information within the time specified in Table 1, the Board shall close the applicant's file and send a notice to the applicant by U.S. mail and electronically, if an electronic address is included in the application. The Board may continue to process the application if the applicant is the subject of an investigation. Failure of the applicant to supply the requested information may result in denial of the license or certificate based on information gathered during the investigation.
5. The Board shall grant licensure, conditional licensure, limited licensure, certification, or approval to an applicant:
  - a. Who meets the substantive criteria for licensure, certification, or approval required by A.R.S. Title 32, Chapter 15 and this Chapter; and
  - b. Whose licensure, certification, or approval is in the best interest of the public.
6. The Board shall deny licensure, certification, or approval to an applicant:
  - a. Who fails to meet the substantive criteria for licensure, certification, or approval required by A.R.S. Title 32, Chapter 15 and this Chapter; or
  - b. Who has engaged in unprofessional conduct as described in A.R.S. § 32-1601 or this Chapter; and
  - c. Whose licensure, certification, or approval is not in the best interest of the public.
7. The Board's written order of denial shall meet the requirements of A.R.S. § 41-1076. The applicant may request a hearing by filing a written request with the Board within 30 days of receipt of the Board's order of denial. The Board shall conduct hearings in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

## **ARTICLE 2. ARIZONA REGISTERED AND PRACTICAL NURSING PROGRAMS; REFRESHER PROGRAMS**

### **R4-19-207. New Programs; Proposal Approval; Provisional Approval**

- A. At a minimum of one year before establishing a nursing program, a parent institution shall submit to the Board ~~one~~ an electronic copy ~~and one paper copy~~ of an application for proposal approval. The parent institution shall ensure that the proposal application was written by or under the direction of a registered nurse who meets the nursing program administrator requirements of R4-19-203(A) and includes the following information and documentation:
  1. Name and address of the parent institution;
  2. Statement of intent to establish a nursing program, including the academic and licensure level of the program; and:
    - a. Organizational structure of the educational institution documenting the relationship of the nursing program within the institution and the role of the nursing program administrator consistent with R4-19-201 and R4-19-203;
    - b. Evidence of institutional accreditation consistent with R4-19-201 and post-secondary approval, if applicable. The institution shall provide the most recent full reports including findings and recommendations of the applicable accrediting organization or approval agency. The Board may request additional accreditation or approval evidence.
    - c. Curriculum development documentation to include:
      - i. Student-centered outcomes for the program;
      - ii. A plan that identifies the prescribed course sequencing and time required; and
      - iii. Identification of established professional standards, guidelines or competencies upon which the curriculum will be based;
    - d. Name, qualifications, and job description of a nursing program administrator who meets the requirements of R4-19-203 and availability and job description of faculty who meet qualifications of R4-19-204;
    - e. Number of budgeted clinical and didactic faculty positions from the time of the first admission to graduation of the first class;
    - f. Evidence that the program has secured clinical sites for its projected enrollment that meet the requirements of R4-19-206;
    - g. Anticipated student enrollment per session and annually;
    - h. Documentation of planning for adequate academic facilities and secretarial and support staff to support the nursing program consistent with the requirements of R4-19-202;
    - i. Evidence of adequate program financial resources;

- j. Tentative time schedule for planning and initiating the nursing program including faculty hiring, entry date and size of student cohorts, and obtaining and utilizing clinical placements from the expected date of proposal approval to graduation of the first cohort.
  - k. For a parent institution or owner corporation that has multiple nursing programs in one or more U.S. jurisdictions including Arizona, evidence for each of its nursing programs that includes:
    - i. Program approval in good standing with no conditions, restrictions, ongoing investigations or deficiencies;
    - ii. An NCLEX pass rate of at least 80% for the past two years or since inception; and
    - iii. An on-time graduation rate consistent with the requirements of R4-19-206.
- B.** The Board shall grant proposal approval to any parent institution that meets the requirements of subsection (A) if the Board deems that such approval is in the best interests of the public. Proposal approval expires one year from the date of Board issuance.
- C.** A parent institution that is denied proposal approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for proposal approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter.
- D.** At a minimum of 180 days before planned enrollment of students, a parent institution that received proposal approval within the previous year may submit to the Board ~~one an~~ electronic copy ~~and one paper copy~~ of an application for provisional approval. The parent institution shall ensure that the provisional approval application was written by or under the direction of a registered nurse who meets the program administrator requirements of R4-19-203(A) and includes the following information and documentation:
1. Name and address of parent institution;
  2. A self-study that provides evidence supporting compliance with R4-19-201 through R4-19-206, and
  3. Names and qualifications of:
    - a. The nursing program administrator;
    - b. Didactic nursing faculty or one or more nurse consultants who are responsible for developing the curriculum and determining nursing program admission, progression and graduation criteria;
  4. Plan for recruiting and hiring additional didactic faculty for the first semester or session of operation at least 60 days before classes begin;
  5. Plan for recruiting and hiring additional clinical nursing faculty at least 30 days before the clinical rotation begins;
  6. Final program implementation plan including dates and number of planned student admissions, recruitment and hire dates for didactic and clinical faculty for the period of provisional approval;
  7. Descriptions of available and proposed physical facilities with dates of availability; and
  8. Detailed written plan for clinical placements for all planned enrollments until graduation of the first class that is:
    - a. Based on current clinical availability and curriculum needs;
    - b. Confirms availability and commitment from proposed clinical agencies for the times and units specified.
- E.** Following an onsite evaluation conducted according to A.R.S. § 41-1009, the Board shall grant a two year provisional approval to a parent institution that meets the requirements of R4-19-201 through R4-19-206 if approval is in the best interest of the public. A parent institution that is denied provisional approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for provisional approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter.
- F.** The provisional approval of a nursing program expires 12 months from the date of the grant of provisional approval if a class of nursing students is not admitted by the nursing program within that time.
- G.** One year after admission of the first nursing class into nursing courses, the program shall provide a report to the Board containing information on:
1. Implementation of the program including any differences from the plans submitted in the applications for proposal and provisional approval and an explanation of those differences; and
  2. The outcomes of the evaluation of the program according to the program's systematic evaluation plan under R4-19-201;
- H.** Following receipt of the report described in subsection (G), a representative of the Board shall conduct a site survey visit in accordance with A.R.S. § 41-1009 to determine compliance with this Article. A report of the site visit shall be provided to the Board.
- I.** If a nursing program with provisional approval fails to comply with requirements of A.R.S. Title 32, Chapter 15, or 4 A.A.C. 19, Article 4, the Board may initiate a disciplinary action. Prior to imposition of discipline against a provisional approval, the nursing program is entitled to a hearing conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter.

**R4-19-208. Full Approval of a New Nursing Program**

- A.** A nursing program seeking full approval shall submit an electronic ~~and one paper copy of an~~ application that includes the following information and documentation:
1. Name and address of the parent institution,

2. Date the nursing program graduated its first class of students, and
  3. A self-study report that contains evidence the program is in compliance with R4-19-201 through R4-19-206.
- B.** Following an onsite evaluation conducted according to A.R.S § 41-1009, the Board shall grant full approval for a maximum of five years or the accreditation period for nationally accredited programs governed by R4-19-213, to a nursing program that meets the requirements of this Article and if approval is in the best interest of the public. A nursing program that is denied full approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for full approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

**R4-19-209. Nursing Program Change**

- A.** A nursing program administrator shall receive approval from the Board before implementing any of the following nursing program changes:
1. Curriculum or program delivery method;
  2. Increasing or decreasing the academic credits or units of the program excluding pre-requisite credits;
  3. Adding a geographical location of the program;
  4. Changing the level of educational preparation provided;
  5. Transferring the nursing program from one parent institution to another; or
  6. Establishing different admission, progression or graduation requirements for specific cohorts of the program.
- B.** The administrator shall submit ~~one an~~ an electronic ~~and one paper~~ copy of the following materials with the request for nursing program changes:
1. The rationale for the proposed change and the anticipated effect on the program administrator, faculty, students, resources, and facilities;
  2. A summary of the differences between the current practice and proposed change;
  3. A timetable for implementation of the change; and
  4. The methods of evaluation to be used to determine the effect of the change.
- C.** The Board shall approve a request for a nursing program change if the program meets the requirements of this Section and R4-19-201 through R4-19-206. A nursing program that is denied approval of program changes may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for program change. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter.

**R4-19-210. Renewal of Approval of Nursing Programs Not Accredited by a National Nursing Accrediting Agency**

- A.** An approved nursing program that is not accredited by an approved national nursing accrediting agency shall submit an application packet to the Board at least four months before the expiration of the current approval that includes the following:
1. Name and address of the parent institution,
  2. Evidence of current institutional accreditation status under R4-19-201,
  3. Evidence that the program has secured clinical sites for its projected enrollment that meet the requirements of R4-19-206,
  4. Copy or on-line access to:
    - a. A current catalog of the parent institution,
    - b. Current nursing program and institutional student and academic policies, and
    - c. Institutional and nursing program faculty policies and job descriptions for nursing program faculty, and
  5. ~~One An~~ An electronic copy ~~and one paper~~ copy of a self-study report that contains evidence of compliance with R4-19-201 through R4-19-206.
- B.** Following an onsite evaluation conducted according to A.R.S. § 41-1009, the Board shall renew program approval for a maximum of five years if the nursing program meets the criteria in R4-19-201 through R4-19-206 and if renewal is in the best interest of the public. The Board shall determine the term of approval that is in the best interest of the public.
- C.** If the Board denies renewal of approval, the nursing program may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for renewal of approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter.

**R4-19-216. Approval of a Refresher Program**

- A.** An applicant for approval of a refresher program for nurses whose licenses have been inactive or expired for five or more years, nurses under Board order to enroll in a refresher program, or nurses who have not met the nursing practice requirements of R4-19-312 shall submit ~~one an~~ an electronic ~~and one paper~~ copy of a completed application that provides all of the following information and documentation:
1. Applicant's name, address, e-mail address, telephone number, web site address, if applicable, and fax number;
  2. Proposed starting date for the program;

3. Name and qualifications of all instructors that meet the requirements of subsection (C);
  4. Statement describing the facilities, staff, and resources that the applicant will use to conduct the refresher program;
  5. A program and participant evaluation plan that includes student evaluation of the course, instructor, and clinical experience;
  6. Evidence of a curriculum that meets the requirements of subsection (B);
- B.** A refresher program for registered and practice nurses shall provide:
1. Didactic instruction sufficient to ensure competent and safe practice to the applicable level of the nursing license, including the following subjects, at a minimum:
    - a. Nursing process and patient centered care;
    - b. Pharmacology, medication calculation, and medication administration;
    - c. Communication and working with inter-professional teams;
    - d. Critical thinking, clinical decision making and evidence-based practice;
    - e. Delegation, management, and leadership;
    - f. Meeting psychosocial and physiological needs of adult clients with medical-surgical conditions. Other populations of care may be added to the content at the program's discretion;
    - g. Ethics; and
    - h. Informatics, to include electronic health record documentation.
  2. The program shall provide clinical experiences that, at a minimum:
    - a. Ensure that each qualified student has a verified clinical placement within six months of course enrollment;
    - b. Provide program policies for clinical placement in advance of enrollment that specify both the obligations of the school and the student regarding placement;
    - c. Validate that a student has the necessary didactic and theoretical knowledge to function safely in the specific clinical setting before starting a clinical experience;
    - d. Ensure that clinical experiences are of the type and duration to meet the course objectives.
  3. Laboratory practice hours, at the program's discretion, including simulation experiences in accordance with the clinical objectives of the course, but may not replace clinical experiences.
  4. Curriculum and other materials to students and prospective students that, include:
    - a. An overall program description including student learning objectives;
    - b. Objectives, content outline, and hours for didactic and clinical experience;
    - c. Course policies that include but are not limited to admission requirements, passing criteria, cause for dismissal, clinical requirements, grievance process and student responsibilities, cost, and length of the program.
- C.** Refresher program personnel qualifications and responsibilities:
1. An administrator of a refresher program shall:
    - a. Hold a graduate degree in nursing or a bachelor of science in nursing degree and a graduate degree in either education or a health-related field, and
    - b. Be responsible for administering and evaluating the program.
  2. A faculty member of a refresher program shall:
    - a. Hold a minimum of a bachelor of science in nursing degree,
    - b. Be responsible for implementing the curriculum and supervising clinical experiences either directly or indirectly through the use of clinical preceptors.
  3. Licensure requirements for program administrator and faculty:  
The administrator and faculty members shall hold a current Arizona RN license in good standing or a multi-state privilege under A.R.S., Title 32, Chapter 15.
  4. If preceptors are used for clinical experiences, the program shall adhere to the preceptorship requirements of R4-19-206(E).
  5. Licensed health care professionals not regulated by the Board may participate in course instruction consistent with their licensure and scope of practice, under the direction of the program administrator or faculty.
- D.** Program types; bonding:
1. A refresher program may be offered by:
    - a. An educational institution licensed by the State Board for Private Postsecondary Education;
    - b. A public post-secondary educational institution;
    - c. A health care institution licensed by the Arizona Department of Health Services or a health care institution authorized by the Centers for Medicare & Medicaid Services; or
    - d. A private business that meets the requirements of this Section and all other legal requirements to operate a business in Arizona;
    - e. A program funded by a local, state or federal governmental agency, such as a program within a technical school or school of nursing.
  2. If the refresher program is offered by a private business not licensed by the State Board for Private Postsecondary Education, the program shall meet the following requirements:

- a. Hold a minimum of \$15,000 of insurance covering any potential or future claims for damages resulting from any aspect of the program or a hold a surety bond from a surety company with a rating of “A minus” or better by either Best’s Credit Ratings, Moody’s Investor Service, or Standard and Poor’s rating service.
- b. The program shall ensure that:
  - i. Bond or insurance distributions are limited to students or former students with a valid claim for instructional or program deficiencies;
  - ii. The amount of the bond or insurance coverage is sufficient to reimburse the full amount of collected tuition and fees for all students during all enrollment periods of the program; and
  - iii. The bond or insurance is maintained for an additional 24 months after program closure.
- E. The Board shall approve a refresher program that meets the requirements of this Section, if approval is in the best interest of the public, for a maximum term of five years. An applicant who is denied refresher program approval may request a hearing by filing a written request with the Board within 30 days of service of the Board’s order denying the application for approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and Article 6 of this Chapter.
- F. The refresher program sponsor shall apply for renewal of approval in accordance with subsection (A) not later than 90 days before expiration of the current approval. The sponsor of a refresher program that is denied renewal of approval may request a hearing by filing a written request with the Board within 30 days of service of the Board’s order denying the application for renewal of approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, and 4 A.A.C. 19, Article 6 of this Chapter.
- G. The sponsor of an approved refresher program shall provide written notification to the Board within 15 days of a participant’s completion of the program of the following:
  - 1. Name of the participant and whether the participant successfully completed or failed the program,
  - 2. Participant’s license number, and
  - 3. End date of participant’s participation in the program.
- H. The Board may approve a refresher program application from another U.S. jurisdiction for an individual applicant on a case-by-case basis if the applicant provides verifiable evidence that the refresher program substantially meets the requirements of this Section. The acceptance of the program for an individual applicant does not confer approval status upon the program.
- I. Within 30 days, a refresher program shall report to the Board changes in:
  - 1. Name, address, email address, web site address or phone number of the program; or
  - 2. Ownership including adding or deleting an owner.
- J. The Board may take disciplinary action against the approval of a refresher program after offering a hearing conducted in accordance with A.R.S. Title 41, Chapter 6, and 4 A.A.C. 19, Article 6 of this Chapter.

### ARTICLE 3. LICENSURE

#### R4-19-301. Licensure by Examination

- A. An applicant for licensure by examination shall:
  - 1. Submit a verified application to the Board on a form furnished by the Board that provides the following information about the applicant:
    - a. Full legal name and all former names used by the applicant;
    - b. ~~Mailing address~~ Address of Record, including declared primary state of residence, e-mail address, and telephone number;
    - c. Place and date of birth;
    - d. Ethnic category and marital status, at the applicant’s discretion;
    - e. Social Security number for an applicant who lives or works in the United States;
    - f. Post-secondary education, including the names and locations of all schools attended, graduation dates, and degrees received, if applicable;
    - g. Current employer or practice setting, including address, position, and dates of service, if employed or practicing in nursing or health care;
    - h. Information regarding the applicant’s compliance with the practice or education requirements in R4-19-312;
    - i. Any state, territory, or country in which the applicant holds or has held a registered or practical nursing license and the license number and status of the license, including original state of licensure, if applicable;
    - j. The date the applicant previously filed an application for licensure in Arizona, if applicable;
    - k. Responses to questions regarding the applicant’s background on the following subjects:
      - i. Current investigation or pending disciplinary action by a nursing regulatory agency in the United States or its territories;
      - ii. Action taken on a nursing license by any other state;
      - iii. Undesignated offenses, felony charges, convictions and plea agreements, including deferred prosecution;
      - iv. Misdemeanor charges, convictions and plea agreements, including deferred prosecution, that are required to be reported under A.R. S. § 32-3208;

- v. Unprofessional conduct as defined in A.R.S. § 32-1601;
  - vi. Substance use disorder within the last 5 years;
  - vii. Current participation in an alternative to discipline program in any other state;
- l. Explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background; and.
  - m. Certification in nursing including category, specialty, name of certifying body, date of certification, and expiration date.
2. Submit proof of United States citizenship or alien status as specified in A.R.S. § 41-1080;
  3. Submit a completed fingerprint card on a form provided by the Board or prints for the purpose of obtaining a criminal history report under A.R.S. § 32-1606 if the applicant has not submitted a fingerprint card or prints to the Board within the last two years; and
  4. Pay the applicable fees.
- B.** If an applicant is a graduate of a pre-licensure nursing program in the United States that has been assigned a program code by the National Council of State Boards of Nursing during the period of the applicant's attendance, the applicant shall submit one of the following:
1. If the program is an Arizona-approved program, the transcript required in subsection (B)(2) or a statement signed by a nursing program administrator or designee verifying that:
    - a. The applicant graduated from or is eligible to graduate from a registered nursing program for a registered nurse applicant; or
    - b. The applicant graduated from or is eligible to graduate from a practical nursing program or graduated from a registered nursing program and completed Board-prescribed role delineation education for a practical nurse applicant; or
  2. If the program is located either in Arizona or in another state or territory and meets educational standards that are substantially comparable to Board standards for educational programs under Article 2 when the applicant completed the program, an official transcript sent directly from one of the following as:
    - a. Evidence of graduation or eligibility for graduation from a diploma registered nursing program, associate degree registered nursing program, or baccalaureate or higher degree registered nursing program for a registered nurse applicant.
    - b. Evidence of graduation or eligibility for graduation of a practical nursing program, associate degree registered nursing program, or baccalaureate or higher degree registered nursing program for a practical nurse applicant.
- C.** If an applicant is a graduate of a pre-licensure international nursing program and lacks items required in subsection (B), the applicant shall comply with subsection (A), submit a self report on the status of any international nursing license, and submit the following:
1. To demonstrate nursing program equivalency, one of the following:
    - a. If the applicant graduated from a Canadian nursing program, evidence of a passing score on the English language version of either the Canadian Nurses' Association Testing Service, the Canadian Registered Nurse Examination, NCLEX or an equivalent examination;
    - b. A Certificate or Visa Screen Certificate issued by the Commission on Graduates of Foreign Nursing Schools (CGFNS), or a report from CGFNS that indicates an applicant's program is substantially comparable to a U.S. program; or
    - c. A report from any other credential evaluation service (CES) approved by the Board.
  2. If a graduate of an international pre-licensure nursing program subsequently obtains a degree in nursing from an accredited U.S. nursing program, the requirement for a CES equivalency report may be waived by the Board, however the applicant is not eligible for a multi-state compact license.
  3. If an applicant's pre-licensure nursing program provided classroom instruction, textbooks, or clinical experiences in a language other than English, a test of written, oral, and spoken English is required. Clinical experiences are deemed to have been provided in a language other than English if the principal or official language of the country or region where the clinical experience occurred is a language other than English, according to the United States Department of State.
  4. An applicant who is required to demonstrate English language proficiency shall ensure that one of the following is submitted to the Board directly from the testing or certifying agency:
    - a. Evidence of a minimum score of 84 with a minimum speaking score of 26 on the Internet-based Test of English as a Foreign Language (TOEFL),
    - b. Evidence of a minimum score of 6.5 overall with minimum of 6.0 on each module of the Academic Exam of the International English Language Test Service (IELTS) Examination,
    - c. Evidence of a minimum score of 55 overall with a minimum score of 50 on each section of the Pearson Test of English Academic exam.
    - d. A Visa Screen Certificate from CGFNS,
    - e. A CGFNS Certificate,
    - f. Evidence of a similar minimum score on another written and spoken English proficiency exam determined by the Board to be equivalent to the other exams in this subsection, or

- g. Evidence of employment for a minimum of 960 hours within the past five years as a nurse in a country or territory where the principal language is English, according to the United States Department of State.
- D. An applicant for a registered nurse license shall attain one of the following:
  - 1. A passing score on the NCLEX-RN;
  - 2. A score of 1600 on the NCLEX-RN, if the examination was taken before July 1988; or
  - 3. A score of not less than 350 on each part of the SBTPE for registered nurses.
- E. An applicant for a practical nurse license shall attain:
  - 1. A passing score on the NCLEX-PN;
  - 2. A score of not less than 350 on the NCLEX-PN, if the examination was taken before October 1988; or
  - 3. A score of not less than 350 on the SBTPE for practical nurses.
- F. The Board shall grant a license to practice as a registered or practical nurse to any applicant who meets the criteria established in statute and this Article. An applicant who is denied a license by examination may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the license. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.
- G. If the Board receives an application from a graduate of a nursing program and the program's approval was rescinded under R4-19-212 at any time during the applicant's nursing education, the Board shall ensure that the applicant has completed a basic curriculum that is equivalent to that of a Board-approved nursing program and may do any of the following:
  - 1. Grant licensure, if the program's approval was reinstated during the applicant's period of enrollment and the program provides evidence that the applicant completed a curriculum equivalent to that of a Board-approved nursing program;
  - 2. By order, require successful completion of remedial education while enrolled in a Board approved nursing program which may include clinical experiences, before granting licensure; or
  - 3. Return or deny the application if the education was not equivalent and no remediation is possible.

**R4-19-304. Temporary License**

- A. Subject to subsection (B), the Board shall issue a temporary license if:
  - 1. An applicant:
    - a. Is qualified under:
      - i. A.R.S. § 32-1635 and applies for a temporary registered nursing license, or is qualified under A.R.S. § 32-1640 and applies for a temporary practical nursing license; and
      - ii. R4-19-301 for applicants for licensure by examination, or is qualified under R4-19-302 for applicants for licensure by endorsement; and
    - b. Submits an application for a temporary license with the applicable fee required under A.R.S. § 32-1643(A)(9); and
    - c. Submits an application for a license by endorsement or examination with the applicable fee required under A.R.S. § 32-1643(A).
  - 2. An applicant is seeking a license by examination, meets the requirements of R4-19-312(D), and the Board receives a report from the Arizona Department of Public Safety (DPS), verifying that DPS has no criminal history record information, as defined in A.R.S. § 41-1701, relating to the applicant or that any criminal history reported has been reviewed by the executive director or the director's designee and determined not to pose a threat to public health, safety, or welfare the applicant's fingerprint card or fingerprints; or
  - 3. An applicant is seeking a license by endorsement, meets the requirements in R4-19-312(B), and the applicant submits evidence that the applicant has a current license in good standing in another state or territory of the United States or, if no current license, a previous license in good standing that was not the subject of an investigation or pending discipline; or
  - 4. An applicant who does not meet the practice requirements in R4-19-312(B) or (D), but provides evidence that the applicant has applied for enrollment in a refresher or other competency program approved by the Board, may practice nursing under a temporary license during the clinical portion of the program only.
- B. An applicant who has a criminal history, a history of disciplinary action by a regulatory agency, a pending complaint before the Board, or answers affirmatively to any criminal background or disciplinary question in the application is not eligible for a temporary license or extension of a temporary license without Board approval.
- C. A temporary license is valid for a maximum of 12 months unless extended for good cause under subsection (D) of this Section.
- D. An applicant with a temporary license may apply for and the Board, the Executive Director or the Executive Director's designee may grant an extension of the temporary license period for good cause. Good cause means reasons beyond the control of the temporary licensee, such as unavoidable delays in obtaining information required for licensure.
- E. An applicant who receives a temporary license but does not meet the criteria for a regular license within the established period under subsections (C) and (D) is no longer eligible for a temporary license except for the purpose of completing a refresher or other competency program under subsection (A)(4) of this Section.

**R4-19-305. License Renewal**

- A. An applicant for renewal of a registered or practical nursing license shall:

1. Submit a verified application to the Board on a form furnished by the Board that provides all of the following information about the applicant:
    - a. Full legal name, ~~mailing~~ address of record, e-mail address, telephone number and declared primary state of residence;
    - b. A listing of all states in which the applicant is currently licensed, or, since the last renewal, was previously licensed or has been denied licensure;
    - c. Marital status and ethnic category, at the applicant's discretion;
    - d. Information regarding qualifications, including:
      - i. Educational background;
      - ii. Employment status;
      - iii. Practice setting; and
      - iv. Other information related to the nurse's practice for the purpose of collecting nursing workforce data.
    - e. Responses to questions regarding the applicant's background on the following subjects:
      - i. Criminal convictions for offenses involving drugs or alcohol since the time of last renewal;
      - ii. Undesignated offenses and felony charges, convictions and plea agreements including deferred prosecution;
      - iii. Misdemeanor charges, convictions and plea agreements, including deferred prosecution, that are required to be reported under A.R.S. § 32-3208;
      - iv. Unprofessional conduct as defined in A.R.S. § 32-1601 since the time of last renewal;
      - v. Substance use disorder within the last five years;
      - vi. Current participation in an alternative to discipline program in any other state; and
      - vii. Disciplinary action or investigation related to the applicant's nursing license by any other state nursing regulatory agency since the last renewal.
    - f. Explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background;
    - g. Information related to the applicant's current or most recent nursing practice setting, including position, address, telephone number, and dates of practice;
    - h. Information regarding the applicant's compliance with the practice or education requirements in R4-19-312;
    - i. National certification in nursing including specialty, name of certifying body, date of certification, certification number, and expiration date, if applicable; and for an applicant certified as a registered nurse practitioner or clinical nurse specialist the patient population of the certification; and
  2. Pay fees for renewal authorized by A.R.S. § 32-1643 (A)(6); and
  3. Pay an additional fee for late renewal authorized by A.R.S. § 32-1643(A)(7) if the application for renewal is submitted after May 1 of the year of renewal.
- B.** A license expires on August 1 of the year of renewal indicated on the license.
- C.** A licensee who fails to submit a renewal application before expiration of a license shall not practice nursing until the Board issues a renewal license.
- D.** If the applicant holds a license or certificate that has been or is currently revoked, surrendered, denied, suspended or placed on probation in another jurisdiction, the applicant is not eligible to renew or reactivate a license until a review or investigation has been completed and a decision regarding eligibility for renewal or reactivation is made by the Board.
- E.** The Board shall renew the license of any registered or practical nurse applicant who meets the criteria established in statute and this Article. An applicant who is denied renewal of a license may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying renewal of the license. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

**R4-19-308. Change of Name or Address**

- A.** A licensee or applicant shall notify the Board, in writing or electronically through the Board website, of any legal change in name within 30 days of the change, and submit a copy of the official document verifying the name change.
- B.** A licensee or applicant shall notify the Board in writing or electronically through the Board website of any change in ~~mailing~~ address of record, and residential address, if different, within 30 days.

**ARTICLE 5. ADVANCED PRACTICE REGISTERED NURSING**

**R4-19-501. Roles and Population Foci of Advanced Practice Registered Nursing (APRN); Certification Programs**

- A.** The Board recognizes the following APRN roles;
  1. Registered nurse practitioner (RNP) in a population focus ~~including Certified Nurse Midwife as a population focus of RNP~~;
  2. Clinical Nurse Specialist (CNS) in a population focus; ~~and~~
  3. Certified Registered Nurse Anesthetist (CRNA); ;
  4. Certified Nurse Midwife (CNM).

- B.** RNPs and CNSs shall practice within one or more population foci, consistent with their education and certification. Population foci include:
1. Family-individual across the life span;
  2. Adult-gerontology primary or acute care;
  3. Neonatal;
  4. Pediatric primary or acute care;
  5. Women's health-gender related;
  6. Psychiatric-mental health;
  7. ~~For Certified Nurse Midwives, women's health gender-related including childbirth and neonatal care;~~
- ~~8.~~ Other foci that have been recognized by the Board previously and new foci that meet the following conditions:
- a. There is an accredited educational program and a national certifying process that meets the requirements of subsection (C); and
  - b. The focus is broad enough for an educational program to be developed that prepares a registered nurse to function both within the scope of practice of the role and population focus.
- C.** Certified Nurse Midwives shall practice within a population focus consistent with their education, specifically women's health gender-related care, including childbirth and neonatal care.
- CD.** The Board shall accept advanced practice certifications from programs that meet the following qualifications:
1. The certification program:
    - a. Is accredited by the National Commission for Certifying Agencies, the Accreditation Board for Specialty Nursing Certification, or an equivalent organization as determined by the Board;
    - b. Establishes educational requirements for certification that are consistent with the requirements in R4-19-505;
    - c. Has an application process and credential review that requires an applicant to submit original source documentation of the applicant's education and clinical practice in the advanced practice role and population focus, if applicable, for which certification is granted; and
    - d. Is national in the scope of its credentialing.
  2. The certification program uses an examination as a basis for certification in the advanced practice role and population focus, as applicable that meets all of the following criteria:
    - a. The examination is based upon job analysis studies conducted using standard methodologies acceptable to the testing community both initially and every five years;
    - b. The examination assesses entry-level practice in the advanced practice role and population focus, if applicable;
    - c. The examination assesses the knowledge, skills, and abilities essential for the delivery of safe and effective advanced nursing care to clients;
    - d. Examination items are reviewed for content validity, cultural sensitivity, and correct scoring using an established mechanism, both before first use and periodically; items are reviewed for currency at least every three years;
    - e. The examination is evaluated for psychometric performance and conforms to psychometric standards that are routinely utilized for other types of high-stakes testing;
    - f. The passing standard is established using accepted psychometric methods and is re-evaluated periodically;
    - g. Examination security is maintained through established procedures;
    - h. A re-take policy is in place; and
    - i. Conditions for taking the certification examination are consistent with standards of the testing community;
  3. Certification is issued upon passing the examination and meeting all other certification requirements;
  4. The certification program periodically provides for re-certification that includes review of qualifications and continued competence;
  5. The certification program provides timely communication to the Board regarding licensee or applicant certification status, changes in an individual's certification status, exam results and changes in the certification program, including qualifications, test plan, and scope of practice; and
  6. The certification program has an evaluation process to provide quality assurance in its certificate program.
- DE.** The Board shall determine whether a certification program meets the requirements of this Section. The following certification programs meet the requirements of this Section as of the effective date of this rulemaking:
1. For RNP, and CNM (consistent with R4-19-501(C and D)):
    - a. American Academy of Nurse Practitioner certification programs:
      - i. Adult nurse practitioner,
      - ii. Family nurse practitioner,
      - iii. Gerontologic nurse practitioner,
      - iv. Adult health-gerontological nurse practitioner.
    - b. American Nurses Credentialing Center certification programs:
      - i. Acute care nurse practitioner (adult/gerontology),
      - ii. Adult nurse practitioner,
      - iii. Family nurse practitioner,
      - iv. Gerontological nurse practitioner,

- v. Pediatric nurse practitioner,
- vi. Adult psychiatric and mental health nurse practitioner,
- vii. Family psychiatric and mental health nurse practitioner,
- viii. Adult health-gerontological nurse practitioner,
- c. Pediatric Nursing Certification Board certification programs:
  - i. Pediatric nurse practitioner primary care,
  - ii. Pediatric nurse practitioner acute care,
- d. National Certification Corporation for Obstetric, Gynecological, and Neonatal Nursing Specialties certification programs:
  - i. Women's health nurse practitioner,
  - ii. Neonatal nurse practitioner,
- e. For a nurse-midwife, the American Midwifery Certification Board certification program in nurse midwifery,
- f. AACN Certification Corporation certification programs:
  - i. Adult acute care nurse practitioner,
  - ii. Adult-gerontology acute care nurse practitioner,
- 2. For CNS:
  - a. AACN Certification Corporation certification programs:
    - i. Adult acute and critical care CNS,
    - ii. Pediatric acute and critical care CNS,
    - iii. Neonatal acute and critical care CNS,
  - b. American Nurses Credentialing Center certification:
    - i. Adult psychiatric-mental health CNS,
    - ii. Family psychiatric-mental health CNS,
    - iii. Gerontological CNS,
    - iv. Adult health CNS,
    - v. Pediatric CNS.
- 3. For CRNA, the National Board of Certification and Recertification for Nurse Anesthetists.

**EE.** The Board shall approve a certification program that meets the criteria established in this Section. An entity that seeks approval of a certification program and is denied approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

**R4-19-502. Requirements for APRN Programs**

- A.** An educational institution or other entity that offers an APRN program in this state for RNP, CNM, or CNS roles shall ensure that the program:
1. Is offered by or affiliated with a college or university that is accredited under A.R.S. § 32-1644;
  2. For new programs, the college or university offering the program has at least one additional nationally accredited nursing program as defined in R4-19-101 or otherwise provides substantial evidence of the ability to attain national APRN program accreditation for all graduating cohorts;
  3. Is a formal educational program, that is part of a masters or doctoral program or a post-masters program in nursing with a concentration in an advanced practice registered nursing role and population focus under R4-19-501;
  4. Is nationally accredited, or has achieved candidacy status for national accreditation by an approved national nursing accrediting agency as defined in R4-19-101;
  5. Offers a curriculum that covers the scope of practice for both the role of advanced practice as specified in A.R.S. § 32-1601 and the population focus including:
    - a. Three separate graduate level courses in:
      - i. Advanced physiology and pathophysiology, including general principles across the lifespan;
      - ii. Advanced health assessment, which includes assessment of all human systems, advanced assessment techniques, concepts and approaches;
      - iii. Advanced pharmacology, which includes pharmacodynamics, pharmacokinetics and pharmacotherapeutics of all broad category agents;
    - b. Diagnosis and management of diseases across practice settings including diseases representative of all systems;
    - c. Preparation that provides a basic understanding of the principles for decision making in the identified role;
    - d. Preparation in the core competencies for the identified APRN role including legal, ethical and professional responsibilities; and
    - e. Role preparation in an identified population focus under R4-19-501.
  6. Verifies that each student has an unencumbered license to practice as an RN in the state of clinical practice;
  7. Includes a minimum of 500 hours of faculty supervised clinical practice (programs that prepare students for more than one role or population focus shall have 500 hours of clinical practice in each role and population focus);

8. Notifies the Board of any changes in hours of clinical practice, accreditation status, denial or deferral of accreditation or program administrator and responds to Board requests for information;
  9. Has financial resources sufficient to support accreditation standards and the educational goals of the program;
  10. Establishes academic, professional, and conduct standards that determine admission to the program, progression in the program, and graduation from the program that are consistent with sound educational practices and recognized standards of professional conduct;
  11. Establishes provisions for advanced placement for individuals holding a graduate degree in nursing who are seeking education in an APRN role and population focus, provided that advanced placement students master the same APRN competencies as students in the graduate-level APRN program; and
  12. Provides the Board an application for approval under the provisions of R4-19-209(B) before making changes to the:
    - a. Scope of the program, or
    - b. Level of educational preparation provided.
- B.** A CNS, CNM, or RNP program shall appoint the following personnel:
1. An APRN program administrator who:
    - a. Holds a current unencumbered RN license or multi-state privilege to practice in Arizona and a current unencumbered APRN certificate issued by the Board;
    - b. Holds an earned doctorate in nursing or health-related field if appointed after the effective date of this Section;
    - c. Has at least two years clinical experience as an APRN; and
    - d. Holds current national certification as an APRN.
  2. A lead faculty member who is educated and certified both nationally and by the Board in the same role and population focus to coordinate the educational component for the role and population focus in the advanced practice registered nursing program.
  3. Nursing faculty to teach any APRN course that includes a clinical learning experience who have the following qualifications:
    - a. A current unencumbered RN license or multi-state privilege to practice registered nursing in Arizona;
    - b. A current unencumbered Arizona APRN certificate,
    - c. A graduate degree in nursing or a health related field in the population focus,
    - d. Two years of APRN clinical experience, and
    - e. Current knowledge, competence and certification as an APRN in the role and population focus consistent with teaching responsibilities.
  4. Adjunct or part-time clinical faculty employed solely to supervise clinical nursing experiences shall meet all of the faculty qualifications for the APRN program they are teaching.
  5. Interdisciplinary faculty who teach non-clinical courses shall have advanced preparation in the areas of course content.
  6. Clinical preceptors may be used to enhance faculty-directed clinical learning experiences, but not to replace faculty. A clinical preceptor shall be approved by program administration or faculty and:
    - a. Hold a current unencumbered license or multistate privilege to practice as a registered nurse or physician in the state in which the preceptor practices or, if employed by the federal government, holds a current unencumbered RN or physician license in the United States;
    - b. Have at least one year clinical experience as a physician or an advanced practice nurse
    - c. Practice in a population focus comparable to that of the APRN program;
    - d. For nurse preceptors, have at least one of the following:
      - i. Current national certification in the advanced practice role and population focus of the course or program in which the student is enrolled;
      - ii. Current Board certification in the advanced practice role and population focus of the course or program in which the student is enrolled; or
      - iii. If an advanced practice preceptor cannot be found who meets the requirements of subsection (B)(6)(d)(i) or (ii), educational and experiential qualifications that will enable the preceptor to precept students in the program, as determined by the nursing program and approved by the Board.
- C.** An entity that offers a CRNA program in Arizona shall maintain full national program accreditation with no limitations from the Council on Accreditation of Nurse Anesthesia Educational Programs or an equivalent agency approved by the Board. The program shall notify the Board of all program accreditation actions within 30 days of official notification by the accrediting agency.

**R4-19-503. Application for Approval of an Advanced Practice Registered Nursing Program; Approval by Board; Provisional Approval by Executive Director**

- A.** An administrator of an educational institution that proposes to offer a CNS, CNM, or RNP program shall submit an application that includes all of the following information to the Board:
1. Role, population focus that meets the criteria in R4-19-501 program administrator and lead faculty member as required in R4-19-502(B);

2. Name, address, and evidence verifying institutional accreditation status of the affiliated educational institution and program accreditation status of current nursing programs offered by the educational institution;
  3. The mission, goals, and objectives of the program consistent with generally accepted standards for advanced practice education in the role and population focus of the program;
  4. List of the required courses, and a description, measurable objectives, and content outline for each required course consistent with curricular requirements in R4-19-502;
  5. A proposed time schedule for implementation of the program and attaining national accreditation;
  6. The total hours allotted for both didactic instruction and supervised clinical practicum in the program;
  7. A program proposal that provides evidence of sufficient financial resources, clinical opportunities and available faculty and preceptors for the proposed enrollment and planned expansion;
  8. A self-study that provides evidence of compliance with R4-19-502;
- B.** An entity that wishes to offer a CRNA program shall submit evidence of current accreditation by the Council on Accreditation of Nurse Anesthesia Education Programs or an equivalent organization.
- C.** The Board shall approve an advanced practice registered nursing program if approval is in the best interest of the public and the program meets the requirements of this Article. The Board may grant approval for a period of two years or less to an advanced practice nursing program where the program meets all the requirements of this Article except for accreditation by a national nursing accrediting agency, based on the program's presentation of evidence that it has applied for accreditation and meets accreditation standards.
- D.** An educational institution or entity that is denied approval of an advanced practice registered nursing program may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying its application for approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.
- E.** Approval of an advanced practice registered nursing program expires 12 months from the date of approval if a class of students is not admitted within that time.
- F.** An advanced practice registered nursing program that has submitted an application pursuant to this Section that meets the threshold requirements of the Nurse Practice Act, may receive a 90 day provisional approval from the Board, through Executive Director's delegated authority, prior to application review by the Board, as described in this Section. A program denied provisional approval may request a hearing, as described in subsection D of this Section.

**R4-19-504. Notice of Deficiency; Unprofessional APRN Program Conduct**

- A.** The Board may periodically survey an advanced practice registered nursing program under its jurisdiction to determine whether criteria for approval are being met.
- B.** The Board shall, upon determining that an advanced practice registered nursing program is not in compliance with this Article, provide to the program administrator a written notice of deficiencies that establishes a reasonable time, based upon the number and severity of deficiencies, to correct the deficiencies. The time for correction may not exceed 18 months.
1. The program administrator shall, within 30 days from the date of service of the notice of deficiencies, consult with the Board or designated Board representative and, after consultation, file a plan to correct each of the identified deficiencies.
  2. The program administrator may, within 30 days from the date of service of the notice of deficiencies, submit a written request for a hearing before the Board to appeal the Board's determination of deficiencies. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.
  3. If the Board's determination is not appealed or is upheld upon appeal, the Board may conduct periodic evaluations of the program during the time of correction to determine whether the deficiencies have been corrected.
- C.** The Board shall, following a Board-conducted survey and report, rescind the approval or limit the ability of a program to admit students if the program fails to comply with R4-19-502 within the time set by the Board in the notice of deficiencies provided to the program administrator.
1. The Board shall serve the program administrator with a written notice of proposed rescission of approval or limitation of admission of students that states the grounds for the rescission or limitation. The program administrator has 30 days to submit a written request for a hearing to show cause why approval should not be rescinded or admissions limited. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.
  2. Upon the effective date of a decision to rescind program approval, the affected advanced practice registered nursing program shall immediately cease operation and be removed from the official approved-status listing. An advanced practice registered nursing program that is ordered to cease operations shall assist currently enrolled students to transfer to an approved nursing program.
- D.** A disciplinary action, denial of approval, or notice of deficiency may be issued against an RNP or CNS nursing program for any of the following acts of unprofessional conduct:
1. Failure to maintain minimum standards of acceptable and prevailing educational practice;
  2. For a program that was served with a notice of deficiencies within the preceding three years and timely corrected the noticed deficiencies, subsequent noncompliance with the standards in this Article;
  3. Utilization of students to meet staffing needs in health care facilities;
  4. Non-compliance with the program or parent institution mission or goals, program design, objectives, or policies;

5. Failure to provide the variety and number of clinical learning opportunities necessary for students to achieve program outcomes or minimal competence;
6. Student enrollments without adequate faculty, facilities, or clinical experiences;
7. Ongoing or repetitive employment of unqualified faculty;
8. Failure to comply with Board requirements within designated time-frames;
9. Fraud or deceit in advertising, promoting or implementing a nursing program;
10. Material misrepresentation of fact by the program in any advertisement, application or information submitted to the Board;
11. Failure to allow Board staff to visit the program or conduct an investigation;
12. Any other evidence that gives the Board reasonable cause to believe the program's conduct may be a threat to the safety and well-being of students, faculty or potential patients.

**R4-19-505. Requirements for Initial APRN Certification**

- A. An applicant for certification as an advanced practice registered nurse, shall:
1. Hold a current Arizona registered nurse (RN) license in good standing or an RN license in good standing from a compact party state with multistate privileges, and not be a participant in an alternative to discipline program in any jurisdiction; and
  2. Submit a verified application to the Board on a form provided by the Board that provides all of the following:
    - a. Full legal name and all former names used by the applicant;
    - b. Current mailing address of record, including primary state of residence and telephone number;
    - c. Place and date of birth;
    - d. RN license number, application for RN license, or copy of a multistate compact RN license;
    - e. Social security number for an applicant who lives or works in the United States;
    - f. Current e-mail address;
    - g. Educational background, including the name and location of basic nursing program, the institution that awarded the highest degree held and any and all advanced practice registered nursing education programs or schools attended including the number of years attended, the length of each program, the date of graduation or completion, and the type of degree or certificate awarded;
    - h. Role and population focus, as applicable for which the applicant is applying;
    - i. Current employer or practice setting, including address, position, and dates of service, if employed or practicing in nursing or health care;
    - j. Evidence of national certification or recertification as an advanced practice registered nurse in the role and population focus, if applicable, of the application and by a certification program that meets the requirements of R4-19-501(C). The applicant shall include the name of the certifying organization, population focus, certification number, date of certification, and expiration date;
    - k. For applicants holding a multistate compact RN license in a state other than Arizona:
      - i. State of original licensure and license number;
      - ii. State of current compact RN license, license number and expiration date;
      - iii. Date of taking RN licensure exam and name of exam;
      - iv. Whether the applicant ever submitted an application for and was granted an Arizona license and, if applicable, the date of Arizona licensure;
      - v. Other information related to the nurse's practice for the purpose of collecting nursing workforce data; and
      - vi. State of licensure and license number of all RN licenses held;
    - l. Responses regarding the applicant's background on the following subjects:
      - i. Current investigation or pending disciplinary action by a nursing regulatory agency in the United States or its territories;
      - ii. Undesignated offense and felony charges, convictions and plea agreements including deferred prosecution;
      - iii. Misdemeanor charges, convictions, and plea agreements, including deferred prosecution, that are required to be reported under A.R.S. § 32-3208;
      - iv. Actions taken on a nursing license by any other state;
      - v. Unprofessional conduct as defined in A.R.S. § 32-1601;
      - vi. Substance use disorder within the last five years;
      - vii. Current participation in an alternative to discipline program in any other state; and
    - m. Information that the applicant meets the criteria in R4-19-506(A) or (C).
  3. Submit a fingerprint card on a form provided by the Board or prints if the applicant has not submitted fingerprints to the Board within the last two years.
  4. Submit an official transcript from an institution accredited under A.R.S. § 32-1644 either sent directly from the institution or obtained from a Board-approved database that provides evidence of:
    - a. A graduate degree with a major in nursing for RNP, CNM, and CNS Applicants, or
    - b. A graduate degree associated with a CRNA program for a CRNA applicant.
  5. The applicant shall cause the program to provide the Board with evidence of completion of an APRN program in the role and population focus of the application through submission of an official letter or other official program document

sent either directly from the program, or from a Board-approved data base. The APRN program shall meet one of the following criteria during the period of the applicant's attendance in the program:

- a. The program was part of a graduate degree, or post-masters program at an institution accredited under A.R.S. § 32-1644; or
  - b. The program was approved or recognized in the U.S jurisdiction of program location for the purpose granting APRN licensure or certification.
6. For an applicant who completed an advanced practice or graduate program in a foreign jurisdiction, submit an evaluation from the Commission on Graduates of Foreign Nursing Schools or a Board-approved credential evaluation service that indicates the applicant's program is comparable to a U.S. graduate nursing or APRN program.
7. Submit the required fee.
- B.** If the applicant satisfies all other requirements, the Board shall continue to certify:
1. An RNP or CNM without a graduate degree with a major in nursing if the applicant:
    - a. Meets all other requirements for certification; and
    - b. Ensures that the U.S. jurisdiction of an applicant's previous RNP or CNM licensure or certification submits evidence of the applicant's certification or licensure in the nurse practitioner role and population focus that either is current or was current at least six months before the application was received by the Board, and was originally issued:
      - i. Before January 1, 2001, if the RNP or CNM applicant lacks a graduate degree; or
      - ii. Before November 13, 2005 if the RNP's or CNM's graduate degree is in a health-related area other than nursing.
  2. An RNP, CNM, or CNS applicant without evidence of national certification who received initial advanced practice certification or licensure in another state not later than July 1, 2004 and provides evidence, directly from the jurisdiction, that the certification or licensure is current.
  3. A CNS applicant without evidence of completion of a CNS program who received initial certification or advanced practice licensure in this or another state not later than November 13, 2005 and provides evidence, directly from the jurisdiction, that the certificate or license is current.
  4. A CRNA who completed a CRNA program before the effective date of this Section without evidence of a graduate degree.
  5. A CNS applicant who completed a women's health clinical nurse specialist program that was part of a graduate degree in nursing program under subsection (A), without evidence of national certification upon submission of the following:
    - a. A description of the applicant's scope of practice that is consistent with A.R.S. § 32-1601(7);
    - b. One of the following:
      - i. A letter from a faculty member who supervised the applicant during the graduate program attesting to the applicant's competence to practice within the defined scope of practice;
      - ii. A letter from a current supervisor verifying the applicant's competence in the defined scope of practice; or
      - iii. A letter from a physician, RNP, CNM, or CNS who has worked with the applicant within the past two years attesting to the applicant's competence in the defined scope of practice; and
    - c. A form verifying that the applicant has practiced a minimum of 500 hours in the population focus within the past two years, which may include clinical practice time in a CNS program.
- C.** The Board shall issue a certificate to practice as an RNP, CNM, or CNS in a population focus, ~~a CNS in a population focus,~~ or as a registered nurse anesthetist, to a registered nurse who meets the criteria in this Section. An applicant who is denied a certificate may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter.

**R4-19-506. Expiration of APRN Certificate; Practice Requirement; Renewal**

- A.** An advanced practice certificate issued after July 1, 2004, expires when the certificate holder's RN license expires, or when national certification expires, whichever occurs first. Certificates issued on or before July 1, 2004, or those issued without proof of national certification under R4-19-505(B)(5) and (B)(2) do not expire unless the RN license expires under A.R.S. § 32-1642 or the nurse has not practiced advanced practice nursing at the applicable level of certification for a minimum of 960 hours in the five years before the date the application is received. This requirement is satisfied if the applicant verifies that the applicant has:
1. Completed an advanced practice nursing education program within the past five years; or
  2. Practiced for a minimum of 960 hours within the past five years where the nurse:
    - a. Worked for compensation or as a volunteer, as an APRN and performed one or more acts under A.R.S. § 32-1601(7) for a CNS, A.R.S. § 32-1601(20) for an RNP, A.R.S. § 32-1601(5) for a CNM, or A.R.S. § 32-1634.04 for a CRNA; or
    - b. Held a position for compensation or as a volunteer that required, preferred or recommended, in the job description, the level of advanced practice certification being sought or renewed.

- B. A registered nurse requesting renewal of an ~~advanced practice certificate or an RNP~~ APRN certificate issued after July 1, 2004 shall provide evidence of current national certification or recertification under R4-19-505(A)(2)(j). This provision does not apply to a CNS granted a waiver of certification.
- C. An ~~advanced practice nurse~~ APRN who does not satisfy the practice requirement of subsection (A) shall complete coursework or continuing education activities at the graduate or advanced practice level that include, at minimum, 45 contact hours of advanced pharmacology and 45 contact hours in a subject or subjects related to the role and population focus of certification. Upon completion of the coursework, the nurse shall engage in a period of precepted clinical practice as specified in this subsection;
  - 1. Precepted clinical practice shall be directly supervised by an ~~advanced practice nurse~~ APRN in the same role and population focus as the certification being renewed or a physician who engages in practice with the same population focus as the certification being renewed.
  - 2. Practice hours completed during the time-frame specified below may be applied to reduce the number of precepted clinical practice hours, except that in no case shall the hours be reduced by more than half the requirement. The nurse shall complete hours according to the following schedule:
    - a. 300 hours if the applicant has practiced less than 960 hours in only the last five years;
    - b. 600 hours if the applicant has not practiced 960 hours in the last five years, but has practiced at least 960 hours in the last six years;
    - c. 1000 hours if the applicant has not practiced at least 960 hours in the last six years, but has practiced 960 hours in the last seven to 10 years; or
    - d. If the nurse has not practiced 960 hours of advanced practice nursing in the role and population focus being renewed in more than 10 years, complete a program of study as recommended by an approved advanced practice nursing program that includes, at minimum, 500 hours of faculty supervised clinical practice in the role and population focus of certification. An applicant who qualifies for any option in subsection (C)(2)(a) through (c) may complete the requirements of this subsection to satisfy the practice requirement.
- D. An applicant who, in addition to not meeting the requirements for continued APRN certification, does not meet the requirements for RN renewal, shall fulfill all RN renewal requirements before satisfying the requirements of this Section.
- E. The Board shall renew a certificate to practice as a registered nurse practitioner in a population focus, a clinical nurse specialist in a population focus, or a registered nurse anesthetist for a registered nurse who meets the criteria in this Section. An applicant who is denied renewal of a certificate may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying renewal of certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter.

**R4-19-507. Temporary Advanced Practice Certificate; Temporary Prescribing and Dispensing Authority**

- A. Based on the registered nurse's qualifications, the Board may issue a temporary certificate to practice as a ~~registered nurse practitioner RNP, CNM, or a clinical nurse specialist CNS~~ in a population focus or a registered nurse anesthetist. A registered nurse who is applying for a temporary certificate shall:
  - 1. Apply for certification as an ~~advanced practice nurse~~ APRN;
  - 2. Submit an application for a temporary certificate;
  - 3. Demonstrate authorization to practice as a registered nurse in Arizona on either a permanent or temporary Arizona license in good standing or a multistate compact privilege;
  - 4. Meet all requirements of R4-19-505 or meet the requirements of R4-19-505 with the exception of national certification for ~~RNP, CNM, and CNS~~ applicants unless exempt under R4-19-505(B); and
  - 5. Submit evidence that the applicant:
    - a. Has applied for and is eligible to take an approved national advanced practice certification exam in the role and population focus of the application;
    - b. Has requested that the certification program transmit all exam results directly to the Board; or
    - c. For a CRNA, holds national certification according to R4-19-501.
- B. If an applicant fails to meet criteria for national advanced practice certification or has failed a certification exam, the applicant is not eligible for a temporary certificate.
- C. The Board may issue temporary prescribing and dispensing authority for ~~RNP, CNM, or CNS~~ applicants, if the applicant:
  - 1. Meets all application requirements for temporary certification in this Section,
  - 2. Applies for and meets all requirements for prescribing and dispensing authority under R4-19-511,
  - 3. Has been certified or licensed as ~~a nurse practitioner or nurse midwife an RNP, CNM, or CNS~~ with prescribing and dispensing authority in the same role and population focus in another state or territory of the United States,
  - 4. Either holds current national certification as ~~a registered nurse practitioner or nurse midwife an RNP, CNM, or CNS~~ in the population focus of the application or is exempt from national certification under R4-19-505(B), and
  - 5. Meets the practice requirement of R4-19-506(A)(2).
- D. Temporary certification as an ~~advanced practice nurse~~ APRN and temporary prescribing and dispensing authority expire in six months and may be renewed for an additional six months for good cause. Good cause means reasons beyond the control of the temporary certificate holder such as unavoidable delays in obtaining information required for certification.

- E. Notwithstanding subsection (D), the Board shall withdraw a temporary ~~advanced practice~~ APRN certificate and temporary prescribing and dispensing authority under any one of the following conditions. The temporary certificate holder:
  1. Does not meet requirements for RN licensure in this state or the RN license is suspended or revoked,
  2. Fails to renew the RN license upon expiration,
  3. Loses the multistate compact privilege,
  4. Fails the national certifying examination, fails to maintain current national certification, as required by R4-19-505, or
  5. Violates a statute or rule of the Board.
- F. An applicant who is denied a temporary certificate or temporary prescribing and dispensing authority may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the temporary certification or authority. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter.

**R4-19-508. Standards Related to Registered Nurse Practitioner RNP, CNM, and CNS Scope of Practice**

- A. An RNP, CNM, or CNS shall refer a patient to a physician or another health care provider if the referral will protect the health and welfare of the patient and consult with a physician and other health care providers if a situation or condition occurs in a patient that is beyond the RNP's, CNM's, or CNS's knowledge and experience.
- B. In addition to the scope of practice permitted a registered nurse, ~~a registered nurse practitioner~~ the additional certification of an RNP, CNM, and CNS, under pursuant to A.R.S. §§ 32-1601 (5), (9), and (20), as applicable, and 32-1606(B)(12), may permits the RNP, CNM, and CNS to perform the following acts within the limits of the population focus of certification:
  1. Examine a patient and establish a medical diagnosis by client history, physical examination, and other criteria.
  2. For a patient who requires the services of a health care facility:
    - a. Admit the patient to the facility,
    - b. Manage the care the patient receives in the facility, and
    - c. Discharge the patient from the facility.
  3. Order and interpret laboratory, radiographic, and other diagnostic tests, and perform those tests that the RNP, CNM, or CNS is qualified to perform.
  4. Prescribe, order, administer and dispense therapeutic measures including pharmacologic agents and devices if authorized under R4-19-511, and non-pharmacological interventions including, but not limited to, durable medical equipment, nutrition, home health care, hospice, physical therapy and occupational therapy. (For the CNS, all prescribing is restricted pursuant to A.R.S. § 32-1651.)
  5. Identify, develop, implement, and evaluate a plan of care for a patient to promote, maintain, and restore health.
  6. Perform therapeutic procedures that the RNP, CNM, or CNS is qualified to perform.
  7. Delegate therapeutic measures to qualified assistive personnel including medical assistants under R4-19-509.
  8. Perform additional acts that the RNP, CNM, or CNS is qualified to perform and that are generally recognized as being within the role and population focus of certification.
- C. An RNP, CNM, or CNS shall only provide health care services including prescribing and dispensing within the RNP's, CNM's, or CNS's population focus and role and for which the RNP, CNM, or CNS is educationally prepared and for which competency has been established and maintained. Educational preparation means academic coursework or continuing education activities that include both theory and supervised clinical practice.

**R4-19-511. Prescribing and Dispensing Authority; Prohibited Acts**

- A. The Board shall authorize ~~a registered nurse practitioner (RNP)~~ an RNP, CNM, or CNS to prescribe and dispense (P&D) drugs and devices within the RNP's, CNM's, or CNS's population focus only if the RNP, CNM, or CNS does all of the following:
  1. Obtains authorization by the Board to practice as an RNP, CNM, or CNS;
  2. Applies for prescribing and dispensing privileges on the application for RNP, CNM, or CNS certification;
  3. Submits a completed verified application on a form provided by the Board that contains all of the following information:
    - a. Name, address, e-mail address and home telephone number;
    - b. Arizona registered nurse license number, or copy of compact license;
    - c. RNP, CNM, or CNS population focus;
    - d. RNP, CNM, or CNS certification number issued by the Board; and
    - e. Business address and telephone number;
  4. Submits evidence of a minimum of 45 contact hours of education within the three years immediately preceding the application, covering one or both of the following topics consistent with the population focus of education and certification:
    - a. Pharmacology, or
    - b. Clinical management of drug therapy, and

5. Submits the required fee.
- B. An applicant who is denied P & D authority may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the P & D authority. Board hearings shall comply with A.R.S. Title 41, Chapter 6, Article 10, and 4 A.A.C. 19, Article 6, of this Chapter.
  - C. An RNP, CNM, or CNS shall not prescribe or dispense drugs or devices without Board authority or in a manner inconsistent with law. The Board may impose an administrative or civil penalty for each violation, suspend the RNP's, CNM's, or CNS's P & D authority, or impose other sanctions under A.R.S. § 32-1606(C). In determining the appropriate sanction, the Board shall consider factors such as the number of violations, the severity of each violation, and the potential for or existence of patient harm.
  - D. In addition to acts listed under R4-19-403, for an RNP, CNM, or CNS who prescribes or dispenses a drug or device, a practice that is or might be harmful to the health of a patient or the public, includes one or more of the following:
    1. Prescribing a controlled substance to oneself, a member of the RNP's, CNM's, or CNS's family or any other person with whom the RNP, CNM, or CNS has a relationship that may affect the RNP's, CNM's, or CNS's ability to use independent, objective and sound judgment when prescribing;
    2. Providing any controlled substance or prescription-only drug or device for other than accepted therapeutic purposes;
    3. Delegating the prescribing and dispensing of drugs or devices to any other person;
    4. Prescribing for a patient that is not in the RNP's, CNM's, or CNS's population focus of education and certification except as authorized in subsection (D)(5)(d); and
    5. Prescribing, dispensing, or furnishing a prescription drug or a prescription-only device to a person unless the RNP, CNM, or CNS has examined the person and established a professional relationship, except when ~~the RNP is~~ engaging in one or more of the following:
      - a. Providing temporary patient care on behalf of the patient's regular treating and licensed health care professional;
      - b. Providing care in an emergency medical situation where immediate medical care or hospitalization is required by a person for the preservation or health, life, or limb;
      - c. Furnishing a prescription drug to prepare a patient for a medical examination; or
      - d. Prescribing antimicrobials to a person who is believed to be at substantial risk as a contact of a patient who has been examined and diagnosed with a communicable disease by the prescribing RNP, CNM, or CNS even if the contact is not in the population focus of the RNP's, CNM's, or CNS's certification.
    6. Prescribing or dispensing any controlled substance or prescription-only drug or device in a manner that is inconsistent with other state or federal requirements.
  - E. An RNP, CNM, or CNS shall not dispense a Schedule II Controlled Substance that is an opioid, except for an opioid that is for medication assisted treatment for substance use disorders.
  - F. A CNS's prescribing is additionally limited pursuant to A.R.S. § 32-1651.
  - G. A CRNA may apply for and obtain a prescribing-only certificate upon successful completion of all application requirements that are applicable to prescribing, as listed for other APRNs, and follow the same prescribing restrictions and administrative processes, as described in subsections A-D, above; and consistent with A.R.S. § 32-1634.04, and all other applicable laws.

#### **R4-19-512. Prescribing Drugs and Devices**

- A. An RNP, CNM, or CNS granted P & D authority by the Board may, within restrictions provided by law and applicable to each certificate:
  1. Prescribe drugs and devices;
  2. Provide for refill of prescription-only drugs and devices for one year from the date of the prescription.
- B. An RNP, CNM, or CNS with P & D authority who wishes to prescribe a controlled substance shall obtain a DEA registration number before prescribing a controlled substance; ~~The RNP and~~ shall file the DEA registration number with the Board.
- C. An RNP, CNM, or CNS with a DEA registration number may prescribe, but may not exceed the limitations of each certification:
  1. A Schedule II controlled substance as defined in the federal Controlled Substances Act, 21 U.S.C. § 801 et seq., or Arizona's Uniform Controlled Substances Act, A.R.S. Title 36, Chapter 27, but shall not prescribe refills of the prescription, and shall follow all other restrictions provided by law;
  2. A Schedule III or IV controlled substance, as defined in the federal Controlled Substances Act or Arizona's Uniform Controlled Substances Act, and may prescribe a maximum of five refills in six months; and
  3. A Schedule V controlled substance, as defined in the federal Controlled Substances Act or Arizona's Uniform Controlled Substances Act, and may prescribe refills for a maximum of one year.
- D. An RNP, CNM, or CNS whose DEA registration is revoked or expires shall not prescribe controlled substances. An RNP, CNM, or CNS whose DEA registration is revoked or limited shall report the action to the Board within 10 days of the revocation or limitation.
- E. In all outpatient settings or at the time of hospital discharge, an RNP, CNM, or CNS with P & D authority, who prescribed medication to a patient, shall personally provide a the patient or the patient's representative with the name of the drug,

directions for use, and any special instructions, precautions, or storage requirements necessary for safe and effective use of the drug if any of the following occurs:

1. A new drug is prescribed or there is a change in the dose, form, or direction for use in a previously prescribed drug;
  2. In the RNP's, CNM's, or CNS's professional judgment, these instructions are warranted; or
  3. The patient or patient's representative requests instruction.
- F. An RNP, CNM, or CNS with P & D authority shall ensure that all prescription orders contain the following:
1. The RNP's, CNM's, or CNS's name, address, telephone number, and population focus;
  2. The prescription date;
  3. The name of the patient and either the address of the patient or a blank for the address if the prescription is not being dispensed by the RNP, CNM, or CNS;
  4. The full name of the drug, strength, dosage form, and directions for use;
  5. The letters "DAW", "dispense as written", "do not substitute", "medically necessary" or any similar statement on the face of the prescription form if intending to prevent substitution of the drug;
  6. The RNP's, CNM's, or CNS's DEA registration number, if applicable; and
  7. The RNP's, CNM's, or CNS's signature.

#### **R4-19-513. Dispensing Drugs and Devices**

- A. ~~A registered nurse practitioner (RNP)~~ An RNP, CNM, or CNS granted prescribing and dispensing authority by the Board may, within restrictions provided by law and applicable to each certificate:
1. Dispense drugs and devices to patients;
  2. Dispense samples of drugs packaged for individual use without a prescription order or additional labeling;
  3. Only dispense drugs and devices obtained directly from a pharmacy, manufacturer, wholesaler, or distributor; and
  4. Allow other personnel to assist in the delivery of medications provided that the RNP, CNM, or CNS retains responsibility and accountability for the dispensing process.
- B. If dispensing a drug or device, an RNP, CNM, or CNS with dispensing authority shall:
1. Ensure that the patient has a written prescription that complies with R4-19-512(F) and contains the address of the patient and inform the patient that the prescription may be filled by the prescribing RNP, CNM, or CNS or by a pharmacy of the patient's choice;
  2. Affix a prescription number to each prescription that is dispensed;
  3. Ensure that all original prescriptions are preserved for a minimum of seven years and make the original prescriptions available at all times for inspection by the Board of Nursing, Board of Pharmacy, and law enforcement officers in performance of their duties; and
  4. Report the dispensing of controlled substances to the Board of Pharmacy's Controlled Substance Prescription Monitoring Program ~~as required in pursuant to~~ A.R.S. § 36-2608.
- C. An RNP, CNM, or CNS practicing in a public health facility operated by this state or a county or in a qualifying community health center under A.R.S. § 32-1921(D) and (F) may dispense drugs or devices to patients without a written prescription if the public health facility or the qualifying community health center adheres to all storage, labeling, safety, and recordkeeping rules of the Board of Pharmacy.
- D. An RNP, CNM, or CNS who dispenses a drug shall ensure that a label is affixed that contains all of the following information:
1. Dispensing RNP's, CNM's, or CNS's name and population focus;
  2. Address and telephone number of the location from which the drug is dispensed;
  3. Date dispensed;
  4. Patient's name and address;
  5. Name and strength of the drug, quantity in the container, directions for use, and any cautionary statements necessary for the safe and effective use of the drug;
  6. Manufacturer and lot number; and
  7. Prescription order number.
- E. An RNP, CNM, or CNS who dispenses a drug or device shall ensure that the following information about the drug or device is entered into the patient's medical record:
1. Name of the drug, strength, quantity, directions for use, and number of refills;
  2. Date dispensed;
  3. Therapeutic reason;
  4. Manufacturer and lot number; and
  5. Prescription order number.
- F. An RNP, CNM, or CNS with dispensing authority shall:
1. Keep all drugs in a locked cabinet or room in an area that is not accessible to patients;
  2. If dispensing a controlled substance:
    - a. Control access by a written policy that specifies:
      - i. Those persons allowed access, and

- ii. Procedures to report immediately the discovery of a shortage or illegal removal of drugs to a local law enforcement agency and provide that agency and the DEA with a written report within seven days of the discovery.
  - b. Maintain and make available to the Board upon request an ongoing inventory and record of:
    - i. A Schedule II controlled substance, as defined in the federal Controlled Substances Act or Arizona's Uniform Controlled Substances Act, separately from all other records, and a prescription for a Schedule II controlled substance in a separate prescription file; and
    - ii. A Schedule III, IV, or V controlled substance, as defined in the federal Controlled Substances Act or Arizona's Uniform Controlled Substances Act, in a form that is readily retrievable from other records.
- G. If a prescription order is refilled, an RNP, CNM, or CNS with P & D authority shall record the following information on the back of the prescription order or in the patient's medical record:
  - 1. Date refilled,
  - 2. Quantity dispensed if different from the full amount of the original prescription,
  - 3. RNP's, CNM's, or CNS's name or identifiable initials, and
  - 4. Manufacturer and lot number.
- H. Under the supervision of an RNP, CNM, or CNS with P & D authority, other personnel may:
  - 1. Receive and record a prescription refill request from a patient or a patient's representative;
  - 2. Receive and record a verbal refill authorization from the RNP including:
    - a. The RNP's, CNM's, or CNS's name;
    - b. Date of refill;
    - c. Name, directions for use, and quantity of drug; and
    - d. Manufacturer and lot number;
  - 3. Prepare and affix a prescription label; and
  - 4. Prepare a drug or device for delivery, provided that the dispensing RNP, CNM, or CNS:
    - a. Inspects the drug or device and initials the label before issuing to the patient to ensure compliance with the prescription; and
    - b. Ensures that the patient is informed of the name of the drug or device, directions for use, precautions, and storage requirements.

**R4-19-514. Standards Related to Clinical Nurse Specialist Scope of Practice**

In addition to the functions of a registered nurse, a CNS, ~~under~~ pursuant to A.R.S. § 32-1601(7), may perform one or more of the following for an individual, family, or group within the population focus of certification and for which competency has been maintained:

- 1. Conduct an advanced assessment, analysis, and evaluation of a patient's complex health needs;
- 2. Establish primary and differential health status diagnoses;
- 3. Direct health care as an advanced clinician;
- 4. Develop, implement, and evaluate a treatment plan according to a patient's need for specialized nursing care;
- 5. Establish nursing standing orders, algorithms, and practice guidelines related to interventions and specific plans of care;
- 6. Manage health care according to written protocols;
- 7. Facilitate system changes on a multidisciplinary level to assist a health care facility and improve patient outcomes cost-effectively;
- 8. Consult with the public and professionals in health care, business, and industry in the areas of research, case management, education, and administration;
- 9. Perform psychotherapy if certified as a clinical nurse specialist in psychiatric and mental health nursing;
- 10. ~~Prescribe and dispense durable medical equipment~~ Prescribe, order, administer, and dispense therapeutic measures including pharmacologic agents and devices if authorized under R4-19-511, and within the limitations of A.R.S. § 32-1651; ~~or and~~
- 11. Perform additional acts that the clinical nurse specialist is qualified to perform.

**ARTICLE 6. RULES OF PRACTICE AND PROCEDURE**

**R4-19-604. Notice of Hearing; Response**

- A. The Board, in consultation with the Office of Administrative Hearings, as necessary shall prepare and serve a written notice of hearing on all parties under A.R.S. § 41-1092.05.
- B. In addition to the notice requirements in A.R.S. § 41-1092.05(D), the Board shall include the following in the notice:
  - 1. The full name, address, and license number, if any, of the licensee, certificate holder, program, or applicant;
  - 2. The name, ~~mailing~~ address of record, and telephone number of the Board's executive director or Board designee if the hearing is to be conducted by the Board;

3. A statement that a hearing will proceed without a party's presence if a party fails to attend or participate in the hearing;
  4. The names and mailing addresses of record of persons to whom notice is being given, including the Attorney General representing the state at the hearing; and
  5. Any other matters relevant to the proceedings.
- C. The party named in the notice of hearing shall file a written response under A.R.S. § 32-1664 within 30 days after service of the notice of hearing. The response shall contain:
1. The party's name, address, and telephone number;
  2. Whether the party has legal representation and, if so, the name and address of the attorney;
  3. A response to the allegations contained in the notice of hearing; and
  4. Any other matters relevant to the proceedings.

## **ARTICLE 8. CERTIFIED AND LICENSED NURSING ASSISTANTS AND CERTIFIED MEDICATION ASSISTANTS**

### **R4-19-804. Initial Approval and Re-Approval of Training Programs**

- A. An applicant for initial training program approval shall submit an application packet to the Board at least 90 days before the expected starting date of the program. An applicant shall submit application documents ~~that are unbound, typed or word processed, single-sided, and on white, letter-size paper plus one electronic copy of the entire packet. The Board does not accept notebooks, spiral bound documents, manuals or books in an electronic format.~~
- B. The Board may impose disciplinary action including denial on any training program that has advertised, conducted classes, recruited or collected money from potential students before receiving Board approval or after expiration of approval except for completing instruction to students who enrolled before the expiration date.
- C. A program applying for initial approval shall include all of the following in their application packet:
1. Name, address, web address, telephone number, e-mail address and fax number of the program;
  2. Identity of all program owners or sponsoring institutions;
  3. Name, license number, telephone number, e-mail address and qualifications of the program coordinator as required in R4-19-802;
  4. Name, license number, telephone number, e-mail address and qualifications of each program instructor including clinical instructors as required in either R4-19-802 for NA programs or R4-19-803 for CMA programs;
  5. Name, telephone number, e-mail address and qualifications any person with administrative oversight of the training program, such as an owner, supervisor or director;
  6. Accreditation status of the training program, if any, including the name of the accrediting body and date of last review;
  7. Name, address, telephone number and contact person, for all health care institutions which will be clinical sites for the program;
  8. Medicare certification status of all clinical sites, if any;
  9. Evidence of program compliance with this Article including all of the following:
    - a. Program description that includes the length of the program, number of hours of clinical, laboratory and classroom instruction, and program goals consistent with federal, state, and if applicable, private postsecondary requirements;
    - b. A list and description of classroom facilities, equipment, and instructional tools the program will provide;
    - c. Written curriculum and course schedule according to the provisions of this Article;
    - d. A copy of the documentation that the program will use to verify student attendance, instructor presence and skills;
    - e. Copy of signed, current clinical contracts;
    - f. The title, author, name, year of publication, and publisher of all textbooks the program will require students to use;
    - g. A copy of course policies and any other materials that demonstrate compliance with this Article and the statutory requirements in Title 32, Chapter 15;
    - h. A plan to evaluate the program that meets requirements in R4-19-801(A)(10);
    - i. An implementation plan including start date and a description of how the program will provide oversight to ensure all requirements of this Article are met;
    - j. A self-assessment checklist of the application contents and their location in the application, on a form provided by the Board; and
    - k. Other requirements as requested consistent with R4-19-802 for nursing assistant programs and R4-19-803 for medication assistant programs.
- D. Re-approval of Training Programs
1. A training program applying for re-approval shall submit ~~a paper and an~~ electronic application and accompanying materials to the Board before expiration of the current approval. ~~The applicant program shall ensure that all documents submitted are unbound, typed or word processed, single-sided, and on white, letter-size paper. The Board does not accept notebooks, spiral bound documents, manuals or books.~~ A program or site of a consolidated program that did not hold any classes in the previous approval period is not eligible for renewal of approval.
  2. The program shall include the following with the renewal application:
    - a. A program description and course goals;

- b. Name, license number, and qualifications of current program personnel
  - c. A copy of the current curriculum which meets the applicable requirements in either R4-19-802 or R4-19-803;
  - d. The dates of each program offering, number of students who have completed the program, and the results of the state-approved written and manual skills tests, including first-time pass rates since the last program review;
  - e. A copy of current program policies, consistent with R4-19-801;
  - f. Any change in resources, contracts, or clinical facilities since the previous approval or changes that were not previously reported to the Board;
  - g. The program evaluation plan with findings regarding required evaluation elements under R4-19-801(A)(10);
  - h. The title, author, year of publication, and publisher of the textbook used by the program;
  - i. Copies of the redacted records of one program graduate;
  - j. The total number of enrolled students and graduates for each year since the last approval;
  - k. The total number of persons taking the state-approved exam in the past two years; if the number is less than 10, a comprehensive plan to increase program enrollment;
  - l. A self-assessment checklist of the application contents and their location in the application, on a form provided by the Board; and
  - m. Other requirements as requested consistent with R4-19-802 for nursing assistant programs and R4-19-803 for medication assistant programs.
- E.** Upon determination of administrative completeness of either an initial or renewal application, the Board, through its authorized representative, shall schedule and conduct a site visit of a NA program, unless one year only approval is granted on an initial application. The Board may conduct a site visit of a CMA program. Site visits are for the purpose of verifying compliance with this Article. Site visits may be conducted in person or through the use of distance technology.
- F.** Following an evaluation of the program application and a site visit, if applicable, the Board may approve or renew the approval of the program for two years for a nursing assistant program and up to four years for a medication assistant program, if the program renewal application and site visit findings, as applicable, meet the requirements of this Article, and A.R.S. Title 32, Chapter 15 and renewal is in the best interest of the public. If the program does not meet these requirements, the Board may issue a notice of deficiency under R4-19-805 or take disciplinary action.
- G.** A program may request an administrative hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for program approval or renewal of approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.
- H.** The owner, operator, administrator or coordinator of a program that is denied approval or renewal of approval shall not be eligible to conduct, own or operate a new or existing program for a period of two years from the date of denial.

**R4-19-806. Initial Nursing Assistant Licensure (LNA) and Medication Assistant Certification**

- A.** An applicant for initial licensed nursing assistant (LNA) licensure or CMA certification shall submit the following to the Board:
- 1. A verified application on a form furnished by the Board that provides the following information about the applicant:
    - a. Full legal name and any and all former names used by the applicant;
    - b. Current ~~mailing address of record~~, including county of residence, e-mail address and telephone number;
    - c. Place and date of birth;
    - d. Social Security number;
    - e. Ethnic category and marital status at the applicant's discretion;
    - f. Educational background, including the name of the training program attended, and date of graduation and for medication assistant, proof of high school or equivalent education completion as required in A.R.S. § 32-1650-02(A)(4);
    - g. Current employer, including address and telephone number, type of position, and dates of employment, if employed in health care;
    - h. A list of all states in which the applicant is or has been included on a nursing assistant registry or been licensed or certified as a nursing or medication assistant and the license or certificate number, if any;
    - i. For medication assistant, proof of LNA licensure and 960 hours or 6 months full time employment as a CNA or LNA in the past year, as required in A.R.S. § 32-1650.02;
    - j. Responses to questions regarding the applicant's background on the following subjects:
      - i. Current investigation or pending disciplinary action by a nursing, nursing assistant or medication assistant regulatory agency in the United States or its territories;
      - ii. Action taken on a nursing assistant or medication assistant license, certification or registry designation in any other state;
      - iii. Felony conviction or conviction of an undesignated or other similar offense and the date of absolute discharge of sentence;
      - iv. Unprofessional conduct as defined in A.R.S. § 32-1601;
      - v. Explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background;

2. Proof of satisfactory completion of a nursing assistant or medication assistant training program that meets the requirements of this Article;
  3. Proof of United States citizenship or alien status as specified in A.R.S. § 41-1080;
  4. For LNA applicants, one or more fingerprint cards or fingerprints;
  5. For CMA applicants, one or more fingerprint cards or fingerprints, as required by A.R.S. § 32-1606(B)(15) if a fingerprint background report has not been received by the Board in the past two years; and
  6. Applicable fees under A.R.S. § 32-1643 and R4-19-808.
- B.** An applicant for licensure as a nursing assistant shall submit a passing score on a Board-approved nursing assistant examination and provide one of the following criteria:
1. Proof that the applicant has completed a Board-approved nursing assistant training program within the past two years;
  2. Proof that the applicant has completed a nursing assistant training program approved in another state or territory of the United States consisting of at least 120 hours within the past two years;
  3. Proof that the applicant has completed a nursing assistant program approved in another state or territory of the United States of at least 75 hours of instruction in the past two years and proof of working as a nursing assistant for an additional number of hours in the past two years that together with the hours of instruction, equal at least 120 hours;
  4. Proof that the applicant either holds a nursing license in good standing in the U.S. or territories, has graduated from an approved nursing program, or otherwise meets educational requirements for a registered or practical nursing license in Arizona;
  5. Documentation sent directly from the program that the applicant successfully completed a nursing course or courses as part of an RN or LPN program approved in either this or another state in the last 2 years that included:
    - a. Didactic content regarding long-term care clients; and
    - b. Forty hours of instructor-supervised direct patient care in a long-term care or comparable facility; or
  6. Documentation of a minimum of 100 hours of military health care training, as evidenced by military records, and proof of working in health care within the past 2 years.
- C.** An applicant for medication assistant shall meet the qualifications of A.R.S. §§ 32-1650.02 and 32-1650.03. An applicant who wishes to use part of a nursing program in lieu of completion of a Board approved medication assistant training program under A.R.S. § 32-1650.02 shall submit the following:
1. An official transcript from a Board approved nursing program showing a grade of C or higher in a 45 hour or 3 semester credit, or equivalent, pharmacology course; and
  2. A document signed by both the applicant's clinical instructor and the nursing program administrator verifying that the applicant completed 40 hours of supervised medication administration in a long-term care facility.
- D.** Certifying Exam
1. A LNA applicant shall take and pass both portions of the certifying exam within 2 years:
    - a. Of program completion for graduates of nursing assistant programs approved in Arizona or another state, or
    - b. Of the date of the first test for all other applicants.
  2. A CMA applicant shall take and pass both portions of the certifying exam within one year:
    - a. Of program completion for graduates of Board-approved programs, or
    - b. Of the date of the first test for all other applicants.
  3. An applicant may re-take the failed portion or portions of a certifying exam, under conditions prescribed in written policy by the exam vendor, until a passing score is achieved or their time expires under subsections (D)(1) or (2).
- E.** An applicant who does not take or pass an examination within the time period specified in subsection (D) shall enroll in and successfully complete a Board approved training program in the certification category before being permitted to retake an examination.
- F.** The Board may license a nursing assistant or certify a medication assistant applicant who meets the applicable criteria in this Article and A.R.S. Title 32, Chapter 15 if licensure or certification is in the best interest of the public.
- G.** An applicant who is denied licensure or certification may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.
- H.** Medication assistant certification expires when nursing assistant licensure expires.

**R4-19-809. Nursing Assistant Licensure and Medication Assistant Certificate Renewal**

- A.** An applicant for renewal of a LNA license or a CMA certificate shall:
1. Submit a verified application to the Board on a form furnished by the Board that provides all of the following information about the applicant:
    - a. Full legal name, mailing address of record including county of residence, e-mail address and telephone number;
    - b. Marital status and ethnicity at the applicant's discretion;
    - c. Current health care employer including name, address, telephone number, dates of employment and type of setting;
    - d. If the applicant fails to meet the practice requirements in subsections (A)(2) for nursing assistant or (A)(3) for medication assistant renewal, documentation that the applicant has completed a Board-approved training program

- for the licensure or certification sought and passed both the written and manual skills portions of the competency examination within the past two years;
- e. Responses to questions that address the applicant's background:
    - i. Any investigation or disciplinary action by a nursing regulatory agency or nursing assistant regulatory agency in the United States or its territories not previously disclosed by the applicant to the Board;
    - ii. Felony conviction or conviction of undesignated offense and date of absolute discharge of sentence since licensed, certified or last renewed, and
    - iii. Unprofessional conduct committed by the applicant as defined in A.R.S. § 32-1601 since the time of last renewal and not previously disclosed by the applicant to the Board;
    - iv. Any disciplinary action or investigation related to the applicant's nursing or nursing assistant license or medication assistant certificate, nursing assistant certificate or registry listing by any other state regulatory agency since issuance of the license or certificate, or since last renewal and not previously disclosed to the Board.
    - v. Explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background;
  - f. For LNA renewal, employment as a nursing assistant, performing nursing assistant tasks for an employer or the applicant's performance of nursing assistant activities as part of a nursing or allied health program for a minimum of 160 hours every two years since the last license or certificate was issued, or
  - g. For CMA renewal, employment as a medication assistant for a minimum of 160 hours within the last 2 years, and
  - h. Pay applicable fees pursuant to A.R.S. § 32-1643 and R4-19-808.
- B.** An applicant's license or certificate expires every two years on the last day of the applicant's birth month. If an applicant fails to timely renew the license or certificate, the applicant shall:
    1. Not work or practice as an LNA or CMA until the Board issues a renewal license or certificate; and
    2. Pay any late fee imposed by the Board.
  - C.** If an applicant's license or certificate was, or is currently, revoked, surrendered, denied, suspended or placed on probation in another jurisdiction, the applicant is not eligible to renew or reactivate the applicant's Arizona license or certificate until a review or investigation has been completed and a decision made by the Board.
  - D.** The Board may renew an LNA license and CMA certificate of an applicant who meets the criteria established in statute and this Article. An applicant who is denied renewal of a license or certificate may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying renewal of the license or certificate. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter.

**R4-19-815. Reissuance or Subsequent Issuance of a Nursing Assistant License or Medication Assistant Certificate**

- A.** A person whose LNA license or CMA certificate was denied, revoked, or voluntarily surrendered pursuant to A.R.S. § 32-1663 may apply to the Board to issue or re-issue the license or certificate:
  1. Five years from the date of denial or revocation, or
  2. In accordance with the terms of a voluntary surrender agreement.
- B.** A person who applies for issuance or re-issuance of a license or certificate under the conditions of subsection (A) is subject to the following terms and conditions:
  1. The applicant shall submit a written application for issuance or re-issuance of the license or certificate that contains substantial evidence that the basis for surrendering, denying, or revoking the license or certificate has been removed and that the issuance or re-issuance of the license or certificate will not be a threat to public health or safety.
  2. Safe practice:
    - a. Pursuant to A.R.S. § 32-1664(F), the Board for reasonable cause may require a combination of mental, physical, nursing competency, psychological, or psychiatric evaluations, or any combination of evaluations, reports, and affidavits that the Board considers necessary to determine the person's competence and conduct to safely practice as an LNA or CMA.
    - b. The Board may require the applicant to be tested for competency, or retake and successfully complete a Board approved training program and pass the required examination, all at the applicant's expense.
- C.** The Board shall consider the application, and may designate a time for the applicant to address the Board at a regularly scheduled meeting.
- D.** After considering the application, the Board may:
  1. Grant certification or licensure, with or without conditions or limitations, or
  2. Deny the application.
- E.** An applicant who is denied issuance or re-issuance of LNA licensure or CMA certification may request a hearing by filing a written request with the Board within 30 days of service of the Board's order. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6, of this Chapter.

# ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

for

## TITLE 4. PROFESSIONS AND OCCUPATIONS

### CHAPTER 19. BOARD OF NURSING

#### ARTICLES 1, 2, 3, 5, 6, 8

A. Economic, small business and consumer impact summary:

**1. Identification of the rulemaking:**

The rules amendments include reducing regulatory burdens for nurse applicants to obtain temporary nursing licenses and advanced practice nursing programs to obtain provisional approvals; rule amendments to implement recent statutory changes, including adding a process for clinical nurse specialists (“CNSs”) to prescribe, certified registered nurse anesthetists (“CRNAs”) to obtain a prescribing certificate; and reducing the regulatory burdens on regulated parties by eliminating the requirement for paper submissions of documents.

**a. The conduct and its frequency of occurrence that the rule is designed to change:**

This subsection is not applicable to the rule amendments.

**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:**

Some nurse applicants experience delays in receiving their temporary licenses from the Board due to delays in processing their fingerprints by law enforcement. The rule amendments proposed would safely reduce those requirements by allowing applicants to receive a temporary license once the fingerprints have been submitted, rather than requiring that the results were received.

Similarly, the amendments would allow the Board’s Executive Director to provisionally approve advanced practice nursing program’s applications for

program approval prior to the bi-monthly Board meetings, thus avoiding delays of up to 7-8 weeks.

Additionally, these amendments will reduce confusion by implementing statutory changes, including processes for CNS prescribing that were created by statute and change in terminology and content for addresses of record; and will reduce regulatory burdens by eliminating unnecessary paper document submissions. If the rules are not amended, regulated parties will be unable to implement the statutory changes, there will be confusion regarding differences between statutes and rules, there will be reduced flexibility for nursing programs, and the burdens on the regulated population of filing paper documents will remain.

c. **The estimated change in frequency of the targeted conduct expected from the rule change:**

This subsection is not applicable to the rule amendments.

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

**R4-19-101. Definitions**

The Board approved amending this Section to include a definition of “advance practice registered nurse” for clarity throughout Arizona Administrative Code, Title 4, Chapter 19. This should not have an economic impact.

**R4-19-102. Time-frames for Licensure, Certification, or Approval**

The Board seeks to amend this section to align the references to address from the current “mailing address” to the new “address of record”, which is defined in and consistent with new legislation, codified in A.R.S. § 32-3226. There is no anticipated economic impact from this change.

**R4-19-207. New Programs, Proposal Approval; Provisional Approval**

The Board seeks to amend this section to reduce burdens on regulated parties by eliminating the requirement for submission to the Board of paper copies of documents. This should have a modest economic benefit for regulated parties by eliminating the expense of paper copies.

**R4-19-208. Full Approval of a New Nursing Program**

Please see above, R4-19-207, for the same analysis.

**R4-19-209. Nursing Program Change**

Please see above, R4-19-207, for the same analysis.

**R4-19-210. Renewal of Approval of Nursing Programs Not Accredited by a National Nursing Accrediting Agency**

Please see above, R4-19-207, for the same analysis.

**R4-19-216. Approval of a Refresher Program**

Please see above, R4-19-207, for the same analysis.

**R4-19-301. Licensure by Examination**

Please see above, R4-19-102, for the same analysis.

**R4-19-304. Temporary License**

The Board seeks to amend this section to expedite processing temporary license applications to reduce regulatory burdens on stakeholders. By maintaining the applicant's requirement to submit fingerprints, but reducing the requirement to receive the report back from law enforcement, which can sometimes cause delays, the Board maintains a balance of public protection and efficiency to stakeholders, so that they may begin work earlier.

This new process will allow nursing license applicants to begin work sooner, which is anticipated to have a modest, positive economic benefit to stakeholders and the State of Arizona.

**R4-19-305. License Renewal**

Please see above, R4-19-102, for the same analysis.

**R4-19-308. Change of Name or Address**

The Board seeks to amend this section to align the references to address from the current “mailing address” to the new “address of record”, which is defined in and consistent with A.R.S. § 32-3226. The Board is requiring licensees and applicants to submit a residential address due to nurse licensure compact requirements for “primary state of residence”, and because most licensees and applicants already submit residential addresses. The Board anticipates no economic impact from this change.

**R4-19-501. Roles and Population Foci of Advanced Practice Registered Nursing (APRN); Certification Programs**

Adding certified nurse midwife (CNM) as a separate APRN category, rather than as a subcategory under registered nurse practitioner (RNP). Consistent with legislative changes to A.R.S. §§ 32-1601(5) and 32-1636(D). This change may have a minimal positive economic impact to stakeholders.

**R4-19-502. Requirements for APRN Programs**

Please see above, R4-19-501, for the same analysis.

**R4-19-503. Application for Approval of an Advanced Practice Registered Nursing Program; Approval by Board; Provisional Approval by Executive Director**

Adding certified nurse midwife (CNM) as a separate APRN category, rather than as a subcategory under registered nurse practitioner (RNP). Consistent with changes to A.R.S. §§ 32-1601(5) and 32-1636(D).

Also, section (F) will permit the Executive Director to issue a provisional approval to APRN nursing programs, which is intended to reduce regulatory burdens by allowing APRN nursing programs that have submitted complete applications and appear to meet criteria to begin to operate in Arizona between Board meetings, rather than to necessarily wait for full Board approval. This is expected to create a positive financial impact for stakeholders and the State of Arizona because it will allow new businesses to begin operating in Arizona sooner.

**R4-19-504. Notice of Deficiency; Unprofessional APRN Program Conduct**

Amendment limited to title, clarification that programs included in this rules are “APRN” programs. There is no anticipated economic impact from this change.

**R4-19-505. Requirements for Initial APRN Certification**

These proposed amendments include the “address of record” language update to match A.R.S. § 32-3226, adding CNM as a separate APRN category, and some technical edits that are non-substantive and are not anticipated to have any economic impact.

**R4-19-506. Expiration of APRN Certificate; Practice Requirement; Renewal**

Proposed amendments include adding CNM as a separate APRN category, and consistency in use of “APRN” acronym. No discernable economic impact is anticipated from this change.

**R4-19-507. Temporary Advanced Practice Certificate; Temporary Prescribing and Dispensing Authority**

Proposed amendments include adding CNM as a separate APRN category, consistency in use of “APRN” acronym, and adding clinical nurse specialists (CNS) as eligible to obtain temporary prescribing and dispensing authority, pursuant to A.R.S. § 32-1651, *inter alia*. This is anticipated to have a positive impact on the State of Arizona and particularly CNSs because they will be able to provide more expanded care, with prescribing ability, in Arizona, through this rule change that is based upon the statutory change.

**R4-19-508. Standards Related to ~~Registered Nurse Practitioner~~ RNP, CNM, and CNS Scope of Practice**

Proposed amendments include adding CNM and CNS as APRN categories authorized to perform other functions as APRNs, including prescribing. No economic impact is anticipated.

**R4-19-511. Prescribing and Dispensing Authority; Prohibited Acts**

Proposed amendments to this section, similar to sections 507 and 508, including adding CNM and CNS as separate categories; authorizing CNM and CNS to perform functions previously limited to RNPs; specifically adding CNS prescribing limitations referencing A.R.S. § 32-1651; and authorizing CRNAs to obtain prescribing-only certificates, consistent with A.R.S. § 32-1634.04, and

other applicable laws. Again, a positive economic impact is anticipated related to an expanded scope of practice for the CNS.

**R4-19-512. Prescribing Drugs and Devices**

Proposed amendments add CNM and CNS to RNP as authorized APRNs eligible to be authorized to prescribe drugs and devices, with applicable limitations for CNS. Please see above, R4-19-511, for the same economic analysis.

**R4-19-513. Dispensing Drugs and Devices**

Proposed amendments add CNM and CNS to RNP as authorized APRNs eligible to be authorized to dispense drugs and devices, with applicable limitations for CNS. Please see above, R4-19-511, for the same economic analysis.

**R4-19-514. Standards Related to Clinical Nurse Specialist Scope of Practice**

Proposed technical amendment, and clarification of expanded eligibility of CNS to prescribe, order, administer and dispense therapeutic measures, pursuant to A.R.S. § 32-1651, *inter alia*. Please see above, R4-19-511, for the same economic analysis.

**R4-19-604. Notice of Hearing; Response**

The Board seeks to amend this section to align the references to address from the current “mailing address” to the new “address of record”, which is defined in and consistent with A.R.S. § 32-3226. No economic impact is anticipated from this amendment.

**R4-19-804. Initial Approval and Re-Approval of Training Programs**

Proposed technical amendment to title; elimination of requirement to submit paper documents to ease regulatory burden on regulated parties.

**R4-19-806. Initial Nursing Assistant Licensure (LNA) and Medication Assistant Certification**

Please see above, R4-19-604, for the same analysis.

**R4-19-809. Nursing Assistant Licensure and Medication Assistant Certificate Renewal**

Please see above, R4-19-604, for the same analysis.

**R4-19-815. Reissuance or Subsequent Issuance of a Nursing Assistant License or Medication Assistant Certificate**

Proposed technical amendment to add term “licensure” to current “certification”.

“Certification” refers to medication assistants and “licensure” is applicable to licensed nursing assistants, consistent with licensed nursing assistant existing title.

There is no anticipated economic impact from this amendment.

**3. 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:	Joey Ridenour Executive Director Arizona State Board of Nursing
Address:	1740 W. Adams, Suite 2000 Phoenix, Arizona 85007
Telephone:	(602) 771-7801
Fax:	(602) 771-7888
E-mail:	<a href="mailto:jridenour@azbn.gov">jridenour@azbn.gov</a>

Website: [www.azbn.gov](http://www.azbn.gov)

**B. Economic, small business and consumer impact statement**

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

This is included in the "Brief Summary" section, above.

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

There are no anticipated new or additional costs associated with the proposed changes. All regulated persons, the Board, patients, and health care facilities may be affected by these changes, but an anticipated positive economic way.

**3. Analysis of costs and benefits occurring in this state:**

Important Note: The Board is not proposing any changes that would increase any licensing/certification or other application fees or add any regulatory burdens.

Description of Affected Groups	Description of the Effect	Increased Cost/Decreased Revenue	Decreased Costs/Increased Revenue
A. Agency - Board of Nursing	Improved electronic communications may reduce administrative and mailing costs. Adding additional categories for prescriptions may minimally increase administrative demands.	Minimal	Minimal
B. Nursing Programs	Eliminating paper applications and documents may reduce costs. Allowing the Executive Director to provisionally approve programs may increase revenue with earlier program start.	None	Minimal - Moderate
C. Regulated Population (Individuals): Nurses and	Adding CNS to prescribing providers is anticipated to increase revenue for that nursing category, and may result in more nurses seeking CNS certification in the	None	Minimal - Moderate

Nursing Assistants	future, which would increase their revenue. There are no increases to license fees, no significant changes to regulation or licensure processes. (However, see advance practice nurses, below.)		
D. Refresher nursing programs	No significant changes.	None	None
E. Nurse Practitioners with Prescribing Privileges	Adding CNS as prescriber, pursuant to statutory change, is anticipated to increase revenue for that APRN category. Other changes are expected to have minimal positive impact and no negative impact. No changes proposed that would increase any fees or add any regulatory burdens.	None	Minimal-Moderate
F. Nursing Assistant Programs	Technical corrections - no anticipated impact.	None	None

“Minimal” means more than 0 up to and including \$10,000

“Moderate” means more than \$10,000 up to and including \$50,000

“Substantial” means more than \$50,000 up to and including \$100,000

“Very Substantial” means more than \$100,000

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

No significant impact on public or private employment is expected, but expanded scope of practice for CNS is expected to create an economic benefit to the

licensees and potential employers, plus benefit to community from additional healthcare providers.

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

**(a) Identification of the small businesses subject to the rulemaking:**

Solo advanced practice nurses, particularly CNSs, small health care facilities, small nursing programs. No significant changes are anticipated, other than faster ability to get nurses working with temporary licenses, and CNS having increased scope of practice with implementation of statutory prescribing authority.

**(b) Administrative and other costs required for compliance with the proposed rulemaking:**

No additional costs for compliance, and no fees have changed.

**(c) Description of the methods that the agency may use to reduce the impact on small businesses:**

Eliminating paper filing requirements.

**(d) Probable cost and benefit to private persons and consumers who are directly affected by the rulemaking:**

The benefit to nurses trying to get temporary licenses may be a shortened waiting period, which would benefit both the individual nurses and their employers, with no discernable economic cost. The same analysis applies to the provisional approval permitted in these amendments for nursing programs.

There are close to 100,000 registered nurses in Arizona. There are approximately 170 CNS. This rulemaking will implement the statutory authority for the CNS to prescribe, but this impact is anticipated to be

minimal and positive in expanding the scope of practice. The other amendments are elimination of paper filing requirements, which reduces stakeholders' expenses, and more technical changes to address information, categories of advanced practice nurses, and terminology or minimal wording updates of the rules for clarity.

**6. Statement of probable effect on state revenues.**

Possible minimal tax revenue increase due to nurses being able to get temporary licenses more quickly, nursing programs being able to operate more quickly, and CNS being able to work in an expanded scope.

**7. Description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using non-selected alternatives:**

There is no less intrusive or costly alternative to the rulemaking.

**C. Explanation of limitations of the data and the methods that were employed in the attempt to obtain the data and a characterization of 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:**

None.

# *RULES OF THE STATE BOARD OF NURSING*

*ISSUED BY*

*ARIZONA STATE BOARD OF NURSING*

*PHOENIX, ARIZONA*

**Updated: June 3, 2019**

**See Historical Notes after each Rule Section for  
Official Effective Date of Rules**

## TITLE 4. PROFESSIONS AND OCCUPATIONS

### CHAPTER 19. BOARD OF NURSING

(Authority: A.R.S. § 32-1606 et seq.)

*September 30, 2019*

*Editor's Note: The Arizona State Board of Nursing amended Sections in this Chapter under an exemption from the provisions of A.R.S. Title 41, Chapter 6 under Laws 2015, Chapter 262 § 22. Exemption from A.R.S. Title 41, Chapter 6 means the Board was not required to submit proposed rules for publication in the Arizona Administrative Register, conduct a public hearing on the rules, or required to submit the rules for approval by the Governor's Regulatory Review Council. Refer to the historical notes for more information (Supp. 16-2).*

#### ARTICLE 1. DEFINITIONS AND TIME-FRAMES

*New Article 1, consisting of R4-19-101, adopted effective July 19, 1995 (Supp. 95-3).*

*Article 1, consisting of R4-19-101 through R4-19-102, repealed effective July 19, 1995 (Supp. 95-3).*

Section	
R4-19-101.	Definitions
R4-19-102.	Time-frames for Licensure, Certification, or Approval
Table 1.	Time-frames

## **ARTICLE 2. ARIZONA REGISTERED AND PRACTICAL NURSING PROGRAMS; REFRESHER PROGRAMS**

*Article 2, consisting of R4-19-201 through R4-19-214, adopted effective July 19, 1995 (Supp. 95-3).*

Section	
R4-19-201.	Organization and Administration
R4-19-202.	Repealed
R4-19-203.	Administrator; Qualifications and Duties
R4-19-204.	Repealed
R4-19-205.	Students; Policies and Admissions
R4-19-206.	Curriculum
R4-19-207.	New Programs; Proposal Approval; Provisional Approval
R4-19-208.	Full Approval of a New Nursing Program
R4-19-209.	Nursing Program Change
R4-19-210.	Renewal of Approval of Nursing Programs Not Accredited by a National Nursing Accrediting Agency
R4-19-211.	Unprofessional Conduct in a Nursing Program; Reinstatement or Reissuance
R4-19-212.	Repealed
R4-19-213.	Nursing Programs Holding National Program Accreditation; Changes in Accreditation
R4-19-214.	Pilot Programs for Innovative Approaches in Nursing Education
R4-19-215.	Voluntary Termination of a Nursing Program or a Refresher Program
R4-19-216.	Approval of a Refresher Program
R4-19-217	Distance Learning Nursing Programs; Out-of-State Nursing Programs

## **ARTICLE 3. LICENSURE**

*Article 3, consisting of R4-19-301 through R4-19-308, adopted effective July 19, 1995 (Supp. 95-3).*

Section	
R4-19-301.	Licensure by Examination
R4-19-302.	Licensure by Endorsement
R4-19-303.	Requirements for Credential Evaluation Service (CES)
R4-19-304.	Temporary License
R4-19-305.	License Renewal
R4-19-306.	Inactive License
R4-19-307.	Repealed
R4-19-308.	Change of Name or Address
R4-19-309.	School Nurse Certification Requirements
R4-19-310.	Certified Registered Nurse
R4-19-311.	Nurse Licensure Compact
R4-19-312.	Practice Requirement
R4-19-313	Background

## **ARTICLE 4. REGULATION**

*Article 4, consisting of R4-19-401 through R4-19-404, adopted effective July 19, 1995 (Supp. 95-3).*

Section	
R4-19-401.	Standards Related to Licensed Practical Nurse Scope of Practice
R4-19-402.	Standards Related to Registered Nurse Scope of Practice
R4-19-403.	Unprofessional Conduct
R4-19-404.	Re-issuance or Subsequent Issuance of License
R4-19-405.	Board-ordered Evaluations

## **ARTICLE 5. ADVANCED PRACTICE REGISTERED NURSING**

Section	
R4-19-501.	Roles and Population Foci of Advanced Practice Registered Nursing (APRN); Certification Programs
R4-19-502.	Requirements for APRN Programs
R4-19-503.	Application for Approval of an Advanced Practice Registered Nursing Program; Approval by Board
R4-19-504.	Notice of Deficiency; Unprofessional Program Conduct
R4-19-505.	Requirements for Initial APRN Certification
R4-19-506.	Expiration of APRN Certificate; Practice Requirement; Renewal
R4-19-507.	Temporary Advanced Practice Certificate; Temporary Prescribing and Dispensing Authority
R4-19-508.	Standards Related to Registered Nurse Practitioner Scope of Practice
R4-19-509.	Delegation to Medical Assistants
R4-19-510.	Expired

- R4-19-511. Prescribing and Dispensing Authority; Prohibited Acts
- R4-19-512. Prescribing Drugs and Devices
- R4-19-513. Dispensing Drugs and Devices
- R4-19-514. Standards Related to Clinical Nurse Specialist Scope of Practice
- R4-19-515. Repealed
- R4-19-516. Repealed

#### **ARTICLE 6. RULES OF PRACTICE AND PROCEDURE**

*Article 6, consisting of R4-19-601 through R4-19-615, adopted effective October 10, 1996 (Supp. 96-4).*

- Section
- R4-19-601. Expired
- R4-19-602. Letter of Concern
- R4-19-603. Representation
- R4-19-604. Notice of Hearing; Response
- R4-19-605. Expired
- R4-19-606. Expired
- R4-19-607. Recommended Decision
- R4-19-608. Rehearing or Review of Decision
- R4-19-609. Effectiveness of Orders
- R4-19-610. Expired
- R4-19-611. Expired
- R4-19-612. Renumbered
- R4-19-613. Expired
- R4-19-614. Renumbered
- R4-19-615. Renumbered

#### **ARTICLE 7. PUBLIC PARTICIPATION PROCEDURES**

*Article 7, consisting of R4-19-701 through R4-19-706, adopted effective October 10, 1996 (Supp. 96-4).*

- Section
- R4-19-701. Expired
- R4-19-702. Petition for Rulemaking; Review of Agency Practice or Substantive Policy Statement; Objection to Rule Based Upon Economic, Small Business, or Consumer Impact
- R4-19-703. Oral Proceedings
- R4-19-704. Petition for Altered Effective Date
- R4-19-705. Written Criticism of an Existing Rule
- R4-19-706. Renumbered

#### **ARTICLE 8. CERTIFIED AND LICENSED NURSING ASSISTANTS AND CERTIFIED MEDICATION ASSISTANTS**

*Article 8, consisting of Sections R4-19-801 through R4-19-815, adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1).*

- Section
- R4-19-801. Common Standards for Nursing Assistant (NA) and Certified Medication Assistant (CMA) Training Programs
- R4-19-802. Nursing Assistant (NA) Program Requirements
- R4-19-803. Certified Medication Assistant Program Requirements
- R4-19-804. Initial Approval and Re-approval Training Programs
- R4-19-805. Deficiencies and Rescission of Program Approval, Unprofessional Program Conduct, Voluntary Termination, Disciplinary Action, and Reinstatement
- R4-19-806. Initial Nursing Assistant Licensure and Medication Assistant Certification
- R4-19-807. Nursing Assistant Licensure and Medication Assistant Certification by Endorsement
- R4-19-808. Fees Related to Certified Medication Assistant
- R4-19-809. Nursing Assistant Licensure and Medication Assistant Certificate Renewal
- R4-19-810. Certified Nursing Assistant Registry; Licensed Nursing Assistant Registry
- R4-19-811. Repealed
- R4-19-812. Change of Name or Address
- R4-19-813. Performance of Nursing Assistant Tasks; Performance of Medication Assistant Tasks
- R4-19-814. Standards of Conduct for Licensed Nursing Assistants and Certified Medication Assistants
- R4-19-815. Reissuance or Subsequent Issuance of a Nursing Assistant License or Medication Assistant Certificate

#### **ARTICLE 1. DEFINITIONS AND TIME-FRAMES**

##### **R4-19-101. Definitions**

In addition to the definitions in A.R.S. § 32-1601, in this Chapter:

"Abuse" means a misuse of power or betrayal of trust, respect, or intimacy by a nurse, nursing assistant, or applicant that causes or is likely to cause physical, mental, emotional, or financial harm to a client.

"Administer" means the direct application of a medication to the body of a patient by a nurse, whether by injection, inhalation, ingestion, or any other means.

"Admission cohort" means a group of students admitted at the same time to the same curriculum in a regulated nursing, nursing assistant, or advanced practice nursing program or entering the first clinical course in a regulated program at the same time. "Same time" means on the same date or within a narrow range of dates pre-defined by the program.

"Applicant" means a person seeking licensure, certification, prescribing, or prescribing and dispensing privileges, or an entity seeking approval or re-approval, if applicable, of a:

- CNS or RNP nursing program,
- Credential evaluation service,
- Nursing assistant training program,
- Nursing program,
- Nursing program change, or
- Refresher program.

"Approved national nursing accrediting agency" means an organization recognized by the United States Department of Education as an accrediting agency for a nursing program.

"Assign" means a nurse designates nursing activities to be performed by another nurse that are consistent with the other nurse's scope of practice.

"Certificate or diploma in practical nursing" means the document awarded to a graduate of an educational program in practical nursing.

"Certified medication assistant" means a certified nursing assistant who meets Board qualifications and is additionally certified by the Board to administer medications under A.R.S. § 32-1650 et. seq.

"CES" means credential evaluation service.

"Client" means a recipient of care and may be an individual, family, group, or community.

"Clinical instruction" means the guidance and supervision provided by a nursing, nursing assistant or medication assistant program faculty member while a student is providing client care.

"CMA" means certified medication assistant.

"CNA" means a certified nursing assistant, as defined in A.R.S § 32-1601(4).

"CNS" means clinical nurse specialist, as defined in A.R.S. § 32-1601(7).

"Collaborate" means to establish a relationship for consultation or referral with one or more licensed physicians on an as-needed basis. Supervision of the activities of a registered nurse practitioner by the collaborating physician is not required.

"Contact hour" means a unit of organized learning, which may be either clinical or didactic and is either 60 minutes in length or is otherwise defined by an accrediting agency recognized by the Board.

"Continuing education activity" means a course of study related to nursing practice that is awarded contact hours by an accrediting agency recognized by the Board, or academic credits in nursing or medicine by a regionally or nationally accredited college or university.

"CRNA" means a certified registered nurse anesthetist as defined in A.R.S. § 32-1601 (6).

"DEA" means the federal Drug Enforcement Administration.

"Dispense" means to deliver a controlled substance or legend drug to an ultimate user.

"Dual relationship" means a nurse or CNA simultaneously engages in both a professional and nonprofessional relationship with a patient or resident or a patient's or resident's family that is avoidable, non-incident, and results in the patient or resident or the patient's or resident's family being exploited financially, emotionally, or sexually.

"Eligibility for graduation" means that the applicant has successfully completed all program and institutional requirements for receiving a degree or diploma but is delayed in receiving the degree or diploma due to the graduation schedule of the institution.

"Endorsement" means the procedure for granting an Arizona nursing license to an applicant who is already licensed as a nurse in another state or territory of the United States and has passed an exam as required by A.R.S. §§ 32-1633 or 32-1638 or an Arizona nursing assistant or medication assistant certificate to an applicant who is already listed on a nurse aide register or certified as a medication assistant in another state or territory of the United States.

"Episodic nursing care" means nursing care at nonspecific intervals that is focused on the current needs of the individual.

"Failure to maintain professional boundaries" means any conduct or behavior of a nurse or CNA that, regardless of the nurse's or CNA's intention, is likely to lessen the benefit of care to a patient or resident or a patient's or resident's family or places the patient, resident or the patient's or resident's family at risk of being exploited financially, emotionally, or sexually;

"Family", as applied to R4-9-511, means individuals who are related by blood, marriage, adoption, legal guardianship, or domestic partnership, or who are cohabitating or romantically involved.

"Full approval" means the status granted by the Board when a nursing program, after graduation of its first class, demonstrates the ability to

provide and maintain a program in accordance with the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter.

"Good standing" means the license of a nurse, or the certificate of a nursing assistant, is current, and the nurse or nursing assistant is not presently subject to any disciplinary action, consent order, or settlement agreement.

"Independent nursing activities" means nursing care within an RN's scope of practice that does not require authorization from another health professional.

"Initial approval" means the permission, granted by the Board, to an entity to establish a nursing assistant training program, after the Board determines that the program meets the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter.

"Licensure by examination" means the granting of permission to practice nursing based on an individual's passing of a prescribed examination and meeting all other licensure requirements.

"LPN" means licensed practical nurse.

"NCLEX" means the National Council Licensure Examination.

"Nurse" means a licensed practical or registered nurse.

"Nursing diagnosis" means a clinical judgment, based on analysis of comprehensive assessment data, about a client's response to actual and potential health problems or life processes. Nursing diagnosis statements include the actual or potential problem, etiology or risk factors, and defining characteristics, if any.

"Nursing process" means applying problem-solving techniques that require technical and scientific knowledge, good judgment, and decision-making skills to assess, plan, implement, and evaluate a plan of care.

"Nursing program" means a formal course of instruction designed to prepare its graduates for licensure as registered or practical nurses.

"Nursing program administrator" means a nurse educator who meets the requirements of A.R.S. Title 32, Chapter 15 and this Chapter and has the administrative responsibility and authority for the direction of a nursing program.

"Nursing program faculty member" means an individual working full or part time within a nursing program who is responsible for either developing, implementing, teaching, evaluating, or updating nursing knowledge, clinical skills, or curricula.

"Nursing-related activities or duties" means client care tasks for which education is provided by a basic nursing assistant training program.

"P & D" means prescribing and dispensing.

"Parent institution" means the educational institution in which a nursing program, or nursing assistant training program or medication assistant program is conducted.

"Patient" means an individual recipient of care.

"Pharmacology" means the science that deals with the study of drugs.

"Physician" means a person licensed under A.R.S. Title 32, Chapters 7, 8, 11, 13, 14, 17, or 29, or by a state medical board in the United States.

"Preceptor" means a licensed nurse or other health professional who meets the requirements of A.R.S. Title 32, Chapter 15 and this Chapter who instructs, supervises and evaluates a licensee, clinical nurse specialist, nurse practitioner or pre-licensure nursing student, for a defined period.

"Preceptorship" means a clinical learning experience by which a learner enrolled in a nursing program, nurse refresher program, clinical nurse specialist, or registered nurse practitioner program or as part of a Board order provides nursing care while assigned to a health professional who holds a license or certificate equivalent to or higher than the level of the learner's program or in the case of a nurse under Board order, meets the qualifications in the Board order.

"Prescribe" means to order a medication, medical device, or appliance for use by a patient.

"Private business" means any individual or sole proprietorship, partnership, limited liability partnership, limited liability company, corporation or other legal business entity.

"Proposal approval" means that an institution has met the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter to proceed with an application for provisional approval to establish a pre-licensure nursing program in Arizona.

"Provisional approval" means that an institution has met the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter to implement a pre-licensure nursing program in Arizona.

"Refresher program" means a formal course of instruction designed to provide a review and update of nursing theory and practice.

"Register" means a listing of Arizona certified nursing assistants maintained by the Board that includes the following about each nursing assistant:

- Identifying demographic information;
- Date placed on the register;
- Date of initial and most recent certification, if applicable; and
- Status of the nursing assistant certificate, including findings of abuse, neglect, or misappropriation of property made by the Arizona Department of Health Services, sanctions imposed by the United States Department of Health and Human Services, and disciplinary actions by the Board.

"Resident" means a patient who receives care in a long-term care facility or other residential setting.

"RN" means registered nurse.

"RNP" means a registered nurse practitioner as defined in A.R.S. § 32-1601(20).

"SBTPE" means the State Board Test Pool Examination.

"School nurse" means a registered nurse who is certified under R4-19-309.

"Secure examination" means a written test given to an examinee that:

Is administered under conditions designed to prevent cheating;

Is taken by an individual examinee without access to aides, textbooks, other students or any other material that could influence the examinee's score; and,

After opportunity for examinee review, is either never used again or stored such that only designated employees of the educational institution are permitted to access the test.

"Self-study" means a written self-evaluation conducted by a nursing program to assess the compliance of the program with the standards listed in Article 2.

"Standards related to scope of practice" means the expected actions of any nurse who holds the identified level of licensure.

"Substance use disorder" means misuse, dependence or addiction to alcohol, illegal drugs or other substances.

"Supervision" means the direction and periodic consultation provided to an individual to whom a nursing task or patient care activity is delegated.

"Unlicensed assistive personnel" or "UAP" means a CNA or any other unlicensed person, regardless of title, to whom nursing tasks are delegated.

"Verified application" means an affidavit signed by the applicant attesting to the truthfulness and completeness of the application and includes an oath that applicant will conform to ethical professional standards and obey the laws and rules of the Board.

#### Historical Note

Former Glossary of Terms; Amended effective Nov. 17, 1978 (Supp. 78-6). Former Section R4-19-01 repealed, new Section R4-19-01 adopted effective February 20, 1980 (Supp. 80-1). Amended paragraphs (1) and (7), added paragraphs (9) through (25) effective July 16, 1984 (Supp. 84-4). Former Section R4-19-01 renumbered as Section R4-19-101 (Supp. 86-1). Amended effective November 18, 1994 (Supp. 94-4). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended effective December 22, 1995 (Supp. 95-4). Amended effective November 25, 1996 (Supp. 96-4). Amended by final rulemaking at 7 A.A.R. 1712, effective April 4, 2001 (Supp. 01-2). Amended by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citations in the definitions of "CNA" "CNS" and "RNP" have been updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1308 effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). A.R.S. section references updated under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 1420, effective July 1, 2017 (Supp. 17-2). When amended in Supp. 19-2 the Board inadvertently omitted the definition of "Full Approval" as "No Change" in its notice at 25 A.A.R. 919. The definition was included in Supp. 19-2 (Supp. 19-3).

#### **R4-19-102. Time-frames for Licensure, Certification, or Approval**

A. In this Section:

1. "Administrative completeness" or "administratively complete" means Board receipt of all application components required by statute or rule and necessary to begin the substantive review time-frame.
2. "Application packet" means an application form provided by the Board and the documentation necessary to establish an applicant's qualifications for licensure, certification, or approval.
3. "Comprehensive written request for additional information" means written communication after the administrative completeness time-frame by the Board to an applicant in person or at the mailing or electronic address identified on the application notifying the applicant that additional information, including missing documents is needed before the Board can grant the license. The written communication shall:
  - a. Contain a list of information required by statute or rule and necessary to complete the application or grant the license, and
  - b. Inform the applicant that the request suspends the running of days within the time-frame, and
  - c. Be effective on the date of issuance which is:
    - i. The date of its postmark, if mailed;
    - ii. The date of delivery, if delivered in person by a Board employee or agent; or
    - iii. The date of delivery to the electronic address if delivered electronically.
4. "Deficiency notice" means written communication by the Board to an applicant in person or at the mailing or electronic address identified on the application notifying the applicant that additional information, including missing documents, is needed to complete the application. The written communication shall:
  - a. Contain a list of information required by statute or rule and necessary to complete the application or grant the license;
  - b. Inform the applicant that the request suspends the running of days within the time-frame; and
  - c. Be effective on the date of issuance which is:
    - i. The date of its postmark, if mailed;
    - ii. The date of delivery, if delivered in person by a Board employee or agent; or
    - iii. The date of delivery to the electronic address if delivered electronically.
5. "Notice of administrative completeness" means written communication by the Board to an applicant in person or at the

mailing or electronic address identified on the application notifying the applicant the application contains all information required by statute or rule to complete the application.

6. "Overall time-frame" has the same meaning as A.R.S. § 41-1072(2).
  7. "Substantive review time-frame" has the same meaning as A.R.S. § 41-1072(3).
- B.** In computing the time-frames in this Section, the day of the act or event from which the designated period begins to run is not included. The last day of the period is included unless it is a Saturday, Sunday, or official state holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or official state holiday.
- C.** For each type of licensure, certification, or approval issued by the Board, the overall time-frame described in A.R.S. § 41-1072(2) is listed in Table 1. An applicant may submit a written request to the Board for an extension of time in which to provide a complete application. The request for an extension of time shall be submitted to the Board office before the deadline for submission of a complete application and shall state the reason that the applicant is unable to comply with the time-frame requirements in Table 1 and the amount of additional time requested. The Board may grant an extension of time based on whether the Executive Director of the Board finds that the applicant is unable to comply within the time-frame due to circumstances beyond the applicant's control and that the additional information can reasonably be supplied during the extension of time.
- D.** For each type of licensure, certification, or approval issued by the Board, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is listed in Table 1 and begins to run when the Board receives an application packet.
1. If the application packet is not administratively complete, the Board shall send a deficiency notice to the applicant. The time for the applicant to respond to a deficiency notice begins to run on the date the deficiency notice is issued.
    - a. The deficiency notice shall list each deficiency.
    - b. The applicant shall submit to the Board the missing information listed in the deficiency notice within the period specified in Table 1 for responding to a deficiency notice. The time-frame for the Board to complete the administrative review is suspended until the Board receives the missing information.
    - c. If an applicant fails to provide the missing information listed in the deficiency notice within the period specified in Table 1, the Board shall close the applicant's file and send a notice to the applicant by U.S. mail and electronically, if an electronic address is included in the application.
    - d. If the applicant is the subject of an investigation, the Board may continue to process the application. Failure of the applicant to supply the requested information may result in denial of the license or certificate based on information gathered during the investigation.
  2. If the application packet is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.
  3. If the Board issues a license, certificate, or approval during the administrative completeness review time-frame, the Board shall not send a separate written notice of administrative completeness.
- E.** For each type of licensure, certification, or approval issued by the Board, the substantive review time-frame described in A.R.S. § 41-1072(3) is listed in Table 1 and begins to run on the date the notice of administrative completeness is issued.
1. During the substantive review time-frame, an applicant may make a request to withdraw an application packet. The Board may deny the request to withdraw an application packet if the applicant is the subject of an investigation, based on information gathered during the investigation.
  2. If an applicant discloses or the Board receives allegations of unprofessional conduct as described in A.R.S. § 32-1601 or this Chapter, the Board shall review the allegations and may investigate the applicant. The Board may require the applicant to provide additional information as prescribed in subsection (E)(3) based on its assessment of whether the conduct is or might be harmful or dangerous to the health of a client or the public.
  3. During the substantive review time-frame, the Board may make one comprehensive written request for additional information. The applicant shall submit the additional information within the period specified in Table 1. The time-frame for the Board to complete the substantive review of the application packet is suspended from the date the comprehensive written request for additional information is issued until the Board receives the additional information.
  4. If the applicant fails to provide the additional information identified in the comprehensive written request for additional information within the time specified in Table 1, the Board shall close the applicant's file and send a notice to the applicant by U.S. mail and electronically, if an electronic address is included in the application. The Board may continue to process the application if the applicant is the subject of an investigation. Failure of the applicant to supply the requested information may result in denial of the license or certificate based on information gathered during the investigation.
  5. The Board shall grant licensure, conditional licensure, limited licensure, certification, or approval to an applicant:
    - a. Who meets the substantive criteria for licensure, certification, or approval required by A.R.S. Title 32, Chapter 15 and this Chapter; and
    - b. Whose licensure, certification, or approval is in the best interest of the public.
  6. The Board shall deny licensure, certification, or approval to an applicant:
    - a. Who fails to meet the substantive criteria for licensure, certification, or approval required by A.R.S. Title 32, Chapter 15 and this Chapter; or
    - b. Who has engaged in unprofessional conduct as described in A.R.S. § 32-1601 or this Chapter; and
    - c. Whose licensure, certification, or approval is not in the best interest of the public.
  7. The Board's written order of denial shall meet the requirements of A.R.S. § 41-1076. The applicant may request a hearing by filing a written request with the Board within 30 days of receipt of the Board's order of denial. The Board shall conduct hearings in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

#### **Historical Note**

Adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-02 renumbered and amended as Section R4-19-102 effective February 21, 1986 (Supp. 86-1). Section repealed effective July 19, 1995 (Supp. 95-3). New Section adopted April 20, 1998 (Supp. 98-2). Amended by final rulemaking at 7 A.A.R. 1712, effective April 4, 2001 (Supp. 01-2). Amended by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4).

**Table 1. Time-frames**

Time-frames (in days)

Type of License, Certificate, or Approval	Applicable Statute and Section	Board Overall Time-frame Without Investigation	Board Overall Time-frame With Investigation	Board Administrative Review Completeness Review Time-frame	Applicant Time to Respond to Deficiency Notice	Board Substantive Review Time-frame Without Investigation	Board Substantive Review Time-frame With Investigation	Applicant Time to Respond to Comprehensive Written Request
Nursing Program Proposal Approval	A.R.S. §§ 32-1606(B)(2), 32-1644; R4-19-207	150	Not Applicable	60	180	90	Not applicable	120
Nursing Program Provisional Approval	A.R.S. §§ 32-1606(B)(2), 32-1644; R4-19-207	150	Not applicable	60	180	90	Not applicable	120
Nursing Program Full Approval or Re-approval	A.R.S. §§ 32-1606(B)(2), 32-1644; R4-19-208, R4-19-210	150	Not applicable	60	180	90	Not applicable	120
Nursing Program Change	A.R.S. § 32-1606(B)(1); R4-19-209	150	Not applicable	60	180	90	Not applicable	120
Refresher Program Approval or Re-approval	A.R.S. § 32-1606(B)(21); R4-19-216	150	Not applicable	60	180	90	No applicable	120
CNS or RNP Nursing Program Approval or Re-approval	A.R.S. §§ 32-1606(B)(18), 32-1644; R4-19-503	150	Not applicable	60	180	90	Not applicable	120
Credential Evaluation Service Approval or Re-approval	A.R.S. §§ 32-1634.01(A)(1), 32-1634.02(A)(1), 32-1639.01(1), 32-1639.02(1); R4-19-303	90	Not applicable	30	180	60	Not applicable	120
Licensure by Exam	A.R.S. §§ 32-1606(B)(5), 32-1633, 32-1638, and R4-19-301	150	270	30	270	120	240	150
Licensure by Endorsement	A.R.S. §§ 32-1606(B)(5), 32-1634, 32-1639, and R4-19-302	150	270	30	270	120	240	150
Temporary License or Renewal	A.R.S. §§ 32-1605.01(B)(3), 32-1635, 32-1640; R4-19-304	60	90	30	60	30	60	90
License Renewal	A.R.S. §§ 32-1606(B)(5), 32-1642; R4-19-305	120	270	30	270	90	240	150
School Nurse Certification or Renewal	A.R.S. §§ 32-1606(B)(13), 32-1643(A)(8); R4-19-309	150	270	30	270	120	240	150
Re-issuance or Subsequent Issuance of License	A.R.S. § 32-1664(O); R4-19-404	150	270	30	270	120	240	150
Registered Nurse Practitioner Certification or Renewal	A.R.S. §§ 32-1601(19), 32-1606(B)(21); R4-19-505, R4-19-506	150	270	30	270	120	240	150
RNP Prescribing and Dispensing Privilege	A.R.S. § 32-1601(19); R4-19-511	150	270	30	270	120	240	150
CNS Certification or Renewal	A.R.S. §§ 32-1601(6), 32-1606(B)(21); R4-19-505, R4-19-506	150	270	30	270	120	240	150
CRNA Certification or Renewal	A.R.S. § 32-1634-.03; R4-19-505; R4-19-506	150	270	30	270	120	240	150
Temporary RNP, CRNA or CNS Certificate or Renewal	A.R.S. § 32-1635.01, 32-1634.03; R4-19-507	60	Not applicable	30	60	30	Not applicable	60
Nursing Assistant and Medication Assistant Training Programs Approval or Re-approval	A.R.S. § 32-1606(B)(11), 32-1650.01; R4-19-803, R4-19-804	120	Not applicable	30	180	90	Not applicable	120
Licensed or Certified Nursing Assistant and Medication Assistant Certification by Examination	A.R.S. §§ 32-1606(B)(11), 32-1647, 32-1650.02, 32-1650.03; R4-19-806	150	270	30	270	120	240	150
Licensed or Certified Nursing Assistant and Medication Assistant Certification by Endorsement	A.R.S. §§ 32-1606(B)(11), 32-1648, 32-1650.04; R4-19-807	150	270	30	270	120	240	150
Licensed or Certified Nursing	A.R.S. § 32-							

Assistant and Certified Medication Assistant Renewal	1606(B)(11); R4-19-809	120	270	30	270	90	240	150
Re-issuance or Subsequent Issuance of a Nursing Assistant License	A.R.S. § 32-1664(O); R4-19-815	150	270	30	270	120	240	150

### Historical Note

Table 1 adopted effective April 20, 1998 (Supp. 98-2). Amended by final rulemaking at 7 A.A.R. 1712, effective April 4, 2001 (Supp. 01-2). Table 1 amended by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citations in column two of “Registered Nurse Practitioner Certification or Renewal,” “RNP Prescribing and Dispensing Privilege,” and “CNS Certification or Renewal” have been updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1308 effective July 6, 2013 (Supp. 13-2). A.R.S. Section and Chapter Section references updated under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3) Amended by final rulemaking at 23 A.A.R. 1420, effective July 1, 2017 (Supp. 17-2).

## ARTICLE 2. ARIZONA REGISTERED AND PRACTICAL NURSING PROGRAMS; REFRESHER PROGRAMS

### R4-19-201. Organization and Administration

- A.** The parent institution of a nursing program shall:
1. Be accredited as a post-secondary institution, college, or university, by an accrediting body that is recognized as an accrediting body by the U.S. Department of Education.
  2. Hold Arizona Private Post-secondary board approval status, if applicable.
  3. Submit evidence to the board of continuing accreditation after each reaccreditation review or action.
  4. Operate any RN or PN program under its post-secondary accreditation if the parent institution holds both secondary and post-secondary accreditation.
  5. Notify the Board within 15 days of any change or pending change in institutional accreditation status or reporting requirements.
  6. Provide adequate fiscal, physical, learning resources and adequate human resources to recruit, employ and retain sufficient numbers of qualified faculty members to support program processes and outcomes necessary for compliance with this Article.
  7. Center the administrative control of the nursing program in the nursing program administrator and shall provide the support and resources necessary to meet the requirements of R4-19-203 and R4-19-204.
  8. Ensure that the nursing program is an integral part of the parent institution and shall have at a minimum equivalent status with other academic units of the parent institution.
  9. Appoint a sole individual to the position of nursing program administrator, and fill any program administrator vacancies within 15 days.
  10. Notify the Board of any changes in program administrator within 30 days and ensure that the individual appointed meets the requirements of, and fulfills the duties specified in R4-19-203.
  11. Ensure that every registered nursing program faculty member holds a current Arizona registered nurse license in good standing or multi-state privilege to practice in Arizona under A.R.S., Title 32, Chapter 15, and that every faculty member meets one of the following:
    - a. If providing didactic instruction:
      - i. At least two years of experience as a registered nurse providing direct patient care; and
      - ii. A graduate degree. The majority of the faculty members of a registered nursing program shall hold a graduate degree with a major in nursing. If the graduate degree is not in nursing, the faculty member shall hold a minimum of a baccalaureate degree in nursing.
    - b. If providing clinical instruction only, as defined in R4-19-101:
      - i. The requirements for didactic faculty, or
      - ii. A baccalaureate degree with a major in nursing and at least three years of experience as a registered nurse providing direct patient care.
  12. Ensure that each practical nursing program faculty member holds a current Arizona registered nurse license in good standing or multi-state privilege to practice in Arizona under A.R.S. Title 32, Chapter 15, and that every faculty member meets the following:
    - a. At least two years of experience as a registered nurse providing direct patient care, and
    - b. A minimum of a baccalaureate degree with a major in nursing.
- B.** A nursing program shall:
1. Maintain an organizational chart that identifies the actual relationships, lines of authority, and channels of communication within the program, between the program, and between the program and the parent institution.
  2. Develop, implement, and enforce written policies and procedures that provide:
    - a. A mechanism for student feedback into the development of academic policies and procedures and allow students to anonymously evaluate faculty, nursing courses, clinical experiences, resources and the overall program.
    - b. Personnel policies for didactic and clinical nursing faculty members including workload policies that facilitate safe and effective nursing education, including clinical experiences.
    - c. For clinical experiences, ensure that:
      - i. At least one nursing faculty member is assigned to no more than ten students while students are directly or indirectly involved in the care of patients, including precepted experiences.
      - ii. Faculty supervises all students in clinical areas in accordance with the acuity of the patient population, clinical

- objectives, demonstrated competencies of the student, and requirements established by the clinical agency.
- iii. Either faculty or program-approved preceptors are on site supervising students during all patient care.
3. Provide the minimum number of qualified faculty members necessary for compliance with the provisions of this Article.
  4. Develop and implement a written plan for the systematic evaluation of the total program that is based on program and student learning outcomes and that incorporates continuous improvement based on the evaluative data. The plan shall include measurable outcome criteria, logical methodology, frequency of evaluation, assignment of responsibility, actual outcomes and actions taken. The following areas shall be evaluated:
    - a. Internal structure of the program, its relationship to the parent institution, and compatibility of program policies and procedures with those of the parent institution;
    - b. Mission and goals consistent with those of the parent institution and compatible with current concepts in nursing education and practice appropriate for the type of nursing program offered;
    - c. Curriculum;
    - d. Education facilities, resources, and student support services;
    - e. Clinical resources;
    - f. Student achievement of program educational outcomes;
    - g. Admission and graduation data for each admission cohort, including, at a minimum, the number and percent of students who graduated within 100%, 150% or greater than 150% of time allotted in the curriculum plan.
    - h. Graduate performance on the licensing examination;
    - i. Protection of patient safety including but not limited to:
      - i. Student and faculty policies regarding supervision of students, practicing within scope and student safe practice;
      - ii. The integration of safety concepts within the curriculum;
      - iii. The application of safety concepts in the clinical setting; and
      - iv. Policies made under R4-19-203(C)(6).
  5. Maintain current and accurate records of the following:
    - a. Student admission materials, courses taken, grades received, scores in any standardized tests taken, health and performance, and health information submitted to meet program or clinical requirements, for a minimum of three years after the fiscal year of program completion for academic records and one year after program completion for health records;
    - b. Faculty registered nursing license number issued by the board, evidence of fulfilling the requirements in R4-19-204, and performance evaluations for faculty employed by the parent institution. Records shall be kept current during the period of employment and retained for a minimum of three years after termination of employment;
    - c. Minutes of faculty and committee meetings for a minimum of three years;
    - d. Reports from accrediting agencies and the Board for a minimum of 10 years;
    - e. Curricular materials consistent with the requirements of R4-19-206 for the current curriculum and, previous curricula used within the past three years; and
    - f. Formal program complaints and grievances since the last site review with evidence of resolution for a minimum of three years.
- C.** Prior to final approval for new nursing programs and by July 31, 2015 for existing programs, all RN nursing programs offering less than a bachelor's degree in nursing shall have a minimum of one articulation agreement with a Board approved and nationally accredited baccalaureate or higher nursing program that includes recognition of prior learning in nursing and recognition of foundational courses.

#### **Historical Note**

Former Section I, Part I; Amended effective January 20, 1975 (Supp. 75-1). Former Section R4-19-11 repealed, new Section R4-19-11 adopted effective February 20, 1980 (Supp. 80-1). Amended effective July 16, 1984 (Supp. 84-4). Former Section R4-19-11 renumbered as Section R4-19-201 (Supp. 86-1). Section repealed; new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 23 A.A.R. 1420, effective July 1, 2017 (Supp. 17-2). Amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

#### **R4-19-202. Repealed**

#### **Historical Note**

Former Section I, Part II; Former Section R4-19-12 repealed, new Section R4-19-12 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-12 repealed, new Section R4-19-12 adopted effective July 16, 1984 (Supp. 84-4). Former Section R4-19-12 renumbered as Section R4-19-202 (Supp. 86-1). Section repealed; new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2). Repealed by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

#### **R4-19-203. Administrator; Qualifications and Duties**

- A.** The nursing program administrator shall hold a current Arizona registered nurse license in good standing or multi-state privilege to practice in Arizona under A.R.S., Title 32, Chapter 15 and:
1. For registered nursing programs:
    - a. A graduate degree with a major in nursing;

- b. A minimum of three years work experience as a registered nurse providing direct patient care; and
  - c. If appointed to the position of nursing program administrator on or after the effective date of these rules, have a minimum of one academic year fulltime experience teaching in or administering a nursing education program leading to licensure; or
2. For practical nursing programs:
- a. If appointed prior to the effective date of these rules, a baccalaureate degree with a major in nursing; and
  - b. If appointed on or after the effective date of these rules, the requirements of subsection (A)(1).
- B.** The administrator shall have comparable status with other program administrators in the parent institution and shall report directly to an academic officer of the institution.
- C.** The administrator shall have the authority and responsibility to direct the program in all its phases, including:
- 1. Administering the nursing education program;
  - 2. Directing activities related to academics, personnel, curriculum, resources, facilities, services, program policies, and program evaluation;
  - 3. Preparing and administering the budget;
  - 4. Evaluating nursing program faculty members at a minimum:
    - a. Annually in the first year of employment and every three years thereafter;
    - b. Upon receipt of information that a faculty member, in conjunction with performance of their duties, may be engaged in conduct that is or might be:
      - i. Below a pattern of conduct the standards of the program or the parent institution,
      - ii. A pattern of conduct that is inconsistent with nursing professional standards, or
      - iii. Any conduct that is potentially or actually harmful to a patient or a student.
    - c. In the areas of teaching ability and application of nursing knowledge and skills relative to the teaching assignment.
  - 5. Together with faculty:
    - a. Developing, implementing, consistently enforcing, evaluating, and revising, as necessary:
      - i. Equivalent student and faculty policies necessary for safe patient care, including faculty supervision of clinical activities, and to meet clinical agency requirements regarding student and faculty physical and mental health, criminal background checks, substance use screens, and functional abilities.
      - ii. The program of learning including the curriculum and learning outcomes of the program, standards for the admission, progression, and graduation of students, and written policies for faculty orientation, continuous learning and evaluation.
      - iii. Student and faculty policies regarding minimal requisite nursing skills and knowledge necessary to provide safe patient care for the type of unit and patient assignment.
    - b. Participating in advisement and guidance of students.
  - 6. Participating in activities that contribute to the governance of the parent institution.

#### **Historical Note**

Former Section I, Part III; Former Section R4-19-13 repealed, new Section R4-19-13 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-13 repealed, new Section R4-19-13 adopted effective July 16, 1984 (Supp. 84-4). Former Section R4-19-13 renumbered as Section R4-19-203 (Supp. 86-1). Section repealed; new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2). The numbering outline under R4-19-203(C) has been corrected at the request of the Board, file number R20-02 (Supp. 19-3).

#### **R4-19-204. Repealed**

#### **Historical Note**

Former Section I, Part IV; Former Section R4-19-14 repealed, new Section R4-19-14 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-14 repealed, new Section R4-19-14 adopted effective July 16, 1984 (Supp. 84-4). Former Section R4-19-14 renumbered as Section R4-19-204 (Supp. 86-1). Section repealed; new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2). Repealed by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

#### **R4-19-205. Students; Policies and Admissions**

- A.** The number of students admitted to a nursing program shall be determined by the number of qualified faculty, the size, number and availability of educational facilities and resources, and the availability of the appropriate clinical learning experiences for students.
- B.** A nursing program shall implement written student admission and progression requirements that are evidence-based, allow for a variety of clinical experiences and satisfy the licensure criteria of A.R.S. Title 32, Chapter 15 and A.A.C. Title 4 Chapter 19.
- C.** A nursing program and parent institution shall:
  - 1. Develop and enforce written policies that are readily available to:
    - a. Students, in either the college catalogue or nursing student handbook, that address student rights, responsibilities, grievance processes, health, safety; and
    - b. Students and the public, for policies regarding, admission, readmission, transfer, advanced placement, progression, graduation, withdrawal, and dismissal.
  - 2. Provide accurate and complete written information that is readily available to all students and the general public about the program, including:
    - a. The nature of the program, including course sequence, prerequisites, co-requisites and academic standards;

- b. The length of the program;
  - c. Total program costs including tuition, fees and all program related expenses;
  - d. The transferability of credits to other public and private educational institutions in Arizona; and
  - e. A clear statement regarding any technology based instruction and the technical support provided to students.
- D.** A nursing program shall communicate changes in policies, procedures and program information clearly to all students, prospective students and the public and provide advance notice in a time-frame that allows those who are or may be affected to comply with the changes.

#### **Historical Note**

Adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-15 repealed, new Section R4-19-15 adopted effective July 16, 1984 (Supp. 84-4). Former Section R4-19-15 renumbered as Section R4-19-205 (Supp. 86-1). Section repealed; new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4).

Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 23 A.A.R. 1420, effective July 1, 2017 (Supp. 17-2).) Amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

#### **R4-19-206. Curriculum**

- A.** A nursing program shall provide a written program curriculum to students that includes:
- 1. Student centered outcomes for the program;
  - 2. A curriculum plan that identifies the prescribed course sequencing and time required;
  - 3. Specific course information that includes:
    - a. A course description and outline including student centered and measurable didactic, clinical, and simulation objectives, if applicable, for each unit of instruction;
    - b. Graded activities to demonstrate that course objectives have been met.
- B.** A nursing program administrator and faculty members shall ensure that the curriculum:
- 1. Is designed so that the student is able to achieve program objectives within the curriculum plan;
  - 2. Is logically consistent between and within courses and structured in a manner whereby each course builds on previous learning.
  - 3. Incorporates established professional standards, guidelines or competencies; and
  - 4. Is designed so that a student who completes the program will have the knowledge and skills necessary to function in accordance with the definition and scope of practice specified in A.R.S. for a practical nurse Title 32, Chapter 15 and A.A.C. Title 4 Chapter 19, for a registered or practical nurse, as applicable.
- C.** A nursing program shall provide for progressive sequencing of classroom and clinical instruction sufficient to meet the goals of the program and be organized in such a manner to allow the student to form necessary links of theoretical knowledge, clinical reasoning, and practice.
- 1. A nursing program curriculum shall provide coursework that includes, but is not limited to:
    - a. Content in the biological, physical, social, psychological and behavioral sciences, professional responsibilities, legal and ethical issues, history and trends in nursing and health care, to provide a foundation for safe and effective nursing practice consistent with the level of the nursing program;
    - b. Didactic content and supervised clinical experience in the prevention of illness and the promotion, restoration and maintenance of health in patients across the life span and from diverse cultural, ethnic, social and economic backgrounds to include:
      - i. Patient centered care,
      - ii. Teamwork and collaboration,
      - iii. Evidence-based practice,
      - iv. Quality improvement,
      - v. Safety, and
      - vi. Informatics.
  - 2. A registered nursing program shall provide clinical instruction that includes, at a minimum, selected and guided experiences that develop a student's ability to apply core principles of registered nursing in varied settings when caring for:
    - a. Adult and geriatric patients with acute, chronic, and complex, life-threatening, medical and surgical conditions;
    - b. Peri-natal patients and families;
    - c. Neonates, infants, and children;
    - d. Patients with mental, psychological, or psychiatric conditions; and
    - e. Patients with wellness needs.
  - 3. A practical nursing program shall provide clinical instruction that includes, at minimum, selected and guided experiences that develop a student's ability to apply core principles of practical nursing when caring for:
    - a. Patients with medical and surgical conditions throughout the life span,
    - b. Peri-natal patients, and
    - c. Neonates, infants, and children in varied settings.
  - 4. A nursing program shall assign students only to those clinical agencies that provide the experience necessary to meet the established clinical objectives of the course.
- E.** A nursing program may provide precepted clinical instruction. Programs offering precepted clinical experiences shall:
- 1. Develop and enforce policies that require preceptors to:
    - a. Be licensed nurses at or above the level of the program either by holding an Arizona license in good standing, holding multi-state privilege to practice in Arizona under A.R.S. Title 32, Chapter 15, or if practicing in a federal facility, meet requirements of A.R.S. § 32-1631(5);

- b. For LPN preceptors, practice under the supervision required by A.R.S. Title 32, Chapter 15.
- 2. Develop and implement policies that require a faculty member of the program to:
  - a. Together with facility personnel, select preceptors that possess clinical expertise sufficient to accomplish the goals of the preceptorship;
  - b. Supervise the clinical instruction consistent with requirements of this Article, and
  - c. Maintain accountability for student education and evaluation.
- F. A nursing program may utilize simulation in accordance with the clinical objectives of the course. Unless approved under R4-19-214, a nursing program shall not utilize simulation for an entire clinical experience with any patient population identified in subsection (D) of this Section.
- G. A nursing program shall maintain at least a 80% NCLEX® passing rate for graduates taking the NCLEX-PN® or NCLEX-RN® for the first time within 12 months of graduation.
- H. At least 45% of students enrolled in the first nursing clinical course shall graduate within 100% of the prescribed period. “Prescribed period” means the time required to complete all courses and to graduate on time according to the nursing program’s curriculum plan in place at the time the student entered the program, excluding the time to complete program pre-requisite or pre-clinical courses.

#### **Historical Note**

Adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-16 repealed, former Section R4-19-17 renumbered and amended as Section R4-19-16 effective July 16, 1984 (Supp. 84-4). Former Section R4-19-16 renumbered as R4-19-206 (Supp. 86-1). Section repealed; new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citations in subsection (B)(3) were updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2). A.R.S. section references updated under subsection (C)(5) under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3). Amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

#### **R4-19-207. New Programs; Proposal Approval; Provisional Approval**

- A. At a minimum of one year before establishing a nursing program, a parent institution shall submit to the Board one electronic copy and one paper copy of an application for proposal approval. The parent institution shall ensure that the proposal application was written by or under the direction of a registered nurse who meets the nursing program administrator requirements of R4-19-203(A) and includes the following information and documentation:
  - 1. Name and address of the parent institution;
  - 2. Statement of intent to establish a nursing program, including the academic and licensure level of the program; and:
    - a. Organizational structure of the educational institution documenting the relationship of the nursing program within the institution and the role of the nursing program administrator consistent with R4- 19-201 and R4-19-203;
    - b. Evidence of institutional accreditation consistent with R4-19-201 and post-secondary approval, if applicable. The institution shall provide the most recent full reports including findings and recommendations of the applicable accrediting organization or approval agency. The Board may request additional accreditation or approval evidence.
    - c. Curriculum development documentation to include:
      - i. Student-centered outcomes for the program;
      - ii. A plan that identifies the prescribed course sequencing and time required; and
      - iii. Identification of established professional standards, guidelines or competencies upon which the curriculum will be based;
    - d. Name, qualifications, and job description of a nursing program administrator who meets the requirements of R4-19-203 and availability and job description of faculty who meet qualifications of R4-19-204;
    - e. Number of budgeted clinical and didactic faculty positions from the time of the first admission to graduation of the first class;
    - f. Evidence that the program has secured clinical sites for its projected enrollment that meet the requirements of R4-19-206;
    - g. Anticipated student enrollment per session and annually;
    - h. Documentation of planning for adequate academic facilities and secretarial and support staff to support the nursing program consistent with the requirements of R4-19-202;
    - i. Evidence of adequate program financial resources;
    - j. Tentative time schedule for planning and initiating the nursing program including faculty hiring, entry date and size of student cohorts, and obtaining and utilizing clinical placements from the expected date of proposal approval to graduation of the first cohort.
    - k. For a parent institution or owner corporation that has multiple nursing programs in one or more U.S. jurisdictions including Arizona, evidence for each of its nursing programs that includes:
      - i. Program approval in good standing with no conditions, restrictions, ongoing investigations or deficiencies;
      - ii. An NCLEX pass rate of at least 80% for the past two years or since inception; and
      - iii. An on-time graduation rate consistent with the requirements of R4-19-206.
- B. The Board shall grant proposal approval to any parent institution that meets the requirements of subsection (A) if the Board deems that such approval is in the best interests of the public. Proposal approval expires one year from the date of Board issuance.
- C. A parent institution that is denied proposal approval may request a hearing by filing a written request with the Board within 30 days of service of the Board’s order denying the application for proposal approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter.

- D.** At a minimum of 180 days before planned enrollment of students, a parent institution that received proposal approval within the previous year may submit to the Board one electronic copy and one paper copy of an application for provisional approval. The parent institution shall ensure that the provisional approval application was written by or under the direction of a registered nurse who meets the program administrator requirements of R4-19-203(A) and includes the following information and documentation:
1. Name and address of parent institution;
  2. A self-study that provides evidence supporting compliance with R4-19-201 through R4-19-206, and
  3. Names and qualifications of:
    - a. The nursing program administrator;
    - b. Didactic nursing faculty or one or more nurse consultants who are responsible for developing the curriculum and determining nursing program admission, progression and graduation criteria;
  4. Plan for recruiting and hiring additional didactic faculty for the first semester or session of operation at least 60 days before classes begin;
  5. Plan for recruiting and hiring additional clinical nursing faculty at least 30 days before the clinical rotation begins;
  6. Final program implementation plan including dates and number of planned student admissions, recruitment and hire dates for didactic and clinical faculty for the period of provisional approval;
  7. Descriptions of available and proposed physical facilities with dates of availability; and
  8. Detailed written plan for clinical placements for all planned enrollments until graduation of the first class that is:
    - a. Based on current clinical availability and curriculum needs;
    - b. Confirms availability and commitment from proposed clinical agencies for the times and units specified.
- E.** Following an onsite evaluation conducted according to A.R.S. § 41-1009, the Board shall grant a two year provisional approval to a parent institution that meets the requirements of R4-19-201 through R4-19-206 if approval is in the best interest of the public. A parent institution that is denied provisional approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for provisional approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter.
- F.** The provisional approval of a nursing program expires 12 months from the date of the grant of provisional approval if a class of nursing students is not admitted by the nursing program within that time.
- G.** One year after admission of the first nursing class into nursing courses, the program shall provide a report to the Board containing information on:
1. Implementation of the program including any differences from the plans submitted in the applications for proposal and provisional approval and an explanation of those differences; and
  2. The outcomes of the evaluation of the program according to the program's systematic evaluation plan under R4-19- 201;
- H.** Following receipt of the report described in subsection (G), a representative of the Board shall conduct a site survey visit in accordance with A.R.S. § 41-1009 to determine compliance with this Article. A report of the site visit shall be provided to the Board.
- I.** If a nursing program with provisional approval fails to comply with requirements of A.R.S. Title 32, Chapter 15, or 4 A.A.C. 19, Article 4, the Board may initiate a disciplinary action. Prior to imposition of discipline against a provisional approval, the nursing program is entitled to a hearing conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter.

#### **Historical Note**

Adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-17 renumbered and amended as Section R4-19-16 effective July 16, 1984 (Supp. 84-4). Former Section R4-19-17 renumbered as R4-19-207 (Supp. 86-1). New Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 23 A.A.R. 1420, effective July 1, 2017 (Supp. 17-2). Amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

#### **R4-19-208. Full Approval of a New Nursing Program**

- A.** A nursing program seeking full approval shall submit an electronic and one paper copy of an application that includes the following information and documentation:
1. Name and address of the parent institution,
  2. Date the nursing program graduated its first class of students, and
  3. A self-study report that contains evidence the program is in compliance with R4-19-201 through R4-19-206.
- B.** Following an onsite evaluation conducted according to A.R.S. § 41-1009, the Board shall grant full approval for a maximum of five years or the accreditation period for nationally accredited programs governed by R4-19-213, to a nursing program that meets the requirements of this Article and if approval is in the best interest of the public. A nursing program that is denied full approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for full approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

#### **Historical Note**

Adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

#### **R4-19-209. Nursing Program Change**

- A.** A nursing program administrator shall receive approval from the Board before implementing any of the following nursing program changes:
1. Curriculum or program delivery method;
  2. Increasing or decreasing the academic credits or units of the program excluding pre-requisite credits;
  3. Adding a geographical location of the program;

4. Changing the level of educational preparation provided;
  5. Transferring the nursing program from one parent institution to another; or
  6. Establishing different admission, progression or graduation requirements for specific cohorts of the program.
- B.** The administrator shall submit one electronic and one paper copy of the following materials with the request for nursing program changes:
1. The rationale for the proposed change and the anticipated effect on the program administrator, faculty, students, resources, and facilities;
  2. A summary of the differences between the current practice and proposed change;
  3. A timetable for implementation of the change; and
  4. The methods of evaluation to be used to determine the effect of the change.
- C.** The Board shall approve a request for a nursing program change if the program meets the requirements of this Section and R4-19-201 through R4-19-206. A nursing program that is denied approval of program changes may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for program change. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter.

#### **Historical Note**

Adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 23 A.A.R. 1420, effective July 1, 2017 (Supp. 17-2). Amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

#### **R4-19-210. Renewal of Approval of Nursing Programs Not Accredited by a National Nursing Accrediting Agency**

- A.** An approved nursing program that is not accredited by an approved national nursing accrediting agency shall submit an application packet to the Board at least four months before the expiration of the current approval that includes the following:
1. Name and address of the parent institution,
  2. Evidence of current institutional accreditation status under R4-19-201,
  3. Evidence that the program has secured clinical sites for its projected enrollment that meet the requirements of R4-19-206,
  4. Copy or on-line access to:
    - a. A current catalog of the parent institution,
    - b. Current nursing program and institutional student and academic policies, and
    - c. Institutional and nursing program faculty policies and job descriptions for nursing program faculty, and
  5. One electronic copy and one paper copy of a self-study report that contains evidence of compliance with R4-19-201 through R4-19-206.
- B.** Following an onsite evaluation conducted according to A.R.S. § 41-1009, the Board shall renew program approval for a maximum of five years if the nursing program meets the criteria in R4-19-201 through R4-19-206 and if renewal is in the best interest of the public. The Board shall determine the term of approval that is in the best interest of the public.
- C.** If the Board denies renewal of approval, the nursing program may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for renewal of approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter.

#### **Historical Note**

Adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

#### **R4-19-211. Unprofessional Conduct in a Nursing Program; Reinstatement or Reissuance**

- A.** A disciplinary action, or denial of approval, may be issued against a nursing, refresher, pilot, or distance learning program for any of the following acts of unprofessional conduct:
1. A pattern of failure to maintain minimum standards of acceptable and prevailing educational or nursing practice, or any such failure related to student or patient health, welfare, or safety;
  2. A pattern of deficiencies in compliance with the provisions of this Article, or any such deficiency related to student or patient health, welfare, or safety;
  3. Utilization or substitution of students to meet staffing needs in health care facilities;
  4. A pattern of non-compliance with the program's or parent institution's mission or goals, program design, objectives, or policies, or any such deficiency related to student or patient health, welfare, or safety;
  5. Failure to provide the variety and number of clinical learning opportunities necessary for students to achieve program outcomes or minimal nursing competence;
  6. Student enrollments without necessary faculty, facilities, or clinical experiences to achieve program outcomes or minimal nursing competence;
  7. Ongoing or repetitive employment of unqualified faculty or program administrator;
  8. Failure to comply with Board requirements within designated time-frames;
  9. Fraud or deceit in advertising, promoting or implementing the program;
  10. Material misrepresentation of fact in any application or information submitted to the Board;
  11. Failure to allow Board staff to visit the program or conduct an investigation including failure to supply requested investigative documents;
  12. Any other evidence that the program's conduct may be a threat to the safety and well-being of students, faculty, patients or potential patients; or

13. Violation of any other state or federal laws, rules, or regulations that may indicate a threat to the safety or wellbeing of students, faculty, patients or potential patients.

**B.** If a program's approval was surrendered, rescinded, or denied, the program may reapply for reinstatement or reissuance of approval after a period prescribed by the Board, not to exceed five years. The program must comply with all application requirements in this Article, and further provide evidence of remediation of all violations that led to the rescission. The Board shall review the evidence, and reinstate or reissue approval of the program if the program has demonstrated remediation, complies with all program requirements in A.R.S. Title 32, Chapter 15, and this Chapter and reinstatement is in the best interests of the public. If reinstatement or reissuance is denied, the may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter

#### **Historical Note**

Adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). R4-19-211 renumbered to R4-19-212; New Section R4-19-211 made by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2) Amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2). Amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

#### **R4-19-212. Repealed**

#### **Historical Note**

Adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). R4-19-212 renumbered to R4-19-213; New Section R4-19-212 renumbered from R4-19-211 and amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2). Repealed by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

#### **R4-19-213. Nursing Programs Holding National Program Accreditation; Changes in Accreditation**

- A.** A nationally accredited nursing program or a program seeking national accreditation or re-accreditation shall inform the Board at least 30 days in advance of any pending visit by a nursing program accrediting agency and allow Board staff to attend all portions of the visit.
- B.** Following any visit by the accrediting agency, a nursing program shall submit a complete copy of all site visit reports to the Board within 15 days of receipt by the program and notify the Board within 15 days of any change or known pending change in program accreditation status or reporting requirements.
- C.** The administrator of a nursing program that loses its accreditation status or allows its accreditation status to lapse shall file an application for renewal of approval under R4-19-210 within 30 days of loss of or lapse in accreditation status.
- D.** Under A.R.S. § 32-1644(D) the Board may periodically resurvey a nationally accredited program to determine compliance with this Article and require a self study report. Board site visits may be conducted in conjunction with the national accrediting team.
- E.** Unless otherwise notified by the Board following receipt and review of the documents required by subsections (A) and (B), a nationally accredited nursing program continues to retain full-approval status unless the Board rescinds the approval after the program has had an opportunity for a hearing in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter.

#### **Historical Note**

Adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). R4-19-213 renumbered to R4-19-215; New Section R4-19-213 renumbered from R4-19-212 and amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

#### **R4-19-214 Pilot Programs for Innovative Approaches in Nursing Education**

- A.** Under A.R.S. § 32-1606(A)(9) a nursing education program, refresher program or a certified nursing assistant program may implement a pilot program for an innovative approach by complying with the provisions of this Section. Education programs approved to implement innovative approaches shall comply with all other applicable provisions of A.R.S. Title 32, Chapter 15 and this Chapter.
- B.** A program applying for a pilot program shall:
1. Hold full approval in good standing; and
  2. Have no discipline in the past two years.
- C.** The following written information shall be provided to the Board at least 90 days prior to a Board meeting to seek approval for a pilot program:
1. Identifying information including name of program, address, responsible party and contact information;
  2. A brief description of the current program, including accreditation and Board approval status;
  3. Identification of the regulation or regulations that the proposed innovative approach would violate without pilot program board approval;
  4. Length of time for which the innovative approach is requested;
  5. Description of the innovative approach, including rationale and objectives;
  6. Explanation of how the proposed innovation differs from approaches in the current program;
  7. Available evidence supporting the innovative approach;
  8. Identification of resources that support the proposed innovative approach;
  9. Expected impact the innovative approach will have on the program, including administration, students, faculty, and other program resources;
  10. Plan for implementation and evaluation of the proposed innovation, including timeline;
  11. Additional application information as requested by the Board.

- D.** The Board shall approve an application for a pilot program that is in the best interests of the public, and meets the following criteria:
1. Eligibility criteria in subsection (B) and application criteria in subsection (C) are met;
  2. The innovative approach will not compromise the quality of education or safe practice of students;
  3. Resources are sufficient to support the innovative approach;
  4. Rationale with available evidence supports the implementation of the innovative approach;
  5. Implementation plan is reasonable to achieve the desired outcomes of the innovative approach;
  6. Timeline provides for a sufficient period to implement and evaluate the innovative approach; and
  7. Plan for periodic evaluation is comprehensive and supported by appropriate methodology.
- E.** The Board may:
1. Deny the application or request additional information if the program does not meet the criteria in subsections (B) and (C), or otherwise is not in the best interests of the public. The program may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying an application for a pilot program. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, and 4 A.A.C. 19, Article 6 of this Chapter.
  2. Rescind the approval of the innovation, after an opportunity for a hearing in accordance with A.R.S. Title 41, Chapter 6, and Article 6 of this Chapter, or require the program to make modifications if:
    - a. The Board receives substantiated evidence indicating adverse impact on the program, students, faculty, patients, or the public,
    - b. The program fails to implement or evaluate the innovative approach as presented and approved, or
    - c. The program fails to maintain eligibility criteria in subsection (B).
- F.** An education program that is granted approval for an innovation shall maintain eligibility criteria in subsection (B) and submit:
1. Progress reports conforming to the evaluation plan annually or as requested by the Board; and
  2. A final evaluation report that conforms to the evaluation plan, detailing and analyzing the outcomes data.
- G.** If the innovative approach has achieved the desired outcomes and the final evaluation has been submitted, the program may request that the innovative approach be continued.
- H.** The Board may grant the request to continue approval if the innovative approach has achieved desired outcomes and is in the best interests of the public.
- I.** If the Board denies the request to continue approval of the pilot program, the program may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying renewal of the pilot program. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, and 4 A.A.C. 19, Article 6 of this Chapter.

#### **Historical Note**

Adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). R4-19-214 renumbered to R4-19-216; New Section R4-19-214 made by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

#### **R4-19-215. Voluntary Termination of a Nursing Program or a Refresher Program**

- A.** The administrator of a nursing program or a refresher program shall notify the Board within 15 days of a decision to voluntarily terminate the program. The administrator shall, at the same time, submit a written plan for terminating the nursing program or refresher program. A program is considered voluntarily terminated when it no longer admits or plans to admit students after current students graduate.
- B.** The administrator shall ensure that the nursing program or refresher program is maintained, including the nursing faculty, until the last enrolled student is transferred or completes the program. At that time the Board shall remove the program from the current list of approved programs.
- C.** Within 15 days after the termination of a nursing program or refresher program, the administrator shall notify the Board of the permanent location and availability of all program records.

#### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 1483, effective June 2, 2007 (Supp. 07-2). R4-19-215 renumbered to R4-19-217; New Section R4-19-215 renumbered from R4-19-213 and amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

#### **R4-19-216. Approval of a Refresher Program**

- A.** An applicant for approval of a refresher program for nurses whose licenses have been inactive or expired for five or more years, nurses under Board order to enroll in a refresher program, or nurses who have not met the nursing practice requirements of R4-19-312 shall submit one electronic and one paper copy of a completed application that provides all of the following information and documentation:
1. Applicant's name, address, e-mail address, telephone number, web site address, if applicable, and fax number;
  2. Proposed starting date for the program;
  3. Name and qualifications of all instructors that meet the requirements of subsection (C);
  4. Statement describing the facilities, staff, and resources that the applicant will use to conduct the refresher program;
  5. A program and participant evaluation plan that includes student evaluation of the course, instructor, and clinical experience;
  6. Evidence of a curriculum that meets the requirements of subsection (B);
- B.** A refresher program for registered and practice nurses shall provide:
1. Didactic instruction sufficient to ensure competent and safe practice to the applicable level of the nursing license, including the following subjects, at a minimum:

- a. Nursing process and patient centered care;
  - b. Pharmacology, medication calculation, and medication administration;
  - c. Communication and working with inter-professional teams
  - d. Critical thinking, clinical decision making and evidence-based practice;
  - e. Delegation, management, and leadership;
  - f. Meeting psychosocial and physiological needs of adult clients with medical-surgical conditions. Other populations of care may be added to the content at the program's discretion;
  - g. Ethics; and
  - h. Informatics, to include electronic health record documentation.
2. The program shall provide clinical experiences that, at a minimum:
    - a. Ensure that each qualified student has a verified clinical placement within six months of course enrollment;
    - b. Provide program policies for clinical placement in advance of enrollment that specify both the obligations of the school and the student regarding placement;
    - c. Validate that a student has the necessary didactic and theoretical knowledge to function safely in the specific clinical setting before starting a clinical experience;
    - d. Ensure that clinical experiences are of the type and duration to meet the course objectives.
  3. Laboratory practice hours, at the program's discretion, including simulation experiences in accordance with the clinical objectives of the course, but may not replace clinical experiences.
  4. Curriculum and other materials to students and prospective students that, include:
    - a. An overall program description including student learning objectives;
    - b. Objectives, content outline, and hours for didactic and clinical experience;
    - c. Course policies that include but are not limited to admission requirements, passing criteria, cause for dismissal, clinical requirements, grievance process and student responsibilities, cost, and length of the program.
- C. Refresher program personnel qualifications and responsibilities:**
1. An administrator of a refresher program shall:
    - a. Hold a graduate degree in nursing or a bachelor of science in nursing degree and a graduate degree in either education or a health-related field, and
    - b. Be responsible for administering and evaluating the program.
  2. A faculty member of a refresher program shall:
    - a. Hold a minimum of a bachelor of science in nursing degree,
    - b. Be responsible for implementing the curriculum and supervising clinical experiences either directly or indirectly through the use of clinical preceptors.
  3. Licensure requirements for program administrator and faculty: The administrator and faculty members shall hold a current Arizona RN license in good standing or a multi-state privilege under A.R.S., Title 32, Chapter 15.
  4. If preceptors are used for clinical experiences, the program shall adhere to the preceptorship requirements of R4-19-206(E).
  5. Licensed health care professionals not regulated by the Board may participate in course instruction consistent with their licensure and scope of practice, under the direction of the program administrator or faculty.
- D. Program types; bonding**
1. A refresher program may be offered by:
    - a. An educational institution licensed by the State Board for Private Postsecondary Education;
    - b. A public post-secondary educational institution;
    - c. A health care institution licensed by the Arizona Department of Health Services or a health care institution authorized by the Centers for Medicare & Medicaid Services; or
    - d. A private business that meets the requirements of this Section and all other legal requirements to operate a business in Arizona;
    - e. A program funded by a local, state or federal governmental agency, such as a program within a technical school or school of nursing.
  2. If the refresher program is offered by a private business not licensed by the State Board for Private Postsecondary Education, the program shall meet the following requirements:
    - a. Hold a minimum of \$15,000 of insurance covering any potential or future claims for damages resulting from any aspect of the program or a hold a surety bond from a surety company with a rating of "A minus" or better by either Best's Credit Ratings, Moody's Investor Service, or Standard and Poor's rating service.
    - b. The program shall ensure that:
      - i. Bond or insurance distributions are limited to students or former students with a valid claim for instructional or program deficiencies;
      - ii. The amount of the bond or insurance coverage is sufficient to reimburse the full amount of collected tuition and fees for all students during all enrollment periods of the program; and
      - iii. The bond or insurance is maintained for an additional 24 months after program closure.
- E.** The Board shall approve a refresher program that meets the requirements of this Section, if approval is in the best interest of the public, for a maximum term of five years. An applicant who is denied refresher program approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and Article 6 of this Chapter.
- F.** The refresher program sponsor shall apply for renewal of approval in accordance with subsection (A) not later than 90 days before expiration of the current approval. The sponsor of a refresher program that is denied renewal of approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for renewal of approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, and 4 A.A.C. 19, Article 6 of this Chapter.
- G.** The sponsor of an approved refresher program shall provide written notification to the Board within 15 days of a participant's completion of the program of the following:

1. Name of the participant and whether the participant successfully completed or failed the program,
  2. Participant's license number, and
  3. End date of participant's participation in the program.
- H.** The Board may approve a refresher program application from another U.S. jurisdiction for an individual applicant on a case-by-case basis if the applicant provides verifiable evidence that the refresher program substantially meets the requirements of this Section. The acceptance of the program for an individual applicant does not confer approval status upon the program.
- I.** Within 30 days, a refresher program shall report to the Board changes in:
1. Name, address, email address, web site address or phone number of the program; or
  2. Ownership including adding or deleting an owner.
- J.** The Board may take disciplinary action against the approval of a refresher program after offering a hearing conducted in accordance with A.R.S. Title 41, Chapter 6, and 4 A.A.C. 19, Article 6 of this Chapter.

#### **Historical Note**

New Section R4-19-216 renumbered from R4-19-214 and amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 23 A.A.R. 1420, effective July 1, 2017 (Supp. 17-2). Amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

#### **R4-19-217. Distance Learning Nursing Programs; Out-of-State Nursing Programs**

- A.** An out-of-state nursing program that is in good standing in another state in the United States and plans to provide distance-based didactic instruction and on-ground clinical instruction in Arizona shall comply with the application requirements of R4-19-207 and R4-19-208. The program shall employ at least one faculty member who is physically present in this state to coordinate the education and clinical experience.
- B.** Any nursing program that delivers didactic instruction in Arizona by distance learning methods shall ensure that the methods of instruction are compatible with the program curriculum plan and enable a student to meet the goals, competencies, and objectives of the educational program and standards of the Board, A.R.S. Title 32, Chapter 15, and this Chapter.
1. A distance learning nursing program shall establish a means for assessing individual student outcomes, and program outcomes including, at minimum, student learning outcomes, student retention, student satisfaction, and faculty satisfaction.
  2. For out-of-state nursing programs, the program shall be within the jurisdiction of and regulated by an equivalent United States nursing regulatory authority in the state from which the program originates, unless also providing clinical experience in Arizona.
  3. Didactic faculty members shall be licensed in the state of origination of a distance learning nursing program and in Arizona or hold a multi-state compact license unless exempt under A.R.S. § 32-1631(8). Clinical supervising faculty shall be licensed in the location of the clinical activity.
  4. A distance learning nursing program shall provide students with supervised clinical and laboratory experiences so that program objectives are met and didactic learning is validated by supervised, on-ground clinical and laboratory experiences.
  5. A distance-learning nursing program shall provide students with adequate access to technology, resources, technical support, and the ability to interact with peers, preceptors, and faculty.
- C.** A nursing program, located in another state or territory of the United States, that wishes to provide clinical experiences in Arizona under A.R.S. § 32-1631(3), shall obtain Board approval before offering or conducting a clinical session. To obtain approval, the program shall submit a proposal package that contains:
1. A self study, describing the program's compliance with R4-19-201 through R4-19-206; and
  2. A statement regarding, the number and type of student placements planned, and written commitment by the clinical facilities to provide the necessary clinical experiences, the name and qualifications of faculty licensed in Arizona and physically present in the facility who will supervise the experience and verification of good standing of the program in the jurisdiction of origin.
- D.** The Board may require a nursing program approved under this Section to file periodic reports to determine compliance with the provisions of this Article. A program shall submit a report to the Board within 30 days of the date on a written request from the Board or by the due date stated in the request if the due date is after the normal 30-day period.
- E.** The Board shall approve an application to conduct clinical instruction in Arizona that meets the requirements in A.R.S. Title 32, Chapter 15 and this Chapter, and is in the best interest of the public. An applicant who is denied approval to conduct clinical instruction in Arizona may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter.
- F.** If the Board finds that a nursing program located and approved in another state or territory of the United States does not meet requirements for nursing programs prescribed in this Article the Board may take other disciplinary action depending on the severity of the offense after offering a hearing conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter.
1. Students enrolled at the time of rescission of approval shall not be granted licensure unless the applicant meets all applicable licensure requirements.
  2. The Board shall ensure that the applicant has completed a curriculum that is equivalent to that of an approved nursing program.

#### **Historical Note**

New Section R4-19-217 renumbered from R4-19-215 and amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

## **ARTICLE 3. LICENSURE**

**R4-19-301. Licensure by Examination**

**A.** An applicant for licensure by examination shall:

1. Submit a verified application to the Board on a form furnished by the Board that provides the following information about the applicant:
  - a. Full legal name and all former names used by the applicant;
  - b. Mailing address, including declared primary state of residence, e-mail address, and telephone number;
  - c. Place and date of birth;
  - d. Ethnic category and marital status, at the applicant's discretion;
  - e. Social Security number for an applicant who lives or works in the United States;
  - f. Post-secondary education, including the names and locations of all schools attended, graduation dates, and degrees received, if applicable;
  - g. Current employer or practice setting, including address, position, and dates of service, if employed or practicing in nursing or health care;
  - h. Information regarding the applicant's compliance with the practice or education requirements in R4-19-312;
  - i. Any state, territory, or country in which the applicant holds or has held a registered or practical nursing license and the license number and status of the license, including original state of licensure, if applicable;
  - j. The date the applicant previously filed an application for licensure in Arizona, if applicable;
  - k. Responses to questions regarding the applicant's background on the following subjects:
    - i. Current investigation or pending disciplinary action by a nursing regulatory agency in the United States or its territories;
    - ii. Action taken on a nursing license by any other state;
    - iii. Undesignated offenses, felony charges, convictions and plea agreements, including deferred prosecution;
    - iv. Misdemeanor charges, convictions and plea agreements, including deferred prosecution, that are required to be reported under A.R. S. § 32-3208;
    - v. Unprofessional conduct as defined in A.R.S. § 32-1601;
    - vi. Substance use disorder within the last 5 years;
    - vii. Current participation in an alternative to discipline program in any other state;
  - l. Explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background; and
  - m. Certification in nursing including category, specialty, name of certifying body, date of certification, and expiration date.
2. Submit proof of United States citizenship or alien status as specified in A.R.S. § 41-1080;
3. Submit a completed fingerprint card on a form provided by the Board or prints for the purpose of obtaining a criminal history report under A.R.S. § 32-1606 if the applicant has not submitted a fingerprint card or prints to the Board within the last two years; and
4. Pay the applicable fees.

**B.** If an applicant is a graduate of a pre-licensure nursing program in the United States that has been assigned a program code by the National Council of State Boards of Nursing during the period of the applicant's attendance, the applicant shall submit one of the following:

1. If the program is an Arizona-approved program, the transcript required in subsection (B)(2) or a statement signed by a nursing program administrator or designee verifying that:
  - a. The applicant graduated from or is eligible to graduate from a registered nursing program for a registered nurse applicant; or
  - b. The applicant graduated from or is eligible to graduate from a practical nursing program or graduated from a registered nursing program and completed Board-prescribed role delineation education for a practical nurse applicant; or
2. If the program is located either in Arizona or in another state or territory and meets educational standards that are substantially comparable to Board standards for educational programs under Article 2 when the applicant completed the program, an official transcript sent directly from one of the following as:
  - a. Evidence of graduation or eligibility for graduation from a diploma registered nursing program, associate degree registered nursing program, or baccalaureate or higher degree registered nursing program for a registered nurse applicant.
  - b. Evidence of graduation or eligibility for graduation of a practical nursing program, associate degree registered nursing program, or baccalaureate or higher degree registered nursing program for a practical nurse applicant.

**C.** If an applicant is a graduate of a pre-licensure international nursing program and lacks items required in subsection (B), the applicant shall comply with subsection (A), submit a self report on the status of any international nursing license, and submit the following:

1. To demonstrate nursing program equivalency, one of the following:
  - a. If the applicant graduated from a Canadian nursing program, evidence of a passing score on the English language version of either the Canadian Nurses' Association Testing Service, the Canadian Registered Nurse Examination, NCLEX or an equivalent examination;
  - b. A Certificate or Visa Screen Certificate issued by the Commission on Graduates of Foreign Nursing Schools (CGFNS), or a report from CGFNS that indicates an applicant's program is substantially comparable to a U.S. program; or
  - c. A report from any other credential evaluation service (CES) approved by the Board.
2. If a graduate of an international pre-licensure nursing program subsequently obtains a degree in nursing from an accredited U.S. nursing program, the requirement for a CES equivalency report may be waived by the Board, however the applicant is not eligible for a multi-state compact license.
3. If an applicant's pre-licensure nursing program provided classroom instruction, textbooks, or clinical experiences in a language other than English, a test of written, oral, and spoken English is required. Clinical experiences are deemed to have been provided in a language other than English if the principal or official language of the country or region where the clinical experience occurred is a language other than English, according to the United States Department of State.

4. An applicant who is required to demonstrate English language proficiency shall ensure that one of the following is submitted to the Board directly from the testing or certifying agency:
  - a. Evidence of a minimum score of 84 with a minimum speaking score of 26 on the Internet-based Test of English as a Foreign Language (TOEFL),
  - b. Evidence of a minimum score of 6.5 overall with minimum of 6.0 on each module of the Academic Exam of the International English Language Test Service (IELTS) Examination,
  - c. Evidence of a minimum score of 55 overall with a minimum score of 50 on each section of the Pearson Test of English Academic exam.
  - d. A Visa Screen Certificate from CGFNS,
  - e. A CGFNS Certificate,
  - f. Evidence of a similar minimum score on another written and spoken English proficiency exam determined by the Board to be equivalent to the other exams in this subsection, or
  - g. Evidence of employment for a minimum of 960 hours within the past five years as a nurse in a country or territory where the principal language is English, according to the United States Department of State.
- D.** An applicant for a registered nurse license shall attain one of the following:
  1. A passing score on the NCLEX-RN;
  2. A score of 1600 on the NCLEX-RN, if the examination was taken before July 1988; or
  3. A score of not less than 350 on each part of the SBTPE for registered nurses.
- E.** An applicant for a practical nurse license shall attain:
  1. A passing score on the NCLEX-PN;
  2. A score of not less than 350 on the NCLEX-PN, if the examination was taken before October 1988; or
  3. A score of not less than 350 on the SBTPE for practical nurses.
- F.** The Board shall grant a license to practice as a registered or practical nurse to any applicant who meets the criteria established in statute and this Article. An applicant who is denied a license by examination may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the license. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.
- G.** If the Board receives an application from a graduate of a nursing program and the program's approval was rescinded under R4-19-212 at any time during the applicant's nursing education, the Board shall ensure that the applicant has completed a basic curriculum that is equivalent to that of a Board-approved nursing program and may do any of the following:
  1. Grant licensure, if the program's approval was reinstated during the applicant's period of enrollment and the program provides evidence that the applicant completed a curriculum equivalent to that of a Board-approved nursing program;
  2. By order, require successful completion of remedial education while enrolled in a Board approved nursing program which may include clinical experiences, before granting licensure; or
  3. Return or deny the application if the education was not equivalent and no remediation is possible.

#### **Historical Note**

Former Section II, Part I; Amended effective January 20, 1975 (Supp. 75-1). Amended effective December 7, 1976 (Supp. 76-5). Former Section R4-19-24 repealed, new Section R4-19-24 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-24 repealed, new Section R4-19-24 adopted effective May 9, 1984 (Supp. 84-3). Former Section R4-19-24 renumbered as Section R4-19-301 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 4819, effective December 7, 2000 (Supp. 00-4). Amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 13 A.A.R. 1483, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 23 A.A.R. 1420, effective July 1, 2017 (Supp. 17-2).

#### **R4-19-302. Licensure by Endorsement**

- A.** An applicant for a license by endorsement shall submit all of the information required in R4-19-301(A).
- B.** In addition to the information required in subsection (A), an applicant for a license by endorsement shall:
  1. Submit evidence of a passing examination score in accordance with:
    - a. R4-19-301(E) for a registered nurse applicant, or
    - b. R4-19-301(F) for a practical nurse applicant.
  2. Submit the following:
    - a. Evidence of previous or current license in another state or territory of the United States,
    - b. Information related to the nurse's practice for the purpose of collecting nursing workforce data, and
    - c. One of the following:
      - i. Completion of a pre-licensure nursing program that has been assigned a nursing program code by the National Council of State Boards of Nursing (NCSBN) at the time of program completion and the program meets educational standards substantially comparable to Board standards for educational programs in Article 2;
      - ii. If the applicant completed a pre-licensure nursing program that has been assigned a program code by the NCSBN but the program's approval was rescinded under A.R.S. § 32-1606(B)(8) or removed from the list of approved programs under A.R.S. § 32-1644(D) or R4-19-212 during the applicant's enrollment in the program, proof of completion of the program and completion of any remedial education required by the Board to mitigate the deficiencies in the applicant's initial nursing program;
      - iii. If the applicant graduated from a U.S. nursing program before 1986 and the applicant was issued an initial license in another state or territory of the United States without being required to obtain additional education or experience, proof both of program completion and initial licensure without additional educational or experiential requirements;
      - iv. If the applicant graduated from an international nursing program, proof of meeting the requirements in R4-19-301.
      - v. If the Board finds that the documentation submitted by the applicant does not fulfill one of the requirements in (B) (2)(b)(i) through (iv), but the applicant has submitted verified employer evaluations demonstrating applicant's safe

practice as a registered or practical nurse in another state for a minimum of two years full-time during the past three years and applicant otherwise meets licensure requirements, the Board may grant a single-state only license if the Board determines that licensure is in the best interest of the public.

- C. The Board shall grant a license to practice as a registered or practical nurse to any applicant who meets the criteria established in statute and this Article. An applicant who is denied a license by endorsement may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the license. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

#### Historical Note

Former Section II, Part II; Amended effective December 7, 1976 (Supp. 76-5). Former Section R4-19-25 repealed, new Section R4-19-25 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-25 repealed, new Section R4-19-25 adopted effective May 9, 1984 (Supp. 84-3). Former Section R4-19-25 renumbered and amended as Section R4-19-302 effective February 21, 1986 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 4819, effective December 7, 2000 (Supp. 00-4). Amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 13 A.A.R. 1483, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2).

#### **R4-19-303. Requirements for Credential Evaluation Service (CES)**

- A. A CES seeking Board approval shall submit documentation to the Board demonstrating that it:
1. Provides a credential evaluation to determine comparability of registered nurse or practical nurse programs in other countries to nursing education in the United States;
  2. Evaluates original source documents;
  3. Has five or more years of experience in evaluating nursing educational programs or employs personnel that have this experience;
  4. Employs staff with expertise in evaluating nursing programs;
  5. Has access to resources pertinent to the field of nursing education and the evaluation of nursing programs;
  6. Issues a report on each applicant, and supplies the Board with a sample of such a report, regarding the comparability of the applicant's nursing educational program to nursing education in the United States that includes:
    - a. The current name of the applicant including any names formerly used by the applicant;
    - b. Source and description of the documents evaluated;
    - c. Name and nature of the nursing education program, including status of the parent institution;
    - d. Dates applicant attended;
    - e. References consulted;
    - f. A seal or some other security measure;
    - g. Notification of any falsification or misrepresentation of documents by the applicant;
    - h. A report on licensure examination results for the applicant, if an exam was required for licensure in the international jurisdiction; and
    - i. The status of any international nursing licenses held by the applicant.
  7. Has a quality control program that includes at a minimum:
    - a. Standards regarding the use of original documents;
    - b. Verification of authenticity of documents and translations;
    - c. Processes and procedures to prevent and detect fraud;
    - d. Policies for maintaining confidentiality of applicant educational records;
    - e. Responsiveness to applicants, including ensuring that reports are issued no later than eight weeks from the receipt of an applicant's documents; and
    - f. Tracking of and notification to the Board of any trends in falsification or misrepresentation of documents;
  8. Follows or exceeds the standards of the National Association of Credentialing Services (NACES) or an equivalent organization;
  9. Responds to Board requests for information in a timely and thorough manner; and
  10. Agrees to notify the Board before any changes in any of the above criteria.
- B. If a CES fails to comply with the provisions of subsection (A), the Board may rescind its approval of the CES.
- C. The Board shall approve a credential evaluation service that meets the criteria established in this Section. A CES applicant who is denied approval or whose approval is revoked may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

#### Historical Note

Former Section II, Part III; Former Section R4-19-26 repealed, new Section R4-19-26 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-26 renumbered and amended as Section R4-19-27, new Section R4-19-26 adopted effective May 9, 1984 (Supp. 84-3). Former Section R4-19-27 renumbered as Section R4-19-303 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 5 A.A.R. 1802, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 6 A.A.R. 4819, effective December 7, 2000 (Supp. 00-4). Former Section R4-19-303 renumbered to R4-19-304; new Section R4-19-303 made by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2).

#### **R4-19-304. Temporary License**

- A. Subject to subsection (B), the Board shall issue a temporary license if:
1. An applicant:
    - a. Is qualified under:

- i. A.R.S. § 32-1635 and applies for a temporary registered nursing license, or is qualified under A.R.S. § 32-1640 and applies for a temporary practical nursing license; and
  - ii. R4-19-301 for applicants for licensure by examination, or is qualified under R4-19-302 for applicants for licensure by endorsement; and
  - b. Submits an application for a temporary license with the applicable fee required under A.R.S. § 32-1643(A)(9); and
  - c. Submits an application for a license by endorsement or examination with the applicable fee required under A.R.S. § 32-1643(A).
2. An applicant is seeking a license by examination, meets the requirements of R4-19-312(D), and the Board receives a report from the Arizona Department of Public Safety (DPS), verifying that DPS has no criminal history record information, as defined in A.R.S. § 41-1701, relating to the applicant or that any criminal history reported has been reviewed by the executive director or the director's designee and determined not to pose a threat to public health, safety, or welfare; or
  3. An applicant is seeking a license by endorsement, meets the requirements in R4-19-312(B), and the applicant submits evidence that the applicant has a current license in good standing in another state or territory of the United States or, if no current license, a previous license in good standing that was not the subject of an investigation or pending discipline; or
  4. An applicant who does not meet the practice requirements in R4-19-312(B) or (D), but provides evidence that the applicant has applied for enrollment in a refresher or other competency program approved by the Board, may practice nursing under a temporary license during the clinical portion of the program only.
- B.** An applicant who has a criminal history, a history of disciplinary action by a regulatory agency, a pending complaint before the Board, or answers affirmatively to any criminal background or disciplinary question in the application is not eligible for a temporary license or extension of a temporary license without Board approval.
  - C.** A temporary license is valid for a maximum of 12 months unless extended for good cause under subsection (D) of this Section.
  - D.** An applicant with a temporary license may apply for and the Board, the Executive Director or the Executive Director's designee may grant an extension of the temporary license period for good cause. Good cause means reasons beyond the control of the temporary licensee, such as unavoidable delays in obtaining information required for licensure.
  - E.** An applicant who receives a temporary license but does not meet the criteria for a regular license within the established period under subsections (C) and (D) is no longer eligible for a temporary license except for the purpose of completing a refresher or other competency program under subsection (A)(4) of this Section.

#### **Historical Note**

Former Section II, Part IV; Amended effective January 20, 1975 (Supp. 75-1). Former Section R4-19-27 repealed, new Section R4-19-27 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-27 renumbered and amended as Section R4-19-28. Former Section R4-19-26 renumbered and amended as Section R4-19-27 effective May 9, 1984 (Supp. 84-3). Former Section R4-19-27 renumbered and amended as Section R4-19-304 effective February 21, 1986 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 4819, effective December 7, 2000 (Supp. 00-4). Former Section R4-19-304 renumbered to R4-19-305; new Section R4-19-304 renumbered from R4-19-303 and amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2). Chapter Section references updated under subsections (A)(2) and (A)(4) under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3).

#### **R4-19-305. License Renewal**

- A.** An applicant for renewal of a registered or practical nursing license shall:
  1. Submit a verified application to the Board on a form furnished by the Board that provides all of the following information about the applicant:
    - a. Full legal name, mailing address, e-mail address, telephone number and declared primary state of residence;
    - b. A listing of all states in which the applicant is currently licensed, or, since the last renewal, was previously licensed or has been denied licensure;
    - c. Marital status and ethnic category, at the applicant's discretion;
    - d. Information regarding qualifications, including:
      - i. Educational background;
      - ii. Employment status;
      - iii. Practice setting; and
      - iv. Other information related to the nurse's practice for the purpose of collecting nursing workforce data.
    - e. Responses to questions regarding the applicant's background on the following subjects:
      - i. Criminal convictions for offenses involving drugs or alcohol since the time of last renewal;
      - ii. Undesignated offenses and felony charges, convictions and plea agreements including deferred prosecution;
      - iii. Misdemeanor charges, convictions and plea agreements, including deferred prosecution, that are required to be reported under A.R.S. § 32-3208;
      - iv. Unprofessional conduct as defined in A.R.S. § 32-1601 since the time of last renewal;
      - v. Substance use disorder within the last five years;
      - vi. Current participation in an alternative to discipline program in any other state; and
      - vii. Disciplinary action or investigation related to the applicant's nursing license by any other state nursing regulatory agency since the last renewal.
    - f. Explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background;
    - g. Information related to the applicant's current or most recent nursing practice setting, including position, address, telephone number, and dates of practice;
    - h. Information regarding the applicant's compliance with the practice or education requirements in R4-19-312;
    - i. National certification in nursing including specialty, name of certifying body, date of certification, certification number, and

- expiration date, if applicable; and for an applicant certified as a registered nurse practitioner or clinical nurse specialist the patient population of the certification; and
2. Pay fees for renewal authorized by A.R.S. § 32-1643 (A)(6); and
  3. Pay an additional fee for late renewal authorized by A.R.S. § 32-1643(A)(7) if the application for renewal is submitted after May 1 of the year of renewal.
- B.** A license expires on August 1 of the year of renewal indicated on the license.
- C.** A licensee who fails to submit a renewal application before expiration of a license shall not practice nursing until the Board issues a renewal license.
- D.** If the applicant holds a license or certificate that has been or is currently revoked, surrendered, denied, suspended or placed on probation in another jurisdiction, the applicant is not eligible to renew or reactivate a license until a review or investigation has been completed and a decision regarding eligibility for renewal or reactivation is made by the Board.
- E.** The Board shall renew the license of any registered or practical nurse applicant who meets the criteria established in statute and this Article. An applicant who is denied renewal of a license may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying renewal of the license. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

#### **Historical Note**

Former Section II, Part V; Repealed effective January 20, 1975 (Supp. 75-1). New Section R4-19-28 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-28 renumbered and amended as Section R4-19-29. Former Section R4-19-27 renumbered and amended as Section R4-19-28 effective May 9, 1984 (Supp. 84-3). Former Section R4-19-28 renumbered and repealed as Section R4-19-305 effective February 21, 1986 (Supp. 86-1). New Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 4819, effective December 7, 2000 (Supp. 00-4). Former Section R4-19-305 renumbered to R4-19-306; new Section R4-19-305 renumbered from R4-19-304 and amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 23 A.A.R. 1420, effective July 1, 2017 (Supp. 17-2).

#### **R4-19-306. Inactive License**

- A.** A licensee in good standing may submit to the Board either as a separate written document or as part of the renewal application, a request to transfer to inactive status, or retirement status under A.R.S. §§ 32-1606(A)(10) and 32-1636(E).
- B.** The Board shall send a written notice to the licensee granting inactive or retirement status or denying the request. A licensee denied a request for transfer to inactive or retirement status may request a hearing by filing a written request with the Board within 30 days of service of the denial of the request. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

#### **Historical Note**

Former Section II, Part VI; Amended effective January 20, 1975 (Supp. 75-1). Amended effective December 7, 1976 (Supp. 76-5). Former Section R4-19-29 repealed, new Section R4-19-29 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-29 renumbered and amended as Section R4-19-30 effective May 9, 1984 (Supp. 84-3). Former Section R4-19-28 renumbered and amended as Section R4-19-29 effective May 9, 1984 (Supp. 84-3). Former Section R4-19-29 renumbered as Section R4-19-306 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 4819, effective December 7, 2000 (Supp. 00-4). Former Section R4-19-306 renumbered to R4-19-307; new Section R4-19-306 renumbered from R4-19-305 and amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2).

#### **R4-19-307. Repealed**

#### **Historical Note**

Former Section II, Part VII; Former Section R4-19-30 renumbered and amended as Section R4-19-45, new Section R4-19-30 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-30 renumbered and amended as Section R4-19-31. Former Section R4-19-29 renumbered and amended as R4-19-30 effective May 9, 1984 (Supp. 84-3). Former Section R4-19-29 renumbered and amended as Section R4-19-307 effective February 21, 1986 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 4819, effective December 7, 2000 (Supp. 00-4). Former Section R4-19-307 renumbered to R4-19-308; new Section R4-19-307 renumbered from R4-19-306 and amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2). Repealed by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

#### **R4-19-308. Change of Name or Address**

- A.** A licensee or applicant shall notify the Board, in writing or electronically through the Board website, of any legal change in name within 30 days of the change, and submit a copy of the official document verifying the name change.
- B.** A licensee or applicant shall notify the Board in writing or electronically through the Board website of any change in mailing address within 30 days.

#### **Historical Note**

Former Section II, Part VII; Former Section R4-19-31 repealed, new Section R4-19-31 adopted effective February 20, 1980 (Supp.

80-1). Former Section R4-19-31 renumbered and amended as Section R4-19-32. Former Section R4-19-30 renumbered and amended as Section R4-19-31 effective May 9, 1984 (Supp. 84-3). Former Section R4-19-31 renumbered as Section R4-19-308 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended effective December 3, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 4819, effective December 7, 2000 (Supp. 00-4). Former Section R4-19-308 renumbered to R4-19-309; new Section R4-19-308 renumbered from R4-19-307 and amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2).

**R4-19-309. School Nurse Certification Requirements**

- A. An applicant for initial school nurse certification shall hold a current license in good standing or multistate privilege to practice as a registered nurse in Arizona.
- B. An initial or renewal of certificate expires six years after the issue date on the certificate.
- C. The Board shall grant a school nurse certificate to any applicant who meets the criteria established in statute and this Article. An applicant who is denied a school nurse certificate may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the certificate. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

Former Section II, Part IX; Repealed effective February 20, 1980 (Supp. 80-1). Former Section R4-19-31 renumbered and amended as Section R4-19-32 effective May 9, 1984 (Supp. 84-3). Former Section R4-19-32 renumbered as Section R4-19-309 (Supp. 86-1). Repealed effective July 19, 1995 (Supp. 95-3). New Section made by final rulemaking at 8 A.A.R. 1813, effective March 20, 2002 (Supp. 02-1). Former Section R4-19-309 renumbered to R4-19-311; new Section R4-19-309 renumbered from R4-19-308 and amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

**R4-19-310. Certified Registered Nurse**

A registered nurse who has been certified by a nursing certification organization accredited by the Accreditation Board for Specialty Nursing Certification, the National Commission for Certifying Agencies, or an equivalent accrediting agency as determined by the Board is deemed certified for the purposes of A.R.S. § 32-1601(5).

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2). A.R.S. Section reference updated under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3)

**R4-19-311. Nurse Licensure Compact**

The Board shall implement A.R.S. §§ 32-1668 and 32-1669 according to the provisions of the Nurse Licensure Compact Model Rules and Regulations for RNs and LPN/VNs, published by the National Council of State Boards of Nursing, Inc., 111 E. Wacker Dr., Suite 2900, Chicago, IL 60601, [www.ncsbn.org](http://www.ncsbn.org), November 13, 2012, and no later amendments or editions, which is incorporated by reference and on file with the Board.

**Enhanced Nurse Licensure Compact (e-NLC) Final Rules effective January 19, 2018 can be found at [https://www.azbn.gov/media/2858/enlc-final-rules-adopted121217\\_2.pdf](https://www.azbn.gov/media/2858/enlc-final-rules-adopted121217_2.pdf)**

**Historical Note**

New Section renumbered from R4-19-309 and amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 18 A.A.R. 2485, effective September 11, 2012 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 2852, effective September 11, 2013 (Supp. 13-3).

*NURSE LICENSURE COMPACT (NLC)*

***MODEL RULES AND REGULATIONS for RNs and LPN/VNs (Incorporated by Reference)***

*Article 6D and 8C of the Nurse Licensure Compact grant authority to the Compact Administrators to develop uniform rules to facilitate and coordinate implementation of the Compact.*

***As Amended November 13, 2012***

***1. Definition of terms in the Compact.***

*For the Purpose of the Compact:*

- a. "Board" means party state's regulatory body responsible for issuing nurse licenses.
- b. "Information system" means the coordinated licensure information system.
- c. "Primary state of residence" means the state of a person's declared fixed permanent and principal home for legal purposes; domicile.
- d. "Public" means any individual or entity other than designated staff or representatives of party state Boards or the National Council

of State Boards of Nursing, Inc.

Other terms used in these rules are to be defined as in the Interstate Compact.

**2. Issuance of a license by a Compact party state.**

For the purpose of this Compact:

- a. As of July 1, 2005, no applicant for initial licensure will be issued a compact license granting a multi-state privilege to practice unless the applicant first obtains a passing score on the applicable NCLEX examination or its predecessor examination used for licensure.
- b. A nurse applying for a license in a home party state shall produce evidence of the nurse's primary state of residence. Such evidence shall include a declaration signed by the licensee. Further evidence that may be requested may include but is not limited to:
  - i. Driver's license with a home address;
  - ii. Voter registration card displaying a home address; ~~or~~
  - iii. Federal income tax return declaring the primary state of residence.
  - iv. Military Form no. 2058 - state of legal residence certificate; or
  - v. W2 from US Government or any bureau, division or agency thereof indicating the declared state of residence. (Statutory basis: Articles 2E, 4C, and 4D)
- c. A nurse on a visa from another country applying for licensure in a party state may declare either the country of origin or the party state as the primary state of residence. If the foreign country is declared the primary state of residence, a single state license will be issued by the party state. (Statutory basis: Article 3E)
- d. A licensee issued by a party state is valid for practice in all other party states unless clearly designated as valid only in the state which issued the license. (Statutory basis: Article 3A and 3B)
- e. When a party state issued a license authorizing practice only in that state and not authorizing practice in other party states (i.e. a single state license), the license shall be clearly marked with words indicating that it is valid only in the state of issuance. (Statutory basis: Article 3A, 3B, and 3E)
- f. A nurse changing primary state of residence, from one party state to another party state, may continue to practice under the former home state license and multi-state licensure privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed ninety (90) days. (Statutory basis: Articles 4B, 4C, and 4D[1])
- g. The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance and the ninety-(90) day period in section 2f shall be stayed until resolution of the pending investigation. (Statutory basis: Article 5[B])
- h. The former home state license shall no longer be valid upon the issuance of a new home state license. (Statutory basis: Article 4D[1])
- i. If a decision is made by the new home state denying licensure, the new home state shall notify the former home state within ten (10) business days and the former home state may take action in accordance with that state's laws and rules.

**3. Limitations on multi-state licensure privilege - Discipline.**

- a. Home state Boards shall include in all licensure disciplinary orders and/or agreements that limit practice and/or require monitoring the requirement that the licensee subject to said order and/or agreement will agree to limit the licensee's practice to the home state during the pendency of the disciplinary order and/or agreement. This requirement may, in the alternative, allow the nurse to practice in other party states with prior written authorization from both the home state and such other party state Boards. (Statutory basis: State statute)
- b. An individual who had a license which was surrendered, revoked, suspended, or an application denied for cause in a prior state of primary residence, may be issued a single state license in a new primary state of residence until such time as the individual would be eligible for an unrestricted license by the prior state(s) of adverse action. Once eligible for licensure in the prior state(s), a multistate license may be issued.
- c.

**4. Information System**

- a. Levels of access
  - i. The Public shall have access to nurse licensure information limited to:
    - a. the nurse's name,
    - b. jurisdiction(s) of licensure,
    - c. license expiration date(s),
    - d. licensure classification(s) and status(es),
    - e. public emergency and final disciplinary actions, as defined by contributing state authority, and
    - f. the status of multi-state licensure privileges.
  - ii. Non-party state Boards shall have access to all Information System data except current significant investigative information and other information as limited by contributing party state authority.
  - iii. Party state Boards shall have access to all Information System data contributed by the party states and other information as limited by contributing non-party state authority. (Statutory basis: 7G)
- b. The licensee may request in writing to the home state Board to review the data relating to the licensee in the Information System. In the event a licensee asserts that any data relating to him or her is inaccurate, the burden of proof shall be upon the licensee to provide evidence that substantiates such claim. The Board shall verify and within ten (10) business days correct inaccurate data to the Information System. (Statutory basis: 7G)
- c. The Board shall report to the Information System within ten (10) business days
  - i. disciplinary action, agreement or order requiring participation in alternative programs or which limit practice or require monitoring (except agreements and orders relating to participation in alternative programs required to remain nonpublic by contributing state authority),
  - ii. dismissal of complaint, and
  - iii. changes in status of disciplinary action, or licensure encumbrance. (Statutory basis: 7B)

- d. *Current significant investigative information shall be deleted from the Information System within ten (10) business days upon report of disciplinary action, agreement or order requiring participation in alternative programs or agreements which limit practice or require monitoring or dismissal of a complaint. (Statutory basis: 7B, 7F)*
- e. *Changes to licensure information in the Information System shall be completed within ten (10) business days upon notification by a Board. (Statutory basis: 7B, 7F)*

**R4-19-312. Practice Requirement**

- A. The Board shall not issue a license or renew the license of an applicant who does not meet the applicable requirements in subsections (B), (C), and (D).
- B. An applicant for licensure by endorsement or renewal shall either have completed a post-licensure nursing program or practiced nursing at the applicable level of licensure for a minimum of 960 hours in the five years before the date on which the application is received. This requirement is satisfied if the applicant verifies that the applicant has:
  - 1. Completed a post-licensure nursing education program at a school that is accredited under R4-19-201(A) and obtained a degree, or an advanced practice certificate in nursing within the past five years; or
  - 2. Practiced for a minimum of 960 hours within the past five years where the nurse:
    - a. Worked for compensation or as a volunteer, as a licensed nurse in the United States or an international jurisdiction, and performed one or more acts under A.R.S. § 32-1601(21) as an RN if applying for RN renewal or licensure or A.R.S. § 32-1601(17) as an LPN if applying for LPN renewal or licensure; or
    - b. Held a position for compensation or as a volunteer in the United States or an international jurisdiction that required or recommended, in the job description, the level of licensure being sought or renewed; or
    - c. Engaged in clinical practice as part of an RN-to-Bachelor of Science in Nursing, Masters, Doctoral or Nurse Practitioner program.
- C. Care of family members does not meet the requirements of subsection (B)(2) unless the applicant submits evidence:
  - 1. That the applicant is providing care as part of a medical foster home; or
  - 2. That the specific care provided by the applicant was:
    - a. Ordered by another health care provider who is authorized to prescribe and was responsible for the care of the patient,
    - b. The type of care would typically be authorized by a third-party payer, and
    - c. The care was documented and reviewed by the health care provider.
- D. An applicant for licensure by either examination or endorsement, who does not meet the requirements of subsection (B), shall have completed the clinical portion of a pre-licensure nursing program within two years of the date of licensure.
- E. A licensee or applicant who fails to satisfy the requirements of subsection (B) or (D), shall submit evidence of satisfactory completion of a Board-approved refresher or competency program. The Board may issue a temporary license stamped “for refresher course only” to any applicant who meets all requirements of this Article except subsection (B) or (D) and provides evidence of applying for enrollment in a Board-approved refresher or competency program.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citations in subsection (B)(2)(a) were updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2). A.R.S. Section references updated under subsection (B)(2)(a) under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 1420, effective July 1, 2017 (Supp. 17-2).

**R4-19-313. Background**

- A. All applicants convicted of a sexual offense involving a minor or performing a sexual act against the will of another person shall be subject to a Board order under A.R.S. § 32-1664(F) and R4-19-405 unless the individual is precluded from licensure under A.R.S. § 32-1606(B)(17). If the evaluation identifies sexual behaviors of a predatory nature, the Board shall deny licensure or renewal of licensure.
- B. All individuals reporting a substance use disorder in the last five years may be subject to a Board order for an evaluation under A.R.S. § 32-1664(F) and R4-19-405 to determine safety to practice.
- C. The Board may order the evaluation of other individuals on a case-by-case basis under A.R.S. § 32-1664(F) and R4-19-405.

**Historical Note**

New Section made by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2).

**ARTICLE 4. REGULATION**

**R4-19-401. Standards Related to Licensed Practical Nurse Scope of Practice**

- A. A licensed practical nurse shall engage in practical nursing as defined in A.R.S. § 32-1601 only under the supervision of a registered nurse or licensed physician.
- B. A LPN's nursing practice is limited to those activities for which the LPN has been prepared through basic practical nursing education in accordance with A.R.S. § 32-1637(1) and those additional skills that are obtained through subsequent nursing education and within the scope of practice of a LPN as determined by the Board.
- C. A LPN shall:
  - 1. Practice within the legal boundaries of practical nursing within the scope of practice authorized by A.R.S. Title 32, Chapter 15 and 4 A.A.C.19;
  - 2. Demonstrate honesty and integrity;
  - 3. Base nursing decisions on nursing knowledge and skills, the needs of clients, and licensed practical nursing standards;
  - 4. Accept responsibility for individual nursing actions, decisions, and behavior in the course of practical nursing practice.
  - 5. Maintain competence through ongoing learning and application of knowledge in practical nursing practice.

6. Protect confidential information unless obligated by law to disclose the information;
  7. Report unprofessional conduct, as defined in A.R.S. § 32-1601(24) and further specified in R4-19-403 and R4-19-814, to the Board;
  8. Respect a client's rights, concerns, decisions, and dignity;
  9. Maintain professional boundaries; and
  10. Respect a client's property and the property of others.
- D.** In participating in the nursing process and implementing client care across the lifespan, a LPN shall:
1. Contribute to the assessment of the health status of clients by:
    - a. Recognizing client characteristics that may affect the client's health status;
    - b. Gathering and recording assessment data;
    - c. Demonstrating attentiveness by observing, monitoring, and reporting signs, symptoms, and changes in client condition in an ongoing manner to the supervising registered nurse or physician;
  2. Contribute to the development and modification of the plan of care by:
    - a. Planning episodic nursing care for a client whose condition is stable or predictable;
    - b. Assisting the registered nurse or supervising physician in identification of client needs and goals; and
    - c. Determining priorities of care together with the supervising registered nurse or physician;
  3. Implement aspects of a client's care consistent with the LPN scope of practice in a timely and accurate manner including:
    - a. Following nurse and physician orders and seeking clarification of orders when needed;
    - b. Administering treatments, medications, and procedures;
    - c. Attending to client and family concerns or requests;
    - d. Providing health information to clients as directed by the supervising RN or physician or according to an established educational plan;
    - e. Promoting a safe client environment;
    - f. Communicating relevant and timely client information with other health team members regarding:
      - i. Client status and progress,
      - ii. Client response or lack of response to therapies,
      - iii. Significant changes in client condition, and
      - iv. Client needs and special requests, and
    - g. Documenting the nursing care the LPN provided;
  4. Contribute to evaluation of the plan of care by:
    - a. Gathering, observing, recording, and communicating client responses to nursing interventions; and
    - b. Modifying the plan of care in collaboration with a registered nurse based on an analysis of client responses.
- E.** A LPN assigns and delegates nursing activities. The LPN shall:
1. Assign nursing care within the LPN scope of practice to other LPNs;
  2. Delegate nursing tasks to unlicensed assistive personnel (UAPs). In maintaining accountability for the delegation, the LPN shall ensure that the:
    - a. UAP has the education, legal authority, and demonstrated competency to perform the delegated task;
    - b. Tasks delegated are consistent with the UAP's job description and can be safely performed according to clear, exact, and unchanging directions;
    - c. Results of the task are reasonably predictable;
    - d. Task does not require assessment, interpretation, or independent decision making during its performance or at completion;
    - e. Selected client and circumstances of the delegation are such that delegation of the task poses minimal risk to the client and the consequences of performing the task improperly are not life-threatening;
    - f. LPN provides clear directions and guidelines regarding the delegated task or, for routine tasks on stable clients, verifies that the UAP follows each written facility policy or procedure when performing the delegated task;
    - g. LPN provides supervision and feedback to the UAP; and
    - h. LPN observes and communicates the outcomes of the delegated task.

#### **Historical Note**

Former Section III, Part II; Amended effective February 20, 1980 (Supp. 80-1). Former Section R4-19-42 renumbered as Section R4-19-401 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4). Subsection (C)(7) amended at request of Board, Office File No. M11-423, filed November 18, 2011 (Supp. 11-4). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citation in subsection (C)(7) was updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). A.R.S. Section reference updated under subsection (C)(7) under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3)

#### **R4-19-402. Standards Related to Registered Nurse Scope of Practice**

- A.** A registered nurse (RN) shall perform only those nursing activities for which the RN has been prepared through basic registered nursing education and those additional skills which are obtained through subsequent nursing education and within the scope of practice of an RN as determined by the Board.
- B.** A RN shall:
1. Practice within the legal boundaries of registered nursing within the scope of practice authorized by A.R.S. Title 32, Chapter 15 and 4 A.A.C. 19;

2. Demonstrate honesty and integrity;
  3. Base nursing decisions on nursing knowledge and skills, the needs of clients, and registered nursing standards;
  4. Accept responsibility for individual nursing actions, decisions, and behavior in the course of registered nursing practice;
  5. Maintain competence through ongoing learning and application of knowledge in registered nursing practice;
  6. Protect confidential information unless obligated by law to disclose the information;
  7. Report unprofessional conduct, as defined in A.R.S. § 32-1601(24) and further specified in R4-19-403 and R4-19-814, to the Board;
  8. Respect a client's rights, concerns, decisions, and dignity;
  9. Maintain professional boundaries;
  10. Respect a client's property and the property of others; and
  11. Advocate on behalf of a client to promote the client's best interest.
- C.** In utilizing the nursing process to plan and implement nursing care for clients across the life-span, a RN shall:
1. Conduct a nursing assessment of a client in which the nurse:
    - a. Recognizes client characteristics that may affect the client's health status;
    - b. Gathers or reviews comprehensive subjective and objective data and detects changes or missing information;
    - c. Applies nursing knowledge in the integration of the biological, psychological, and social aspects of the client's condition;
 and
    - d. Demonstrates attentiveness by providing ongoing client surveillance and monitoring;
  2. Use critical thinking and nursing judgment to analyze client assessment data to:
    - a. Make independent nursing decisions and formulate nursing diagnoses; and
    - b. Determine the clinical implications of client signs, symptoms, and changes, as either expected, unexpected, or emergent situations;
  3. Based on assessment and analysis of client data, plan strategies of nursing care and nursing interventions in which the nurse:
    - a. Identifies client needs and goals;
    - b. Formulates strategies to meet identified client needs and goals;
    - c. Modifies defined strategies to be consistent with the client's overall health care plan; and
    - d. Prioritizes strategies based on client needs and goals;
  4. Provide nursing care within the RN scope of practice in which the nurse:
    - a. Administers prescribed aspects of care including treatments, therapies, and medications;
    - b. Clarifies health care provider orders when needed;
    - c. Implements independent nursing activities consistent with the RN scope of practice;
    - d. Institutes preventive measures to protect client, others, and self;
    - e. Intervenes on behalf of a client when problems are identified;
    - f. Promotes a safe client environment;
    - g. Attends to client concerns or requests;
    - h. Communicates client information to health team members including:
      - i. Client concerns and special needs;
      - ii. Client status and progress;
      - iii. Client response or lack of response to interventions; and
      - iv. Significant changes in client condition; and
    - i. Documents the nursing care the RN has provided;
  5. Evaluate the impact of nursing care including the:
    - a. Client's response to interventions;
    - b. Need for alternative interventions;
    - c. Need to communicate and consult with other health team members; and
    - d. Need to revise the plan of care;
  6. Provide comprehensive nursing and health care education in which the RN:
    - a. Assesses and analyzes educational needs of learners;
    - b. Plans educational programs based on learning needs and teaching-learning principles;
    - c. Ensures implementation of an educational plan either directly or by delegating selected aspects of the education to other qualified persons; and
    - d. Evaluates the education to meet the identified goals;
- D.** A RN assigns and delegates nursing activities. The RN shall:
1. Assign nursing care within the RN scope of practice to other RNs;
  2. Assign nursing care to a LPN within the LPN scope of practice based on the RN's assessment of the client and the LPN's ability;
  3. Supervise, monitor, and evaluate the care assigned to a LPN; and
  4. Delegate nursing tasks to UAPs. In maintaining accountability for the delegation, an RN shall ensure that the:
    - a. UAP has the education, legal authority, and demonstrated competency to perform the delegated task;
    - b. Tasks delegated are consistent with the UAP's job description and can be safely performed according to clear, exact, and unchanging directions;
    - c. Results of the task are reasonably predictable;
    - d. Task does not require assessment, interpretation, or independent decision making during its performance or at completion;
    - e. Selected client and circumstances of the delegation are such that delegation of the task poses minimal risk to the client and the consequences of performing the task improperly are not life-threatening;
    - f. RN provides clear directions and guidelines regarding the delegated task or, for routine tasks on stable clients, verifies that the UAP follows each written facility policy or procedure when performing the delegated task;

- g. RN provides supervision and feedback to the UAP; and
- h. RN observes and communicates the outcomes of the delegated task.

#### Historical Note

Former Section III, Part I; Amended effective February 20, 1980 (Supp. 80-1). Former Section R4-19-43 renumbered as Section R4-19-402 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Section repealed, new Section made by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4). Subsection (B)(7) amended at request of Board, Office File No. M11-423, filed November 18, 2011 (Supp. 11-4). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citation in subsection (B)(7) was updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). A.R.S. Section reference updated under subsection (B)(7) under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3).

#### **R4-19-403. Unprofessional Conduct**

For purposes of A.R.S. § 32-1601(24)(d), any conduct or practice that is or might be harmful or dangerous to the health of a patient or the public includes one or more of the following:

1. A pattern of failure to maintain minimum standards of acceptable and prevailing nursing practice;
2. Intentionally or negligently causing physical or emotional injury;
3. Failing to maintain professional boundaries or engaging in a dual relationship with a patient, resident, or any family member of a patient or resident;
4. Engaging in sexual conduct with a patient, resident, or any family member of a patient or resident who does not have a pre-existing relationship with the nurse, or any conduct in the work place that a reasonable person would interpret as sexual;
5. Abandoning or neglecting a patient who requires immediate nursing care without making reasonable arrangement for continuation of care;
6. Removing a patient's life support system without appropriate medical or legal authorization;
7. Failing to maintain for a patient record that accurately reflects the nursing assessment, care, treatment, and other nursing services provided to the patient;
8. Falsifying or making a materially incorrect, inconsistent, or unintelligible entry in any record:
  - a. Regarding a patient, health care facility, school, institution, or other work place location; or
  - b. Pertaining to obtaining, possessing, or administering any controlled substance as defined in the federal Uniform Controlled Substances Act, 21 U.S.C. 801 et seq., or Arizona's Uniform Controlled Substances Act, A.R.S. Title 36, Chapter 27;
9. Failing to take appropriate action to safeguard a patient's welfare or follow policies and procedures of the nurse's employer designed to safeguard the patient;
10. Failing to take action in a health care setting to protect a patient whose safety or welfare is at risk from incompetent health care practice, or to report the incompetent health care practice to employment or licensing authorities;
11. Failing to report to the Board a licensed nurse whose work history includes conduct, or a pattern of conduct, that leads to or may lead to an adverse patient outcome;
12. Assuming patient care responsibilities that the nurse lacks the education to perform, for which the nurse has failed to maintain nursing competence, or that are outside the scope of practice of the nurse;
13. Failing to supervise a person to whom nursing functions are delegated;
14. Delegating services that require nursing judgment to an unauthorized person;
15. Removing, without authorization, any money, property, or personal possessions, or requesting payment for services not performed from a patient, employer, co-worker, or member of the public.
16. Removing, without authorization, a narcotic, drug, controlled substance, supply, equipment, or medical record from any health care facility, school, institution, or other work place location;
17. A pattern of using or being under the influence of alcohol, drugs, or a similar substance to the extent that judgment may be impaired and nursing practice detrimentally affected, or while on duty in any health care facility, school, institution, or other work location;
18. Obtaining, possessing, administering, or using any narcotic, controlled substance, or illegal drug in violation of any federal or state criminal law, or in violation of the policy of any health care facility, school, institution, or other work location at which the nurse practices;
19. Providing or administering any controlled substance or prescription-only drug for other than accepted therapeutic or research purposes;
20. Engaging in fraud, misrepresentation, or deceit in taking a licensing examination or on an initial or renewal application for a license or certificate;
21. Impersonating a nurse licensed or certified under this Chapter;
22. Permitting or allowing another person to use the nurse's license for any purpose;
23. Advertising the practice of nursing with untruthful or misleading statements;
24. Practicing nursing without a current license or while the license is suspended, or practicing as a nurse practitioner without current national certification, if required pursuant to R4-19-505;
25. Failing to:
  - a. Furnish in writing a full and complete explanation of a matter reported pursuant to A.R.S. § 32-1664, or
  - b. Respond to a subpoena issued by the Board;
26. Making a written false or inaccurate statement to the Board or the Board's designee in the course of an investigation;
27. Making a false or misleading statement on a nursing or health care related employment or credential application concerning previous employment, employment experience, education, or credentials;
28. If a licensee or applicant is charged with a felony or a misdemeanor involving conduct that may affect patient safety, failing

to notify the Board in writing, as required under A.R.S. § 32-3208, within 10 days of being charged. The licensee or applicant shall include the following in the notification:

- a. Name, address, telephone number, social security number, and license number, if applicable;
  - b. Date of the charge; and
  - c. Nature of the offense;
29. Failing to notify the Board, in writing, of a conviction for a felony or an undesignated offense within 10 days of the conviction. The nurse or applicant shall include the following in the notification:
- a. Name, address, telephone number, social security number, and license number, if applicable;
  - b. Date of the conviction; and
  - c. Nature of the offense;
30. For a registered nurse granted prescribing privileges, any act prohibited under R4-19-511(D); or
31. Practicing in any other manner that gives the Board reasonable cause to believe the health of a patient or the public may be harmed.

#### **Historical Note**

Adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-44 repealed, new Section R4-19-44 adopted effective May 9, 1984 (Supp. 84-3). Amended by adding Paragraphs 18 through 22 effective July 16, 1984 (Supp. 84-4). Former Section R4-19-44 renumbered and amended as Section R4-19-403 effective February 21, 1986 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4). Antiquated statute reference in opening subsection revised at the request of Board under A.R.S. § 41-1011(C), Office File No. M11-189, filed May 16, 2011 (Supp. 11-2). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citation in the opening subsection was updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). A.R.S. Section reference updated under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3). Amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

#### **R4-19-404. Re-issuance or Subsequent Issuance of License**

- A.** The Board may restore a license to a nurse whose license has been suspended after the period of suspension if the licensee provides written evidence that all requirements or conditions prescribed or ordered in the consent agreement or Board order for suspension have been met to the satisfaction of the Board. The Board may place conditions or limitations on the restored license. The license of a nurse who fails to provide such evidence of fulfilling the requirements or conditions prescribed by the Board shall remain on suspended status until such submission and acceptance by the Board.
- B.** A person whose nursing license is denied, revoked, or voluntarily surrendered under A.R.S. § 32-1663 may apply to the Board to issue or re-issue the license:
1. Five years from the date of denial or revocation, or
  2. In accordance with the terms of a voluntary surrender agreement.
- C.** A person who applies for issuance or re-issuance of a license under the conditions of subsection (B) is subject to the following terms and conditions:
1. The person shall submit a written application for issuance or re-issuance of the license that contains substantial evidence that the basis for surrendering, denying, or revoking the license has been removed and that the issuance or re-issuance of the license will not be a threat to public health or safety.
  2. Safe practice.
    - a. Under A.R.S. § 32-1664(F), the Board for reasonable cause may require a combination of mental, physical, nursing competency, psychological, or psychiatric evaluations, or any combination of evaluations, reports, and affidavits that the Board considers necessary to determine the person's competence and conduct to safely practice nursing.
    - b. Under A.R.S. 32-1664(K) the Board may issue subpoenas and compel the attendance of witnesses and the production of records and documentary evidence relevant to the person's ability to safely practice nursing.
  3. After receipt of the application, the information required under subsection (C)(2), and the completion of an investigation, the Board shall place the application on the agenda of a regularly scheduled Board meeting.
  4. After consideration of the application and any information required under subsection (C)(2), the Board may:
    - a. Grant the license with or without conditions or limitations;
    - b. If other licensure requirements have been met, grant, with or without conditions, a temporary license for the sole purpose of allowing the applicant to successfully complete an approved nurse refresher course; or
    - c. Deny the license if the Board determines that licensure might be harmful or dangerous to the health of a patient or the public.
  5. If the Board orders a refresher course described in subsection (C)(4)(b) the Board shall consider the applicant's performance in the approved refresher course and any other evidence, if available, of the applicant's safety to practice, and either deny the license under subsection (C)(4)(c) or grant the license with or without conditions or limitations.
  6. An applicant who is denied issuance or re-issuance of a license shall have 30 days from the date of issuance of the notice of denial from the Board to file a written request for hearing with the Board. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

#### **Historical Note**

Former Section R4-19-30 renumbered and amended as Section R4-19-45 effective February 20, 1980 (Supp. 80-1). Former Section R4-19-45 renumbered as Section R4-19-404 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4).

#### **R4-19-405. Board-ordered Evaluations**

- A.** Under A.R.S. § 32-1664(F), the Board may order a licensee or CNA certificate-holder to undergo an evaluation by an independent qualified evaluator for the purposes of determining the licensee's or certificate holder's safety and competence to practice. Evaluations may be in the areas of:
1. Nursing knowledge or skills or both;
  2. Mental functioning, including but not limited to neuropsychological evaluation, and other cognition evaluations;
  3. Medical status including but not limited to medical review of drug screen results, chronic pain evaluation, physical examination, and biological testing;
  4. Psychiatric or psychological status including but not limited to substance abuse evaluation, boundary or sexual misconduct evaluations, and psychological testing; or
  5. Other similar evaluations that the Board determines are necessary to evaluate a licensee or certificate holder's ability to safely practice.
- B.** Before making the decision to order the evaluation, the Board shall review the allegations and investigative findings.
- C.** The Board retains the discretion to use an evaluator based on the evaluator's licensure history, the Board's past experience with the evaluator, and the quality of the evaluation provided. Before conducting a Board-ordered evaluation, a potential evaluator shall submit documentation that the evaluator:
1. Possesses expertise and educational credentials in the area that the Board has ordered an evaluation;
  2. Holds a license or certificate in good standing with a licensing or certifying board located in the United States and discloses any past licensure disciplinary actions and criminal history;
  3. Will provide equipment and environmental conditions necessary to conduct a valid evaluation;
  4. Has no current or past treatment, collegial, or social relationship with the licensee or certificate holder, any family member of the licensee or certificate holder, or the licensee's or certificate holder's legal counsel;
  5. Will not enter into a treatment relationship with the licensee or certificate holder unless the relationship is unavoidable due to geographical location or the specific expertise of the evaluator; and
  6. Agrees to keep information provided by the Board under subsection (D) confidential as evidenced by a signed confidentiality agreement provided by the Board.
- D.** Upon receipt of the evaluator's signed confidentiality agreement, the Board may provide confidential investigative information and documents to the evaluator for the purpose of disclosing the reason for the evaluation, the focus of the evaluation, and the conduct causing the Board to order the evaluation including:
1. The complaint and all information that has been received during the investigation of the complaint. Documents may include but are not limited to employment records, medical records, arrest records, conviction and sentencing records, excluding FBI fingerprint results, drug screen results, pharmacy profiles, witness statements, past licensure history, and a summary of information obtained during investigative interviews; and
  2. The specific questions for which the Board is seeking answers; and
- E.** The evaluator shall provide the following information to the Board:
1. A professional report that is objective, thorough, timely, accurate, and defensible;
  2. Evaluation findings including diagnosis if appropriate and assessment of ability to practice safely;
  3. Recommendations for further evaluation, treatment, and remediation; and
  4. Suggestions for assuring safe practice and compliance with treatment and remediation recommendations, if any.

#### **Historical Note**

Adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-46 renumbered and amended as Section R4-19-405 effective February 21, 1986 (Supp. 86-1). Repealed effective July 19, 1995 (Supp. 95-3). New Section made by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4).

### **ARTICLE 5. ADVANCED PRACTICE REGISTERED NURSING**

#### **R4-19-501. Roles and Population Foci of Advanced Practice Registered Nursing (APRN); Certification Programs**

- A.** The Board recognizes the following APRN roles:
1. Registered nurse practitioner (RNP) in a population focus including Certified Nurse Midwife as a population focus of RNP;
  2. Clinical Nurse Specialist (CNS) in a population focus; and
  3. Certified Registered Nurse Anesthetist (CRNA).
- B.** RNPs and CNSs shall practice within one or more population foci, consistent with their education and certification. Population foci include:
1. Family-individual across the life span;
  2. Adult-gerontology primary or acute care;
  3. Neonatal;
  4. Pediatric primary or acute care;
  5. Women's health-gender related;
  6. Psychiatric-mental health;
  7. For Certified Nurse Midwives, women's health gender related including childbirth and neonatal care;
  8. Other foci that have been recognized by the Board previously and new foci that meet the following conditions:
    - a. There is an accredited educational program and a national certifying process that meets the requirements of subsection (C); and
    - b. The focus is broad enough for an educational program to be developed that prepares a registered nurse to function both within the scope of practice of the role and population focus.
- C.** The Board shall accept advanced practice certifications from programs that meet the following qualifications:
1. The certification program:

- a. Is accredited by the National Commission for Certifying Agencies, the Accreditation Board for Specialty Nursing Certification, or an equivalent organization as determined by the Board;
  - b. Establishes educational requirements for certification that are consistent with the requirements in R4-19-505;
  - c. Has an application process and credential review that requires an applicant to submit original source documentation of the applicant's education and clinical practice in the advanced practice role and population focus, if applicable, for which certification is granted; and
  - d. Is national in the scope of its credentialing.
2. The certification program uses an examination as a basis for certification in the advanced practice role and population focus, as applicable that meets all of the following criteria:
    - a. The examination is based upon job analysis studies conducted using standard methodologies acceptable to the testing community both initially and every five years;
    - b. The examination assesses entry-level practice in the advanced practice role and population focus, if applicable;
    - c. The examination assesses the knowledge, skills, and abilities essential for the delivery of safe and effective advanced nursing care to clients;
    - d. Examination items are reviewed for content validity, cultural sensitivity, and correct scoring using an established mechanism, both before first use and periodically; items are reviewed for currency at least every three years;
    - e. The examination is evaluated for psychometric performance and conforms to psychometric standards that are routinely utilized for other types of high-stakes testing;
    - f. The passing standard is established using accepted psychometric methods and is re-evaluated periodically;
    - g. Examination security is maintained through established procedures;
    - h. A re-take policy is in place; and
    - i. Conditions for taking the certification examination are consistent with standards of the testing community;
  3. Certification is issued upon passing the examination and meeting all other certification requirements;
  4. The certification program periodically provides for re-certification that includes review of qualifications and continued competence;
  5. The certification program provides timely communication to the Board regarding licensee or applicant certification status, changes in an individual's certification status, exam results and changes in the certification program, including qualifications, test plan, and scope of practice; and
  6. The certification program has an evaluation process to provide quality assurance in its certificate program.
- D.** The Board shall determine whether a certification program meets the requirements of this Section. The following certification programs meet the requirements of this Section as of the effective date of this rulemaking:
1. For RNP:
    - a. American Academy of Nurse Practitioner certification programs:
      - i. Adult nurse practitioner,
      - ii. Family nurse practitioner,
      - iii. Gerontologic nurse practitioner,
      - iv. Adult health-gerontological nurse practitioner.
    - b. American Nurses Credentialing Center certification programs:
      - i. Acute care nurse practitioner (adult/gerontology),
      - ii. Adult nurse practitioner,
      - iii. Family nurse practitioner,
      - iv. Gerontological nurse practitioner,
      - v. Pediatric nurse practitioner,
      - vi. Adult psychiatric and mental health nurse practitioner,
      - vii. Family psychiatric and mental health nurse practitioner,
      - viii. Adult health-gerontological nurse practitioner,
    - c. Pediatric Nursing Certification Board certification programs:
      - i. Pediatric nurse practitioner primary care,
      - ii. Pediatric nurse practitioner acute care,
    - d. National Certification Corporation for Obstetric, Gynecological, and Neonatal Nursing Specialties certification programs:
      - i. Women's health nurse practitioner,
      - ii. Neonatal nurse practitioner,
    - e. For a nurse-midwife, the American Midwifery Certification Board certification program in nurse midwifery,
    - f. AACN Certification Corporation certification programs:
      - i. Adult acute care nurse practitioner,
      - ii. Adult-gerontology acute care nurse practitioner,
  2. For CNS:
    - a. AACN Certification Corporation certification programs:
      - i. Adult acute and critical care CNS,
      - ii. Pediatric acute and critical care CNS,
      - iii. Neonatal acute and critical care CNS,
    - b. American Nurses Credentialing Center certification:
      - i. Adult psychiatric-mental health CNS,
      - ii. Family psychiatric-mental health CNS,
      - iii. Gerontological CNS,
      - iv. Adult health CNS,
      - v. Pediatric CNS.

3. For CRNA, National Board of Certification and Recertification for Nurse Anesthetists.
- E.** The Board shall approve a certification program that meets the criteria established in this Section. An entity that seeks approval of a certification program and is denied approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

#### **Historical Note**

Former Section IV, Part I. Former Section R4-19-53 renumbered as Section R4-19-501 (Supp. 86-1). Former Section R4-19-501 renumbered to R4-19-502, new Section R4-19-501 adopted effective November 18, 1994 (Supp. 94-4). Amended effective November 25, 1996 (Supp. 96-4). Amended by final rulemaking at 7 A.A.R. 3213, effective July 12, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (05-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

#### **R4-19-502. Requirements for APRN Programs**

- A.** An educational institution or other entity that offers an APRN program in this state for RNP or CNS roles shall ensure that the program:
1. Is offered by or affiliated with a college or university that is accredited under A.R.S. § 32-1644;
  2. For new programs, the college or university offering the program has at least one additional nationally accredited nursing program as defined in R4-19-101 or otherwise provides substantial evidence of the ability to attain national APRN program accreditation for all graduating cohorts;
  3. Is a formal educational program, that is part of a masters or doctoral program or a post-masters program in nursing with a concentration in an advanced practice registered nursing role and population focus under R4-19-501;
  4. Is nationally accredited, or has achieved candidacy status for national accreditation by an approved national nursing accrediting agency as defined in R4-19-101;
  5. Offers a curriculum that covers the scope of practice for both the role of advanced practice as specified in A.R.S. § 32-1601 and the population focus including:
    - a. Three separate graduate level courses in:
      - i. Advanced physiology and pathophysiology, including general principles across the lifespan;
      - ii. Advanced health assessment, which includes assessment of all human systems, advanced assessment techniques, concepts and approaches;
      - iii. Advanced pharmacology, which includes pharmacodynamics, pharmacokinetics and pharmacotherapeutics of all broad category agents;
    - b. Diagnosis and management of diseases across practice settings including diseases representative of all systems;
    - c. Preparation that provides a basic understanding of the principles for decision making in the identified role;
    - d. Preparation in the core competencies for the identified APRN role including legal, ethical and professional responsibilities; and
    - e. Role preparation in an identified population focus under R4-19-501.
  6. Verifies that each student has an unencumbered license to practice as an RN in the state of clinical practice;
  7. Includes a minimum of 500 hours of faculty supervised clinical practice (programs that prepare students for more than one role or population focus shall have 500 hours of clinical practice in each role and population focus);
  8. Notifies the Board of any changes in hours of clinical practice, accreditation status, denial or deferral of accreditation or program administrator and responds to Board requests for information;
  9. Has financial resources sufficient to support accreditation standards and the educational goals of the program;
  10. Establishes academic, professional, and conduct standards that determine admission to the program, progression in the program, and graduation from the program that are consistent with sound educational practices and recognized standards of professional conduct;
  11. Establishes provisions for advanced placement for individuals holding a graduate degree in nursing who are seeking education in an APRN role and population focus, provided that advanced placement students master the same APRN competencies as students in the graduate-level APRN program; and
  12. Provides the Board an application for approval under the provisions of R4-19-209(B) before making changes to the:
    - a. Scope of the program, or
    - b. Level of educational preparation provided.
- B.** A CNS or RNP program shall appoint the following personnel:
1. An APRN program administrator who:
    - a. Holds a current unencumbered RN license or multi-state privilege to practice in Arizona and a current unencumbered APRN certificate issued by the Board;
    - b. Holds an earned doctorate in nursing or health-related field if appointed after the effective date of this Section;
    - c. Has at least two years clinical experience as an APRN; and
    - d. Holds current national certification as an APRN.
  2. A lead faculty member who is educated and certified both nationally and by the Board in the same role and population focus to coordinate the educational component for the role and population focus in the advanced practice registered nursing program.
  3. Nursing faculty to teach any APRN course that includes a clinical learning experience who have the following qualifications:
    - a. A current unencumbered RN license or multi-state privilege to practice registered nursing in Arizona;
    - b. A current unencumbered Arizona APRN certificate,
    - c. A graduate degree in nursing or a health related field in the population focus,
    - d. Two years of APRN clinical experience, and
    - e. Current knowledge, competence and certification as an APRN in the role and population focus consistent with teaching responsibilities.
  4. Adjunct or part-time clinical faculty employed solely to supervise clinical nursing experiences shall meet all of the faculty

- qualifications for the APRN program they are teaching.
5. Interdisciplinary faculty who teach non-clinical courses shall have advanced preparation in the areas of course content.
  6. Clinical preceptors may be used to enhance faculty-directed clinical learning experiences, but not to replace faculty. A clinical preceptor shall be approved by program administration or faculty and:
    - a. Hold a current unencumbered license or multistate privilege to practice as a registered nurse or physician in the state in which the preceptor practices or, if employed by the federal government, holds a current unencumbered RN or physician license in the United States;
    - b. Have at least one year clinical experience as a physician or an advanced practice nurse
    - c. Practice in a population focus comparable to that of the APRN program;
    - d. For nurse preceptors, have at least one of the following:
      - i. Current national certification in the advanced practice role and population focus of the course or program in which the student is enrolled;
      - ii. Current Board certification in the advanced practice role and population focus of the course or program in which the student is enrolled; or
      - iii. If an advanced practice preceptor cannot be found who meets the requirements of subsection (B)(6)(d)(i) or (ii), educational and experiential qualifications that will enable the preceptor to precept students in the program, as determined by the nursing program and approved by the Board.
  - C. An entity that offers a CRNA program in Arizona shall maintain full national program accreditation with no limitations from the Council on Accreditation of Nurse Anesthesia Educational Programs or an equivalent agency approved by the Board. The program shall notify the Board of all program accreditation actions within 30 days of official notification by the accrediting agency.

#### **Historical Note**

Former Section IV, Part II; Amended effective February 20, 1980 (Supp. 80-1). Former Section R4-19-54 repealed, new Section R4-19-54 adopted effective July 20, 1981 (Supp. 81-4). Former Section R4-19-54 renumbered as Section R4-19-502 (Supp. 86-1). Section repealed, new Section R4-19-502 renumbered from R4-19-501 and Section heading amended effective November 18, 1994 (Supp. 94-4). Section repealed, new Section R4-19-502 adopted effective November 25, 1996 (Supp. 96-4). Amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (05-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

#### **R4-19-503. Application for Approval of an Advanced Practice Registered Nursing Program; Approval by Board**

- A. An administrator of an educational institution that proposes to offer a CNS or RNP program shall submit an application that includes all of the following information to the Board:
  1. Role, population focus that meets the criteria in R4-19-501 program administrator and lead faculty member as required in R4-19-502(B);
  2. Name, address, and evidence verifying institutional accreditation status of the affiliated educational institution and program accreditation status of current nursing programs offered by the educational institution;
  3. The mission, goals, and objectives of the program consistent with generally accepted standards for advanced practice education in the role and population focus of the program;
  4. List of the required courses, and a description, measurable objectives, and content outline for each required course consistent with curricular requirements in R4-19-502;
  5. A proposed time schedule for implementation of the program and attaining national accreditation;
  6. The total hours allotted for both didactic instruction and supervised clinical practicum in the program;
  7. A program proposal that provides evidence of sufficient financial resources, clinical opportunities and available faculty and preceptors for the proposed enrollment and planned expansion;
  8. A self-study that provides evidence of compliance with R4-19-502;
- B. An entity that wishes to offer a CRNA program shall submit evidence of current accreditation by the Council on Accreditation of Nurse Anesthesia Education Programs or an equivalent organization.
- C. The Board shall approve an advanced practice registered nursing program if approval is in the best interest of the public and the program meets the requirements of this Article. The Board may grant approval for a period of two years or less to an advanced practice nursing program where the program meets all the requirements of this Article except for accreditation by a national nursing accrediting agency, based on the program's presentation of evidence that it has applied for accreditation and meets accreditation standards.
- D. An educational institution or entity that is denied approval of an advanced practice registered nursing program may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying its application for approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.
- E. Approval of an advanced practice registered nursing program expires 12 months from the date of approval if a class of students is not admitted within that time.

#### **Historical Note**

Former Section IV, Part III; Amended effective Nov. 17, 1978 (Supp. 78-6). Amended effective February 20, 1980 (Supp. 80-1). Amended by adding subsection (F) effective July 20, 1981 (Supp. 81-4). Amended by adding subsection (G) effective September 15, 1982 (Supp. 82-5). Former Section R4-19-55 renumbered as Section R4-19-503 (Supp. 86-1). Former Section R4-19-503 repealed, new Section adopted effective November 18, 1994 (Supp. 94-4). Former Section R4-19-503 renumbered to Section R4-19-504; new Section R4-19-503 adopted effective November 25, 1996 (Supp. 86-1). Amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (05-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

#### **R4-19-504. Notice of Deficiency; Unprofessional Program Conduct**

- A. The Board may periodically survey an advanced practice registered nursing program under its jurisdiction to determine whether

criteria for approval are being met.

- B.** The Board shall, upon determining that an advanced practice registered nursing program is not in compliance with this Article, provide to the program administrator a written notice of deficiencies that establishes a reasonable time, based upon the number and severity of deficiencies, to correct the deficiencies. The time for correction may not exceed 18 months.
1. The program administrator shall, within 30 days from the date of service of the notice of deficiencies, consult with the Board or designated Board representative and, after consultation, file a plan to correct each of the identified deficiencies.
  2. The program administrator may, within 30 days from the date of service of the notice of deficiencies, submit a written request for a hearing before the Board to appeal the Board's determination of deficiencies. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.
  3. If the Board's determination is not appealed or is upheld upon appeal, the Board may conduct periodic evaluations of the program during the time of correction to determine whether the deficiencies have been corrected.
- C.** The Board shall, following a Board-conducted survey and report, rescind the approval or limit the ability of a program to admit students if the program fails to comply with R4-19-502 within the time set by the Board in the notice of deficiencies provided to the program administrator.
1. The Board shall serve the program administrator with a written notice of proposed rescission of approval or limitation of admission of students that states the grounds for the rescission or limitation. The program administrator has 30 days to submit a written request for a hearing to show cause why approval should not be rescinded or admissions limited. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.
  2. Upon the effective date of a decision to rescind program approval, the affected advanced practice registered nursing program shall immediately cease operation and be removed from the official approved-status listing. An advanced practice registered nursing program that is ordered to cease operations shall assist currently enrolled students to transfer to an approved nursing program.
- D.** A disciplinary action, denial of approval, or notice of deficiency may be issued against an RNP or CNS nursing program for any of the following acts of unprofessional conduct:
1. Failure to maintain minimum standards of acceptable and prevailing educational practice;
  2. For a program that was served with a notice of deficiencies within the preceding three years and timely corrected the noticed deficiencies, subsequent noncompliance with the standards in this Article;
  3. Utilization of students to meet staffing needs in health care facilities;
  4. Non-compliance with the program or parent institution mission or goals, program design, objectives, or policies;
  5. Failure to provide the variety and number of clinical learning opportunities necessary for students to achieve program outcomes or minimal competence;
  6. Student enrollments without adequate faculty, facilities, or clinical experiences;
  7. Ongoing or repetitive employment of unqualified faculty;
  8. Failure to comply with Board requirements within designated time-frames;
  9. Fraud or deceit in advertising, promoting or implementing a nursing program;
  10. Material misrepresentation of fact by the program in any advertisement, application or information submitted to the Board;
  11. Failure to allow Board staff to visit the program or conduct an investigation;
  12. Any other evidence that gives the Board reasonable cause to believe the program's conduct may be a threat to the safety and well-being of students, faculty or potential patients.

#### **Historical Note**

Former R4-19-504 renumbered to R4-19-505; new R4-19-504 made by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (05-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

#### **R4-19-505. Requirements for Initial APRN Certification**

- A.** An applicant for certification as an advanced practice registered nurse, shall:
1. Hold a current Arizona registered nurse (RN) license in good standing or an RN license in good standing from a compact party state with multistate privileges, and not be a participant in an alternative to discipline program in any jurisdiction; and
  2. Submit a verified application to the Board on a form provided by the Board that provides all of the following:
    - a. Full legal name and all former names used by the applicant;
    - b. Current mailing address, including primary state of residence and telephone number;
    - c. Place and date of birth;
    - d. RN license number, application for RN license, or copy of a multistate compact RN license;
    - e. Social security number for an applicant who lives or works in the United States;
    - f. Current e-mail address;
    - g. Educational background, including the name and location of basic nursing program, the institution that awarded the highest degree held and any and all advanced practice registered nursing education programs or schools attended including the number of years attended, the length of each program, the date of graduation or completion, and the type of degree or certificate awarded;
    - h. Role and population focus, as applicable for which the applicant is applying;
    - i. Current employer or practice setting, including address, position, and dates of service, if employed or practicing in nursing or health care;
    - j. Evidence of national certification or recertification as an advanced practice registered nurse in the role and population focus, if applicable, of the application and by a certification program that meets the requirements of R4-19-501(C). The applicant shall include the name of the certifying organization, population focus, certification number, date of certification, and expiration date;
    - k. For applicants holding a multistate compact RN license in a state other than Arizona:
      - i. State of original licensure and license number;

- ii. State of current compact RN license, license number and expiration date;
  - iii. Date of taking RN licensure exam and name of exam;
  - iv. Whether the applicant ever submitted an application for and was granted an Arizona license and, if applicable, the date of Arizona licensure;
  - v. Other information related to the nurse's practice for the purpose of collecting nursing workforce data; and
  - vi. State of licensure and license number of all RN licenses held,
- I. Responses regarding the applicant's background on the following subjects:
- i. Current investigation or pending disciplinary action by a nursing regulatory agency in the United States or its territories;
  - ii. Undesignated offense and felony charges, convictions and plea agreements including deferred prosecution;
  - iii. Misdemeanor charges, convictions, and plea agreements, including deferred prosecution, that are required to be reported under A.R.S. § 32-3208;
  - iv. Actions taken on a nursing license by any other state;
  - v. Unprofessional conduct as defined in A.R.S. § 32-1601;
  - vi. Substance use disorder within the last five years;
  - vii. Current participation in an alternative to discipline program in any other state; and
- m. Information that the applicant meets the criteria in R4-19-506(A) or (C).
3. Submit a fingerprint card on a form provided by the Board or prints if the applicant has not submitted fingerprints to the Board within the last two years.
4. Submit an official transcript from an institution accredited under A.R.S. § 32-1644 either sent directly from the institution or obtained from a Board-approved database that provides evidence of:
- a. A graduate degree with a major in nursing for RNP and CNS Applicants, or
  - b. A graduate degree associated with a CRNA program for a CRNA applicant.
5. The applicant shall cause the program to provide the Board with evidence of completion of an APRN program in the role and population focus of the application through submission of an official letter or other official program document sent either directly from the program, or from a Board-approved data base. The APRN program shall meet one of the following criteria during the period of the applicant's attendance in the program:
- a. The program was part of a graduate degree, or postmasters program at an institution accredited under A.R.S. § 32-1644;
  - or
  - b. The program was approved or recognized in the U.S jurisdiction of program location for the purpose granting APRN licensure or certification.
6. For an applicant who completed an advanced practice or graduate program in a foreign jurisdiction, submit an evaluation from the Commission on Graduates of Foreign Nursing Schools or a Board-approved credential evaluation service that indicates the applicant's program is comparable to a U.S. graduate nursing or APRN program.
7. Submit the required fee.
- B.** If the applicant satisfies all other requirements, the Board shall continue to certify:
- 1. An RNP without a graduate degree with a major in nursing if the applicant:
    - a. Meets all other requirements for certification; and
    - b. Ensures that the U.S. jurisdiction of an applicant's previous RNP licensure or certification submits evidence of the applicant's certification or licensure in the nurse practitioner role and population focus that either is current or was current at least six months before the application was received by the Board, and was originally issued:
      - i. Before January 1, 2001, if the RNP applicant lacks a graduate degree; or
      - ii. Before November 13, 2005 if the RNP's graduate degree is in a health-related area other than nursing.
  - 2. An RNP or CNS applicant without evidence of national certification who received initial advanced practice certification or licensure in another state not later than July 1, 2004 and provides evidence, directly from the jurisdiction, that the certification or licensure is current.
  - 3. A CNS applicant without evidence of completion of a CNS program who received initial certification or advanced practice licensure in this or another state not later than November 13, 2005 and provides evidence, directly from the jurisdiction, that the certificate or license is current.
  - 4. A CRNA who completed a CRNA program before the effective date of this Section without evidence of a graduate degree.
  - 5. A CNS applicant who completed a women's health clinical nurse specialist program that was part of a graduate degree in nursing program under subsection (A), without evidence of national certification upon submission of the following:
    - a. A description of the applicant's scope of practice that is consistent with A.R.S. § 32-1601(7);
    - b. One of the following:
      - i. A letter from a faculty member who supervised the applicant during the graduate program attesting to the applicant's competence to practice within the defined scope of practice;
      - ii. A letter from a current supervisor verifying the applicant's competence in the defined scope of practice; or
      - iii. A letter from a physician, RNP, or CNS who has worked with the applicant within the past two years attesting to the applicant's competence in the defined scope of practice; and
    - c. A form verifying that the applicant has practiced a minimum of 500 hours in the population focus within the past two years, which may include clinical practice time in a CNS program.
- C.** The Board shall issue a certificate to practice as an RNP in a population focus, a CNS in a population focus, or a registered nurse anesthetist to a registered nurse who meets the criteria in this Section. An applicant who is denied a certificate may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter6.

#### Historical Note

Adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-56 repealed, new Section R4-19-56 adopted effective

July 16, 1984 (Supp. 84-4). Former Section R4-19-56 renumbered as Section R4-19-504 (Supp. 86-1). Former Section R4-19-504 renumbered to R4-19-505, new Section R4-19-504 adopted effective November 18, 1994 (Supp. 94-4). Former Section R4-19-504 renumbered to Section R4-10-505; new Section R4-19-504 renumbered from R4-19-503 and amended effective November 25, 1996 (Supp. 96-4). Amended effective January 10, 1997 (Supp. 97-1). Amended by final rulemaking at 5 A.A.R. 3911, effective September 28, 1999 (Supp. 99-3). Former R4-19-505 renumbered to R4-19-508; new R4-19-505 renumbered from R4-19-504 and amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 1483, effective June 2, 2007 (Supp. 07-2). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citation in subsection (A)(7)(a) was updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2). A.R.S. Section reference updated under subsection (B)(5)(a), under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3) Amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

**R4-19-506. Expiration of APRN Certificate; Practice Requirement; Renewal**

- A.** An advanced practice certificate issued after July 1, 2004, expires when the certificate holder's RN license expires, or when national certification expires, whichever occurs first. Certificates issued on or before July 1, 2004, or those issued without proof of national certification under R4-19-505(B)(5) and (B)(2) do not expire unless the RN license expires under A.R.S. § 32-1642 or the nurse has not practiced advanced practice nursing at the applicable level of certification for a minimum of 960 hours in the five years before the date the application is received. This requirement is satisfied if the applicant verifies that the applicant has:
1. Completed an advanced practice nursing education program within the past five years; or
  2. Practiced for a minimum of 960 hours within the past five years where the nurse:
    - a. Worked for compensation or as a volunteer, as an APRN and performed one or more acts under A.R.S. § 32-1601(7) for a CNS, A.R.S. § 32-1601(20) for an RNP or A.R.S. § 32-1634.04 for a CRNA; or
    - b. Held a position for compensation or as a volunteer that required, preferred or recommended, in the job description, the level of advanced practice certification being sought or renewed.
- B.** A registered nurse requesting renewal of an advanced practice certificate or an RNP certificate issued after July 1, 2004 shall provide evidence of current national certification or recertification under R4-19-505(A)(2)(j). This provision does not apply to a CNS granted a waiver of certification.
- C.** An advanced practice nurse who does not satisfy the practice requirement of subsection (A) shall complete coursework or continuing education activities at the graduate or advanced practice level that include, at minimum, 45 contact hours of advanced pharmacology and 45 contact hours in a subject or subjects related to the role and population focus of certification. Upon completion of the coursework, the nurse shall engage in a period of precepted clinical practice as specified in this subsection:
1. Precepted clinical practice shall be directly supervised by an advanced practice nurse in the same role and population focus as the certification being renewed or a physician who engages in practice with the same population focus as the certification being renewed.
  2. Practice hours completed during the time-frame specified below may be applied to reduce the number of precepted clinical practice hours, except that in no case shall the hours be reduced by more than half the requirement. The nurse shall complete hours according to the following schedule:
    - a. 300 hours if the applicant has practiced less than 960 hours in only the last five years;
    - b. 600 hours if the applicant has not practiced 960 hours in the last five years, but has practiced at least 960 hours in the last six years;
    - c. 1000 hours if the applicant has not practiced at least 960 hours in the last six years, but has practiced 960 hours in the last seven to 10 years; or
    - d. If the nurse has not practiced 960 hours of advanced practice nursing in the role and population focus being renewed in more than 10 years, complete a program of study as recommended by an approved advanced practice nursing program that includes, at minimum, 500 hours of faculty supervised clinical practice in the role and population focus of certification. An applicant who qualifies for any option in subsection (C)(2)(a) through (c) may complete the requirements of this subsection to satisfy the practice requirement.
- D.** An applicant who, in addition to not meeting the requirements for continued APRN certification, does not meet the requirements for RN renewal, shall fulfill all RN renewal requirements before satisfying the requirements of this Section.
- E.** The Board shall renew a certificate to practice as a registered nurse practitioner in a population focus, a clinical nurse specialist in a population focus, or a registered nurse anesthetist for a registered nurse who meets the criteria in this Section. An applicant who is denied renewal of a certificate may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying renewal of certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter.

**Historical Note**

Section R4-19-506 renumbered from R4-19-505 effective November 18, 1994 (Supp. 94-4). Former Section R4-19-506 renumbered to R4-19-510, new Section R4-19-506 adopted effective November 25, 1996 (Supp. 96-4). Former R4-19-506 renumbered to R4-19-510; new Section R4-19-506 made by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 1483, effective June 2, 2007 (Supp. 07-2). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citations in subsection (A)(2)(a) were updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2). A.R.S. Section references updated under subsection (A)(2)(a), under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3). Amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

**R4-19-507. Temporary Advanced Practice Certificate; Temporary Prescribing and Dispensing Authority**

- A.** Based on the registered nurse's qualifications, the Board may issue a temporary certificate to practice as a registered nurse practitioner or a clinical nurse specialist in a population focus or a registered nurse anesthetist. A registered nurse who is applying for a temporary certificate shall:
1. Apply for certification as an advanced practice nurse;
  2. Submit an application for a temporary certificate;
  3. Demonstrate authorization to practice as a registered nurse in Arizona on either a permanent or temporary Arizona license in good standing or a multistate compact privilege;
  4. Meet all requirements of R4-19-505 or meet the requirements of R4-19-505 with the exception of national certification for RNP and CNS applicants unless exempt under R4-19-505(B); and
  5. Submit evidence that the applicant:
    - a. Has applied for and is eligible to take an approved national advanced practice certification exam in the role and population focus of the application;
    - b. Has requested that the certification program transmit all exam results directly to the Board; or
    - c. For a CRNA, holds national certification according to R4-19-501.
- B.** If an applicant fails to meet criteria for national advanced practice certification or has failed a certification exam, the applicant is not eligible for a temporary certificate.
- C.** The Board may issue temporary prescribing and dispensing authority for RNP applicants, if the applicant:
1. Meets all application requirements for temporary certification in this Section,
  2. Applies for and meets all requirements for prescribing and dispensing authority under R4-19-511,
  3. Has been certified or licensed as a nurse practitioner or nurse midwife with prescribing and dispensing authority in the same role and population focus in another state or territory of the United States,
  4. Either holds current national certification as a registered nurse practitioner or nurse midwife in the population focus of the application or is exempt from national certification under R4-19-505(B), and
  5. Meets the practice requirement of R4-19-506(A)(2).
- D.** Temporary certification as an advanced practice nurse and temporary prescribing and dispensing authority expire in six months and may be renewed for an additional six months for good cause. Good cause means reasons beyond the control of the temporary certificate holder such as unavoidable delays in obtaining information required for certification.
- E.** Notwithstanding subsection (D), the Board shall withdraw a temporary advanced practice certificate and temporary prescribing and dispensing authority under any one of the following conditions. The temporary certificate holder:
1. Does not meet requirements for RN licensure in this state or the RN license is suspended or revoked,
  2. Fails to renew the RN license upon expiration,
  3. Loses the multistate compact privilege,
  4. Fails the national certifying examination, fails to maintain current national certification, as required by R4-19-505, or
  5. Violates a statute or rule of the Board.
- F.** An applicant who is denied a temporary certificate or temporary prescribing and dispensing authority may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the temporary certification or authority. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter.

**Historical Note**

Adopted effective November 25, 1996 (Supp. 96-4). Amended by final rulemaking at 5 A.A.R. 4300, effective October 18, 1999 (Supp. 99-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 1483, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

**R4-19-508. Standards Related to Registered Nurse Practitioner Scope of Practice**

- A.** An RNP shall refer a patient to a physician or another health care provider if the referral will protect the health and welfare of the patient and consult with a physician and other health care providers if a situation or condition occurs in a patient that is beyond the RNP's knowledge and experience.
- B.** In addition to the scope of practice permitted a registered nurse, a registered nurse practitioner, under A.R.S. §§ 32-1601 (20) and 32-1606(B)(12), may perform the following acts within the limits of the population focus of certification:
1. Examine a patient and establish a medical diagnosis by client history, physical examination, and other criteria.
  2. For a patient who requires the services of a health care facility:
    - a. Admit the patient to the facility,
    - b. Manage the care the patient receives in the facility, and
    - c. Discharge the patient from the facility.
  3. Order and interpret laboratory, radiographic, and other diagnostic tests, and perform those tests that the RNP is qualified to perform.
  4. Prescribe, order, administer and dispense therapeutic measures including pharmacologic agents and devices if authorized under R4-19-511, and non-pharmacological interventions including, but not limited to, durable medical equipment, nutrition, home health care, hospice, physical therapy and occupational therapy.
  5. Identify, develop, implement, and evaluate a plan of care for a patient to promote, maintain, and restore health.
  6. Perform therapeutic procedures that the RNP is qualified to perform.
  7. Delegate therapeutic measures to qualified assistive personnel including medical assistants under R4-19-509.
  8. Perform additional acts that the RNP is qualified to perform and that are generally recognized as being within the role and population focus of certification.
- C.** An RNP shall only provide health care services including prescribing and dispensing within the RNP's population focus and role

and for which the RNP is educationally prepared and for which competency has been established and maintained. Educational preparation means academic coursework or continuing education activities that include both theory and supervised clinical practice.

#### Historical Note

Adopted effective February 25, 1987 (Supp. 87-1). Former Section R4-19-505 renumbered to R4-19-506, new Section R4-19-505 renumbered from R4-19-504 effective November 18, 1994 (Supp. 94-4). Former Section R4-19-505 repealed, new Section R4-19-505 renumbered from R4-19-504 and amended effective November 25, 1996 (Supp. 96-4). Amended by final rulemaking at 5 A.A.R. 4300, effective October 18, 1999 (Supp. 99-4). Former R4-19-508 renumbered to R4-19-513; new R4-19-508 renumbered from R4-19-505 and amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 1483, effective June 2, 2007 (Supp. 07-2). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore one of the A.R.S. citations in subsection (B) was updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2). A.R.S. Section reference updated under subsection (B), under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3).

#### **R4-19-509. Delegation to Medical Assistants**

- A.** Under A.R.S. §§ 32-1456 and 32-1601(20), an RNP may delegate patient care to a medical assistant in an office or outpatient setting. The RNP shall verify that a medical assistant to whom the RNP delegates meets at least one of the following qualifications:
1. Completed an approved medical assistant training program as defined in A.A.C. R4-16-101(3);
  2. If a graduate of an unapproved medical assistant training program, passed the medical assistant examination administered by either the American Association of Medical Assistants or the American Medical Technologists;
  3. Completed an unapproved medical assistant training program and was employed as a medical assistant on a continuous basis since completion of the program before February 2, 2000;
  4. Was directly supervised by the same registered nurse practitioner for at least 2000 hours before February 2, 2000; or
  5. Completed a medical services training program of the Armed Forces of the United States.
- B.** An RNP may delegate the following acts to a medical assistant who is under the direct supervision of the RNP and demonstrates competency in the performance of the act:
1. Obtain vital signs;
  2. Perform venipuncture and draw blood;
  3. Perform capillary puncture;
  4. Perform pulmonary function testing;
  5. Perform electrocardiography;
  6. Perform patient screening using established protocols;
  7. Perform dosage calculations as applicable to written orders;
  8. Apply pharmacology principles to prepare and administer oral, inhalant, topical, otic, optic, rectal, vaginal and parenteral medications (excluding intravenous medications);
  9. Maintain medication and immunization records;
  10. Assist provider with patient care;
  11. Perform Clinical Laboratory Improvement Amendments (CLIA) waived hematology, chemistry, urinalysis, microbiological and immunology testing;
  12. Screen test results;
  13. Obtain specimens for microbiological testing;
  14. Obtain patient history;
  15. Instruct patients according to their needs to promote health maintenance and disease prevention;
  16. Prepare a patient for procedures or treatments;
  17. Document patient care and education;
  18. Perform first aid procedures;
  19. Perform whirlpool treatments;
  20. Perform diathermy treatments;
  21. Perform electronic galvanation stimulation treatments;
  22. Perform ultrasound therapy;
  23. Perform massage therapy (subject to regulation by massage therapy board);
  24. Apply traction treatments;
  25. Apply Transcutaneous Nerve Stimulation unit treatments;
  26. Apply hot and cold pack treatments; and
  27. Administer small volume nebulizer treatments.

#### Historical Note

Adopted effective November 25, 1996 (Supp. 96-4). Section repealed by final rulemaking at 5 A.A.R. 4300, effective October 18, 1999 (Supp. 99-4). New Section made by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore one of the A.R.S. citations in subsection (A) was updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2). A.R.S. Section reference updated under subsection (A), under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3).

**R4-19-510. Expired****Historical Note**

Section renumbered from R4-19-506 and amended effective November 25, 1996 (Supp. 96-4). Section repealed made by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Section R4-19-510 renumbered from R4-19-506 and amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 1093, effective March 24, 2011 (Supp. 11-2).

**R4-19-511. Prescribing and Dispensing Authority; Prohibited Acts**

- A.** The Board shall authorize a registered nurse practitioner (RNP) to prescribe and dispense (P&D) drugs and devices within the RNP's population focus only if the RNP does all of the following:
1. Obtains authorization by the Board to practice as an RNP;
  2. Applies for prescribing and dispensing privileges on the application for RNP certification;
  3. Submits a completed verified application on a form provided by the Board that contains all of the following information:
    - a. Name, address, e-mail address and home telephone number;
    - b. Arizona registered nurse license number, or copy of compact license;
    - c. RNP population focus;
    - d. RNP certification number issued by the Board; and
    - e. Business address and telephone number;
  4. Submits evidence of a minimum of 45 contact hours of education within the three years immediately preceding the application, covering one or both of the following topics consistent with the population focus of education and certification:
    - a. Pharmacology, or
    - b. Clinical management of drug therapy, and
  5. Submits the required fee.
- B.** An applicant who is denied P & D authority may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the P & D authority. Board hearings shall comply with A.R.S. Title 41, Chapter 6, Article 10, and 4 A.A.C. 19, Article 6, of this Chapter.
- C.** An RNP shall not prescribe or dispense drugs or devices without Board authority or in a manner inconsistent with law. The Board may impose an administrative or civil penalty for each violation, suspend the RNP's P & D authority, or impose other sanctions under A.R.S. § 32-1606(C). In determining the appropriate sanction, the Board shall consider factors such as the number of violations, the severity of each violation, and the potential for or existence of patient harm.
- D.** In addition to acts listed under R4-19-403, for an RNP who prescribes or dispenses a drug or device, a practice that is or might be harmful to the health of a patient or the public, includes one or more of the following:
1. Prescribing a controlled substance to oneself, a member of the RNP's family or any other person with whom the RNP has a relationship that may affect the RNP's ability to use independent, objective and sound judgment when prescribing;
  2. Providing any controlled substance or prescription-only drug or device for other than accepted therapeutic purposes;
  3. Delegating the prescribing and dispensing of drugs or devices to any other person;
  4. Prescribing for a patient that is not in the RNP's population focus of education and certification except as authorized in subsection (D)(5)(d); and
  5. Prescribing, dispensing, or furnishing a prescription drug or a prescription-only device to a person unless the RNP has examined the person and established a professional relationship, except when the RNP is engaging in one or more of the following:
    - a. Providing temporary patient care on behalf of the patient's regular treating and licensed health care professional;
    - b. Providing care in an emergency medical situation where immediate medical care or hospitalization is required by a person for the preservation or health, life, or limb;
    - c. Furnishing a prescription drug to prepare a patient for a medical examination; or
    - d. Prescribing antimicrobials to a person who is believed to be at substantial risk as a contact of a patient who has been examined and diagnosed with a communicable disease by the prescribing RNP even if the contact is not in the population focus of the RNP's certification.
  6. Prescribing or dispensing any controlled substance or prescription-only drug or device in a manner that is inconsistent with other state or federal requirements.
- E.** An RNP shall not dispense a Schedule II Controlled Substance that is an opioid, except for an opioid that is for medication assisted treatment for substance use disorders.

**Historical Note**

Adopted effective November 25, 1996 (Supp. 96-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 23 A.A.R. 1420, effective July 1, 2017 (Supp. 17-2); Amended by emergency rulemaking at 24 A.A.R. 1678, filed and effective May 23, 2018, valid for 180 days, A.R.S. 41-1026(D) (Supp. 18-2). Emergency renewed with amendments at 24 A.A.R. 3335, filed and effective November 9, 2018, valid for an additional 180 days (Supp. 18-4). Emergency expired. Amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

**R4-19-512. Prescribing Drugs and Devices**

- A.** An RNP granted P & D authority by the Board may:
1. Prescribe drugs and devices;
  2. Provide for refill of prescription-only drugs and devices for one year from the date of the prescription.
- B.** An RNP with P & D authority who wishes to prescribe a controlled substance shall obtain a DEA registration number before prescribing a controlled substance. The RNP shall file the DEA registration number with the Board.
- C.** An RNP with a DEA registration number may prescribe:

1. A Schedule II controlled substance as defined in the federal Controlled Substances Act, 21 U.S.C. § 801 et seq., or Arizona's Uniform Controlled Substances Act, A.R.S. Title 36, Chapter 27, but shall not prescribe refills of the prescription;
  2. A Schedule III or IV controlled substance, as defined in the federal Controlled Substances Act or Arizona's Uniform Controlled Substances Act, and may prescribe a maximum of five refills in six months; and
  3. A Schedule V controlled substance, as defined in the federal Controlled Substances Act or Arizona's Uniform Controlled Substances Act, and may prescribe refills for a maximum of one year.
- D.** An RNP whose DEA registration is revoked or expires shall not prescribe controlled substances. An RNP whose DEA registration is revoked or limited shall report the action to the Board.
- E.** In all outpatient settings or at the time of hospital discharge, an RNP with P & D authority shall personally provide a patient or the patient's representative with the name of the drug, directions for use, and any special instructions, precautions, or storage requirements necessary for safe and effective use of the drug if any of the following occurs:
1. A new drug is prescribed or there is a change in the dose, form, or direction for use in a previously prescribed drug;
  2. In the RNP's professional judgment, these instructions are warranted; or
  3. The patient or patient's representative requests instruction.
- F.** An RNP with P & D authority shall ensure that all prescription orders contain the following:
1. The RNP's name, address, telephone number, and population focus;
  2. The prescription date;
  3. The name of the patient and either the address of the patient or a blank for the address if the prescription is not being dispensed by the RNP;
  4. The full name of the drug, strength, dosage form, and directions for use;
  5. The letters "DAW", "dispense as written", "do not substitute", "medically necessary" or any similar statement on the face of the prescription form if intending to prevent substitution of the drug;
  6. The RNP's DEA registration number, if applicable; and
  7. The RNP's signature.

#### **Historical Note**

Former R4-19-512 renumbered to R4-19-514; new R4-19-512 made by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (05-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

#### **R4-19-513. Dispensing Drugs and Devices**

- A.** A registered nurse practitioner (RNP) granted prescribing and dispensing authority by the Board may:
1. Dispense drugs and devices to patients;
  2. Dispense samples of drugs packaged for individual use without a prescription order or additional labeling;
  3. Only dispense drugs and devices obtained directly from a pharmacy, manufacturer, wholesaler, or distributor; and
  4. Allow other personnel to assist in the delivery of medications provided that the RNP retains responsibility and accountability for the dispensing process.
- B.** If dispensing a drug or device, an RNP with dispensing authority shall:
1. Ensure that the patient has a written prescription that complies with R4-19-512(F) and contains the address of the patient and inform the patient that the prescription may be filled by the prescribing RNP or by a pharmacy of the patient's choice;
  2. Affix a prescription number to each prescription that is dispensed;
  3. Ensure that all original prescriptions are preserved for a minimum of seven years and make the original prescriptions available at all times for inspection by the Board of Nursing, Board of Pharmacy, and law enforcement officers in performance of their duties; and
  4. Report the dispensing of controlled substances to the Board of Pharmacy's Controlled Substance Prescription Monitoring Program as required in A.R.S. § 36-2608.
- C.** An RNP practicing in a public health facility operated by this state or a county or in a qualifying community health center under A.R.S. § 32-1921(D) and (F) may dispense drugs or devices to patients without a written prescription if the public health facility or the qualifying community health center adheres to all storage, labeling, safety, and recordkeeping rules of the Board of Pharmacy.
- D.** An RNP who dispenses a drug shall ensure that a label is affixed that contains all of the following information:
1. Dispensing RNP's name and population focus;
  2. Address and telephone number of the location from which the drug is dispensed;
  3. Date dispensed;
  4. Patient's name and address;
  5. Name and strength of the drug, quantity in the container, directions for use, and any cautionary statements necessary for the safe and effective use of the drug;
  6. Manufacturer and lot number; and
  7. Prescription order number.
- E.** An RNP who dispenses a drug or device shall ensure that the following information about the drug or device is entered into the patient's medical record:
1. Name of the drug, strength, quantity, directions for use, and number of refills;
  2. Date dispensed;
  3. Therapeutic reason;
  4. Manufacturer and lot number; and
  5. Prescription order number.
- F.** An RNP with dispensing authority shall:
1. Keep all drugs in a locked cabinet or room in an area that is not accessible to patients;
  2. If dispensing a controlled substance:
    - a. Control access by a written policy that specifies:

- i. Those persons allowed access, and
  - ii. Procedures to report immediately the discovery of a shortage or illegal removal of drugs to a local law enforcement agency and provide that agency and the DEA with a written report within seven days of the discovery.
  - b. Maintain and make available to the Board upon request an ongoing inventory and record of:
    - i. A Schedule II controlled substance, as defined in the federal Controlled Substances Act or Arizona's Uniform Controlled Substances Act, separately from all other records, and a prescription for a Schedule II controlled substance in a separate prescription file; and
    - ii. A Schedule III, IV, or V controlled substance, as defined in the federal Controlled Substances Act or Arizona's Uniform Controlled Substances Act, in a form that is readily retrievable from other records.
- G.** If a prescription order is refilled, an RNP with P & D authority shall record the following information on the back of the prescription order or in the patient's medical record:
- 1. Date refilled,
  - 2. Quantity dispensed if different from the full amount of the original prescription,
  - 3. RNP's name or identifiable initials, and
  - 4. Manufacturer and lot number.
- H.** Under the supervision of an RNP with P & D authority, other personnel may:
- 1. Receive and record a prescription refill request from a patient or a patient's representative;
  - 2. Receive and record a verbal refill authorization from the RNP including:
    - a. The RNP's name;
    - b. Date of refill;
    - c. Name, directions for use, and quantity of drug; and
    - d. Manufacturer and lot number;
  - 3. Prepare and affix a prescription label; and
  - 4. Prepare a drug or device for delivery, provided that the dispensing RNP:
    - a. Inspects the drug or device and initials the label before issuing to the patient to ensure compliance with the prescription; and
    - b. Ensures that the patient is informed of the name of the drug or device, directions for use, precautions, and storage requirements.

#### **Historical Note**

Adopted effective November 25, 1996 (Supp. 96-4). Amended by final rulemaking at 5 A.A.R. 4300, effective October 18, 1999 (Supp. 99-4). Former R4-19-513 renumbered to R4-19-515; new R4-19-513 renumbered from R4-19-508 and amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

#### **R4-19-514. Standards Related to Clinical Nurse Specialist Scope of Practice**

In addition to the functions of a registered nurse, a CNS, under A.R.S. § 32-1601(7), may perform one or more of the following for an individual, family, or group within the population focus of certification and for which competency has been maintained:

- 1. Conduct an advanced assessment, analysis, and evaluation of a patient's complex health needs;
- 2. Establish primary and differential health status diagnoses;
- 3. Direct health care as an advanced clinician;
- 4. Develop, implement, and evaluate a treatment plan according to a patient's need for specialized nursing care;
- 5. Establish nursing standing orders, algorithms, and practice guidelines related to interventions and specific plans of care;
- 6. Manage health care according to written protocols;
- 7. Facilitate system changes on a multidisciplinary level to assist a health care facility and improve patient outcomes cost-effectively;
- 8. Consult with the public and professionals in health care, business, and industry in the areas of research, case management, education, and administration;
- 9. Perform psychotherapy if certified as a clinical nurse specialist in psychiatric and mental health nursing;
- 10. Prescribe and dispense durable medical equipment; or
- 11. Perform additional acts that the clinical nurse specialist is qualified to perform.

#### **Historical Note**

Adopted effective November 25, 1996 (Supp. 96-4). Section R4-19-514 renumbered from R4-19-512 and amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citation in the opening subsection was updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2). A.R.S. Section reference updated under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3)

#### **R4-19-515. Repealed**

#### **Historical Note**

Section adopted by final rulemaking at 6 A.A.R. 335, effective December 20, 1999 (Supp. 99-4). Section R4-19-515 renumbered from R4-19-513 by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Repealed by final rulemaking at 18 A.A.R. 2140, effective August 8, 2012 (Supp. 12-3).

#### **R4-19-516. Repealed**

### Historical Note

New Section made by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Repealed by final rulemaking at 18 A.A.R. 2140, effective August 8, 2012 (Supp. 12-3).

## ARTICLE 6. RULES OF PRACTICE AND PROCEDURE

### R4-19-601 Expired

#### Historical Note

Adopted effective October 10, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 618, effective December 31, 2001 (Supp. 02-1). Section R4-19-601 renumbered from R4-19-602 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2692, effective August 31, 2011 (Supp. 11-4).

### R4-19-602. Letter of Concern

A letter of concern issued by the Board is not an appealable agency action as defined in A.R.S. § 41-1092.

#### Historical Note

Adopted effective October 10, 1996 (Supp. 96-4). Former Section R4-19-602 renumbered to R4-19-601; new Section R4-19-602 made by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

### R4-19-603. Representation

Any person subject to a hearing may participate in the hearing and may be represented by legal counsel. The Board shall not pay for the person's legal counsel.

#### Historical Note

Adopted effective October 10, 1996 (Supp. 96-4). Former Section R4-19-603 repealed; new Section R4-19-603 renumbered from R4-19-604 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

### R4-19-604. Notice of Hearing; Response

- A.** The Board, in consultation with the Office of Administrative Hearings, as necessary shall prepare and serve a written notice of hearing on all parties under A.R.S. § 41-1092.05.
- B.** In addition to the notice requirements in A.R.S. § 41-1092.05(D), the Board shall include the following in the notice:
1. The full name, address, and license number, if any, of the licensee, certificate holder, program, or applicant;
  2. The name, mailing address, and telephone number of the Board's executive director or Board designee if the hearing is to be conducted by the Board;
  3. A statement that a hearing will proceed without a party's presence if a party fails to attend or participate in the hearing;
  4. The names and mailing addresses of persons to whom notice is being given, including the Attorney General representing the state at the hearing; and
  5. Any other matters relevant to the proceedings.
- C.** The party named in the notice of hearing shall file a written response under A.R.S. § 32-1664 within 30 days after service of the notice of hearing. The response shall contain:
1. The party's name, address, and telephone number;
  2. Whether the party has legal representation and, if so, the name and address of the attorney;
  3. A response to the allegations contained in the notice of hearing; and
  4. Any other matters relevant to the proceedings.

#### Historical Note

Adopted effective October 10, 1996 (Supp. 96-4). Former Section R4-19-604 renumbered to R4-19-603; new Section R4-19-604 renumbered from R4-19-605 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

### R4-19-605. Expired

#### Historical Note

Adopted effective October 10, 1996 (Supp. 96-4). Former Section R4-19-605 renumbered to R4-19-604; new Section R4-19-605 renumbered from R4-19-606 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2692, effective August 31, 2011 (Supp. 11-4).

### R4-19-606. Expired

#### Historical Note

Adopted effective October 10, 1996 (Supp. 96-4). Former Section R4-19-606 renumbered to R4-19-605; new Section R4-19-606 renumbered from R4-19-607 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2692, effective August 31, 2011 (Supp. 11-4).

### R4-19-607. Recommended Decision

The Administrative Law Judge who conducts the hearing shall make a recommended decision under A.R.S. § 41-1092.08. The Board shall

immediately transmit a copy of the recommended decision to each party. Each party may file a memorandum of objections for consideration at the next Board meeting that contains the reasons why the recommended decision is in error or requires correction, and includes appropriate citations to the record, statutes, or rules in support of each objection.

#### **Historical Note**

Adopted effective October 10, 1996 (Supp. 96-4). Former Section R4-19-607 renumbered to R4-19-606; new Section R4-19-607 renumbered from R4-19-612 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

#### **R4-19-608. Rehearing or Review of Decision**

- A. A party may file a motion for rehearing or review of a decision under A.R.S. §§ 41-1092.09 and 32-1665.
- B. The Board may grant a rehearing or review of the decision for any of the following causes materially affecting the moving party's rights:
  - 1. Irregularity in the administrative proceedings of the Board or the administrative law judge, or any order, or abuse of discretion, which deprived the moving party of a fair hearing;
  - 2. Misconduct of the Board, the administrative law judge, or the prevailing party;
  - 3. Accident or surprise that could not have been prevented by ordinary prudence;
  - 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the original hearing;
  - 5. Excessive or insufficient penalties;
  - 6. Error in the admission or exclusion of evidence or other errors of law occurring during the pendency of the proceeding or at the administrative hearing; or
  - 7. The decision is not justified by the evidence or is contrary to law.
- C. Upon the Board's receipt of a motion for rehearing or review, the Board may affirm or modify the decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (B). An order granting a rehearing shall specify with particularity the grounds for the order. Any rehearing shall cover only those specified matters.
- D. Within the time limits of A.R.S. § 41-1092.09, the Board may order a rehearing or review on its own initiative for any of the reasons in subsection (B). The Board shall specify the grounds for the rehearing or review in the order.
- E. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days of such service, serve opposing affidavits.

#### **Historical Note**

Adopted effective October 10, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective December 31, 2001 (Supp. 02-1). Section R4-19-608 renumbered from R4-19-614 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

#### **R4-19-609. Effectiveness of Orders**

- A. Except as provided in subsection (B), a decision is final upon expiration of the time for filing a request for rehearing or review or upon denial of such a request, whichever is later. If the Board grants a rehearing or review, the decision is stayed until another order is issued.
- B. If it finds that the public health, safety, or welfare imperatively requires emergency action, the Board may proceed under A.R.S. § 41-1092.11(B), ordering summary suspension of a license while other proceedings are pending. If the Board orders a summary suspension, a party shall exhaust the party's administrative remedies by filing a motion for rehearing or review under A.R.S. § 41-1092.09(B) before seeking judicial review of the decision.

#### **Historical Note**

Adopted effective October 10, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective December 31, 2001 (Supp. 02-1). Section R4-19-609 renumbered from R4-19-615 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

#### **R4-19-610. Expired**

#### **Historical Note**

Adopted effective October 10, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective December 31, 2001 (Supp. 02-1).

#### **R4-19-611. Expired**

#### **Historical Note**

Adopted effective October 10, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective December 31, 2001 (Supp. 02-1).

#### **R4-19-612. Renumbered**

#### **Historical Note**

Adopted effective October 10, 1996 (Supp. 96-4). Section renumbered to R4-19-607 by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

#### **R4-19-613. Expired**

#### Historical Note

Adopted effective October 10, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective December 31, 2001 (Supp. 02-1).

#### R4-19-614. Renumbered

#### Historical Note

Adopted effective October 10, 1996 (Supp. 96-4). Section renumbered to R4-19-608 by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

#### R4-19-615. Renumbered

#### Historical Note

Adopted effective October 10, 1996 (Supp. 96-4). Section renumbered to R4-19-609 by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

## ARTICLE 7. PUBLIC PARTICIPATION PROCEDURES

#### R4-19-701. Expired

#### Historical Note

Adopted effective October 10, 1996 (Supp. 96-4). Amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2692, effective August 31, 2011 (Supp. 11-4).

#### R4-19-702. **Petition for Rulemaking; Review of Agency Practice or Substantive Policy Statement; Objection to Rule Based Upon Economic, Small Business, or Consumer Impact**

A person may petition the Board, requesting the making of a final rule, or a review of an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule under A.R.S. § 41-1033, or objecting to a rule under A.R.S. § 41-1056.01, by filing a petition which contains the following:

1. The name, current address, and telephone number of the person submitting the petition.
2. For the making of a new rule, the specific language of the proposed rule.
3. For amendment of a current rule, the Arizona Administrative Code (A.A.C.) Section number, the Section heading, and the specific language of the current rule, with any language to be deleted stricken through but legible, and any new language underlined.
4. For repeal of a current rule, the A.A.C. Section number and Section heading proposed for repeal.
5. The reasons the rule should be made, specifically stating in reference to an existing rule, why the rule is inadequate, unreasonable, unduly burdensome, or otherwise not acceptable. The petitioner may provide additional supporting information including:
  - a. Any statistical data or other justification, with clear references to attached exhibits;
  - b. An identification of any person or segment of the public that would be affected and how they would be affected; and
  - c. If the petitioner is a public agency, a summary of relevant issues raised in any public hearing, or written comments offered by the public.
6. For a review of an existing agency practice or substantive policy statement alleged to constitute a rule, the reasons the existing agency practice or substantive policy statement constitutes a rule and the proposed action requested of the Board.
7. For an objection to a rule based upon the economic, small business, or consumer impact, evidence of any of the following grounds:
  - a. The actual economic, small business, or consumer impact significantly exceeded the impact estimated in the economic, small business, and consumer impact statement submitted during the making of the rule.
  - b. The actual economic, small business, or consumer impact was not estimated in the economic, small business, and consumer impact statement submitted during the making of the rule and that actual impact imposes a significant burden on persons subject to the rule.
  - c. The Board did not select the alternative that 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.
8. The signature of the person submitting the petition.

#### Historical Note

Adopted effective October 10, 1996 (Supp. 96-4). Amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

#### R4-19-703. **Oral Proceedings**

- A. The Board shall schedule an oral proceeding on all rulemakings and publish the notice as prescribed in A.R.S. § 41-1023. A Board member, the executive director, or a Board staff member shall serve as presiding officer at an oral proceeding.
- B. The Board shall record all oral proceedings either by an electronic recording device or stenographically, and any resulting cassette tapes or transcripts, registers, and all written comments received shall become part of the official record.

- C. The presiding officer shall conduct an oral proceeding according to A.R.S. § 41-1023; and
1. Request each person in attendance register;
  2. Obtain the following information from any person who intends to speak:
    - a. Name and whether the person represents another;
    - b. Position with regard to the proposed rule; and
    - c. Approximate length of time needed to speak;
  3. Open the proceeding by identifying the subject matter of the rules under consideration and the purpose of the proceeding;
  4. Present the agenda;
  5. Ensure that a Board representative explains the background and general content of the proposed rules;
  6. Limit comments to a reasonable period, and prevent undue repetition of comments;
  7. Announce the address for written public comments and the date and time for the close of record; and
  8. Close the proceeding if there are no persons in attendance within 15 minutes after the posted meeting time.

#### **Historical Note**

Adopted effective October 10, 1996 (Supp. 96-4). Former Section R4-19-703 repealed; new Section R4-19-703 renumbered from R4-19-704 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

#### **R4-19-704. Petition for Altered Effective Date**

- A. A person wishing to alter the effective date of a rule shall file a written petition that contains:
1. The name, current address, and telephone number of the person submitting the petition;
  2. Identification of the proposed rule;
  3. If the person is petitioning for an immediate effective date, a demonstration that the immediate date is necessary for one or more of the reasons in A.R.S. § 41-1032(A);
  4. If the person is petitioning for a later effective date, more than 60 days after filing of the rule, a demonstration under A.R.S. § 41-1032(B) that good cause exists for, and the public interest will not be harmed by, the later effective date; and
  5. The signature of the person submitting the petition.
- B. The Board shall make a decision and notify the petitioner of the decision within 60 days of receipt of the petition.

#### **Historical Note**

Adopted effective October 10, 1996 (Supp. 96-4). Former Section R4-19-704 renumbered to R4-19-703; new Section R4-19-704 renumbered from R4-19-705 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

#### **R4-19-705. Written Criticism of an Existing Rule**

- A. Any person may file with the Board a written criticism of an existing rule that contains:
1. The rule addressed, and
  2. The reason the existing rule is inadequate, unduly burdensome, unreasonable, or improper.
- B. The Board shall acknowledge receipt of any criticism within 10 working days and shall place the criticism in the official record for review by the Board under A.R.S. § 41-1056.

#### **Historical Note**

Adopted effective October 10, 1996 (Supp. 96-4). Former Section R4-19-705 renumbered to R4-19-704; new Section R4-19-705 renumbered from R4-19-706 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

#### **R4-19-706. Renumbered**

#### **Historical Note**

Adopted effective October 10, 1996 (Supp. 96-4). Renumbered to R4-19-705 by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

## **ARTICLE 8. CERTIFIED AND LICENSED NURSING ASSISTANTS AND CERTIFIED MEDICATION ASSISTANTS**

#### **R4-19-801. Common Standards for Nursing Assistant (NA) and Certified Medication Assistant (CMA) Training Programs**

- A. Program Administrative Responsibilities
1. Any person or entity offering a training program under this Article shall, before accepting tuition from prospective students, and at all times thereafter, provide program personnel including a coordinator and instructors, as applicable, who meet the requirements of this Article.
  2. If at any time, a person or entity offering a training program cannot provide a qualified instructor for its students, it shall immediately cease instruction and, if the training program cannot provide a qualified instructor within 5 business days, the training program shall offer all enrolled students a refund of all tuition and fees the students have paid to the program.
  3. A training program shall obtain and maintain Board approval or re-approval as specified in this Article and A.R.S. § 32-1650.01 (B) before advertising the program, accepting any tuition, fees, or other funds from prospective students, or enrolling students.
  4. A training program that uses external clinical facilities shall execute a written agreement with each external clinical facility.
  5. A training program that requires students to pay tuition for the program shall:
    - a. Make all program costs readily accessible on the school's website with effective dates,

- b. Publically post any increases in costs on the school's website 30 days in advance of the increase;
  - c. Include in the cost calculation and public posting, all fees directly paid to the program including but not limited to tuition, lab fee, clinical fee, enrollment fee, insurance, books, uniform, health screening, credit card fee and state competency exam fee; and
  - d. Provide a description of all program costs to the student that are not directly paid to the program.
6. Before collecting any tuition or fees from a student, a training program shall notify each prospective student of Board requirements for certification and licensure including:
    - a. Legal presence in the United States; and
    - b. For licensure, criminal background check requirements, and ineligibility under A.R.S. § 32- 1606(B)(15) and (16).
  7. Within the first 14 days of the program and before 50% of program instruction occurs, a training program shall transmit to the Board-approved test vendor, accurate and complete information regarding each enrolled student for the purposes of tracking program enrollment, attrition and completion. Upon receipt of accurate completion information, the vendor shall issue a certificate of completion to the program for each successful graduate.
  8. A training program shall provide the Board, or its designee, access to all training program records, students and staff at any time, including during an announced or unannounced visit. A program's refusal to provide such access is grounds for withdrawal of Board approval.
  9. A training program shall provide each student with an opportunity to anonymously and confidentially evaluate the course instructor, curriculum, classroom environment, clinical instructor, clinical setting, textbook and resources of the program;
  10. A training program shall provide and implement a plan to evaluate the program that includes the frequency of evaluation, the person responsible, the evaluative criteria, the results of the evaluation and actions taken to improve the program. The program shall evaluate the following elements at a minimum every two years:
    - a. Student evaluations consistent with subsection (A)(9);
    - b. First-time pass rates on the written and manual skills certification exams for each admission cohort;
    - c. Student attrition rates for each admission cohort;
    - d. Resolution of student complaints and grievances in the past two years; and
    - e. Review and revision of program policies.
  11. A training program shall submit written documentation and information to the Board regarding the following program changes within 30 days of instituting the change:
    - a. For a change or addition of an instructor or coordinator, the name, RN license number, and documentation that the coordinator or instructor meets the applicable requirements of R4-19-802(B) and (C) for NA programs and R4-19-803 (B) for CMA programs;
    - b. For a change in classroom location, the previous and new location, and a description of the new classroom;
    - c. For a change in a clinical facility, the name and address of the new facility and a copy of the signed clinical contract;
    - d. For a change in the name or ownership of the training program, the former name or owners and the new name or owners; and
    - e. For a decrease in hours of the program, a written revised curriculum document that clearly highlights new content, strikes out deleted content and includes revised hours of instruction, as applicable.

**B. Policies and Procedures**

1. A training program shall promulgate and enforce written policies and procedures that comply with state and federal requirements, and are consistent with the policies and procedures of the parent institution, if any. The program shall provide effective and review dates for each policy or procedure.
2. A training program shall provide a copy of its policies and procedures to each student on or before the first day the student begins the program.
3. The program shall promulgate and enforce the following policies with accompanying procedures:
  - a. Admission requirements including:
    - i. Criminal background, health and drug screening either required by the program or necessary to place a student in a clinical agency; and
    - ii. English language, reading and math skills necessary to comprehend course materials and perform duties safely.
  - b. Student attendance policy, ensuring that a student receives the hours and types of instruction as reported to the Board in the program's most recent application to the Board and as required in this Article. If absences are permitted, the program shall ensure that each absence is remediated by providing and requiring the student to complete learning activities that are equivalent to the missed curriculum topics, clinical experience or skill both in substance and in classroom or clinical time.
  - c. A final examination policy that includes the following provisions:
    - i. Require that its students score a minimum 75% correct answers on a comprehensive secure final examination with no more than one retake. The program may allow an additional retake following documented, focused remediation based on past test performance. Any retake examination must contain different items than the failed exam, address all course competencies, and be documented with score, date administered and proctor in the student record; and
    - ii. Require that each student demonstrate, to program faculty, satisfactory performance of each practical skill as prescribed in the curriculum before performance of that skill on patients or residents without the instructor's presence, direct observation, and supervision.
  - d. Student record maintenance policies consistent with subsection (D) including the retention period, the location of records and the procedure for students to access to their records.
  - e. Clinical supervision policies consistent with clinical supervision provisions of this Section, and:
    - i. R4-19-802(C) and (D) for NA programs, or
    - ii. R4-19-803(B) and (C) for CMA programs;
  - f. Student conduct policies for expected and unacceptable conduct in both classroom and clinical settings;
  - g. Dismissal and withdrawal policies;
  - h. Student grievance policy that includes a chain of command for grade disputes and ensures that students have the right to

contest program actions and provide evidence in support of their best interests including the right to a third party review by a person or committee that has no stake in the outcome of the grievance;

i. Program progression and completion criteria.

**C. Classroom and clinical instruction**

1. During clinical training sessions, a training program shall ensure that each student is identified as a student by a name badge or another means readily observable to staff, patients, and residents.
2. A training program shall not utilize, or allow the clinical facility to utilize, students as staff during clinical training sessions.
3. A training program shall provide a clean, comfortable, distraction-free learning environment for didactic teaching and skill practice.
4. A training program shall provide, in either electronic or paper format, a written curriculum to each student on or before the first day of class that includes a course description, course hours including times of instruction and total course hours, instructor information, passing requirements, course goals, and a topical schedule containing date, time and topic for each class session.
5. For each unit or class session the program shall provide, to its students, written:
  - a. Measurable learner-centered objectives,
  - b. An outline of the material to be taught, and
  - c. The learning activities or reading assignment.
6. A training program shall utilize an electronic or paper textbook corresponding to the course curriculum that has been published within the previous five years. Unless granted specific permission by the publisher, a training program shall not utilize copies of published materials in lieu of an actual textbook.
7. A training program shall provide, to all program instructors and enrolled students, access to the following instructional and educational resources:
  - a. Reference materials, corresponding to the level of the curriculum; and
  - b. Equipment and supplies necessary to practice skills.
8. A training program instructor shall:
  - a. Plan each learning experience;
  - b. Ensure that the curriculum meets the requirements of this Section;
  - c. Prepare written course goals, lesson objectives, class content and learning activities;
  - d. Schedule and achieve course goals and objectives by the end of the course; and
  - e. Require satisfactory performance of all critical elements of each skill under R4-19-802(H) for nursing assistant and R4-19-803(D)(4) for medication assistant before allowing a student to perform the skill on a patient or resident without the instructor's presence at the bedside.
9. A qualified RN instructor shall be present at all times and during all scheduled classroom, skills laboratory and clinical sessions. In no instance shall a nursing assistant or other unqualified person provide any instruction, reinforcement, evaluation or independent activities in the classroom or skills laboratory.
10. A qualified RN instructor shall supervise any student who provides care to patients or residents by:
  - a. Remaining in the clinical facility and focusing attention on student learning needs during all student clinical experiences;
  - b. Providing the instructor's current and valid contact information to students and facility staff during the instructor's scheduled teaching periods;
  - c. Observing each student performing tasks taught in the training program;
  - d. Documenting each student's performance each day, consistent with course skills and clinical objectives;
  - e. During the clinical session, engaging exclusively in activities related to the supervision of students; and
  - f. Reviewing all student documentation.

**D. Records**

1. A training program shall maintain the following program records either electronically or in paper form for a minimum of three years for NA programs and five years for CMA programs:
  - a. Curriculum and course schedule for each admission cohort;
  - b. Results of state-approved written and manual skills testing;
  - c. Documentation of program evaluation under subsection (A)(10)
  - d. A copy of any Board reports, applications, or correspondence, related to the program; and
  - e. A copy of all clinical contracts, if using outside clinical agencies.
2. A training program shall maintain the following student records either electronically or in paper form for a minimum of three years for NA programs and five years for CMA programs:
  - a. A record of each student's legal name, date of birth, address, telephone number, e-mail address and Social Security number, if available;
  - b. A completed skill checklist containing documentation of student level of competency performing the skills in R4-19-802(F) for nursing assistant, and in R4-19-803(D)(4) for medication assistants;
  - c. An accurate attendance record, which describes any make-up class sessions and reflects whether the student completed the required number of hours in the course;
  - d. Scores for each test, quiz, or exam and whether such test, quiz, or exam was retaken; and
  - e. For NA programs only, a copy of a document providing proof of legal presence in the United States as specified in A.R.S. § 41-1080 to be remitted to the Board's designated testing vendor in order to facilitate timely placement of program graduates on a nursing assistant registry.

**E. Certifying Exam Passing Standard:** A training program and each site of a consolidated program under R4-19-802(E) shall attain, at a minimum, an annual first-time passing rate on the manual skill and written certifying examinations that is equal to the Arizona average pass rate for all candidates on each examination minus 20 percentage points. The Board may waive this requirement for programs with less than five students taking the exam during the year. The Board shall issue a notice of deficiency under R4-19-805 to any program with five or more students taking the exam that fails to achieve the minimum passing standard in any calendar year.

**F. Distance Learning; Innovative Programs**

1. A training program may be offered using real-time interactive distance technologies such as interactive television and web based conferencing if the program meets the requirements of this Article.
  2. Before a training program may offer, advertise, or recruit students for an on-line, innovative or other non-traditional program, the program shall submit an application for innovative applications in education under R4-19-214 and receive Board approval.
- G.** Site visits: A training program shall permit the Board, and its designee, including another state agency, to conduct an onsite scheduled evaluation for initial Board approval and renewal of approval in accordance with R4-19-804 and announced or unannounced site visits at any other time the Board deems necessary

#### **Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Section repealed; new Section made by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2). A.R.S. Section reference updated under subsection (A)(6), under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3). Amended by final rulemaking at 23 A.A.R. 1420, effective July 1, 2017 (Supp. 17-2). Amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

#### **R4-19-802. Nursing Assistant (NA) Program Requirements**

##### **A. Organization and Administration**

1. A nursing assistant program may be offered by:
  - a. An educational institution licensed by the State Board for Private Postsecondary Education,
  - b. A public educational institution or a program funded by a local, state or federal governmental agency,
  - c. A health care institution licensed by the Arizona Department of Health Services or a federally authorized health care institution,
  - d. A private business that meets the requirements of this Article and all other legal requirements to operate a business in Arizona.
2. If a nursing assistant program is offered by a private business, the program shall meet the following requirements.
  - a. Hold insurance covering any potential or future claims for damages resulting from any aspect of the program or a hold a surety bond from a surety company with a financial strength rating of "A minus" or better by Best's Credit Ratings, Moody's Investors Service, Standard and Poor's rating service or another comparable rating service as determined by the Board in the amount of a minimum of \$15,000. The program shall ensure that:
    - i. Bond or insurance distributions are limited to students or former students with a valid claim for instructional or program deficiencies;
    - ii. The amount of the bond or insurance is sufficient to reimburse the full amount of collected tuition and fees for all students during all enrollment periods of the program; and
    - iii. The bond or insurance is maintained for an additional 24 months after program closure; and
  - b. Upon initial use and remodeling, provide the Board with a fire inspection report from the Office of the State Fire Marshall or the local authority with jurisdiction, indicating that each program classroom and skill lab location is in compliance with the applicable fire code.
3. Programs approved by the Board before the effective date of this Section shall comply with subsection (A)(2) within one year of the effective date. If a program does not charge tuition or fees, the bond requirement is waived.
4. A Medicare or Medicaid certified long-term care facility-based nursing assistant program shall not require a student to pay a fee for any portion of the program including the initial attempt on the state competency exam.
5. In addition to the policies required in R4-19-801(B), the Board may approve a nursing assistant program to offer an advanced placement option to a student with a background in health care. A nursing assistant program wishing to offer an advance placement option shall submit their advanced placement policy to the Board and receive approval before implementing the policy. The program shall include, at a minimum, the following provisions in its policy:
  - a. Advanced placement is limited to students with at least one year full-time employment in the direct provision of health care within the past five years or students who have successfully completed course work that included direct patient care experiences in allied health, medicine or nursing in the past five years.
  - b. The program, at a minimum, shall require an advanced placement student to meet the same outcomes as regular students on all examinations and skill performance demonstrations.
  - c. The program shall require an advanced placement student to successfully accomplish all clinical objectives during a minimum of 16 hours of clinical practice under the direct supervision and observation of a qualified instructor and in a long-term care facility.
  - d. Upon successful completion of advanced placement and any other program requirements, the program shall credit the graduate with the same number of didactic, laboratory and clinical hours as the regular graduate.

##### **B. Program coordinator qualifications and responsibilities**

1. Program coordinator qualifications include:
  - a. Holding a current, registered nurse license that is active and in good standing or multistate privilege to practice as an RN under A.R.S. Title 32, Chapter 15; and
  - b. Possessing at least two years of nursing experience at least one year of which is in the provision of longterm care facility services.
2. A director of nursing in a health care facility may assume the role of a program coordinator for a nursing assistant training program that is housed in the facility but shall not function as a program instructor.
3. A program coordinator's responsibilities include:
  - a. Supervising and evaluating the program;

- b. Ensuring that instructors meet Board qualifications and there are sufficient instructors to provide for a clinical ratio not to exceed 10 students per instructor;
  - c. Ensuring that the program meets the requirements of this Article; and
  - d. Ensuring that the program meets federal requirements regarding clinical facilities under 42 CFR 483.151.
4. Other than the director of nursing in a long-term care facility, a program coordinator may also serve as a program instructor.
- C. Program instructor qualifications and duties**
- 1. Program instructor qualifications include:
    - a. Holding a current, registered nurse license that is active and in good standing under A.R.S. Title 32, Chapter 15 and provide documentation of a minimum of one year full time or 1500 hours employment providing direct care as a registered nurse in any setting; and
    - b. At a minimum, one of the following:
      - i. Successful completion of a three semester credit course on adult teaching and learning concepts offered by an accredited post-secondary educational institution,
      - ii. Completion of a 40 hour continuing education program in adult teaching and learning concepts that was awarded continuing education credit by an accredited organization,
      - iii. One year of full-time or 1500 hours experience teaching adults as a faculty member or clinical educator, or
      - iv. One year of full time or 1500 hours experience supervising nursing assistants, either in addition to or concurrent with the one year of experience required in subsection (C)(1)(a).
  - 2. In addition to the program instruction requirements in R4-19-801(C), a nursing assistant program instructor shall provide on-site supervision for each student placed in a health care facility not to exceed 10 students per instructor;
- D. Clinical and classroom hour requirements and resources**
- 1. A nursing assistant training program shall ensure each graduate receives a minimum of 120 hours of total instruction consisting of:
    - a. Instructor-led teaching in a classroom setting for a minimum of 40 hours;
    - b. Instructor-supervised skills practice and testing in a laboratory setting for a minimum of 20 hours; and
    - c. Instructor-supervised clinical experiences for a minimum of 40 hours, consistent with the goals of the program. Clinical requirements include the following:
      - i. The program shall provide students with clinical orientation to any clinical setting utilized.
      - ii. The program shall provide a minimum of 20 hours of direct resident care in a long-term care facility licensed by the Department of Health Services, except as provided in subsection (iv). Direct resident care does not include orientation and clinical pre and post conferences.
      - iii. If another health care facility is used for additional required hours, the program shall ensure that the facility provides opportunities for students to apply nursing assistant skills similar to those provided to long-term care residents.
      - iv. If a long-term care facility licensed by the Department of Health Services is not available within 50 miles of the training program's classroom, the program may provide the required clinical hours in a facility or unit that cares for residents or patients similar to those residing in a long-term care facility.
    - d. To meet the 120 hour minimum program hour requirement, a NA program shall designate an additional 20 hours to classroom, skill or clinical instruction based upon the educational needs of the program's students and program resources.
  - 2. A nursing assistant training program shall ensure that equipment and supplies are in functional condition and sufficient in number for each enrolled student to practice required skills. At a minimum, the program shall provide:
    - a. Hospital-type bed, over-bed table, linens, linen protectors, pillows, privacy curtain, call-light and nightstand.;
    - b. Thermometers, stethoscopes, including a teaching stethoscope, aneroid blood pressure cuffs, and a scale;
    - c. Realistic skill training equipment, such as a manikin or model, that provides opportunity for practice and demonstration of perineal care;
    - d. Personal care supplies including wash basin, towels, washcloths, emesis basin, rinse-free wash, tooth brushes, disposable toothettes, dentures, razor, shaving cream, emery board, orange stick, comb, shampoo, hair brush, and lotion;
    - e. Clothes for dressing residents including undergarments, socks, hospital gowns, shirts, pants and shoes or non-skid slippers;
    - f. Elimination equipment including fracture bed pans, bed pans, urinals, ostomy supplies, adult briefs, specimen cups, graduate cylinder, and catheter supplies;
    - g. Aseptic and protective equipment including running water, sink, soap, paper towels, clean disposable gloves, surgical masks, particulate respirator mask for demonstration purposes, gowns, hair protectors and shoe protectors;
    - h. Restorative equipment including wheelchair, gait belt, walker, anti-embolic hose, adaptive equipment, and cane;
    - i. Feeding supplies including cups, glasses, dishes, straws, standard utensils, adaptive utensils and clothing protectors;
    - j. Clean dressings, bandages and binders; and
    - k. Documentation forms.
- E. Consolidated Programs**
- 1. A nursing assistant program may request, in writing, to consolidate more than one site of a program under one program approval for convenience of administration. The site of a program is where didactic instruction occurs. The Board may approve the request for a consolidated program if all the following conditions are met:
    - a. The program is not based in a long-term care facility;
    - b. The program does not offer an innovative program as defined in R4-19-214 at any consolidated site;
    - c. A single RN administrator has authority and responsibility for all sites including hiring, retention and evaluation of all program personnel;
    - d. Curriculum and policies are identical for all sites;
    - e. Instructional delivery methods are substantially similar at all sites;
    - f. Didactic, lab practice and clinical hours are identical for all sites;
    - g. The program presents sufficient evidence that all sites have comparable resources, including classroom, skill lab, clinical

- facilities and staff. Evidence may include pictures, videos, documentation of equipment purchase and instructor resumes;
- h. The program provides an application to the Board a minimum of 30 days before consolidation of the program or use of the new site;
  - i. The site is fully staffed before accepting students;
  - j. The program evaluates each site separately under R4-19-801(A)(9);
  - k. The program arranges for the test vendor to provide a separate program number for each site;
2. There have been no substantiated complaints against the program or failure to follow the provisions of this Article in the past two years.
  3. The program shall notify the Board if a site is closed or has not been used in two years.
  4. A program that has been Board-approved as a consolidated program may request to add additional sites 30 days in advance of site utilization. The Board may approve the new site if the site meets the criteria in subsection (E)(1).
  5. The Board may deny a request to consolidate programs or add a site if the requirements of this section are not met. Denial of such a request is not a disciplinary action and does not affect the program's approval status.
  6. The Board shall not renew or visit any site that was not used in the previous approval period.
- F. Curriculum:** a nursing assistant training program shall provide classroom and clinical instruction regarding each of the following subjects:
1. Communication, interpersonal skills, and documentation;
  2. Infection control;
  3. Safety and emergency procedures, including abdominal thrusts for foreign body airway obstruction and cardiopulmonary resuscitation;
  4. Patient or resident independence;
  5. Patient or resident rights, including the right to:
    - a. Confidentiality;
    - b. Privacy;
    - c. Be free from abuse, mistreatment, and neglect;
    - d. Make personal choices;
    - e. Obtain assistance in resolving grievances and disputes;
    - f. Security of a patient's or resident's personal property; and
    - g. Be free from restraints;
  6. Recognizing and reporting abuse, mistreatment or neglect to a supervisor;
  7. Basic nursing assistant skills, including:
    - a. Taking vital signs, height, and weight using standing, wheelchair and bed scales;
    - b. Maintaining a patient's or resident's environment;
    - c. Observing and reporting pain;
    - d. Assisting with diagnostic tests including obtaining specimens;
    - e. Providing care for patients or residents with drains and tubes including catheters and feeding tubes;
    - f. Recognizing and reporting abnormal patient or resident physical, psychological, or mental changes to a supervisor;
    - g. Applying clean bandages;
    - h. Providing peri-operative care; and
    - i. Assisting in admitting, transferring, or discharging patients or residents.
  8. Personal care skills, including:
    - a. Bathing, skin care, and dressing;
    - b. Oral and denture care;
    - c. Shampoo and hair care
    - d. Fingernail care;
    - e. Toileting, perineal, and ostomy care;
    - f. Feeding and hydration, including proper feeding techniques and use of assistive devices in feeding; and
  9. Age specific, mental health, and social service needs, including:
    - a. Modifying the nursing assistant's behavior in response to patient or resident behavior,
    - b. Demonstrating an awareness of the developmental tasks and physiologic changes associated with the aging process,
    - c. Responding to patient or resident behavior,
    - d. Allowing the resident or patient to make personal choices and providing and reinforcing other behavior consistent with the individual's dignity,
    - e. Providing culturally sensitive care,
    - f. Caring for the dying patient or resident, and
    - g. Using the patient's or resident's family as a source of emotional support for the resident or patient;
  10. Care of the cognitively impaired patient or resident including:
    - a. Understanding and addressing the unique needs and behaviors of patients or residents with dementia or other cognitive impairment,
    - b. Communicating with cognitively impaired patients or residents,
    - c. Reducing the effects of cognitive impairment, and
    - d. Appropriate responses to the behavior of cognitively impaired individuals.
  11. Skills for basic restorative services, including:
    - a. Body mechanics;
    - b. Resident self-care;
    - c. Assistive devices used in transferring, ambulating and dressing;
    - d. Range of motion exercises;
    - e. Bowel and bladder training;

- f. Care and use of prosthetic and orthotic devices; and
  - g. Turning and positioning a resident in bed, transferring a resident between bed and chair and positioning a resident in a chair.
12. Health care team member skills including the role of the nursing assistant and others on the health care team, time management and prioritizing work; and
  13. Legal aspects of nursing assistant practice, including:
    - a. Requirements for licensure and registry placement and renewal.
    - b. Delegation of nursing tasks,
    - c. Ethics,
    - d. Advance directives and do-not-resuscitate orders, and
    - e. Standards of conduct under R4-19-814.
  14. Body structure and function, together with common diseases and conditions.
- G.** Curriculum sequence: A nursing assistant training program shall provide a student with a minimum of 16 hours instruction in the subjects identified in subsections (F)(1) through (F)(6) before allowing a student to care for patients or residents.
- H.** Skills: A nursing assistant instructor shall verify and document that the following skills are satisfactorily performed by each student before allowing the student to perform the skill on a patient or resident without the instructor present:
1. Hand hygiene, gloving and gowning; and
  2. Skills in subsection (F)(7), (8) and (11)(a), (c), (d), (f), and (g).
- I.** One-year approval: following receipt and review of a complete initial application as specified in R4-19-804 the Board may approve the program for a period that does not exceed one year, if requirements are met, without a site visit.
- J.** A Medicare or Medicaid certified long-term care facility-based program shall provide in its initial and each renewal application, a signed, sworn, and notarized document, executed by the program coordinator, affirming that the program does not require a nursing assistant student to pay a fee for any portion of the program including the initial attempt on the state competency exam.

#### **Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Section repealed; new Section made by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2). Amended by final rulemaking at 23 A.A.R. 1420, effective July 1, 2017 (Supp. 17-2). Amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

#### **R4-19-803. Certified Medication Assistant Program Requirements**

- A.** Organization and Administration: A certified medication assistant (CMA) program may only be offered by those entities identified in A.R.S. § 32-1650.01 (A).
- B.** Instructor qualifications and duties
1. A medication assistant program instructor shall:
    - a. Hold a current, registered nurse license that is active and in good standing or multistate privilege to practice as an RN under A.R.S. Title 32, Chapter 15;
    - b. Possess at least two years or 3,000 hours of direct care nursing experience; and
    - c. Have administered medications to residents of a long-term care facility for a minimum of 40 hours.
  2. Duties of a medication assistant instructor include, but are not limited to:
    - a. Ensuring that the program meets the requirements of this Article;
    - b. Planning each learning experience;
    - c. Teaching a curriculum that meets the requirements of this Section;
    - d. Implementing student and program evaluation policies that meet or exceed the requirements R4-19-801 (A) (9) and (10);
    - e. Administering not less than three secure unit examinations and one comprehensive final exam consistent with the course curriculum and the requirements of R4-19-801(B)(3)(c) and;
    - f. Requiring each student to demonstrate satisfactory performance of all critical elements of each skill in subsection (D)(4) before allowing a student to perform the skill on a patient or resident without the instructor's presence and direct observation;
    - g. Being physically present and attentive to students in the classroom and clinical setting at all times during all sessions;
  3. A program instructor shall supervise only one student for the first 12 hours of each student's clinical experience; no more than three students for the next 12 hours of each student's clinical experience; and no more than five students for the next 16 hours of each student's clinical experience;
- C.** Clinical and classroom hour requirements and resources
1. A medication assistant training program shall ensure each graduate received a minimum of 100 hours of total instruction consisting of:
    - a. Instructor-led didactic instruction for a minimum of 45 hours;
    - b. Instructor supervised skill practice and testing for a minimum of 15 hours;
    - c. Instructor supervised medication administration for a minimum of 40 hours in a long-term care facility licensed by the Department of Health Services.
  2. A medication assistant program shall ensure that equipment and supplies are in functional condition and sufficient in number for each enrolled student to practice required skills in subsection (D)(3) and (D)(4). At a minimum, the program shall provide the following
    - a. A medication cart similar to one used in the clinical practice facility;
    - b. Simulated medications and packaging consistent with resident medications;
    - c. Pill crushers, pill splitters, medication cups and hand hygiene supplies;
    - d. Medication administration record forms; and
    - e. Current drug references, calculator and any other equipment used to administer medications safely.

- D.** Curriculum: a medication assistant training program shall provide classroom and clinical instruction in each of the following subjects.
1. Role of certified medication assistant (CMA) in Arizona including allowable acts, conditions, delegation and restrictions;
  2. Principles of medication administration including:
    - a. Terminology,
    - b. Laws affecting drug administration,
    - c. Drug references,
    - d. Medication action,
    - e. Medication administration across the human lifespan,
    - f. Dosage calculation,
    - g. Medication safety,
    - h. Asepsis, and
    - i. Documentation.
  3. Medication properties, uses, adverse effects, administration and care implications for the following types of medications:
    - a. Vitamins, minerals, and herbs,
    - b. Antimicrobials,
    - c. Eye and ear medications,
    - d. Skin medications,
    - e. Cardiovascular medications,
    - f. Respiratory medications,
    - g. Gastrointestinal medications,
    - h. Urinary system medications and medications to attain fluid balance,
    - i. Endocrine/reproductive medications,
    - j. Musculoskeletal medications,
    - k. Nervous system/sensory system medications' and
    - l. Psychotropic medications.
  4. Medication administration theory and skill practice in administration of:
    - a. Oral tablets, capsules, and solutions;
    - b. Ear drops, eye drops and eye ointments;
    - c. Topical lotions, ointments and solutions;
    - d. Rectal suppositories; and
    - e. Nasal drops and sprays.
  5. Any other topics deemed by the program or the Board as necessary and pertinent to the safe administration of medications.

#### **Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Section repealed; new Section made by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3).

#### **R4-19-804. Initial Approval and Re-Approval Training Programs**

- A.** An applicant for initial training program approval shall submit an application packet to the Board at least 90 days before the expected starting date of the program. An applicant shall submit application documents that are unbound, typed or word processed, single-sided, and on white, letter-size paper plus one electronic copy of the entire packet. The Board does not accept notebooks, spiral bound documents, manuals or books.
- B.** The Board may impose disciplinary action including denial on any training program that has advertised, conducted classes, recruited or collected money from potential students before receiving Board approval or after expiration of approval except for completing instruction to students who enrolled before the expiration date.
- C.** A program applying for initial approval shall include all of the following in their application packet:
1. Name, address, web address, telephone number, e-mail address and fax number of the program;
  2. Identity of all program owners or sponsoring institutions;
  3. Name, license number, telephone number, e-mail address and qualifications of the program coordinator as required in R4-19-802;
  4. Name, license number, telephone number, e-mail address and qualifications of each program instructor including clinical instructors as required in either R4-19-802 for NA programs or R4-19-803 for CMA programs;
  5. Name, telephone number, e-mail address and qualifications any person with administrative oversight of the training program, such as an owner, supervisor or director;
  6. Accreditation status of the training program, if any, including the name of the accrediting body and date of last review;
  7. Name, address, telephone number and contact person; for all health care institutions which will be clinical sites for the program;
  8. Medicare certification status of all clinical sites, if any;
  9. Evidence of program compliance with this Article including all of the following:
    - a. Program description that includes the length of the program, number of hours of clinical, laboratory and classroom instruction, and program goals consistent with federal, state, and if applicable, private postsecondary requirements;
    - b. A list and description of classroom facilities, equipment, and instructional tools the program will provide;
    - c. Written curriculum and course schedule according to the provisions of this Article;
    - d. A copy of the documentation that the program will use to verify student attendance, instructor presence and skills;
    - e. Copy of signed, current clinical contracts;
    - f. The title, author, name, year of publication, and publisher of all textbooks the program will require students to use;

- g. A copy of course policies and any other materials that demonstrate compliance with this Article and the statutory requirements in Title 32, Chapter 15;
  - h. A plan to evaluate the program that meets requirements in R4-19-801(A) (10);
  - i. An implementation plan including start date and a description of how the program will provide oversight to ensure all requirements of this Article are met;
  - j. A self-assessment checklist of the application contents and their location in the application, on a form provided by the Board; and
  - k. Other requirements as requested consistent with R4-19-802 for nursing assistant programs and R4-19-803 for medication assistant programs.
- D. Re-approval of Training Programs**
- 1. A training program applying for re-approval shall submit a paper and electronic application and accompanying materials to the Board before expiration of the current approval. The applicant program shall ensure that all documents submitted are unbound, typed or word processed, single-sided, and on white, letter-size paper. The Board does not accept notebooks, spiral bound documents, manuals or books. A program or site of a consolidated program that did not hold any classes in the previous approval period is not eligible for renewal of approval.
  - 2. The program shall include the following with the renewal application:
    - a. A program description and course goals;
    - b. Name, license number, and qualifications of current program personnel;
    - c. A copy of the current curriculum which meets the applicable requirements in either R4-19-802 or R4-19-803;
    - d. The dates of each program offering, number of students who have completed the program, and the results of the state-approved written and manual skills tests, including first-time pass rates since the last program review;
    - e. A copy of current program policies, consistent with R4-19-801;
    - f. Any change in resources, contracts, or clinical facilities since the previous approval or changes that were not previously reported to the Board;
    - g. The program evaluation plan with findings regarding required evaluation elements under R4-19-801 (A) (10);
    - h. The title, author, year of publication, and publisher of the textbook used by the program;
    - i. Copies of the redacted records of one program graduate;
    - j. The total number of enrolled students and graduates for each year since the last approval;
    - k. The total number of persons taking the state-approved exam in the past two years; if the number is less than 10, a comprehensive plan to increase program enrollment;
    - l. A self-assessment checklist of the application contents and their location in the application, on a form provided by the Board; and
    - m. Other requirements as requested consistent with R4-19-802 for nursing assistant programs and R4-19- 803 for medication assistant programs.
- E.** Upon determination of administrative completeness of either an initial or renewal application, the Board, through its authorized representative, shall schedule and conduct a site visit of a NA program, unless one year only approval is granted on an initial application. The Board may conduct a site visit of a CMA program. Site visits are for the purpose of verifying compliance with this Article. Site visits may be conducted in person or through the use of distance technology.
- F.** Following an evaluation of the program application and a site visit, if applicable, the Board may approve or renew the approval of the program for two years for a nursing assistant program and up to four years for a medication assistant program, if the program renewal application and site visit findings, as applicable, meet the requirements of this Article, and A.R.S. Title 32, Chapter 15 and renewal is in the best interest of the public. If the program does not meet these requirements, the Board may issue a notice of deficiency under R4-19-805 or take disciplinary action.
- G.** A program may request an administrative hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for program approval or renewal of approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.
- H.** The owner, operator, administrator or coordinator of a program that is denied approval or renewal of approval shall not be eligible to conduct, own or operate a new or existing program for period of two years from the date of denial.

#### **Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Section repealed; new Section made by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2).

#### **R4-19-805. Deficiencies and Rescission of Program Approval, Unprofessional Program Conduct, Voluntary Termination, Disciplinary Action, and Reinstatement**

- A. Deficiencies**
- 1. Upon determining that a training program has not complied with this Article, the Board may issue a written notice of deficiency to the program. The Board shall establish a reasonable period of time, based upon the number and severity of deficiencies, for correction of the deficiencies. Under no circumstances, however, shall the period for correction of deficiencies exceed six months.
    - a. Within ten days from the date that the notice of deficiency is served, the program shall submit a plan of correction to the Board.
    - b. The Board, through its authorized representative, may approve the plan of correction or require modifications to the plan if the plan does not adequately address the deficiencies.
    - c. The Board may conduct periodic evaluations and site visits during the period of correction to ascertain the program's progress toward correcting the deficiencies.

- d. The Board shall evaluate the program's compliance, at a regularly scheduled Board meeting following the period of correction to determine whether the program has corrected the deficiencies.
2. The Board may rescind the approval of a training program or take other disciplinary action under A.R.S. § 32-1663, based on the number and severity of violations if the program engages in any of the following:
  - a. Failure to submit a plan of correction to the Board within ten days of service of a notice of deficiency.
  - b. Failure to comply with the requirements of this Article within the period set by the Board in the notice of deficiency;
  - c. Noncompliance with federal, state, or, if applicable, private postsecondary requirements;
  - d. Failure to permit a scheduled or unannounced Board site visit or failure to allow a Board representative access to program documents, staff or students during a site visit or investigation;
  - e. Loaning or transferring Board program approval to another entity or facility, including a facility with the same ownership;
  - f. Offering, advertising, recruiting, or enrolling students in a training program before Board approval is granted;
  - g. Conducting a training program after expiration of Board approval without filing an application for renewal of approval before the expiration date;
  - h. For a long-term care based nursing assistant program, charging for any portion of the program;
  - i. Committing an act of unprofessional program conduct.

**B. Unprofessional program conduct**

A notice of deficiency or a disciplinary action including denial of approval or rescission of approval may be issued against a training program for any of the following acts of unprofessional conduct:

1. Failing to maintain minimum standards of acceptable and prevailing educational practice;
2. Any violation of this Article;
3. Utilization of students as labor rather than for educational purposes in a health care facility;
4. Failing to follow the program's or parent institution's mission or goals, program design, objectives, or policies;
5. Failing to provide the classroom, laboratory or clinical teaching hours required by this Article or described in the program description;
6. Enrolling students in a program without adequate faculty, facilities, or clinical experiences, as required by this Article;
7. Permitting unqualified persons to supervise teaching-learning experiences in any portion of the program;
8. Failing to comply with Board requirements within designated timeframes;
9. Engaging in fraud, misrepresentation or deceit in advertising, recruiting, promoting or implementing the program;
10. Making a false, inaccurate or misleading statement to the Board or the Board's designee in the course of an investigation, or on any application or information submitted to the Board or on the program's public website;
11. Failing to supervise students in the clinical setting in accordance with this Article or allowing more than the maximum students per clinical instructor prescribed in this Article;
12. Engaging in any other conduct that gives the Board reasonable cause to believe the program's conduct may be a threat to the safety or welfare of students, faculty, patients or the public.
13. Failing to:
  - a. Furnish in writing a full and complete explanation of a matter reported pursuant to A.R.S. §32-1664, or
  - b. Respond to a subpoena issued by the Board;
14. Failing to take appropriate action to safeguard a patient's or resident's welfare or follow policies and procedures of the program or clinical site designed to safeguard the patient or resident;
15. Failing to promptly provide make-up classroom, laboratory, or clinical hours, with adequate notice to students, equivalent educational content, and reasonable scheduling, when shortages of hours were caused by the program or program instructors;
16. Failing to promptly remove, or adequately discipline or train, program instructors whose conduct violates this Article or may be a threat to the safety or welfare of students, patients, residents, or the public.
17. Engaging in retaliatory, threatening, or intimidating conduct toward current, prospective or former program students, instructors, other staff, or the public, who make complaints about any aspect of the program to program staff or the Board.

**C. Disciplinary Action**

If the Board issues disciplinary action against the approval of a nursing assistant or medication assistant training program, the program may request a hearing by filing a written request with the Board within 30 days of service of the Board's order. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10, and 4 A.A.C. 19, Article 6.

**D. Voluntary termination**

1. If a training program is voluntarily terminating before renewal, the program shall submit a written notice of termination to the Board.
2. The program coordinator shall continue the training program, including retaining necessary instructors, until the last student is transferred or has completed the training program.
3. Within 15 days after the termination of a training program, the administrator or a program representative shall notify the Board in writing of the permanent location and availability of all program records.
4. A program that fails to renew its approval with the Board shall be considered voluntarily terminated unless there is a complaint against the program.

**E. Re-issuance of approval**

1. If the Board revokes the approval of a training program, the owner, administrator or coordinator of the revoked program may apply for re-issuance of program approval after a period of two years by complying with the requirements of this Article. The owner, administrator and coordinator of a program that had its approval revoked shall not own, administer or coordinate a training program for a period of two years from the date of program revocation.
2. If the Board, in lieu of revocation, accepts a voluntarily surrender of a program's approval, the program's owner, administrator or coordinator may apply for reissuance of the program's approval after a period of two years. The owner, administrator and coordinator of a program that voluntarily surrendered its approval shall not own, administer or coordinate a training program for a period of two years from the date of the surrender of approval.

3 A training program owner, administrator or coordinator whose program approval was voluntarily surrendered or that had its approval rescinded or revoked shall submit a complete reissuance application packet in writing that contains all of the information and documentation required of programs applying for initial approval. In addition, the program shall provide substantial evidence that the basis for revocation or voluntary surrender no longer exist and that reissuance\_of program approval is in the best interest of the public.

4. The Board may reissue approval to a training program that meets the requirements of this Article. A program that is denied reissuance of approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying reissuance. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp.14-3).

#### **R4-19-806. Initial Nursing Assistant Licensure (LNA) and Medication Assistant Certification**

- A.** An applicant for initial licensed nursing assistant (LNA) licensure or CMA certification shall submit the following to the Board:
1. A verified application on a form furnished by the Board that provides the following information about the applicant:
    - a. Full legal name and any and all former names used by the applicant;
    - b. Current mailing address, including county of residence, e-mail address and telephone number;
    - c. Place and date of birth;
    - d. Social Security number;
    - e. Ethnic category and marital status at the applicant's discretion;
    - f. Educational background, including the name of the training program attended, and date of graduation and for medication assistant, proof of high school or equivalent education completion as required A.R.S. § 32-1650-02 (A)(4);
    - g. Current employer, including address and telephone number, type of position, and dates of employment, if employed in health care;
    - h. A list of all states in which the applicant is or has been included on a nursing assistant registry or been licensed or certified as a nursing or medication assistant and the license or certificate number, if any;
    - i. For medication assistant, proof of LNA licensure and 960 hours or 6 months full time employment as a CNA or LNA in the past year, as required in A.R.S. §32-1650.02;
    - j. Responses to questions regarding the applicant's background on the following subjects:
      - i. Current investigation or pending disciplinary action by a nursing, nursing assistant or medication assistant regulatory agency in the United States or its territories
      - ii. Action taken on a nursing assistant or medication assistant license, certification or registry designation in any other state;
      - iii. Felony conviction or conviction of an undesignated or other similar offense and the date of absolute discharge of sentence;
      - iv. Unprofessional conduct as defined in A.R.S. § 32-1601;
      - v. Explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background;
  2. Proof of satisfactory completion of a nursing assistant or medication assistant training program that meets the requirements of this Article;
  3. Proof of United States citizenship or alien status as specified in A.R.S. § 41-1080;
  4. For LNA applicants, one or more fingerprint cards or fingerprints;
  5. For CMA applicants, one or more fingerprint cards or fingerprints, as required by A.R.S. § 32-1606 (B)(15) if a fingerprint background report has not been received by the Board in the past two years; and
  6. Applicable fees under A.R.S. § 32-1643 and R4-19-808.
- B.** An applicant for licensure as a nursing assistant shall submit a passing score on a Board-approved nursing assistant examination and provide one of the following criteria:
1. Proof that the applicant has completed a Board-approved nursing assistant training program within the past two years;
  2. Proof that the applicant has completed a nursing assistant training program approved in another state or territory of the United States consisting of at least 120 hours within the past two years;
  3. Proof that the applicant has completed a nursing assistant program approved in another state or territory of the United States of at least 75 hours of instruction in the past two years and proof of working as a nursing assistant for an additional number of hours in the past two years that together with the hours of instruction, equal at least 120 hours;
  4. Proof that the applicant either holds a nursing license in good standing in the U.S. or territories, has graduated from an approved nursing program, or otherwise meets educational requirements for a registered or practical nursing license in Arizona;
  5. Documentation sent directly from the program that the applicant successfully completed a nursing course or courses as part of an RN or LPN program approved in either in this or another state in the last 2 years that included:
    - a. Didactic content regarding long-term care clients; and
    - b. Forty hours of instructor-supervised direct patient care in a long-term care or comparable facility; or
  6. Documentation of a minimum of 100 hours of military health care training, as evidenced by military records, and proof of working in health care within the past 2 years.
- C.** An applicant for medication assistant shall meet the qualifications of A.R.S. §§32-1650.02 and 32-1650.03. An applicant who wishes to use part of a nursing program in lieu of completion of a Board approved medication assistant training program under A.R.S. § 32-1650.02 shall submit the following:
1. An official transcript from a Board approved nursing program showing a grade of C or higher in a 45 hour or 3 semester

- credit, or equivalent, pharmacology course; and
2. A document signed by both the applicant's clinical instructor and the nursing program administrator verifying that the applicant completed 40 hours of supervised medication administration in a long-term care facility.
- D. Certifying Exam**
1. A LNA applicant shall take and pass both portions of the certifying exam within 2 years:
    - a. Of program completion for graduates of nursing assistant programs approved in Arizona or another state, or
    - b. Of date of the first test for all other applicants.
  2. A CMA applicant shall take and pass both portions of the certifying exam within one year:
    - a. Of program completion for graduates of Board-approved programs, or
    - b. Of the date of the first test for all other applicants.
  3. An applicant may re-take the failed portion or portions of a certifying exam, under conditions prescribed in written policy by the exam vendor, until a passing score is achieved or their time expires under subsections (D) (1) or (2).
- E.** An applicant who does not take or pass an examination within the time period specified in subsection (D) shall enroll in and successfully complete a Board approved training program in the certification category before being permitted to retake an examination.
- F.** The Board may license a nursing assistant or certify a medication assistant applicant who meets the applicable criteria in this Article and A.R.S. Title 32, Chapter 15 if licensure or certification is in the best interest of the public.
- G.** An applicant who is denied licensure or certification may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.
- H.** Medication assistant certification expires when nursing assistant licensure expires.

#### **Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp.14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2).

#### **R4-19-807. Nursing Assistant Licensure and Medication Assistant Certification by Endorsement**

- A.** An applicant for LNA or CMA by endorsement shall submit all of the information, documentation, and fees required in R4-19-806.
- B.** An applicant who has been employed for less than one year shall list all employers during the past two years.
- C.** An applicant for nursing assistant licensure by endorsement shall meet the training program criteria in R4-19-806(B). An applicant for medication assistant endorsement shall, in addition, provide evidence satisfactory completion of a training program that meets the requirements of A.R.S. § 32-1650.04 and pass a competency examination as prescribed in A.R.S. § 32-1650.03.
- D.** In addition to the other requirements of this Section, an applicant for licensure or certification by endorsement shall provide evidence that the applicant:
1. Is or has been, within the last 2 years, listed as active on a nursing assistant register or a substantially equivalent register by another state or territory of the United States with no substantiated complaints or discipline; and
  2. For nursing assistant, meets one or more of the following criteria:
    - a. Regardless of job title or description, performed nursing assistant activities for a minimum of 160 hours for an employer or as part of a nursing or allied health program in the past two years; or
    - b. Has completed a nursing assistant training program and passed the required examination within the past two years.
  3. In addition to the above requirements, for medication assistant certification, meets the practice requirements of A.R.S. § 32-1650.04 and pays applicable fees under R4-19-808.
- E.** The Board may license a nursing assistant or certify a medication assistant applicant who meets the applicable criteria in this Article if certification is in the best interest of the public.
- F.** An applicant who is denied licensure or certification may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for licensure or certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

#### **Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp.14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2)

#### **R4-19-808. Fees Related to Certified Medication Assistant**

- A.** The Board shall collect the following fees related medication assistant certification:
1. Initial application for certification by exam, \$50.00.
  2. Fingerprint processing, \$50.00.
  3. Application for CMA certification by endorsement, \$50.00.
- B.** If an individual or entity submits a dishonored check, draft order or note, the Board may collect, from the provider of the instrument, the amount allowed under A.R.S. § 44-6852.

#### **Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 5004, effective November 15, 2002 (Supp. 02-4). Amended by final rulemaking at 11 A.A.R. 4254, effective

December 5, 2005 (Supp. 05-4). Section repealed; new Section made by final rulemaking at 20 A.A. § 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2).

**R4-19-809. Nursing Assistant Licensure and Medication Assistant Certificate Renewal**

- A.** An applicant for renewal of a LNA license or a CMA certificate shall:
1. Submit a verified application to the Board on a form furnished by the Board that provides all of the following information about the applicant
    - a. Full legal name, mailing address including county of residence, e-mail address and telephone number;
    - b. Marital status and ethnicity at the applicant's discretion;
    - c. Current health care employer including name, address, telephone number, dates of employment and type of setting;
    - d. If the applicant fails to meet the practice requirements in subsections (A)(2) for nursing assistant or (A)(3) for medication assistant renewal, documentation that the applicant has completed a Board approved training program for the licensure or certification sought and passed both the written and manual skills portions of the competency examination within the past two years;
    - e. Responses to questions that address the applicant's background:
      - i. Any investigation or disciplinary action by a nursing regulatory agency or nursing assistant regulatory agency in the United States or its territories not previously disclosed by the applicant to the Board;
      - ii. Felony conviction or conviction of undesignated offense and date of absolute discharge of sentence since licensed, certified or last renewed, and
      - iii. Unprofessional conduct committed by the applicant as defined in A.R.S. § 32-1601 since the time of last renewal and not previously disclosed by the applicant to the Board;
      - iv. Any disciplinary action or investigation related to the applicant's nursing or nursing assistant license or medication assistant certificate, nursing assistant certificate or registry listing by any other state regulatory agency since issuance of the license or certificate, or since last renewal and not previously disclosed to the Board.
      - v. Explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background;
    - f. For LNA renewal, employment as a nursing assistant, performing nursing assistant tasks for an employer or the applicant's performance of nursing assistant activities as part of a nursing or allied health program for a minimum of 160 hours every two years since the last license or certificate was issued, or
    - g. For CMA renewal, employment as a medication assistant for a minimum of 160 hours within the last 2 years, and
    - h. Pay applicable fees pursuant to A.R.S. § 32-1643 and R4-19-808.
- B.** An applicant's license or certificate expires every two years on the last day of the applicant's birth month. If an applicant fails to timely renew the license or certificate, the applicant shall:
1. Not work or practice as an LNA or CMA until the Board issues a renewal license or certificate; and
  2. Pay any late fee imposed by the Board.
- C.** If an applicant's license or certificate was, or is currently, revoked, surrendered, denied, suspended or placed on probation in another jurisdiction, the applicant is not eligible to renew or reactivate the applicant's Arizona license or certificate until a review or investigation has been completed and a decision made by the Board.
- D.** The Board may renew an LNA license and CMA certificate of an applicant who meets the criteria established in statute and this Article. An applicant who is denied renewal of a license or certificate may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying renewal of the license or certificate. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6 of this Chapter

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2). Amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

**R4-19-810. Certified Nursing Assistant Registry; Licensed Nursing Assistant Registry**

- A.** The Board shall maintain a Certified Nursing Assistant (CNA) Registry and a Licensed Nursing Assistant (LNA) Registry. All individuals listed in either Registry shall provide proof to the Board, either directly or through the Board's test vendor, of legal presence in the United States as specified in A.R.S. § 41- 1080. Both Registries meet the requirements of A.R.S. § 32- 1606(B)(11).
1. To be placed on the CNA Registry, an applicant shall either:
    - a. Have successfully completed an approved nursing assistant training program and passed the nursing assistant written and manual skills competency evaluation within the past two years; or
    - b. For endorsement, be listed on another state's nursing assistant registry.
  2. To renew CNA Registry status under A.R.S. § 32- 1642(E), an applicant shall submit an application that includes verified statements establishing:
    - a. Whether applicant has performed nursing assistant or nursing related services for at least eight hours within the past 24 months. An applicant must complete this work requirement to be eligible for renewal.
    - b. Whether the applicant's listing on any registry in any other state includes documented findings of abuse, neglect or misappropriation of property.
  3. The Executive Director shall include the following information in the CNA Registry for each registered individual:
    - a. Full legal name and any other names used;
    - b. Address of record;
    - c. County of residence;
    - d. The date of initial placement on the registry;

- e. Dates and results of both the written and manual skills portions of the nursing assistant competency examination;
- f. Date of expiration of current registration, if applicable;
- g. Any substantiated complaints of abuse, neglect or misappropriation of property; and
- h. Registry status such as active or expired as applicable.

**B.** An LNA applicant who meets the qualifications under subsection (A)(1) and the licensure requirements of this Article shall be placed on an LNA Registry. The Executive Director shall include the following information in the LNA Registry for each licensed individual:

- 1. Information contained in subsection (A)(3);
- 2. Status of the license and any Board actions on the license, such as active, denied, expired, or revoked, as applicable.

**C.** The Executive Director shall include the following information in the applicable Registry for an individual if the Board, or the United States Department of Health and Human Services (HHS) finds that the individual has violated relevant law. For a finding by the Board or HHS, the Executive Director shall include:

- 1. The finding, including the date of the decision, and a reference to each statute, rule, or regulation violated; and
- 2. The sanction, if any, including the date of action and the duration of action, if time-limited.

#### **Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp.14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2) Amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2).

#### **R4-19-811. Repealed**

#### **Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1) Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3) Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16- 2.) Repealed by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2)

#### **R4-19-812. Change of Name or Address**

- A.** An applicant, CNA, LNA or a CMA certificate holder shall notify the Board, in writing or electronically through the Board's website of any legal name change within 30 days of the change, and submit a copy of the official document verifying the name change.
- B.** An applicant, CNA, LNA, or CMA certificate holder shall notify the Board in writing or electronically through the Board's website of any change of address within 30 days of the address change.

#### **Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2).

#### **R4-19-813. Performance of Nursing Assistant Tasks; Performance of Medication Assistant Tasks**

- A.** A CNA or LNA may perform the following tasks as delegated by a licensed nurse:
  - 1. Tasks for which the nursing assistant has been trained through the curriculum identified in R4-19-802, and
  - 2. Tasks learned through inservice or educational training if the task meets the following criteria and the nursing assistant has demonstrated competence performing the task:
    - a. The task can be safely performed according to clear, exact, and unchanging directions;
    - b. The task poses minimal risk to the patient or resident and the consequences of performing the task improperly are not life-threatening or irreversible;
    - c. The results of the task are reasonably predictable; and
    - d. Assessment, interpretation, or decision-making is not required during the performance or at the completion of the task.
- B.** A licensed nursing assistant who is also certified as a medication assistant under A.R.S. § 32-1650.02 may administer medications under the conditions imposed by A.R.S. § § 32-1650 through 32-1650.07.
- C.** A licensed nursing assistant under this Article shall:
  - 1. Recognize the limits of the licensee's personal knowledge, skills, and abilities;
  - 2. Comply with laws relevant to nursing assistant and medication assistant practice;
  - 3. Inform the registered nurse, licensed practical nurse, or another person authorized to delegate the task about the licensee's ability to perform the task before accepting the assignment;
  - 4. Accept delegation, instruction, and supervision from a licensed nurse or another person authorized to delegate a task;
  - 5. Not perform any task that requires a judgment based on nursing knowledge;
  - 6. Acknowledge responsibility for personal actions necessary to complete an accepted assigned task;
  - 7. Follow the plan of care, if available;
  - 8. Observe, report, and record signs, symptoms, and changes in the patient or resident's condition in an ongoing and timely manner; and
  - 9. Retain responsibility for all assigned tasks without delegating any tasks to another person.

#### **Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp.14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2).

**R4-19-814. Standards of Conduct for Licensed Nursing Assistants and Certified Medication Assistants**

For purposes of A.R.S. § 32-1601(24)(d), a practice or conduct that is or might be harmful or dangerous to the health of a patient or the public and constitutes a basis for disciplinary action on a LNA license and a CMA certificate includes the following:

1. Failing to maintain professional boundaries or engaging in a dual relationship with a patient, resident, or any member of the patient's or resident's family;
2. Engaging in sexual conduct with a patient, resident, or any member of the patient's or resident's family who does not have a pre-existing relationship with the, licensee or any conduct while on duty or in the presence of a patient or resident that a reasonable person would interpret as sexual;
3. Leaving an assignment or abandoning a patient or resident who requires care without properly notifying the immediate supervisor;
4. Failing to accurately and timely document care and treatment provided to a patient or resident, including, for a CMA, medications administered or not administered;
5. Falsifying or making a materially incorrect entry in a health care record;
6. Failing to follow an employer's policies and procedures, designed to safeguard the patient or resident;
7. Failing to take action to protect a patient or resident whose safety or welfare is at risk from potential or actual incompetent health care practice, or to report the practice to the immediate supervisor or a facility administrator;
8. Failing to report signs, symptoms, and changes in patient or resident conditions to the immediate supervisor in an ongoing and timely manner;
9. Violating the rights or dignity of a patient or resident;
10. Violating a patient or resident's right of privacy by disclosing confidential information or knowledge concerning the patient or resident, unless disclosure is otherwise required by law;
11. Neglecting or abusing a patient or resident physically, verbally, emotionally, or financially;
12. Failing to immediately report to a supervisor and the Board any observed or suspected abuse or neglect, including a resident or patient's report of abuse or neglect;
13. Soliciting, or borrowing, property or money from a patient or resident, or any member of the patient's or resident's family, or the patient's or resident's guardian;
14. Soliciting or engaging in the sale of goods or services unrelated to the licensee's health care assignment with a patient or resident, or any member of the patient or resident's immediate family, or guardians;
15. Removing, without authorization, any money, property, or personal possessions, or requesting payment for services not performed from a patient, resident, employer, co-worker, or member of the public.
16. Repeated use or being under the influence of alcohol, medication, or any other substance to the extent that judgment may be impaired and practice detrimentally affected or while on duty in any work setting;
17. Accepting or performing patient or resident care tasks that the licensee lacks the education, competence or legal authority to perform;
18. Removing, without authorization, narcotics, drugs, supplies, equipment, or medical records from any work setting;
19. Obtaining, possessing, using, or selling any narcotic, controlled substance, or illegal drug in violation of any employer policy or any federal or state law;
20. Permitting or assisting another person to use the licensee's license or CMA certificate holder's certificate or identity for any purpose;
21. Making untruthful or misleading statements in advertisements of the individual's practice as a licensed nursing assistant or certified medication assistant;
22. Offering or providing licensed nursing assistant or certified medication assistant services for compensation without a designated registered nurse supervisor;
23. Threatening, harassing, or exploiting an individual;
24. Using violent or abusive behavior in any work setting;
25. Failing to cooperate with the Board during an investigation by:
  - a. Not furnishing in writing a complete explanation of a matter reported under A.R.S. § 32-1664;
  - b. Not responding to a subpoena or written request for information issued by the Board;
  - c. Not completing and returning a Board-issued questionnaire within 30 days; or
  - d. Not informing the Board of a change of address or phone number within 10 days of each change;
26. Cheating on the competency exam or providing false information on an initial or renewal application for license or certification;
27. Making a false or inaccurate statement to the Board or the Board's designee during the course of an investigation;
28. Making a false or misleading statement on a nursing assistant, medication assistant or health care related employment or credential application;
29. If an applicant, licensee or CMA certificate holder is charged with a felony or a misdemeanor, involving conduct that may affect patient safety, failing to notify the Board, in writing, within 10 working days of being charged under A.R.S. § 32-3208. The applicant, licensee or CMA certificate holder shall include the following in the notification:
  - a. Name, current address, telephone number, Social Security number, and license and certificate number, if applicable;
  - b. Date of the charge; and
  - c. Nature of the offense;
30. Failing to notify the Board, in writing, of a conviction for a felony or an undesignated offense within 10 days of the conviction. The applicant, licensee or CMA certificate holder shall include the following in the notification:
  - a. Name, current address, telephone number, Social Security number, and license and CMA certificate number, if applicable;
  - b. Date of the conviction;
  - c. Nature of the offense;
31. For a medication assistant, performance of any acts associated with medication administration not specifically authorized by

- A.R.S. § 32-1650 et seq; and
32. Practicing in any other manner that gives the Board reasonable cause to believe that the health of a patient, resident, or the public may be harmed.
  33. Violation of any other state or federal laws, rules or regulations.

#### **Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4). Antiquated statute reference in opening subsection revised at the request of Board under A.R.S. § 41-1011(C), Office File No. M11-189, filed May 16, 2011 (Supp. 11-2). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citation in the opening subsection was updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2). A.R.S. Section reference updated under subsection under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3).

#### **R4-19-815. Reissuance or Subsequent Issuance of a Nursing Assistant License or Medication Assistant Certificate**

- A.** A person whose LNA license or CMA certificate was denied, revoked, or voluntarily surrendered pursuant to A.R.S. § 32-1663 may apply to the Board to issue or re-issue the license or certificate:
  1. Five years from the date of denial or revocation, or
  2. In accordance with the terms of a voluntary surrender agreement.
- B.** A person who applies for issuance or re-issuance of a license or certificate under the conditions of subsection (A) is subject to the following terms and conditions:
  1. The applicant shall submit a written application for issuance or re-issuance of the license or certificate that contains substantial evidence that the basis for surrendering, denying, or revoking the license or certificate has been removed and that the issuance or re-issuance of the license or certificate will not be a threat to public health or safety.
  2. Safe practice:
    - a. Pursuant to A.R.S. § 32-1664(F), the Board for reasonable cause may require a combination of mental, physical, nursing competency, psychological, or psychiatric evaluations, or any combination of evaluations, reports, and affidavits that the Board considers necessary to determine the person's competence and conduct to safely practice as an LNA or CMA.
    - b. The Board may require the applicant to be tested for competency, or retake and successfully complete a Board approved training program and pass the required examination, all at the applicant's expense.
- C.** The Board shall consider the application, and may designate a time for the applicant to address the Board at a regularly scheduled meeting.
- D.** After considering the application, the Board may:
  1. Grant certification, with or without conditions or limitations, or
  2. Deny the application.
- E.** An applicant who is denied issuance or re-issuance of LNA licensure or CMA certification may request a hearing by filing a written request with the Board within 30 days of service of the Board's order. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6, of this Chapter.

#### **Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-). Amended by final rulemaking at 25 A.A.R. 919, effective June 3, 2019 (Supp. 19-2)

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### 32-1601. Definitions

In this chapter, unless the context otherwise requires:

1. "Absolute discharge from the sentence" means completion of any sentence, including imprisonment, probation, parole, community supervision or any form of court supervision.
2. "Appropriate health care professional" means a licensed health care professional whose scope of practice, education, experience, training and accreditation are appropriate for the situation or condition of the patient who is the subject of a consultation or referral.
3. "Approval" means that a regulated training or educational program to prepare persons for licensure, certification or registration has met standards established by the board.
4. "Board" means the Arizona state board of nursing.
5. "Certified nurse midwife" means a registered nurse who:
  - (a) Is certified by the board.
  - (b) Has completed a nurse midwife education program approved or recognized by the board and educational requirements prescribed by the board by rule.
  - (c) Holds a national certification as a certified nurse midwife from a national certifying body recognized by the board.
  - (d) Has an expanded scope of practice in the provision of health care services for women from adolescence to beyond menopause, including antepartum, intrapartum, postpartum, reproductive, gynecologic and primary care, for normal newborns during the first twenty-eight days of life and for men for the treatment of sexually transmitted diseases. The expanded scope of practice under this subdivision includes:
    - (i) Assessing patients, synthesizing and analyzing data and understanding and applying principles of health care at an advanced level.
    - (ii) Managing the physical and psychosocial health care of patients.
    - (iii) Analyzing multiple sources of data, identifying alternative possibilities as to the nature of a health care problem and selecting, implementing and evaluating appropriate treatment.
    - (iv) Making independent decisions in solving complex patient care problems.
    - (v) Diagnosing, performing diagnostic and therapeutic procedures and prescribing, administering and dispensing therapeutic measures, including legend drugs, medical devices and controlled substances, within the scope of the certified nurse midwife practice after meeting requirements established by the board.
    - (vi) Recognizing the limits of the nurse's knowledge and experience by consulting with or referring patients to other appropriate health care professionals if a situation or condition occurs that is beyond the knowledge and experience of the nurse or if the referral will protect the health and welfare of the patient.
    - (vii) Delegating to a medical assistant pursuant to section 32-1456.
    - (viii) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a certified nurse midwife.
6. "Certified nursing assistant" means a person who is registered on the registry of nursing assistants pursuant to this chapter to provide or assist in the delivery of nursing or nursing-related services under the supervision and

direction of a licensed nursing staff member. Certified nursing assistant does not include a person who:

- (a) Is a licensed health care professional.
- (b) Volunteers to provide nursing assistant services without monetary compensation.
- (c) Is a licensed nursing assistant.

7. "Certified registered nurse" means a registered nurse who has been certified by a national nursing credentialing agency recognized by the board.

8. "Certified registered nurse anesthetist" means a registered nurse who meets the requirements of section 32-1634.03 and who practices pursuant to the requirements of section 32-1634.04.

9. "Clinical nurse specialist" means a registered nurse who:

- (a) Is certified by the board as a clinical nurse specialist.
- (b) Holds a graduate degree with a major in nursing and completes educational requirements as prescribed by the board by rule.
- (c) Is nationally certified as a clinical nurse specialist or, if certification is not available, provides proof of competence to the board.
- (d) Has an expanded scope of practice based on advanced education in a clinical nursing specialty that includes:
  - (i) Assessing clients, synthesizing and analyzing data and understanding and applying nursing principles at an advanced level.
  - (ii) Managing directly and indirectly a client's physical and psychosocial health status.
  - (iii) Analyzing multiple sources of data, identifying alternative possibilities as to the nature of a health care problem and selecting appropriate nursing interventions.
  - (iv) Developing, planning and guiding programs of care for populations of patients.
  - (v) Making independent nursing decisions to solve complex client care problems.
  - (vi) Using research skills and acquiring and applying critical new knowledge and technologies to nursing practice.
  - (vii) Prescribing and dispensing durable medical equipment.
  - (viii) Consulting with or referring a client to other health care providers based on assessment of the client's health status and needs.
  - (ix) Facilitating collaboration with other disciplines to attain the desired client outcome across the continuum of care.
  - (x) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a clinical nurse specialist.
  - (xi) Prescribing, ordering and dispensing pharmacological agents subject to the requirements and limits specified in section 32-1651.

10. "Conditional license" or "conditional approval" means a license or approval that specifies the conditions under which the regulated party is allowed to practice or to operate and that is prescribed by the board pursuant to section 32-1644 or 32-1663.

11. "Delegation" means transferring to a competent individual the authority to perform a selected nursing task in a designated situation in which the nurse making the delegation retains accountability for the delegation.

12. "Disciplinary action" means a regulatory sanction of a license, certificate or approval pursuant to this chapter in any combination of the following:

(a) A civil penalty for each violation of this chapter, not to exceed \$1,000 for each violation.

(b) Restitution made to an aggrieved party.

(c) A decree of censure.

(d) A conditional license or a conditional approval that fixed a period and terms of probation.

(e) Limited licensure.

(f) Suspension of a license, a certificate or an approval.

(g) Voluntary surrender of a license, a certificate or an approval.

(h) Revocation of a license, a certificate or an approval.

13. "Health care institution" has the same meaning prescribed in section 36-401.

14. "Licensed nursing assistant" means a person who is licensed pursuant to this chapter to provide or assist in the delivery of nursing or nursing-related services under the supervision and direction of a licensed nursing staff member. Licensed nursing assistant does not include a person who:

(a) Is a licensed health care professional.

(b) Volunteers to provide nursing assistant services without monetary compensation.

(c) Is a certified nursing assistant.

15. "Licensee" means a person who is licensed pursuant to this chapter or in a party state as defined in section 32-1668.

16. "Limited license" means a license that restricts the scope or setting of a licensee's practice.

17. "Medication order" means a written or verbal communication given by a certified registered nurse anesthetist to a health care professional to administer a drug or medication, including controlled substances.

18. "Practical nurse" means a person who holds a practical nurse license issued pursuant to this chapter or pursuant to a multistate compact privilege and who practices practical nursing as defined in this section.

19. "Practical nursing" includes the following activities that are performed under the supervision of a physician or a registered nurse:

(a) Contributing to the assessment of the health status of individuals and groups.

(b) Participating in the development and modification of the strategy of care.

(c) Implementing aspects of the strategy of care within the nurse's scope of practice.

- (d) Maintaining safe and effective nursing care that is rendered directly or indirectly.
  - (e) Participating in the evaluation of responses to interventions.
  - (f) Delegating nursing activities within the scope of practice of a practical nurse.
  - (g) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a practical nurse.
20. "Presence" means within the same health care institution or office as specified in section 32-1634.04, subsection A, and available as necessary.
21. "Registered nurse" or "professional nurse" means a person who practices registered nursing and who holds a registered nurse license issued pursuant to this chapter or pursuant to a multistate compact privilege.
22. "Registered nurse practitioner" means a registered nurse who:
- (a) Is certified by the board.
  - (b) Has completed a nurse practitioner education program approved or recognized by the board and educational requirements prescribed by the board by rule.
  - (c) If applying for certification after July 1, 2004, holds national certification as a nurse practitioner from a national certifying body recognized by the board.
  - (d) Has an expanded scope of practice within a specialty area that includes:
    - (i) Assessing clients, synthesizing and analyzing data and understanding and applying principles of health care at an advanced level.
    - (ii) Managing the physical and psychosocial health status of patients.
    - (iii) Analyzing multiple sources of data, identifying alternative possibilities as to the nature of a health care problem and selecting, implementing and evaluating appropriate treatment.
    - (iv) Making independent decisions in solving complex patient care problems.
    - (v) Diagnosing, performing diagnostic and therapeutic procedures, and prescribing, administering and dispensing therapeutic measures, including legend drugs, medical devices and controlled substances within the scope of registered nurse practitioner practice on meeting the requirements established by the board.
    - (vi) Recognizing the limits of the nurse's knowledge and experience by consulting with or referring patients to other appropriate health care professionals if a situation or condition occurs that is beyond the knowledge and experience of the nurse or if the referral will protect the health and welfare of the patient.
    - (vii) Delegating to a medical assistant pursuant to section 32-1456.
    - (viii) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a nurse practitioner.
23. "Registered nursing" includes the following:
- (a) Diagnosing and treating human responses to actual or potential health problems.
  - (b) Assisting individuals and groups to maintain or attain optimal health by implementing a strategy of care to accomplish defined goals and evaluating responses to care and treatment.

- (c) Assessing the health status of individuals and groups.
- (d) Establishing a nursing diagnosis.
- (e) Establishing goals to meet identified health care needs.
- (f) Prescribing nursing interventions to implement a strategy of care.
- (g) Delegating nursing interventions to others who are qualified to do so.
- (h) Providing for the maintenance of safe and effective nursing care that is rendered directly or indirectly.
- (i) Evaluating responses to interventions.
- (j) Teaching nursing knowledge and skills.
- (k) Managing and supervising the practice of nursing.
- (l) Consulting and coordinating with other health care professionals in the management of health care.
- (m) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a registered nurse.

24. "Registry of nursing assistants" means the nursing assistants registry maintained by the board pursuant to the omnibus budget reconciliation act of 1987 (P.L. 100-203; 101 Stat. 1330), as amended by the medicare catastrophic coverage act of 1988 (P.L. 100-360; 102 Stat. 683).

25. "Regulated party" means any person or entity that is licensed, certified, registered, recognized or approved pursuant to this chapter.

26. "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere:

- (a) Committing fraud or deceit in obtaining, attempting to obtain or renewing a license or a certificate issued pursuant to this chapter.
- (b) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.
- (c) Aiding or abetting in a criminal abortion or attempting, agreeing or offering to procure or assist in a criminal abortion.
- (d) Any conduct or practice that is or might be harmful or dangerous to the health of a patient or the public.
- (e) Being mentally incompetent or physically unsafe to a degree that is or might be harmful or dangerous to the health of a patient or the public.
- (f) Having a license, certificate, permit or registration to practice a health care profession denied, suspended, conditioned, limited or revoked in another jurisdiction and not reinstated by that jurisdiction.
- (g) Wilfully or repeatedly violating a provision of this chapter or a rule adopted pursuant to this chapter.
- (h) Committing an act that deceives, defrauds or harms the public.
- (i) Failing to comply with a stipulated agreement, consent agreement or board order.
- (j) Violating this chapter or a rule that is adopted by the board pursuant to this chapter.

(k) Failing to report to the board any evidence that a registered or practical nurse or a nursing assistant is or may be:

(i) Incompetent to practice.

(ii) Guilty of unprofessional conduct.

(iii) Mentally or physically unable to safely practice nursing or to perform nursing-related duties. A nurse who is providing therapeutic counseling for a nurse who is in a drug rehabilitation program is required to report that nurse only if the nurse providing therapeutic counseling has personal knowledge that patient safety is being jeopardized.

(l) Failing to self-report a conviction for a felony or undesignated offense within ten days after the conviction.

(m) Cheating or assisting another to cheat on a licensure or certification examination.

### 32-1605.01. Executive director; compensation; powers; duties

A. Subject to title 41, chapter 4, article 4, the board shall appoint an executive director who is not a member 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 or the executive director's designee shall:

1. Perform the administrative duties of the board.
2. Subject to title 41, chapter 4, article 4, employ personnel needed to carry out the functions of the board.
3. Issue and renew temporary and permanent licenses, certificates and prescribing or dispensing authority.
4. Issue single state and multistate licenses pursuant to this chapter to applicants who are not under investigation and who meet the qualifications for licensure prescribed in this chapter.
5. Perform other duties as directed by the board.
6. Register certified nursing assistants and maintain a registry of licensed nursing assistants and certified nursing assistants.
7. On behalf of the board, enter into stipulated agreements with a licensee for the confidential treatment, rehabilitation and monitoring of chemical dependency. A licensee who materially fails to comply with a program requirement shall be reported to the board and terminated from the confidential program. Any records of a 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:
  - (a) The licensee voluntarily agrees to participate in the confidential program.
  - (b) The licensee complies with all treatment requirements or recommendations, including participation in alcoholics anonymous or an equivalent twelve step program and nurse support group.
  - (c) The licensee refrains from the practice of nursing until the return to nursing has been approved by the treatment program and the executive director or the executive director's designee.
  - (d) The licensee complies with all monitoring requirements of the stipulated agreement, including random bodily fluid testing.
  - (e) The licensee's nursing employer is notified of the licensee's chemical dependency and participation in the confidential program and is provided a copy of the stipulated agreement.
8. Approve nursing assistant training programs that meet the requirements of this chapter.

C. If the board adopts a substantive policy statement pursuant to section 41-1091 and the executive director or designee reports all actions taken pursuant to this subsection to the board at the next regular board meeting, the executive director or designee may:

1. Dismiss a complaint pursuant to section 32-1664 if the complainant does not wish to address the board and either there is no evidence substantiating the complaint or, after conducting an investigation, there is insufficient evidence that the regulated party violated this chapter or a rule adopted pursuant to this chapter.
2. Enter into a stipulated agreement with the licensee or certificate holder for the treatment, rehabilitation and monitoring of the licensee's or certificate holder's abuse or misuse of a chemical substance.

3. Close complaints resolved through settlement.

4. Issue letters of concern.

5. In lieu of a summary suspension hearing, enter into a consent agreement if there is sufficient evidence that the public health, safety or welfare imperatively requires emergency action.

D. The executive director may accept the voluntary surrender of a license, certificate or approval to resolve a pending complaint that is subject to disciplinary action. The voluntary surrender or revocation of a license, certificate or approval is a disciplinary action, and the board shall report this action if required by federal law.

### 32-1606. Powers and duties of board

#### A. The board may:

1. Adopt and revise rules necessary to carry into effect this chapter.
2. Publish advisory opinions regarding registered and practical nursing practice and nursing education.
3. Issue limited licenses or certificates if it determines that an applicant or licensee cannot function safely in a specific setting or within the full scope of practice.
4. Refer criminal violations of this chapter to the appropriate law enforcement agency.
5. Establish a confidential program for monitoring licensees who are chemically dependent and who enroll in rehabilitation programs that meet the criteria established by the board. The board may take further action if the licensee refuses to enter into a stipulated agreement or fails to comply with its terms. In order to protect the public health and safety, the confidentiality requirements of this paragraph do not apply if the licensee does not comply with the stipulated agreement.
6. On the applicant's or regulated party's request, establish a payment schedule with the applicant or regulated party.
7. Provide education regarding board functions.
8. Collect or assist in collecting workforce data.
9. Adopt rules to conduct pilot programs consistent with public safety for innovative applications in nursing practice, education and regulation.
10. Grant retirement status on request to retired nurses who are or were licensed under this chapter, who have no open complaint or investigation pending against them and who are not subject to discipline.
11. Accept and spend federal monies and private grants, gifts, contributions and devises to assist in carrying out the purposes of this chapter. These monies do not revert to the state general fund at the end of the fiscal year.

#### B. The board shall:

1. Approve regulated training and educational programs that meet the requirements of this chapter and rules adopted by the board.
2. By rule, establish approval and reapproval processes for nursing and nursing assistant training programs that meet the requirements of this chapter and board rules.
3. Prepare and maintain a list of approved nursing programs to prepare registered and practical nurses whose graduates are eligible for licensing under this chapter as registered nurses or as practical nurses if they satisfy the other requirements of this chapter and board rules.
4. Examine qualified registered and practical nurse applicants.
5. License and renew the licenses of qualified registered and practical nurse applicants and licensed nursing assistants who are not qualified to be licensed by the executive director.
6. Adopt a seal, which the executive director shall keep.
7. Keep a record of all proceedings.

8. For proper cause, deny or rescind approval of a regulated training or educational program for failure to comply with this chapter or the rules of the board.
9. Adopt rules to approve credential evaluation services that evaluate the qualifications of applicants who graduated from an international nursing program.
10. Determine and administer appropriate disciplinary action against all regulated parties who are found guilty of violating this chapter or rules adopted by the board.
11. Perform functions necessary to carry out the requirements of nursing assistant and nurse aide training and competency evaluation program as set forth in the omnibus budget reconciliation act of 1987 (P.L. 100-203; 101 Stat. 1330), as amended by the medicare catastrophic coverage act of 1988 (P.L. 100-360; 102 Stat. 683). These functions shall include:
  - (a) Testing and registering certified nursing assistants.
  - (b) Testing and licensing licensed nursing assistants.
  - (c) Maintaining a list of board-approved training programs.
  - (d) Maintaining a registry of nursing assistants for all certified nursing assistants and licensed nursing assistants.
  - (e) Assessing fees.
12. Adopt rules establishing those acts that may be performed by a registered nurse practitioner or certified nurse midwife, except that the board does not have authority to decide scope of practice relating to abortion as defined in section 36-2151.
13. Adopt rules that prohibit registered nurse practitioners, clinical nurse specialists or certified nurse midwives from dispensing a schedule II controlled substance that is an opioid, except for an implantable device or an opioid that is for medication-assisted treatment for substance use disorders.
14. Adopt rules establishing educational requirements to certify school nurses.
15. Publish copies of board rules and distribute these copies on request.
16. Require each applicant for initial licensure or certification to submit a full set of fingerprints to the board 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.
17. Except for a licensee who has been convicted of a felony that has been designated a misdemeanor pursuant to section 13-604, revoke a license of a person, revoke the multistate licensure privilege of a person pursuant to section 32-1669 or not issue a license or renewal to an applicant who has one or more felony convictions and who has not received an absolute discharge from the sentences for all felony convictions three or more years before the date of filing an application pursuant to this chapter.
18. Establish standards to approve and reapprove nurse practitioner and clinical nurse specialist programs and provide for surveys of nurse practitioner and clinical nurse specialist programs as it deems necessary.
19. Provide the licensing authorities of health care institutions, facilities and homes with any information the board receives regarding practices that place a patient's health at risk.
20. Limit the multistate licensure privilege of any person who holds or applies for a license in this state pursuant to section 32-1668.

21. Adopt rules to establish competency standards for obtaining and maintaining a license.
  22. Adopt rules to qualify and certify clinical nurse specialists.
  23. Adopt rules to approve and reapprove refresher courses for nurses who are not currently practicing.
  24. Maintain a list of approved medication assistant training programs.
  25. Test and certify medication assistants.
  26. Maintain a registry and disciplinary record of medication assistants who are certified pursuant to this chapter.
  27. Adopt rules to establish the requirements for a clinical nurse specialist to prescribe and dispense drugs and devices consistent with section 32-1651 and within the clinical nurse specialist's population or disease focus.
- C. The board may conduct an investigation on receipt of information that indicates that a person or regulated party may have violated this chapter or a rule adopted pursuant to this chapter. Following the investigation, the board may take disciplinary action pursuant to this chapter.
- D. The board may limit, revoke or suspend the privilege of a nurse to practice in this state granted pursuant to section 32-1668.
- E. Failure to comply with any final order of the board, including an order of censure or probation, is cause for suspension or revocation of a license or a certificate.
- F. The president or a member of the board designated by the president may administer oaths in transacting the business of the board.

32-1609. Register of licenses and registrations; change of address

A. The executive director shall keep a register of licenses and registrations for each person who holds an Arizona nursing license or who is a licensed nursing assistant or a certified nursing assistant that includes the following:

1. Each person's current address.
2. Licenses, certificates and registrations granted or revoked.

B. The register shall be open during office hours to public inspection.

C. Each regulated person shall notify the board in writing within thirty days after each change in the person's address.

32-1634. Licensing out-of-state registered nurses

A. The board may issue a license to practice registered nursing to an applicant who has been duly licensed or registered as a registered nurse in another state or a territory of the United States if in the opinion of the board the applicant meets the qualifications required of a registered nurse in this state pursuant to sections 32-1632 and 32-1633.

B. The board shall not issue a license to an applicant who has one or more felony convictions and who has not received an absolute discharge from the sentences for all felony convictions three or more years before the date of filing the application.

32-1634.04. Certified registered nurse anesthetist; scope of practice; physician and surgeon immunity

A. A certified registered nurse anesthetist may administer anesthetics under the direction of and in the presence of a physician or surgeon in connection with the preoperative, intraoperative or postoperative care of a patient or as part of a procedure performed by a physician or surgeon in the following settings:

1. A health care institution.
2. An office of a health care professional who is licensed pursuant to chapter 7, 11, 13 or 17 of this title.
3. An ambulance.

B. In connection with the preoperative, intraoperative or postoperative care of a patient or as part of the procedure in the settings prescribed in subsection A of this section, a certified registered nurse anesthetist as part of the care or procedure may:

1. Issue a medication order for drugs or medications, including controlled substances, to be administered by a licensed, certified or registered health care provider.
2. Assess the health status of an individual as that status relates to the relative risks associated with anesthetic management of an individual.
3. Obtain informed consent.
4. Order and evaluate laboratory and diagnostic test results and perform point-of-care testing that the certified registered nurse anesthetist is qualified to perform.
5. Order and evaluate radiographic imaging studies that the certified registered nurse anesthetist is qualified to order and interpret.
6. Identify, develop, implement and evaluate an anesthetic plan of care for a patient to promote, maintain and restore health.
7. Take action necessary in response to an emergency situation.
8. Perform therapeutic procedures that the certified registered nurse anesthetist is qualified to perform.

C. A certified registered nurse anesthetist's prescribing authority to administer anesthetics or to issue a medication order as prescribed by this section does not include the ability to write or issue a prescription for medications to be filled or dispensed for a patient for use outside of the settings prescribed in subsection A of this section.

D. A physician or surgeon is not liable for any act or omission of a certified registered nurse anesthetist who orders or administers anesthetics under this section.

### 32-1636. Use of titles or abbreviations

A. Only a person who holds a valid and current license to practice registered nursing in this state or in a party state pursuant to section 32-1668 may use the title "nurse", "registered nurse", "graduate nurse" or "professional nurse" or the abbreviation "R.N."

B. Only a person who holds a valid and current license to practice practical nursing in this state or in a party state as defined in section 32-1668 may use the title "nurse", "licensed practical nurse" or "practical nurse" or the abbreviation "L.P.N."

C. Only a person who holds a valid and current certificate issued pursuant to this chapter to practice as a registered nurse practitioner in this state may use the title "nurse practitioner", "registered nurse practitioner" or "nurse midwife", if applicable, or use any words or letters to indicate the person is a registered nurse practitioner. A person who is certified as a registered nurse practitioner shall indicate by title or initials the specialty area of certification.

D. Except as provided in subsection C of this section, only a person who holds a valid and current certificate issued pursuant to this chapter to practice as a certified nurse midwife in this state may use the title "certified nurse midwife" or "nurse midwife" or use any words or letters to indicate the person is a certified nurse midwife.

E. Only a person who holds a valid and current certificate issued pursuant to this chapter to practice as a clinical nurse specialist may use the title "clinical nurse specialist" or use any words or letters to indicate the person is a clinical nurse specialist. A person who is certified as a clinical nurse specialist shall indicate by title or initials the specialty area of certification.

F. A nurse who is granted retirement status shall not practice nursing but may use the title "registered nurse-retired" or "RN-retired" or "licensed practical nurse-retired" or "LPN-retired", as applicable.

32-1640. Temporary license to practice as a licensed practical nurse

A. The board may issue a temporary license to practice as a licensed practical nurse to an applicant for a license who meets the qualifications for licensing specified in section 32-1637 and as prescribed by the board by rule.

B. Temporary licenses expire on the date specified in the license and may be renewed at the discretion of the executive director.

32-1644. Approval of nursing schools and nursing programs; application; maintenance of standards

A. The board shall approve all new prelicensure nursing, nurse practitioner and clinical nurse specialist programs pursuant to this section. A postsecondary educational institution or school in this state that is accredited by an accrediting agency recognized by the United States department of education desiring to conduct a registered nursing, practical nursing, nurse practitioner or clinical nurse specialist program shall apply to the board for approval and submit satisfactory proof that it is prepared to meet and maintain the minimum standards prescribed by this chapter and board rules.

B. The board or its authorized agent shall conduct a survey of the institution or program applying for approval and shall submit a written report of its findings to the board. If the board determines that the program meets the requirements prescribed in its rules, it shall approve the applicant as either a registered nursing program, practical nursing program, nurse practitioner program or clinical nurse specialist program in a specialty area.

C. A nursing program approved by the board may also be accredited by a national nursing accrediting agency recognized by the board. If a prelicensure nursing program is accredited by a national nursing accrediting agency recognized by the board, the board does not have authority over it unless any of the following occurs:

1. The board receives a complaint about the program relating to patient safety.
2. The program falls below the standards prescribed by the board in its rules.
3. The program loses its accreditation by a national nursing accrediting agency recognized by the board.
4. The program allows its accreditation by a national nursing accrediting agency recognized by the board to lapse.

D. From time to time the board, through its authorized employees or representatives, may resurvey all approved programs in the state and shall file written reports of these resurveys with the board. If the board determines that an approved nursing program is not maintaining the required standards, it shall immediately give written notice to the program specifying the defects. If the defects are not corrected within a reasonable time as determined by the board, the board may take either of the following actions:

1. Approve the program but restrict the program's ability to admit new students until the program complies with board standards.
2. Remove the program from the list of approved nursing programs until the program complies with board standards.

E. All approved nursing programs shall maintain accurate and current records showing in full the theoretical and practical courses given to each student.

F. The board does not have regulatory authority over the following approved nurse practitioner or clinical nurse specialist programs unless the conditions prescribed in subsection C are met:

1. A nurse practitioner or clinical nurse specialist program that is part of a graduate program in nursing accredited by an agency recognized by the board if the program was surveyed as part of the graduate program accreditation.
2. A nurse practitioner or clinical nurse specialist program that is accredited by an agency recognized by the board.

### 32-1651. Clinical nurse specialists; prescribing and dispensing authority

A. The board shall grant to a clinical nurse specialist the privileges to prescribe and dispense pharmacological agents if the clinical nurse specialist has both of the following:

1. The education and training equivalent to the requirements to prescribe and dispense pharmacological agents of a registered nurse practitioner, including successful completion of a nationally accredited advanced practice nursing program.
2. Certification as a clinical nurse specialist by a nationally recognized certification entity approved by the state board of nursing.

B. A clinical nurse specialist may prescribe only for patients of a licensed health care institution that uses the services of the clinical nurse specialist as follows:

1. In a licensed hospital or hospital-affiliated outpatient treatment center, a behavioral health inpatient facility, a nursing care institution, a recovery care center, a behavioral health residential facility or a hospice, the clinical nurse specialist may prescribe or dispense only pursuant to the protocols or standards applicable to clinical nurse specialists of the health care institution and may not prescribe a schedule II controlled substance that is an opioid except pursuant to protocols or standing orders of the health care institution. The prescribing and dispensing of opioid or benzodiazepine prescriptions by a clinical nurse specialist shall be limited to the treatment of patients while at the licensed health care institution and shall not be for patients to use or fill outside of the licensed health care institution except pursuant to discharge protocols of the institution.
2. In a licensed outpatient treatment center that provides behavioral health services or qualifies pursuant to federal law as a community health center, the clinical nurse specialist may prescribe or dispense only pursuant to the protocols or standards applicable to clinical nurse specialists of the health care institution. The clinical nurse specialist may not prescribe a schedule II controlled substance that is an opioid except for an opioid that is for medication-assisted treatment for substance use disorders.

C. A clinical nurse specialist shall report any required information relating to dispensing or prescribing medication pursuant to the health care institution's protocols.

D. For the purposes of this section, a health care institution's protocols relating to the dispensing and prescribing authority of a clinical nurse specialist shall be developed with the input of the institution's medical director.

## 32-1660. Nurse licensure compact

The nurse licensure compact is adopted and enacted into law as follows:

### Article I

#### Findings and Declaration of Purpose

##### A. The party states find that:

1. The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws.
2. Violations of nurse licensure laws and other laws regulating the practice of nursing may result in injury or harm to the public.
3. The expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation.
4. New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex.
5. The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant for both nurses and states.
6. Uniformity of nurse licensure requirements throughout the states promotes public safety and public health benefits.

##### B. The general purposes of this compact are to:

1. Facilitate the states' responsibility to protect the public's health and safety.
2. Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation.
3. Facilitate the exchange of information between party states in the areas of nurse regulation, investigation and adverse actions.
4. Promote compliance with the laws governing the practice of nursing in each jurisdiction.
5. Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses.
6. Decrease redundancies in the consideration and issuance of nurse licenses.
7. Provide opportunities for interstate practice by nurses who meet uniform licensure requirements.

### Article II

#### Definitions

As used in this compact:

- A. "Adverse action" means any administrative, civil, equitable or criminal action permitted by a state's laws that is imposed by a licensing board or other authority against a nurse, including actions against an individual's

license or multistate licensure privilege such as revocation, suspension, probation, monitoring of the licensee or limitation on the licensee's practice, or any other encumbrance on licensure affecting a nurse's authorization to practice, including issuance of a cease and desist action.

B. "Alternative program" means a nondisciplinary monitoring program approved by a licensing board.

C. "Coordinated licensure information system" means an integrated process for collecting, storing and sharing information on nurse licensure and enforcement activities related to nurse licensure laws that is administered by a nonprofit organization composed of and controlled by licensing boards.

D. "Current significant investigative information" means either:

1. Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction.

2. Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

E. "Encumbrance" means a revocation or suspension of, or any limitation on, the full and unrestricted practice of nursing imposed by a licensing board.

F. "Home state" means the party state that is the nurse's primary state of residence.

G. "Licensing board" means a party state's regulatory body responsible for issuing nurse licenses.

H. "Multistate license" means a license to practice as a registered or a licensed practical/vocational nurse issued by a home state licensing board that authorizes the licensed nurse to practice in all party states under a multistate licensure privilege.

I. "Multistate licensure privilege" means a legal authorization associated with a multistate license that allows the practice of nursing as either a registered nurse or a licensed practical/vocational nurse in a remote state.

J. "Nurse" means a registered nurse or a licensed practical/vocational nurse, as those terms are defined by each party state's practice laws.

K. "Party state" means any state that has adopted this compact.

L. "Remote state" means a party state, other than the home state.

M. "Single-state license" means a nurse license issued by a party state that authorizes practice only within the issuing state and does not include a multistate licensure privilege to practice in any other party state.

N. "State" means a state, territory or possession of the United States and the District of Columbia.

O. "State practice laws" means a party state's laws, rules and regulations that govern the practice of nursing, define the scope of nursing practice and establish the methods and grounds for imposing discipline. State practice laws do not include requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

## Article III

### General Provisions and Jurisdiction

A. A multistate license to practice registered or licensed practical/vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a nurse to practice as a registered nurse

or as a licensed practical/vocational nurse, under a multistate licensure privilege, in each party state.

B. A state must implement procedures for considering the criminal history records of applicants for initial multistate license or licensure by endorsement. Such procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the federal bureau of investigation and the agency responsible for retaining that state's criminal records.

C. Each party state shall require that, in order for an applicant to obtain or retain a multistate license in the home state, the applicant meets all of the following criteria:

1. Meets the home state's qualifications for licensure or renewal of licensure as well as all other applicable state laws.

2. either:

(a) Has graduated or is eligible to graduate from a licensing board-approved registered nurse or licensed practical/vocational nurse prelicensure education program.

(b) Has graduated from a foreign registered nurse or licensed practical/vocational nurse prelicensure education program that both:

(i) Has been approved by the authorized accrediting body in the applicable country.

(ii) has been verified by an independent credentials review agency to be comparable to a licensing board-approved prelicensure education program.

3. If a graduate of a foreign prelicensure education program not taught in English or if English is not the individual's native language, Has successfully passed an English proficiency examination that includes the components of reading, speaking, writing and listening.

4. Has successfully passed an NCLEX-RN® or NCLEX-PN® examination or recognized predecessor, as applicable.

5. Is eligible for or holds an active, unencumbered license.

6. Has submitted, in connection with an application for initial licensure or licensure by endorsement, fingerprints or other biometric data for the purpose of obtaining criminal history record information from the federal bureau of investigation and the agency responsible for retaining that state's criminal records.

7. Has not been convicted or found guilty, or has entered into an agreed disposition, of a felony offense under applicable state or federal criminal law.

8. Has not been convicted or found guilty, or has entered into an agreed disposition, of a misdemeanor offense related to the practice of nursing as determined on a case-by-case basis.

9. Is not currently enrolled in an alternative program.

10. Is subject to self-disclosure requirements regarding current participation in an alternative program.

11. Has a valid United States social security number.

D. All party states shall be authorized, in accordance with existing state due process law, to take adverse action against a nurse's multistate licensure privilege such as revocation, suspension or probation or any other action that affects a nurse's authorization to practice under a multistate licensure privilege, including cease and desist actions. If a party state takes such an action, it shall promptly notify the administrator of the coordinated

licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

E. A nurse practicing in a party state must comply with the state practice laws of the state in which the client is located at the time service is provided. The practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of the party state in which the client is located. The practice of nursing in a party state under a multistate licensure privilege will subject a nurse to the jurisdiction of the licensing board, the courts and the laws of the party state in which the client is located at the time service is provided.

F. Individuals not residing in a party state shall continue to be able to apply for a party state's single-state license as provided under the laws of each party state. However, the single-state license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state. This compact does not affect the requirements established by a party state for the issuance of a single-state license.

G. Any nurse holding a home state multistate license on the effective date of this compact may retain and renew the multistate license issued by the nurse's then-current home state, provided that:

1. A nurse who changes the nurse's primary state of residence after this Compact's effective date must meet all applicable requirements in subsection C of this article to obtain a multistate license from a new home state.
2. A nurse who fails to satisfy the multistate licensure requirements in subsection C of this article due to a disqualifying event occurring after this compact's effective date shall be ineligible to retain or renew a multistate license, and the nurse's multistate license shall be revoked or deactivated in accordance with applicable rules adopted by the interstate commission of nurse licensure compact administrators.

## Article IV

### Applications for Licensure in a Party State

A. On application for a multistate license, the licensing board in the issuing party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any encumbrances on any license or multistate licensure privilege held by the applicant, whether any adverse action has been taken against any license or multistate licensure privilege held by the applicant and whether the applicant is currently participating in an alternative program.

B. A nurse may hold a multistate license, issued by the home state, in only one party state at a time.

C. If a nurse changes the nurse's primary state of residence by moving between two party states, the nurse must apply for licensure as follows in the new home state and the multistate license issued by the prior home state will be deactivated in accordance with applicable rules adopted by the commission:

1. The nurse may apply for licensure in advance of a change in primary state of residence.
2. A multistate license shall not be issued by the new home state until the nurse provides satisfactory evidence of a change in the nurse's primary state of residence to the new home state and satisfies all applicable requirements to obtain a multistate license from the new home state.

D. If a nurse changes the nurse's primary state of residence by moving from a party state to a nonparty state, the multistate license issued by the prior home state will convert to a single-state license that is valid only in the former home state.

## Article V

### Additional Authorities Invested in Party State Licensing Boards

A. In addition to the other powers conferred by state law, a licensing board shall have the authority to:

1. Take adverse action against a nurse's multistate licensure privilege to practice within that party state as follows:

(a) Only the home state shall have the power to take adverse action against a nurse's license issued by the home state.

(b) For purposes of taking adverse action, the home state licensing board shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine appropriate action.

2. Issue cease and desist orders or impose an encumbrance on a nurse's authority to practice within that party state.

3. Complete any pending investigation of a nurse who changes the nurse's primary state of residence during the course of such an investigation. The licensing board shall also have the authority to take any appropriate action and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

4. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a licensing board in a party state for the attendance and testimony of witnesses or the production of evidence from another party state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state in which any witness or evidence is located.

5. Obtain and submit, for each nurse licensure applicant, fingerprint or other biometric-based information to the federal bureau of investigation for criminal background checks, receive the results of the Federal Bureau of Investigation record search on criminal background checks and use the results in making licensure decisions.

6. If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse.

7. Take adverse action based on the factual findings of the remote state, provided that the licensing board follows its own procedures for taking such adverse action.

B. If adverse action is taken by the home state against a nurse's multistate license, the nurse's multistate licensure privilege to practice in all other party states shall be deactivated until all encumbrances have been removed from the multistate license. All home state disciplinary orders that impose adverse action against a nurse's multistate license shall include a statement that the nurse's multistate licensure privilege is deactivated in all party states during the pendency of the order.

C. This compact does not override a party state's decision that participation in an alternative program may be used in lieu of adverse action. The home state licensing board shall deactivate the multistate licensure privilege under the multistate license of any nurse for the duration of the nurse's participation in an alternative program.

## Article VI

### Coordinated Licensure Information System and Exchange of Information

- A. All party states shall participate in a coordinated licensure information system of all licensed registered nurses and licensed practical/vocational nurses. This system will include information on the licensure and disciplinary history of each nurse, as submitted by party states, to assist in the coordination of nurse licensure and enforcement efforts.
- B. The commission, in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection and exchange of information under this compact.
- C. All licensing boards shall promptly report to the coordinated licensure information system any adverse action, any current significant investigative information, denials of applications with the reasons for such denials and nurse participation in alternative programs known to the licensing board regardless of whether such participation is deemed nonpublic or confidential under state law.
- D. Current significant investigative information and participation in nonpublic or confidential alternative programs shall be transmitted through the coordinated licensure information system only to party state licensing boards.
- E. Notwithstanding any other provision of law, all party state licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.
- F. Any personally identifiable information obtained from the coordinated licensure information system by a party state licensing board may not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.
- G. Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information shall also be expunged from the coordinated licensure information system.
- H. The compact administrator of each party state shall furnish a uniform data set to the compact administrator of each other party state that includes, at a minimum:
1. Identifying information.
  2. Licensure data.
  3. Information related to alternative program participation.
  4. Other information that may facilitate the administration of this compact, as determined by commission rules.
- I. The compact administrator of a party state shall provide all investigative documents and information requested by another party state.

## Article VII

### Establishment of the Interstate Commission of Nurse

#### Licensure Compact Administrators

- A. The party states hereby create and establish a joint public entity known as the interstate commission of nurse licensure compact administrators as follows:
1. The commission is an instrumentality of the party states.

2. Venue is proper, and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this compact shall be construed to be a waiver of sovereign immunity.

B. Membership, voting and meetings are as follows:

1. Each party state shall have and be limited to one administrator. The head of the state licensing board or designee shall be the administrator of this compact for each party state. Any administrator may be removed or suspended from office as provided by the laws of the state from which the administrator is appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the party state in which the vacancy exists.

2. Each administrator shall be entitled to one vote with regard to the adoption of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission. An administrator shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for an administrator's participation in meetings by telephone or other means of communication.

3. The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws or rules of the commission.

4. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article VIII of this compact.

5. The commission may convene in a closed, nonpublic meeting if the commission must discuss any of the following:

(a) Noncompliance of a party state with its obligations under this compact.

(b) The employment, compensation, discipline or other personnel matters, practices or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures.

(c) Current, threatened or reasonably anticipated litigation.

(d) Negotiation of contracts for the purchase or sale of goods, services or real estate.

(e) Accusing any person of a crime or formally censuring any person.

(f) Disclosure of trade secrets or commercial or financial information that is privileged or confidential.

(g) Disclosure of information of a personal nature if disclosure would constitute a clearly unwarranted invasion of personal privacy.

(h) Disclosure of investigatory records compiled for law enforcement purposes.

(i) Disclosure of information related to any reports prepared by or on behalf of the commission for the purpose of investigation of compliance with this compact.

(j) Matters specifically exempted from disclosure by federal or state statute.

6. If a meeting, or portion of a meeting, is closed pursuant to this article, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the

views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission or an order of a court of competent jurisdiction.

C. The commission, by a majority vote of the administrators, shall prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of this compact, including:

1. Establishing the fiscal year of the commission.

2. Providing reasonable standards and procedures:

(a) For the establishment and meetings of other committees.

(b) Governing any general or specific delegation of any authority or function of the commission.

3. Providing reasonable procedures for calling and conducting meetings of the commission, ensuring reasonable advance notice of all meetings and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals and proprietary information, including trade secrets. The commission may meet in closed session only after a majority of the administrators vote to close a meeting in whole or in part. As soon as practicable, the commission must make public a copy of the vote to close the meeting revealing the vote of each administrator, with no proxy votes allowed.

4. Establishing the titles, duties and authority and reasonable procedures for the election of the officers of the commission.

5. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any party state, the bylaws shall exclusively govern the personnel policies and programs of the commission.

6. Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus monies that may exist after the termination of this compact after the payment or reserving of all of its debts and obligations.

D. The commission shall publish its bylaws and rules, and any amendments thereto, in a convenient form on the website of the commission.

E. The commission shall maintain its financial records in accordance with the bylaws.

F. The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.

G. The commission shall have the following powers:

1. To adopt uniform rules to facilitate and coordinate the implementation and administration of this compact. The rules shall have the force and effect of law and shall be binding in all party states.

2. To bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any licensing board to sue or be sued under applicable law shall not be affected.

3. To purchase and maintain insurance and bonds.

4. To borrow, accept or contract for services of personnel, including employees of a party state or nonprofit organizations.

5. To cooperate with other organizations that administer state compacts related to the regulation of nursing, including sharing administrative or staff expenses, office space or other resources.
6. To hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of this compact and establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel and other related personnel matters.
7. To accept any and all appropriate donations, grants and gifts of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same if at all times the commission avoids any appearance of impropriety or conflict of interest.
8. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, whether real, personal or mixed if at all times the commission avoids any appearance of impropriety.
9. To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, whether real, personal or mixed.
10. To establish a budget and make expenditures.
11. To borrow money.
12. To appoint committees, including advisory committees composed of administrators, state nursing regulators, state legislators or their representatives, and consumer representatives, and other such interested persons.
13. To provide and receive information from, and to cooperate with, law enforcement agencies.
14. To adopt and use an official seal.
15. To perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of nurse licensure and practice.

H. Financing of the Commission is as follows:

1. The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization and ongoing activities.
2. The commission may levy on and collect an annual assessment from each party state to cover the cost of its operations, activities and staff in its annual budget as approved each year. The aggregate annual assessment amount, if any, shall be allocated based on a formula to be determined by the commission, which shall adopt a rule that is binding on all party states.
3. The commission may not incur obligations of any kind before securing the monies adequate to meet the same or pledge the credit of any of the party states, except by, and with the authority of, such party state.
4. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of monies handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

I. Qualified immunity, defense and indemnification are as follows:

1. The administrators, officers, executive director, employees and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing

occurred, within the scope of commission employment, duties or responsibilities. this paragraph does not protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional, wilful or wanton misconduct of that person.

2. The commission shall defend any administrator, officer, executive director, employee or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities. This paragraph does not prohibit that person from retaining that person's own counsel if the actual or alleged act, error or omission did not result from that person's intentional, wilful or wanton misconduct.

3. The commission shall indemnify and hold harmless any administrator, officer, executive director, employee or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities if the actual or alleged act, error or omission did not result from the intentional, wilful or wanton misconduct of that person.

## Article VIII

### Rulemaking

A. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment and shall have the same force and effect as other provisions of this compact.

B. Rules or amendments to the rules shall be adopted at a regular or special meeting of the commission.

C. Before the adoption of a final rule or rules by the commission, and at least sixty days in advance of the meeting at which the rule will be considered and voted on, the commission shall file a notice of proposed rulemaking both:

1. On the website of the commission.

2. On the website of each licensing board or the publication in which each state would otherwise publish proposed rules.

D. The notice of proposed rulemaking shall include all of the following:

1. The proposed time, date and location of the meeting in which the rule will be considered and voted on.

2. The text of the proposed rule or amendment and the reason for the proposed rule.

3. A request for comments on the proposed rule from any interested person.

4. The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

E. Before the adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions and arguments, which shall be made available to the public.

F. The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment.

G. The commission shall publish the place, time and date of the scheduled public hearing. The following apply to hearings under this subsection:

1. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing. All hearings will be recorded, and a copy will be made available on request.
  2. This subsection does not require a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.
- H. If no one appears at the public hearing, the commission may proceed with the adoption of the proposed rule.
- I. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.
- J. The commission, by majority vote of all administrators, shall take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.
- K. On determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice or an opportunity for comment or hearing, provided that the usual rulemaking procedures provided in this compact and in this section shall be retroactively applied to the rule as soon as reasonably practicable, but not later than ninety days after the effective date of the rule. For the purposes of this subsection, an emergency rule is one that must be adopted immediately in order to do any of the following:
1. Meet an imminent threat to public health, safety or welfare.
  2. Prevent a loss of commission or party state funds.
  3. Meet a deadline for the adoption of an administrative rule that is required by federal law or rule.
- L. The commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency or grammatical errors. Public notice of any revisions shall be posted on the website of the commission. The revision shall be subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the commission before the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

## Article IX

### Oversight, Dispute Resolution and Enforcement

#### A. Oversight is as follows:

1. Each party state shall enforce this compact and take all actions necessary and appropriate to effectuate this compact's purposes and intent.
2. The commission is entitled to receive service of process in any proceeding that may affect the powers, responsibilities or actions of the commission and has standing to intervene in such a proceeding for all purposes. Failure to provide service of process in such proceeding to the commission shall render a judgment or order void as to the commission, this compact or adopted rules.

#### B. Default, technical assistance and termination are as follows:

1. If the commission determines that a party state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall do both of the following:
  - (a) Provide written notice to the defaulting state and other party states of the nature of the default, the proposed means of curing the default or any other action to be taken by the commission.

(b) Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to cure the default, the defaulting state's membership in this compact may be terminated on an affirmative vote of a majority of the administrators, and all rights, privileges and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

3. Termination of membership in this compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to the governor of the defaulting state and to the executive officer of the defaulting state's licensing board and each of the party states.

4. A state whose membership in this compact has been terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

5. The commission may not bear any costs related to a state that is found to be in default or whose membership in this compact has been terminated unless agreed on in writing between the commission and the defaulting state.

6. The defaulting state may appeal the action of the commission by petitioning the United States district court for the District of Columbia or the federal district in which the commission has its principal offices. The prevailing party shall be awarded all costs of such litigation, including reasonable attorney fees.

C. Dispute resolution is as follows:

1. On request by a party state, the commission shall attempt to resolve disputes related to the compact that arise among party states and between party and nonparty states.

2. The commission shall adopt a rule providing for both mediation and binding dispute resolution for disputes, as appropriate.

3. If the commission cannot resolve disputes among party states arising under this compact:

(a) The party states may submit the issues in dispute to an arbitration panel that is composed of individuals appointed by the compact administrator in each of the affected party states and an individual who is mutually agreed on by the compact administrators of all the party states involved in the dispute.

(b) The decision of a majority of the arbitrators is final and binding.

D. Enforcement provisions are as follows:

1. The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

2. By majority vote, the commission may initiate legal action in the United States District Court for the District of Columbia or the federal district in which the commission has its principal offices against a party state that is in default to enforce compliance with this compact and its adopted rules and bylaws. The relief sought may include both injunctive relief and damages. If judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorneys' fees.

3. The remedies in this compact are not the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

Article X

## Effective Date, Withdrawal and Amendment

- A. This compact shall become effective and binding on the earlier of the date of legislative enactment of this compact into law by at least twenty-six states or December 31, 2018. All party states to this compact that also were parties to the prior nurse licensure compact, superseded by this compact, shall be deemed to have withdrawn from the prior compact within six months after the effective date of this compact.
- B. Each party state to this compact shall continue to recognize a nurse's multistate licensure privilege to practice in that party state issued under the prior compact until that party state has withdrawn from the prior compact.
- C. Any party state may withdraw from this compact by enacting a statute repealing the compact. A party state's withdrawal shall not take effect until six months after enactment of the repealing statute.
- D. A party state's withdrawal or termination shall not affect the continuing requirement of the withdrawing or terminated state's licensing board to report adverse actions and significant investigations occurring before the effective date of such a withdrawal or termination.
- E. This compact does not invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of this compact.
- F. This compact may be amended by the party states. An amendment to this compact does not become effective and binding on the party states until it is enacted into the laws of all party states.
- G. Representatives of nonparty states to this compact shall be invited to participate in the activities of the commission, on a nonvoting basis, before the adoption of this compact by all states.

## Article XI

### Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes of the compact. the provisions of this compact shall be severable, and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the Constitution of any party state or of the United States, or if the applicability of the compact to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability of the compact to any government, agency, person or circumstance shall not be affected thereby. If this compact is held to be contrary to the constitution of any party state, this compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

32-1660.01. Applicability of compact; scope of practice; notification; withdrawal from compact

A. The compact adopted by section 32-1660 does not alter the scope of practice of a registered nurse practicing in this state. A registered nurse practicing in this state shall comply with the scope of practice enacted under this chapter.

B. The commission created by the compact adopted by section 32-1660 does not have the authority to alter the scope of practice for registered nurses practicing in this state. The governor may withdraw this state from the compact adopted by section 32-1660 if the board notifies the governor that the commission has adopted a rule to change the scope of practice for registered nurses in this state and a law is enacted that repeals the compact.

### 32-1663. Disciplinary action

- A. If an applicant for licensure or certification commits an act of unprofessional conduct, the board, after an investigation, may deny the application or take other disciplinary action.
- B. In its denial order, the board shall immediately invalidate any temporary license or certificate issued to the applicant.
- C. Any person aggrieved by an order of the board issued under the authority granted by subsection A of this section may request an administrative hearing pursuant to title 41, chapter 6, article 10.
- D. If the board finds, after affording an opportunity to request an administrative hearing pursuant to title 41, chapter 6, article 10, that a person who holds a license or certificate issued pursuant to this chapter has committed an act of unprofessional conduct, it may take disciplinary action.
- E. If the board finds after giving the person an opportunity to request an administrative hearing pursuant to title 41, chapter 6, article 10 that a nurse who practices in this state and is licensed by another jurisdiction pursuant to section 32-1668 committed an act of unprofessional conduct, the board may limit, suspend or revoke the privilege of that nurse to practice in this state.
- F. If the board determines pursuant to an investigation that reasonable grounds exist to discipline a person pursuant to subsection D or E of this section, the board may serve on the licensee or certificate holder a written notice that states:
1. That the board has sufficient evidence that, if not rebutted or explained, will justify the board in taking disciplinary actions allowed by this chapter.
  2. The nature of the allegations asserted and that cites the specific statutes or rules violated.
  3. That unless the licensee or certificate holder submits a written request for a hearing within thirty days after service of the notice by certified mail, the board may consider the allegations admitted and may take any disciplinary action allowed pursuant to this chapter without conducting a hearing.
- G. If the Arizona state board of nursing acts to modify any registered nurse practitioner's or clinical nurse specialist's prescription writing privileges, it shall immediately notify the Arizona state board of pharmacy of the modification.

### 32-1663.01. Administrative violations; administrative penalty.

A. The board may sanction any of the following as an administrative violation rather than as unprofessional conduct and may impose an administrative penalty of not more than one thousand dollars for any of the following:

1. Failing to timely renew a nursing license or licensed nursing assistant license while continuing to practice nursing or engage in activities or duties regulated by this chapter.
2. Failing to notify the board in writing within thirty days after a change in address.
3. Failing to renew nursing, licensed nursing assistant or certified nursing assistant program approval and continuing to operate the program.
4. If the board adopts a substantive policy statement pursuant to section 41-1091, practicing nursing without a license.

B. A regulated party who fails to pay an administrative penalty as prescribed by this section or to establish a schedule for payment as prescribed pursuant to section 32-1606, subsection A, paragraph 6 within thirty days after notification commits an act of unprofessional conduct and is subject to disciplinary action.

C. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies collected under this section in the state general fund.

### 32-1921. Exempted acts; exemption from registration fees; definition

A. This chapter does not prevent:

1. The prescription and dispensing of drugs or prescription medications by a registered nurse practitioner or clinical nurse specialist pursuant to rules adopted by the Arizona state board of nursing in consultation with the Arizona medical board, the Arizona board of osteopathic examiners in medicine and surgery and the Arizona state board of pharmacy.
  2. The sale of nonprescription drugs that are sold at retail in original packages by a person holding a permit issued by the board under this chapter.
  3. The sale of drugs at wholesale by a wholesaler or manufacturer that holds the required permit issued by the board to a person who holds the required permit issued under this chapter.
  4. The manufacturing of drugs by a person who is not a pharmacist and who holds the required permit issued by the board under this chapter.
  5. The following health professionals from dispensing or personally administering drugs or devices to a patient for a condition being treated by the health professional:
    - (a) A doctor of medicine licensed pursuant to chapter 13 of this title.
    - (b) An osteopathic physician licensed pursuant to chapter 17 of this title.
    - (c) A homeopathic physician licensed pursuant to chapter 29 of this title.
    - (d) A podiatrist licensed pursuant to chapter 7 of this title.
    - (e) A dentist licensed pursuant to chapter 11 of this title.
    - (f) A doctor of naturopathic medicine who is authorized to prescribe natural substances, drugs or devices and who is licensed pursuant to chapter 14 of this title.
    - (g) An optometrist who is licensed pursuant to chapter 16 of this title and who is certified for topical or oral pharmaceutical agents.
  6. A veterinarian licensed pursuant to chapter 21 of this title from dispensing or administering drugs to an animal or from dispensing or administering devices to an animal being treated by the veterinarian.
  7. The use of any pesticide chemical, soil or plant nutrient or other agricultural chemical that is a color additive solely because of its effect in aiding, retarding or otherwise affecting directly or indirectly the growth or other natural physiological process of produce of the soil and thereby affecting its color whether before or after harvest.
  8. A licensed practical or registered nurse employed by a person licensed pursuant to chapter 7, 11, 13, 14, 17 or 29 of this title from assisting in the delivery of drugs and devices to patients, in accordance with chapter 7, 11, 13, 14, 17 or 29 of this title.
  9. The use of any mechanical device or vending machine in connection with the sale of any nonprescription drug, including proprietary and patent medicine. The board may adopt rules to prescribe conditions under which nonprescription drugs may be dispensed pursuant to this paragraph.
- B. A person who is licensed pursuant to chapter 7, 11, 13, 14, 17 or 29 of this title and who employs a licensed practical or registered nurse who in the course of employment assists in the delivery of drugs and devices is responsible for the dispensing process.

C. Pursuant to a prescription order written by a physician for the physician's patients and dispensed by a licensed pharmacist, a physical therapist licensed pursuant to chapter 19 of this title, an occupational therapist licensed pursuant to chapter 34 of this title or an athletic trainer licensed pursuant to chapter 41 of this title may procure, store and administer nonscheduled legend and topical anti-inflammatories and topical anesthetics for use in phonophoresis and iontophoresis procedures and within the scope of practice of physical or occupational therapy or athletic training.

D. A public health facility operated by this state or a county and a qualifying community health center may dispense medication or devices to patients at no cost without providing a written prescription if the public health facility or the qualifying community health center meets all storage, labeling, safety and record keeping rules adopted by the board of pharmacy.

E. A person who is licensed pursuant to chapter 7, 11, 13, 14, 17 or 29 of this title, who is practicing at a public health facility or a qualifying community health center and who is involved in the dispensing of medication or devices only at a facility or center, whether for a charge or at no cost, shall register to dispense with the appropriate licensing board but is exempt from paying registration fees.

F. For the purposes of this section, "qualifying community health center" means a primary care clinic that is recognized as nonprofit under section 501(c)(3) of the United States internal revenue code and whose board of directors includes patients of the center and residents of the center's service area.

32-3226. Address of record; disclosure; telephone number or email address; definition

A. A health profession regulatory board shall have, for each licensee under the board's regulation, an address of record designated by the licensee that may be disclosed to the public. If the licensee designates the licensee's residential address as the address of record, the board shall notify the licensee of the public disclosure and allow the licensee to opt out of the disclosure.

B. Each licensee who is required to maintain patient medical records must have on file with the licensee's health profession regulatory board a telephone number or email address for the board to provide to a patient who is seeking medical records.

C. A health profession regulatory board shall designate associations of licensed health professionals that may receive on request the contact information and addresses of record for all health professionals under the board's regulation, including health professionals who have opted out of public disclosure. An association of licensed health professions that receives contact information and addresses of record from a health profession regulatory board may not transfer or sell that information.

D. This section does not prohibit a health profession regulatory board from providing to the department of health services or a university under the jurisdiction of the Arizona board of regents information and data concerning the health profession regulatory board's licensees for research purposes if the information and data are not distributed to the public in a format that includes a licensee's personally identifiable information.

E. For the purposes of this section, "address of record" means either:

1. The address where a health professional practices the person's health profession or is otherwise employed.
2. The health professional's residential address.

**D-6**

**BOARD OF BEHAVIORAL HEALTH EXAMINERS (R20-1105)**

Title 4, Chapter 6, Articles 1-8 and 11, Board of Behavioral Health Examiners

**Amend:** R4-6-101, R4-6-211, R4-6-212, R4-6-212.01, R4-6-214, R4-6-215,  
R4-6-216, R4-6-304, R4-6-402, R4-6-501, R4-6-502, R4-6-504,  
R4-6-601, R4-6-602, R4-6-604, R4-6-701, R4-6-704, R4-6-706,  
R4-6-802, R4-6-1101, R4-6-1106



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** November 3, 2020

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

**FROM:** Council Staff

**DATE:** October 5, 2020

**SUBJECT: BOARD OF BEHAVIORAL HEALTH EXAMINERS (R20-1105)**  
Title 4, Chapter 6, Articles 1-8 and 11, Board of Behavioral Health Examiners

**Amend:** R4-6-101, R4-6-211, R4-6-212, R4-6-212.01, R4-6-214, R4-6-215,  
R4-6-216, R4-6-304, R4-6-402, R4-6-501, R4-6-502, R4-6-504,  
R4-6-601, R4-6-602, R4-6-604, R4-6-701, R4-6-704, R4-6-706,  
R4-6-802, R4-6-1101, R4-6-1106

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### Summary:

This regular rulemaking from the Board of Behavioral Health Examiners (Board) seeks to amend rules in several articles in Title 4, Chapter 6 relating to the Board. The rules address four disciplines under the Board's purview: **Article 4: Social Work; Article 5: Counseling; Article 6: Marriage and Family Therapy; and Article 7: Substance Abuse Counseling.**

As stated in the Board's Notice of Final Rulemaking (NFR), this rulemaking seeks 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 (6) other technical corrections found since the last rulemaking.

Specifically for the proposed fee elimination, the Board seeks to eliminate the fee for “Issuance of license” in R4-6-215, which is currently \$100.

The Board received an exemption from Executive Order 2020-02 to conduct this rulemaking on March 17, 2020.

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 these rules.

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

No. The rules do not establish a new fee or contain a fee increase. Further, the Board seeks to eliminate one fee in this rulemaking.

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 a study in conducting this rulemaking.

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

The proposed rule changes will reduce costs and therefore should be a positive economic impact for small businesses and consumers. The removal of the issuance fee will decrease the initial cost of licensure in Arizona, which financially benefits those seeking licensure. Expanding the clinical supervision options for licensees who are required to work under supervision gives greater access to training by qualified independently licensed behavioral health professionals. The increased flexibility for supervision reduces some of the burdens faced by non-independent level licensees seeking supervision from independently licensed professionals in the same discipline, allowing them to become independently licensed faster.

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

The Board believes that there is no less intrusive or less costly alternative method because the rulemaking reduces regulations and fees, rather than increases them. The alternative would be to retain the status quo.

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

This rulemaking will result in less revenue going to the Board due to its proposed fee elimination.

No political subdivisions are directly affected by the rulemaking.

Expanded opportunities for licensure benefit local businesses that require licensed professionals to fill positions. Allowing greater flexibility in the requirements for clinical supervision allows non-independent level licensees greater access to qualified supervisors and reduces the amount of agencies who have to contract with outside clinical supervisors. Eliminating the issuance fee reduces the business costs of those licensees in private practice as business owners, and also those employers who subsidize the license costs of their employees.

For private persons and consumers who are directly affected by the rulemaking, expanded access to clinical supervision and reduced costs benefit the applicants and licensees regulated by the Board. In addition, with the expectation that additional individuals will become eligible for licensure, there will be a benefit of greater access to mental health treatment in Arizona and greater continuity of care as more licensed behavioral health professionals remain in their place of employment.

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

No. As the Board states, it made two technical, non-substantive changes between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking. These changes do not result in rules that are “substantially different” pursuant to A.R.S. § 41-1025.

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

Yes. As described in the Notice of Final Rulemaking, the Board received several comments in response to this rulemaking. In response to two of the comments, it made changes to the rule language. Those changes were not substantive pursuant to A.R.S. § 41-1025. Council staff finds that the Board adequately responded to the comments it received for this rulemaking.

9. **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 for the four disciplines (Article 4: Social Work; Article 5: Counseling; Article 6: Marriage and Family Therapy; and Article 7: Substance Abuse Counseling) covered in the rules, the Board issues general permits because they are issued to qualified individuals or entities to conduct activities that are substantially similar in nature. The Board 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?**

No. There are no corresponding federal laws or regulations to these rules.

**11. Conclusion**

In this rulemaking, the Board seeks to make a number of changes that if approved, would make the rules more clear, concise, understandable, and effective. Notably, this rulemaking would reduce a regulatory burden by eliminating one fee entirely. The Board requests the standard 60-day delayed effective date for this rulemaking. Council staff recommends approval of this rulemaking.



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BOARD OF BEHAVIORAL HEALTH EXAMINERS  
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DOUGLAS A. DUCEY  
Governor

TOBI ZAVALA  
Executive Director

September 21, 2020

ADOA - Governor's Regulatory Review Council  
Krishna Jhaveri, Attorney  
100 North 15<sup>th</sup> Avenue, Suite 305  
Phoenix, AZ 85007

Dear Mr. Jhaveri,

The Arizona Board of Behavioral Health Examiners ("Board") requests approval from the Governor's Regulatory Review Council ("GRRC") for the following Notice of Final Rulemaking, recently approved by the Board. The Notice of Proposed Rulemaking was published in the Arizona Administrative Register in Volume 26, Issue 21, dated May 22, 2020. The Board held oral proceedings on June 22, 2020 and June 25, 2020, and the record was closed on June 30, 2020.

Pursuant to A.A.C. R1-6-201, the Notice of Final Rulemaking does not:

- Relate to a five-year review report
- Establish new fees
- Increase fees – in fact, it eliminates one fee
- Include a request for an immediate effective date

The preamble included in the Notice of Final Rulemaking indicates that the Board did not rely on any study relevant to the rulemaking, and that no additional full-time employees are necessary to implement or enforce the proposed rules.

Items included with the cover letter include:

- Notice of Final Rulemaking
- Economic, small business and consumer impact statement
- A grid of feedback received by the Board concerning the proposed rules
- A copy of the Board minutes from the September 11, 2020 meeting
- Email correspondence demonstrating the Board's request and approval for an exemption from the rulemaking moratorium

The Board respectfully requests placement on the October 27, 2020 GRRC study session agenda, and the November 3, 2020 meeting agenda. Please contact Donna Dalton, Deputy Director, with any questions on the rulemaking.

Thank you,

A handwritten signature in black ink that reads "Tobi Zavala".

Tobi Zavala  
Executive Director

**NOTICE OF FINAL RULEMAKING**  
**TITLE 4. PROFESSIONS AND OCCUPATIONS**  
**CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS**  
**PREAMBLE**

<b><u>1. Article, Part, or Section Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
R4-6-101	Amend
R4-6-211	Amend
R4-6-212	Amend
R4-6-212.01	Amend
R4-6-214	Amend
R4-6-215	Amend
R4-6-216	Amend
R4-6-304	Amend
R4-6-402	Amend
R4-6-501	Amend
R4-6-502	Amend
R4-6-504	Amend
R4-6-601	Amend
R4-6-602	Amend
R4-6-604	Amend
R4-6-701	Amend
R4-6-704	Amend
R4-6-706	Amend
R4-6-802	Amend
R4-6-1101	Amend
R4-6-1106	Amend

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

Authorizing statute: A.R.S. § 32-3253

Implementing statutes: A.R.S. §§ 32-3253, 32-3272, 32-3273, 32-3274, 32-3275, 32-3279, 32-3291, 32-3292, 32-3301, 32-3303, 32-3311, 32-3313, 32-3321, 32-4302

**3. The effective date for the rules and the reason the agency selected the effective date:**

The Board is selecting the standard 60 days following the publish date as an effective date.

**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 proposed rule:**

Notice of Rulemaking Docket Opening: 26 A.A.R. 1620 May 22, 2020

Notice of Proposed Rulemaking: 26 A.A.R. 1620 May 22, 2020

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

Name: Donna Dalton, Deputy Director  
Address: AZ Board of Behavioral Health Examiners  
1740 W. Adams St., Suite 3600  
Phoenix, AZ 85007  
Telephone: (602) 542-1882  
Fax: (602) 364-0890  
E-mail: donna.dalton@azbbhe.us  
Web site: [www.azbbhe.us](http://www.azbbhe.us)

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

An exemption from the rulemaking moratorium in Executive Order 2019-01 was informally approved by Emily Rajakovich, Director, Boards and Commissions, Governor's Office, in an email dated September 19, 2019. Following submission of the initial proposed language, the exemption request was formally approved in an email dated March 17, 2020 from Trista Guzman Glover, Director, Boards and Commissions, Governor's Office. The proposed rulemaking will amend and clarify rules to reduce burdens on applicants and licensees as follows:

- Expand the options for non-independent licensees to obtain clinical supervision from behavioral health professionals outside their discipline.
- Modify the curriculum requirements for licensure for substance abuse counselors.
- Provide clarification regarding the tutorials approved by the Board.

- Clarify the process of applying for an independent licensure by exam with a non-independent license earned through the endorsement process.
- Reduce fees collected by the Board.
- Update the telepractice rule to align with national trends.
- Other technical corrections found since the last rulemaking.

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

The Board did not review or rely on any study relevant to the rules.

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

The rules do not diminish the authority of political subdivisions of this state.

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

The proposed rule changes will reduce costs and therefore should be a positive economic impact for small businesses and consumers. The removal of the issuance fee will decrease the initial cost of licensure in Arizona which financially benefits those seeking licensure. Expanding the clinical supervision options for licensees who are required to work under supervision gives greater access to training by qualified independently licensed behavioral health professionals. The increased flexibility for supervision reduces some of the burdens faced by non-independent licensees seeking supervision from independently licensed professionals in the same discipline, allowing them to become independently licensed quicker.

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

Minimal changes were made to the proposed rulemaking based on public feedback received as follows:

- Modified A.A.C. R4-6-212 to provide clarification related to the documentation of clinical supervision sessions
- Modified A.A.C. R4-6-1106 to clarify how to record/verify the client's emergency contacts.

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

The Board made the following changes in response to public comments regarding the proposed rulemaking as posted on the Board's web site. The Board determined none of the changes is substantial under the standard at A.R.S. § 41-1025(B).

COMMENT	BOARD'S ANALYSIS	BOARD'S RESPONSE
<p>R4-6-212. Clinical Supervision Requirements: Concerned that the proposed language is too subjective. Prefers more specific language such as themes/demonstrated skills.</p>	<p>The Board agrees with the comment.</p>	<p>Language changed.</p>
<p>R4-6-215. Fees and Charges: Strongly encourages the Board to permanently remove the issuance fees.</p>	<p>The Board agrees with the comment.</p>	<p>Language unchanged.</p>
<p>R4-6-504. Clinical Supervision for Professional Counselor Licensure: Received approximately nine written comments opposed to expanding the options for Licensed Associate Counselors to receive all of their clinical supervision from other behavioral health professionals, citing the scopes of practice are very different, the change diminishes the counseling profession, and the training and education are different. Several of those commenters felt it wasn't fair that social work was not expanding as well. There were approximately six comments in favor of the change citing increased flexibility, stabilizing the work force, and the benefits from interdisciplinary supervision.</p>	<p>The Board considered all feedback.</p>	<p>Language unchanged.</p>
<p>R4-6-604. Clinical Supervision for Marriage and Family Therapist Licensure: Received 3 comments in support of the change citing increased flexibility, stabilizing the</p>	<p>The Board considered all feedback.</p>	<p>Language unchanged.</p>

<p>workforce and expanding the opportunities for Licensed Associate Marriage and Family Therapists to find appropriate supervisors. There was one written comment received opposing the change because marriage and family therapy is very focused on systemic therapy and requires education and skill in that area.</p>		
<p>R4-6-706. Clinical Supervision for Substance Abuse Counselor Licensure: Received two comments strongly supporting the change citing increased flexibility for Licensed Associate Substance Abuse Counselors to receive supervision, stabilizing the workforce and the benefits of interdisciplinary supervision</p>	<p>The Board agreed with the comments.</p>	<p>Language unchanged.</p>
<p>R4-6-1106. Telepractice: Received comments indicating that documenting the client's emergency contacts in every progress note is burdensome. Recommended documenting the client's emergency contacts in the consent for treatment and then verifying it with each progress note since the client could be in new locations each session.</p>	<p>The Board agreed with the comments.</p>	<p>Language changed.</p>

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

None

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

**general permit is not used:**

For all four disciplines, the licenses issued by the Board are general permits consistent with A.R.S. § 41-1037 because they are issued to qualified individuals or entities to conduct activities that are substantially similar in nature.

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

None of the rules is more stringent than federal law. No federal law is directly applicable to the subject of any of the rules in this rulemaking.

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

No analysis was submitted.

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

None

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

Not applicable.

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

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS**

**ARTICLE 1. DEFINITIONS**

Section

R4-6-101. Definitions

**ARTICLE 2. GENERAL PROVISIONS**

Section

R4-6-211. Direct Supervision; Supervised Work Experience: General

R4-6-212. Clinical Supervision Requirements

R4-6-212.01. Exemptions to Clinical Supervision Requirements

R4-6-214. Clinical Supervisor Educational Requirements

R4-6-215. Fees and Charges

R4-6-216. Foreign Equivalency Determination

### **ARTICLE 3. LICENSURE**

Section

R4-6-304. Application for a License by Endorsement

### **ARTICLE 4. SOCIAL WORK**

Section

R4-6-402. Examination

### **ARTICLE 5. COUNSELING**

Section

R4-6-501. Curriculum

R4-6-502. Examination

R4-6-504. Clinical Supervision for Professional Counselor Licensure

### **ARTICLE 6. MARRIAGE AND FAMILY THERAPY**

Section

R4-6-601. Curriculum

R4-6-602. Examination

R4-6-604. Clinical Supervision for Marriage and Family Therapy Licensure

### **ARTICLE 7. SUBSTANCE ABUSE COUNSELING**

Section

R4-6-701. Licensed Substance Abuse Technician Curriculum

R4-6-704. Examination

R4-6-706. Clinical Supervision for Substance Abuse Counselor Licensure

### **ARTICLE 8. LICENSE RENEWAL AND CONTINUING EDUCATION**

Section

R4-6-802. Continuing Education

### **ARTICLE 11. STANDARDS OF PRACTICE**

Section

R4-6-1101. Consent for Treatment

R4-6-1106. Telepractice

## **TITLE 4. PROFESSIONS AND OCCUPATIONS**

## CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

### 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. No change
  - a. No change
  - b. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
9. No change
10. No change
11. No change
12. No change
13. No change
14. No change
15. No change
16. No change
17. No change
18. No change
19. No change
20. No change
21. No change
22. No change
23. No change
24. No change
25. No change
26. No change
27. No change
  - a. No change
  - b. No change

28. No change
29. No change
30. No change
31. No change
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~~32. No change
- ~~34~~33. No change
- ~~35~~34. No change
- ~~36~~35. No change
- a. No change
- b. No change
- c. No change
- ~~37~~36. No change
- ~~38~~37. No change
- ~~39~~38. No change
- ~~40~~39. No change
- ~~41~~40. No change
- ~~42~~41. No change
- a. No change
- b. No change
- ~~43~~42. No change
- a. No change
- b. No change
- c. No change
- d. No change
- e. No change
- ~~44~~43. No change
- a. No change
- b. No change
- c. No change
- ~~45~~44. No change
- a. No change
- b. No change
- ~~46~~45. No change
- ~~47~~46. No change

~~4847.~~ No change

~~4948.~~ “Regionally accredited college or university” means ~~approved~~ the institution has been approved by an entity recognized by the Council for Higher Education Accreditation as a regional accrediting organization.

~~a. New England Association of Schools and Colleges,~~

~~b. Middle States Commission on Higher Education,~~

~~e. 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.~~

~~5049.~~ No change

~~5150.~~ No change

~~5251.~~ No change

~~5352.~~ No change

~~5453.~~ No change

~~5554.~~ No change

~~5655.~~ No change

B. No change

**R4-6-211. Direct supervision: Supervised Work Experience: General**

A. No change

B. No change

1. No change

a. No change

b. No change

c. No change

2. No change

a. No change

b. No change

c. No change

d. No change

e. No change

f. No change

C. A licensee complying with subsection B shall not provide clinical oversight and responsibility for the behavioral health services of another licensee subject to the practice limitations pursuant to R4-6-210.

~~C~~D. No change

1. No change

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

~~D~~E. No change

~~E~~F. No change

#### **R4-6-212. Clinical Supervision Requirements**

A. No change

1. No change
  - a. No change
  - b. No change
2. No change
3. No change
  - a. No change
  - b. No change
    - i. Under a contract or grant with the federal government under the authority of 25 U.S.C. § 450-450(n)5301 or § 1601-1683, or
    - ii. No change
  - c. No change

B. No change

1. No change
2. No change

C. No change

1. No change
2. No change
3. No change
4. Contemporaneously written documentation by the clinical supervisor of at least the following for each clinical supervision session at each entity:
  - a. No change
  - b. A detailed Description description of topics discussed to include themes and demonstrated skills-  
~~Identifying information regarding clients is not required;~~
  - c. No change
  - d. No change
  - e. No change
5. No change

- 6. No change
  - a. No change
  - b. No change
- 7. No change
- 8. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
- 9. No change
- 10. No change

- D.** No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change

- E.** No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change

- F.** No change

- G.** No change
  - 1. No change
  - 2. No change
    - a. No change
    - b. No change

- H.** No change

**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. No change
  - 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~~ Education, training and experience necessary to provide clinical supervision;
  - ii. Complied with the educational requirements specified in R4-6-214; and
  - ~~iii. The behavioral health professional who provided or will provide the clinical supervision holds an~~ 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. No change
- 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, that is signed and dated by both parties, and
  - ii. No change
- c. No change
2. An individual using supervised work experience acquired outside of Arizona may apply to the Board for an exemption from the clinical 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 clinical supervision ~~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. No change
  - b. No change
    - a. No change
    - b. No change
    - c. No change

**R4-6-214. Clinical Supervisor Educational Requirements**

- A. No change
1. No change
    - a. No change
      - i. No change
      - ii. No change
      - iii. No change
      - iv. No change
    - b. No change
    - c. No change

- d. No change
  - 2. ~~Beginning January 1, 2018, completes a~~Completes the three clock hour ~~Board approved tutorial on Board statutes and rules~~Clinical Supervision Tutorial on Arizona Statutes/Regulations.
- 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.~~
- ~~CB.~~ 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~~Includes the three clock hour Clinical Supervision Tutorial on Arizona Statutes/Regulations.
- ~~DC.~~ 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~~Complete the Clinical Supervision Tutorial on Arizona Statutes/Regulations.
- D. An applicant submitting hours of clinical supervision by an individual qualified by meeting the clinical supervision education requirements in effect before the effective date of this Section shall provide documentation that the clinical supervisor was compliant with the education requirements during the period of supervision.

**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. No change
2. No change
- ~~3. Issuance of license \$100;~~
- 4~~3~~. Application for a temporary license: \$50;
- 5~~4~~. Application for approval of educational program: \$500;
- 6~~5~~. Application for approval of an educational program change: \$250
- 7~~6~~. Biennial renewal of first area of licensure: \$325;
- 8~~7~~. Biennial renewal of each additional area of licensure if all licenses are renewed at the same time: \$163;
- 9~~8~~. Late renewal penalty: \$100 in addition to the biennial renewal fee;
- 10~~9~~. Inactive status request: \$100; and
- 11~~10~~. Late inactive status request: \$100 in addition to the inactive status request fee.

B. No change

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

C. No change

D. No change

1. No change
2. No change
3. No change
  - a. No change
  - b. No change
  - c. No change

~~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~~ evaluation service that is a member of the National Association of Credential Evaluation Services, Inc.

- A. Any document that is in a language other than English shall be accompanied by a translation with notarized verification of the translation's accuracy and completeness. This translation shall be completed by an individual, other than the applicant, and demonstrates no conflict of interest. The individual providing the translation may be college or university language faculty, a translation service, or an American consul.

#### **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. No change
2. No change
  - a. No change
  - b. No change
  - 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. No change
3. No change
  - a. No change
  - b. No change
4. Documentation of completion of the ~~board approved tutorial on board statutes and rules~~ Arizona Statutes/Regulations Tutorial.

#### **R4-6-402. Examination**

- A. No change
- B. No change
- C. ~~Except as specified in subsection (G)(2), to~~ To be licensed as a clinical social worker, an applicant shall receive a passing score on the clinical examination offered by ASWB.
- D. No change
- E. No change
- F. No change
- ~~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.~~

**R4-6-501. Curriculum**

- A.** No change
  - 1. No change
  - 2. No change
  - 3. No change
- B.** No change
  - 1. No change
  - 2. No change
  - 3. No change
- C.** No change
  - 1. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
  - 2. No change
    - a. No change
    - b. No change
  - 3. No change
    - a. No change
    - b. No change
  - 4. No change
    - a. No change
    - b. No change
  - 5. No change
    - a. No change
    - b. No change
    - c. No change
  - 6. No change
    - a. No change
    - b. No change
    - c. No change
  - 7. No change
    - a. No change

- b. No change
- c. No change
- 8. No change
  - a. No change
  - b. No change
- D.** No change
- E.** No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
- F.** No change
- G.** No change
- H.** The Board shall deem ~~that an applicant who holds an active associate counselor license issued by the Board and in good standing to~~ meets the curriculum requirements for professional counselor licensure if the applicant:-
  - 1. Holds an active and in good standing associate counselor license issued by the Board; and
  - 2. Met the curriculum requirements with a master's degree in a behavioral health field from a regionally accredited university when the associate counselor license was issued.

**R4-6-502. Examination**

- A.** No change
  - 1. No change
  - 2. No change
  - 3. No change
- B.** ~~An applicant for counselor licensure shall receive a passing score on an approved licensure examination.~~
- CB.** ~~Except as specified in subsection (E), An~~ 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.
- DC.** ~~If an applicant does not receive a passing score as required under subsection (B) within the 12 months referenced in subsection (CB), 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.~~
- ED.** No change
- E.** The Board shall deem an applicant for professional counselor licensure to meet the exam requirement if the applicant holds an active and in good standing associate counselor license issued by the Board pursuant to A.R.S. § 32-3274 or A.R.S. § 32-4302.

**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 from the following behavioral health professionals who meet the educational requirements under R4-6-214if:
  - 1. ~~At least 50 hours are supervised by a professional counselor licensed by the Board, and~~ A licensed professional counselor;
  - 2. ~~The remaining hours are supervised by an individual qualified under R4-6-212(A), or~~ A licensed clinical social worker;
  - 3. A licensed marriage and family therapist;
  - 4. A licensed psychologist; or
  - 35. ~~The hours are supervised by an~~ An individual for whom an exemption was obtained under R4-6-212.01.
- C. No change

**R4-6-601. Curriculum**

- A. No change
  - 1. No change
  - 2. No change
  - 3. No change
- B. No change
  - 1. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
  - 2. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
  - 3. No change
    - a. No change
    - b. No change
    - c. No change
  - 4. No change
    - a. No change

- b. No change
- 5. No change
- 6. No change
- C. No change
- D. No change
  - 1. No change
  - 2. No change
  - 3. No change
- E. No change
- 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~~ to meet the curriculum requirements for marriage and family therapist licensure ~~if the applicant:-~~
  - 1. Holds an active and in good standing associate marriage and family therapist license issued by the Board; and
  - 2. Met the curriculum requirements with a master's degree in a behavioral health field from a regionally accredited university when the associate marriage and family therapist license was issued.

**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.~~
- B.** Except as specified in subsection (E), An 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.
- ~~**C.**~~ **D.** If an applicant does not receive a passing score ~~as required under subsection (B)~~ within the 12 months referenced in subsection (~~C~~B), 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).
- F.** The Board shall deem an applicant for marriage and family therapist licensure to meet the examination requirement if the applicant holds an active and in good standing associate marriage and family therapist license issued by the Board pursuant to A.R.S. § 32-3274 or A.R.S. § 32-4302.

**R4-6-604. Clinical Supervision for Marriage and Family Therapy Licensure**

- A. No change
- B. No change

1. No change
  2. At least ~~75~~50 of the hours are supervised by: ~~a marriage and family therapist licensed by the Board, and~~
    - a. A marriage and family therapist licensed by the Board; or
    - b. An independently licensed behavioral health professional who holds an Approved Supervisor designation from the American Association for Marriage and Family Therapy; and
  3. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
  4. No change
- C. No change

**R4-6-701. Licensed Substance Abuse Technician Curriculum**

- A. No change
1. No change
  2. No change
  3. No change
- 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 not 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 effects on mood, behavior, cognition and physiology;~~
  2. Models of treatment and relapse prevention; Including including but not limited to philosophies and practices of generally accepted and scientifically evidence-supported models of
    - ~~a. Treatment;~~
    - ~~b. Recovery;~~
    - ~~c. Relapse prevention, and~~
    - ~~d. Continuing care for addiction and other substance use related problems;~~
  3. No change
  4. No change
  5. Co-occurring disorders, including but not limited to philosophies and practices of generally accepted and evidence-supported models;

- ~~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. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
- 7. No change
- C. No change
  - 1. The applicant provides services under a contract or grant with the federal government under the authority of 25 U.S.C. § ~~450~~~~(n)~~5301 or § 1601 – 1683;
  - 2. No change
  - 3. No change
  - 4. No change
- D. No change
- E. No change

**R4-6-704. Examination**

- A. No change
  - 1. No change
  - 2. No change
- B. No change
  - 1. No change
  - 2. No change
  - 3. No change
- 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.~~ No change
  - 1. No change
  - 2. No change
  - 3. No change

~~ED~~. No change

~~FE~~. No change

~~GF~~. No change

**R4-6-706. Clinical Supervision for Substance Abuse Counselor Licensure**

A. No change

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~~

a. An independent substance abuse counselor licensed by the Board; or

b. An independently licensed behavioral health professional who:

i. Provides evidence of knowledge and experience in substance use disorder treatment; and

ii. Is approved by the ARC or designee, and

2. No change

3. No change

**R4-6-802. Continuing Education**

A. No change

B. No change

1. No change

2. No change

a. No change

b. No change

c. No change

3. No change

C. No change

1. No change

a. No change

b. No change

2. ~~Beginning January 1, 2018, in addition to the requirement under subsection (C)(1), complete~~ Completion of

~~a the three clock hour Board-approved tutorial on Board statutes and rules~~ Arizona Statutes/Regulations

Tutorial.

D. No change

1. No change

2. No change

3. No change

4. No change

5. No change

6. No change

**E.** No change

1. No change

2. No change

3. No change

4. No change

5. No change

6. No change

7. No change

8. No change

9. No change

10. No change

11. No change

**R4-6-1101. Consent for Treatment**

A licensee shall:

1. No change

2. 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

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; and

5. Include a dated signature from an authorized representative of the behavioral health entity.

**R4-6-1106. Telepractice**

**A.** No change

**B.** No change

**C.** No change

1. No change

a. No change

b. No change

c. No change

d. No change

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. Verification of the client's:

i. Physical location during the session; and

ii. Local emergency contacts.

# ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT<sup>1</sup>

## TITLE 4. PROFESSIONS AND OCCUPATIONS

### CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

#### 1. Identification of the rulemaking:

The Board is amending its rules in response to several factors as follows:

- Eliminating its license issuance fee with the Governor's Office of Strategic Planning and Budgeting (OSPB) approval;
- Expanding the options for non-independent level licensees to obtain clinical supervision from behavioral health professionals outside their discipline;
- Providing clarification for the process of applying for an independent license by exam with a non-independent license earned through endorsement.
- Modifying the curriculum requirements for Substance Abuse Counselor licensure; and
- Updating other rules to provide clarity and technical corrections.

#### a. The conduct and its frequency of occurrence that the rule is designed to change:

The fee elimination will impact approximately 2,000 licensees a year. The Board issues an average of 170 licenses per month, and each applicant pays a license issuance fee which will be removed in this rulemaking. There are approximately 2,500 non-independent level licensees who will benefit from this rulemaking because of expanded access to a qualified supervisor.

#### 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 made:

The Board has been fiscally responsible with its budgeting and with input from OSPB recognizes it can sustain operations without the collection of the issuance fee, so it would be burdensome to continue to charge it. The current rules place unnecessary burdens on non-independent level licensees' access to qualified supervision. Without the rulemaking, there will continue to be high staff turnover because non-independent level licensees switch positions when there is not an appropriate supervisor at their place of employment.

#### c. The estimated change in frequency of the targeted conduct expected from the rule change:

---

<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)).

When the rulemaking is completed, approximately 2,000 applicants for licensure will have a lower cost for initial licensure and approximately 2,500 non-independent level licensees will have expanded options to qualified supervisors.

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

The proposed rule changes will reduce costs and therefore should be a positive economic impact for small businesses and consumers. The removal of the issuance fee will decrease the initial cost of licensure in Arizona which financially benefits those seeking licensure. Expanding the clinical supervision options for licensees who are required to work under supervision gives greater access to training by qualified independently licensed behavioral health professionals. The increased flexibility for supervision reduces some of the burdens faced by non-independent level licensees seeking supervision from independently licensed professionals in the same discipline, allowing them to become independently licensed quicker.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: Donna Dalton, Deputy Director  
Address: 1740 W. Adams St., Suite 3600  
Phoenix, AZ 85007  
Telephone: (602) 542-1811  
Fax: (602) 364-0890  
E-mail: donna.dalton@azbbhe.us  
Web site: [www.azbbhe.us](http://www.azbbhe.us)

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

All applicants for licensure will benefit from the rulemaking because it reduces their initial cost for licensure. Non-independent level licensees seeking independent licensure will benefit from the rulemaking based on expanded access to qualified supervision. Many applicants who work in an agency that does not employ an independent level behavioral health professional in their discipline spend thousands of dollars on supervision to meet the requirements, or seek other employment which causes workforce issues and ultimately impacts access to behavioral health care in the state of Arizona.

In addition, applicants for Substance Abuse Counselor licensure will benefit from the reduced specificity in the curriculum requirements. Applicants who acquire licensure by endorsement as a non-independent level licensee will benefit from the rulemaking because they will be deemed to meet the examination requirements when they later apply for independent licensure.

The Board will be impacted by the rulemaking through a reduction in revenue because of the fee elimination.

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 benefits and costs are discussed in item 4. In addition, prior to the decision to eliminate the issuance fee, the Board worked with OSPB to do an extensive cost analysis to ensure Board operations could be sustained with lower revenue. The Board will not need an additional full-time employee to implement and enforce the rulemaking.

b. Costs and benefits to political subdivisions directly affected by the rulemaking:

No political subdivisions are directly affected by the rulemaking.

c. Costs and benefits to businesses directly affected by the rulemaking:

Expanded opportunities for licensure benefit local businesses that require licensed professionals to fill positions. Allowing greater flexibility in the requirements for clinical supervision allows non-independent level licensees greater access to qualified supervisors and reduces the amount of agencies who have to contract with outside clinical supervisors. Eliminating the issuance fee reduces the business costs of those licensees in private practice as business owners and also those employers who subsidize the license costs of their employees.

6. Impact on private and public employment:

Expanding the access to qualified supervision for non-independent level licensees benefits public health agencies by lessening the resources needed to contract an appropriate supervisor from outside the agency and by stabilizing the turnover from those

who leave solely because they do not have access to a clinical supervisor in their discipline.

7. Impact on small businesses<sup>2</sup>:

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

The potential impact on small businesses is explained in 5(c) above.

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

The Board does not anticipate any administrative or other costs associated with compliance with the rulemaking.

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

The expected economic impact on small businesses is positive, therefore not requiring reduction.

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

Expanded access to clinical supervision and reduced costs benefit the applicants and licensees regulated by the Board. In addition, with the expectation that additional individuals will become eligible for licensure, there will be a benefit of greater access to mental health treatment in Arizona and greater continuity of care as more licensed behavioral health professionals remain in their place of employment.

9. Probable effects on state revenues:

Based on the projection of revenue as developed in conjunction with OSPB, the Board's revenues will decrease based on the fee elimination. Because the Board provides 10% of its total revenue to the state's general fund, the state will likely see a proportionate decline.

10. Less intrusive or less costly alternative methods considered:

No less intrusive or less costly alternative methods were considered because the rulemaking reduces regulations and fees, rather than increases them. The alternative would be to remain status quo.

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<sup>2</sup> Small business has the meaning specified in A.R.S. § 41-1001(21).



BEHAVIORAL HEALTH - Rules Feedback &lt;rulesfeedback@azbbhe.us&gt;

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**Feedback on issuance fee and telehealth**

1 message

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**Dania Demauro** [REDACTED] >  
To: "rulesfeedback@azbbhe.us" <rulesfeedback@azbbhe.us>

Sat, May 23, 2020 at 10:31 AM

Hello,

I am an LCSW in AZ and writing to encourage the board to permanently remove issuance fees moving forward in order to decrease costs towards licensure especially for new licensees who are entering a field where our services are essential. I was glad the fees have been waived for now and hope the fee will be permanently removed to increase access to licensure. Thank you for your attention.

Sincerely,

Dania Demauro

Sent from my iPhone



BEHAVIORAL HEALTH - Rules Feedback <rulesfeedback@azbbhe.us>

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## Comments on Proposed BBHE Rules

1 message

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Candy Espino <[REDACTED]>

Wed, Jun 24, 2020 at 2:54 PM

To: "rulesfeedback@azbbhe.us" <rulesfeedback@azbbhe.us>

Good afternoon,

Attached are the comments from the Arizona Council of Human Service Providers regarding the BBHE proposed rules.

Thank you,

Candy Espino, MBA

President and CEO

Arizona Council of Human Service Providers

2100 N. Central, Suite 225

Phoenix, AZ 85004

[REDACTED]  
Office: 602-252-9363  
[REDACTED]

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 **Comments on BBHE Rules.pdf**  
129K



## COMMENTS ON BOARD OF BEHAVIORAL HEALTH EXAMINERS PROPOSED RULES

The Arizona Council of Human Service Providers welcomes the opportunity to comment on the proposed BBHE rule changes. The Council has been an active participant in the development of statutes and rules for the Board of Behavioral Health Examiners for many years. Previous activities included participation in drafting extensive amendments to Chapter 32, Title 32, as well as all subsequent rule changes, particularly regarding clinical supervision.

The Council has ongoing and significant concerns about lack of access to mental health care, and we therefore have encouraged the BBHE staff to consider ways to mitigate work force shortages, while also balancing the need for public health and safety. We are particularly concerned about statewide shortages of mental health professionals in light of an increased need for services because of COVID-19 pandemic increases in depression and anxiety.

In an ideal world, if there was an adequate supply of independently licensed social workers, counselors, MFT's etc., supervision could be provided by someone within the licensee's profession - social workers supervise social workers, for instance. However, we see continued mental health workforce shortages in Arizona, which are exacerbated in rural communities. Because of these workforce shortages, there may not be the right "type" of independently licensed supervisor available to provide supervision through a licensee's employer or in their community. Lack of access to supervisors through their employers, forces individuals to seek out and pay for individual supervision, which only is an option for those who have the financial means to do so, ultimately decreasing our pool of qualified, independently licensed counselors, MFT's, substance abuse counselors and social workers. Unnecessary barriers to becoming independently licensed also impact the earning power of those with associate licenses.

Additionally, our members have pointed out to us the value of interdisciplinary supervision. All licensees benefit from broad exposure to multiple theoretical and treatment approaches. The practice of psychotherapy, which is what individuals are licensed to provide, refers to specific groups of theoretical perspectives, skills, and techniques in the assessment, diagnosis, and treatment of mental health conditions. In school and internship, potential licensees learn the theoretical perspectives and values of their profession. Through involvement with their professional associations, they maintain those perspectives. Supervision by a professional from another field, allows supervisees to expand their base of knowledge and ultimately helps them become better, well rounded professionals.

Additionally, many rural areas are limited in the specific types of programs offered by educational institutions, e.g., an institution providing programs may only offer Marriage and Family whereas in another community only Social Work programs may be offered. This puts a further burden, on already limited supervision resources, in many communities in which a licensee may wish to practice but may not be able to find adequate supervision for licensure.



Furthermore, the advancement of healthcare integration has opened the door to many employment possibilities and innovative practices. With this type of systemic change in healthcare delivery, we must also consider how we too can be innovative through licensing, thus allowing greater opportunities for our skilled workforce to provide higher quality care to those they serve.

Taking these things into consideration, we support the flexibility of interdisciplinary supervision. Due to healthcare integration, and the desire to focus on whole person healthcare, interdisciplinary supervision should be considered in order to provide broad exposure, a more robust learning experience, and an expansion of the workforce, all to better prepare licensed individuals for meeting the needs of the communities they serve.

We believe the most recent version of the proposed rules addresses many of these concerns and we appreciate meeting with the BBHE staff over this last year. Below are provisions that are supported by the Council, as they appear to provide more flexibility in options for clinical supervision for those seeking independent licensure, while maintaining quality in that supervision.

- R4-6-212.01 Exemption from Clinical Supervision Requirements. Removes the requirement that the use of a qualified physician or nurse practitioner be dependent upon a finding of availability based on size and location of the professional setting;
- R4-6-504 Allows qualified MFT, social worker and Psychologist to provide supervision for Counselors
- R4-6-604 Changes required MFT supervision for MFT independent licensing from 75 hours to 50 hours of the required supervision hours.
- R4-6-706 Allows independently licensed behavioral health professionals qualified in substance abuse treatment to provide supervision for those seeking independent substance abuse counselor licensing.

Thank you for the opportunity to comment on the proposed rule changes. We are happy to answer any questions you might have.

Sincerely,

Candy Espino  
President and CEO





BEHAVIORAL HEALTH - Rules Feedback &lt;rulesfeedback@azbbhe.us&gt;

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**2020 Rulemaking R4-6-504**

1 message

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**Aryn Sylvester** <[REDACTED]>  
To: rulesfeedback@azbbhe.us

Thu, May 14, 2020 at 6:07 PM

To Who it May Concern,

It recently came to my attention that under this new ruling R4-6-504 LAC's do not need to be Supervised by LPCs but could potentially have 100% of their supervision hours done by Marriage and Family Counselors or Social Workers. This seems problematic for few reasons.

1. When clients seek an LAC or LPC they expect them to have some training as an LAC or LPC not training as a social worker or Marriage counselor. To not require some training from a LPC would be misleading to clients.
2. If I am hiring a LPC I would expect them to have some type of training/supervision from a LPC.
  - a. This rule would undermined those who have received training from a LPC.
  - b. It would ill prepare an LAC to accept this job.

I am not sure why this rule is coming forward at this time. It seems to be a step back for LAC's & LPC's in general and since I am entering this profession this rule has a big impact on me and my colleges.

It seems to me that this rule is not in my best interest or the best interest of the field of Counseling in general.

Thank you,  
Aryn Sylvester  
Counseling Intern with the University of Phoenix



BEHAVIORAL HEALTH - Rules Feedback &lt;rulesfeedback@azbbhe.us&gt;

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**Objection to changes to R4-6-504**

1 message

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**Janet Lee O'Connor** <[REDACTED]>  
To: "rulesfeedback@azbbhe.us" <rulesfeedback@azbbhe.us>  
Cc: Janet Lee O'Connor <[REDACTED]>

Sun, May 31, 2020 at 1:50 PM

5/31/2020

To Whom It May Concern,

I am responding to the call for public comment regarding changing the requirements for supervision of licensed associate counselors seeking an independent license. The proposed rule change in R4-6-504 diminishes the education and supervision requirements for a Licensed Professional Counselor by telegraphing that anyone can appropriately supervise for this discipline. This is a return to a former situation that was rectified by rule changes developed with community input that at least 50% of supervision hours ( 50 of 100) be conducted by an licensed professional approved by the board and of the same discipline as the associate level professional. I support a continuation of the current rule of a 50% hour requirement for professional counselors and do not support the proposed rule change to R-4-6-504.

Education and supervision for a professional counselor is distinct from that of a social worker, substance use counselor, or a marriage and family counselor. In light of that fact, it makes no sense that the associate professional counselor would not be required to have at least 50 hours of supervision from a professional counselor. The scope of practice, not to mention education, have similarities yet the counselor has a specific body of knowledge and a philosophy that is distinct from other professionals.

If this were an "across the board" change for all disciplines, I would have less objection. This proposed change seems to indicate that social workers and marriage and family counselors are somehow "better" than someone who has earned a master's degree as a professional counselor, as the requirements for supervision for these professions (MFT and SW) remain in place with at least 50% of the 100 hours being provided by a licensed member of the same profession.

This letter is not submitted by me, in my capacity, as an appointed member of the Counseling Academic Review Committee. With that being stated, since I have served for approximately 4 years on the CARC, the very few exemption requests to the requirements are reviewed and most are approved if it is clear, from the application, that the applicant cannot find an LPC to provide at least half of the required 100 hours for independent licensing and there is an available supervisor with the training and expertise needed.

Supervision is recognized as a profession (McMahon & Simons, 2011) and as such, not just anyone has the training and experience to effectively guide associate counselors to competence, as professionals. Borders et al (1991) make the case for and propose a standardized curriculum for supervisor training programs. Some researchers and scholars have even suggested that untrained supervisors are practicing outside their area of competence.

When asked about how this rule change came to be proposed, I was told "counseling is in favor of it." I did not see any vote by the membership of AZCA nor do I have any information on how such a proposal may have been made. Such a decision and change to the rule diminishes the profession of counseling in the State of Arizona.

Sincerely,



Janet Lee O'Connor, EdS, LPC, LISAC, NCC, ACS

Sent from Mail for Windows 10



BEHAVIORAL HEALTH - Rules Feedback &lt;rulesfeedback@azbbhe.us&gt;

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**Change in rules for Supervision**

1 message

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**Dana Rudner** [REDACTED] >  
To: rulesfeedback@azbbhe.us

Sun, May 31, 2020 at 2:28 PM

To whom it may concern,  
Please do not change the rules of supervision for LPC. That change would diminish the profession of counseling. The counselor has a specific body of knowledge and philosophy that is distinct from other professions.  
Please feel free to contact me,  
Dana Denney LPC13299  
[REDACTED]

Sent from my iPad



BEHAVIORAL HEALTH - Rules Feedback &lt;rulesfeedback@azbbhe.us&gt;

**ARIZONA R4-6-504**

1 message

dr cynthia Dowdall &lt;[REDACTED]&gt;

Sun, May 31, 2020 at 4:22 PM

To: rulesfeedback@azbbhe.us, NBCC Government Affairs &lt;govtaffairs@nbcc.org&gt;, Janet Oconnor [REDACTED]

This email is in response to R4-6-504.

As Licensed Professional Counselors, we need to uphold our profession and supervise our own in best practices by LPC's qualified to do so. Many Psychologists, Social Workers, and Marriage and Family Therapists do not receive extensive training in Counseling Theory and application, as required by CACREP graduate level counseling programs. If some in these professions do, it is not to the degree required in Counselor Education. It is time that we stop oppressing the counseling profession and LPC Supervision not only in the State of Arizona, but also nationally. NBCC is moving towards National Counselor Licensure where we need to be consistent in this effort by uplifting the Counseling Profession to be recognized where we train our own. Psychologists, MSW's, and MFT's all supervise their own graduates working towards licensure. To have other professionals be able to supervise counselors is continued oppression of our field and is not upholding the high level of training standards required by CACREP and the NBCC. The Arizona Board of Behavioral Health Examiners also have high standards and have raised the level of professionalism in our state. Please continue this level of high standards in LPC Supervision and require those outside of our profession to obtain a waiver showing that they have had the appropriate coursework in Counselor Education, Application, and Supervision from an accredited institution. Qualified LPC Supervisors should be the only professionals allowed to provide the majority of supervision to those working towards licensure not the reverse. To uphold best practices in the field of counseling, those in other fields may be able to supervise for a much shorter duration of time after providing they have the required credentials as listed above. I have CC'd NBCC in this email to keep them informed.

Best Regards,

Cynthia Dowdall-Thomae, Ph.D., L.P.C., N.C.C., A.C.S., R.T.C.



BEHAVIORAL HEALTH - Rules Feedback &lt;rulesfeedback@azbbhe.us&gt;

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**R46 504**

1 message

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**Tammy Brewer** [REDACTED]  
To: "rulesfeedback@azbbhe.us" <rulesfeedback@azbbhe.us>

Sun, May 31, 2020 at 5:39 PM

In regards to R 46 504

In my opinion, The proposed changes diminishes the profession of counseling in Arizona as it telegraphs that any discipline can supervise counselors seeking an independent license. Education and supervision for a professional counselor is distinct from that of a social worker, substance use counselor, marriage and family counselor, psychologist, and so forth. The scope of practice, not to mention education, have similarities yet the counselor has a specific body of knowledge and philosophy that is distinct from other professionals.

This proposal seems to indicate that social workers and marriage and family counselors are somehow "better" than someone who has earned a master's degree as a professional counselor, as the requirements for these professions remains in place with at least 50% of the 100 hours being provided by a licensed member of the same profession. I hope that this rule does not change but will remain as is.

Sent from my iPhone

Tammy Brewer MS.,LPC,LMT  
Desert Therapies and Wellness  
[6979 E. Broadway Blvd St. 115](#)  
Tucson, AZ 85710  
[REDACTED]



BEHAVIORAL HEALTH - Rules Feedback &lt;rulesfeedback@azbbhe.us&gt;

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**Proposed changes for Counselor supervision**

1 message

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**Celeste&David** <[REDACTED]>  
To: rulesfeedback@azbbhe.us

Mon, Jun 1, 2020 at 10:02 AM

To whom it may concern,

I disagree with the proposed changes about supervision as it seems inappropriate. The change would make sense if the changes were across the board and also applied to Marriage counselors and social workers. You would be greatly affected those Licensed Professional Counselors who have provided supervision for many years by discrediting them and lowering their potential work flow.

I urge you to please reconsider this change.

Thank you,

Celeste McBimie LPC



BEHAVIORAL HEALTH - Rules Feedback &lt;rulesfeedback@azbbhe.us&gt;

**Addendum Re: R4-6-504**

1 message

**Caila Lipovsky** <[REDACTED]>  
To: rulesfeedback@azbbhe.us

Mon, Jun 1, 2020 at 11:25 AM

Greetings,

Although I maintain the support for this rule as offered in my prior email (below), I would like clarification on why the same adaptations are not made across the board, particularly for MFTs and social workers. This seems to indicate a relative lack of respect for the scope of LPCs, relative to professions with a similar degree of training.

I hope to hear from you soon. Again, thank you for taking time to read this.

—Caila Lipovsky

On Mon, Jun 1, 2020 at 11:02 AM Caila Lipovsky &lt;[REDACTED]&gt; wrote:

Hello,

I am writing in support of the proposed changes for R4-6-504, in which the requirement for at least 50% of the supervision for independent licensing must be provided by an LPC.

I am a new LAC struggling to move forward in my career amidst the unexpected challenges of this new era. Right away, I experienced a roadblock in which I missed a chance to work under a highly competent and experienced psychologist with significant supervision experience as well as being certified in a modality I am training in, as she didn't have the required training to work with me.

I am seeing many in our field taking a career hit on account of sudden layers of increasing complexity in a rapidly changing country.

Given this landscape, I am all for reduction of the hoops we need to jump through to be of service to clients.

If there is strong collective opposition to the proposed changes, I might recommend at least allowing LACs to receive supervision from licensed psychologists and reducing the hours required for supervision specifically under LPCs.

Thanks for listening.

—Caila Lipovsky

—

Caila Lipovsky, M.A., LAC, NCC

<https://www.psychologytoday.com/us/therapists/caila-lipovsky-tucson-az/752701?>

Owner of Bright Moon Therapy, LLC

Former President-Elect of Chi Sigma Iota Honor Society

9/2/2020

State of Arizona Mail Addendum Re: R4 6 504

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Caila Lipovsky, M.A., LAC, NCC

<https://www.psychologytoday.com/us/therapists/caila-lipovsky-tucson-az/752701?>

Owner of Bright Moon Therapy, LLC

Former President-Elect of Chi Sigma Iota Honor Society

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BEHAVIORAL HEALTH - Rules Feedback <rulesfeedback@azbbhe.us>

# Proposed change to clinical supervision requirements for LPCs

1 message

Linda Ouellette [REDACTED]

Mon, Jun 1, 2020 at 3:35 PM

To: "rulesfeedback@azbbhe.us" <rulesfeedback@azbbhe.us>

I am personally AGAINST the proposal to remove the requirement that 50 of the 100 hours of supervision for LPC licensure must be provided by an LPC. I think LPCs have a different education, training and perspective than LCSWs, LMFTs and psychologists.

And the fact that you are not proposing the same change for any of the other licenses is quite telling. It leads me to believe that you see the LPC as a "less than" license and does not carry the same weight, or have the same credibility as an LCSW, LMFT or psychologist.

Thank you.

Linda Ouellette, LPC  
Coordinator of Clinical Supervision Services  
Sierra Tucson

--  
Linda Ouellette, LPC  
Psychotherapist, Certified EMDR therapist  
Awakenings Counseling, LLC/EMDR Center of Tucson, LLC  
5151 N Oracle Rd, Suite 118C  
Tucson, AZ 85704

[REDACTED]  
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BEHAVIORAL HEALTH - Rules Feedback &lt;rulesfeedback@azbbhe.us&gt;

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**licensing supervisor requirements**

1 message

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**Alexis Grae** <[REDACTED]>  
To: rulesfeedback@azbbhe.us

Tue, Jun 2, 2020 at 2:47 PM

It appears that more skill and talent are being given to Marriage and family therapists than and LPC. LPC's must have a broader base of training and experience, that actually includes marriage & Family. If a marriage and family counselor can provide supervision for an LAC, and an LPC CANNOT provide supervision to anyone but an LAC does not seem fair or or even appropriate given the broadness of expertise needed to who provide generalized therapy. in this community. It lessens the prestige and perception of a counselor. A marriage and family counselor is the expert for marriage and family counseling, a social worker is an expert for managed care, but an LPC has to be expert at everything. If someone wants counseling for something other than relationships, who will they want to do therapy with? Are counselor going to go the way of the general dentist who can now only clean your teeth and do xrays? They can't pull a tooth or provide a decent cavity fill anymore. Of the general physician who used to see a patient from cradle to old age? It appears the way of the counselor as the one to help with emotional and psychological issues is on its way out. Why? This is a terrible change and should not occur at the proposed level. If Anyone can supervise an LAC, then an LPC should by rights, be allowed to supervise every other master's level profession.

Alexis Grae, MC, LPC, LISAC  
Clinical Director/Executive Administrator



BEHAVIORAL HEALTH - Rules Feedback &lt;rulesfeedback@azbbhe.us&gt;

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**Supervision**

1 message

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**Delbert Carr** [REDACTED] >  
To: rulesfeedback@azbbhe.us

Mon, Jun 8, 2020 at 7:10 AM

AZBBHE,

My name is Delbert Lee Carr and I want to thank you very much for allowing telehealth to count towards my internship direct hours. This has allowed me to continue with my masters program in Mental Health Counseling and continue offering care to client's of Little Colorado Behavioral Health in Apache County.

It has come to my attention that you are also considering rather or not to allow supervisors of different disciplines to offer supervision for associate licensees. As an example I will graduate in September of this year and will then be applying for my Associate Licensed Professional Counselor. At this time there are no LPC supervisors in Apache County. Being that we are so rural it would be a hardship for me to travel for supervision. I assume many others in rural areas would also experience this hardship. I appreciate that you are considering feedback with this decision and hope that you will strongly consider continuing case by case allowances of this rule.

Sincerely,  
Delbert Lee Carr



BEHAVIORAL HEALTH - Rules Feedback &lt;rulesfeedback@azbbhe.us&gt;

**Opposition to proposed rule change to R4-6-504- Attached file has my signature**

1 message

Patricia Kerstner &lt;[REDACTED]&gt;

Wed, Jun 10, 2020 at 11:44 AM

To: "rulesfeedback@azbbhe.us" &lt;rulesfeedback@azbbhe.us&gt;

I am responding to the call for public comment regarding changing the requirements for supervision of licensed associate counselors seeking an independent license.. This proposed rule change in R4-6-504 diminishes the education and supervision requirements for a Licensed Professional Counselor by telegraphing that anyone can appropriately supervise for this discipline. This is a return to a former situation that was rectified by rule changes developed with community input that at least 50% of supervision hours ( 50 of 100) be conducted by an licensed professional approved by the board and of the same discipline as the associate level professional. I support a continuation of the current rule of a 50%-hour requirement for professional counselors. I do not support the proposed rule change to R-4-6-504.

Education and supervision for a professional counselor is distinct from that of a social worker, substance use counselor, or a marriage and family counselor. With that fact, it makes no sense that the associate professional counselor would not be required to have at least 50 hours of supervision from a professional counselor. The scope of practice, not to mention education, have similarities yet the counselor has a specific body of knowledge and a philosophy that is distinct from other professionals. As a counselor educator for over 20 years and a National Certified Counselor ( NCC)

If this were an “across the board” change for all disciplines, I would have less objection. This proposed change seems to indicate that social workers and marriage and family counselors are somehow “better” than someone who has earned a master’s degree as a professional counselor, as the requirements for supervision for these professions (MFT and SW) remain in place with at least 50% of the 100 hours being provided by a licensed member of the same profession.

Having served on the Counseling Academic Review Committee ( CRC) of the Arizona Board of Behavioral Health Examiners for approximately 4 years, the very few exemption requests to the requirements submitted are reviewed thoroughly. Most are approved if it is clear, from the application, that the applicant cannot find an LPC to provide at least half of the required 100 hours for independent licensing

and there is an available supervisor with the training and expertise needed. To create a rule change to deal with exceptions when a process exists to address those exceptions does not make sense.

Supervision is recognized as a profession (McMahon & Simons, 2011) and as such, not just anyone has the training and experience to effectively guide associate counselors to competence, as professionals.

Sincerely,

Patricia L. Kerstner, PhD, NCC



Sent from [Mail](#) for Windows 10



**Response personal to call for R4-6-504^L.docx**  
32K



BEHAVIORAL HEALTH - Rules Feedback &lt;rulesfeedback@azbbhe.us&gt;

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## Supervisory Rules Modifications

1 message

Grover Glenn <[REDACTED]>  
To: rulesfeedback@azbbhe.us

Fri, Jun 19, 2020 at 4:45 PM

Dear Board Members:

This is a note to indicate my support for the move toward greater supervisory flexibility for individuals working toward independent behavioral health licensure. In my experience, membership in a particular profession is seldom the best predictor of clinical prowess, including supervisory skill.

Instead, either specific training outside one's degree program or other determinants of clinical skill are often more salient than the specific degree one has. While certain different emphases exist between professions, the move nowadays is toward integrative, multidisciplinary approaches that emphasize teamwork and deemphasize specific approaches once more inherent to different fields.

I recognize that certain professions see themselves as belonging to a guild, but I feel this is an antiquated approach. If a clinical supervisor is highly skilled, that person—regardless of specific profession—is likely to be of great benefit to the professional development of the supervisee. I see skill-building as the goal, not alliance to a specific profession, and see expansion of supervision options toward independent licensing as a positive move.

Thank you for considering this option. I look forward to hearing your decision.

Sincerely,

Grover Glenn, MA, LPC, LIS [REDACTED]  
[REDACTED]



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BEHAVIORAL HEALTH - Rules Feedback &lt;rulesfeedback@azbbhe.us&gt;

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## Proposed Rule Changes

1 message

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**Stephanie Neidermyer** <[REDACTED]>  
To: rulesfeedback@azbbhe.us

Tue, Jun 30, 2020 at 2:49 PM

I am writing to oppose changing R4-6-604 from 75 to 50 hours of supervision by a Licensed Marriage & Family Therapist. Because the education, degree, and subsequent licensure for a Marriage & Family Therapist has a specific focus on systemic therapy, a candidate working towards LMFT would be best served by supervision provided by a LMFT qualified to provide supervision. If supervised by a non-LMFT, a candidate's growth and development as a systemic therapist may be negatively impacted in maintaining the education, training and program and licensure emphasis that MFTs acquire.

Thank you for your consideration in this matter.

Sincerely,  
Stephanie Neidermyer, LMFT  
AAMFT Approved Supervisor  
Clinical Director  
Tucson Lasting Connections

Rule #	Description	Feedback from	Representing or Employed by	Comments
<b>ARTICLE 1. DEFINITIONS</b>				
<b>R4-6-101</b>	Definitions	NONE		
32		NONE		
48		NONE		
<b>ARTICLE 2. GENERAL PROVISIONS</b>				
<b>R4-6-211</b>	Direct Supervision; Supervised Work Experience; General	NONE		
(C)		NONE		
<b>R4-6-212</b>	Clinical Supervision Requirements	NONE		
(C)(4)	Contemporaneously written	Casey Heinsch	AZ Interest Network of AAMFT	Concern about the interpretation of "a detailed description" could be subjective. Prefers topics/themes/demonstrated skills
<b>R4-6-212.01</b>	Clinical Supervision Exemptions	NONE		
<b>R4-6-214</b>	Clinical Supervisor Educational Requirements	NONE		
<b>R4-6-215</b>	Fees and Charges	Dania Demauro	LCSW	Strongly encourages the Board to permanently remove the issuance fees to decrease licensure costs.
<b>R4-6-216</b>	Foreign Equivalency Determination	NONE		
<b>ARTICLE 3. LICENSURE</b>				
<b>R4-6-304</b>	Application for a License by Endorsement	NONE		
<b>ARTICLE 4. SOCIAL WORK</b>				
<b>R4-6-402</b>	Examination	NONE		

Rule #	Description	Feedback from	Representing or Employed by	Comments
<b>ARTICLE 5. COUNSELING</b>				
<b>R4-6-501</b>	Curriculum	NONE		
<b>R4-6-502</b>	Examination	NONE		
<b>R4-6-504</b>	Clinical Supervision for LPC	Kathy Busby	Council for Human Service Providers	Strong supporters of the increased flexibility for supervisors to assist with the workforce shortage.
		Candy Espino	Council for Human Service Providers	Lack of access to the right "type" of supervisor through employers forces individuals to seek out and pay for supervision which is only an option for those who can afford it. Those who can't are unable to use their time which impacts their ability to become independently licensed, further impacting the workforce. Additionally members have pointed out the value of interdisciplinary supervision from multiple theoretical and treatment approaches. With the move to integrated healthcare, interdisciplinary supervision provides broad exposure and a more robust learning experience. We highly support the proposed rules related to increased flexibility in clinical supervision.
		Anne Ordway	President-elect for AzCA	Says that increasing access to additional supervisors in the rural areas was supported by their membership. For some of the members that had some opposition, the feedback was that the training by the same discipline was key. She also indicated that the proposed rulemaking was simply a return to how the rules were prior to 2015, so overall the AZ Counselor's Association was in favor.
		Rory Hays	Council for Human Service Providers	Commented that they understood some of the discomfort between disciplines regarding supervision outside the discipline, however there is only ONE statutory definition of psychotherapy and all clinical supervisors should be capable in providing supervision for psychotherapy.
		Aryn Sylvester	Counseling intern University of Phoenix	Feels that clients would prefer that their LAC has training from a LPC. Employers hiring an LPC would assume the LPC had training from an LPC during their years of supervised work experience, and LPCs without that are ill prepared for their job.
		Janet O'Connor	LPC, LISAC	The proposed rule change returns to a former situation prior to the 2015 rule requiring 50 hours from a LPC which came about with community support. She supports the continuation of 50% of the hours of clinical supervision being from a LPC. She indicates that the education and supervision is distinct from other disciplines. She would have less of an issue if it were an "across the board" change for all disciplines. She has not seen a vote through AzCA although she has heard they are in favor of it.
		Dana Rudner	LPC	Please do not change the rules of supervision for LPC licensure. The change would diminish the profession. The counselor has a specific body of knowledge and philosophy that is distinct from other professions.
		Cynthia Dowdall	LPC, NCC, PhD	We need to uphold our profession and supervise our own. Psychologists, Social Workers and Marriage and Family Therapists do not receive extensive training in Counseling theory and application as required in CACREP programs. To have other professionals be able to supervise counselors is continued oppression of our field.
		Tammy Brewer	LPC	The proposed changes diminish the profession. The education and supervision for a professional counselor is distinct as is the scope of practice. The proposal seems to indicate that social workers and marriage and family counselors are somehow "better" than someone who has earned a master's degree. I hope this rule will not change.
		Celeste McBirnie	LPC	Disagrees with the proposed rule change as it seems inappropriate. The change would make sense if the changes were across the board (including social workers and MFTs). The change greatly affects the LPCs who have provided supervision for many years by discrediting them and lowering their work flow.
		Caila Lipovsky	LAC	In support of the proposed changes. As a new LAC, she hit a roadblock where she missed a chance to work under a highly competent and experienced psychologist because of the 50 hour limit. Given the landscape she is in favor of reducing the hoops to jump through to serve clients. Although she is in favor, she wondered why the same adaptations were not made across the board.
		Linda Ouellette	LPC	Personally against the removal of the 50 hour requirement. Feels LPCs have different education, training and perspective from the other disciplines. And the fact that it is not being changed for the other disciplines leads her to believe that LPCs are seen as "less than" the others.

Rule #	Description	Feedback from	Representing or Employed by	Comments
		Alexis Grae	LPC, LISAC	It appears that more skill and talent are being given to Marriage and family therapists than and LPC. LPC's must have a broader base of training and experience, that actually includes marriage & Family. If a marriage and family counselor can provide supervision for an LAC, and an LPC CANNOT provide supervision to anyone but an LAC does not seem fair or or even appropriate given the broadness of expertise needed to who provide generalized therapy. in this community. It lessens the prestige and perception of a counselor. A marriage and family counselor is the expert for marriage and family counseling, a social worker is an expert for managed care, but an LPC has to be expert at everything. If someone wants counseling for something other than relationships, who will they want to do therapy with? Ar e counselor going to go the way of the general dentist who can now only clean your teeth and do xrays? They can't pull a tooth or provide a decent cavity fill anymore. Ot the general physician who used to see a patient from cradle to old age? It appears the way of the counselor as the one to help with emotional and psychological issues is on its way out. Why? This is a terrible change and should not occur at the proposed level. If Anyone can supervise an LAC, then an LPC should by rights, be allowed to supervise every other master's level profession.
		Delbert Carr	Masters student	Appreciates that the Board is considering allowing others to supervise. Once he is licensed as a LAC, there are no LPC supervisors in Apache County and it is a hardship for him to travel for supervision.
		Patricia Kerstner	PhD, NCC	The proposed rule change returns to a former situation prior to the 2015 rule requiring 50 hours from a LPC which came about with community support. She supports the continuation of 50% of the hours of clinical supervision being from a LPC. She indicates that the education and supervision is distinct from other disciplines. She would have less of an issue if it were an "across the board" change for all disciplines. She has not seen a vote through AzCA although she has heard they are in favor of it.
		Grover Glenn	LPC, LISAC	In support of the proposed flexibility for lower level individuals. "Membership in a particular profession is seldom the best predictor of clinical prowess, including supervisory skill." While certain different emphases exist, the move is toward integrative, multidisciplinary approaches. If a clinical supervisor is highly skilled, they are to be of great benefit to the professional development of the supervisee.
<b>ARTICLE 6. MARRIAGE FAMILY THERAPY</b>				
<b>R4-6-601</b>	Curriculum	NONE		
<b>R4-6-602</b>	Examination	NONE		
<b>R4-6-604</b>	Clinical Supervision for LMFT	Casey Heinsch	AZ Interest Network of AAMFT	In support of the recommended changes related to changing the decrease from 75 to 50 hours from an LMFT or other BHP with the AAMFT Approved Supervisor designation
		Kathy Busby	Council for Human Service Providers	Strong supporters of the increased flexibility for supervisors to assist with the workforce shortage.
		Stephanic Neidermyer	LMFT	Opposes changing from 75 to 50 hours by an LMFT. Because the education, degree and licensure have a specific focus on systemic therapy LAMFTs are best served by a LMFT.
		Candy Espino	Council for Human Service Providers	Lack of access to the right "type" of supervisor through employers forces individuals to seek out and pay for supervision which is only an option for those who can afford it. Those who can't are unable to use their time which impacts their ability to become independently licensed, further impacting the workforce. Additionally members have pointed out the value of interdisciplinary supervision from multiple theoretical and treatment approaches. With the move to integrated healthcare, interdisciplinary supervision provides broad exposure and a more robust learning experience. We highly support the proposed rules related to increased flexibility in clinical supervision.
<b>ARTICLE 7. SUBSTANCE ABUSE</b>				
<b>R4-6-701</b>	LSAT Curriculum	NONE		
<b>R4-6-704</b>	Examination	NONE		
<b>R4-6-706</b>	Clinical Supervision for Substance Abuse Counselor Licensure	Kathy Busby	Council for Human Service Providers	Strong supporters of the increased flexibility for supervisors to assist with the workforce shortage.

Rule #	Description	Feedback from	Representing or Employed by	Comments
		Candy Espino	Council for Human Service Providers	Lack of access to the right "type" of supervisor through employers forces individuals to seek out and pay for supervision which is only an option for those who can afford it. Those who can't are unable to use their time which impacts their ability to become independently licensed, further impacting the workforce. Additionally members have pointed out the value of interdisciplinary supervision from multiple theoretical and treatment approaches. With the move to integrated healthcare, interdisciplinary supervision provides broad exposure and a more robust learning experience. We highly support the proposed rules related to increased flexibility in clinical supervision.

Rule #	Description	Feedback from	Representing or Employed by	Comments
<b>ARTICLE 8. RENEWALS</b>				
<b>R4-6-802</b>	Continuing Education	NONE		
<b>ARTICLE 11. STANDARDS OF PRACTICE</b>				
<b>R4-6-1101</b>	Consent for Treatment	NONE		
<b>R4-6-1106</b>	Telepractice	Casey Heinsch	AZ Interest Network of AAMFT	Have concerns with client location for every progress note. Going through the emergency contact plan by location is burdensome. Agree that having it at the beginning of telehealth sessions is important. Have an emergency contact sheet, a crisis management plan and then a check mark to validate each session
		Nicholas Rudgear	Self	Agrees that emergency contact info should be on file and you could confirm each session. Could also add what happens with tech failure.
		Anne Ordway	AzcA President Elect	Approves in the addition of client's local emergency contacts in progress notes. Confirm that the person is in their usual location and if they are not, ask the follow up of what their emergency plan is for where they are.
		Keith Cross	Self	Feels that ownership should be on the client to provide updates to the emergency contacts and it should be an overall form not each progress note. Seems redundant to go through every session.
<b>GENERAL RULES COMMENTS</b>				
		Nicholas Rudgear	Self	Felt it was not equitable that all disciplines didn't have similar changes to the acceptable clinical supervisor rules



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DOUGLAS A. DUCEY  
Governor

TOBI ZAVALA  
Executive Director

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BOARD OF BEHAVIORAL HEALTH EXAMINERS  
TELECONFERENCE MEETING MINUTES  
September 11, 2020

Members Present: Chip Coffey

Members Present telephonically: Kimberly Bailey, Robert Charles (out at 3:47 p.m.), Mary Coonrod, Cedric Davis, Meaghan Kramer, Heidi Quinlan (out at 5:05 p.m.), Mark Shen, Gerald Szymanski, Antwan Trotter

Staff Present: Tobi Zavala, Executive Director; Mona Baskin, A.A.G.; Donna Dalton, Deputy Director; Ian Hirmand, Assistant Director

**1. Call to Order**

A telephonic meeting of the Arizona Board of Behavioral Health Examiners was called to order on September 11, 2020 at 9:06 a.m. with Mr. Coffey presiding.

**2. Roll Call**

See above.

**3. Minutes: review, consideration and action**

*A. July 10, 2020, telephonic general meeting minutes*

Dr. Davis moved, seconded by Ms. Coonrod, to approve the telephonic general meeting minutes for the July 10, 2020 meeting as submitted. The motion passed unanimously. Ms. Bailey and Mr. Szymanski abstained.

**4. Consent Agenda: review, consideration and action**

A. Cases recommended for dismissal

1. 2020-0038, Michele Edmiston, LMSW-13468
2. 2020-0045, Shoshana Elkins, LCSW-12449
3. 2019-0126, Uvoltta Francis, LAC-16940
4. 2020-0073, Vonecia Hill, LAC-16357
5. 2020-0052, Crystal Kapuscinski, LAC-17099
6. 2020-0039, Jean-Paul Kingsley, LCSW-2545
7. 2020-0065, Kristen Pulver, LASAC-15217
8. 2020-0040, Andrea Santillan, LMSW-14125
9. 2020-0035, Lori Martinez, LPC-2395, LISAC-1650

Following discussion, Dr. Davis moved, seconded by Ms. Coonrod, to approve the consent agenda items 4(A)(1, 3-9). The motion passed unanimously.

Following further discussion, Dr. Davis moved, seconded by Ms. Coonrod, to rescind the motion to approve consent agenda items 4(A)(4).

Following further discussion, Mr. Trotter moved, seconded by Dr. Davis, to rescind the motion to approve consent agenda items 4(A)(5).

## **12. Report from the Treasurer**

### *A. Review, consideration, and possible action regarding June/July financial report*

Following review and discussion by members, Dr. Davis moved, seconded by Ms. Coonrod, to accept the June/July financial report as presented. The motion passed unanimously.

## **13. Report from the Executive Director and/or staff**

### *A. General Agency Operations*

No report.

### *B. Discussion regarding 2021 calendar*

Ms. Zavala shared with the members the Board meeting calendar for 2021.

### *C. Review, consideration, and possible action regarding the definition of direct client contact pursuant to A.R.S. § 32-3251(3)*

Board members revisited the discussion started at the June 10, 2020 Board meeting regarding a review of the interpretation of “in the presence of a client” pursuant to A.R.S. § 32-3251(3). Since its inception, the Board has interpreted “in the presence of a client” to mean the client and clinician are physically in the same location.

Ms. Zavala is requesting that the members reconsider this interpretation to include telehealth sessions as long as the client can be seen. Ms. Zavala shared that the Board has received a number of letters supporting this interpretation, which were uploaded to the member portal.

Following review and discussion, the members deferred the vote for a later date. The Board further indicated that during the pandemic, licensees may still count hours obtained via telehealth as direct client contact including videoconference and telephonic sessions.

### *D. Discussion regarding the FY22 Budget*

Ms. Zavala shared with members that the FY22 budget was uploaded to the member portal for their review and she was available to answer any questions. The members had no questions.

### *E. Review, consideration and possible action regarding adopting final draft of proposed rulemaking*

Ms. Dalton presented the feedback received from the public regarding the proposed rulemaking.

Following review and discussion by members, Mr. Szymanski moved, seconded by Ms. Kramer, to approve the final draft of proposed rulemaking, with modifications requested by members. The motion carried with Mr. Coffey opposed.

### *F. Review, consideration, and possible action regarding Ms. Zavala’s nomination of Director at Large, Member Board Administrator position for the Association of Social Work Boards*

Following review and discussion by members, Ms. Kramer moved, seconded by Ms. Bailey, to allow Ms. Zavala to accept the nomination of Director at Large, Member Board Administrator position for ASWB. The motion passed unanimously.

## **14. Request for extension of inactive status: review, consideration and action**

### *A. Tyrone Weckerly, LAC-12322 (inactive)*

Following review and discussion by members, Dr. Davis moved, seconded by Mr. Trotter, to deny the request for extension of inactive status. The motion passed unanimously.

## **15. Future agenda items**

N/A

## **16. Call for public comment**

Brandie Reiner, Executive Director for the National Association of Social Workers – Arizona chapter, addressed the Board regarding clinical supervision for social work licensure.

Tamara Brazil Christian, LMSW addressed the Board regarding accepting telephonic treatment and telehealth as direct client contact during and after the pandemic.

Juliette Beeman, LCSW addressed the Board regarding the definition of direct client contact.

**17. Establishment of future meeting date(s)**

*The next regular meeting is scheduled for Friday, October 9, 2020, at 9:00 a.m., at 1740 W. Adams St., Board Room C.*

**18. Adjournment**

Mr. Trotter moved, seconded by Dr. Davis, to adjourn. The motion passed unanimously and the meeting was adjourned at 5:09 p.m.

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Cedric Davis  
Secretary/Treasurer

---

Date

# Arizona Administrative CODE

4 A.A.C. 6 Supp. 18-4

www.azsos.gov

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of October 1, 2018 through December 31, 2018

## Title 4



### TITLE 4. PROFESSIONS AND OCCUPATIONS

#### CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

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="#">R4-6-101.</a>	<a href="#">Definitions .....</a>	<a href="#">3</a>	<a href="#">R4-6-304.</a>	<a href="#">Application for a License by Endorsement .....</a>	<a href="#">11</a>
<a href="#">R4-6-211.</a>	<a href="#">Direct Supervision: Supervised Work Experience:</a>		<a href="#">R4-6-306.</a>	<a href="#">Application for a Temporary License .....</a>	<a href="#">12</a>
	<a href="#">General .....</a>	<a href="#">6</a>	<a href="#">R4-6-402.</a>	<a href="#">Examination .....</a>	<a href="#">14</a>
<a href="#">R4-6-212.</a>	<a href="#">Clinical Supervision Requirements .....</a>	<a href="#">7</a>	<a href="#">R4-6-502.</a>	<a href="#">Examination .....</a>	<a href="#">16</a>
<a href="#">R4-6-212.01.</a>	<a href="#">Exemptions to the Clinical Supervision</a>		<a href="#">R4-6-602.</a>	<a href="#">Examination .....</a>	<a href="#">18</a>
	<a href="#">Requirements .....</a>	<a href="#">8</a>	<a href="#">R4-6-704.</a>	<a href="#">Examination .....</a>	<a href="#">21</a>
<a href="#">R4-6-215.</a>	<a href="#">Fees and Charges .....</a>	<a href="#">9</a>	<a href="#">R4-6-1101.</a>	<a href="#">Consent for Treatment .....</a>	<a href="#">25</a>
<a href="#">R4-6-301.</a>	<a href="#">Application for a License by Examination .....</a>	<a href="#">10</a>			

#### Questions about these rules? Contact:

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#### The release of this Chapter in Supp. 18-4 replaces Supp. 17-4, 26 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

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### 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 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS**

*Editor's Note: Former 4 A.A.C. 6 repealed; new 4 A.A.C. 6 made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004. Under Laws 2003, Ch. 65, the rules for the Board of Behavioral Health Examiners were repealed and replaced with new rules, and the Board was exempt from the Administrative Procedure Act for one year. The former rules and all Historical Notes are on file in the Office of the Secretary of State (Supp. 04-2).*

**ARTICLE 1. DEFINITIONS**

Section  
 R4-6-101. Definitions ..... 3

**ARTICLE 2. GENERAL PROVISIONS**

Section  
 R4-6-201. Board Meetings; Elections ..... 5  
 R4-6-202. Repealed ..... 5  
 R4-6-203. Academic Review Committee Meetings; Elections ..... 5  
 R4-6-204. Repealed ..... 5  
 R4-6-205. Change of Contact Information ..... 5  
 R4-6-206. Change of Name ..... 5  
 R4-6-207. Confidential Records ..... 5  
 R4-6-208. Conviction of a Felony or Prior Disciplinary Action ..... 6  
 R4-6-209. Deadline Extensions ..... 6  
 R4-6-210. Practice Limitations ..... 6  
 R4-6-211. Direct Supervision: Supervised Work Experience: General ..... 6  
 R4-6-212. Clinical Supervision Requirements ..... 7  
 R4-6-212.01. Exemptions to the Clinical Supervision Requirements ..... 8  
 R4-6-213. Registry of Clinical Supervisors ..... 8  
 R4-6-214. Clinical Supervisor Educational Requirements ... 9  
 R4-6-215. Fees and Charges ..... 9  
 R4-6-216. Foreign Equivalency Determination ..... 10

**ARTICLE 3. LICENSURE**

Section  
 R4-6-301. Application for a License by Examination ..... 10  
 R4-6-302. Licensing Time Frames ..... 10  
 Table 1. Time Frames (in Days) ..... 11  
 R4-6-303. Repealed ..... 11  
 R4-6-304. Application for a License by Endorsement ..... 11  
 R4-6-305. Inactive Status ..... 12  
 R4-6-306. Application for a Temporary License ..... 12  
 R4-6-307. Approval of an Educational Program ..... 13

**ARTICLE 4. SOCIAL WORK**

Section  
 R4-6-401. Curriculum ..... 14  
 R4-6-402. Examination ..... 14  
 R4-6-403. Supervised Work Experience for Clinical Social Worker Licensure ..... 15  
 R4-6-404. Clinical Supervision for Clinical Social Worker Licensure ..... 15  
 R4-6-405. Repealed ..... 15

**ARTICLE 5. COUNSELING**

Section  
 R4-6-501. Curriculum ..... 15

R4-6-502. Examination .....16  
 R4-6-503. Supervised Work Experience for Professional Counselor Licensure .....16  
 R4-6-504. Clinical Supervision for Professional Counselor Licensure .....17  
 R4-6-505. Post-degree Programs .....17

**ARTICLE 6. MARRIAGE AND FAMILY THERAPY**

Section  
 R4-6-601. Curriculum .....17  
 R4-6-602. Examination .....18  
 R4-6-603. Supervised Work Experience for Marriage and Family Therapy Licensure .....18  
 R4-6-604. Clinical Supervision for Marriage and Family Therapy Licensure .....18  
 R4-6-605. Post-degree Programs .....19  
 R4-6-606. Repealed .....19

**ARTICLE 7. SUBSTANCE ABUSE COUNSELING**

Section  
 R4-6-701. Licensed Substance Abuse Technician Curriculum .....19  
 R4-6-702. Licensed Associate Substance Abuse Counselor Curriculum .....20  
 R4-6-703. Licensed Independent Substance Abuse Counselor Curriculum .....20  
 R4-6-704. Examination .....21  
 R4-6-705. Supervised Work Experience for Substance Abuse Counselor Licensure .....21  
 R4-6-706. Clinical Supervision for Substance Abuse Counselor Licensure .....21  
 R4-6-707. Post-degree Programs .....22

**ARTICLE 8. LICENSE RENEWAL AND CONTINUING EDUCATION**

Section  
 R4-6-801. Renewal of Licensure .....22  
 R4-6-802. Continuing Education .....22  
 R4-6-803. Continuing Education Documentation .....23  
 R4-6-804. Repealed .....23

**ARTICLE 9. APPEAL OF LICENSURE OR LICENSURE RENEWAL INELIGIBILITY**

Section  
 R4-6-901. Appeal Process for Licensure Ineligibility .....23  
 R4-6-902. Appeal Process for Licensure Renewal Ineligibility .....24

**ARTICLE 10. DISCIPLINARY PROCESS**

Section  
 R4-6-1001. Disciplinary Process .....24  
 R4-6-1002. Review or Rehearing of a Board Decision .....25



## CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

## 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 non-verbal 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:

## CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

- 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).

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 14 A.A.R. 3895, effective September 16, 2008 (Supp. 08-3). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to

## CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4). Formatting error with “theories” not in italics in subsection 44 corrected at the request of the Board (Supp. 17-2). Amended by final rulemaking at 24 A.A.R. 3369, effective January 12, 2019 (Supp. 18-4).

**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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**R4-6-202. Repealed****Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Section repealed by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**R4-6-204. Repealed****Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Section

repealed by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

**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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**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.

## CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

- 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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Formatting error to subsection 7; corrected indent at the request of the Board (Supp. 17-2).

**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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Section repealed; new Section made by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**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;

## CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

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.
- Historical Note**
- New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4). Amended by final rulemaking at 24 A.A.R. 3369, effective January 12, 2019 (Supp. 18-4).
- 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.

## CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

- 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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4). Amended by final rulemaking at 24 A.A.R. 3369, effective January 12, 2019 (Supp. 18-4).

**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.

**Historical Note**

New Section made by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4). Amended by final rulemaking at 24 A.A.R. 3369, effective January 12, 2019 (Supp. 18-4).

**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 pro-

## CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

vide 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).

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 14 A.A.R. 3895, effective September 16, 2008 (Supp. 08-3). Section R4-6-213 renumbered to Section R4-6-215; new Section made final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**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 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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Section R4-6-214 renumbered to Section R4-6-216; new Section made final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

**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:

## CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

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.

**Historical Note**

New Section R4-6-215 renumbered from R4-6-213 and amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Section repealed; new Section made by final rulemaking at 23 A.A.R. 3347, with an immediate effective date of November 28, 2017 (Supp. 17-4). Amended by final rulemaking at 24 A.A.R. 3369, effective January 12, 2019 (Supp. 18-4).

**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.

**Historical Note**

New Section R4-6-216 renumbered from R4-6-214 and amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4). Amended by final rulemaking at 24 A.A.R. 3369, effective January 12, 2019 (Supp. 18-4).

**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 addi-

CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

tional 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

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 14 A.A.R. 2714, effective June 6, 2008 (Supp. 08-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**R4-6-303. Repealed**

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Section repealed by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

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;

**R4-6-304. Application for a License by Endorsement**

## CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by exempt rulemaking at 14 A.A.R. 2714, effective June 6, 2008 (Supp. 08-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4). Amended by final rulemaking at 24 A.A.R. 3369, effective January 12, 2019 (Supp. 18-4).

**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 educa-

tion 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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final rulemaking at 14 A.A.R. 4516, effective December 2, 2008 (Supp. 08-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**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:

## CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4). Amended by final rulemaking at 24 A.A.R. 3369, effective January 12, 2019 (Supp. 18-4).

**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, the 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 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

## CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

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.

**Historical Note**

New Section made by exempt rulemaking at 14 A.A.R. 2714, effective June 6, 2008 (Supp. 08-2). Section repealed; new Section by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4). Amended by final rulemaking at 24 A.A.R. 3369, effective

## CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

tive January 12, 2019 (Supp. 18-4).

**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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

**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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**R4-6-405. Repealed****Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Repealed by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**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;

## CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

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.
- Historical Note**
- New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).
- 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).
- Historical Note**
- New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4). Amended by final rulemaking at 24 A.A.R. 3369, effective January 12, 2019 (Supp. 18-4).
- 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;

## CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

**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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Section repealed; new Section by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**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

## CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

- 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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

**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).

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt emergency rulemaking at 21 A.A.R. 521, with Attorney General approval effective March 18, 2015 (Supp. 15-1). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4). Amended by final rulemaking at 24 A.A.R. 3369, effective January 12, 2019 (Supp. 18-4).

**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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

**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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by

## CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 1386, effective June 4, 2006 (Supp. 06-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**R4-6-606. Repealed****Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Repealed by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by exempt rulemaking at 14 A.A.R. 4532, effective January 1, 2009 (Supp. 08-4). Amended by final exempt rulemaking pursuant to Laws

## CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4). Clerical error correction made to subsection (B)(4); the Office inadvertently did not remove repealed text as filed at 22 A.A.R. 3238; correction made at the request of the Board (Supp. 17-2).

**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 appli-

cant's educational training using the standards in effect before the effective date of this Section.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

**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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking

## CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

**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).

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4). Amended by final rulemaking at 24 A.A.R. 3369, effective January 12, 2019 (Supp. 18-4).

**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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

**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.

## CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

- 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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Section repealed; new Section made by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**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

- a. 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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final rulemaking at 14 A.A.R. 4516, effective December 2, 2008 (Supp. 08-4). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**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

## CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

- 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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 22 A.A.R. 3238, effective November 1, 2016 (Supp. 16-4).

**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 spon-

- soring 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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**R4-6-804. Repealed****Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by exempt rulemaking at 11 A.A.R. 2713, effective June 27, 2005 (Supp. 05-2). Repealed by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**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

## CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**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;

## CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4). Amended by final rulemaking at 24 A.A.R. 3369, effective January 12, 2019 (Supp. 18-4).

**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;

## CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

- c. The date when the client's treatment plan will be reviewed;
  - d. If a discharge date has been determined, the after-care 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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**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 client's 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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**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 non-payment;
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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

**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

## CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

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.

**Historical Note**

New Section made by exempt rulemaking at 10 A.A.R. 2700, effective July 1, 2004 (Supp. 04-2). Amended by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1,

2015 (Supp. 15-4).

**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.

**Historical Note**

New Section made by final exempt rulemaking pursuant to Laws 2015, Chapter 154, § 10, at 21 A.A.R. 2630, effective November 1, 2015 (Supp. 15-4).

### 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.



### 32-3272. 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.

32-3279. 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.

32-3291. 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.

32-3301. 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.

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.

32-3321. Licensed substance abuse technician; licensed associate substance abuse counselor; licensed independent substance abuse counselor; 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 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.

32-4302. Out-of-state applicants; residents; military spouses; licensure; certification; exceptions

A. Notwithstanding any other law, an occupational or professional license or certificate shall be issued, in the discipline applied for and at the same practice level as determined by the regulating entity, pursuant to this title to a person who establishes residence in this state or without an examination to a person who is married to an active duty member of the armed forces of the United States and who is accompanying the member to an official permanent change of station to a military installation located in this state if all of the following apply:

1. The person is currently licensed or certified in at least one other state in the discipline applied for and at the same practice level as determined by the regulating entity and the license or certification is in good standing in all states in which the person holds a license or certification.
2. The person has been licensed or certified by another state for at least one year.
3. When the person was licensed or certified by another state there were minimum education requirements and, if applicable, work experience and clinical supervision requirements in effect and the other state verifies that the person met those requirements in order to be licensed or certified in that state.
4. The person previously passed an examination required for the license or certification if required by the other state.
5. The person has not had a license or certificate revoked and has not voluntarily surrendered a license or certificate in any other state or country while under investigation for unprofessional conduct.
6. The person has not had discipline imposed by any other regulating entity. If another jurisdiction has taken disciplinary action against the person, the regulating entity shall determine if the cause for the action was corrected and the matter resolved. If the matter has not been resolved by that jurisdiction, the regulating entity may not issue or deny a license until the matter is resolved.
7. The person does not have a complaint, allegation or investigation pending before another regulating entity in another state or country that relates to unprofessional conduct. If an applicant has any complaints, allegations or investigations pending, the regulating entity in this state shall suspend the application process and may not issue or deny a license to the applicant until the complaint, allegation or investigation is resolved.
8. The person pays all applicable fees.
9. The person does not have a disqualifying criminal history as determined by the regulating entity pursuant to section 41-1093.04.

B. This section does not prevent a regulating entity under this title from entering into a reciprocity agreement with another state or jurisdiction for persons married to active duty members of the armed forces of the United States, except that the agreement may not allow out-of-state licensees or certificate holders to obtain a license or certificate by reciprocity in this state if the applicant has not met standards that are substantially equivalent to or greater than the standards required in this state as determined by the regulating entity on a case-by-case basis.

C. Except as provided in subsection A of this section, a regulating entity that administers an examination on laws of this state as part of its license or certificate application requirement may require an applicant to take and pass an examination specific to the laws of this state.

D. A person who is licensed pursuant to this title is subject to the laws regulating the person's practice in this state and is subject to the regulating entity's jurisdiction.

E. This section does not apply to:

1. A license or registration certificate that is issued pursuant to chapter 24 or 26 of this title.
2. Requirements for a fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1.
3. Criteria for a license, permit or certificate of eligibility that is established by an interstate compact.
4. The ability of a regulating entity under this title to require an applicant to submit fingerprints in order to access state and federal criminal records information for noncriminal justice purposes.

F. A license or certificate issued pursuant to this section is valid only in this state and does not make the person eligible to be part of an interstate compact. A regulating entity under this title may determine eligibility for an applicant to be licensed or certified under this section if the applicant is not part of an interstate compact.

**D-7**

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

Title 18, Chapter 8, Department of Environmental Quality - Hazardous Waste Management

**Amend:** 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



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** November 3, 2020

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

**FROM:** Council Staff

**DATE:** October 9, 2020

**SUBJECT: DEPARTMENT OF ENVIRONMENTAL QUALITY**  
Title 18, Chapter 8, Department of Environmental Quality - Hazardous Waste Management

**Amend:** 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

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**Summary:**

This regular rulemaking from the Department of Environmental Quality (Department) seeks to amend twelve rules in Title 18, Chapter 8, Article 2 related to Hazardous Wastes. Specifically, the Department is proposing changes to the state's hazardous waste rules to incorporate certain changes in 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 Department states the amendments in this rulemaking seek to adopt changes to federal regulations that were in effect as of July 1, 2020 and update the general incorporation date in Arizona hazardous waste rules from July 1, 2018 to July 1, 2020. The Department also indicates technical corrections are also included. The Department has also incorporated EPA's 2008, 2015, and 2018 regulations relating to the definition of solid waste in this rulemaking.

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

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?**

The Department indicates this rulemaking does not establish a new fee or contain a fee increase.

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

The Department indicates it reviewed and proposes to rely on the following reports in its evaluation of the federal rules that it has incorporated by reference:

1. Update of the State of the Takata Airbag Recalls, January 23, 2020, available at [https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/update\\_on\\_the\\_state\\_of\\_the\\_takata\\_airbag\\_recalls-012320-tag.pdf](https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/update_on_the_state_of_the_takata_airbag_recalls-012320-tag.pdf)
2. The State of the Takata Airbag Recalls, November 15, 2017, available at [https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/the\\_state\\_of\\_the\\_takata\\_airbag\\_recalls-report\\_of\\_the\\_independent\\_monitor\\_112217\\_v3\\_tag.pdf](https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/the_state_of_the_takata_airbag_recalls-report_of_the_independent_monitor_112217_v3_tag.pdf)
3. Regulatory Impact Analysis: USEPA's 2008 Final Rule Amendments to the Industrial Recycling Exclusions of the RCRA Definition of Solid Waste, September 25, 2008, EPA-HQ-RCRA-2002-0031-0602, available at <https://www.regulations.gov/document?D=EPA-HQ-RCRA-2002-0031-0602>
4. Regulatory Impact Analysis: EPA's 2014 Revisions to the Industrial Recycling Exclusions of the RCRA Definition of Solid Waste, November 26, 2014, EPA-HQ-RCRA-2010-0742-0369, available at <https://www.regulations.gov/document?D=EPA-HQ-RCRA-2010-0742-0369>
5. Economic Assessment of the Safe Management of Recalled Airbags Interim Final Rule, October 2018, EPA-HQ-OLEM-2018-0646-0023, available at <https://www.regulations.gov/document?D=EPA-HQ-OLEM-2018-0646-0023>
6. Regulatory Impact Analysis of Proposed Rule to Add Aerosol Cans to the Universal Waste Rule, February 2018, EPA-HQ-OLEM-2017-0463-0002, available at <https://www.regulations.gov/document?D=EPA-HQ-OLEM-2017-0463-0002>
7. Regulatory Impact Analysis for EPA's Final Regulations for the Management of Hazardous Waste Pharmaceuticals, October 2018, EPA-HQ-RCRA-2007-0932-0412, available at <https://www.regulations.gov/document?D=EPA-HQ-RCRA-2007-0932-0412>

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

The Department estimates that the rulemaking will ensure consistency and the minimum environmental standards, while providing Arizona flexibility to implement the federal standards at the state and local level.

In 2015, the EPA estimated cost savings of \$28 million among the 100 to 150 manufacturing, waste treatment and disposal, remediation and other waste management services. The rulemaking will also provide cost savings to the following businesses in Arizona: 250-300 estimated car dealerships, up to 500 generators of hazardous waste, and over 1,000 medical facilities.

**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 rules authorize Arizona to perform many functions that would otherwise be done by the EPA. The Department had determined that taking on these responsibilities in lieu of the EPA results in cost saving benefits for Arizona businesses directly affected by the rules. The benefits outweigh the costs.

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

The stakeholders include: the Department, the EPA, the general public, car dealerships, waste management services, generators of hazardous waste, and medical facilities. The Department will benefit from rules that allow the Department to oversee regulatory objectives, rather than the EPA. While the Department will take on additional responsibilities, their involvement will allow for increased public safety and increased cost savings for the industries under their purview. Types of businesses that will experience cost savings from this rulemaking include: waste management services, car dealerships, generators of aerosol cans, and certain healthcare facilities.

The rules benefit waste management services by removing barriers to recycling certain materials, resulting in cost savings to the business.

Since the Department now handles airbag removal, car dealerships will experience cost savings by no longer handling airbag disposal themselves. The Department taking over this function will also result in increased public safety.

The rules reduce the burdens on generators of aerosol cans, allowing cans to be disposed of more efficiently. The rules also provide generators the flexibility to decide which treatment makes the most sense given the size of aerosol can, resulting in cost savings.

Healthcare facilities will benefit from the rules, since certain material will no longer be considered hazardous waste. Since this rulemaking no longer defines certain materials as hazardous, disposing of it will be more attainable for facilities, resulting in cost savings.

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

The Department indicates it made a technical change by adding the phrase, “modified by the following subsections” to R18-8-273(A). This change does not constitute a substantial difference pursuant to A.R.S. § 41-1025. The Department indicates no other changes were made between the proposed rules and the final rules.

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

The Department indicates it received several comments in support of this rule during informal rulemaking meetings from March to July, as well as questions about EPA’s preamble language and the identification of a typo. During the formal comment period after the rule was proposed, the Department indicates it received one comment which supported the rulemaking, but which also requested that the Department clarify and add language to the preamble to affirm the applicability of prior Department regulatory determinations. The Department agreed with the comment and added language to the last two sentences in the paragraph on pre-2008 determination in Part 6. The Department also added a paragraph to Part 6 to clarify documentation requirements.

Council staff believes the Department has adequately addressed the comments on the proposed rules.

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

This rulemaking would amend an existing rule that requires a regulatory permit. Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license or agency authorization, the agency shall use a general permit unless one of several exceptions applies. Here, the Department indicates that this rulemaking does not require a general permit for two reasons. First, a general permit is prohibited by federal law. *See* A.R.S. § 41-1037(A)(1). Specifically, the Department indicates general permits, as defined by A.R.S. § 41-1001, are not recognized under federal hazardous waste regulations with which the Department is required to be consistent. Second, a specific alternative permit is authorized by state statute under A.R.S. § 49-922(B)(5). *See* A.R.S. § 41-1037(A)(2). Therefore, the Department is in compliance with A.R.S. § 41-1037.

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

The Department indicates that these rules are not more stringent than corresponding federal laws, except where there is statutory authority. Specifically, the Department indicates that, since EPA’s first authorization of Arizona’s hazardous waste program in

1985, Arizona rules have been more stringent than EPA rules in the areas of reports and manifests. (*See* 50 FR at 47736, November 20, 1985.) The Department indicates that this was authorized under A.R.S. § 49-922(B), which states that the Department may not adopt a nonprocedural standard that is more stringent than EPA. However, the Department indicates both of these more stringent procedural requirements were removed in the previous hazardous waste rulemaking.

## **11. Conclusion**

This regular rulemaking from the Department seeks to amend twelve rules in Title 18, Chapter 8, Article 2 related to Hazardous Wastes. Specifically, the Department is proposing changes to the state's hazardous waste rules to incorporate certain changes in federal regulations. The Department states the amendments in this rulemaking seek to adopt changes to federal regulations that were in effect as of July 1, 2020 and update the general incorporation date in Arizona hazardous waste rules from July 1, 2018 to July 1, 2020. The Department also indicates technical corrections are also included. The Department has also incorporated EPA's 2008, 2015, and 2018 regulations relating to the definition of solid waste in this rulemaking.

The Department indicates in the proposed rule, the Department stated that it was considering requesting an immediate effective date pursuant to A.R.S. § 41-1032(A)(1) so that the airbag rule could become effective in Arizona as soon as possible. The Department indicates it also requested comment on whether an immediate effective date for the entire rulemaking might be burdensome for other sectors affected. The Department indicates it did not receive any comments that an immediate effective date would be burdensome. As such, the Department is requesting an immediate effective date due to the urgent public health issue posed by the recalled Takata airbag inflators that remain installed in Arizona vehicles, pursuant to A.R.S. § 41-1032(A)(1), "to preserve the public peace, health or safety." Council staff believes the Department has provided adequate justification for an immediate effective date.

Council staff recommends approval of this rulemaking.



Douglas A. Ducey  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



Misael Cabrera  
Director

September 21, 2020

Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
100 N. 15th Avenue  
Suite 402  
Phoenix, Arizona 85007

Re: 18 A.A.C. 8, ADEQ-Hazardous Waste Management

Dear Ms. Sornsin:

Enclosed is the final Arizona Department of Environmental Quality (ADEQ) rule package and I respectfully request that you place it on the Governor's Regulatory Review Council agenda for approval. Pursuant to A.A.C. R1-6-201, I provide the following information:

- The close of record date was September 4, 2020
- No part of this rulemaking is related to a five-year-review report
- The rule does not include any new or increased fees
- An immediate effective date is requested and information is included in the preamble showing that the rule qualifies under A.R.S. § 41-1032

I certify that the preamble contains a reference to any study relevant to the rules that ADEQ reviewed and either did or did not rely on in our evaluation and justification for the rule. No new full-time employees are necessary to implement and enforce the rule, and no competitiveness analysis was submitted. Electronic copies have been provided of the following:

- The Notice of Final Rulemaking
- The Economic, Small Business and Consumer Impact Statement
- Comments received (only 1)
- Material incorporated by reference
- The general and specific statutes authorizing the rule
- Definitions of terms used in the rulemaking that are contained in statutes or other rules
- The existing rule, for the subsections listed as "no change"

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*printed on recycled paper*

September 21, 2020

Page 2 of 2

As required by the Administrative Procedure Act, the Notice of Rulemaking Docket Opening and Notice of Proposed Rulemaking were filed with the Secretary of State, and published in the Arizona Administrative Register on February 21, 2020, and July 24, 2020, respectively.

Please do not hesitate to call me or Caitlin Caputo, Legal Analyst, at 602-771-4677, if you have any questions.

Sincerely,

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

Misael Cabrera, P.E.  
Director

Electronic Enclosures:

Notice of Final Rulemaking

Economic, small business and consumer impact statement Comments Received

Material incorporated by reference copy of definitions used in rules Authorizing statutes

Existing rules

**NOTICE OF FINAL RULEMAKING**  
**TITLE 18. ENVIRONMENTAL QUALITY**  
**CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**HAZARDOUS WASTE MANAGEMENT**

**PREAMBLE**

- | <b><u>1. Article, Part or Section Affected (as applicable)</u></b> | <b><u>Rulemaking Action</u></b> |
|--|---------------------------------|
| R18-8-260  | Amend                           |
| R18-8-261  | Amend                           |
| R18-8-262  | Amend                           |
| R18-8-263  | Amend                           |
| R18-8-264  | Amend                           |
| R18-8-265  | Amend                           |
| R18-8-266  | Amend                           |
| R18-8-268  | Amend                           |
| R18-8-270  | Amend                           |
| R18-8-271  | Amend                           |
| R18-8-273  | Amend                           |
| R18-8-280  | Amend                           |
- 2. Citations to the agency’s statutory rulemaking authority to include the authorizing statutes (general) and the implementing statutes (specific):**
- Authorizing Statutes:           A.R.S. §§ 41-1003 and 49-104
- Implementing Statute:           A.R.S. § 49-922
- 3. The effective date of the rules:** *Date filed with the Secretary of State* (Immediate effective date applies, see Part 6)
- 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 rules:**
- Notice of Rulemaking Docket Opening: 26 A.A.R. 318, February 21, 2020
- Notice of Proposed Rulemaking: 26 A.A.R. 1451, July 24, 2020
- 5. The agency’s contact person who can answer questions about the rulemaking:**
- Name:           Mark Lewandowski or Caitlin Caputo

Address: Arizona Department of Environmental Quality  
Waste Programs Division  
1110 W. Washington St.  
Phoenix, Arizona 85007

Mark's phone: (602) 771-2230

Caitlin's phone: (602) 771-4677

Fax: (602) 771-4272

E-mail: lewandowski.mark@azdeq.gov

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

Summary. The Arizona Department of Environmental Quality (ADEQ) has adopted changes to the state's hazardous waste (HW) rules to incorporate certain changes in 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 amendments in this final rule adopt changes to federal regulations that were in effect as of July 1, 2020 and update the general incorporation date in Arizona HW rules from July 1, 2018 to July 1, 2020. ADEQ-initiated technical corrections are also included. EPA's 2008, 2015, and 2018 regulations relating to the definition of solid waste are incorporated by this rulemaking.

Background. Congress passed RCRA in 1976 to establish a national "cradle to grave" regulatory system to control the generation, transportation, treatment, storage, and disposal of HW. Similar to other national environmental laws, states are encouraged to assume most of the responsibility for the program and become "authorized" to implement RCRA and its underlying regulations. This process ensures national consistency and minimum standards while providing flexibility to states to implement the national standards with state and local solutions.

The federal requirements for state HW program authorization are found in 40 CFR 271. Federal HW regulations change from year to year, so states with authorization such as Arizona have a continuing obligation to revise their programs to keep up with federal changes and remain authorized states. (See 40 CFR 271.21(e)(1).)

Arizona's HW rules are found in 18 A.A.C. 8, Article 2 and have been in effect since 1984. EPA first granted “final” authorization to Arizona in 1985 to operate its HW program in Arizona in lieu of the federal HW program, subject to the limitations imposed by HSWA. (See 50 FR 47736, November 20, 1985.) EPA last authorized revisions to Arizona’s HW program on December 21, 2017. (See 82 FR 60550.) Due to federal and Arizona requirements requiring equivalency with federal regulations, Arizona’s HW rules incorporate the federal HW regulations by reference and are mostly identical to the federal regulations. (See 42 U.S.C. 6926(b) and A.R.S. § 49-922(A)) ADEQ regularly compares Arizona’s HW rules to the federal regulations and amends the Arizona rules as necessary to comply with state statutes and to facilitate continued authorization. Without continued authorization, EPA, rather than ADEQ, would administer the HW program in Arizona. ADEQ’s primary objective with this rulemaking is to continue administering the federal HW program in Arizona in place of EPA. ADEQ believes that continued authorization is ensured by regular incorporation of the changes and additions to federal language into the Arizona rules.

Background to this Notice of Final Rulemaking. ADEQ’s rulemaking process contained a significant amount of stakeholder dialogue before a formal proposed rule was drafted. From March through July, 2020, ADEQ posted informational documents on its website and held both a virtual public stakeholder meeting and a workshop on a pre-proposal draft rule and the federal regulations. The events were well attended and answered many early stakeholder questions, especially regarding the handling of hazardous secondary materials under EPA’s Definition of Solid Waste rules. Only one comment was received after the proposed rule was published. It is discussed in Part 11.

Effective date of rule. In the proposed rule, ADEQ stated that it was considering requesting an immediate effective date pursuant to A.R.S. § 41-1032(A)(1) so that the airbag rule could become effective in Arizona as soon as possible. ADEQ also requested comment on whether an immediate effective date for the entire rulemaking might be burdensome for other sectors affected. ADEQ did not receive any comments that an immediate effective date would be burdensome. Due to the urgent public health issue posed by the recalled Takata airbag inflators that remain installed in Arizona vehicles, an immediate effective date was requested and approved. (See Part 7 of this preamble for further information.)

Subsections not amended listed as “No change”. In the proposed rule and in this final rule, ADEQ used the option in A.A.C. R1-1-502(B)(18)(f) and R1-1-602(B)(6) to list most rule text subsections not amended by this rulemaking as “No change”, rather than showing long sections of text that are not being changed. Occasionally, certain subsections of unchanged text are shown to provide context for nearby changes.

Incorporation date changed to July 1, 2020. As mentioned in the June 9, 2020 public meeting discussing a draft proposed rule, ADEQ changed the incorporation dates in the proposed rule to July 1, 2020. This will simplify the use of the printed versions of 40 CFR, which are effective as of July 1<sup>st</sup> of each year.

What EPA regulations has ADEQ incorporated into Arizona rules?

The following is a list of each EPA rule that altered federal HW regulations, effective as of July 1, 2020, that has been incorporated into Arizona rules.

- Revisions to the Definition of Solid Waste, 73 FR 64667, October 30, 2008.
- Definition of Solid Waste, 80 FR 1693, January 13, 2015.
- Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule, 83 FR 24664, May 30, 2018.
- Safe Management of Recalled Airbags, 83 FR 61552, November 30, 2018.
- Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine, 84 FR 5816, February 22, 2019.
- Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations, 84 FR 67202, December 9, 2019.
- Address Change for Waste Import-Export Submittals from the Office of Federal Activities to the Office of Resource Conservation and Recovery, 83 FR 38263, August 6, 2018.

Descriptions of EPA regulations incorporated by reference

- The Definition of Solid Waste Rules, 73 FR 64668, October 30, 2008; 80 FR 1694, January 13, 2015; and 83 FR 24664, May 30, 2018. These three rulemakings updated and provided certainty in the area of legitimate recycling of hazardous secondary materials. EPA

characterized the 2015 and 2018 rules as less stringent than previous federal rules for states not operating under the 2008 Definition of Solid Waste (DSW) rule, such as Arizona. The changes from these federal rules were only effective in Arizona after adopted as state rules. Together, the three federal rules amended 40 CFR 260, 261, and 270. ADEQ adopted the changes from these three rules so that the final incorporated language is identical to the July 1, 2020 versions of 40 CFR 260, 261, and 270, except where “Administrator” is changed to “Director”, etc.

- Safe Management of Recalled Airbags, 83 FR 61552, November 30, 2018. EPA issued this interim final rule in response to the urgent public health issue posed by recalled Takata airbag inflators currently installed in vehicles. With the rule, EPA facilitated a more expedited removal of defective Takata airbag inflators from vehicles by dealerships, salvage yards, and other locations, and allowed for safe, environmentally sound disposal by exempting the collection of airbag waste from HW requirements, provided certain conditions were met. EPA characterized this rule as less stringent than previous federal rules and did not require it to be adopted by states for authorization. ADEQ has adopted EPA’s airbags rule to address the urgent public health issue, and to avoid being more stringent than federal law. The changes from this federal rule were not effective in Arizona until adopted as state rules. The federal airbags rule amended 40 CFR 260, 261, and 262. ADEQ adopted this rule without change so that the final incorporated language would be identical to the July 1, 2020 versions of 40 CFR 260, 261, and 262, except where “Administrator” is changed to “Director”, etc.

- Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine, 84 FR 5816, February 22, 2019. This rule allowed healthcare facilities (for both humans and animals) and reverse distributors to manage their HW pharmaceuticals under a new set of sector-specific standards in lieu of the existing HW generator regulations. Additionally, EPA excluded certain U.S. Food and Drug Administration (FDA) approved over-the-counter (OTC) nicotine replacement therapies (NRTs) from regulation as HW, established a policy on the regulatory status of unsold retail items that are not pharmaceuticals and are managed via reverse logistics, prohibited the disposal of HW pharmaceuticals down the drain (“sewering”), and eliminated the dual regulation of RCRA HW pharmaceuticals that are Drug Enforcement Administration (DEA) controlled substances. EPA characterized this rule, “[t]aken as a whole,” to be more stringent than previous federal rules; the more stringent rules are

required to be adopted for authorization. ADEQ has adopted the more stringent parts of the pharmaceuticals rule for continued authorization and the less stringent parts so as not to be more stringent than federal law. Under this rule, no new facilities or substances are regulated within HW pharmaceuticals as compared to previous federal rules. Most of the changes from the pharmaceuticals rule were not effective in Arizona until adopted as state rules; however, the sewerage prohibition became effective on August 21, 2019. ADEQ has adopted the pharmaceuticals rule without change so that the final incorporated language is identical to the July 1, 2020 versions of 40 CFR 261, 262, 264, 265, 266, 268, 270, and 273, except where “EPA Regional Administrator” is changed to “Director”, etc.

- **Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations**, 84 FR 67202, December 9, 2019. In this rule, EPA added HW aerosol cans to the Universal Waste (UW) program and provided a clear, protective system for managing discarded aerosol cans. This change benefits a wide variety of establishments generating and managing HW aerosol cans, including the retail sector. The rule eases the regulatory burden on facilities that discard HW aerosol cans, promotes the collection and recycling of these cans, and encourages the development of municipal and commercial programs to reduce the quantity of these cans going to Municipal Solid Waste (MSW) landfills or incinerators. EPA characterized this rule as less stringent than previous federal rules and not required to be adopted for authorization. ADEQ has incorporated by reference EPA’s aerosol cans rule so as not to be more stringent than federal law. The changes in the aerosol cans rule were not effective in Arizona until adopted as state rules. ADEQ has adopted the federal aerosol cans rule without change so that the final incorporated language is identical to the July 1, 2020 versions of 40 CFR 260, 261, 264, 265, 268, 270, and 273.

- **Address Change for Waste Import-Export Submittals from the Office of Federal Activities to the Office of Resource Conservation and Recovery**, 83 FR 38263, August 6, 2018. This minor rule changed addresses for import and export purposes. ADEQ has adopted this rule without change as well.

#### What regulations are not being incorporated in this rule?

- **Standardized Permit Rule**, 70 FR 53419, September 8, 2005. In this rule, EPA finalized revisions to the RCRA HW permitting program to allow for a “standardized permit”. In past

HW rulemakings, ADEQ has discussed but not proposed to incorporate EPA’s Standardized Permit rule. No facilities have thus far indicated an interest in a standardized permit. ADEQ has decided to maintain this position and not burden the HW rules with an extra set of procedures for a class of permits no one is interested in.

Technical corrections.

In R18-8-262(G), ADEQ has corrected an error from the last rulemaking, which required written logs from Small Quantity Generators (SQGs) but omitted Large Quantity Generators (LQGs). The correction adds LQGs back. In addition, ADEQ added 40 CFR 260.40 to the list in R18-8-260(F) since it is a companion section to 260.41, and added the phrase “modified by the following subsections” to R18-8-273(A).

How does the incorporation of the Definition of Solid Waste rules affect pre-2008 solid waste exclusions, or other prior solid waste determinations or variances?

To be equivalent to EPA’s regulations, ADEQ follows EPA’s regulatory text as well as certain interpretations in its preamble. EPA states at 80 FR 1735, “[t]he final rule does not supersede any of the pre-2008 solid waste exclusions or other prior solid waste determinations or variances, including determinations made in letters of interpretation and inspection reports. If a hazardous secondary material has been determined not to be a solid waste for whatever reason, such a determination remains in effect, unless the authorized state decides to revisit the regulatory determination under their current authority. In addition, if a hazardous secondary material has been excluded from HW regulations—for example, under the Bevill exclusion in 40 CFR 261.4(b)(7)—the regulatory status of that material will not be affected by today’s rule.” ADEQ agrees with EPA’s preamble language and confirms that ADEQ’s incorporation of the three Definition of Solid Waste Rules will not supersede any (1) pre-2008 solid waste exclusions, (2) prior solid waste determinations, including determination made in letters of interpretations and inspection reports, or (3) prior solid waste variances. ADEQ invites anyone operating under such a pre-2008 solid waste exclusion, or prior determination or variance who is seeking additional certainty to contact ADEQ directly.

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

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

ADEQ reviewed and proposed to rely on the following reports in its evaluation of the federal rules that it has incorporated by reference:

1. Update of the State of the Takata Airbag Recalls, January 23, 2020, available at [https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/update\\_on\\_the\\_state\\_of\\_the\\_takata\\_airbag\\_recalls-012320-tag.pdf](https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/update_on_the_state_of_the_takata_airbag_recalls-012320-tag.pdf)
2. The State of the Takata Airbag Recalls, November 15, 2017, available at [https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/the\\_state\\_of\\_the\\_takata\\_airbag\\_recalls-report\\_of\\_the\\_independent\\_monitor\\_112217\\_v3\\_tag.pdf](https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/the_state_of_the_takata_airbag_recalls-report_of_the_independent_monitor_112217_v3_tag.pdf)
3. Regulatory Impact Analysis: USEPA’s 2008 Final Rule Amendments to the Industrial Recycling Exclusions of the RCRA Definition of Solid Waste, September 25, 2008, EPA-HQ-RCRA-2002-0031-0602, available at <https://www.regulations.gov/document?D=EPA-HQ-RCRA-2002-0031-0602>
4. Regulatory Impact Analysis: EPA’s 2014 Revisions to the Industrial Recycling Exclusions of the RCRA Definition of Solid Waste, November 26, 2014, EPA-HQ-RCRA-2010-0742-0369, available at <https://www.regulations.gov/document?D=EPA-HQ-RCRA-2010-0742-0369>
5. Economic Assessment of the Safe Management of Recalled Airbags Interim Final Rule, October 2018, EPA-HQ-OLEM-2018-0646-0023, available at <https://www.regulations.gov/document?D=EPA-HQ-OLEM-2018-0646-0023>
6. Regulatory Impact Analysis of Proposed Rule to Add Aerosol Cans to the Universal Waste Rule, February 2018, EPA-HQ-OLEM-2017-0463-0002, available at <https://www.regulations.gov/document?D=EPA-HQ-OLEM-2017-0463-0002>
7. Regulatory Impact Analysis for EPA’s Final Regulations for the Management of Hazardous Waste Pharmaceuticals, October 2018, EPA-HQ-RCRA-2007-0932-0412, available at <https://www.regulations.gov/document?D=EPA-HQ-RCRA-2007-0932-0412>

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

Not applicable

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

OVERVIEW:

Identification of the rulemaking: 18 A.A.C. 8, Article 2. (See Part 6 of this preamble.)

Program Description. Under A.R.S. § 49-922 and federal law, Arizona’s Hazardous Waste (HW) Program is responsible for ensuring that all regulated HW in Arizona is stored, transported, and disposed of safely and properly. The HW Program is largely a preventative program to keep HW from entering the environment. The program maintains an inventory of HW generators, transporters, and treatment, storage, and disposal (TSD) facilities in Arizona. It also provides permit modifications, renewals, closure plan reviews and approvals, and financial assurance reviews. Additionally, the program issues, manages, and maintains permits for TSD facilities. Generators, transporters, and TSD facilities are inspected periodically by the program. The ADEQ HW program also investigates complaints. Compliance and generator data is collected and stored by the HW program. The program tracks HW from generation to disposal, provides compliance assistance, pursues enforcement actions against significant violators, and oversees the remediation of contaminated sites. ADEQ is authorized by EPA to implement the federal HW program in Arizona in lieu of EPA. These activities are conducted according to a Memorandum of Agreement with EPA.

Among the almost 2,000 active facilities ADEQ’s HW Program regulates are metal platers, chemical manufacturers, laboratories, explosive and munitions manufacturers, pesticide manufacturers, HW TSD facilities, healthcare facilities, and military installations. There are currently 13 permitted TSD facilities, 348 LQGs, 616 SQGs, 859 Very Small Quantity Generators (VSQGs), and 132 HW transporters in Arizona. An unknown fraction of these are small businesses. ADEQ records indicate that volumes of HW in excess of 40,000 tons were generated in Arizona in 2017. Until June 30, 2018, ADEQ processed over 35,000 manifests tracking HW annually. ADEQ no longer processes these manifests as these manifests now go to EPA.

Cost/Benefit Analysis. In A.R.S. § 49-922(A), the legislature has given ADEQ twin directives regarding Arizona HW rules: 1) maintain program authorization by being consistent with and

equivalent to the federal rules, even when changes to the federal rules make them more stringent than the previous federal rules, and 2) Arizona HW rules should not conflict with or be more stringent than EPA rules in nonprocedural areas.

These directives express the standing conclusion of the legislature that the impacts of incorporating all federal rules required for continued authorization will be less than the impact of not incorporating them and thereby having EPA implement the HW Program in Arizona. Under federal law, the adoption by states of new, more stringent federal rules is required for state authorization, although states may opt not to adopt those that are less stringent. Nonetheless, the less stringent federal rules must be adopted under ADEQ's legislative mandate requiring that Arizona rules not be more stringent than corresponding federal rules. Thus, ADEQ incorporates almost all federal rules by reference. ADEQ provided a preliminary summary of the impacts of incorporating the federal rules in the proposed rule as an aid to regulated entities and others in understanding the proposed rule revisions. ADEQ requested input on the accuracy of that summary. No information on costs and impacts was provided to ADEQ by regulated entities. ADEQ has notified JLBC that it will not need to hire any new FTEs to implement this rule.

#### INCORPORATION BY REFERENCE:

Impact of individual EPA regulations incorporated by reference. There are six main federal regulations, spanning more than a decade, that were incorporated by this rule. For the purposes of determining economic impact, ADEQ considered the three rules related to the DSW as one rule because ADEQ incorporated only the changes that survived the three EPA rulemakings. The three DSW rules and each of the other rules affect different segments and activities of ADEQ's HW community.

#### DEFINITION OF SOLID WASTE RULES:

Impact of Incorporating the DSW Rules. There are numerous parts of these three EPA rules that will affect various industrial facilities differently. In Arizona, industrial facilities are currently operating under pre-2008 DSW exclusions. Therefore, the net impact for Arizona facilities of incorporating the EPA DSW rules is the difference in total cost between complying with the pre-2008 DSW exclusions and complying with the post 2018 DSW rules. Some basic data can be obtained from EPA's Regulatory Impact Analyses (RIAs) that accompanied the 2008 and

2015 EPA rules. However, ADEQ noted in the proposed rule that this data could be out of date and contained only national statistics. Due to these observations, ADEQ requested information from Arizona stakeholders on how these three incorporated rules may affect Arizona industries, facilities, and waste streams. The EPA estimate of the number of facilities affected nationally falls between 5,000 and 7,500. ADEQ assumed there is a proportional 1/50<sup>th</sup> share in Arizona, and estimated 100-150 affected facilities in Arizona. Based on the facility types in EPA's estimates, those facilities are most likely also distributed in Arizona among manufacturing, waste treatment and disposal, and remediation and other waste management services. In the RIA for the 2008 rule, EPA estimated a national annual net cost savings of \$95.3 million (without discounted present value computations). In the RIA for the 2015 rule, EPA estimated a net cost savings of \$28 million (with a 7% discount rate). ADEQ received several positive and no negative comments regarding the adoption of EPA's DSW rules.

EPA characterized three parts of their DSW rules as less stringent than previous federal rules: the revised generator controlled exclusion, the transfer based exclusion, and the remanufacturing exclusion. Other parts were characterized as more stringent, such as the revised definition of legitimacy and the prohibition of sham recycling, because they codify implicit requirements that previously existed only in guidance. Also more stringent are the additional recordkeeping requirement for speculative accumulation in 40 CFR 261.1(c)(8) and changes to the standards and criteria for variances from classification as a solid waste. ADEQ received no additional data from stakeholders so the cost-benefit analysis remains unchanged.

#### AIRBAGS RULE:

Impact of Incorporating the Airbags Rule. The national recalls of Takata airbag inflators are the largest and most complex in U.S. history. They are the result of enforcement actions originating with the U.S. Department of Transportation's National Highway Traffic Safety Administration (NHTSA) and are not managed by EPA. The EPA Airbags rule that ADEQ is incorporating addresses this urgent public health issue and allows a more expedited removal of defective airbag inflators from vehicles by dealerships, salvage yards, and other locations. This rule also affects the storage and disposal of the inflators after removal by providing for safe and environmentally sound disposal by exempting the collection of airbag waste from HW

requirements when certain conditions are met. The rule exempts “airbag handlers”, such as dealerships, from counting airbag inflators toward their RCRA generator status.

ADEQ believes the exemption from HW requirements will result in savings for all airbag handlers. The new rule allows the waste management companies who receive the airbags from the automotive facilities to more easily transport stockpiled airbags to final waste termination facilities for ultimate disposal. ADEQ anticipates that some of the resulting savings will be passed on to the generators of this waste, primarily Arizona’s 250-300 dealerships. ADEQ recognizes that reducing the regulatory burden on facilities that handle these airbags while maintaining minimal requirements will likely improve public safety. EPA’s Economic Assessment of this rule estimated national savings for the 2019-2023 period to be between \$7.55 million and \$56.9 million, accounting for variation in enforcement scenarios.

#### AEROSOL CANS RULE:

Impact of Incorporating the Aerosol Cans Rule. The EPA’s new rule adding HW aerosol cans to the Universal Waste (UW) rule aims to increase compliance and reduce the burden on generators of HW aerosol cans by allowing them to manage their aerosol can waste in a more efficient manner. The Household & Commercial Products Association (HCPA) stated to ADEQ in a June 9, 2020 letter, “The draft proposed rule incorporates flexibility for handlers of discarded waste aerosol cans and lessens the regulatory burden on the regulated community, allowing more aerosol cans that are properly discarded to be recycled. By incorporating the federal rule, ADEQ ensures that programs developed in Arizona can also be safely and universally implemented in other states so that waste handlers with multiple locations within the United States can have one consistent program to handle aerosol cans across multiple sites. For the reasons stated above, HCPA supports ADEQ’s draft proposed rule to incorporate EPA’s rule by reference.” The new rule would omit aerosol cans entirely from consideration for a facility’s RCRA generator status. This omission allows generators to be included in lower generator size categories and thereby reducing their expenses. Currently, generators do not have the option to treat aerosol cans as UW and so must treat them as HW. This new rule allows generators the flexibility to decide which treatment of aerosol cans makes the most financial sense for them. Due to the variation in generator category and volume—LQG, SQG, VSQG—generators could experience different levels of cost savings. For example, under this new rule, some generators

could decrease to the VSQG level, which could allow them to reduce HW fees and dispose of aerosol cans in MSW landfills, thereby further reducing costs. The greatest share of impacted facilities will fall into the Retail and Manufacturing sectors. There will be some small cost of rule familiarization, but this cost is necessary to provide larger generator cost savings. Overall, the benefits of incorporating this rule by reference in Arizona are numerous while the costs are marginal. The net cost savings across all generators nationally is anticipated to be \$3-3.5 million. To maximize this benefit, ADEQ is prepared to exercise enforcement discretion to allow generators to use the new rule prior to its effective date.

#### HAZARDOUS WASTE PHARMACEUTICALS RULE:

Impact of Incorporating the Hazardous Waste Pharmaceuticals Rule. The EPA's HW pharmaceuticals rule re-categorizes several HWs so that the requirements become less stringent and therefore more attainable for facilities. There are no new categories of HW and no new facilities regulated under this rule. Overall, the rule should decrease the burden on facilities across Arizona and lead to cost savings. The EPA estimates as many as 1,103 facilities in Arizona may be subject to the rule change. Utilizing the nationwide breakdown of facility types, those Arizona facilities would likely be made up of Physician's Offices (31%), Dentist's Offices (18%), Supermarkets and Grocery Stores (9%), Pharmacies and Drug Stores (6%), Outpatient Care Centers (5%), Nursing Care Facilities (2%), and Hospitals (1%), among other facilities affected by this rule. Using the EPA estimates, the impacts of the new rule could lead to an incremental annualized cost savings across Arizona facilities of \$171,000 due to simpler training and \$100,000 due to the Nicotine exemption, if ADEQ assumes a proportional 1/50<sup>th</sup> share. Additionally, the new rule saves facilities money by imposing fewer requirements for labeling, record keeping, and manifesting and tracking. The new rule also decreases biennial reporting, further reducing expenditures. EPA found that certain increased costs will be offset by other cost savings. For example, the sewerage prohibition will necessitate more time spent on new paperwork for HW that has historically been sewerage by the facility, but excluding HW pharmaceuticals from generator categories under RCRA will decrease time spent on labeling and completion of Biennial Reports. EPA heard from stakeholders that controlled substances that qualify as HW under both EPA and DEA regulatory systems are expensive and difficult to manage, which results in these substances being sewerage to avoid the cost of conforming to both

EPA and DEA requirements. The rule would remove the burden of dual competing regulation by harmonizing DEA and RCRA regulations for such substances. In addition, this rule is not anticipated to impact small businesses significantly. The EPA's Small Business Analysis found that each facility's annual costs incremental to baseline fall far below 1% of the average of annual revenues. It should be noted that EPA's definition of a small business is different than Arizona's and includes larger businesses. EPA estimated that this rule will result in a positive net impact on businesses of all sizes. ADEQ requested information on the economic impacts for facilities subject to the new pharmaceuticals rule but received no feedback from stakeholders.

#### TECHNICAL CHANGES:

Impact of Technical Changes. In R18-8-262(G), ADEQ added LQGs to the requirement to keep a log of required periodic inspections of storage areas. In the last rulemaking, ADEQ mistakenly required this log only for SQGs. ADEQ is aware that some LQGs have recognized this omission and are already keeping logs for these inspections to facilitate compliance visits by ADEQ. For those that will begin or resume keeping these logs, this change will have minimal impact.

#### IMPACTS ON AGENCIES & SMALL BUSINESSES:

Reduction in Revenues to State Agencies. This rulemaking will have no quantifiable effect on state general fund revenues or on agencies other than ADEQ. No new fees are established and no existing fees are increased or reduced. Certain changes in what counts as HW and changes in generator status resulting from these rules could result in a reduction in revenue to ADEQ funds under A.R.S. §§ 49-929 and 49-931. ADEQ's preliminary estimate is that the combined effect of the Aerosol Cans and HW Pharmaceuticals Rules in Arizona would be a reduction of generators by 39%, a reduction of 279.04 tons of HW, and a reduction of 3.17 tons of acutely toxic waste.

Reduction of Impact on Small Businesses. A.R.S. § 41-1035 requires state agencies to reduce the impact of a rulemaking on small businesses, if legal and feasible in meeting the statutory objectives of the rule. As discussed previously, ADEQ's rules must be as stringent as EPA's for ADEQ to be authorized to implement the HW program in Arizona. Under A.R.S. § 49-922(A), ADEQ may be more stringent than EPA in procedural areas. After the elimination of the annual report in the last rulemaking, ADEQ is not aware of any further procedural requirements where Arizona HW rules are more stringent than EPA that could be relaxed for small businesses. For

similar reasons, the Department has determined there are no less intrusive or less costly methods of achieving the purposes of the rule.

**9. The agency’s contact person who can answer questions about the economic, small business and consumer impact statement:**

Name: Mark Lewandowski or Caitlin Caputo  
Address: Arizona Department of Environmental Quality  
Waste Programs Division  
1110 W. Washington St.  
Phoenix, Arizona 85007  
Phone for Mark: (602) 771-2230  
Phone for Caitlin: (602) 771-4677  
Fax: (602) 771-4272  
E-mail: lewandowski.mark@azdeq.gov

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

ADEQ made a technical change by adding the phrase, “modified by the following subsections” to R18-8-273(A). No other changes were made to the rule.

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

ADEQ received several comments in support of this rule during informal rulemaking meetings from March to July, as well as questions about EPA’s preamble language and the identification of a typo. During the formal comment period after the rule was proposed, ADEQ received one comment which supported the rulemaking, but which also requested that ADEQ clarify and add language to the preamble to affirm the applicability of prior ADEQ regulatory determinations. ADEQ agreed with the comment and has added language to the last two sentences in the

paragraph on pre-2008 determination in Part 6. ADEQ also added a paragraph to Part 6 to clarify documentation requirements.

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

**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:**

See A.R.S. § 41-1037(A)(1) and (2). This rulemaking would amend an existing rule that requires a regulatory permit. This rulemaking does not require a general permit 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 by A.R.S. § 41-1001 are not recognized under federal HW regulations with which ADEQ is required to be consistent.

However, it should be noted that ADEQ has already adopted a federal general permit rule that is similar to Arizona general permits. 40 CFR 270.60, "Permits by Rule", applies to three types of facilities: 1) ocean disposal barges or vessels, 2) injection wells, and 3) publicly owned treatment works. Under the federal rule, these three types of facilities are "deemed to have a RCRA permit if the conditions listed are met". Only the third category exists in Arizona and DEQ has incorporated the federal general permit rule for publicly owned treatment works in R18-2-270(A). It is important to note that the HW standardized permit, which is not incorporated in this rule, is not a general permit as defined by A.R.S. § 41-1001 since each standardized permit applies to just one facility.

**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:**

These rules are not more stringent than corresponding federal laws, except where there is statutory authority. Since EPA's first authorization of Arizona's HW program in 1985, Arizona rules have been more stringent than EPA rules in the areas of reports and manifests. (See 50 FR at 47736, November 20, 1985.) This was authorized under A.R.S. § 49-922(B), which states that

ADEQ may not adopt a nonprocedural standard that is more stringent than EPA. Both of these more stringent procedural requirements were removed in the previous HW rulemaking.

**c. Whether a person submitted an analysis to the agency regarding the rule’s impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states:**

No person has submitted a competitiveness analysis under A.R.S. § 41-1055(I).

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

<u>Incorporated Federal Citation</u>	<u>Location</u>
40 CFR 260	R18-8-260(C)
40 CFR 261	R18-8-261(A)
40 CFR 262	R18-8-262(A)
40 CFR 263	R18-8-263(A)
40 CFR 264	R18-8-264(A)
40 CFR 265	R18-8-265(A)
40 CFR 266	R18-8-266(A)
40 CFR 268	R18-8-268
40 CFR 270	R18-8-270(A)
40 CFR 124	R18-8-271(A)
40 CFR 273	R18-8-273(A)

**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 18. ENVIRONMENTAL QUALITY  
CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS  
WASTE MANAGEMENT**

**ARTICLE 2. HAZARDOUS WASTES**

Section

- R18 8 260. Hazardous Waste Management System: General
- R18-8-261. Identification and Listing of Hazardous Waste
- R18-8-262. Standards Applicable to Generators of Hazardous Waste
- R18-8-263. Standards Applicable to Transporters of Hazardous Waste
- R18-8-264. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
- R18-8-265. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
- R18-8-266. Standards for the Management of Specific Hazardous Wastes and Specific Hazardous Waste Management Facilities
- R18-8-268. Land Disposal Restrictions
- R18-8-270. Hazardous Waste Permit Program
- R18-8-271. Procedures for Permit Administration
- R18-8-273. Standards for Universal Waste Management
- R18-8-280. Compliance

## ARTICLE 2. HAZARDOUS WASTES

### **R18-8-260. Hazardous Waste Management System: General**

- A.** All Federal regulations cited in this Article are those revised as of July 1, ~~2018~~ 2020 (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.** No change
- C.** All of 40 CFR 260, revised as of ~~July 1, 2018~~ July 1, 2020 (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; and
  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.** No change
1. No change
  2. No change
    - a. No change
      - i. No change
      - ii. No change
    - b. No change
      - i. No change
      - ii. No change
      - iii. No change
      - iv. No change
    - c. No change
      - i. No change
      - ii. No change
      - iii. No change
    - d. No change
      - i. No change
      - ii. No change
      - iii. No change
    - e. No change
      - i. No change
      - ii. No change
      - iii. No change
    - f. No change
      - i. No change
      - ii. No change
      - iii. No change

- iv. No change
  - v. No change
- 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. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
  - 6. No change
  - 7. [“Department of Transportation” or “DOT” means the U.S. Department of Transportation.]
  - 8. No change
  - 9. No change
  - 10. No change
  - 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. No change
    - b. No change
    - c. No change
    - d. No change
    - e. No change
    - f. No change
    - g. No change
    - h. No change
    - i. References in §§ ~~260.2(d)~~ 260.1(b); 260.2(d); 260.4(a)(4); 260.10 (definitions of “Administrator,” “EPA region,” “Federal agency,” “Person,” and “Regional Administrator”); 260.11(a); 260.34; 261, Appendix IX; 261.39(a)(5); 261.41; 261.4(a)(24), but in § 261.24(a)(24)(v)(B)(2), “EPA” means “DEQ”; 261.4(a)(25); 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 nondelegable 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. No change
- 13. No change
- 14. No change
- 15. No change
- 16. No change
- 17. No change
- 18. No change
- 19. No change
- 20. No change
- 21. No change
  - a. No change
  - b. No change
- 22. No change
- 23. No change
- 24. No change
- 25. No change
- 26. No change
- 27. No change
- 28. No change
- 29. No change
- 30. No change
- 31. No change
- 32. No change
- 32. No change

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. No change
2. “Administrator,” “Regional Administrator,” “EPA 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
  - 260.40
  - 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 nondelegable 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, and structures, other 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] or for managing hazardous secondary materials prior to reclamation. 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~~ purpose 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. No change
5. No change
6. No change
7. “United States” or “U.S.” means [Arizona except for the following:
  - a. No change
  - b. §§ 261.4(a)(23) and 261.4(a)(25).
  - bc. No change
  - ed. No change
  - e. § 262.14(a)(5).
  - df. No change
  - eg. No change
  - fh. No change

G. No change

H. No change

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,~~ and 260.34, the director shall accept the determination, if the director determines the action is consistent with the policies and purposes of the HWMA.

J. No change

K. No change

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~~ Registration 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.

**R18-8-261. Identification and Listing of Hazardous Waste**

- A. All of 40 CFR 261 and accompanying appendices, revised as of ~~July 1, 2018~~ July 1, 2020 (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. No change
  2. ~~The revisions to the solid waste definition as published at 73 FR 64668, 80 FR 1694, and 83 FR 24664~~ 40 CFR §§ 261.149, 261.400(a), 261.400(b), 261.410(e), 261.410(f), 261.411, and 261.420; 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~~ section 1004(5) of RCRA” or “~~Section~~ section 1004(5) of the Act” means A.R.S. § 49-921(5).
- C. No change
- D. No change
- E. No change
- F. No change
- G. No change
- H. No change
- I. No change
- J. Notwithstanding the definitions of “EPA” and “EPA Regional Administrator” in R18-8-260(E)(11) and (F)(2):
  1. In § 261.151(g), the third sentence is replaced by the following: “If the facilities covered by the mechanism are in more than one State, identical evidence of financial assurance must be submitted to and maintained with each state agency regulating hazardous waste or with the appropriate Regional Administrator if a facility is located in an unauthorized State.”
  2. § 261.151 is amended by adding at the end: “Whenever this section requires that the owner or operator of a reclamation or intermediate facility notify several Regional Administrators of their financial obligations, the notice shall be to both DEQ and all Regional Administrators of the United States Environmental Protection Agency of Regions that are affected by the owner or operator’s financial assurance mechanisms.”

**R18-8-262. Standards Applicable to Generators of Hazardous Waste**

- A. All of 40 CFR 262, revised as of ~~July 1, 2018~~ July 1, 2020 (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. No change
  1. No change
  2. No change
  3. No change

- C. No change
- D. No change
- E. No change
- F. No change
- G. Any generator who must comply with 40 CFR 262.16 or 262.17 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. No change
- I. No change
- J. No change
- K. No change
- L. No change
- M. No change

**R18-8-263. Standards Applicable to Transporters of Hazardous Waste**

- A. All of 40 CFR 263, revised as of July 1, ~~2018~~ 2020 (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. No change
- C. No change

**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~~ July 1, 2020 (and no future editions), with the exception of §§ 264.1(d) and (f), 264.149, 264.150, and 264.301(l), 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. No change
- D. No change:
  - 1. No change
  - 2. 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
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
  - 6. No change
- M. No change
- N. No change

**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~~ July 1, 2020 (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. No changes
- D. No change
  - 1. No change
  - 2. No change
- E. No change
- F. No change
- G. No change
- H. No change
- I. No change
  - 1. No change
- J. No change
- K. No change
  - 1. No change
  - 2. No change
  - 3. No change

**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~~ July 1, 2020 (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. No change

### **R18-8-268. Land Disposal Restrictions**

All of 40 CFR 268 and accompanying appendices, revised as of ~~July 1, 2018~~ July 1, 2020 (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>.

### **R18-8-270. Hazardous Waste Permit Program**

A. All of 40 CFR 270 and the accompanying appendices, revised as of ~~July 1, 2018~~ July 1, 2020 (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; and
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 270 are available at <https://www.eCFR.gov>. Copies 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, leachfield, or roadway.]~~
  - e. ~~At an existing facility accorded interim status under the provisions of § 270.70 (as incorporated by R18-8-270).~~
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 ~~(as incorporated by R18-8-260)~~; and
  - b. Injection well, ditch, alleyway, storm drain, leachfield, or roadway.]

- C. No change
- D. No change
- E. No change
- F. No change
- G. No change
  - 1. No change
  - 2. No change
    - a. No change
    - b. No change
    - c. No change
  - 3. No change
  - 4. No change
  - 5. No change
    - a. No change
    - b. No change
      - i. No change
      - ii. No change
      - iii. No change
    - c. No change
    - d. No change
  - 6. No change
    - a. No change
    - b. No change
      - i. No change
      - ii. No change
      - iii. No change
      - iv. No change
      - v. No change
      - vi. No change
      - vii. No change
      - viii. No change
      - ix. No change
    - c. No change
  - 7. No change
    - a. No change
    - b. No change
  - 8. No change
  - 9. No change
- H. No change
- I. No change
- 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. No change
- L. No change
- M. No change
- N. No change
- O. No change
- P. No change
- Q. No change
- R. No change
- S. No change
- T. No change
- U. No change

#### **R18-8-271. Procedures for Permit Administration**

A. All of 40 CFR 124, revised as of July 1, ~~2018~~ 2020 (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. 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
- M. No change
- N. No change
- O. No change
- P. No change
- Q. No change

- R. No change
- S. No change
- T. No change

**R18-8-273. Standards for Universal Waste Management**

- A. All of 40 CFR 273, revised as of ~~July 1, 2018~~ July 1, 2020 (and no future editions), is incorporated by reference, modified by the following subsections, and on file with the DEQ. Copies of 40 CFR 273 are available at <https://www.eCFR.gov>.
- B. No change
- C. No change

**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 hazardous wastes, including used oil that may be classified as hazardous waste pursuant to A.R.S. Title 49, Chapter 4, Article 7, and hazardous secondary materials, 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~~ such wastes are or have been generated, stored, treated, disposed, or transported from;
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
- B. No change
- C. No change
- D. No change
  - 1. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change

**ECONOMIC IMPACT STATEMENT**  
**TITLE 18. ENVIRONMENTAL QUALITY**  
**CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**HAZARDOUS WASTE MANAGEMENT**

Identification of the rulemaking: 18 A.A.C. 8, Article 2. (See Part 6 of the Notice of Final Rulemaking)

Program Description. Under A.R.S. § 49-922 and federal law, Arizona's Hazardous Waste (HW) Program is responsible for ensuring that all regulated HW in Arizona is stored, transported, and disposed of safely and properly. The HW Program is largely a preventative program to keep HW from entering the environment. The program maintains an inventory of HW generators, transporters, and treatment, storage, and disposal (TSD) facilities in Arizona. It also provides permit modifications, renewals, closure plan reviews and approvals, and financial assurance reviews. Additionally, the program issues, manages, and maintains permits for TSD facilities. Generators, transporters, and TSD facilities are inspected periodically by the program. The ADEQ HW program also investigates complaints. Compliance and generator data is collected and stored by the HW program. The program tracks HW from generation to disposal, provides compliance assistance, pursues enforcement actions against significant violators, and oversees the remediation of contaminated sites. ADEQ is authorized by EPA to implement the federal HW program in Arizona in lieu of EPA. These activities are conducted according to a Memorandum of Agreement with EPA.

Among the almost 2,000 active facilities ADEQ's HW Program regulates are metal platers, chemical manufacturers, laboratories, explosive and munitions manufacturers, pesticide manufacturers, HW TSD facilities, healthcare facilities, and military installations. There are currently 13 permitted TSD facilities, 348 LQGs, 616 SQGs, 859 Very Small Quantity Generators (VSQGs), and 132 HW transporters in Arizona. An unknown fraction of these are small businesses. ADEQ records indicate that volumes of HW in excess of 40,000 tons were generated in Arizona in 2017. Until June 30, 2018, ADEQ processed over 35,000 manifests tracking HW annually. ADEQ no longer processes these manifests as these manifests now go to EPA.

Cost/Benefit Analysis. In A.R.S. § 49-922(A), the legislature has given ADEQ twin directives regarding Arizona HW rules: 1) maintain program authorization by being consistent with and equivalent to the federal rules, even when changes to the federal rules make them more stringent than the previous federal rules, and 2) Arizona HW rules should not conflict with or be more stringent than EPA rules in nonprocedural areas.

These directives express the standing conclusion of the legislature that the impacts of incorporating all federal rules required for continued authorization will be less than the impact of not incorporating them and thereby having EPA implement the HW Program in Arizona. Under federal law, the adoption by states of new, more stringent federal rules is required for state authorization, although states may opt not to adopt those that are less stringent. Nonetheless, the less stringent federal rules must be adopted under ADEQ's legislative mandate requiring that Arizona rules not be more stringent than corresponding federal rules. Thus, ADEQ incorporates almost all federal rules by reference. ADEQ provided a preliminary summary of the impacts of incorporating the federal rules in the proposed rule as an aid to regulated entities and others in understanding the proposed rule revisions. ADEQ requested input on the accuracy of that summary. No information on costs and impacts was provided to ADEQ by regulated entities. ADEQ has notified JLBC that it will not need to hire any new FTEs to implement this rule.

#### INCORPORATION BY REFERENCE:

Impact of individual EPA regulations incorporated by reference. There are six main federal regulations, spanning more than a decade, that were incorporated by this rule. For the purposes of determining economic impact, ADEQ considered the three rules related to the DSW as one rule because ADEQ incorporated only the changes that survived the three EPA rulemakings. The three DSW rules and each of the other rules affect different segments and activities of ADEQ's HW community.

## DEFINITION OF SOLID WASTE RULES:

Impact of Incorporating the DSW Rules. There are numerous parts of these three EPA rules that will affect various industrial facilities differently. In Arizona, industrial facilities are currently operating under pre-2008 DSW exclusions. Therefore, the net impact for Arizona facilities of incorporating the EPA DSW rules is the difference in total cost between complying with the pre-2008 DSW exclusions and complying with the post 2018 DSW rules. Some basic data can be obtained from EPA's Regulatory Impact Analyses (RIAs) that accompanied the 2008 and 2015 EPA rules. However, ADEQ noted in the proposed rule that this data could be out of date and contained only national statistics. Due to these observations, ADEQ requested information from Arizona stakeholders on how these three incorporated rules may affect Arizona industries, facilities, and waste streams. The EPA estimate of the number of facilities affected nationally falls between 5,000 and 7,500. ADEQ assumed there is a proportional 1/50<sup>th</sup> share in Arizona, and estimated 100-150 affected facilities in Arizona. Based on the facility types in EPA's estimates, those facilities are most likely also distributed in Arizona among manufacturing, waste treatment and disposal, and remediation and other waste management services. In the RIA for the 2008 rule, EPA estimated a national annual net cost savings of \$95.3 million (without discounted present value computations). In the RIA for the 2015 rule, EPA estimated a net cost savings of \$28 million (with a 7% discount rate). ADEQ received several positive and no negative comments regarding the adoption of EPA's DSW rules.

EPA characterized three parts of their DSW rules as less stringent than previous federal rules: the revised generator controlled exclusion, the transfer based exclusion, and the remanufacturing exclusion. Other parts were characterized as more stringent, such as the revised definition of legitimacy and the prohibition of sham recycling, because they codify implicit requirements that previously existed only in guidance. Also more stringent are the additional recordkeeping requirement for speculative accumulation in 40 CFR 261.1(c)(8) and changes to the standards and criteria for variances from classification as a solid waste. ADEQ received no additional data from stakeholders so the cost-benefit analysis remains unchanged.

### AIRBAGS RULE:

Impact of Incorporating the Airbags Rule. The national recalls of Takata airbag inflators are the largest and most complex in U.S. history. They are the result of enforcement actions originating with the U.S. Department of Transportation's National Highway Traffic Safety Administration (NHTSA) and are not managed by EPA. The EPA Airbags rule that ADEQ is incorporating addresses this urgent public health issue and allows a more expedited removal of defective airbag inflators from vehicles by dealerships, salvage yards, and other locations. This rule also affects the storage and disposal of the inflators after removal by providing for safe and environmentally sound disposal by exempting the collection of airbag waste from HW requirements when certain conditions are met. The rule exempts "airbag handlers", such as dealerships, from counting airbag inflators toward their RCRA generator status.

ADEQ believes the exemption from HW requirements will result in savings for all airbag handlers. The new rule allows the waste management companies who receive the airbags from the automotive facilities to more easily transport stockpiled airbags to final waste termination facilities for ultimate disposal. ADEQ anticipates that some of the resulting savings will be passed on to the generators of this waste, primarily Arizona's 250-300 dealerships. ADEQ recognizes that reducing the regulatory burden on facilities that handle these airbags while maintaining minimal requirements will likely improve public safety. EPA's Economic Assessment of this rule estimated national savings for the 2019-2023 period to be between \$7.55 million and \$56.9 million, accounting for variation in enforcement scenarios.

### AEROSOL CANS RULE:

Impact of Incorporating the Aerosol Cans Rule. The EPA's new rule adding HW aerosol cans to the Universal Waste (UW) rule aims to increase compliance and reduce the burden on generators of HW aerosol cans by allowing them to manage their aerosol can waste in a more efficient manner. The Household & Commercial Products Association (HCPA) stated to ADEQ in a June 9, 2020 letter, "The draft proposed rule incorporates flexibility for handlers of discarded waste aerosol cans and lessens the regulatory burden on the regulated community, allowing more aerosol cans that are properly discarded to be recycled. By

incorporating the federal rule, ADEQ ensures that programs developed in Arizona can also be safely and universally implemented in other states so that waste handlers with multiple locations within the United States can have one consistent program to handle aerosol cans across multiple sites. For the reasons stated above, HCPA supports ADEQ's draft proposed rule to incorporate EPA's rule by reference." The new rule would omit aerosol cans entirely from consideration for a facility's RCRA generator status. This omission allows generators to be included in lower generator size categories and thereby reducing their expenses.

Currently, generators do not have the option to treat aerosol cans as UW and so must treat them as HW. This new rule allows generators the flexibility to decide which treatment of aerosol cans makes the most financial sense for them. Due to the variation in generator category and volume—LQG, SQG, VSQG—generators could experience different levels of cost savings. For example, under this new rule, some generators could decrease to the VSQG level, which could allow them to reduce HW fees and dispose of aerosol cans in MSW landfills, thereby further reducing costs. The greatest share of impacted facilities will fall into the Retail and Manufacturing sectors. There will be some small cost of rule familiarization, but this cost is necessary to provide larger generator cost savings. Overall, the benefits of incorporating this rule by reference in Arizona are numerous while the costs are marginal. The net cost savings across all generators nationally is anticipated to be \$3-3.5 million. To maximize this benefit, ADEQ is prepared to exercise enforcement discretion to allow generators to use the new rule prior to its effective date.

#### HAZARDOUS WASTE PHARMACEUTICALS RULE:

Impact of Incorporating the Hazardous Waste Pharmaceuticals Rule. The EPA's HW pharmaceuticals rule re-categorizes several HWs so that the requirements become less stringent and therefore more attainable for facilities. There are no new categories of HW and no new facilities regulated under this rule. Overall, the rule should decrease the burden on facilities across Arizona and lead to cost savings. The EPA estimates as many as 1,103 facilities in Arizona may be subject to the rule change. Utilizing the nationwide breakdown of facility types, those Arizona facilities would likely be made up of Physician's Offices (31%), Dentist's Offices (18%), Supermarkets and Grocery Stores (9%), Pharmacies and

Drug Stores (6%), Outpatient Care Centers (5%), Nursing Care Facilities (2%), and Hospitals (1%), among other facilities affected by this rule. Using the EPA estimates, the impacts of the new rule could lead to an incremental annualized cost savings across Arizona facilities of \$171,000 due to simpler training and \$100,000 due to the Nicotine exemption, if ADEQ assumes a proportional 1/50<sup>th</sup> share. Additionally, the new rule saves facilities money by imposing fewer requirements for labeling, record keeping, and manifesting and tracking. The new rule also decreases biennial reporting, further reducing expenditures. EPA found that certain increased costs will be offset by other cost savings. For example, the sewerage prohibition will necessitate more time spent on new paperwork for HW that has historically been sewerage by the facility, but excluding HW pharmaceuticals from generator categories under RCRA will decrease time spent on labelling and completion of Biennial Reports. EPA heard from stakeholders that controlled substances that qualify as HW under both EPA and DEA regulatory systems are expensive and difficult to manage, which results in these substances being sewerage to avoid the cost of conforming to both EPA and DEA requirements. The rule would remove the burden of dual competing regulation by harmonizing DEA and RCRA regulations for such substances. In addition, this rule is not anticipated to impact small businesses significantly. The EPA's Small Business Analysis found that each facility's annual costs incremental to baseline fall far below 1% of the average of annual revenues. It should be noted that EPA's definition of a small business is different than Arizona's and includes larger businesses. EPA estimated that this rule will result in a positive net impact on businesses of all sizes. ADEQ requested information on the economic impacts for facilities subject to the new pharmaceuticals rule but received no feedback from stakeholders.

#### TECHNICAL CHANGES:

Impact of Technical Changes. In R18-8-262(G), ADEQ added LQGs to the requirement to keep a log of required periodic inspections of storage areas. In the last rulemaking, ADEQ mistakenly required this log only for SQGs. ADEQ is aware that some LQGs have recognized this omission and are already keeping logs for these inspections to facilitate compliance visits by ADEQ. For those that will begin or resume keeping these logs, this change will have minimal impact.

### IMPACTS ON AGENCIES & SMALL BUSINESSES:

Reduction in Revenues to State Agencies. This rulemaking will have no quantifiable effect on state general fund revenues or on agencies other than ADEQ. No new fees are established and no existing fees are increased or reduced. Certain changes in what counts as HW and changes in generator status resulting from these rules could result in a reduction in revenue to ADEQ funds under A.R.S. §§ 49-929 and 49-931. ADEQ's preliminary estimate is that the combined effect of the Aerosol Cans and HW Pharmaceuticals Rules in Arizona would be a reduction of generators by 39%, a reduction of 279.04 tons of HW, and a reduction of 3.17 tons of acutely toxic waste.

Reduction of Impact on Small Businesses. A.R.S. § 41-1035 requires state agencies to reduce the impact of a rulemaking on small businesses, if legal and feasible in meeting the statutory objectives of the rule. As discussed previously, ADEQ's rules must be as stringent as EPA's for ADEQ to be authorized to implement the HW program in Arizona. Under A.R.S. § 49-922(A), ADEQ may be more stringent than EPA in procedural areas. After the elimination of the annual report in the last rulemaking, ADEQ is not aware of any further procedural requirements where Arizona HW rules are more stringent than EPA that could be relaxed for small businesses. For similar reasons, the Department has determined there are no less intrusive or less costly methods of achieving the purposes of the rule.



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September 4, 2020

**VIA Electronic Mail**

Mr. Mark Lewandowski  
Ms. Caitlin Caputo  
Arizona Department of Environmental Quality  
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**RE: Freeport-McMoRan Inc. Comments on ADEQ “Hazardous Waste” Rulemaking**

Dear Mr. Lewandowski and Ms. Caputo:

Freeport-McMoRan Inc. (“Freeport”) submits these comments on the Arizona Department of Environmental Quality’s (“ADEQ”) Notice of Proposed Rulemaking (“Proposed Rule”) to amend Title 18, Chapter 8 of the Arizona Administrative Code by adopting certain U.S. Environmental Protection Agency (“EPA” or “Agency”) “hazardous waste” rules. ADEQ’s Proposed Rule was published in the *Arizona Administrative Register* on July 24, 2020.<sup>1</sup> Specifically, Freeport provides comments on the proposed adoption of three EPA rules relating to the “Definition of Solid Waste” (hereinafter, the “DSW Final Rules”).<sup>2</sup>

**Statement of Interest**

Freeport is the world’s second-largest producer of copper, a world leader in the production of molybdenum, and the largest producer of molybdenum-based chemicals and continuous cast copper rod.

The primary copper industry beneficially uses/reuses intermediate and residual materials generated within the industry to ensure the maximum recovery of any and all metals contained in

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<sup>1</sup> 26 Ariz. Admin. Reg. 1,451.

<sup>2</sup> 73 Fed. Reg. 64,668 (Oct. 30, 2008); 80 Fed. Reg. 1,694 (Jan. 13, 2015); 83 Fed. Reg. 24,664 (May 30, 2018).

such materials that are produced during the extraction, beneficiation, or processing of ores and minerals. Further, the industry is able to receive secondary materials generated in other industries to recover residual metals and/or to beneficially use/reuse as substitutes for virgin materials used in the production of copper cathode. The primary copper industry also generates materials that may be used by other primary metals industries to recover the metal values contained therein, such as silver, gold, selenium, and lead.

Freeport has a substantial interest in ADEQ's proposed incorporation of EPA's DSW Final Rules for a number of reasons:

- Due to the incremental nature of copper recovery, the industry generates a number of materials containing metals and other values (*e.g.*, copper, silver, gold, selenium, lead, silica, acid and water values) that are used/reused either within the primary copper industry, or by others in the primary metals mining and mineral processing industry.
- The primary metals industry has been at the center of the seminal cases interpreting the Agency's "hazardous waste" jurisdiction, particularly the point at which a material is considered "discarded" under the Resource Conservation and Recovery Act ("RCRA").
- For over a decade, the primary metals mining and mineral processing industry was the subject of heightened RCRA enforcement under an EPA "enforcement initiative" entitled "Reducing Pollution from Mineral Processing Operations."<sup>3</sup>
- Freeport was an active participant in EPA's DSW rulemakings, including submitting comments on the proposed rules,<sup>4</sup> challenging EPA's 2015 DSW Final Rule,<sup>5</sup> and intervening in support of EPA's 2018 DSW Final Rule.<sup>6</sup>
- Freeport supported ADEQ, through the Arizona Mining Association ("AMA"), in ADEQ's efforts to secure approval from the Office of the Governor to

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<sup>3</sup> Commencing with Fiscal Year 2017, EPA "returned" this enforcement initiative to its "base" enforcement program. See EPA Website re: "National Enforcement Initiative: Reducing Pollution from Mineral Processing Operations" (explaining that the MMPI will return to the base enforcement program level for "hazardous waste" beginning in fiscal year 2017), [https://19january2017snapshot.epa.gov/enforcement/national-enforcement-initiative-reducing-pollution-mineral-processing-operations\\_.html](https://19january2017snapshot.epa.gov/enforcement/national-enforcement-initiative-reducing-pollution-mineral-processing-operations_.html) (last visited July 24, 2020).

<sup>4</sup> Letter from Christian Strickler, Phelps Dodge Corp., to OSWER Docket (Feb. 24, 2004) (EPA-HQ-RCRA-2002-0031); Letter from William Cobb, Freeport-McMoRan Copper & Gold Inc., to OSWER Docket (June 25, 2007) (EPA-HQ-RCRA-2002-0031-0528); Letter from William Cobb, Freeport-McMoRan Copper & Gold Inc., to OSWER Docket (Aug. 13, 2009) (EPA-HQ-RCRA-2009-0315-0243); Letter from William Cobb, Freeport-McMoRan Copper & Gold Inc., to OSWER Docket (Oct. 20, 2011) (EPA-HQ-RCRA-2010-0742-0025).

<sup>5</sup> *American Petroleum Inst. v. EPA*, No. 09-1038 (D.C. Cir. filed 2015).

<sup>6</sup> *California Communities Against Toxics v. EPA*, No. 18-1163 (D.C. Cir. filed 2018).

commence this rulemaking in light of Executive Order 2019-01, which prohibited State agencies from conducting a rulemaking without prior written approval of the Office of the Governor.<sup>7</sup>

- Freeport provided a DSW briefing to ADEQ at a September 26, 2020 AMA Solid Waste Subcommittee meeting.
- Freeport participated on ADEQ webinars on June 9, 2020 and July 15, 2020 regarding ADEQ's contemplated adoption of the DSW Final Rules.

Given the nature of Freeport's operations, its active participation in EPA's DSW rulemakings that are proposed for incorporation by ADEQ, participation in litigation regarding the DSW rulemakings, and its participation on ADEQ webinars regarding the Proposed Rule, Freeport has a substantial interest in this rulemaking.

### **Comments**

As noted by ADEQ in the preamble to the Proposed Rule, ADEQ must periodically adopt EPA "hazardous waste" rules to remain an authorized State to administer its "hazardous waste" program in lieu of EPA.<sup>8</sup> ADEQ should remain the primary regulatory oversight agency for entities engaged in "hazardous waste" activities in the State of Arizona, and, therefore, Freeport supports ADEQ's proposed adoption of the DSW Final Rules. However, Freeport offers three comments on the codified "legitimate" recycling criteria in the DSW Final Rules and their application to the primary copper mining and mineral processing industry. In part, these comments are based on EPA's important clarifications about the "legitimate" recycling criteria during the prior rulemakings and litigation.

#### **I. The "Legitimate" Recycling Criteria Only Apply to "Hazardous Secondary Materials"**

Prior to EPA's 2008 DSW Final Rule,<sup>9</sup> the Agency established guidance to distinguish "legitimate" recycling of materials that would be considered a "hazardous waste" when "discarded" from "sham" recycling.<sup>10</sup> The Lowrance Memo sets forth a number of criteria for evaluation to "help draw the distinction between recycling and sham recycling or treatment."<sup>11</sup>

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<sup>7</sup> Letter from Steven Trussell, AMA, to Terry Baer, ADEQ (Sept. 20, 2019).

<sup>8</sup> 26 Ariz. Admin. Reg. at 1,452.

<sup>9</sup> 73 Fed. Reg. at 64,668.

<sup>10</sup> EPA Memorandum from Sylvia K. Lowrance, EPA, to EPA Hazardous Waste Management Division Directors Regions I – X (April 26, 1989) (hereinafter, "Lowrance Memo").

<sup>11</sup> *Id.* at 4-5.

In the 2008 DSW Final Rule, EPA codified four factors for a “legitimate” recycling evaluation (with two factors being mandatory, and two factors only being “considered”), and applied the factors to certain recycling activities involving “hazardous secondary materials.”<sup>12</sup> In turn, EPA defined a “hazardous secondary material” to mean “a secondary material (*e.g.*, spent material, by-product, or sludge) that, when discarded, would be identified as hazardous waste under part 261 of [title 40 of the *Code of Federal Regulations*].”<sup>13</sup> EPA applied the codified “legitimate” recycling criteria to entities: (1) seeking a formal non-waste determination from EPA; (2) generating and, in turn, reclaiming a “hazardous secondary material;” and (3) generating and, in turn, sending the “hazardous secondary material” to another entity for reclamation.<sup>14</sup>

In the 2015 DSW Final Rule, EPA (1) revised two of the four “legitimate” recycling factors;<sup>15</sup> (2) made all four factors mandatory;<sup>16</sup> (3) applied the factors to all pre-existing “hazardous secondary material” recycling exemptions;<sup>17</sup> and (4) identified non-compliance with the “legitimate” recycling criteria as “sham” recycling (*i.e.*, “discard” of a “hazardous waste”).<sup>18</sup> Freeport challenged EPA’s codified “legitimate” recycling criteria in the U.S. Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) due to their inconsistency with RCRA and longstanding D.C. Circuit precedent.<sup>19</sup>

In its opinion,<sup>20</sup> the D.C. Circuit vacated one of the four “legitimacy” factors, leaving three of the four factors from the 2015 DSW Final Rule remaining, and replaced the fourth factor in the 2015 DSW Final Rule with the version of that factor in the 2008 DSW Final Rule (which, again, became a factor to be “considered,” but not mandatory). EPA revised its regulations to comport with the D.C. Circuit’s ruling in the 2018 DSW Final Rule, and also clarified some of its positions related to the 2015 DSW Final Rule during the litigation.<sup>21</sup>

Importantly, the “legitimacy” criteria in the DSW Final Rules all relate to “hazardous secondary materials;” that is, materials that would otherwise be considered a “hazardous waste” if discarded. This is because EPA’s “hazardous waste” jurisdiction is limited to “discarded” materials.<sup>22</sup> Similarly, ADEQ’s “hazardous waste” jurisdiction is limited to “discarded” materials.<sup>23</sup>

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<sup>12</sup> 73 Fed. Reg. at 64,759-60 (codified at 40 C.F.R. § 260.43 (2009)).

<sup>13</sup> *Id.* at 64,757 (the definition of a “hazardous secondary material,” codified at 40 C.F.R. § 260.10 (2009)).

<sup>14</sup> *Id.* at 64,759 (codified at 40 C.F.R. § 260.43(a) (2009)).

<sup>15</sup> 80 Fed. Reg. at 1,773 (codified at 40 C.F.R. § 260.43 (2015)).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* (codified at 40 C.F.R. § 260.43(a) (2015)).

<sup>18</sup> *Id.* at 1,774 (codified at 40 C.F.R. § 261.2(g) (2015)).

<sup>19</sup> *American Petroleum Inst. v. EPA*, No. 09-1038 (D.C. Cir. filed 2015).

<sup>20</sup> *American Petroleum Inst. v. EPA*, 862 F.3d 50 (D.C. Cir. 2017).

<sup>21</sup> 83 Fed. Reg. at 24,667-68 (codified at 40 C.F.R. § 260.43 (2019)).

<sup>22</sup> A “hazardous waste” must first be a “solid waste” (42 U.S.C. § 6903(5) (2019)), and a “solid waste” is defined to include “discarded material” (*id.* § 6903(27) (2019)).

<sup>23</sup> *See* A.R.S. § 49-921.5 (definition of “hazardous waste”).

The primary copper mining and mineral processing industry frequently uses/reuses materials for their metal, acid, and water values due to the incremental nature of copper production. The D.C. Circuit has noted on several occasions that the use/reuse of these materials does not amount to “discard.”<sup>24</sup> As such, these materials are not “solid waste,” “hazardous waste,” or “hazardous secondary materials.” To the contrary, they should be considered primary feedstocks or intermediates within the ongoing production process, which does not end until it produces high-purity copper or other valuable metals.

Further, ADEQ has confirmed that the incremental extraction of metal values and use/reuse of solutions for their metal, acid, and water values in the primary copper industry do not implicate RCRA. As an example, in November 2000, ADEQ provided its analysis of the RCRA status of various streams generated and reused in the primary copper sector based on its inspections of such facilities in Arizona and requests for information.<sup>25</sup> The companies provided detailed process descriptions and process flow diagrams of their operations. In turn, ADEQ evaluated the RCRA status of the streams based on application of its “hazardous waste” regulations and the *Association of Battery Recyclers* decision<sup>26</sup> from the D.C. Circuit. ADEQ concluded that a number of streams generated and used/reused for their respective values were neither “solid” nor “hazardous waste,” including: copper reverts; acid plant liquids, solids, and sludges; used furnace brick; facility runoff and washdown water; air pollution sludges and residuals; wet scrubber sludges; vanadium pentoxide catalyst and quartz rock; and flue dusts.<sup>27</sup> Nothing in the DSW Final Rules require ADEQ to revisit its 2000 Determination or alter the regulatory status of these materials since they never met the regulatory threshold for regulation as a “solid waste,” a prerequisite to regulation as a “hazardous waste” or a “hazardous secondary material.”

Similarly, in its briefing in the legal challenges to the 2015 DSW Final Rule, EPA confirmed that primary copper industry materials used/reused for their values are not subject to the codified “legitimate” recycling criteria because they are not “hazardous secondary materials.” As an example, citing to a 2002 EPA RCRA inspection report for Freeport-McMoRan Miami Inc., EPA agreed with Freeport’s position that “large reverts [are] raw material inputs to the copper

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<sup>24</sup> See, e.g., *American Mining Congress v. EPA*, 824 F.2d 1,177, 1,181 (D.C. Cir. 1987) (hereinafter, “*AMC I*”) (“Extractive metallurgy proceeds incrementally. Rome was not built in a day, and all metal cannot be extracted in one fell swoop. In consequence, materials are reprocessed in order to remove as much of the pure metal as possible from the natural ore . . . . What is more, valuable metal-bearing and mineral-bearing dusts are often released in processing a particular metal. The mining facility typically recaptures, recycles, and reuses these dusts, frequently in production processes different from the one from which the dusts were originally emitted.”); *Ass’n of Battery Recyclers v. EPA*, 208 F.3d 1047, 1058 (D.C. Cir. 2000) (“Once again, ‘by regulating in-process secondary materials, EPA has acted in contravention of Congress’ intent’ . . . because it has based its regulation on an improper interpretation of ‘discarded’ and an incorrect reading of our *AMC I* decision.”).

<sup>25</sup> Letter from Greg Workman, ADEQ, to Richard Vaille, EPA Region IX (Nov. 13, 2000) (hereinafter, “2000 Determination”).

<sup>26</sup> *Ass’n of Battery Recyclers v. EPA*, 208 F.3d 1047.

<sup>27</sup> 2000 Determination at 6.

production process . . . . Thus, the copper reverts that Industry Petitioners refer to in their brief are not even secondary materials, and the legitimacy test does not apply . . . .”<sup>28</sup>

Thus, incorporating EPA’s “legitimate” recycling criteria from the DSW Final Rules in ADEQ’s regulations should not affect Freeport’s operations because both ADEQ and EPA have concluded that the vast majority of streams generated and used/reused in the primary copper industry are not “solid waste,” meaning they never become a “hazardous waste” or a “hazardous secondary material” for purposes of applying a “legitimate” recycling evaluation.

## **II. The Codification of the “Legitimate” Recycling Criteria Did Not Alter Prior Regulatory Interpretations or Determinations**

Importantly, even for “hazardous secondary materials,” EPA made clear on several occasions that the codification of the “legitimate” recycling criteria in the DSW Final Rules did not require state agencies or industry to re-evaluate prior conclusions regarding the regulatory status of the materials:

- “We did not intend to cause facilities that are legitimately recycling to revisit their practices or for state agencies to revisit past legitimacy determinations.”<sup>29</sup>
- “The final rule does not supersede any of the pre-2008 solid waste exclusions or other prior solid waste determinations or variances, including determinations made in letters of interpretations and inspection reports. If a hazardous secondary material has been determined not to be a solid waste for whatever reason, such a determination remains in effect, unless the authorized state decides to revisit that regulatory determination under their current authority. In addition, if a hazardous secondary material has been excluded from hazardous waste regulations – for example, under the Bevill exclusion in 40 CFR 261.4(b)(7) – the regulatory status of that material will not be affected by today’s rule.”<sup>30</sup>
- “[T]he Agency is clarifying that it does not intend for the current recycling legitimacy determinations to change due to the codification of the legitimacy factors. . . . Therefore, we do not anticipate that implementing agencies will revisit past legitimacy determinations. If recycling was considered legitimate

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<sup>28</sup> *American Petroleum Inst. v. EPA*, No. 09-1038, “Final Brief for [EPA] Respondents,” Dkt. 1620224 at 31-32 (D.C. Cir. filed June 20, 2016) (hereinafter, “EPA Brief”).

<sup>29</sup> 80 Fed. Reg. at 1,730.

<sup>30</sup> *Id.* at 1,735.

under the Lowrance Memo, its status should not change as a result of today's rule."<sup>31</sup>

- "[E]ven if the reverts were subject to the legitimacy test, the preamble to the 2015 Rule states several times that EPA is not revisiting prior legitimacy determinations."<sup>32</sup>
- "EPA confirmed in a 2002 inspection report that both of those specific processes [for recycling copper and acid, respectively,] are legitimate, and has repeatedly stated that companies do not need to revisit such prior determinations."<sup>33</sup>

EPA's conclusion is reasonable because the Agency viewed the codified "legitimacy" factors as "consistent with the criteria in the Lowrance Memo."<sup>34</sup> And, ADEQ confirmed its position that EPA should not compel Arizona to revisit prior "legitimate" recycling determinations as a result of the DSW Final Rules, given Arizona's longstanding policy of encouraging recycling.<sup>35</sup>

In the preamble to the Proposed Rule, ADEQ correctly notes that "[t]o be equivalent to EPA's regulations, ADEQ follows EPA's regulatory text as well as certain interpretations in its preamble."<sup>36</sup> ADEQ then goes on to quote one of EPA's preamble statements cited above, confirming that the codified "legitimate" recycling criteria do not alter "pre-2008 solid waste exclusions or other prior solid waste determinations or variances, including determinations made in letters of interpretations and inspection reports."<sup>37</sup> Finally, ADEQ "invites anyone operating under such a pre-2008 determination or variance who is seeking additional certainty to contact ADEQ directly."<sup>38</sup>

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<sup>31</sup> EPA, "Revisions to the Definition of Solid Waste Final Rule – Response to Comments Document, Summaries and Responses" at 137 (Dec. 10, 2014) (EPA-HQ-RCRA-2010-0742-0372) (hereinafter, "Response to Comment Document").

<sup>32</sup> EPA Brief at 31-32.

<sup>33</sup> *Id.* at 19.

<sup>34</sup> Response to Comments Document at 137.

<sup>35</sup> Letter from Henry Darwin, ADEQ, to OSWER Docket (Oct. 20, 2011) (EPA-HQ-RCRA-2010-0742-0254) ("EPA and the States should work cooperatively to create incentives for recycling of hazardous secondary materials. . . . ADEQ is not in a position to expend significant resources chasing rules contrary to Arizona's policy to encourage recycling, especially those that may not survive legal challenge.").

<sup>36</sup> 26 Ariz. Admin. Reg. at 1,453. In addition, ADEQ "[must] 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." A.R.S. § 49-922.A.

<sup>37</sup> 26 Ariz. Admin. Reg. at 1,453 (quoting 80 Fed. Reg. at 1,735).

<sup>38</sup> *Id.*

Freeport supports ADEQ incorporating this preamble language from EPA's 2015 DSW Final Rule in its Proposed Rule preamble, and confirming that ADEQ's Final Rule will be equivalent to EPA's DSW Final Rules as applied within the State of Arizona. However, Freeport believes that ADEQ has narrowly interpreted the quoted language.

While it is true that the codified "legitimate" recycling criteria do not alter pre-2008 solid waste exclusions, they also do not alter any prior "solid waste" determinations or variances, including those made in letters of interpretation and inspection reports. In other words, nowhere in EPA's preambles to the DSW Final Rules, Response to Comments document, or in its briefing in the DSW legal challenge did EPA limit the continued validity of determinations or variances, whether formal (*e.g.*, via the rulemaking procedures in 40 C.F.R. §§ 260.30, 260.31, 260.33, or 260.34) or informal (*e.g.*, in letters of interpretations or inspection reports), to those that were issued prior to 2008. EPA clearly stated that the codification of the "legitimate" recycling criteria did not alter (1) pre-2008 "solid waste" exclusions, (2) prior "solid waste" determinations, or (3) prior "solid waste" variances.<sup>39</sup> Moreover, this is the outcome that ADEQ asked EPA to seek, based on Arizona's longstanding policy of encouraging recycling (rather than creating regulatory uncertainty about the State's prior determinations).

Thus, in the preamble to the Final Rule, Freeport encourages ADEQ to amend the above-quoted language by stating (changes in underline and strike-through):

To be equivalent to EPA's regulations, ADEQ follows EPA's regulatory text as well as certain interpretations in its preamble. EPA states at 80 FR 1735, "[t]he final rule does not supersede any of the pre-2008 solid waste exclusions or other prior solid waste determinations or variances, including determinations made in letters of interpretations and inspection reports. If a hazardous secondary material has been determined not to be a solid waste for whatever reason, such a determination remains in effect, unless the authorized state decides to revisit that regulatory determination under their current authority. In addition, if a hazardous secondary material has been excluded from hazardous waste regulations – for example, under the Bevill exclusion in 40 CFR 261.4(b)(7) – the regulatory status of that material will not be affected by today's rule." ADEQ agrees with EPA's preamble language and confirms that ADEQ's incorporation of the three Definition of Solid Waste Rules will not supersede any (1) pre-2008 solid waste exclusions, (2) prior solid waste determinations, including determination made in letters of interpretations and inspection reports, or (3) prior solid waste variances. ADEQ invites anyone operating under such a pre-2008 solid waste exclusion, or prior determination or variance who is seeking additional certainty to contact ADEQ directly.

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<sup>39</sup> 80 Fed. Reg. at 1,735.

These changes will ensure the equivalency of ADEQ's rules to EPA's DSW Final Rules.

### **III. The DSW Final Rules Do Not Require Documentation of Existing Determinations and Interpretations**

Although not discussed in the preamble to the Proposed Rule, during the June 9, 2020, ADEQ webinar discussing a pre-publication draft of the Proposed Rule, ADEQ staff suggested that entities relying on an existing letter of interpretation or inspection report may need to provide documentation of that reliance to ADEQ. To support this statement, ADEQ staff pointed to the preamble of the 2015 DSW Final Rule, which states:

[T]here are two revisions to the regulations that, while they do not directly affect the regulatory status of excluded hazardous secondary materials, may impact facilities' responsibilities *under an existing exclusion*. These two revisions are (1) a new recordkeeping requirement for speculative accumulation, and (2) a documentation, certification, and notification requirement for recycling processes which are legitimate despite having levels of hazardous constituents that are not comparable to or unable to be compared to a legitimate product. These requirements must be met by the effective date of the rule, which is July 13, 2015.<sup>40</sup>

However, the above-quoted preamble language is in the context of discussing regulatory exclusions, and not letters of interpretations or inspection reports.

As to the first item in the above-quoted list, the 2015 DSW Final Rule revised the definition of "speculative accumulation" (in 40 C.F.R. § 261.1(c)(8)) to require a "hazardous secondary material" being accumulated for reuse to be placed in a labeled storage container indicating the date the accumulation began, or a separate inventory log containing this information if a label is not practical.<sup>41</sup> Thus, this notation/recordkeeping requirement would only apply to a "hazardous secondary material" being accumulated for reuse to ensure the material is not being "speculatively accumulated," not to materials that were previously evaluated in a regulatory determination, such as a letter of interpretation or inspection report.

As to the second item in the above-quoted list, the documentation was required in 40 C.F.R. § 260.43(a)(4)(iii), which was contained in "Factor 4" of the 2015 DSW Final Rule "legitimate" recycling criteria.<sup>42</sup> However, "Factor 4" was vacated by the D.C. Circuit and replaced with the 2008 DSW Final Rule language for Factor 4 (which must be "considered," but is not mandatory).<sup>43</sup> The revised, and current, version of § 260.43 sets forth "Factor 4" in § 260.43(b)(1). Notably, § 260.43(b)(1) does not contain the documentation requirement

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<sup>40</sup> *Id.* (emphasis added).

<sup>41</sup> *Id.* at 1,773 (codified at 40 C.F.R. § 261.1(c)(8) (2015)).

<sup>42</sup> *Id.* (codified at 40 C.F.R. § 260.43(a)(4)(iii) (2015)).

<sup>43</sup> 83 Fed. Reg. at 24,667-68 (codified at 40 C.F.R. § 260.43(b)(1) (2019)).

Mr. Mark Lewandowski  
Ms. Caitlin Caputo  
Arizona Department of Environmental Quality  
September 4, 2020  
Page 10

originally present in § 260.43(a)(4)(iii). Thus, this documentation requirement, although mentioned in the preamble to the 2015 DSW Final Rule, is not a current requirement in the regulations, and, in any event, does not apply to letters of interpretation or inspection reports.

We trust that ADEQ appreciates this nuance of the DSW Final Rules as the verbal discussion during June 9th webinar is not set forth in the preamble to the Proposed Rule, and presumably will not be in the preamble to the Final Rule.

### **Conclusion**

Freeport is pleased to provide these comments on ADEQ's Proposed Rule. Please feel free to contact me if you have any questions regarding our comments.

Sincerely,



William E. Cobb  
Vice President

# 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](#)

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Phoenix, AZ 85007  
Telephone: (602) 771-2230, or (800) 234-5677, enter  
771-2230 (Arizona only)  
Fax: (602) 771-4272  
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.

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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.”

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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.

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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.

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*Rhonda Paschal, managing rules editor, assisted with the editing of this chapter.*



Administrative Rules Division  
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**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
R18-8-202.	Reserved ..... 4
R18-8-203.	Reserved ..... 4
R18-8-204.	Reserved ..... 4
R18-8-205.	Reserved ..... 4
R18-8-206.	Reserved ..... 4
R18-8-207.	Reserved ..... 4
R18-8-208.	Reserved ..... 4
R18-8-209.	Reserved ..... 4
R18-8-210.	Reserved ..... 4
R18-8-211.	Reserved ..... 4
R18-8-212.	Reserved ..... 4
R18-8-213.	Reserved ..... 4
R18-8-214.	Reserved ..... 4
R18-8-215.	Reserved ..... 4
R18-8-216.	Reserved ..... 4
R18-8-217.	Reserved ..... 4
R18-8-218.	Reserved ..... 4
R18-8-219.	Reserved ..... 4
R18-8-220.	Reserved ..... 4
R18-8-221.	Reserved ..... 4
R18-8-222.	Reserved ..... 4
R18-8-223.	Reserved ..... 4
R18-8-224.	Reserved ..... 4
R18-8-225.	Reserved ..... 4
R18-8-226.	Reserved ..... 4
R18-8-227.	Reserved ..... 4

R18-8-228.	Reserved .....4
R18-8-229.	Reserved .....4
R18-8-230.	Reserved .....4
R18-8-231.	Reserved .....4
R18-8-232.	Reserved .....4
R18-8-233.	Reserved .....4
R18-8-234.	Reserved .....4
R18-8-235.	Reserved .....4
R18-8-236.	Reserved .....4
R18-8-237.	Reserved .....4
R18-8-238.	Reserved .....4
R18-8-239.	Reserved .....4
R18-8-240.	Reserved .....4
R18-8-241.	Reserved .....4
R18-8-242.	Reserved .....4
R18-8-243.	Reserved .....4
R18-8-244.	Reserved .....4
R18-8-245.	Reserved .....4
R18-8-246.	Reserved .....4
R18-8-247.	Reserved .....4
R18-8-248.	Reserved .....4
R18-8-249.	Reserved .....4
R18-8-250.	Reserved .....4
R18-8-251.	Reserved .....4
R18-8-252.	Reserved .....4
R18-8-253.	Reserved .....4
R18-8-254.	Reserved .....4
R18-8-255.	Reserved .....4
R18-8-256.	Reserved .....4
R18-8-257.	Reserved .....4
R18-8-258.	Reserved .....4
R18-8-259.	Reserved .....4
R18-8-260.	Hazardous Waste Management System: General .....4
R18-8-261.	Identification and Listing of Hazardous Waste .....9
R18-8-262.	Standards Applicable to Generators of Hazardous Waste .....11
R18-8-263.	Standards Applicable to Transporters of Hazardous Waste .....12
R18-8-264.	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities .....13
R18-8-265.	Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities .....14
R18-8-266.	Standards for the Management of Specific Hazardous Wastes and Specific Hazardous Waste Management Facilities .....15
R18-8-267.	Reserved .....16
R18-8-268.	Land Disposal Restrictions .....16
R18-8-269.	Expired .....16
R18-8-270.	Hazardous Waste Permit Program .....16
	Table. Hazardous Waste Permitting Application and Maximum Fees For Various License Types .....16

CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

R18-8-271.	Procedures for Permit Administration .....	19
R18-8-272.	Reserved .....	24
R18-8-273.	Standards for Universal Waste Management .....	24
R18-8-274.	Reserved .....	24
R18-8-275.	Reserved .....	24
R18-8-276.	Reserved .....	24
R18-8-277.	Reserved .....	24
R18-8-278.	Reserved .....	24
R18-8-279.	Reserved .....	24
R18-8-280.	Compliance .....	24

R18-8-505.	Recodified .....	26
R18-8-506.	Recodified .....	26
R18-8-507.	Recodified .....	26
R18-8-508.	Recodified .....	26
R18-8-509.	Recodified .....	26
R18-8-510.	Recodified .....	27
R18-8-511.	Recodified .....	27
R18-8-512.	Recodified .....	27
R18-8-513.	Expired .....	27

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		
R18-8-301.	Recodified .....	25
R18-8-302.	Recodified .....	25
R18-8-303.	Recodified .....	25
R18-8-304.	Recodified .....	25
R18-8-305.	Recodified .....	25
R18-8-306.	Repealed .....	25
R18-8-307.	Recodified .....	26
Table A.	Recodified .....	26
Exhibit 1.	Recodified .....	26
Appendix A.	Recodified .....	26
Appendix B.	Recodified .....	26

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		
R18-8-401.	Expired .....	26
R18-8-402.	Recodified .....	26

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
R18-8-502.	Recodified .....	26
R18-8-503.	Recodified .....	26
R18-8-504.	Recodified .....	26

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		
R18-8-601.	Expired .....	27
R18-8-602.	Recodified .....	27
R18-8-603.	Recodified .....	27
R18-8-604.	Recodified .....	27
R18-8-605.	Expired .....	27
R18-8-606.	Recodified .....	27
R18-8-607.	Expired .....	27
R18-8-608.	Recodified .....	27
R18-8-609.	Expired .....	27
R18-8-610.	Expired .....	27
R18-8-611.	Expired .....	27
R18-8-612.	Recodified .....	27
R18-8-613.	Recodified .....	27
R18-8-614.	Recodified .....	28
R18-8-615.	Recodified .....	28
R18-8-616.	Recodified .....	28
R18-8-617.	Recodified .....	28
R18-8-618.	Recodified .....	28
R18-8-619.	Recodified .....	28
R18-8-620.	Recodified .....	28
R18-8-621.	Expired .....	28

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		
R18-8-701.	Recodified .....	28
R18-8-702.	Recodified .....	28
R18-8-703.	Recodified .....	28
R18-8-704.	Recodified .....	28
R18-8-705.	Recodified .....	28
R18-8-706.	Recodified .....	28
R18-8-707.	Recodified .....	28

CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

R18-8-708.	Recodified .....	28	<i>1614, recodified to 18 A.A.C. 13, Article 16 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).</i>
R18-8-709.	Recodified .....	28	
R18-8-710.	Recodified .....	28	

**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**

Section

R18-8-1601.	Recodified .....	29
R18-8-1602.	Recodified .....	29
R18-8-1603.	Recodified .....	29
R18-8-1604.	Recodified .....	29
R18-8-1605.	Recodified .....	29
R18-8-1606.	Recodified .....	29
R18-8-1607.	Recodified .....	29
R18-8-1608.	Recodified .....	29
R18-8-1609.	Recodified .....	29
R18-8-1610.	Recodified .....	29
R18-8-1611.	Recodified .....	29
R18-8-1612.	Recodified .....	29
R18-8-1613.	Recodified .....	29
R18-8-1614.	Recodified .....	29

*Article 16, consisting of Sections R18-8-1601 through R18-8-*

## CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

**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).

R18-8-202. Reserved  
 R18-8-203. Reserved  
 R18-8-204. Reserved  
 R18-8-205. Reserved  
 R18-8-206. Reserved  
 R18-8-207. Reserved  
 R18-8-208. Reserved  
 R18-8-209. Reserved  
 R18-8-210. Reserved  
 R18-8-211. Reserved  
 R18-8-212. Reserved  
 R18-8-213. Reserved  
 R18-8-214. Reserved  
 R18-8-215. Reserved  
 R18-8-216. Reserved  
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 R18-8-243. Reserved  
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 R18-8-254. Reserved  
 R18-8-255. Reserved  
 R18-8-256. Reserved  
 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-

## CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

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-

## CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

- 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

## CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

- 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.]

## CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

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 at §§ 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 peti-

## CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

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

## CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

- (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

## CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

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

## CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

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

## CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

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

## CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

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

## CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

- (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).

CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

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

CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

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.

## CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

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.

## CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

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.

## CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

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.

## CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

- (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-

## CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

- 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-

## CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

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.

## CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

- (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-

## CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

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-

## CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

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**

## CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

**Historical Note**

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

## CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

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).

## CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY - HAZARDOUS WASTE MANAGEMENT

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).

## **Authorizing Statutes-ADEQ Hazardous Waste rule**

### **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 See (B)(4)**

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.

**49-922. 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.



## Definitions in Other Statutes and Rules

### 41-1092. Definitions

In this article, unless the context otherwise requires:

1. "Administrative law judge" means an individual or an agency head, board or commission that sits as an administrative law judge, that conducts administrative hearings in a contested case or an appealable agency action and that makes decisions regarding the contested case or appealable agency action.
2. "Administrative law judge decision" means the findings of fact, conclusions of law and recommendations or decisions issued by an administrative law judge.
3. "Appealable agency action" means an action that determines the legal rights, duties or privileges of a party and that is not a contested case. Appealable agency actions do not include interim orders by self-supporting regulatory boards, rules, orders, standards or statements of policy of general application issued by an administrative agency to implement, interpret or make specific the legislation enforced or administered by it or clarifications of interpretation, nor does it mean or include rules concerning the internal management of the agency that do not affect private rights or interests. For the purposes of this paragraph, administrative hearing does not include a public hearing held for the purpose of receiving public comment on a proposed agency action.
4. "Director" means the director of the office of administrative hearings.
5. "Final administrative decision" means a decision by an agency that is subject to judicial review pursuant to title 12, chapter 7, article 6.
6. "Office" means the office of administrative hearings.
7. "Self-supporting regulatory board" means any one of the following:
  - (a) The Arizona state board of accountancy.
  - (b) The state board of appraisal.
  - (c) The board of barbers.
  - (d) The board of behavioral health examiners.
  - (e) The Arizona state boxing and mixed martial arts commission.
  - (f) The state board of chiropractic examiners.
  - (g) The board of cosmetology.
  - (h) The state board of dental examiners.
  - (i) The state board of funeral directors and embalmers.
  - (j) The Arizona game and fish commission.
  - (k) The board of homeopathic and integrated medicine examiners.
  - (l) The Arizona medical board.
  - (m) The naturopathic physicians medical board.
  - (n) The state board of nursing.
  - (o) The board of examiners of nursing care institution administrators and adult care home managers.
  - (p) The board of occupational therapy examiners.
  - (q) The state board of dispensing opticians.
  - (r) The state board of optometry.
  - (s) The Arizona board of osteopathic examiners in medicine and surgery.
  - (t) The Arizona peace officer standards and training board.
  - (u) The Arizona state board of pharmacy.
  - (v) The board of physical therapy.

- (w) The state board of podiatry examiners.
- (x) The state board for private postsecondary education.
- (y) The state board of psychologist examiners.
- (z) The board of respiratory care examiners.
- (aa) The office of pest management.
- (bb) The state board of technical registration.
- (cc) The Arizona state veterinary medical examining board.
- (dd) The acupuncture board of examiners.
- (ee) The Arizona regulatory board of physician assistants.
- (ff) The board of athletic training.
- (gg) The board of massage therapy.

#### 49-921. **Definitions**

In this article, unless the context otherwise requires:

1. "**Disposal**" means discharging, depositing, injecting, dumping, spilling, leaking or placing hazardous waste into or on land or water so that hazardous waste or any constituent of hazardous waste may enter the environment, be emitted into the air or discharged into any waters, including groundwater.
2. "**Facility**" includes all contiguous land and structures, other appurtenances and improvements on the land used for treating, storing or disposing of hazardous waste. A facility may consist of several treatment, storage or disposal units.
3. "Federal act" means the solid waste disposal act, as amended by the resource conservation and recovery act of 1976 and the hazardous and solid waste amendments of 1984 (P.L. 94-580; 90 Stat. 2795).
4. "**Generation**" means the act or process of producing hazardous waste.
5. "**Hazardous waste**" means garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, or other discarded materials, including solid, liquid, semisolid or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations or from community activities which because of its quantity, concentration or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or pose a substantial present or potential hazard to human health or the environment if improperly treated, stored, transported, disposed of or otherwise managed or any waste identified as hazardous pursuant to section 49-922. Hazardous waste does not include solid or dissolved material in domestic sewage, solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the federal water pollution control act (P.L. 92-500; 86 Stat. 816), as amended, or source, special nuclear or by-product material as defined by the atomic energy act of 1954 (68 Stat. 919), as amended.
6. "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 business concern. 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.

7. "Manifest" means the form used for identifying the quantity, composition, origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.
8. "Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, state, municipality, commission, political subdivision of the state, interstate body or federal facility.
9. "Storage" means the holding of hazardous waste for a temporary period at the end of which the hazardous waste is treated, disposed of or stored elsewhere.
10. "Transportation" means the movement of hazardous waste by air, rail, highway or water.
11. "Treatment" means a method, technique or process designed to change the physical, chemical or biological character or composition of hazardous waste so as to neutralize such waste or to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume.

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

Title 18, Chapter 2, Department of Environmental Quality - Air Pollution Control

**Amend:** R18-2-327



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** November 3, 2020

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

**FROM:** Council Staff

**DATE:** October 9, 2020

**SUBJECT: DEPARTMENT OF ENVIRONMENTAL QUALITY**  
Title 18, Chapter 2, Department of Environmental Quality - Air Pollution Control

**Amend:** R18-2-327

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### **Summary:**

This regular rulemaking from the Department of Environmental Quality (Department) seeks to amend one rule in Title 18, Chapter 2, Article 3 related to Air Pollution Control Permits and Permit Revisions. Specifically, under Clean Air Act (CAA) § 182, states with areas designated nonattainment by the EPA have two years from the effective date of the designation to submit emission inventory reporting regulations under CAA § 182(a)(3)(B). Currently, R18-2-327 is deficient because it fails to require the federally mandated emissions statements. As such, the Department intends to amend R18-2-327 to require stationary sources located in ozone nonattainment areas that also emit 25 tons or more per year of the ozone precursors, oxides of nitrogen (NOx) and volatile organic compounds (VOCs), to submit annual emission statements to the Department. The Department indicates it is making these changes to retain primacy and avoid the promulgation of a Federal Implementation Plan (FIP). The final rule will be submitted to EPA as a revision to the Arizona State Implementation Plan (SIP).

Additionally, R18-2-327 prescribes the procedures a source permitted under A.A.C. Title 18, Chapter 2, Article 3 must follow to submit an annual emission inventory questionnaire to the Department. The Department has identified amendments to R18-2-327 that would alleviate a

burdensome regulatory reporting requirement for some Class II air quality permitted sources. Proposed amendments to the rule would change the frequency from annual reporting to a minimum of once every three years. The Department estimates these amendments will alleviate the reporting requirements for an average of 275 sources each year and will free up at least 100 hours of Department staff time per year. At the same time, the Department will retain the discretionary ability to require Class II sources to submit annual emission reports.

The Department indicates this rulemaking implements a proposed course of action in a Five-Year Review Report approved by this Council on August 6, 2019.

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

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?**

The Department indicates this rulemaking does not establish a new fee or contain a fee increase.

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

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

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

This rulemaking brings the Department's emission reporting rules into compliance with federal requirements and also reduces the frequency of reporting requirements of some Class II air quality permitted sources from annual reporting to a minimum of once every three years. This rule change will allow the Department to retain primacy and avoid the promulgation of a Federal Implementation Plan by the EPA.

Sources located in ozone nonattainment areas will bear minimal costs associated with new federal reporting requirements. The Department estimates these new requirements will require approximately two hours of administrative staff time per source per year. The Department estimates that the reduced reporting requirements for Class II permitted air quality sources will alleviate the reporting requirement for an average of 275 sources each year and will free up at least 100 hours of Department staff per year.

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

The Department has analyzed the costs and benefits of the rulemaking and was unable to identify any less intrusive or less costly alternative method of achieving the objective of the rulemaking.

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

Stakeholders include the Department and air quality permitted sources.

The Department benefits from the rulemaking because it will free up at least 100 hours of Department staff time per year, while also allowing the Department to retain primacy and the discretionary ability to require Class II sources to submit annual emission reports.

275 Class II permitted air quality sources will benefit from the reduction of annual reporting requirements to once every three years.

Stationary sources located in ozone nonattainment areas that produce 25 tons or more of NOx and VOCs annually will directly bear minimal costs of producing the new federal emission statement requirements. The Department estimates that these new requirements will require approximately two hours of administrative staff time per source per year. The Department will bear the additional costs associated with reviewing these new federally required emission statements.

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

The Department indicates there were no changes between the Notice of Proposed Rulemaking and Notice of Final Rulemaking.

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

The Department indicates it received one comment related to the rulemaking in support of the changes to the reporting requirements. The Department indicates it acknowledged that comment during the public hearing held on May 11, 2020. Council staff believes the Department has adequately addressed the comment on the proposed rules.

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

Not applicable. The 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?**

The Department indicates that the rules are not more stringent than corresponding federal law, specifically, compliance with the Clean Air Act, Title 1, Part D.

**11. Conclusion**

The Department seeks to amend R18-2-327 to require stationary sources located in ozone nonattainment areas that also emit 25 tons or more per year of the ozone precursors, oxides of nitrogen (NOx) and volatile organic compounds (VOCs), to submit annual emission statements to the Department. The Department indicates the current rule fails to require the federally mandated emissions statements. The Department is also amending R18-2-327 to change the frequency from annual reporting to a minimum of once every three years. The Department estimates these amendments will alleviate the reporting requirements for an average of 275 sources each year and will free up at least 100 hours of Department staff time per year.

The Department is seeking the standards 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.



Douglas A. Ducey  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



Misael Cabrera  
Director

September 22, 2020

Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
100 N. 15<sup>th</sup> Avenue, #305  
Phoenix, AZ 85007

Re: Rulemaking for Title 18 – Environmental Quality, Chapter 2. Department of Environmental Quality- Air Pollution Control, Article 3

Dear Chair Sornsin:

The Arizona Department of Environmental Quality (ADEQ) hereby submits to Arizona Administrative Code (A.A.C.) R18-2-327 to the Governor's Regulatory Review Council (GRRC) for its consideration and approval at the Council meeting scheduled for November 3, 2020.

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

I. Information Required by A.A.C. R1-6-201(A)(1)

- The public record closed for all rules on May 11, 2020 at 5:00 p.m.
- The rulemaking activity relates to the five-year review report approved by GRRC on August 6, 2019.
- The rules do not contain a new fee.
- The rules do not contain a fee increase.
- The Department is not seeking an immediate effective date for these rules.
- The Department certifies that the preamble discloses reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.
- A full-time employee will not be required to implement and enforce the rules.
- A list of all documents enclosed is provided in Sections II and III.

**Main Office**

1110 W. Washington Street • Phoenix, AZ 85007  
(602) 771-2300

**Southern Regional Office**

400 W. Congress Street • Suite 433 • Tucson, AZ 85701  
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*printed on recycled paper*

II. List of Documents Enclosed under A.A.C. R1-6-201(A)(1)(h), (A)(2-5)

- One electronic copy of the following is enclosed:
  1. This cover letter.
  2. The Notice of Final Rulemaking (NFRM), including the preamble, table of contents, and text of the rule.
  3. A complete economic, small business and consumer impact statement, which is included in the preamble of the NFRM.
  4. Written Comments on the Notice of Proposed Rulemaking (NPRM).
    - ADEQ received no analysis regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states; therefore, no such analysis is included in this submittal.

III. List of Documents Enclosed under A.A.C. R1-6-201(A)(6-7)

- There are no new incorporations by reference within this rulemaking.
- Authorizing statute: A.R.S. §§ 49-104(A)(1) and (A)(10), 49-404(A).
- One electronic copy of each of the following is enclosed: the general and specific statutes authorizing the rule, including relevant statutory definitions; the statutes are: A.R.S. §§ 49-104(A)(1), (10), 49-404(A).
- No term is defined in the rule by referring to another.

Thank you for your timely review and approval. Please contact Daniel Czecholinski, Division Director, Air Quality Division, 602-771-4655 or [czecholinski.daniel@azdeq.gov](mailto:czecholinski.daniel@azdeq.gov), if you have any questions.

Sincerely,

*Misael Cabrera*

Misael Cabrera, P.E.  
Director  
Arizona Department of Environmental Quality

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR POLLUTION CONTROL

PREAMBLE

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

R18-2-327

Amend

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

Authorizing statute: A.R.S. §§ 49-104(A)(1) and (A)(10), 49-404(A).

Implementing statute: A.R.S. §§ 49-425(A) and 49-426.

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

January 4, 2021.

**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 proposed rule:**

Notice of Rulemaking Docket Opening: 25 A.A.R. 1163, May 3, 2019.

Notice of Proposed Rulemaking: 26 A.A.R. 653, April 10, 2020.

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

Name: Ray Caccavale  
Address: Arizona Department of Environmental Quality  
Air Quality Division, AQIP Section  
1110 W. Washington St.  
Phoenix, AZ 85007  
Telephone: (602) 771-4585  
Fax: (602) 771-8730  
E-mail: caccavale.raymond@azdeq.gov

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

**Summary.**

**Ozone Emission Statement Requirements**

On June 4, 2018, the U.S. Environmental Protection Agency (EPA) designated a portion of Yuma County "nonattainment" for the 2015 Ozone National Ambient Air Quality Standards (NAAQS), classifying the area as "marginal." Under Clean Air Act (CAA) § 182, states with areas designated nonattainment have two years from the effective date of the designation to submit emission inventory reporting regulations under CAA § 182(a)(3)(B). Currently, Arizona Administrative Code (A.A.C.) R18-2-327 is deficient because it fails to require the federally mandated emissions statements. As such, the Arizona Department of Environmental Quality (ADEQ) must amend A.A.C. R18-2-327 to require stationary sources located in ozone nonattainment areas that also emit 25 tons or more per year of the ozone precursors, oxides of nitrogen (NO<sub>x</sub>) and volatile organic compounds (VOCs), to submit annual emission statements to ADEQ. ADEQ is making these changes to retain primacy and avoid the promulgation of a Federal Implementation Plan (FIP). The final rule will be submitted to EPA as a revision to the Arizona State Implementation Plan (SIP).

**Annual Emissions Inventory Questionnaire (AEIQ) Reporting Frequency**

In addition, A.A.C. R18-2-327 prescribes the procedures a source permitted under A.A.C. Title 18, Chapter 2, Article 3 must follow to submit an annual emission inventory questionnaire to ADEQ. ADEQ has identified amendments to A.A.C. R18-2-327 that would alleviate a burdensome regulatory reporting requirement for some Class II air quality permitted sources. Amendments to the rule change the frequency

from annual reporting to a minimum of once every three years. ADEQ estimates these amendments will alleviate the reporting requirements for an average of 275 sources each year and will free up at least 100 hours of ADEQ staff time per year. At the same time, ADEQ will retain the discretionary ability to require Class II sources to submit annual emission reports.

**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:**

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 following discussion addresses each of the elements required for an Economic, Small Business, and Consumer Impact Statement (EIS) under A.R.S. § 41-1055.

**An identification of the rule making.**

This EIS addresses a rulemaking designed to bring ADEQ's emission reporting rules into compliance with federal requirements and reduce the reporting requirements of some Class II air quality permitted sources.

ADEQ anticipates the overall economic impact of this rulemaking will have a positive effect on businesses, consumers, and ADEQ because of the reduction in required annual emission inventory questionnaires. ADEQ anticipates emission statements required by federal law will only affect those sources located in ozone nonattainment areas that produce 25 tons or more of NOx and VOCs annually. A more detailed analysis of these changes is addressed in Section 6 of this Notice of Final Rulemaking.

**An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the rule making.**

The proposed changes affect permitted air quality sources statewide and stationary sources located in ozone nonattainment areas that emit ozone precursors. Some Class II air quality permitted sources will directly benefit from this rulemaking by reducing the reporting burden from annually to a minimum of once every three years, and as required by the Director. Stationary sources located in ozone nonattainment areas that emit ozone precursors will directly bear the costs of producing the new federal emission statement requirements.

**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 rule making.**

ADEQ will directly benefit from the changes in reporting frequency from Class II air quality permitted sources. ADEQ anticipates this proposed rulemaking will free up at least 100 hours of staff time per year by reducing the number of questionnaires the agency must review within a three-year period. ADEQ will bear the additional costs associated with reviewing the new federally required emission statements.

**(b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the rule making.**

ADEQ does not anticipate any economic impacts to political subdivisions of the state as a result of this rulemaking.

**(c) The probable costs and benefits to businesses directly affected by the rule making, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the rule making.**

ADEQ anticipates some Class II permitted air quality sources will directly benefit from this rulemaking by reducing the number of emission inventory questionnaires required in a three year period. ADEQ anticipates these amendments will reduce the reporting requirements and associated costs on approximately 275 sources.

ADEQ anticipates the costs associated with the new federal reporting requirements on sources located in ozone nonattainment areas that emit ozone precursors to be minimal. ADEQ estimates the new federally required emission statements will require approximately two hours of administrative staff time per source

per year.

**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 rule making.**

ADEQ anticipates any additional costs imposed on businesses because of this rulemaking will be minimal as per the reasons described above. Accordingly, ADEQ anticipates minimal impact on private employment or on the employment of any political subdivision subject to the proposed amendments.

**A statement of the probable impact of the rule making on small businesses.**

**(a) An identification of the small businesses subject to the rule making.**

Under A.R.S. § 41-1001(21) “Small business” means a concern, including its affiliates, which is [1] independently owned and operated, which is [2] not dominant in its field and which [3] employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year.

Currently ADEQ does not have a method to determine which of the approximately 275 Class II air quality permitted sources meet the criteria of a small business. However, given that the proposed amendments to the reporting frequency for these sources is of a beneficial nature, ADEQ is confident that any of the sources that meet the criteria of a small business would benefit from removing this cumbersome reporting requirement.

For stationary sources located in ozone nonattainment areas that emit ozone precursors, ADEQ has not positively identified any sources that meet the definition of a small business. Within the Yuma ozone nonattainment area, ADEQ has identified two dry cleaners and one carpet manufacturer as potentially meeting the criteria of a small business that may be subject to the proposed emission statement requirements.

**(b) The administrative and other costs required for compliance with the rule making.**

ADEQ currently estimates the administrative cost to comply with the proposed emission statement requirements to be approximately two hours of administrative staff time per source per year. ADEQ does not anticipate any additional costs to be placed on small businesses as a result of this proposed rulemaking.

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

**(i) Establishing less costly compliance requirements in the rule making for small businesses.**

ADEQ is committed to working closely with small businesses subject to this rulemaking to streamline the creation and submittal of required emissions statements. ADEQ has streamlined the process of submitting all questionnaires discussed in the rulemaking by giving participants the option to submit electronic or paper copies as demonstrated in R18-2-327(A)(3). ADEQ also anticipates the provisions of this rulemaking will limit the amount of administrative staff time necessary to comply with the proposed amendments.

**(ii) Establishing less costly schedules or less stringent deadlines for compliance in the rule making.**

Due to federally mandated deadlines for emissions reporting, ADEQ is not able to establish less stringent deadlines for small businesses other than those offered to all sources. ADEQ commits to working closely with small businesses subject to emission statement requirements to further mitigate any issues related to submission schedules and deadlines.

**(iii) Exempting small businesses from any or all requirements of the rule making.**

ADEQ has identified that under 42 U.S.C. 7511a(a)(3)(B)(ii) the agency may waive the application of federally required emission statement requirements to any class or category of stationary sources which emit less than 25 tons per year of ozone precursors contingent on the agency meeting other inventory submission requirements. ADEQ anticipates this will serve to exempt any small business that emits fewer than 25 tons per year of ozone precursors from being subject to the new federal emission statement requirements.

**(d) The probable cost and benefit to private persons and consumers who are directly affected by the rule making.**

Not applicable.

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

Not applicable.

**A description of any less intrusive or less costly alternative methods of achieving the purpose of the rule making.**

ADEQ was unable to identify any less intrusive or less costly alternative methods of achieving the proposed amendments to A.A.C. R18-2-327.

**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.**

This rulemaking impacts sources producing specific volumes of emissions, which is testable and replicable by the source owners and oversight agency, in this case ADEQ.

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

ADEQ did not make any changes to the rule language in response to comments or otherwise between the proposed rule and the final rule.

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

ADEQ received one comment related to the rule making in support of the changes to the reporting requirements. ADEQ acknowledged that comment during the public hearing held on May 11, 2020.

**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 matters prescribed by statute applicable specifically to ADEQ 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:**

These rules do not require any permits.

**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:**

These rules help Arizona comply with the federal Clean Air Act, Title 1, Part D. These rules are no more stringent than required by federal law.

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

No person(s) submitted an analysis to ADEQ.

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

Not applicable.

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

Not applicable.

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

**TITLE 18. ENVIRONMENTAL QUALITY  
CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY  
AIR POLLUTION CONTROL**

**ARTICLE 2. AMBIENT AIR QUALITY STANDARDS; AREA DESIGNATIONS; CLASSIFICATIONS**

Section

R18-2-327.

~~Annual~~ Emissions Inventory Questionnaire and Emissions Statement

**ARTICLE 2. AMBIENT AIR QUALITY STANDARDS; AREA DESIGNATIONS; CLASSIFICATIONS**

**R18-2-327. ~~Annual~~ Emissions Inventory Questionnaire and Emissions Statement**

A. Emissions Inventory Questionnaire Requirements

1. Every source subject to permit requirements under this Chapter shall complete and submit to the Director an ~~annual~~ emissions inventory questionnaire as follows: The questionnaire is due by March 31 or 90 days after the Director makes the inventory form available, whichever occurs later, and shall include emission information for the previous calendar year.

a. Sources Requiring a Class I Permit under R18-2-302(B)

i. Sources requiring a Class I permit under R18-2-302(B) shall complete and submit to the Director an emissions inventory questionnaire no later than June 1 of each year.

b. Sources Requiring a Class II Permit under R18-2-302(B)

i. Sources requiring a Class II permit under R18-2-302(B) shall complete and submit to the Director an emissions inventory questionnaire no later than June 1 every three (3) years beginning June 1, 2021.

ii. At the Director's request, sources requiring a Class II permit under R18-2-302(B) may be required to complete and submit emissions inventory questionnaires in addition to the triennial emissions inventory questionnaire required under subsection (A)(1)(b)(i). The Director shall notify the owner or operator of the source in writing of the decision to require additional emissions inventory questionnaires.

2. These requirements apply whether or not a permit has been issued and whether or not a permit application has been filed.

~~B-3.~~ The emissions inventory questionnaire shall be on an electronic or paper form provided by the Director and shall include the following information for the previous calendar year:

~~1.~~a. The source's name, description, mailing address, contact person and contact person phone number, and physical address and location, if different than the mailing address.

~~2.~~b. Process information for the source, including design capacity, throughput, operations schedule, and emissions control devices, their description and efficiencies.

~~3.~~c. The actual quantity of emissions from permitted emission points and fugitive emissions as provided in the permit, including documentation of the method of measurement, calculation, or estimation, determined pursuant to subsection (C), of the following regulated air pollutants:

1. a-i. Any single regulated air pollutant in a quantity greater than 1 ton or the amount listed for the pollutant in the definition of "significant" in R18-2-101(131)(a) or (b), whichever is less.

~~b~~.ii. Any combination of regulated air pollutants in a quantity greater than 2 1/2 tons.

d. A certification by a responsible official of truth, accuracy, and completeness. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

4. An amendment to an emissions inventory questionnaire, containing the documentation required by subsection (A)(3), shall be submitted to the Director by any source whenever it discovers or receives notice, within two years of the original submittal, that incorrect or insufficient information was submitted to the Director by a previous emissions inventory questionnaire. The amendment shall be submitted to the Director within 30 days of discovery or receipt of notice. If the incorrect or insufficient information resulted in an incorrect annual emissions fee, the Director shall require that additional payment be made or shall apply an amount as a credit to a future annual emissions fee. The submittal of an amendment under this subsection shall not subject the owner or operator to an enforcement action or a civil or criminal penalty if the original submittal of incorrect or insufficient information was not due to willful neglect.
5. The Director may require submittal of supplemental emissions inventory questionnaires for air contaminants pursuant to A.R.S. §§ 49-422, 49-424, and 49-426.03 through 49-426.08.

B. Emissions Statement Requirements

1. Any stationary source located in an ozone nonattainment area that has actual emissions of 25 tons or more of nitrogen oxides (NO<sub>x</sub>) or volatile organic compounds (VOCs) during the calendar year shall complete and submit to the Director an emissions statement no later than June 1 of the following year, except as provided in subsection (B)(5).
2. The emissions statement shall be on an electronic or paper form provided by the Director and shall require the following information for the previous calendar year:
  - a. The source's name, description, mailing address, contact person and contact person phone number, and physical address and location, if different than the mailing address.
  - b. Process information for the source, including design capacity, throughput, operations schedule, and emissions control devices, their description and efficiencies.
  - c. Actual emissions of NO<sub>x</sub> and VOC including documentation of the method of measurement, calculation, or estimation, determined pursuant to subsection (C).
  - d. A certification by a responsible official of truth, accuracy, and completeness. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.
3. If either NO<sub>x</sub> or VOC annual emissions are greater than or equal to 25 tons, the other pollutant shall be included in the emissions statement even if less than 25 tons.

4. An amendment to an emissions statement, containing the documentation required by subsection (B)(2), shall be submitted to the Director by any source whenever it discovers or receives notice, within two years of the original submittal, that incorrect or insufficient information was submitted to the Director by a previous emissions statement. The amendment shall be submitted to the Director within 30 days of discovery or receipt of notice. The submittal of an amendment under this subsection shall not subject the owner or operator to an enforcement action or a civil or criminal penalty if the original submittal of incorrect or insufficient information was not due to willful neglect.
5. A source that submits an emissions inventory questionnaire under subsection (A) is exempt from subsection (B) requirements for that submission year.

C. Emissions Estimation Methodology

1. Actual quantities of emissions shall be determined using the following emission factors or data.
  - ~~1~~-a. Whenever available, emissions estimates shall either be calculated from continuous emissions monitors certified pursuant to 40 CFR 75, Subpart C and referenced appendices, or data quality assured pursuant to Appendix F of 40 CFR 60.
  - ~~2~~-b. When sufficient data pursuant to subsection (C)(1)(a) is not available, emissions estimates shall be calculated from data from source performance tests conducted pursuant to R18-2-312 in the calendar year being reported or, when not available, conducted in the most recent calendar year representing the operating conditions of the year being reported.
  - ~~3~~-c. When sufficient data pursuant to subsection (C)(1)(a) or ~~(2)(b)~~ is not available, emissions estimates shall be calculated using emissions factors from EPA Publication No. AP-42 "Compilation of Air Pollutant Emission Factors," Volume I: Stationary Point and Area Sources, Fifth Edition, 1995, U.S. Environmental Protection Agency, Research Triangle Park, NC, including Supplements A through F and all updates published through July 1, 2011 (and no future editions). AP-42 is incorporated by reference and is on file with the Department of Environmental Quality and can be obtained from the Government Printing Office, 732 North Capitol Street, NW, Washington, D.C. 20401, telephone (202) 512-1800, or by downloading the document from the web site for the EPA Clearinghouse for Emission Inventories and Emission Factors.
  - ~~4~~-d. When sufficient data pursuant to subsections (C)(1)(a) through ~~(C)(3)(c)~~ is not available, emissions estimates shall be calculated from material balance using engineering knowledge of process.
  - ~~5~~-e. When sufficient data pursuant to subsections (C)(1)(a) through ~~(4)(d)~~ is not available, emissions estimates shall be calculated by equivalent methods approved by the Director.

The Director shall only approve methods that are demonstrated as accurate and reliable as one of the methods in subsections (C)(1)(a) through (4)(d).

~~D.2.~~ Actual quantities of emissions calculated under subsection (C) shall be determined on the basis of actual operating hours, production rates, in-place process control equipment, operational process control data, and types of materials processed, stored, or combusted.

~~E.~~ ~~An amendment to an annual emission inventory questionnaire, containing the documentation required by subsection (B)(3), shall be submitted to the Director by any source whenever it discovers or receives notice, within two years of the original submittal, that incorrect or insufficient information was submitted to the Director by a previous questionnaire. If the incorrect or insufficient information resulted in an incorrect annual emissions fee, the Director shall require that additional payment be made or shall apply an amount as a credit to a future annual emissions fee. The submittal of an amendment under this subsection (shall) not subject the owner or operator to an enforcement action or a civil or criminal penalty if the original submittal of incorrect or insufficient information was due to reasonable cause and not willful neglect.~~

~~F.~~ ~~The Director may require submittal of supplemental emissions inventory questionnaires for air contaminants pursuant to A.R.S. §§ 49-422, 49-424, and 49-426.03 through 49-426.08.~~

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**PROPOSED RULE REVISION**  
**Arizona Administrative Code R18-2-327**  
**Annual Emissions Inventory Questionnaire**

Oral Proceeding  
Hearing Officer Script

May 11th, 2020

10 Zach Dorn: Hi. Thank you for coming. I now open this hearing on the proposed rule revision for  
11 the Arizona Administrative Code Title 18 Chapter 2 Article 327 Annual Emissions Inventory  
12 Questionnaire.

13  
14 This proceeding is being recorded and will be preserved for the record.

15  
16 Today is May 11th, 2020 and the time is now 3:31 p.m. This proceeding is being carried out via  
17 conference call due to the Stay at Home Order issued by the Governor of Arizona in response to  
18 the growing public health crisis caused by the COVID-19 virus. My name is Zach Dorn and I have  
19 been appointed by the Director of the Arizona Department of Environmental Quality (ADEQ) to  
20 preside at this hearing.

21  
22 The purpose of this oral proceeding is to provide the public an opportunity to hear a summary  
23 of the proposed Rule Revision and to provide comments on such revisions.

24  
25 The Department representative for today's hearing is Ray Caccavale of the Air Quality  
26 Improvement Program Section.

27  
28 Public notice of the comment period and hearing was published in the Arizona Republic on April  
29 10<sup>th</sup> and 12<sup>th</sup>, 2020. Copies of the revisions were made available on ADEQ's website and at the  
30 ADEQ Phoenix Records Center starting April 10<sup>th</sup>, 2020 and will remain available until the close  
31 of the comment period, which is 5:00 p.m. today.

32  
33 If you wish to make a verbal comment please email your comment to Ray Caccavale at  
34 [Caccavale.raymond@azdeq.gov](mailto:Caccavale.raymond@azdeq.gov) and wait until the summary of the rule revision has occurred  
35 and you will be prompted to verbally express your comments and concerns in an orderly  
36 fashion by the host.

37  
38 Comments made during the formal comment period are required by law to be considered by  
39 the Department when preparing the final submission to the U.S. Environmental Protection  
40 Agency. The Department will include a responsiveness summary for written and oral comments  
41 received during the formal comment period.

42  
43 The agenda for this hearing is as follows:

1  
2 First, we will present a brief overview of the proposed rule revision.

3  
4 Then I will conduct the oral comment portion. At that time I will call on everyone who is present  
5 on the line to state their names. Afterwards I will go down the list of names and request each  
6 individual verbally express their comments or concerns one at a time as they are called on.

7  
8 Please be aware that any comments at today's hearing that you want the Department to  
9 formally consider must be given either in writing via email or on the record during this oral  
10 proceeding.

11  
12 At this time Ray will give a brief overview of the proposal.

13  
14 \* \* \* \* \*

15 Ray Caccavale: Thank you Zach.

16  
17 On June 4, 2018, the EPA designated a portion of Yuma County “nonattainment” for the  
18 2015 Ozone NAAQS, classifying the area as “marginal.” Under CAA § 182, states with  
19 areas designated nonattainment have two years from the effective date of the  
20 designation to submit emissions inventory reporting regulations under CAA §  
21 182(a)(3)(B). As such, ADEQ must amend A.A.C. R18-2-327 to require annual emissions  
22 statements for stationary sources located in ozone nonattainment areas that emit  
23 ozone precursors. Currently, Article 327 is deficient because it fails to require federally  
24 mandated emissions statements. In order to retain state primacy and avoid the  
25 promulgation of a Federal Implementation Plan (FIP), ADEQ must amend Article 327 to  
26 require all stationary sources located in ozone nonattainment areas that emit ozone  
27 precursors to submit annual emissions statements to the Director.

28 As a result, ADEQ has elected to amend Article 327 Annual Emissions Inventory  
29 Questionnaire to include federal emissions statement requirements for sources located  
30 in ozone nonattainment areas that emit ozone precursors. This amendment is necessary  
31 to bring Arizona’s ozone rules into compliance with federal law in order to avoid  
32 sanctions under the federal Clean Air Act (CAA).

33 ADEQ also proposes to amend Article 327 to reduce regulatory burden; the reporting  
34 frequency for Class II air quality permitted sources from annually to a minimum of once

1 every three years, and at the discretion of the Director of ADEQ (Director).

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7 Mr. Dorn: This concludes the overview portion of this proceeding.

8 \* \* \* \* \*

9  
10  
11 I now open this proceeding for oral comments.

12  
13 Would everyone on the line one at a time please identify yourself by name orally and let us  
14 know if you have a comment.

15  
16 Paul Melcher: This is Paul Melcher from Yuma County. You just wanted us to give the name?

17  
18 Mr. Dorn: Yes, if you don't have a comment you would like to submit.

19  
20 Mr. Melcher: The comment I would like to make is in support of a change in the reporting  
21 requirements from every 12 months to once every 3 years or as deemed necessary by the  
22 ADEQ Director.

23  
24 Mr. Dorn: Thank you very much for your comments.

25  
26 This concludes the oral comment portion of this proceeding.

27 \* \* \* \* \*

28  
29  
30 If you have not already submitted written comments, you may submit them at this time. Again,  
31 the comment period for this proposal ends today at 5:00 p.m.

32  
33 Thank you for attending.

34  
35 The time is now 3:36 p.m. I now close this oral proceeding.

36  
37 Mr. Caccavale: Thank you everyone who came and attended.

## CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

or inspection fee required under subsection (C), (D), or (E). The owner or operator of a source claiming inactive status under this subsection shall submit a letter to the Director by December 15 of the calendar year for which the source was inactive. Termination of a permit does not relieve a source of any past fees due.

- K.** If an applicant uses the Tier 4 method for conducting a risk management analysis (RMA) according to R18-2-1708(B), the applicant shall pay any costs incurred by the Director in contracting for, hiring or supervising work of outside consultants.
- L.** Transition.
1. Subsections (A) through (J) of this Section are effective December 4, 2007. The first administrative or inspection fees are due on February 1, 2008.
  2. Except as provided in subsection (b), all fees incurred after December 4, 2007, are payable in accordance with the rates contained in this Section.
    - a. Emission-based fees for calendar year 2006 shall be billed at \$38.25 per ton and be due February 1, 2008.
    - b. The hourly rates and maximum fees for a new permit or permit revision are those in effect when the application for the permit or revision is determined to be complete.
    - c. Fees accrued but not yet paid before the effective date of this Section remain as obligations to be paid to the Department

**Historical Note**

Emergency rule adopted effective September 17, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency rule re-adopted without change effective December 16, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency expired; text deleted (Supp. 93-1). New Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 5670, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 10 A.A.R. 4767, effective November 4, 2004 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 4379, effective December 4, 2007 (Supp. 07-4). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-326.01. Expired****Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 844, effective July 1, 2010 (Supp. 10-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 613, effective February 14, 2017 (Supp. 17-1).

**R18-2-327. Annual Emissions Inventory Questionnaire**

- A.** Every source subject to permit requirements under this Chapter shall complete and submit to the Director an annual emissions inventory questionnaire. The questionnaire is due by March 31 or 90 days after the Director makes the inventory form available, whichever occurs later, and shall include emission information for the previous calendar year. These requirements apply whether or not a permit has been issued and whether or not a permit application has been filed.
- B.** The questionnaire shall be on a form provided by the Director and shall include the following information:
1. The source's name, description, mailing address, contact person and contact person phone number, and physical address and location, if different than the mailing address.
  2. Process information for the source, including design capacity, operations schedule, and emissions control devices, their description and efficiencies.
- 3.** The actual quantity of emissions from permitted emission points and fugitive emissions as provided in the permit, including documentation of the method of measurement, calculation, or estimation, determined pursuant to subsection (C), of the following regulated air pollutants:
- a. Any single regulated air pollutant in a quantity greater than 1 ton or the amount listed for the pollutant in the definition of "significant" in R18-2-101(131)(a) or (b), whichever is less.
  - b. Any combination of regulated air pollutants in a quantity greater than 2 1/2 tons.
- C.** Actual quantities of emissions shall be determined using the following emission factors or data:
1. Whenever available, emissions estimates shall either be calculated from continuous emissions monitors certified pursuant to 40 CFR 75, Subpart C and referenced appendices, or data quality assured pursuant to Appendix F of 40 CFR 60.
  2. When sufficient data pursuant to subsection (C)(1) is not available, emissions estimates shall be calculated from data from source performance tests conducted pursuant to R18-2-312 in the calendar year being reported or, when not available, conducted in the most recent calendar year representing the operating conditions of the year being reported.
  3. When sufficient data pursuant to subsection (C)(1) or (2) is not available, emissions estimates shall be calculated using emissions factors from EPA Publication No. AP-42 "Compilation of Air Pollutant Emission Factors," Volume I: Stationary Point and Area Sources, Fifth Edition, 1995, U.S. Environmental Protection Agency, Research Triangle Park, NC, including Supplements A through F and all updates published through July 1, 2011 (and no future editions). AP-42 is incorporated by reference and is on file with the Department of Environmental Quality and can be obtained from the Government Printing Office, 732 North Capitol Street, NW, Washington, D.C. 20401, telephone (202) 512-1800, or by downloading the document from the web site for the EPA Clearinghouse for Emission Inventories and Emission Factors.
  4. When sufficient data pursuant to subsections (C)(1) through (C)(3) is not available, emissions estimates shall be calculated from material balance using engineering knowledge of process.
  5. When sufficient data pursuant to subsections (C)(1) through (4) is not available, emissions estimates shall be calculated by equivalent methods approved by the Director. The Director shall only approve methods that are demonstrated as accurate and reliable as one of the methods in subsections (C)(1) through (4).
- D.** Actual quantities of emissions calculated under subsection (C) shall be determined on the basis of actual operating hours, production rates, in-place process control equipment, operational process control data, and types of materials processed, stored, or combusted.
- E.** An amendment to an annual emission inventory questionnaire, containing the documentation required by subsection (B)(3), shall be submitted to the Director by any source whenever it discovers or receives notice, within two years of the original submittal, that incorrect or insufficient information was submitted to the Director by a previous questionnaire. If the incorrect or insufficient information resulted in an incorrect annual emissions fee, the Director shall require that additional payment be made or shall apply an amount as a credit to a future annual emissions fee. The submittal of an amendment under this subsection (shall) not subject the owner or operator to an

## CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

enforcement action or a civil or criminal penalty if the original submittal of incorrect or insufficient information was due to reasonable cause and not willful neglect.

- F. The Director may require submittal of supplemental emissions inventory questionnaires for air contaminants pursuant to A.R.S. §§ 49-422, 49-424, and 49-426.03 through 49-426.08.

**Historical Note**

Emergency rule adopted effective September 17, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency rule re-adopted without change effective December 16, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency expired; text deleted (Supp. 93-1). New Section adopted effective November 15, 1993 (Supp. 93-4). Amended effective December 7, 1995 (Supp. 95-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-328. Conditional Orders**

- A. The Director may grant to any person a conditional order for each air pollution source which allows such person to vary from any provision of A.R.S. Title 49, Chapter 3, Article 2, or this Chapter, for any non-federally enforceable requirement of a permit issued pursuant to this Chapter if the Director makes each of the following findings:
1. Issuance of the conditional order will not endanger public health or the environment, impede attainment or maintenance of the national ambient air quality standards, or constitute a violation of the Act; and
  2. Either of the following is true:
    - a. There has been a breakdown of equipment or upset of operations beyond the control of the petitioner which causes the source to be out of compliance with the requirements of this Chapter; the source was in compliance with the requirements of this Chapter before the breakdown or upset, and the breakdown or upset may be corrected within a reasonable time;
    - b. There is no reasonable relationship between the economic and social cost of, and benefits to be obtained from, achieving compliance.
- B. The following procedures shall apply to a person seeking a conditional order:
1. The person shall file a petition for a conditional order with the Director. The petition shall contain at a minimum:
    - a. A description of the breakdown or upset;
    - b. A description of corrective action being undertaken to bring the source back into compliance;
    - c. An estimate of emissions related to the breakdown or upset;
    - d. A compliance schedule with a date of final compliance and interim dates as appropriate;
    - e. A detailed analysis of the economic and social costs and benefits of achieving compliance with the requirement for which the variance is sought, if the petition is based on subsection (A)(2)(b).
  2. If the issuance of the conditional order requires a public hearing pursuant to R18-2-330, the Director shall set the hearing date within 30 days after the filing of the petition and the hearing shall be held within 60 days after the filing of the petition.
  3. Notice of the filing of a petition for a conditional order and of the hearing date on said petition shall be published in the manner provided in A.R.S. § 49-444 and R18-2-330.
- C. Decisions on petitions for a conditional order shall be made as follows:
1. For any conditional order that requires a revision to the SIP, the Director shall comply with the requirements contained in 40 CFR 51, Subpart F.
  2. For any other conditional order, the Director shall grant or deny the petition with such terms and conditions as are listed in subsection (E)(2) within 30 days after the conclusion of any required hearing, or, if no hearing is held, within 60 days after the filing of the petition.
- D. A fee to cover the costs of processing conditional orders may be charged by the Director prior to issuance consistent with R18-2-326(I) or (J). The fee shall be deposited in the permit administration fund established in A.R.S. § 49-455.
- E. The terms of a conditional order or its renewal shall conform to the following:
1. A conditional order issued by the Director shall be valid for such period as the Director prescribes but in no event for more than one year in the case of a source that is required to obtain a permit pursuant to this Chapter and Title V of the Act, and three years in the case of any other source that is required to obtain a permit pursuant to this Chapter.
  2. The terms and conditions which are imposed as a condition to the granting or the continued existence of a conditional order shall include:
    - a. A detailed plan for completion of corrective steps needed to conform to the provisions of A.R.S. Title 49, Chapter 3, Article 2, this Chapter, and the requirements of any permit issued pursuant to this Chapter;
    - b. A requirement that necessary construction shall begin as expeditiously as practicable and proceed as specified in the compliance schedule;
    - c. Written reports, at least quarterly, of the status of the source and construction progress;
    - d. The right of the Director to make periodic inspection of the facilities for which the conditional order is granted;
    - e. Such additional terms and conditions as the Director finds necessary to meet the requirements of this Section and A.R.S. § 49-437.
  3. A holder of a conditional order may petition the Director to renew the order. The total term of the initial period and all renewals shall not exceed three years from the date of initial issuance of the order. Petitions for renewal may be filed at any time not more than 60 days nor less than 30 days prior to the expiration of the order. The Director, within 30 days of receipt of a petition, shall renew the conditional order for one year if the petitioner is in compliance and conforming with the terms and conditions imposed. The Director may refuse to renew the conditional order if, after a public hearing held within 30 days of receipt of a petition, the Director finds that the petitioner is not in compliance and conforming with the terms and conditions of the conditional order. If, after a period of three years from the date of original issuance, the petitioner is not in compliance and conforming with the terms and conditions, the Director may renew a conditional order for a total term of two additional years only if the Director finds that failure to comply and conform is due to conditions beyond the control of such petitioner.
  4. If the Director amends or adopts any rule imposing conditions on the operation of an air pollution source which

Authorizing Statutes  
A.R.S. 49 104(A)(1) & (A)(10)

**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.

A.R.S 49 404(A)

49-404. State implementation plan

- A. The director shall maintain a state implementation plan that provides for implementation, maintenance and enforcement of national ambient air quality standards and protection of visibility as required by the clean air act.
- B. B. The director may adopt rules that describe procedures for adoption of revisions to the state implementation plan.
- C. C. The state implementation plan and all revisions adopted before September 30, 1992 remain in effect according to their terms, except to the extent otherwise provided by the clean air act, inconsistent with any provision of the clean air act, or revised by the administrator. No control requirement in effect, or required to be adopted by an order, settlement agreement or plan in effect, before the enactment of the clean air act in any area which is a nonattainment or maintenance area for any air pollutant may be modified after enactment in any manner unless the modification insures equivalent or greater emission reductions of the air pollutant. The director shall evaluate and adopt revisions to the plan in conformity with federal regulations and guidelines promulgated by the administrator for those purposes until the rules required by subsection B are effective.

**DEPARTMENT OF REVENUE**

Title 15, Chapter 5, Article 17, Department of Revenue - Transaction Privilege and Use  
Tax

**Amend:** R15-5-1708

**Repeal:** R15-5-2204



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** November 3, 2020

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

**FROM:** Council Staff

**DATE:** October 9, 2020

**SUBJECT:** Department of Revenue  
Title 15, Chapter 5, Transaction Privilege and Use Tax

**Amend:** R15-5-1708

**Repeal:** R15-5-2204

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### Summary:

This regular rulemaking from the Department of Revenue relates to rules in Title 15, Chapter 5, regarding transaction privilege and use tax. In this rulemaking the Department seeks to amend R15-5-1708 (Gratuities (Tips)) and repeal R15-5-2204 (Change of Business Location or Mailing Address). Currently, R15-5-1708, does not permit gratuities to be deducted unless the full amount of the gratuity listed is distributed to the employee, regardless of whether there was a processing fee associated with liquidating the gratuity. The Department is seeking to amend the rule, based on restaurant industry recommendations, to allow restaurants to deduct the full amount of gratuity even though the amount distributed to the employee is reduced by the credit card fees associated with the processing of the gratuity. The rule change would properly reflect the reality of credit card processing charges related to gratuities, and will be in line with industry standards as well as the federal Fair Labor Standards Act.

Pursuant to A.R.S. § 42-5005(G), a transaction privilege tax (TPT) license is not transferable on a change of location of a business. If a business changes its location, the business

must obtain a new TPT license. The Department indicates it seeks to repeal R15-5-2204, as it is redundant because the requirement is already established in statute.

The Department received an exemption from the rulemaking moratorium on June 25, 2020 to conduct this rulemaking.

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. The rules do not establish a new fee or 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?**

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

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

The amendment to A.A.C. R15-5-1708 would allow restaurants to deduct the full amount of a gratuity even though the amount distributed to the relevant employees is reduced by the credit card fees associated with processing the gratuity. The restaurant industry has indicated that this amendment would better reflect the current reality and the way the gratuities are treated for income tax purposes. Although not currently quantifiable, the department expects to experience time and cost savings because restaurants are already using this method for income tax purposes and so there will likely be less audit issues if the rule is implemented for TPT purposes. The department does not expect to incur any other costs apart from the costs associated with filing the amendment to the rules.

There is no economic impact in relation to the repeal of A.A.C. R15-5-2204 as the requirement to obtain a new license on a change of business location is already in statute. See A.R.S. § 42-5005.

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

The Department believes that the methods by which the Department achieves its purposes in this rulemaking are statutorily set; consequently, the Department is not authorized to develop, through rulemaking, alternative methods as suggested, and has not attempted to do so.

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

Although not currently quantifiable, the Department expects to experience time and cost savings because the restaurants are already using this method for income tax purposes and so there will likely be less reporting and audit issues if the rule is implemented for TPT purposes. The department does not expect to incur any other costs apart from the costs associated with filing the amendment to the rules. The Department does not anticipate that it will be necessary to hire any new full-time employees to implement and enforce the amendments to the rules. There are no other agencies directly impacted by the implementation and enforcement of this rulemaking.

Because county taxes follow the state TPT provisions, the Department anticipates that the implementation and enforcement of this rulemaking will directly affect some of the state's political subdivisions positively in the same manner as the state. Although not currently quantifiable, The Department does not anticipate political subdivisions will incur any negative effects as a result of the final rulemaking.

Current and prospective holders of transaction privilege and affiliated excise tax licenses that operate under the restaurant classification will likely be affected by this rulemaking. The rule as currently written only allows a restaurant to deduct gratuities if the entire amount is distributed to the employee. If any amount is withheld as recoupment for processing fees, the entire gratuity is taxable. The amendment will allow a restaurant to recoup processing fees by subtracting the amount associated with such fees prior to distribution to employees and still have the full amount of the gratuity be deductible from its TPT base. Since the industry already deducts processing fees from gratuities for income tax purposes, overall, the amendment will result in less potential penalties being assessed against restaurant businesses for improperly accounting for or improperly deducting gratuities. In addition, it will result in minimal costs to restaurants.

The Department does not anticipate that private persons other than current and prospective taxpayers subject to TPT under the restaurant classification would be directly 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. The Department did not make any changes to the final rules.

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

Not applicable. The Department indicates they 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?**

Not applicable. The rules do not require the issuance of 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. The Department indicates there are no corresponding federal laws.

11. **Conclusion**

As stated above, the rule change would properly reflect the reality of credit card processing charges related to gratuities, and will be in line with industry standards as well as the federal Fair Labor Standards Act. Additionally, the Department is seeking to repeal R15-5-2204, as it is redundant because the requirement is already established in statute. Council staff finds that if approved, the amended rules would be more clear, concise, understandable and effective.

The Department is requesting an immediate effective date for new rules under A.R.S. § 41-1032(A)(2). Upon review of the applicable statutes, Council staff finds that the Department demonstrates adequate justification for an immediate effective date. Council Staff recommends approval of this rulemaking with an immediate effective date.



September 18, 2020

Via email: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)

Ms. Nicole Sornsin  
GRRC Chair  
Governor's Regulatory Review Council  
Arizona Department of Administration  
100 North 15<sup>th</sup> Avenue, Room 402  
Phoenix, Arizona 85007

Douglas A. Ducey  
Governor

Carlton Woodruff  
Director

**Re: Notice of Final Rulemaking – Amendment to rules in 15 A.A.C.5**

Dear Ms. Sornsin:

The Department submits the enclosed Notice of Final Rulemaking with the listed actions to the following rules for the Council's consideration and approval:

R15-5-1708	Gratuities (Tips)	Amend
R15-5-2204	Change of Business Location or Mailing Address	Repeal

The Department filed a Notice of Rulemaking Docket Opening and Notice of Proposed Rulemaking with the Arizona Secretary of State on August 7, 2020. The close of record date was September 11, 2020. This rulemaking activity does not relate to a fiveyear review report and the rules do not establish any new fees or fee increases.

The Department did not receive any study relevant to the rules. Accordingly, it certifies that the preamble discloses no reference to any such study and it did not rely on any such study in its evaluation of or justification for the rules. The Department does *not* believe that it will be necessary to engage any additional full-time employees to implement and enforce the rules.

The Department is requesting an immediate effective date pursuant to A.R.S. § 41-1032(A)(5) since the rule being amended will be less stringent than the rule currently in effect.

The following documents are enclosed:

- The Notice of Final Rulemaking, including the preamble, table of contents for the rulemaking and the text of each rule;

Ms. Nicole Sornsin  
GRRC Chair  
Governor's Regulatory Review Council  
September 18, 2020  
Page 2

- Economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055;
- Reference materials: authorizing and implementing statutes; the A.A.C. rules.
- E-mail approving the Department's request for an exception to the rulemaking moratorium.

If you have any questions, please contact Lisa Querard, Research and Policy Administrator, Taxpayer Services Section via email at [LQuerard@azdor.gov](mailto:LQuerard@azdor.gov).

Thank you for your consideration.

Sincerely,



Grant Nülle  
Deputy Director  
Arizona Department of Revenue

Enclosures

**NOTICE OF FINAL RULEMAKING**

**TITLE 15. REVENUE**

**CHAPTER 5. DEPARTMENT OF REVENUE – Transaction Privilege and Use Tax**

**PREAMBLE**

<b>1. Article, Part, or Section Affected (as applicable)</b>	<b>Rulemaking Action</b>
R15-5-1708    Gratuities (Tips)	Amend
R15-5-2204    Change of Business Location or Mailing Address	Repeal

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

Authorizing statute: A.R.S. § 42-1005(A)(1)

Implementing statutes: A.R.S. § 42-5074

**3. Effective date of the rule:**

The Department is requesting an immediate effective date pursuant to A.R.S. § 41-1032(A)(5) since the rule being amended will be less stringent than the rule currently in effect.

**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: 26 A.A.R. 1591, August 7, 2020 (issue 32)

Notice of Proposed Rulemaking: 26 A.A.R. 1579, August 7, 2020 (issue 32)

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

Name:            Lisa Querard

Address:        1600 W. Monroe St., Mail Code 1300, Phoenix, AZ 85007

Telephone:     (602) 716-6813

Fax: (602) 716-7996  
E-mail: LQuerard@azdor.gov  
Web site: <http://www.azdor.gov>

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

A.A.C. R15-5-1708. Current rule A.A.C. R15-5-1708 does not permit gratuities to be deducted unless the full amount of the gratuity listed on the bill or statement is distributed to the employees, regardless of whether processing fees were associated with liquidating the gratuity. A.A.C. R15-5-1708 is being amended based on the restaurant industry recommendations to reflect the reality of credit card processing charges related to gratuities. The amendment to the rule would allow restaurants to deduct the full amount of a gratuity even though the amount distributed to the relevant employees is reduced by the credit card fees associated with processing the gratuity. The amendment will bring the rule in line with current industry standards as well as the federal Fair Labor Standards Act.

A.A.C. R15-5-2204. A.R.S. § 42-5005(G) provides that a transaction privilege tax (TPT) license is not transferable on a change of location of the business. Thus, if a business changes its location, the business must obtain a new TPT license. See A.R.S. § 42-5005(H). Since this requirement is already in statute, A.A.C. R15-5-2204 is being repealed because it is redundant.

**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:**

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 amendment to A.A.C. R15-5-1708 would allow restaurants to deduct the full amount of a gratuity even though the amount distributed to the relevant employees is reduced by the credit card fees associated with processing the gratuity. The restaurant industry has indicated that this amendment would better reflect the current reality and the way the gratuities are treated for income tax purposes. Although not currently quantifiable, the department expects to experience time and cost savings because restaurants are already using this method for income tax purposes and so there will likely be less audit issues if the rule is implemented for TPT purposes. The department does not expect to incur any other costs apart from the costs associated with filing the amendment to the rules.

Current and prospective holders of transaction privilege and affiliated excise tax licenses that operate under the restaurant classification will likely be affected by this rulemaking.

The rule as currently written only allows a restaurant to deduct gratuities if the entire amount is distributed to the employee. If any amount is withheld as recoupment for processing fees, the entire gratuity is taxable. The rule amendment will allow the gratuity to be deducted even where processing fees are withheld from the final distribution amount. This practice is consistent with federal income tax rules. Overall, it

will result in less potential penalties being assessed against businesses for improperly accounting for or improperly deducting gratuities. In addition, it will result in minimal costs to restaurants since the industry already deducts processing fees from gratuities for income tax purposes.

There is no economic impact in relation to the repeal of A.A.C. R15-5-2204 as the requirement to obtain a new license on a change of business location is already in statute. See A.R.S. § 42-5005.

- 10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:**
- 11. The agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:**
- 12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. § § 41-1052 and 41-1055 shall respond to the following questions:**

None

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

The rules do not require a permit.

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

**to exceed the requirements of federal law:**

There is no applicable federal law.

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

No such analysis was submitted.

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

Not applicable.

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

The rules were not previously made, amended or repealed as an emergency rule.

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

**TITLE 15. REVENUE**

**CHAPTER 5. DEPARTMENT OF REVENUE – TRANSACTION PRIVILEGE AND USE TAX**

**ARTICLE 17 RESTAURANT CLASSIFICATION**

R15-5-1708 Gratuities (Tips)

**ARTICLE 22 TRANSACTION PRIVILEGE TAX - ADMINISTRATION**

R15-5-2204 ~~Change of Business Location or Mailing Address~~ Repealed

**TITLE 15. REVENUE**

**CHAPTER 5. DEPARTMENT OF REVENUE – TRANSACTION PRIVILEGE AND USE TAX**

**ARTICLE 17 RESTAURANT CLASSIFICATION**

**R15-5-1708 Gratuities (Tips)**

- A.** A restaurant’s gross receipts from gratuities that are separately stated on the check or bill are not included in the restaurant’s tax base if:
1. The exact amount charged on a check or bill for gratuities and any amounts attributable to credit card fees for gratuities, ~~is~~ are segregated on the seller’s records for the account of the employees actually providing the services; and
  2. The amounts so segregated less any amounts attributable to credit card fees for gratuities, are distributed directly to the employees providing the services for which the charges were made;
- B.** If a restaurant cannot specifically segregate the charges for gratuities and amounts, if any, attributable to credit card fees or if any portion of the amounts charged for gratuities less amounts attributable to credit card fees, is not distributed to the employees ~~involved~~, the total gross receipts from the gratuities including any amounts attributable to credit card fees, are included in the tax base under the restaurant classification.

**ARTICLE 22 TRANSACTION PRIVILEGE TAX - ADMINISTRATION**

**R15-5-2204. ~~Change of Business Location or Mailing Address~~ Repealed**

- ~~**A.** The taxpayer shall apply for a new transaction privilege tax or use tax license if the physical location of the business changes.~~
- ~~**B.** The taxpayer shall notify the Department of a change in mailing address by submitting a form prescribed by the Department or through AZTaxes.gov.~~

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT (“EIS”)

NOTICE OF FINAL RULEMAKING

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

<u>Sections Affected</u>	<u>Rulemaking Action</u>
R15-5-1708 Gratuities (Tips)	Amend
R15-5-2204 Change of Business Location or Mailing Address	Repeal

**2. An identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the final rulemaking:**

The Department anticipates that the parties who will be directly affected by, bear the costs of, or directly benefit from this rulemaking are as follows:

- The Department; and
- Current and prospective taxpayers subject to transaction privilege tax (“TPT”) under the restaurant classification

**3. A cost benefit analysis:**

The Department’s responses in this analysis are limited by the data available to it through its various divisions and sections. Any probable cost ranges referenced in this section are as follows:

- Minimal costs = less than \$1,000
- Moderate costs = \$1,000 to \$10,000
- Substantial costs = more than \$10,000

Where such ranges are not referenced, the Department characterizes the probable or anticipated impacts below in qualitative terms, pursuant to A.R.S. § 41-1055(C).

**a. The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the final rulemaking:**

The amendment to A.A.C. R15-5-1708 would allow restaurants to deduct the full amount of a gratuity from their tax base even though the amount distributed to the relevant employees is reduced by the credit card fees associated with processing the gratuity. The industry has indicated that this amendment would better reflect current reality and the way the gratuities are treated for income tax purposes. Although not currently quantifiable, the Department expects to experience time and cost savings because the restaurants are already using this method for income tax purposes and so there will likely be less reporting and audit issues if the rule is implemented for TPT purposes. The department does not expect to incur any other costs apart from the costs associated with filing the amendment to the rules.

The Department does not anticipate that it will be necessary to hire any new full-time employees to implement and enforce the amendments to the rules.

There are no other agencies directly impacted by the implementation and enforcement of this rulemaking.

The Department does not anticipate an economic impact in relation to the repeal of A.A.C. R15-5-2204 as the requirement to obtain a new license on a change of business location is already in statute. See A.R.S. § 42-5005.

**b. The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the final rulemaking:**

Because county taxes follow the state TPT provisions, the Department anticipates that the implementation and enforcement of this rulemaking will directly affect some of the state's political subdivisions positively in the same manner as the state. Although not currently quantifiable, The Department does not anticipate political subdivisions will incur any negative effects as a result of the final rulemaking.

The Department does not anticipate an economic impact in relation to the repeal of A.A.C. R15-5-2204 to any political subdivision as the requirement to obtain a new license on a change of business location is already in statute. See A.R.S. § 42-5005.

**c. The probable costs and benefits to businesses directly affected by the final rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the final rulemaking:**

Current and prospective holders of transaction privilege and affiliated excise tax licenses that operate under the restaurant classification will likely be affected by this rulemaking. The rule as currently written only allows a restaurant to deduct gratuities if the entire amount is distributed to the employee. If any amount is

withheld as recoupment for processing fees, the entire gratuity is taxable. The amendment will allow a restaurant to recoup processing fees by subtracting the amount associated with such fees prior to distribution to employees and still have the full amount of the gratuity be deductible from its TPT base. since the industry already deducts processing fees from gratuities for income tax purposes, overall, the amendment it will result in less potential penalties being assessed against restaurant businesses for improperly accounting for or improperly deducting gratuities. In addition, it will result in minimal costs to restaurants.

There is no economic impact in relation to the repeal of A.A.C. R15-5-2204 to small businesses as the requirement to obtain a new license on a change of business location is already in statute. See A.R.S. § 42-5005.

**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 final rulemaking:**

Except as outlined above, the Department does not anticipate any impact on private and public employment (whether direct or indirect) in businesses, agencies, and political subdivisions of this state directly affected by this rulemaking.

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

A.R.S. § 41-1001 defines a small business as a concern, including its affiliates, that is independently owned and operated, not dominant in its field, and employs fewer than 100 full-time employees or that had gross annual receipts of less than \$4,000,000 in its

last fiscal year. Save as outlined herein, the Department does not expect any impact on small businesses as a result of the rulemaking.

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

For small businesses, the same category of persons—that is, current and prospective taxpayers subject to TPT under the restaurant classification—as for mid- to large-sized businesses is potentially subject to this rulemaking.

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

The Department does not anticipate additional administrative or other costs required for compliance, other than costs associated with reviewing the rules themselves. The Department cannot, however, currently quantify such costs. Any impact to small business will be minimal since clarification that tips are deductible even if credit card processing fees are deducted prior to distribution will limit the business's exposure for penalties and interest because compliance with the new rule will be consistent with current practice and federal income tax rules. Additionally, because the amendments to the rules will not cause any *additional* reporting or compliance requirements, businesses will not have to employ any additional personnel or engage any additional outside services such as legal or consulting fees as a result of the rule changes.

**c. A description of the methods prescribed in 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 to use each method:**

Small businesses will not be impacted negatively by the rules so they cannot be further simplified, reduced, or exempted pursuant to A.R.S. § 41-1035.

**d. The probable cost and benefit to private persons and consumers who are directly affected by the final rulemaking:**

The Department does not anticipate that private persons other than current and prospective taxpayers subject to TPT under the restaurant classification would be directly affected by this rulemaking.

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

The Department does not anticipate any effect on state revenues from this rulemaking; the rule brings clarity as to the deductibility of tips when credit cards processing fees are involved may produce a positive effect, but the Department cannot currently quantify this effect.

**7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the final rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using non-selected alternatives:**

The methods by which the Department achieves its purposes in this rulemaking are statutorily set; consequently, the Department is not authorized to develop, through rulemaking, alternative methods as suggested, and has not attempted to do so.

**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:**

Not applicable.

## CHAPTER 5. DEPARTMENT OF REVENUE - TRANSACTION PRIVILEGE AND USE TAX SECTION

Repealed April 21, 1995 (Supp. 95-2).

Amended effective December 16, 1997 (Supp. 97-4).

**R15-5-1703. Repealed****Historical Note**

Repealed effective March 18, 1981 (Supp. 81-2).

**R15-5-1704. Providing Food or Drink to Government Agencies**

A restaurant's gross proceeds of sales or gross income from sales of food or drink to the United States Government, the state or its political subdivisions, or any other government agency, or its employees is included in the tax base under the restaurant classification unless exempt as a sale to a qualifying hospital under A.R.S. § 42-5074(B)(7) or as a sale *for consumption within the premises of a prison, jail or other institution under the jurisdiction of the state department of corrections, the department of public safety, the department of juvenile corrections or a county sheriff* under A.R.S. § 42-5074(B)(9).

**Historical Note**

Amended effective December 16, 1997 (Supp. 97-4).  
R15-5-1704 corrected to reflect updated citation references to Arizona Revised Statutes (Supp. 06-4).

**R15-5-1705. Amusement Devices**

A restaurant's gross proceeds of sales or gross income from the operation of amusement devices is included in the tax base under the amusement classification (see Article 4).

**Historical Note**

Amended effective December 16, 1997 (Supp. 97-4).

**R15-5-1706. Cover Charges**

A restaurant's gross proceeds of sales or gross income from a cover charge or other minimum charge is included in the tax base under the restaurant classification.

**Historical Note**

Amended effective December 16, 1997 (Supp. 97-4).

**R15-5-1707. Repealed****Historical Note**

Repealed effective January 16, 1997 (Supp. 97-1).

**R15-5-1708. Gratuities (Tips)**

- A. A restaurant's gross receipts from gratuities that are separately stated on the check or bill are not included in the restaurant's tax base if:
1. The exact amount charged on a check for gratuities is segregated on the seller's records for the account of the employees actually providing the services; and
  2. The amounts so segregated are distributed directly to the employees providing the services for which the charges were made.
- B. If a restaurant cannot specifically segregate the charges for gratuities or if any portion of the amounts charged for gratuities is not distributed to the employees involved, the total gross receipts from the gratuities are included in the tax base under the restaurant classification.

**Historical Note**

Amended effective December 16, 1997 (Supp. 97-4).

**R15-5-1709. Coupon Redemption**

A restaurant that accepts coupons is subject to transaction privilege tax on the full sales price of the food or beverage before the coupon value is deducted if the restaurant receives advertising, services, or products in exchange for providing the discounts.

**Historical Note**

Adopted effective November 7, 1978 (Supp. 78-6).

**ARTICLE 18. REPEALED****R15-5-1801. Repealed****Historical Note**

Repealed effective July 23, 1985 (Supp. 85-4).

**R15-5-1802. Repealed****Historical Note**

Repealed effective April 13, 1987 (Supp. 87-2).

**R15-5-1803. Renumbered****Historical Note**

Renumbered to R15-5-181 effective August 9, 1993 (Supp. 93-3).

**R15-5-1804. Renumbered****Historical Note**

Renumbered to R15-5-182 effective August 9, 1993 (Supp. 93-3).

**R15-5-1805. Renumbered****Historical Note**

Renumbered to R15-5-104 effective August 9, 1993 (Supp. 93-3).

**R15-5-1806. Repealed****Historical Note**

Amended effective November 7, 1978 (Supp. 78-6).  
Repealed effective August 9, 1993 (Supp. 93-3).

**R15-5-1807. Repealed****Historical Note**

Repealed effective August 9, 1993 (Supp. 93-3).

**R15-5-1808. Renumbered****Historical Note**

Renumbered to R15-5-111 effective August 9, 1993 (Supp. 93-3).

**R15-5-1809. Renumbered****Historical Note**

Renumbered to R15-5-110 effective August 9, 1993 (Supp. 93-3).

**R15-5-1810. Repealed****Historical Note**

Repealed effective April 13, 1987 (Supp. 87-2).

**R15-5-1811. Renumbered****Historical Note**

Amended effective November 7, 1978 (Supp. 78-6).  
Renumbered to R15-5-101 effective August 9, 1993 (Supp. 93-3).

**R15-5-1812. Repealed****Historical Note**

Repealed effective August 9, 1993 (Supp. 93-3).

*Editor's Note: The information about casual sales that formerly was contained in R15-5-1812, and which is referenced in subsection R15-5-151(C)(1), now appears in R15-5-2001.*

**R15-5-1813. Renumbered**

## CHAPTER 5. DEPARTMENT OF REVENUE - TRANSACTION PRIVILEGE AND USE TAX SECTION

(Supp. 80-5). Repealed effective February 22, 1989 (Supp. 89-1). Section R15-5-2201 renumbered from R15-5-2203 and amended effective October 14, 1993 (Supp. 93-4). Amended by exempt rulemaking at 25 A.A.R. 3010, effective October 1, 2019 (Supp. 19-3).

**R15-5-2202. Change in Ownership**

- A. A transaction privilege tax or use tax license is issued to a specific person. The license shall not be transferred to the new owner when selling a business. The new owner shall apply to the state for a new license before engaging in business transactions.
- B. Court-appointed trustees, receivers, and others in cases of liquidation or operational bankruptcies shall obtain a transaction privilege tax or use tax license.

**Historical Note**

Repealed effective February 22, 1989 (Supp. 89-1). Section R15-5-2202 renumbered from R15-5-2205 and amended effective October 14, 1993 (Supp. 93-4). Amended by exempt rulemaking at 25 A.A.R. 3010, effective October 1, 2019 (Supp. 19-3).

**R15-5-2203. Change of Name or Trade Name**

If a change is made in the name or trade name under which the business is operating and the ownership remains the same, the taxpayer shall apply for a new license.

**Historical Note**

Section R15-5-2203 renumbered to R15-5-2201, new Section R15-5-2203 renumbered from R15-5-2206 and amended effective October 14, 1993 (Supp. 93-4).

**R15-5-2204. Change of Business Location or Mailing Address**

- A. The taxpayer shall apply for a new transaction privilege tax or use tax license if the physical location of the business changes.
- B. The taxpayer shall notify the Department of a change in mailing address by submitting a form prescribed by the Department or through AZTaxes.gov.

**Historical Note**

Amended effective October 15, 1980 (Supp. 80-5). Section R15-5-2204 repealed, new Section R15-5-2204 renumbered from R15-5-2207 and amended effective October 14, 1993 (Supp. 93-4). Amended by exempt rulemaking at 25 A.A.R. 3010, effective October 1, 2019 (Supp. 19-3).

**R15-5-2205. Surrender of License upon Sale or Termination of Business**

- A. If a business is sold or terminated, the taxpayer shall notify the Department of the date of sale or termination by submitting a form prescribed by the Department or through AZTaxes.gov and shall surrender the transaction privilege tax or use tax license to the Department.
- B. For the purposes of A.R.S. § 42-5005 and this Section, the Department shall consider a license surrendered if the licensee submits a request to cancel its license by submitting a form prescribed by the Department or through AZTaxes.gov.

**Historical Note**

Amended effective November 7, 1978 (Supp. 78-6). Section R15-5-2205 renumbered to R15-5-2202, new Section R15-5-2205 renumbered from R15-5-2209 effective October 14, 1993 (Supp. 93-4). Amended by exempt rulemaking at 25 A.A.R. 3010, effective October 1, 2019 (Supp. 19-3).

**R15-5-2206. Cancellation of License**

- A. In this Section, "affiliated person" has the same meaning as prescribed in A.R.S. § 42-5043.
- B. The Department may cancel a license if:
  1. During any consecutive 12-month period, the licensee reports no taxable transaction; and
  2. The licensee is not a subcontractor or wholesaler.
- C. The Department shall notify a licensee in writing of its intention to cancel the license. The notice shall explain the action the licensee may take to contest cancellation of the license and when cancellation is final.
- D. The Department shall cancel a license 30 days after the notice of intention to cancel is mailed unless, within 30 days, the licensee objects to the cancellation in writing and produces documentation that the licensee is actively engaged in a taxable business. Suitable documentation includes, but is not limited to, the following:
  1. Evidence that the licensee holds an inventory of raw or finished tangible personal property for sale or resale;
  2. Evidence that the licensee maintains segregated bank accounts for the purpose of transacting business;
  3. Bona fide contracts for future sale or resale of tangible personal property;
  4. Profit and loss statements for federal or state income tax purposes; or
  5. Evidence that the licensee otherwise actually engages in bona fide business activities.
- E. Within 30 days of receipt of the licensee's objections and documentation, the Department shall notify the licensee in writing of its decision to cancel or retain the license. If the decision is to cancel the license, the licensee may request an administrative hearing.
- F. Except as provided in subsection (G), a marketplace facilitator or remote seller may choose not to renew a license or cancel a license for the following calendar year if the sales of the marketplace facilitator or remote seller to Arizona purchasers fall below the current year threshold in A.R.S. § 42-5044 in the prior year.
- G. A marketplace facilitator or remote seller may choose not to renew a license or cancel a license for the following calendar year if the current year sales of the marketplace facilitator or remote seller, together with the aggregated sales of all affiliated persons of the marketplace facilitator or remote seller to Arizona purchasers, fall below the current year threshold in A.R.S. § 42-5044 in the prior year.

**Historical Note**

Section R15-5-2206 renumbered to R15-5-2203, new Section R15-5-2206 renumbered from R15-5-3018 effective October 14, 1993 (Supp. 93-4). Amended by exempt rulemaking at 25 A.A.R. 3010, effective October 1, 2019 (Supp. 19-3).

**R15-5-2207. Taxpayer Bonds**

- A. The amount of the bond required under A.R.S. § 42-1102 shall be the greater of five hundred dollars, or:
  1. For licensees reporting monthly, four times the average monthly liability;
  2. For licensees reporting quarterly, six times the average monthly tax liability; or
  3. For licensees reporting annually, fourteen times the average monthly tax liability.
- B. For purposes of determining the bond amount, the average monthly tax liability is equal to the average monthly tax due from the licensee for the preceding six consecutive months. If an applicant does not have a six-month payment history, the bond amount shall be a minimum of five hundred dollars.

42-1005. Powers and duties of director

A. The director shall be directly responsible to the governor for the direction, control and operation of the department and shall:

1. Make such administrative rules as he deems necessary and proper to effectively administer the department and enforce this title and title 43.

2. On or before November 15 of each year issue a written report to the governor and legislature concerning the department's activities during the year. In any election year a copy of this report shall be made available to the governor-elect and to the legislature-elect.

3. On or before December 15 of each year issue a supplemental report which shall also contain proposed legislation recommended by the department for the improvement of the system of taxation in the state.

4. In addition to the report required by paragraph 2 of this subsection, on or before November 15 of each year issue a written report to the governor and legislature detailing the approximate costs in lost revenue for all state tax expenditures in effect at the time of the report. For the purpose of this paragraph, "tax expenditure" means any tax provision in state law which exempts, in whole or in part, any persons, income, goods, services or property from the impact of established taxes including deductions, subtractions, exclusions, exemptions, allowances and credits.

5. Annually, on or before January 10, prepare and submit to the legislature a report containing a summary of all the revisions made to the internal revenue code during the preceding calendar year.

6. Provide such assistance to the governor and the legislature as they may require.

7. Delegate such administrative functions, duties or powers as he deems necessary to carry out the efficient operation of the department.

B. The director may enter into an agreement with the taxing authority of any state which imposes a tax on or measured by income to provide that compensation paid in that state to residents of this state is exempt in that state from liability for income tax, the requirement for filing a tax return and withholding tax from compensation. Compensation paid in this state to residents of that state is reciprocally exempt from the requirements of title 43.

42-5005. Transaction privilege tax and municipal privilege tax licenses; fees; renewal; revocation; violation; classification

A. Every person who receives gross proceeds of sales or gross income on which a transaction privilege tax is imposed by this article and who desires to engage or continue in business shall apply to the department for an annual transaction privilege tax license accompanied by a fee of \$12. A person shall not engage or continue in business until the person has obtained a transaction privilege tax license.

B. A person desiring to engage or continue in business within a city or town that imposes a municipal privilege tax shall apply to the department of revenue for an annual municipal privilege tax license accompanied by a fee of up to \$50, as established by ordinance of the city or town. The person shall submit the fee with each new license application. The person may not engage or continue in business until the person has obtained a municipal privilege tax license. The department must collect, hold, pay and manage the fees in trust for the city or town and may not use the monies for any other purposes. The fee imposed by this subsection does not apply to a marketplace facilitator or remote seller that is only required to obtain a transaction privilege tax license pursuant to section 42-5043.

C. A transaction privilege tax license is valid only for the calendar year in which it is issued, but it may be renewed for the following calendar year. There is no fee for the renewal of the transaction privilege tax license. The transaction privilege tax license must be renewed at the same time and in the manner as the municipal privilege tax license renewal.

D. A municipal privilege tax license is valid only for the calendar year in which it is issued, but it may be renewed for the following calendar year by the payment of a license renewal fee of up to \$50. The renewal fee is due and payable on January 1 and is considered delinquent if not received on or before the last business day of January. The department must collect, hold, pay and manage the fees in trust for the city or town and may not use the monies for any other purposes. The renewal fee imposed by this subsection does not apply to a marketplace facilitator or remote seller that is only required to obtain a transaction privilege tax license pursuant to section 42-5043.

E. A licensee that remains in business after the municipal privilege tax license has expired is subject to the payment of the license renewal fee and the civil penalty prescribed in section 42-1125, subsection R.

F. If the applicant is not in arrears in payment of any tax imposed by this article, the department shall issue a license authorizing the applicant to engage and continue in business on the condition that the applicant complies with this article. The license number shall be continuous.

G. The transaction privilege tax license and the municipal privilege tax license are not transferable on a complete change of ownership or change of location of the business. For the purposes of this subsection:

1. "Location" means the business address appearing in the application for the license and on the transaction privilege tax or municipal privilege tax license.

2. "Ownership" means any right, title or interest in the business.

3. "Transferable" means the ability to convey or change the right or privilege to engage or continue in business by virtue of the issuance of the transaction privilege tax or municipal privilege tax license.

H. When the ownership or location of a business on which a transaction privilege tax or municipal privilege tax is imposed has been changed within the meaning of subsection G of this section, the licensee shall surrender the license to the department. The license shall be reissued to the new owners or for the new location on application by the taxpayer and payment of the \$12 fee for a transaction privilege tax license and a fee of up to \$50 per jurisdiction for a municipal privilege tax license. The department must collect, hold, pay and manage the fees in trust for the city or town and may not use the monies for any other purposes.

I. A person who is engaged in or conducting a business in two or more locations or under two or more business names shall procure a transaction privilege tax license for each location or business name regardless of whether all locations or business names are reported on a consolidated return under a single transaction privilege tax license number. This requirement shall not be construed as conflicting with section 42-5020.

J. A person who is engaged in or conducting a business in two or more locations or under two or more business names shall procure a municipal privilege tax license for each location or business name regardless of whether all locations or business names are reported on a consolidated return.

K. A person who is engaged in or conducting business at two or more locations or under two or more business names and who files a consolidated return under a single transaction privilege tax license number as provided by section 42-5020 is required to pay only a single municipal privilege tax license renewal fee for each local jurisdiction pursuant to subsection D of this section. A person who is engaged in or conducting business at two or more locations or under two or more business names and who does not file a consolidated return under a single license number is required to pay a license renewal fee for each location or license in a local jurisdiction.

L. For the purposes of this chapter and chapter 6 of this title:

1. Through December 31, 2018, an online lodging marketplace, as defined in section 42-5076, may register with the department for a license for the payment of taxes levied by this state and one or more counties, cities, towns or special taxing districts, at the election of the online lodging marketplace, for taxes due from an online lodging operator on any online lodging transaction facilitated by the online lodging marketplace, subject to sections 42-5076 and 42-6009.

2. Beginning from and after December 31, 2018, an online lodging marketplace, as defined in section 42-5076, shall register with the department for a license for the payment of taxes levied by this state and one or more counties, cities, towns or special taxing districts for taxes due from an online lodging operator on any online lodging transaction facilitated by the online lodging marketplace, subject to sections 42-5076 and 42-6009.

M. For the purposes of this chapter and chapter 6 of this title, a person who is licensed pursuant to title 32, chapter 20 and who files an electronic consolidated tax return for individual real properties under management on behalf of the property owners may be licensed with the department for the payment of taxes levied by this state and by any county, city or town with respect to those properties. There is no fee for a license issued pursuant to this subsection.

N. If a person violates this article or any rule adopted under this article, the department upon hearing may revoke any transaction privilege tax or municipal privilege tax license issued to the person. The department shall provide ten days' written notice of the hearing, stating the time and place and requiring the person to appear and show cause why the license or licenses should not be revoked. The department shall provide written notice to the person of the revocation of the license. The notices may be served personally or by mail pursuant to section 42-5037. After revocation, the department shall not issue a new license to the person unless the person presents evidence satisfactory to the department that the person will comply with this article and with the rules adopted under this article. The department may prescribe the terms under which a revoked license may be reissued.

O. The department may revoke any transaction privilege tax or municipal privilege tax license issued to any person who fails for thirteen consecutive months to make and file a return required by this article on or before the due date or the due date as extended by the department unless the failure is due to a reasonable cause and not due to wilful neglect.

P. A person who violates any provision of this section is guilty of a class 3 misdemeanor.

#### 42-5074. Restaurant classification

A. The restaurant classification is comprised of the business of operating restaurants, dining cars, dining rooms, lunchrooms, mobile food units, lunch stands, soda fountains, catering services or similar establishments where articles of food or drink are sold for consumption on or off the premises.

B. The tax base for the restaurant classification is the gross proceeds of sales or gross income derived from the business. The gross proceeds of sales or gross income derived from the following shall be deducted from the tax base:

1. Sales to a person engaged in business classified under the restaurant classification if the items sold are to be resold in the regular course of the business.

2. Sales by a congressionally chartered veterans organization of food or drink prepared for consumption on the premises leased, owned or maintained by the organization.

3. Sales by churches, fraternal benefit societies and other nonprofit organizations, as these organizations are defined in the federal internal revenue code (26 United States Code section 501), that do not regularly engage or continue in the restaurant business for the purpose of fund-raising.

4. Sales by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the organization is associated with a major league baseball team or a national touring professional golfing association and no part of the organization's net earnings inures to the benefit of any private shareholder or individual. This paragraph does not apply to an organization that is owned, managed or controlled, in whole or in part, by a major league baseball team, or its owners, officers, employees or agents, or by a major league baseball association or professional golfing association, or its owners, officers, employees or agents, unless the organization conducted or operated exhibition events in this state before January 1, 2018 that were exempt from taxation under section 42-5073.

5. Sales at a rodeo featuring primarily farm and ranch animals in this state by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or 501(c)(8) of the internal revenue code if no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

6. Sales by any nonprofit organization organized and operated exclusively for charitable purposes and recognized by the United States internal revenue service under section 501(c)(3) of the internal revenue code.

7. Sales to qualifying hospitals as defined in section 42-5001.

8. Sales to a qualifying health care organization as defined in section 42-5001 if the tangible personal property is used by the organization solely to provide health and medical related educational and charitable services.

9. Sales of food, drink and condiment for consumption within the premises of any prison, jail or other institution under the jurisdiction of the state department of corrections, the department of public safety, the department of juvenile corrections or a county sheriff.

10. Sales of articles of prepared or unprepared food, drink or condiment and accessory tangible personal property to a school district or charter school if the articles and accessory tangible personal property are served to persons for consumption on the premises of a public school in the school district or charter school during school hours.

11. Prepared food, drink or condiment donated by a restaurant to a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code and that regularly serves meals to the needy and indigent on a continuing basis at no cost.

12. Sales of articles of food and drink at low or reduced prices to eligible elderly or homeless persons or persons with a disability by a restaurant that contracts with the department of economic security and that is approved by the food and nutrition services of the United States department of agriculture pursuant to the supplemental nutrition assistance program established by the food and nutrition act of 2008 (P.L. 110-246; 122 Stat. 1651; 7 United States Code sections 2011 through 2036a), if the purchases of the articles of food and drink are made with the benefits issued pursuant to the supplemental nutrition assistance program.

C. The tax imposed on the restaurant classification pursuant to this section does not apply to the gross proceeds of sales or gross income from tangible personal property sold to a commercial airline consisting of food, beverages and condiments and accessories used for serving the food and beverages, if those items are to be provided without additional charge to passengers for consumption in flight. For the purposes of this subsection, "commercial airline" means a person holding a federal certificate of public convenience and necessity or foreign air carrier permit for air transportation to transport persons, property or United States mail in intrastate, interstate or foreign commerce.

D. The department shall separately account for revenues collected under the restaurant classification for the purposes of section 42-5029, subsection D, paragraph 4, subdivision (b).

E. For the purposes of section 42-5032.01, the department shall separately account for revenues collected under the restaurant classification from businesses operating restaurants, dining rooms, lunchrooms, lunch stands, soda fountains, catering services or similar establishments:

1. On the premises of a multipurpose facility that is owned or operated by the tourism and sports authority pursuant to title 5, chapter 8 for consumption on or off the premises.

2. At professional football contests that are held in a stadium located on the campus of an institution under the jurisdiction of the Arizona board of regents.

**SCHOOL FACILITIES BOARD (R20-1109)**

Title 7, Chapter 6, Articles 1, 2, and 7

**Amend:** R7-6-101, R7-6-201, R7-6-205, R7-6-210, R7-6-211, R7-6-212, R7-6-213, R7-6-214, R7-6-215, R7-6-220, R7-6-221, R7-6-225, R7-6-226, R7-6-227, R7-6-230, R7-6-235, R7-6-245, R7-6-246, R7-6-247, R7-6-249, R7-6-250, R7-6-251, R7-6-255, R7-6-256, R7-6-258, R7-6-261, R7-6-265, R7-6-270, R7-6-271, R7-6-285, R7-6-701, R7-6-710, R7-6-711, R7-6-714, R7-6-719, R7-6-721, R7-6-750, R7-6-756, R7-6-758, R7-6-780, R7-6-781, R7-6-782

**Repeal:** R7-6-216, R7-6-248, R7-6-705, R7-6-712, R7-6-713, R7-6-715, R7-6-716, R7-6-720, R7-6-725, R7-6-726, R7-6-727, R7-6-730, R7-6-735, R7-6-745, R7-6-746, R7-6-747, R7-6-748, R7-6-749, R7-6-751, R7-6-755, R7-6-757, R7-6-760, R7-6-761, R7-6-765, R7-6-770, R7-6-771, R7-6-783, R7-6-790

**New Section:** R7-6-216



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

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**MEETING DATE:** November 3, 2020

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

**FROM:** Council Staff

**DATE:** October 7, 2020

**SUBJECT: SCHOOL FACILITIES BOARD (R20-1109)**  
Title 7, Chapter 6, Articles 1, 2, and 7

**Amend:** R7-6-101, R7-6-201, R7-6-205, R7-6-210, R7-6-211, R7-6-212, R7-6-213, R7-6-214, R7-6-215, R7-6-220, R7-6-221, R7-6-225, R7-6-226, R7-6-227, R7-6-230, R7-6-235, R7-6-245, R7-6-246, R7-6-247, R7-6-249, R7-6-250, R7-6-251, R7-6-255, R7-6-256, R7-6-258, R7-6-261, R7-6-265, R7-6-270, R7-6-271, R7-6-285, R7-6-701, R7-6-710, R7-6-711, R7-6-714, R7-6-719, R7-6-721, R7-6-750, R7-6-756, R7-6-758, R7-6-780, R7-6-781, R7-6-782

**Repeal:** R7-6-216, R7-6-248, R7-6-705, R7-6-712, R7-6-713, R7-6-715, R7-6-716, R7-6-720, R7-6-725, R7-6-726, R7-6-727, R7-6-730, R7-6-735, R7-6-745, R7-6-746, R7-6-747, R7-6-748, R7-6-749, R7-6-751, R7-6-755, R7-6-757, R7-6-760, R7-6-761, R7-6-765, R7-6-770, R7-6-771, R7-6-783, R7-6-790

**New Section:** R7-6-216

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### **Summary:**

This Notice of Final Expedited Rulemaking (NFER) from the School Facilities Board (Board) relates to rules in Title 7, Chapter 6, Articles 1, 2, and 7, governing the School Facilities Board. The Board states that it is conducting this expedited rulemaking because the rules are now

inconsistent with current industry standards and Board practice, technological changes, and best practices regarding education. The rules were adopted in 2001.

The Board received an exemption from Executive Order 2017-02 to conduct this expedited rulemaking on August 24, 2017.

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

Yes. The Board cites to A.R.S. § 41-1027(A)(3) (“[c]orrects typographical errors, makes address or name changes or clarifies language of a rule without changing its effect) and (6) (“[a]mends or repeals rules that are outdated, redundant or otherwise no longer necessary for the operation of state government”) as the bases to conduct this expedited rulemaking. Upon review of this statute and the NFER, Council staff agrees that the rulemaking satisfies the criteria for expedited rulemaking.

2. **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 these rules.

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

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

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

Yes. As described in the NFER, the Board received several comments in conducting this expedited rulemaking. Upon review, Council staff finds that the Board adequately responded to the comments that it received. In addition, the comments received are included with these materials for the Council Members’ review.

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

No. As described in Item 10 of the NFER, the Board made minor technical and clarifying changes to the rules between the Notice of Proposed Expedited Rulemaking and the Notice of Final Expedited Rulemaking. The changes do not result in rules that are “substantially different” pursuant to A.R.S. § 41-1025.

6. **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 Board states that federal civil rights laws prohibiting discrimination on the basis of disability are applicable to these rules, and that the rules are not more stringent than federal law.

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

These rules do not require a permit or license.

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

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

9. **Conclusion**

In this expedited rulemaking, the Board seeks to update its rules to align with current industry standards, Board practice, technological changes, and best practices. Upon review, Council staff finds that the Board cites the adequate bases under A.R.S. § 41-1027 to conduct this expedited rulemaking. If approved, the rulemaking would be effective immediately upon the Board filing the NFER and its Certificate of Approval with the Secretary of State. Council staff recommends approval of this expedited rulemaking.

Douglas A. Ducey  
Governor



Andy Tobin  
Executive Director

September 22, 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 7. Education  
Chapter 6. School Facilities Board  
Request for Approval of Final Expedited Rulemaking**

Dear Ms. Sornsin:

The attached notice of final expedited rulemaking is submitted for review and approval by the Council. The following information is provided for Council's use in reviewing the rulemaking:

- A. Close of record date: The rulemaking record was closed on September 22, 2020, following a period for public comment and an oral proceeding.
- B. Relation of the rulemaking to a five-year-review report: The rulemaking relates, in part, to a 5YRR approved by the Council on August 4, 2020.
- C. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):  
The Board is authorized under A.R.S. § 41-1027(A)(3) and (6) to conduct an expedited rulemaking because the rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated by the rules. The rulemaking also corrects typographical errors, clarifies language without changing its effect, and repeals redundant rules unnecessary for the operation of state government.
- D. Certification regarding studies: The Board certifies the preamble accurately discloses the Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.
- E. A list of all items enclosed:
  1. Notice of Final Expedited Rulemaking including the Preamble, Table of Contents, and rule text
  2. Current rules
  3. Statutory authority
  4. Public comments regarding the rulemaking

Sincerely,

A handwritten signature in black ink that reads "Nick Loper".

Nick Loper

Douglas A. Ducey  
Governor



Andy Tobin  
Executive Director

Executive Consultant

**NOTICE OF FINAL EXPEDITED RULEMAKING**  
**TITLE 7. EDUCATION**  
**CHAPTER 6. SCHOOL FACILITIES BOARD**  
**PREAMBLE**

<b><u>1. Articles, Parts, and Sections Affected</u></b>	<b><u>Rulemaking Action</u></b>
R7-6-101	Amend
R7-6-201	Amend
R7-6-205	Amend
R7-6-210	Amend
R7-6-211	Amend
R7-6-212	Amend
R7-6-213	Amend
R7-6-214	Amend
R7-6-215	Amend
R7-6-216	Repeal
R7-6-216	New Section
R7-6-220	Amend
R7-6-221	Amend
R7-6-225	Amend
R7-6-226	Amend
R7-6-227	Amend
R7-6-230	Amend
R7-6-235	Amend
R7-6-245	Amend
R7-6-246	Amend
R7-6-247	Amend
R7-6-248	Repeal
R7-6-249	Amend
R7-6-250	Amend
R7-6-251	Amend
R7-6-255	Amend
R7-6-256	Amend

R7-6-258	Amend
R7-6-261	Amend
R7-6-265	Amend
R7-6-270	Amend
R7-6-271	Amend
R7-6-285	Amend
R7-6-701	Amend
R7-6-705	Repeal
R7-6-710	Amend
R7-6-711	Amend
R7-6-712	Repeal
R7-6-713	Repeal
R7-6-714	Amend
R7-6-715	Repeal
R7-6-716	Repeal
R7-6-719	Amend
R7-6-720	Repeal
R7-6-721	Amend
R7-6-725	Repeal
R7-6-726	Repeal
R7-6-727	Repeal
R7-6-730	Repeal
R7-6-735	Repeal
R7-6-745	Repeal
R7-6-746	Repeal
R7-6-747	Repeal
R7-6-748	Repeal
R7-6-749	Repeal
R7-6-750	Amend
R7-6-751	Repeal
R7-6-755	Repeal
R7-6-756	Amend
R7-6-757	Repeal
R7-6-758	Amend

R7-6-760	Repeal
R7-6-761	Repeal
R7-6-765	Repeal
R7-6-770	Repeal
R7-6-771	Repeal
R7-6-780	Amend
R7-6-781	Amend
R7-6-782	Amend
R7-6-783	Repeal
R7-6-790	Repeal

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

Authorizing statute: A.R.S. §§ 15-2002(A)(11) and 15-2011(F)

Implementing statute: A.R.S. §§ A.R.S. § 15-2002(A)(11) and 15-2011(F)

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

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

Notice of Rulemaking Docket Opening: 25 A.A.R. 1740, July 5, 2019

Notice of Proposed Expedited Rulemaking: 26 A.A.R. 1363, July 10, 2020

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

Name: Nick Loper, Executive Consultant

Address: 100 N 15th Avenue; Suite 103  
Phoenix, AZ 85007

Telephone: (602) 620-4868

E-mail: [nick.loper@azdoa.gov](mailto:nick.loper@azdoa.gov)

Web site: <https://sfb.az.gov>

**6. An agency's explanation why the proposed expedited rule should be made, amended, repealed, or renumbered under A.R.S. § 41-1027(A) and why expedited proceedings are justified under A.R.S. § 41-1001(16)(c):**

The rules of the School Facilities Board were made in 2001. During the intervening years, the rules have become inconsistent with current industry standards and Board practice, technological changes, and best practices regarding education. The rules are being updated to address these issues and others identified in a five-year-review report approved by the Council on August 4, 2020.

Under A.R.S. § 41-1027(A)(3) and (6), the Board is authorized to conduct an expedited rulemaking because the rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated by the rules. The rulemaking also corrects typographical errors, clarifies language without changing its effect, and repeals redundant rules unnecessary for the operation of state government.

An exemption from Executive Order 2017-02 was provided for this rulemaking by Dawn Wallace, Director of the Governor's Office of Education, on August 24, 2017.

**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 Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

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

Not applicable

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

Under A.R.S. § 41-1055(D)(2), the Board is not required to prepare 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:**

Changes between the proposed and final expedited rulemaking include those identified in item 11:

- R7-6-201: This Section was amended to clarify its intent.
- R7-6-202: This Section was removed from the rulemaking.
- R7-6-213(B): Corrected a typographical error.
- R7-6-221: Deleted the term "VCR."
- R7-6-240: Was removed from the rulemaking.
- R7-6-260: This Section was removed from the rulemaking.

Additionally, the Board made minor edits to R7-6-246(A)(6) and (B)(2); R7-6-247(B); R7-6-250 and R7-6-750 (a word was removed from the Section headings; conforming changes were made in the Table of Contents); R7-6-256; and R7-6-258.

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

The Board received written comments from eight individuals before the close-of-record date on July 21, 2020, following an oral proceeding. Those who commented are:

- Caroline Lobo (Suoll Architects);
- Dale Ponder (Crane Schools);
- Greg Gilliam (Glendale Elementary School District #40);
- Marlene Imirzian (Marlene Imirzian & Associates, Architects);
- John Bendor (Osborn Maledon);
- Paul Bakalis (Proteus West);
- Robert Dalager (Public Policy Partners)
- Mark Davenport (SPS+ Architects LLP); and
- Carmen Wyckoff (DLR Group).

The Board thanks those who made time to review the NEPR and comment. The comments and the Board’s analysis and response follow:

COMMENT	ANALYSIS	RESPONSE
<p>Recommends the Board have the rules vetted by a team of experts similar to the MAG stakeholders group that made recommendations earlier this year. The rules in their current form do not serve students well. The proposed rules do not address issues discussed in the MAG stakeholder meetings. Urges the Board to reconvene the MAG stakeholders group for further input. (Lobo; Imirzian; Bendor; Bakalis)</p>	<p>The Board appreciates the input made by the MAG stakeholders group. Under statute (See A.R.S. § 41-1027(A)), this expedited rulemaking cannot include any provision that increases the cost of regulatory compliance. As a result, many of the suggestions of the stakeholder group could not be included in this rulemaking. The Board intends to address the suggestions in the regular rulemaking that will begin very soon.</p>	<p>No change</p>
<p>The proposed changes have not been the subject of a public hearing process, Board study, or</p>	<p>The Board held multiple stakeholder meetings in 2019 to collect public input. There was</p>	<p>No change</p>

<p>Board action. (Bendor)</p>	<p>a 30-day public comment period following posting the proposed rules on the Board’s website and an oral proceeding. The Board will review the rules at a meeting on August 5, 2020, to which the public is invited. Following this final review, the Board will vote to approve the NEFR during an open meeting.</p>	
<p>R7-6-201: The rules appear to be limited in applicability to newly constructed schools and primary building renewal projects. It is unclear what this means and what rules would apply to earlier-constructed schools. (Bendor; Dalager)</p> <p>This Section shifts the guidelines from minimum adequacy standards to construction standards. It leaves no vehicle for awarding statutorily prescribed building renewal grant projects. No previously constructed facility would be required to comply with the guidelines. Is the intent to leave the Board without guidelines to use in evaluation building renewal grant projects? (Dalager)</p>	<p>That is a grandfathering provision. The rules as they existed when a school facility was build would apply to earlier-constructed schools except if the earlier-constructed school engaged in a primary building renewal project or purchased necessary equipment.</p> <p>The Section clearly says it applies to primary building renewal projects. Any new construction, primary building renewal project, or purchase of necessary equipment would have to comply with the new guidelines.</p>	<p>Because questions were raised about this Section, the Board amended it to clarify its intent.</p>

<p>The rules maintain existing language regarding security. Because of school shootings and other safety issues, additional guidelines regarding security are needed. (Ponder; Gilliam)</p>	<p>The Board agrees but additional provisions could not be included in this expedited rulemaking because they may increase compliance costs. This issue will be addressed in the regular rulemaking.</p>	<p>No change</p>
<p>R7-6-202: It's good to have school facilities built/remodeled using local building codes. However, it's a bad idea to require the Board to list all applicable codes on its web site because there are too many and they change too fast. (Gilliam; Wyckoff)</p> <p>School facilities should be built using local building codes. Codes vary widely between counties and municipalities. (Davenport)</p>	<p>The Board believes the concerns about building codes are valid and decided to reevaluate this provision.</p>	<p>To provide time to reevaluate applicable building codes, the Board removed R7-6-202 from the rulemaking. Because this change would leave no applicable building code, the Board also removed the repeal of R7-6-260 from the rulemaking. This has the effect of leaving R7-6-260 as it currently exists.</p>
<p>R7-6-205(E): What is means by "adequate security"? Site security is much more than a fence around a playground. (Gilliam; Bendor)</p> <p>There are national guidelines regarding school safety. Reference should be made to them. (Bakalis)</p>	<p>The Board agrees that school safety and security are very important. However, additional provisions might increase compliance costs and cannot be addressed in an expedited rulemaking. This issue will be addressed in the regular rulemaking.</p>	<p>No change</p>

<p>R7-6-210: The rule regarding classroom space is inadequate for current educational needs. It fails to accommodate space for teaching, desk reconfiguration, accessibility, movement, storage, etc. (Imirzian; Bakalis)</p>	<p>Increasing the requirement regarding classroom square footage would increase the cost of compliance. It cannot be done in an expedited rulemaking. The Board will revisit this issue when the regular rulemaking is done.</p>	<p>No change</p>
<p>R7-6-210, R7-6-211, R7-6-221, R7-6-221, R7-6-227, R7-6-230, R7-6-245, R7-6-246, R7-6-248, and R7-6-258: These issues should be addressed in policy rather than rule to allow them to change quickly and to accommodate differences in district preferences. (Bakalis)</p>	<p>This is a rulemaking. Things addressed in policy are outside its scope. However, any requirement with which a district must comply has to be, by definition, a rule (See A.R.S. § 41-1001(19)).</p>	<p>No change</p>
<p>R7-6-210(C): This subsection is confusing. It seems to reduce the cumulative square footage listed in subsection (A). (Gilliam)</p>	<p>Cumulative classroom square footage is different from and a subset of classroom square footage.</p>	<p>No change</p>
<p>R7-6-210(E): An exterior space “may” be included. Who decides, what is the intent of this subsection, what is the issue? (Gilliam; Bendor)</p> <p>An exterior space should not be included. It is not a good minimum standard. Exterior space should not be used in place of interior space. (Davenport)</p>	<p>The intent is to provide flexibility to local authorities. An exterior classroom is not required but may be used.</p>	<p>No change</p>

<p>R7-6-211(1)(b): Does this subsection prohibit a built-in desk/cabinet/counter spaces? (Gilliam)</p>	<p>No. It simply says that student and teacher desks are required to be movable.</p>	<p>No change</p>
<p>R7-6-212: This entire Section is unnecessary. Because lighting system technology is ever changing, just say to comply with building codes. (Gilliam; Davenport)</p> <p>There is no mention of daylighting in this Section. Daylighting is important to learning outcomes. (Bakalis)</p>	<p>This issue will be revisited when the Board addresses building codes in the regular rulemaking.</p> <p>Adding a provision regarding daylighting might have resulted in increased compliance costs and could not be done in an expedited rulemaking. This issue will be revisited when the regular rulemaking is done.</p>	<p>No change</p> <p>No change</p>
<p>R7-6-213(B): Evaporative cooling is not a good source of cooling in a modern classroom. Evaporative cooling systems should be replaced with HVAC units. (Gilliam; Davenport)</p> <p>The last sentence of the subsection makes no sense.</p>	<p>The Board agrees but as Mr. Gilliam points out, replacing an evaporative cooling system with an HVAC unit results in increases in the cost of compliance. This change could not be made in an expedited rulemaking. This issue will be addressed when the regular rulemaking is done.</p> <p>The commenters are correct about the last sentence, part of</p>	<p>No change</p> <p>The omitted part of the last sentence, which is in the rule as</p>

(Gilliam; Bendor; Bakalis; Wyckoff)	which was inadvertently omitted in the NEPR.	it currently exists, was added.
R7-6-214: The decibel level should not be stated. Rather, voice amplification systems should be used so all students can hear the teacher without the teacher having to strain the teacher's voice. (Bakalis)	As the commenter indicated, voice amplification systems cost money. Because of this, they could not be addressed in an expedited rulemaking.	No change
R7-6-215: The rule should not specify an ambient CO <sup>2</sup> level. Rather, it should reference a national standard. (Bakalis; Wyckoff)	Referencing a national standard was a change that might incur increased compliance costs and could not be done in an expedited rulemaking. This will be revisited when the regular rulemaking is done.	No change
R7-6-216 and R7-6-248: The requirements for space for special education and vocational education appear to be deleted. (Bendor)	A new provision regarding space for special education was removed because of the expedited rulemaking limitation regarding compliance costs. Space regarding vocation education (now Career and Technical Education) is addressed in R7-6-247.	No change
R7-6-221: The requirement to have a TV/VCR is not needed. (Gilliam; Bakalis; Davenport; Wyckoff)  Having a specific publication date on materials makes them quickly out of date. (Bakalis; Wyckoff)	The Board agrees but requiring different equipment or more recently published materials is apt to increase the cost of compliance. The Board will address this when the regular rulemaking is done.	No change

<p>R7-6-225: This Section should clarify that the cafeteria is an interior space. (Gilliam; Davenport)</p>	<p>Some school districts combine an exterior space with an interior space as a cafeteria. The Board does not want to exclude this use of exterior space.</p>	<p>No change</p>
<p>R7-6-230(3): The last sentence should not be struck because it provides flexibility to districts. (Wyckoff)</p>	<p>The Board views the last sentence as unnecessarily duplicative. The Section is about multiuse spaces. By definition, this allows use as provided in the last sentence.</p>	<p>No change</p>
<p>R7-6-235: Continuing to fund technology devices at the rate of one device for every eight students is inadequate. There needs to be one device for each student. This could potentially result in savings by replacing hard-copy textbooks with digital textbooks and would allow for academic time to extend beyond the traditional classroom. (Ponder; Gilliam; Bendor; Bakalis; Davenport)</p>	<p>The ratio of technology devices to students had to be maintained in this expedited rulemaking to comply with statute requiring no increase in regulatory costs. The Board appreciates the suggestion and will address technology issues in the regular rulemaking.</p>	<p>No change</p>
<p>R7-6-240: The guideline regarding transportation is repealed with no alternative guideline provided. (Ponder; Bendor)</p>	<p>After consideration, the Board decided to remove this Section from the rulemaking. It will address the Section in the regular rulemaking.</p>	<p>The Section was removed from the rulemaking.</p>
<p>R7-6-246: Many districts now use virtual microscopes. This provision should have enough flexibility to accommodate this</p>	<p>As with all other issues involving emerging technology, this cannot be addressed in an expedited rulemaking because</p>	<p>No change</p>

new technology. (Wyckoff)	of the potential for increasing compliance costs. It will be revisited when the regular rulemaking is done.	
R7-6-249(B)(4): The provision regarding multiple use of a space is not needed because it is in R7-6-225. (Gilliam)	It makes rules more user-friendly if the user does not have to hunt for provisions applicable to a subject. The provision regarding multiple use of space occurs several times in the rules. However, when the regular rulemaking is done, the Board will consider including a general provision about multiple uses of spaces.	No change
R7-6-261: This Section is not needed. The building codes referenced in R7-6-202 are adequate. And energy performance contacting is addressed at A.R.S. § 15-213.01(B). (Gilliam)	A.R.S. § 15-213.01(B) is a voluntary program in which districts work with local utilities under an agreement approved by the Department of Education. While a piece of the program touches on energy savings, it is unclear whether it satisfies the intent of the rule. The Board will revisit this potential duplication when the regular rulemaking is done.	No change

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

None

- a. Whether the rule requires a permit, license, or agency authorization under A.R.S. § 41-1037(A) and whether a general permit is used and if not, the reasons why a general permit is not used:**

The Board does not issue permits.

- 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:**

Civil rights laws prohibiting discrimination based on disability are federal laws applicable to school facilities. The rules are not more stringent than federal law.

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

No analysis was submitted.

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

None

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

**TITLE 7. EDUCATION**  
**CHAPTER 6. SCHOOL FACILITIES BOARD**  
**ARTICLE 1. DEFINITIONS**

Section

R7-6-101. Definitions

**ARTICLE 2. MINIMUM SCHOOL FACILITY GUIDELINES**

R7-6-201. Application

R7-6-205. School Site

R7-6-210. ~~Academic Classroom Space~~ Square Footage

R7-6-211. ~~Classroom Light~~ Classroom Fixtures and Equipment

R7-6-212. ~~Reserved~~ Classroom Lighting

R7-6-213. Classroom Temperature

R7-6-214. Classroom ~~Acoustic~~ Acoustics

R7-6-215. Classroom Air Quality

R7-6-216. ~~Education Classroom Facilities for Disabled Students~~ Measuring Classroom Comfort

R7-6-220. ~~Libraries and Media Centers/Research Area~~ Learning and Technology Center

R7-6-221. Equipment for ~~Libraries and Media Centers/Research Area~~ Learning and Technology Center

R7-6-225. ~~Cafeterias~~ Cafeteria

R7-6-226. Food Service

R7-6-227. Equipment List for Food Service

R7-6-230. ~~Auditoriums, Multipurpose Rooms, or Other~~ Multiuse Space

R7-6-235. Technology

R7-6-245. Science Facilities

R7-6-246. Equipment List for Science Facilities

R7-6-247. Art Facilities; Career and Technical Education Facilities

R7-6-248. ~~Vocational Education Facilities~~ Repealed

R7-6-249. Physical Education and Comprehensive Health Program Facilities

R7-6-250. Equipment ~~List~~ for Physical Education Activity

R7-6-251. Alternative Delivery Method

R7-6-255. Parent Work Space

R7-6-256. Two-way Internal Communication System

R7-6-258. Administrative Space

R7-6-261. Energy Saving Measures

R7-6-265. Building Systems

- R7-6-270. Building Structural Soundness
- R7-6-271. Exterior Envelope, Interior Surfaces, and Interior Finishes
- R7-6-285. Guidelines Exception

**ARTICLE 7. MINIMUM SCHOOL FACILITY GUIDELINES FOR THE ARIZONA STATE  
SCHOOLS FOR THE DEAF AND BLIND**

Section

- R7-6-701. Application
- R7-6-705. ~~School Site~~ Repealed
- R7-6-710. ~~Academic Classroom Space~~ Square Footage Requirements for the ASDB
- R7-6-711. Classroom Fixtures and Equipment
- R7-6-712. ~~Classroom Lighting~~ Repealed
- R7-6-713. ~~Classroom Temperature~~ Repealed
- R7-6-714. Classroom Acoustics
- R7-6-715. ~~Classroom Air Quality~~ Repealed
- R7-6-716. ~~Education Classroom Facilities for Disabled Students~~ Repealed
- R7-6-720. ~~Libraries and Media Centers/Research Area~~ Repealed
- R7-6-721. Equipment for ~~Libraries and Media Centers/Research Area~~ Learning and Technology Center
- R7-6-725. ~~Cafeterias~~ Repealed
- R7-6-726. ~~Food Service~~ Repealed
- R7-6-727. ~~Equipment List for Food Service~~ Repealed
- R7-6-730. ~~Auditoriums, Multipurpose Rooms, or Other Multiuse Space~~ Repealed
- R7-6-735. ~~Technology~~ Repealed
- R7-6-740. ~~Transportation~~ Repealed
- R7-6-745. ~~Science Facilities~~ Repealed
- R7-6-746. ~~Equipment List for Science Facilities~~ Repealed
- R7-6-747. ~~Art Facilities~~ Repealed
- R7-6-748. ~~Vocational Education Facilities~~ Repealed
- R7-6-749. ~~Physical Education and Comprehensive Health Program Facilities~~ Repealed
- R7-6-750. Equipment List for Physical Education
- R7-6-751. ~~Alternative Delivery Method~~ Repealed
- R7-6-755. ~~Parent Work Space~~ Repealed
- R7-6-756. Two-Way Internal Communication System

- R7-6-757. ~~Fire Alarm~~ Repealed
- R7-6-758. Administrative Space
- R7-6-760. ~~Laws and Building Codes~~ Repealed
- R7-6-761. ~~Energy Saving Measures~~ Repealed
- R7-6-765. ~~Building Systems~~ Repealed
- R7-6-770. ~~Building Structural Soundness~~ Repealed
- R7-6-771. ~~Exterior Envelope, Interior Surfaces and Interior Finishes~~ Repealed
- R7-6-775. ~~Minimum Gross Square Footage~~ Repealed
- R7-6-776. ~~Assessment of Minimum Gross Square Footage~~ Repealed
- R7-6-780. Student Boarding Space
- R7-6-781. Facility Requirements for ASDB Program Requirement Facilities Programs
- R7-6-782. Student Health Center
- R7-6-783. ~~Parent Outreach Program~~ Repealed
- R7-6-790. ~~Guidelines Exception~~ Repealed

## ARTICLE 1. DEFINITIONS

### R7-6-101. Definitions

~~In~~ The definitions at A.R.S. § 15-2032 apply to this Chapter. ~~Additionally,~~ unless otherwise specified, ~~the following terms mean in this Chapter:~~

1. ~~“Ambient CO<sub>2</sub> Level~~ CO<sub>2</sub> level” means the carbon dioxide level of the outside air.
2. ~~“All-weather~~ All-weather surface” means ~~a~~ an area for vehicular use ~~and/or~~ or parking area that ~~shall be~~ is surfaced with ~~one of the following:~~ asphalt, concrete, chip seal, graded and compacted gravel, or other stabilized system.
3. ~~“Area” means exterior covered or uncovered portion of a school site.~~
- 4.~~3.~~ “Board” means the School Facilities Board.
- 5.~~4.~~ “Decibel” means a unit ~~in which various acoustical hearing level quantities are expressed for~~ expressing the relative intensity of sounds.
- 6.~~5.~~ “Eligible students” ~~means eligible students as defined in~~ has the same meaning as prescribed at A.R.S. § 15-901(A)(9).
- 7.~~6.~~ “Equipment” means ~~a specified~~ an item not affixed to the real property of a school facility.
8. ~~“Executive Director” means Executive Director of the School Facilities Board as set forth in A.R.S. § 15-2002(C).~~
- 9.~~7.~~ “Exterior envelope” means the exterior walls, floor, and roof of a building.
- 10.~~8.~~ “Fixture” means ~~a specified~~ an item ~~that is~~ affixed to the real property of a school facility.
- 11.~~9.~~ “Footcandle Foot-candle” means ~~the direct light thrown,~~ amount of illumination the inside surface of ~~on a square foot of surface,~~ a one-foot-radius sphere would receive from ~~by~~ a candle 7/8 inch in diameter burning at the exact center of the sphere at 7.776 grams per hour.
- 12.~~10.~~ “FTE” means ~~fulltime~~ full-time equivalent.
- 13.~~11.~~ “General Classroom classroom” means a ~~classroom~~ space that ~~is or~~ can be appropriately configured for instruction in at least the areas of language arts, mathematics, and social studies.
- 14.~~12.~~ “HVAC” means a heating, ventilation, and air conditioning system. ~~This does not necessarily mean a refrigerated~~ The air conditioning system may or may not be refrigerated.
13. “IEP” means individualized educational plan, a legal document required by law for each public school child who needs special education.
- 15.~~14.~~ “Normal Conditions conditions” means occupancy during regular school hours while the building system is operating.
- 16.~~15.~~ “PPM” means parts per million.
17. ~~“Pupil” means student.~~

- ~~18. “Pupil transportation vehicle” means a bus used to transport eligible students between their residence and a school facility for the academic day or a vehicle used to transport eligible disabled students between their residence and a school facility for the academic day.~~
- ~~19.~~16. “Random sample” means arbitrary selection through a process of assigning numbers to in which each classroom in each building ~~to be assessed~~ has an equal chance of being selected.
- ~~20.~~17. “School facility” means a building or group of buildings and outdoor area that are administered together to comprise a school campus.
- ~~21.~~18. “School site” means one or more parcels of land where a school facility is located. More than one school facility may be located on a school site.
- ~~22.~~ “Space” means ~~square footage located within the interior of a building.~~
- ~~23.~~19. “Specialty classroom” means a classroom space square footage that is or can be appropriately configured for instruction in a specific subject such as specifically designed for instruction in science, physical education, career and technical education, or art.
- ~~24.~~ “Student body” means ~~the number of students at a school facility.~~
- ~~25.~~20. “Student” means ~~the number of students~~ an individual:
- a. Enrolled at a school facility; and
  - b. ~~in~~ In average daily membership. Average daily membership is defined as the attending average enrollment of fractional students and full time students, minus withdrawals, of each school day through the first 100 days in session, not adjusted for average daily attendance , which is defined at A.R.S. § 15-901.
- ~~21.~~ “Student body” means the number of students at a school facility.
- ~~26.~~ “Transportation capacity” means ~~the number of passenger seats, according to manufacturer specifications, available on all of the pupil transportation vehicles owned by the school district, multiplied by two.~~

## ARTICLE 2. MINIMUM SCHOOL FACILITY GUIDELINES

### **R7-6-201. Application**

- A.** The provisions of this ~~Article~~ Chapter are applicable to a school facility and equipment that are necessary to meet the minimum school facility guidelines established in this Article or to meet the gross square footage standards and are in addition to standards prescribed by law.
- B.** Notwithstanding subsection (A), new construction projects and building renewal projects approved before the effective date of this rulemaking are exempt from changes made in this rulemaking.

**R7-6-205. School Site**

- A. A school site shall have safe access, parking, drainage, and security, ~~and area~~ to accommodate a school facility that complies with:
1. ~~the~~ The minimum gross square footage requirements established in A.R.S. § 15-2011, for the number of students at the school facility; ~~and that comply with these guidelines~~
  2. This Chapter.
- B. ~~“Safe access” means~~ A school site provides safe access by having:
1. ~~a~~ A student ~~drop-off~~ drop-off area; and
  2. ~~or~~ A pedestrian pathway that allows students to enter the school facility through a designated point of entry without crossing vehicular traffic or by ~~using~~ crossing vehicular traffic at a designated crosswalk. ~~Any student drop-off area that is used by a bus must be configured to accommodate bus width and turning requirements.~~
- C. ~~“Parking means a maintainable all-weather surfaced~~ A school site provides adequate parking by having an all-weather surface area that is large enough to accommodate one parking space per staff FTE and one visitor parking space per 100 students. If this definition is not met, A school site that is unable to provide adequate parking may have the sufficiency of the parking at the school site is subject to review determined by the Board using the following criteria:
1. Availability of street parking around the school;
  2. Availability of any nearby parking lots;
  3. Availability of public transit;
  4. Number of staff ~~that~~ who drive to work on a daily basis; and
  5. The average number of visitors on a daily basis.
- D. ~~“Drainage” means that a~~ A school site provides adequate drainage is configured such that runoff does not undermine the structural integrity of the school buildings located on the site or create flooding, ponding, or erosion resulting in a threat to health, safety, or welfare if the school site is prepared in a manner consistent with the drainage and floodplain management standards of the jurisdiction in which the school site is located.
- E. ~~“Security” means~~ A school site provides adequate security if there is a fenced or walled, play/physical outdoor, play or physical education area for preschool students with disabilities in programs for preschool children with disabilities and kindergarten and students in grades one kindergarten through grade six. This definition is met if the entire school is fenced or walled. If this definition is not met, A school site that is unable to provide adequate security may have the sufficiency of security at the school site is subject to review determined by the Board using the following criteria:
1. Amount of vehicular traffic near the school site;

2. Existence of hazardous or natural barriers on or near the school site;
3. The amount of animal nuisance near the school site; and
4. Visibility of the ~~play/physical~~ outdoor, play or physical education area.

**R7-6-210. Academic Classroom Space Square Footage**

- A. A school district shall have school facilities with the following minimum cumulative classroom square footage: ~~of 32 square feet for each student in programs for preschool children with disabilities, kindergarten programs and grades one through three in the district.~~
1. For preschool students with disabilities through grade three: 32 square feet per student;
  2. For grades four through six: 28 square feet per student;
  3. For grades seven and eight: 26 square feet per student; and
  4. For grades nine through 12: 25 square feet per student.
- B. ~~A school district shall have school facilities with cumulative classroom square footage of 28 square feet for each student in grades four through six in the district.~~ Classroom square footage of a school facility is measured from interior wall to interior wall of a classroom and is the space required for teaching. Both general and specialty classrooms are included in the classroom square footage of a school facility.
- C. ~~A school district shall have school facilities with cumulative~~ Cumulative classroom square footage ~~of 26 square feet for each student in grades seven and eight in the district.~~ is measured as follows:
1. 100 percent of the classroom square footage usable for general classroom purposes and occupied throughout a day by the same students in programs for preschool students with disabilities, kindergarten, and grades one through six;
  2. 90 percent of the classroom square footage usable for general and specialty classroom purposes in programs for students in grades seven and eight; and
  3. 85 percent of the classroom square footage usable for general and specialty classroom purposes in programs for students in grades nine through 12.
- D. ~~A school district shall have school facilities with cumulative classroom square footage of 25 square feet for each student in grades 9 through 12 in the district.~~ Classroom square footage includes space allocated for any of the following purposes:
1. Garment storage,
  2. Supply storage,
  3. Work counter; and
  4. Teacher or student collaboration.

- ~~E.~~ For purposes of measuring cumulative classroom square footage for programs for preschool children with disabilities, kindergarten programs and grades one through six, classroom spaces are those occupied throughout the school day by the same students, or usable for general classroom purposes. An exterior space may be included in the classroom square footage of a school facility if the exterior space is covered and meets all other standards in this Chapter.
- ~~F.~~ For purposes of measuring cumulative classroom square footage for grades seven and eight, classroom spaces are 90 percent of the square footage of those rooms usable for general and specialty classroom purposes.
- ~~G.~~ For purposes of measuring cumulative classroom square footage for grades 9 through 12, classroom spaces are 85 percent of the square footage of those rooms usable for general and specialty classroom purposes.
- ~~H.~~ Classroom space is measured from interior wall to interior wall.
- ~~I.~~ The amount of classroom space per student specified in this Article accounts for required teaching space.
- ~~J.~~ The square footage of a general classroom is not counted as specialty classroom square footage.
- ~~K.~~ The square footage of a specialty classroom is not counted as general classroom square footage.

#### **R7-6-211. Classroom Fixtures and Equipment**

- ~~A.~~ Each general and specialty classroom shall:
  - ~~1.~~ ~~contain~~ Contain a work surface and seat for each student, teacher, and other individual regularly assigned to in the classroom. The work surface and seat shall be:
    - ~~a.~~ ~~appropriate~~ Appropriate for the normal activity of the class conducted in the room. ~~A work surface and seat are adequate if the items are:, and~~
    - ~~1.~~ Safe; and
    - ~~2.~~ ~~b.~~ Maintainable Capable of being moved into different configurations;
  - ~~B.~~ ~~2.~~ Each general and specialty classroom shall have Have one or more, non-electronic, mounted or retractable, surfaces, at least three feet by five feet, which fulfill all of the following purposes:
    - ~~a.~~ ~~an~~ Is erasable, surface and a surface
    - ~~b.~~ Is suitable for projection, and purposes, appropriate for group classroom instruction and a
    - ~~c.~~ Is suitable for display surface. A single surface may meet one or more of these purposes. An erasable surface and a surface suitable for projection purposes, appropriate for group classroom instruction must be at least three feet by five feet.;
  - ~~C.~~~~3.~~ Each general and specialty classroom shall have Have storage for classroom materials or access ~~to conveniently located~~ accessible storage.; and

~~D.4.~~ Each general and specialty classroom shall have a work surface and seat for the teacher and for the aid assigned to the classroom and Have secure storage for student records, ~~that is located in the classroom or is convenient to access from the classroom~~ or conveniently accessible secure storage. Student records may be stored electronically.

#### **R7-6-212. Classroom Lighting**

~~A.~~ Each general, science, and art classroom shall have a light system capable of maintaining at least:

- ~~1.~~ 50 footcandles Fifty foot-candles of light if the light is provided by incandescent, halogen, or fluorescent bulbs; or
- ~~2.~~ Thirty foot-candles of light if the light is provided by LED (light emitting diode) bulbs;

~~B.~~ The light level shall be measured at a work surface located in the approximate center of the classroom, between clean light fixtures under normal operating conditions.

~~C.~~ A random sample of 10 percent of the general, science, and art classrooms in each building shall be measured to determine the classroom light level for the school facility. ~~D.~~ For purposes of this Section, all portable or modular buildings located at a school facility that were manufactured in the same year and installed at the school facility at the same time are considered a single building.

#### **R7-6-213. Classroom Temperature**

~~A.~~ Each general, science, and art classroom A school facility shall have a an HVAC system capable of maintaining a temperature between 68° and 82 F under normal conditions with an occupied classroom.

~~B.~~ Except in areas where the elevation is above 5,000 feet, defective or non-operable air conditioners and evaporative coolers shall be replaced with air conditioning. Non-air conditioned schools with elevations less than 5,000 feet shall be air-conditioned.

~~C.~~ The temperature shall be measured at a work surface in the approximate center of the classroom, under normal conditions.

~~D.~~ A random sample of 10 percent of the general, science, and art classrooms in each building shall be measured to determine the classroom temperature level for the school facility.

~~E.~~ For purposes of this Section, all portable or modular buildings located at a school facility that were manufactured in the same year and installed at the school facility at the same time are considered a single building.

#### **R7-6-214. Classroom Acoustics**

- ~~A. Each general, science, and art classroom shall be maintainable at a~~ The sustained background sound level of each general, science, and art classroom shall be less than 55 decibels.
- ~~B. The sound level shall be measured at a work surface in the approximate center of the classroom, under normal conditions.~~
- ~~C. A random sample of 10 percent of the general, science, and art classrooms in each building shall be measured to determine the classroom sound level for the school facility.~~
- ~~D. For purposes of this Section, all portable or modular buildings located at a school facility that were manufactured in the same year and installed at the school facility at the same time are considered a single building.~~

**R7-6-215. Classroom Air Quality**

- ~~A. Each general, science, and art classroom shall have a HVAC system capable of maintaining a CO2~~ The CO<sup>2</sup>-level of not more than in each general and specialty classroom shall not exceed 800 PPM above the ambient CO2 level.
- ~~B. The air quality shall be measured at a work surface in the approximate center of the classroom, under normal conditions.~~
- ~~C. A random sample of 10 percent of the general, science, and art classrooms in each building shall be measured to determine the classroom air quality level for the school facility.~~
- ~~D. For purposes of this Section, all portable or modular buildings located at a school facility that were manufactured in the same year and installed at the school facility at the same time are considered a single building.~~

**R7-6-216. ~~Education Classroom Facilities for Disabled Students~~ Measuring Classroom Comfort**

~~A school facility shall have space or access to space capable of being used for the education programs of disabled students attending the school facility.~~ To determine whether a school facility complies with the standards in R7-6-212 through R7-6-215:

1. Classroom lighting, temperature, acoustics, and air quality shall be measured at a work surface in the approximate center of a classroom under normal conditions;
2. Measuring shall be performed for a random sample of 10 percent of the general, science, and art classrooms in each building of the school facility; and
3. All portable or modular buildings manufactured in the same year and installed at the school facility at the same time are considered a single building.

**R7-6-220. ~~Libraries and Media Centers/~~Research Area Learning and Technology Center**

- A. A school facility shall have a learning and technology center with space for students to access electronic and hard-copy research materials, literature, nontext and reading materials, and reading books and technology, to permit students to achieve state academic standards as prescribed by the State Board of Education. ~~This~~ The learning and technology center shall include space for reading, listening, and viewing materials.
- B. For an elementary school facility that serves at least 150 students, ~~this space~~ the learning and technology center shall be have space equal to the greater of 1000 square feet or the square footage equal to 20 square feet per student for 10 percent of the student body.
- C. For a middle or junior high or high school facility that serves at least 150 students, ~~this space~~ the learning and technology center shall be have space equal to the greater of 1200 square feet or the square footage equal to 20 square feet per student for 10 percent of the student body.
- ~~D. A school facility that serves at least 150 students shall have library fixtures and equipment in accordance with R7-6-221 as modified from time to time.~~
- ~~E. A school facility shall have library materials in accordance with R7-6-221 as modified from time to time.~~

**R7-6-221. ~~Equipment for Libraries and Media Centers/~~Research Area Learning and Technology Center**

- A. ~~The standard equipment list for libraries and media centers/research areas is as follows~~ learning and technology center of a school facility shall contain the following minimum equipment:
1. One linear foot of ~~library book shelves~~ shelf space per student;
  2. For a school facility of 150 or more students, one work surface and seat for every 20 students, minimum of 15, maximum of 75;
  3. ~~For a school of 150 or more students, one seat for every 20 students, minimum of 15, maximum of 75;~~
  4. ~~3.~~ One TV/VCR;
  5. ~~4.~~ One overhead projector Projection equipment and projection surface;
  6. ~~5.~~ Ten books per ~~students~~ student; and
  7. ~~6.~~ One almanac (may be An electronic or hard copy); of each of the following:
    - a. Almanac,
    - b. Encyclopedia,
    - c. Atlas, and

d. Unabridged dictionary.

8. ~~One encyclopedia set per 200 students (may be electronic or hard copy);~~

9. ~~One atlas (may be electronic or hard copy); and~~

10. ~~One unabridged dictionary (may be electronic or hard copy).~~

B. ~~Each~~ If a hard-copy almanac, encyclopedia, and or atlas is used, each shall have a publication date of 2000 or later.

**R7-6-225. Cafeterias Cafeteria**

A school facility shall have a covered ~~area or space, or combination, to permit in which~~ students are able to eat within the school site, outside of ~~general~~ classrooms. ~~This~~ The space used as a cafeteria may have more than one function and may fulfill more than one ~~guideline~~ requirement (~~auditorium and/or indoor physical education~~) in this Chapter.

**R7-6-226. Food Service**

A. A school facility shall have space, and fixtures, and equipment, ~~in accordance with the standard equipment list in R7-6-227 as modified from time to time, for the preparation, receipt, storage, and service of~~ sufficient for receiving, storing, preparing, and serving food to students. ~~The food service fixtures and equipment shall be in or accessible to the cafeteria space. that is accessible to the serving area.~~ The space, fixtures, and equipment shall be appropriate for the food service program of the school facility. Food service fixtures and equipment are subject to assessment under R7-6-265(A)(1) and (2).

B. ~~Food~~ A school facility shall ensure food service facilities fixtures and equipment shall comply with county health codes.

**R7-6-227. Equipment List for Food Service.**

A. A school facility that receives, stores, prepares, and serves food to students shall have the following fixtures and equipment ~~for the preparation, receipt, storage and service of food to students:~~

1. One three-compartment sink<sub>2</sub>
2. One ~~double stack~~ double-stack ~~convection oven for a cooking kitchen~~ or a warming oven<sub>2</sub>
3. One dishwasher if reusable dishes and silverware are used<sub>2</sub>
4. One ~~hot food~~ hot-food holding appliance<sub>2</sub>
5. One range with hood<sub>2</sub>
6. One refrigerator<sub>2</sub>
7. One freezer<sub>2</sub>, and

8. One milk refrigerator.

- B.** ~~The items in subsection (A) of this Section may be substituted for a reasonable~~ An alternative may be substituted for any item in subsection (A) if the alternative enables the school facility to receive, store, prepare, and serve food to students.
- C.** A school facility that receives, stores, and serves food prepared off the school site may adjust the items in subsection (A) accordingly.

**R7-6-230. Auditoriums, Multipurpose Rooms, or Other Multiuse Space**

A school facility shall have a space capable of being used for student assembly. The space shall be:

1. sufficient ~~Large enough~~ to accommodate one-third of the student body, ~~which shall be the~~
2. The same size or larger than an average classroom at the school facility, and. ~~The space must be~~
3. equal to at ~~At~~ least seven square feet multiplied by one-third of the student body in addition to the square footage of open aisle and exiting path space. ~~This space may have more than one function and may fulfill more than one guideline requirement (cafeteria and/or indoor physical education).~~

**R7-6-235. Technology**

- A.** ~~Each classroom at a~~ A school facility shall ~~have Internet access, at least through a network modem. Each school must have available either on a school basis or on a district wide basis a firewall and filtering software. Each school facility shall have~~ provide at least one network connected multimedia computer device, available for student use, for every eight students, ~~on a school wide network. Computer equipment is subject to assessment under R7-6-265(A)(1) and (2). A multimedia device is a computer, tablet, or other smart device with internet access capable of presenting multimedia content.~~
- B.** ~~A multimedia computer is defined as a computer that has sound, CD-ROM, a keyboard, a monitor, and a pointing device.~~
- C.** ~~Until June 30, 2005, each district shall have an application service provider, coupled with an adequate variety of instructional software.~~
- D.** ~~In order to meet the requirements of this Section, should a school district have an application service provider in place, the school district may also meet the requirements of subsection (A) of this Section by purchasing thin client terminals or network appliances with full access to the Internet, equipped with a 13" screen or larger monitors.~~

**R7-6-245. Science Facilities**

- A. A school facility with students in grades ~~5~~ five through 12 shall have classroom ~~space to deliver square footage for delivery of practical science instruction, or classroom space for an alternate science delivery method in science.~~
1. For grades five through eight, ~~no space is required beyond the academic classroom requirement classroom square footage is required other than as specified in R7-6-210.~~
  2. For grades ~~9~~ nine through 12, four square feet per student ~~is required for~~ of practical and instructional instruction in science space is required. The space shall not be smaller than the average classroom at the facility. ~~This space is included in the academic classroom requirement and may be used for other instruction when not needed for practical instruction in science.~~
- B. A ~~Except as specified in R7-6-251, a school facility with students in grades 5 five through 12 that delivers practical science instruction shall have the~~ science fixtures and equipment, in accordance with specified in R7-6-246 as modified from time to time. If an alternate science delivery method is used by a district, a school facility shall have science fixtures and equipment for students in grades 5 through 12 that are an alternate equivalent to the science fixtures and equipment identified in R7-6-246 for delivery of practical instruction in science.

**R7-6-246. Equipment List for Science Facilities**

- A. Science facilities for students in grades ~~9~~ nine through 12 shall have the following fixtures and equipment:
1. One demonstration table with non-corrosive surface per 250 students-;
  2. Six laboratory stations with a non-corrosive surface per 250 students-;
  3. One fume hood-;
  4. One chemical storage unit per 1,000 students-;
  5. One ~~eye wash/shower~~ eyewash or safety shower station per 250 students-;
  6. ~~One~~ Access to one dissecting microscope per 25 students, minimum of ~~the lesser of 12 microscopes or the number equal to one-half of the number of eligible students in grades nine through 12 divided by 25, whichever is fewer-;~~ and
  7. One refrigerator.
- B. Science facilities for students in grades five through 12 shall have the following fixtures and equipment:
1. One sink per 250 students-;

2. ~~One~~ Access to one compound microscope per 25 students, minimum of ~~the lesser of~~ 12 microscopes or the number equal to one-half of the number of eligible students in grades five through 12 divided by 25, whichever is fewer; and
3. One balance per 250 students.

**R7-6-247. Arts Facilities; Career and Technical Education Facilities**

- A. ~~Except as specified in R7-6-251, a school facility with students in grades 7 seven through 12 shall have space to deliver art education programs, including visual, music, and performing arts, programs or have access to an alternate delivery method and career and technical education programs.~~
- B. ~~For~~ A school facility with students in grades 7 seven through 12, shall have four square feet per student of ~~art and/or vocational education space is required~~ for art education and/or career and technical education. The space shall not be smaller than the average classroom at the facility. ~~This space is included in the academic classroom requirement and may be used for other instruction when not needed for instruction in the arts or career and technical education.~~
- C. A school facility with students in kindergarten through sixth grade may deliver art education in the classroom square footage specified in R7-6-210. Education in performing arts may be delivered to students in kindergarten through sixth grade in spaces such as a multiuse space, gymnasium, or cafeteria if the spaces have appropriate acoustical treatment.

**R7-6-248. Vocational Education Facilities Repealed**

- A. ~~A school facility with students in grades 7 through 12 shall have space to deliver vocational education programs or have access to an alternate delivery method.~~
- B. ~~For grades 7 through 12, four square feet per student of art and/or vocational education space is required. The space shall not be smaller than the average classroom at the facility. This space is included in the academic classroom requirement and may be used for other instruction.~~

**R7-6-249. Physical Education and Comprehensive Health Program Facilities**

- A. ~~A school facility shall have area and space and fixtures, in accordance with R7-6-250 as modified from time to time,~~ classroom square footage for indoor physical education activity and space for a comprehensive health program established in compliance with the academic standards prescribed by the State Board of Education.
- B. ~~For schools designed for 20-50 students, the~~ The indoor space classroom square footage available for physical education must be one single space of at least 1,600 square feet. activity shall be:

1. For a school facility designed to serve no more than 50 students: at least 1,600 square feet in a single space;
2. For schools designed for 50 a school facility designed to serve 51 to 125 students; the indoor space available for physical education must be one single space of at least 2,600 square feet in a single space;
3. For schools a school facility designed for more than 125 to serve 126 to 600 students; the total indoor space available for physical education must be at least 5,100 square feet, and one single space that is of which at least 2,600 square feet must be available. is in a single space; and
4. For a school facility designed to serve more than 600 students: at least 7,500 square feet, which may include space that also serves as a cafeteria.

C. This space The classroom square footage designated in subsection (B) may have more than one function and may fulfill more than one guideline requirement (cafeteria and/or auditorium). The including the comprehensive health space is the indoor space available for physical education program.

#### **R7-6-250. Equipment List for Physical Education Activity**

**A.** A school facility shall have ~~the following equipment and fixtures for physical education:~~

1. ~~Exterior to the building, one hardscape equivalent in size to an outdoor basketball court size-surface area and two goals per 300 students, four court to a maximum of three hardscapes.~~
2. **B.** ~~Exterior to the building, one baseball/softball backstop~~ A school facility with students in grades seven through 12 shall have a sports field appropriate for softball, hardball, football, track, soccer, or other sports.

**B.** ~~Concrete shall be used when installing basketball courts.~~

#### **R7-6-251. Alternate Alternative Delivery Method**

~~If A school district may use an alternate delivery alternative method is used by the district to deliver instruction in art, science, or vocational career and technical education; the Before an alternate alternative method is used, the school district must be approved by shall:~~

1. Have the school district governing board and be determine the alternative method is capable of meeting the requirements established in the academic standards prescribed by the State Board of Education for the specific subject area; and
2. Approve use of the alternative method.

#### **R7-6-255. Parent Work Space**

- A. If parents are invited to assist with school activities, a school facility shall include a work space ~~capable of being used by~~ large enough to accommodate the number of parents expected to assist with school activities at one time.
- B. ~~One square foot per student, with a minimum of 150 square feet and a maximum of 800 square feet, is required. The maximum may be exceeded. The parent work space may be divided into more than one room. This space~~ in multiple locations throughout the school facility and may have more than one function.

#### **R7-6-256. Two-way Internal Communication System**

A school facility shall have a ~~network and~~ two-way internal communication system, such as a telephone, between a central location and ~~each classroom, library, physical education space, and the cafeteria~~ each general and specialty classroom, the learning and technology center, and the cafeteria.

#### **R7-6-258. Administrative Space**

- A. A school facility shall have space for ~~the use of~~ by the administration of the school. For the school administrator, 150 designated square feet is required. For general administrative purposes, ~~and additional 1.5 square feet per student is required, with a minimum of~~ a space between 150 square feet and a maximum of 2,500 ~~and 1.5 square feet per student, as reasonable for the size of the anticipated student body, is required.~~ The maximum may be exceeded.
- B. A school facility shall have a dedicated space in which to isolate a sick student from the other students. This space shall be ~~a designated space that is~~ accessible to a restroom, and large enough to accommodate one cot per 200 students, with a maximum of four cots. ~~The maximum may be exceeded.~~
- C. A school facility shall have work space available to the faculty. ~~This space that~~ is in addition to any work ~~area available to a teacher,~~ space in or near a classroom. ~~One square foot per student with a maximum of~~ A space between 150 square feet and a maximum of 800 ~~and one square foot is required foot per student, as reasonable for the size of the anticipated student body, is required. The maximum may be exceeded. The space may be divided into more than one room. This~~ The faculty work space may be in multiple locations throughout the school facility and may have more than one function.

#### **R7-6-261. Energy Saving Measures**

~~New school facility construction and, as required, building renovations in existing school, Both construction of a new school facility and renewal of an existing school facility shall include, where reasonable, energy conservation upgrades measures that will provide dollar savings in excess of the cost of the upgrade conservation measure within eight years of the installation construction or renewal.~~

#### **R7-6-265. Building Systems**

- A. ~~Building~~ As required under A.R.S. § 15-2011(B)(3), building systems in a school facility ~~must~~ shall be in working order and capable of being properly maintained. A building system ~~shall be~~ is considered to be in “working order and capable of being maintained,” if ~~all of the following:~~
- ~~1. The system is capable of being operated as intended ~~and maintained~~;~~
  - ~~2. The system is capable of being maintained according to manufacturer’s instructions;~~
  - ~~2.3. Newly manufactured or refurbished replacement parts are available;~~
  - ~~3.4. The remaining life expectancy of the system, ~~at the time of the initial statewide assessment,~~ is at least three years;~~
  - ~~4.5. The system is capable of supporting the gross square footage ~~standard and minimum~~ of the school facility ~~guidelines established in this Article;~~ and~~
  - ~~5.6. Components of the system present no imminent danger of personal injury.~~
- B. ~~Building systems include, as required by law, under A.R.S. § 15-2011(B)(3) to be in working order and capable of being maintained include~~ roof, plumbing, telephone, electrical, and ~~heating and cooling~~ HVAC systems. Additionally, under this Chapter, the following building systems shall be in working order and capable of being properly maintained: as well as fire alarm, ~~twoway~~ two-way internal communication, ~~computer~~ network cabling, and ~~existing~~ security systems.

#### **R7-6-270. Building Structural Soundness**

- A As required under A.R.S. § 15-2011(B)(4), all buildings of a school facility ~~must~~ shall be structurally sound. A building of a school facility shall be is considered structurally sound if the building:
- ~~1. presents~~ Presents no imminent danger of personal harm, ~~or major~~
  - ~~2. Has no visible signs of major decay or distress, and~~
  - ~~3. the~~ Appears to have at least three years of remaining life expectancy of the building structure ~~appears to be at least a minimum of three years.~~

#### **R7-6-271. Exterior Envelope, Interior Surfaces, and Interior Finishes**

The exterior envelope, interior surfaces, and interior finishes ~~at~~ of a school facilities must facility shall be safe and capable of being maintained.

1. An exterior envelope is safe and capable of being maintained if:
  - a. Walls and roof are ~~weather tight under normal conditions with routine upkeep~~ constructed of materials requiring minimal maintenance, including painting;
  - b. ~~Doors~~ Walls, roof, doors, and windows are weather tight under normal conditions with routine upkeep; and
  - c. The building structural systems support the loads imposed on them.
2. An interior surface is safe and capable of being maintained if it is:
  - a. Structurally sound;
  - b. Capable of supporting a finish; and
  - c. Capable of continuing in its intended use, with normal maintenance and repair, for at least three years ~~after the initial statewide assessment.~~
3. An interior finish is safe and capable of being maintained if it is:
  - a. Free of exposed lead paint;
  - b. Free of friable asbestos; and
  - c. Capable of continuing in its intended use, with normal maintenance and repair, for at least three years ~~after the initial statewide assessment.~~

#### **R7-6-285. Guidelines Exception**

The Board may grant an exception from any of the guidelines ~~requirements, in this Chapter. upon agreement between the Board and the school district.~~ To obtain an exception, the governing board of the school district shall submit a written request to the Board. The Board shall grant an exception if it determines ~~that~~ the intent of the guideline is capable of being met by the school district in an ~~alternate~~ alternative manner. If the Board grants the exception, the Board shall deem the school district ~~shall be deemed to meet~~ meets the guideline and is not eligible for state funding to meet the guideline.

### **ARTICLE 7. MINIMUM SCHOOL FACILITY GUIDELINES FOR THE ARIZONA STATE SCHOOLS FOR THE DEAF AND BLIND**

#### **R7-6-701. Application**

- A.** The provisions of Article 2 apply to the Arizona State Schools for the Deaf and Blind (ASDB), created under A.R.S. Title 15, Chapter 11, except as specified in this Article.

- B. When a provision of Article 2 refers to a school district, the reference shall be interpreted to mean the ASDB governing board.
- C. If there is a conflict between a provision of this Chapter and a student's IEP, the IEP controls.
- D. The provisions of this Article are applicable only to the Arizona State Schools for the Deaf and Blind ("ASDB") as created by A.R.S. Title 15, Chapter 11. Board funding for ASDB deficiency correction projects pursuant to this Article is subject to legislative authorization for such funding.

**R7-6-705. School Site Repealed**

- ~~A. A school site shall have safe access, parking, drainage, security, and area to accommodate a school facility that complies with the minimum gross square footage requirements established in A.R.S. § 52011, for the number of students at the school facility and that comply with these guidelines.~~
- ~~B. "Safe access" means a student drop-off area or pedestrian pathway that allows students to enter the school facility without crossing vehicular traffic or by using a designated crosswalk. Any student drop-off area that is used by a bus must be configured to accommodate bus width and turning requirements.~~
- ~~C. "Parking means a maintainable all-weather surfaced area that is large enough to accommodate one parking space per staff FTE and 10 visitor parking spaces per 100 students. If this definition is not met, the sufficiency of the parking at the site is subject to review by the Board using the following criteria:
 
  1. Availability of street parking around the school;
  2. Availability of any nearby parking lots;
  3. Availability of public transit;
  4. Number of staff that drive to work on a daily basis; and
  5. The average number of visitors on a daily basis.~~
- ~~D. "Drainage" means that a school site is configured such that runoff does not undermine the structural integrity of the school buildings located on the site or create flooding, ponding, or erosion resulting in a threat to health, safety, or welfare.~~
- ~~E. "Security" means perimeter fencing surrounding the campus with lockable access gates with at least one automatic gate including card access as well as sight/audio, two-way communication with a central security office. The campus shall also have an accessible security office of at least 300 square feet per campus for visitor registration and multiple campus surveillance cameras strategically located around campus feeding video to the security office via monitors. The campus shall also have a fenced or walled play/physical education area for students in programs for preschool children with~~

~~disabilities and kindergarten and students in grades 1 through 6. The requirement for a fenced or walled play/physical education area is met if the entire school is fenced or walled; otherwise, the sufficiency of this requirement is subject to review by the Board using the following criteria:~~

- ~~1. Amount of vehicular traffic near the school site;~~
- ~~2. Existence of hazardous or natural barriers on or near the school site;~~
- ~~3. The amount of animal nuisance near the school site; and~~
- ~~4. Visibility of the play/physical education area.~~

#### **R7-6-710. Academic Classroom Space Square Footage Requirements for the ASDB**

A. To accommodate the needs of ASDB students, the classroom square footage requirements of the ASDB differ from those of other school facilities as follows.

~~**A.B.** The ASDB shall have school facilities with Minimum cumulative classroom square footage; of 150 square feet for each of its students in programs for preschool children with disabilities and kindergarten programs.~~

- ~~1. For preschool students with disabilities through kindergarten: 150 square feet per student; and~~
- ~~2. For grades one through 12: 100 square feet per student.~~

~~**B.C.** The ASDB shall have school facilities with cumulative classroom square footage of 100 square feet for each of its students in grades kindergarten through six. Learning and technology center:~~

- ~~1. For an elementary school facility that serves at least 150 students, the greater of 1000 square feet or the square footage equal to 325 square feet per student for 10 percent of the student body; and~~
- ~~2. For a middle or junior high or high school facility that serves at least 150 students, the greater of 1200 square feet or the square footage equal to 275 square feet per student for 10 percent of the student body.~~

~~**C.D.** The ASDB shall have school facilities with cumulative classroom square footage of 100 square feet for each of its students in grades seven and eight. Multiuse space capable of being used for student assembly:~~

- ~~1. Large enough to accommodate one-half of the student body plus parents and staff,~~
- ~~2. The same size or larger than an average classroom at the ASDB, and~~
- ~~3. At least 50 square feet multiplied by one-third of the student body in addition to the square footage of open aisle and exiting path space.~~

~~**D.E.** The ASDB shall have school facilities with cumulative classroom square footage of 100 square feet for each of its students in grades 9 through 12. Science facilities:~~

1. For grades five through eight, no classroom square footage is required other than as specified in R7-6-710; and

2. For grades nine through 12, 10 square feet per student is required for practical instruction in science.

~~E.F.~~ For purposes of measuring cumulative classroom square footage for programs for preschool children with disabilities, kindergarten programs and grades one through six, classroom spaces are those occupied throughout the school day by the same students, or usable for general classroom purposes. Art facilities: For students in grades seven through 12, 10 square feet per student is required for art education.

~~F.G.~~ For purposes of measuring cumulative classroom square footage for grades seven and eight, classroom spaces are 90 percent of the square footage of those rooms usable for general and specialty classroom purposes. Career and technical education facilities: For students in grades seven through 12, 40 square feet per student is required for career and technical education programs.

~~G.H.~~ For purposes of measuring cumulative classroom square footage for grades 9 through 12, classroom spaces are 85 percent of the square footage of those rooms usable for general and specialty classroom purposes. Physical education and comprehensive health program facilities: 125 square feet per student of indoor space is required for physical education and comprehensive health programs.

~~H.I.~~ Classroom space is measured from interior wall to interior wall. The spaces designated under subsections (C) through (H) shall not be smaller than the average classroom at the ASDB.

~~I.J.~~ The amount of classroom space per student specified in this Article accounts for required teaching space. The spaces designated under subsections (E) through (H) shall not be:

1. Included in the classroom square footage requirement; or
2. Used for instruction other than the specialty instruction specified.

~~J.~~ The square footage of a general classroom is not counted as specialty classroom square footage.

~~K.~~ The square footage of a specialty classroom is not counted as general classroom square footage.

### **R7-6-711. Classroom Fixtures and Equipment**

A. Each general and specialty classroom of the ASDB shall contain:

1. ~~two~~ Two work surfaces and seating per student and seating for each student, in the classroom that accommodates The work surfaces and seat shall accommodate the special needs of a student who is deaf, blind, and multi-handicapped students or has multiple disabilities. The work surface and seat shall be appropriate for the normal activity of the class conducted in the room. A work surface and seat are adequate if the items are; and

1. Safe; and

2. Maintainable One work surface and seat for the teacher and any other individual regularly assigned to the classroom.
- ~~B. Each general and specialty classroom shall have an erasable surface and a surface suitable for projection purposes, appropriate for group classroom instruction and a display surface. A single surface may meet one or more of these purposes. An erasable surface and a surface suitable for projection purposes, appropriate for group classroom instruction must be at least three feet by five feet. The ASDB shall provide the equipment and supplies necessary to meet the IEP of all students.~~
- ~~C. Each general and specialty classroom shall have storage for classroom materials or access to conveniently located storage.~~
- ~~D. Each general and specialty classroom shall have a work surface and seat for the teacher and for the aid assigned to the classroom and secure storage for student records, that is located in the classroom or is convenient to access from the classroom.~~
- ~~E. Each classroom shall have the following equipment to facilitate instruction to deaf/hard of hearing students:~~
- ~~1. TTY~~
  - ~~2. Accessible computer with Internet access and printer~~
  - ~~3. Television with built in captioned and videocassette recorder.~~
  - ~~4. Loop systems for auditory access.~~
  - ~~5. Sound field amplification system.~~
  - ~~6. Overhead projector.~~
- ~~F. Each classroom shall have the following equipment to facilitate instruction to blind/visually impaired students:~~
- ~~1. One CCTV.~~
  - ~~2. One listening station.~~
  - ~~3. Two Braille n' Speaks.~~
  - ~~4. Two Braille writers.~~
  - ~~5. Slantboards.~~
  - ~~6. Fully accessible computer station with Braille printer.~~
  - ~~7. Tables to accommodate Braille writers and Braille books simultaneously.~~
  - ~~8. Shelving for Braille materials, low vision aids/equipment.~~
  - ~~9. Auditory electronic dictionaries and calculators.~~
  - ~~10. Cane racks.~~
  - ~~11. Television monitor with a video cassette recorder.~~

**R7-6-712. Classroom Lighting Repealed**

- ~~A. Each general, science, and art classroom shall have non-glare, natural light and a light system capable of maintaining at least 50 footcandles of ambient, indirect light and 70 footcandles of direct task lighting, which may include lamps.~~
- ~~B. The light level shall be measured at a work surface located in the approximate center of the classroom, between clean light fixtures under normal operating conditions.~~
- ~~C. A random sample of 10 percent of the general, science, and art classrooms in each building shall be measured to determine the classroom light level for the school facility.~~
- ~~D. For purposes of this Section, all portable or modular buildings located at a school facility that were manufactured in the same year and installed at the school facility at the same time are considered a single building.~~

**R7-6-713. Classroom Temperature Repealed**

- ~~A. Each general, science, and art classroom, and all student resident space shall have a HVAC system capable of maintaining a temperature between 68° and 82° F under normal conditions with an occupied classroom.~~
- ~~B. Except in areas where the elevation is above 5,000 feet, defective or non-operable A/C conditioning and evaporative coolers shall be replaced with A/C. Non-air conditioned schools with elevations less than 5,000 feet shall be air conditioned.~~
- ~~C. In the classrooms, the temperature shall be measured at a work surface in the approximate center of the classroom, under normal conditions.~~
- ~~D. A random sample of 10 percent of the student residence space, and the general, science, and art classrooms in each building shall be measured to determine the classroom temperature level for the school facility.~~
- ~~E. For purposes of this Section, all portable or modular buildings located at a school facility that were manufactured in the same year and installed at the school facility at the same time are considered a single building.~~

**R7-6-714. Classroom Acoustics**

- ~~A. The library/media center, the multipurpose room, and each general, science, and art classroom shall be maintainable at a sustained background sound level of the learning and technology center, multiuse space, and each general, science, and art classroom of the ASDB shall be less than 35 decibels.~~

- ~~B. The sound level shall be measured at a work surface in the approximate center of the room, under normal conditions.~~
- ~~C. A random sample of 10 percent of all rooms in each building subject to this requirement shall be measured to determine the room sound level for the school facility.~~
- ~~D. For purposes of this Section, all portable or modular buildings located at a school facility that were manufactured in the same year and installed at the school facility at the same time are considered a single building.~~

**R7-6-715. Classroom Air Quality Repealed**

- ~~A. Each general, science, and art classroom shall have a HVAC system capable of maintaining a CO<sub>2</sub> level of not more than 800 PPM above the ambient CO<sub>2</sub> level.~~
- ~~B. The air quality shall be measured at a work surface in the approximate center of the classroom, under normal conditions.~~
- ~~C. A random sample of 10 percent of the general, science, and art classrooms in each building shall be measured to determine the classroom air quality level for the school facility.~~
- ~~D. For purposes of this Section, all portable or modular buildings located at a school facility that were manufactured in the same year and installed at the school facility at the same time are considered a single building.~~

**R7-6-716. Education Classroom Facilities for Disabled Students Repealed**

~~A school facility shall have space or access to space capable of being used for the education programs of disabled students attending the school facility.~~

**R7-6-720. Libraries and Media Centers/Research Area Repealed**

- ~~A. A school facility shall have space for students to access research materials, literature, nontext reading materials, and reading books and technology, to permit students to achieve state academic standards as prescribed by the State Board of Education. This shall include space for reading, listening, and viewing materials.~~
- ~~B. For an elementary school facility that serves at least 150 students, this space shall be the greater of 1000 square feet or the square footage equal to 325 square feet per student for 10 percent of the student body.~~

- ~~C. For a middle or junior high or high school facility that serves at least 150 students, this space shall be the greater of 1200 square feet or the square footage equal to 275 square feet per student for 10 percent of the student body.~~
- ~~D. A school facility that serves at least 150 students shall have library fixtures and equipment in accordance with R7-6-721 as modified from time to time.~~
- ~~E. A school facility shall have library materials in accordance with R7-6-721 as modified from time to time.~~

**R7-6-721. Equipment for ~~Libraries and Media Centers~~/Research Area Learning and Technology Center**

~~A. The standard equipment list for libraries and media centers/research areas is as follows: The learning and technology center of each ASDB campus shall have equipment defined in each student's IEP or as defined in R7-6-221, as appropriate.~~

- ~~1. Twelve linear feet of library book shelves per blind student and two linear feet of library book shelves per deaf student;~~
- ~~2. One work surface for every 40 students;~~
- ~~3. One seat for every eight students;~~
- ~~4. Two TV's/VCR's;~~
- ~~5. One overhead projector;~~
- ~~6. One accessible computer station with Internet access for every 25 students;~~
- ~~7. One Braille printer;~~
- ~~8. Ten books per students;~~
- ~~9. One almanac (may be electronic or hard copy);~~
- ~~10. One encyclopedia set per 200 students (may be electronic or hard copy);~~
- ~~11. One atlas (may be electronic or hard copy);~~
- ~~12. One unabridged dictionary (may be electronic or hard copy); and~~
- ~~13. At least one set of each of the books listed in subsections (9) through (12) of this Section shall be accessible to blind students.~~

~~B. Each almanac, encyclopedia and atlas shall have a publication date of 2000 or later.~~

**R7-6-725. Cafeterias Repealed**

~~A school facility shall have a covered area or space, or combination, to permit students to eat within the school site, outside of general classrooms. This space may have more than one function and may fulfill more than one guideline requirement.~~

**R7-6-726. Food Service Repealed**

- ~~A. A school facility shall have space and fixtures and equipment, in accordance with the standard equipment list in R7-6-727 as modified from time to time, for the preparation, receipt, storage, and service of food to students that is accessible to the serving area. The space, fixtures, and equipment shall be appropriate for the food service program of the school facility. Food service fixtures and equipment are subject to assessment under R7-6-765(A)(1) and (2).~~
- ~~B. Food service facilities and equipment shall comply with county health codes.~~

**R7-6-727. Equipment List for Food Service. Repealed**

- ~~A. A school facility shall have the following fixtures and equipment for the preparation, receipt, storage and service of food to students:
  - 1. ~~One three-compartment sink.~~
  - 2. ~~One double stack convection oven for a cooking kitchen or a warming oven.~~
  - 3. ~~One dishwasher if reusable dishes and silverware are used.~~
  - 4. ~~One hot food holding appliance.~~
  - 5. ~~One range with hood.~~
  - 6. ~~One refrigerator.~~
  - 7. ~~One freezer.~~
  - 8. ~~One milk refrigerator.~~~~
- ~~B. The items in subsection (A) of this Section may be substituted for a reasonable alternative.~~

**R7-6-730. Auditoriums, Multipurpose Rooms, or Other Multiuse Space Repealed**

~~A school facility shall have a space capable of being used for student assembly sufficient to accommodate one-half of the student body plus parents and staff, which shall be the same size or larger than an average classroom at the facility. The space must be equal to at least 50-square feet multiplied by one-third of the student body. This space may have more than one function and may fulfill more than one guideline requirement (cafeteria and/or indoor physical education).~~

**R7-6-735. Technology Repealed**

- ~~A. Each classroom at a school facility shall have Internet access, at least through a network modem. Each school must have available either on a school basis or on a district wide basis a firewall and filtering software. Each school facility shall have at least one network multimedia computer, available for student use, for every eight students, on a school wide network. Computer equipment is subject to assessment under R7-6-765(A)(1) and (2).~~
- ~~B. A multimedia computer is defined as a computer that has sound, CD-ROM, a keyboard, a monitor, and a pointing device.~~
- ~~C. Until June 30, 2005, each ASDB campus shall have an application service provider, coupled with an adequate variety of instructional software.~~
- ~~D. When five or more students are provided instruction remotely, at least one classroom in each school facility shall be equipped for distance learning activities, including video conferencing capable of supporting 30 frames per second.~~

**R7-6-740. Transportation Repealed**

- ~~A. Pupil transportation vehicles manufactured prior to 1978 shall be replaced if the eligible students transported exceeds the student transportation capacity of the district, excluding the vehicle eligible for replacement.~~
- ~~B. Diesel powered pupil transportation vehicles with more than 250,000 miles or more than 10 years of service, gasoline powered pupil transportation vehicles with more than 150,000 miles or more than 10 years of service, and coach buses with more than 500,000 miles or more than 15 years of service, shall be replaced if the eligible students transported exceeds the student transportation capacity of the district, excluding the vehicle eligible for replacement.~~

**R7-6-745. Science Facilities Repealed**

- ~~A. A school facility with students in grades 5 through 12 shall have classroom space to deliver practical science instruction, or classroom space for an alternate science delivery method.
  - ~~1. For grades five through eight no space is required beyond the academic classroom requirement. For grades 9 through 12, 10 square feet per student of practical and instructional science space is required. The space shall not be smaller than the average classroom at the facility. This space is separate and distinct from the academic classroom requirement and may not be used for other instruction.~~~~

- ~~B. A school facility with students in grades 5 through 12 that delivers practical science instruction shall have science fixtures and equipment, in accordance with R7-6-746 as modified from time to time. If an alternate science delivery method is used by the ASDB, a school facility shall have science fixtures and equipment for students in grades 5 through 12 that are an alternate equivalent to the science fixtures and equipment identified in R7-6-746.~~

**R7-6-746. Equipment List for Science Facilities Repealed**

- ~~A. Science facilities for students in grades 9 through 12 shall have the following fixtures and equipment:~~
- ~~1. One demonstration table with non-corrosive surface per 250 students.~~
  - ~~2. Six laboratory stations with a non-corrosive surface per 250 students.~~
  - ~~3. One fume hood.~~
  - ~~4. One chemical storage unit per 1,000 students.~~
  - ~~5. One eye wash/shower per 250 students.~~
  - ~~6. One dissecting microscope per 25 students, minimum of the lesser of 12 or one half of the number of eligible students.~~
  - ~~7. One refrigerator.~~
- ~~B. Science facilities for students in grades 5 through 12 shall have the following fixtures and equipment:~~
- ~~1. One sink per 250 students.~~
  - ~~2. One compound microscope per 25 students, minimum of the lesser of 12 or one half of the number of eligible students.~~
  - ~~3. One balance per 250 students.~~

**R7-6-747. Arts Facilities Repealed**

- ~~A. A school facility with students in grades 7 through 12 shall have space to deliver art education programs including visual, music, and performing arts programs or have access to an alternate delivery method.~~
- ~~B. For grades 7 through 12, ten square feet per student of art and/or vocational education space is required. The space shall not be smaller than the average classroom at the facility. This space shall not be included in the academic classroom requirement and may not be used for other instruction.~~

**R7-6-748. Vocational Education Facilities Repealed**

- ~~A. A school facility with students in grades 7 through 12 shall have space to deliver vocational education programs or have access to an alternate delivery method.~~
- ~~B. For grades 7 through 12, forty square feet per student of art and/or vocational education space is required. The space shall not be smaller than the average classroom at the facility. This space shall not be included in the academic classroom requirement and may not be used for other instruction.~~

**R7-6-749. Physical Education and Comprehensive Health Program Facilities Repealed**

- ~~A. A school facility shall have area and space and fixtures, in accordance with R7-6-750 as modified from time to time, for physical education activity and space for a comprehensive health program established in compliance with the academic standards prescribed by the State Board of Education.~~
- ~~B. One hundred twenty five square feet per student of comprehensive health space is required. The comprehensive health space is the indoor space available for physical education and this space shall not be included in the academic classroom requirement and this space shall not have more than one function or satisfy more than one guideline requirement.~~

**R7-6-750. Equipment List for Physical Education**

- ~~A. A school facility shall have the following equipment and fixtures for physical education:
  - ~~1. Exterior to the building, one hardscape equivalent in size to an outdoor basketball court size surface area and two goals per 300 students, four court to a maximum of three hardscapes.~~
  - ~~2. Exterior to the building, one baseball/softball backstop.~~~~
- ~~B. Concrete shall be used when installing basketball courts.~~

**R7-6-751. Alternate Delivery Method Repealed**

~~If an alternate delivery method is used by the ASDB to deliver instruction in art, science, or vocational education, the alternate method must be approved by the ASDB governing board and be capable of meeting the requirements established in the academic standards prescribed by the State Board of Education for the specific subject area.~~

**R7-6-755. Parent Work Space Repealed**

- ~~A. If parents are invited to assist with school activities, a school facility shall include a work space capable of being used by parents.~~

- ~~B. One square foot per student, with a minimum of 150 square feet and a maximum of 800 square feet, is required. The maximum may be exceeded. The space may be divided into more than one room. This space may have more than one function.~~

**R7-6-756. Two-way Internal Communication System**

A school facility shall have a ~~network and twoway~~ two-way internal communication system between a central location and ~~each classroom, library, physical education space, and the cafeteria~~ each general and specialty classroom, the learning and technology center, and the cafeteria. The internal communication system shall have both audio and video capabilities.

**R7-6-757. ~~Fire Alarm Repealed~~**

~~A school facility shall have a fire alarm system as required by the State Fire Marshal. The fire alarm system shall meet current ADAAG requirements.~~

**R7-6-758. Administrative Space**

- A. A school facility shall have space for ~~the use of~~ by the administration of the school. For the school administrator, 150 designated square feet is required. For general administrative purposes, ~~and additional 7.5 square feet per student is required, with a minimum of a space between 150 square feet and a maximum of 2,500 square feet. The maximum may be exceeded~~ and 7.5 square feet per student, as reasonable for the size of the anticipated student body, is required.
- B. A school facility shall have a dedicated space in which to isolate a sick student from the other students. This space shall be ~~a designated space that is~~ accessible to a restroom; ~~and~~ large enough to accommodate one cot per 50 students, with a maximum of eight cots. ~~The maximum may be exceeded.~~
- C. A school facility shall have work space available to the faculty. ~~This space that~~ that is in addition to any work ~~area available to a teacher,~~ space in or near a classroom. ~~One square foot per student with a maximum of~~ A space between 150 square feet and a maximum of 800 square feet and one square foot per student, as reasonable for the size of the anticipated student body, is required. The maximum may be exceeded. The space may be divided into more than one room. This The faculty work space may be in multiple locations throughout the school facility and may have more than one function.
- D. A 9,500 square foot facility used for the administration of the Arizona School for the Deaf and Blind shall also be available.

**R7-6-760. Laws and Building Codes Repealed**

- ~~A. To the extent required by law, school buildings shall be in compliance with federal, state and local building and fire codes and laws that are applicable to the particular building.~~
- ~~B. At a minimum, the 1997 Uniform Building Code (UBC) is required to be met for new school facility construction and, as required, for building renovations in existing schools.~~

**R7-6-761. Energy Saving Measures Repealed**

~~New school facility construction and, as required, building renovations in existing schools, shall include, where reasonable, energy conservation upgrades that will provide dollar savings in excess of the cost of the upgrade within eight years of the installation.~~

**R7-6-765. Building Systems Repealed**

- ~~A. Building systems in a school facility must be in working order and capable of being properly maintained. A building system shall be considered to be in “working order and capable of being maintained,” if all of the following:
  - ~~1. The system is capable of being operated as intended and maintained.~~
  - ~~2. Newly manufactured or refurbished replacement parts are available.~~
  - ~~3. The remaining life expectancy of the system, at the time of the initial statewide assessment, is at least three years.~~
  - ~~4. The system is capable of supporting the gross square footage standard and minimum school facility guidelines established in this Article.~~
  - ~~5. Components of the system present no imminent danger of personal injury.~~~~
- ~~B. Building systems include, as required by law, roof, plumbing, telephone, electrical, and heating and cooling systems as well as fire alarm, twoway internal communication, computer cabling, and existing security systems.~~

**R7-6-770. Building Structural Soundness Repealed**

~~A school facility must be structurally sound. A school facility shall be considered structurally sound if the building presents no imminent danger or major visible signs of decay or distress, and the remaining life expectancy of the building structure appears to be at least a minimum of three years.~~

**R7-6-771. Exterior Envelope, Interior Surfaces and Interior Finishes Repealed**

The exterior envelope, interior surfaces, and interior finishes at school facilities must be safe and capable of being maintained.

1. An exterior envelope is safe and capable of being maintained if:
  - a. Walls and roof are weather tight under normal conditions with routine upkeep;
  - b. Doors and windows are weather tight under normal conditions with routine upkeep; and
  - c. The building structural systems support the loads imposed on them.
2. An interior surface is safe and capable of being maintained if it is:
  - a. Structurally sound;
  - b. Capable of supporting a finish; and
  - c. Capable of continuing in its intended use with normal maintenance and repair for at least three years after the initial statewide assessment.
3. An interior finish is safe and capable of being maintained if it is:
  - a. Free of exposed lead paint;
  - b. Free of friable asbestos; and
  - c. Capable of continuing in its intended use, with normal maintenance and repair, for at least three years after the initial statewide assessment.

**R7-6-775. Minimum Gross Square Footage Repealed**

The ASDB shall have sufficient school facilities, which comply with minimum school facility guidelines established in this Article, to meet the per pupil minimum adequate gross square footage requirements for the ASDB as determined by law, based on number and grade distribution of the students served by the ASDB.

**R7-6-776. Assessment of Minimum Gross Square Footage Repealed**

- A.** Computation of the gross square footage of a school facility may be by physical measure or by calculation based on architectural plan documents.
- B.** The gross square footage of a school facility equals all space within the facility excluding space used for ASDB administrative purposes.
- C.** The gross square footage of the ASDB shall equal the sum of the gross square footage of each school facility owned by the ASDB.
- D.** The minimum gross square footage of the ASDB equals the sum of the products of the students in each grade or program for preschool children with disabilities or kindergarten program multiplied by

~~the minimum adequate gross square footage requirements per pupil, applicable to the ASDB for such grade or program.~~

- ~~E. For the purpose of assessment of minimum gross square footage, the number of children in all grades and kindergarten shall be evenly distributed across all grades and kindergarten served by the ASDB.~~

#### **R7-6-780. Student Boarding Space**

Each ASDB campus shall provide safe and sanitary ~~student~~ boarding for resident ASDB students as follows:

1. A student dormitory consisting of a shared living area, resident and kitchen, and a bedroom for each student in ~~grades preschool kindergarten through grade 12.~~ at a ratio of The student dormitory shall provide at least 400 square feet of space per student., and
2. ~~A bedroom for each Resourcee housing at a ratio of 150 square feet per occupant,~~
3. ~~One live-in assistant housing (apartment) for every eight resident students at a ratio of 500 square feet per live-in assistant.~~
4. ~~One laundry room for every student dormitory. The laundry room shall provide at least at a ratio of 100 square feet of space for every eight resident students.~~
5. ~~All independent living dormitory space shall be constructed with 300 square feet per student with no fewer than two students per dormitory.~~

#### **R7-6-781. Facility Requirements for ASDB Program Requirement Facilities Programs**

~~A. Each ASDB campus shall provide minimum facilities required the following minimum square footage of space to support the ASDB audiology program specified: requirements at a ratio of five square feet per deaf student and one square foot per blind student.~~

1. Audiology program. Five square feet per deaf student and one square foot per blind student;
2. Auditory training and speech therapy program. Three square feet per deaf student and one square foot per blind student;
3. Low-vision program. Three square feet per student;
4. Occupational and physical therapy program. Five square feet per student with a minimum of 1,500 square feet; and
5. Orientation and mobility program. Six square feet per blind student.

~~B. Each ASDB campus shall provide minimum facilities required to support ASDB auditory training and speech therapy program requirements at a ratio of three square feet per deaf student and one square foot per blind student.~~

- ~~C. Each ASDB campus shall provide minimum facilities required to support ASDB low vision program requirements at a ratio of three square feet per student.~~
- ~~D. Each ASDB campus shall provide minimum facilities required to support ASDB occupational and physical therapy program requirements at a ratio of five square feet per student with a minimum of 1,500 square feet.~~
- ~~E. Each ASDB campus shall provide minimum facilities required to support ASDB orientation and mobility program requirements at a ratio of six square feet per blind student.~~
- ~~F. Each ASDB campus shall provide a distance learning classroom required to support ASDB program requirements. This facility shall be at a minimum a 600 square foot separate/dedicated space for teaching to satellite, remote, and shared schools.~~

**R7-6-782. Student Health Center**

Each ASDB boarding campus shall have space for a student health center. The student health center shall have at a ratio of least 13 square feet of space per student.

**R7-6-783. Parent Outreach Program Repealed**

~~Each ASDB campus shall have space for a Parent Outreach Program at a ratio of 10 square feet per family with students enrolled at the campus with a minimum area of 300 square feet.~~

**R7-6-790. Guidelines Exception Repealed**

~~The Board may grant an exception from any of the guidelines requirements, upon agreement between the Board and the school district. The Board shall grant an exception if it determines that the intent of the guideline is capable of being met by the ASDB in an alternate manner. If the Board grants the exception, the ASDB shall be deemed to meet the guideline and is not eligible for state funding to meet the guideline.~~

July 21, 2020

Nick Loper  
Executive Consultant  
AZ Department of Administration  
100 North 15<sup>th</sup> Avenue  
Phoenix, AZ 85007

**subject:**

Public Comment: Expedited Rulemaking Minimum School Facilities Guidelines

Dear Mr. Loper:

I am writing to request that AZSFB Minimum Adequacy Guidelines for Schools Facilities is thoroughly vetted by a Team of experts in the field prior to approval by Council. This Team should consist of Educators, School Administrators, Parent Representative, Student Representative, Development Psychology experts, health care professionals, architects and contractors at a bare minimum. I say this because I have reviewed the guidelines in its current form and strongly believe that it does not reflect the current thinking in School Facility design for a positive impact on students learning and school experience. In addition, the current pandemic has unveiled many challenges in implementing these guidelines for the health and vitality of all those that utilize our School Facilities.

Last year I was part of MAG Stakeholders Group with good representation of Committee members from diverse backgrounds and points of view. We had five intense meetings with several breakout sessions taking a deep dive into every aspect of MAG. Our Group made recommendations to the AZSFB in the form of a summary document. I believe the summary represents our collective wisdom and should be considered to be developed further.

As a resident and practicing architect in the State of Arizona that has designed several School Facilities with input from several stakeholder groups, I strongly believe that the Guidelines in their current form do not serve our students well. I urge you to reconsider bringing back the MAG Stakeholders group to reconvene and continue to develop the guidelines that could include Rules, Policies and Best Practices for Arizona School Facilities.

Sincerely,



Caroline Lobo  
PhD, AIA, LEED-AP  
**suOLL** architects



Nick Loper &lt;nick.loper@azdoa.gov&gt;

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## Public Comment Re: Notice of Proposed Expedited Rulemaking

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Dale Ponder &lt;DPonder@craneschools.org&gt;

Mon, Jul 20, 2020 at 3:11 PM

To: "publiccomments@azsfb.gov" &lt;publiccomments@azsfb.gov&gt;

Good afternoon,

I offer the following comments regarding the School Facilities Board's Proposed Expedited Rulemaking.

### Technology (R7-6-235):

Continuing to fund technology devices at the rate of 1 device for every eight students is an antiquated standard and a ratio of one device for every one student should be considered as the optimum standard. Offering this solution provides long-term savings to the district by replacing traditional hard-copy textbooks with interactive, multimedia digital textbooks that are accessible to students through an internet connection. This transformation permits the student's academic time to be extended beyond what is available to them within the classroom, and allows the user to take advantage of other academic-based programs, many of which may be complimentary to the instruction provided in the classroom and tailored for that specific student towards greater academic achievement. Given these parameters, and the need to provide the statewide assessment on a device for, in our district, grades 3-8, the existing ratio of 1 device for every 8 students is still quite inadequate for today's learner.

### Transportation (R7-6-240):

I am concerned that the guidelines appear to repeal the guidelines for transportation, altogether, with no alternative recommendation included.

### Security:

Other than maintaining the existing language regarding "security", I did not find any expansion for the improvement of security measures within a school environment. Given the school shootings of recent past, additional standards surrounding single-point entries, Crime Prevention Through Environmental Design (CPTED) strategies, sensors, access controls, cameras or other security protocols to better equip and protect our schools, staff and visitors, should be heavily considered.

As noted by Director Tobin, I am hopeful that each of these mentioned above, and others throughout the document will be developed, expanded, and included in the second phase of this necessary effort to updated the obsolete standards for the maintenance of school facilities.

Thanks,

Dale

--



**#WeAreCrane**

**Dale Ponder**  
Chief, Finance & Operations

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**Growing a community of curious change-makers  
through innovative problem solving.**



July 20, 2020

Arizona School Facilities  
Board 1700 W Washington  
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PARTNERS  
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ASSOCIATES  
Richard K. Begay Jr., AIA  
Neil L. Pieratt, RA, LEED AP BD+C

Relating to the Proposed Expedited Rulemaking, my comments are limited to what was recently posted on the AZSFB website.

#### **R7-6-202 Building Codes**

- A. The school facilities should be built/remodeled in keeping with the local building codes.
- B. The SFB should only require that schools submit to State, city and county jurisdictions and to inquire with their building official gather the most current information as the building codes vary widely between counties and municipalities and they adopt and alter these codes on different schedules.

#### **R7-6-210 Classroom Square Footage**

- D. If these items are NOT built in, then this is within industry standards.
- E. An exterior space shall not be included, this is just not a good minimum standard. Additional accommodations should be made for exterior spaces, but in lieu of interior space. An interior and an exterior space should be provided that is large enough to accommodate two-thirds of the student body equally.

#### **R7-6-212 Classroom Lighting**

This section is more of a building/energy code item and should not be governed here.

#### **R7-6-213 Classroom Temperature**

- C. Evaporative cooling, as the primary source of cooling, is not a very good source of cooling in a modern classroom environment, we do not recommend it.

#### **R7-6-221 Equipment for Learning and Technology Center(s)**

- A3. The requirement to have a TV/VCR is not needed. Some sort of media device should be required.

#### **R7-6-225 Cafeteria**

It should be a covered "interior" space, not simply a covered space. Should be similar to the multi- purpose space. Inside a third and outside a third. At the very least a quarter for each.

**R7-6-235 Technology**

1:8 is unacceptable in the modern electronic education environment. The Covid-19 issue has exposed this standard as totally inadequate.

Sincerely,

A handwritten signature in blue ink, appearing to be 'M Davenport', with a flourish extending upwards and to the right.

Mark Davenport AIA, LEED AP,  
BD+C PARTNER  
SPS+ ARCHITECTS LLP

P: 480.991.0800

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# paul george bakalis, aia, ncarb, alep, csba

July 21, 2020

Nick Loper  
Executive Consultant  
Arizona Department of Administration  
100 North 15<sup>th</sup> Avenue  
Suite 103  
Phoenix, Arizona 85007

*eMail Transmitted: nick.loper@azdoa.gov*

Reference: Public Comments  
Expedited Rulemaking, Minimum School Facilities Guidelines

Mr. Loper and Members of the School Facilities Board;

In compliance with ARS 41-1027 E, we request that the SFB; Adequately address, in writing, any written objections prior to the Agency filing a request for approval with the council

#### 41-1027. Expedited rulemaking

*E. After adequately addressing, in writing, any written objections, an agency shall file a request for approval with the council. The request shall contain the notice of final expedited rulemaking and the agency's responses to any written comments. The council may require a representative of an agency whose expedited rulemaking is under examination to attend a council meeting and answer questions. The council may communicate to the agency its comments on the expedited rulemaking within the scope of subsection A of this section and require the agency to respond to its comments or testimony in writing. A person may submit written comments to the council that are within the scope of subsection A of this section.*

#### **General Observations**

As I know you are aware, there are several regulatory vehicles that provide opportunity to convey desired guidance and direction. Some take legislative action, others, like rule making, take Gubernatorial approval, and others require responsible actions by the agency.

*Article 2. Minimum School Facilities Guidelines, and Article 7 Minimum School Facilities Guidelines for Arizona State School for the Deaf and Blind are rarely visited for revisions. Title 7, Chapter 6 was adopted by exempt rulemaking at 6 A.A.R. 597, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1) by law in 1998. It is required that the rules be reviewed on a 5-year schedule and submitted for revisions, which I believe was done without approval to make changes. On August 24, 2017, permission was granted for the SFB to go into rulemaking by Dawn Wallace, Governor's Senior Policy Advisor for Education.*

A team of community members was assembled to review the Minimum Guidelines (*list attached*), a schedule was prepared (*attached*), a rulemaking consultant was engaged, and after five stakeholder meetings were had, a compilation of the consensus results (*attached*) was prepared.

This attempt at “accelerated” rulemaking continues along a failed path toward accomplishing this. It fails the Districts, the community, businesses who count on a skilled workforce, and most of all, our students.

It was the suggestion that some of the review comments should be memorialized in Rules, and that some should become Policy. From the historical perspective of the ease, or lack thereof, to regularly modify Rules, Policy would provide for easier and quicker revisions as technology advances, delivery of education changes, and as learning environments become more engaging. This would keep the guidelines reflective of these advances as well as provide a platform for regular stakeholder and community engagement so that Arizona finds its way to the top of the list of great educational outcomes

## **Article 7. Minimum School Facility Guidelines for the Arizona State Schools**

### **Comments**

#### **R7-6-202 B Building Codes**

*B. The Board shall maintain on its web site a list of building codes applicable to construction of a new school facility or renewal of an existing school facility. Before constructing a new school facility or renewing an existing school facility, a school district shall review the list of building codes to ensure compliance with all applicable codes.*

What is the remedy if the list on the SFB website is not up to date with adopted codes and guidelines prescribed by the municipality having jurisdiction? Should there be a requirement to abide by that which is more stringent?

#### **R7-6-205 C School Site**

*C. "A school site provides adequate parking by having an all-weather surface area large enough to accommodate one parking space per staff FTE and one visitor parking space per 100 students. A school site that is unable to provide adequate parking may have the sufficiency of parking at the school site is subject to review determined by the Board using the following criteria:*

- 1. Availability of street parking around the school;*
- 2. Availability of any nearby parking lots;*
- 3. Availability of public transit;*
- 4. Number of staff that who drive to work on a daily basis; and*
- 5. The average number of visitors on a daily basis.*

This may conflict with the zoning ordinance of the municipality having jurisdiction. How is that resolved? Should there be a requirement to abide by that which is more stringent?

#### **R7-6-205 E School Site**

*E. A school site provides adequate security if there is a fenced or walled, outdoor, play or physical education area for preschool students with disabilities through grade six. This definition is met if the entire school is fenced or walled. If this definition is not met, a school site that is unable to provide adequate security may have the sufficiency of security at the school site determined by the Board using the following criteria:*

- 1. Amount of vehicular traffic near the school site;*
- 2. Existence of hazardous or natural barriers on or near the school site;*
- 3. The amount of animal nuisance near the school site; and*
- 4. Visibility of the play/physical outdoor, play or physical education area.*

The guidelines in Rules should defer to a nationally recognized Crime Prevention Through Environmental Design (CPTED). The Crime Prevention Through Environmental Design (CPTED), School Assessment (CSA), May 2017 (Centers for Disease Control and Prevention. Crime Prevention Through Environmental Design, School Assessment. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, and Carter & Carter Associates, 2017, is one such authority.

#### **R7-6-210 A Classroom Square Footage**

*A school district shall have school facilities with the following minimum cumulative classroom square footage;*

- 1. For preschool students with disabilities through grade three: 32 square feet per student;*
- 2. For grades four through six: 28 square feet per student;*
- 3. For grades seven and eight: 26 square feet per student; and*
- 4. For grades nine through 12: 25 square feet per student.*

The square footage allocations listed in this section are woefully inadequate for the current conditions. These numbers do not accommodate a response to the COVID 19 Pandemic and the recommended distancing for students in the classroom.

In fact, when students occupy a space for hours, the distancing should be extended. Recent published research indicates that smaller atomized particle size will linger in the air for hours. When a space is occupied by many, this condition and risk to students, teachers, and staff is exasperated.

These guidelines should not be in the Rules but rather, reside and be referenced in Policy. A study completed by Moseley Architects recommends Classroom Distancing Strategies, May 27, 2020. (Attached)

#### **R7-6-210 B Classroom Square Footage**

This references that *"both general and specialty classrooms are included in the classroom square footage"*. What are the accommodations for science labs, shared learning space, breakout space for individual learning, and other "specialty" space?

These guidelines should not be in the Rules but rather, reside and be referenced in Policy so that they can be easily modified as appropriate to changing conditions.

### **R7-6-210 C. 1, 2, and 3 Classroom Square Footage**

Classrooms referenced in Item 1; *"100% of the classroom square footage usable for classroom purposes and occupied throughout the day by the same students with disabilities, kindergarten, and grades one through six."*

Classrooms referenced in Item 2; *"90% of the classroom square footage usable for classroom purposes and occupied throughout the day by the same students in grades seven and eighth."*

Classrooms referenced in Item 2; *"85% of the classroom square footage usable for classroom purposes and occupied throughout the day by the same students in grades ninth and twelfth."*

These are high utilization targets and don't necessarily accommodate flexible leaning spaces. Again, these guidelines should not be in the Rules but rather, reside and be referenced in Policy so that it will provide for easier and quicker alignment with changes in the delivery of knowledge and resources to students.

### **R7-6-211 Classroom Fixtures and Equipment.**

This is an ever-changing condition defined by a District's desired learning environments, pedagogy, teaching style, learning delivery model (Project-based learning, Career Technical Education, and other adaptable spaces), or other models of which we are not currently aware. This provides for flexibility and adaptability.

Furniture responds to an ever-changing learning environment. Technology's rate of change and adoption is quick and difficult to predict. VCRs gave way to streaming, blackboards to digital displays, fixed furniture to furniture on wheels. Having these guidelines in Rules does not serve the District, student, teacher, or community.

Again, this equipment guideline should not be in the Rules but rather, reside and be referenced in Policy. It will provide for easier and quicker alignment with changes in the delivery of knowledge and resources to students.

### **R7-6-212. Classroom Lighting**

There is no mention of daylighting in this section, and daylighting is important to learning outcomes. There are several studies indicating a direct correlation between natural lighting and student outcomes. There are also studies that indicate better comfort, health and performance associated with visual access to biophilic environments.

#### ***Natural Lighting***

*"Natural Light and Productivity: Analyzing the Impacts of Daylighting on Students' and Workers' Health and Alertness"*, N. Shishegar, M. Boubekri, Int'l Journal of Advances in Chemical Engg., & Biological Sciences (IJACEBS) Vol. 3, Issue 1 (2016) ISSN 2349-1507 EISSN 2349-1515  
<https://iicbe.org/upload/4635AE0416104.pdf>

V. Natural Light and Students' Academic Performance (page 75)

### ***Views to Biophilic Environments***

*"The Impact of Biophilic Learning Spaces on Student Success, Architecture Planning Interiors", This study is a collaboration of Craig Gaulden Davis, Morgan State University, The Salk Institute for Biological Studies, and Terrapin Bright Green. October 2019*

[https://www.researchgate.net/publication/337798236\\_Impact\\_of\\_Biophilic\\_Learning\\_Spaces\\_on\\_Student\\_Success\\_1\\_THE\\_IMPACT\\_OF\\_BIOPHILIC\\_LEARNING\\_SPACES\\_ON\\_STUDENT\\_SUCCESS\\_Architecture\\_Planning\\_Interiors](https://www.researchgate.net/publication/337798236_Impact_of_Biophilic_Learning_Spaces_on_Student_Success_1_THE_IMPACT_OF_BIOPHILIC_LEARNING_SPACES_ON_STUDENT_SUCCESS_Architecture_Planning_Interiors)

While wall space is desired in classroom spaces, there is evidence that views to biophilic environments improve, cognitive engagement, health and wellness, performance and better student outcomes.

### **R7-6-213 B Classroom Temperature**

This is hard to understand, especially the line *"Non-airconditioned schools with elevations less than 5,000 feet."* This should be revisited and re-written to clarify.

### **R7-6-214 Classroom Acoustics**

*"The sustained background sound level of each general, science, and art classroom shall be less than 55 decibels."*

Again, technology advances and these requirements should appear in Policy. There are 'in-classroom' voice amplification systems that have been adopted by Districts with the economic means to provide these types of systems. These systems ensure every student can hear and understand the teacher, as well as ease the voice strain for teachers in the classroom. Districts in poorer areas are disadvantaged because they are unable to incorporate these systems into the classroom environment. This sustains inequity in education in Arizona.

### **R7-6-215 B Classroom Air Quality**

*"The CO<sup>2</sup> level in each general classroom and specialty classroom shall not exceed 800PPM above the ambient CO<sup>2</sup> level"*.

This is likely not a good measure for CO<sup>2</sup> levels. What happens if the ambient CO<sup>2</sup> level is high? Should not there be a maximum level stated in the guidelines? The current wisdom is 600PPM. There should be a reference to a national standard like ASHRAE for acceptable recommendations

If the SFB had defined lead levels in drinking water the same way, there would have been exceedingly high, unacceptable levels of lead in the school drinking water. Instead, the SFB defined an upper limit which was defined by the EPA.

### **R7-6-221 3 Equipment for Learning and Technology Center**

*"One TV/VCR"*

VCRs gave way to streaming, blackboards to digital displays, fixed furniture to furniture on wheels. Having these guidelines in Rules does not serve the District, student, teacher, or community.

Again, this equipment guideline should not be in the Rules but rather, reside and be referenced to Policy. This will provide for easier and quicker alignment with changes in the delivery of knowledge and resources to students.

**R7-6-221 A 6 Equipment for Learning and Technology Center**

**At a minimum, (ADD) *"An electronic or hard copy of each of the following"***

**R7-6-221 B Equipment for Learning and Technology Center**

If a hard copy almanac, encyclopedia, or atlas is used, each shall have a publication date ~~"or 2000 or later."~~ **(ADD) of not more than 5 years old.**

If the Rules are not revisited, as has been the case for many years, a date specific like '2000' should not be stated. Again, this guideline should be within Policy so that it can be updated quickly and easily.

**R7-6-227 Equipment List for Food Service**

Much like technology, food service preparation and 'deliver-prepared' is a moving target. The New School Fund provides funding for FFE which includes much of this equipment that is not built in. The BRG fund only replaces equipment that is built-in and required to meet the guidelines. Often, there is kitchen equipment that the District owns which, when broken and beyond repair, does not qualify for funding. Similarly, when an HVAC unit in the kitchen is replaced, the initial intended use of the kitchen when constructed may have changed from preparing meals to accepting delivery and maintaining temperature (*warming*) until served. This has an impact on the makeup air system as well.

These systems and the circumstances for replacement should be described in Policy, not Rule so that interpretations based on these operational changes can benefit the District's correction of the deficiency as well as providing essential services to the students.

**R7-6-230 Multipurpose Space**

This should be defined consistent with grade configuration (K12) and District learning intention which might be different for each school within a District, or different from District to District. A K4's Multipurpose room configuration is different from 9-12 requirements. To accommodate District/school differences, the requirements for Multipurpose space should be delineated in Policy, not Rule.

**R7-6-235 A Technology**

*"A school facility shall provide at least one network connected multimedia computer device, available for student use, for every eight students. A multimedia device is a computer, tablet, or other smart device with internet access capable of presenting multimedia content."*

This requirement is grossly inadequate and does not respond to the need for technology to support student success. Each student should be provided a device of their own (laptop, Chromebook, iPad, or the like). Network connections should be wireless and available to every student, staff member, teacher, and visitors. A WIFI hotspot should be available 24/7 for access when stationary in the school parking lots. It is important to recognize that some students do not have readily available access to internet connectivity and provisions should be made to make this essential service available to disadvantaged students.

Again, technology advances and these requirements should appear in Policy, not Rule. These systems have been adopted by Districts with the economic means to provide systems that ensure every student has access to a device and connection to the internet/intranet. Districts in poorer areas are disadvantaged by not having access to these critical tools. This sustains inequity in education in Arizona.

#### **R7-6-245 A 1 and 2 Science Facilities**

*"A school Facility with students in grades five through 12 shall have classroom square footage for delivery of practical instruction in science.*

1. *"For grades five through eight, no classroom square footage is required other than as specified in R7-6-210"*

This is inadequate today as students in some Districts are exploring science in grades five through eight. While the space required today is not at the level required for 9-12, students require adequate space to explore, experiment, and discover.

Again, as stated in the comments on R7-6-210, these guidelines should be delineated in Policy, not Rule.

2. *"For grades nine through 12, four square feet per student is required for practical in science."*

Again, as stated above and in the comments on R7-6-210, these guidelines should be delineated in Policy, not Rule.

#### **R7-6-246 A Equipment List for Science Facilities**

- F. *"Science facilities for students in grades nine through 12 shall have the following fixtures and equipment:"*
- G. *"Science facilities for students in grades five through 12 shall have the following fixtures and equipment:"*

Much like technology, Science facilities, fixtures, and tools are a moving target. Technology drives the tools of science. Today a student, through virtual reality, can step inside the body cavity and explore anatomy. Today a student can explore the galaxy through connection with the Universities. Arizona State University's School of Earth and Space Exploration partners with K12 to provide images, classes, and tools to explore the universe. These tools are ever evolving and will create opportunities for student engagement, exploration, discovery, and growth.

These systems and the associated space and tools should be described in Policy, not Rule so that the District, teachers, students, community, local business, and the State of Arizona benefit.

#### **R7-6-248 Vocational Education Facilities Repealed**

There is a need for Career Technical Education (CTE) in high school. Most new high school projects place importance on this educational program and the community and local businesses are partnering with schools to engage students and enhance outcomes. There should be a skill certification available at the completion of high school. Some students today do not go on to college. They may not be interested in continuing to college and instead prefer working in a career at the completion of high school. Others may face the financial barrier of continuing to college or university. These students might desire an option that ensures a life-long and rewarding career at the completion of high school.

This needs to be a part of the nine through 12 learning environment and guidelines should be defined as a part of Policy, not Rule.

### **R7-6-258 C Administrative Space**

There is a desire for faculty space for teachers to prepare, collaborate with peers, socialize, and engage in professional development. This space needs to be aggregated in one area so that these functions can survive and thrive. There may also be a need for quiet and private space. These should be accommodated in the Administrative space.

Again, this is a success model for today and new models may surface, so the administrative space should be as flexible as reasonable to adapt.

Again, to allow for the greatest adaptation to new models, the Rules should provide guidance on the gross square footages set aside for faculty, but not the details of the space. These specific guidelines should appear in Policy, not Rules.

## **Article 7. Minimum School Facility Guidelines for the Arizona State Schools for the Deaf and Blind.**

### **Comments**

Similar comments are applicable to the Minimum School Facility Guidelines for the Arizona State Schools for the Deaf and Blind.

### **Summary**

Please accept these comments understanding that they are intended to improve the content of both Article 7. Minimum School Facility Guidelines for the Arizona State Schools for the Deaf and Blind, and Article 7. Minimum School Facility Guidelines for the Arizona State Schools.

We would also like to inquire as to the status of the MAG Consensus Results (*attached*) compiled and distributed as a part of the Rulemaking Activities begun in August of 2017. These defined in much greater detail some of the concerns and comments from stakeholders which included members of District administration and staff, teachers, and members of the design and construction community, as well as Representative Michelle Udall and Senator Sylvia Allen.

Schools deserve much more than they are currently afforded if the goal for Arizona schools is to perform and provide for student success outcomes at the very top of the country. We have a distance to travel, but with thoughtful and adaptive guidelines and with a coordinated definition in Rules and Policy, we can get to where we intend. In some instances, we may go places we never imagined possible when we started.

July 21, 2020  
Nick Loper  
Arizona Department of Administration  
Page 9

Many of us would like to remain involved in the development of guidelines as well as resurrect the stakeholders as appropriate to make certain there is broad authorship and ownership in the final document. This will ensure adoption, continued contribution, and experience success across the educational enterprise of Arizona.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Paul G. Bakalis', written over a horizontal line.

Paul G. Bakalis, AIA, NCARB ALEP  
Co-founder, Proteus West

Attachments: MAG Stakeholders Group Listing  
MAG Schedule  
MAG Consensus Results  
Spacing Guidelines

Cc: MAG Stakeholder Group  
SFB Board Members  
Kathy Hoffman, State Superintendent of Schools

# Attachment One

MAG Stakeholders Group Listing



Rulemaking  
Minimum Adequacy Guidelines  
Suggested Committee Members

Name	Affiliation	Contact Information
Dan Demland, AIA	Committee Facilitator	School Facilities Board 1700 West Jefferson Avenue Phoenix, AZ 85007 602.542.6567 ddemland@azsfb.gov
Katherine Robinson	Public Information Officer Committee Secretary	School Facilities Board 1700 West Jefferson Avenue Phoenix, AZ 85007 602.542.4457 krobinson@azsfb.gov
Marlene Imirzian, FAIA	Marlene Imirzian & Associates	8906 N Central Ave Phoenix, AZ 85020 (602) 943-5279 p info@imirzian-architects.com
Caroline Lobo, AIA, PhD, LEED AP	Soul Architects	6619 n. Scottsdale Road Scottsdale AZ 85250 602.677.3141 p caroline.lobo@suoll.com
Carmen Wyckoff, AIA, LEED AP	DLR Group	6225 North 24th Street Suite 250 Phoenix, AZ 85016 602-794-2134 p 703-606-6462 m cwyckoff@DLRGROUP.com
Halleh Landon, PE	Energy Systems Design, Inc.	7135 East Camelback Road Suite 275 Scottsdale, AZ 85251 480.481.4917 p halleh.landon@esdaz.com
	Core Construction	
Missy Mudry, CPPB	Professional Group Public Consulting	2855 E Brown Rd #19 Mesa, AZ 85213 (480) 416.6743 o missy@pgpc.org
Mark Valenti	The Sextant Group, Inc	8655 East Via de Ventura Scottsdale, AZ 85258 480.831.8580 o 412.680.9805 m mvalenti@thesextantgroup.com
Lana Berry, CPA	Chandler Unified School District	1525 West Frye Road Chandler, Arizona 85224 480-812-7660 berry.lana@cusd80.com



Rulemaking  
Minimum Adequacy Guidelines  
Suggested Committee Members

Sandy Williams	Paradise Valley Unified School	District Administrative Center 15002 N. 32nd Street Phoenix, AZ 85032 602-449-2000 p sanwilliams2@gmail.com
Dan Ensign	Litchfield Elementary School District	18921 W. Thomas Rd. Litchfield Park, AZ 85340 623-547-1549 p ensign@lesd.k12.az.us
Phillip Nelson	Safford Unified School District	1185 S. 14th Avenue Safford, AZ 8554 928-348-7090 p pnelson@saffordusd.com
Dennis Runyan	Agua Fria Union High School District	1481 N. Eliseo Felix Jr. Way Avondale, AZ 85323 Phone: 623-932- 7000 drunyan@aguafria.org
	School for the Deaf and Blind Arizona Department of Education	
Richard Oros	Rio Salado College <i>(Formerly Ex Dir Facilities Tolleson USD)</i>	1325 Park Street Floor 1 Tempe, Arizona (480) 517-8208 richard.oros@riosalado.edu
AZ Senator	Senator Sylvia Allen	1700 West Washington Street Phoenix, AZ 85007
AZ Representative	Representative Michelle Udall	1700 West Washington Street Phoenix, AZ 85007
Parents		
Students		
	Security Subject Matter Expert	
	Education Subject Matter Expert	

# Attachment Two

MAG Schedule



**Rulemaking  
Minimum Adequacy Guidelines  
Proposed Schedule of Activities**

Task Name	Primary Party	Start Date	End Date	Duration
<b>Initiate</b>				
SFB Board Approval of Rulemaking	Pbakalis	10/04/17	10/05/17	1
SFB Board Approval of Committee Members, Schedule, and Communication Strategy	PBakalis	01/10/18	01/17/18	7
Establish MAG Review Committee	PBakalis	01/17/18	03/03/18	45
MAG Kick-Off Meeting	KCampbell	03/29/19	03/29/19	0
<b>Notice of Rulemaking Document Opening</b>				
File Notice with the AZ Secretary of State	JHann	04/13/19	04/13/19	365
Public Kick-Off Meeting and Charette	MImmerzian	03/29/19	06/27/19	90
Description of Recommended Revisions	KCampbell	06/27/19	07/27/19	30
Public Forums/Updates	Campbell	07/27/19	09/25/19	60
Participation at Meetings	MAG Ops Com	03/29/19	06/27/19	90
Written Communication	DCherry	03/29/19	06/27/19	90
Notice of Meetings	DCherry	03/29/19	09/25/19	180
<b>Notice of Rulemaking</b>				
File Notice with the AZ Secretary of State	JHann	09/25/19	10/16/19	21
Notice of Published in the AZ Administrative Register	JHann	10/16/19	10/16/19	0
30-Day Public Comments	KCampbell	10/16/19	11/15/19	30
Oral Proceedings	JHann	11/29/19	12/29/19	30
Encourage Public Participation	DCherry	10/16/19	12/29/19	74
Economic Impact Statement	JHann	11/29/19	12/29/19	30
Incorporate Public Comments into Rulemaking	KCampbell	01/12/20	01/26/20	14
<b>Notice of Final Rulemaking</b>				
Submit to GRRC for Review, Comment, and Approval with copy to Administrative	JHann	01/26/20	05/25/20	120
Review/Incorporate Comments from GRRC Staff (1)	MAGC	05/25/20	06/24/20	30
Board to Provide Final Approval of the Rule Changes	KCampbell	07/08/20	08/07/20	30
File Approved Final Rules with AZ Secretary of State	JHann	08/07/20	10/06/20	60
Rules Go into Affect	N/A	10/06/20	10/06/20	0
Posting to SFB Website	KCampbell	10/06/20	10/09/20	3

1. "Substantial changes to the notice of initial rulemaking will require publication of a supplemental notice of rulemaking, and an additional 30-day public comment period. Consequently, the incorporation of public comments may impact the proposed schedule."

# Attachment Three

MAG Consensus Results

# Minimum Adequacy Guidelines Review 2019

## SUMMARY OF GUIDELINES TO CONSIDER FOR MODIFICATION

red is existing section; black is existing guideline summary; green is suggested modification

### R7-6-206 School Site

safe access (drop off without crossing vehicular traffic), parking, drainage, security (fenced or walled physical educ area for students preschool thru 6)

R7-6-250 phys educ; one basketball court, 2 courts per 300 students, 4 max, one baseball/softball backstop

Design site for zoned secure areas to allow areas for use outside of the regular school day including core areas of Gymnasium, Performing Arts/Auditorium, Dining/Commons, Learning Resource Center/Library, Restrooms, play fields.

HVAC, lighting, and security systems shall be designed so that spaces being used outside of the regular school day can be operated independently while securing the remainder of the building that is not in use.

Parking should be convenient for use outside of regular school day

Provide car drop off area for at least 5 cars with curb cuts and sidewalk access to school entry separate from the bus drop off area and street

### Safety by Design:

Design buildings to provide views of all areas from multiple directions with no areas isolated from passive observation from interiors and circulation spaces

Provide for views inside and out for visibility of activities, which increases safety and security

Site entry to be to office and lobby as secure entry vestibule, with separation from school campus and views to adjacent campus areas

**Secure entry vestibule shall be provided at the main entry, configured in a manner that requires site visitors to enter the main office and check in prior to accessing the school**

**Design corridors with good sight lines for ease of supervision**

**Provide generous amounts of interior windows connecting all student occupies spaces to provide transparency**

**Orient large common/gathering spaces so they are not directly visible from the main entry to the school**

FOR CONSIDERATION

Exterior learning: consider providing exterior spaces with power and digital display with space sized to accommodate a classroom student population

#### **R7-6-210 Academic Classroom Space**

Cumulative SF:

A. K, 1-3: cumulative SF 32 SF/student, general classrooms

B. 4-6: cumulative SF 28 SF/student, general classrooms

C. 7-8; cumulative SF 26 SF/student, 90% of rooms used for general and specialty classrooms

D. 9-12; cumulative SF 25 SF/student, 85% of rooms usable for general and specialty classrooms

#### **Provide accessibility for all classrooms**

K-6

7-8; 35 students

9-12; 35 students, allow grouping

## **R7-6-211 Classroom Fixtures & Equipment**

- A. work surface and seat
- B. erasable surface, surface for projection, display at least 3x5
- C. storage

## **Technology for learning**

**Provide technology for learning per SFB Policy**

## **R7-6-212 Classroom Lighting**

50 footcandles measured at a work surface in center of classroom

**Use LED lighting; 30 footcandles of light**

**Design to meet recommendations from the most recent Illuminating Engineering Society handbook when using other lighting technology.**

**Use daylight sensing, dimming capabilities with zones within the classroom, and occupancy sensors for energy savings and lighting control.**

**Daylight harvesting recommended where feasible for energy savings**

**FOR REFERENCE; ILLUMINATING ENGINEERING SOCIETY CHART OF LIGHTING LEVELS FOR SCHOOLS**

**190828 slide 38**

### **R7-6-213 Classroom Temperature**

68-82 degrees

A. ~~temperature between 68 and 82 degrees F...~~ **Temperature range between 68-75 degrees and a relative humidity between 20 and 60% OR (and even better) when occupied**

B. ~~Except in areas where the elevation is above 5,000 feet....~~

**Design to be per current ASHRAE Standard 55 – Thermal Environmental Conditions for Human Occupancy.**

### **214 Classroom Acoustics**

Background sound level of less than 55 decibels in center of classroom

**Acoustic design shall be per ANSI standard 35 for acoustic performance general instruction, and in other areas specific to each space type/use**

### **215 Classroom Air Quality**

minimal criteria

**Fresh Air to be provided in all occupied spaces per current ASHRAE 62.1**

### **R7-6-220 Libraries/Research**

minimal

**Include area for storage to maintain the book inventory**

**Include multi-media projection area for up to 40 students that is adaptable to include latest smart technology**

## R7-6-221 Equipment for Libraries and Media Centers/Research Area

One work surface for every ~~40~~ 35 students

4. ~~One TV/VCR~~ **Multi-media technology integrated throughout**

5. ~~One overhead projector~~ **Projection equipment and screen/surface**

**11. Provide digital work/reference space with internet access for every 35 students per SFB policy**

## R7-6-226 Food Service

**C. Food Service shall include dry storage area**

**D. Food Service shall include digital, electrical and plumbing infrastructure to integrate flexibility for reasonable food service alternatives**

BEST PRACTICE:

Consider food courts, fresh food vending if appropriate; show illustrations of operation variations, best practices, including systems flexibility

## R7-6-227 Equipment List for Food Service

**The items listed may be substituted for a reasonable alternative**

### R7-6-230- Auditoriums, Multipurpose, Multiuse

...accommodate 1/3 of student body, which shall be the same size or larger than an average classroom at the facility. The space must be equal to at least seven square feet multiplied by one-third of the student body.

**...in addition to open aisle or exiting path space within the room**

#### BEST PRACTICE:

For spaces with multiple uses, consider a large storage room sufficient to store chairs for 1/3 student body, portable platforms, choir risers, cafeteria tables or similar

### R7-6-247 Arts Facilities

B. For grades 7 through 12, four square feet per student of ***art and/or vocational education*** is required.

**Add performing arts space for grades K-6, with option to be included within gymnasium and/or cafeteria with appropriate acoustical treatment that meets ANSI standards.**

**Provide visual display appropriately sized for space capacity**

#### BEST PRACTICE:

- For Grades K-6, consider portable platforms in smaller schools; larger assembly spaces should consider a permanent platform or informal stage.
- For Grades 7-12, leave the MAG as is to allow for flexibility by school districts. We are not recommending traditional auditoriums as a requirement
- For less formal performance areas, a movable wall at the proscenium may allow for band or music class on stage during the day

- If a full performance lighting package is not appropriate, consider a ceiling mounted track lighting bar or portable lighting towers
- For a multi-purpose space with an open ceiling, an acoustical deck should be considered to absorb sound
- For schools which include auditorium/ theaters, consider:
  - Fly tower that is low enough to avoid the requirement for an expensive fire-rated curtain or sprinkler system (current code: under 50' tall)
  - Flexible performance spaces like a black box that can double as other uses
  - Stagecraft shop with direct access to the stage; high garage doors to the stage and exterior allow for the easy movement of sets or outside rental company equipment
  - Co-Ed green rooms or make-up rooms so that dressing rooms can be strictly men or women
  - Visible, supervised and accessible flat area in front of the stage for orchestra use rather than a pit; consider removable chairs to use this space as seating for larger performances
  - Dance room with similar dimensions to the stage; sprung floor or floor that provides cushion for dancers
  - Structure for future rigging lines, if full rigging is not in the initial budget
  - Encourage the use of outside rentals or funding sources, such as an IGA with the municipality

#### **R7-6-248 Vocational Education**

Change term: “vocational education” to **Career and Technical Education**”

B. For grades 7 through 12, four square feet per student of ~~art and/or vocational education space~~...CTE **indoor or covered outdoor space**

### R7-6-249 Physical Education

50-125 students: 2,600 sf

more than 125; 5,100 sf with one minimum 2,600 sf, can be multi-function including cafeteria, auditorium

B. ....For schools designed for more than 125 students....**For schools with more than 600 students include a separate cafeteria space or a combined 7,500 square feet of space**

**For grades 7-12 include a changing area and space to store personal items  
Include storage space for athletic equipment**

### R7-6-250 Equipment List for Physical Education

A. 1. Exterior to the building, one basketball court size surface area ~~and two goals per 300 students, four court maximum...~~

2. Exterior to the building, one baseball/softball backstop **for grades 7-12. For grades K-6 provide exterior age appropriate partially shaded playground/activity yard.**

#### BEST PRACTICE:

For grades 7-12 include appropriate sports field such as softball, baseball, football, track, soccer

Consider photovoltaics on stand-alone structure to provide shade for play spaces

## R7-6-260 Laws & Building Codes

local building codes, minimum 1997 UBC

### Minimum performance standards for sustainability

ASHRAE

Local life safety & building

SFB energy performance

2018 iecc

2018 iebc envelope

Fresh Air per ASHRAE 62.1

Best practices; built examples of operational cost comparison to system operation investment

-

## R7-6-261 Energy Saving Measures

include where reasonable energy conservation upgrades that will provide dollar savings in excess of the cost of the upgrade within 8 yrs of installation

Cost basis; life cycle cost basis exterior envelope performance; long term ROI

Lighting control to allow fixtures off when daylight adequate

Provide windows in **primary (not just elementary) occupied general instruction areas for Daylighting (or show how it has been optimized)**

- exterior shading to limit direct solar gain; fixed or operable where orientation is not optimum

- interior shading/blackout control for teachers

- view to exterior landscape, occupied spaces - not just sky; "ample and pleasant view, that includes vegetation or human activity and objects in the far distance"

- consider operable portion

- minimum glazing performance: per iecc

### Minimum Performance Standards

2012 INTERNATIONAL BUILDING CODE energy related only

**2012 INTERNATIONAL ENERGY CONSERVATION CODE to be updated every three years**

**ASHRAE 2018**

**LIGHTING CONTROLS to allow fixtures to be turned off during daylight hours**

**LIFE CYCLE COSE basis for systems design showing cost upgrade payoff within 8 years**

**IEBC envelope**

-

~~R7-6-265 Building Systems (for replacement)~~

~~working order, life expectance 3 years~~

~~Provide WIFI throughout campus~~

~~Provide for ease of maintenance~~

~~Mechanical system commissioning required  
energy modeling~~

**R7-6-271 Exterior Envelope**

safe and capable of being maintained for at least 3 years

**Exterior materials to have requirement for minimal maintenance and limited painting required**

**Exterior glazing to have shading to limit direct solar gain on glazing where orientation is problematic**

**Glazing to be minimum equivalent insulated glass per iecc**

**Minimum insulation required per iecc**

**Minimum HVAC equipment efficiency required per iecc**

### **BEST PRACTICES**

Operable windows to incorporate automatic closing connected to mechanical system operation

Security is not yet required; start to establish recommendations for safety by design; perimeter physical barrier;

# Attachment Four

## Spacing Guidelines

MOESLEY ARCHITECTS

# Classroom Distancing Strategy

<https://www.moseleyarchitects.com/2020/05/design-responses-to-k-12-clients-concerns-about-covid-19/>

Mr. Loper,

My comments are limited to any changes recently posted on the AZSFB website and not to the guidelines as a whole. I find it interesting that very little guidance has been provided in the area of campus Security - relating to both physical and electronic means. Did that topic come up during the thorough review of these standards? There is now only some minor guidance related to fencing and an operable security system – that's all.

- Greg Gilliam, Director of Maintenance & Operations for the Glendale Elementary School District #40

R7-6-202. Building Codes –

*A. This is a good change. The school facilities should be built/remodeled in keeping with the local building codes...and as they are each specifically amended by the local building authorities.*

*B. This is a bad idea as the building codes vary widely between counties and municipalities. There is no way the SFB can keep up with the differences. Many of the localities adopt and alter these codes on completely different schedules as well. This is destined to fail.*

*D. This is not needed as it is captured under paragraph "A" of this section above.*

*E. What is meant by the phrase "adequate security"? It is implied here that adequate security simply means a fence around the playground for students in K thru 6<sup>th</sup> grades. Site Security is a far reaching area with implications that needs significant discussion, direction, guidance, etc., within the Building Standard itself. The language here is just nonsensical.*

R7-6-210. Classroom Square Footage

*C. This paragraph is confusing. Is it essentially reducing the cumulative square footage noted in paragraph "A" of this section that was set forth as being the minimum square footage? I'm not exactly sure how this paragraph is intended to be used to modify the numbers in paragraph A of this section.*

*E. An exterior space "may" be included. Is this decision left to the prerogative of the school district or the SFB? Again, what is the intent of this paragraph? What issue is it addressing?*

R7-6-211. Classroom Fixtures and Equipment

*1b. Does this paragraph prohibit built in desk/cabinet/counter spaces?*

R7-6-212. Classroom Lighting

*This entire section is unnecessary. Lighting system technologies are ever changing and should be designed to comply with local building codes as noted in a previous section. Variances were often requested for this section due to this reality. A hard fast rule like this is simply not required.*

#### R7-6-213. Classroom Temperature

*B. Evaporative cooling, as the primary source of cooling, is not a very good source of cooling in a modern classroom environment. The air from these systems is typically unfiltered. These units are notorious sources of roof leaks, roofing damage, mold and it is much more difficult to control the temps as outlined in paragraph A of this section.*

*Another reality, NOT addressed here, is when you do convert from Evap to HVAC there are significant building envelope issues that must also be addressed as these two systems cool the space in much different ways. The envelope design for an ordinary HVAC system is different than the envelope designed for Evap.*

*For overall classroom air quality the evap systems should be removed and replaced with HVAC units.*

*The last sentence of this paragraph doesn't make sense.*

#### R7-6-221. Equipment for Learning and Technology Center(s)

*A3. The requirement to have a TV/VCR is not needed.*

#### R7-6-225. Cafeteria

*It should be a covered "interior" space, not simply a covered space.*

#### R7-6-235. Technology

*1:8 is unacceptable in the modern electronic education environment. The Covid-19 issue has exposed this standard as totally inadequate.*

#### R7-6-249. Physical Education and Comprehensive Health Program Facilities

*B4. Adding that the minimum square footage "may include space that also serves as a cafeteria" actually implies that it will be considered just that at some point. I think that this added stipulation should be removed as it is covered in a previous section. R7-6-225.*

#### R7-6-261. Energy Saving Measures

*This section refers to new construction and renewal of existing facility, but that would be included under R7-6-202 Building Codes. Many/most local jurisdictions have adopted Energy Codes as part of the overarching Building codes.*

*If that were moved, this section would then only be referring to Energy Performance Contracting. As such, this section could then simply be repealed as well as that activity is governed elsewhere is state statute: <https://www.azleg.gov/ars/15/00213-01.htm> Part B.*

July 20, 2020

Nick Loper  
Executive Consultant  
Arizona Department of Administration  
100 North 15<sup>th</sup> Avenue Suite 103  
Phoenix, AZ 85007  
nick.loper@azdoa.gov

RE: SFB Rule Changes

Dear Mr. Loper,

I am writing in response to the proposed rule changes for school construction. Thank you for your work on these important standards.

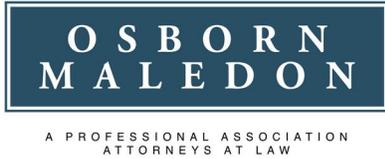
I was the facilitator for the 2019 SFB Minimum Adequacy Guidelines Rulemaking task force, which included wide representation from school districts across the state. The task force developed a draft of recommendations for rule changes that included recommended guideline changes to be implemented. This was supplemented by recommended considerations for schools to consider in their project design and capital improvement programs. I ask that the task force rule changes recommendations be considered for implementation with the rule changes proposed for SFB. The recommendations were highly reviewed in the task force workshops, and the final recommendations were a result of those interactive sessions.

As an example of the recommendations is the recommendations for R7-6-210 Academic Classroom Space. In this time of high awareness of social areas needed, the area recommendations are of high priority. The base standard must allow space for a student to work on a laptop and write adjacent to the laptop. The base area required simply for a desk to accommodate that activity, a chair behind it, and the clearance to walk behind the chair is 25 square feet. In addition the square footage standard must allow for teaching area, space for desk reconfiguration from simple lines of desks, accessibility, room circulation, room storage, hallway area to access the room, restrooms to serve the school, and other areas as required for the school to function for teaching. This cannot be accommodated with the proposed square footage.

Thank you for your consideration of these comments.  
Regards,



Marlene S. Imirzian, FAIA  
Principal



**Josh Bendor**

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July 20, 2020

**VIA EMAIL**

School Facilities Board  
1700 W. Washington, Suite 104  
Phoenix, AZ 85007  
[publiccomments@azsfb.gov](mailto:publiccomments@azsfb.gov)

Re: Proposed Expedited Rulemaking

Dear Members of the School Facilities Board:

We represent the plaintiffs in the capital funding lawsuit, *Glendale Elementary School District, et al. v. State of Arizona, et al.* We provide the following comments on the SFB's Proposed Expedited Rulemaking, which was posted on the SFB website on June 19, 2020 and published in the Arizona Administrative Register (Vol. 26, Issue 28, Page 1363) on July 10, 2020.

1. **Context of Current Expedited Rulemaking:** During the last SFB meeting, Director Tobin discussed the current expedited rulemaking process. Director Tobin indicated that this was to be the first of two rulemaking efforts related to the Minimum Adequacy Guidelines. The first, he indicated, is largely only technical and clarifying. Another effort that is more substantive is taking place but is not the subject of this current comment period. Based on this understanding, these brief comments will not address all of the inadequacies in the current Guidelines. Nor will these comments address issues regarding schools for the deaf and blind or all of the legal problems with the Proposed Rules.

The Agency's explanation of the need to change the guidelines explains that the rules were made in 2001, and that they "have become inconsistent with current industry standards and Board practice, technological changes, and best practices regarding education." See Proposed Rules, at p. 3, No. 5. This is certainly correct. Perhaps the substantive changes that will – at some point – be offered in a second phase of rulemaking will address some of these issues. The Proposed Rules currently under review do not. The current Proposed Rules also do not address the issues discussed in the MAG committee meetings that took place over the past year.

2. **Lack of Board involvement:** To our knowledge the proposed changes have not been the subject of a public hearing process, Board study, or Board action. That the Board appears to have been uninvolved in proposing these rules until the very end of the process is particularly puzzling in light of the fact that SFB staff routinely seek Board approval for minor changes to Board policy. The Board often discusses these changes at its public meetings, in considerable detail, *prior* to proposing them for public comment. By

contrast, the Proposed Rules do not appear to have been discussed substantively in any open meeting until *after* the rules were proposed.

3. **Limitation of the Proposed Rules to New Schools and Primary Building Renewal**

**Projects:** It is also noteworthy that the Proposed Rules appear to limit the applicability of the Guidelines to newly constructed schools and primary building renewal projects. *See*, for example, R7-6-201. It is unclear what this means and what rules would apply to earlier-constructed schools, including how inadequacies would be determined. Nor does this change seem merely technical or clarifying.

4. **Problems with specific changes (or lack thereof):** As stated, most of the changes appear to be technical in nature, and fail to address what is needed to provide an adequate education and a safe environment in today's world. For example:

- a. The guideline concerning **technology** and the number of students per computer has been obsolete since at least the mid 2000's, and is completely inadequate today (not even considering the impact of the pandemic). The Guidelines do not address this failure. *See also* R7-6-221(A)(3) (still calling for a VCR).
- b. The Guideline concerning **security** is vague and completely inadequate in today's world. The SFB long ago adopted recommendations pertaining to security. Yet the proposed rule does nothing to implement any of those changes. Further, R7-6-205(E) is vague and confusing. The first sentence says security is adequate if there is a fence around playgrounds for grades K-6. The second sentence talks about sites that are unable to provide adequate security and may have the sufficiency of security determined by the Board using several factors. Does "adequate security" in the second sentence refer only to a fence as described in the first sentence?
- c. The proposed rules regarding **classroom square footage** are vague and potentially troubling. For example, the proposed rule regarding exterior space counting as classroom square footage could cause problems for districts. Who will determine whether to count outdoor space as classroom space – the district or the SFB? If exterior space can be counted as classroom square footage despite the wishes of the district, that is certainly troubling. The requirements for space for special education and vocational education appear to be deleted.
- d. It is worrisome that all **transportation** guidelines appear to be subject to deletion/repeal, with nothing to take their place.
- e. There are numerous other revisions that are confusing or incomplete. *See* for example R7-6-213(B) (the last sentence appears incomplete).

July 20, 2020

Page 3

A detailed analysis of all of these issues is beyond the scope of these comments, especially given the comments of Director Tobin that this is merely an interim rulemaking process and the “substantive” process will take place later.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Josh Bendor', with a long, sweeping horizontal stroke extending to the right.

Josh Bendor

Daniel Adelman  
Arizona Center for Law in the Public Interest

JB:kw

cc: [nick.loper@azdoa.gov](mailto:nick.loper@azdoa.gov)

Robert Dalager

Pursuant to you Notice of Proposed Expedited Rulemaking, section 10, I am submitting the following comments for your review and consideration. The subject of the comment is R7-6-201 – Application:

1. A.R.S. § 41-1027(A)(3) and (6) are cited as the statutory basis for using an expedited rulemaking process. Specifically the Notice cites subsection (A)(3) that the rulemaking “...clarifies language without changing its effect...” and (A)(6) “repeals redundant rules unnecessary for the operation of state government.” However, the proposed amendments to R7-6-201 - Application shift the objective of the Minimum School Facility Guidelines (“Guidelines”) from minimum adequacy standards to new construction standards. This shift neither clarifies language nor repeals redundant rules.

The proposed rules strike current language making the Guidelines “applicable to a school facility and equipment that are necessary to meet the minimum school facility guidelines in this Article...” and replaces it with language that makes the Guidelines applicable to only “... a newly constructed school facility, primary building renewal project, and necessary equipment.” In addition, R7-6-201(C) further excludes from application of the Guidelines “a school facility constructed or renewed and equipment obtained before the effective date of this Chapter...”

2. The proposed rules appear to shift the application of the Guidelines **is** to new construction standards, therefore leaving no vehicle for awarding statutorily prescribed Building Renewal Grant projects. According to statute, monies in the Building Renewal Grant Fund are awarded for “primary building renewal projects.” A.R.S. § 15-2032(B). The statutory definition of these projects are those “necessary for buildings owned by school districts . . . and that fall below the minimum school facility adequacy guidelines, as adopted by the School Facilities Board . . .” A.R.S. § 15-2032(J)(1). But based on the draft applicability language in the proposed rules, no previously constructed facility would **be** required to comply with the Guidelines. Is the intent to leave the School Facilities Board without Guidelines to use in evaluating Building Renewal Grant projects?
3. A.R.S. § 15-2011 requires the School Facilities Board to adopt rules establishing minimum school facility adequacy guidelines. The statute additionally requires the guidelines to provide the minimum quality and quantity of school buildings and facilities and equipment necessary and appropriate to enable pupils to achieve the academic standards. If previously constructed facilities are not subject to the Guidelines in the proposed rules, it is not clear what these facilities can be tested against to determine whether the previously constructed facilities are appropriate to enable pupils to achieve the academic standards. As a consequence of that, the requirements of A.R.S. § 15-2011 would be unmet with adoption of the proposed rules.

July 20, 2020

RE: SFB Minimum Adequacy Guidelines Public Comment

I understand the desire to move forward quickly after years of not updating the Minimum Adequacy Guidelines, and hope to be involved in a robust conversation on the more complicated aspects of updating the MAG in the future. In the meantime, I have limited my comments to the items included in the June 2020 proposed revisions.

In general, I would suggest Rules with items that evolve frequently (standards, codes and technology) should refer to Board Policy or other outside organizations rather than be specified in more static Rules.

Thank you

-Carmen Wyckoff, AIA

R7-6-202 B: With the number of jurisdictions in Arizona, their local code amendments, and the variety of building codes adopted it is not practical for the staff to keep a current list of building codes on the SFB website. In fact, many cities struggle to even keep their own websites up to date! It is also not advisable for the SFB to take on this liability which should fall on the Authority Having Jurisdiction and the design professional.

R7-6-213 B: The last sentence seems to need an action for schools at less than 5,000 ft elevation.

R7-6-215 A: Rather than setting a specific PPM level, the MAG committee recommended referring to ASHRAE 62.1 standards for technical items like this, as those standards are updated more often as HVAC technology becomes updated or as our societal health concerns change.

R7-6-221 3: Consider removing the requirement for a TV/ VCR. I would suggest instead replace with "Multi-media technology for group instruction" or a more generic description of the equipment, or refer to a more flexible Board Policy item instead since technology is constantly evolving.

R7-6-221 B: It would be advisable to require hard copy references be "less than 10 years old" so that the MAG is not setting hard year dates (such as 2000) that do not evolve until the next Rule-making process.

R7-6-230 3: The final sentence in this paragraph should not be struck, as it gives schools flexibility in adapting to changing educational approaches and in how they use their common or public space. It would also give Districts flexibility in serving not only students, but their surrounding communities' needs. Retaining this sentence can also help many Districts stretch their budgets by being able to use one space multiple ways throughout the day and evening, or to create a larger space by combining it with eating or PE areas.

R7-6-246 6: Please consider including an exception for electronic "virtual" microscopes as many districts have started using these in the science classrooms, or defer this equipment to Board Policy so that it might evolve more frequently.

## School Facilities Board

## TITLE 7. EDUCATION

## CHAPTER 6. SCHOOL FACILITIES BOARD

*Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 01-4).*

*Editor's Note: This Chapter contains rules which were adopted, amended, repealed, or renumbered under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6), pursuant to Laws 1998, 5th Special Session, Chapter 1, section 55, as amended by Laws 1999, Chapter 299, section 39. Because this Chapter contains rules which are exempt from the regular rulemaking process, it is printed on blue paper.*

*Title 7, Chapter 6, adopted by exempt rulemaking at 6 A.A.R. 597, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1).*

## ARTICLE 1. DEFINITIONS

Section	
R7-6-101.	Definitions
R7-6-102.	Repealed

R7-6-244.	Reserved
R7-6-245.	Science Facilities
R7-6-246.	Equipment List for Science Facilities
R7-6-247.	Art Facilities
R7-6-248.	Vocational Education Facilities
R7-6-249.	Physical Education and Comprehensive Health Program Facilities

## ARTICLE 2. MINIMUM SCHOOL FACILITY GUIDELINES

Section	
R7-6-201.	Application
R7-6-202.	Reserved
R7-6-203.	Reserved
R7-6-204.	Reserved
R7-6-205.	School Site
R7-6-206.	Reserved
R7-6-207.	Reserved
R7-6-208.	Reserved
R7-6-209.	Reserved
R7-6-210.	Reserved
R7-6-211.	Classroom Light
R7-6-212.	Reserved
R7-6-213.	Classroom Temperature
R7-6-214.	Classroom Acoustic
R7-6-215.	Classroom Air Quality
R7-6-216.	Education Classroom Facilities for Disabled Students
R7-6-217.	Reserved
R7-6-218.	Reserved
R7-6-219.	Reserved
R7-6-220.	Libraries and Media Centers/Research Area
R7-6-221.	Equipment for Libraries and Media Centers/Research Area
R7-6-222.	Reserved
R7-6-223.	Reserved
R7-6-224.	Reserved
R7-6-225.	Cafeterias
R7-6-226.	Food Service
R7-6-227.	Equipment List for Food Service
R7-6-228.	Reserved
R7-6-229.	Reserved
R7-6-230.	Auditoriums, Multipurpose Rooms, or Other Multiuse Space
R7-6-231.	Reserved
R7-6-232.	Reserved
R7-6-233.	Reserved
R7-6-234.	Reserved
R7-6-235.	Technology
R7-6-236.	Reserved
R7-6-237.	Reserved
R7-6-238.	Reserved
R7-6-239.	Reserved
R7-6-240.	Transportation
R7-6-241.	Reserved
R7-6-242.	Reserved
R7-6-243.	Reserved

R7-6-250.	Equipment List for Physical Education
R7-6-251.	Alternative Delivery Method
R7-6-252.	Reserved
R7-6-253.	Reserved
R7-6-254.	Reserved
R7-6-255.	Parent Work Space
R7-6-256.	2-Way Internal Communication System
R7-6-257.	Fire Alarm
R7-6-258.	Administrative Space
R7-6-259.	Reserved
R7-6-260.	Laws and Building Codes
R7-6-261.	Energy Saving Measures
R7-6-262.	Reserved
R7-6-263.	Reserved
R7-6-264.	Reserved
R7-6-265.	Building Systems
R7-6-266.	Reserved
R7-6-267.	Reserved
R7-6-268.	Reserved
R7-6-269.	Reserved
R7-6-270.	Building Structural Soundness
R7-6-271.	Exterior Envelope, Interior Surfaces and Interior Finishes
R7-6-272.	Reserved
R7-6-273.	Reserved
R7-6-274.	Reserved
R7-6-275.	Minimum Gross Square Footage
R7-6-276.	Assessment of Minimum Gross Square Footage
R7-6-277.	Reserved
R7-6-278.	Reserved
R7-6-279.	Reserved
R7-6-280.	Expired
R7-6-281.	Reserved
R7-6-282.	Reserved
R7-6-283.	Reserved
R7-6-284.	Reserved
R7-6-285.	Guidelines Exception

## ARTICLE 3. SQUARE FOOTAGE CALCULATIONS

Section	
R7-6-301.	Square Footage Calculations
R7-6-302.	Modification of Square Footage for Geographic Factors
R7-6-303.	Repealed
R7-6-304.	Repealed
R7-6-305.	Repealed
R7-6-306.	Repealed

## School Facilities Board

R7-6-307. Reserved  
through  
R7-6-320. Reserved  
R7-6-321. Repealed

**ARTICLE 4. EXPIRED**

*Article 4, consisting of Section R7-6-401, expired under A.R.S. § 41-1056(E) at 11 A.A.R. 3252, effective June 30, 2005 (05-3).*

## Section

R7-6-401. Expired

**ARTICLE 5. NEW SCHOOL AND LAND FUNDING**

## Section

R7-6-501. Capital Plans  
R7-6-502. Funding for New Schools or Additional Square Footage  
R7-6-503. Funding for Land  
R7-6-504. Donations of Real Property  
R7-6-505. Constructing Bond Funded Schools on Land Funded by the School Facilities Board  
R7-6-506. Providing Technical Assistance in the Form of Project Management  
R7-6-507. Reserved  
R7-6-508. Reserved  
R7-6-509. Reserved  
R7-6-510. Reserved  
R7-6-511. Repealed

**ARTICLE 6. CONTINGENCY FUNDS**

## Section

R7-6-601. Allocation and Use of Contingency Monies

**ARTICLE 7. MINIMUM SCHOOL FACILITY GUIDELINES FOR THE ARIZONA STATE SCHOOLS FOR THE DEAF AND BLIND**

## Section

R7-6-701. Application  
R7-6-702. Reserved  
R7-6-703. Reserved  
R7-6-704. Reserved  
R7-6-705. School Site  
R7-6-706. Reserved  
R7-6-707. Reserved  
R7-6-708. Reserved  
R7-6-709. Reserved  
R7-6-710. Academic Classroom Space  
R7-6-711. Classroom Fixtures and Equipment  
R7-6-712. Classroom Lighting  
R7-6-713. Classroom Temperature  
R7-6-714. Classroom Acoustics  
R7-6-715. Classroom Air Quality  
R7-6-716. Education Classroom Facilities for Disabled Students  
R7-6-717. Reserved  
R7-6-718. Reserved  
R7-6-719. Libraries and Media Centers/Research Area  
R7-6-720. Reserved  
R7-6-721. Equipment for Libraries and Media Centers/Research Area  
R7-6-722. Reserved  
R7-6-723. Reserved  
R7-6-724. Reserved  
R7-6-725. Cafeterias  
R7-6-726. Food Service

R7-6-727. Equipment List for Food Service  
R7-6-728. Reserved  
R7-6-729. Reserved  
R7-6-730. Auditoriums, Multipurpose Rooms, or Other Multi-use Space  
R7-6-731. Reserved  
R7-6-732. Reserved  
R7-6-733. Reserved  
R7-6-734. Reserved  
R7-6-735. Technology  
R7-6-736. Reserved  
R7-6-737. Reserved  
R7-6-738. Reserved  
R7-6-739. Reserved  
R7-6-740. Transportation  
R7-6-741. Reserved  
R7-6-742. Reserved  
R7-6-743. Reserved  
R7-6-744. Reserved  
R7-6-745. Science Facilities  
R7-6-746. Equipment List for Science Facilities  
R7-6-747. Art Facilities  
R7-6-748. Vocational Education Facilities  
R7-6-749. Physical Education and Comprehensive Health Program Facilities  
R7-6-750. Equipment List for Physical Education  
R7-6-751. Alternative Delivery Method  
R7-6-752. Reserved  
R7-6-753. Reserved  
R7-6-754. Reserved  
R7-6-755. Parent Work Space  
R7-6-756. Two-Way Internal Communication System  
R7-6-757. Fire Alarm  
R7-6-758. Administrative Space  
R7-6-759. Reserved  
R7-6-760. Laws and Building Codes  
R7-6-761. Energy Saving Measures  
R7-6-762. Reserved  
R7-6-763. Reserved  
R7-6-764. Reserved  
R7-6-765. Building Systems  
R7-6-766. Reserved  
R7-6-767. Reserved  
R7-6-768. Reserved  
R7-6-769. Reserved  
R7-6-770. Building Structural Soundness  
R7-6-771. Exterior Envelope, Interior Surfaces and Interior Finishes  
R7-6-772. Reserved  
R7-6-773. Reserved  
R7-6-774. Reserved  
R7-6-775. Minimum Gross Square Footage  
R7-6-776. Assessment of Minimum Gross Square Footage  
R7-6-777. Reserved  
R7-6-778. Reserved  
R7-6-779. Reserved  
R7-6-780. Student Boarding Space  
R7-6-781. ASDB Program Requirement Facilities  
R7-6-782. Student Health Center  
R7-6-783. Parent Outreach Program  
R7-6-784. Reserved  
R7-6-785. Expired  
R7-6-786. Expired  
R7-6-787. Expired  
R7-6-788. Expired  
R7-6-789. Expired

R7-6-790. Guidelines Exception

**EXHIBIT A. REPEALED**

**ARTICLE 8. REPEALED**

Section  
R7-6-801. Repealed

**ARTICLE 1. DEFINITIONS**

**R7-6-101. Definitions**

In this Chapter, unless otherwise specified, the following terms mean:

**ARTICLE 9. REPEALED**

Section  
R7-6-901. Repealed  
R7-6-902. Reserved through  
R7-6-910. Reserved  
R7-6-911. Repealed  
R7-6-912. Reserved through  
R7-6-920. Reserved  
R7-6-921. Repealed  
R7-6-922. Reserved through  
R7-6-930. Reserved  
R7-6-931. Repealed  
R7-6-932. Reserved through  
R7-6-940. Reserved  
R7-6-941. Repealed

1. "Ambient CO2 Level" means the carbon dioxide level of the outside air.
2. "All weather surface" means a vehicular use and/or parking area that shall be surfaced with one of the following: asphalt, concrete, chip seal, graded and compacted gravel, or other stabilized system.
3. "Area" means exterior covered or uncovered portion of a school site.
4. "Board" means the School Facilities Board.
5. "Decibel" means a unit in which various acoustical hearing level quantities are expressed.
6. "Eligible students" means eligible students as defined in A.R.S. § 15-901(A)(9).
7. "Equipment" means a specified item not affixed to the real property of a school facility.
8. "Executive Director" means Executive Director of the School Facilities Board as set forth in A.R.S. § 15-2002(C).
9. "Exterior envelope" means the exterior walls, floor, and roof of a building.
10. "Fixture" means a specified item that is affixed to the real property of a school facility.
11. "Footcandle" means the direct light thrown, on a square foot of surface, by a candle 7/8 inch in diameter burning at 7.776 grams per hour.
12. "FTE" means full-time equivalent.
13. "General Classroom" means a classroom space that is or can be appropriately configured for instruction in at least the areas of language arts, mathematics, and social studies.
14. "HVAC" means heating, ventilation, and air conditioning system. This does not necessarily mean a refrigerated air conditioning system.
15. "Normal Conditions" means occupancy during regular school hours while the building system is operating.
16. "PPM" means parts per million.
17. "Pupil" means student.
18. "Pupil transportation vehicle" means a bus used to transport eligible students between their residence and a school facility for the academic day or a vehicle used to transport eligible disabled students between their residence and a school facility for the academic day.
19. "Random" means arbitrary selection through a process of assigning numbers to each classroom in each building to be assessed.
20. "School facility" means a building or group of buildings and outdoor area that are administered together to comprise a school campus.
21. "School site" means one or more parcels of land where a school facility is located. More than one school facility may be located on a school site.
22. "Space" means square footage located within the interior of a building.
23. "Specialty classroom" means a classroom space that is or can be appropriately configured for instruction in a specific subject such as science, physical education, or art.
24. "Student body" means the number of students at a school facility.
25. "Student" means the number of students in average daily membership. Average daily membership is defined as the

**ARTICLE 10. REPEALED**

Section  
R7-6-1001. Repealed  
R7-6-1002. Repealed  
R7-6-1003. Repealed  
R7-6-1004. Repealed

**ARTICLE 11. REPEALED**

Section  
R7-6-1101. Repealed

**ARTICLE 12. REPEALED**

Section  
R7-6-1201. Repealed

**ARTICLE 13. REPEALED**

Section  
R7-6-1301. Repealed  
R7-6-1302. Repealed

**ARTICLE 14. REPEALED**

Section  
R7-6-1401. Repealed  
R7-6-1402. Repealed

**ARTICLE 15. REPEALED**

Section  
R7-6-1501. Repealed

**ARTICLE 16. REPEALED**

Section  
R7-6-1601. Repealed

attending average enrollment of fractional students and full time students, minus withdrawals, of each school day through the first 100 days in session, not adjusted for average daily attendance.

26. "Transportation capacity" means the number of passenger seats, according to manufacturer specifications, available on all of the pupil transportation vehicles owned by the school district, multiplied by two.

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Amended by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-102. Repealed**

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**ARTICLE 2. MINIMUM SCHOOL FACILITY GUIDELINES**

**R7-6-201. Application**

The provisions of this Article are applicable to a school facility and equipment that are necessary to meet the minimum school facility guidelines established in this Article or to meet the gross square footage standards prescribed by law.

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-202. Reserved**

**R7-6-203. Reserved**

**R7-6-204. Reserved**

**R7-6-205. School Site**

- A. A school site shall have safe access, parking, drainage, security, and area to accommodate a school facility that complies with the minimum gross square footage requirements established in A.R.S. § 15-2011, for the number of students at the school facility and that comply with these guidelines.
- B. "Safe access" means a student drop off area or pedestrian pathway that allows students to enter the school facility without crossing vehicular traffic or by using a designated crosswalk. Any student drop off area that is used by a bus must be configured to accommodate bus width and turning requirements.
- C. "Parking" means a maintainable all weather surfaced area that is large enough to accommodate one parking space per staff FTE and one visitor parking space per 100 students. If this definition is not met, the sufficiency of the parking at the site is subject to review by the Board using the following criteria:
1. Availability of street parking around the school;
  2. Availability of any nearby parking lots;
  3. Availability of public transit;
  4. Number of staff that drive to work on a daily basis; and
  5. The average number of visitors on a daily basis.
- D. "Drainage" means that a school site is configured such that runoff does not undermine the structural integrity of the school

buildings located on the site or create flooding, ponding, or erosion resulting in a threat to health, safety, or welfare.

- E. "Security" means a fenced or walled play/physical education area for students in programs for preschool children with disabilities and kindergarten and students in grades one through six. This definition is met if the entire school is fenced or walled. If this definition is not met, the sufficiency of security at the site is subject to review by the Board using the following criteria:
1. Amount of vehicular traffic near the school site;
  2. Existence of hazardous or natural barriers on or near the school site;
  3. The amount of animal nuisance near the school site; and
  4. Visibility of the play/physical education area.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-206. Reserved**

**R7-6-207. Reserved**

**R7-6-208. Reserved**

**R7-6-209. Reserved**

**R7-6-210. Academic Classroom Space**

- A. A school district shall have school facilities with cumulative classroom square footage of 32 square feet for each student in programs for preschool children with disabilities, kindergarten programs and grades one through three in the district.
- B. A school district shall have school facilities with cumulative classroom square footage of 28 square feet for each student in grades four through six in the district.
- C. A school district shall have school facilities with cumulative classroom square footage of 26 square feet for each student in grades seven and eight in the district.
- D. A school district shall have school facilities with cumulative classroom square footage of 25 square feet for each student in grades 9 through 12 in the district.
- E. For purposes of measuring cumulative classroom square footage for programs for preschool children with disabilities, kindergarten programs and grades one through six, classroom spaces are those occupied throughout the school day by the same students, or usable for general classroom purposes.
- F. For purposes of measuring cumulative classroom square footage for grades seven and eight, classroom spaces are 90 percent of the square footage of those rooms usable for general and specialty classroom purposes.
- G. For purposes of measuring cumulative classroom square footage for grades 9 through 12, classroom spaces are 85 percent of the square footage of those rooms usable for general and specialty classroom purposes.
- H. Classroom space is measured from interior wall to interior wall.
- I. The amount of classroom space per student specified in this Article accounts for required teaching space.
- J. The square footage of a general classroom is not counted as specialty classroom square footage.
- K. The square footage of a specialty classroom is not counted as general classroom square footage.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-211. Classroom Fixtures and Equipment**

- A. Each general and specialty classroom shall contain a work surface and seat for each student in the classroom. The work sur-

## School Facilities Board

face and seat shall be appropriate for the normal activity of the class conducted in the room. A work surface and seat are adequate if the items are:

1. Safe; and
  2. Maintainable.
- B.** Each general and specialty classroom shall have an erasable surface and a surface suitable for projection purposes, appropriate for group classroom instruction and a display surface. A single surface may meet one or more of these purposes. An erasable surface and a surface suitable for projection purposes, appropriate for group classroom instruction must be at least three feet by five feet.
- C.** Each general and specialty classroom shall have storage for classroom materials or access to conveniently located storage.
- D.** Each general and specialty classroom shall have a work surface and seat for the teacher and for the aid assigned to the classroom and secure storage for student records, that is located in the classroom or is convenient to access from the classroom.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-212. Classroom Lighting**

- A.** Each general, science, and art classroom shall have a light system capable of maintaining at least 50 footcandles of light.
- B.** The light level shall be measured at a work surface located in the approximate center of the classroom, between clean light fixtures under normal operating conditions.
- C.** A random sample of 10 percent of the general, science, and art classrooms in each building shall be measured to determine the classroom light level for the school facility.
- D.** For purposes of this Section, all portable or modular buildings located at a school facility that were manufactured in the same year and installed at the school facility at the same time are considered a single building.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-213. Classroom Temperature**

- A.** Each general, science, and art classroom shall have a HVAC system capable of maintaining a temperature between 68° and 82° F under normal conditions with an occupied classroom.
- B.** Except in areas where the elevation is above 5,000 feet, defective or non-operable air conditioners and evaporative coolers shall be replaced with air conditioning. Non-air conditioned schools with elevations less than 5,000 feet shall be air-conditioned.
- C.** The temperature shall be measured at a work surface in the approximate center of the classroom, under normal conditions.
- D.** A random sample of 10 percent of the general, science, and art classrooms in each building shall be measured to determine the classroom temperature level for the school facility.
- E.** For purposes of this Section, all portable or modular buildings located at a school facility that were manufactured in the same year and installed at the school facility at the same time are considered a single building.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-214. Classroom Acoustics**

- A.** Each general, science, and art classroom shall be maintainable at a sustained background sound level of less than 55 decibels.

- B.** The sound level shall be measured at a work surface in the approximate center of the classroom, under normal conditions.
- C.** A random sample of 10 percent of the general, science, and art classrooms in each building shall be measured to determine the classroom sound level for the school facility.
- D.** For purposes of this Section, all portable or modular buildings located at a school facility that were manufactured in the same year and installed at the school facility at the same time are considered a single building.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-215. Classroom Air Quality**

- A.** Each general, science, and art classroom shall have a HVAC system capable of maintaining a CO2 level of not more than 800 PPM above the ambient CO2 level.
- B.** The air quality shall be measured at a work surface in the approximate center of the classroom, under normal conditions.
- C.** A random sample of 10 percent of the general, science, and art classrooms in each building shall be measured to determine the classroom air quality level for the school facility.
- D.** For purposes of this Section, all portable or modular buildings located at a school facility that were manufactured in the same year and installed at the school facility at the same time are considered a single building.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-216. Education Classroom Facilities for Disabled Students**

A school facility shall have space or access to space capable of being used for the education programs of disabled students attending the school facility.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-217. Reserved****R7-6-218. Reserved****R7-6-219. Reserved****R7-6-220. Libraries and Media Centers/Research Area**

- A.** A school facility shall have space for students to access research materials, literature, non-text reading materials, and reading books and technology, to permit students to achieve state academic standards as prescribed by the State Board of Education. This shall include space for reading, listening, and viewing materials.
- B.** For an elementary school facility that serves at least 150 students, this space shall be the greater of 1000 square feet or the square footage equal to 20 square feet per student for 10 percent of the student body.
- C.** For a middle or junior high or high school facility that serves at least 150 students, this space shall be the greater of 1200 square feet or the square footage equal to 20 square feet per student for 10 percent of the student body.
- D.** A school facility that serves at least 150 students shall have library fixtures and equipment in accordance with R7-6-221 as modified from time to time.
- E.** A school facility shall have library materials in accordance with R7-6-221 as modified from time to time.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-221. Equipment for Libraries and Media Centers/ Research Area**

- A.** The standard equipment list for libraries and media centers/ research areas is as follows:
1. One linear foot of library book shelves per student;
  2. For a school of 150 or more students, one work surface for every 20 students, minimum of 15, maximum of 75;
  3. For a school of 150 or more students, one seat for every 20 students, minimum of 15, maximum of 75;
  4. One TV/VCR;
  5. One overhead projector;
  6. Ten books per students;
  7. One almanac (may be electronic or hard copy);
  8. One encyclopedia set per 200 students (may be electronic or hard copy);
  9. One atlas (may be electronic or hard copy); and
  10. One unabridged dictionary (may be electronic or hard copy).
- B.** Each almanac, encyclopedia and atlas shall have a publication date of 2000 or later.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-222. Reserved****R7-6-223. Reserved****R7-6-224. Reserved****R7-6-225. Cafeterias**

A school facility shall have a covered area or space, or combination, to permit students to eat within the school site, outside of general classrooms. This space may have more than one function and may fulfill more than one guideline requirement (auditorium and/or indoor physical education).

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-226. Food Service**

- A.** A school facility shall have space and fixtures and equipment, in accordance with the standard equipment list in R7-6-227 as modified from time to time, for the preparation, receipt, storage, and service of food to students that is accessible to the serving area. The space, fixtures, and equipment shall be appropriate for the food service program of the school facility. Food service fixtures and equipment are subject to assessment under R7-6-265(A)(1) and (2).
- B.** Food service facilities and equipment shall comply with county health codes.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-227. Equipment List for Food Service.**

- A.** A school facility shall have the following fixtures and equipment for the preparation, receipt, storage and service of food to students:
1. One three-compartment sink.
  2. One double stack convection oven for a cooking kitchen or a warming oven.

3. One dishwasher if reusable dishes and silverware are used.
4. One hot food holding appliance.
5. One range with hood.
6. One refrigerator.
7. One freezer.
8. One milk refrigerator.

- B.** The items in subsection (A) of this Section may be substituted for a reasonable alternative.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-228. Reserved****R7-6-229. Reserved****R7-6-230. Auditoriums, Multipurpose Rooms, or Other Multiuse Space**

A school facility shall have a space capable of being used for student assembly sufficient to accommodate one-third of the student body, which shall be the same size or larger than an average classroom at the facility. The space must be equal to at least seven square feet multiplied by one-third of the student body. This space may have more than one function and may fulfill more than one guideline requirement (cafeteria and/or indoor physical education).

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-231. Reserved****R7-6-232. Reserved****R7-6-233. Reserved****R7-6-234. Reserved****R7-6-235. Technology**

- A.** Each classroom at a school facility shall have Internet access, at least through a network modem. Each school must have available either on a school basis or on a district-wide basis a firewall and filtering software. Each school facility shall have at least one network multimedia computer, available for student use, for every eight students, on a school wide network. Computer equipment is subject to assessment under R7-6-265(A)(1) and (2).
- B.** A multimedia computer is defined as a computer that has sound, CD-ROM, a keyboard, a monitor, and a pointing device.
- C.** Until June 30, 2005, each district shall have an application service provider, coupled with an adequate variety of instructional software.
- D.** In order to meet the requirements of this Section, should a school district have an application service provider in place, the school district may also meet the requirements of subsection (A) of this Section by purchasing thin client terminals or network appliances with full access to the Internet, equipped with a 13" screen or larger monitors.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

## School Facilities Board

**R7-6-236. Reserved****R7-6-237. Reserved****R7-6-238. Reserved****R7-6-239. Reserved****R7-6-240. Transportation**

- A.** Pupil transportation vehicles manufactured prior to 1978 shall be replaced if the eligible students transported exceeds the student transportation capacity of the district, excluding the vehicle eligible for replacement.
- B.** Diesel powered pupil transportation vehicles with more than 400,000 miles and gasoline powered pupil transportation vehicles with more than 200,000 miles shall be replaced if the eligible students transported exceeds the student transportation capacity of the district, excluding the vehicle eligible for replacement.
- C.** Diesel powered pupil transportation vehicles with more than 266,800 miles and gasoline powered pupil transportation vehicles with more than 133,400 miles shall be replaced if at least one-half of the miles accumulated on the vehicle were driven on unpaved roads and if the eligible students transported exceeds the student transportation capacity of the district, excluding the vehicle eligible for replacement.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-241. Reserved****R7-6-242. Reserved****R7-6-243. Reserved****R7-6-244. Reserved****R7-6-245. Science Facilities**

- A.** A school facility with students in grades 5 through 12 shall have classroom space to deliver practical science instruction, or classroom space for an alternate science delivery method.
- For grades five through eight no space is required beyond the academic classroom requirement. For grades 9 through 12, four square feet per student of practical and instructional science space is required. The space shall not be smaller than the average classroom at the facility. This space is included in the academic classroom requirement and may be used for other instruction.
- B.** A school facility with students in grades 5 through 12 that delivers practical science instruction shall have science fixtures and equipment, in accordance with R7-6-246 as modified from time to time. If an alternate science delivery method is used by a district, a school facility shall have science fixtures and equipment for students in grades 5 through 12 that are an alternate equivalent to the science fixtures and equipment identified in R7-6-246.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-246. Equipment List for Science Facilities**

- A.** Science facilities for students in grades 9 through 12 shall have the following fixtures and equipment:
- One demonstration table with non-corrosive surface per 250 students.
  - Six laboratory stations with a non-corrosive surface per 250 students.

- One fume hood.
  - One chemical storage unit per 1,000 students.
  - One eye wash/shower per 250 students.
  - One dissecting microscope per 25 students, minimum of the lesser of 12 or one-half of the number of eligible students.
  - One refrigerator.
- B.** Science facilities for students in grades five through 12 shall have the following fixtures and equipment:
- One sink per 250 students.
  - One compound microscope per 25 students, minimum of the lesser of 12 or one-half of the number of eligible students.
  - One balance per 250 students.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-247. Arts Facilities**

- A.** A school facility with students in grades 7 through 12 shall have space to deliver art education programs including visual, music, and performing arts programs or have access to an alternate delivery method.
- B.** For grades 7 through 12, four square feet per student of art and/or vocational education space is required. The space shall not be smaller than the average classroom at the facility. This space is included in the academic classroom requirement and may be used for other instruction.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-248. Vocational Education Facilities**

- A.** A school facility with students in grades 7 through 12 shall have space to deliver vocational education programs or have access to an alternate delivery method.
- B.** For grades 7 through 12, four square feet per student of art and/or vocational education space is required. The space shall not be smaller than the average classroom at the facility. This space is included in the academic classroom requirement and may be used for other instruction.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-249. Physical Education and Comprehensive Health Program Facilities**

- A.** A school facility shall have area and space and fixtures, in accordance with R7-6-250 as modified from time to time, for physical education activity and space for a comprehensive health program established in compliance with the academic standards prescribed by the State Board of Education.
- B.** For schools designed for 20-50 students, the indoor space available for physical education must be one single space of at least 1,600 square feet. For schools designed for 50 to 125 students, the indoor space available for physical education must be one single space of at least 2,600 square feet. For schools designed for more than 125 students, the total indoor space available for physical education must be at least 5,100 square feet and one single space that is at least 2,600 square feet must be available. This space may have more than one function and may fulfill more than one guideline requirement (cafeteria and/or auditorium). The comprehensive health space is the indoor space available for physical education.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-250. Equipment List for Physical Education**

- A. A school facility shall have the following equipment and fixtures for physical education:
1. Exterior to the building, one basketball court size surface area and two goals per 300 students, four court maximum.
  2. Exterior to the building, one baseball/softball backstop.
- B. Concrete shall be used when installing basketball courts.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-251. Alternate Delivery Method**

If an alternate delivery method is used by the district to deliver instruction in art, science, or vocational education, the alternate method must be approved by the school district governing board and be capable of meeting the requirements established in the academic standards prescribed by the State Board of Education for the specific subject area.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-252. Reserved****R7-6-253. Reserved****R7-6-254. Reserved****R7-6-255. Parent Work Space**

- A. If parents are invited to assist with school activities, a school facility shall include a work space capable of being used by parents.
- B. One square foot per student, with a minimum of 150 square feet and a maximum of 800 square feet, is required. The maximum may be exceeded. The space may be divided into more than one room. This space may have more than one function.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-256. Two-way Internal Communication System**

A school facility shall have a network and two-way internal communication system between a central location and each classroom, library, physical education space, and the cafeteria.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-257. Fire Alarm**

A school facility shall have a fire alarm system as required by the State Fire Marshal.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-258. Administrative Space**

- A. A school facility shall have space for the use of the administration of the school. For the school administrator, 150 designated square feet is required. For general administrative purposes and additional 1.5 square feet per student is required, with a minimum of 150 square feet and a maximum of 2,500 square feet. The maximum may be exceeded.

- B. A school facility shall have space to isolate a sick student from the other students. This space shall be a designated space that is accessible to a restroom, large enough to accommodate one cot per 200 students, with a maximum of four cots. The maximum may be exceeded.
- C. A school facility shall have work space available to the faculty. This space is in addition to any work area available to a teacher, in or near a classroom. One square foot per student with a maximum of 150 square feet and a maximum of 800 square feet is required. The maximum may be exceeded. The space may be divided into more than one room. This space may have more than one function.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-259. Reserved****R7-6-260. Laws and Building Codes**

- A. To the extent required by law, school buildings shall be in compliance with federal, state and local building and fire codes and laws that are applicable to the particular building. Existing school buildings are not required to comply with current requirements for new buildings unless this compliance is specifically mandated by law or by the building or fire code of the jurisdiction where the building is located.
- B. At a minimum, the 1997 Uniform Building Code (UBC) is required to be met for new school facility construction and, as required, for building renovations in existing schools.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-261. Energy Saving Measures**

New school facility construction and, as required, building renovations in existing schools, shall include, where reasonable, energy conservation upgrades that will provide dollar savings in excess of the cost of the upgrade within eight years of the installation.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-262. Reserved****R7-6-263. Reserved****R7-6-264. Reserved****R7-6-265. Building Systems**

- A. Building systems in a school facility must be in working order and capable of being properly maintained. A building system shall be considered to be in "working order and capable of being maintained," if all of the following:
1. The system is capable of being operated as intended and maintained.
  2. Newly manufactured or refurbished replacement parts are available.
  3. The remaining life expectancy of the system, at the time of the initial statewide assessment, is at least three years.
  4. The system is capable of supporting the gross square footage standard and minimum school facility guidelines established in this Article.
  5. Components of the system present no imminent danger of personal injury.
- B. Building systems include, as required by law, roof, plumbing, telephone, electrical, and heating and cooling systems as well as fire alarm, two-way internal communication, computer cabling, and existing security systems.

## School Facilities Board

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-266. Reserved**

**R7-6-267. Reserved**

**R7-6-268. Reserved**

**R7-6-269. Reserved**

**R7-6-270. Building Structural Soundness**

A school facility must be structurally sound. A school facility shall be considered structurally sound if the building presents no imminent danger or major visible signs of decay or distress, and the remaining life expectancy of the building structure appears to be at least a minimum of three years.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-271. Exterior Envelope, Interior Surfaces and Interior Finishes**

The exterior envelope, interior surfaces, and interior finishes at school facilities must be safe and capable of being maintained.

1. An exterior envelope is safe and capable of being maintained if:
  - a. Walls and roof are weather tight under normal conditions with routine upkeep;
  - b. Doors and windows are weather tight under normal conditions with routine upkeep; and
  - c. The building structural systems support the loads imposed on them.
2. An interior surface is safe and capable of being maintained if it is:
  - a. Structurally sound;
  - b. Capable of supporting a finish; and
  - c. Capable of continuing in its intended use with normal maintenance and repair for at least three years after the initial statewide assessment.
3. An interior finish is safe and capable of being maintained if it is:
  - a. Free of exposed lead paint;
  - b. Free of friable asbestos; and
  - c. Capable of continuing in its intended use, with normal maintenance and repair, for at least three years after the initial statewide assessment.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-272. Reserved**

**R7-6-273. Reserved**

**R7-6-274. Reserved**

**R7-6-275. Minimum Gross Square Footage**

Each school district shall have sufficient school facilities, which comply with minimum school facility guidelines established in this Article, to meet the per pupil minimum adequate gross square footage requirements for such district as determined by law, for such district based on number and grade distribution of the students served by the district.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-276. Assessment of Minimum Gross Square Footage**

- A. Computation of the gross square footage of a school facility may be by physical measure or by calculation based on architectural plan documents.
- B. The gross square footage of a school facility equals all space within the facility excluding space used for district administrative purposes.
- C. The gross square footage of a district shall equal the sum of the gross square footage of each school facility in the district.
- D. The minimum gross square footage of a district equals the sum of the products of the students in each grade or program for preschool children with disabilities or kindergarten program multiplied by the minimum adequate gross square footage requirements per pupil, applicable to the district for such grade or program.
- E. For the purpose of assessment of minimum gross square footage, the number of children in all grades and kindergarten shall be evenly distributed across all grades and kindergarten served by the district.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-277. Reserved**

**R7-6-278. Reserved**

**R7-6-279. Reserved**

**R7-6-280. Expired**

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 3252, effective June 30, 2005 (05-3).

**R7-6-281. Reserved**

**R7-6-282. Reserved**

**R7-6-283. Reserved**

**R7-6-284. Reserved**

**R7-6-285. Guidelines Exception**

The Board may grant an exception from any of the guidelines requirements, upon agreement between the Board and the school district. The Board shall grant an exception if it determines that the intent of the guideline is capable of being met by the school district in an alternate manner. If the Board grants the exception, the school district shall be deemed to meet the guideline and is not eligible for state funding to meet the guideline.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**ARTICLE 3. SQUARE FOOTAGE CALCULATIONS****R7-6-301. Square Footage Calculations**

- A. A school district may use Class A bonds to supplement any project funded by the School Facilities Board pursuant to A.R.S. § 15-2021 or A.R.S. § 15-2041. Pursuant to A.R.S. § 5-2002(H), when a school district adds square footage to the district through the construction of a new school using Class A bonds, the School Facilities Board shall not provide funding to supplement the new school construction.
- B. When a school district adds square footage to the district through the construction of a new school using either Class B bonds, or unrestricted capital outlay monies, the School Facili-

ties Board shall not include the square footage of the new school in the gross square footage of the school district for purposes of calculating building renewal distributions pursuant to A.R.S. § 15-2031 and for determining needs for additional square footage pursuant to A.R.S. § 15-2011 and A.R.S. § 15-2041.

- C. When a school district adds square footage to the district through the construction of a new school using Class A bonds, the School Facilities Board shall include the square footage of the new school in the gross square footage of the school district for purposes of calculating building renewal distributions pursuant to A.R.S. § 15-2031 and for determining needs for additional square footage pursuant to A.R.S. § 15-2011 and A.R.S. § 15-2041.
- D. A school district that uses Class B bonds and/or unrestricted capital outlay monies to add or replace square footage at existing schools shall have the additional square footage or replacement square footage treated as follows:
1. A school district that adds square footage to an existing school with the use of Class B bonds or unrestricted capital outlay monies shall not have the additional square footage included in the determination of minimum adequate square footage pursuant to A.R.S. § 15-2011(C), but the School Facilities Board shall consider the additional square footage for purposes of determining adequacy of the functional components of the school as specified in the Minimum School Facilities Guidelines set forth in R7-6-201 through R7-6-285.
  2. A school district that both removes and adds square footage with the use of Class B bonds or unrestricted capital outlay monies shall not have the net additional square footage included in the determination of minimum adequate square footage pursuant to A.R.S. § 15-2011(C), but the School Facilities Board shall consider the net additional square footage for purposes of determining adequacy of the functional components of the school as specified in the Minimum School Facilities Guidelines set forth in R7-6-201 through R7-6-285.
  3. For purposes of calculating building renewal pursuant to A.R.S. § 15-2031, replacement square footage constructed with Class B bonds or unrestricted capital outlay monies shall be included, but net additional square footage shall be excluded.
  4. If square footage is replaced at an existing school with the use of Class B bonds or unrestricted capital outlay monies, the student capacity of the facility after completion of the project will be determined in the same manner as it would have been determined prior to the addition. If Class B bonds or unrestricted capital outlay monies are used to construct a complete replacement school, the student capacity of the facility once the project is completed will be based on the provisions of A.R.S. § 15-2011(C).
  5. For purposes of this Section, replacement square footage is defined as square footage constructed with Class B bonds or unrestricted capital outlay monies that replaces existing square footage.
- E. If square footage is added to or replaced at an existing school with the use of Class A bonds, the student capacity of the facility after completion of the project will be determined in the same manner as it would have been determined prior to the addition.
- F. The method of computing the funding and square footage for any expansion of a core facility previously funded by the School Facilities Board shall follow the same method that was used for computing the original core facility.

#### Historical Note

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

#### R7-6-302. Modification of Square Footage for Geographic Factors

- A. In those school districts where students are transported one hour or more via the most reasonable and direct route or where students reside 45 miles or more from the closest school via the most reasonable and direct route, and where 100 or more students are affected by these conditions within the same region, the School Facilities Board shall provide additional school space to the district to accommodate the educational needs of the affected students. However, the educational space provided may be modified as the Board sees fit in making a conscientious effort to meet the Minimum Adequacy Guidelines without requiring extraordinary expenditures of public funds.
- B. If an elementary school district that is not in a high school district unifies after June 30, 2005, the resulting unified school district may qualify for high school space under A.R.S. § 15-2041 if it meets the following criteria:
1. The elementary school district unifies after June 30, 2005; and
  2. The resulting unified school district is projected to have more than 350 resident high school students being served in school districts other than the student's resident school district within three years following the current fiscal year; and
  3. One of the following is true:
    - a. At least 350 of the high school students would travel 20 miles or more to the receiving school facility; or
    - b. The receiving school district is projected to need additional high school space within seven years. For purposes of this analysis, the projected average daily membership of the receiving district includes the high school students of both the receiving and sending districts.

#### Historical Note

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final rulemaking at 12 A.A.R. 3988, effective December 4, 2006 (Supp. 06-4).

#### R7-6-303. Repealed

#### Historical Note

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

#### R7-6-304. Repealed

#### Historical Note

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

## School Facilities Board

**R7-6-305. Repealed****Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-306. Repealed****Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-307. Reserved through****R7-6-320. Reserved****R7-6-321. Repealed****Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**ARTICLE 4. EXPIRED****R7-6-401. Expired****Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 3252, effective June 30, 2005 (05-3).

**ARTICLE 5. NEW SCHOOL AND LAND FUNDING****R7-6-501. Capital Plans**

If a school district's capital plan, developed pursuant to A.R.S. § 15-2041, indicates a need for a new school or an addition to an existing school within the next four years or a need for land within the next ten years, the school district shall complete the capital plan packet issued by the School Facilities Board and return the packet to the Board by the announced deadline.

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-502. Funding for New Schools or Additional Square Footage**

- A.** The data submitted by each school district requesting additional square footage under the capital plan shall be reviewed by staff to determine student capacity. Additionally, staff shall review and verify district student population projections and the existing square footage in the district. The staff shall prepare a New Construction Analysis for the district.
- B.** If the proposed new school facilities are located in territory in the vicinity of a military airport as defined in A.R.S. § 28-

8461, the Board shall provide notice to the military airport of the proposed new school facility construction and seek the military airports comments and analysis concerning compatibility of the proposed school facilities with the high noise or accident potential generated by military airport operations that may have an adverse effect on public health and safety. The Board shall consider and analyze the comments and analysis provided by the military airport prior to making a final determination to fund the new square footage.

- C.** The Board shall make a decision regarding the number of square feet and students to be funded for the district, the appropriate cost per square foot and the total budget. At the time the Board is making its decision, the New Construction Analysis shall be available to the Board members and the school district. The school district may address the Board at this time.
- D.** A school district that is approved for additional square footage shall have 60 days from the date of notification to officially accept, in writing, funding for the square footage approved by the Board or the approval shall expire. After a school district has accepted a project in writing and has signed the Terms and Conditions for New School Funding, the Board shall provide five percent of the monies approved for architectural and engineering fees for projects of \$500,000 or more. The individual school district shall be responsible for establishing the actual A and E amount.
- E.** A school district that receives approval for additional square footage from the Board shall proceed with the design development plan and specifications for the project. Two copies of the proposed educational goals or specifications and schematic design, with budget estimates are required to be submitted to the Board's staff. The items required to be included in the estimated budget are all elements of new construction, excluding land acquisition. These elements include, but are not limited to:
1. Architectural and engineering fees;
  2. Survey, testing, permits, advertising and printing;
  3. Construction costs;
  4. Furniture, fixtures and equipment;
  5. Any necessary project management; and
  6. A five percent contingency amount.
- After Board staff review, the school district shall proceed with a preliminary bid package.
- F.** If the school district includes reasonable upgrades to the new construction project for energy conservation purposes, the Board shall provide funding upgrades above the formula based award to cover the full amount of the upgrade. Upgrades will only be funded if the upgrade receives pre-approval by the Board staff and the school district architect or engineer certifies that the upgrade will provide dollar savings in excess of the cost of the upgrade within an eight-year period.
- G.** Upon review of the submitted schematic design, budget estimates and preliminary bid package, the Board's staff shall make a recommendation to the Board regarding the appropriateness of the school district to proceed with the additional square footage and the efficiency and effectiveness of the plan. The staff recommendation shall be based on whether the project is within the original scope and Board approved budget (including square footage and number of students), the project meets the building adequacy standards, initial comments from the local building authority and whether revised student population projections continue to justify the additional square footage. If the Board approves the project, the school district shall be authorized to proceed with the final bid package. Prior to authorization to contract the school district shall document that it has obtained local (city, county or equivalent) building

department approval. For projects outside of the original scope and /or Board approved budget or that do not meet the minimum adequacy guidelines, the Board may instruct the school district to resubmit the project, or the Board may make an alternative decision. Local funds may be used by the school district in conjunction with the Board approved funding.

- H. Upon receipt of bids by the school district, the Executive Director shall authorize the district to proceed with the contract if the school district has documented that it has obtained local (city, county or equivalent) building department approval, and the bid is within the original scope and Board approved budget, and meets the building adequacy standards. The Executive Director may make an alternative recommendation to the full Board.
- I. The Board-approved funding for additional square footage shall be available to the school district for one year from the date of notification. The bid process shall be completed within the one-year period. The Board shall consider requests for an extension beyond the one year and may grant an extension for good reason.
- J. The Board may modify or waive the requirements of this Section for good cause.

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

#### R7-6-503. Funding for Land

- A. The School Facilities Board follows a three-step approval process for the funding of land that is classified as Step One - Justification of Need for Land; Step Two - Request to Purchase a Specific Site; and Step Three - Due Diligence. The executive director may deviate from the three-step approval process to meet other circumstances as they arise, such as purchasing state-owned land and condemnation and bring such recommendations to the full Board.
- B. Step One is the initial request for land for new construction. A school district that currently owns land shall demonstrate that the district-owned property is not suitable for the needed new school in order for the school district to receive funding for the acquisition of land.
- C. Step Two includes the following:
  1. The school district shall provide a map of the district showing current schools and the projected student population, grade levels served and attendance boundaries in various locations in the district, which supports the location of the new school at the requested site. The school district shall also provide a listing of vacant parcels currently owned by the school district (including the size of each parcel and its location), describe the site selection process, explain why the site requested was chosen over alternative sites, and summarize any joint use provisions or other intergovernmental agreements related to the site. The school district shall also provide a legal description of the desired site, the size of the site and an estimate of the cost of the site. The school district may provide information on more than one site.
  2. The Board shall make a decision regarding the site size for each site. The range of acreage table approved by the Board is provided to allow school districts some leeway in site selection. The school district shall provide special justification if the site size is not within the range shown on the range of acreage table. Allowances shall not be granted for additional acreage for limited use activities that are only remotely related to the teaching and learning enterprise. Limited use activities would include, but not be limited to, athletic fields that are only used for inter-

scholastic competition rather than daily activities, and non-school related community functions. The site size will be based on the eventual size of the school, if expansion is planned. The school district may request a larger or smaller site if conditions require. The school district may purchase additional acres with local funds. School districts should give careful consideration to joint-use sites such as those which adjoin community parks and play grounds. The ranges indicated are not intended to dictate a minimum acreage if a joint-use agreement provides the school with access to adjoining public space.

3. If a school district needs monies to verify, gather and submit the information required in Step Three, the school district shall submit a cost estimate to the Board, and the Board shall approve or disapprove the request for monies. Rather than allocating monies to a school district to verify, gather and submit information required in Step Three, the Board may approve the staff of the School Facilities Board to contract directly for such services, in which case the contractors will be paid directly by the Board.
- D. If the school district receives approval to proceed to Step Three, the following information about the site shall be acquired:
  1. An appraisal of the land that documents that the proposed cost is at or below the fair market value.
  2. Legal description of the land.
  3. Level one environmental assessment, plus the following factors (if not included):
    - a. Hazardous materials
    - b. Archaeology
    - c. Endangered flora and fauna
    - d. Noise
    - e. Soil Conditions
    - f. Adjacent land owners and/or uses
  4. Boundary and Topographical Survey
  5. Drainage statement
  6. Site development cost
  7. Photographic survey (if required by planning and zoning departments)
  8. Feasibility site diagram-conceptual study by a design professional illustrating proposed development of the site (based on the eventual size of the school, if there are plans for expansion), indicating:
    - a. Property lines and measurements
    - b. Setbacks, right-of-ways, and easements
    - c. Vehicular access and parking
    - d. Pedestrian and bicycle access
    - e. Building zone
    - f. Drainage concept
    - g. Utility routes or systems
    - h. Activity fields and courts
    - i. Limit-lines and calculation of usable area
    - j. Existing features to be demolished or preserved
    - k. Future expansion capability
- E. Final distribution of monies to purchase the site may be made by the Board if Step Three reveals no serious problem with the site. If the actual cost of the site does not exceed the Board approved amount the Executive Director may make the final determination of site funding without further action by the Board. If monies were distributed to the school district to verify, gather and submit the information required based on a cost estimate, an adjustment for the actual cost shall be made at the time of the final distribution. The school district shall provide documentation to the Board of the actual expenditures from the monies provided and the actual closing costs within 60 days of the final distribution. Expenditures exceeding the

## School Facilities Board

amount provided pursuant to subsection (C)(3) of this Section require approval by the Board. If the site is rejected as a result of information gathered in Step Three, the school district may repeat Steps Two and Three with a new site.

- F. The Board may modify or waive the requirements of this Section for good cause.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-504. Donations of Real Property**

- A. A school district seeking to acquire real property by donation pursuant to A.R.S. § 15-2041 shall complete the school site and school facility donation information requirements form and submit the form to the School Facilities Board. The information requested on the form for land shall include, among other items, a district map identifying existing school sites and facilities, student population and the location of the donation. The information requested on the form for a facility shall include, among other items, the size of the facility, grade levels served and location. If all of the information required is not available and if a school district needs monies to verify, gather and submit the information required, it shall submit a cost estimate at the same time it submits the information that is available.
- B. If all information is available, the School Facilities Board staff shall analyze the request to accept the donation and make a recommendation to the Board. If all information is not available, the School Facilities Board staff shall analyze the request on the basis of whether the school district should be awarded the funds necessary to complete the information gathering process, and shall make a recommendation to the Board. At the time the Board is making its decision, the staff analysis and recommendation shall be available to the School Facilities Board members and the applicant school district. The applicant school district may address the Board.
- C. If the Board approval is to award funds necessary to complete the information gathering process, the district shall be notified by the Board Staff and upon acceptance may proceed to gather the additional information required. Once the additional information is submitted to the Board, the Staff shall analyze the request to accept the donation and make a recommendation to the Board as stated in subsection (B).
- D. If the Board approves the district request to accept the donation, the Board staff shall notify the district. The distribution of 20 percent of the value of the accepted donation pursuant to A.R.S. § 15-2041 shall be awarded to the school district upon notification to the Board that the donation has been accepted by the district. The district shall submit documentation of its governing board action and documentation that the property title has been transferred to the district. Upon receipt of this documentation Board staff shall be authorized to distribute the approved 20 percent amount.
- E. If monies were distributed to the district to verify, gather and submit the information required based on an estimated cost, an adjustment for the actual cost shall be made at the time of the final distribution. The district shall provide documentation to the Board of the actual expenditures from the monies provided. Expenditures exceeding any amounts provided pursuant to R7-6-503(C)(3) shall require approval by the Board.
- F. In determining whether the real property proposed for donation is at an appropriate school site, the School Facilities Board Staff analysis shall be based on the following:
1. Location of the proposed donation of real property.
  2. District needs for additional student capacity.

3. District needs for additional land (for site donations only).
  4. Usable acres proposed for donation, taking into consideration School Facilities Board adopted usable acreage requirements.
  5. The ability of a proposed site donation to accommodate a school facility that meets the minimum adequacy guidelines (for site donations only), or the adequacy of a proposed school facility donation.
  6. Estimated site development costs.
  7. Age and condition of the real property (for facility donation only).
  8. Portion of real property that can be used for academic purposes.
- G. If the School Facilities Board Staff recommendation is to authorize the district to accept the donation, the Staff shall prepare a recommended 20 percent distribution amount. The 20 percent distribution recommendation will be based on the fair market value of the real property proposed for donation that is usable for academic purposes.
- H. The Board may waive or modify the requirements of this Section for good cause.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-505. Constructing Bond-Funded Schools on Land Funded by the School Facilities Board**

- A. A school district that acquires land by sale or lease pursuant to A.R.S. § 15-2041 may construct a school facility on that land using Class A bonds. The square footage of the new facility shall be included in the gross square footage of the school district for purposes of determining needs for additional square footage and building renewal distributions.
- B. A school district that acquires land by sale or lease pursuant to A.R.S. § 15-2041 may construct a school facility on that land using Class B bonds provided that the school district agrees in writing that when the school district qualifies for a new school funded by the School Facilities Board that the School Facilities Board will not provide funding for the lease or purchase of an additional site for that school. The square footage of the new facility constructed with Class B bond monies shall not be included in the gross square footage of the school district for purposes of determining needs for additional square footage and building renewal distributions.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-506. Providing Technical Assistance in the Form of Project Management**

- A. A school district that does not have the experience or resources to successfully oversee a new school construction project may request technical support from the Board pursuant to A.R.S. § 15-2002(13) in the form of project management services.
- B. The Executive Director may approve the project management request. Should the Executive Director deny the request, the school district has the right to appeal the decision to the Board.
- C. The cost of the project management shall be made a part of the overall cost of the new school, and those funds shall be derived from the total allocation for the project provided by the School Facilities Board. Should the allocation of funds that the district receives pursuant to A.R.S. § 15-2041 satisfy the base cost of the new school plus the cost of the project management, then the Board shall not provide any additional funds for project management services.

- D.** If the school district's request for project management services is approved, the school district shall agree to reimburse the Board from its allocated funds for the cost of any independent contractors that the Board uses to provide the project management services.
- E.** The Board may provide the school district with monies to pay for the project management services in addition to the monies the school district receives pursuant to A.R.S. § 15-2041 provided:
1. The school district demonstrates that the monies it receives pursuant to A.R.S. § 15-2041 are not sufficient to build a school that meets the building adequacy guidelines and pay the fees for the project management; and
  2. The school district demonstrates in writing to the Board's satisfaction that the school district does not have the experience or resources necessary to successfully complete the new school construction project.
- C.** Change orders can be additive or subtractive to the construction contract and both should be used. All changes in the scope of the contract and the contract documents should be considered potential change orders. Change order should not be used to correct conditions known prior to or discovered during the bid process. These should be addendum items and made part of the bid.
- D.** The following conditions apply to the use of all contingency monies allocated to a specific project approved by the School Facilities Board. If the district wishes to issue change orders that do not comply with these rules, the associated costs shall be accounted for separately and not considered part of the approved project. In other words, they would need to be paid out of separate monies and would not be considered part of the approved project, even though they might be included in the same basic contract. These costs would be paid for using local funds.

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

- R7-6-507. Reserved**
- R7-6-508. Reserved**
- R7-6-509. Reserved**
- R7-6-510. Reserved**
- R7-6-511. Repealed**

#### Historical Note

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

### ARTICLE 6. CONTINGENCY FUNDS

#### R7-6-601. Allocation and Use of Contingency Monies

- A.** A sum equal to a percentage of the construction bid shall be set aside as a contingency fund to cover the cost of unknown conditions that could arise during construction. The School Facilities Board shall set aside an amount equal to five percent of the base cost for new construction and ten percent of the base cost for renovation of a structure or system replacement to cover these potential costs. Contingency funds are not part of the construction budget and are to be used only if needed. For deficiency corrections projects, any contingency funds which are not used shall be returned to the deficiency corrections fund. For projects funded by the new school facilities fund, any contingency funds which are not used may be used by the school district in accordance with A.R.S. § 15-2041.
- B.** The mechanism that is used to spend contingency funds during construction is a "change order." There are three types of situations that generally require a change order:
1. An unknown condition that was not determined until after construction was started and that requires a change, deletion or addition to the construction contract.
  2. The school district has determined to change the scope of work and add to or delete from the contract.
  3. A change is required to correct a discrepancy between what the contractor bid and what the architect and owner intended. This type of change order could be determined an "error or omission" on the part of the architect. If so, the owner should pursue the architect's error and omissions insurance to recover the costs of the required change.

1. The school district may use contingency monies only to cover change orders that are to correct unknown conditions.
  2. Contingency funds may not be used to cover change orders for the other two types of situations discussed in subsection (B) above: the district has determined to change the scope of work during construction by adding components, or a change is required to correct a discrepancy created by the architect that could be considered an error or omission by the architect.
  3. For deficiency correction projects performed pursuant to A.R.S. § 15-2021 only, the Executive Director shall have the discretion to authorize the use of contingency funds for expansion of scope, to accommodate low budget estimates, and for all other project related costs.
  4. Contingency monies shall not be used to pay for "bid add alternates." These items are not part of the final approved project.
- E.** A school district whose deficiency correction projects are combined with the deficiency correction projects of one or more additional school districts pursuant to R7-6-401 shall have the contingency amount included as a percentage of the overall set of projects that have been grouped together for such purposes. The Executive Director shall have the discretion to use, transfer, and/or combine the contingency amounts for any projects within such a group to any other project within the group of projects. The Executive Director's adjustment authority pursuant to R7-6-401 shall be considered as a percentage or sum of the overall group of projects.
- F.** The Board may modify or waive the requirements of this Section for good cause.

#### Historical Note

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

### ARTICLE 7. MINIMUM SCHOOL FACILITY GUIDELINES FOR THE ARIZONA STATE SCHOOLS FOR THE DEAF AND BLIND

#### R7-6-701. Application

The provisions of this Article are applicable only to the Arizona State Schools for the Deaf and Blind ("ASDB") as created by A.R.S. Title 15, Chapter 11. Board funding for deficiency correction projects pursuant to this Article is subject to legislative authorization for such funding.

## School Facilities Board

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-702. Reserved****R7-6-703. Reserved****R7-6-704. Reserved****R7-6-705. School Site**

- A.** A school site shall have safe access, parking, drainage, security, and area to accommodate a school facility that complies with the minimum gross square footage requirements established in A.R.S. § 5-2011, for the number of students at the school facility and that comply with these guidelines.
- B.** "Safe access" means a student drop off area or pedestrian pathway that allows students to enter the school facility without crossing vehicular traffic or by using a designated crosswalk. Any student drop off area that is used by a bus must be configured to accommodate bus width and turning requirements.
- C.** "Parking means a maintainable all weather surfaced area that is large enough to accommodate one parking space per staff FTE and 10 visitor parking spaces per 100 students. If this definition is not met, the sufficiency of the parking at the site is subject to review by the Board using the following criteria:
1. Availability of street parking around the school;
  2. Availability of any nearby parking lots;
  3. Availability of public transit;
  4. Number of staff that drive to work on a daily basis; and
  5. The average number of visitors on a daily basis.
- D.** "Drainage" means that a school site is configured such that runoff does not undermine the structural integrity of the school buildings located on the site or create flooding, ponding, or erosion resulting in a threat to health, safety, or welfare.
- E.** "Security" means perimeter fencing surrounding the campus with lockable access gates with at least one automatic gate including card access as well as sight/audio, two-way communication with a central security office. The campus shall also have an accessible security office of at least 300 square feet per campus for visitor registration and multiple campus surveillance cameras strategically located around campus feeding video to the security office via monitors. The campus shall also have a fenced or walled play/physical education area for students in programs for preschool children with disabilities and kindergarten and students in grades 1 through 6. The requirement for a fenced or walled play/physical education area is met if the entire school is fenced or walled; otherwise, the sufficiency of this requirement is subject to review by the Board using the following criteria:
1. Amount of vehicular traffic near the school site;
  2. Existence of hazardous or natural barriers on or near the school site;
  3. The amount of animal nuisance near the school site; and
  4. Visibility of the play/physical education area.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-706. Reserved****R7-6-707. Reserved****R7-6-708. Reserved****R7-6-709. Reserved****R7-6-710. Academic Classroom Space**

- A.** The ASDB shall have school facilities with cumulative classroom square footage of 150 square feet for each of its students in programs for preschool children with disabilities and kindergarten programs.
- B.** The ASDB shall have school facilities with cumulative classroom square footage of 100 square feet for each of its students in grades kindergarten through six.
- C.** The ASDB shall have school facilities with cumulative classroom square footage of 100 square feet for each of its students in grades seven and eight.
- D.** The ASDB shall have school facilities with cumulative classroom square footage of 100 square feet for each of its students in grades 9 through 12.
- E.** For purposes of measuring cumulative classroom square footage for programs for preschool children with disabilities, kindergarten programs and grades one through six, classroom spaces are those occupied throughout the school day by the same students, or usable for general classroom purposes.
- F.** For purposes of measuring cumulative classroom square footage for grades seven and eight, classroom spaces are 90 percent of the square footage of those rooms usable for general and specialty classroom purposes.
- G.** For purposes of measuring cumulative classroom square footage for grades 9 through 12, classroom spaces are 85 percent of the square footage of those rooms usable for general and specialty classroom purposes.
- H.** Classroom space is measured from interior wall to interior wall.
- I.** The amount of classroom space per student specified in this Article accounts for required teaching space.
- J.** The square footage of a general classroom is not counted as specialty classroom square footage.
- K.** The square footage of a specialty classroom is not counted as general classroom square footage.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-711. Classroom Fixtures and Equipment**

- A.** Each general and specialty classroom shall contain two work surfaces per student and seating for each student in the classroom that accommodates the special needs of deaf, blind and multi-handicapped students. The work surface and seat shall be appropriate for the normal activity of the class conducted in the room. A work surface and seat are adequate if the items are:
1. Safe; and
  2. Maintainable.
- B.** Each general and specialty classroom shall have an erasable surface and a surface suitable for projection purposes, appropriate for group classroom instruction and a display surface. A single surface may meet one or more of these purposes. An erasable surface and a surface suitable for projection purposes, appropriate for group classroom instruction must be at least three feet by five feet.
- C.** Each general and specialty classroom shall have storage for classroom materials or access to conveniently located storage.
- D.** Each general and specialty classroom shall have a work surface and seat for the teacher and for the aid assigned to the

classroom and secure storage for student records, that is located in the classroom or is convenient to access from the classroom.

- E. Each classroom shall have the following equipment to facilitate instruction to deaf/hard of hearing students:
1. TTY
  2. Accessible computer with Internet access and printer
  3. Television with built-in captioned and videocassette recorder.
  4. Loop systems for auditory access.
  5. Sound field amplification system.
  6. Overhead projector.
- F. Each classroom shall have the following equipment to facilitate instruction to blind/visually impaired students:
1. One CCTV.
  2. One listening station.
  3. Two Braille n' Speaks.
  4. Two Braille writers.
  5. Slantboards.
  6. Fully accessible computer station with Braille printer.
  7. Tables to accommodate Braille writers and Braille books simultaneously.
  8. Shelving for Braille materials, low vision aids/equipment.
  9. Auditory electronic dictionaries and calculators.
  10. Cane racks.
  11. Television monitor with a video cassette recorder.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-712. Classroom Lighting**

- A. Each general, science, and art classroom shall have non-glare, natural light and a light system capable of maintaining at least 50 footcandles of ambient, indirect light and 70 footcandles of direct task lighting, which may include lamps.
- B. The light level shall be measured at a work surface located in the approximate center of the classroom, between clean light fixtures under normal operating conditions.
- C. A random sample of 10 percent of the general, science, and art classrooms in each building shall be measured to determine the classroom light level for the school facility.
- D. For purposes of this Section, all portable or modular buildings located at a school facility that were manufactured in the same year and installed at the school facility at the same time are considered a single building.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-713. Classroom Temperature**

- A. Each general, science, and art classroom, and all student residence space shall have a HVAC system capable of maintaining a temperature between 68° and 82° F under normal conditions with an occupied classroom.
- B. Except in areas where the elevation is above 5,000 feet, defective or non-operable A/C conditioning and evaporative coolers shall be replaced with A/C. Non-air conditioned schools with elevations less than 5,000 feet shall be air-conditioned.
- C. In the classrooms, the temperature shall be measured at a work surface in the approximate center of the classroom, under normal conditions.
- D. A random sample of 10 percent of the student residence space, and the general, science, and art classrooms in each building shall be measured to determine the classroom temperature level for the school facility.

- E. For purposes of this Section, all portable or modular buildings located at a school facility that were manufactured in the same year and installed at the school facility at the same time are considered a single building.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-714. Classroom Acoustics**

- A. The library/media center, the multipurpose room, and each general, science, and art classroom shall be maintainable at a sustained background sound level of less than 35 decibels.
- B. The sound level shall be measured at a work surface in the approximate center of the room, under normal conditions.
- C. A random sample of 10 percent of all rooms in each building subject to this requirement shall be measured to determine the room sound level for the school facility.
- D. For purposes of this Section, all portable or modular buildings located at a school facility that were manufactured in the same year and installed at the school facility at the same time are considered a single building.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-715. Classroom Air Quality**

- A. Each general, science, and art classroom shall have a HVAC system capable of maintaining a CO2 level of not more than 800 PPM above the ambient CO2 level.
- B. The air quality shall be measured at a work surface in the approximate center of the classroom, under normal conditions.
- C. A random sample of 10 percent of the general, science, and art classrooms in each building shall be measured to determine the classroom air quality level for the school facility.
- D. For purposes of this Section, all portable or modular buildings located at a school facility that were manufactured in the same year and installed at the school facility at the same time are considered a single building.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-716. Education Classroom Facilities for Disabled Students**

A school facility shall have space or access to space capable of being used for the education programs of disabled students attending the school facility.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-717. Reserved**

**R7-6-718. Reserved**

**R7-6-719. Reserved**

**R7-6-720. Libraries and Media Centers/Research Area**

- A. A school facility shall have space for students to access research materials, literature, non-text reading materials, and reading books and technology, to permit students to achieve state academic standards as prescribed by the State Board of Education. This shall include space for reading, listening, and viewing materials.
- B. For an elementary school facility that serves at least 150 students, this space shall be the greater of 1000 square feet or the

## School Facilities Board

square footage equal to 325 square feet per student for 10 percent of the student body.

- C. For a middle or junior high or high school facility that serves at least 150 students, this space shall be the greater of 1200 square feet or the square footage equal to 275 square feet per student for 10 percent of the student body.
- D. A school facility that serves at least 150 students shall have library fixtures and equipment in accordance with R7-6-721 as modified from time to time.
- E. A school facility shall have library materials in accordance with R7-6-721 as modified from time to time.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-721. Equipment for Libraries and Media Centers/ Research Area**

- A. The standard equipment list for libraries and media centers/ research areas is as follows:
  1. Twelve linear feet of library book shelves per blind student and two linear feet of library book shelves per deaf student;
  2. One work surface for every 40 students;
  3. One seat for every eight students;
  4. Two TV's/VCR's;
  5. One overhead projector;
  6. One accessible computer station with Internet access for every 25 students;
  7. One Braille printer;
  8. Ten books per students;
  9. One almanac (may be electronic or hard copy);
  10. One encyclopedia set per 200 students (may be electronic or hard copy);
  11. One atlas (may be electronic or hard copy);
  12. One unabridged dictionary (may be electronic or hard copy); and
  13. At least one set of each of the books listed in subsections (9) through (12) of this Section shall be accessible to blind students.
- B. Each almanac, encyclopedia and atlas shall have a publication date of 2000 or later.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-722. Reserved****R7-6-723. Reserved****R7-6-724. Reserved****R7-6-725. Cafeterias**

A school facility shall have a covered area or space, or combination, to permit students to eat within the school site, outside of general classrooms. This space may have more than one function and may fulfill more than one guideline requirement.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-726. Food Service**

- A. A school facility shall have space and fixtures and equipment, in accordance with the standard equipment list in R7-6-727 as modified from time to time, for the preparation, receipt, storage, and service of food to students that is accessible to the serving area. The space, fixtures, and equipment shall be appropriate for the food service program of the school facility.

Food service fixtures and equipment are subject to assessment under R7-6-765(A)(1) and (2).

- B. Food service facilities and equipment shall comply with county health codes.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-727. Equipment List for Food Service.**

- A. A school facility shall have the following fixtures and equipment for the preparation, receipt, storage and service of food to students:
  1. One three-compartment sink.
  2. One double stack convection oven for a cooking kitchen or a warming oven.
  3. One dishwasher if reusable dishes and silverware are used.
  4. One hot food holding appliance.
  5. One range with hood.
  6. One refrigerator.
  7. One freezer.
  8. One milk refrigerator.
- B. The items in subsection (A) of this Section may be substituted for a reasonable alternative.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-728. Reserved****R7-6-729. Reserved****R7-6-730. Auditoriums, Multipurpose Rooms, or Other Multiuse Space**

A school facility shall have a space capable of being used for student assembly sufficient to accommodate one-half of the student body plus parents and staff, which shall be the same size or larger than an average classroom at the facility. The space must be equal to at least 50 square feet multiplied by one-third of the student body. This space may have more than one function and may fulfill more than one guideline requirement.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-731. Reserved****R7-6-732. Reserved****R7-6-733. Reserved****R7-6-734. Reserved****R7-6-735. Technology**

- A. Each classroom at a school facility shall have Internet access, at least through a network modem. Each school must have available either on a school basis or on a district-wide basis a firewall and filtering software. Each school facility shall have at least one network multimedia computer, available for student use, for every eight students, on a school wide network. Computer equipment is subject to assessment under R7-6-765(A)(1) and (2).
- B. A multimedia computer is defined as a computer that has sound, CD-ROM, a keyboard, a monitor, and a pointing device.
- C. Until June 30, 2005, each ASDB campus shall have an application service provider, coupled with an adequate variety of instructional software.

- D. When five or more students are provided instruction remotely, at least one classroom in each school facility shall be equipped for distance learning activities, including video conferencing capable of supporting 30 frames per second.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-736. Reserved**

**R7-6-737. Reserved**

**R7-6-738. Reserved**

**R7-6-739. Reserved**

**R7-6-740. Transportation**

- A. Pupil transportation vehicles manufactured prior to 1978 shall be replaced if the eligible students transported exceeds the student transportation capacity of the district, excluding the vehicle eligible for replacement.
- B. Diesel powered pupil transportation vehicles with more than 250,000 miles or more than 10 years of service, gasoline powered pupil transportation vehicles with more than 150,000 miles or more than 10 years of service, and coach buses with more than 500,000 miles or more than 15 years of service, shall be replaced if the eligible students transported exceeds the student transportation capacity of the district, excluding the vehicle eligible for replacement.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-741. Reserved**

**R7-6-742. Reserved**

**R7-6-743. Reserved**

**R7-6-744. Reserved**

**R7-6-745. Science Facilities**

- A. A school facility with students in grades 5 through 12 shall have classroom space to deliver practical science instruction, or classroom space for an alternate science delivery method.
- For grades five through eight no space is required beyond the academic classroom requirement. For grades 9 through 12, 10 square feet per student of practical and instructional science space is required. The space shall not be smaller than the average classroom at the facility. This space is separate and distinct from the academic classroom requirement and may not be used for other instruction.
- B. A school facility with students in grades 5 through 12 that delivers practical science instruction shall have science fixtures and equipment, in accordance with R7-6-746 as modified from time to time. If an alternate science delivery method is used by the ASDB, a school facility shall have science fixtures and equipment for students in grades 5 through 12 that are an alternate equivalent to the science fixtures and equipment identified in R7-6-746.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-746. Equipment List for Science Facilities**

- A. Science facilities for students in grades 9 through 12 shall have the following fixtures and equipment:

- One demonstration table with non-corrosive surface per 250 students.
  - Six laboratory stations with a non-corrosive surface per 250 students.
  - One fume hood.
  - One chemical storage unit per 1,000 students.
  - One eye wash/shower per 250 students.
  - One dissecting microscope per 25 students, minimum of the lesser of 12 or one-half of the number of eligible students.
  - One refrigerator.
- B. Science facilities for students in grades 5 through 12 shall have the following fixtures and equipment:
- One sink per 250 students.
  - One compound microscope per 25 students, minimum of the lesser of 12 or one-half of the number of eligible students.
  - One balance per 250 students.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-747. Arts Facilities**

- A. A school facility with students in grades 7 through 12 shall have space to deliver art education programs including visual, music, and performing arts programs or have access to an alternate delivery method.
- B. For grades 7 through 12, ten square feet per student of art and/or vocational education space is required. The space shall not be smaller than the average classroom at the facility. This space shall not be included in the academic classroom requirement and may not be used for other instruction.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-748. Vocational Education Facilities**

- A. A school facility with students in grades 7 through 12 shall have space to deliver vocational education programs or have access to an alternate delivery method.
- B. For grades 7 through 12, forty square feet per student of art and/or vocational education space is required. The space shall not be smaller than the average classroom at the facility. This space shall not be included in the academic classroom requirement and may not be used for other instruction.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-749. Physical Education and Comprehensive Health Program Facilities**

- A. A school facility shall have area and space and fixtures, in accordance with R7-6-750 as modified from time to time, for physical education activity and space for a comprehensive health program established in compliance with the academic standards prescribed by the State Board of Education.
- B. One hundred twenty-five square feet per student of comprehensive health space is required. The comprehensive health space is the indoor space available for physical education and this space shall not be included in the academic classroom requirement and this space shall not have more than one function or satisfy more than one guideline requirement.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

## School Facilities Board

**R7-6-750. Equipment List for Physical Education**

- A. A school facility shall have the following equipment and fixtures for physical education:
1. Exterior to the building, one basketball court size surface area and two goals per 300 students, four court maximum.
  2. Exterior to the building, one baseball/softball backstop.
- B. Concrete shall be used when installing basketball courts.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-751. Alternate Delivery Method**

If an alternate delivery method is used by the ASDB to deliver instruction in art, science, or vocational education, the alternate method must be approved by the ASDB governing board and be capable of meeting the requirements established in the academic standards prescribed by the State Board of Education for the specific subject area.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-752. Reserved****R7-6-753. Reserved****R7-6-754. Reserved****R7-6-755. Parent Work Space**

- A. If parents are invited to assist with school activities, a school facility shall include a work space capable of being used by parents.
- B. One square foot per student, with a minimum of 150 square feet and a maximum of 800 square feet, is required. The maximum may be exceeded. The space may be divided into more than one room. This space may have more than one function.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-756. Two-way Internal Communication System**

A school facility shall have a network and two-way internal communication system between a central location and each classroom, library, physical education space, and the cafeteria. The communication system shall have both audio and video capabilities.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-757. Fire Alarm**

A school facility shall have a fire alarm system as required by the State Fire Marshal. The fire alarm system shall meet current ADAAG requirements.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-758. Administrative Space**

- A. A school facility shall have space for the use of the administration of the school. For the school administrator, 150 designated square feet is required. For general administrative purposes and additional 7.5 square feet per student is required, with a minimum of 150 square feet and a maximum of 2,500 square feet. The maximum may be exceeded.
- B. A school facility shall have space to isolate a sick student from the other students. This space shall be a designated space that

is accessible to a restroom, large enough to accommodate one cot per 50 students, with a maximum of eight cots. The maximum may be exceeded.

- C. A school facility shall have work space available to the faculty. This space is in addition to any work area available to a teacher, in or near a classroom. One square foot per student with a maximum of 150 square feet and a maximum of 800 square feet is required. The maximum may be exceeded. The space may be divided into more than one room. This space may have more than one function.
- D. A 9,500 square foot facility used for the administration of the Arizona School for the Deaf and Blind shall also be available.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-759. Reserved****R7-6-760. Laws and Building Codes**

- A. To the extent required by law, school buildings shall be in compliance with federal, state and local building and fire codes and laws that are applicable to the particular building.
- B. At a minimum, the 1997 Uniform Building Code (UBC) is required to be met for new school facility construction and, as required, for building renovations in existing schools.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-761. Energy Saving Measures**

New school facility construction and, as required, building renovations in existing schools, shall include, where reasonable, energy conservation upgrades that will provide dollar savings in excess of the cost of the upgrade within eight years of the installation.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-762. Reserved****R7-6-763. Reserved****R7-6-764. Reserved****R7-6-765. Building Systems**

- A. Building systems in a school facility must be in working order and capable of being properly maintained. A building system shall be considered to be in "working order and capable of being maintained," if all of the following:
1. The system is capable of being operated as intended and maintained.
  2. Newly manufactured or refurbished replacement parts are available.
  3. The remaining life expectancy of the system, at the time of the initial statewide assessment, is at least three years.
  4. The system is capable of supporting the gross square footage standard and minimum school facility guidelines established in this Article.
  5. Components of the system present no imminent danger of personal injury.
- B. Building systems include, as required by law, roof, plumbing, telephone, electrical, and heating and cooling systems as well as fire alarm, two-way internal communication, computer cabling, and existing security systems.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-766. Reserved**

**R7-6-767. Reserved**

**R7-6-768. Reserved**

**R7-6-769. Reserved**

**R7-6-770. Building Structural Soundness**

A school facility must be structurally sound. A school facility shall be considered structurally sound if the building presents no imminent danger or major visible signs of decay or distress, and the remaining life expectancy of the building structure appears to be at least a minimum of three years.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-771. Exterior Envelope, Interior Surfaces and Interior Finishes**

The exterior envelope, interior surfaces, and interior finishes at school facilities must be safe and capable of being maintained.

1. An exterior envelope is safe and capable of being maintained if:
  - a. Walls and roof are weather tight under normal conditions with routine upkeep;
  - b. Doors and windows are weather tight under normal conditions with routine upkeep; and
  - c. The building structural systems support the loads imposed on them.
2. An interior surface is safe and capable of being maintained if it is:
  - a. Structurally sound;
  - b. Capable of supporting a finish; and
  - c. Capable of continuing in its intended use with normal maintenance and repair for at least three years after the initial statewide assessment.
3. An interior finish is safe and capable of being maintained if it is:
  - a. Free of exposed lead paint;
  - b. Free of friable asbestos; and
  - c. Capable of continuing in its intended use, with normal maintenance and repair, for at least three years after the initial statewide assessment.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-772. Reserved**

**R7-6-773. Reserved**

**R7-6-774. Reserved**

**R7-6-775. Minimum Gross Square Footage**

The ASDB shall have sufficient school facilities, which comply with minimum school facility guidelines established in this Article, to meet the per pupil minimum adequate gross square footage requirements for the ASDB as determined by law, based on number and grade distribution of the students served by the ASDB.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-776. Assessment of Minimum Gross Square Footage**

**A.** Computation of the gross square footage of a school facility may be by physical measure or by calculation based on architectural plan documents.

- B.** The gross square footage of a school facility equals all space within the facility excluding space used for ASDB administrative purposes.
- C.** The gross square footage of the ASDB shall equal the sum of the gross square footage of each school facility owned by the ASDB.
- D.** The minimum gross square footage of the ASDB equals the sum of the products of the students in each grade or program for preschool children with disabilities or kindergarten program multiplied by the minimum adequate gross square footage requirements per pupil, applicable to the ASDB for such grade or program.
- E.** For the purpose of assessment of minimum gross square footage, the number of children in all grades and kindergarten shall be evenly distributed across all grades and kindergarten served by the ASDB.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-777. Reserved**

**R7-6-778. Reserved**

**R7-6-779. Reserved**

**R7-6-780. Student Boarding Space**

Each ASDB campus shall provide safe and sanitary student boarding for resident ASDB students as follows:

1. A student dormitory consisting of a living area, resident kitchen, and bedroom for each student in grades preschool through 12 at a ratio of 400 square feet per student.
2. A bedroom for each Resource housing at a ratio of 150 square feet per occupant,
3. One live-in assistant housing (apartment) for every eight resident students at a ratio of 500 square feet per live-in assistant.
4. One laundry room for every student dormitory at a ratio of 100 square feet for every eight resident students.
5. All independent living dormitory space shall be constructed with 300 square feet per student with no fewer than two students per dormitory.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-781. ASDB Program Requirement Facilities**

- A.** Each ASDB campus shall provide minimum facilities required to support ASDB audiology program requirements at a ratio of five square feet per deaf student and one square foot per blind student.
- B.** Each ASDB campus shall provide minimum facilities required to support ASDB auditory training and speech therapy program requirements at a ratio of three square feet per deaf student and one square foot per blind student.
- C.** Each ASDB campus shall provide minimum facilities required to support ASDB low vision program requirements at a ratio of three square feet per student.
- D.** Each ASDB campus shall provide minimum facilities required to support ASDB occupational and physical therapy program requirements at a ratio of five square feet per student with a minimum of 1,500 square feet.
- E.** Each ASDB campus shall provide minimum facilities required to support ASDB orientation and mobility program requirements at a ratio of six square feet per blind student.

## School Facilities Board

- F. Each ASDB campus shall provide a distance learning classroom required to support ASDB program requirements. This facility shall be at a minimum a 600 square foot separate/dedicated space for teaching to satellite, remote, and shared schools.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-782. Student Health Center**

Each ASDB boarding campus shall have space for a student health center at a ratio of 13 square feet per student.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-783. Parent Outreach Program**

Each ASDB campus shall have space for a Parent Outreach Program at a ratio of 10 square feet per family with students enrolled at the campus with a minimum area of 300 square feet.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-784. Reserved****R7-6-785. Expired****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 3252, effective June 30, 2005 (05-3).

**R7-6-786. Reserved****R7-6-787. Reserved****R7-6-788. Reserved****R7-6-789. Reserved****R7-6-790. Guidelines Exception**

The Board may grant an exception from any of the guidelines requirements, upon agreement between the Board and the school district. The Board shall grant an exception if it determines that the intent of the guideline is capable of being met by the ASDB in an alternate manner. If the Board grants the exception, the ASDB shall be deemed to meet the guideline and is not eligible for state funding to meet the guideline.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**ARTICLE 8. REPEALED****R7-6-801. Repealed****Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**ARTICLE 9. REPEALED****R7-6-901. Repealed****Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-902. Reserved through****R7-6-910. Reserved****R7-6-911. Repealed****Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-912. Reserved through****R7-6-920. Reserved****R7-6-921. Repealed****Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-922. Reserved through****R7-6-930. Reserved****R7-6-931. Repealed****Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-932. Reserved through****R7-6-940. Reserved****R7-6-941. Repealed****Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**ARTICLE 10. REPEALED****R7-6-1001. Repealed****Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section

repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-1002. Repealed**

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-1003. Repealed**

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-1004. Repealed**

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**ARTICLE 11. REPEALED**

**R7-6-1101. Repealed**

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**ARTICLE 12. REPEALED**

**R7-6-1201. Repealed**

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**ARTICLE 13. REPEALED**

**R7-6-1301. Repealed**

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-1302. Repealed**

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**ARTICLE 14. REPEALED**

**R7-6-1401. Repealed**

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-1402. Repealed**

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**ARTICLE 15. REPEALED**

**R7-6-1501. Repealed**

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**ARTICLE 16. REPEALED**

**R7-6-1601. Repealed**

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**EXHIBIT A. REPEALED**

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Exhibit A repealed by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

### 15-2001. School facilities board; conflict of interest

A. The school facilities board is established consisting of the following members who shall be appointed by the governor pursuant to section 38-211 in such a manner as to provide for approximate geographic balance and approximate balance between public and private members:

1. One member who is an elected member of a school district governing board with knowledge and experience in the area of finance.
2. One private citizen who represents an organization of taxpayers.
3. One member with knowledge and experience in school construction.
4. One member who is a registered professional architect and who has current knowledge and experience in school architecture.
5. One member with knowledge and experience in school facilities management in a public school system.
6. One member with knowledge and experience in demographics.
7. One member who is a teacher and who currently provides classroom instruction.
8. One member who is a registered professional engineer and who has current knowledge and experience in school engineering.
9. One member who is an owner or officer of a private business.

B. In addition to the members appointed pursuant to subsection A of this section, the superintendent of public instruction or the superintendent's designee shall serve as an advisory nonvoting member of the school facilities board.

C. The governor shall appoint a chairperson from members appointed pursuant to subsection A of this section.

D. Members of the school facilities board serve four year terms. The school facilities board shall meet as often as the members deem necessary. A majority of the members constitutes a quorum for the transaction of business.

E. The unexcused absence of a member for more than three consecutive meetings is justification for removal by a majority vote of the board. If the member is removed, notice shall be given of the removal pursuant to section 38-292.

F. The governor shall fill a vacancy by appointment of a qualified person as provided in subsection A of this section.

G. Members of the board who are employed by government entities are not eligible to receive compensation. Members of the board who are not employed by government entities are entitled to payment of one hundred fifty dollars for each meeting attended, prorated for partial days spent for each meeting, up to two thousand five hundred dollars each year. All members are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2. These expenses and the payment of compensation are payable to a member from monies appropriated to the board from the new school facilities fund.

H. Members of the school facilities board are subject to title 38, chapter 3, article 8.

### 15-2002. Powers and duties; executive director; staffing; report

A. The school facilities board shall:

1. Make assessments of school facilities and equipment deficiencies and approve the distribution of grants as appropriate.
2. Maintain a database of school facilities to administer the building renewal grant fund and new school facilities formula. The facilities listed in the database must include all buildings that are owned by school districts. The school facilities board shall ensure that the database is updated on at least an annual basis. Each school district shall report to the school facilities board no later than September 1 of each year information as required by the school facilities board for the administration of the building renewal grant fund and computation of new school facilities formula distributions, including the nature and cost of major repairs, renovations or physical improvements to or replacement of building systems or equipment that were made in the previous year and that were paid for either with local monies or monies provided by the school facilities board from the building renewal grant fund. Each school district shall report any

school or school buildings that have been closed, that have been leased to another entity or that operate as a charter school. The school facilities board may review or audit the information, or both, to confirm the information submitted by a school district. Notwithstanding any other provision of this chapter, if a school district converts space that is listed in the database maintained pursuant to this paragraph to space that will be used for administrative purposes, the school district is responsible for any costs associated with the conversion, maintenance and replacement of that space. If a building is significantly upgraded or remodeled, the school facilities board shall adjust the age of that school facility in the database as follows:

(a) Determine the building capacity value as follows:

(i) Multiply the student capacity of the building by the per pupil square foot capacity established by section 15-2041.

(ii) Multiply the product determined in item (i) of this subdivision by the cost per square foot established by section 15-2041.

(b) Divide the cost of the renovation by the building capacity value determined in subdivision (a) of this paragraph.

(c) Multiply the quotient determined in subdivision (b) of this paragraph by the currently listed age of the building in the database.

(d) Subtract the product determined in subdivision (c) of this paragraph from the currently listed age of the building in the database, rounded to the nearest whole number. If the result is a negative number, use zero.

3. Inspect school buildings at least once every five years to ensure compliance with the building adequacy standards prescribed in section 15-2011 and routine preventative maintenance guidelines as prescribed in this section with respect to construction of new buildings and maintenance of existing buildings. The school facilities board shall randomly select twenty school districts every thirty months and inspect them pursuant to this paragraph.

4. Review and approve student population projections submitted by school districts to determine to what extent school districts are entitled to monies to construct new facilities pursuant to section 15-2041. The board shall make a final determination within five months after the receipt of an application by a school district for monies from the new school facilities fund.

5. Certify that plans for new school facilities meet the building adequacy standards prescribed in section 15-2011.

6. Develop prototypical elementary and high school designs. The board shall review the design differences between the schools with the highest academic productivity scores and the schools with the lowest academic productivity scores. The board shall also review the results of a valid and reliable survey of parent quality rating in the highest performing schools and the lowest performing schools in this state. The survey of parent quality rating shall be administered by the department of education. The board shall consider the design elements of the schools with the highest academic productivity scores and parent quality ratings in the development of elementary and high school designs. The board shall develop separate school designs for elementary, middle and high schools with varying pupil capacities.

7. Develop application forms, reporting forms and procedures to carry out the requirements of this article.

8. Review and approve or reject requests submitted by school districts to take actions pursuant to section 15-341, subsection G.

9. Submit electronically an annual report on or before December 15 to the speaker of the house of representatives, the president of the senate, the superintendent of public instruction, the secretary of state and the governor that includes the following information:

(a) A detailed description of the amount of monies distributed by the school facilities board in the previous fiscal year.

(b) A list of each capital project that received monies from the school facilities board during the previous fiscal year, a brief description of each project that was funded and a summary of the board's reasons for the distribution of monies for the project.

(c) A summary of the findings and conclusions of the building maintenance inspections conducted pursuant to this article during the previous fiscal year.

(d) A summary of the findings of common design elements and characteristics of the highest performing schools and the lowest performing schools based on academic productivity, including the results of the parent quality rating survey. For the purposes of this subdivision, "academic productivity" means academic year advancement per calendar year as measured with student-level data using the statewide nationally standardized norm-referenced achievement test.

10. On or before December 1 of each year, report electronically to the joint committee on capital review the amounts necessary to fulfill the requirements of sections 15-2022 and 15-2041 for the following three fiscal years. In developing the amounts necessary for this report, the school facilities board shall use the most recent average daily membership data available. On request from the board, the department of education shall make available the most recent average daily membership data for use in calculating the amounts necessary to fulfill the requirements of section 15-2041 for the following three fiscal years. The board shall provide copies of the report to the president of the senate, the speaker of the house of representatives and the governor.

11. Adopt minimum school facility adequacy guidelines to provide the minimum quality and quantity of school buildings and the facilities and equipment necessary and appropriate to enable pupils to achieve the educational goals of the Arizona state schools for the deaf and the blind. The school facilities board shall establish minimum school facility adequacy guidelines applicable to the Arizona state schools for the deaf and the blind.

12. In each even-numbered year, report electronically to the joint committee on capital review the amounts necessary to fulfill the requirements of section 15-2041 for the Arizona state schools for the deaf and the blind for the following two fiscal years. The Arizona state schools for the deaf and the blind shall incorporate the findings of the report in any request for new school facilities monies. Any monies provided to the Arizona state schools for the deaf and the blind for new school facilities are subject to legislative appropriation.

13. On or before June 15 of each year, submit electronically detailed information regarding demographic assumptions, a proposed construction schedule and new school construction cost estimates for individual projects approved in the current fiscal year and expected project approvals for the upcoming fiscal year to the joint committee on capital review for its review. A copy of the report shall also be submitted electronically to the governor's office of strategic planning and budgeting. The joint legislative budget committee staff, the governor's office of strategic planning and budgeting staff and the school facilities board staff shall agree on the format of the report.

14. Every two years, provide school districts with information on improving and maintaining the indoor environmental quality in school buildings.

15. On or before December 31 of each year, report to the joint legislative budget committee on all class B bond approvals by school districts in that year. Each school district shall report to the school facilities board on or before December 1 of each year information required by the school facilities board for the report prescribed in this paragraph.

16. Validate proposed adjacent ways projects submitted by school districts as prescribed in section 15-995.

B. The school facilities board may contract for the following services in compliance with the procurement practices prescribed in title 41, chapter 23:

1. Private services.
2. Construction project management services.
3. Assessments for school buildings to determine if the buildings have outlived their useful life pursuant to section 15-2041, subsection G.
4. Services related to land acquisition and development of a school site.

C. The governor shall appoint an executive director of the school facilities board pursuant to section 38-211. The executive director is eligible to receive compensation as determined pursuant to section 38-611 and may hire and fire necessary staff subject to title 41, chapter 4, article 4 and as approved by the legislature in the budget. The executive director shall have demonstrated competency in school finance, facilities design or facilities management, either in private business or government service. The executive

director serves at the pleasure of the governor. The staff of the school facilities board is exempt from title 41, chapter 4, articles 5 and 6. The executive director:

1. Shall analyze applications for monies submitted to the board by school districts.
  2. Shall assist the board in developing forms and procedures for the distribution and review of applications and the distribution of monies to school districts.
  3. May review or audit, or both, the expenditure of monies by a school district for deficiencies corrections and new school facilities.
  4. Shall assist the board in the preparation of the board's annual report.
  5. Shall research and provide reports on issues of general interest to the board.
  6. May aid school districts in the development of reasonable and cost-effective school designs in order to avoid statewide duplicated efforts and unwarranted expenditures in the area of school design.
  7. May assist school districts in facilitating the development of multijurisdictional facilities.
  8. Shall assist the board in any other appropriate matter or method as directed by the members of the board.
  9. Shall establish procedures to ensure compliance with the notice and hearing requirements prescribed in section 15-905. The notice and hearing procedures adopted by the board shall include the requirement, with respect to the board's consideration of any application filed after July 1, 2001 or after December 31 of the year in which the property becomes territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461 for monies to fund the construction of new school facilities proposed to be located in territory in the vicinity of a military airport or ancillary military facility, that the military airport receive notification of the application by first class mail at least thirty days before any hearing concerning the application.
  10. May expedite any request for monies in which the local match was not obtained for a project that received preliminary approval by the state board for school capital facilities.
  11. Shall expedite any request for monies in which the school district governing board submits an application that shows an immediate need for a new school facility.
  12. Shall make a determination as to administrative completion within one month after the receipt of an application by a school district for monies from the new school facilities fund.
  13. Shall provide technical support to school districts as requested by school districts in connection with the construction of new school facilities and the maintenance of existing school facilities and may contract directly with construction project managers pursuant to subsection B of this section. This paragraph does not restrict a school district from contracting with a construction project manager using district or state resources.
- D. When appropriate, the school facilities board shall review and use the statewide school facilities inventory and needs assessment conducted by the joint committee on capital review and issued in July, 1995.
- E. The school facilities board shall contract with one or more private building inspectors to complete an initial assessment of school facilities and equipment and shall inspect each school building in this state at least once every five years to ensure compliance with section 15-2011. A copy of the inspection report, together with any recommendations for building maintenance, shall be provided to the school facilities board and the governing board of the school district.
- F. The school facilities board may consider appropriate combinations of facilities or uses in making assessments of and curing deficiencies pursuant to subsection A, paragraph 1 of this section and in certifying plans for new school facilities pursuant to subsection A, paragraph 5 of this section.
- G. The board shall not award any monies to fund new facilities that are financed by class A bonds that are issued by the school district.
- H. The board shall not distribute monies to a school district for replacement or repair of facilities if the costs associated with the replacement or repair are covered by insurance or a performance or payment bond.
- I. The board may contract for construction services and materials that are necessary to correct existing deficiencies in school district facilities. The board may procure the construction services necessary

pursuant to this subsection by any method, including construction-manager-at-risk, design-build, design-bid-build or job-order-contracting as provided by title 41, chapter 23. The construction planning and services performed pursuant to this subsection are exempt from section 41-791.01.

J. The school facilities board may enter into agreements with school districts to allow school facilities board staff and contractors access to school property for the purposes of performing the construction services necessary pursuant to subsection I of this section.

K. Each school district shall develop routine preventative maintenance guidelines for its facilities. The guidelines shall include plumbing systems, electrical systems, heating, ventilation and air conditioning systems, special equipment and other systems and for roofing systems shall recommend visual inspections performed by district staff for signs of structural stress and weakness. The guidelines shall be submitted to the school facilities board for review and approval. If on inspection by the school facilities board it is determined that a school district facility was inadequately maintained pursuant to the school district's routine preventative maintenance guidelines, the school district shall return the building to compliance with the school district's routine preventative maintenance guidelines.

L. The school facilities board may temporarily transfer monies between the capital reserve fund established by section 15-2003, the emergency deficiencies correction fund established by section 15-2022 and the new school facilities fund established by section 15-2041 if all of the following conditions are met:

1. The transfer is necessary to avoid a temporary shortfall in the fund into which the monies are transferred.
2. The transferred monies are restored to the fund where the monies originated as soon as practicable after the temporary shortfall in the other fund has been addressed.
3. The school facilities board reports to the joint committee on capital review the amount of and the reason for any monies transferred.

M. After notifying each school district, and if a written objection from the school district is not received by the school facilities board within thirty days of the notification, the school facilities board may access public utility company records of power, water, natural gas, telephone and broadband usage to assemble consistent and accurate data on utility consumption at school facilities to determine the effectiveness of facility design, operation and maintenance measures intended to reduce energy and water consumption and costs. Any public utility that provides service to a school district in this state shall provide the data requested by the school facilities board pursuant to this subsection.

N. The school facilities board shall not require a common school district that provides instruction to pupils in grade nine to obtain approval from the school facilities board to reconfigure its school facilities. A common school district that provides instruction to pupils in grade nine is not entitled to additional monies from the school facilities board for facilities to educate pupils in grade nine.

### 15-2011. Minimum school facility adequacy requirements; definition

(L17, Ch. 258, sec. 11 & Ch. 320, sec. 5)

A. The school facilities board, as determined and prescribed in this chapter, shall provide funding to school districts for new construction as the number of pupils in the district fills the existing school facilities and requires more pupil space.

B. School buildings in a school district are adequate if all of the following requirements are met:

1. The buildings contain sufficient and appropriate space and equipment that comply with the minimum school facility adequacy guidelines established pursuant to subsection F of this section. The state shall not fund facilities for elective courses that require the school district facilities to exceed minimum school facility adequacy requirements. The school facilities board shall determine whether a school building meets the requirements of this paragraph by analyzing the total square footage that is available for each pupil in conjunction with the need for specialized spaces and equipment.

2. The buildings are in compliance with federal, state and local building and fire codes and laws that are applicable to the particular building, except that a school with an aggregate area of less than five thousand square feet is subject to permitting and inspection by a local fire marshal and is only subject to regulation or inspection by the office of the state fire marshal if the county, city or town in which the school is located does not employ a local fire marshal. An existing school building is not required to comply with current requirements for new buildings unless this compliance is specifically mandated by law or by the building or fire code of the jurisdiction where the building is located.

3. The building systems, including roofs, plumbing, telephone systems, electrical systems, heating systems and cooling systems, are in working order and are capable of being properly maintained.

4. The buildings are structurally sound.

C. The standards that shall be used by the school facilities board to determine whether a school building meets the minimum adequate gross square footage requirements are as follows:

1. For a school district that provides instruction to pupils in programs for preschool children with disabilities, kindergarten programs and grades one through six, eighty square feet per pupil in programs for preschool children with disabilities, kindergarten programs and grades one through six.

2. For a school district that provides instruction to up to eight hundred pupils in grades seven and eight, eighty-four square feet per pupil in grades seven and eight.

3. For a school district that provides instruction to more than eight hundred pupils in grades seven and eight, eighty square feet per pupil in grades seven and eight or sixty-seven thousand two hundred square feet, whichever is more.

4. For a school district that provides instruction to up to four hundred pupils in grades nine through twelve, one hundred twenty-five square feet per pupil in grades nine through twelve.

5. For a school district that provides instruction to more than four hundred and up to one thousand pupils in grades nine through twelve, one hundred twenty square feet per pupil in grades nine through twelve or fifty thousand square feet, whichever is more.

6. For a school district that provides instruction to more than one thousand and up to one thousand eight hundred pupils in grades nine through twelve, one hundred twelve square feet per pupil in grades nine through twelve or one hundred twenty thousand square feet, whichever is more.

7. For a school district that provides instruction to more than one thousand eight hundred pupils in grades nine through twelve, ninety-four square feet per pupil in grades nine through twelve or two hundred one thousand six hundred square feet, whichever is more.

D. The school facilities board may modify the square footage requirements prescribed in subsection C of this section or modify the amount of monies awarded to cure the square footage deficiency pursuant to this section for particular school districts based on extraordinary circumstances for any of the following considerations:

1. The number of pupils served by the school district.

2. Geographic factors.

3. Grade configurations other than those prescribed in subsection C of this section.

E. In measuring the square footage per pupil requirements of subsection C of this section, the school facilities board shall:

1. Use the average daily membership through the first one hundred days in session.

2. For each school, use the lesser of either:

(a) Total gross square footage.

(b) Student capacity multiplied by the appropriate square footage per pupil prescribed by subsection C of this section.

3. Consider the total space available in all schools in use in the school district, except that the school facilities board shall allow an exclusion of the square footage for certain schools and the pupils within the schools' boundaries if the school district demonstrates to the board's satisfaction unusual or excessive busing of pupils or unusual attendance boundary changes between schools.

4. Compute the gross square footage of all buildings by measuring from exterior wall to exterior wall. Square footage used solely for district administration, storage of vehicles and other nonacademic purposes shall be excluded from the net square footage.
  5. Include all portable and modular buildings.
  6. Include in the net square footage new construction funded wholly or partially by the school facilities board based on the square footage funded by the school facilities board. If the new construction is to exceed the square footage funded by the school facilities board, the excess square footage shall not be included in the net square footage if any of the following applies:
    - (a) The excess square footage was constructed before July 1, 2002 or funded by a class B bond, impact aid revenue bond or capital outlay override approved by the voters after August 1, 1998 and before June 30, 2002 or funded from unrestricted capital outlay expended before June 30, 2002.
    - (b) The excess square footage of new school facilities does not exceed twenty-five percent of the minimum square footage requirements pursuant to subsection C of this section.
    - (c) The excess square footage of expansions to school facilities does not exceed twenty-five percent of the minimum square footage requirements pursuant to subsection C of this section.
  7. Exclude square footage built under a developer agreement according to section 15-342, paragraph 33 until the school facilities board provides funding for the square footage under section 15-2041, subsection O.
  8. Include square footage that a school district has leased to another entity.
- F. The school facilities board shall adopt rules establishing minimum school facility adequacy guidelines. The guidelines shall provide the minimum quality and quantity of school buildings and facilities and equipment necessary and appropriate to enable pupils to achieve the academic standards pursuant to section 15-203, subsection A, paragraphs 12 and 13 and sections 15-701 and 15-701.01. At a minimum, the school facilities board shall address all of the following in developing these guidelines:
1. School sites.
  2. Classrooms.
  3. Libraries and media centers, or both.
  4. Cafeterias.
  5. Auditoriums, multipurpose rooms or other multiuse space.
  6. Technology.
  7. Transportation.
  8. Facilities for science, arts and physical education.
  9. Other facilities and equipment that are necessary and appropriate to achieve the academic standards prescribed pursuant to section 15-203, subsection A, paragraphs 12 and 13 and sections 15-701 and 15-701.01.
  10. Appropriate combinations of facilities or uses listed in this section.
- G. The board shall consider the facilities and equipment of the schools with the highest academic productivity scores, as prescribed in section 15-2002, subsection A, paragraph 9, subdivision (d), and the highest parent quality ratings in the establishment of the guidelines.
- H. The school facilities board may consider appropriate combinations of facilities or uses in making assessments of and curing existing deficiencies pursuant to section 15-2002, subsection A, paragraph 1 and in certifying plans for new school facilities pursuant to section 15-2002, subsection A, paragraph 5.
- I. For the purposes of this section, "student capacity" means the capacity adjusted to include any additions to or deletions of space, including modular or portable buildings at the school. The school facilities board shall determine the student capacity for each school in conjunction with each school district, recognizing each school's allocation of space as of July 1, 1998, to achieve the academic standards prescribed pursuant to section 15-203, subsection A, paragraphs 12 and 13 and sections 15-701 and 15-701.01.

**15-2022. Emergency deficiencies correction fund; definition**

A. An emergency deficiencies correction fund is established consisting of monies transferred from the new school facilities fund established by section 15-2041. The school facilities board shall administer the

fund and distribute monies in accordance with the rules of the school facilities board to school districts for emergency purposes. The school facilities board shall not transfer monies from the new school facilities fund if the transfer will affect, interfere with, disrupt or reduce any capital projects that the school facilities board has approved pursuant to section 15-2041. The school facilities board shall transfer to the emergency deficiencies correction fund the amount necessary each fiscal year to fulfill the requirements of this section. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

B. If the school facilities board determines that there are insufficient monies in the emergency deficiencies correction fund to correct an emergency, the school district may correct the emergency pursuant to section 15-907.

C. If a school district has an emergency, the school district shall apply to the school facilities board for funding for the emergency. The school district's application shall disclose any insurance or building renewal monies available to the school district to pay for the emergency.

D. The school facilities board staff shall acknowledge receipt of the school district's application for emergency deficiencies funding in writing within five business days of receiving the application. The school facilities board staff shall include in the written acknowledgement of receipt to the school district any investigative, study or informational requirements from the school district, along with an estimated timeline to complete the requirements, necessary for the school facilities board staff to make a recommendation for funding to the school facilities board.

E. For the purposes of this section, "emergency" means a serious need for materials, services or construction or expenses in excess of the district's adopted budget for the current fiscal year that seriously threatens the functioning of the school district, the preservation or protection of property or public health, welfare or safety.

#### 15-2032. School facilities board building renewal grant fund; definitions

A. The building renewal grant fund is established consisting of monies appropriated to the fund by the legislature. The school facilities board shall administer the fund and distribute monies to school districts for the purpose of maintaining the adequacy of existing school facilities. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

B. The school facilities board shall distribute monies from the fund based on grant requests from school districts to fund primary building renewal projects. Project requests shall be prioritized by the school facilities board, with priority given to school districts that have provided routine preventative maintenance on the facility, and to school districts that can provide a match of monies provided by the fund. The school facilities board shall approve only projects that will be completed within twelve months, unless similar projects on average take longer to complete.

C. School districts that receive monies from the fund shall use these monies on projects for buildings or any part of a building in the school facilities board's database for any of the following:

1. Major renovations and repairs to a building.
2. Upgrading systems and areas that will maintain or extend the useful life of the building.
3. Infrastructure costs.

D. Monies received from the fund shall not be used for any of the following purposes:

1. New construction.
2. Remodeling interior space for aesthetic or preferential reasons.
3. Exterior beautification.
4. Demolition.
5. Routine preventative maintenance.
6. Any project in a building, or part of a building, that is being leased to another entity.

E. Accommodation schools are not eligible for monies from the building renewal grant fund.

F. If the school facilities board or a court of competent jurisdiction determines that a school district received monies from the building renewal grant fund that must be reimbursed to the school facilities board due to legal action associated with improper construction by a hired contractor, the school district

shall reimburse the school facilities board an agreed-on amount for deposit into the building renewal grant fund.

G. For the purposes of this section:

1. "Primary building renewal projects" means projects that are necessary for buildings owned by school districts that are required to meet the minimum adequacy standards for student capacity and that fall below the minimum school facility adequacy guidelines, as adopted by the school facilities board pursuant to section 15-2011, for school districts that have provided routine preventative maintenance to the school facility.
2. "Routine preventative maintenance" means services that are performed on a regular schedule at intervals ranging from four times a year to once every three years, or on the schedule of services recommended by the manufacturer of the specific building system or equipment, and that are intended to extend the useful life of a building system and reduce the need for major repairs.
3. "Student capacity" has the same meaning prescribed in section 15-2011.

**15-2041. New school facilities fund; capital plan; report**

A. The new school facilities fund is established consisting of monies appropriated by the legislature and monies credited to the fund pursuant to section 37-221. The school facilities board shall administer the fund and distribute monies, as a continuing appropriation, to school districts for the purpose of constructing new school facilities and for contracted expenses pursuant to section 15-2002, subsection B, paragraphs 2, 3 and 4. On June 30 of each fiscal year, any unobligated contract monies in the new school facilities fund shall be transferred to the capital reserve fund established by section 15-2003.

B. The school facilities board shall prescribe a uniform format for use by the school district governing board in developing and annually updating a capital plan that consists of each of the following:

1. Enrollment projections for the next five years for elementary schools and eight years for middle and high schools, including a description of the methods used to make the projections.
2. A description of new schools or additions to existing schools needed to meet the building adequacy standards prescribed in section 15-2011. The description shall include:
  - (a) The grade levels and the total number of pupils that the school or addition is intended to serve.
  - (b) The year in which it is necessary for the school or addition to begin operations.
  - (c) A timeline that shows the planning and construction process for the school or addition.
3. Long-term projections of the need for land for new schools.
4. Any other necessary information required by the school facilities board to evaluate a school district's capital plan.
5. If a school district pays tuition for all or a portion of the school district's high school pupils to another school district, the capital plan shall indicate the number of pupils for which the district pays tuition to another district. If a school district accepts pupils from another school district pursuant to section 15-824, subsection A, the school district shall indicate the projections for this population separately. This paragraph does not apply to a small isolated school district as defined in section 15-901.

C. If the capital plan indicates a need for a new school or an addition to an existing school within the next four years or a need for land within the next ten years, the school district shall submit its plan to the school facilities board by July 1 and shall request monies from the new school facilities fund for the new construction or land. The school facilities board may require a school district to sell land that was previously purchased entirely with monies provided by the school facilities board if the school facilities board determines that the property is no longer needed within the ten-year period specified in this subsection for a new school or no longer needed within that ten-year period for an addition to an existing school. Monies provided for land shall be in addition to any monies provided pursuant to subsection D of this section.

D. The school facilities board shall distribute monies from the new school facilities fund for additional square footage as follows:

1. The school facilities board shall review and evaluate the enrollment projections. On or before December 1, following the submission of the enrollment projections, the school facilities board shall

either approve the projections as submitted or revise the projections. In approving or revising the enrollment projections, the school facilities board shall use the most recent fortieth day average daily membership data available during the current school year. On request from the school facilities board, the department of education shall make available the most recent average daily membership data for use in revising the enrollment projections. In determining new construction requirements, the school facilities board shall determine the net new growth of pupils that will require additional square footage that exceeds the building adequacy standards prescribed in section 15-2011. If the projected growth and the existing number of pupils exceed three hundred fifty pupils who are served in a school district other than the pupil's resident school district, the school facilities board, the receiving school district and the resident school district shall develop a capital facilities plan on how to best serve those pupils. A small isolated school district as defined in section 15-901 is not required to develop a capital facilities plan pursuant to this paragraph.

2. If the most recent fortieth day average daily membership during the current school year indicates that additional space would not have been needed during the current school year in order to meet the building adequacy standards prescribed in section 15-2011, the request shall be held for consideration by the school facilities board for possible future funding and the school district shall annually submit an updated plan until the additional space is needed.

3. If the most recent fortieth day average daily membership during the current school year indicates that additional space would have been needed during the current school year in order to meet the building adequacy standards prescribed in section 15-2011, the school facilities board shall provide an amount as follows:

(a) Determine the number of pupils requiring additional square footage to meet building adequacy standards. This amount for elementary schools shall not be less than the number of new pupils for whom space will be needed in the next year and shall not exceed the number of new pupils for whom space will be needed in the next five years. This amount for middle and high schools shall not be less than the number of new pupils for whom space will be needed in the next four years and shall not exceed the number of new pupils for whom space will be needed in the next eight years.

(b) Multiply the number of pupils determined in subdivision (a) of this paragraph by the square footage per pupil. The square footage per pupil is ninety square feet per pupil for preschool children with disabilities, kindergarten programs and grades one through six, one hundred square feet for grades seven and eight, one hundred thirty-four square feet for a school district that provides instruction in grades nine through twelve for fewer than one thousand eight hundred pupils and one hundred twenty-five square feet for a school district that provides instruction in grades nine through twelve for at least one thousand eight hundred pupils. The total number of pupils in grades nine through twelve in the district shall determine the square footage factor to use for net new pupils. The school facilities board may modify the square footage requirements prescribed in this subdivision for particular schools based on any of the following factors:

(i) The number of pupils served or projected to be served by the school district.

(ii) Geographic factors.

(iii) Grade configurations other than those prescribed in this subdivision.

(iv) Compliance with minimum school facility adequacy requirements established pursuant to section 15-2011.

(c) Multiply the product obtained in subdivision (b) of this paragraph by the cost per square foot. The cost per square foot is ninety dollars for preschool children with disabilities, kindergarten programs and grades one through six, ninety-five dollars for grades seven and eight and one hundred ten dollars for grades nine through twelve. The cost per square foot shall be adjusted annually for construction market considerations based on an index identified or developed by the joint legislative budget committee as necessary but not less than once each year. The school facilities board shall multiply the cost per square foot by 1.05 for any school district located in a rural area. The school facilities board may only modify the base cost per square foot prescribed in this subdivision for particular schools based on geographic conditions or site conditions. For the purposes of this subdivision, "rural area" means an area outside a

thirty-five-mile radius of a boundary of a municipality with a population of more than fifty thousand persons.

(d) Once the school district governing board obtains approval from the school facilities board for new facility construction monies, additional portable or modular square footage created for the express purpose of providing temporary space for pupils until the completion of the new facility and any additional space funded by the school district shall not be included by the school facilities board for the purpose of new construction funding calculations. On completion of the new facility construction project, any additional space funded by the school district shall be included as prescribed by this chapter and, if the portable or modular facilities continue in use, the portable or modular facilities shall be included as prescribed by this chapter, unless the school facilities board approves their continued use for the purpose of providing temporary space for pupils until the completion of the next new facility that has been approved for funding from the new school facilities fund.

4. For projects approved after December 31, 2001, and notwithstanding paragraph 3 of this subsection, a unified school district that does not have a high school is not eligible to receive high school space as prescribed by section 15-2011 and this section unless the unified district qualifies for geographic factors prescribed by paragraph 3, subdivision (b), item (ii) of this subsection.

5. If a joint technical education district leases a building from a school district, that building shall be included in the school district's square footage calculation for the purposes of new construction pursuant to this section.

6. If a school district leases a building to another entity, that building shall be included in the school district's square footage calculation for purposes of new construction pursuant to this section.

7. A school district shall qualify for monies from the new school facilities fund for additional square footage in a fiscal year only if the school facilities board has approved or revised its enrollment projection under paragraph 3 of this subsection on or before March 1 of the prior fiscal year.

E. Monies for architectural and engineering fees, project management services and preconstruction services shall be distributed on the completion of the analysis by the school facilities board of the school district's request. After receiving monies pursuant to this subsection, the school district shall submit a design development plan for the school or addition to the school facilities board before any monies for construction are distributed. If the school district's request meets the building adequacy standards, the school facilities board may review and comment on the district's plan with respect to the efficiency and effectiveness of the plan in meeting state square footage and facility standards before distributing the remainder of the monies. If the school facilities board modifies the cost per square foot as prescribed in subsection D, paragraph 3, subdivision (c) of this section, the school facilities board may deduct the cost of project management services and preconstruction services from the required cost per square foot. The school facilities board may decline to fund the project if the square footage is no longer required due to revised enrollment projections.

F. The school facilities board shall distribute the monies needed for land for new schools so that land may be purchased at a price that is less than or equal to fair market value and in advance of the construction of the new school. If necessary, the school facilities board may distribute monies for land to be leased for new schools if the duration of the lease exceeds the life expectancy of the school facility by at least fifty percent. A school district shall not use land purchased or partially purchased with monies provided by the school facilities board for a purpose other than a site for a school facility without obtaining prior written approval from the school facilities board. A school district shall not lease, sell or take any action that would diminish the value of land purchased or partially purchased with monies provided by the school facilities board without obtaining prior written approval from the school facilities board. The proceeds derived through the sale of any land purchased or partially purchased, or the sale of buildings funded or partially funded, with monies provided by the school facilities board shall be returned to the state fund from which it was appropriated and to any other participating entity on a proportional basis. Except as provided in section 15-342, paragraph 33, if a school district acquires real property by donation at an appropriate school site approved by the school facilities board, the school facilities board shall distribute an amount equal to twenty percent of the fair market value of the donated real property that can be used

for academic purposes. The school district shall place the monies in the unrestricted capital outlay fund and increase the unrestricted capital budget limit by the amount of monies placed in the fund. Monies distributed under this subsection shall be distributed from the new school facilities fund. A school district that receives monies from the new school facilities fund for a donation of land pursuant to section 15-342, paragraph 33 shall not receive monies from the school facilities board for the donation of real property pursuant to this subsection. A school district shall not pay a consultant a percentage of the value of any of the following:

1. Donations of real property, services or cash from any of the following:

(a) Entities that have offered to provide construction services to the school district.

(b) Entities that have been contracted to provide construction services to the school district.

(c) Entities that build residential units in that school district.

(d) Entities that develop land for residential use in that school district.

2. Monies received from the school facilities board on behalf of the school district.

3. Monies paid by the school facilities board on behalf of the school district.

G. In addition to distributions to school districts based on pupil growth projections, a school district may submit an application to the school facilities board for monies from the new school facilities fund if one or more school buildings have outlived their useful life. If the school facilities board determines that the school district needs to build a new school building for these reasons, the school facilities board shall remove the square footage computations that represent the building from the computation of the school district's total square footage for purposes of this section. If the square footage recomputation reflects that the school district no longer meets building adequacy standards, the school district qualifies for a distribution of monies from the new school construction formula in an amount determined pursuant to subsection D of this section. The school facilities board may only modify the base cost per square foot prescribed in this subsection under extraordinary circumstances for geographic factors or site conditions.

H. School districts that receive monies from the new school facilities fund shall establish a district new school facilities fund and shall use the monies in the district new school facilities fund only for the purposes prescribed in this section. By October 15 of each year, each school district shall report to the school facilities board the projects funded at each school in the previous fiscal year with monies from the district new school facilities fund and shall provide an accounting of the monies remaining in the new school facilities fund at the end of the previous fiscal year.

I. If a school district has surplus monies received from the new school facilities fund, the school district may use the surplus monies only for capital purposes for the project for up to one year after completion of the project. If the school district possesses surplus monies from the new school construction project that have not been expended within one year of the completion of the project, the school district shall return the surplus monies to the school facilities board for deposit in the new school facilities fund.

J. The board's consideration of any application filed after December 31 of the year in which the property becomes territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461 for monies to fund the construction of new school facilities proposed to be located in territory in the vicinity of a military airport or ancillary military facility shall include, if after notice is transmitted to the military airport pursuant to section 15-2002 and before the public hearing the military airport provides comments and an analysis concerning compatibility of the proposed school facilities with the high noise or accident potential generated by military airport or ancillary military facility operations that may have an adverse effect on public health and safety, consideration and analysis of the comments and analysis provided by the military airport before making a final determination.

K. If a school district uses its own project manager for new school construction, the members of the school district governing board and the project manager shall sign an affidavit stating that the members and the project manager understand and will follow the minimum adequacy requirements prescribed in section 15-2011.

L. The school facilities board shall establish a separate account in the new school facilities fund designated as the litigation account to pay attorney fees, expert witness fees and other costs associated with litigation in which the school facilities board pursues the recovery of damages for deficiencies

correction that resulted from alleged construction defects or design defects that the school facilities board believes caused or contributed to a failure of the school building to conform to the building adequacy requirements prescribed in section 15-2011. Attorney fees paid pursuant to this subsection shall not exceed the market rate for similar types of litigation. On or before December 1 of each year, the school facilities board shall report to the joint committee on capital review the costs associated with current and potential litigation that may be paid from the litigation account.

M. Until the state board of education and the auditor general adopt rules pursuant to section 15-213, subsection I, the school facilities board may allow school districts to contract for construction services and materials through the qualified select bidders list method of project delivery for new school facilities pursuant to this section.

N. The school facilities board shall submit electronically a report on project management services and preconstruction services to the governor, the president of the senate and the speaker of the house of representatives by December 31 of each year. The report shall compare projects that use project management and preconstruction services with those that do not. The report shall address cost, schedule and other measurable components of a construction project. School districts, construction manager at risk firms and project management firms that participate in a school facilities board funded project shall provide the information required by the school facilities board in relation to this report.

O. If a school district constructs new square footage according to section 15-342, paragraph 33, the school facilities board shall review the design plans and location of any new school facility submitted by school districts and another party to determine whether the design plans comply with the adequacy standards prescribed in section 15-2011 and the square footage per pupil requirements pursuant to subsection D, paragraph 3, subdivision (b) of this section. When the school district qualifies for a distribution of monies from the new school facilities fund according to this section, the school facilities board shall distribute monies to the school district from the new school facilities fund for the square footage constructed under section 15-342, paragraph 33 at the same cost per square foot established by this section that was in effect at the time of the beginning of the construction of the school facility. Before the school facilities board distributes any monies pursuant to this subsection, the school district shall demonstrate to the school facilities board that the facilities to be funded pursuant to this section meet the minimum adequacy standards prescribed in section 15-2011. The agreement entered into pursuant to section 15-342, paragraph 33 shall set forth the procedures for the allocation of these funds to the parties that participated in the agreement.

P. Accommodation schools are not eligible for monies from the new school facilities fund.

Q. If the school facilities board approves a school district for funding from the new school facilities fund and the full legislative appropriation is not available to the school district in the fiscal year following the approval by the school facilities board, the school district may use any legally available monies to pay for the land or the new construction project approved by the school facilities board and may reimburse the fund from which the monies were used in subsequent years with legislative appropriations when those appropriations are made available by this state.

### 15-901. Definitions

A. In this title, unless the context otherwise requires:

1. "Average daily membership" means the total enrollment of fractional students and full-time students, minus withdrawals, of each school day through the first one hundred days or two hundred days in session, as applicable, for the current year. Withdrawals include students who are formally withdrawn from schools and students who are absent for ten consecutive school days, except for excused absences identified by the department of education. For the purposes of this section, school districts and charter schools shall report student absence data to the

department of education at least once every sixty days in session. For computation purposes, the effective date of withdrawal shall be retroactive to the last day of actual attendance of the student or excused absence.

(a) "Fractional student" means:

(i) For common schools, a preschool child who is enrolled in a program for preschool children with disabilities of at least three hundred sixty minutes each week that meets at least two hundred sixteen hours over the minimum number of days or a kindergarten student who is at least five years of age before January 1 of the school year and enrolled in a school kindergarten program that meets at least three hundred fifty-six hours for a one hundred eighty-day school year, or the instructional hours prescribed in this section. Lunch periods and recess periods may not be included as part of the instructional hours unless the child's individualized education program requires instruction during those periods and the specific reasons for such instruction are fully documented. In computing the average daily membership, preschool children with disabilities and kindergarten students shall be counted as one-half of a full-time student. For common schools, a part-time student is a student enrolled for less than the total time for a full-time student as defined in this section. A part-time common school student shall be counted as one-fourth, one-half or three-fourths of a full-time student if the student is enrolled in an instructional program that is at least one-fourth, one-half or three-fourths of the time a full-time student is enrolled as defined in subdivision (b) of this paragraph.

(ii) For high schools, a part-time student who is enrolled in less than four subjects that count toward graduation as defined by the state board of education, each of which, if taught each school day for the minimum number of days required in a school year, would meet a minimum of one hundred twenty-three hours a year, or the equivalent, in a recognized high school. The average daily membership of a part-time high school student shall be 0.75 if the student is enrolled in an instructional program of three subjects that meet at least five hundred forty hours for a one hundred eighty-day school year, or the instructional hours prescribed in this section. The average daily membership of a part-time high school student shall be 0.5 if the student is enrolled in an instructional program of two subjects that meet at least three hundred sixty hours for a one hundred eighty-day school year, or the instructional hours prescribed in this section. The average daily membership of a part-time high school student shall be 0.25 if the student is enrolled in an instructional program of one subject that meets at least one hundred eighty hours for a one hundred eighty-day school year, or the instructional hours prescribed in this section. The hours in which a student is scheduled to attend a high school during the regular school day shall be included in the calculation of the average daily membership for that student.

(b) "Full-time student" means:

(i) For common schools, a student who is at least six years of age before January 1 of a school year, who has not graduated from the highest grade taught in the school district and who is regularly enrolled in a course of study required by the state board of education. First, second and third grade students or ungraded group B children with disabilities who are at least five, but under six, years of age by September 1 must be enrolled in an instructional program that meets for a total of at least seven hundred twelve hours for a one hundred eighty-day school year, or the

instructional hours prescribed in this section. Fourth, fifth and sixth grade students must be enrolled in an instructional program that meets for a total of at least eight hundred ninety hours for a one hundred eighty-day school year, or the instructional hours prescribed in this section. Seventh and eighth grade students must be enrolled in an instructional program that meets for at least one thousand hours. Lunch periods and recess periods may not be included as part of the instructional hours unless the student is a child with a disability and the child's individualized education program requires instruction during those periods and the specific reasons for such instruction are fully documented.

(ii) For high schools, a student who has not graduated from the highest grade taught in the school district and who is enrolled in at least an instructional program of four or more subjects that count toward graduation as defined by the state board of education, each of which, if taught each school day for the minimum number of days required in a school year, would meet a minimum of one hundred twenty-three hours a year, or the equivalent, that meets for a total of at least seven hundred twenty hours for a one hundred eighty-day school year, or the instructional hours prescribed in this section in a recognized high school. A full-time student shall not be counted more than once for computation of average daily membership. The average daily membership of a full-time high school student shall be 1.0 if the student is enrolled in at least four subjects that meet at least seven hundred twenty hours for a one hundred eighty-day school year, or the equivalent instructional hours prescribed in this section. The hours in which a student is scheduled to attend a high school during the regular school day shall be included in the calculation of the average daily membership for that student.

(iii) If a child who has not reached five years of age before September 1 of the current school year is admitted to kindergarten and repeats kindergarten in the following school year, a school district or charter school is not eligible to receive basic state aid on behalf of that child during the child's second year of kindergarten. If a child who has not reached five years of age before September 1 of the current school year is admitted to kindergarten but does not remain enrolled, a school district or charter school may receive a portion of basic state aid on behalf of that child in the subsequent year. A school district or charter school may charge tuition for any child who is ineligible for basic state aid pursuant to this item.

(iv) Except as otherwise provided by law, for a full-time high school student who is concurrently enrolled in two school districts or two charter schools, the average daily membership shall not exceed 1.0.

(v) Except as otherwise provided by law, for any student who is concurrently enrolled in a school district and a charter school, the average daily membership shall be apportioned between the school district and the charter school and shall not exceed 1.0. The apportionment shall be based on the percentage of total time that the student is enrolled in or in attendance at the school district and the charter school.

(vi) Except as otherwise provided by law, for any student who is concurrently enrolled, pursuant to section 15-808, in a school district and Arizona online instruction or a charter school and Arizona online instruction, the average daily membership shall be apportioned between the school district and Arizona online instruction or the charter school and Arizona online instruction

and shall not exceed 1.0. The apportionment shall be based on the percentage of total time that the student is enrolled in or in attendance at the school district and Arizona online instruction or the charter school and Arizona online instruction.

(vii) For homebound or hospitalized, a student receiving at least four hours of instruction per week.

(c) "Regular school day" means the regularly scheduled class periods intended for instructional purposes. Instructional purposes may include core subjects, elective subjects, lunch, study halls, music instruction, and other classes that advance the academic instruction of pupils, except that instructional purposes shall not include athletic practices or extracurricular clubs and activities.

2. "Budget year" means the fiscal year for which the school district is budgeting and that immediately follows the current year.

3. "Common school district" means a political subdivision of this state offering instruction to students in programs for preschool children with disabilities and kindergarten programs and either:

(a) Grades one through eight.

(b) Grades one through nine pursuant to section 15-447.01.

4. "Current year" means the fiscal year in which a school district is operating.

5. "Daily attendance" means:

(a) For common schools, days in which a pupil:

(i) Of a kindergarten program or ungraded, but not group B children with disabilities, who is at least five, but under six, years of age by September 1 attends at least three-quarters of the instructional time scheduled for the day. If the total instruction time scheduled for the year is at least three hundred fifty-six hours but is less than seven hundred twelve hours, such attendance shall be counted as one-half day of attendance. If the instructional time scheduled for the year is at least six hundred ninety-two hours, "daily attendance" means days in which a pupil attends at least one-half of the instructional time scheduled for the day. Such attendance shall be counted as one-half day of attendance.

(ii) Of the first, second or third grades attends more than three-quarters of the instructional time scheduled for the day.

(iii) Of the fourth, fifth or sixth grades attends more than three-quarters of the instructional time scheduled for the day, except as provided in section 15-797.

(iv) Of the seventh or eighth grades attends more than three-quarters of the instructional time scheduled for the day, except as provided in section 15-797.

(b) For common schools, the attendance of a pupil at three-quarters or less of the instructional time scheduled for the day shall be counted as follows, except as provided in section 15-797 and except that attendance for a fractional student shall not exceed the pupil's fractional membership:

(i) If attendance for all pupils in the school is based on quarter days, the attendance of a pupil shall be counted as one-fourth of a day's attendance for each one-fourth of full-time instructional time attended.

(ii) If attendance for all pupils in the school is based on half days, the attendance of at least three-quarters of the instructional time scheduled for the day shall be counted as a full day's attendance and attendance at a minimum of one-half but less than three-quarters of the instructional time scheduled for the day equals one-half day of attendance.

(c) For common schools, the attendance of a preschool child with disabilities shall be counted as one-fourth day's attendance for each thirty-six minutes of attendance not including lunch periods and recess periods, except as provided in paragraph 1, subdivision (a), item (i) of this subsection for children with disabilities up to a maximum of three hundred sixty minutes each week.

(d) For high schools, the attendance of a pupil shall not be counted as a full day unless the pupil is actually and physically in attendance and enrolled in and carrying four subjects, each of which, if taught each school day for the minimum number of days required in a school year, would meet a minimum of one hundred twenty-three hours a year, or the equivalent, that count toward graduation in a recognized high school except as provided in section 15-797 and subdivision (e) of this paragraph. Attendance of a pupil carrying less than the load prescribed shall be prorated.

(e) For high schools, the attendance of a pupil may be counted as one-fourth of a day's attendance for each sixty minutes of instructional time in a subject that counts toward graduation, except that attendance for a pupil shall not exceed the pupil's full or fractional membership.

(f) For homebound or hospitalized, a full day of attendance may be counted for each day during a week in which the student receives at least four hours of instruction.

(g) For school districts that maintain school for an approved year-round school year operation, attendance shall be based on a computation, as prescribed by the superintendent of public instruction, of the one hundred eighty days' equivalency or two hundred days' equivalency, as applicable, of instructional time as approved by the superintendent of public instruction during which each pupil is enrolled.

6. "Daily route mileage" means the sum of:

(a) The total number of miles driven daily by all buses of a school district while transporting eligible students from their residence to the school of attendance and from the school of attendance to their residence on scheduled routes approved by the superintendent of public instruction.

(b) The total number of miles driven daily on routes approved by the superintendent of public instruction for which a private party, a political subdivision or a common or a contract carrier is reimbursed for bringing an eligible student from the place of the student's residence to a school transportation pickup point or to the school of attendance and from the school transportation scheduled return point or from the school of attendance to the student's residence. Daily route mileage includes the total number of miles necessary to drive to transport eligible students from and to their residence as provided in this paragraph.

7. "District support level" means the base support level plus the transportation support level.

8. "Eligible students" means:

(a) Students who are transported by or for a school district and who qualify as full-time students or fractional students, except students for whom transportation is paid by another school district or a county school superintendent, and:

(i) For common school students, whose place of actual residence within the school district is more than one mile from the school facility of attendance or students who are admitted pursuant to section 15-816.01 and who meet the economic eligibility requirements established under the national school lunch and child nutrition acts (42 United States Code sections 1751 through 1785) for free or reduced price lunches and whose actual place of residence outside the school district boundaries is more than one mile from the school facility of attendance.

(ii) For high school students, whose place of actual residence within the school district is more than one and one-half miles from the school facility of attendance or students who are admitted pursuant to section 15-816.01 and who meet the economic eligibility requirements established under the national school lunch and child nutrition acts (42 United States Code sections 1751 through 1785) for free or reduced price lunches and whose actual place of residence outside the school district boundaries is more than one and one-half miles from the school facility of attendance.

(b) Kindergarten students, for purposes of computing the number of eligible students under subdivision (a), item (i) of this paragraph, shall be counted as full-time students, notwithstanding any other provision of law.

(c) Children with disabilities, as defined by section 15-761, who are transported by or for the school district or who are admitted pursuant to chapter 8, article 1.1 of this title and who qualify as full-time students or fractional students regardless of location or residence within the school district or children with disabilities whose transportation is required by the pupil's individualized education program.

(d) Students whose residence is outside the school district and who are transported within the school district on the same basis as students who reside in the school district.

9. "Enrolled" or "enrollment" means that a pupil is currently registered in the school district.

10. "GDP price deflator" means the average of the four implicit price deflators for the gross domestic product reported by the United States department of commerce for the four quarters of the calendar year.

11. "High school district" means a political subdivision of this state offering instruction to students for grades nine through twelve or that portion of the budget of a common school district that is allocated to teaching high school subjects with permission of the state board of education.

12. "Revenue control limit" means the base revenue control limit plus the transportation revenue control limit.

13. "Student count" means average daily membership as prescribed in this subsection for the fiscal year before the current year, except that for the purpose of budget preparation student count means average daily membership as prescribed in this subsection for the current year.

14. "Submit electronically" means submitted in a format and in a manner prescribed by the department of education.

15. "Total bus mileage" means the total number of miles driven by all buses of a school district during the school year.

16. "Total students transported" means all eligible students transported from their place of residence to a school transportation pickup point or to the school of attendance and from the school of attendance or from the school transportation scheduled return point to their place of residence.

17. "Unified school district" means a political subdivision of this state offering instruction to students in programs for preschool children with disabilities and kindergarten programs and grades one through twelve.

B. In this title, unless the context otherwise requires:

1. "Base" means the revenue level per student count specified by the legislature.

2. "Base level" means the following amounts plus the percentage increases to the base level as provided in sections 15-902.04 and 15-952, except that if a school district or charter school is eligible for an increase in the base level as provided in two or more of these sections, the base level amount shall be calculated by compounding rather than adding the sum of one plus the percentage of the increase from those different sections:

(a) For fiscal year 2007-2008, three thousand two hundred twenty-six dollars eighty-eight cents.

(b) For fiscal year 2008-2009, three thousand two hundred ninety-one dollars forty-two cents.

(c) For fiscal years 2009-2010, 2010-2011, 2011-2012 and 2012-2013, three thousand two hundred sixty-seven dollars seventy-two cents.

(d) For fiscal year 2013-2014, three thousand three hundred twenty-six dollars fifty-four cents.

(e) For fiscal year 2014-2015, three thousand three hundred seventy-three dollars eleven cents.

(f) For fiscal year 2015-2016, three thousand six hundred dollars zero cents.

(g) For fiscal year 2016-2017, three thousand six hundred thirty-five dollars sixty-four cents.

(h) For fiscal year 2017-2018, three thousand six hundred eighty-three dollars twenty-seven cents.

3. "Base revenue control limit" means the base revenue control limit computed as provided in section 15-944.

4. "Base support level" means the base support level as provided in section 15-943.

5. "Certified teacher" means a person who is certified as a teacher pursuant to the rules adopted by the state board of education, who renders direct and personal services to schoolchildren in the form of instruction related to the school district's educational course of study and who is paid from the maintenance and operation section of the budget.

6. "DD" means programs for children with developmental delays who are at least three years of age but under ten years of age. A preschool child who is categorized under this paragraph is not eligible to receive funding pursuant to section 15-943, paragraph 2, subdivision (b).

7. "ED, MIID, SLD, SLI and OHI" means programs for children with emotional disabilities, mild intellectual disabilities, a specific learning disability, a speech/language impairment and other health impairments. A preschool child who is categorized as SLI under this paragraph is not eligible to receive funding pursuant to section 15-943, paragraph 2, subdivision (b).

8. "ED-P" means programs for children with emotional disabilities who are enrolled in private special education programs as prescribed in section 15-765, subsection D, paragraph 1 or in an intensive school district program as provided in section 15-765, subsection D, paragraph 2.

9. "ELL" means English learners who do not speak English or whose native language is not English, who are not currently able to perform ordinary classroom work in English and who are enrolled in an English language education program pursuant to sections 15-751, 15-752 and 15-753.

10. "Full-time equivalent certified teacher" or "FTE certified teacher" means for a certified teacher the following:

(a) If employed full time as defined in section 15-501, 1.00.

(b) If employed less than full time, multiply 1.00 by the percentage of a full school day, or its equivalent, or a full class load, or its equivalent, for which the teacher is employed as determined by the governing board.

11. "Group A" means educational programs for career exploration, a specific learning disability, an emotional disability, a mild intellectual disability, remedial education, a speech/language impairment, developmental delay, homebound, bilingual, other health impairments and gifted pupils.

12. "Group B" means educational improvements for pupils in kindergarten programs and grades one through three, educational programs for autism, a hearing impairment, a moderate intellectual disability, multiple disabilities, multiple disabilities with severe sensory impairment, orthopedic impairments, preschool severe delay, a severe intellectual disability and emotional disabilities for school age pupils enrolled in private special education programs or in school district programs for children with severe disabilities or visual impairment and English learners enrolled in a program to promote English language proficiency pursuant to section 15-752.

13. "HI" means programs for pupils with hearing impairment.

14. "Homebound" or "hospitalized" means a pupil who is capable of profiting from academic instruction but is unable to attend school due to illness, disease, accident or other health conditions, who has been examined by a competent medical doctor and who is certified by that doctor as being unable to attend regular classes for a period of not less than three school months or a pupil who is capable of profiting from academic instruction but is unable to attend school regularly due to chronic or acute health problems, who has been examined by a competent medical doctor and who is certified by that doctor as being unable to attend regular classes for intermittent periods of time totaling three school months during a school year. The medical certification shall state the general medical condition, such as illness, disease or chronic health condition, that is the reason that the pupil is unable to attend school. Homebound or hospitalized includes a student who is unable to attend school for a period of less than three months due to a pregnancy if a competent medical doctor, after an examination, certifies that the student is unable to attend regular classes due to risk to the pregnancy or to the student's health.

15. "K-3" means kindergarten programs and grades one through three.

16. "K-3 reading" means reading programs for pupils in kindergarten programs and grades one, two and three.

17. "MD-R, A-R and SID-R" means resource programs for pupils with multiple disabilities, autism and severe intellectual disability.

18. "MD-SC, A-SC and SID-SC" means self-contained programs for pupils with multiple disabilities, autism and severe intellectual disability.

19. "MD-SSI" means a program for pupils with multiple disabilities with severe sensory impairment.

20. "MOID" means programs for pupils with moderate intellectual disability.
21. "OI-R" means a resource program for pupils with orthopedic impairments.
22. "OI-SC" means a self-contained program for pupils with orthopedic impairments.
23. "PSD" means preschool programs for children with disabilities as provided in section 15-771.
24. "P-SD" means programs for children who meet the definition of preschool severe delay as provided in section 15-771.
25. "Qualifying tax rate" means the qualifying tax rate specified in section 15-971 applied to the assessed valuation used for primary property taxes.
26. "Small isolated school district" means a school district that meets all of the following:
  - (a) Has a student count of fewer than six hundred in kindergarten programs and grades one through eight or grades nine through twelve.
  - (b) Contains no school that is fewer than thirty miles by the most reasonable route from another school, or, if road conditions and terrain make the driving slow or hazardous, fifteen miles from another school that teaches one or more of the same grades and is operated by another school district in this state.
  - (c) Is designated as a small isolated school district by the superintendent of public instruction.
27. "Small school district" means a school district that meets all of the following:
  - (a) Has a student count of fewer than six hundred in kindergarten programs and grades one through eight or grades nine through twelve.
  - (b) Contains at least one school that is fewer than thirty miles by the most reasonable route from another school that teaches one or more of the same grades and is operated by another school district in this state.
  - (c) Is designated as a small school district by the superintendent of public instruction.
28. "Transportation revenue control limit" means the transportation revenue control limit computed as prescribed in section 15-946.
29. "Transportation support level" means the support level for pupil transportation operating expenses as provided in section 15-945.
30. "VI" means programs for pupils with visual impairments.

**DEPARTMENT OF HEALTH SERVICES**

Title 9, Chapter 7, Article 12, Department of Health Services - Radiation Control



**GOVERNOR'S REGULATORY REVIEW COUNCIL**

**ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT**

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**MEETING DATE: November 3, 2020**

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

**FROM:** Council Staff

**DATE:** October 15, 2020

**SUBJECT: DEPARTMENT OF HEALTH SERVICES (F20-1006)**  
Title 9, Chapter 7, Article 12, Radiation Control

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**Summary**

This Five-Year Review Report (5YRR) from the Department of Health Services relates to all rules in Title 9, Chapter 7, Articles 12, related to administrative provisions regarding radiation control. The Department indicates that it did not review R9-7-1203, R9-7-1204, R9-7-1205, R9-7-1207, R9-7-1209, R9-7-1210, R9-7-1211, R9-7-1212, R9-7-1218, and R9-7-1222 with the intention that these rules expire pursuant to A.R.S. § 41-1056(J). The remainder of the rules in this article address the process for administrative hearings and site visits, the various factors/mitigating factors that affect the severity of a violation and its reflective penalty, and the review process for licenses and registrations.

In the last 5YRR for these rules, the Department planned to amend R9-7-1215 and Table A to account for the certification of certified laser technicians and training, and planned to initiate a rulemaking. The Department states that due to legislative changes in 2017 and 2018, under which the Department assumed responsibility for the regulation of sources of radiation, no rulemaking was begun. Additionally, the Department states that since it intends to move regulatory requirements for certified laser technicians from this Chapter to a new Article in 9 A.A.C. 16, it would be a duplicative effort to make these changes as planned.

## **Proposed Action**

As discussed further below, the Department is proposing to amend several of the rules to improve their overall clarity, conciseness and understandability. As proposed in other recent 5YRR's, the Department plans to complete the changes after reviewing all articles in the Chapter. The last 5YRR for the Chapter is due in December 2021.

### **1. Has the agency analyzed whether the rules are authorized by statute?**

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

### **2. Summary of the agency's economic impact comparison and identification of stakeholders:**

Pursuant to Laws 2017, Ch. 313, and Laws 2018, Ch. 234, the Department succeeded to the authority, powers, duties, and responsibilities of the Arizona Radiation Regulatory Agency for the regulation of radioactive materials and those persons using them. The Department indicates that no economic impact statements were available for any of the rulemakings in the five-year period. Economic impact of sections made/revised was assessed from information in the Notice of Final Rulemaking (NFR) for the rulemaking that occurred.

As of December 31, 2019, the Department issued 353 licenses to persons who use, store, or dispose of sources of radiation and 7,812 registrations to entities with 20,982 devices that are sources of radiation, for a total of 8,165 licenses or registrations issued. During 2019, the Department conducted 64 enforcement actions, which resulted in no revocations or suspensions, and collected \$80,500 in civil penalties, under these rules.

The Department states that based on their analysis the economic impact of the rulemakings was as estimated.

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

The Department believes that the substantive content of the rules is the minimum necessary to protect health and safety and that the protection of public health and safety outweigh the probable costs of the rules. The Board believes the rules may impose a slight regulatory burden, but the rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

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

The Department 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?**

The Department indicates that the rules are generally clear, concise, and understandable except for the following rules:

- **R9-7-1201**: The Department plans to amend this rule to add the definitions of “working day.”
- **R9-7-1202**: The Department states the rule would be clearer if “A.R.S.” were added in subsection (A) and “or the Board” were removed from subsection (C), since this function was removed by the statutory changes in 2017 and 2018. The rule would be more concise if subsection (B) was removed as unnecessary.
- **R9-7-1213**: The Department plans to amend subsections (A)(1)(a) and (b), (B)(1)(a) and (b), and (C)(1)(a) and (b) in order to clarify whether a failure, malfunction, or insufficiency of a safety system that results in radiation exposure or a concentration of radionuclides is a severity level I violation, a severity level II violation, or a severity level III violation. Additionally, in subsections (A)(1)(c), (4), and (5), (B)(1)(c) and (3), (C)(1)(c), (2), and (3), (D)(2) and (4), and (E)(1)(b) and (c), the rule should state “this Chapter” rather than “9 A.A.C. 7.” The Department also plans to make subsection (A)(6) a separate subsection from subsection (A), especially since it is relevant and cited to in subsection (B)(3). The rule would be clearer if the meaning of “unlawful attempt” in subsection (C)(5) were defined or described. Subsection (D)(1) would be clearer if it included “Except as specified in subsection (A), (B), or (C).” The rule would be more understandable if the content of subsection (E)(2) were moved under subsection (D).
- **R9-7-1214**: The Department plans to amend subsection (A)(1) to include both licensees and registrants. Additionally, the Department wants to move the definition of “voluntary reporting” to the beginning of the rule from its current placement in the second sentence of subsection (B)(2).
- **R9-7-1215**: The Department plans to resolve minor inconsistencies in nomenclature of categories of licenses and registrations between the rule and the list in Article 13. The Department also plans to better describe the terms “register the use of a general license” and “obtain a specific license” in subsections (B) and (D)(1). Additionally, subsection (D) would be more understandable if the reason someone not otherwise required to be licensed or registered would be under the regulatory authority of the Department were better explained. Lastly, the Department states subsection (D)(4) would be clearer if those servicing either x-ray machines or nonionizing equipment were included in the subsection.
- **R9-7-1216**: The Department plans to replace the term “Board” with “Director” in subsection (B) and remove it from subsection (C). Subsection (B) would be clearer if it specified that it is only applicable to violations described in R9-7-1213(A)(1) and (B)(1), since the rest of the violations in R9-7-1213(A) and (B) appear to be intentional. Subsection (C) could be clearer if it stated that the Director “may waive” rather than

“shall waive” payment of penalties. Subsection (C)(2) would be improved if it were broken into subsections, stated “this Chapter” rather than “9 A.A.C. 7,” and clarified that “registration, and license conditions” means “registration conditions or license conditions, as applicable.”

- R9-7-1217: The Department plans to clarify the distinction between “continuing violation” and “repeat violation” in subsection (A), and correct inconsistent language between the terms “second violation” and “same violation” in subsections (B), (C), (D) and (E).
- R9-7-1219: The Department plans to clarify the phrase “similar severity level I violation” in subsection (B) and remove the phrase “repeated or different” in subsection (C).
- Table A: The Department plans to add the timeframes for certification of laser technician programs to this table and remove them from Article 14 of the Chapter.

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

The Department indicates that the rules are generally consistent with other rules and statutes except for the following rule:

- R9-7-1220: Subsection (C) should cite to A.R.S. § 30-686, rather than to A.R.S. § 30-688 when referring to hearings.

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

The Department indicates the rules are effective in achieving their underlying regulatory objectives.

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

The Department indicates that the rules are enforced as written.

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

No. The Department says these rules rely on state statutes, not federal regulations.

**10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

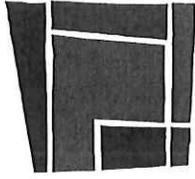
These rules were recodified into 9 A.A.C. 7, Article 12 from 12 A.C.C. 1, Article 12, in March 2018. The Department states that except for R9-7-1215 and Table A, all other rules were adopted before July 29, 2010. A.R.S. § 30-672, as amended by Laws 2017, Ch. 313, authorizes the Department to issue licenses and registrations for sources of radiation and those persons using these sources. A general permit issued under the rules

in 9 A.A.C. 7 applies to certain levels of radioactive material, and specific permits are issued by rule for quantities and uses that are specific to the user and their training or scope of practice.

Upon review, council staff agrees the Department complies with A.R.S. § 41-1037. Due to the majority of the rules being adopted before July 29, 2010, compliance with A.R.S. § 41-1037 is unnecessary. The only rules that were adopted after this date were R9-7-1215 and Table A. As the department states, A.R.S. § 30-672 says that “[t]he department by rule shall provide for general or specific licensing of by-product, source, special nuclear materials or devices or equipment using those materials.” Pursuant to A.R.S. § 41-1037(A)(2), an agency may use a license other than a general permit if “[t]he issuance of an alternative type of permit, license or authorization is specifically authorized by state statute.” The issuance of an alternative type of permit, license or authorization here appears to be specifically authorized by A.R.S. § 30-672. Therefore, the Department is in compliance with the requirements of A.R.S. § 41-1037.

## **11. Conclusion**

In this 5YRR, the Department conducted an adequate analysis of the rules as required under A.R.S. § 41-1056(A). The Department identifies a number of rules that need to be amended and, as proposed in other recent 5YRR’s, the Department plans to complete the changes after reviewing all articles in the Chapter. The Department’s final 5YRR will be submitted in December, 2021. Council staff recommends approval of this report.



# ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

August 21, 2020

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

Nicole Sornsin, Esq., Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

RE: Department of Health Services, 9 A.A.C. 7, Article 12, Five-Year-Review Report

Dear Ms. Sornsin:

Please find enclosed the Five-Year-Review Report from the Arizona Department of Health Services (Department) for 9 A.A.C. 7, Article 12, Administrative Provisions, which is due on August 31, 2020. The Department is not reviewing the following Sections and allowing them to expire: R9-7-1203, R9-7-1204, R9-7-1205, R9-7-1207, R9-7-1209, R9-7-1210, R9-7-1211, R9-7-1212, R9-7-1218, and R9-7-1222.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Ruthann Smejkal at [Ruthann.Smejkal@azdhs.gov](mailto:Ruthann.Smejkal@azdhs.gov) or 602-364-1230.

Sincerely,

A handwritten signature in black ink, appearing to read 'RL', written over the printed name of Robert Lane.

Robert Lane  
Director's Designee

RL:rms

Enclosures

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



**Arizona Department of Health Services**  
**Five-Year-Review Report**  
**Title 9. Health Services**  
**Chapter 7. Department of Health Services**  
**Radiation Control**  
**Article 12. Administrative Provisions**  
**August 2020**

**1. Authorization of the rule by existing statutes**

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

Specific Statutory Authority: A.R.S. §§ 30-654, 30-681, 30-686, 30-687, 30-688, 41-1002(C), 41-1003

**2. The objective of each rule:**

Rule	Objective
R9-7-1201	To specify how the timeliness of documents submitted to the Department is determined.
R9-7-1202	To specify under what statutes hearings are conducted and the process when a visit is necessary to the site of an alleged violation of activity.
R9-7-1213	To specify the factors upon which a determination of the severity of a violation is based.
R9-7-1214	To describe the situations for which the Department may reduce the usual level of enforcement, either by not issuing a Notice of Violation or by reducing or waiving civil penalties.
R9-7-1215	To establish how registrant or license types are classified into administrative sanction divisions. To specify how other persons, including those who fail to register or obtain a license, who operate in Arizona under a reciprocal license, or who are not required to obtain a license or registration, are classified.
R9-7-1216	To establish a schedule of civil penalties based on the severity of a violation and the administrative sanction division of the registrant or licensee. To specify situations for which payment of a civil penalty may be reduced or waived.
R9-7-1217	To establish augmented civil penalties for repeated violations and how these augmented penalties may be avoided.
R9-7-1219	To specify situations in which a registrant or licensee may be required to show cause why the registration or license should not be suspended or revoked.
R9-7-1220	To specify situations in which an order to suspend, revoke, or modify a registration or license, or impound a radiation source may be issued.
R9-7-1223	To specify how the Department reviews new or renewal licenses and registrations.
Table A	To establish timeframes for the review of new or renewal licenses and registrations.

**3. Are the rules effective in achieving their objectives?**

Yes X      No

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

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

4. **Are the rules consistent with other rules and statutes?** Yes  No

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
R9-7-1220	Subsection (C) should cite to A.R.S. § 30-686, rather than to A.R.S. § 30-688 when referring to hearings.

5. **Are the rules enforced as written?** Yes  No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation

6. **Are the rules clear, concise, and understandable?** Yes  No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation
Multiple	The rules would be clearer if minor grammatical or formatting changes were made.
R9-7-1201	The rule would be clearer if the definitions of "working day" were in R9-7-102.
R9-7-1202	The rule would be clearer if "A.R.S." were added in subsection (A) and "or the Board" were removed from subsection (C), since this function was removed by the statutory changes in 2017 and 2018. The rule would be more concise if subsection (B) were removed as unnecessary.
R9-7-1213	The rule would be more understandable if subsections (A)(1)(a) and (b), (B)(1)(a) and (b), and (C)(1)(a) and (b) were changed so it is clearer whether a failure, malfunction, or insufficiency of a safety system that results in radiation exposure or a concentration of radionuclides is a severity level I violation, a severity level II violation, or a severity level III violation. In subsections (A)(1)(c), (4), and (5); (B)(1)(c) and (3); (C)(1)(c), (2), and (3); (D)(2) and (4); and (E)(1)(b) and (c), the rule should state "this Chapter" rather than "9 A.A.C. 7." Subsection (A)(6) should be a separate subsection rather than being under subsection (A), especially since it is relevant and cited to in subsection (B)(3). The rule would be clearer if the meaning of "unlawful attempt" in subsection (C)(5) were defined or described. Subsection (D)(1) would be clearer if it included "Except as specified in

	subsection (A), (B), or (C).” The rule would be more understandable if the content of subsection (E)(2) were moved under subsection (D).
R9-7-1214	Subsection (A)(1) would be clearer if both licensees and registrants were included. The rule would be more understandable if the definition of “voluntary reporting” were at the beginning of the rule, rather than being the second sentence in subsection (B)(2).
R9-7-1215	The rule would be more understandable if minor inconsistencies in nomenclature of categories of licenses and registrations between the rule and the list in Article 13 of the Chapter were resolved. The rule would be clearer if the terms “register the use of a general license” and “obtain a specific license” in subsections (B) and (D)(1) were better described. Subsection (D) would be more understandable if the reason someone not otherwise required to be licensed or registered would be under the regulatory authority of the Department were better explained. Subsection (D)(4) would be clearer if those servicing either x-ray machines or nonionizing equipment were included.
R9-7-1216	The rule would be more understandable if the term “Board” were replaced by “Director” in subsection (B) and removed from subsection (C). Subsection (B) would be clearer if it specified that it is only applicable to violations described in R9-7-1213(A)(1) and (B)(1), since the rest of the violations in R9-7-1213(A) and (B) appear to be intentional. Subsection (C) could be clearer if it stated that the Director “may waive” rather than “shall waive” payment of penalties. Subsection (C)(2) would be improved if it were broken into subsections, stated “this Chapter” rather than “9 A.A.C. 7,” and clarified that “registration, and license conditions” means “registration conditions or license conditions, as applicable.”
R9-7-1217	The rule could be improved if the distinction between “continuing violation” and “repeat violation” in subsection (A) were clarified. In subsections (B) and (C), the term used is “second” violation, while in subsections (D) and (E) the term is “repeated” violation. Subsection (D) also uses the “same” violation. The uses of these terms should also be clarified. Since subsection (I) restates what is in A.R.S. § 30-687(A), these requirements may not be needed.
R9-7-1219	The rule could be more understandable if the phrase “similar severity level I violation” in subsection (B) were clarified. In subsection (C), the rule could be improved if the phrase “repeated or different” were removed.
Table A	The Table could be improved if timeframes for certification of laser technician programs were added here, rather than being in Article 14 of the Chapter.

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

*If yes, please fill out the table below:*

<b>Rule</b>	<b>Explanation</b>

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

Pursuant to Laws 2017, Ch. 313, and Laws 2018, Ch. 234, the Department succeeded to the authority, powers, duties, and responsibilities of the Arizona Radiation Regulatory Agency for the regulation of radioactive materials and those persons using them. The rules in Article 6 were recodified in 2018 from 12 A.A.C. 1 to 9 A.A.C. 7, and the current codification is used when describing the economic impact of the rules, even though all but one of the rulemakings were in 12 A.A.C. 1. No economic impact statements (EISs) are available to the Department for the three rulemakings affecting the rules in Article 12, so the economic impact of the Sections

made/revised in the rulemakings was assessed from information in the Notice of Final Rulemaking (NFR) for the rulemaking, including review of the changes made. If a rule included in a rulemaking was further revised in a subsequent rulemaking, the impact of the rule is considered in the description of the subsequent rulemaking.

As of December 31, 2019, the Department has issued 353 licenses to persons who use, store, or dispose of sources of radiation and 7,812 registrations to entities with a total of 20,982 devices that are sources of radiation, for a total of 8,165 licenses or registrations issued. During 2019, the Department conducted 64 enforcement actions, which resulted in no revocations or suspensions, and collected \$80,500 in civil penalties under these rules.

Only one rule, R9-7-1214, was last revised in 1999. The contents of the former subsection (A), containing requirements related to when the Department could refrain from issuing a Notice of Violation for a severity level V violation, was removed from the rule “because of the difficulty in discovering the listed criteria.” The rulemaking also gave “the Director more latitude in determining when a civil penalty should be reduced or waived” and made “wording changes to improve understandability.” The economic impact due to these changes was anticipated to be minimal. The Department believes the economic impact is as estimated.

In a rulemaking effective November 14, 2003, R9-7-1201, R9-7-1202, R9-7-1213, R9-7-1216, R9-7-1217, R9-7-1219, R9-7-1220, and R9-7-1223 were last revised. The titles of R9-7-1201 and R9-7-1216 were clarified in the rulemaking. In R9-7-1213, the phrase “An individual exposure” was changed to “Radiation exposure to a person” to clarify meaning, and a cross-reference was made more specific. The rulemaking also clarified that R9-7-1217 and R9-7-1219 also applied to registrants and that the Department could revoke a registration or license as specified in R9-7-1220. In R9-7-1223, minor grammatical changes were made. According to the summary of the economic impact of the rulemaking in paragraph 9 of the Preamble of the NFR, the changes being made to the rules were thought to have “little economic impact on the licensees and registrants regulated” under the rules. The Department believes the economic impact is as estimated.

The final two rules being reviewed, R9-7-1215 and Table A, were last revised effective April 6, 2015. This rulemaking added categories of radiofrequency devices to the list of Division III licenses and registration in R9-7-1215 and to the timeframes in Table A. No economic impact was anticipated by these changes. The Department believes the economic impact is as estimated.

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

10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**

*Please state what the previous course of action was and if the agency did not complete the action, please explain why not.*

The 2015 five-year-review report indicated that the Arizona Radiation Regulatory Agency (ARRA) had planned to amend R9-7-1215 and Table A to account for the certification of certified laser technicians and training programs for certified laser technicians and to request an exception from the rulemaking moratorium once two pending requests had been approved by the Governor’s Office and the agency’s sunset review completed.

However, ARRA had been asked by the Governor’s policy advisor to hold off until the legislative plan was determined. ARRA had thought the Governor’s Office would support a rulemaking during 2016. With legislative changes in 2017 and 2018 under which the Department assumed responsibility for the regulation of sources of radiation, no rulemaking was begun. Since the Department intends to move regulatory requirements for certified laser technicians from this Chapter to a new Article in 9 A.A.C. 16, it would be duplicative effort to make these changes as planned.

**11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The rules in Article 12 provide notice to regulated entities of the factors upon which a determination of the severity of a violation is based; the situations for which the Department may reduce the usual level of enforcement; how registrant or license types are classified into administrative sanction divisions; how civil penalties are assessed; the situations in which an order to suspend, revoke, or modify a registration or license, or impound a radiation source may be issued; and how and within what time-frames the Department reviews new or renewal licenses and registrations. This notice enables a regulated entity to know the consequences of a violation and, thus, provide a decided benefit to the regulated entities. By providing this notice and enabling the Department to provide oversight sources of radiation, the Department believes that the probable benefits of the rules in Article 12 outweigh the probable costs of the rule. The Department believes that the substantive content of the rules is the minimum necessary to protect health and safety and that the protection of public health and safety outweigh the probable costs of the rules. The Department also believes that, despite the minor issues identified in this report, which may impose a slight regulatory burden, the rules impose the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

**12. Are the rules more stringent than corresponding federal laws? Yes  No**

*Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?*

These rules rely on statutory authority from state statutes, not from federal regulations.

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

In March 2018, these rules were recodified into 9 A.A.C. 7, Article 12, without any substantive changes, from 12 A.A.C. 1, Article 12, to clarify that the Department had assumed responsibility for regulating the use, storage, and disposal of sources of radiation in compliance with Laws 2017, Ch. 313, and Laws 2018, Ch. 234. Except for R9-7-1215 and Table A, the rules in 12 A.A.C. 1, Article 12, were all adopted before July 29, 2010. However, A.R.S.

§ 30-672, as amended by Laws 2017, Ch. 313, authorizes the Department is to issue licenses and registrations for sources of radiation and those persons using these sources. A general permit issued under the rules in 9 A.A.C. 7 applies to certain levels of radioactive material, and specific permits are issued by rule for quantities and uses that are specific to the user and their training or scope of practice.

**14. Proposed course of action**

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

The minor items and possible changes described in paragraphs 4 and 6 are not substantive. As discussed with the Council on the occasion of another 5YRR, it does not make sense in most cases, and is certainly not effective or efficient, to try to revise the Articles in Chapter 7 piecemeal. The Department plans to evaluate the entire Chapter, after finishing reviews of all the Articles in the Chapter, to determine whether a rulemaking is necessary and, if so, to establish a time-frame to complete the rulemaking. According to the Department's current schedule, the last five-year report for the Chapter is due in December 2021. Based on the reviews of those Articles that have been completed, the Chapter may need to be extensively revised and reorganized.

## **ARTICLE 12. ADMINISTRATIVE PROVISIONS**

Section

R9-7-1201.	Timeliness
R9-7-1202.	Administrative Hearings
R9-7-1203.	Procedures for Rulemaking Public Hearings
R9-7-1204.	Initiation of Administrative Hearings
R9-7-1205.	Intervention in Administrative Hearings; Director as a Party
R9-7-1207.	Rehearing or Review
R9-7-1209.	Notice of Violation
R9-7-1210.	Response to Notice of Violation
R9-7-1211.	Initial Orders
R9-7-1212.	Request for Hearing in Response to an Initial Order
R9-7-1213.	Severity Levels of Violations
R9-7-1214.	Mitigating Factors
R9-7-1215.	License and Registration Divisions
R9-7-1216.	Civil Penalties
R9-7-1217.	Augmentation of Civil Penalties
R9-7-1218.	Payment of Civil Penalties
R9-7-1219.	Additional Sanctions-Show Cause
R9-7-1220.	Escalated Enforcement
R9-7-1222.	Enforcement Conferences
R9-7-1223.	Registration and Licensing Time-frames
Table A.	Registration and Licensing Time-frames

## **ARTICLE 12. ADMINISTRATIVE PROVISIONS**

### **R9-7-1201. Timeliness**

- A. Any application, request, response, or report required by any rule, order, application, or letter shall be considered timely if it is postmarked on or before the due date, or hand-delivered to the Department office before 5:00 p.m. on the due date. If the due date falls on a Saturday, a Sunday, or a legal holiday, the due date is extended to the end of the next day that is not a Saturday, a Sunday, or legal holiday.
- B. As used in this Article, “working days” are all days other than Saturdays, Sundays, or legal holidays prescribed in A.R.S. § 1-301.

### **R9-7-1202. Administrative Hearings**

- A. All hearings shall be governed by Title 41, Chapter 6, Article 10.
- B. If the Radiation Regulatory Hearing Board is conducting a hearing, all motions and rulings shall be in writing, except those made during the hearing may be oral. The Board shall ensure that any agreements reached during a conference are incorporated in the record, and that all hearings are recorded.
- C. If it is necessary for an administrative law judge or the Board to visit the site of an alleged violation or activity that is regulated by the Department in order to supplement testimonial or documentary evidence presented at the hearing, the party that proposed the visit shall enter the purpose of the visit and all pertinent observations into the record.

### **R9-7-1203. Procedures for Rulemaking Public Hearings**

- A. Hearings on proposed rulemaking by the Department shall be held before the Director or another person designated by the Director to act as the hearing officer.
- B. All hearings shall be governed by the Administrative Procedure Act, A.R.S. §§ 41-1021, 41-1021.01 through 41-1025, 41-1028, 41-1029, and 41-1031.
- C. The hearing shall be recorded and shall be retained as part of the record of the rulemaking.
- D. A written summary of the comments presented shall be prepared along with a written response to the comments by the Department staff and retained with the record of the rulemaking.
- E. The request for hearing shall identify the rule involved or propose a new rule.

### **R9-7-1204. Initiation of Administrative Hearings**

- A. An administrative hearing shall be initiated by the Director or commenced in response to the

request of any person directly affected by an order of the Director or a proposed licensing or registration action by the Department.

- B. If the Director initiates an administrative hearing pursuant to R9-7-1220, the order may incorporate a notice of hearing; otherwise a notice of any hearing and the notice of violation shall be issued separately.
- C. For any hearing on a proposed licensing or registration action, only a notice of hearing shall be issued.
- D. A notice of hearing shall specify the time, place, and nature of the hearing and may include specification of the legal authority and jurisdiction under which the hearing is to be held; the particular sections of the statutes, rules, or license conditions involved; the amount of the penalty and other sanctions proposed, if appropriate; and a statement of matters asserted and issues involved.
- E. A hearing may be requested by filing a written request for hearing with the Director within the time limit specified in the pertinent order or notice. A request for hearing on a regulatory action not subject to public notice requirements may be filed at any time, provided that a request to reconsider a licensing or registration action shall be filed within 30 days of the issuance of the licensing or registration action.
  - 1. The request for a hearing to appeal an order shall identify the order which the person desires to appeal and include a statement reciting the matters asserted, issues involved, and the applicable statutes or rules. The Department shall respond within 30 calendar days to the person and forward the request and response to the Chairperson of the Board.
  - 2. The request for a hearing to appeal a licensing or registration action shall identify the action appealed. The Department shall respond within 30 calendar days to the person and forward the request and response to the Chairperson of the Board.
  - 3. The request for hearing shall include a statement identifying the interest claimed to be affected by the action. If a statement is not provided or is clearly insufficient, the Chairperson may deny the request and notify the person of that action.
  - 4. If the request for hearing is denied for insufficiency, the requestor shall have five days from the notice of denial within which to file an amended request for hearing. The amended request shall refer back to the original request for hearing.

**R9-7-1205. Intervention in Administrative Hearings; Director as a Party**

- A. Any person may submit a timely motion to intervene in a proceeding if an unconditional right to intervene is granted by law or the applicant claims an interest to any property or transaction

affected by the proceeding.

- B.** A motion to intervene shall be in writing and shall state the reason why the applicant should be allowed to intervene. If the applicant claims an interest in property or in a transaction affected by the proceeding, the applicant shall demonstrate that the result of the proceeding may as a practical matter impair or impede protection of that interest.
- C.** The applicant shall serve the motion upon the administrative law judge or the Board, as appropriate, and the Director as a party at least five working days before the hearing. An application for leave to intervene shall not be granted, if by doing so, the issues will be unduly broadened.
- D.** If two or more persons have substantially similar positions, the administrative law judge may declare them a class of interested persons for purposes of the hearing. The members of a class shall designate one person to be spokesperson for the class. More than one class may be established for a hearing.
- E.** The Director is party to all administrative hearings.

**R9-7-1207. Rehearing or Review**

- A.** The Board may grant a rehearing or review of a decision for any of the following reasons, materially affecting a party's rights:
  - 1. Irregularity in the administrative proceedings or any order or abuse of discretion, that deprived a party of a fair hearing;
  - 2. Misconduct of the Board, an administrative law judge, or the prevailing party;
  - 3. Accident or surprise that could not have been prevented by ordinary prudence;
  - 4. Newly discovered material evidence that could not, with reasonable diligence have been discovered and produced at the original hearing;
  - 5. Excessive or insufficient penalties;
  - 6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the progress of the proceedings;
  - 7. That the decision is not justified by the evidence or is contrary to law.
- B.** The Board may affirm or modify a decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons listed in subsection (A). An order modifying a decision or granting a rehearing shall specify with particularity the ground or grounds for the order. A rehearing shall cover only the subject matters specified in the order.
- C.** No later than 15 working days after the date on the decision the Board may, on its own initiative, order a rehearing or review of its decision for any reason for which it might have granted a

rehearing on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion.

- D. If a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 30 calendar days after service, serve opposing affidavits. This period of time may be extended by the Board if good cause is shown or a written stipulation is received from both parties. The Board may permit reply affidavits.

**R9-7-1209. Notice of Violation**

- A. Except as provided in R9-7-1220, the Department shall issue a notice of violation and provide time, as specified in R9-7-1210, for the registrant or licensee to respond before the Director issues any order to modify, suspend, or revoke a license or registration, or to impose a civil penalty.
- B. The notice shall specify:
  - 1. The severity level and circumstances of the alleged violation;
  - 2. The particular statute, rule, or registration or license condition violated; and
  - 3. The division of the registration or license.
- C. The notice shall specify a civil penalty if one is proposed by the Department.

**R9-7-1210. Response to Notice of Violation**

- A. Except as provided in subsection (D), within 30 calendar days of the date of the notice, or longer time period specified in the notice, the person charged with the violation shall submit a written response that includes a description of:
  - 1. The actions taken to achieve compliance and the results of the actions;
  - 2. The actions that are proposed and the date when full compliance is expected to be achieved; and
  - 3. If the violation is a repeat violation, why corrective actions taken previously did not prevent the violation from recurring and why the new actions will be effective.
- B. If the person charged with a violation submits a timely response, the Director, in consideration of the answer and the severity level of the violation, shall do one of the following:
  - 1. Issue an initial order conditionally imposing the full amount of the proposed civil penalty and any other sanctions proposed;
  - 2. Issue an initial order conditionally mitigating or waiving the proposed civil penalty under R9-7-1214(B);
  - 3. Waive the penalty as authorized under R9-7-1216(C);

4. Enter into a consent agreement as authorized under R9-7-1222.
- C. If the Department does not receive an adequate and timely response to the notice, the Director shall issue an initial order conditionally imposing any or all sanctions and civil penalties proposed in the notice of violation. If no civil penalty was proposed, the initial order may impose the base civil penalty listed in R9-7-1216.
- D. Response to the notice of violation as otherwise required in this Section may be waived by the Department, if the Department determines that a response is not required.

**R9-7-1211. Initial Orders**

- A. Initial orders are valid for 30 calendar days after the date of the order, or until the other time specified in the order, during which time the person charged may:
  1. Pay the civil penalty proposed and accept any proposed sanction, or
  2. Request a hearing before the Board.
- B. If a timely request for a hearing is not received, the order shall become final.

**R9-7-1212. Request for Hearing in Response to an Initial Order**

- A. In a request for a hearing, a person charged with a violation shall include a statement of the issues and the explanations and the arguments supporting denial of the violation or demonstrating extenuating circumstances, errors in notice, or any other reasons for not imposing the civil penalty, sanction, or both.
- B. The statement shall identify all issues. The failure to include an issue may, at the option of the Board, foreclose consideration of that issue. If a statement is not provided or is insufficient, the Board may summarily determine the issues.
- C. The person charged may admit the violation and request a reduction of the proposed civil penalty based on extenuating circumstances.
- D. The person charged may waive oral proceedings and request dismissal of any or all of the charged violations, reduction of the civil penalties, or modification of any other imposed sanction based on consideration by the Board of the written statement.

**R9-7-1213. Severity Levels of Violations**

- A. The following violations are classified as severity level I violations:
  1. Any failure, malfunction, or insufficiency of a safety system which may result in
    - a. Radiation exposure to a person,
    - b. A concentration of radionuclides; or

- c. A radiation level, in excess of 10 times the limits specified in 9 A.A.C. 7, or 10 times the prescribed therapeutic patient dose.
2. Any inaccurate or incomplete information that is intentionally provided by a licensee or registrant official, and if the information had been complete and accurate at the time it was provided, would have likely resulted in action such as an immediate order required to protect the public health and safety.
3. Any information that the Department requires be kept by a licensee or registrant that is incomplete or inaccurate because of falsification by or with the knowledge of a licensee or registrant official, and if the information had been complete and accurate at the time it was reviewed by the Department, would have likely resulted in action such as an immediate order required to protect the public health and safety.
4. Any concealment or attempted concealment of a severity level I violation of the Act, 9 A.A.C. 7, or a license condition. This is a separate violation in addition to the original violation.
5. Any concealment or attempted concealment of a severity level II violation of the Act, 9 A.A.C. 7, or a license condition. This violation shall increase the severity level of the original violation by one level.
6. For the purposes of subsections (A)(2) and (3) above the term “licensee or registrant official” means the owner, a partner, a corporate officer, a radiation safety officer, the individual signing an application for a license or registration, or the chairman of any radiation safety committee supervising the radiation safety program of the licensee or registrant.

**B.** The following violations are classified as severity level II violations:

1. Any failure, malfunction, or insufficiency of a safety system which may result in:
  - a. Radiation exposure to a person,
  - b. A concentration of radionuclides, or
  - c. A radiation level, in excess of two times the limits specified in 9 A.A.C. 7, or two times the prescribed therapeutic patient dose.
2. Any attempt to prevent a Department inspection.
3. Any concealment or attempted concealment of a severity level III violation of the Act, 9 A.A.C. 7, or a license condition by a licensee or registrant official as defined in subsection (A)(6). This violation shall increase the severity level of the original violation by one level.
4. Significant information provided and designated by a licensee or registrant and not

previously provided to the Department because of careless disregard on the part of a licensee official or registrant.

**C.** The following violations are classified as severity level III violations:

1. Any failure, malfunction, or insufficiency of a safety system, or loss of control over a radiation source, which may result in:
  - a. Radiation exposure to a person,
  - b. A concentration of radionuclides, or
  - c. A radiation level in excess of the limits specified in 9 A.A.C. 7, or 20% higher than the prescribed therapeutic patient dose.
2. Any concealment or attempted concealment of a severity level IV or V violation of the Act, 9 A.A.C. 7, or a registration or license condition. This violation shall increase the severity level of the original violation by one level.
3. Any violation of the safety requirements for the use, storage, disposal, or the preparation for transportation of sources of radiation, as prescribed in the Act, 9 A.A.C. 7, or in a license or registration condition, provided the violation does not meet the criteria for a severity level I or II violation and the licensee or registrant does not maintain a radiation protection program meeting the requirements of R9-7-407.
4. Any factually incorrect statement upon which the Department relied or would have relied in consideration of any action.
5. Any unlawful attempt to interfere with the progress of an inspection by the Department.
6. The acquisition of any source of radiation without the applicable current registration or license, unless otherwise authorized by these rules; or use of the source outside the scope of the current registration or license.
7. The continued use of sources of radiation after April 1, if the annual fee has not been paid for the current year.

**D.** The following violations are classified as severity level IV violations:

1. Any violation of R9-7-407;
2. Any violation of the safety requirements for the use, storage, disposal, or preparation for transportation of sources of radiation, prescribed in the Act, 9 A.A.C. 7, or in a license or registration condition, provided the violation does not meet the criteria for a severity level I, II or III violation;
3. Failure to maintain records of mammography quality control tests required in R9-7-614.
4. Any failure to comply with the reporting requirements in the Act or 9 A.A.C. 7.

**E.** The following violations are classified as severity level V violations:

1. Failure of a registrant or a licensee to comply with the recordkeeping requirements of:
  - a. The Act;
  - b. 9 A.A.C. 7; or
  - c. A registration or facility certification, or license condition, provided that all safety requirements prescribed in the Act, 9 A.A.C. 7, or in a license or registration condition are met or otherwise demonstrated.
2. If compliance with all safety requirements cannot be demonstrated by the registrant or licensee the failure to comply with the recordkeeping requirements is classified as a level IV violation.

**R9-7-1214. Mitigating Factors**

- A.** The Department may refrain from issuing a Notice of Violation for Severity Level IV or V violations identified by the registrant or licensee provided the severity level IV or V violations are identified in an inspection report, the report includes a brief description of the corrective action, and the violation meets all of the following criteria:
1. It was identified by the licensee, as a result of an event discovered by the licensee or registrant;
  2. It was not a violation that could reasonably be expected to have been prevented by the licensee's or registrant's corrective action for a previous violation or a previous licensee or registrant finding;
  3. It was or will be corrected within a reasonable time, by specific corrective action committed to by the registrant or licensee by the end of the inspection. The corrective action shall include comprehensive measures that will prevent reoccurrence;
  4. It was not a willful violation or, if it was willful:
    - a. The violation was reported to the Department;
    - b. The violation appears to be the isolated action of an employee without management involvement and the violation was not caused by lack of management oversight;
    - c. Significant remedial action was taken by the licensee or registrant, demonstrating the seriousness of the violation to all affected personnel.
- B.** The Director may:
1. Reduce the scheduled civil penalty, including any augmentation, by 50% for the discovery, remedy, and voluntary reporting of a severity level I or II violation by the registrant or licensee; or

2. Waive the scheduled civil penalty, including augmented civil penalties, for the discovery, remedy, and voluntary reporting of a severity level III, IV, or V violation by the registrant or licensee. For the purposes of this rule, “voluntary reporting” means that the registrant or licensee has notified the Department of a violation, the reporting of which may or may not be required under 9 A.A.C. 7.

**R9-7-1215. License and Registration Divisions**

A. Each registrant or license type is classified into one of three administrative sanction divisions.

1. Division I licenses and registrations:
  - a. Broad Academic Class A,
  - b. Broad Academic Class B,
  - c. Broad Academic Class C,
  - d. Broad Industrial Class A,
  - e. Broad Medical,
  - f. Class C Laser Facility,
  - g. Distribution,
  - h. Fixed Gauge Class A,
  - i. Industrial Radiography Class A,
  - j. Low Level Radioactive Waste Disposal Site,
  - k. Major Accelerator Facility,
  - l. Medical Materials Class A,
  - m. Medical Teletherapy,
  - n. NORM Commercial Disposal Site,
  - o. Nuclear Laundry,
  - p. Nuclear Pharmacy,
  - q. Open Field Irradiator,
  - r. Secondary Uranium Recovery,
  - s. Waste Processor Class A,
  - t. Well Logging,
  - u. X-Ray Machine Class A.
2. Division II licenses and registrations:
  - a. Broad Industrial Class B,
  - b. Broad Industrial Class C,
  - c. Class B Industrial Radiofrequency Facility,

- d. Class B Laser Facility,
  - e. Class C Industrial Radiofrequency Facility,
  - f. Fixed Gauge Class B,
  - g. Health Physics Class A,
  - h. Industrial Radiation Machine,
  - i. Industrial Radiography Class B,
  - j. Laser Light Show,
  - k. Limited Academic,
  - l. Medical Imaging Facility,
  - m. Medical Laser,
  - n. Medical Materials Class B,
  - o. Medical Radiofrequency Device Facility,
  - p. NORM Commercial Disposal Site,
  - q. Research and Development,
  - r. Self Shielded Irradiator,
  - s. Tanning Facility,
  - t. Waste Processor Class B,
  - u. X-Ray Machine Class B.
3. Division III licenses and registrations:
- a. Class A Industrial Radiofrequency Facility,
  - b. Class A Laser Facility,
  - c. Gas Chromatograph,
  - d. General Depleted Uranium,
  - e. General Industrial,
  - f. General Medical,
  - g. General Veterinary Medicine,
  - h. Health Physics Class B,
  - i. Laboratory,
  - j. Leak Detector,
  - k. Limited Industrial,
  - l. Medical Materials Class C,
  - m. Other Ionizing Radiation Machine,
  - n. Other Nonionizing Radiation Machine,
  - o. Portable Gauge,

- p. Possession Only,
- q. Radioactive waste transfer-for-disposal,
- r. Unclassified,
- s. Veterinary Medicine,
- t. X-ray Machine Class C,
- u. Class A Medical (non-cosmetic) Radiofrequency Facility,
- v. Class B Medical (non-cosmetic) Radiofrequency Facility,
- w. Class C Medical (non-cosmetic) Radiofrequency Facility,
- x. Class D Medical (non-cosmetic) Radiofrequency Facility.

- B.** Any person required by the Act to register the use of a general license with the Department, or to obtain a specific license from the Department, is considered a licensee of the appropriate type notwithstanding the failure of the person to register or obtain a license.
- C.** The Department shall classify each person that possesses an out-of-state specific license for the use of radioactive material and operates in Arizona under reciprocal recognition, as prescribed in R9-7-320 and authorized in R9-7-1302(D)(16), by placing the person into the administrative sanction division listed in subsection (A) that best defines the out-of-state, licensed activities.
- D.** For administrative purposes, the following persons are classified with the Division III licensees and registrants in subsection (A)(3):
  - 1. Any person not required to register the use of a general license,
  - 2. Any person not required to obtain a specific license,
  - 3. Any person not required to register a source of radiation who violates the Act or 9 A.A.C. 7, and
  - 4. Any person registered to provide x-ray machine service.

**R9-7-1216. Civil Penalties**

- A.** Except as augmented by R9-7-1217, the schedule of civil penalties is as follows:
  - 1. Severity level I violations:
    - a. Division I registration or license -- \$4,000;
    - b. Division II registration or license -- \$3,000;
    - c. Division III registration or license -- \$2,000.
  - 2. Severity level II violations:
    - a. Division I registration or license -- \$3,000;
    - b. Division II registration or license -- \$2,000;
    - c. Division III registration or license -- \$1,000.

3. Severity level III violations:
    - a. Division I registration or license -- \$2,000;
    - b. Division II registration or license -- \$1,000;
    - c. Division III registration or license -- \$500.
  4. Severity level IV violations:
    - a. Division I registration or license -- \$1,000;
    - b. Division II registration or license -- \$500;
    - c. Division III registration or license -- \$250.
  5. Severity level V violations:
    - a. Division I registration or license -- \$500,
    - b. Division II registration or license -- \$250,
    - c. Division III registration or license -- \$125.
- B.** Payment of civil penalties for severity level I and severity level II violations may not be avoided merely by rectifying the condition; however, the Board may mitigate or waive the penalty upon determining a violation meets all of the following:
1. It was not a violation that could reasonably be expected to have been prevented by the licensee's or registrant's corrective action for a previous violation or a previous licensee or registrant finding;
  2. It was or will be corrected within the time given for corrections, by specific corrective action committed to by the licensee or registrant by the end of the inspection, which includes immediate and comprehensive measures to prevent recurrence;
  3. It was not a willful violation.
- C.** The Director or Board shall waive payment of penalties for severity level III through severity level V violations provided:
1. The violation is not subject to augmentation under R9-7-1217; and
  2. The registrant or licensee submits a timely and adequate response to the notice; rectifies the conditions which appear to have caused the violation; and complies with the Act, 9 A.A.C. 7, registration, and license conditions.

**R9-7-1217. Augmentation of Civil Penalties**

- A.** A continuing violation, for the purposes of calculating the proposed civil penalty, is considered a separate violation for each day it continues. The second (or successive) day of a continuing violation is not considered a repeat violation of the violation occurring on the first day.
- B.** If a second severity level I violation is committed within five years, the Department shall increase

- the base civil penalty by 100%, provided the registration or license is not revoked under R9-7-1219.
- C.** If a second severity level II violation is committed within a period of five years, the Department shall increase the base civil penalty by 50%, provided the registration or license is not revoked under R9-7-1219.
  - D.** If a severity level III violation is repeated within five years, the Department shall increase the base civil penalty by 50%. If the same severity level III violation is repeated a second time within five years, the base civil penalty shall be increased by 100%, provided the registration or license is not revoked under R9-7-1219.
  - E.** If a severity level IV violation is repeated within five years, the Department shall propose the base d civil penalty.
    - 1. If the same violation occurs three times within five years, the Department shall increase the base civil penalty by 50%.
    - 2. If the same violation occurs four times within five years, the Department shall increase the base civil penalty by 100%, provided the registration or license is not revoked under R9-7-1219.
  - F.** If more than three severity level V violations are observed during two consecutive inspections, the Department shall impose a civil penalty for each violation. The base civil penalty for each violation is the base civil penalty assessed for a severity level V violation. If the inspection shows repetition of a violation the base civil penalty for each repeat violation is the base civil penalty assessed for a severity level IV violation. Subsection (E) does not apply to penalties under this subsection.
  - G.** Other rights and procedures are not affected by the repeat nature of a violation.
  - H.** A person may avoid the penalties in subsections (D) and (E) by demonstrating to the Director in the response to the penalty that the violation meets all of the following criteria:
    - 1. It was not a violation that could reasonably be expected to have been prevented by the licensee's or registrant's corrective action for a previous violation or a previous licensee or registrant finding;
    - 2. It was or will be corrected within the time given for correction, by specific corrective action committed to by the licensee or registrant by the end of the inspection, which includes immediate and comprehensive measures to prevent recurrence;
    - 3. It was not a willful violation.
  - I.** Notwithstanding any other provision of this Section, the Department shall not impose a penalty that exceeds a maximum of \$5,000 for each violation for each day up to a maximum of \$25,000

for any 30-day period.

**R9-7-1218. Payment of Civil Penalties**

- A. A person shall pay civil penalties imposed under this Article by certified check or money order payable to the Department and mailed or delivered to the Department at the address shown on the notice of violation.
- B. Payment of a civil penalty is due 30 calendar days after the effective date of the final order imposing the civil penalties, unless an alternate payment schedule is agreed upon before that date. A payment schedule shall not extend beyond one year after the due date.

**R9-7-1219. Additional Sanctions-Show Cause**

- A. If a severity level I violation is repeated or if any second severity level I violation is committed within 10 years, the Department shall require the registrant or licensee to show cause why the registration or license should not be suspended or revoked.
- B. If any second severity level II violation is committed within five years, or if a severity level II violation involving radioactive effluent releases, excessive radiation levels, or radiation overexposure to an individual is committed within five years of a similar severity level I violation, the Department shall require the registrant or licensee to show cause why the registration or license should not be suspended or revoked.
- C. If repeated or different severity level III violations are committed on three separate occasions within any five year period, the Department may require the registrant or licensee to show cause why the registration or license should not be suspended or revoked.

**R9-7-1220. Escalated Enforcement**

- A. The Director may issue an order to suspend, revoke, or modify a registration or license, or impound a radiation source for:
  - 1. Any severity level I violation; or
  - 2. Any of the following occurring within a five-year period:
    - a. A repeat severity level II violation,
    - b. A different second severity level II violation, or
    - c. A severity level II violation after a severity level I violation.
- B. The Director may issue an order impounding the radiation source or suspending, revoking, or modifying the registration or license upon determining that conditions exist which cause a potential for a severity level I or severity level II violation.

- C. The Department shall hold hearings according to A.R.S. § 30-688.
- D. An order to impound a radiation source, or an order to suspend, revoke, or modify a registration or a license shall remain in effect until the order is suspended or modified by the Board according to A.R.S. § 30-688.

**R9-7-1222. Enforcement Conferences**

- A. An enforcement conference consists of a meeting in person between management personnel of the registrant or licensee and the Department.
- B. The enforcement conference is informal; however, the Department shall make a record of items discussed and decisions reached. Statements made at the conference shall not be introduced in evidence at a formal hearing unless all parties have consented.
- C. Based on the results of the conference, the Department may:
  1. Dismiss the notice of violation;
  2. Enter into a consent agreement; or
  3. Continue with, or initiate, formal proceedings.

**R9-7-1223. Registration and Licensing Time-frames**

The Department shall perform an administrative completeness review and substantive review of an application for a new or renewal license or registration; or an amendment to a license or registration within the time-frames in Table A. The Department shall review an application for an amendment to an existing license or registration that changes the license category listed in R9-7-1306, using the time-frames specified for the requested category.

**Table A. Registration and Licensing Time-frames**

<b>REGISTRATION AND LICENSING TIME-FRAMES</b>			
<b>License or Registration category in R9-7-1306</b>	<b>Administrative Completeness Review Time-frame, in days</b>	<b>Substantive Review Time-frame, in days</b>	<b>Overall Time-frame, in days</b>
A1	90	30	120
A2	90	30	120
A3	90	30	120

A4	60	30	90
B1	90	30	120
B2	90	30	120
B3	90	30	120
B4	90	30	120
B5	90	30	120
B6	40	20	60
C1	60	30	90
C2	60	30	90
C3	60	30	90
C4	60	30	90
C5	60	30	90
C6	60	30	90
C7	60	30	90
C8	90	30	120
C9	60	30	90
C10	40	20	60
C11	90	30	120
C12	90	30	120
C13	90	30	120
C14	90	30	120
C15	90	30	120
C16	90	30	120
C17	90	30	120
D1	90	30	120
D2	90	30	120
D3	90	30	120
D4	40	20	60

D5	40	20	60
D6	90	30	120
D7	40	20	60
D8	60	30	90
D9	90	30	120
D10	90	30	120
D11	1095	365	1460
D12	730	180	910
D13	365	90	455
D14	90	30	120
D15	40	20	60
D16	20	10	30
D17	40	20	60
D18	90	30	120
D19	365	120	485
E1	40	20	60
E2	40	20	60
E3	40	20	60
E4	40	20	60
E5	90	30	120
E6	90	30	120
F1	40	20	60
F2	40	20	60
F3	40	20	60
F4	40	20	60
F5	20	10	30
F6	40	20	60
F7	40	20	60

F8	40	20	60
F9	40	20	60
F10	40	20	60
F11	40	20	60
F12	40	20	60
F13	40	20	60
F14	40	20	60
F15	40	20	60
F16	90	30	120

Footnote: “administrative completeness review time-frame”; “substantive review time-frame,” and “overall time-frame” are defined in A.R.S. § 41-1072.

## Statutory Authority for Rules in 9 A.A.C. 7, Article 12

### **30-654. Powers and duties of the department**

A. The department may:

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

B. The department shall:

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

12. Adopt rules that are applicable to the shipment of radioactive materials in conformity with and compatible with those established by the United States nuclear regulatory commission, the department of transportation, the United States treasury department and the United States postal service.

13. In individual cases, impose additional requirements to protect health and safety or grant necessary exemptions that will not jeopardize health or safety, or both.

14. Make recommendations to the governor and furnish such technical advice as required on matters relating to the utilization and regulation of sources of radiation.

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

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

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

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

C. All fees collected under subsection B, paragraph 17 of this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

### **30-681. Inspections**

A. The department or its duly authorized representatives may enter at all reasonable times on any private or public property for the purpose of determining whether there is compliance with or a violation of this chapter and rules adopted under this chapter, except that entry into areas under the jurisdiction of the federal government shall be effected only with the concurrence of the federal government or its duly designated representative.

B. If the director determines that there is reasonable cause to believe that a radiation source is not in compliance with the licensing requirements of this chapter, the director or the director's designee or agent may enter on and into the premises of any radiation source that is licensed or required to be licensed pursuant to this chapter at any reasonable time to determine compliance with this chapter and rules adopted pursuant to this chapter. An 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 the inspection shows that the radiation source is not adhering to the licensing requirements of this chapter, the director may take action authorized by this chapter. A radiation source whose license has been suspended or revoked in accordance with this subsection is subject to inspection when applying for relicensure or reinstatement of the license.

### **30-686. Appeal; hearing**

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

### **30-687. Assessment; civil penalty; enforcement; appeals; collection**

A. The director may assess a civil penalty against a person that violates this chapter or a rule adopted pursuant to this chapter in an amount not to exceed five thousand dollars for each violation. Each day a violation occurs constitutes a separate violation. The maximum amount of any assessment is twenty-five thousand dollars for any thirty-day period.

B. The director may issue a notice of assessment that includes the proposed amount of the assessment. In determining the amount of a civil penalty assessed against a person under subsection A of this section, the department shall consider all of the following:

1. Repeated violations of statutes and rules.
2. Patterns of noncompliance.
3. Types of violations.
4. The severity of the violations.
5. The potential for and occurrences of actual harm.
6. Threats to health and safety.
7. The number of persons affected by the violations.
8. The number of violations.
9. The length of time the violations have been occurring.

C. A person may appeal the assessment by requesting a hearing pursuant to title 41, chapter 6, article 10. If the assessment is appealed, the director may not take further action to enforce and collect the assessment until after the hearing.

D. Actions to enforce the collection of civil penalties assessed pursuant to subsection A of this section shall be brought by the attorney general or the county attorney in the name of the state in the justice court or the superior court in the county in which the violation occurred.

E. The department shall deposit, pursuant to sections 35-146 and 35-147, civil penalties collected pursuant to this section in the state general fund.

### **30-688. Emergency action**

A. If the director finds that the public health, safety or welfare imperatively requires emergency action and incorporates a finding to that effect in an order, the director may:

1. Order the summary suspension of a license pending proceedings for revocation or another action. These proceedings shall be promptly instituted and determined.
2. Order the impoundment of sources of radiation in the possession of any person that is not equipped to comply with or that fails to comply with this chapter or any rule adopted pursuant to this chapter.

B. The director may apply to the superior court for an injunction to restrain a person from violating a provision of this chapter or a rule adopted pursuant to this chapter. The court shall grant a temporary restraining order, a preliminary injunction or a permanent injunction without bond. The person may be served in any county of this state. The action shall be brought on behalf of the director by the attorney general or the county attorney of the county in which the violation is occurring.

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

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) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

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

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-

causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

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

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

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. 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 food for commercial purposes pursuant to paragraph 4 of this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

H. For the purposes of this section:

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

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

**41-1003. Required rule making**

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

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

Title 18, Chapter 11, Articles 4 and 5, Department of Environmental Quality – Water  
Quality Standards



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** November 3, 2020

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

**FROM:** Council Staff

**DATE:** October 9, 2020

**SUBJECT:** Department of Environment Quality  
Title 18, Chapter 11, Articles 4 & 5

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This Five-Year-Review Report (5YRR) from the Department of Environmental Quality relates to rules in Title 18, Chapter 11 regarding water quality standards. The report covers the following:

**Article 4:** Aquifer Water Quality Standards

**Article 5:** Aquifer Boundary and Protected Use Classification

The Department did not propose any changes in the last 5YRR of these rules.

### **Proposed Action**

The Department for the reasons mentioned in the report, indicates it plans to amend the following rules in order to improve overall clarity, conciseness, understandability, and consistency with other rules and statute:

**R18-11-403** - Analytical Methods

**R18-11-406** - Numeric Aquifer Water Quality Standards: Drinking Water  
Protected Use

**R18-11-407** - Aquifer Water Quality Standards in Reclassified Aquifers

**R18-11-502** - Aquifer Boundaries

**R18-11-504 - Agency Action on Petition**  
**R18-11-506 - Rescission of Reclassification**

The Department indicates it plans to complete a rulemaking that addresses the proposed changes by June 30, 2023.

**1. Has the agency analyzed whether the rules are authorized by statute?**

Yes, the Department cites to both general and specific statutory authority for these rules.

**2. Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department states that the rules establish a set of aquifer water quality standards for various regulatory programs to utilize. Programs include the Aquifer Protection Permits (APP); Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); Water Quality Assurance Revolving Fund (WQARF); and Underground Storage Tanks (UST).

An economic impact statement was not required in either the 1990 or the 1992 rulemakings. The Department believes that the economic impacts of article 4 are no greater than those when the article was created.

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

The Department believes that the benefits exceed the costs for each of the rules in the review and that they impose the least burden and costs to persons regulated by the rules.

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

Yes, the Department received multiple comments on the rules and properly responded to each comment.

**5. Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Department indicates the rules are overall clear, concise, and understandable with the exception of the following:

**R18-11-403 - Analytical Methods**  
**R18-11-407 - Aquifer Water Quality Standards in Reclassified Aquifers**  
**R18-11-504 - Agency Action on Petition**  
**R18-11-506 - Rescission of Reclassification**

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

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

**R18-11-403** - Analytical Methods

**R18-11-406** - Numeric Aquifer Water Quality Standards: Drinking Water Protected Use

**R18-11-407** - Aquifer Water Quality Standards in Reclassified Aquifers

**R18-11-502** - Aquifer Boundaries

**R18-11-504** - Agency Action on Petition

**R18-11-506** - Rescission of Reclassification

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

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

**R18-11-403** - Analytical Methods

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

Yes, the Department indicates the rules are enforced as written.

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

No, the Department indicates the rules are not more stringent than the corresponding federal laws; 42 U.S.C. 300f, 300g-1, 300f-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, 300j-9, and 300j-11 and 40 CFR 141.11, 141.12, and 141.13.

**10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules were adopted before July 29, 2010 and do not require the issuance of a regulatory permit or license.

**11. Conclusion**

As mentioned above, and for the reasons mentioned in the report, the Department indicates it plans to complete a rulemaking that would address the changes mentioned in the report by June 30, 2023. The proposed changes would qualify for an Expedited Rulemaking.

While Council staff recommends approval of this report, Council staff does not believe the Department has provided justification for the timeframe to complete its proposed

course of action. Council staff encourages the Council to further discuss the proposed timeframes.



Douglas A. Ducey  
Governor

ARIZONA DEPARTMENT  
OF  
ENVIRONMENTAL QUALITY



Misael Cabrera  
Director

August 26, 2020  
Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
100 N. 15<sup>th</sup> Avenue, #305  
Phoenix, AZ 85007

Re: Submittal of Five Year Rule Review Report for  
A.A.C. Title 18, Chapter 11, Articles 4 and 5

Dear Chair Sornsin:

I am pleased to submit to you, pursuant to A.R.S. § 41-1056 and A.A.C. R1-6-301, our agency's 5-Year Review Report for Title 18, Chapter 11, Articles 4 and 5.

Pursuant to A.R.S. § 41-1056(A), I certify that ADEQ is in compliance with A.R.S. § 41-1091 requirements for filing of notices of substantive policy statements and annual publication of a substantive policy statement directory.

Please contact Jon Rezabek in the Water Quality Division at 602-771-8219, or [rezabek.jon@azdeq.gov](mailto:rezabek.jon@azdeq.gov), if you have any questions.

Sincerely,

Misael Cabrera  
Director  
Arizona Department of Environmental Quality

Enclosure

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**Arizona Department of Environmental Quality**

**Five-Year-Review Report**

**Title 18. Environmental Quality**

**Chapter 11. Department of Environmental Quality – Water Quality Standards**

**Article 4. Aquifer Water Quality Standards**

**August 26, 2020**

**1. Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. § 49-104(B)(4).

Specific Statutory Authority: A.R.S. §§ 49-221, and 49-223.

**2. The objective of each rule:**

The purpose of these rules is to establish a set of aquifer water quality standards for various regulatory programs to utilize.

<b>Rule</b>	<b>Objective</b>
<b>R18-11-401</b>	This rule provides specific explanation for certain terms used in this Article.
<b>R18-11-403</b>	This rule specifies which analytical methods are used to determine compliance with an aquifer water quality standard.
<b>R18-11-404</b>	This rule determines which laboratories are approved for specific analysis when testing for compliance with the aquifer water quality standards.
<b>R18-11-405</b>	This rule describes narrative standards that will be applied to discharges to aquifers of the state.
<b>R18-11-406</b>	This rule establishes numeric aquifer water quality standards for aquifers that are classified for drinking water protected use.
<b>R18-11-407</b>	This rule establishes a process for the Director to set standards in an aquifer if it is reclassified for a use other than drinking water.
<b>R18-11-408</b>	This rule establishes procedures to petition the Director to adopt a numeric aquifer water quality standard as well as procedures for the Director to follow in granting or denying the petition.

3. **Are the rules effective in achieving their objectives?**

Yes  No

*The rules are effective other than as identified below.*

Rule	Explanation
R18-11-403	R18-11-403 meets its objective of providing the location of the approved analytical methods. The rule would be more effective, however, if it gave the correct reference to the specifically applicable rule, R9-14-610(C) for seeking approval on an alternative analytical method.

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

Yes  No

*The rules are consistent other than as identified below.*

Rule	Explanation
R18-11-403	Except for the incorrect citation (R9-14-607(B)), the rule is consistent with applicable state statutes and rules.
R18-11-406	The rule is consistent with state and federal statutes and rules, except as to A.R.S. § 49-223(A). A.R.S. § 49-223(A) requires adoption of new Federal MCLs through the opening of a rulemaking docket within one year of establishment. If substantial opposition is demonstrated in the state rulemaking docket regarding a particular constituent, a procedure can be followed where the Director may adopt a different AWQS. Due to higher priority strategic planning, past substantial opposition from stakeholders and agency resource constraints, ADEQ has not adopted 12 new MCLs. ADEQ opened a docket for Uranium and Arsenic on April 7, 2006 and received substantial opposition. <sup>1</sup> However, no further action was taken. The list of pollutants for which the AWQSs are either not aligned with the MCLs are as follows: aldicarb, aldicarb sulfoxide, aldicarb sulfone, bromate, chlorite, copper, haloacetic acids, lead, uranium, arsenic, total trihalomethanes, and total coliform. ADEQ has plans to address the AWQSs in Fiscal Year 2023.
R18-11-407	The rule is consistent with all applicable state and federal and statutes and rules. However the reference to A.R.S. § 49-223(D) is incorrect and should be changed to A.R.S. § 49-223(E).

5. **Are the rules enforced as written?**

Yes  No

*If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.*

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<sup>1</sup> 7 AAR 870 (Feb 16, 2001).

6. **Are the rules clear, concise, and understandable?**

Yes  No

*The rules are clear, concise, and understandable other than as identified below.*

Rule	Explanation
R18-11-403	The rule is clear, concise, and understandable, except for the incorrect citation. Any confusion as to the correct location of analytical methods can be mitigated by including the correct citation in an aquifer protection permit.
R18-11-407	The rule is clear, concise, and understandable; however, the citation should be updated.

7. **Has the agency received written criticisms of the rules within the last five years?**

Yes  No

*If yes, please fill out the table below*

Rule	Criticisms
R18-11-401	<p><u>Criticism 1</u>: The Department received a written criticism of the rule, stating that terminology such as igneous or nephelometric should be defined.</p> <p><u>Response 1</u>: The term igneous is a common geologic term, found in textbooks on Geology. The term is not used in a unique manner within the Article. Therefore, ADEQ does not have a compelling reason to add the definition. The term nephelometric refers to a nephelometer, which is a common instrument used to measure the concentration of suspended particulates in a liquid or gas colloid. ADEQ does not find it necessary to define nephelometer as the context surrounding the usage of the word is one of turbidity. When measuring turbidity, the nephelometer is the most common tool in use.</p> <p><u>Criticism 2</u>: The Department received a written criticism of the rule, stating that if R18-11-401(1-9) are the Article’s definitions of pollutants, then the list is too narrow. For example, the commenter said that the Article does not include constituents that are sometimes found in aquifers that are known to have effects on the human endocrine system, cause birth defects, cancer and mutation. The commenter further stated that the exclusion of these compounds is antithetical to the definition given in R18-11-401(3), [d]rinking water protected use means the protection and maintenance of aquifer water quality for human consumption. If an aquifer is meant for human consumption and is known to contain contaminants that can cause any of the effects given above, then how does ADEQ justify calling water safe, the commenter asked. Especially because, the commenter said, typical WWTPs were never designed to remove these compounds in the first place and it is well-known that many of them continue to exist in post-treated effluent.</p> <p><u>Response</u>: 2 – As noted in rule, A.A.C. R18-11-401 is intended to define terms in this Article in addition to the definitions in A.R.S. §§ 49-101 and 49-201. The definition of pollutants is listed in A.R.S. § 49-201(29). As required in statute,</p>

	<p>ADEQ has developed AWQS in A.A.C. R18-11-406, which lists concentration limits for pollutants used in regulatory programs.</p> <p><u>Criticism 3</u>: The Department received a written criticism of the rule, stating that R18-11-401(5) should be changed from "Mg/l" to "mg/l".</p> <p><u>Response</u>: 3 - The reason that “Mg/l” is capitalized at R18-11-401(5) is because of the grammatical rule to capitalize the first word of a new sentence.</p>
<p><b>R18-11-405</b></p>	<p><u>Criticism 1</u>: The Department received a written criticism of the rule, stating that the inclusion of a reference to where the water quality standard established for a navigable water of the state in R18-11-405(B) is found. The commenter followed up with this question, “Are these the standards in R18-11-406?”</p> <p><u>Response 1</u>: R18-11-405(B) refers to navigable waters of the state, which is defined in A.R.S. § 49-222. A.A.C. R18-11-405(B) does not refer to A.A.C. R18-11-406, but rather to Arizona Administrative Code R18-11 Article 1, “Water Quality Standards for Surface Waters.” Furthermore, “Waters of the State” is defined in A.R.S. § 49-201(41).</p> <p><u>Criticism 2</u>: The Department received a written criticism of the rule, referencing A.A.C. R18-11-405(B), “[a] discharge shall not cause or contribute to a violation of a water quality standard established for a navigable water of the state.” The phrase “navigable water of the state” is not defined in this section. If the rule is opened up, it would be helpful to add a definition to clarify that this means a water of the state and not a “surface water” (which is defined by ADEQ as a Water of the U.S). Consistency in use of terms across regulatory sections and definitions for similar terms that have different meanings would assist with clarity.</p> <p><u>Response 2</u>: A.A.C. R18-11-405(B) refers to navigable waters of the state, which is defined in A.R.S. § 49-222. A.A.C R18-11-405(B) does not refer to R18-11-406, but rather to Arizona Administrative Code R18-11 Article 1, “Water Quality Standards for Surface Waters.” Furthermore, “Waters of the State” is defined in A.R.S. 49-201(41).</p> <p><u>Criticism 3</u>: The Department received a written criticism of the rule, referencing R18-11-405(B), "...navigable water of the state." The commenter asks, with recent activities at the Federal level regarding WOTUS, how will this be administered at the state level?</p> <p><u>Response 3</u>: ADEQ is aware of EPA’s update of the Navigable Waters Protection Rule, which became effective in June 2020. It contains a new definition of Waters of the United States (WOTUS). The Department is currently reviewing the rule in detail to ensure a full understanding of how it impacts Arizona.</p>
<p><b>R18-11-406</b></p>	<p><u>Criticism 1</u>: The Department received a written criticism of the rule, stating, generally, that there should be standards for more chemicals.</p> <p><u>Response 1</u>: - AWQSs are standards ADEQ promulgated pursuant to A.R.S. §49-223, which generally adopts EPA’s primary drinking water maximum contaminant</p>

levels (PDWMCLs or MCLs) as Arizona’s AWQs. Therefore, the AWQS standards are designed to align with the national standards implemented by EPA.

Criticism 2: The Department received a written criticism of the rule, stating that New Mexico 20.6.2.3103 - Standards for Groundwater - should apply to the dissolved portion of the contaminants specified.

Response 2: - ADEQ reviewed the New Mexico rule for reference. EPA’s drinking water standards generally require analysis of “total” constituents in a sample, as opposed to “dissolved” constituents. However, when it comes to sampling groundwater for inorganic metals listed in A.A.C. R18-11-406(B), ADEQ has issued a substantive policy entitled, “Monitoring Groundwater for Metals to Determine Compliance with Aquifer Water Quality Standards Policy” — 0121.000, which states, situationally, when using a dissolved methodology is appropriate. ADEQ substantive policy 0121.000 can be found at the following website: <https://www.azdeq.gov/substantivepolicy?page=0%2C3> and was published on August 22, 1997; in the Arizona Administrative Register.<sup>2</sup> Therefore, the commenter’s concern about when to use a “total” versus a “dissolved” methodology has been addressed by ADEQ.

Criticism 3: The Department received a written criticism of the rule, stating that confusion is caused by the fact that some chemicals have multiple names that are not listed in this Article. Presenting the standards in a tabular format and listing all names a chemical may be called would be helpful.

Response 3: ADEQ is aware of the different naming conventions that exist concerning certain constituents. However, the Department follows EPA’s convention for primary drinking water MCLs and has no plans to deviate at this time.

Criticism 4: The Department received written criticisms of the rule, stating that the Arsenic standard should be changed to 0.01 mg/L to match the Federal MCL.

Response 4: EPA adjusted the Arsenic MCL from 0.05 mg/L to 0.01 mg/L in 2001. Pursuant to A.R.S. §49-223(A), ADEQ opened a rulemaking docket on April 7<sup>th</sup>, 2006 in order to adopt the MCL adjustment. In the rulemaking process, the Department received substantial opposition from the regulated community, reasoning against adoption of the new standard. A.R.S. § 49-223(A) and (B) provides a procedure for the Director to adopt a different AWQS, if substantial opposition is demonstrated in the rulemaking docket regarding a particular pollutant. Due to the substantial opposition received from stakeholders, higher priority strategic planning and insufficient resources, ADEQ has not yet adopted the Arsenic MCL. ADEQ has plans to address the AWQs in Fiscal Year 2023.

Criticism 5: The Department received a written criticism of the rule, urging ADEQ to align the Total Coliform AWQS with EPA’s Revised Total Coliform Rule (RTCR). The commenter went on to say that the AWQS rule was developed back

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<sup>2</sup> 3 AAR 2312 (Aug. 22, 1997).

in the 1980's. In April 2016, EPA's final RTCR became effective for drinking water. In creating the revision, the EPA established a Maximum Contaminant Level (MCL) for E. coli, and eliminated the MCL for Total Coliform bacteria. The revised rule still requires the analysis of Total Coliform bacteria as an indicator of a potential pathway of contamination into the drinking water distribution system, and requires an assessment if a specific frequency of total coliform detection is exceeded.

Response 5: EPA revised the Total Coliform Rule (RTCR) in 2016. Fifteen years earlier, in 2001, ADEQ adopted a rule requiring new sewage treatment facilities to comply with fecal coliform or E. coli treatment standards (AAC R18-9-204), prior to discharge to groundwater. When Total Coliform is exceeded in samples from groundwater monitoring wells, the agency requests resampling and analysis for fecal coliform or E. coli to determine whether fecal contamination in groundwater is actually present. Furthermore, Total Coliform AWQS continues to be protective of groundwater because detection of total coliform indicates that either fecal coliform (including E. coli) is present, or that other types of coliform are present. While monitoring for total coliform can require an extra analysis to confirm the presence of fecal contamination, it is still an effective indicator of potential contamination. ADEQ has plans to address the AWQSs in Fiscal Year 2023.

Criticism 6: The Department received a written criticism of the rule, stating that Asbestos should be placed in its own separate group, as it has a different reporting unit from the rest of the standards in the AWQSs.

Response 6: AWQSs are standards ADEQ promulgated pursuant to A.R.S. § 49-223, in which adopt EPA's primary drinking water maximum contaminant levels (PDWMCLs or MCLs) as Arizona's AWQSs. Asbestos's categorization in the inorganics list is accurate, despite its unique standard.

Criticism 7: The Department received a written criticism of the rule, drawing attention to A.A.C. R18-11-406(F), which states: if a sample of "total coliform" tests positive, a repeat sample shall be taken within 2 weeks. The commenter requests that "total coliform" be replaced with "E.coli."

Response 7: In 2001, ADEQ adopted a rule requiring new sewage treatment facilities to comply with fecal coliform or E. coli treatment standards (AAC R18-9-204), prior to discharge to groundwater. When Total Coliform is exceeded in samples from groundwater monitoring wells, the agency requests resampling and analysis for fecal coliform or E. coli to determine whether fecal contamination in groundwater is actually present. Furthermore, the Total Coliform AWQS continues to be protective of groundwater because detection of total coliform indicates that either fecal coliform (including E. coli) is present, or that other types of coliform are present. While monitoring for total coliform can require an extra analysis to confirm the presence of fecal contamination, it is still an effective indicator of potential contamination. EPA revised the Total Coliform Rule (RTCR) in 2016. ADEQ has plans to address the AWQSs in Fiscal Year 2023.

<p><b>General</b></p>	<p><u>Criticism 1</u>: The Department received a written criticism of the rule, stating that the rules are unlawful, inaccurate, and a continuing liability for the agency.</p> <p><u>Response 1</u>: Without further detail from the commenter, ADEQ cannot address any specific concerns. However, the Aquifer Water Quality Standards are required by statute, in accordance with A.R.S. §§49-221 and 49-223.</p> <p><u>Criticism 2</u>: The Department received a written criticism of the rule, stating that the objective of protecting groundwater is not always met due to repairs to discharging facilities that are not required.</p> <p><u>Response 2</u>: ADEQ’s Water Quality Division has a Unit devoted entirely to Groundwater Inspections and Compliance. This Unit inspects permitted facilities, responds to complaints from the public, conducts educational outreach events and enforces on out-of-compliance facilities. Enforcement includes requirements to repair facilities that are not functioning in accordance with their permit or are discharging without a permit.</p> <p><u>Criticism 3</u>: The Department received a written criticism of the rule, stating that not all aquifers should be considered drinking water aquifers if secondary Federal standards are not met, such as TDS or salinity. Many shallow aquifers cannot be considered potable water.</p> <p><u>Response 3</u>: A.R.S. §49-224(B) designates all aquifers in the state of Arizona to be for drinking water protected use unless the classification is changed in the manner provided in A.R.S. §49-224(C). No aquifers within the state have been classified outside of drinking water protected use at this time.</p> <p><u>Criticism 4</u>: The Department received a written criticism of the rule, stating that the application of the rule to all facilities regardless of discharge volume is unfair, inappropriate, and costly to the utility operations and to their customers. Loading based or reduced constituent standards should be set for average flows below a certain amount.</p> <p><u>Response 4</u>: The Aquifer Water Quality Standards, in the Aquifer Protection Permits, are utilized as individual constituent limits for facilities, measured at their Point of Compliance (POC). The POC is a determined place on the property where compliance with all applicable AWQs must be met. Therefore, the AWQs apply equally regardless of a facility’s large or small quantity of effluent.</p> <p>Protection of aquifers as sources of drinking water is mandated by statute. Permit Compliance requirements vary depending on the nature of the facility. For example ADEQ provides many general permits specifically tailored to smaller facility discharge volumes.</p> <p><u>Criticism 5</u>: The Department received a written criticism of the rule, stating that the rule is unenforceable on its face because it is outdated.</p>
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Response 5: The AWQs have authority in rule and statute (A.R.S. §§49-221 and 49-223). Due to this authority, they are enforceable.

Criticism 6: The Department received a written criticism of the rule, stating that the AWQs listed should be revalidated to ensure the highest achievable level of public health using the latest testing methods. Also, processing and reporting times should be shortened to reflect state-of-the-art capabilities.

Response 6: The comment on processing and reporting times is not relevant to the AWQs. Therefore, ADEQ cannot address any specific concerns. However, the AWQs are standards ADEQ promulgated pursuant to A.R.S. §49-223, in which generally adopts EPA's primary drinking water maximum contaminant levels (PDWMCLs or MCLs). Therefore, the AWQs are designed to align with the national standards implemented by EPA.

Criticism 7: The Department received a written criticism of the rule, stating that consideration of treated or reclaimed water from environmental clean-up activities should be addressed.

Response 7: Arizona rules and regulations allow for the reuse of treated or reclaimed water from any source. So long as the reclaimed water standards and AWQs are met per rule, reclaimed water can be used for its regulated purposes. Arizona has long been a leader in the use of reclaimed water for appropriate purposes.

Criticism 8: The Department received a written criticism of the rule, stating that it is important to state at the very outset the core Public Health values that underlie the rule.

Response 8: AWQs are designed to protect the public health and preserve Arizona's groundwater as valuable sources of drinking water. The purpose of the programs themselves are to protect the public health.

Criticism 9: The Department received a written criticism of the rule, stating that aquifers should be cleaned to true drinking water quality standards, which include far more analytes than what are mentioned in these Articles.

Response 9: The AWQs are designed to protect groundwater to drinking water standards. With the exception of a few contaminants for which AWQs have not been adopted, the program aligns with the Safe Drinking Water Act standards as required by A.R.S. §49-223. Therefore, the AWQs rules are designed to align with the national standards implemented by EPA.

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

An economic impact statement was not required in either the 1990 or 1992 rulemakings. ADEQ believes that the economic impacts of Article 4 are no greater than those when the article was created. Article 4 still sets standards that are implemented through other programs, such as the Aquifer Protection Permits (APP), Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Water Quality Assurance Revolving Fund (WQARF), and Underground Storage Tanks (UST). Any costs would be borne by the permittees and other persons who must ensure that a discharge to an aquifer or remediation impacting an aquifer complies with the aquifer water quality standards. ADEQ continues to believe that these costs are exceeded by the benefits of protection to human health and the environment.

9. **Has the agency received any business competitiveness analyses of the rules?**

Yes  No

No such analysis was submitted for any rule in this Article.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

*Please state what the previous course of action was and if the agency did not complete the action, please explain why not.*

ADEQ did not propose any amendments to the Article 4 rules in the previous Five-Year Review Report, submitted to the Council on April 15, 2015.

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:**

ADEQ believes that the benefits exceed the costs for each of the rules in this review, and that they impose the least burden and cost to persons regulated by the rules.

12. **Are the rules more stringent than corresponding federal laws?**

Yes  No

*Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s).*

The primary drinking water maximum contaminant levels were established pursuant to the Safe Drinking Water Act. No aquifer water quality standards are more stringent than the Federal maximum contaminant levels. The relevant authority in the Safe Drinking Water Act can be found in the United States Code, 42 U.S.C. 300f, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, 300j-9, and 300j-11. The primary drinking water maximum contaminant levels can be found in the Code of Federal Regulations at 40 CFR 141.11, 141.12 and 141.13.

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:**

These rules were adopted before July 29, 2010, but do not require issuance of a regulatory permit, license or agency authorization.

14. **Proposed course of action**

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

ADEQ's rules, as they exist now, provide the necessary information for the regulated community. Identified potential rulemakings could be made when the agency determines through strategic planning and consideration of priorities and resources that the time is right to open the rules consistent with Executive Order 2020-02. ADEQ anticipates opening the rules as noted above in R18-11-403, R18-11-406, and R18-11-407 by June 30, 2023.

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**Arizona Department of Environmental Quality**  
**Five-Year-Review Report**  
**Title 18. Environmental Quality**  
**Chapter 11. Department of Environmental Quality – Water Quality Standards**  
**Article 5. Aquifer Boundary and Protected Use Classification**  
**August 26, 2020**

1. **Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. § 49-104(B)(4)

Specific Statutory Authority: A.R.S. § 49-224

2. **The objective of each rule:**

The purpose of the rules is two-fold: (1) to provide a mechanism in rule for the aquifers of the state to be classified, reclassified or rescinded from classification concerning drinking water and nondrinking water protected use; (2) to provide a mechanism in rule for the boundaries of the aquifers in the state to be defined or redefined. The objective is to define and designate the aquifers so that regulatory programs have a jurisdiction upon which to operate.

<b>Rule</b>	<b>Objective</b>
<b>R18-11-501</b>	This rule provides specific explanation for certain terms used in this Article.
<b>R18-11-502</b>	This rule identifies and defines the boundaries of aquifers in Arizona using, to the maximum extent practicable, data available from the Arizona Department of Water Resources (ADWR). Most of the State is deemed to be underlain by aquifers, which are classified for drinking water protected use. The rule distinguishes between aquifers and low-yielding bedrock areas. In this manner, certain areas inside of the groundwater basin boundaries are excluded from designation as aquifers.
<b>R18-11-503</b>	This rule establishes a procedure that a person can use to petition the Director to reclassify an aquifer. The rule specifically identifies the information that a petitioner should submit to ADEQ to allow the findings identified in A.R.S. § 49-224(C).
<b>R18-11-504</b>	This rule establishes procedures for taking action on a petition to reclassify an aquifer. The rule also triggers actions by ADEQ to initiate rulemaking for aquifer water quality standards when a petition to reclassify an aquifer is granted.
<b>R18-11-505</b>	This rule establishes procedures for public participation regarding the proposed aquifer reclassification.
<b>R18-11-506</b>	This rule establishes procedures to rescind an aquifer reclassification.

3. **Are the rules effective in achieving their objectives?**

Yes  No

*If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.*

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

Yes  No

*The rules are consistent other than as identified below.*

Rule	Explanation
R18-11-502	Incorporations in subsections (A) and (B) do not comply with all requirements of A.R.S. § 41-1028(B) and (C), and R1-1-414, specifically that the rule does not mention that the incorporated items contain no later editions or amendments. Also, even though permitted under R1-1-414(E), stating that copies of the incorporated item are on file at the Secretary of State's office is not the current method of identifying the location.
R18-11-504	The rule is generally consistent with all applicable state and federal statutes and rules. However the reference to A.R.S. § 49-204 should be deleted. At the time the rule was written, A.R.S. § 49-204 established a Water Quality Advisory Council. The topic of A.R.S. § 49-204 now is grey water reuse.
R18-11-506	The rule is generally consistent with all applicable state statutes and rules. However the reference to A.R.S. § 49-204 should be deleted. At the time the rules were written, A.R.S. § 49-204 established a Water Quality Advisory Council. The topic of A.R.S. § 49-204 now is grey water reuse.

5. **Are the rules enforced as written?**

Yes  No

*If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.*

6. **Are the rules clear, concise, and understandable?**

Yes  No

*The rules are clear, concise, and understandable other than as identified below.*

Rule	Explanation
R18-11-504	The rule provides ADEQ with the means to take action on a petition. ADEQ believes that if there were any confusion to the regulated community on the incorrect reference to A.R.S. § 49-204, that ADEQ could provide a clear explanation of the public participation requirements through a public notice. Under the statute governing aquifer reclassification, ADEQ must conduct a public hearing, with prior public notice (A.R.S. §§ 49-224(C), 49-208).
R18-11-506	The rule provides a means for returning an aquifer to a drinking water protected use status if the conditions specified in the original reclassification change. ADEQ believes that if there were any confusion to the regulated community on the incorrect reference to A.R.S. § 49-204, that ADEQ could provide a clear explanation of the public participation requirements through a public notice. Under the statute governing aquifer reclassification, ADEQ must conduct a public

	hearing, with prior public notice (A.R.S. §§ 49-224(C), 49-208). Also, as this rule states, rescission of an aquifer reclassification must be done by rule, which has its own public participation requirements.
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7. **Has the agency received written criticisms of the rules within the last five years?**

Yes  No

*If yes, please fill out the table below:*

Rule	Criticism
<b>R18-11-502</b>	<p><u>Criticism 1</u>: The Department received a written criticism of the rule, stating that aquifer boundaries in many parts of Arizona, specifically Northern and Central Arizona do not conform to basin and subbasin boundaries determined by ADWR in 1984 (See A.A.C. R18-11-502(A)). Examples:</p> <ol style="list-style-type: none"> <li>1) Multiple hydrologically distinct aquifers occur within, and extend beyond, the boundaries of the Little Colorado Plateau Basin. In fact, some of them cross state lines to the east and north (Bidahochi Aquifer, D aquifer, N aquifer, C aquifer, and R-M aquifer).</li> <li>2) Aquifers (C aquifer and R-M aquifer) in the Coconino Plateau extend southward and westward into parts of the Verde River and Peach Springs Basins. Also, they receive groundwater as under flow from the Little Colorado River Basin.</li> <li>3) Parts of the C aquifer and R-M aquifers extend southward from the Little Colorado River Basins discharging into areas in the Tonto and Salt River Basins.</li> <li>4) Aquifers in the Kanab Plateau Basin (N aquifer and R-M aquifer) extend westward to both the Shivwits and Grand Wash Basins. There have been many hydrogeologic and groundwater model reports in support of this, including ADWR's own "Groundwater Atlas" (2006-2009); all occurring since the 1984 ADWR Boundary determination.</li> </ol> <p><u>Response 1</u>: ADEQ agrees that aquifer boundaries may not conform to basin and subbasin boundaries determined by ADWR in 1984 (SEE A.A.C. R18-11-502(A) and (B)). However, given the fact that all aquifers in Arizona are currently classified as "drinking water protected use," regulation of facilities based on aquifer boundaries is not at issue (SEE A.R.S. § 49-224(B)). Furthermore, A.A.C. R18-11-502(D) further diminishes any regulatory issue with aquifer boundary as any determinations made that a facility is outside of the boundaries, none-the-less, is subject to A.R.S. § 49-241, which is "Permit required to discharge" (regulation under the Aquifer Protection Permits).</p> <p><u>Criticism 2</u>: The Department received a written criticism of the rule, stating that in the context of protection and maintenance of aquifer water quality for human consumption, imposing artificial boundaries on aquifers and aquifer systems make it difficult to determine source areas, flow pathways, and the discharge zones of pollutants and affected aquifer water quality. This is especially important where aquifers cross into basins or sub-basins that might not otherwise</p>

	<p>be considered.</p> <p><u>Response 2:</u> The purpose of aquifer boundaries is not to determine source areas, flow pathways, and discharge zones of pollutants, but to <i>designate</i> them for <i>drinking water protected use</i> (A.A.C. R18-11-501(1)) or another use. Reclassification of aquifers via A.A.C. R18-11-503 includes an analysis as to whether other aquifers would be impacted by a reclassification of the given aquifer (A.A.C. R18-11-503(B)(3)(j)).</p> <p><u>Criticism 3:</u> The Department received a written criticism of the rule, stating that a reference to a list of reclassified aquifers and the reasons for reclassification is missing from the rule.</p> <p><u>Response 3:</u> No aquifers have been reclassified since the inception of the Aquifer Boundaries and Protected Use Classification went into effect.</p>
<p style="text-align: center;"><b>General</b></p>	<p><u>Criticism 1:</u> The Department received a written criticism of the rule, stating that the indivisible relationship between surface water and groundwater is not sufficiently and consistently recognized or defined.</p> <p><u>Response 1:</u> ADEQ acknowledges a connection between surface and groundwater. However, the AWQs are standards ADEQ promulgated pursuant to A.R.S. §49-223, which generally adopts EPA’s primary drinking water maximum contaminant levels (PDWMCLs or MCLs). Therefore, the AWQS standards are designed to align with the national standards implemented by EPA.</p> <p>The current authority mandates ADEQ to protect groundwater for drinking water purposes in the manner provided statutorily. As a separate matter, ADEQ protects surface water quality through standards based on uses of surface water.</p> <p><u>Criticism 2:</u> The Department received a written criticism of the rule, stating that this Article is inconsistent with agency statements and actions regarding Underground Injection Control (UIC).</p> <p><u>Response 2:</u> The agency does not find inconsistencies between this Article and implementing a UIC program. Furthermore, upon ADEQ’s prospective EPA approval of a state-run UIC program, UIC permittees will be exempt from state APP regulation.</p> <p><u>Criticism 3:</u> The Department received a written criticism of the rule, stating that the Article is aging and should be reviewed thoroughly to ensure the latest modeling techniques are used to determine aquifer boundaries. Recent USGS aquifer studies have proven long-accepted data to be erroneous.</p> <p><u>Response 3:</u> ADEQ acknowledges that some components of the Aquifer Boundary and Protected Use Classification are dated. However, the rule continues to complete its main function, to protect aquifers for drinking water purposes.</p>

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

An economic impact statement was not required in either the 1987 or 1989 rulemakings. ADEQ believes that the economic impacts of Article 5 are no greater than those when the article was created. Under A.R.S. § 49-223(A), aquifer water quality standards were set at the federal primary maximum contaminant levels for drinking water; under A.R.S. § 49-224(B), all aquifers in the state are classified as for drinking water protected use. The Article 5 rules establish a procedure for the Director to reclassify an aquifer from a drinking water protected use to a nondrinking water protected use pursuant to A.R.S. § 49-224(C). If the Director decides to reclassify an aquifer, ADEQ must initiate proceedings for new aquifer water quality standards for the aquifer classification. R18-11-504(C), R18-11-407(C).

The Article 5 rules benefit a person who seeks to discharge to an aquifer without unnecessarily meeting the costs of aquifer water quality standards designed to protect groundwater as a drinking water source. The Article 5 rules implement the standard set in A.R.S. § 49-224 to determine that the short-term and long-term benefits to the public significantly outweigh the short-term and long-term costs to the public. A.R.S. §49-224(C)(3).

9. **Has the agency received any business competitiveness analyses of the rules?**

Yes  No

No such analysis was submitted for any rules in this Article.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

*Please state what the previous course of action was and if the agency did not complete the action, please explain why not.*

ADEQ did not propose any amendments to the Article 5 rules in the previous Five-Year Review Report, submitted to the Council on April 15, 2015.

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:**

ADEQ believes that the benefits exceed the costs for each of the rules in this review, and that they impose the least burden and cost to persons regulated by the rules.

12. **Are the rules more stringent than corresponding federal laws?**

Yes  No

*Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?*

Article 5 does not have 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:**

These rules were adopted before July 29, 2010, but do not require issuance of a regulatory permit, license or agency authorization.

14. **Proposed course of action:**

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

ADEQ's rules, as they exist now, provide the necessary information for the regulated community. Identified potential rulemakings could be made when the agency determines through strategic planning and consideration of priorities and resources that the time is right to open the rules consistent with Executive Order 2020-02. ADEQ anticipates opening the rules as noted above in R18-11-502, R18-11-504, and R18-11-506 by June 30, 2023.

# Arizona Administrative CODE

18 A.A.C. 11 Supp. 19-3

www.azsos.gov

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of July 1, 2019 through September 30, 2019

## Title 18

**ARD** Office of the Secretary of State  
**ADMINISTRATIVE RULES DIVISION**

## TITLE 18. ENVIRONMENTAL QUALITY

### CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

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="#">R18-11-101. Definitions .....</a>	<a href="#">3</a>	<a href="#">Table 11.</a>	<a href="#">Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife coldwater, Unionid Mussels Present .....</a>	<a href="#">22</a>
<a href="#">R18-11-107.01. Antidegradation Criteria .....</a>	<a href="#">6</a>	<a href="#">Table 12.</a>	<a href="#">Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife warmwater, Unionid Mussels Present .....</a>	<a href="#">23</a>
<a href="#">R18-11-109. Numeric Water Quality Standards .....</a>	<a href="#">9</a>	<a href="#">Table 13.</a>	<a href="#">Chronic Criteria for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife coldwater and warmwater, Unionid Mussels Present .....</a>	<a href="#">24</a>
<a href="#">R18-11-114. Mixing Zones .....</a>	<a href="#">12</a>	<a href="#">Table 14.</a>	<a href="#">Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Coldwater, Unionid Mussels Absent .....</a>	<a href="#">25</a>
<a href="#">R18-11-115. Site-Specific Standards .....</a>	<a href="#">13</a>	<a href="#">Table 15.</a>	<a href="#">Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Warmwater and Effluent Dependent, Unionid Mussels Absent ...</a>	<a href="#">26</a>
<a href="#">R18-11-120. Enforcement of Non-permitted Discharges .....</a>	<a href="#">14</a>	<a href="#">Table 16.</a>	<a href="#">Chronic Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Warmwater and Effluent Dependent, Unionid Mussels Absent ...</a>	<a href="#">27</a>
<a href="#">R18-11-122. Variances .....</a>	<a href="#">14</a>	<a href="#">Table 17.</a>	<a href="#">Chronic Criteria for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife coldwater, Unionid Mussels Absent .....</a>	<a href="#">28</a>
<a href="#">Appendix A. Numeric Water Quality Standards .....</a>	<a href="#">17</a>	<a href="#">Appendix B.</a>	<a href="#">Surface Waters and Designated Uses .....</a>	<a href="#">30</a>
<a href="#">Table 1. Water Quality Criteria By Designated Use (see f) .....</a>	<a href="#">17</a>	<a href="#">Appendix C.</a>	<a href="#">Site-Specific Standards .....</a>	<a href="#">56</a>
<a href="#">Table 2. Acute Water Quality Standards for Dissolved Cadmium .....</a>	<a href="#">20</a>			
<a href="#">Table 3. Chronic Water Quality Standards for Dissolved Cadmium .....</a>	<a href="#">20</a>			
<a href="#">Table 4. Water Quality Standards for Dissolved Chromium III .....</a>	<a href="#">20</a>			
<a href="#">Table 5. Water Quality Standards for Dissolved Copper ..</a>	<a href="#">20</a>			
<a href="#">Table 6. Water Quality Standards for Dissolved Lead .....</a>	<a href="#">21</a>			
<a href="#">Table 7. Water Quality Standards for Dissolved Nickel ..</a>	<a href="#">21</a>			
<a href="#">Table 8. Water Quality Standards for Dissolved Silver ...</a>	<a href="#">21</a>			
<a href="#">Table 9. Water Quality Standards for Dissolved Zinc .....</a>	<a href="#">21</a>			
<a href="#">Table 10. Water Quality Standards for Pentachlorophenol ..</a>	<a href="#">22</a>			

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<http://www.azdeq.gov/node/3934>

**The release of this Chapter in Supp. 19-3 replaces Supp. 16-4, 1-63 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.

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*Rhonda Paschal, managing rules editor, assisted with the editing of this chapter.*



Administrative Rules Division  
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**TITLE 18. ENVIRONMENTAL QUALITY**

**CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS**

**ARTICLE 1. WATER QUALITY STANDARDS FOR SURFACE WATERS**

Tables in Article 1, Appendix A have been updated and now include historical notes (Supp. 16-4).

Article 1, consisting of Appendices A through C, repealed April 24, 1996 (Supp. 96-2).

Article 1, consisting of Section R18-11-103, reserved effective April 24, 1996 (Supp. 96-2).

Article 1, consisting of Sections R18-11-105 and R18-11-106, and Appendices A and B, adopted April 24, 1996 (Supp. 96-2).

Article 1, consisting of Sections R18-11-101 and R18-11-102, R18-11-104, R18-11-107 through R18-11-109, R18-11-111 through R18-11-113, R18-11-115, R18-11-117 and R18-11-118, R18-11-120 and R18-11-121, amended effective April 24, 1996 (Supp. 96-2).

Article 1, consisting of Sections R18-11-101 through R18-11-121 and Appendices A through C, adopted effective February 18, 1992 (Supp. 92-1).

Article 1, consisting of Section R18-11-101, repealed effective February 18, 1992 (Supp. 92-1).

Article 1 consisting of Section R9-21-101 renumbered as Article 1, Section R18-11-101 (Supp. 87-3).

Section

R18-11-101. Definitions ..... 3

R18-11-102. Applicability ..... 5

R18-11-103. Repealed ..... 5

R18-11-104. Designated Uses ..... 5

R18-11-105. Tributaries; Designated Uses ..... 5

R18-11-106. Net Ecological Benefit ..... 6

R18-11-107. Antidegradation ..... 6

R18-11-107.01. Antidegradation Criteria ..... 6

R18-11-108. Narrative Water Quality Standards ..... 8

R18-11-108.01. Narrative Biological Criteria for Wadeable, Perennial Streams ..... 8

R18-11-108.02. Narrative Bottom Deposit Criteria for Wadeable, Perennial Streams ..... 8

R18-11-108.03. Narrative Nutrient Criteria for Lakes and Reservoirs ..... 8

R18-11-109. Numeric Water Quality Standards ..... 9

R18-11-110. Salinity Standards for the Colorado River ..... 10

R18-11-111. Analytical Methods ..... 11

R18-11-112. Outstanding Arizona Waters ..... 11

R18-11-113. Effluent-Dependent Waters ..... 12

R18-11-114. Mixing Zones ..... 12

R18-11-115. Site-Specific Standards ..... 13

R18-11-116. Resource Management Agencies ..... 14

R18-11-117. Canals and Urban Park Lakes ..... 14

R18-11-118. Dams and Flood Control Structures ..... 14

R18-11-119. Natural background ..... 14

R18-11-120. Enforcement of Non-permitted Discharges ..... 14

R18-11-121. Schedules of Compliance ..... 14

R18-11-122. Variances ..... 14

R18-11-123. Discharge Prohibitions ..... 16

Appendix A. Numeric Water Quality Standards ..... 17

Table 1. Water Quality Criteria By Designated Use (see f) .....17

Table 2. Acute Water Quality Standards for Dissolved Cadmium .....20

Table 3. Chronic Water Quality Standards for Dissolved Cadmium .....20

Table 4. Water Quality Standards for Dissolved Chromium III .....20

Table 5. Water Quality Standards for Dissolved Copper .....20

Table 6. Water Quality Standards for Dissolved Lead .....21

Table 7. Water Quality Standards for Dissolved Nickel .....21

Table 8. Water Quality Standards for Dissolved Silver .....21

Table 9. Water Quality Standards for Dissolved Zinc .....21

Table 10. Water Quality Standards for Pentachlorophenol .....22

Table 11. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife coldwater, Unionid Mussels Present .....22

Table 12. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife warmwater, Unionid Mussels Present .....23

Table 13. Chronic Criteria for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife coldwater and warmwater, Unionid Mussels Present .....24

Table 14. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Coldwater, Unionid Mussels Absent .....25

Table 15. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Warmwater and Effluent Dependent, Unionid Mussels Absent .....26

Table 16. Chronic Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Warmwater and Effluent Dependent, Unionid Mussels Absent .....27

Table 17. Chronic Criteria for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife coldwater, Unionid Mussels Absent .....28

Table 18. Repealed .....28

Table 19. Repealed .....28

Table 20. Repealed .....29

Table 21. Repealed .....29

Table 22. Repealed .....29

Table 23. Repealed .....29

Table 24. Repealed .....29

Table 25. Renumbered .....29

Table 26. Renumbered .....29

Appendix B. Surface Waters and Designated Uses .....30

Appendix C. Site-Specific Standards .....56

**ARTICLE 2. REPEALED**

Article 2, consisting of Sections R18-11-201 through R18-11-205, adopted effective February 18, 1992 (Supp. 92-1).

Article 2, consisting of Sections R18-11-201 through R18-11-214 and Appendices A and B, repealed effective February 18, 1992 (Supp. 92-1).

Article 2 consisting of Sections R9-21-201 through R9-21-214 and Appendices A and B renumbered as Article 2, Sections R18-11-201 through R18-11-214 and Appendices A and B (Supp. 87-3).

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

Section  
 R18-11-201. Repealed ..... 56  
 R18-11-202. Repealed ..... 56  
 R18-11-203. Repealed ..... 56  
 R18-11-204. Repealed ..... 56  
 R18-11-205. Repealed ..... 56  
 R18-11-206. Repealed ..... 57  
 R18-11-207. Repealed ..... 57  
 R18-11-208. Repealed ..... 57  
 R18-11-209. Repealed ..... 57  
 R18-11-210. Repealed ..... 57  
 R18-11-211. Repealed ..... 57  
 R18-11-212. Repealed ..... 57  
 R18-11-213. Repealed ..... 57  
 R18-11-214. Repealed ..... 58  
 Appendix A. Repealed ..... 58  
 Appendix B. Repealed ..... 58

**ARTICLE 3. RECLAIMED WATER QUALITY STANDARDS**

*Article 3, consisting of Sections R18-11-301 through R18-11-309 and Table A, adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).*

*Article 3 heading repealed effective April 24, 1996 (Supp. 96-2).*

*Article 3, consisting of Sections R18-11-301 through R18-11-304 repealed effective February 18, 1992 (Supp. 92-1).*

*Article 3 consisting of Sections R9-21-301 through R9-21-304 renumbered as Article 3, Sections R18-11-301 through R18-11-304 (Supp. 87-3).*

Section  
 R18-11-301. Definitions ..... 58  
 R18-11-302. Applicability ..... 58  
 R18-11-303. Class A+ Reclaimed Water ..... 58  
 R18-11-304. Class A Reclaimed Water ..... 59  
 R18-11-305. Class B+ Reclaimed Water ..... 59  
 R18-11-306. Class B Reclaimed Water ..... 59  
 R18-11-307. Class C Reclaimed Water ..... 60  
 R18-11-308. Industrial Reuse ..... 60  
 R18-11-309. Reclaimed Water Quality Standards for an Unlisted Type of Direct Reuse ..... 60  
 Table A. Minimum Reclaimed Water Quality Requirements for Direct Reuse ..... 60

**ARTICLE 4. AQUIFER WATER QUALITY STANDARDS**

Section  
 R18-11-401. Definitions ..... 61  
 R18-11-402. Repealed ..... 61

R18-11-403. Analytical Methods .....61  
 R18-11-404. Laboratories .....61  
 R18-11-405. Narrative Aquifer Water Quality Standards .....61  
 R18-11-406. Numeric Aquifer Water Quality Standards:  
 Drinking Water Protected Use .....61  
 R18-11-407. Aquifer Water Quality Standards in Reclassified  
 Aquifers .....62  
 R18-11-408. Petition for Adoption of a Numeric Aquifer Water  
 Quality Standard .....63  
 Appendix 1. Repealed .....63  
 Appendix 2. Repealed .....63  
 Appendix 3. Repealed .....63  
 Appendix 4. Repealed .....63  
 Appendix 5. Repealed .....63  
 Appendix 6. Repealed .....63  
 Appendix 7. Repealed .....63

**ARTICLE 5. AQUIFER BOUNDARY AND PROTECTED USE CLASSIFICATION**

*New Article 5 consisting of Sections R18-11-501 through R18-11-504 and Section R18-11-506 adopted effective October 22, 1987.*

Section  
 R18-11-501. Definitions .....63  
 R18-11-502. Aquifer boundaries .....63  
 R18-11-503. Petition for reclassification .....64  
 R18-11-504. Agency action on petition .....64  
 R18-11-505. Public participation .....64  
 R18-11-506. Rescission of reclassification .....64

**ARTICLE 6. IMPAIRED WATER IDENTIFICATION**

*Article 6, consisting of Sections R18-11-601 through R18-11-606, made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).*

Section  
 R18-11-601. Definitions .....64  
 R18-11-602. Credible Data .....66  
 R18-11-603. General Data Interpretation Requirements .....68  
 R18-11-604. Types of Surface Waters Placed on the Planning List and 303(d) List .....68  
 R18-11-605. Evaluating A Surface Water or Segment For Listing and Delisting .....70  
 Table 1. Minimum Number of Samples Exceeding the Numeric Standard .....71  
 Table 2. Minimum Number of Samples Exceeding the Numeric Standard .....72  
 R18-11-606. TMDL Priority Criteria for 303(d) Listed Surface Waters or Segments .....73

## CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

## ARTICLE 1. WATER QUALITY STANDARDS FOR SURFACE WATERS

## R18-11-101. Definitions

The following terms apply to this Article:

1. "Acute toxicity" means toxicity involving a stimulus severe enough to induce a rapid response. In aquatic toxicity tests, an effect observed in 96 hours or less is considered acute.
2. "Agricultural irrigation (AgI)" means the use of a surface water for crop irrigation.
3. "Agricultural livestock watering (AgL)" means the use of a surface water as a water supply for consumption by livestock.
4. "Annual mean" is the arithmetic mean of monthly values determined over a consecutive 12-month period, provided that monthly values are determined for at least three months. A monthly value is the arithmetic mean of all values determined in a calendar month.
5. "Aquatic and wildlife (cold water) (A&Wc)" means the use of a surface water by animals, plants, or other cold-water organisms, generally occurring at an elevation greater than 5000 feet, for habitation, growth, or propagation.
6. "Aquatic and wildlife (effluent-dependent water) (A&Wedw)" means the use of an effluent-dependent water by animals, plants, or other organisms for habitation, growth, or propagation.
7. "Aquatic and wildlife (ephemeral) (A&We)" means the use of an ephemeral water by animals, plants, or other organisms, excluding fish, for habitation, growth, or propagation.
8. "Aquatic and wildlife (warm water) (A&Ww)" means the use of a surface water by animals, plants, or other warm-water organisms, generally occurring at an elevation less than 5000 feet, for habitation, growth, or propagation.
9. "Arizona Pollutant Discharge Elimination System (AZPDES)" means the point source discharge permitting program established under 18 A.A.C. 9, Article 9.
10. "Assimilative capacity" means the difference between the baseline water quality concentration for a pollutant and the most stringent applicable water quality criterion for that pollutant.
11. "Clean Water Act" means the Federal Water Pollution Control Act [33 U.S.C. 1251 to 1387].
12. "Complete Mixing" means the location at which concentration of a pollutant across a transect of a surface water differs by less than five percent.
13. "Criteria" means elements of water quality standards that are expressed as pollutant concentrations, levels, or narrative statements representing a water quality that supports a designated use.
14. "Critical flow conditions of the discharge" means the hydrologically based discharge flow averages that the director uses to calculate and implement applicable water quality criteria to a mixing zone's receiving water as follows:
  - a. For acute aquatic water quality standard criteria, the discharge flow critical condition is represented by the maximum one-day average flow analyzed over a reasonably representative timeframe.
  - b. For chronic aquatic water quality standard criteria, the discharge flow critical flow condition is represented by the maximum monthly average flow analyzed over a reasonably representative timeframe.
  - c. For human health based water quality standard criteria, the discharge flow critical condition is the long-term arithmetic mean flow, averaged over several years so as to simulate long-term exposure.
15. "Critical flow conditions of the receiving water" means the hydrologically based receiving water low flow averages that the director uses to calculate and implement applicable water quality criteria:
  - a. For acute aquatic water quality standard criteria, the receiving water critical condition is represented as the lowest one-day average flow event expected to occur once every ten years, on average (1Q10).
  - b. For chronic aquatic water quality standard criteria, the receiving water critical flow condition is represented as the lowest seven-consecutive-day average flow expected to occur once every 10 years, on average (7Q10), or
  - c. For human health based water quality standard criteria, in order to simulate long-term exposure, the receiving water critical flow condition is the harmonic mean flow.
16. "Deep lake" means a lake or reservoir with an average depth of more than 6 meters.
17. "Designated use" means a use specified in Appendix B of this Article for a surface water.
18. "Domestic water source (DWS)" means the use of a surface water as a source of potable water. Treatment of a surface water may be necessary to yield a finished water suitable for human consumption.
19. "Effluent-dependent water (EDW)" means a surface water, classified under R18-11-113 that consists of a point source discharge of wastewater. An effluent-dependent water is a surface water that, without the point source discharge of wastewater, would be an ephemeral water.
20. "Ephemeral water" means a surface water that has a channel that is at all times above the water table and flows only in direct response to precipitation.
21. "Existing use" means a use attained in the waterbody on or after November 28, 1975, whether or not it is included in the water quality standards.
22. "Fish consumption (FC)" means the use of a surface water by humans for harvesting aquatic organisms for consumption. Harvestable aquatic organisms include, but are not limited to, fish, clams, turtles, crayfish, and frogs.
23. "Full-body contact (FBC)" means the use of a surface water for swimming or other recreational activity that causes the human body to come into direct contact with the water to the point of complete submergence. The use is such that ingestion of the water is likely and sensitive body organs, such as the eyes, ears, or nose, may be exposed to direct contact with the water.
24. "Geometric mean" means the  $n$ th root of the product of  $n$  items or values. The geometric mean is calculated using the following formula:
 
$$GM_Y = \sqrt[n]{(Y_1)(Y_2)(Y_3)\dots(Y_n)}$$
25. "Hardness" means the sum of the calcium and magnesium concentrations, expressed as calcium carbonate (CaCO<sub>3</sub>) in milligrams per liter.
26. "Igneous lake" means a lake located in volcanic, basaltic, or granite geology and soils.
27. "Intermittent water" means a stream or reach that flows continuously only at certain times of the year, as when it receives water from a spring or from another surface source, such as melting snow.

## CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

28. "Mixing zone" means an area or volume of a surface water that is contiguous to a point source discharge where dilution of the discharge takes place.
29. "Oil" means petroleum in any form, including crude oil, gasoline, fuel oil, diesel oil, lubricating oil, or sludge.
30. "Outstanding Arizona water (OAW)" means a surface water that is classified as an outstanding state resource water by the Director under R18-11-112.
31. "Partial-body contact (PBC)" means the recreational use of a surface water that may cause the human body to come into direct contact with the water, but normally not to the point of complete submergence (for example, wading or boating). The use is such that ingestion of the water is not likely and sensitive body organs, such as the eyes, ears, or nose, will not normally be exposed to direct contact with the water.
32. "Perennial water" means a surface water that flows continuously throughout the year.
33. "*Pollutant*" means fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and mining, industrial, municipal, and agricultural wastes or any other liquid, solid, gaseous, or hazardous substance. A.R.S. § 49-201(29)
34. "Pollutant Minimization Program" means a structured set of activities to improve processes and pollutant controls that will prevent and reduce pollutant loadings.
35. "Practical quantitation limit" means the lowest level of quantitative measurement that can be reliably achieved during a routine laboratory operation.
36. "Reference condition" means a set of abiotic physical stream habitat, water quality, and site selection criteria established by the Director that describe the typical characteristics of stream sites in a region that are least disturbed by environmental stressors. Reference biological assemblages of macroinvertebrates and algae are collected from these reference condition streams for calculating the Arizona Indexes of Biological Integrity thresholds.
37. "Regional Administrator" means the Regional Administrator of Region IX of the U.S. Environmental Protection Agency.
38. "Regulated discharge" means a point-source discharge regulated under an AZPDES permit, a discharge regulated by a § 404 permit, and any discharge authorized by a federal permit or license that is subject to state water quality certification under § 401 of the Clean Water Act.
39. "Riffle habitat" means a stream segment where moderate water velocity and substrate roughness produce moderately turbulent conditions that break the surface tension of the water and may produce breaking wavelets that turn the surface water into white water.
40. "Run habitat" means a stream segment where there is moderate water velocity that does not break the surface tension of the water and does not produce breaking wavelets that turn the surface water into white water.
41. "Sedimentary lake" means a lake or reservoir in sedimentary or karst geology and soils.
42. "Shallow lake" means a lake or reservoir, excluding an urban lake, with a smaller, flatter morphology and an average depth of less than 3 meters and a maximum depth of less than 4 meters.
43. "Significant degradation" means:
- The consumption of 20 percent or more of the available assimilative capacity for a pollutant of concern at critical flow conditions, or
  - Any consumption of assimilative capacity beyond the cumulative cap of 50 percent of assimilative capacity.
44. "Surface water" means "Navigable waters" as defined in A.R.S. § 49-201(22).
45. "Total nitrogen" means the sum of the concentrations of ammonia (NH<sub>3</sub>), ammonium ion (NH<sub>4</sub><sup>+</sup>), nitrite (NO<sub>2</sub>), and nitrate (NO<sub>3</sub>), and dissolved and particulate organic nitrogen expressed as elemental nitrogen.
46. "Total phosphorus" means all of the phosphorus present in a sample, regardless of form, as measured by a persulfate digestion procedure.
47. "Toxic" means a pollutant or combination of pollutants, that after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism, either directly from the environment or indirectly by ingestion through food chains, may cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformations in the organism or its offspring.
48. "Urban lake" means a manmade lake within an urban landscape.
49. "Use attainability analysis" means a structured scientific assessment of the factors affecting the attainment of a designated use including physical, chemical, biological, and economic factors.
50. "Variance" means a time-limited designated use and criterion for a specific pollutant(s) or water quality parameter(s) that reflect the highest attainable condition during the term of the variance.
51. "Wadeable" means a surface water can be safely crossed on foot and sampled without a boat.
52. "Wastewater" does not mean:
- Stormwater,
  - Discharges authorized under the De Minimus General Permit,
  - Other allowable non-stormwater discharges permitted under the Construction General Permit or the Multi-sector General Permit, or
  - Stormwater discharges from a municipal storm sewer system (MS4) containing incidental amounts of non-stormwater that the MS4 is not required to prohibit.
53. "Wetland" means an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. A wetland includes a swamp, marsh, bog, cienega, tinaja, and similar areas.
54. "Zone of initial dilution" means a small area in the immediate vicinity of an outfall structure in which turbulence is high and causes rapid mixing with the surrounding water.

**Historical Note**

Former Section R9-21-101 repealed, new Section R9-21-101 adopted effective January 29, 1980 (Supp. 80-1).  
 Amended effective April 17, 1984 (Supp. 84-2).  
 Amended effective January 7, 1985 (Supp. 85-1).  
 Amended by adding subsection (C) effective August 12, 1986 (Supp. 86-4). Former Section R9-21-101 renumbered without change as Section R18-11-101 (Supp. 87-3). Former Section R18-11-101 repealed, new Section

## CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

R18-11-101 adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Deleted first definition to R18-11-101(32) "Navigable Water", previously printed in error (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

**R18-11-102. Applicability**

- A. The water quality standards prescribed in this Article apply to surface waters.
- B. The water quality standards prescribed in this Article do not apply to the following:
1. A waste treatment system, including an impoundment, pond, lagoon, or constructed wetland that is a part of the waste treatment system;
  2. A man-made surface impoundment and any associated ditch and conveyance used in the extraction, beneficiation, or processing of metallic ores that is not a surface water or is located in an area that once was a surface water but is no longer a surface water because it has been and remains legally converted, including:
    - a. A pit,
    - b. Pregnant leach solution pond,
    - c. Raffinate pond,
    - d. Tailing impoundment,
    - e. Decant pond,
    - f. Pond or a sump in a mine pit associated with dewatering activity,
    - g. Pond holding water that has come into contact with a process or product and that is being held for recycling,
    - h. Spill or upset catchment pond, or
    - i. A pond used for onsite remediation;
  3. A man-made cooling pond that is neither created in a surface water nor results from the impoundment of a surface water; or
  4. A surface water located on tribal lands.

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

**R18-11-103. Repealed****Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1). Repealed effective April 24, 1996 (Supp. 96-2).

**R18-11-104. Designated Uses**

- A. The Director shall adopt or remove a designated use or subcategory of a designated use by rule.
- B. Designated uses of a surface water may include full-body contact, partial-body contact, domestic water source, fish consumption, aquatic and wildlife (cold water), aquatic and wildlife (warm water), aquatic and wildlife (ephemeral), aquatic and wildlife (effluent-dependent water), agricultural irrigation, and agricultural livestock watering. The designated uses for specific surface waters are listed in Appendix B of this Article.

- C. Numeric water quality criteria to maintain and protect water quality for the designated uses are prescribed in Appendix A, R18-11-109, R18-11-110, and R18-11-112. Narrative water quality standards to protect all surface waters are prescribed in R18-11-108.
- D. If a surface water has more than one designated use listed in Appendix B, the most stringent water quality criterion applies.
- E. The Director shall revise the designated uses of a surface water if water quality improvements result in a level of water quality that permits a use that is not currently listed as a designated use in Appendix B.
- F. In designating uses of a surface water and in establishing water quality criteria to protect the designated uses, the Director shall take into consideration the applicable water quality standards for downstream surface waters and shall ensure that the water quality standards that are established for an upstream surface water also provide for the attainment and maintenance of the water quality standards of downstream surface waters.
- G. A use attainability analysis shall be conducted prior to removal of a designated use or adoption of a subcategory of a designated use that requires less stringent water quality criteria.
- H. The Director may remove a designated use or adopt a subcategory of a designated use that requires less stringent water quality criteria, provided the designated use is not an existing use and it is demonstrated through a use attainability analysis that allowing the designated use is not feasible for any of the following reasons:
  1. A naturally-occurring pollutant concentration prevents the attainment of the use;
  2. A natural, ephemeral, intermittent, or low-flow condition or water level prevents the attainment of the use;
  3. A human-caused condition or source of pollution prevents the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place;
  4. A dam, diversion, or other type of hydrologic modification precludes the attainment of the use, and it is not feasible to restore the surface water to its original condition or to operate the modification in a way that would result in attainment of the use;
  5. A physical condition related to the natural features of the surface water, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, precludes attainment of an aquatic life designated use; or
  6. Controls more stringent than those required by § 301 (b) and § 306 of the Clean Water Act [33 U.S.C. § 1311 and § 1316] are necessary to attain the use and implementation of the controls would result in substantial and widespread economic and social impact.

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1).

**R18-11-105. Tributaries; Designated Uses**

The following water quality standards apply to a surface water that is not listed in Appendix B but that is a tributary to a listed surface water.

1. The aquatic and wildlife (ephemeral) and partial-body contact standards apply to an unlisted tributary that is an ephemeral water.
2. The aquatic and wildlife (cold water), full-body contact, and fish consumption standards apply to an unlisted tributary that is a perennial or intermittent surface water and is above 5000 feet in elevation.

## CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

3. The aquatic and wildlife (warm water), full-body contact, and fish consumption standards apply to an unlisted tributary that is a perennial or intermittent surface water and is below 5000 feet in elevation.

**Historical Note**

Adopted effective April 24, 1996 (Supp. 96-2). Section heading amended per instructions of the Department of Environmental Quality, August 9, 1996 (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1).

**R18-11-106. Net Ecological Benefit**

- A. The Director may, by rule, modify a water quality standard on the ground that there is a net ecological benefit associated with the discharge of effluent to support or create a riparian and aquatic habitat in an area where water resources are limited. The Director may modify a water quality standard for a pollutant if it is demonstrated that:
1. The discharge of effluent creates or supports an ecologically valuable aquatic, wetland, or riparian ecosystem in an area where these resources are limited;
  2. The ecological benefits associated with the discharge of effluent under a modified water quality standard exceed the environmental costs associated with the elimination of the discharge of effluent;
  3. The cost of treatment to achieve compliance with a water quality standard is so high that it is more cost effective to eliminate the discharge of effluent to the surface water. The discharger shall demonstrate that it is feasible to eliminate the discharge of effluent that creates or supports the ecologically valuable aquatic, wetland, or riparian ecosystem;
  4. The discharge of effluent to the surface water will not cause or contribute to a violation of a water quality standard that has been established for a downstream surface water;
  5. All practicable point source discharge control programs, including local pretreatment, waste minimization, and source reduction programs are implemented; and
  6. The discharge of effluent does not produce or contribute to the concentration of a pollutant in the tissues of aquatic organisms or wildlife that is likely to be harmful to humans or wildlife through food chain concentration.
- B. The Director shall not modify a water quality criterion for a pollutant to be less stringent than a technology-based effluent limitation that applies to the discharge of that effluent. The discharge of effluent shall, at a minimum, comply with applicable technology-based effluent limitations.

**Historical Note**

Adopted effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**R18-11-107. Antidegradation**

- A. The Director shall, using R18-11-107.01 and this Section, determine whether there is degradation of water quality in a surface water on a pollutant-by-pollutant basis.
- B. Tier 1: The level of water quality necessary to support an existing use shall be maintained and protected. No degradation of existing water quality is permitted in a surface water where the existing water quality does not meet the applicable water quality standards.
- C. Tier 2: Where existing water quality in a surface water is better than the applicable water quality standard the existing water quality shall be maintained and protected. The Director may

allow degradation of existing water quality in the surface water, if the Director makes all of the following findings:

1. The water quality necessary for existing uses is fully protected and water quality is not lowered to a level that does not comply with applicable water quality standards,
  2. The highest statutory and regulatory requirements for new and existing point sources are achieved,
  3. All cost-effective and reasonable best management practices for nonpoint source pollution control are implemented, and
  4. Allowing lower water quality is necessary to accommodate important economic or social development in the area where the surface water is located.
- D. Tier 3: Existing water quality shall be maintained and protected in a surface water that is classified as an OAW under R18-11-112. Degradation of an OAW under subsection (C) is prohibited.
- E. The Director shall implement this Section in a manner consistent with § 316 of the Clean Water Act [33 U.S.C. 1326] if a potential water quality impairment associated with a thermal discharge is involved.

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

**R18-11-107.01. Antidegradation Criteria**

- A. Tier 1 antidegradation protection.
1. Tier 1 antidegradation protection applies to the following surface waters:
    - a. A surface water listed on the 303(d) list for the pollutant that resulted in the listing,
    - b. An effluent dependent water,
    - c. An ephemeral water,
    - d. An intermittent water, and
    - e. A canal listed in Appendix B.
  2. A regulated discharge shall not cause a violation of a surface water quality standard or a wasteload allocation in a total maximum daily load approved by EPA.
  3. Except as provided in subsections (E) and (F), Tier 1 antidegradation review requirements are satisfied for a point-source discharge regulated under an individual AZPDES permit to an ephemeral water, effluent dependent water, intermittent water, or a canal listed in Appendix B, if water quality-based effluent limitations designed to achieve compliance with applicable surface water quality standards are established in the permit and technology-based requirements of the Clean Water Act for the point source discharge are met.
- B. Tier 2 antidegradation protection.
1. Tier 2 antidegradation protection applies to a perennial water with existing water quality that is better than applicable water quality standards. A perennial water that is not listed in subsection (A)(1) nor classified as an OAW under A.A.C. R18-9-112(G) has Tier 2 antidegradation protection for all pollutants of concern.
  2. A regulated discharge that meets the following criteria, at critical flow conditions, does not cause significant degradation:
    - a. The regulated discharge consumes less than 20 percent of the available assimilative capacity for each pollutant of concern, and

## CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

- b. At least 50 percent of the assimilative capacity for each pollutant of concern remains available in the surface water for each pollutant of concern.
- 3. Antidegradation review. Any person proposing a new or expanded regulated discharge under an individual AZPDES permit that may cause significant degradation shall provide ADEQ with the following information:
  - a. Baseline characterization. A person seeking authorization to discharge under an individual AZPDES permit to a perennial water shall provide baseline water quality data on pollutants of concern where no data exists or there are insufficient data to characterize baseline water quality and to determine available assimilative capacity. A discharger shall characterize baseline water quality at a location upstream of the proposed discharge location;
  - b. Alternative analysis.
    - i. The person seeking authorization for the discharge shall prepare and submit a written analysis of alternatives to the discharge. The analysis shall provide information on all reasonable, cost-effective, less-degrading or non-degrading discharge alternatives. Alternatives may include wastewater treatment process changes or upgrades, pollution prevention measures, source reduction, water reclamation, alternative discharge locations, groundwater recharge, land application or treatment, local pretreatment programs, improved operation and maintenance of existing systems, seasonal or controlled discharge to avoid critical flow conditions, and zero discharge;
    - ii. The alternatives analysis shall include cost information on base pollution control measures associated with the regulated discharge and cost information for each alternative;
    - iii. The person shall implement the alternative that is cost-effective and reasonable, results in the least degradation, and is approved by the Director. An alternative is cost-effective and reasonable if treatment costs associated with the alternative are less than a 10 percent increase above the cost of base pollution control measures;
    - iv. For purposes of this subsection, "base pollution control measures" are water pollution control measures required to meet technology-based requirements of the Clean Water Act and water quality-based effluent limits designed to achieve compliance with applicable water quality standards; and
  - c. Social and economic justification. The person shall demonstrate to the Director that significant degradation is necessary to accommodate important economic or social development in the local area. The person seeking authorization for the discharge shall prepare a written social and economic justification that includes a description of the following:
    - i. The geographic area where significant degradation of existing water quality will occur;
    - ii. The current baseline social and economic conditions in the local area;
    - iii. The net positive social and economic effects of development associated with the regulated discharge and allowing significant degradation;
    - iv. The negative social, environmental, and economic effects of allowing significant degradation of existing water quality; and
    - v. Alternatives to the regulated discharge that do not significantly degrade water quality yet may yield comparable social and economic benefits.
- 4. For purposes of this Section, the term "pollutant of concern" means a pollutant with either a numeric or narrative water quality standard.
- 5. Public participation. The Director shall provide public notice and an opportunity to comment on an antidegradation review under subsection (B)(3) and shall provide an opportunity for a public hearing under A.A.C. R18-9-A908(B).
- C. Tier 3 antidegradation protection.
  - 1. Tier 3 antidegradation protection applies only to an OAW listed in R18-11-112(G).
  - 2. A new or expanded point-source discharge directly to an OAW is prohibited.
  - 3. A person seeking authorization for a regulated discharge to a tributary to, or upstream of, an OAW shall demonstrate in a permit application or in other documentation submitted to ADEQ that the regulated discharge will not degrade existing water quality in the downstream OAW.
  - 4. A discharge regulated under a § 404 permit that may affect existing water quality of an OAW requires a determination by the Director to ensure that existing water quality is maintained and protected and any water quality impacts are temporary. Temporary water quality impacts are those impacts that occur for a period of six months or less and are not regularly occurring. The form of such a determination shall be as follows:
    - a. For Corps-issued § 404 permits, an individual § 401 water quality certification.
    - b. For Director-issued § 404 permits, a § 404 permit action, wherein the Director shall conduct a water quality evaluation as a part of the state's requirements for issuing § 404 permits and in accordance with this Section.
- D. Antidegradation review of a § 404 permit shall be conducted as follows:
  - 1. For a Corps-issued § 404 permit. The Director shall conduct the antidegradation review of any discharge authorized under a nationwide or regional § 404 permit as part of the § 401 water quality certification prior to issuance of the nationwide or regional permit. The Director shall conduct the antidegradation review of an individual § 404 permit if the discharge may degrade existing water quality in an OAW or a water listed on the 303(d) List of impaired waters. For regulated discharges that may degrade water quality in an OAW or a water that is on the 303(d) List of impaired waters, the Director shall conduct the antidegradation review as part of the § 401 water quality certification process.
  - 2. For a Director-issued § 404 permit. The Director shall conduct the antidegradation review of any discharge authorized under a general § 404 permit as a part of its determination whether to issue a general permit in accordance with state requirements for issuing a § 404 general permit and with this Section. The Director shall conduct the antidegradation review of an individual § 404 permit as part of the § 404 permit action in accordance with state requirements for issuing a § 404 permit and in accordance with this Section.
- E. Antidegradation review of an AZPDES stormwater permit. An individual stormwater permit for a municipal separate storm

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

sewer system (MS4) meets antidegradation requirements if the permittee complies with the permit, including developing a stormwater management plan containing controls that reduce the level of pollutants in stormwater discharges to the maximum extent practicable.

- F. Antidegradation review of a general permit. The Director shall conduct the antidegradation review of a regulated discharge authorized by a general permit at the time the general permit is issued or renewed. A person seeking authorization to discharge under a general permit is not required to undergo an individual antidegradation review at the time the Notice of Intent is submitted unless the discharge may degrade existing water quality in an OAW or a water listed on the 303(d) List of impaired waters.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

**R18-11-108. Narrative Water Quality Standards**

- A. A surface water shall not contain pollutants in amounts or combinations that:
  1. Settle to form bottom deposits that inhibit or prohibit the habitation, growth, or propagation of aquatic life;
  2. Cause objectionable odor in the area in which the surface water is located;
  3. Cause off-taste or odor in drinking water;
  4. Cause off-flavor in aquatic organisms;
  5. Are toxic to humans, animals, plants, or other organisms;
  6. Cause the growth of algae or aquatic plants that inhibit or prohibit the habitation, growth, or propagation of other aquatic life or that impair recreational uses;
  7. Cause or contribute to a violation of an aquifer water quality standard prescribed in R18-11-405 or R18-11-406; or
  8. Change the color of the surface water from natural background levels of color.
- B. A surface water shall not contain oil, grease, or any other pollutant that floats as debris, foam, or scum; or that causes a film or iridescent appearance on the surface of the water; or that causes a deposit on a shoreline, bank, or aquatic vegetation. The discharge of lubricating oil or gasoline associated with the normal operation of a recreational watercraft is not a violation of this narrative standard.
- C. A surface water shall not contain a discharge of suspended solids in quantities or concentrations that interfere with the treatment processes at the nearest downstream potable water treatment plant or substantially increase the cost of handling solids produced at the nearest downstream potable water treatment plant.
- D. A surface water shall not contain solid waste such as refuse, rubbish, demolition or construction debris, trash, garbage, motor vehicles, appliances, or tires.
- E. A wadeable, perennial stream shall support and maintain a community of organisms having a taxa richness, species composition, tolerance, and functional organization comparable to that of a stream with reference conditions in Arizona.

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

**R18-11-108.01. Narrative Biological Criteria for Wadeable, Perennial Streams**

- A. The narrative biological criteria in this Section apply to a wadeable, perennial stream with either an aquatic and wildlife (cold water) or an aquatic and wildlife (warm water) designated use.
- B. The biological standard in R18-11-108(E) is met when a bioassessment result, as measured by the Arizona Index of Biological Integrity (IBI), for cold or warm water is:
  1. Greater than or equal to the 25th percentile of reference condition, or
  2. Greater than the 10th percentile of reference condition and less than the 25th percentile of reference condition and a verification bioassessment result is greater than or equal to the 25th percentile of reference condition.
- C. Arizona Index of Biological Integrity (IBI) scores:

Bioassessment Result	Index of Biological Integrity Scores	
	A&Wc	A&Ww
Greater than or equal to the 25th percentile of reference condition	≥52	≥50
Greater than the 10th and less than the 25th percentile of reference condition	46 - 51	40 - 49

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

**R18-11-108.02. Narrative Bottom Deposit Criteria for Wadeable, Perennial Streams**

- A. The narrative bottom deposit criteria in this Section apply to wadeable, perennial streams with an aquatic and wildlife (cold water) or an aquatic and wildlife (warm water) designated use.
- B. The narrative water quality standard for bottom deposits at R18-11-108(A)(1) is met when:
  1. The percentage of fine sediments in the riffle habitats of a wadeable, perennial stream with an A&Wc designated use, as determined by a riffle pebble count, is less than or equal to 30 percent.
  2. The percentage of fine sediments in all stream habitats of a wadeable, perennial stream with an A&Ww designated use, as determined by a reach level pebble count, is equal to or less than 50 percent.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

**R18-11-108.03. Narrative Nutrient Criteria for Lakes and Reservoirs**

- A. The narrative nutrient criteria in this Section apply to those lakes and reservoirs categorized in Appendix B.
- B. The narrative water quality standard for nutrients at R18-11-108(A)(6) is met when, based on a minimum of two lake sample events conducted during the peak season based on lake productivity, the results show an average chlorophyll-*a* value below the applicable threshold for designated use and lake and reservoir category in subsection (D).
  1. The mean chlorophyll-*a* concentration is less than the lower value in the target range chlorophyll-*a* for the lake and reservoir category, or
  2. The mean chlorophyll-*a* concentration is within the target range for the lake and reservoir category and:
    - a. The mean blue green algae count is at or below 20,000 per milliliter, and
    - b. The blue green algae count is less than 50 percent of the total algae count, and
    - c. There is no evidence of nutrient-related impairments such as:

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

- i. An exceedance of dissolved oxygen or pH standards;
  - ii. A fish kill coincident with a dissolved oxygen or pH exceedance;
  - iii. A fish kill or other aquatic organism mortality coincident with algal toxicity;
  - iv. Secchi depth is less than the lower value prescribed for the lake and reservoir category;
  - v. A nuisance algal bloom is present in the limnetic portion of the lake or reservoir; or
  - vi. The concentration of total phosphorous, total nitrogen, or total Kjehldal nitrogen (TKN) is greater than the upper value in the range prescribed for the lake and reservoir category; or
  - 3. For a shallow lake. In addition to meeting the mean chlorophyll-*a* concentrations in subsections (B)(1) or (2), submerged aquatic vegetation covers 50 percent or less of the lake bottom and there is less than a 5 mg/L swing in diel-dissolved oxygen concentration measured within the photic zone.
- C. The following threshold ranges apply during the peak season for lake productivity:
- 1. Warm water lakes peak season, April – October;
  - 2. Cold water lakes peak season, May – September.
- D. The following table lists the numeric targets for lakes and reservoirs.

NUMERIC TARGETS FOR LAKES AND RESERVOIRS										
Designated Use	Lake Category	Chl- <i>a</i> (µg/L)	Secchi Depth (m)	Total Phosphorus (µg/L)	Total Nitrogen (mg/L)	Total Kjehldal Nitrogen (TKN) (mg/L)	Blue-Green Algae (per ml)	Blue-Green Algae (% of total count)	Dissolved Oxygen (mg/L)	pH (SU)
FBC and PBC	Deep	10-15	1.5-2.5	70-90	1.2-1.4	1.0-1.1	20,000			6.5-9.0
	Shallow	10-15	1.5-2.0	70-90	1.2-1.4	1.0-1.1				
	Igneous	20-30	0.5-1.0	100-125	1.5-1.7	1.2-1.4				
	Sedimentary	20-30	1.5-2.0	100-125	1.5-1.7	1.2-1.4				
	Urban	20-30	0.5-1.0	100-125	1.5-1.7	1.2-1.4				
A&Wc	All	5-15	1.5-2.0	50-90	1.0-1.4	0.7-1.1		<50	7 (top m)	6.5-9.0
A&Ww	Urban	30-50	0.7-1.0	125-160	1.7-1.9	1.4-1.7			6 (top m)	
A&Ww	All (except urban lakes)	25-40	0.8-1.0	115-140	1.6-1.8	1.3-1.6				6.5-9.0
A&Wedw	All	30-50	0.7-1.0	125-160	1.7-1.9	1.4-1.7				
DWS	All	10-20	0.5-1.5	70-100	1.2-1.5	1.0-1.2	20,000			5.0-9.0

Historical Note

New Section made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

R18-11-109. Numeric Water Quality Standards

A. *E. coli* bacteria. The following water quality standards for *Escherichia coli* (*E. coli*) are expressed in colony forming units per 100 milliliters of water (cfu / 100 ml) or as a Most Probable Number (MPN):

<i>E. coli</i>	FBC	PBC
Geometric mean (minimum of four samples in 30 days)	126	126
Statistical threshold value	410	576

B. pH. The following water quality standards for pH are expressed in standard units:

pH	DWS	FBC, PBC, A&W <sup>1</sup>	AgI	AgL
Maximum	9.0	9.0	9.0	9.0
Minimum	5.0	6.5	4.5	6.5

Footnotes:

1. "1" Includes A&Wc, A&Ww, A&Wedw, and A&We.

C. The maximum allowable increase in ambient water temperature, due to a thermal discharge is as follows:

A&Ww	A&Wedw	A&Wc
3.0° C	3.0° C	1.0° C

D. Suspended sediment concentration.

1. The following water quality standards for suspended sediment concentration, expressed in milligrams per liter (mg/L), are expressed as a median value determined from

a minimum of four samples collected at least seven days apart:

A&Wc	A&Ww
25	80

2. The Director shall not use the results of a suspended sediment concentration sample collected during or within 48 hours after a local storm event to determine the median value.

E. Dissolved oxygen. A surface water meets the water quality standard for dissolved oxygen when either:

- 1. The percent saturation of dissolved oxygen is equal to or greater than 90 percent, or
- 2. The single sample minimum concentration for the designated use, as expressed in milligrams per liter (mg/L) is as follows:

Designated Use	Single sample minimum concentration in mg/L
A&Ww	6.0
A&Wc	7.0
A&W edw for a sample taken from three hours after sunrise to sunset	3.0
A&W edw for a sample taken from sunset to three hours after sunrise	1.0

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

The single sample minimum concentration is the same for the designated use in a lake, but the sample must be taken from a depth no greater than one meter.

- F. Nutrient criteria. The following are water quality standards for total phosphorus and total nitrogen (expressed in milligrams per liter (mg/L)) that apply to the surface waters listed below. A minimum of 10 samples, each taken at least 10 days apart in a consecutive 12-month period, are required to determine a 90th percentile. Not more than 10 percent of the samples may exceed the 90th percentile value listed below. The Director will apply these water quality standards for total phosphorus and total nitrogen to the surface waters listed below, and to their perennial tributaries, if listed. The Director may also apply these total phosphorus and total nitrogen standards to any source discharging to any tributary (ephemeral, intermittent, effluent dependent water, or perennial) of the surface waters listed below, if necessary to protect nutrient water quality in the listed surface water, based on the volume, frequency, magnitude and duration of the discharge, and distance to the downstream surface water listed below:

1. Verde River and its perennial tributaries from the Verde headwaters to Bartlett Lake:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.10	0.30	1.00
Total nitrogen	1.00	1.50	3.00

2. Black River, Tonto Creek and their perennial tributaries for any segments that are not located on tribal lands:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.10	0.20	0.80
Total nitrogen	0.50	1.00	2.00

3. Salt River and its perennial tributaries above Roosevelt Lake for any segments that are not located on tribal lands:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.12	0.30	1.00
Total nitrogen	0.60	1.20	2.00

4. Salt River below Stewart Mountain Dam to its confluence with the Verde River:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.05	–	0.20
Total nitrogen	0.60	–	3.00

5. Little Colorado River and its perennial tributaries upstream from:

- a. The headwaters to River Reservoir,
- b. South Fork of Little Colorado River at 34°00'49"/109°24'18" to above South Fork Campground at 34°04'49"/109°24'18", and
- c. The headwaters of Water Canyon Creek to the Apache-Sitgreaves National Forest boundary:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.08	0.10	0.75

Total nitrogen	0.60	0.75	1.10
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6. From the Little Colorado River and State Route 260 at 34°06'39"/109°18'55" to Lyman Lake:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.20	0.30	0.75
Total nitrogen	0.70	1.20	1.50

7. Colorado River at the Northern International Boundary near Morelos Dam:

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	–	0.33	–
Total nitrogen	–	2.50	–

8. Oak Creek from its headwaters at 35°01'30"/111°44'12" to its confluence with the Verde River and the West Fork of Oak Creek from its headwaters at 35°02'44"/111°54'48" to its confluence with Oak Creek.

Surface Water	Annual Mean	90th Percentile	Single Sample Maximum
Total phosphorus	0.1	0.25	0.30
Total nitrogen	1.00	1.50	2.50

9. No discharge of wastewater to Show Low Creek or its perennial tributaries upstream of and including Fools Hollow Lake shall exceed 0.16 mg/L total phosphates as P.
10. No discharge of wastewater to the San Francisco River or its perennial tributaries upstream of Luna Lake Dam shall exceed 1.0 mg/L total phosphates as P.

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1).  
 Amended effective April 24, 1996 (Supp. 96-2).  
 Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

**R18-11-110. Salinity Standards for the Colorado River**

- A. The flow-weighted average annual salinity in the lower main stem of the Colorado River shall not exceed the following criteria:

Location	Total Dissolved Solids
Below Hoover Dam	723 mg/L
Below Parker Dam	747 mg/L
At Imperial Dam	879 mg/L

- B. The plan of implementation contained in the "2014 Review, Water Quality Standards for Salinity, Colorado River System," approved October 2014, is incorporated by reference to preserve the basin-wide approach to salinity control developed by the Colorado River Basin Salinity Control Forum and to ensure compliance with the numeric criteria for salinity in subsection (A). This material does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix, Arizona 85007 or may be obtained from the Colorado River Basin Salinity Control Forum, 106

## CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

West 500 South, Suite 101, Bountiful, Utah 84010-6232 or at <http://www.coloradoriversalinity.org/>.

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**R18-11-111. Analytical Methods**

- A.** A person conducting an analysis of a sample taken to determine compliance with a water quality standard shall use an analytical method prescribed in A.A.C. R9-14-610, 40 CFR 136.3, or an alternative analytical method approved under A.A.C. R9-14-610(C).
- B.** A test result from a sample taken to determine compliance with a water quality standard is valid only if the sample is analyzed by a laboratory that is licensed by the Arizona Department of Health Services, an out-of-state laboratory licensed under A.R.S. § 36-495.14, or a laboratory exempted under A.R.S. § 36-495.02, for the analysis performed.

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

**R18-11-112. Outstanding Arizona Waters**

- A.** The Director shall classify a surface water as an outstanding Arizona water (OAW) by rule.
- B.** The Director may adopt, under R18-11-115, a site-specific standard to maintain and protect existing water quality in an OAW.
- C.** Any person may nominate a surface water for classification as an OAW by filing a nomination with the Director. The nomination shall include:
1. A map and a description of the surface water;
  2. A written statement in support of the nomination, including specific reference to the applicable criteria for an OAW classification prescribed in subsection (D);
  3. Supporting evidence demonstrating that the criteria prescribed in subsection (D) are met; and
  4. Available water quality data relevant to establishing the baseline water quality of the proposed OAW.
- D.** The Director may classify a surface water as an OAW based upon the following criteria:
1. The surface water is a perennial or intermittent water;
  2. The surface water is in a free-flowing condition. For purposes of this subsection, "in a free-flowing condition" means that a surface water does not have an impoundment, diversion, channelization, rip-rapping or other bank armor, or another hydrological modification within the reach nominated for an OAW classification;
  3. The surface water has good water quality. For purposes of this subsection, "good water quality" means that the surface water has water quality that meets or is better than applicable surface water quality standards. A surface water that is listed as impaired under R18-11-604(E) is ineligible for OAW classification; and
  4. The surface water meets one or both of the following conditions:
    - a. The surface water is of exceptional recreational or ecological significance because of its unique attributes, such as the geology, flora and fauna, water

quality, aesthetic value, or the wilderness characteristic of the surface water;

- b. An endangered or threatened species is associated with the surface water and the existing water quality is essential to the species' maintenance and propagation or the surface water provides critical habitat for the threatened or endangered species. An endangered or threatened species is identified in "Endangered and Threatened Wildlife," 50 CFR 17.11 (revised 2005), and "Endangered and Threatened Plants," 50 CFR 17.12 (revised 2005). This material is incorporated by reference and does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix, Arizona 85007 or may be obtained from the National Archives and Records Administration at <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1>.
- E.** The Director shall hold at least one public meeting in the local area of a surface water that is nominated for classification as an OAW to solicit public comment on the nomination.
- F.** The Director shall consider the following factors when deciding whether to classify a surface water as an OAW:
1. Whether there is the ability to manage the surface water and its watershed to maintain and protect existing water quality;
  2. The social and economic impact of Tier 3 antidegradation protection;
  3. The public comments in support of, or in opposition to, an OAW classification;
  4. The timing of the nomination relative to the triennial review of surface water quality standards;
  5. The consistency of an OAW classification with applicable water quality management plans; and
  6. Whether the nominated surface water is located within a national or state park, national monument, national recreation area, wilderness area, riparian conservation area, area of critical environmental concern, or it has another special use designation (for example, Wild and Scenic River).
- G.** The following surface waters are classified as OAWs:
1. The West Fork of the Little Colorado River, from its headwaters to Government Springs (approximately 9.1 river miles);
  2. Oak Creek, from its headwaters to its confluence with the Verde River (approximately 50.3 river miles);
  3. West Fork of Oak Creek, from its headwaters to its confluence with Oak Creek (approximately 15.8 river miles);
  4. Peeples Canyon Creek, from its headwaters to its confluence with the Santa Maria River (approximately 8.1 river miles);
  5. Burro Creek, from its headwaters to its confluence with Boulder Creek (approximately 29.5 miles);
  6. Francis Creek, from its headwaters to its confluence with Burro Creek (approximately 22.9 river miles);
  7. Bonita Creek, from its boundary of the San Carlos Indian Reservation to its confluence with the Gila River (approximately 14.7 river miles);
  8. Cienega Creek, from its confluence with Gardner Canyon to the USGS gaging station (#09484600) (approximately 28.3 river miles);
  9. Aravaipa Creek, from its confluence with Stowe Gulch to the downstream boundary of the Aravaipa Canyon Wilderness Area (approximately 15.5 river miles);

## CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

10. Cave Creek, from its headwaters to the Coronado National Forest boundary (approximately 10.4 river miles);
11. South Fork of Cave Creek, from its headwaters to its confluence with Cave Creek (approximately 8.6 river miles);
12. Buehman Canyon Creek, from its headwaters to its confluence with unnamed tributary at 32°24'31"/110°32'08" (approximately 9.8 river miles);
13. Lee Valley Creek, from its headwaters to Lee Valley Reservoir (approximately 1.6 river miles);
14. Bear Wallow Creek, from its headwaters to the boundary of the San Carlos Indian Reservation (approximately 4.25 river miles);
15. North Fork of Bear Wallow Creek, from its headwaters to its confluence with Bear Wallow Creek (approximately 3.8 river miles);
16. South Fork of Bear Wallow Creek, from its headwaters to its confluence with Bear Wallow Creek (approximately 3.8 river miles);
17. Snake Creek, from its headwaters to its confluence with the Black River (approximately 6.2 river miles);
18. Hay Creek, from its headwaters to its confluence with the West Fork of the Black River (approximately 5.5 river miles);
19. Stinky Creek, from the White Mountain Apache Indian Reservation boundary to its confluence with the West Fork of the Black River (approximately 3.0 river miles);
20. KP Creek, from its headwaters to its confluence with the Blue River (approximately 12.7 river miles);
21. Davidson Canyon, from the unnamed spring at 31°59'00"/110°38'49" to its confluence with Cienega Creek; and
22. Fossil Creek, from its headwaters at the confluence of Sandroock and Calf Pen Canyons above Fossil Springs to its confluence with the Verde River (approximately 17.2 river miles).

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective April 24, 1996 (Supp. 96-2). Added "water quality standards" to R18-11-112, previously omitted in error (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**R18-11-113. Effluent-Dependent Waters**

- A. The Director shall classify a surface water as an effluent-dependent water by rule.
- B. The Director may adopt, under R18-11-115, a site-specific water quality standard for an effluent-dependent water.
- C. Any person may submit a petition for rule adoption requesting that the Director classify a surface water as an effluent-dependent water. The petition shall include:
  1. A map and a description of the surface water;
  2. Information that demonstrates that the surface water consists of a point source discharge of wastewater; and
  3. Information that demonstrates that, without a point source discharge of a wastewater, the receiving water is an ephemeral water.
- D. The Director shall use the water quality standards that apply to an effluent-dependent water to derive water quality-based effluent limits for a point source discharge of wastewater to an ephemeral water.
- E. The Director may use aquatic and wildlife (edw) acute standards only to derive water quality based effluent limits for a sporadic, infrequent, or emergency point source discharge to

an ephemeral water or to an effluent-dependent water. The Director shall consider the following factors when deciding whether to apply A&Wedw (acute) standards:

1. The amount, frequency, and duration of the discharge;
  2. The length of time water may be present in the receiving water;
  3. The distance to a downstream water with aquatic and wildlife chronic standards; and
  4. The likelihood of chronic exposure to pollutants.
- F. The Director may establish alternative water quality-based effluent limits in an AZPDES permit based on seasonal differences in the discharge.

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1). Amended effective December 18, 1992 (Supp. 92-4). Amended effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

**R18-11-114. Mixing Zones**

- A. The Director may establish a mixing zone for a point source discharge to a surface water as a condition of an individual AZPDES permit on a pollutant-by-pollutant basis. A mixing zone is prohibited in an ephemeral water or where there is no water for dilution, or as prohibited pursuant to subsection (H).
- B. The owner or operator of a point source seeking the establishment of a mixing zone shall submit a request to the Director for a mixing zone as part of an application for an AZPDES permit. The request shall include:
  1. An identification of the pollutant for which the mixing zone is requested;
  2. A proposed outfall design;
  3. A definition of the boundary of the proposed mixing zone. For purposes of this subsection, the boundary of a mixing zone is where complete mixing occurs; and
  4. A complete and detailed description of the existing physical, biological, and chemical conditions of the receiving water and the predicted impact of the proposed mixing zone on those conditions. The description shall also address the factors listed in subsection (D) that the Director must consider when deciding to grant or deny a request and shall address the mixing zone requirements in subsection (H).
- C. The Director shall consider the following factors when deciding whether to grant or deny a request for a mixing zone:
  1. The assimilative capacity of the receiving water;
  2. The likelihood of adverse human health effects;
  3. The location of drinking water plant intakes and public swimming areas;
  4. The predicted exposure of biota and the likelihood that resident biota will be adversely affected;
  5. Bioaccumulation;
  6. Whether there will be acute toxicity in the mixing zone, and, if so, the size of the zone of initial dilution;
  7. The known or predicted safe exposure levels for the pollutant for which the mixing zone is requested;
  8. The size of the mixing zone;
  9. The location of the mixing zone relative to biologically sensitive areas in the surface water;
  10. The concentration gradient of the pollutant within the mixing zone;
  11. Sediment deposition;
  12. The potential for attracting aquatic life to the mixing zone; and

## CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

13. The cumulative impacts of other mixing zones and other discharges to the surface water.
- D. Director determination.**
1. The Director shall deny a request to establish a mixing zone if a water quality standard will be violated outside the boundaries of the proposed mixing zone..
  2. If the Director approves the request to establish a mixing zone, the Director shall establish the mixing zone as a condition of an AZPDES permit. The Director shall include any mixing zone condition in the AZPDES permit that is necessary to protect human health and the designated uses of the surface water.
- E.** Any person who is adversely affected by the Director's decision to grant or deny a request for a mixing zone may appeal the decision under A.R.S. § 49-321 et seq. and A.R.S. § 41-1092 et seq.
- F.** The Director shall reevaluate a mixing zone upon issuance, reissuance, or modification of the AZPDES permit for the point source or a modification of the outfall structure.
- G. Mixing zone requirements.**
1. A mixing zone shall be as small as practicable in that it shall not extend beyond the point in the waterbody at which complete mixing occurs under the critical flow conditions of the discharge and of the receiving water.
  2. The total horizontal area allocated to all mixing zones on a lake shall not exceed 10 percent of the surface area of the lake.
  3. Adjacent mixing zones in a lake shall not overlap or be located closer together than the greatest horizontal dimension of the largest mixing zone.
  4. The design of any discharge outfall shall maximize initial dilution of the wastewater in a surface water.
  5. The size of the zone of initial dilution in a mixing zone shall prevent lethality to organisms passing through the zone of initial dilution. The mixing zone shall prevent acute toxicity and lethality to organisms passing through the mixing zone.
- H.** The Director shall not establish a mixing zone in an AZPDES permit for the following persistent, bioaccumulative pollutants:
1. Chlordane,
  2. DDT and its metabolites (DDD and DDE),
  3. Dieldrin,
  4. Dioxin,
  5. Endrin,
  6. Endrin aldehyde,
  7. Heptachlor,
  8. Heptachlor epoxide,
  9. Lindane,
  10. Mercury,
  11. Polychlorinated biphenyls (PCBs), and
  12. Toxaphene.

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1).  
 Amended effective April 24, 1996 (Supp. 96-2).  
 Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

**R18-11-115. Site-Specific Standards**

- A.** The Director shall adopt a site-specific standard by rule.
- B.** The Director may adopt a site-specific standard based upon a request or upon the Director's initiative for any of the following reasons:

1. Local physical, chemical, or hydrological conditions of a surface water such as pH, hardness, fate and transport, or temperature alters the biological availability or toxicity of a pollutant;
  2. The sensitivity of resident aquatic organisms that occur in a surface water to a pollutant differs from the sensitivity of the species used to derive the numeric water quality standards to protect aquatic life in Appendix A;
  3. Resident aquatic organisms that occur in a surface water represent a narrower mix of species than those in the dataset used by ADEQ to derive numeric water quality standards to protect aquatic life in Appendix A;
  4. The natural background concentration of a pollutant is greater than the numeric water quality standard to protect aquatic life prescribed in Appendix A. "Natural background" means the concentration of a pollutant in a surface water due only to non-anthropogenic sources; or
  5. Other factors or combination of factors that upon review by the Director warrant changing a numeric water quality standard for a surface water.
- C. Site-specific standard by request.** To request that the Director adopt a site-specific standard, a person must conduct a study to support the development of a site-specific standard using a scientifically-defensible procedure.
1. Before conducting the study, a person shall submit a study outline to the Director for approval that contains the following elements:
    - a. Identifies the pollutant;
    - b. Describes the reach's boundaries;
    - c. Uses one of the following procedures, as defined by the most recent EPA guidance documents:
      - i. The recalculation procedure,
      - ii. The water effects ratio for metals,
      - iii. The streamlined water effects ratio, or
      - iv. The Biotic ligand model.
    - d. Demonstrates that all designated uses are protected.
  2. Alternatively, a study outline submitted for the Director's approval must contain the following elements:
    - a. Identifies the pollutant;
    - b. Describes the reach's boundaries;
    - c. Describes the hydrologic regime of the waterbody;
    - d. Describes the scientifically-defensible procedure, which can include relevant aquatic life studies, ecological studies, laboratory tests, biological translators, fate and transport models, and risk analyses;
    - e. Describes and compares the taxonomic composition, distribution and density of the aquatic biota within the reach to a reference reach and describes the basis of any major taxonomic differences;
    - f. Describes the pollutant's effect on the affected species or appropriate surrogate species and on the other designated uses listed for the reach;
    - g. Demonstrates that all designated uses are protected; and
    - h. A person seeking to develop a site-specific standard based on natural background may use statistical or modeling approaches to determine natural background concentration. Modeling approaches include Better Assessment Science Integrating Source and Nonpoint Sources (Basins), Hydrologic Simulation Program-Fortran (HSPF), and Hydrologic Engineering Center (HEC) programs developed by the U.S. Army Corps of Engineers.

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1).  
 Amended effective April 24, 1996 (Supp. 96-2). Section

## CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

repealed by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). New Section made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

**R18-11-116. Resource Management Agencies**

Nothing in this Article prohibits fisheries management activities by the Arizona Game and Fish Department or the U.S. Fish and Wildlife Service. This Article does not exempt fish hatcheries from AZPDES permit requirements.

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1).  
Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

**R18-11-117. Canals and Urban Park Lakes**

- A. Nothing in this Article prevents the routine physical or mechanical maintenance of canals, drains, and the urban lakes identified in Appendix B. Physical or mechanical maintenance includes dewatering, lining, dredging, and the physical, biological, or chemical control of weeds and algae. Increases in turbidity that result from physical or mechanical maintenance activities are permitted in canals, drains, and the urban lakes identified in Appendix B.
- B. The discharge of lubricating oil associated with the start-up of well pumps that discharge to canals is not a violation of R18-11-108(B).

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1).  
Amended effective April 24, 1996 (Supp. 96-2).  
Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

**R18-11-118. Dams and Flood Control Structures**

Increases in turbidity that result from the routine physical or mechanical maintenance of a dam or flood control structure are not violations of this Article. Nothing in this Article requires the release of water from a dam or a flood control structure.

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1).  
Amended effective April 24, 1996 (Supp. 96-2).  
Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

**R18-11-119. Natural background**

Where the concentration of a pollutant exceeds a water quality standard and the exceedance is not caused by human activity but is due solely to naturally-occurring conditions, the exceedance shall not be considered a violation of the water quality standard.

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1).

**R18-11-120. Enforcement of Non-permitted Discharges**

- A. The Department may establish a numeric water quality standard at a concentration that is below the practical quantitation limit. Therefore, in enforcement actions pursuant to subsection (B), the water quality standard is enforceable at the practical quantitation limit.
- B. Except for chronic aquatic and wildlife criteria, for non-permitted discharge violations, the Department shall determine compliance with numeric water quality standard criteria from the analytical result of a single sample, unless additional samples are required under this article. For chronic aquatic and wildlife criteria, compliance for non-permitted discharge vio-

lations shall be determined from the geometric mean of the analytical results of the last four samples taken at least 24 hours apart. For the purposes of this Section, a "non-permitted discharge violation" does not include a discharge regulated under an AZPDES permit.

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1).  
Amended effective April 24, 1996 (Supp. 96-2).  
Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

**R18-11-121. Schedules of Compliance**

A compliance schedule in an AZPDES permit shall require the permittee to comply with a discharge limitation based upon a new or revised water quality standard as soon as possible to achieve compliance. The permittee shall demonstrate that all requirements under § 301(b) and § 306 of the Clean Water Act [33 U.S.C. 1311(b) and 1316] are achieved and that the point source cannot comply with a discharge limitation based upon the new or revised water quality standard through the application of existing water pollution control technology, operational changes, or source reduction. In establishing a compliance schedule, the Director shall consider:

1. How much time the permittee has already had to meet any effluent limitations under a prior permit;
2. The extent to which the permittee has made good faith efforts to comply with the effluent limitations and other requirements in a prior permit;
3. Whether treatment facilities, operations, or measures must be modified to meet the effluent limitations;
4. How long any necessary modifications would take to implement; and
5. Whether the permittee would be expected to use the same treatment facilities, operations or other measures to meet the effluent limitations as it would have used to meet the effluent limitations in a prior permit.

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1).  
Amended effective April 24, 1996 (Supp. 96-2).  
Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**R18-11-122. Variances**

- A. Upon request, the Director may establish, by rule, a discharger-specific or water segment(s)-specific variance from a water quality standard if requirements pursuant to this Section are met.
- B. A person who requests a variance must demonstrate all of the following information:
1. Identification of the specific pollutant and water quality standard for which a variance is sought.
  2. Identification of the receiving surface water segment or segments to which the variance would apply.
  3. A detailed discussion of the need for the variance, including the reasons why compliance with the water quality standard cannot be achieved over the term of the proposed variance, and any other useful information or analysis to evaluate attainability.
  4. A detailed discussion of the discharge control technologies that are available for achieving compliance with the water quality standard for which a variance is sought.
  5. Documentation that more advanced treatment technology than applicable technology-based effluent limitations is

## CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

necessary to achieve compliance with the water quality standard for which a variance is sought.

6. A detailed description of proposed interim discharge limitations and pollutant control activities that represent the highest level of treatment achievable by a point source discharger or dischargers during the term of the variance.
  7. Documentation that the proposed term is only as long as necessary to achieve the highest attainable condition.
  8. Documentation that is appropriate to the type of use to which the variance would apply as follows:
    - a. For a water quality standard variance to a use specified in Clean Water Act § 101(a)(2), documentation must include demonstration of at least one of the following factors that preclude attainment of the use during the term of the variance:
      - i. Naturally occurring pollutant concentrations prevent attainment of the use;
      - ii. Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating state water conservation requirements to enable uses to be met;
      - iii. That human-caused conditions or sources of pollution prevent the attainment of the water quality standard for which the variance is sought and either (1) it is not possible to remedy the conditions or sources of pollution or (2) remedying the human-caused conditions would cause more environmental damage to correct than to leave in place;
      - iv. Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use;
      - v. Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses;
      - vi. That installation and operation of each of the available discharge technologies more advanced than those required to comply with technology-based effluent limitations to achieve compliance with the water quality standard would result in substantial and widespread economic and social impact; or
      - vii. Actions necessary to facilitate lake, wetland, or stream restoration through dam removal or other significant reconfiguration activities preclude attainment of the designated use and criterion while the actions are being implemented.
    - b. For a water quality standard variance to a use other than those uses specified in Clean Water Act § 101(a)(2), documentation must justify how consideration and value of the water subject to the use appropriately supports the variance and term. A demonstration consistent with (B)(8)(a) of this Section may be used to satisfy this requirement.
  9. For a waterbody segment(s)-specific variance, the following information is required before the Director may issue a variance, in addition to all other required documentation pursuant to this Section:
    - a. Identification and documentation of any cost-effective and reasonable best management practices for nonpoint source controls related to the pollutant(s) or water quality parameter(s) and water body or waterbody segment(s) specified in the variance that could be implemented to make progress towards attaining the underlying designated use and criterion; and
    - b. If any variance pursuant to subsection (B)(9)(a) previously applied to the water body or waterbody segment(s), documentation must also demonstrate whether and to what extent best management practices for nonpoint source controls were implemented to address the pollutant(s) or water quality parameter(s) subject to the water quality variance and the water quality progress achieved.
  10. For a discharger-specific variance, the following information is required before the Director may issue a variance, in addition to all other required documentation pursuant to this Section:
    - a. Identification of the permittee subject to the variance;
    - b. For an existing point source discharge, a detailed description of the existing discharge control technologies that are used to achieve compliance with applicable water quality standards. For a new point source discharge, a detailed description of the proposed discharge control technologies that will be used to achieve compliance with applicable water quality standards; and
    - c. Documentation that the existing or proposed discharge control technologies will comply with applicable technology-based effluent limitations.
- C.** The Director shall consider the following factors when deciding whether to grant or deny a variance request:
1. Bioaccumulation,
  2. The predicted exposure of biota and the likelihood that resident biota will be adversely affected,
  3. The known or predicted safe exposure levels for the pollutant for which the variance is requested, and
  4. The likelihood of adverse human health effects.
- D.** The variance shall represent the highest attainable condition of the water body or water body segment applicable throughout the term of the variance.
- E.** A variance shall not result in any lowering of the currently attained ambient water quality, unless the variance is necessary for restoration activities, consistent with subsection (B)(8)(a)(vii). The Director must specify the highest attainable condition of the water body or waterbody segment as a quantifiable expression of one of the following:
1. The highest attainable interim criterion,
  2. The interim effluent condition that reflects the greatest pollutant reduction achievable; or
  3. If no additional feasible pollutant control technology can be identified, the interim criterion or interim effluent condition that reflects the greatest pollutant reduction achievable with the pollutant control technologies installed at the time of the issuance of the variance, and the adoption and implementation of a Pollutant Minimization Program.
- F.** A variance shall not modify the underlying designated use and criterion. A variance is only a time limited exception to the underlying standard. For discharge-specific variances, other point source dischargers to the surface water that are not

## CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

- granted a variance shall still meet all applicable water quality standards.
- G.** Point source discharges shall meet all other applicable water quality standards for which a variance is not granted.
- H.** The Director may not grant a variance for a point source discharge to an OAW listed in R18-11-112(G).
- I.** Each variance established by the Director is subject to review and approval by the Regional Administrator.
- J.** The term of the water quality variance may only be as long as necessary to achieve the highest attainable condition and must be consistent with the supporting documentation in subsection (E). The variance term runs from the approval of the variance by the Regional Administrator.
- K.** The Director shall reevaluate, in its triennial review, whether each variance continues to represent the highest attainable condition. Comment on the variance shall be considered regarding whether the variance continues to represent the highest attainable condition. If the Director determines that the requirements of the variance do not represent the highest attainable condition, then the Director shall modify or repeal the variance in its triennial review rulemaking.
- L.** If the variance is modified by rulemaking, the requirements of the variance shall represent the highest attainable condition at the time of initial adoption of the variance, or the highest attainable condition identified during the current reevaluation, whichever is more stringent.
- M.** Upon expiration of a variance, point source dischargers shall comply with the water quality standard.
- N.** The following are discharger-specific variances adopted by the Director:
- O.** The following are water body and waterbody segment-specific variances adopted by the Director:
- Historical Note**  
Adopted effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).
- R18-11-123. Discharge Prohibitions**
- A.** The discharge of wastewater to the following surface waters is prohibited:
1. Sabino Canyon Creek;
  2. Vekol Wash, upstream of the Ak-Chin Indian Reservation; and
  3. Smith Wash, upstream of the Ak-Chin Indian Reservation.
- B.** The discharge to Lake Powell of human body wastes and the wastes from toilets and other receptacles intended to receive or retain wastes from a vessel is prohibited.
- Historical Note**  
Adopted effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4).

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

Appendix A. Numeric Water Quality Standards

Table 1. Water Quality Criteria By Designated Use (see f)

Parameter	CAS NUMBER	DWS (µg/L)	FC (µg/L)	FBC (µg/L)	PBC (µg/L)	A&Wc Acute (µg/L)	A&Wc Chronic (µg/L)	A&Ww Acute (µg/L)	A&Ww Chronic (µg/L)	A&Wedw Acute (µg/L)	A&Wedw Chronic (µg/L)	A&We Acute (µg/L)	AgI (µg/L)	AgL (µg/L)
Acenaphthene	83329	420	198	56,000	56,000	850	550	850	550	850	550			
Acenaphthylene	208968	420		56,000	56,000									
Acrolein	107028	3.5	1.9	467	467	3	3	3	3	3	3	3		
Acrylonitrile	107131	0.006	0.2	9	37,333	3,800	250	3,800	250	3,800	250			
Alachlor	15972608	2		9,333	9,333	2,500	170	2,500	170	2,500	170			
Aldrin	309002	0.002	0.00005	0.27	28	3		3		3		4.5	0.003	See (b)
Alpha Particles (Gross) Radioactivity		15 pCi/L See (h)												
Ammonia	7664417					See (e) & Tables 11 (present) & 14 (absent)	See (e) & Tables 13 (present) & 17 (absent)	See (e) & Tables 12 (present) & 15 (absent)	See (e) & Tables 13 (present) & 16 (absent)	See (e) & Table 15 (absent)	See (e) & Table 16 (absent)			
Anthracene	120127	2,100	74	280,000	280,000									
Antimony	7440360	6 T	640 T	747 T	747 T	88 D	30 D	88 D	30 D	1,000 D	600 D			
Arsenic	7440382	10 T	80 T	30 T	280 T	340 D	150 D	340 D	150 D	340 D	150 D	440 D	2,000 T	200 T
Asbestos	1332214	See (a)												
Atrazine	1912249	3		32,667	32,667									
Barium	7440393	2,000 T		186,667 T	186,667 T									
Benzo(a)anthracene	56553	0.005	0.02	47	280									
Benzene	71432	5	114	133	3,733	2,700	180	2,700	180	8,800	560			
Benzo(b)fluoranthene Benzofluoranthene	205992	0.005	0.02	47	280									
Benzidine	92875	0.0002	0.0002	0.02	2,800	1,300	89	1,300	89	1,300	89	10,000	0.01	0.01
Benzo(a)pyrene	50328	0.2	0.1	47	280									
Benzo(k)fluoranthene	207089	0.005	0.02	47	280									
Beryllium	7440417	4 T	84 T	1,867 T	1,867 T	65 D	5.3 D	65 D	5.3 D	65 D	5.3 D			
Beta particles and photon emitters		4 millirems / year See (i)												
Bis(2-chloroethoxy) methane	111911	21		2,800	2,800									
Bis(2-chloroethyl) ether	111444	0.03	0.5	4	4	120,000	6,700			120,000	6,700			
Bis(2-chloroisopropyl) ether	108601	280	3,441	37,333	37,333									
Bis(chloromethyl) ether	542881	0.00015		0.02										
Boron	7440428	1,400 T		186,667 T	186,667 T								1,000 T	
Bromodichloromethane	75274	TTHM See (g)	17	TTHM	18,667									
to 4-Bromophenyl phenyl ether	101553					180	14	180	14	180	14			
Bromoform	75252	TTHM See (g)	133	591	18,667	15,000	10,000	15,000	10,000	15,000	10,000			
Bromomethane	74839	9.8	299	1,307	1,307	5,500	360	5,500	360	5,500	360			
Butyl benzyl phthalate	85687	1,400	386	186,667	186,667	1,700	130	1,700	130	1,700	130			
Cadmium	7440439	5 T	6 T	467 T	467 T	See Table 2	See Table 3	See Table 2	See Table 3	See Table 2	See Table 3	See Table 2	50	50
Carbaryl	63252					2.1	2.1	2.1	2.1	2.1	2.1	2.1		
Carbofuran	1563662	40		4,667	4,667	650	50	650	50	650	50			
Carbon tetrachloride	56235	5	3	67	3,733	18,000	1,100	18,000	1,100	18,000	1,100			
Chlordane	57749	2	0.0008	13	467	2.4	0.004	2.4	0.2	2.4	0.2	3.2		
Chlorine (total residual)	7782505	4,000		93,333	93,333	19	11	19	11	19	11			
Chlorobenzene	108907	100	1,553	18,667	18,667	3,800	260	3,800	260	3,800	260			
Chloroethane	75003	280		93,333	93,333									
2-Chloroethyl vinyl ether	110758					180,000	9,800	180,000	9,800	180,000	9,800			
Chloroform	67663	TTHM See (g)	2,133	9,333	9,333	14,000	900	14,000	900	14,000	900			
p-Chloro-m-cresol	59507					15	4.7	15	4.7	15	4.7	48,000		
Chloromethane	74873					270,000	15,000	270,000	15,000	270,000	15,000			
beta-Chloronaphthalene	91587	2240	1267	298,667	298,667									
2-Chlorophenol	95578	35	30	4,667	4,667	2,200	150	2,200	150	2,200	150			
Chloropyrifos	2921882	21	1.0	2,800	2,800	0.08	0.04	0.08	0.04	0.08	0.04			
Chromium III	16065831	10,500	75,000 T	1,400,000 T	1,400,000 T	See (d) & Table 4	See (d) & Table 4	See (d) & Table 4	See (d) & Table 4					
Chromium VI	18540299	21 T	150 T	2,800 T	2,800 T	16 D	11 D	16 D	11 D	16 D	11 D	34 D		
Chromium (Total)	7440473	100 T											1,000	1,000
Chrysene	218019	0.005	0.02	0.6	0.6									
Copper	7440508	1,300 T		1,300 T	1,300 T	See (d) & Table 5	See (d) & Table 5	See (d) & Table 5	See (d) & Table 5	5,000 T	500 T			
Cyanide (as free cyanide)	57125	200 T	504 T	588 T	588 T	22 T	5.2 T	41 T	9.7 T	41 T	9.7 T	84 T		200 T
Dalapon	75990	200	8,000	28,000	28,000									
DDT and its breakdown products	50293	0.1	0.0003	14	467	1.1	0.001	1.1	0.001	1.1	0.001	1.1	0.001	0.001
Demeton	8065483						0.1		0.1		0.1			
Diazinon	333415					0.17	0.17	0.17	0.17	0.17	0.17	0.17		
Dibenz (ah) anthracene	53703	0.350	0.02	47.0	280.0									
Dibromochloromethane	124481	TTHM See (g)	13	TTHM	18,667									
1,2-Dibromo-3-chloropropane	96128	0.2		2,800	2,800									
1,2-Dibromoethane	106934	0.02		2	8,400									
Dibutyl phthalate	84742	700	899	93,333	93,333	470	35	470	35	470	35	1,100		
1,2-Dichlorobenzene	95501	600	205	84,000	84,000	790	300	1,200	470	1,200	470	5,900		
1,3-Dichlorobenzene	541731					2,500	970	2,500	970	2,500	970			
1,4-Dichlorobenzene	106467	75	5755	373,333	373,333	560	210	2,000	780	2,000	780	6,500		
3,3'-Dichlorobenzidine	91941	0.08	0.03	10	10									
1,2-Dichloroethane	107062	5	37	15	186,667	59,000	41,000	59,000	41,000	59,000	41,000			

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

1,1-Dichloroethylene	75354	7	7,143	46,667	46,667	15,000	950	15,000	950	15,000	950			
1,2-cis-Dichloroethylene	156592	70		1,867	1,867									
1,2-trans-Dichloroethylene	156605	100	10,127	18,667	18,667	68,000	3,900	68,000	3,900	68,000	3,900			
Dichloromethane	75092	5	2,222	2,333	5,600	97,000	5,500	97,000	5,500	97,000	5,500			
2,4-Dichlorophenol	120832	21	59	2,800	2,800	1,000	88	1,000	88	1,000	88			
2,4-Dichlorophenoxyacetic acid (2,4-D)	94757	70		9,333	9,333									
1,2-Dichloropropane	78875	5	17,518	84,000	84,000	26,000	9,200	26,000	9,200	26,000	9,200			
1,3-Dichloropropene	542756	0.7	42	93	28,000	3,000	1,100	3,000	1,100	3,000	1,100			
Dieldrin	60571	0.002	0.00005	0.3	47	0.2	0.06	0.2	0.06	0.2	0.06	4	0.003	See (b)
Diethyl phthalate	84662	5,600	8,767	746,667	746,667	26,000	1,600	26,000	1,600	26,000	1,600			
Di (2-ethylhexyl) adipate	103231	400		3,889	560,000									
Di (2-ethylhexyl) phthalate	117817	6	3	333	18,667	400	360	400	360	400	360	3,100		
2,4-Dimethylphenol	105679	140	171	18,667	18,667	1,000	310	1,000	310	1,000	310	150,000		
Dimethyl phthalate	131113					17,000	1,000	17,000	1,000	17,000	1,000			
4,6-Dinitro-o-cresol	534521	0.6	12	75	75	310	24	310	24	310	24			
2,4-Dinitrophenol	51285	14	1,067	1,867	1,867	110	9.2	110	9.2	110	9.2			
2,4-Dinitrotoluene	121142	14	421	1,867	1,867	14,000	860	14,000	860	14,000	860			
2,6-Dinitrotoluene	606202	0.05		7	280									
Di-n-octyl phthalate	117840	70		9,333	9,333									
Dinoseb	88857	7	12	933	933									
1,2-Diphenylhydrazine	122667	0.04	0.2	6	6	130	11	130	11	130	11			
Diquat	85007	20	176	2,053	2,053									
Endosulfan sulfate	1031078	42	18	5,600	5,600	0.2	0.06	0.2	0.06	0.2	0.06	3		
Endosulfan (Total)	115297	42	18	5,600	5,600	0.2	0.06	0.2	0.06	0.2	0.06	3		
Endothall	145733	100	16,000	18,667	18,667									
Endrin	72208	2	0.06	1,120	1,120	0.09	0.04	0.09	0.04	0.09	0.04	0.7	0.004	0.004
Endrin aldehyde	7421933	2	0.06	1,120	1,120	0.09	0.04	0.09	0.04	0.09	0.04	0.7		
Ethylbenzene	100414	700	2,133	93,333	93,333	23,000	1,400	23,000	1,400	23,000	1,400			
Fluoranthene	206440	280	28	37,333	37,333	2,000	1,600	2,000	1,600	2,000	1,600			
Fluorene	86737	280	1,067	37,333	37,333									
Fluoride	7782414	4,000		140,000	140,000									
Glyphosate	1071836	700	266,667	93,333	93,333									
Guthion	86500	21	92	2,800	2,800		0.01		0.01		0.01			
Heptachlor	76448	0.4	0.00008	1	467	0.5	0.004	0.5	0.004	0.6	0.01	0.9		
Heptachlor epoxide	1024573	0.2	0.00004	0.5	12	0.5	0.004	0.5	0.004	0.6	0.01	0.9		
Hexachlorobenzene	118741	1	0.0003	3	747	6	3.7	6	3.7	6	3.7			
Hexachlorobutadiene	87683	0.4	18	60	187	45	8.2	45	8.2	45	8.2			
Hexachlorocyclohexane alpha	319846	0.006	0.005	0.7	7,467	1,600	130	1,600	130	1,600	130	1,600		
Hexachlorocyclohexane beta	319857	0.02	0.02	3	560	1,600	130	1,600	130	1,600	130	1,600		
Hexachlorocyclohexane delta	319868					1,600	130	1,600	130	1,600	130	1,600		
Hexachlorocyclohexane gamma (lindane)	58899	0.2	5	700	700	1	0.08	1	0.28	1	0.61	11		
Hexachlorocyclopentadi-ene	77474	50	74	11,200	11,200	3.5	0.3	3.5	0.3	3.5	0.3			
Hexachloroethane	67721	0.9	1	117	653	490	350	490	350	490	350	850		
Hydrogen sulfide	7783064						2 See (c)		2 See (c)		2 See (c)			
Indeno (1,2,3-cd) pyrene	193395	0.4	1	47	47									
Iron	7439896						1,000 D		1,000 D		1,000 D			
Isophorone	78591	37	961	4,912	186,667	59,000	43,000	59,000	43,000	59,000	43,000			
Lead	7439971	15 T		15 T	15 T	See (d) & Table 6	10,000 T							
Malathion	121755	140	1,455	18,667	18,667				0.1		0.1			
Manganese	7439965	980		130,667	130,667								10,000	
Mercury	7439976	2 T		280 T	280 T	2.4 D	0.01 D	2.4 D	0.01 D	2.4 D	0.01 D	5 D		10 T
Methoxychlor	72435	40		18,667	18,667		0.03		0.03		0.03			
Methylmercury	22967926		0.3 mg/ kg											
Mirex	2385855	1	0.0002	0.26	187		0.001		0.001		0.001			
Naphthalene	91203	140	1,524	18,667	18,667	1,100	210	3,200	580	3,200	580			
Nickel	7440020	210 T	511 T	28,000 T	28,000 T	See (d) & Table 7								
Nitrate	14797558	10,000		3,733,333	3,733,333									
Nitrite	14797650	1,000		233,333	233,333									
Nitrate + Nitrite		10,000												
Nitrobenzene	98953	14	554	1,867	1,867	1,300	850	1,300	850	1,300	850			
p-Nitrophenol	100027					4,100	3,000	4,100	3,000	4,100	3,000			
Nitrosodibutylamine	924163	0.006	0.2	0.9										
Nitrosodiethylamine	55185	0.0002	0.1	0.03										
N-nitrosodimethylamine	62759	0.001	3	0.09	0.09									
N-Nitrosodiphenylamine	86306	7.1	6	952	952	2,900	200	2,900	200	2,900	200			
N-nitrosodi-n-propylamine	621647	0.005	0.5	0.7	0.7									
N-nitrosopyrrolidine	930552	0.02	34	2										
Nonylphenol	104405					28	6.6	28	6.6	28	6.6	28		
Oxamyl	23135220	200	6452	23,333	23,333									
Parathion	56382	42	16	5,600	5,600	0.07	0.01	0.07	0.01	0.07	0.01			
Pentachlorobenzene	608935	6		747	747									
Paraquat	1910425	32	12,000	4,200	4,200	100	54	100	54	100	54			
Pentachlorophenol	87865	1	111	12	4,667	See (e), (j) & Table 10								
Permethrin	52645531	350	77	46,667	46,667	0.3	0.2	0.3	0.2	0.3	0.2			
Phenanthrene	85018					30	6.3	30	6.3	30	6.3			
Phenol	108952	2,100	37	280,000	280,000	5,100	730	7,000	1,000	7,000	1,000	180,000		
Picloram	1918021	500	1,806	65,333	65,333									
Polychlorinatedbiphenyls (PCBs)	1336363	0.5	0.00006	2	19	2	0.01	2	0.02	2	0.02	11	0.001	0.001

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

Pyrene	129000	210	800	28,000	28,000										
Radium 226 + Radium 228		5 pCi/L													
Selenium	7782492	50 T	667 T	4,667 T	4,667 T		2 T			2 T		2 T	33 T	20 T	50 T
Silver	7440224	35 T	8,000 T	4,667 T	4,667 T	See (d) & Table 8		See (d) & Table 8		See (d) & Table 8		See (d) & Table 8			
Simazine	112349	4		4,667	4,667										
Strontium	7440246	8 pCi/L													
Styrene	100425	100		186,667	186,667	5,600	370	5,600	370	5,600	370				
Sulfides													100		
1,2,4,5-Tetrachlorobenzene	95943	2.1		280	280										
2,3,7,8-Tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD)	1746016	0.00003	0.0000001	0.0007	0.0007	0.01	0.005	0.01	0.005	0.01	0.005	0.1			
1,1,2,2-Tetrachloroethane	79345	0.2	32,000	23	186,667	4,700	3,200	4,700	3,200	4,700	3,200				
Tetrachloroethylene	127184	5	62	2,222	5,600	2,600	280	6,500	680	6,500	680	15,000			
Thallium	7440280	2 T	0.07 T	9 T	9 T	700 D	150 D	700 D	150 D	700 D	150 D				
Toluene	108883	1,000	11,963	149,333	149,333	8,700	180	8,700	180	8,700	180				
Toxaphene	8001352	3	0.0003	4	1,867	0.7	0.0002	0.7	0.0002	0.7	0.0002	11	0.005	0.005	
Tributyltin	688733		0.08	280	280	0.5	0.07	0.5	0.07	0.5	0.07				
1,2,4-Trichlorobenzene	120821	70	70	9,333	9,333	750	130	1,700	300	1,700	300				
1,1,1-Trichloroethane	71556	200	285,714	1,866,667	1,866,667	2,600	1,600	2,600	1,600	2,600	1,600		1,000		
1,1,2-Trichloroethane	79005	5	16	82	3,733	18,000	12,000	18,000	12,000	18,000	12,000				
Trichloroethylene	79016	5	8	101	467	20,000	1,300	20,000	1,300	20,000	1,300				
2,4,5-Trichlorophenol	95954	700		93,333	93,333										
2,4,6-Trichlorophenol	88062	3.2	2	424	424	160	25	160	25	160	25	3,000			
2,4,5-Trichlorophenoxy propionic acid (2,4,5-TP)	93721	50		29,867	29,867										
Trihalomethanes (T)		80													
Tritium	10028178	20,000 pCi/L													
Uranium	7440611	30 D		2,800	2,800										
Vinyl chloride	75014	2	5	6	2,800										
Xylenes (T)	1330207	10,000		186,667	186,667										
Zinc	7440666	2,100 T	5,106 T	280,000 T	280,000 T	See (d) & Table 9	10,000 T	25,000 T							
2-nitrophenol	88755		No Data	No Data	No Data	No Data	No Data	No Data	No Data	No Data	No Data	No Data	No Data	No Data	
1,1-dichloroethane	85343		No Data	No Data	No Data	No Data	No Data	No Data	No Data	No Data	No Data	No Data	No Data	No Data	
4-chlorophenyl phenyl ether	7005723		No Data	No Data	No Data	No Data	No Data	No Data	No Data	No Data	No Data	No Data	No Data	No Data	
Benzo (ghi) perylene	191242		No Data	No Data	No Data	No Data	No Data	No Data	No Data	No Data	No Data	No Data	No Data	No Data	

Footnotes

- a. The asbestos standard is 7 million fibers (longer than 10 micrometers) per liter.
- b. The aldrin/dieldrin standard is exceeded when the sum of the two compounds exceeds 0.003 µg/L.
- c. In lakes, the acute criteria for hydrogen sulfide apply only to water samples taken from the epilimnion, or the upper layer of a lake or reservoir.
- d. Hardness, expressed as mg/L CaCO<sub>3</sub>, is determined according to the following criteria:
  - i. If the receiving water body has an A&Wc or A&Ww designated use, then hardness is based on the hardness of the receiving water body from a sample taken at the same time that the sample for the metal is taken, except that the hardness may not exceed 400 mg/L CaCO<sub>3</sub>.
  - ii. If the receiving water has an A&Wedw or A&We designated use, then the hardness is based on the hardness of the effluent from a sample taken at the same time that the sample for the metal is taken, except that the hardness may not exceed 400 mg/L CaCO<sub>3</sub>.
  - iii. The mathematical equations for the hardness-dependent parameter represent the water quality standards. Examples of criteria for the hardness-dependent parameters have been calculated and are presented in separate tables at the end of Appendix A for the convenience of the user.
- e. pH is determined according to the following criteria:
  - i. If the receiving water has an A&Wc or A&Ww designated use, then pH is based on the pH of the receiving water body from a sample taken at the same time that the sample for pentachlorophenol or ammonia is taken.
  - ii. If the receiving water body has an A&Wedw or A&We designated use, then the pH is based on the pH of the effluent from a sample taken at the same time that the sample for pentachlorophenol or ammonia is taken.
  - iii. The mathematical equations for ammonia represent the water quality standards. Examples of criteria for ammonia have been calculated and are presented in separate tables at the end of Appendix A for the convenience of the user.
- f. Table 1 abbreviations.
  - i. µg/L = micrograms per liter,
  - ii. mg/kg = milligrams per kilogram,
  - iii. pCi/L = picocuries per liter,
  - iv. D = dissolved,
  - v. T = total recoverable,
  - vi. TTHM indicates that the chemical is a trihalomethane.
- g. The total trihalomethane (TTHM) standard is exceeded when the sum of these four compounds exceeds 80 µg/L, as a rolling annual average.
- h. The concentration of gross alpha particle activity includes radium-226, but excludes radon and uranium.
- i. The average annual concentration of beta particle activity and photon emitters from manmade radionuclides shall not produce an annual dose equivalent to the total body or any internal organ greater than four millirems per year.
- j. The mathematical equations for the pH-dependent parameters represent the water quality standards. Examples of criteria for the pH-dependent parameters have been calculated and are presented in separate tables at the end of Appendix A for the convenience of the user.
- k. Abbreviations for the mathematical equations are as follows:  
 e = the base of the natural logarithm and is a mathematical constant equal to 2.71828  
 LN = is the natural logarithm  
 CMC = Criterion Maximum Concentration (acute)  
 CCC = Criterion Continuous Concentration (chronic)

Historical Note

Appendix A repealed; new Appendix A, Table 1 adopted effective April 24, 1996 (Supp. 96-2). Appendix A, Table 1 amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 1 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 1 repealed; new Appendix A, Table 1 made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 1 amended by final rulemaking at 22 A.A.R.

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

2328, effective August 2, 2016 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

**Table 2. Acute Water Quality Standards for Dissolved Cadmium**

Aquatic and Wildlife coldwater		Aquatic and Wildlife warm water, and edw		Aquatic and Wildlife ephemeral	
Hard. mg/L	Std. µg/L	Hard. mg/L	Std. µg/L	Hard. mg/L	Std. µg/L
20	0.40	20	2.1	20	4.9
100	1.8	100	9.4	100	22
400	6.5	400	34	400	80
$e^{(0.9789 \cdot \text{LN}(\text{Hardness}) - 3.866)} \cdot (1.136672 - \text{LN}(\text{Hardness})) \cdot 0.041838$		$e^{(0.9789 \cdot \text{LN}(\text{Hardness}) - 2.208)} \cdot (1.136672 - \text{LN}(\text{Hardness})) \cdot 0.041838$		$e^{(0.9789 \cdot \text{LN}(\text{Hardness}) - 1.363)} \cdot (1.136672 - \text{LN}(\text{Hardness})) \cdot 0.041838$	

**Historical Note**

Appendix A repealed; new Appendix A, Table 2 adopted effective April 24, 1996 (Supp. 96-2). Appendix A, Table 2 amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 2 amended to correct references to footnotes (Supp. 02-4). Appendix A, Table 2 footnotes amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 2 repealed; new Appendix A, Table 2 made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 2 repealed; new Table 2 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

**Table 3. Chronic Water Quality Standards for Dissolved Cadmium**

Aquatic and Wildlife coldwater, warmwater, and edw	
Hard. mg/L	Std. µg/L
20	0.21
100	0.72
400	2.0
$e^{(0.7977 \cdot \text{LN}(\text{Hardness}) - 3.909)} \cdot (1.101672 - \text{LN}(\text{Hardness})) \cdot 0.041838$	

**Historical Note**

Appendix A, Table 3 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 3 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 3 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 3 repealed; new Table 3 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

**Table 4. Water Quality Standards for Dissolved Chromium III**

Acute Aquatic and Wildlife coldwater, warmwater and edw		Chronic Aquatic and Wildlife coldwater, warmwater and edw		Acute Aquatic and Wildlife ephemeral	
Hard. mg/L	Std. µg/L	Hard. mg/L	Std. µg/L	Hard. mg/L	Std. µg/L
20	152	20	19.8	20	512
100	570	100	74.1	100	1,912
400	1,773	400	231	400	5,950
$e^{(0.819 \cdot \text{LN}(\text{Hardness}) + 3.7256)} \cdot (0.316)$		$e^{(0.819 \cdot \text{LN}(\text{Hardness}) + 0.6848)} \cdot (0.86)$		$e^{(0.819 \cdot \text{LN}(\text{Hardness}) + 4.9361)} \cdot (0.316)$	

**Historical Note**

Appendix A, Table 4 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 4 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 4 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 4 repealed; new Table 4 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

**Table 5. Water Quality Standards for Dissolved Copper**

Acute Aquatic and Wildlife coldwater, warmwater and edw		Chronic Aquatic and Wildlife coldwater, warmwater and edw		Acute Aquatic and Wildlife ephemeral	
Hard. mg/L	Std. µg/L	Hard. mg/L	Std. µg/L	Hard. mg/L	Std. µg/L
20	2.9	20	2.3	20	5.1
100	13	100	9.0	100	23
400	50	400	29	400	86
$e^{(0.9422 \cdot \text{LN}(\text{Hardness}) - 1.702)} \cdot (0.96)$		$e^{(0.8545 \cdot \text{LN}(\text{Hardness}) - 1.702)} \cdot (0.96)$		$e^{(0.9422 \cdot \text{LN}(\text{Hardness}) - 1.1514)} \cdot (0.96)$	

**Historical Note**

Appendix A, Table 5 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 5 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 5 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 5 repealed; new Table 5 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

**Table 6. Water Quality Standards for Dissolved Lead**

Acute Aquatic and Wildlife coldwater, warmwater and edw		Chronic Aquatic and Wildlife coldwater, warmwater and edw		Acute Aquatic and Wildlife ephemeral	
Hard. mg/L	Std. µg/L	Hard. mg/L	Std. µg/L	Hard. mg/L	Std. µg/L
20	10.8	20	0.42	20	22.8
100	64.6	100	2.5	100	136.3
400	281	400	10.9	400	592.7
$e^{(1.273 \cdot \text{LN}(\text{Hardness}) - 1.46)} \cdot (1.46203 - \text{LN}(\text{Hardness})) \cdot (0.145712))$		$e^{(1.273 \cdot \text{LN}(\text{Hardness}) - 4.705)} \cdot (1.46203 - \text{LN}(\text{Hardness})) \cdot (0.145712))$		$e^{(1.273 \cdot \text{LN}(\text{Hardness}) - 0.7131)} \cdot (1.46203 - \text{LN}(\text{Hardness})) \cdot (0.145712))$	

**Historical Note**

Appendix A, Table 6 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 6 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 6 renumbered to Table 9; new Table 6 made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 6 repealed; new Table 6 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

**Table 7. Water Quality Standards for Dissolved Nickel**

Acute Aquatic and Wildlife coldwater, warmwater and edw		Chronic Aquatic and Wildlife coldwater, warmwater and edw		Acute Aquatic and Wildlife ephemeral	
Hard. mg/L	Std. µg/L	Hard. mg/L	Std. µg/L	Hard. mg/L	Std. µg/L
20	120.0	20	13.3	20	1066
100	468	100	52.0	100	4158
400	1513	400	168	400	13436
$e^{(0.846 \cdot \text{LN}(\text{Hardness}) + 2.255)} \cdot (0.998)$		$e^{(0.846 \cdot \text{LN}(\text{Hardness}) + 0.0584)} \cdot (0.997)$		$e^{(0.846 \cdot \text{LN}(\text{Hardness}) + 4.4389)} \cdot (0.998)$	

**Historical Note**

Appendix A, Table 7 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 7 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 7 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 7 repealed; new Table 7 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 8. Water Quality Standards for Dissolved Silver**

Acute Aquatic and Wildlife coldwater, warmwater, edw, and ephemeral	
Hard. mg/L	Std. µg/L
20	0.20
100	3.2
400	34.9
$e^{(1.72 \cdot \text{LN}(\text{Hardness}) - 6.59)} \cdot (0.85)$	

**Historical Note**

Appendix A, Table 8 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 8 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 8 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 8 repealed; new Table 8 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 9. Water Quality Standards for Dissolved Zinc**

Acute and Chronic Aquatic and Wildlife coldwater, warmwater and edw		Acute Aquatic and Wildlife ephemeral	
Hard. mg/L	Std. µg/L	Hard. mg/L	Std. µg/L
20	30.0	20	284
100	117	100	1112
400	379	400	3599
$e^{(0.8473 \cdot \text{LN}(\text{Hardness}) + 0.884)} \cdot (0.978)$		$e^{(0.8473 \cdot \text{LN}(\text{Hardness}) + 3.1342)} \cdot (0.978)$	

**Historical Note**

Appendix A, Table 9 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 9 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 9 renumbered to Table 11; new Table 9 renumbered from Table 6 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 9 repealed; new Table 9 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

**Table 10. Water Quality Standards for Pentachlorophenol**

Acute Aquatic and Wildlife coldwater, warmwater and edw		Chronic Aquatic and Wildlife coldwater, warmwater and edw		Acute Aquatic and Wildlife ephemeral	
pH	µg/L	pH	µg/L	pH	µg/L
3	0.16	3	0.1	3	0.66
6	3.3	6	2.1	6	13.5
9	67.7	9	42.7	9	274
e <sup>(1.005*(pH)-4.83)</sup>		e <sup>(1.005*(pH)-5.29)</sup>		e <sup>(1.005*(pH)-3.4306)</sup>	

**Historical Note**

Appendix A, Table 10 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 10 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 10 renumbered to Table 12; new Table 10 renumbered from Table 11 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 10 repealed; new Table 10 made by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 11. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife coldwater, Unionid Mussels Present**

For the aquatic and wildlife coldwater uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment.

pH	Temperature (°C)																
	0-14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
6.5	33	33	32	29	27	25	23	21	19	18	16	15	14	13	12	11	9.9
6.6	31	31	30	28	26	24	22	20	18	17	16	14	13	12	11	10	9.5
6.7	30	30	29	27	24	22	21	19	18	16	15	14	13	12	11	9.8	9
6.8	28	28	27	25	23	21	20	18	17	15	14	13	12	11	10	9.2	8.5
6.9	26	26	25	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	7.9
7	24	24	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	8	7.3
7.1	22	22	21	20	18	17	15	14	13	12	11	10	9.3	8.5	7.9	7.2	6.7
7.2	20	20	19	18	16	15	14	13	12	11	9.8	9.1	8.3	7.7	7.1	6.5	6
7.3	18	18	17	16	14	13	12	11	10	9.5	8.7	8	7.4	6.8	6.3	5.8	5.3
7.4	15	15	15	14	13	12	11	9.8	9	8.3	7.7	7	6.5	6	5.5	5.1	4.7
7.5	13	13	13	12	11	10	9.2	8.5	7.8	7.2	6.6	6.1	5.6	5.2	4.8	4.4	4
7.6	11	11	11	10	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5
7.7	9.6	9.6	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5	3.2	3
7.8	8.1	8.1	7.9	7.2	6.7	6.1	5.6	5.2	4.8	4.4	4	3.7	3.4	3.2	2.9	2.7	2.5
7.9	6.8	6.8	6.6	6	5.6	5.1	4.7	4.3	4	3.7	3.4	3.1	2.9	2.6	2.4	2.2	2.1
8	5.6	5.6	5.4	5	4.6	4.2	3.9	3.6	3.3	3	2.8	2.6	2.4	2.2	2	1.9	1.7
8.1	4.6	4.6	4.5	4.1	3.8	3.5	3.2	3	2.7	2.5	2.3	2.1	2	1.8	1.7	1.5	1.4
8.2	3.8	3.8	3.7	3.5	3.1	2.9	2.7	2.4	2.3	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2
8.3	3.1	3.1	3.1	2.8	2.6	2.4	2.2	2	1.9	1.7	1.6	1.4	1.3	1.2	1.1	1	0.96
8.4	2.6	2.6	2.5	2.3	2.1	2	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1	0.93	0.86	0.79
8.5	2.1	2.1	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2	1.1	0.98	0.9	0.83	0.77	0.71	0.65
8.6	1.8	1.8	1.7	1.6	1.5	1.3	1.2	1.1	1	0.96	0.88	0.81	0.75	0.69	0.63	0.59	0.54
8.7	1.5	1.5	1.4	1.3	1.2	1.1	1	0.94	0.87	0.8	0.74	0.68	0.62	0.57	0.53	0.49	0.45
8.8	1.2	1.2	1.2	1.1	1	0.93	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37
8.9	1	1	1	0.93	0.85	0.79	0.72	0.67	0.61	0.56	0.52	0.48	0.44	0.4	0.37	0.34	0.32
9	0.88	0.88	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37	0.34	0.32	0.29	0.27

$$MIN\left(\left(\frac{0.275}{1+10^{7.204-pH}} + \frac{39.0}{1+10^{pH-7.204}}\right) \cdot \left(0.7249 \times \left(\frac{0.0114}{1+10^{7.204-pH}} + \frac{1.6181}{1+10^{pH-7.204}}\right) \times (23.12 \times 10^{0.096 \times (20-p)})\right)\right)$$

**Historical Note**

Appendix A, Table 11 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 11 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 11 renumbered to Table 10; new Table 11 renumbered from Table 9 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 11 repealed; new Table 11 renumbered from Table 25 and amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Appendix A, Table 11 repealed; new Appendix A, Table 11 made by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

**Table 12. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife warmwater, Unionid Mussels Present**

For the aquatic and wildlife warmwater uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment.

pH	Temperature (°C)																				
	0-10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
6.5	51	48	44	41	37	34	32	29	27	25	23	21	19	18	16	15	14	13	12	11	9.9
6.6	49	46	42	39	36	33	30	28	26	24	22	20	18	17	16	14	13	12	11	10	9.5
6.7	46	44	40	37	34	31	29	27	24	22	21	19	18	16	15	14	13	12	11	9.8	9
6.8	44	41	38	35	32	30	27	25	23	21	20	18	17	15	14	13	12	11	10	9.2	8.5
6.9	41	38	35	32	30	28	25	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	7.9
7	38	35	33	30	28	25	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	7.9	7.3
7.1	34	32	30	27	25	23	21	20	18	17	15	14	13	12	11	10	9.3	8.5	7.9	7.2	6.7
7.2	31	29	27	25	23	21	19	18	16	15	14	13	12	11	9.8	9.1	8.3	7.7	7.1	6.5	6
7.3	27	26	24	22	20	18	17	16	14	13	12	11	10	9.5	8.7	8	7.4	6.8	6.3	5.8	5.3
7.4	24	22	21	19	18	16	15	14	13	12	11	9.8	9	8.3	7.7	7	6.5	6	5.5	5.1	4.7
7.5	21	19	18	17	15	14	13	12	11	10	9.2	8.5	7.8	7.2	6.6	6.1	5.6	5.2	4.8	4.4	4
7.6	18	17	15	14	13	12	11	10	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5
7.7	15	14	13	12	11	10	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5	3.2	2.9
7.8	13	12	11	10	9.3	8.5	7.9	7.2	6.7	6.1	5.6	5.2	4.8	4.4	4	3.7	3.4	3.2	2.9	2.7	2.5
7.9	11	9.9	9.1	8.4	7.7	7.1	6.6	3	5.6	5.1	4.7	4.3	4	3.7	3.4	3.1	2.9	2.6	2.4	2.2	2.1
8	8.8	8.2	7.6	7	6.4	5.9	5.4	5	4.6	4.2	3.9	3.6	3.3	3	2.8	2.6	2.4	2.2	2	1.9	1.7
8.1	7.2	6.8	6.3	5.8	5.3	4.9	4.5	4.1	3.8	3.5	3.2	3	2.7	2.5	2.3	2.1	2	1.8	1.7	1.5	1.4
8.2	6	5.6	5.2	4.8	4.4	4	3.7	3.4	3.1	2.9	2.7	2.4	2.3	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2
8.3	4.9	4.6	4.3	3.9	3.6	3.3	3.1	2.8	2.6	2.4	2.2	2	1.9	1.7	1.6	1.4	1.3	1.2	1.1	1	0.96
8.4	4.1	3.8	3.5	3.2	3	2.7	2.5	2.3	2.1	2	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1	0.93	0.86	0.79
8.5	3.3	3.1	2.9	2.7	2.4	2.3	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2	1.1	0.98	0.9	0.83	0.77	0.71	0.65
8.6	2.8	2.6	2.4	2.2	2	1.9	1.7	1.6	1.5	1.3	1.2	1.1	1	0.96	0.88	0.81	0.75	0.69	0.63	0.58	0.54
8.7	2.3	2.2	2	1.8	1.7	1.6	1.4	1.3	1.2	1.1	1	0.94	0.87	0.8	0.74	0.68	0.62	0.57	0.53	0.49	0.45
8.8	1.9	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1	0.93	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37
8.9	1.6	1.5	1.4	1.3	1.2	1.1	1	0.93	0.85	0.79	0.72	0.67	0.61	0.56	0.52	0.48	0.44	0.4	0.37	0.34	0.32
9	1.4	1.3	1.2	1.1	1	0.93	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37	0.34	0.32	0.29	0.27

$$0.7249 \times \left( \frac{0.0114}{1 + 10^{7.204 - pH}} + \frac{1.6181}{1 + 10^{pH - 7.204}} \right) \times \text{MIN}(51.93, 23.12 \times 10^{0.036 \times (20 - T)})$$

**Historical Note**

Appendix A, Table 12 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 12 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 12 renumbered to Table 18; new Table 12 renumbered from Table 10 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 12 repealed; new Table 12 renumbered from Table 26 and amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Appendix A, Table 11 repealed; new Appendix A, Table 11 made by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3). Appendix A, Table 12 repealed; new Appendix A, Table 12 made by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

**Table 13. Chronic Criteria for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife coldwater and warmwater, Unionid Mussels Present**

For the aquatic and wildlife cold and warm water uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment.

pH	Temperature (°C)																													
	0-7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30						
6.5	4.9	4.6	4.3	4.1	3.8	3.6	3.3	3.1	2.9	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8	1.6	1.5	1.5	1.4	1.3	1.2	1.1						
6.6	4.8	4.5	4.3	4	3.8	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1						
6.7	4.8	4.5	4.2	3.9	3.7	3.5	3.2	3	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1						
6.8	4.6	4.4	4.1	3.8	3.6	3.4	3.2	3	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1						
6.9	4.5	4.2	4	3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1						
7	4.4	4.1	3.8	3.6	3.4	3.2	3	2.8	2.6	2.4	2.3	2.2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	0.99						
7.1	4.2	3.9	3.7	3.5	3.2	3	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.95						
7.2	4	3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	0.96	0.9						
7.3	3.8	3.5	3.3	3.1	2.9	2.7	2.6	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	0.97	0.91	0.85						
7.4	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	0.96	0.9	0.85	0.79						
7.5	3.2	3	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.95	0.89	0.83	0.78	0.73						
7.6	2.9	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8	1.6	1.5	1.4	1.4	1.3	1.2	1.1	1.1	0.98	0.92	0.86	0.81	0.76	0.71	0.67						
7.7	2.6	2.4	2.3	2.2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	1	0.94	0.88	0.83	0.78	0.73	0.68	0.64	0.6						
7.8	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.95	0.89	0.84	0.79	0.74	0.69	0.65	0.61	0.57	0.53						
7.9	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.95	0.89	0.84	0.79	0.74	0.69	0.65	0.61	0.57	0.53	0.5	0.47						
8	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	1	0.94	0.88	0.83	0.78	0.73	0.68	0.64	0.6	0.56	0.53	0.5	0.44	0.44	0.41						
8.1	1.5	1.5	1.4	1.3	1.2	1.1	1.1	0.99	0.92	0.87	0.81	0.76	0.71	0.67	0.63	0.59	0.55	0.52	0.49	0.46	0.43	0.4	0.38	0.35						
8.2	1.3	1.2	1.2	1.1	1	0.96	0.9	0.84	0.79	0.74	0.7	0.65	0.61	0.57	0.54	0.5	0.47	0.44	0.42	0.39	0.37	0.34	0.32	0.3						
8.3	1.1	1.1	0.99	0.93	0.87	0.82	0.76	0.72	0.67	0.63	0.59	0.55	0.52	0.49	0.46	0.43	0.4	0.38	0.35	0.33	0.31	0.29	0.27	0.26						
8.4	0.95	0.89	0.84	0.79	0.74	0.69	0.65	0.61	0.57	0.53	0.5	0.47	0.44	0.41	0.39	0.36	0.34	0.32	0.3	0.28	0.26	0.25	0.23	0.22						
8.5	0.8	0.75	0.71	0.67	0.62	0.58	0.55	0.51	0.48	0.45	0.42	0.4	0.37	0.35	0.33	0.31	0.29	0.27	0.25	0.24	0.22	0.21	0.2	0.18						
8.6	0.68	0.64	0.6	0.56	0.53	0.49	0.46	0.43	0.41	0.38	0.36	0.33	0.31	0.29	0.28	0.26	0.24	0.23	0.21	0.2	0.19	0.18	0.16	0.15						
8.7	0.57	0.54	0.51	0.47	0.44	0.42	0.39	0.37	0.34	0.32	0.3	0.28	0.27	0.25	0.23	0.22	0.21	0.19	0.18	0.17	0.16	0.15	0.14	0.13						
8.8	0.49	0.46	0.43	0.4	0.38	0.35	0.33	0.31	0.29	0.27	0.26	0.24	0.23	0.21	0.2	0.19	0.17	0.16	0.15	0.14	0.13	0.13	0.12	0.11						
8.9	0.42	0.39	0.37	0.34	0.32	0.3	0.28	0.27	0.25	0.23	0.22	0.21	0.19	0.18	0.17	0.16	0.15	0.14	0.13	0.12	0.12	0.11	0.1	0.09						
9	0.36	0.34	0.32	0.3	0.28	0.26	0.24	0.23	0.21	0.2	0.19	0.18	0.17	0.16	0.15	0.14	0.13	0.12	0.11	0.11	0.1	0.09	0.09	0.08						

$$0.8876 \times \left( \frac{0.0278}{1 + 10^{7.688 - pH}} + \frac{1.1994}{1 + 10^{pH - 7.688}} \right) \times (2.126 \times 10^{0.028 \times (20 - \text{MAX}(T, 7))})$$

**Historical Note**

Appendix A, Table 13 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 13 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 13 renumbered to Table 15; new Table 13 renumbered from Table 14 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 13 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). New Appendix A, Table 13 made by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

**Table 14. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Coldwater, Unionid Mussels Absent**  
 For the aquatic and wildlife coldwater uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment.

pH	Temperature (°C)																
	0-14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
6.5	33	33	33	33	33	33	33	33	33	33	33	33	33	33	31	29	27
6.6	31	31	31	31	31	31	31	31	31	31	31	31	31	31	30	28	26
6.7	30	30	30	30	30	30	30	30	30	30	30	30	30	30	29	26	24
6.8	28	28	28	28	28	28	28	28	28	28	28	28	28	28	27	25	23
6.9	26	26	26	26	26	26	26	26	26	26	26	26	26	26	25	23	21
7	24	24	24	24	24	24	24	24	24	24	24	24	24	24	23	21	20
7.1	22	22	22	22	22	22	22	22	22	22	22	22	22	22	21	19	18
7.2	20	20	20	20	20	20	20	20	20	20	20	20	20	20	19	17	16
7.3	18	18	18	18	18	18	18	18	18	18	18	18	18	18	17	16	14
7.4	15	15	15	15	15	15	15	15	15	15	15	15	15	15	15	14	13
7.5	13	13	13	13	13	13	13	13	13	13	13	13	13	13	13	12	11
7.6	11	11	11	11	11	11	11	11	11	11	11	11	11	11	11	10	9.3
7.7	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.6	9.3	8.6	7.9
7.8	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	8.1	7.8	7.2	6.6
7.9	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.8	6.5	6	5.5
8	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.4	5	4.6
8.1	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.6	4.5	4.1	3.8
8.2	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.8	3.7	3.4	3.1
8.3	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3	2.8	2.6
8.4	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.5	2.3	2.1
8.5	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	2.1	1.9	1.8
8.6	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.8	1.7	1.6	1.4
8.7	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.5	1.4	1.3	1.2
8.8	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.1	1
8.9	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	0.92	0.85
9	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.88	0.85	0.78	0.72

$$MIN\left(\frac{0.275}{1 + 10^{7.204 - pH}} + \frac{39.0}{1 + 10^{pH - 7.204}}\right) \cdot \left(0.7249 \times \left(\frac{0.0114}{1 + 10^{7.204 - pH}} + \frac{1.6181}{1 + 10^{pH - 7.204}}\right) \times (62.15 \times 10^{0.036 \times (20 - T)})\right)$$

**Historical Note**

Appendix A, Table 14 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 14 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 14 renumbered to Table 13; new Table 14 renumbered from Table 15 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 14 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). New Appendix A, Table 14 made by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

**Table 15. Acute Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Warmwater and Effluent Dependent, Unionid Mussels Absent**

For the aquatic and wildlife warmwater uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment. For the aquatic and wildlife effluent dependent uses, unionids will be assumed to be absent.

pH	Temperature (°C)																
	0-14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
6.5	51	51	51	51	51	51	51	51	51	48	44	40	37	34	31	29	27
6.6	49	49	49	49	49	49	49	49	49	46	42	39	36	33	30	28	26
6.7	46	46	46	46	46	46	46	46	46	43	40	37	34	31	29	26	24
6.8	44	44	44	44	44	44	44	44	44	41	38	35	32	29	27	25	23
6.9	41	41	41	41	41	41	41	41	41	38	35	32	30	27	25	23	21
7	38	38	38	38	38	38	38	38	38	35	32	30	27	25	23	21	20
7.1	34	34	34	34	34	34	34	34	34	32	29	27	25	23	21	19	18
7.2	31	31	31	31	31	31	31	31	31	29	26	24	22	21	19	17	16
7.3	27	27	27	27	27	27	27	27	27	26	23	22	20	18	17	16	14
7.4	24	24	24	24	24	24	24	24	24	22	21	19	17	16	15	14	13
7.5	21	21	21	21	21	21	21	21	21	19	18	16	15	14	13	12	11
7.6	18	18	18	18	18	18	18	18	18	17	15	14	13	12	11	10	9.3
7.7	15	15	15	15	15	15	15	15	15	14	13	12	11	10	9.3	8.6	7.9
7.8	13	13	13	13	13	13	13	13	13	12	11	10	9.2	8.5	7.8	7.2	6.6
7.9	11	11	11	11	11	11	11	11	11	9.9	9.1	8.4	7.7	7.1	6.5	6	5.5
8	8.8	8.8	8.8	8.8	8.8	8.8	8.8	8.8	8.8	8.2	7.5	6.9	6.4	5.9	5.4	5	4.6
8.1	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	6.8	6.2	5.7	5.3	4.9	4.5	4.1	3.8
8.2	6	6	6	6	6	6	6	6	6	5.6	5.1	4.7	4.4	4	3.7	3.4	3.1
8.3	4.9	4.9	4.9	4.9	4.9	4.9	4.9	4.9	4.9	4.6	4.2	3.9	3.6	3.3	3	2.8	2.6
8.4	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1	3.8	3.4	3.2	3	2.7	2.5	2.3	2.1
8.5	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.1	2.9	2.6	2.4	2.2	2.1	1.9	1.8
8.6	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.8	2.6	2.4	2.2	2	1.9	1.7	1.6	1.4
8.7	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.2	2	1.8	1.7	1.5	1.4	1.3	1.2
8.8	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.9	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1
8.9	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.6	1.5	1.4	1.3	1.2	1.1	1	0.92	0.85
9	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.3	1.2	1.1	1	0.93	0.85	0.78	0.72

$$0.7249 \times \left( \frac{0.0114}{1 + 10^{7.204 - pH}} + \frac{1.6181}{1 + 10^{pH - 7.204}} \right) \times \text{MIN} \left( 51.93, (62.15 \times 10^{0.036 \times (20 - T)}) \right)$$

**Historical Note**

Appendix A, Table 15 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 15 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 15 renumbered to Table 14; new Table 15 renumbered from Table 13 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 15 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). New Appendix A, Table 14 made by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

**Table 16. Chronic Standards for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife Warmwater and Effluent Dependent, Unionid Mussels Absent**

For the aquatic and wildlife warmwater uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment. For the aquatic and wildlife effluent dependent uses, unionids will be assumed to be absent.

pH	Temperature (°C)																							
	0-7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
6.5	19	17	16	15	14	13	13	12	11	10	9.7	9.1	8.5	8	7.5	7	6.6	6.2	5.8	5.4	5.1	4.8	4.5	4.2
6.6	18	17	16	15	14	13	12	12	11	10	9.6	9	8.4	7.9	7.4	6.9	6.5	6.1	5.7	5.4	5	4.7	4.4	4.1
6.7	18	17	16	15	14	13	12	11	11	10	9.4	8.8	8.3	7.7	7.3	6.8	6.4	6	5.6	5.3	4.9	4.6	4.3	4.1
6.8	17	16	15	14	14	13	12	11	10	9.8	9.2	8.6	8.1	7.6	7.1	6.7	6.2	5.8	5.5	5.1	4.8	4.5	4.2	4
6.9	17	16	15	14	13	12	12	11	10	9.5	8.9	8.4	7.8	7.4	6.9	6.5	6.1	5.7	5.3	5	4.7	4.4	4.1	3.9
7	16	15	14	14	13	12	11	10	9.8	9.2	8.6	8.1	7.6	7.1	6.7	6.2	5.9	5.5	5.1	4.8	4.5	4.2	4	3.7
7.1	16	15	14	13	12	11	11	10	9.4	8.8	8.3	7.7	7.3	6.8	6.4	6	5.6	5.3	4.9	4.6	4.3	4.1	3.8	3.6
7.2	15	14	13	12	12	11	10	9.5	9	8.4	7.9	7.4	6.9	6.5	6.1	5.7	5.3	5	4.7	4.4	4.1	3.9	3.6	3.4
7.3	14	13	12	12	11	10	9.6	9	8.4	7.9	7.4	6.9	6.5	6.1	5.7	5.4	5	4.7	4.4	4.1	3.9	3.6	3.4	3.2
7.4	13	12	12	11	10	9.5	9	8.4	7.9	7.4	6.9	6.5	6.1	5.7	5.3	5	4.7	4.4	4.1	3.9	3.6	3.4	3.2	3
7.5	12	11	11	10	9.4	8.8	8.2	7.7	7.2	6.8	6.4	6	5.6	5.2	4.9	4.6	4.3	4.1	3.8	3.6	3.3	3.1	2.9	2.8
7.6	11	10	10	9.1	8.5	8	7.5	7	6.6	6.2	5.8	5.4	5.1	4.8	4.5	4.2	3.9	3.7	3.5	3.2	3	2.9	2.7	2.5
7.7	9.9	9.3	8.7	8.1	7.7	7.2	6.8	6.3	5.9	5.6	5.2	4.9	4.6	4.3	4	3.8	3.5	3.3	3.1	2.9	2.7	2.6	2.4	2.3
7.8	8.8	8.3	7.8	7.3	6.8	6.4	6	5.6	5.3	5	4.6	4.4	4.1	3.8	3.6	3.4	3.2	3	2.8	2.6	2.4	2.3	2.1	2
7.9	7.8	7.3	6.8	6.4	6	5.6	5.3	5	4.6	4.4	4.1	3.8	3.6	3.4	3.2	3	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8
8	6.8	6.3	6	5.6	5.2	4.9	4.6	4.3	4	3.8	3.6	3.3	3.1	2.9	2.7	2.6	2.4	2.3	2.1	2	1.9	1.7	1.6	1.5
8.1	5.8	5.5	5.1	4.8	4.5	4.2	4	3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3
8.2	5	4.7	4.4	4.1	3.9	3.6	3.4	3.2	3	2.8	2.6	2.5	2.3	2.2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1
8.3	4.2	4	3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.96
8.4	3.6	3.4	3.2	3	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	0.99	0.92	0.87	0.81
8.5	3	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.95	0.89	0.83	0.78	0.73	0.69
8.6	2.6	2.4	2.2	2.1	2	1.9	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	0.97	0.91	0.85	0.8	0.75	0.7	0.66	0.62	0.58
8.7	2.2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	1	0.93	0.88	0.82	0.77	0.72	0.68	0.63	0.6	0.56	0.52	0.49
8.8	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1	0.96	0.9	0.85	0.79	0.74	0.7	0.65	0.61	0.58	0.54	0.51	0.47	0.44	0.42
8.9	1.6	1.5	1.4	1.3	1.2	1.1	1.1	1	0.94	0.88	0.82	0.77	0.72	0.68	0.64	0.6	0.56	0.52	0.49	0.46	0.43	0.4	0.38	0.36
9	1.4	1.3	1.2	1.1	1	0.98	0.92	0.86	0.81	0.76	0.71	0.66	0.62	0.58	0.55	0.51	0.48	0.45	0.42	0.4	0.37	0.35	0.33	0.31

$$0.9405 \times \left( \frac{0.0278}{1 + 10^{7.688 - pH}} + \frac{1.1994}{1 + 10^{pH - 7.688}} \right) \times (7.547 \times 10^{0.028 \times (20 - \text{MAX}(7,7))})$$

**Historical Note**

Appendix A, Table 16 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 16 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 16 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 16 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Appendix A, Table 16 made by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

**Table 17. Chronic Criteria for Total Ammonia (in mg/L, as N) for Aquatic and Wildlife coldwater, Unionid Mussels Absent**  
 For the aquatic and wildlife coldwater uses, unionids will be assumed to be present unless a study is performed demonstrating that they are absent and there is no historic evidence of their presence, or hydrologic modification has altered the flow regime in a way that would prevent their reestablishment.

pH	Temperature (°C)																
	0-14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
6.5	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7.3	7	6.6	6.2	5.8	5.4	5.1	4.8	4.5	4.2
6.6	7.2	7.2	7.2	7.2	7.2	7.2	7.2	7.2	6.9	6.5	6.1	5.7	5.4	5	4.7	4.4	4.1
6.7	7.1	7.1	7.1	7.1	7.1	7.1	7.1	7.1	6.8	6.4	6	5.6	5.3	4.9	4.6	4.3	4.1
6.8	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.9	6.6	6.2	5.8	5.5	5.1	4.8	4.5	4.2	4
6.9	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.5	6.1	5.7	5.3	5	4.7	4.4	4.1	3.9
7	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.5	6.2	5.8	5.5	5.1	4.8	4.5	4.2	4	3.7
7.1	6.2	6.2	6.2	6.2	6.2	6.2	6.2	6.2	6	5.6	5.3	4.9	4.6	4.3	4.1	3.8	3.6
7.2	5.9	5.9	5.9	5.9	5.9	5.9	5.9	5.9	5.7	5.3	5	4.7	4.4	4.1	3.9	3.6	3.4
7.3	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.6	5.4	5	4.7	4.4	4.1	3.9	3.6	3.4	3.2
7.4	5.2	5.2	5.2	5.2	5.2	5.2	5.2	5.2	5	4.7	4.4	4.1	3.9	3.6	3.4	3.2	3
7.5	4.8	4.8	4.8	4.8	4.8	4.8	4.8	4.8	4.6	4.3	4.1	3.8	3.6	3.3	3.1	2.9	2.8
7.6	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.4	4.2	3.9	3.7	3.5	3.2	3	2.9	2.7	2.5
7.7	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.9	3.8	3.5	3.3	3.1	2.9	2.7	2.6	2.4	2.3
7.8	3.5	3.5	3.5	3.5	3.5	3.5	3.5	3.5	3.4	3.2	3	2.8	2.6	2.4	2.3	2.1	2
7.9	3.1	3.1	3.1	3.1	3.1	3.1	3.1	3.1	3	2.8	2.6	2.4	2.3	2.1	2	1.9	1.8
8	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.7	2.6	2.4	2.3	2.1	2	1.9	1.7	1.6	1.5
8.1	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3
8.2	2	2	2	2	2	2	2	2	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1
8.3	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1	0.96
8.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.4	1.3	1.2	1.1	1.1	0.99	0.93	0.87	0.81
8.5	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.1	1	0.95	0.89	0.83	0.78	0.73	0.69
8.6	1	1	1	1	1	1	1	1	0.97	0.91	0.85	0.8	0.75	0.7	0.66	0.62	0.58
8.7	0.86	0.86	0.86	0.86	0.86	0.86	0.86	0.86	0.82	0.77	0.72	0.68	0.64	0.6	0.56	0.52	0.49
8.8	0.73	0.73	0.73	0.73	0.73	0.73	0.73	0.73	0.7	0.65	0.61	0.58	0.54	0.51	0.47	0.44	0.42
8.9	0.62	0.62	0.62	0.62	0.62	0.62	0.62	0.62	0.6	0.56	0.52	0.49	0.46	0.43	0.41	0.38	0.36
9	0.54	0.54	0.54	0.54	0.54	0.54	0.54	0.54	0.51	0.48	0.45	0.42	0.4	0.37	0.35	0.33	0.31
$0.9405 \times \left( \frac{0.0278}{1 + 10^{7.688 - pH}} + \frac{1.1994}{1 + 10^{pH - 7.688}} \right) \times \text{MIN} \left( 6.920, (7.547 \times 10^{0.028 \times (20 - T)}) \right)$																	

**Historical Note**

Appendix A, Table 17 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 17 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 17 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 17 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Appendix A, Table 16 made by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

**Table 18. Repealed**

A, Table 18 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Historical Note**

Appendix A, Table 18 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 18 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 18 repealed; new Table 18 renumbered from Table 12 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix

**Table 19. Repealed**

**Historical Note**

Appendix A, Table 19 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 19 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 19 renumbered to Table 21; new Table 19

## CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 19 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 20. Repealed****Historical Note**

Appendix A, Table 20 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 20 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 20 amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 20 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 21. Repealed****Historical Note**

Appendix A, Table 21 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 21 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 21 renumbered to Table 22; new Table 21 renumbered from Table 19 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 21 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 22. Repealed****Historical Note**

Appendix A, Table 22 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 22 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 22 renumbered to Table 23; new Table 22 renumbered from Table 21 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 22 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 23. Repealed****Historical Note**

Appendix A, Table 23 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 23 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 23 renumbered to Table 24; new Table 23 renumbered from Table 22 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 23 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 24. Repealed****Historical Note**

Appendix A, Table 24 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 24 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 24 renumbered to Table 25; new Table 24 renumbered from Table 23 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 24 repealed by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 25. Renumbered****Historical Note**

Appendix A, Table 25 adopted by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Appendix A, Table 25 amended by final rulemaking at 9 A.A.R. 716, effective April 8, 2003 (Supp. 03-1). Appendix A, Table 25 renumbered to Table 26; new Table 25 renumbered from Table 24 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 25 renumbered to Table 11 by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

**Table 26. Renumbered****Historical Note**

Appendix A, Table 26 renumbered from Table 25 and amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Appendix A, Table 26 renumbered to Table 12 by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4).

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

**Appendix B. Surface Waters and Designated Uses**

(Coordinates are from the North American Datum of 1983 (NAD83). All latitudes in Arizona are north and all longitudes are west, but the negative signs are not included in the Appendix B table. Some web-based mapping systems require a negative sign before the longitude values to indicate it is a west longitude.)

**Watersheds:**

- BW = Bill Williams
- CG = Colorado – Grand Canyon
- CL = Colorado – Lower Gila
- LC = Little Colorado
- MG = Middle Gila
- SC = Santa Cruz – Rio Magdalena – Rio Sonoyta
- SP = San Pedro – Willcox Playa – Rio Yaqui
- SR = Salt River
- UG = Upper Gila
- VR = Verde River

**Other Abbreviations:**

- WWTP = Wastewater Treatment Plant
- Km = kilometers

Water-shed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife				Human Health				Agricultural	
				A&Wc	A&Ww	A&We	A&Wed w	FBC	PBC	DWS	FC	AgI	AgL
BW	Alamo Lake	34°14'06"/113°35'00"	Deep		A&Ww			FBC			FC		AgL
BW	Big Sandy River	Headwaters to Alamo Lake			A&Ww			FBC			FC		AgL
BW	Bill Williams River	Alamo Lake to confluence with Colorado River			A&Ww			FBC			FC		AgL
BW	Blue Tank	34°40'14"/112°58'17"			A&Ww			FBC			FC		AgL
BW	Boulder Creek	Headwaters to confluence with unnamed tributary at 34°41'13"/113°03'37"		A&Wc				FBC			FC		AgL
BW	Boulder Creek	Below confluence with unnamed tributary to confluence with Burro Creek			A&Ww			FBC			FC		AgL
BW	Burro Creek (OAW)	Headwaters to confluence with Boulder Creek			A&Ww			FBC			FC		AgL
BW	Burro Creek	Below confluence with Boulder Creek to confluence with Big Sandy River			A&Ww			FBC			FC		AgL
BW	Carter Tank	34°52'27"/112°57'31"			A&Ww			FBC			FC		AgL
BW	Conger Creek	Headwaters to confluence with unnamed tributary at 34°45'15"/113°05'46"		A&Wc				FBC			FC		AgL
BW	Conger Creek	Below confluence with unnamed tributary to confluence with Burro Creek			A&Ww			FBC			FC		AgL
BW	Copper Basin Wash	Headwaters to confluence with unnamed tributary at 34°28'12"/112°35'33"		A&Wc				FBC			FC		AgL
BW	Copper Basin Wash	Below confluence with unnamed tributary to confluence with Skull Valley Wash				A&We			PBC				AgL
BW	Cottonwood Canyon	Headwaters to Bear Trap Spring		A&Wc				FBC			FC		AgL
BW	Cottonwood Canyon	Below Bear Trap Spring to confluence at Sycamore Creek			A&Ww			FBC			FC		AgL
BW	Date Creek	Headwaters to confluence with Santa Maria River			A&Ww			FBC			FC		AgL
BW	Francis Creek (OAW)	Headwaters to confluence with Burro Creek			A&Ww			FBC		DWS	FC	AgI	AgL
BW	Kirkland Creek	Headwaters to confluence with Santa Maria River			A&Ww			FBC			FC	AgI	AgL
BW	Knight Creek	Headwaters to confluence with Big Sandy River			A&Ww			FBC			FC		AgL
BW	Peoples Canyon (OAW)	Headwaters to confluence with Santa Maria River			A&Ww			FBC			FC		AgL
BW	Red Lake	35°12'18"/113°03'57"	Sedimentary		A&Ww			FBC			FC		AgL
BW	Santa Maria River	Headwaters to Alamo Lake			A&Ww			FBC			FC	AgI	AgL
BW	Trout Creek	Headwaters to confluence with unnamed tributary at 35°06'47"/113°13'01"		A&Wc				FBC			FC		AgL
BW	Trout Creek	Below confluence with unnamed tributary to confluence with Knight Creek			A&Ww			FBC			FC		AgL
CG	Agate Canyon	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Beaver Dam Wash	Headwaters to confluence with the Virgin River			A&Ww			FBC			FC		AgL
CG	Big Springs Tank	36°36'08"/112°21'01"		A&Wc				FBC			FC		AgL

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

Water-shed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife				Human Health				Agricultural	
				A&Wc	A&Ww	A&We	A&Wed w	FBC	PBC	DWS	FC	AgI	AgL
CG	Boucher Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Bright Angel Creek	Headwaters to confluence with Roaring Springs Creek		A&Wc				FBC			FC		
CG	Bright Angel Creek	Below Roaring Spring Springs Creek to confluence with Colorado River			A&Ww			FBC			FC		
CG	Bright Angel Wash	Headwaters to Grand Canyon National Park South Rim WWTP outfall at 36°02'59"/112°09'02"				A&We			PBC				
CG	Bright Angel Wash (EDW)	Grand Canyon National Park South Rim WWTP outfall to Coconino Wash					A&Wed w		PBC				AgL
CG	Bulrush Canyon Wash	Headwaters to confluence with Kanab Creek				A&We			PBC				
CG	Cataract Creek	Headwaters to Santa Fe Reservoir		A&Wc				FBC		DWS	FC	AgI	AgL
CG	Cataract Creek	Santa Fe Reservoir to City of Williams WWTP outfall at 35°14'40"/112°11'18"		A&Wc				FBC			FC	AgI	AgL
CG	Cataract Creek (EDW)	City of Williams WWTP outfall to 1 km downstream					A&Wed w		PBC				
CG	Cataract Creek	Red Lake Wash to Havasupai Indian Reservation boundary				A&We			PBC				AgL
CG	Cataract Lake	35°15'04"/112°12'58"	Igneous	A&Wc				FBC		DWS	FC		AgL
CG	Chuar Creek	Headwaters to confluence with unnamed tributary at 36°11'35"/111°52'20"		A&Wc				FBC			FC		
CG	Chuar Creek	Below unnamed tributary to confluence with the Colorado River			A&Ww			FBC			FC		
CG	City Reservoir	35°13'57"/112°11'25"	Igneous	A&Wc				FBC		DWS	FC		
CG	Clear Creek	Headwaters to confluence with unnamed tributary at 36°07'33"/112°00'03"		A&Wc				FBC			FC		
CG	Clear Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww			FBC			FC		
CG	Coconino Wash (EDW)	South Grand Canyon Sanitary District Tusayan WRF outfall at 35°58'39"/112°08'25" to 1 km downstream					A&Wed w		PBC				
CG	Colorado River	Lake Powell to Lake Mead		A&Wc				FBC		DWS	FC	AgI	AgL
CG	Cottonwood Creek	Headwaters to confluence with unnamed tributary at 35°20'46"/113°35'31"		A&Wc				FBC			FC		AgL
CG	Cottonwood Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww			FBC			FC		AgL
CG	Crystal Creek	Headwaters to confluence with unnamed tributary at 36°13'41"/112°11'49"		A&Wc				FBC			FC		
CG	Crystal Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww			FBC			FC		
CG	Deer Creek	Headwaters to confluence with unnamed tributary at 36°26'15"/112°28'20"		A&Wc				FBC			FC		
CG	Deer Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww			FBC			FC		
CG	Detrital Wash	Headwaters to Lake Mead				A&We			PBC				
CG	Dogtown Reservoir	35°12'40"/112°07'54"	Igneous	A&Wc				FBC		DWS	FC	AgI	AgL
CG	Dragon Creek	Headwaters to confluence with Milk Creek		A&Wc				FBC			FC		
CG	Dragon Creek	Below confluence with Milk Creek to confluence with Crystal Creek			A&Ww			FBC			FC		
CG	Garden Creek	Headwaters to confluence with Pipe Creek			A&Ww			FBC			FC		
CG	Gonzalez Lake	35°15'26"/112°12'09"	Shallow		A&Ww			FBC			FC	AgI	AgL
CG	Grand Wash	Headwaters to Colorado River				A&We			PBC				
CG	Grapevine Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Grapevine Wash	Headwaters to Colorado River				A&We			PBC				
CG	Hakatai Canyon	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Hance Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Havasupai Creek	From the Havasupai Indian Reservation boundary to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Hermit Creek	Headwaters to Hermit Pack Trail crossing at 36°03'38"/112°14'00"		A&Wc				FBC			FC		
CG	Hermit Creek	Below Hermit Pack Trail crossing to confluence with the Colorado River			A&Ww			FBC			FC		

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

Water-shed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife				Human Health				Agricultural	
				A&Wc	A&Ww	A&We	A&Wed w	FBC	PBC	DWS	FC	AgI	AgL
CG	Horn Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Hualapai Wash	Headwaters to Lake Mead				A&We			PBC				
CG	Jacob Lake	36°42'27"/112°13'50"	Sedi-mentary	A&Wc				FBC			FC		
CG	Kaibab Lake	35°17'04"/112°09'32"	Igneous	A&Wc				FBC		DWS	FC	AgI	AgL
CG	Kanab Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC		DWS	FC		AgL
CG	Kwagunt Creek	Headwaters to confluence with unnamed tributary at 36°13'37"/111°54'50"		A&Wc				FBC			FC		
CG	Kwagunt Creek	Below confluence with unnamed tributary to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Lake Mead	36°06'18"/114°26'33"	Deep	A&Wc				FBC		DWS	FC	AgI	AgL
CG	Lake Powell	36°59'53"/111°08'17"	Deep	A&Wc				FBC		DWS	FC	AgI	AgL
CG	Lonetree Canyon Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Matkatamiba Creek	Below Havasupai Indian Reservation boundary to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Monument Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Nankoweap Creek	Headwaters to confluence with unnamed tributary at 36°15'29"/111°57'26"		A&Wc				FBC			FC		
CG	Nankoweap Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww			FBC			FC		
CG	National Canyon Creek	Headwaters to Hualapai Indian Reservation boundary at 36°15'15"/112°52'34"			A&Ww			FBC			FC		
CG	North Canyon Creek	Headwaters to confluence with unnamed tributary at 36°33'58"/111°55'41"		A&Wc				FBC			FC		
CG	North Canyon Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww			FBC			FC		
CG	Olo Canyon	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Parashant Canyon	Headwaters to confluence with unnamed tributary at 36°21'02"/113°27'56"		A&Wc				FBC			FC		
CG	Parashant Canyon	Below confluence with unnamed tributary to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Paria River	Utah border to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Phantom Creek	Headwaters to confluence with unnamed tributary at 36°09'29"/112°08'13"		A&Wc				FBC			FC		
CG	Phantom Creek	Below confluence with unnamed tributary to confluence with Bright Angel Creek			A&Ww			FBC			FC		
CG	Pipe Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Red Canyon Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Red Lake	35°40'03"/114°04'07"			A&Ww			FBC			FC		AgL
CG	Roaring Springs	36°11'45"/112°02'06"		A&Wc				FBC		DWS	FC		
CG	Roaring Springs Creek	Headwaters to confluence with Bright Angel Creek		A&Wc				FBC			FC		
CG	Rock Canyon	Headwaters to confluence with Truxton Wash				A&We			PBC				
CG	Royal Arch Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Ruby Canyon	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Russell Tank	35°52'21"/111°52'45"		A&Wc				FBC			FC		AgL
CG	Saddle Canyon Creek	Headwaters to confluence with unnamed tributary at 36°21'36"/112°22'43"		A&Wc				FBC			FC		
CG	Saddle Canyon Creek	Below confluence with unnamed tributary to confluence with Colorado River			A&Ww			FBC			FC		
CG	Santa Fe Reservoir	35°14'31"/112°11'10"	Igneous	A&Wc				FBC		DWS	FC		
CG	Sapphire Canyon	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Serpentine Canyon	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Shinumo Creek	Headwaters to confluence with unnamed tributary at 36°18'18"/112°18'07"		A&Wc				FBC			FC		

## CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

Water-shed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife				Human Health				Agricultural	
				A&Wc	A&Ww	A&We	A&Wedw	FBC	PBC	DWS	FC	AgI	AgL
CG	Shinumo Creek	Below confluence with unnamed tributary to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Short Creek	Headwaters to confluence with Fort Pearce Wash				A&We			PBC				
CG	Slate Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Spring Canyon Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Stone Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Tapeats Creek	Headwaters to confluence with the Colorado River		A&Wc				FBC			FC		
CG	Thunder River	Headwaters to confluence with Tapeats Creek		A&Wc				FBC			FC		
CG	Trail Canyon Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Transept Canyon	Headwaters to Grand Canyon National Park North Rim WWTP outfall at 36°12'20"/112°03'35"				A&We			PBC				
CG	Transept Canyon (EDW)	Grand Canyon National Park North Rim WWTP outfall to 1 km downstream					A&Wedw		PBC				
CG	Transept Canyon	From 1 km downstream of the Grand Canyon National Park North Rim WWTP outfall to confluence with Bright Angel Creek				A&We			PBC				
CG	Travertine Canyon Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Truxton Wash	Headwaters to Red Lake				A&We			PBC				
CG	Turquoise Canyon	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Unkar Creek	Below confluence with unnamed tributary at 36°07'54"/111°54'06" to confluence with Colorado River			A&Ww			FBC			FC		
CG	Unnamed Wash (EDW)	Grand Canyon National Park Desert View WWTP outfall at 36°02'06"/111°49'13" to confluence with Cedar Canyon					A&Wedw		PBC				
CG	Unnamed Wash (EDW)	Valle Airpark WRF outfall at 35°38'34"/112°09'22" to confluence with Spring Valley Wash					A&Wedw		PBC				
CG	Vasey's Paradise	A spring at 36°29'52"/111°51'26"		A&Wc				FBC			FC		
CG	Virgin River	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC	AgI	AgL
CG	Vishnu Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Warm Springs Creek	Headwaters to confluence with the Colorado River			A&Ww			FBC			FC		
CG	West Cataract Creek	Headwaters to confluence with Cataract Creek		A&Wc				FBC			FC		AgL
CG	White Creek	Headwaters to confluence with unnamed tributary at 36°18'45"/112°21'03"		A&Wc				FBC			FC		
CG	White Creek	Below confluence with unnamed tributary to confluence with the Colorado River			A&Ww			FBC			FC		
CG	Wright Canyon Creek	Headwaters to confluence with unnamed tributary at 35°20'48"/113°30'40"		A&Wc				FBC			FC		AgL
CG	Wright Canyon Creek	Below confluence with unnamed tributary to confluence with Truxton Wash			A&Ww			FBC			FC		AgL
CL	A10 Backwater	33°31'45"/114°33'19"	Shallow		A&Ww			FBC			FC		
CL	A7 Backwater	33°34'27"/114°32'04"	Shallow		A&Ww			FBC			FC		
CL	Adobe Lake	33°02'36"/114°39'26"	Shallow		A&Ww			FBC			FC		
CL	Cibola Lake	33°14'01"/114°40'31"	Shallow		A&Ww			FBC			FC		
CL	Clear Lake	33°01'59"/114°31'19"	Shallow		A&Ww			FBC			FC		
CL	Columbus Wash	Headwaters to confluence with the Gila River				A&We			PBC				
CL	Colorado River	Lake Mead to Topock Marsh		A&Wc				FBC		DWS	FC	AgI	AgL
CL	Colorado River	Topock Marsh to Morelos Dam			A&Ww			FBC		DWS	FC	AgI	AgL
CL	Gila River	Painted Rock Dam to confluence with the Colorado River			A&Ww			FBC			FC	AgI	AgL
CL	Holy Moses Wash	Headwaters to City of Kingman Downtown WWTP outfall at 35°10'33"/114°03'46"				A&We			PBC				

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

Water-shed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife			Human Health				Agricultural		
				A&Wc	A&Ww	A&We	A&Wed w	FBC	PBC	DWS	FC	AgI	AgL
CL	Holy Moses Wash (EDW)	City of Kingman Downtown WWTP outfall to 3 km downstream					A&Wed w		PBC				
CL	Holy Moses Wash	From 3 km downstream of City of Kingman Downtown WWTP outfall to confluence with Sawmill Wash				A&We			PBC				
CL	Hunter's Hole Backwater	32°31'13"/114°48'07"	Shallow		A&Ww			FBC			FC		AgL
CL	Imperial Reservoir	32°53'02"/114°27'54"	Shallow		A&Ww			FBC		DWS	FC	AgI	AgL
CL	Island Lake	33°01'44"/114°36'42"	Shallow		A&Ww			FBC			FC		
CL	Laguna Reservoir	32°51'35"/114°28'29"	Shallow		A&Ww			FBC		DWS	FC	AgI	AgL
CL	Lake Havasu	34°35'18"/114°25'47"	Deep		A&Ww			FBC		DWS	FC	AgI	AgL
CL	Lake Mohave	35°26'58"/114°38'30"	Deep	A&Wc				FBC		DWS	FC	AgI	AgL
CL	Martinez Lake	32°58'49"/114°28'09"	Shallow		A&Ww			FBC			FC	AgI	AgL
CL	Mittry Lake	32°49'17"/114°27'54"	Shallow		A&Ww			FBC			FC		
CL	Mohave Wash	Headwaters to Lower Colorado River				A&We			PBC				
CL	Nortons Lake	33°02'30"/114°37'59"	Shallow		A&Ww			FBC			FC		
CL	Painted Rock (Borrow Pit) Lake	33°04'55"/113°01'17"	Sedimentary		A&Ww			FBC			FC	AgI	AgL
CL	Pretty Water Lake	33°19'51"/114°42'19"	Shallow		A&Ww			FBC			FC		
CL	Quigley Pond	32°43'40"/113°57'44"	Shallow		A&Ww			FBC			FC		
CL	Redondo Lake	32°44'32"/114°29'03"	Shallow		A&Ww			FBC			FC		
CL	Sacramento Wash	Headwaters to Topock Marsh				A&We			PBC				
CL	Sawmill Canyon	Headwaters to abandoned gaging station at 35°09'45"/113°57'56"			A&Ww			FBC			FC		AgL
CL	Sawmill Canyon	Below abandoned gaging station to confluence with Holy Moses Wash				A&We			PBC				AgL
CL	Topock Marsh	34°43'27"/114°28'59"	Shallow		A&Ww			FBC		DWS	FC	AgI	AgL
CL	Tyson Wash (EDW)	Town of Quartzsite WWTP outfall at 33°42'39"/114°13'10" to 1 km downstream					A&Wed w		PBC				
CL	Wellton Canal	Wellton-Mohawk Irrigation District								DWS		AgI	AgL
CL	Wellton Ponds	32°40'32"/114°00'26"			A&Ww			FBC			FC		
CL	Yuma Proving Ground Pond	32°50'58"/114°26'14"			A&Ww			FBC			FC		
CL	Yuma Area Canals	Above municipal water treatment plant intakes								DWS		AgI	AgL
CL	Yuma Area Canals	Below municipal water treatment plant intakes and all drains										AgI	AgL
LC	Als Lake	35°02'10"/111°25'17"	Igneous		A&Ww			FBC			FC		AgL
LC	Ashurst Lake	35°01'06"/111°24'18"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Atcheson Reservoir	33°59'59"/109°20'43"	Igneous		A&Ww			FBC			FC	AgI	AgL
LC	Auger Creek	Headwaters to confluence with Nutrioso Creek		A&Wc				FBC			FC		AgL
LC	Barbershop Canyon Creek	Headwaters to confluence with East Clear Creek		A&Wc				FBC			FC		AgL
LC	Bear Canyon Creek	Headwaters to confluence with General Springs Canyon		A&Wc				FBC			FC		AgL
LC	Bear Canyon Creek	Headwaters to confluence with Willow Creek		A&Wc				FBC			FC		AgL
LC	Bear Canyon Lake	34°24'00"/111°00'06"	Sedimentary	A&Wc				FBC			FC	AgI	AgL
LC	Becker Lake	34°09'11"/109°18'23"	Shallow	A&Wc				FBC			FC		AgL
LC	Billy Creek	Headwaters to confluence with Show Low Creek		A&Wc				FBC			FC		AgL
LC	Black Canyon	Headwaters to confluence with Chevelon Creek		A&Wc				FBC			FC	AgI	AgL
LC	Black Canyon Lake	34°20'32"/110°40'13"	Sedimentary	A&Wc				FBC		DWS	FC	AgI	AgL
LC	Boot Lake	34°58'54"/111°20'11"	Igneous	A&Wc				FBC			FC		AgL
LC	Bow and Arrow Wash	Headwaters to confluence with Rio de Flag				A&We			PBC				
LC	Buck Springs Canyon Creek	Headwaters to confluence with Leonard Canyon Creek		A&Wc				FBC			FC		AgL
LC	Bunch Reservoir	34°02'20"/109°26'48"	Igneous	A&Wc				FBC			FC	AgI	AgL

## CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

Water-shed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife			Human Health				Agricultural	
				A&Wc	A&Ww	A&Ww	FBC	PBC	DWS	FC	AgI	AgL
LC	Camillo Tank	34°55'03"/111°22'40"	Igneous		A&Ww		FBC			FC		AgL
LC	Carnero Lake	34°06'57"/109°31'42"	Shallow	A&Wc			FBC			FC		AgL
LC	Chevelon Canyon Lake	34°29'18"/110°49'30"	Sedimentary	A&Wc			FBC			FC	AgI	AgL
LC	Chevelon Creek	Headwaters to confluence with the Little Colorado River		A&Wc			FBC			FC	AgI	AgL
LC	Chevelon Creek, West Fork	Headwaters to confluence with Chevelon Creek		A&Wc			FBC			FC		AgL
LC	Chilson Tank	34°51'43"/111°22'54"	Igneous		A&Ww		FBC			FC		AgL
LC	Clear Creek	Headwaters to confluence with the Little Colorado River		A&Wc			FBC		DWS	FC		AgL
LC	Clear Creek Reservoir	34°57'09"/110°39'14"	Shallow	A&Wc			FBC		DWS	FC	AgI	AgL
LC	Coconino Reservoir	35°00'05"/111°24'10"	Igneous	A&Wc			FBC			FC	AgI	AgL
LC	Colter Creek	Headwaters to confluence with Nutrioso Creek		A&Wc			FBC			FC		AgL
LC	Colter Reservoir	33°56'39"/109°28'53"	Shallow	A&Wc			FBC			FC		AgL
LC	Concho Creek	Headwaters to confluence with Carrizo Wash		A&Wc			FBC			FC		AgL
LC	Concho Lake	34°26'37"/109°37'40"	Shallow	A&Wc			FBC			FC	AgI	AgL
LC	Cow Lake	34°53'14"/111°18'51"	Igneous		A&Ww		FBC			FC		AgL
LC	Coyote Creek	Headwaters to confluence with the Little Colorado River		A&Wc			FBC			FC	AgI	AgL
LC	Cragin Reservoir (formerly Blue Ridge Reservoir)	34°32'40"/111°11'33"	Deep	A&Wc			FBC			FC	AgI	AgL
LC	Crisis Lake (Snake Tank #2)	34°47'51"/111°17'32"			A&Ww		FBC			FC		AgL
LC	Dane Canyon Creek	Headwaters to confluence with Barbershop Canyon Creek		A&Wc			FBC			FC		AgL
LC	Daves Tank	34°44'22"/111°17'15"			A&Ww		FBC			FC		AgL
LC	Deep Lake	35°03'34"/111°25'00"	Igneous		A&Ww		FBC			FC		AgL
LC	Dry Lake (EDW)	34°38'02"/110°23'40"	EDW			A&Wedw		PBC				
LC	Ducksnest Lake	34°59'14"/111°23'57"			A&Ww		FBC			FC		AgL
LC	East Clear Creek	Headwaters to confluence with Clear Creek		A&Wc			FBC			FC	AgI	AgL
LC	Ellis Wiltbank Reservoir	34°05'25"/109°28'25"	Igneous		A&Ww		FBC			FC	AgI	AgL
LC	Estates at Pine Canyon lakes (EDW)	35°09'32"/111°38'26"	EDW			A&Wedw		PBC				
LC	Fish Creek	Headwaters to confluence with the Little Colorado River		A&Wc			FBC			FC		AgL
LC	Fool's Hollow Lake	34°16'30"/110°03'43"	Igneous	A&Wc			FBC			FC		AgL
LC	General Springs Canyon Creek	Headwaters to confluence with East Clear Creek		A&Wc			FBC			FC		AgL
LC	Geneva Reservoir	34°01'45"/109°31'46"	Igneous		A&Ww		FBC			FC		AgL
LC	Hall Creek	Headwaters to confluence with the Little Colorado River		A&Wc			FBC			FC	AgI	AgL
LC	Hart Canyon Creek	Headwaters to confluence with Willow Creek		A&Wc			FBC			FC		AgL
LC	Hay Lake	34°00'11"/109°25'57"	Igneous	A&Wc			FBC			FC		AgL
LC	Hog Wallow Lake	33°58'57"/109°25'39"	Igneous	A&Wc			FBC			FC	AgI	AgL
LC	Horse Lake	35°03'55"/111°27'50"			A&Ww		FBC			FC		AgL
LC	Hulsey Creek	Headwaters to confluence with Nutrioso Creek		A&Wc			FBC			FC		AgL
LC	Hulsey Lake	33°55'58"/109°09'40"	Sedimentary	A&Wc			FBC			FC		AgL
LC	Indian Lake	35°00'39"/111°22'41"			A&Ww		FBC			FC		AgL
LC	Jacks Canyon Creek	Headwaters to confluence with the Little Colorado River		A&Wc			FBC			FC	AgI	AgL

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

Water-shed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife				Human Health				Agricultural	
				A&Wc	A&Ww	A&We	A&Wed w	FBC	PBC	DWS	FC	AgI	AgL
LC	Jarvis Lake	33°58'59"/109°12'36"	Sedi-mentary		A&Ww			FBC			FC		AgL
LC	Kinnikinick Lake	34°53'53"/111°18'18"	Igneous	A&Wc				FBC			FC		AgL
LC	Knoll Lake	34°25'38"/111°05'13"	Sedi-mentary	A&Wc				FBC			FC		AgL
LC	Lake Humphreys (EDW)	35°11'51"/111°35'19"	EDW				A&Wed w		PBC				
LC	Lake Mary, Lower	35°06'21"/111°34'38"	Igneous	A&Wc				FBC		DWS	FC		AgL
LC	Lake Mary, Upper	35°03'23"/111°28'34"	Igneous	A&Wc				FBC		DWS	FC		AgL
LC	Lake of the Woods	34°09'40"/109°58'47"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Lee Valley Creek (OAW)	Headwaters to Lee Valley Reservoir		A&Wc				FBC			FC		
LC	Lee Valley Creek	From Lee Valley Reservoir to confluence with the East Fork of the Little Colorado River		A&Wc				FBC			FC		AgL
LC	Lee Valley Reservoir	33°56'29"/109°30'04"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Leonard Canyon Creek	Headwaters to confluence with Clear Creek		A&Wc				FBC			FC		AgL
LC	Leonard Canyon Creek, East Fork	Headwaters to confluence with Leonard Canyon Creek		A&Wc				FBC			FC		AgL
LC	Leonard Canyon Creek, Middle Fork	Headwaters to confluence with Leonard Canyon, West Fork		A&Wc				FBC			FC		AgL
LC	Leonard Canyon Creek, West Fork	Headwaters to confluence with Leonard Canyon, East Fork		A&Wc				FBC			FC		AgL
LC	Lily Creek	Headwaters to confluence with Coyote Creek		A&Wc				FBC			FC		AgL
LC	Little Colorado River	Headwaters to Lyman Reservoir		A&Wc				FBC			FC	AgI	AgL
LC	Little Colorado River	Below Lyman Reservoir to confluence with the Puerco River		A&Wc				FBC		DWS	FC	AgI	AgL
LC	Little Colorado River	Below Puerco River confluence to the Colorado River, excluding segments on Native American Lands			A&Ww			FBC		DWS	FC	AgI	AgL
LC	Little Colorado River, East Fork	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC		AgL
LC	Little Colorado River, South Fork	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC		AgL
LC	Little Colorado River, West Fork (OAW)	Headwaters to Government Springs		A&Wc				FBC			FC		
LC	Little Colorado River, West Fork	Below Government Springs to confluence with the Little Colorado River		A&Wc				FBC			FC		AgL
LC	Little George Reservoir	34°00'37"/109°19'15"	Igneous		A&Ww			FBC			FC	AgI	
LC	Little Mormon Lake	34°17'00"/109°58'06"	Igneous		A&Ww			FBC			FC	AgI	AgL
LC	Little Ortega Lake	34°22'47"/109°40'06"	Igneous	A&Wc				FBC			FC		
LC	Long Lake, Lower	34°47'16"/111°12'40"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Long Lake, Upper	35°00'08"/111°21'23"	Igneous	A&Wc				FBC			FC		AgL
LC	Long Tom Tank	34°20'35"/110°49'22"		A&Wc				FBC			FC		AgL
LC	Lower Walnut Canyon Lake (EDW)	35°12'04"/111°34'07"	EDW				A&Wed w		PBC				
LC	Lyman Reservoir	34°21'21"/109°21'35"	Deep	A&Wc				FBC			FC	AgI	AgL
LC	Mamie Creek	Headwaters to confluence with Coyote Creek		A&Wc				FBC			FC		AgL
LC	Marshall Lake	35°07'18"/111°32'07"	Igneous	A&Wc				FBC			FC		AgL

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

Water-shed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife				Human Health				Agricultural		
				A&Wc	A&Ww	A&We	A&Wed w	FBC	PBC	DWS	FC	AgI	AgL	
LC	McKay Reservoir	34°01'27"/109°13'48"		A&Wc				FBC				FC	AgI	AgL
LC	Merritt Draw Creek	Headwaters to confluence with Barbershop Canyon Creek		A&Wc				FBC				FC		AgL
LC	Mexican Hay Lake	34°01'58"/109°21'25"	Igneous	A&Wc				FBC				FC	AgI	AgL
LC	Milk Creek	Headwaters to confluence with Hulsey Creek		A&Wc				FBC				FC		AgL
LC	Miller Canyon Creek	Headwaters to confluence with East Clear Creek		A&Wc				FBC				FC		AgL
LC	Miller Canyon Creek, East Fork	Headwaters to confluence with Miller Canyon Creek		A&Wc				FBC				FC		AgL
LC	Mineral Creek	Headwaters to Little Ortega Lake		A&Wc				FBC				FC	AgI	AgL
LC	Mormon Lake	34°56'38"/111°27'25"	Shallow	A&Wc				FBC		DWS		FC	AgI	AgL
LC	Morton Lake	34°53'37"/111°17'41"	Igneous	A&Wc				FBC				FC		AgL
LC	Mud Lake	34°55'19"/111°21'29"	Shallow		A&Ww			FBC				FC		AgL
LC	Ned Lake (EDW)	34°17'17"/110°03'22"	EDW				A&Wed w		PBC					
LC	Nelson Reservoir	34°02'52"/109°11'19"	Sedimentary	A&Wc				FBC				FC	AgI	AgL
LC	Norton Reservoir	34°03'57"/109°31'27"	Igneous		A&Ww			FBC				FC		AgL
LC	Nutriosio Creek	Headwaters to confluence with the Little Colorado River		A&Wc				FBC				FC	AgI	AgL
LC	Paddy Creek	Headwaters to confluence with Nutriosio Creek		A&Wc				FBC				FC		AgL
LC	Phoenix Park Wash	Headwaters to Dry Lake				A&We			PBC					
LC	Pierce Seep	34°23'39"/110°31'17"		A&Wc					PBC					
LC	Pine Tank	34°46'49"/111°17'21"	Igneous		A&Ww			FBC				FC		AgL
LC	Pintail Lake (EDW)	34°18'05"/110°01'21"	EDW				A&Wed w		PBC					
LC	Porter Creek	Headwaters to confluence with Show Low Creek		A&Wc				FBC				FC		AgL
LC	Potato Lake	35°03'15"/111°24'13"	Igneous	A&Wc				FBC				FC		AgL
LC	Pratt Lake	34°01'32"/109°04'18"	Sedimentary	A&Wc				FBC				FC		
LC	Puerco River	Headwaters to confluence with the Little Colorado River			A&Ww			FBC		DWS		FC	AgI	AgL
LC	Puerco River (EDW)	Sanders Unified School District WWTP outfall at 35°12'52"/109°19'40" to 0.5 km downstream					A&Wed w		PBC					
LC	Rainbow Lake	34°09'00"/109°59'09"	Shallow Igneous	A&Wc				FBC				FC	AgI	AgL
LC	Reagan Reservoir	34°02'09"/109°08'41"	Igneous		A&Ww			FBC				FC		AgL
LC	Rio de Flag	Headwaters to City of Flagstaff WWTP outfall at 35°12'21"/111°39'17"				A&We			PBC					
LC	Rio de Flag (EDW)	From City of Flagstaff WWTP outfall to the confluence with San Francisco Wash					A&Wed w		PBC					
LC	River Reservoir	34°02'01"/109°26'07"	Igneous	A&Wc				FBC				FC	AgI	AgL
LC	Rogers Reservoir	33°56'30"/109°16'20"	Igneous		A&Ww			FBC				FC		AgL
LC	Rudd Creek	Headwaters to confluence with Nutriosio Creek		A&Wc				FBC				FC		AgL
LC	Russel Reservoir	33°59'29"/109°20'01"	Igneous		A&Ww			FBC				FC	AgI	AgL
LC	San Salvador Reservoir	33°58'51"/109°19'55"	Igneous	A&Wc				FBC				FC	AgI	AgL
LC	Scott Reservoir	34°10'31"/109°57'31"	Igneous	A&Wc				FBC				FC	AgI	AgL
LC	Show Low Creek	Headwaters to confluence with Silver Creek		A&Wc				FBC				FC	AgI	AgL
LC	Show Low Lake	34°11'36"/110°00'12"	Igneous	A&Wc				FBC				FC	AgI	AgL
LC	Silver Creek	Headwaters to confluence with the Little Colorado River		A&Wc				FBC				FC	AgI	AgL
LC	Slade Reservoir	33°59'41"/109°20'26"	Igneous		A&Ww			FBC				FC	AgI	AgL
LC	Soldiers Annex Lake	34°47'15"/111°13'51"	Igneous	A&Wc				FBC				FC	AgI	AgL
LC	Soldiers Lake	34°47'47"/111°14'04"	Igneous	A&Wc				FBC				FC	AgI	AgL
LC	Spaulding Tank	34°30'17"/111°02'06"			A&Ww			FBC				FC		AgL

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Water-shed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife				Human Health				Agricultural	
				A&Wc	A&Ww	A&We	A&Wed w	FBC	PBC	DWS	FC	AgI	AgL
LC	Sponseller Lake	34°14'09"/109°50'45"	Igneous	A&Wc				FBC			FC		AgL
LC	St Johns Reservoir (Little Reservoir)	34°29'10"/109°22'06"	Igneous		A&Ww			FBC			FC	AgI	AgL
LC	Telephone Lake (EDW)	34°17'35"/110°02'42"	EDW				A&Wed w		PBC				
LC	Tremaine Lake	34°46'02"/111°13'51"	Igneous	A&Wc				FBC			FC		AgL
LC	Tunnel Reservoir	34°01'53"/109°26'34"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Turkey Draw (EDW)	High Country Pines II WWTP outfall at 33°25'35"/ 110°38'13" to confluence with Black Canyon Creek					A&Wed w		PBC				
LC	Unnamed Wash (EDW)	Bison Ranch WWTP outfall at 34°23'31"/ 110°31'29" to Pierce Seep					A&Wed w		PBC				
LC	Unnamed Wash (EDW)	Black Mesa Ranger Station WWTP outfall at 34°23'35"/110°33'36" to confluence of Oklahoma Flat Draw					A&Wed w		PBC				
LC	Vail Lake	35°05'23"/111°30'46"	Igneous	A&Wc				FBC			FC		AgL
LC	Walnut Creek	Headwaters to confluence with Billy Creek		A&Wc				FBC			FC		AgL
LC	Water Canyon Creek	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC		AgL
LC	Water Canyon Reservoir	34°00'16"/109°20'05"	Igneous		A&Ww			FBC			FC	AgI	AgL
LC	Whale Lake (EDW)	35°11'13"/111°35'21"	EDW				A&Wed w		PBC				
LC	Whipple Lake	34°16'49"/109°58'29"	Igneous		A&Ww			FBC			FC		AgL
LC	White Mountain Lake	34°21'57"/109°59'21"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	White Mountain Reservoir	34°00'12"/109°30'39"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Willow Creek	Headwaters to confluence with Clear Creek		A&Wc				FBC			FC		AgL
LC	Willow Springs Canyon Creek	Headwaters to confluence with Chevelon Creek		A&Wc				FBC			FC		AgL
LC	Willow Springs Lake	34°18'13"/110°52'16"	Sedimentary	A&Wc				FBC			FC	AgI	AgL
LC	Woodland Reservoir	34°07'35"/109°57'01"	Igneous	A&Wc				FBC			FC	AgI	AgL
LC	Woods Canyon Creek	Headwaters to confluence with Chevelon Creek		A&Wc				FBC			FC		AgL
LC	Woods Canyon Lake	34°20'09"/110°56'45"	Sedimentary	A&Wc				FBC			FC	AgI	AgL
LC	Zuni River	Headwaters to confluence with the Little Colorado River		A&Wc				FBC			FC	AgI	AgL
MG	Agua Fria River	Headwaters to confluence with unnamed tributary at 34°35'14"/112°16'18"				A&We			PBC				AgL
MG	Agua Fria River (EDW)	Below confluence with unnamed tributary to State Route 169					A&Wed w		PBC				AgL
MG	Agua Fria River	From State Route 169 to Lake Pleasant			A&Ww			FBC		DWS	FC	AgI	AgL
MG	Agua Fria River	Below Lake Pleasant to the City of El Mirage WWTP at ' 33°34'20"/112°18'32"				A&We			PBC				AgL
MG	Agua Fria River (EDW)	From City of El Mirage WWTP outfall to 2 km downstream					A&Wed w		PBC				
MG	Agua Fria River	Below 2 km downstream of the City of El Mirage WWTP to City of Avondale WWTP outfall at 33°23'55"/112°21'16"				A&We			PBC				
MG	Agua Fria River	From City of Avondale WWTP outfall to confluence with Gila River					A&Wed w		PBC				
MG	Alvord Park Lake	35th Avenue & Baseline Road, Phoenix at 33°22'23"/ 112°08'20"	Urban		A&Ww				PBC		FC		
MG	Andorra Wash	Headwaters to confluence with Cave Creek Wash				A&We			PBC				
MG	Antelope Creek	Headwaters to confluence with Martinez Wash			A&Ww			FBC			FC		AgL
MG	Arlington Canal	From Gila River at 33°20'54"/112°35'39" to Gila River at 33°13'44"/112°46'15"											AgL
MG	Ash Creek	Headwaters to confluence with Tex Canyon		A&Wc				FBC			FC	AgI	AgL
MG	Ash Creek	Below confluence with Tex Canyon to confluence with Agua Fria River			A&Ww			FBC			FC	AgI	AgL

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Water-shed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife				Human Health				Agricultural	
				A&Wc	A&Ww	A&We	A&Wed w	FBC	PBC	DWS	FC	AgI	AgL
MG	Beehive Tank	32°52'37"/111°02'20"			A&Ww			FBC			FC		AgL
MG	Big Bug Creek	Headwaters to confluence with Eugene Gulch		A&Wc				FBC			FC	AgI	AgL
MG	Big Bug Creek	Below confluence with Eugene Gulch to confluence with Agua Fria River			A&Ww			FBC			FC	AgI	AgL
MG	Black Canyon Creek	Headwaters to confluence with the Agua Fria River			A&Ww			FBC			FC		AgL
MG	Blind Indian Creek	Headwaters to confluence with the Hassayampa River			A&Ww			FBC			FC		AgL
MG	Bonsall Park Lake	59th Avenue & Bethany Home Road, Phoenix at 33°31'24"/112°11'08"	Urban		A&Ww				PBC		FC		
MG	Canal Park Lake	College Avenue & Curry Road, Tempe at 33°26'54"/111°56'19"	Urban		A&Ww				PBC		FC		
MG	Cave Creek	Headwaters to the Cave Creek Dam			A&Ww			FBC			FC		AgL
MG	Cave Creek	Cave Creek Dam to the Arizona Canal				A&We			PBC				
MG	Centennial Wash	Headwaters to confluence with the Gila River at 33°16'32"/112°48'08"				A&We			PBC				AgL
MG	Centennial Wash Ponds	33°54'52"/113°23'47"			A&Ww			FBC			FC		AgL
MG	Chaparral Park Lake	Hayden Road & Chaparral Road, Scottsdale at 33°30'40"/111°54'27"	Urban		A&Ww				PBC		FC	AgI	
MG	Cortez Park Lake	35th Avenue & Dunlap, Glendale at 33°34'13"/112°07'52"	Urban		A&Ww				PBC		FC	AgI	
MG	Desert Breeze Lake	Galaxy Drive, West Chandler at 33°18'47"/111°55'10"	Urban		A&Ww				PBC		FC		
MG	Devils Canyon	Headwaters to confluence with Mineral Creek			A&Ww				FBC		FC		AgL
MG	Dobson Lake	Dobson Road & Los Lagos Vista Avenue, Mesa at 33°22'48"/111°52'35"	Urban		A&Ww				PBC		FC		
MG	East Maricopa Floodway	From Brown and Greenfield Rds to the Gila River Indian Reservation Boundary			A&We				PBS				AgL
MG	Eldorado Park Lake	Miller Road & Oak Street, Tempe at 33°28'25"/111°54'53"	Urban		A&Ww				PBC		FC		
MG	Encanto Park Lake	15th Avenue & Encanto Blvd., Phoenix at 33°28'28"/112°05'18"	Urban		A&Ww				PBC		FC	AgI	
MG	Fain Lake	Town of Prescott Valley Park Lake 34°34'29"/112°21'06"	Urban		A&Ww				PBC		FC		
MG	French Gulch	Headwaters to confluence with Hassayampa River			A&Ww				PBC				AgL
MG	Galena Gulch	Headwaters to confluence with the Agua Fria River				A&We			PBC				AgL
MG	Galloway Wash (EDW)	Town of Cave Creek WWTP outfall at 33°50'15"/111°57'35" to confluence with Cave Creek					A&Wed w		PBC				
MG	Gila River	San Carlos Indian Reservation boundary to the Ashurst-Hayden Dam			A&Ww			FBC			FC	AgI	AgL
MG	Gila River	Ashurst-Hayden Dam to the Town of Florence WWTP outfall at 33°02'20"/111°24'19"				A&We			PBC				AgL
MG	Gila River (EDW)	Town of Florence WWTP outfall to Felix Road					A&Wed w		PBC				
MG	Gila River	Felix Road to the Gila River Indian Reservation boundary				A&We			PBC				AgL
MG	Gila River (EDW)	From the confluence with the Salt River to Gillespie Dam					A&Wed w		PBC		FC	AgI	AgL
MG	Gila River	Gillespie Dam to confluence with Painted Rock Dam			A&Ww			FBC			FC	AgI	AgL
MG	Granada Park Lake	6505 North 20th Street, Phoenix at 33°31'56"/112°02'16"	Urban		A&Ww				PBC		FC		
MG	Groom Creek	Headwaters to confluence with the Hassayampa River		A&Wc				FBC		DWS	FC		AgL
MG	Hassayampa Lake	34°25'45"/112°25'33"	Igneous	A&Wc				FBC		DWS	FC		
MG	Hassayampa River	Headwaters to confluence with Copper Creek		A&Wc				FBC			FC	AgI	AgL
MG	Hassayampa River	Below confluence with Copper Creek to the confluence with Blind Indian Creek.			A&Ww			FBC			FC	AgI	AgL
MG	Hassayampa River	Below confluence with Blind Indian Creek to the Buckeye Irrigation Company Canal				A&We			PBC				AgL
MG	Hassayampa River	Below Buckeye Irrigation Company canal to the Gila River			A&Ww			FBC			FC		AgL
MG	Horsethief Lake	34°09'42"/112°17'57"	Igneous	A&Wc				FBC		DWS	FC		AgL

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

Water-shed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife				Human Health				Agricultural	
				A&Wc	A&Ww	A&We	A&Wed w	FBC	PBC	DWS	FC	AgI	AgL
MG	Indian Bend Wash	Headwaters to confluence with the Salt River				A&We			PBC				
MG	Indian Bend Wash Lakes	Scottsdale at 33°30'32"/111°54'24"	Urban		A&Ww				PBC		FC		
MG	Indian School Park Lake	Indian School Road & Hayden Road, Scottsdale at 33°29'39"/111°54'37"	Urban		A&Ww				PBC		FC		
MG	Kiwanis Park Lake	6000 South Mill Avenue, Tempe at 33°22'27"/111°56'22"	Urban		A&Ww				PBC		FC	AgI	
MG	Lake Pleasant	33°53'46"/112°16'29"	Deep		A&Ww			FBC		DWS	FC	AgI	AgL
MG	Lake Pleasant, Lower	33°50'32"/112°16'03"			A&Ww			FBC			FC	AgI	AgL
MG	Lion Canyon	Headwaters to confluence with Weaver Creek			A&Ww			FBC			FC		AgL
MG	Little Ash Creek	Headwaters to confluence with Ash Creek at			A&Ww			FBC			FC		AgL
MG	Lynx Creek	Headwaters to confluence with unnamed tributary at 34°34'29"/112°21'07"		A&Wc				FBC			FC		AgL
MG	Lynx Creek	Below confluence with unnamed tributary at 34°34'29"/112°21'07" to confluence with Agua Fria River			A&Ww			FBC			FC		AgL
MG	Lynx Lake	34°31'07"/112°23'07"	Deep	A&Wc				FBC		DWS	FC	AgI	AgL
MG	Maricopa Park Lake	33°35'28"/112°18'15"	Urban		A&Ww				PBC		FC		
MG	Martinez Canyon	Headwaters to confluence with Box Canyon			A&Ww			FBC			FC		AgL
MG	Martinez Wash	Headwaters to confluence with the Hassayampa River			A&Ww			FBC			FC	AgI	AgL
MG	McKellips Park Lake	Miller Road & McKellips Road, Scottsdale at 33°27'14"/111°54'49"	Urban		A&Ww				PBC		FC	AgI	
MG	McMicken Wash (EDW)	City of Peoria Jomax WWTP outfall at 33°43'31"/112°20'15" to confluence with Agua Fria River					A&Wed w		PBC				
MG	Mineral Creek	Headwaters to 33°12'34"/110°59'58"			A&Ww			FBC			FC		AgL
MG	Mineral Creek (diversion tunnel and lined channel)	33°12'24"/110°59'58" to 33°07'56"/110°58'34"						PBC					
MG	Mineral Creek	End of diversion channel to confluence with Gila River			A&Ww			FBC			FC		AgL
MG	Minnehaha Creek	Headwaters to confluence with the Hassayampa River			A&Ww			FBC			FC		AgL
MG	New River	Headwaters to Interstate 17 at 33°54'19.5"/112°08'46"			A&Ww			FBC			FC	AgI	AgL
MG	New River	Below Interstate 17 to confluence with Agua Fria River				A&We			PBC				AgL
MG	Painted Rock Reservoir	33°04'23"/113°00'38"	Sedimentary		A&Ww			FBC			FC	AgI	AgL
MG	Papago Park Ponds	Galvin Parkway, Phoenix at 33°27'15"/111°56'45"	Urban		A&Ww				PBC		FC		
MG	Papago Park South Pond	Curry Road, Tempe 33°26'22"/111°55'55"	Urban		A&Ww				PBC		FC		
MG	Perry Mesa Tank	34°11'03"/112°02'01"			A&Ww			FBC			FC		AgL
MG	Phoenix Area Canals	Granite Reef Dam to all municipal WTP intakes								DWS		AgI	AgL
MG	Phoenix Area Canals	Below municipal WTP intakes and all other locations										AgI	AgL
MG	Picacho Reservoir	32°51'10"/111°28'25"	Shallow		A&Ww			FBC			FC	AgI	AgL
MG	Poland Creek	Headwaters to confluence with Lorena Gulch		A&Wc				FBC			FC		AgL
MG	Poland Creek	Below confluence with Lorena Gulch to confluence with Black Canyon Creek			A&Ww			FBC			FC		AgL
MG	Queen Creek	Headwaters to the Town of Superior WWTP outfall at 33°16'33"/111°07'44"			A&Ww				PBC		FC		AgL
MG	Queen Creek (EDW)	Below Town of Superior WWTP outfall to confluence with Potts Canyon					A&Wed w		PBC				
MG	Queen Creek	Below Potts Canyon to 'Whitlow Dam			A&Ww			FBC			FC		AgL
MG	Queen Creek	Below Whitlow Dam to confluence with Gila River				A&We			PBC				
MG	Riverview Park Lake	Dobson Road & 8th Street, Mesa at 33°25'50"/111°52'29"	Urban		A&Ww				PBC		FC		

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

Water-shed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife				Human Health				Agricultural	
				A&Wc	A&Ww	A&We	A&Wed w	FBC	PBC	DWS	FC	AgI	AgL
MG	Roadrunner Park Lake	36th Street & Cactus, Phoenix at 33°35'56"/112°00'21"	Urban		A&Ww				PBC		FC		
MG	Salt River	Verde River to 2 km below Granite Reef Dam			A&Ww			FBC		DWS	FC	AgI	AgL
MG	Salt River	2 km below Granite Reef Dam to City of Mesa NW WRF outfall at 33°26'22"/111°53'14"				A&We			PBC				
MG	Salt River (EDW)	City of Mesa NW WRF outfall to Tempe Town Lake					A&Wed w		PBC				
MG	Salt River	Below Tempe Town Lake to Interstate 10 bridge				A&We			PBC				
MG	Salt River	Below Interstate 10 bridge to the City of Phoenix 23rd Avenue WWTP outfall at 33°24'44"/112°07'59"			A&Ww				PBC		FC		
MG	Salt River (EDW)	From City of Phoenix 23rd Avenue WWTP outfall to confluence with Gila River					A&Wed w		PBC		FC	AgI	AgL
MG	Siphon Draw (EDW)	Superstition Mountains CFD WWTP outfall at 33°21'40"/111°33'30" to 6 km downstream					A&Wed w		PBC				
MG	Sycamore Creek	Headwaters to confluence with Tank Canyon		A&Wc				FBC			FC		AgL
MG	Sycamore Creek	Below confluence with Tank Canyon to confluence with Agua Fria River			A&Ww			FBC			FC		AgL
MG	Tempe Town Lake	At Mill Avenue Bridge at 33°26'00"/111°56'26"	Urban		A&Ww			FBC			FC		
MG	The Lake Tank	32°54'14"/111°04'15"			A&Ww			FBC			FC		AgL
MG	Tule Creek	Headwaters to confluence with the Agua Fria River			A&Ww			FBC			FC		AgL
MG	Turkey Creek	Headwaters to confluence with unnamed tributary at 34°19'28"/112°21'33"		A&Wc				FBC			FC	AgI	AgL
MG	Turkey Creek	Below confluence with unnamed tributary to confluence with Poland Creek			A&Ww			FBC			FC	AgI	AgL
MG	Unnamed Wash (EDW)	Gila Bend WWTP outfall to confluence with the Gila River					A&Wed w		PBC				
MG	Unnamed Wash (EDW)	Luke Air Force Base WWTP outfall at 33°32'21"/112°19'15" to confluence with the Agua Fria River					A&Wed w		PBC				
MG	Unnamed Wash (EDW)	North Florence WWTP outfall at 33°03'50"/111°23'13" to confluence with Gila River					A&Wed w		PBC				
MG	Unnamed Wash (EDW)	Town of Prescott Valley WWTP outfall at 34°35'16"/112°16'18" to confluence with the Agua Fria River					A&Wed w		PBC				
MG	Unnamed Wash (EDW)	Town of Cave Creek WRF outfall at 33°48'02"/111°59'22" to confluence with Cave Creek					A&Wed w		PBC				
MG	Wagner Wash (EDW)	City of Buckeye Festival Ranch WRF outfall at 33°39'14"/112°40'18" to 2 km downstream					A&Wed w		PBC				
MG	Walnut Canyon Creek	Headwaters to confluence with the Gila River			A&Ww			FBC			FC		AgL
MG	Weaver Creek	Headwaters to confluence with Antelope Creek, tributary to Martinez Wash			A&Ww			FBC			FC		AgL
MG	White Canyon Creek	Headwaters to confluence with Walnut Canyon Creek			A&Ww			FBC			FC		AgL
MG	Yavapai Lake (EDW)	Town of Prescott Valley WWTP outfall 002 at 34°36'07"/112°18'48" to Navajo Wash	EDW				A&Wed w		PBC				
SC	Agua Caliente Lake	12325 East Roger Road, Tucson 32°16'51"/110°43'52"	Urban		A&Ww				PBC		FC		
SC	Agua Caliente Wash	Headwaters to confluence with Soldier Trail			A&Ww			FBC			FC		AgL
SC	Agua Caliente Wash	Below Soldier Trail to confluence with Tanque Verde Creek				A&We			PBC				AgL
SC	Aguirre Wash	From the Tohono O'odham Indian Reservation boundary to 32°28'38"/111°46'51"				A&We			PBC				
SC	Alambre Wash	Headwaters to confluence with Brawley Wash				A&We			PBC				
SC	Alamo Wash	Headwaters to confluence with Rillito Creek				A&We			PBC				
SC	Altar Wash	Headwaters to confluence with Brawley Wash				A&We			PBC				
SC	Alum Gulch	Headwaters to 31°28'20"/110°43'51"				A&We			PBC				AgL
SC	Alum Gulch	From 31°28'20"/110°43'51" to 31°29'17"/110°44'25"			A&Ww			FBC			FC		AgL
SC	Alum Gulch	Below 31°29'17"/110°44'25" to confluence with Sonoita Creek				A&We			PBC				AgL
SC	Arivaca Creek	Headwaters to confluence with Altar Wash			A&Ww			FBC			FC		AgL
SC	Arivaca Lake	31°31'52"/111°15'06"	Igneous		A&Ww			FBC			FC	AgI	AgL
SC	Atterbury Wash	Headwaters to confluence with Pantano Wash				A&We			PBC				AgL

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

Water-shed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife				Human Health				Agricultural	
				A&Wc	A&Ww	A&We	A&Wed w	FBC	PBC	DWS	FC	AgI	AgL
SC	Bear Grass Tank	31°33'01"/111°11'03"			A&Ww			FBC			FC		AgL
SC	Big Wash	Headwaters to confluence with Cañada del Oro				A&We			PBC				
SC	Black Wash (EDW)	Pima County WWMD Avra Valley WWTP outfall at 32°09'58"/111°11'17" to confluence with Brawley Wash					A&Wed w		PBC				
SC	Bog Hole Tank	31°28'36"/110°37'09"				A&Ww		FBC			FC		AgL
SC	Brawley Wash	Headwaters to confluence with Los Robles Wash				A&We			PBC				
SC	California Gulch	Headwaters To U.S./Mexico border				A&Ww		FBC			FC		AgL
SC	Cañada del Oro	Headwaters to State Route 77				A&Ww		FBC			FC	AgI	AgL
SC	Cañada del Oro	Below State Route 77 to confluence with the Santa Cruz River					A&We		PBC				AgL
SC	Cienega Creek	Headwaters to confluence with Gardner Canyon				A&Ww		FBC			FC		AgL
SC	Cienega Creek (OAW)	From confluence with Gardner Canyon to USGS gaging station (#09484600)				A&Ww		FBC			FC		AgL
SC	Davidson Canyon	Headwaters to unnamed spring at 31°59'00"/110°38'49"					A&We		PBC				AgL
SC	Davidson Canyon (OAW)	From unnamed Spring to confluence with unnamed tributary at 31°59'09"/110°38'44"					A&Ww		FBC		FC		AgL
SC	Davidson Canyon (OAW)	Below confluence with unnamed tributary to unnamed spring at 32°00'40"/110°38'36"					A&We		PBC				AgL
SC	Davidson Canyon (OAW)	From unnamed spring to confluence with Cienega Creek					A&Ww		FBC		FC		AgL
SC	Empire Gulch	Headwaters to unnamed spring at 31°47'18"/110°38'17"					A&We		PBC				
SC	Empire Gulch	From 31°47'18"/110°38'17" to 31°47'03"/110°37'35"					A&Ww		FBC		FC		
SC	Empire Gulch	From 31°47'03"/110°37'35" to 31°47'05"/110°36'58"						A&We		PBC			AgL
SC	Empire Gulch	From 31°47'05"/110°36'58" to confluence with Cienega Creek						A&Ww		FBC		FC	
SC	Flux Canyon	Headwaters to confluence with Alum Gulch						A&We		PBC			AgL
SC	Gardner Canyon Creek	Headwaters to confluence with Sawmill Canyon		A&Wc					FBC			FC	
SC	Gardner Canyon Creek	Below Sawmill Canyon to confluence with Cienega Creek						A&Ww		FBC			FC
SC	Greene Wash	Santa Cruz River to the Tohono O'odham Indian Reservation boundary						A&We		PBC			
SC	Greene Wash	Tohono O'odham Indian Reservation boundary to confluence with Santa Rosa Wash at 32°53'52"/111°56'48"						A&We		PBC			
SC	Harshaw Creek	Headwaters to confluence with Sonoita Creek at						A&We		PBC			AgL
SC	Hit Tank	32°43'57"/111°03'18"						A&Ww		FBC		FC	AgL
SC	Holden Canyon Creek	Headwaters to U.S./Mexico border						A&Ww		FBC			FC
SC	Huachuca Tank	31°21'11"/110°30'18"						A&Ww		FBC			FC
SC	Julian Wash	Headwaters to confluence with the Santa Cruz River							A&We		PBC		
SC	Kennedy Lake	Mission Road & Ajo Road, Tucson at 32°10'49"/111°00'27"	Urban						A&Ww		PBC		FC
SC	Lakeside Lake	8300 East Stella Road, Tucson at 32°11'11"/110°49'00"	Urban						A&Ww		PBC		FC
SC	Lemmon Canyon Creek	Headwaters to confluence with unnamed tributary at 32°23'48"/110°47'49"		A&Wc						FBC			FC
SC	Lemmon Canyon Creek	Below unnamed tributary at 32°23'48"/110°47'49" to confluence with Sabino Canyon Creek							A&Ww		FBC		FC
SC	Los Robles Wash	Headwaters to confluence with the Santa Cruz River							A&We		PBC		
SC	Madera Canyon Creek	Headwaters to confluence with unnamed tributary at 31°43'42"/110°52'51"		A&Wc						FBC			FC
SC	Madera Canyon Creek	Below unnamed tributary at 31°43'42"/110°52'51" to confluence with the Santa Cruz River							A&Ww		FBC		FC
SC	Mattie Canyon	Headwaters to confluence with Cienega Creek							A&Ww		FBC		FC
SC	Nogales Wash	Headwaters to confluence with Potrero Creek							A&Ww		PBC		FC
SC	Oak Tree Canyon	Headwaters to confluence with Cienega Creek							A&We		PBC		

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Water-shed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife				Human Health				Agricultural	
				A&Wc	A&Ww	A&We	A&Wed w	FBC	PBC	DWS	FC	AgI	AgL
SC	Palisade Canyon	Headwaters to confluence with unnamed tributary at 32°22'33"/110°45'31"		A&Wc				FBC			FC		
SC	Palisade Canyon	Below 32°22'33"/110°45'31" to unnamed tributary of Sabino Canyon			A&Ww			FBC			FC		
SC	Pantano Wash	Headwaters to confluence with Tanque Verde Creek				A&We			PBC				
SC	Parker Canyon Creek	Headwaters to confluence with unnamed tributary at 31°24'17"/110°28'47"	A&Wc					FBC			FC		
SC	Parker Canyon Creek	Below unnamed tributary to U.S./Mexico border			A&Ww			FBC			FC		
SC	Parker Canyon Lake	31°25'35"/110°27'15"	Deep	A&Wc				FBC			FC	AgI	AgL
SC	Patagonia Lake	31°29'56"/110°50'49"	Deep		A&Ww			FBC			FC	AgI	AgL
SC	Peña Blanca Lake	31°24'15"/111°05'12"	Igneous		A&Ww			FBC			FC	AgI	AgL
SC	Potrero Creek	Headwaters to Interstate 19				A&We			PBC				AgL
SC	Potrero Creek	Below Interstate 19 to confluence with Santa Cruz River			A&Ww			FBC			FC		AgL
SC	Puertocito Wash	Headwaters to confluence with Altar Wash				A&We			PBC				
SC	Quitobaquito Spring	(Pond and Springs) 31°56'39"/113°01'06"			A&Ww			FBC			FC		AgL
SC	Redrock Canyon Creek	Headwaters to confluence with Harshaw Creek			A&Ww			FBC			FC		
SC	Rillito Creek	Headwaters to confluence with the Santa Cruz River				A&We			PBC				AgL
SC	Romero Canyon Creek	Headwaters to confluence with unnamed tributary at 32°24'29"/110°50'39"		A&Wc				FBC			FC		
SC	Romero Canyon Creek	Below unnamed tributary to confluence with Sutherland Wash			A&Ww			FBC			FC		
SC	Rose Canyon Creek	Headwaters to confluence with Sycamore Canyon		A&Wc				FBC			FC		
SC	Rose Canyon Lake	32°23'13"/110°42'38"	Igneous	A&Wc				FBC			FC		AgL
SC	Ruby Lakes	31°26'29"/111°14'22"	Igneous		A&Ww			FBC			FC		AgL
SC	Sabino Canyon	Headwaters to 32°23'20"/110°47'06"		A&Wc				FBC		DWS	FC	AgI	
SC	Sabino Canyon	Below 32°23'20"/110°47'06" to confluence with Tanque Verde River			A&Ww			FBC		DWS	FC	AgI	
SC	Salero Ranch Tank	31°35'43"/110°53'25"			A&Ww			FBC			FC		AgL
SC	Santa Cruz River	Headwaters to the at U.S./Mexico border			A&Ww			FBC			FC	AgI	AgL
SC	Santa Cruz River	U.S./Mexico border to the Nogales International WWTP outfall at 31°27'25"/110°58'04"			A&Ww			FBC		DWS	FC	AgI	AgL
SC	Santa Cruz River (EDW)	Nogales International WWTP outfall to the Josephine Canyon					A&Wed w		PBC				AgL
SC	Santa Cruz River	Josephine Canyon to Agua Nueva WRF outfall at 32°17'04"/111°01'45"				A&We			PBC				AgL
SC	Santa Cruz River (EDW)	Agua Nueva WRF outfall to Baumgartner Road					A&Wed w		PBC				
SC	Santa Cruz River, West Branch	Headwaters to the confluence with Santa Cruz River				A&We			PBC				AgL
SC	Santa Cruz River	Baumgartner Road to the Ak Chin Indian Reservation boundary				A&We			PBC				AgL
SC	Santa Cruz Wash, North Branch	Headwaters to City of Casa Grande WRF outfall at 32°54'57"/111°47'13"				A&We			PBC				
SC	Santa Cruz Wash, North Branch (EDW)	City of Casa Grande WRF outfall to 1 km downstream					A&Wed w		PBC				
SC	Santa Rosa Wash	Below Tohono O'odham Indian Reservation to the Ak Chin Indian Reservation				A&We			PBC				
SC	Santa Rosa Wash (EDW)	Palo Verde Utilities CO-WRF outfall at 33°04'20"/ 112°01'47" to the Chin Indian Reservation					A&Wed w		PBC				
SC	Soldier Tank	32°25'34"/110°44'43"		A&Wc				FBC			FC		AgL

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Water-shed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife				Human Health				Agricultural	
				A&Wc	A&Ww	A&We	A&Wed w	FBC	PBC	DWS	FC	AgI	AgL
SC	Sonoita Creek	Headwaters to the Town of Patagonia WWTP outfall at 31°32'25"/110°45'31"				A&We			PBC				AgL
SC	Sonoita Creek (EDW)	Town of Patagonia WWTP outfall to permanent groundwater upwelling point approximately 1600 feet downstream of outfall					A&Wed w		PBC				AgL
SC	Sonoita Creek	Below 1600 feet downstream of Town of Patagonia WWTP outfall groundwater upwelling point to confluence with the Santa Cruz River				A&Ww		FBC			FC	AgI	AgL
SC	Split Tank	31°28'11"/111°05'12"				A&Ww		FBC			FC		AgL
SC	Sutherland Wash	Headwaters to confluence with Cañada del Oro				A&Ww		FBC			FC		
SC	Sycamore Canyon	Headwaters to 32°21'60" / 110°44'48"		A&Wc				FBC			FC		
SC	Sycamore Canyon	From 32°21'60" / 110°44'48" to Sycamore Reservoir				A&Ww		FBC			FC		
SC	Sycamore Canyon	Headwaters to the U.S./Mexico border				A&Ww		FBC			FC		AgL
SC	Sycamore Reservoir	32°20'57"/110°47'38"		A&Wc				FBC			FC		AgL
SC	Tanque Verde Creek	Headwaters to Houghton Road				A&Ww		FBC			FC		AgL
SC	Tanque Verde Creek	Below Houghton Road to confluence with Rillito Creek					A&We		PBC				AgL
SC	Three R Canyon	Headwaters to Unnamed Trib to Three R Canyon at 31°28'26"/110°46'04"					A&We		PBC				AgL
SC	Three R Canyon	From 31°28'26"/110°46'04" to 31°28'28"/110°47'15" (Cox Gulch)				A&Ww		FBC			FC		AgL
SC	Three R Canyon	From (Cox Gulch) 31°28'28"/110°47'15" to confluence with Sonoita Creek					A&We		PBC				AgL
SC	Tinaja Wash	Headwaters to confluence with the Santa Cruz River					A&We		PBC				AgL
SC	Unnamed Wash (EDW)	Oracle Sanitary District WWTP outfall at 32°36'54"/ 110°48'02" to 5 km downstream							A&Wed w		PBC		
SC	Unnamed Wash (EDW)	Arizona City Sanitary District WWTP outfall at 32°45'43"/111°44'24" to confluence with Santa Cruz Wash							A&Wed w		PBC		
SC	Unnamed Wash (EDW)	Saddlebrook WWTP outfall at 32°32'00"/ 110°53'01" to confluence with Cañada del Oro							A&Wed w		PBC		
SC	Vekol Wash	Headwater to Santa Cruz Wash: Those reaches not located on the Ak-Chin, Tohono O'odham and Gila River Indian Reservations					A&We				PBC		
SC	Wakefield Canyon	Headwaters to confluence with unnamed tributary at 31°52'48"/110°26'27"		A&Wc				FBC			FC		AgL
SC	Wakefield Canyon	Below confluence with unnamed tributary to confluence with Cienega Creek						A&Ww			FBC		AgL
SC	Wild Burro Canyon	Headwaters to confluence with unnamed tributary at 32°27'43"/111°05'47"						A&Ww			FBC		AgL
SC	Wild Burro Canyon	Below confluence with unnamed tributary to confluence with Santa Cruz River					A&We				PBC		AgL
SP	Abbot Canyon	Headwaters to confluence with Whitewater Draw						A&Ww			FBC		AgL
SP	Aravaipa Creek	Headwaters to confluence with Stowe Gulch						A&Ww			FBC		AgL
SP	Aravaipa Creek (OAW)	Stowe Gulch to downstream boundary of Aravaipa Canyon Wilderness Area						A&Ww			FBC		AgL
SP	Aravaipa Creek	Below downstream boundary of Aravaipa Canyon Wilderness Area to confluence with the San Pedro River						A&Ww			FBC		AgL
SP	Ash Creek	Headwaters to 31°50'28"/109°40'04"						A&Ww			FBC	AgI	AgL
SP	Babocomari River	Headwaters to confluence with the San Pedro River						A&Ww			FBC		AgL
SP	Bass Canyon Creek	Headwaters to confluence with unnamed tributary at 32°26'06"/110°13'22"		A&Wc							FBC		AgL
SP	Bass Canyon Creek	Below confluence with unnamed tributary to confluence with Hot Springs Canyon Creek						A&Ww			FBC		AgL
SP	Bass Canyon Tank	32°24'00"/110°13'00"						A&Ww			FBC		AgL
SP	Bear Creek	Headwaters to U.S./Mexico border						A&Ww			FBC		AgL
SP	Big Creek	Headwaters to confluence with Pitchfork Canyon		A&Wc							FBC		AgL

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

Water-shed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife				Human Health				Agricultural	
				A&Wc	A&Ww	A&We	A&Wed w	FBC	PBC	DWS	FC	AgI	AgL
SP	Blacktail Pond	Fort Huachuca Military Reservation at 31°31'04"/110°24'47", headwater lake in Black-tail Canyon			A&Ww			FBC			FC		
SP	Black Draw	Headwaters to the U.S./Mexico border			A&Ww			FBC			FC		AgL
SP	Booger Canyon	Headwaters to confluence with Aravaipa Creek			A&Ww			FBC			FC		AgL
SP	Buck Canyon	Headwaters to confluence with Buck Creek Tank			A&Ww			FBC			FC		AgL
SP	Buck Canyon	Below Buck Creek Tank to confluence with Dry Creek				A&We			PBC				AgL
SP	Buehman Canyon Creek (OAW)	Headwaters to confluence with unnamed tributary at 32°24'54"/110°32'10"			A&Ww			FBC			FC		AgL
SP	Buehman Canyon Creek	Below confluence with unnamed tributary to confluence with San Pedro River			A&Ww			FBC			FC		AgL
SP	Bull Tank	32°31'13"/110°12'52"			A&Ww			FBC			FC		AgL
SP	Bullock Canyon	Headwaters to confluence with Buehman Canyon			A&Ww			FBC			FC		AgL
SP	Carr Canyon Creek	Headwaters to confluence with unnamed tributary at 31°27'01"/110°15'48"		A&Wc				FBC			FC		AgL
SP	Carr Canyon Creek	Below confluence with unnamed tributary to confluence with the San Pedro River			A&Ww			FBC			FC		AgL
SP	Copper Creek	Headwaters to confluence with Prospect Canyon			A&Ww			FBC			FC		AgL
SP	Copper Creek	Below confluence with Prospect Canyon to confluence with the San Pedro River				A&We			PBC				AgL
SP	Deer Creek	Headwaters to confluence with unnamed tributary at 32°59'57"/110°20'11"		A&Wc				FBC			FC		AgL
SP	Deer Creek	Below confluence with unnamed tributary to confluence with Aravaipa Creek			A&Ww			FBC			FC		AgL
SP	Dixie Canyon	Headwaters to confluence with Mexican Canyon			A&Ww			FBC			FC		AgL
SP	Double R Canyon Creek	Headwaters to confluence with Bass Canyon			A&Ww			FBC			FC		
SP	Dry Canyon	Headwaters to confluence with Whitewater draw			A&Ww			FBC			FC		AgL
SP	East Gravel Pit Pond	Fort Huachuca Military Reservation at 31°30'54"/110°19'44"	Sedi-mentary		A&Ww			FBC			FC		
SP	Espiritu Canyon Creek	Headwaters to confluence with Soza Wash			A&Ww			FBC			FC		AgL
SP	Fly Pond	Fort Huachuca Military Reservation at 31°32'53"/110°21'16"			A&Ww			FBC			FC		
SP	Fourmile Creek	Headwaters to confluence with Aravaipa Creek			A&Ww			FBC			FC		AgL
SP	Fourmile Canyon, Left Prong	Headwaters to confluence with unnamed tributary at 32°43'15"/110°23'46"		A&Wc				FBC			FC		AgL
SP	Fourmile Canyon, Left Prong	Below confluence with unnamed tributary to confluence with Fourmile Canyon Creek			A&Ww			FBC			FC		AgL
SP	Fourmile Canyon, Right Prong	Headwaters to confluence with Fourmile Canyon			A&Ww			FBC			FC		AgL
SP	Gadwell Canyon	Headwaters to confluence with Whitewater Draw			A&Ww			FBC			FC		AgL
SP	Garden Canyon Creek	Headwaters to confluence with unnamed tributary at 31°29'01"/110°19'44"		A&Wc				FBC		DWS	FC	AgI	
SP	Garden Canyon Creek	Below confluence with unnamed tributary to confluence with the San Pedro River			A&Ww			FBC		DWS	FC	AgI	
SP	Glance Creek	Headwaters to confluence with Whitewater Draw			A&Ww			FBC			FC		AgL
SP	Gold Gulch	Headwaters to U.S./Mexico border			A&Ww			FBC			FC		AgL
SP	Goudy Canyon Wash	Headwaters to confluence with Grant Creek		A&Wc				FBC			FC		AgL
SP	Grant Creek	Headwaters to confluence with unnamed tributary at 32°38'10"/109°56'37"		A&Wc				FBC		DWS	FC		AgL
SP	Grant Creek	Below confluence with unnamed tributary to terminus near Willcox Playa			A&Ww			FBC			FC		AgL
SP	Gravel Pit Pond	Fort Huachuca Military Reservation at 31°30'52"/110°19'49"	Sedi-mentary		A&Ww			FBC			FC		
SP	Greenbush Draw	From U.S./Mexico border to confluence with San Pedro River				A&We			PBC				
SP	Hidden Pond	Fort Huachuca Military Reservation at 32°30'30"/109°22'17"			A&Ww			FBC			FC		
SP	High Creek	Headwaters to confluence with unnamed tributary at 32°33'08"/110°14'42"		A&Wc				FBC			FC		AgL

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

Water-shed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife				Human Health				Agricultural	
				A&Wc	A&Ww	A&We	A&Wed w	FBC	PBC	DWS	FC	AgI	AgL
SP	High Creek	Below confluence with unnamed tributary to terminus near Willcox Playa			A&Ww			FBC			FC		AgL
SP	Horse Camp Canyon	Headwaters to confluence with Aravaipa Creek			A&Ww			FBC			FC		AgL
SP	Hot Springs Canyon Creek	Headwaters to confluence with the San Pedro River			A&Ww			FBC			FC		AgL
SP	Johnson Canyon	Headwaters to Whitewater Draw at 31°32'46"/109°43'32"			A&Ww			FBC			FC		AgL
SP	Lake Cochise (EDW)	South of Twin Lakes Municipal Golf Course at 32°13'50"/109°49'27"	EDW				A&Wed w		PBC				
SP	Leslie Canyon Creek	Headwaters to confluence with Whitewater Draw			A&Ww			FBC			FC		AgL
SP	Lower Garden Canyon Pond	Fort Huachuca Military Reservation at 31°29'39"/110°18'34"			A&Ww			FBC			FC		
SP	Mexican Canyon	Headwaters to confluence with Dixie Canyon			A&Ww			FBC			FC		AgL
SP	Miller Canyon	Headwaters to Broken Arrow Ranch Road at 31°25'35"/110°15'04"		A&Wc				FBC		DWS	FC		AgL
SP	Miller Canyon	Below Broken Arrow Ranch Road to confluence with the San Pedro River			A&Ww			FBC		DWS	FC		AgL
SP	Moonshine Creek	Headwaters to confluence with Post Creek		A&Wc				FBC			FC		AgL
SP	Mountain View Golf Course Pond	Fort Huachuca Military Reservation at 31°32'14"/110°18'52"	Sedimentary		A&Ww				PBC		FC		
SP	Mule Gulch	Headwaters to the Lavender Pit at 31°26'11"/109°54'02"			A&Ww				PBC		FC		
SP	Mule Gulch	The Lavender Pit to the Highway 80 bridge at 31°26'30"/109°49'28"				A&We			PBC				
SP	Mule Gulch	Below the Highway 80 bridge to confluence with Whitewater Draw				A&We			PBC				AgL
SP	Oak Grove Canyon	Headwaters to confluence with Turkey Creek			A&Ww			FBC			FC		AgL
SP	Officers Club Pond	Fort Huachuca Military Reservation at 31°32'51"/110°21'37"	Sedimentary		A&Ww				PBC		FC		
SP	Paige Canyon Creek	Headwaters to confluence with the San Pedro River			A&Ww			FBC			FC		AgL
SP	Parsons Canyon Creek	Headwaters to confluence with Aravaipa Creek			A&Ww			FBC			FC		AgL
SP	Pinery Creek	Headwaters to State Highway 181		A&Wc				FBC		DWS	FC		AgL
SP	Pinery Creek	Below State Highway 181 to terminus near Willcox Playa			A&Ww			FBC		DWS	FC		AgL
SP	Post Creek	Headwaters to confluence with Grant Creek		A&Wc				FBC			FC	AgI	AgL
SP	Ramsey Canyon Creek	Headwaters to Forest Service Road #110 at 31°27'44"/110°17'30"		A&Wc				FBC			FC	AgI	AgL
SP	Ramsey Canyon Creek	Below Forest Service Road #110 to confluence with Carr Wash			A&Ww			FBC			FC	AgI	AgL
SP	Rattlesnake Creek	Headwaters to confluence with Brush Canyon		A&Wc				FBC			FC		AgL
SP	Rattlesnake Creek	Below confluence with Brush Canyon to confluence with Aravaipa Creek			A&Ww			FBC			FC		AgL
SP	Redfield Canyon	Headwaters to confluence with unnamed tributary at 32°33'40"/110°18'42"		A&Wc				FBC			FC		AgL
SP	Redfield Canyon	Below confluence with unnamed tributary to confluence with the San Pedro River			A&Ww			FBC			FC		AgL
SP	Riggs Lake	32°42'28"/109°57'53"	Igneous	A&Wc				FBC			FC	AgI	AgL
SP	Rock Creek	Headwaters to confluence with Turkey Creek Alc						FBC			FC		AgL
SP	Rucker Canyon	Headwaters to confluence with Whitewater Draw		A&Wc				FBC			FC		AgL
SP	Rucker Canyon Lake	31°46'46"/109°18'30"	Shallow	A&Wc				FBC			FC		AgL
SP	San Pedro River	U.S./ Mexico Border to Buehman Canyon			A&Ww			FBC			FC	AgI	AgL
SP	San Pedro River	From Buehman canyon to confluence with the Gila River			A&Ww			FBC			FC		AgL
SP	Snow Flat Lake	32°39'10"/109°51'54"	Igneous	A&Wc				FBC			FC	AgI	AgL
SP	Soldier Creek	Headwaters to confluence with Post Creek at 32°40'50"/109°54'41"		A&Wc				FBC			FC		AgL
SP	Soto Canyon	Headwaters to confluence with Dixie Canyon			A&Ww			FBC			FC		AgL

## CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

Water-shed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife				Human Health				Agricultural	
				A&Wc	A&Ww	A&We	A&Wed w	FBC	PBC	DWS	FC	AgI	AgL
SP	Swamp Springs Canyon	Headwaters to confluence with Redfield Canyon			A&Ww			FBC			FC		AgL
SP	Sycamore Pond I	Fort Huachuca Military Reservation at 31°35'12"/110°26'11"	Sedimentary		A&Ww			FBC			FC		
SP	Sycamore Pond II	Fort Huachuca Military Reservation at 31°34'39"/110°26'10"	Sedimentary		A&Ww			FBC			FC		
SP	Turkey Creek	Headwaters to confluence with Aravaipa Creek			A&Ww			FBC			FC		AgL
SP	Turkey Creek	Headwaters to confluence with Rock Creek		A&Wc				FBC			FC	AgI	AgL
SP	Turkey Creek	Below confluence with Rock Creek to terminus near Willcox Playa			A&Ww			FBC			FC	AgI	AgL
SP	Unnamed Wash (EDW)	Mt. Lemmon WWTP outfall at 32°26'51"/110°45'08" to 0.25 km downstream					A&Wed w		PBC				
SP	Virgus Canyon	Headwaters to confluence with Aravaipa Creek			A&Ww			FBC			FC		AgL
SP	Walnut Gulch	Headwaters to Tombstone WWTP outfall at 31°43'47"/110°04'06"				A&We			PBC				
SP	Walnut Gulch (EDW)	Tombstone WWTP outfall to the confluence with Tombstone Wash					A&Wed w		PBC				
SP	Walnut Gulch	Tombstone Wash to confluence with San Pedro River				A&We			PBC				
SP	Ward Canyon	Headwaters to confluence with Turkey Creek		A&Wc				FBC			FC		AgL
SP	Whitewater Draw	Headwaters to confluence with unnamed tributary at 31°20'36"/109°43'48"				A&We			PBC				AgL
SP	Whitewater Draw	Below confluence with unnamed tributary to U.S./ Mexico border			A&Ww			FBC			FC		AgL
SP	Willcox Playa	From 32°08'19"/109°50'59" in the Sulphur Springs Valley	Sedimentary		A&Ww			FBC			FC		AgL
SP	Woodcutters Pond	Fort Huachuca Military Reservation at 31°30'09"/110°20'12"	Igneous		A&Ww			FBC			FC		
SR	Ackre Lake	33°37'01"/109°20'40"		A&Wc				FBC			FC	AgI	AgL
SR	Apache Lake	33°37'23"/111°12'26"	Deep		A&Ww			FBC		DWS	FC	AgI	AgL
SR	Barnhard Creek	Headwaters to confluence with unnamed tributary at 34°05'37"/111°26'40"		A&Wc				FBC			FC		AgL
SR	Barnhardt Creek	Below confluence with unnamed tributary to confluence with Rye Creek			A&Ww			FBC			FC		AgL
SR	Basin Lake	33°55'00"/109°26'09"	Igneous		A&Ww			FBC			FC		AgL
SR	Bear Creek	Headwaters to confluence with the Black River		A&Wc				FBC			FC	AgI	AgL
SR	Bear Wallow Creek (OAW)	Headwaters to confluence with the Black River		A&Wc				FBC			FC		AgL
SR	Bear Wallow Creek, North Fork (OAW)	Headwaters to confluence with Bear Wallow Creek		A&Wc				FBC			FC		AgL
SR	Bear Wallow Creek, South Fork (OAW)	Headwaters to confluence with Bear Wallow Creek		A&Wc				FBC			FC		AgL
SR	Beaver Creek	Headwaters to confluence with Black River		A&Wc				FBC			FC	AgI	AgL
SR	Big Lake	33°52'36"/109°25'33"	Igneous	A&Wc				FBC		DWS	FC	AgI	AgL
SR	Black River	Headwaters to confluence with Salt River		A&Wc				FBC		DWS	FC	AgI	AgL
SR	Black River, East Fork	From 33°51'19"/109°18'54" to confluence with the Black River		A&Wc				FBC		DWS	FC	AgI	AgL
SR	Black River, North Fork of East Fork	Headwaters to confluence with Boneyard Creek		A&Wc				FBC		DWS	FC	AgI	AgL
SR	Black River, West Fork	Headwaters to confluence with the Black River		A&Wc				FBC		DWS	FC	AgI	AgL
SR	Bloody Tanks Wash	Headwaters to Schultze Ranch Road				A&We			PBC				AgL
SR	Bloody Tanks Wash	Schultze Ranch Road to confluence with Miami Wash				A&We			PBC				
SR	Boggy Creek	Headwaters to confluence with Centerfire Creek		A&Wc				FBC			FC	AgI	AgL
SR	Boneyard Creek	Headwaters to confluence with Black River, East Fork		A&Wc				FBC			FC	AgI	AgL
SR	Boulder Creek	Headwaters to confluence with LaBarge Creek			A&Ww			FBC			FC		
SR	Campaign Creek	Headwaters to Roosevelt Lake			A&Ww			FBC			FC		AgL
SR	Canyon Creek	Headwaters to the White Mountain Apache Reservation boundary		A&Wc				FBC		DWS	FC	AgI	AgL
SR	Canyon Lake	33°32'44"/111°26'19"	Deep		A&Ww			FBC		DWS	FC	AgI	AgL

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Water-shed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife				Human Health				Agricultural	
				A&Wc	A&Ww	A&We	A&Wed w	FBC	PBC	DWS	FC	AgI	AgL
SR	Centerfire Creek	Headwaters to confluence with the Black River		A&Wc				FBC			FC	AgI	AgL
SR	Chambers Draw Creek	Headwaters to confluence with the North Fork of the East Fork of Black River		A&Wc				FBC			FC		AgL
SR	Cherry Creek	Headwaters to confluence with unnamed tributary at 34°05'09"/110°56'07"		A&Wc				FBC			FC	AgI	AgL
SR	Cherry Creek	Below unnamed tributary to confluence with the Salt River			A&Ww			FBC			FC	AgI	AgL
SR	Christopher Creek	Headwaters to confluence with Tonto Creek		A&Wc				FBC			FC	AgI	AgL
SR	Cold Spring Canyon Creek	Headwaters to confluence with unnamed tributary at 33°49'50"/110°52'58"		A&Wc				FBC			FC		AgL
SR	Cold Spring Canyon Creek	Below confluence with unnamed tributary to confluence with Cherry Creek			A&Ww			FBC			FC		AgL
SR	Conklin Creek	Headwaters to confluence with the Black River		A&Wc				FBC			FC	AgI	AgL
SR	Coon Creek	Headwaters to confluence with unnamed tributary at 33°46'41"/110°54'26"		A&Wc				FBC			FC		AgL
SR	Coon Creek	Below confluence with unnamed tributary to confluence with Salt River			A&Ww			FBC			FC		AgL
SR	Corduroy Creek	Headwaters to confluence with Fish Creek		A&Wc				FBC			FC	AgI	AgL
SR	Coyote Creek	Headwaters to confluence with the Black River, East Fork		A&Wc				FBC			FC	AgI	AgL
SR	Crescent Lake	33°54'38"/109°25'18"	Shallow	A&Wc				FBC			FC	AgI	AgL
SR	Deer Creek	Headwaters to confluence with the Black River, East Fork		A&Wc				FBC			FC		AgL
SR	Del Shay Creek	Headwaters to confluence with Gun Creek			A&Ww			FBC			FC		AgL
SR	Devils Chasm Creek	Headwaters to confluence with unnamed tributary at 33°48'46"/110°52'35"		A&Wc				FBC			FC		AgL
SR	Devils Chasm Creek	Below confluence with unnamed tributary to confluence with Cherry Creek			A&Ww			FBC			FC		AgL
SR	Dipping Vat Reservoir	33°55'47"/109°25'31"	Igneous		A&Ww			FBC			FC		AgL
SR	Double Cienega Creek	Headwaters to confluence with Fish Creek		A&Wc				FBC			FC		AgL
SR	Fish Creek	Headwaters to confluence with the Black River		A&Wc				FBC			FC	AgI	AgL
SR	Fish Creek	Headwaters to confluence with the Salt River			A&Ww			FBC			FC		AgL
SR	Gold Creek	Headwaters to confluence with unnamed tributary at 33°59'47"/111°25'10"		A&Wc				FBC			FC		AgL
SR	Gold Creek	Below confluence with unnamed tributary to confluence with Tonto Creek			A&Ww			FBC			FC		AgL
SR	Gordon Canyon Creek	Headwaters to confluence with Hog Canyon		A&Wc				FBC			FC		AgL
SR	Gordon Canyon Creek	Below confluence with Hog Canyon to confluence with Haigler Creek			A&Ww			FBC			FC		AgL
SR	Greenback Creek	Headwaters to confluence with Tonto Creek			A&Ww			FBC			FC		AgL
SR	Haigler Creek	Headwaters to confluence with unnamed tributary at 34°12'23"/111°00'15"		A&Wc				FBC			FC	AgI	AgL
SR	Haigler Creek	Below confluence with unnamed tributary to confluence with Tonto Creek			A&Ww			FBC			FC	AgI	AgL
SR	Hannagan Creek	Headwaters to confluence with Beaver Creek		A&Wc				FBC			FC		AgL
SR	Hay Creek (OAW)	Headwaters to confluence with the Black River, West Fork		A&Wc				FBC			FC		AgL
SR	Home Creek	Headwaters to confluence with the Black River, West Fork		A&Wc				FBC			FC		AgL
SR	Horse Creek	Headwaters to confluence with the Black River, West Fork		A&Wc				FBC			FC		AgL
SR	Horse Camp Creek	Headwaters to confluence with unnamed tributary at 33°54'00"/110°50'07"		A&Wc				FBC			FC		AgL
SR	Horse Camp Creek	Below confluence with unnamed tributary to confluence with Cherry Creek			A&Ww			FBC			FC		AgL
SR	Horton Creek	Headwaters to confluence with Tonto Creek		A&Wc				FBC			FC	AgI	AgL
SR	Houston Creek	Headwaters to confluence with Tonto Creek			A&Ww			FBC			FC		AgL
SR	Hunter Creek	Headwaters to confluence with Christopher Creek		A&Wc				FBC			FC		AgL
SR	LaBarge Creek	Headwaters to Canyon Lake			A&Ww			FBC			FC		AgL

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Water-shed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife				Human Health				Agricultural	
				A&Wc	A&Ww	A&We	A&Wed w	FBC	PBC	DWS	FC	AgI	AgL
SR	Lake Sierra Blanca	33°52'25"/109°16'05"		A&Wc				FBC			FC	AgI	AgL
SR	Miami Wash	Headwaters to confluence with Pinal Creek				A&We			PBC				
SR	Mule Creek	Headwaters to confluence with Canyon Creek		A&Wc				FBC		DWS	FC	AgI	AgL
SR	Open Draw Creek	Headwaters to confluence with the East Fork of Black River		A&Wc				FBC			FC		AgL
SR	P B Creek	Headwaters to Forest Service Road #203 at 33°57'08"/110°56'12"		A&Wc				FBC			FC		AgL
SR	P B Creek	Below Forest Service Road #203 to Cherry Creek			A&Ww			FBC			FC		AgL
SR	Pinal Creek	Headwaters to confluence with unnamed EDW wash (Globe WWTP) at 33°25'29"/110°48'20"				A&We			PBC				AgL
SR	Pinal Creek (EDW)	Confluence with unnamed EDW wash (Globe WWTP) to 33°26'55"/110°49'25"					A&Wed w		PBC				
SR	Pinal Creek	From 33°26'55"/110°49'25" to Lower Pinal Creek water treatment plant outfall #001 at 33°31'04"/110°51'55"				A&We			PBC				AgL
SR	Pinal Creek	From Lower Pinal Creek WTP outfall # to See Ranch Crossing at 33°32'25"/110°52'28"					A&Wed w		PBC				
SR	Pinal Creek	From See Ranch Crossing to confluence with unnamed tributary at 33°35'28"/110°54'31"			A&Ww			FBC					
SR	Pinal Creek	From unnamed tributary to confluence with Salt River			A&Ww			FBC			FC		
SR	Pine Creek	Headwaters to confluence with the Salt River			A&Ww			FBC			FC		
SR	Pinto Creek	Headwaters to confluence with unnamed tributary at 33°19'27"/110°54'58"		A&Wc				FBC			FC	AgI	AgL
SR	Pinto Creek	Below confluence with unnamed tributary to Roosevelt Lake			A&Ww			FBC			FC	AgI	AgL
SR	Pole Corral Lake	33°30'38"/110°00'15"	Igneous		A&Ww			FBC			FC	AgI	AgL
SR	Pueblo Canyon Creek	Headwaters to confluence with unnamed tributary at 33°50'23"/110°51'37"		A&Wc				FBC			FC		AgL
SR	Pueblo Canyon Creek	Below confluence with unnamed tributary to confluence with Cherry Creek			A&Ww			FBC			FC		AgL
SR	Reevis Creek	Headwaters to confluence with Pine Creek			A&Ww			FBC			FC		
SR	Reservation Creek	Headwaters to confluence with the Black River		A&Wc				FBC			FC		AgL
SR	Reynolds Creek	Headwaters to confluence with Workman Creek		A&Wc				FBC			FC		AgL
SR	Roosevelt Lake	33°52'17"/111°00'17"	Deep		A&Ww			FBC		DWS	FC	AgI	AgL
SR	Russell Gulch	FromHeadwaters to confluence with Miami Wash				A&We			PBC				
SR	Rye Creek	Headwaters to confluence with Tonto Creek			A&Ww			FBC			FC		AgL
SR	Saguaro Lake	33°33'44"/111°30'55"	Deep		A&Ww			FBC		DWS	FC	AgI	AgL
SR	Salome Creek	Headwaters to confluence with the Salt River			A&Ww			FBC			FC	AgI	AgL
SR	Salt House Lake	33°57'04"/109°20'11"	Igneous		A&Ww			FBC			FC		AgL
SR	Salt River	White Mountain Apache Reservation Boundary at 33°48'52"/110°31'33" to Roosevelt Lake			A&Ww			FBC			FC		AgL
SR	Salt River	Theodore Roosevelt Dam to 2 km below Granite Reef Dam			A&Ww			FBC		DWS	FC	AgI	AgL
SR	Slate Creek	Headwaters to confluence with Tonto Creek			A&Ww			FBC			FC		AgL
SR	Snake Creek (OAW)	Headwaters to confluence with the Black River		A&Wc				FBC			FC		AgL
SR	Spring Creek	Headwaters to confluence with Tonto Creek			A&Ww			FBC			FC		AgL
SR	Stinky Creek (OAW)	Headwaters to confluence with the Black River, West Fork		A&Wc				FBC			FC		AgL
SR	Thomas Creek	Headwaters to confluence with Beaver Creek		A&Wc				FBC			FC		AgL
SR	Thompson Creek	Headwaters to confluence with the West Fork of the Black River		A&Wc				FBC			FC		AgL
SR	Tonto Creek	Headwaters to confluence with unnamed tributary at 34°18'11"/111°04'18"		A&Wc				FBC			FC	AgI	AgL
SR	Tonto Creek	Below confluence with unnamed tributary to Roosevelt Lake			A&Ww			FBC			FC	AgI	AgL
SR	Turkey Creek	Headwaters to confluence with Rock Creek		A&Wc				FBC			FC		
SR	Wildcat Creek	Headwaters to confluence with Centerfire Creek		A&Wc				FBC			FC		AgL
SR	Willow Creek	Headwaters to confluence with Beaver Creek		A&Wc				FBC			FC		AgL
SR	Workman Creek	Headwaters to confluence with Reynolds Creek		A&Wc				FBC			FC	AgI	AgL

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

Water-shed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife				Human Health				Agricultural	
				A&Wc	A&Ww	A&We	A&Wed w	FBC	PBC	DWS	FC	AgI	AgL
SR	Workman Creek	Below confluence with Reynolds Creek to confluence with Salome Creek			A&Ww			FBC			FC	AgI	AgL
UG	Apache Creek	Headwaters to confluence with the Gila River			A&Ww			FBC			FC		AgL
UG	Ash Creek	Headwaters to confluence with unnamed tributary at 32°46'15"/109°51'45"		A&Wc				FBC			FC		AgL
UG	Ash Creek	Below confluence with unnamed tributary to confluence with the Gila River			A&Ww			FBC			FC		AgL
UG	Bennett Wash	Headwaters to the Gila River				A&We			PBC				
UG	Bitter Creek	Headwaters to confluence with the Gila River			A&Ww			FBC			FC		
UG	Blue River	Headwaters to confluence with Strayhorse Creek at 33°29'02"/109°12'14"		A&Wc				FBC			FC	AgI	AgL
UG	Blue River	Below confluence with Strayhorse Creek to confluence with San Francisco River			A&Ww			FBC			FC	AgI	AgL
UG	Bonita Creek (OAW)	San Carlos Indian Reservation boundary to confluence with the Gila River			A&Ww			FBC		DWS	FC		AgL
UG	Buckelew Creek	Headwaters to confluence with Castle Creek		A&Wc				FBC			FC		AgL
UG	Campbell Blue Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		AgL
UG	Castle Creek	Headwaters to confluence with Campbell Blue Creek		A&Wc				FBC			FC		AgL
UG	Cave Creek (OAW)	Headwaters to confluence with South Fork Cave Creek		A&Wc				FBC			FC	AgI	AgL
UG	Cave Creek (OAW)	Below confluence with South Fork Cave Creek to Coronado National Forest boundary			A&Ww			FBC			FC	AgI	AgL
UG	Cave Creek	Below Coronado National Forest boundary to New Mexico border			A&Ww			FBC			FC	AgI	AgL
UG	Cave Creek, South Fork	Headwaters to confluence with Cave Creek		A&Wc				FBC			FC	AgI	AgL
UG	Chase Creek	Headwaters to the Phelps-Dodge Morenci Mine			A&Ww			FBC			FC		AgL
UG	Chase Creek	Below the Phelps-Dodge Morenci Mine to confluence with San Francisco River				A&We			PBC				
UG	Chitty Canyon Creek	Headwaters to confluence with Salt House Creek		A&Wc				FBC			FC		AgL
UG	Cima Creek	Headwaters to confluence with Cave Creek		A&Wc				FBC			FC		AgL
UG	Cluff Reservoir #1	32°48'55"/109°50'46"	Sedimentary		A&Ww			FBC			FC	AgI	AgL
UG	Cluff Reservoir #3	32°48'21"/109°51'46"	Sedimentary		A&Ww			FBC			FC	AgI	AgL
UG	Coleman Creek	Headwaters to confluence with Campbell Blue Creek		A&Wc				FBC			FC		AgL
UG	Dankworth Lake	32°43'13"/109°42'17"	Sedimentary	A&Wc				FBC			FC		
UG	Deadman Canyon Creek	Headwaters to confluence with unnamed tributary at 32°43'50"/109°49'03"		A&Wc				FBC		DWS	FC		AgL
UG	Deadman Canyon Creek	Below confluence with unnamed tributary to confluence with Graveyard Wash			A&Ww			FBC		DWS	FC		AgL
UG	Eagle Creek	Headwaters to confluence with unnamed tributary at 33°22'32"/109°29'43"		A&Wc				FBC		DWS	FC	AgI	AgL
UG	Eagle Creek	Below confluence with unnamed tributary to confluence with the Gila River			A&Ww			FBC		DWS	FC	AgI	AgL
UG	East Eagle Creek	Headwaters to confluence with Eagle Creek		A&Wc				FBC			FC		AgL
UG	East Turkey Creek	Headwaters to confluence with unnamed tributary at 31°58'22"/109°12'20"		A&Wc				FBC			FC		AgL
UG	East Turkey Creek	Below confluence with unnamed tributary to terminus near San Simon River			A&Ww			FBC			FC		AgL
UG	East Whitetail	Headwaters to terminus near San Simon River			A&Ww			FBC			FC		AgL
UG	Emigrant Canyon	Headwaters to terminus near San Simon River			A&Ww			FBC			FC		AgL
UG	Evans Pond #1	32°49'19"/109°51'12"	Sedimentary		A&Ww			FBC			FC	AgI	AgL
UG	Evans Pond #2	32°49'14"/109°51'09"	Sedimentary		A&Ww			FBC			FC	AgI	AgL
UG	Fishhook Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		AgL
UG	Foote Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		AgL
UG	Frye Canyon Creek	Headwaters to Frye Mesa Reservoir		A&Wc				FBC		DWS	FC		AgL

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

Water-shed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife				Human Health				Agricultural	
				A&Wc	A&Ww	A&We	A&Wed w	FBC	PBC	DWS	FC	AgI	AgL
UG	Frye Canyon Creek	Frye Mesa reservoir to terminus at Highline Canal.			A&Ww			FBC			FC		AgL
UG	Frye Mesa Reservoir	32°45'14"/109°50'02"	Igneous	A&Wc				FBC		DWS	FC		
UG	Gibson Creek	Headwaters to confluence with Marijilda Creek		A&Wc				FBC			FC		AgL
UG	Gila River	New Mexico border to the San Carlos Indian Reservation boundary			A&Ww			FBC			FC	AgI	AgL
UG	Grant Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		AgL
UG	Judd Lake	33°51'15"/109°09'35"	Sedi-mentary	A&Wc				FBC			FC		
UG	K P Creek (OAW)	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		AgL
UG	Lanphier Canyon Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		AgL
UG	Little Blue Creek	Headwaters to confluence with Dutch Blue Creek		A&Wc				FBC			FC		AgL
UG	Little Blue Creek	Below confluence with Dutch Blue Creek to confluence with Blue Creek			A&Ww			FBC			FC		AgL
UG	Little Creek	Headwaters to confluence with the San Francisco River		A&Wc				FBC			FC		
UG	George's Tank	33°51'24"/109°08'30"	Sedi-mentary	A&Wc				FBC			FC		AgL
UG	Luna Lake	33°49'50"/109°05'06"	Sedi-mentary	A&Wc				FBC			FC		AgL
UG	Marijilda Creek	Headwaters to confluence with Gibson Creek		A&Wc				FBC			FC		AgL
UG	Marijilda Creek	Below confluence with Gibson Creek to confluence with Stockton Wash			A&Ww			FBC			FC	AgI	AgL
UG	Markham Creek	Headwaters to confluence with the Gila River			A&Ww			FBC			FC		AgL
UG	Pigeon Creek	Headwaters to confluence with the Blue River			A&Ww			FBC			FC		AgL
UG	Raspberry Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		
UG	Roper Lake	32°45'23"/109°42'14"	Sedi-mentary		A&Ww			FBC			FC		
UG	San Francisco River	Headwaters to the New Mexico border		A&Wc				FBC			FC	AgI	AgL
UG	San Francisco River	New Mexico border to confluence with the Gila River			A&Ww			FBC			FC	AgI	AgL
UG	San Simon River	Headwaters to confluence with the Gila River				A&We			PBC				AgL
UG	Sheep Tank	32°46'14"/109°48'09"	Sedi-mentary		A&Ww			FBC			FC		AgL
UG	Smith Pond	32°49'15"/109°50'36"	Sedi-mentary		A&Ww			FBC			FC		
UG	Squaw Creek	Headwaters to confluence with Thomas Creek		A&Wc				FBC			FC		AgL
UG	Stone Creek	Headwaters to confluence with the San Francisco River		A&Wc				FBC			FC	AgI	AgL
UG	Strayhorse Creek	Headwaters to confluence with the Blue River		A&Wc				FBC			FC		
UG	Thomas Creek	Headwaters to confluence with Rousensock Creek		A&Wc				FBC			FC		AgL
UG	Thomas Creek	Below confluence with Rousensock Creek to confluence with Blue River			A&Ww			FBC			FC		AgL
UG	Tinny Pond	33°47'49"/109°04'27"	Sedi-mentary		A&Ww			FBC			FC		AgL
UG	Turkey Creek	Headwaters to confluence with Campbell Blue Creek		A&Wc				FBC			FC		AgL
VR	American Gulch	Headwaters to the Northern Gila County Sanitary District WWTP outfall at 34°14'02"/111°22'14"			A&Ww			FBC			FC	AgI	AgL
VR	American Gulch (EDW)	Below Northern Gila County Sanitary District WWTP outfall to confluence with the East Verde River					A&Wed w		PBC				
VR	Apache Creek	Headwaters to confluence with Walnut Creek			A&Ww			FBC			FC		AgL
VR	Ashbrook Wash	Headwaters to the Fort McDowell Indian Reservation boundary				A&We			PBC				
VR	Aspen Creek	Headwaters to confluence with Granite Creek			A&Ww			FBC			FC		
VR	Bar Cross Tank	35°00'41"/112°05'39"			A&Ww			FBC			FC		AgL
VR	Barrata Tank	35°02'43"/112°24'21"			A&Ww			FBC			FC		AgL

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

Water-shed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife				Human Health				Agricultural	
				A&Wc	A&Ww	A&We	A&Wed w	FBC	PBC	DWS	FC	AgI	AgL
VR	Bartlett Lake	33°49'52"/111°37'44"	Deep		A&Ww			FBC		DWS	FC	AgI	AgL
VR	Beaver Creek	Headwaters to confluence with the Verde River			A&Ww			FBC			FC		AgL
VR	Big Chino Wash	Headwaters to confluence with Sullivan Lake				A&We			PBC				AgL
VR	Bitter Creek	Headwaters to the Jerome WWTP outfall at 34°45'12"/112°06'24"				A&We			PBC				AgL
VR	Bitter Creek (EDW)	Jerome WWTP outfall to the Yavapai Apache Indian Reservation boundary					A&Wed w		PBC				AgL
VR	Bitter Creek	Below the Yavapai Apache Indian Reservation boundary to confluence with the Verde River			A&Ww			FBC			FC	AgI	AgL
VR	Black Canyon Creek	Headwaters to confluence with unnamed tributary at 34°39'20"/112°05'06"		A&Wc				FBC			FC		AgL
VR	Black Canyon Creek	Below confluence with unnamed tributary to confluence with the Verde River			A&Ww			FBC			FC		AgL
VR	Bonita Creek	Headwaters to confluence with Ellison Creek		A&Wc				FBC			FC		
VR	Bray Creek	Headwaters to confluence with Webber Creek		A&Wc				FBC			FC		AgL
VR	Camp Creek	Headwaters to confluence with the Sycamore Creek			A&Ww			FBC			FC		AgL
VR	Cereus Wash	Headwaters to the Fort McDowell Indian Reservation boundary				A&We			PBC				
VR	Chase Creek	Headwaters to confluence with the East Verde River		A&Wc				FBC		DWS	FC		
VR	Clover Creek	Headwaters to confluence with Headwaters of West Clear Creek		A&Wc				FBC			FC		AgL
VR	Coffee Creek	Headwaters to confluence with Spring Creek			A&Ww			FBC			FC		AgL
VR	Colony Wash	Headwaters to the Fort McDowell Indian Reservation boundary				A&We			PBC				
VR	Dead Horse Lake	34°45'08"/112°00'42"	Shallow		A&Ww			FBC			FC		
VR	Deadman Creek	Headwaters to Horseshoe Reservoir			A&Ww			FBC			FC		AgL
VR	Del Monte Gulch	Headwaters to confluence with City of Cottonwood WWTP outfall 002 at 34°43'57"/112°02'46"				A&We			PBC				
VR	Del Monte Gulch (EDW)	City of Cottonwood WWTP outfall 002 at 34°43'57"/112°02'46" to confluence with Blow-out Creek					A&Wed w		PBC				
VR	Del Rio Dam Lake	34°48'55"/112°28'03"	Sedimentary		A&Ww			FBC			FC		AgL
VR	Dry Beaver Creek	Headwaters to confluence with Beaver Creek			A&Ww			FBC			FC	AgI	AgL
VR	Dry Creek (EDW)	Sedona Ventures WWTP outfall at 34°50'02"/111°52'17" to 34°48'12"/111°52'48"					A&Wed w		PBC				
VR	Dude Creek	Headwaters to confluence with the East Verde River		A&Wc				FBC			FC	AgI	AgL
VR	East Verde River	Headwaters to confluence with Ellison Creek		A&Wc				FBC		DWS	FC	AgI	AgL
VR	East Verde River	Below confluence with Ellison Creek to confluence with the Verde River			A&Ww			FBC		DWS	FC	AgI	AgL
VR	Ellison Creek	Headwaters to confluence with the East Verde River		A&Wc				FBC			FC		AgL
VR	Fossil Creek (OAW)	Headwaters to confluence with the Verde River			A&Ww			FBC			FC		AgL
VR	Fossil Springs (OAW)	34°25'24"/111°34'27"			A&Ww			FBC		DWS	FC		
VR	Foxboro Lake	34°53'42"/111°39'55"			A&Ww			FBC			FC		AgL
VR	Fry Lake	35°03'45"/111°48'04"			A&Ww			FBC			FC		AgL
VR	Gap Creek	Headwaters to confluence with Government Spring		A&Wc				FBC			FC		AgL
VR	Gap Creek	Below Government Spring to confluence with the Verde River			A&Ww			FBC			FC		AgL
VR	Garrett Tank	35°18'57"/112°42'20"			A&Ww			FBC			FC		AgL
VR	Goldwater Lake, Lower	34°29'56"/112°27'17"	Sedimentary	A&Wc				FBC		DWS	FC		
VR	Goldwater Lake, Upper	34°29'52"/112°26'59"	Igneous	A&Wc				FBC		DWS	FC		
VR	Granite Basin Lake	34°37'01"/112°32'58"	Igneous	A&Wc				FBC			FC	AgI	AgL
VR	Granite Creek	Headwaters to Watson Lake		A&Wc				FBC			FC	AgI	AgL

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

Water-shed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife				Human Health				Agricultural	
				A&Wc	A&Ww	A&We	A&Wed w	FBC	PBC	DWS	FC	AgI	AgL
VR	Granite Creek	Below Watson Lake to confluence with the Verde River			A&Ww			FBC			FC	AgI	AgL
VR	Green Valley Lake (EDW)	34°13'54"/111°20'45"	Urban				A&Wed w		PBC		FC		
VR	Heifer Tank	35°20'27"/112°32'59"			A&Ww			FBC			FC		AgL
VR	Hells Canyon Tank	35°04'59"/112°24'07"	Igneous		A&Ww			FBC			FC		AgL
VR	Homestead Tank	35°21'24"/112°41'36"	Igneous		A&Ww			FBC			FC		AgL
VR	Horse Park Tank	34°58'15"/111°36'32"			A&Ww			FBC			FC		AgL
VR	Horseshoe Reservoir	34°00'25"/111°43'36"	Sedi-mentary		A&Ww			FBC			FC	AgI	AgL
VR	Houston Creek	Headwaters to confluence with the Verde River			A&Ww			FBC			FC		AgL
VR	Huffer Tank	34°27'46"/111°23'11"			A&Ww			FBC			FC		AgL
VR	J.D. Dam Lake	35°04'02"/112°01'48"	Shallow	A&Wc				FBC			FC	AgI	AgL
VR	Jacks Canyon	Headwaters to Big Park WWTP outfall at 34°45'46"/ 111°45'51"				A&We			PBC				
VR	Jacks Canyon (EDW)	Below Big Park WWTP outfall to confluence with Dry Beaver Creek					A&Wed w		PBC				
VR	Lime Creek	Headwaters to Horseshoe Reservoir			A&Ww			FBC			FC		AgL
VR	Masonry Number 2 Reservoir	35°13'32"/112°24'10"		A&Wc				FBC			FC	AgI	AgL
VR	McLellan Reservoir	35°13'09"/112°17'06"	Igneous		A&Ww			FBC			FC	AgI	AgL
VR	Meath Dam Tank	35°07'52"/112°27'35"			A&Ww			FBC			FC		AgL
VR	Mullican Place Tank	34°44'16"/111°36'10"	Igneous		A&Ww			FBC			FC		AgL
VR	Oak Creek (OAW)	Headwaters to confluence with unnamed tributary at 34°59'15"/111°44'47"		A&Wc				FBC		DWS	FC	AgI	AgL
VR	Oak Creek (OAW)	Below confluence with unnamed tributary to confluence with Verde River			A&Ww			FBC		DWS	FC	AgI	AgL
VR	Oak Creek, West Fork (OAW)	Headwaters to confluence with Oak Creek		A&Wc				FBC			FC		AgL
VR	Odell Lake	34°56'5"/111°37'53"	Igneous	A&Wc				FBC			FC		
VR	Peck's Lake	34°46'51"/112°02'01"	Shallow		A&Ww			FBC			FC	AgI	AgL
VR	Perkins Tank	35°06'42"/112°04'12"	Shallow	A&Wc				FBC			FC		AgL
VR	Pine Creek	Headwaters to confluence with unnamed tributary at 34°21'51"/111°26'49"		A&Wc				FBC		DWS	FC	AgI	AgL
VR	Pine Creek	Below confluence with unnamed tributary to confluence with East Verde River			A&Ww			FBC		DWS	FC	AgI	AgL
VR	Red Creek	Headwaters to confluence with the Verde River			A&Ww			FBC			FC		AgL
VR	Reservoir #1	35°13'5"/111°50'09"	Igneous		A&Ww			FBC			FC		
VR	Reservoir #2	35°13'17"/111°50'39"	Igneous		A&Ww			FBC			FC		
VR	Roundtree Canyon Creek	Headwaters to confluence with Tangle Creek			A&Ww			FBC			FC		AgL
VR	Scholze Lake	35°11'53"/112°00'37"	Igneous	A&Wc				FBC			FC		AgL
VR	Spring Creek	Headwaters to confluence with unnamed tributary at 34°57'23"/111°57'21"		A&Wc				FBC			FC	AgI	AgL
VR	Spring Creek	Below confluence with unnamed tributary to confluence with Oak Creek			A&Ww			FBC			FC	AgI	AgL
VR	Steel Dam Lake	35°13'36"/112°24'54"	Igneous	A&Wc				FBC			FC		AgL
VR	Stehr Lake	34°22'01"/111°40'02"	Sedi-mentary		A&Ww			FBC			FC		AgL
VR	Stoneman Lake	34°46'47"/111°31'14"	Shallow	A&Wc				FBC			FC	AgI	AgL
VR	Sullivan Lake	34°51'42"/112°27'51"			A&Ww			FBC			FC	AgI	AgL
VR	Sycamore Creek	Headwaters to confluence with unnamed tributary at 35°03'41"/111°57'31"		A&Wc				FBC			FC	AgI	AgL
VR	Sycamore Creek	Below confluence with unnamed tributary to confluence with Verde River			A&Ww			FBC			FC	AgI	AgL
VR	Sycamore Creek	Headwaters to confluence with Verde River at 33°37'55"/111°39'58"			A&Ww			FBC			FC	AgI	AgL
VR	Sycamore Creek	Headwaters to confluence with Verde River at 34°04'42"/111°42'14"			A&Ww			FBC			FC		AgL

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

Water-shed	Surface Waters	Segment Description and Location (Latitude and Longitudes are in NAD 83)	Lake Category	Aquatic and Wildlife				Human Health				Agricultural	
				A&Wc	A&Ww	A&We	A&Wed w	FBC	PBC	DWS	FC	AgI	AgL
VR	Tangle Creek	Headwaters to confluence with Verde River			A&Ww			FBC			FC	AgI	AgL
VR	Trinity Tank	35°27'44"/112°48'01"			A&Ww			FBC			FC		AgL
VR	Unnamed Wash	Flagstaff Meadows WWTP outfall at '35°13'59"/111°48'35" to Volunteer Wash					A&Wed w		PBC				
VR	Verde River	From headwaters at confluence of Chino Wash and Granite Creek to Bartlett Lake Dam			A&Ww			FBC			FC	AgI	AgL
VR	Verde River	Below Bartlett Lake Dam to Salt River			A&Ww			FBC		DWS	FC	AgI	AgL
VR	Walnut Creek	Headwaters to confluence with Big Chino Wash			A&Ww			FBC			FC		AgL
VR	Watson Lake	34°34'58"/112°25'26"	Igneous		A&Ww			FBC			FC	AgI	AgL
VR	Webber Creek	Headwaters to confluence with the East Verde River		A&Wc				FBC			FC		AgL
VR	West Clear Creek	Headwaters to confluence with Meadow Canyon		A&Wc				FBC			FC		AgL
VR	West Clear Creek	Below confluence with Meadow Canyon to confluence with the Verde River			A&Ww			FBC			FC	AgI	AgL
VR	Wet Beaver Creek	Headwaters to unnamed springs at 34°41'17"/111°34'34"		A&Wc				FBC			FC	AgI	AgL
VR	Wet Beaver Creek	Below unnamed springs to confluence with Dry Beaver Creek			A&Ww			FBC			FC	AgI	AgL
VR	Whitehorse Lake	35°06'59"/112°00'48"	Igneous	A&Wc				FBC		DWS	FC	AgI	AgL
VR	Williamson Valley Wash	Headwaters to confluence with Mint Wash				A&We			PBC				AgL
VR	Williamson Valley Wash	From confluence of Mint Wash to 10.5 km downstream			A&Ww			FBC			FC		AgL
VR	Williamson Valley Wash	From 10.5 km downstream of Mint Wash confluence to confluence with Big Chino Wash				A&We			PBC				AgL
VR	Williscraft Tank	35°11'22"/112°35'40"			A&Ww			FBC			FC		AgL
VR	Willow Creek	Above Willow Creek Reservoir		A&Wc				FBC			FC		AgL
VR	Willow Creek	Below Willow Creek Reservoir to confluence with Granite Creek			A&Ww			FBC			FC		AgL
VR	Willow Creek Reservoir	34°36'17"/112°26'19"	Shallow		A&Ww			FBC			FC	AgI	AgL
VR	Willow Valley Lake	34°41'08"/111°20'02"	Sedimentary		A&Ww			FBC			FC		AgL

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1). Appendix B repealed, new Appendix B adopted effective April 24, 1996 (Supp. 96-2). Amended by final rulemaking at 8 A.A.R. 1264, effective March 8, 2002 (Supp. 02-1). Amended by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Appendix B amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

Appendix C. Site-Specific Standards

Watershed	Surface Water	Surface Water Description & Location	Parameter	Site-Specific Criterion
LC	Rio de Flag (EDW)	Flagstaff WWTP outfall to the confluence with San Francisco Wash	Copper (D)	36 µg/L (A&Wedw)
CL	Yuma East Wetlands	From inlet culvert from Colorado River into restored channel to Ocean Bridge	Selenium (T)	2.2 µg/L (A&Ww chronic)
			Total residual chlorine	33 µg/L (A&Ww acute)
				20 µg/L (A&Ww chronic)
SR	Pinto Creek	From confluence of Ellis Ranch tributary at 33°19'26.7"/110°54'57.5" to the confluence of West Fork of Pinto Creek at 33°27'32.3"/111°00'19.7"	Copper (D)	34 µg/L (A&Ww acute for hardness values below 268 mg/L)
				34 µg/L (A&Ww chronic)

**Historical Note**

Adopted effective February 18, 1992 (Supp. 92-1). Appendix C repealed effective April 24, 1996 (Supp. 96-2). New Appendix C made by final rulemaking at 14 A.A.R. 4708, effective January 31, 2009 (Supp. 08-4). Amended by final rulemaking at 22 A.A.R. 2328, effective August 2, 2016 (Supp. 16-4). Appendix C amended by final rulemaking at 25 A.A.R. 2515, effective November 9, 2019 (Supp. 19-3).

**ARTICLE 2. REPEALED**

**R18-11-201. Repealed**

**Historical Note**

Amended effective January 29, 1980 (Supp. 80-1). Amended subsection A. effective April 17, 1984 (Supp. 84-2). Former Section R9-21-201 repealed, former Section R9-21-203 renumbered as Section R9-21-201 and amended effective January 7, 1985 (Supp. 85-1). Amended effective August 12, 1986 (Supp. 86-4). Former Section R9-21-201 renumbered without change as Section R18-11-201 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section repealed effective February 18, 1992 (Supp. 92-1).

**R18-11-202. Repealed**

**Historical Note**

Former Section R9-21-202 repealed, former Section R9-21-102 renumbered as Section R9-21-202 and amended effective January 7, 1985 (Supp. 85-1). Amended subsections (B), (D), and (E) effective August 12, 1986 (Supp. 86-4). Former Section R9-21-202 renumbered without change as Section R18-11-202 (Supp. 87-3). Section repealed, new Section adopted effective February 18, 1992 (Supp. 92-1). Section repealed effective April 24, 1996 (Supp. 96-2).

**R18-11-203. Repealed**

**Historical Note**

Amended effective January 29, 1980 (Supp. 80-1). Amended subsection (B) by adding paragraphs (27) and (28) effective October 14, 1981 (Supp. 81-5). Former Section R9-21-203 renumbered as Section R9-21-201, former Section R9-21-204 renumbered as Section R9-21-203 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-203 renumbered and amended as Section R9-21-204, new Section R9-21-203 adopted effective August 12, 1986 (Supp. 86-4). Former Section R9-21-203 renumbered without change as

Section R18-11-203 (Supp. 87-3). Amended subsection (B) effective December 1, 1988 (Supp. 88-4). Section repealed, new Section adopted effective February 18, 1992 (Supp. 92-1). Section repealed effective April 24, 1996 (Supp. 96-2).

**R18-11-204. Repealed**

**Historical Note**

Former Section R9-21-204 renumbered and amended as Section R9-21-207, former Section R9-21-206 renumbered and amended as Section R9-21-204 effective January 29, 1980 (Supp. 80-1). Former Section R9-21-204 renumbered as Section R9-21-203, former Section R9-21-205 renumbered as Section R9-21-204 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-204 renumbered and amended as Section R9-21-205, former Section R9-21-203 renumbered and amended as Section R9-21-204 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-204 renumbered without change as Section R18-11-204 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1).

**R18-11-205. Repealed**

**Historical Note**

Former Section R9-21-205 repealed, new Section R9-21-205 adopted effective January 29, 1980 (Supp. 80-1). Former Section R9-21-205 renumbered as Section R9-21-204, former Section R9-21-206 renumbered as Section R9-21-205 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-205 renumbered and amended as Section R9-21-206, former Section R9-21-204 renumbered and amended as Section R9-21-205 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-205 renumbered without change as Section R18-11-205 (Supp. 87-3). Section repealed, new Section adopted effective February 18, 1992

## CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

(Supp. 92-1). Section repealed April 24, 1996  
(Supp. 96-2).

**R18-11-206. Repealed****Historical Note**

Former Section R9-21-206 renumbered and amended as Section R9-21-204, new Section R9-21-206 adopted effective January 29, 1980 (Supp. 80-1). Amended by adding subsection (B) effective October 14, 1981 (Supp. 81-5). Amended subsection (B) and Table 1 effective January 29, 1982 (Supp. 82-1). Amended subsection (B) and Table 1 effective August 13, 1982 (Supp. 82-4). Former Section R9-21-206 renumbered as Section R9-21-205, former Section R9-21-207 renumbered as Section R9-21-206 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-206 renumbered and amended as Section R9-21-207, former Section R9-21-205 renumbered and amended as R9-21-206 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-206 renumbered without change as Section R18-11-206 (Supp. 87-3).

**R18-11-207. Repealed****Historical Note**

Former Section R9-21-207 repealed, former Section R9-21-204 renumbered and amended as Section R9-21-207 effective January 29, 1980 (Supp. 80-1). Former Section R9-21-207 renumbered as Section R9-21-206, former Section R9-21-208 renumbered as Section R9-21-207 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-207 renumbered without change as Section R9-21-208, former Section R9-21-206 renumbered and amended as Section R9-21-207 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-207 renumbered without change as Section R18-11-207 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1).

**R18-11-208. Repealed****Historical Note**

Former Section R9-21-208 repealed, new Section R9-21-208 adopted effective January 29, 1980 (Supp. 80-1). Former Section R9-21-208 renumbered as Section R9-21-207, Appendices 1 through 9 amended as Appendix A (now shown following R9-21-213), former Section R9-21-209 renumbered as R9-21-208 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-208 renumbered and amended as Section R9-21-209, former Section R9-21-207 renumbered without change as Section R9-21-208 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-208 renumbered without change as Section R18-11-208 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1).

**R18-11-209. Repealed****Historical Note**

Former Section R9-21-209 renumbered and amended as Section R9-21-210, new Section R9-21-209 adopted effective January 29, 1980 (Supp. 80-1). Former Section R9-21-209 renumbered as Section R9-21-208, Tables I and II amended as Appendix B (now shown following R9-21-213 and Appendix A), former Section R9-21-210 renumbered as Section R9-21-209 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-209

renumbered and amended as Section R9-21-210, former Section R9-21-208 renumbered and amended as Section R9-21-209 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-209 renumbered without change as Section R18-11-209 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1).

**R18-11-210. Repealed****Historical Note**

Former Section R9-21-210 renumbered and amended as Section R9-21-211, former Section R9-21-209 renumbered and amended as Section R9-21-210 effective January 29, 1980 (Supp. 80-1). Amended subsection (A) effective April 17, 1984 (Supp. 84-2). Former Section R9-21-210 renumbered as Section R9-21-209, former Section R9-21-211 renumbered as Section R9-21-210 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-210 renumbered and amended as Section R9-21-211, former Section R9-21-209 renumbered and amended as Section R9-21-210 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-210 renumbered without change as Section R18-11-210 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1).

**R18-11-211. Repealed****Historical Note**

Former Section R9-21-210 renumbered and amended as Section R9-21-211 effective January 29, 1980 (Supp. 80-1). Amended subsections (D), (G) three (I), and added (J) effective October 14, 1981 (Supp. 81-5). Former Section R9-21-211 renumbered as Section R9-21-210, former Section R9-21-212 renumbered as Section R9-21-211 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-211 renumbered and amended as Section R9-21-212, former Section R9-21-210 renumbered and amended as Section R9-21-211 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-211 renumbered without change as Section R18-11-211 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1).

**R18-11-212. Repealed****Historical Note**

Adopted effective January 29, 1980 (Supp. 80-1). Former Section R9-21-212 renumbered as Section R9-21-211, former Section R9-21-213 renumbered as Section R9-21-212 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-212 repealed, former Section R9-21-211 renumbered and amended as Section R9-21-212 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-212 renumbered without change as Section R18-11-212 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1).

**R18-11-213. Repealed****Historical Note**

Adopted effective January 29, 1980 (Supp. 80-1). Amended effective April 17, 1984 (Supp. 84-2). Former Section R9-21-213 renumbered as Section R9-21-212, former Section R9-21-103 renumbered as Section R9-21-213 and amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-213 renumbered without change as Section R9-21-214, new Section R9-21-213 adopted effective August 12, 1986 (Supp. 86-4). Former Section R9-21-213 renumbered

## CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

without change as Section R18-11-213 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section repealed effective February 18, 1992 (Supp. 92-1).

**R18-11-214. Repealed****Historical Note**

Former Section R9-21-213 renumbered without change as Section R9-21-214 effective August 12, 1986 (Supp. 86-4). Former Section R9-21-214 renumbered without change as Section R18-11-214 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1).

**Appendix A. Repealed****Historical Note**

Former Section R9-21-208, Appendices 1 through 9 renumbered and amended as new Appendix A adopted effective January 7, 1985 (Supp. 85-1). Amended effective August 12, 1986 (Supp. 86-4). Appendix repealed effective February 18, 1992 (Supp. 92-1).

**Appendix B. Repealed****Historical Note**

Former R9-21-209, Table 1 and Table 2 renumbered and amended as Appendix B adopted effective January 7, 1985 (Supp. 85-1). Amended effective August 12, 1986 (Supp. 86-4). Appendix repealed effective February 18, 1992 (Supp. 92-1).

**ARTICLE 3. RECLAIMED WATER QUALITY STANDARDS****R18-11-301. Definitions**

The terms in this Article have the following meanings:

“Direct reuse” has the meaning prescribed in R18-9-701(1).

“Disinfection” means a treatment process that uses oxidants, ultraviolet light, or other agents to kill or inactivate pathogenic organisms in wastewater.

“Filtration” means a treatment process that removes particulate matter from wastewater by passage through porous media.

“Gray water” means wastewater, collected separately from a sewage flow, that originates from a clothes washer, bathtub, shower, or sink, but it does not include wastewater from a kitchen sink, dishwasher, or a toilet.

“Industrial wastewater” means wastewater generated from an industrial process.

“Landscape impoundment” means a manmade lake, pond, or impoundment of reclaimed water where swimming, wading, boating, fishing, and other water-based recreational activities are prohibited. A landscape impoundment is created for storage, landscaping, or for aesthetic purposes only.

“NTU” means nephelometric turbidity unit.

“On-site wastewater treatment facility” has the meaning prescribed in A.R.S. § 49-201(24).

“Open access” means that access to reclaimed water by the general public is uncontrolled.

“Reclaimed water” has the meaning prescribed in A.R.S. § 49-201(31).

“Recreational impoundment” means a manmade lake, pond, or impoundment of reclaimed water where boating or fishing is an intended use of the impoundment. Swimming and other full-body recreation activities (for example, water-skiing) are prohibited in a recreational impoundment.

“Restricted access” means that access to reclaimed water by the general public is controlled.

“Secondary treatment” means a biological treatment process that achieves the minimum level of effluent quality defined by the federal secondary treatment regulation at 40 CFR § 133.102.

“Sewage” means untreated wastes from toilets, baths, sinks, lavatories, laundries, and other plumbing fixtures in places of human habitation, employment, or recreation.

**Historical Note**

Adopted effective July 9, 1981 (Supp. 81-4). Former Section R9-21-301 renumbered without change as Section R18-11-301 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

**R18-11-302. Applicability**

This Article applies to the direct reuse of reclaimed water, except for:

1. The direct reuse of gray water, or
2. The direct reuse of reclaimed water from an onsite wastewater treatment facility regulated by a general Aquifer Protection Permit under 18 A.A.C. 9, Article 3.

**Historical Note**

Adopted effective June 8, 1981 (Supp. 81-3). Amended effective January 7, 1985 (Supp. 85-1). Former Section R9-21-302 renumbered without change as Section R18-11-302 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

**R18-11-303. Class A+ Reclaimed Water**

- A. Class A+ reclaimed water is wastewater that has undergone secondary treatment, filtration, nitrogen removal treatment, and disinfection. Chemical feed facilities to add coagulants or polymers are required to ensure that filtered effluent before disinfection complies with the 24-hour average turbidity criterion prescribed in subsection (B)(1). Chemical feed facilities may remain idle if the 24-hour average turbidity criterion in (B)(1) is achieved without chemical addition.
- B. An owner of a facility shall ensure that:
  1. The turbidity of Class A+ reclaimed water at a point in the wastewater treatment process after filtration and immediately before disinfection complies with the following:
    - a. The 24-hour average turbidity of filtered effluent is two NTUs or less, and
    - b. The turbidity of filtered effluent does not exceed five NTUs at any time.
  2. Class A+ reclaimed water meets the following criteria after disinfection treatment and before discharge to a reclaimed water distribution system:
    - a. There are no detectable fecal coliform organisms in four of the last seven daily reclaimed water samples taken, and
    - b. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 23 / 100 ml.
    - c. If alternative treatment processes or alternative turbidity criteria are used, or reclaimed water is blended with other water to produce Class A+ reclaimed water under subsection (C), there are no

## CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

detectable enteric virus in four of the last seven monthly reclaimed water samples taken.

3. The 5-sample geometric mean concentration of total nitrogen in a reclaimed water sample is less than 10 mg / L.
- C. An owner of a facility may use alternative treatment methods other than those required by subsection (A), or comply with alternative turbidity criteria other than those required by subsection (B)(1), or blend reclaimed water with other water to produce Class A+ reclaimed water provided the owner demonstrates through pilot plant testing, existing water quality data, or other means that the alternative treatment methods, alternative turbidity criteria, or blending reliably produces a reclaimed water that meets the disinfection criteria in subsection (B)(2) and the total nitrogen criteria in subsection (B)(3) before discharge to a reclaimed water distribution system.
- D. Class A+ reclaimed water is not required for any type of direct reuse. A person may use Class A+ reclaimed water for any type of direct reuse listed in Table A.

**Historical Note**

Adopted effective January 7, 1985 (Supp. 85-1).

Amended effective August 12, 1986 (Supp. 86-4).

Former Section R9-21-303 renumbered without change as Section R18-11-303 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

**R18-11-304. Class A Reclaimed Water**

- A. Class A reclaimed water is wastewater that has undergone secondary treatment, filtration, and disinfection. Chemical feed facilities to add coagulants or polymers are required to ensure that filtered effluent before disinfection complies with the 24-hour average turbidity criterion prescribed in subsection (B)(1). Chemical feed facilities may remain idle if the 24-hour average turbidity criterion in subsection (B)(1) is achieved without chemical addition.
- B. An owner of a facility shall ensure that:
1. The turbidity of Class A reclaimed water at a point in the wastewater treatment process after filtration and immediately before disinfection complies with the following:
    - a. The 24-hour average turbidity of filtered effluent is two NTUs or less, and
    - b. The turbidity of filtered effluent does not exceed five NTUs at any time.
  2. Class A reclaimed water meets the following criteria after disinfection treatment and before discharge to a reclaimed water distribution system:
    - a. There are no detectable fecal coliform organisms in four of the last seven daily reclaimed water samples taken, and
    - b. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 23 / 100 ml.
    - c. If alternative treatment processes or alternative turbidity criteria are used, or reclaimed water is blended with other water to produce Class A reclaimed water under subsection (C), there are no detectable enteric virus in four of the last seven monthly reclaimed water samples taken.
- C. An owner of a facility may use alternative treatment methods other than those required by subsection (A), or comply with alternative turbidity criteria other than those required by subsection (B)(1), or blend reclaimed water with other water to produce Class A reclaimed water provided the owner demonstrates through pilot plant testing, existing water quality data,

or other means that the alternative treatment methods, alternative turbidity criteria, or blending reliably produces a reclaimed water that meets the disinfection criteria in subsection (B)(2) before discharge to a reclaimed water distribution system.

- D. A person shall use Class A reclaimed water for a type of direct reuse listed as Class A in Table A. A person may use Class A reclaimed water for a type of direct reuse listed as Class B or Class C in Table A.

**Historical Note**

Adopted effective January 7, 1985 (Supp. 85-1).

Amended effective August 12, 1986 (Supp. 86-4).

Former Section R9-21-304 renumbered without change as Section R18-11-304 (Supp. 87-3). Section repealed effective February 18, 1992 (Supp. 92-1). New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

**R18-11-305. Class B+ Reclaimed Water**

- A. Class B+ reclaimed water is wastewater that has undergone secondary treatment, nitrogen removal treatment, and disinfection.
- B. An owner of a facility shall ensure that:
1. Class B+ reclaimed water meets the following criteria after disinfection treatment and before discharge to a reclaimed water distribution system:
    - a. The concentration of fecal coliform organisms in four of the last seven daily reclaimed water samples is less than 200 / 100 ml.
    - b. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 800 / 100 ml.
  2. The 5-sample geometric mean concentration of total nitrogen in a reclaimed water sample is less than 10 mg / L.
- C. Class B+ reclaimed water is not required for a type of direct reuse. A person may use Class B+ reclaimed water for a type of direct reuse listed as Class B or Class C in Table A. A person shall not use Class B+ reclaimed water for a type of direct reuse listed as Class A in Table A.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

**R18-11-306. Class B Reclaimed Water**

- A. Class B reclaimed water is wastewater that has undergone secondary treatment and disinfection.
- B. An owner of a facility shall ensure that Class B reclaimed water meets the following criteria after disinfection treatment and before discharge to a reclaimed water distribution system:
  1. The concentration of fecal coliform organisms in four of the last seven daily reclaimed water samples is less than 200 / 100 ml.
  2. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 800 / 100 ml.
- C. A person shall use a minimum of Class B reclaimed water for a type of direct reuse listed as Class B in Table A. A person may use Class B reclaimed water for a type of direct reuse listed as Class C in Table A. A person shall not use Class B reclaimed water for a type of direct reuse listed as Class A in Table A.

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

**R18-11-307. Class C Reclaimed Water**

- A. Class C reclaimed water is wastewater that has undergone secondary treatment in a series of wastewater stabilization ponds, including aeration, with or without disinfection.
- B. The owner of a facility shall ensure that:
  - 1. The total retention time of Class C reclaimed water in wastewater stabilization ponds is at least 20 days.
  - 2. Class C reclaimed water meets the following criteria after treatment and before discharge to a reclaimed water distribution system:
    - a. The concentration of fecal coliform organisms in four of the last seven reclaimed water samples taken is less than 1000 / 100 ml.
    - b. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 4000 / 100 ml.
- C. A person shall use a minimum of Class C reclaimed water for a type of direct reuse listed as Class C in Table A. A person shall not use Class C reclaimed water for a type of direct reuse listed as Class A or Class B in Table A.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

**R18-11-308. Industrial Reuse**

- A. The reclaimed water quality requirements for the following direct reuse applications are industry-specific and shall be determined by the Department on a case-by-case basis in a reclaimed water permit issued by the Department under 18 A.A.C. 9, Article 7:
  - 1. Direct reuse of industrial wastewater containing sewage.
  - 2. Direct reuse of industrial wastewater for the production or processing of any crop used as human or animal food.
- B. The Department shall use best professional judgment to determine the reclaimed water quality requirements needed to protect public health and the environment for a type of direct reuse specified in subsection (A).

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

**R18-11-309. Reclaimed Water Quality Standards for an Unlisted Type of Direct Reuse**

- A. The Department may prescribe in an individual reclaimed water permit issued under 18 A.A.C. 9, Article 7, reclaimed water quality requirements for a type of direct reuse not listed in Table A. Before permitting a direct reuse of reclaimed water not listed in Table A, the Department shall, using its best professional judgment, determine and require compliance with reclaimed water quality requirements needed to protect public health and the environment.
- B. Department may determine that Class A+, A, B+, B, or C reclaimed water is appropriate for a new type of direct reuse.
- C. The Department shall consider the following factors when prescribing reclaimed water quality requirements for a new type of direct reuse:
  - 1. The risk to public health;
  - 2. The degree of public access to the site where the reclaimed water is reused and human exposure to the reclaimed water;
  - 3. The level of treatment necessary to ensure that the reclaimed water is aesthetically acceptable;

- 4. The level of treatment necessary to prevent nuisance conditions;
- 5. Specific water quality requirements for the intended type of direct reuse;
- 6. The means of application of the reclaimed water;
- 7. The degree of treatment necessary to avoid a violation of surface water quality standards or aquifer water quality standards;
- 8. The potential for improper or unintended use of the reclaimed water;
- 9. The reuse guidelines, criteria, or standards adopted or recommended by the U.S. Environmental Protection Agency or other federal or state agencies that apply to the new type of direct reuse; and
- 10. Similar wastewater reclamation experience of reclaimed water providers in the United States.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

**Table A. Minimum Reclaimed Water Quality Requirements for Direct Reuse**

Type of Direct Reuse	Minimum Class of Reclaimed Water Required
Irrigation of food crops	A
Recreational impoundments	A
Residential landscape irrigation	A
Schoolground landscape irrigation	A
Open access landscape irrigation	A
Toilet and urinal flushing	A
Fire protection systems	A
Spray irrigation of an orchard or vineyard	A
Commercial closed loop air conditioning systems	A
Vehicle and equipment washing (does not include self-service vehicle washes)	A
Snowmaking	A
Surface irrigation of an orchard or vineyard	B
Golf course irrigation	B
Restricted access landscape irrigation	B
Landscape impoundment	B
Dust control	B
Soil compaction and similar construction activities	B
Pasture for milking animals	B
Livestock watering (dairy animals)	B
Concrete and cement mixing	B
Materials washing and sieving	B
Street cleaning	B
Pasture for non-dairy animals	C
Livestock watering (non-dairy animals)	C
Irrigation of sod farms	C
Irrigation of fiber, seed, forage, and similar crops	C
Silviculture	C

Note: Nothing in this Article prevents a wastewater treatment plant from using a higher quality reclaimed water for a type of direct

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

reuse than the minimum class of reclaimed water listed in Table A. For example, a wastewater treatment plant may provide Class A reclaimed water for a type of direct reuse where Class B or Class C reclaimed water is acceptable.

**Historical Note**

New Table adopted by final rulemaking at 7 A.A.R. 870, effective January 22, 2001 (Supp. 01-1).

**ARTICLE 4. AQUIFER WATER QUALITY STANDARDS**

**R18-11-401. Definitions**

In addition to the definitions contained in A.R.S. §§ 49-101 and 49-201, the terms of this Article shall have the following meanings:

1. "Beta particle and photon radioactivity from man-made radionuclides" means all radionuclides emitting beta particles or photons, except Thorium-232, Uranium-235, Uranium-238 and their progeny.
2. "Dose equivalent" means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements.
3. "Drinking water protected use" means the protection and maintenance of aquifer water quality for human consumption.
4. "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.
5. "Mg/l" means milligrams per liter.
6. "Millirem" means 1/1000 of a rem. A rem means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system.
7. "Non-drinking water protected use" means the protection and maintenance of aquifer water quality for a use other than for human consumption.
8. "pCi" means picocurie, or the quantity of radioactive material producing 2.22 nuclear transformations per minute.
9. "Total trihalomethanes" means the sum of the concentrations of the following trihalomethane compounds: trichloromethane (chloroform), dibromo-chloromethane, bromodichloromethane and tribromo-methane (bromoform).

**Historical Note**

Adopted effective January 4, 1990 (Supp. 90-1).  
Amended effective August 14, 1992 (Supp. 92-3).

**R18-11-402. Repealed**

**Historical Note**

Adopted effective January 4, 1990 (Supp. 90-1).  
Repealed effective August 14, 1992 (Supp. 92-3).

**R18-11-403. Analytical Methods**

Analysis of a sample to determine compliance with an aquifer water quality standard shall be in accordance with an analytical method specified in A.A.C. Title 9, Chapter 14, Article 6 or an alternative analytical method that is approved by the Director of the Arizona Department of Health Services pursuant to A.A.C. R9-14-607(B).

**Historical Note**

Adopted effective January 4, 1990 (Supp. 90-1).  
Amended effective August 14, 1992 (Supp. 92-3).

**R18-11-404. Laboratories**

A test result from a sample taken to determine compliance with an aquifer water quality standard shall be valid only if the sample has

been analyzed by a laboratory that is licensed by the Arizona Department of Health Services for the analysis performed.

**Historical Note**

Adopted effective January 4, 1990 (Supp. 90-1).  
Amended effective August 14, 1992 (Supp. 92-3).

**R18-11-405. Narrative Aquifer Water Quality Standards**

- A. A discharge shall not cause a pollutant to be present in an aquifer classified for a drinking water protected use in a concentration which endangers human health.
- B. A discharge shall not cause or contribute to a violation of a water quality standard established for a navigable water of the state.
- C. A discharge shall not cause a pollutant to be present in an aquifer which impairs existing or reasonably foreseeable uses of water in an aquifer.

**Historical Note**

Adopted effective January 4, 1990 (Supp. 90-1).  
Amended effective August 14, 1992 (Supp. 92-3).

**R18-11-406. Numeric Aquifer Water Quality Standards: Drinking Water Protected Use**

- A. The aquifer water quality standards in this Section apply to aquifers that are classified for drinking water protected use.
- B. The following are the aquifer water quality standards for inorganic chemicals:

Pollutant	mg/L)
Antimony	0.006
Arsenic	0.05
Asbestos	7 million fibers/liter (longer than 10 mm)
Barium	2
Beryllium	0.004
Cadmium	0.005
Chromium	0.1
Cyanide (As Free Cyanide)	0.2
Fluoride	4.0
Lead	0.05
Mercury	0.002
Nickel	0.1
Nitrate (as N)	10
Nitrite (as N)	1
Nitrate and nitrite (as N)	10
Selenium	0.05
Thallium	0.002

- C. The following are the aquifer water quality standards for organic chemicals:

Pollutant	(mg/L)
Benzene	0.005
Benzo (a) pyrene	0.0002
Carbon Tetrachloride	0.005
o-Dichlorobenzene	0.6
para-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
cis-1,2-Dichloroethylene	0.07
trans-1,2-Dichloroethylene	0.1
1,2-Dichloropropane	0.005
Dichloromethane	0.005

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

Di (2-ethylhexyl) adipate	0.4
Di (2-ethylhexyl) pthalate	0.006
Ethylbenzene	0.7
Hexachlorobenzene	0.001
Hexachlorocyclopentadiene	0.05
Monochlorobenzene	0.1
Pentachlorophenol	0.001
Styrene	0.1
2,3,7,8-TCDD (Dioxin)	0.00000003
Tetrachloroethylene	0.005
Toluene	1
Trihalomethanes (Total)	0.10
1,2,4-Trichlorobenzene	0.07
1,1,1-Trichloroethane	0.20
1,1,2-Trichloroethane	0.005
Trichloroethylene	0.005
Vinyl Chloride	0.002
Xylenes (Total)	10

D. The following are the aquifer water quality standards for pesticides and polychlorinated biphenyls (PCBs):

Pollutant	(mg/L)
Alachlor	0.002
Atrazine	0.003
Carbofuran	0.04
Chlordane	0.002
Dalapon	0.2
1,2-Dibromo-3-Chloropropane (DBCP)	0.0002
2,4,-Dichlorophenoxyacetic Acid(2,4-D)	0.07
Dinoseb	0.007
Diquat	0.02
Endothall	0.1
Endrin	0.002
Ethylene Dibromide (EDB)	0.00005
Glyphosate	0.7
Heptachlor	0.0004
Heptachlor Epoxide	0.0002
Lindane	0.0002
Methoxychlor	0.04
Oxamyl	0.2
Picloram	0.5
Polychlorinated Biphenols (PCBs)	0.0005
Simazine	0.004
Toxaphene	0.003
2,4,5-Trichlorophenoxypropionic Acid (2,4,5-TP or Silvex)	0.05

E. The following are the aquifer water quality standards for radionuclides:

1. The maximum concentration for gross alpha particle activity, including Radium-226 but excluding radon and uranium, shall not exceed 15 pCi/l.
2. The maximum concentration for combined Radium-226 and Radium-228 shall not exceed 5 pCi/l.
3. The average annual concentration of beta particle and photon radioactivity from man-made radionuclides shall not produce an annual dose equivalent to the total body or any internal organ greater than 4 millirem/year.

4. Except for the radionuclides listed in this subsection, the concentration of man-made radionuclides causing 4 millirem total body or organ dose equivalents shall be calculated on the basis of a 2-liter-per-day drinking water intake using the 168-hour data listed in "Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure," National Bureau of Standards Handbook 69, National Bureau of Commerce, as amended August 1963 (and no future editions), incorporated herein by reference and on file with the Office of the Secretary of State and with the Department. If two or more radionuclides are present, the sum of their annual dose equivalent to the total body or to any organ shall not exceed 4 millirem/year. The following average annual concentrations are assumed to produce a total body or organ dose of 4 millirem/year:

Radionuclide	Critical Organ	pCi/l
Tritium	Total body	20,000
Strontium-90	Bone Marrow	8

- F. The aquifer water quality standard for microbiological contaminants is based upon the presence or absence of total coliforms in a 100-milliliter sample. If a sample is total coliform-positive, a 100-milliliter repeat sample shall be taken within two weeks of the time the sample results are reported. Any total coliform-positive repeat sample following a total coliform-positive sample constitutes a violation of the aquifer water quality standard for microbiological contaminants.

G. The following are the aquifer water quality standards for turbidity:

1. One nephelometric turbidity unit as determined by a monthly average except that five or fewer nephelometric turbidity units may be allowed if it can be determined that the higher turbidity does not interfere with disinfection, prevent maintenance of effective disinfectant agents in water supply distribution systems, or interfere with microbiological determinations.
2. Five nephelometric turbidity units based on an average of two consecutive days.

**Historical Note**

Adopted effective January 4, 1990 (Supp. 90-1).  
 Amended effective August 14, 1992 (Supp. 92-3).  
 Amended effective May 26, 1994 (Supp. 94-2).

**R18-11-407. Aquifer Water Quality Standards in Reclassified Aquifers**

- A. All aquifers in the state are classified for drinking water protected use except for aquifers which are reclassified to a non-drinking water protected use pursuant to A.R.S. § 49-224 and A.A.C. R18-11-503.
- B. Aquifer water quality standards for drinking water protected use apply to reclassified aquifers except where expressly superseded by aquifer water quality standards adopted pursuant to subsection (C) of this Section.
- C. The Director shall adopt, by rule, aquifer water quality standards for reclassified aquifers within one year of the date of the order reclassifying the aquifer to a nondrinking water protected use. The Director shall adopt aquifer water quality standards for reclassified aquifers only for pollutants that are specifically identified in a petition for reclassification as prescribed by A.R.S. § 49-223(D) and A.A.C. R18-11-503(B). Aquifer water quality standards for reclassified aquifers shall be sufficient to protect the use of the reclassified aquifer.

## CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

**Historical Note**

Adopted effective January 4, 1990 (Supp. 90-1).  
Amended effective August 14, 1992 (Supp. 92-3).

**R18-11-408. Petition for Adoption of a Numeric Aquifer Water Quality Standard**

- A.** Any person may petition the Director to adopt, by rule, a numeric aquifer water quality standard for a pollutant for which no numeric aquifer water quality standard exists.
- B.** Petitions for adoption of a numeric aquifer water quality standard shall be filed with the Department and shall comply with the requirements applicable to petitions for rule adoption as provided by A.R.S. § 41-1033 and A.A.C. R18-1-302, except as otherwise provided by A.R.S. § 49-223 or this Section.
- C.** In addition to the requirements of A.A.C. R18-1-302, a petition for rule adoption to establish a numeric aquifer water quality standard shall include specific reference to:
1. Technical information that the pollutant is a toxic pollutant.
  2. Technical information upon which the Director reasonably may base the establishment of a numeric aquifer water quality standard.
  3. Evidence that the pollutant that is the subject of the petition is or may in the future be present in an aquifer or part of an aquifer that is classified for drinking water protected use. Evidence may include, but is not limited to, any of the following:
    - a. A laboratory analysis of a water sample by a laboratory licensed by the Arizona Department of Health Services which indicates the presence of the pollutant in the aquifer.
    - b. A hydrogeological study which demonstrates that the pollutant that is the subject of the petition may be present in an aquifer in the future. The hydrogeological study shall include the following:
      - i. A description of the use that results in a discharge of the pollutant that is the subject of the petition.
      - ii. A description of the mobility of the pollutant in the vadose zone and in the aquifer.
      - iii. A description of the persistence of the pollutant in the vadose zone and in the aquifer.
- D.** Within 180 calendar days of the receipt of a complete petition for rule adoption to establish a numeric aquifer water quality standard, the Director shall make a written determination of whether the petition should be granted or denied. The Director shall give written notice by regular mail of the determination to the petitioner.
- E.** If the petition for rule adoption is granted, the Director shall initiate rulemaking proceedings to adopt a numeric aquifer water quality standard. The Director shall, within one year of the date that the petition for adoption of a numeric aquifer water quality standard is granted, either adopt a rule establishing a numeric aquifer water quality standard or publish a notice of termination of rulemaking in the Arizona Administrative Register.
- F.** If the petition for rule adoption is denied, the Director shall issue a denial letter to the petitioner which explains the reasons for the denial. The denial of a petition for rule adoption to establish a numeric aquifer water quality standard is not subject to judicial review.

**Historical Note**

Adopted effective January 4, 1990 (Supp. 90-1).

**Appendix 1. Repealed****Historical Note**

Adopted effective January 4, 1990 (Supp. 90-1).  
Repealed effective August 14, 1992 (Supp. 92-3).

**Appendix 2. Repealed****Historical Note**

Adopted effective January 4, 1990 (Supp. 90-1).  
Repealed effective August 14, 1992 (Supp. 92-3).

**Appendix 3. Repealed****Historical Note**

Adopted effective January 4, 1990 (Supp. 90-1).  
Repealed effective August 14, 1992 (Supp. 92-3).

**Appendix 4. Repealed****Historical Note**

Adopted effective January 4, 1990 (Supp. 90-1).  
Repealed effective August 14, 1992 (Supp. 92-3).

**Appendix 5. Repealed****Historical Note**

Adopted effective January 4, 1990 (Supp. 90-1).  
Repealed effective August 14, 1992 (Supp. 92-3).

**Appendix 6. Repealed****Historical Note**

Adopted effective January 4, 1990 (Supp. 90-1).  
Repealed effective August 14, 1992 (Supp. 92-3).

**Appendix 7. Repealed****Historical Note**

Adopted effective January 4, 1990 (Supp. 90-1).  
Repealed effective August 14, 1992 (Supp. 92-3).

**ARTICLE 5. AQUIFER BOUNDARY AND PROTECTED USE CLASSIFICATION****R18-11-501. Definitions**

In addition to the definitions contained in A.R.S. § 49-201, the words and phrases of this Article shall have the following meaning:

1. "Drinking water protected use" means the protection and maintenance of aquifer water quality for human consumption.
2. "Hardrock areas containing little or no water" means areas of igneous or metamorphic rock which do not yield usable quantities of water.
3. "Nondrinking water protected use" means the protection and maintenance of aquifer water quality for a use other than human consumption.
4. "Usable quantities" means five gallons of water per day.

**Historical Note**

Adopted effective October 22, 1987 (Supp. 87-4).

**R18-11-502. Aquifer boundaries**

- A.** Except as provided in subsection (B) of this rule, aquifer boundaries for the aquifers in this state are identified and defined as being identical to the hydrologic basin and subbasin boundaries, as found by the Director of the Department of Water Resources, Findings and Order In the Matter of The Designation of Groundwater Basins and Subbasins In The State of Arizona (dated June 21, 1984), pursuant to A.R.S. §§ 45-403 and 45-404, which is incorporated herein by reference and on file with the Department of Environmental Quality and the Office of the Secretary of State.
- B.** Excluded from the boundaries of the aquifers are hard rock areas which contain little or no water, as identified in Plate 1 of the Department of Water Resources, Water Resource Hydro-

## CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

logic Map Series Report Number 2 (dated January 1981) and as further identified in the Bureau of Mines, University of Arizona County Geologic Map Series (individual county maps dated 1957 through 1960), which are incorporated herein by reference and on file with the Department of Environmental Quality and the Office of the Secretary of State.

- C. The Director may, by rule, modify or add an aquifer boundary provided that one or more of the following applies:
1. The Department of Water Resources modifies the boundaries of its basins or subbasins.
  2. The Director is made aware of new technical information or data which supports refinement of an aquifer boundary.
- D. Facilities located outside of the boundaries defined in these rules shall be subject to A.R.S. § 49-241 except as provided therein.

**Historical Note**

Adopted effective October 22, 1987 (Supp. 87-4).

**R18-11-503. Petition for reclassification**

- A. Any person may petition the Director to reclassify an aquifer from a drinking water protected use to a nondrinking water protected use pursuant to A.R.S. § 49-224(C).
- B. A written petition for reclassification pursuant to A.R.S. § 49-224(C) or A.R.S. § 49-224(D) shall be filed with the Department and shall include the following categories of information:
1. The proposed protected use for which the reclassification is being requested.
  2. The pollutant and affected aquifer water quality standards for which the reclassification is being requested.
  3. A hydrogeologic report which demonstrates that the aquifer proposed for reclassification is or will be hydrologically isolated, to the extent described in A.R.S. § 49-224(C)(1). This report and demonstration of hydrologic isolation for the area containing such aquifer, and immediate adjacent geologic units, shall include at least the following:
    - a. Hydrogeologic area maps and cross sections.
    - b. An analysis of subsurface geology, including geologic and hydrologic separation.
    - c. Water level elevation or piezometric level contour maps.
    - d. Analysis of hydrologic characteristics of the aquifer and the immediate adjacent geologic units.
    - e. Description of existing water quality and analysis of water chemistry.
    - f. Projected annual quantity of water to be withdrawn.
    - g. Identification of pumping centers, cones of depression and areas of recharge.
    - h. A water balance.
    - i. Existing flow direction and evaluation of the effects of seasonal and future pumping on flow.
    - j. An evaluation as to whether the reclassification will contribute to or cause a violation of aquifer water quality standards in other aquifers, or in parts of the aquifer not being proposed for reclassification.
  4. Documentation demonstrating that water from the aquifer or part of the aquifer for which reclassification is proposed is not being used as drinking water. This documentation shall include at least the following:
    - a. A list of all wells or springs including their location, ownership and use within the aquifer or part of the aquifer being proposed for reclassification.
    - b. Identification of groundwater withdrawal rights, on file with the Department of Water Resources, within

the aquifer or part of the aquifer being proposed for reclassification.

- c. A comprehensive list of agencies, persons and other information sources consulted for aquifer use documentation.
5. A cost-benefit analysis developed pursuant to the requirements of A.R.S. § 49-224(C)(3), except for petitions submitted pursuant to A.R.S. § 49-224(D). This analysis shall identify potential future uses of the aquifer being proposed for reclassification, as well as other opportunity costs associated with reclassification, and shall contain a description of the cost-benefit methodology used, including all assumptions, data, data sources and criteria considered and all supporting statistical analyses.

**Historical Note**

Adopted effective October 22, 1987 (Supp. 87-4).

**R18-11-504. Agency action on petition**

- A. Upon receipt of a petition for reclassification, the Director shall review the petition for compliance with the requirements of R18-11-503. If additional information is necessary, the petitioner shall be notified of specific deficiencies in writing within 30 calendar days of receipt of the petition.
- B. Within 120 calendar days after receipt of a complete petition, and after consultation with the appropriate advisory council pursuant to A.R.S. §§ 49-224(C) and 49-204, the Director shall make a final decision to grant or deny the petition and shall notify the petitioner of such decision and the reason for such determination in writing.
- C. Upon a decision to grant a petition for aquifer reclassification, the Director shall initiate proceedings for promulgation of aquifer water quality standards and, if applicable, for aquifer boundary designation for the reclassified aquifers.

**Historical Note**

Adopted effective October 22, 1987 (Supp. 87-4).

**R18-11-505. Public participation**

- A. Within 30 days of receipt of a complete petition for reclassification filed pursuant to A.R.S. § 49-224(D), or if the Director deems it necessary to consider a reclassification under A.R.S. § 49-224(C), the Director shall give public notice of the proposed reclassification pursuant to A.A.C. R18-1-401.
- B. The Director shall hold at least one public hearing at a location as near as practicable to the aquifer proposed for reclassification. The Director shall give notice of each public hearing and conduct the public hearing in accordance with the provisions of A.A.C. R18-1-402.

**Historical Note**

Adopted effective June 29, 1989 (Supp. 89-2).

**R18-11-506. Rescission of reclassification**

The Director may, by rule, rescind an aquifer reclassification and return an aquifer to a drinking water protected use if he determines that any of the conditions under which the reclassification was granted are no longer valid. If the Director initiates a change under this Section, he shall consult with the appropriate advisory council pursuant to A.R.S. §§ 49-224(C) and 49-204.

**Historical Note**

Adopted effective October 22, 1987 (Supp. 87-4).

**ARTICLE 6. IMPAIRED WATER IDENTIFICATION**

*Article 6, consisting of Sections R18-11-601 through R18-11-606, made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).*

**R18-11-601. Definitions**

## CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

In addition to the definitions established in A.R.S. §§ 49-201 and 49-231, and A.A.C. R18-11-101, the following terms apply to this Article:

1. "303(d) List" means the list of surface waters or segments required under section 303(d) of the Clean Water Act and A.R.S. Title 49, Chapter 2, Article 2.1, for which TMDLs are developed and submitted to EPA for approval.
2. "Attaining" means there is sufficient, credible, and scientifically defensible data to assess a surface water or segment and the surface water or segment does not meet the definition of impaired or not attaining.
3. "AZPDES" means the Arizona Pollutant Elimination Discharge System.
4. "Credible and scientifically defensible data" means data submitted, collected, or analyzed using:
  - a. Quality assurance and quality control procedures under A.A.C. R18-11-602;
  - b. Samples or analyses representative of water quality conditions at the time the data were collected;
  - c. Data consisting of an adequate number of samples based on the nature of the water in question and the parameters being analyzed; and
  - d. Methods of sampling and analysis, including analytical, statistical, and modeling methods that are generally accepted and validated by the scientific community as appropriate for use in assessing the condition of the water.
5. "Designated use" means those uses specified in 18 A.A.C. 11, Article 1 for each surface water or segment whether or not they are attaining.
6. "EPA" means the U.S. Environmental Protection Agency.
7. "Impaired water" means a Navigable water for which credible scientific data exists that satisfies the requirements of A.R.S. § 49-232 and that demonstrates that the water should be identified pursuant to 33 United States Code § 1313(d) and the regulations implementing that statute. A.R.S. § 49-231(1).
8. "Laboratory detection limit" means a "Method Reporting Limit" (MRL) or "Reporting Limit" (RL). These analogous terms describe the laboratory reported value, which is the lowest concentration level included on the calibration curve from the analysis of a pollutant that can be quantified in terms of precision and accuracy.
9. "Monitoring entity" means the Department or any person who collects physical, chemical, or biological data used for an impaired water identification or a TMDL decision.
10. "Naturally occurring condition" means the condition of a surface water or segment that would have occurred in the absence of pollutant loadings as a result of human activity.
11. "Not attaining" means a surface water is assessed as impaired, but is not placed on the 303(d) List because:
  - a. A TMDL is prepared and implemented for the surface water;
  - b. An action, which meets the requirements of R18-11-604(D)(2)(h), is occurring and is expected to bring the surface water to attaining before the next 303(d) List submission; or
  - c. The impairment of the surface water is due to pollution but not a pollutant, for which a TMDL load allocation cannot be developed.
12. "NPDES" means National Pollutant Discharge Elimination System.
13. "Planning List" means a list of surface waters and segments that the Department will review and evaluate to determine if the surface water or segment is impaired and whether a TMDL is necessary.
14. "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. 33 U.S.C. 1362(6). Characteristics of water, such as dissolved oxygen, pH, temperature, turbidity, and suspended sediment are considered pollutants if they result or may result in the non-attainment of a water quality standard.
15. "Pollution" means "the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water." 33 U.S.C. 1362(19).
16. "QAP" means a quality assurance plan detailing how environmental data operations are planned, implemented, and assessed for quality during the duration of a project.
17. "Sampling event" means one or more samples taken under consistent conditions on one or more days at a distinct station or location.
18. "SAP" means a site specific sampling and analysis plan that describes the specifics of sample collection to ensure that data quality objectives are met and that samples collected and analyzed are representative of surface water conditions at the time of sampling.
19. "Spatially independent sample" means a sample that is collected at a distinct station or location. The sample is independent if the sample was collected:
  - a. More than 200 meters apart from other samples, or
  - b. Less than 200 meters apart, and collected to characterize the effect of an intervening tributary, outfall or other pollution source, or significant hydrographic or hydrologic change.
20. "Temporally independent sample" means a sample that is collected at the same station or location more than seven days apart from other samples.
21. "Threatened" means that a surface water or segment is currently attaining its designated use, however, trend analysis, based on credible and scientifically defensible data, indicates that the surface water or segment is likely to be impaired before the next listing cycle.
22. "TMDL" means total maximum daily load.
23. "TMDL decision" means a decision by the Department to:
  - a. Prioritize an impaired water for TMDL development,
  - b. Develop a TMDL for an impaired water, or
  - c. Develop a TMDL implementation plan.
24. "Total maximum daily load" means an estimation of the total amount of a pollutant from all sources that may be added to a water while still allowing the water to achieve and maintain applicable surface water quality standards. Each total maximum daily load shall include allocations for sources that contribute the pollutant to the water, as required by section 303(d) of the clean water act (33 United States Code section 1313(d)) and regulations implementing that statute to achieve applicable surface water quality standards. A.R.S. § 49-231(4).
25. "Water quality standard" means a standard composed of designated uses (classification of waters), the numerical and narrative criteria applied to the specific water uses or classification, the antidegradation policy, and moderating provisions, for example, mixing zones, site-specific alternative criteria, and exemptions, in A.A.C. Title 18, Chapter 11, Article 1.

## CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

26. "WQARF" means the water quality assurance revolving fund established under A.R.S. § 49-282.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

**R18-11-602. Credible Data**

- A.** Data are credible and relevant to an impaired water identification or a TMDL decision when:
1. Quality Assurance Plan. A monitoring entity, which contribute data for an impaired water identification or a TMDL decision, provides the Department with a QAP that contains, at a minimum, the elements listed in subsections (A)(1)(a) through (A)(1)(f). The Department may accept a QAP containing less than the required elements if the Department determines that an element is not relevant to the sampling activity and that its omission will not impact the quality of the results based upon the type of pollutants to be sampled, the type of surface water, and the purpose of the sampling.
    - a. An approval page that includes the date of approval and the signatures of the approving officials, including the project manager and project quality assurance manager;
    - b. A project organization outline that identifies all key personnel, organizations, and laboratories involved in monitoring, including the specific roles and responsibilities of key personnel in carrying out the procedures identified in the QAP and SAP, if applicable;
    - c. Sampling design and monitoring data quality objectives or a SAP that meets the requirements of subsection (A)(2) to ensure that:
      - i. Samples are spatially and temporally representative of the surface water,
      - ii. Samples are representative of water quality conditions at the time of sampling, and
      - iii. The monitoring is reproducible;
    - d. The following field sampling information to assure that samples meet data quality objectives:
      - i. Sampling and field protocols for each parameter or parametric group, including the sampling methods, equipment and containers, sample preservation, holding times, and any analysis proposed for completion in the field or outside of a laboratory;
      - ii. Field and laboratory methods approved under subsection (A)(5);
      - iii. Handling procedures to identify samples and custody protocols used when samples are brought from the field to the laboratory for analysis;
      - iv. Quality control protocols that describe the number and type of field quality control samples for the project that includes, if appropriate for the type of sampling being conducted, field blanks, travel blanks, equipment blanks, method blanks, split samples, and duplicate samples;
      - v. Procedures for testing, inspecting, and maintaining field equipment;
      - vi. Field instrument calibration procedures that describe how and when field sampling and analytical instruments will be calibrated;
      - vii. Field notes and records that describe the conditions that require documentation in the field, such as weather, stream flow, transect information, distance from water edge, water and sample depth, equipment calibration measurements, field observations of watershed activities, and bank conditions. Indicate the procedures implemented for maintaining field notes and records and the process used for attaching pertinent information to monitoring results to assist in data interpretation;
  - viii. Minimum training and any specialized training necessary to do the monitoring, that includes the proper use and calibration of field equipment used to collect data, sampling protocols, quality assurance/quality control procedures, and how training will be achieved;
- e.** Laboratory analysis methods and quality assurance/quality control procedures that assure that samples meet data quality objectives, including:
- i. Analytical methods and equipment necessary for analysis of each parameter, including identification of approved laboratory methods described in subsection (A)(5), and laboratory detection limits for each parameter;
  - ii. The name of the designated laboratory, its license number, if licensed by the Arizona Department of Health Services, and the name of a laboratory contact person to assist the Department with quality assurance questions;
  - iii. Quality controls that describe the number and type of laboratory quality control samples for the project, including, if appropriate for the type of sampling being conducted, field blanks, travel blanks, equipment blanks, method blanks, split samples, and duplicate samples;
  - iv. Procedures for testing, inspecting, and maintaining laboratory equipment and facilities;
  - v. A schedule for calibrating laboratory instruments, a description of calibration methods, and a description of how calibration records are maintained; and
  - vi. Sample equipment decontamination procedures that outline specific methods for sample collection and preparation of equipment, identify the frequency of decontamination, and describe the procedures used to verify decontamination;
- f.** Data review, management, and use that includes the following:
- i. A description of the data handling process from field to laboratory, from laboratory to data review and validation, and from validation to data storage and use. Include the role and responsibility of each person for each step of the process, type of database or other storage used, and how laboratory and field data qualifiers are related to the laboratory result;
  - ii. Reports that describe the intended frequency, content, and distribution of final analysis reports and project status reports;
  - iii. Data review, validation, and verification that describes the procedure used to validate and verify data, the procedures used if errors are detected, and how data are accepted, rejected, or qualified; and
  - iv. Reconciliation with data quality objectives that describes the process used to determine whether the data collected meets the project

## CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

- objectives, which may include discarding data, setting limits on data use, or revising data quality objectives.
2. Sampling and analysis plan.
    - a. A monitoring entity shall develop a SAP that contains, at a minimum, the following elements:
      - i. The experimental design of the project, the project goals and objectives, and evaluation criteria for data results;
      - ii. The background or historical perspective of the project;
      - iii. Identification of target conditions, including a discussion of whether any weather, seasonal variations, stream flow, lake level, or site access may affect the project and the consideration of these factors;
      - iv. The data quality objectives for measurement of data that describe in quantitative and qualitative terms how the data meet the project objectives of precision, accuracy, completeness, comparability, and representativeness;
      - v. The types of samples scheduled for collection;
      - vi. The sampling frequency;
      - vii. The sampling periods;
      - viii. The sampling locations and rationale for the site selection, how site locations are benchmarked, including scaled maps indicating approximate location of sites; and
      - ix. A list of the field equipment, including tolerance range and any other manufacturer's specifications relating to accuracy and precision.
    - b. The Department may accept a SAP containing less than the required elements if the Department determines that an element is not relevant to the sampling activity and that its omission will not impact the quality of the results based upon the type of pollutants to be samples, the type of surface water, and the purpose of the sampling.
  3. The monitoring entity may include any of the following in the QAP or SAP:
    - a. The name, title, and role of each person and organization involved in the project, identifying specific roles and responsibilities for carrying out the procedures identified in the QAP and SAP;
    - b. A distribution list of each individual and organization receiving a copy of the approved QAP and SAP;
    - c. A table of contents;
    - d. A health and safety plan;
    - e. The inspection and acceptance requirements for supplies;
    - f. The data acquisition that describes types of data not obtained through this monitoring activity, but used in the project;
    - g. The audits and response actions that describe how field, laboratory, and data management activities and sampling personnel are evaluated to ensure data quality, including a description of how the project will correct any problems identified during these assessments; and
    - h. The waste disposal methods that identify wastes generated in sampling and methods for disposal of those wastes.
  4. Exceptions. The Department may determine that the following data are also credible and relevant to an impaired water identification or TMDL decision when data were collected, provided the conditions in subsections (A)(5), (A)(6), and (B) are met, and where the data were collected in the surface water or segment being evaluated for impairment:
    - a. The data were collected before July 12, 2002 and the Department determines that the data yield results of comparable reliability to the data collected under subsections (A)(1) and (A)(2);
    - b. The data were collected after July 12, 2002 as part of an ongoing monitoring effort by a governmental agency and the Department determines that the data yield results of comparable reliability to the data collected under subsections (A)(1) and (A)(2); or
    - c. The instream water quality data were or are collected under the terms of a NPDES or AZPDES permit or a compliance order issued by the Department or EPA, a consent decree signed by the Department or EPA, or a sampling program approved by the Department or EPA under WQARF or CERCLA, and the Department determines that the data yield results of comparable reliability to data collected under subsections (A)(1) and (A)(2).
  5. Data collection, preservation, and analytical procedures. The monitoring entity shall collect, preserve, and analyze data using methods of sample collection, preservation, and analysis established under A.A.C. R9-14-610.
  6. Laboratory. The monitoring entity shall ensure that chemical and toxicological samples are analyzed in a state-licensed laboratory, a laboratory exempted by the Arizona Department of Health Services for specific analyses, or a federal or academic laboratory that can demonstrate proper quality assurance/quality control procedures substantially equal to those required by the Arizona Department of Health Services, and shall ensure that the laboratory uses approved methods identified in A.A.C. R9-14-610.
- B. Documentation for data submission.** The monitoring entity shall provide the Department with the following information either before or with data submission:
1. A copy of the QAP or SAP, or both, revisions to a previously submitted QAP or SAP, and any other information necessary for the Department to evaluate the data under subsection (A)(4);
  2. The applicable dates of the QAP and SAP, including any revisions;
  3. Written assurance that the methods and procedures specified in the QAP and SAP were followed;
  4. The name of the laboratory used for sample analyses and its certification number, if the laboratory is licensed by the Arizona Department of Health Services;
  5. The quality assurance/quality control documentation, including the analytical methods used by the laboratory, method number, detection limits, and any blank, duplicate, and spike sample information necessary to properly interpret the data, if different from that stated in the QAP or SAP;
  6. The data reporting unit of measure;
  7. Any field notes, laboratory comments, or laboratory notations concerning a deviation from standard procedures, quality control, or quality assurance that affects data reliability, data interpretation, or data validity; and
  8. Any other information, such as complete field notes, photographs, climate, or other information related to flow, field conditions, or documented sources of pollutants in the watershed, if requested by the Department for interpreting or validating data.

## CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

- C. Recordkeeping. The monitoring entity shall maintain all records, including sample results, for the duration of the listing cycle. If a surface water or segment is added to the Planning List or to the 303(d) List, the Department shall coordinate with the monitoring entity to ensure that records are kept for the duration of the listing.
- Historical Note**  
New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).
- R18-11-603. General Data Interpretation Requirements**
- A. The Department shall use the following data conventions to interpret data for impaired water identifications and TMDL decisions:
1. Data reported below laboratory detection limits.
    - a. When the analytical result is reported as  $<X$ , where  $X$  is the laboratory detection limit for the analyte and the laboratory detection limit is less than or equal to the surface water quality standard, consider the result as meeting the water quality standard:
      - i. Use these statistically derived values in trend analysis, descriptive statistics or modeling if there is sufficient data to support the statistical estimation of values reported as less than the laboratory detection limit; or
      - ii. Use one-half of the value of the laboratory detection limit in trend analysis, descriptive statistics, or modeling, if there is insufficient data to support the statistical estimation of values reported as less than the laboratory detection limit.
    - b. When the sample value is less than or equal to the laboratory detection limit but the laboratory detection limit is greater than the surface water quality standard, shall not use the result for impaired water identifications or TMDL decisions;
  2. Identify the field equipment specifications used for each listing cycle or TMDL developed. A field sample measurement within the manufacturer's specification for accuracy meets surface water quality standards;
  3. Resolve a data conflict by considering the factors identified under the weight-of-evidence determination in R18-11-605(B);
  4. When multiple samples from a surface water or segment are not spatially or temporally independent, or when lake samples are from multiple depths, use the following resultant value to represent the specific dataset:
    - a. The appropriate measure of central tendency for the dataset for:
      - i. A pollutant listed in the surface water quality standards 18 A.A.C. 11, Article 1, Appendix A, Table 1, except for nitrate or nitrate/nitrite;
      - ii. A chronic water quality standard for a pollutant listed in 18 A.A.C. 11, Article 1, Appendix A, Table 2;
      - iii. A surface water quality standard for a pollutant that is expressed as an annual or geometric mean;
      - iv. The surface water quality standard for temperature or the single sample maximum water quality standard for suspended sediment concentration, nitrogen, and phosphorus in R18-11-109;
      - v. The surface water quality standard for radiochemicals in R18-11-109(G); or
      - vi. Except for chromium, all single sample maximum water quality standards in R18-11-112.
    - b. The maximum value of the dataset for:
      - i. The acute water quality standard for a pollutant listed in 18 A.A.C. 11, Article 1, Appendix A, Table 2 and acute water quality standard in R18-11-112;
      - ii. The surface water quality standard for nitrate or nitrate/nitrite in 18 A.A.C. 11, Article 1, Appendix A, Table 1;
      - iii. The single sample maximum water quality standard for bacteria in subsections R18-11-109(A); or
      - iv. The 90th percentile water quality standard for nitrogen and phosphorus in R18-11-109(F) and R18-11-112.
    - c. The worst case measurement of the dataset for:
      - i. Surface water quality standard for dissolved oxygen under R18-11-109(E). For purposes of this subsection, worst case measurement means the minimum value for dissolved oxygen;
      - ii. Surface water quality standard for pH under R18-11-109(B). For purposes of this subsection, "worst case measurement" means both the minimum and maximum value for pH.
- B. The Department shall not use the following data for placing a surface water or segment on the Planning List, the 303(d) List, or in making a TMDL decision.
1. Any measurement outside the range of possible physical or chemical measurements for the pollutant or measurement equipment,
  2. Uncorrected data transcription errors or laboratory errors, and
  3. An outlier identified through statistical procedures, where further evaluation determines that the outlier represents a valid measure of water quality but should be excluded from the dataset.
- C. The Department may employ fundamental statistical tests if appropriate for the collected data and type of surface water when evaluating a surface water or segment for impairment or in making a TMDL decision. The statistical tests include descriptive statistics, frequency distribution, analysis of variance, correlation analysis, regression analysis, significance testing, and time series analysis.
- D. The Department may employ modeling when evaluating a surface water or segment for impairment or in making a TMDL decision, if the method is appropriate for the type of waterbody and the quantity and quality of available data meet the requirements of R18-11-602. Modeling methods include:
1. Better Assessment Science Integrating Source and Non-point Sources (BASINS),
  2. Fundamental statistics, including regression analysis,
  3. Hydrologic Simulation Program-Fortran (HSPF),
  4. Spreadsheet modeling, and
  5. Hydrologic Engineering Center (HEC) programs developed by the Army Corps of Engineers.
- Historical Note**  
New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).
- R18-11-604. Types of Surface Waters Placed on the Planning List and 303(d) List**
- A. The Department shall evaluate, at least every five years, Arizona's surface waters by considering all readily available data.
1. The Department shall place a surface water or segment on:

## CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

- a. The Planning List if it meets any of the criteria described in subsection (D), or
  - b. The 303(d) List if it meets the criteria for listing described in subsection (E).
2. The Department shall remove a surface water or segment from the Planning List based on the requirements in R18-11-605(E)(1) or from the 303(d) List, based on the requirements in R18-11-605(E)(2).
  3. The Department may move surface waters or segments between the Planning List and the 303(d) List based on the criteria established in R18-11-604 and R18-11-605.
- B.** When placing a surface water or segment on the Planning List or the 303(d) List, the Department shall list the stream reach, derived from EPA's Reach File System or National Hydrography Dataset, or the entire lake, unless the data indicate that only a segment of the stream reach or lake is impaired or not attaining its designated use, in which case, the Department shall describe only that segment for listing.
- C.** Exceptions. The Department shall not place a surface water or segment on either the Planning List or the 303(d) List if the non-attainment of a surface water quality standard is due to one of the following:
1. Pollutant loadings from naturally occurring conditions alone are sufficient to cause a violation of applicable water quality standards;
  2. The data were collected within a mixing zone or under a variance or nutrient waiver established in a NPDES or AZPDES permit for the specific parameter and the result does not exceed the alternate discharge limitation established in the permit. The Department may use data collected within these areas for modeling or allocating loads in a TMDL decision; or
  3. An activity exempted under R18-11-117, R18-11-118, or a condition exempted under R18-11-119.
- D.** Planning List.
1. The Department shall:
    - a. Use the Planning List to prioritize surface waters for monitoring and evaluation as part of the Department's watershed management approach;
    - b. Provide the Planning List to EPA; and
    - c. Evaluate each surface water and segment on the Planning List for impairment based on the criteria in R18-11-605(D) to determine the source of the impairment.
  2. The Department shall place a surface water or segment on the Planning List based the criteria in R18-11-605(C). The Department may also include a surface water or segment on the Planning List when:
    - a. A TMDL is completed for the pollutant and approved by EPA;
    - b. The surface water or segment is on the 1998 303(d) List but the dataset used for the listing:
      - i. Does not meet the credible data requirements of R18-11-602, or
      - ii. Contains insufficient samples to meet the data requirements under R18-11-605(D);
    - c. Some monitoring data exist but there are insufficient data to determine whether the surface water or segment is impaired or not attaining, including:
      - i. A numeric surface water quality standard is exceeded, but there are not enough samples or sampling events to fulfill the requirements of R18-11-605(D);
      - ii. Evidence exists of a narrative standard violation, but the amount of evidence is insufficient, based on narrative implementation procedures and the requirements of R18-11-605(D)(3);
- iii. Existing monitoring data do not meet credible data requirements in R18-11-602; or
- iv. A numeric surface water quality standard is exceeded, but there are not enough sample results above the laboratory detection limit to support statistical analysis as established in R18-11-603(A)(1).
- E.** 303(d) List. The Department shall:
1. Place a surface water or segment on the 303(d) List if the Department determines:
    - a. Based on R18-11-605(D), that the surface water or segment is impaired due to a pollutant and that a TMDL decision is necessary; or
    - b. That the surface water or segment is threatened due to a pollutant and, at the time the Department submits a final 303(d) List to EPA, there are federal regulations implementing section 303(d) of the Clean Water Act that require threatened waters be included on the list.
  2. Provide public notice of the 303(d) List according to the requirements of A.R.S. § 49-232 and submit the 303(d) List according to section 303(d) of the Clean Water Act.

## CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

**R18-11-605. Evaluating A Surface Water or Segment For Listing and Delisting**

- A.** The Department shall compile and evaluate all reasonably current, credible, and scientifically defensible data to determine whether a surface water or segment is impaired or not attaining.
- B.** Weight-of-evidence approach.
1. The Department shall consider the following concepts when evaluating data:
    - a. Data or information collected during critical conditions may be considered separately from the complete dataset, when the data show that the surface water or segment is impaired or not attaining its designated use during those critical conditions, but attaining its uses during other periods. Critical conditions may include stream flow, seasonal periods, weather conditions, or anthropogenic activities;
    - b. Whether the data indicate that the impairment is due to persistent, seasonal, or recurring conditions. If the data do not represent persistent, recurring, or seasonal conditions, the Department may place the surface water or segment on the Planning List;
    - c. Higher quality data over lower quality data when making a listing decision. Data quality is established by the reliability, precision, accuracy, and representativeness of the data, based on factors identified in R18-11-602(A) and (B), including monitoring methods, analytical methods, quality control procedures, and the documented field and laboratory quality control information submitted with the data. The Department shall consider the following factors when determining higher quality data:
      - i. The age of the measurements. Newer measurements are weighted heavier than older measurements, unless the older measurements are more representative of critical flow conditions;
      - ii. Whether the data provide a direct measure of an impact on a designated use. Direct measurements are weighted heavier than measurements of an indicator or surrogate parameter; or
      - iii. The amount or frequency of the measurements. More frequent data collection are weighted heavier than nominal datasets.
  2. The Department shall evaluate the following factors to determine if the water quality evidence supports a finding that the surface water or segment is impaired or not attaining:
    - a. An exceedance of a numeric surface water quality standard based on the criteria in subsections (C)(1), (C)(2), (D)(1), and (D)(2);
    - b. An exceedance of a narrative surface water quality standard based on the criteria in subsections (C)(3) and (D)(3);
    - c. Additional information that determines whether a water quality standard is exceeded due to a pollutant, suspected pollutant, or naturally occurring condition:
      - i. Soil type, geology, hydrology, flow regime, biological community, geomorphology, climate, natural process, and anthropogenic influence in the watershed;
      - ii. The characteristics of the pollutant, such as its solubility in water, bioaccumulation potential, sediment sorption potential, or degradation characteristics, to assist in determining which data more accurately indicate the pollutant's presence and potential for causing impairment; and
  - iii. Available evidence of direct or toxic impacts on aquatic life, wildlife, or human health, such as fish kills and beach closures, where there is sufficient evidence that these impacts occurred due to water quality conditions in the surface water.
  - d. Other available water quality information, such as NPDES or AZPDES water quality discharge data, as applicable.
  - e. If the Department determines that a surface water or segment does not merit listing under numeric water quality standards based on criteria in subsections (C)(1), (C)(2), (D)(1), or (D)(2) for a pollutant, but there is evidence of a narrative standard exceedance in that surface water or segment under subsection (D)(3) as a result of the presence of the same pollutant, the Department shall list the surface water or segment as impaired only when the evidence indicates that the numeric water quality standard is insufficient to protect the designated use of the surface water or segment and the Department justifies the listing based on any of the following:
    - i. The narrative standard data provide a more direct indication of impairment as supported by professionally prepared and peer-reviewed publications;
    - ii. Sufficient evidence of impairment exists due to synergistic effects of pollutant combinations or site-specific environmental factors; or
    - iii. The pollutant is bioaccumulative, relatively insoluble in water, or has other characteristics that indicate it is occurring in the specific surface water or segment at levels below the laboratory detection limits, but at levels sufficient to result in an impairment.
3. The Department may consider a single line of water quality evidence when the evidence is sufficient to demonstrate that the surface water or segment is impaired or not attaining.
- C. Planning List.**
1. When evaluating a surface water or segment for placement on the Planning List.
    - a. Consider at least ten spatially or temporally independent samples collected over three or more temporally independent sampling events; and
    - b. Determine numeric water quality standards exceedances. The Department shall:
      - i. Place a surface water or segment on the Planning List following subsection (B), if the number of exceedances of a surface water quality standard is greater than or equal to the number listed in Table 1, which provides the number of exceedances that indicate a minimum of a 10 percent exceedance frequency with a minimum of a 80 percent confidence level using a binomial distribution for a given sample size; or
      - ii. For sample datasets exceeding those shown in Table 1, calculate the number of exceedances using the following equation:  $(X \geq x | n, p)$  where  $n$  = number of samples;  $p$  = exceedance probability of 0.1;  $x$  = smallest number of exceed-

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

ances required for listing with “n” samples; and confidence level ≥ 80 percent.

**Table 1. Minimum Number of Samples Exceeding the Numeric Standard**

MINIMUM NUMBER OF SAMPLES EXCEEDING THE NUMERIC STANDARD								
Number of Samples		Number of Samples Exceeding Standard	Number of Samples		Number of Samples Exceeding Standard	Number of Samples		Number of Samples Exceeding Standard
From	To		From	To		From	To	
10	15	3	173	181	22	349	357	41
16	23	4	182	190	23	358	367	42
24	31	5	191	199	24	368	376	43
32	39	6	200	208	25	377	385	44
40	47	7	209	218	26	386	395	45
48	56	8	219	227	27	396	404	46
57	65	9	228	236	28	405	414	47
66	73	10	237	245	29	415	423	48
74	82	11	246	255	30	424	432	49
83	91	12	256	264	31	433	442	50
92	100	13	265	273	32	443	451	51
101	109	14	274	282	33	452	461	52
110	118	15	283	292	34	462	470	53
119	126	16	293	301	35	471	480	54
127	136	17	302	310	36	481	489	55
137	145	18	311	320	37	490	499	56
146	154	19	321	329	38	500		57
155	163	20	330	338	39			
164	172	21	339	348	40			

2. When there are less than ten samples, the Department shall place a surface water or segment on the Planning List following subsection (B), if three or more temporally independent samples exceed the following surface water quality standards:
    - a. The surface water quality standard for a pollutant listed in 18 A.A.C. 11, Article 1, Appendix A, Table 1, except for nitrate or nitrate/nitrite;
    - b. The surface water quality standard for temperature or the single sample maximum water quality standard for suspended sediment concentration, nitrogen, and phosphorus in R18-11-109;
    - c. The surface water quality standard for radiochemicals in R18-11-109(G);
    - d. The surface water quality standard for dissolved oxygen under R18-11-109(E);
    - e. The surface water quality standard for pH under R18-11-109(B); or
    - f. The following surface water quality standards in R18-11-112:
      - i. Single sample maximum standards for nitrogen and phosphorus,
      - ii. All metals except chromium, or
      - iii. Turbidity.
  3. The Department shall place a surface water or segment on the Planning List if information in subsections (B)(2)(c), (B)(2)(d), and (B)(2)(e) indicates that a narrative water quality standard violation exists, but no narrative implementation procedure required under A.R.S. § 49-232(F) exists to support use of the information for listing.
- D. 303(d) List.**
1. When evaluating a surface water or segment for placement on the 303(d) List.
    - a. Consider at least 20 spatially or temporally independent samples collected over three or more temporally independent sampling events; and
    - b. Determine numeric water quality standards exceedances. The Department shall:
      - i. Place a surface water or segment on the 303(d) List, following subsection (B), if the number of exceedances of a surface water quality standard is greater than or equal to the number listed in Table 2, which provides the number of exceedances that indicate a minimum of a 10 percent exceedance frequency with a minimum of a 90 percent confidence level using a binomial distribution, for a given sample size; or
      - ii. For sample datasets exceeding those shown in Table 2, calculate the number of exceedances using the following equation:  $(X \geq x | n, p)$  where  $n$  = number of samples;  $p$  = exceedance probability of 0.1;  $x$  = smallest number of exceedances required for listing with “n” samples; and confidence level ≥ 90 percent.

CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

**Table 2. Minimum Number of Samples Exceeding the Numeric Standard**

MINIMUM NUMBER OF SAMPLES EXCEEDING THE NUMERIC STANDARD								
Number of Samples		Number of Samples Exceeding Standard	Number of Samples		Number of Samples Exceeding Standard	Number of Samples		Number of Samples Exceeding Standard
From	To		From	To		From	To	
20	25	5	174	182	24	344	352	43
26	32	6	183	191	25	353	361	44
33	40	7	192	199	26	362	370	45
41	47	8	200	208	27	371	379	46
48	55	9	209	217	28	380	388	47
56	63	10	218	226	29	389	397	48
64	71	11	227	235	30	398	406	49
72	79	12	236	244	31	407	415	50
80	88	13	245	253	32	416	424	51
89	96	14	254	262	33	425	434	52
97	104	15	263	270	34	435	443	53
105	113	16	271	279	35	444	452	54
114	121	17	280	288	36	453	461	55
122	130	18	289	297	37	462	470	56
131	138	19	298	306	38	471	479	57
139	147	20	307	315	39	480	489	58
148	156	21	316	324	40	490	498	59
157	164	22	325	333	41	499	500	60
165	173	23	334	343	42			

2. The Department shall place a surface water or segment on the 303(d) List, following subsection (B) without the required number of samples or numeric water quality standard exceedances under subsection (D)(1), if either the following conditions occur:
    - a. More than one temporally independent sample in any consecutive three-year period exceeds the surface water quality standard in:
      - i. The acute water quality standard for a pollutant listed in 18 A.A.C. 11, Article 1, Appendix A, Table 2 and the acute water quality standards in R18-11-112;
      - ii. The surface water quality standard for nitrate or nitrate/nitrite in 18 A.A.C. 11, Article 1, Appendix A, Table 1; or
      - iii. The single sample maximum water quality standard for bacteria in subsections R18-11-109(A).
    - b. More than one exceedance of an annual mean, 90th percentile, aquatic and wildlife chronic water quality standard, or a bacteria 30-day geometric mean water quality standard occurs, as specified in R18-11-109, R18-11-110, R18-11-112, or 18 A.A.C. 11, Article 1, Appendix A, Table 2.
  3. Narrative water quality standards exceedances. The Department shall place a surface water or segment on the Planning List if the listing requirements are met under A.R.S. § 49-232(F).
- E. Removing a surface water, segment, or pollutant from the Planning List or the 303(d) List.**
1. Planning List. The Department shall remove a surface water, segment, or pollutant from the Planning List when:
    - a. Monitoring activities indicate that:
      - i. There is sufficient credible data to determine that the surface water or segment is impaired under subsection (D), in which case the Department shall place the surface water or segment on the 303(d) List. This includes surface waters with an EPA approved TMDL when the Department determines that the TMDL strategy is insufficient for the surface water or segment to attain water quality standards; or
      - ii. There is sufficient credible data to determine that the surface water or segment is attaining all designated uses and standards.
    - b. All pollutants for the surface water or segment are delisted.
  2. 303(d) List. The Department shall:
    - a. Remove a pollutant from a surface water or segment from the 303(d) List based on one or more of the following criteria:
      - i. The Department developed, and EPA approved, a TMDL for the pollutant;
      - ii. The data used for previously listing the surface water or segment under R18-11-605(D) is superseded by more recent credible and scientifically defensible data meeting the requirements of R18-11-602, showing that the surface water or segment meets the applicable numeric or narrative surface water quality standard. When evaluating data to remove a pollutant from the 303(d) List, the monitoring entity shall collect the more recent data under similar hydrologic or climatic conditions as occurred when the samples were taken that indicated impairment, if those conditions still exist;
      - iii. The surface water or segment no longer meets the criteria for impairment based on a change in the applicable surface water quality standard or a designated use approved by EPA under section 303(c)(1) of the Clean Water Act;

## CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

- iv. The surface water or segment no longer meets the criteria for impairment for the specific narrative water quality standard based on a change in narrative water quality standard implementation procedures;
- v. A re-evaluation of the data indicate that the surface water or segment does not meet the criteria for impairment because of a deficiency in the original analysis; or
- vi. Pollutant loadings from naturally occurring conditions alone are sufficient to cause a violation of applicable water quality standards;
- b. Remove a surface water, segment, or pollutant from the 303(d) List, based on criteria that are no more stringent than the listing criteria under subsection (D);
- c. Remove a surface water or segment from the 303(d) List if all pollutants for the surface water or segment are removed from the list;
- d. Remove a surface water, segment, or pollutant, from the 303(d) List and place it on the Planning List, if:
  - i. The surface water, segment or pollutant was on the 1998 303(d) List and the dataset used in the original listing does not meet the credible data requirements under R18-11-602, or contains insufficient samples to meet the data requirements under subsection (D); or
  - ii. The monitoring data indicate that the impairment is due to pollution, but not a pollutant.
- b. A new or modified individual NPDES or AZPDES permit is sought for a new or modified discharge to the impaired water;
- c. The listed surface water or segment is listed as a unique water in A.A.C. R18-11-112 or is part of an area classified as a "wilderness area," "wild and scenic river," or other federal or state special protection of the water resource;
- d. The listed surface water or segment contains a species listed as threatened or endangered under the federal Endangered Species Act and the presence of the pollutant in the surface water or segment is likely to jeopardize the listed species;
- e. A delay in conducting the TMDL could jeopardize the Department's ability to gather sufficient credible data necessary to develop the TMDL;
- f. There is significant public interest and support for the development of a TMDL;
- g. The surface water or segment has important recreational and economic significance to the public; or
- h. The pollutant is listed for eight years or more.
- 2. Consider an impaired surface water or segment a medium priority if:
  - a. The surface water or segment fails to meet more than one designated use;
  - b. The pollutant exceeds more than one surface water quality standard;
  - c. A surface water quality standard exceedance is correlated to seasonal conditions caused by natural events, such as storms, weather patterns, or lake turnover;
  - d. It will take more than two years for proposed actions in the watershed to result in the surface water attaining applicable water quality standards;
  - e. The type of pollutant and other factors relating to the surface water or segment make the TMDL complex; or
  - f. The administrative needs of the Department, including TMDL schedule commitments with EPA, permitting requirements, or basin priorities that require completion of the TMDL.
- 3. Consider an impaired surface water or segment a low priority if:
  - a. The Department has formally submitted a proposal to delist the surface water, segment, or pollutant to EPA based on R18-11-605(E)(2). If the Department makes the submission outside the listing process cycle, the change in priority ranking will not be effective until EPA approves the submittal;
  - b. The Department has modified, or formally proposed for modification, the designated use or applicable surface water quality standard, resulting in an impaired water no longer being impaired, but the modification has not been approved by EPA;
  - c. The surface water or segment is expected to attain surface water quality standards due to any of the following:
    - i. Recently instituted treatment levels or best management practices in the drainage area,
    - ii. Discharges or activities related to the impairment have ceased, or
    - iii. Actions have been taken and controls are in place or scheduled for implementation that will likely to bring the surface water back into compliance;

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

**R18-11-606. TMDL Priority Criteria for 303(d) Listed Surface Waters or Segments**

- A. In addition to the factors specified in A.R.S. § 49-233(C), the Department shall consider the following when prioritizing an impaired water for development of TMDLs:
  - 1. A change in a water quality standard;
  - 2. The date the surface water or segment was added to the 303(d) List;
  - 3. The presence in a surface water or segment of species listed as threatened or endangered under section 4 of the Endangered Species Act;
  - 4. The complexity of the TMDL;
  - 5. State, federal, and tribal policies and priorities; and
  - 6. The efficiencies of coordinating TMDL development with the Department's surface water monitoring program, the watershed monitoring rotation, or with remedial programs.
- B. The Department shall prioritize an impaired surface water or segment for TMDL development based on the factors specified in A.R.S. § 49-233(C) and subsection (A) as follows:
  - 1. Consider an impaired surface water or segment a high priority if:
    - a. The listed pollutant poses a substantial threat to the health and safety of humans, aquatic life, or wildlife based on:
      - i. The number and type of designated uses impaired;
      - ii. The type and extent of risk from the impairment to human health, aquatic life, or wildlife;
      - iii. The pollutant causing the impairment, or
      - iv. The severity, magnitude, and duration the surface water quality standard was exceeded;

## CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER QUALITY STANDARDS

- d. The surface water or segment is ephemeral or intermittent. The Department shall re-prioritize the surface water or segment if the presence of the pollutant in the listed water poses a threat to the health and safety of humans, aquatic life, or wildlife using the water, or the pollutant is contributing to the impairment of a downstream perennial surface water or segment;
  - e. The pollutant poses a low ecological and human health risk;
  - f. Insufficient data exist to determine the source of the pollutant load;
  - g. The uncertainty of timely coordination with national and international entities concerning international waters;
  - h. Naturally occurring conditions are a major contributor to the impairment; and
  - i. No documentation or effective analytical tools exist to develop a TMDL for the surface water or segment with reasonable accuracy.
- C.** The Department will target surface waters with high priority factors in subsections (B)(1)(a) through (B)(1)(d) for initiation of TMDLs within two years following EPA approval of the 303(d) List.
- D.** The Department may shift priority ranking of a surface water or segment for any of the following reasons:
- 1. A change in federal, state, or tribal policies or priorities that affect resources to complete a TMDL;
  - 2. Resource efficiencies for coordinating TMDL development with other monitoring activities, including the Department's ambient monitoring program that monitors watersheds on a five-year rotational basis;
  - 3. Resource efficiencies for coordinating TMDL development with Department remedial or compliance programs;
  - 4. New information is obtained that will revise whether the surface water or segment is a high priority based on factors in subsection (B); and
  - 5. Reduction or increase in staff or budget involved in the TMDL development.
- E.** The Department may complete a TMDL initiated before July 12, 2002 for a surface water or segment that was listed as impaired on the 1998 303(d) List but does not qualify for listing under the criteria in R18-11-605, if:
- 1. The TMDL investigation establishes that the water quality standard is not being met and the allocation of loads is expected to bring the surface water into compliance with standards,
  - 2. The Department estimates that more than 50 percent of the cost of completing the TMDL has been spent,
  - 3. There is community involvement and interest in completing the TMDL, or
  - 4. The TMDL is included within an EPA-approved state workplan initiated before July 12, 2002.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3380, effective July 12, 2002 (Supp. 02-3).

#### 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.

#### 49-221. Water quality standards in general

A. The director shall adopt, by rule, water quality standards for all navigable waters and for all waters in all aquifers to preserve and protect the quality of those waters for all present and reasonably foreseeable future uses.

B. The director may adopt, by rule, water quality standards for waters of the state other than those described in subsection A of this section, including standards for the use of water pumped from an aquifer that does not meet the standards adopted pursuant to section 49-223, subsections A and B and that is put to a beneficial use other than drinking water. These standards may include standards for the use of water pumped as part of a remedial action. In adopting such standards, the director shall consider the economic, social and environmental costs and benefits that would result from the adoption of a water quality standard at a particular level or for a particular water category.

C. In setting standards pursuant to subsection A or B of this section, the director shall consider, but not be limited to, the following:

1. The protection of the public health and the environment.
2. The uses that have been made, are being made or with reasonable probability may be made of these waters.
3. The provisions and requirements of the clean water act and safe drinking water act and the regulations adopted pursuant to those acts.
4. The degree to which standards for one category of waters could cause violations of standards for other, hydrologically connected, water categories.
5. Guidelines, action levels or numerical criteria adopted or recommended by the United States environmental protection agency or any other federal agency.
6. Any unique physical, biological or chemical properties of the waters.

D. Water quality standards shall be expressed in terms of the uses to be protected and, if adequate information exists to do so, numerical limitations or parameters, in addition to any narrative standards that the director deems appropriate.

E. The director may adopt by rule water quality standards for the direct reuse of reclaimed water. In establishing these standards, the director shall consider the following:

1. The protection of public health and the environment.
2. The uses that are being made or may be made of the reclaimed water.
3. The degree to which standards for the direct reuse of reclaimed water may cause violations of water quality standards for other hydrologically connected water categories.

F. If the director proposes to adopt water quality standards for agricultural water, the director shall consult, cooperate, collaborate and, if necessary, enter into interagency agreements and memoranda of understanding with the Arizona department of agriculture relating to its administration, pursuant to title 3, chapter 3, article 4.1, of this state's authority relating to agricultural water under the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112, subpart E) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252). For the purposes of this subsection:

1. "Agricultural water":

(a) Means water that is used in a covered activity on produce where water is intended to, or is likely to, contact produce or food contact surfaces.

(b) Includes all of the following:

(i) Water used in growing activities, including irrigation water, water used for preparing crop sprays and water used for growing sprouts.

(ii) Water used in harvesting, packing and holding activities, including water used for washing or cooling harvested produce and water used for preventing dehydration of produce.

2. "Covered activity" means growing, harvesting, packing or holding produce. Covered activity includes processing produce to the extent that the activity is within the meaning of farm as defined in section 3-525.

3. "Harvesting" has the same meaning prescribed in section 3-525.

4. "Holding" has the same meaning prescribed in section 3-525.

5. "Packing" has the same meaning prescribed in section 3-525.

6. "Produce" has the same meaning prescribed in section 3-525.

### 49-223. Aquifer water quality standards

A. Primary drinking water maximum contaminant levels established by the administrator before August 13, 1986 are adopted as drinking water aquifer water quality standards. The director may only adopt additional aquifer water quality standards by rule. Within one year after the administrator establishes additional primary drinking water maximum contaminant levels, the director shall open a rule making docket pursuant to section 41-1021 for adoption of those maximum contaminant levels as drinking water aquifer water quality standards. If substantial opposition is demonstrated in the rule making docket regarding a particular constituent, the director may adopt for that constituent the maximum contaminant level as a drinking water aquifer water quality standard upon making a finding that this level is appropriate for adoption in Arizona as an aquifer water quality standard. In making this finding, the director shall consider whether the assumptions about technologies, costs, sampling and analytical methodologies and public health risk reduction used by the administrator in developing and implementing the maximum contaminant level are appropriate for establishing a drinking water aquifer water quality standard. For purposes of this subsection "substantial opposition" means information submitted to the director that explains with reasonable specificity why the maximum contaminant level is not appropriate as an aquifer water quality standard.

B. The director may adopt by rule numeric drinking water aquifer water quality standards for pollutants for which the administrator has not established primary drinking water maximum contaminant levels or for which a maximum contaminant level has been established but the director has determined it to be inappropriate as an aquifer water quality standard pursuant to subsection A of this section. These standards shall be based on the protection of human health. In establishing numeric drinking water aquifer water quality standards, the director shall rely on technical protocols appropriate for the development of aquifer water quality standards and shall base the standards on credible medical and toxicological evidence that has been subjected to peer review.

C. Any person may petition the director to adopt a numeric drinking water aquifer quality standard for any pollutant for which no drinking water aquifer quality standard exists. The director shall grant the petition and institute rule making proceedings adopting a numeric standard as provided under subsection B of this section within one hundred eighty days if the petition shows that the pollutant is a toxic pollutant, that the pollutant has been, or may in the future be, detected in any of the state's drinking water aquifers, and that there exists technical information on which a numeric standard might reasonably be based. Within one year of the commencement of the rule making proceeding, the director shall either adopt a numeric standard or make and publish a finding that, pursuant to subsection B of this section, the development of a numeric standard is not possible. The decision to not adopt a numeric standard shall, for purposes of judicial review, be treated in the same manner as a rule adopted pursuant to title 41, chapter 6.

D. For purposes of assessing compliance with each aquifer water quality standard adopted pursuant to this section, the director shall for purposes of articles 3 and 4 of this chapter, and may for purposes of other provisions of this title, identify sampling and analytical protocols appropriate for detecting and measuring the pollutant in the aquifers in the state.

E. Within one year from the reclassification of an aquifer to a non-drinking water status, pursuant to section 49-224, the director shall adopt water quality standards for that aquifer. For any pollutants which were not the basis for the reclassification, the applicable standard shall be identical with the standard for those pollutants adopted pursuant to subsections A and B of this section. For any pollutants which were the basis for reclassification, the standard shall be sufficient to achieve the purpose for which the aquifer was reclassified but shall minimize unnecessary degradation of the aquifer by taking into consideration the potential long-term uses of the aquifer and the short-term and long-term benefits of the activities resulting in discharges into the aquifer.

F. The director shall adopt water quality standards for an aquifer for which a petition has been submitted pursuant to section 49-224, subsection D sufficient to achieve the non-drinking water use for which that aquifer was classified, taking into consideration the potential long-term uses of that aquifer and the short-term and long-term benefits of the discharging activities creating that aquifer.

G. In any action pursuant to this title, aquifer water quality protection provisions, including monitoring requirements, may be imposed only for pollutants for which aquifer water quality standards have been established that are likely to be present in a discharge. Indicator parameters and quality assurance parameters appropriate for such pollutants also may be specified.