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Arizona Administrative REGISTER

Published by the Department of State ~ Office of the Secretary of State

Volume 28, Issue 19 ~ Administrative Register Contents ~ May 13, 2022

Information 976

Rulemaking Guide 977

RULES AND RULEMAKING

Proposed Rulemaking, Notices of

 20 A.A.C. 5 Industrial Commission of Arizona. 979

Supplemental Proposed Rulemaking, Notices of

 6 A.A.C. 6 Department of Economic Security - Development Disabilities 985

Final Rulemaking, Notices of

 4 A.A.C. 23 Board of Pharmacy 994

 13 A.A.C. 15 Department of Public Safety - Rapid DNA 998

Termination, Notices of Rule

 20 A.A.C. 5 Industrial Commission of Arizona. 1004

OTHER AGENCY NOTICES

Docket Opening, Notices of Rulemaking

 9 A.A.C. 8 Department of Health Services - Food, Recreational, and Institutional Sanitation 1005

 9 A.A.C. 13 Department of Health Services - Health Programs Services 1006

 20 A.A.C. 5 Industrial Commission of Arizona. 1007

Oral Proceeding on Proposed Rulemaking (Public Meeting), Notices of

 20 A.A.C. 6 Department of Insurance and Financial Institutions - Insurance Division 1009

Public Information, Notices of

 Department of Environmental Quality - Water Pollution Control 1010

GOVERNOR'S OFFICE

Governor's Executive Order 2022-01

 Moratorium on Rulemaking to Promote Job Creation and Economic Development; Internal Review of Administrative Rules 1011

INDEXES

 Register Index Ledger. 1013

 Rulemaking Activity, Cumulative Index for 2022 1014

 Other Notices and Public Records, Cumulative Index for 2022 1018

CALENDAR/DEADLINES

 Rules Effective Dates Calendar. 1019

 Register Publishing Deadlines. 1021

GOVERNOR'S REGULATORY REVIEW COUNCIL

 Governor's Regulatory Review Council Deadlines 1022

 Notice of Action Taken at the May 3, 2022 Meeting 1023

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From the Publisher

ABOUT THIS PUBLICATION

The authenticated pdf of the *Administrative Register* (A.A.R.) posted on the Arizona Secretary of State's website is the official published version for rulemaking activity in the state of Arizona.

Rulemaking is defined in Arizona Revised Statutes known as the Arizona Administrative Procedure Act (APA), A.R.S. Title 41, Chapter 6, Articles 1 through 10.

The *Register* is cited by volume and page number. Volumes are published by calendar year with issues published weekly. Page numbering continues in each weekly issue.

In addition, the *Register* contains notices of rules terminated by the agency and rules that have expired.

ABOUT RULES

Rules can be: made (all new text); amended (rules on file, changing text); repealed (removing text); or renumbered (moving rules to a different Section number). Rulemaking activity published in the *Register* includes: proposed, final, emergency, expedited, and exempt rules as defined in the APA, and other state statutes.

New rules in this publication (whether proposed or made) are denoted with underlining; repealed text is stricken.

WHERE IS A "CLEAN" COPY OF THE FINAL OR EXEMPT RULE PUBLISHED IN THE REGISTER?

The *Arizona Administrative Code* (A.A.C) contains the codified text of rules. The A.A.C. contains rules promulgated and filed by state agencies that have been approved by the Attorney General or the Governor's Regulatory Review Council. The *Code* also contains rules exempt from the rulemaking process.

The authenticated pdf of *Code* Chapters posted on the Arizona Secretary of State's website are the official published version of rules in the A.A.C. The *Code* is posted online for free.

LEGAL CITATIONS AND FILING NUMBERS

On the cover: Each agency is assigned a Chapter in the *Arizona Administrative Code* under a specific Title. Titles represent broad subject areas. The Title number is listed first; with the acronym A.A.C., which stands for the *Arizona Administrative Code*; following the Chapter number and Agency name, then program name. For example, the Secretary of State has rules on rulemaking in Title 1, Chapter 1 of the *Arizona Administrative Code*. The citation for this Chapter is 1 A.A.C. 1, Secretary of State, Rules and Rulemaking. Every document filed in the office is assigned a file number. This number, enclosed in brackets, is located at the top right of the published documents in the *Register*. The original filed document is available for 10 cents a page.

Arizona Administrative REGISTER

May 13, 2022
Volume 28, Issue 19

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ADMINISTRATIVE REGISTER
This publication is available online for free at www.azsos.gov.

ADMINISTRATIVE CODE
A price list for the *Arizona Administrative Code* is available online at www.azsos.gov.

PUBLICATION DEADLINES
Publication dates are published in the back of the *Register*. These dates include file submittal dates with a three-week turnaround from filing to published document.

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The Office of the Secretary of State is an equal opportunity employer.

Participate in the Process

Look for the Agency Notice

Review (inspect) notices published in the *Arizona Administrative Register*. Many agencies maintain stakeholder lists and would be glad to inform you when they proposed changes to rules. Check an agency’s website and its newsletters for news about notices and meetings.

Feel like a change should be made to a rule and an agency has not proposed changes? You can petition an agency to make, amend, or repeal a rule. The agency must respond to the petition. (See A.R.S. § 41-1033)

Attend a public hearing/meeting

Attend a public meeting that is being conducted by the agency on a Notice of Proposed Rulemaking. Public meetings may be listed in the Preamble of a Notice of Proposed Rulemaking or they may be published separately in the *Register*. Be prepared to speak, attend the meeting, and make an oral comment.

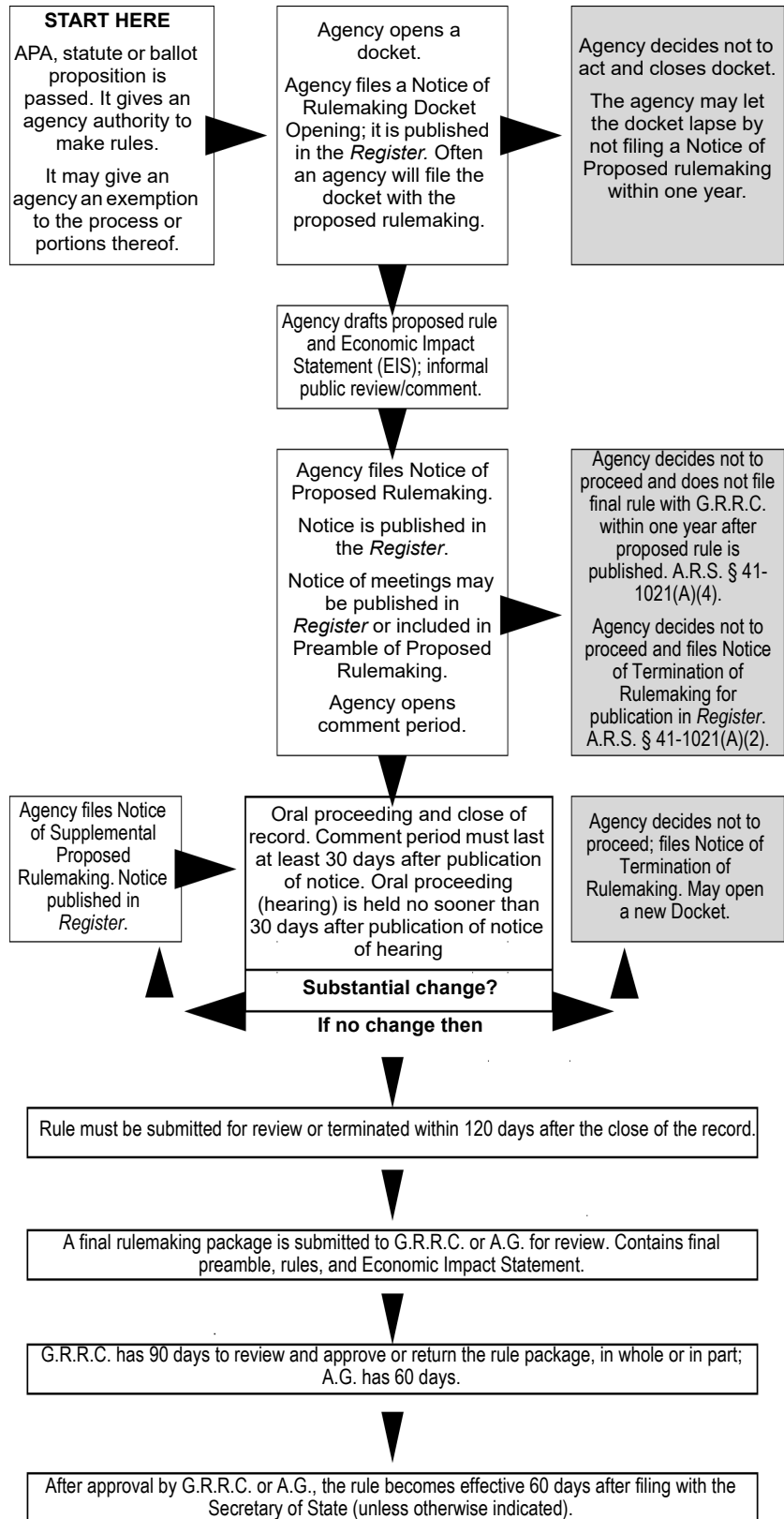
An agency may not have a public meeting scheduled on the Notice of Proposed Rulemaking. If not, you may request that the agency schedule a proceeding. This request must be put in writing within 30 days after the published Notice of Proposed Rulemaking.

Write the agency

Put your comments in writing to the agency. In order for the agency to consider your comments, the agency must receive them by the close of record. The comment must be received within the 30-day comment timeframe following the *Register* publication of the Notice of Proposed Rulemaking.

You can also submit to the Governor’s Regulatory Review Council written comments that are relevant to the Council’s power to review a given rule (A.R.S. § 41-1052). The Council reviews the rule at the end of the rulemaking process and before the rules are filed with the Secretary of State.

Arizona Regular Rulemaking Process



Final rule is published in the *Register* and the quarterly *Code Supplement*.

Definitions

Arizona Administrative Code (A.A.C.): Official rules codified and published by the Secretary of State’s Office. Available online at www.azsos.gov.

Arizona Administrative Register (A.A.R.): The official publication that includes filed documents pertaining to Arizona rulemaking. Available online at www.azsos.gov.

Administrative Procedure Act (APA): A.R.S. Title 41, Chapter 6, Articles 1 through 10. Available online at www.azleg.gov.

Arizona Revised Statutes (A.R.S.): The statutes are made by the Arizona State Legislature during a legislative session. They are compiled by Legislative Council, with the official publication codified by Thomson West. Citations to statutes include Titles which represent broad subject areas. The Title number is followed by the Section number. For example, A.R.S. § 41-1001 is the definitions Section of Title 41 of the Arizona Administrative Procedures Act. The “§” symbol simply means “section.” Available online at www.azleg.gov.

Chapter: A division in the codification of the *Code* designating a state agency or, for a large agency, a major program.

Close of Record: The close of the public record for a proposed rulemaking is the date an agency chooses as the last date it will accept public comments, either written or oral.

Code of Federal Regulations (CFR): The *Code of Federal Regulations* is a codification of the general and permanent rules published in the *Federal Register* by the executive departments and agencies of the federal government.

Docket: A public file for each rulemaking containing materials related to the proceedings of that rulemaking. The docket file is established and maintained by an agency from the time it begins to consider making a rule until the rulemaking is finished. The agency provides public notice of the docket by filing a Notice of Rulemaking Docket Opening with the Office for publication in the *Register*.

Economic, Small Business, and Consumer Impact Statement (EIS): The EIS identifies the impact of the rule on private and public employment, on small businesses, and on consumers. It includes an analysis of the probable costs and benefits of the rule. An agency includes a brief summary of the EIS in its preamble. The EIS is not published in the *Register* but is available from the agency promulgating the rule. The EIS is also filed with the rulemaking package.

Governor’s Regulatory Review (G.R.R.C.): Reviews and approves rules to ensure that they are necessary and to avoid unnecessary duplication and adverse impact on the public. G.R.R.C. also assesses whether the rules are clear, concise, understandable, legal, consistent with legislative intent, and whether the benefits of a rule outweigh the cost.

Incorporated by Reference: An agency may incorporate by reference standards or other publications. These standards are available from the state agency with references on where to order the standard or review it online.

Federal Register (FR): The *Federal Register* is a legal newspaper published every business day by the National Archives and Records Administration (NARA). It contains federal agency regulations; proposed rules and notices; and executive orders, proclamations, and other presidential documents.

Session Laws or “Laws”: When an agency references a law that has not yet been codified into the Arizona Revised Statutes, use the word “Laws” is followed by the year the law was passed by the Legislature, followed by the Chapter number using the abbreviation “Ch.,” and the specific Section number using the Section symbol (§). For example, Laws 1995, Ch. 6, § 2. Session laws are available at www.azleg.gov.

United States Code (U.S.C.): The Code is a consolidation and codification by subject matter of the general and permanent laws of the United States. The Code does not include regulations issued by executive branch agencies, decisions of the federal courts, treaties, or laws enacted by state or local governments.

Acronyms

A.A.C. – *Arizona Administrative Code*

A.A.R. – *Arizona Administrative Register*

APA – *Administrative Procedure Act*

A.R.S. – *Arizona Revised Statutes*

CFR – *Code of Federal Regulations*

EIS – *Economic, Small Business, and Consumer Impact Statement*

FR – *Federal Register*

G.R.R.C. – *Governor’s Regulatory Review Council*

U.S.C. – *United States Code*

About Preambles

The Preamble is the part of a rulemaking package that contains information about the rulemaking and provides agency justification and regulatory intent.

It includes reference to the specific statutes authorizing the agency to make the rule, an explanation of the rule, reasons for proposing the rule, and the preliminary Economic Impact Statement.

The information in the Preamble differs between rulemaking notices used and the stage of the rulemaking.

NOTICES OF PROPOSED RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Proposed Rulemaking.

A proposed rulemaking is filed by an agency upon completion and submittal of a Notice of Rulemaking Docket Opening. Often these two documents are filed at the same time and published in the same *Register* issue.

When an agency files a Notice of Proposed Rulemaking under the Administrative Procedure Act (APA), the notice is published in the *Register* within three weeks of filing. See the publication schedule in the back of each issue of the *Register* for more information.

Under the APA, an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule (A.R.S. §§ 41-1013 and 41-1022).

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the proposed rules should be addressed to the agency that promulgated the rules. Refer to item #4 below to contact the person charged with the rulemaking and item #10 for the close of record and information related to public hearings and oral comments.

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

[R22-84]

PREAMBLE

- | | |
|---|---------------------------------|
| <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
| R20-5-601 | Amend |
| R20-5-602 | Amend |
| R20-5-629 | Amend |
- 2. Citations to agency’s statutory rulemaking authority to include the authorizing statute and the implementing statute:**
 Authorizing statute: A.R.S. § 23-405(4)
 Implementing statute: A.R.S. § 23-410
 Note: An exception from the moratorium on rulemaking, Executive Order 2022-01, was provided for this rulemaking by Brian Norman, Policy Advisor in the Office of the Arizona Governor, by email dated April 28, 2022.
- 3. 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: 28 A.A.R. 1007, May 13, 2022 (*in this issue*)
- 4. The agency’s contact person who can answer questions about the rulemaking:**
 Name: Jessie Atencio, Director
 Address: Division of Occupational Safety and Health
 Industrial Commission of Arizona
 800 W. Washington St., Suite 203
 Phoenix, AZ 85007
 Telephone: (602) 542-5795
 Fax: (602) 542-1614
 Email: jessie.atencio@azdosh.gov
- 5. An agency’s justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**
 Section 18(c) of the Federal Occupational Safety and Health Act of 1970 requires state-administered occupational safety and health programs to adopt standards that are at least as effective as those adopted by the United States Department of Labor, Occupational Safety and Health Administration (“OSHA”). See also 29 CFR 1953.5; A.R.S. § 23-405(3). The Industrial Commission of Arizona (the “Commission”) is proposing to amend R20-5-601 (“The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926”), R20-5-602 (“The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910”), and R20-5-629 (“The Occupational Injury and Illness Recordkeeping and Reporting Requirements”) to incorporate by reference the following OSHA rule updates to 29 CFR 1910 (“Occupational Safety and Health Standards”), 29 CFR 1926 (“Safety and Health Regulations for Construction”), and 29 CFR 1904 (“Recording and Reporting Occupational Injuries and Illnesses”):
- OSHA Final Rule published May 14, 2019, titled “Standards Improvement Project – Phase IV”; published in the *Federal Register* at 84 FR 21416.
 - OSHA Final Rule published September 30, 2019, titled “Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors”; published in the *Federal Register* at 84 FR 51377.
 - OSHA Final Rule published July 14, 2020, titled “Revising the Beryllium Standard for General Industry”; published in the *Federal Register* at 85 FR 42582.

- OSHA Final Rule published August 31, 2020, titled “Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors”; published in the *Federal Register* at 85 FR 53910.
- OSHA Final Rule published September 15, 2020, titled “Cranes and Derricks in Construction: Railroad Roadway Work”; published in the *Federal Register* at 85 FR 57109.
- OSHA Final Rule published February 24, 2021, titled “Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors: Correction”; published in the *Federal Register* at 86 FR 11119.

Standards Improvement Project – Phase IV (May 14, 2019)

The 2019 Final Rule titled “Standards Improvement Project – Phase IV” revised existing standards in the recordkeeping (29 CFR 1904), general industry (29 CFR 1910), and construction (29 CFR 1926) standards. The purpose of OSHA’s Standards Improvement Project was to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements in OSHA’s safety and health standards, which permit improved compliance by employers and reduce costs and paperwork burdens where possible, without reducing employee protections. OSHA reports that many of the revisions in the Final Rule reduce costs while improving worker safety and health or privacy. The revisions include an update to the consensus standard incorporated by reference for signs and devices used to protect workers near automobile traffic, a revision to the requirements for roll-over protective structures to comply with current consensus standards, updates for storage of digital x-rays, and the method of calling emergency services to allow for use of current technology. OSHA also revised two standards to align with current medical practice: a reduction to the number of necessary employee x-rays and updates to requirements for pulmonary function testing. To protect employee privacy and prevent identity fraud, OSHA also removed from the standards the requirements that employers include an employee’s social security number on exposure monitoring, medical surveillance, and other records.

Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors (September 30, 2019)

Under 29 CFR 1910 and 1926, employers are subject to standards for occupational exposure to beryllium. OSHA’s 2017 Final Rule titled “Occupational Exposure to Beryllium” updated existing standards for occupational exposure to beryllium and beryllium compounds. The September 30, 2019 Final Rule titled “Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors” delayed the compliance dates for all ancillary provisions of the construction standards for beryllium until September 30, 2020. The September 30, 2019 Final Rule had no effect on compliance with the PEL and STEL requirements of the existing standards.

Revising the Beryllium Standard for General Industry (July 14, 2020)

The July 14, 2020 Final Rule titled “Revising the Beryllium Standard for General Industry” amended existing general industry standards for occupational exposure to beryllium and beryllium compounds to clarify certain provisions and simplify or improve compliance. Broadly, the July 14 Final Rule added one definition and modified five existing terms in paragraph (b), Definitions; amended paragraph (f), Methods of compliance; paragraph (h), Personal protective clothing and equipment; paragraph (i), Hygiene areas and practices; paragraph (j), Housekeeping; paragraph (k), Medical surveillance; paragraph (m), Communication of hazards; and paragraph (n), Recordkeeping; and replaced the 2017 final standard’s Appendix A with a new appendix designed to supplement the proposed definition of beryllium work area. The revisions in the July 14, 2020 Final Rule are designed to maintain or enhance worker protections overall by ensuring that the Beryllium standard is well understood and compliance is more straightforward.

Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors (August 31, 2020)

The August 31, 2020 Final Rule titled “Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors” amended existing construction standards for occupational exposure to beryllium and beryllium compounds to clarify certain provisions and simplify or improve compliance. First, OSHA removed or modified some provisions which – although appropriate in the general industry context – were unnecessary or required revision to appropriately protect employees in the construction industries. Second, OSHA revised some provisions of the construction standards to avoid inconsistencies with the clarifying changes the agency made in the July 14, 2020 Final Rule (discussed above). Third, OSHA revised certain paragraphs of the construction standards to address the application of provisions related to dermal contact to materials containing beryllium in trace quantities. According to OSHA, the changes were designed to accomplish three goals: to more appropriately tailor the requirements of the construction standards to the particular exposures in these industries in light of partial overlap between the beryllium standards’ requirements and other OSHA standards; to aid compliance and enforcement across the beryllium standards by avoiding inconsistency, where appropriate, between the shipyards and construction standards and recent revisions to the general industry standard; and to clarify certain requirements with respect to materials containing only trace amounts of beryllium. The August 31, 2020 Final Rule does not affect the general industry beryllium standard.

Cranes and Derricks in Construction: Railroad Roadway Work (September 15, 2020)

The 2020 Final Rule titled “Cranes and Derricks in Construction: Railroad Roadway Work” revised the standard for cranes and derricks in construction to provide specific exemptions and clarifications with regard to the application of the standard to cranes and derricks used for railroad roadway work. The Final Rule adds exemptions pertaining to: (1) flash-butt welding trucks and equipment with similar attachments; (2) working conditions of certain employees with respect to which Federal agencies exercise statutory authority to prescribe and enforce occupational safety and health standards; (3) use of rail stops and rail claims on covered equipment; (4) work area controls when employers are subject to specified on-track safety program requirements; (5) railroad roadway maintenance machine (“RMM”) restrictions on out-of-level work; (6) use of cranes or derricks to drag a load sideways; (7) use of a hydraulic piston for raising and lowering a boom; (8) the requirement to obtain and follow equipment manufacturer’s guidance for equipment modifications for RMMs; and (9) the requirement that employers must follow the manufacturer’s guidance, instructions, procedures, prohibitions, limitations, or specifications pertaining to RMMs. According to OSHA, the exemptions and clarifications recognize the unique equipment and circumstances in railroad roadway work and reflect the preemption of some OSHA requirements by regulations promulgated by the Federal Railroad Administration. OSHA reports that the revised

standard provides a clearer understanding of which regulatory requirements are applicable, resulting in a more effective regulatory program and ultimately improved safety.

Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors: Correction (February 24, 2021)

The February 24, 2021 Final Rule titled “Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors; Correction” corrects inadvertent errors contained in the August 31, 2020 Final Rule.

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

The Commission did not review or rely on any study relevant to the proposed amended rules. To the extent applicable, studies, surveys, data, or other information reviewed and relied upon by OSHA are discussed in the Final Rules, which are electronically available at:

- <https://www.federalregister.gov/documents/2019/05/14/2019-07902/standards-improvement-project-phase-iv>
- <https://www.federalregister.gov/documents/2019/09/30/2019-21037/occupational-exposure-to-beryllium-and-beryllium-compounds-in-construction-and-shipyard-sectors>
- <https://www.federalregister.gov/documents/2020/07/14/2020-10678/revising-the-beryllium-standard-for-general-industry>
- <https://www.federalregister.gov/documents/2020/08/31/2020-18017/occupational-exposure-to-beryllium-and-beryllium-compounds-in-construction-and-shipyard-sectors>
- <https://www.federalregister.gov/documents/2020/09/15/2020-17179/cranes-and-derricks-in-construction-railroad-roadway-work>
- <https://www.federalregister.gov/documents/2021/02/24/2021-02809/occupational-exposure-to-beryllium-and-beryllium-compounds-in-construction-and-shipyard-sectors>

7. 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

8. The preliminary summary of the economic, small business and consumer impact:

Standards Improvement Project – Phase IV (May 14, 2019)

OSHA reports that the May 14, 2019 Final Rule titled “Standards Improvement Project – Phase IV” will result in employer cost savings and paperwork reductions. OSHA estimates that one revision (updating the method of identifying and calling emergency medical services) could increase construction employers’ nationwide combined costs by about \$32,000 per year while two provisions (reduction in the number of necessary employee x-rays and elimination of posting requirements for residential construction employers) provide estimated combined cost savings of \$6.1 million annually. The agency did not estimate or quantify benefits to employees from reduced exposure to x-ray radiation or to employers for the reduced cost of storing digital x-rays rather than x-ray films. The agency concluded that the revisions do not have any significant economic impact on small businesses. OSHA’s detailed analysis is electronically available at: <https://www.federalregister.gov/documents/2019/05/14/2019-07902/standards-improvement-project-phase-iv>.

Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors (September 30, 2019)

OSHA estimates that the September 30, 2019 Final Rule titled “Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors” will result in a net cost savings for affected industries. According to OSHA, at a 3% discount rate over ten years, the Final Rule will result in net annual cost savings of \$0.36 million per year; at a discount rate of 7% over ten years, the net annual cost savings is \$0.85 million per year. When OSHA used a perpetual time horizon, the annualized cost savings of the Final Rule is \$0.42 million with a 7% discount rate. OSHA’s detailed analysis is electronically available at: <https://www.federalregister.gov/documents/2019/09/30/2019-21037/occupational-exposure-to-beryllium-and-beryllium-compounds-in-construction-and-shipyard-sectors>

Revising the Beryllium Standard for General Industry (July 14, 2020)

OSHA estimates that the July 14, 2020 Final Rule titled “Revising the Beryllium Standard for General Industry” would not impose any new employer obligations or increase the overall cost of compliance, while some of the revisions in the Final Rule would clarify and simplify compliance in such a way that results in cost savings. OSHA’s detailed analysis is electronically available at: <https://www.federalregister.gov/documents/2020/07/14/2020-10678/revising-the-beryllium-standard-for-general-industry>

Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors (August 31, 2020)

OSHA estimated that the August 31, 2020 Final Rule titled “Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors” will lead to total annualized cost savings of \$2.5 million at a 3% discount rate over 10 years; at a discount rate of 7% over 10 years, the annualized cost savings would be \$2.6 million. OSHA determined that the changes will maintain safety and health protections for workers, while facilitating compliance with the standards and yielding cost savings. OSHA’s detailed analysis is electronically available at: <https://www.federalregister.gov/documents/2020/08/31/2020-18017/occupational-exposure-to-beryllium-and-beryllium-compounds-in-construction-and-shipyard-sectors>

Cranes and Derricks in Construction: Railroad Roadway Work (September 15, 2020)

OSHA estimated that the September 15, 2020 Final Rule titled “Cranes and Derricks in Construction: Railroad Roadway Work” will result in cost savings for impacted employers in an amount of the difference between the full cost of the existing rules and the residual costs left after the exemptions contained in the Final Rule are in effect. OSHA estimates the nationwide costs saving to be

to be \$17.1 million per year at a discount rate of 3%. OSHA's detailed analysis is electronically available at: <https://www.federalregister.gov/documents/2020/09/15/2020-17179/cranes-and-derricks-in-construction-railroad-roadway-work>.

Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors: Correction (February 24, 2021)

The February 24, 2021 Final Rule titled "Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors: Correction" has no economic impact, as the Final Rule merely corrected inadvertent errors contained in the August 31, 2020 Final Rule. OSHA's detailed analysis is electronically available at: <https://www.federalregister.gov/documents/2021/02/24/2021-02809/occupational-exposure-to-beryllium-and-beryllium-compounds-in-construction-and-shipyard-sectors>

9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Jessie Atencio, Director
 Address: Division of Occupational Safety and Health
 Industrial Commission of Arizona
 800 W. Washington St., Suite 203
 Phoenix, AZ 85007
 Telephone: (602) 542-5795
 Fax: (602) 542-1614
 Email: jessie.atencio@azdosh.gov

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Written comments may be submitted to the address listed in item 9 by the close of the comment period, which is 5:00 p.m., June 20, 2022. An oral proceeding is scheduled for June 20, 2022 at 9:00 a.m., at the Industrial Commission of Arizona, 800 W. Washington St., Room 206, Phoenix, AZ 85007.

11. 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.R.S. § 23-405(3) requires the Commission to "[c]ooperate with the federal government to establish and maintain an occupational safety and health program as effective as the federal occupational safety and health program."

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 proposed amended rules do not require issuance of a regulatory permit or license.

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:

Section 18(c) of the Federal Occupational Safety and Health Act of 1970 requires state-administered occupational safety and health programs to adopt standards that are at least as effective as those adopted by the United States Department of Labor, Occupational Safety and Health Administration ("OSHA"). See also 29 CFR 1953.5; A.R.S. § 23-405(3). The Industrial Commission of Arizona (the "Commission") is proposing to amend R20-5-601 ("The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926"), R20-5-602 ("The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910"), and R20-5-629 ("The Occupational Injury and Illness Recordkeeping and Reporting Requirements") to incorporate by reference the following OSHA rule updates to 29 CFR 1910 ("Occupational Safety and Health Standards"), 29 CFR 1926 ("Safety and Health Regulations for Construction"), and 29 CFR 1904 ("Recording and Reporting Occupational Injuries and Illnesses"):

- OSHA Final Rule published May 14, 2019, titled "Standards Improvement Project – Phase IV"; published in the *Federal Register* at 84 FR 21416.
- OSHA Final Rule published September 30, 2019, titled "Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors"; published in the *Federal Register* at 84 FR 51377.
- OSHA Final Rule published July 14, 2020, titled "Revising the Beryllium Standard for General Industry"; published in the *Federal Register* at 85 FR 42582.
- OSHA Final Rule published August 31, 2020, titled "Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors"; published in the *Federal Register* at 85 FR 53910.
- OSHA Final Rule published September 15, 2020, titled "Cranes and Derricks in Construction: Railroad Roadway Work"; published in the *Federal Register* at 85 FR 57109.
- OSHA Final Rule published February 24, 2021, titled "Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors: Correction"; published in the *Federal Register* at 86 FR 11119.

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.

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

The Industrial Commission of Arizona (the "Commission") is proposing to amend R20-5-601 ("The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926"), R20-5-602 ("The Federal Occupational Safety and Health Standards for

General Industry, 29 CFR 1910”), and R20-5-629 (“The Occupational Injury and Illness Recordkeeping and Reporting Requirements”) to incorporate by reference the following OSHA rule updates to 29 CFR 1910 (“Occupational Safety and Health Standards”), 29 CFR 1926 (“Safety and Health Regulations for Construction”), and 29 CFR 1904 (“Recording and Reporting Occupational Injuries and Illnesses”):

- OSHA Final Rule published May 14, 2019, titled “Standards Improvement Project – Phase IV”; published in the *Federal Register* at 84 FR 21416.
- OSHA Final Rule published September 30, 2019, titled “Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors”; published in the *Federal Register* at 84 FR 51377.
- OSHA Final Rule published July 14, 2020, titled “Revising the Beryllium Standard for General Industry”; published in the *Federal Register* at 85 FR 42582.
- OSHA Final Rule published August 31, 2020, titled “Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors”; published in the *Federal Register* at 85 FR 53910.
- OSHA Final Rule published September 15, 2020, titled “Cranes and Derricks in Construction: Railroad Roadway Work”; published in the *Federal Register* at 85 FR 57109.
- OSHA Final Rule published February 24, 2021, titled “Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors: Correction”; published in the *Federal Register* at 86 FR 11119.

A copy OSHA’s Final Rules are available for inspection or reproduction at the Arizona Division of Occupational Safety and Health, 800 W. Washington St., Room 203, Phoenix, AZ 85007, or are electronically available at:

- <https://www.federalregister.gov/documents/2019/05/14/2019-07902/standards-improvement-project-phase-iv>
- <https://www.federalregister.gov/documents/2019/09/30/2019-21037/occupational-exposure-to-beryllium-and-beryllium-compounds-in-construction-and-shipyard-sectors>
- <https://www.federalregister.gov/documents/2020/07/14/2020-10678/revising-the-beryllium-standard-for-general-industry>
- <https://www.federalregister.gov/documents/2020/08/31/2020-18017/occupational-exposure-to-beryllium-and-beryllium-compounds-in-construction-and-shipyard-sectors>
- <https://www.federalregister.gov/documents/2019/05/14/2019-07902/standards-improvement-project-phase-iv>
- <https://www.federalregister.gov/documents/2021/02/24/2021-02809/occupational-exposure-to-beryllium-and-beryllium-compounds-in-construction-and-shipyard-sectors>

13. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Section

- R20-5-601. The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926
 R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910
 R20-5-629. The Occupational Injury and Illness Recording and Reporting Requirements, 29 CFR 1904

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

R20-5-601. The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926

Each employer shall comply with the standards in the Federal Occupational Safety and Health Standards for Construction, as published in 29 CFR 1926, with amendments as of ~~February 7, 2019~~ February 24, 2021, incorporated by reference. Copies of these referenced materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to construction activity by all employers, both public and private, in the state of Arizona. This incorporation by reference does not include amendments or editions to 29 CFR 1926 published after ~~February 7, 2019~~ February 24, 2021.

R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910

Each employer shall comply with the standards in Subparts B through Z inclusive of the Federal Occupational Safety and Health Standards for General Industry, as published in 29 CFR 1910, with amendments as of ~~July 6, 2018~~ July 14, 2020, incorporated by reference. Copies of these reference materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to general industry activity by all employers, both public and private, in the state of Arizona; provided that this Section shall not apply to those conditions and practices which are the subject of R20-5-601. This incorporation by reference does not include amendments or editions to 29 CFR 1910 published after ~~July 6, 2018~~ July 14, 2020.

R20-5-629. The Occupational Injury and Illness Recording and Reporting Requirements, 29 CFR 1904

Each employer shall comply with the standards in the Federal Occupational Safety and Health Standards for Recordkeeping, as published in 29 CFR 1904, with amendments as of ~~February 25, 2019~~ May 14, 2019, incorporated by reference. Copies of the incorporated materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to recordkeep-

ing by all employers, both public and private, in the state of Arizona. This incorporation by reference does not include amendments or editions to 29 CFR 1904 published after ~~February 25, 2019~~ May 14, 2019.

NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKING

This section of the Arizona Administrative Register contains Notices of Supplemental Proposed Rulemakings. After an agency has filed a Notice of Proposed Rulemaking and it is published in the Register, an agency may decide to make substantial changes to the rule after it is proposed.

The agency prepares a Notice of Supplemental Proposed Rulemaking with these proposed changes. When filed, the notice is published under the deadline schedule in the back of the Register.

The Notice of Supplemental Proposed Rulemaking shall be published in the Register before holding any oral proceedings (A.R.S. § 41-1022).

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the proposed rules should be addressed to the agency that promulgated the rules. Refer to item #4 below to contact the person charged with the rulemaking and item #11 for the close of record and information related to public hearings and oral comments.

NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

TITLE 6. ECONOMIC SECURITY

CHAPTER 6. DEPARTMENT OF ECONOMIC SECURITY
DEVELOPMENTAL DISABILITIES

[R22-81]

PREAMBLE

1. Citations to the agency's Notice of Rulemaking Docket Opening, the Notice of Proposed Rulemaking (if applicable) as published in the Register as specified in R1-1-409(A). A list of any other related notices published in the Register as specified in R1-1-409(A):

Notice of Rulemaking Docket Opening: 27 A.A.R. 619, April 23, 2021
Notice of Proposed Rulemaking: 27 A.A.R. 603, April 23, 2021

2. Article, Part, or Section Affected (as applicable)

Rulemaking Action

Table with 2 columns: Article, Part, or Section Affected (as applicable) and Rulemaking Action. Rows include Article 9, R6-6-901, R6-6-902, R6-6-903, R6-6-904, R6-6-905, R6-6-906, R6-6-907, R6-6-908, R6-6-909, R6-6-910, R6-6-911.

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

Authorizing statute: A.R.S. §§ 36-554(C)(6) and 41-1954(A)(3)
Implementing statute: A.R.S. §§ 36-552, 36-554, and 41-1954(A)(1)(h)

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

Name: Melissa Henry
Address: Department of Economic Security
P.O. Box 6123, Mail Drop 111G
Phoenix, AZ 85005



or

Department of Economic Security
1717 W. Jefferson, Mail Drop 111G
Phoenix, AZ 85007

Telephone: (480) 647-3110

Fax: (602) 542-6000

Email: rules@azdes.gov

Website: <https://des.az.gov/documents-center/des-rules>

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

6 A.A.C. 6, Article 9 contains rules regarding planning for and addressing instances when a Division of Developmental Disabilities (DDD) Member engages in unsafe behavior, including creation of behavior plans and limitations on the use of certain techniques. Originally created in 1990, this Article was last amended in 1994. The Governor’s Regulatory Review Council approved a Five-Year Review Report on Chapter 6 on January 5, 2021.

The purpose of this rulemaking is to improve the standard of care for vulnerable populations and enhance existing safeguards by discouraging the use of punitive and outdated behavior management techniques. The proposed rules reflect current professional standards in the field and encourage development of appropriate behavioral interventions for DDD members. In addition, these proposed rules will make the rules more clear, concise, and understandable by revising definitions and modernizing language.

DES is engaging in this supplemental rulemaking to address public comments on the Notice of Proposed Rulemaking for 6 A.A.C. 6, Article 9 published at 27 A.A.R. 619 on April 23, 2021. In addition to addressing the comments received during the public comment period, the Department also conducted multiple meetings with internal and external stakeholders seeking additional informal feedback to ensure that all stakeholder input has been adequately considered in crafting these rules.

6. 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 of 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 rely on any studies. However, the Department reviewed existing literature such as:

1. American Association of Intellectual and Developmental Disabilities “Behavior Supports”
2. Medicaid.gov “Home and Community Based Services Final Regulation.”
3. National Association of State Directors of Developmental Disabilities Services “ASAN: Autistic Self Advocacy Network”.
4. State of Massachusetts Department of Developmental Services “115 CMR Standards and Services”.
5. “Behavior Modification Principles and Procedures” 6th edition by Raymond G. Miltenberger (2016).

7. An explanation of the substantial change which resulted in the supplemental notice:

The substantial changes are as follows:

- Updating multiple definitions and terminology to better reflect current best practices and usage in the field, including “Aversive Intervention” and “Forced Compliance” and eliminating terms that are no longer used in these rules;
- Revising R6-6-902 to accurately state what categories of Service Providers this Article applies to;
- Clarifying the list of prohibited behavior management techniques in R6-6-903 by moving items from the R6-6-904(A) as published in the NPR to this list;
- Clarifying R6-6-904 by moving prohibited techniques from this section to R6-6-903 and limiting R6-6-904 to techniques that are permissible under certain circumstances as well as revising the list to more accurately reflect permissible restricted techniques;
- Requiring the Planning Team to provide the Program Review Committee (PRC) with prior Planning Documents in R6-6-905;
- Allowing the PRC to provide provisional approval for all or part of a Behavior Plan under R6-6-906;
- Increasing the frequency of on-site observations required under R6-6-907;
- Requiring that DDD employees complete Article 9 training, in addition to certain Service Provider employees, under R6-6-908;
- Rewriting R6-6-910 regarding Emergency Measures to be more closely aligned with current rules and Department practices, including direction to a Service Provider for when an Emergency Measure is used and to the Planning Team and PRC when use of Emergency Measure is reported; and
- Adding R6-6-911 to address the use of Psychotropic Medications.

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 preliminary summary of the economic, small business, and consumer impact:

The Department anticipates that this rulemaking will have a minimal economic impact on it as the implementing agency, small businesses, and consumers. The Department and members of the public will benefit from the revision of Article 9 because the proposed rulemaking will make the provisions for member’s behavior management more clear, concise, and understandable.

Most of the requirements of these rules are consistent with current Department practices and, therefore, will not cause a significant

increase in costs for compliance either to the Department or to Service Providers, many of which are small businesses. The training requirements may cause the Department to incur some costs. Additionally, sanctions imposed if training requirements are not met may cause Service Providers to incur some costs. However, these measures are the least burdensome way to mitigate risk to the health, safety, and dignity of individuals with developmental disabilities and are necessary to provide the most current behavioral management guidance to and for Service Providers.

Finally, the consumers who will be directly impacted by this rulemaking are applicants and Members who voluntarily seek services through the Department. This rulemaking does not impose any obligation on the applicant or Member to accept or participate in services without informed consent. Members and applicants will benefit from the increased personal safety and improved protection of personal rights that come from having clear and updated rules with respect to managing unsafe behaviors.

10. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Melissa Henry
 Address: Department of Economic Security
 P.O. Box 6123, Mail Drop 111G
 Phoenix, AZ 85005
 or
 Department of Economic Security
 1717 W. Jefferson, Mail Drop 111G
 Phoenix, AZ 85007
 Telephone: (480) 647-3110
 Fax: (602) 542-6000
 Email: rules@azdes.gov
 Website: <https://des.az.gov/documents-center/des-rules>

11. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The Department has scheduled the following virtual Oral Proceeding for public comments:

Date: Monday, June 13, 2022
 Time: 1:00 - 3:00 p.m.*
 Google Meet: <https://meet.google.com/axr-vkgj-mfr?authuser=0&hs=122>
 Join by Phone: (US) +1 916-750-1619 PIN: 523 784 897#
 Close of Record: Monday, June 13, 2022 at 5:00 p.m.

*Note: If no one has appeared by Google Meet or phone by 2:00 p.m., the oral proceeding will be closed.

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:

This rule does 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:

Not applicable

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

No analysis was submitted.

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

None

14. The full text of the rules follows:

TITLE 6. ECONOMIC SECURITY

CHAPTER 6. DEPARTMENT OF ECONOMIC SECURITY

DEVELOPMENTAL DISABILITIES

ARTICLE 9. ~~MANAGING INAPPROPRIATE INTERVENTIONS FOR UNSAFE AND INAPPROPRIATE BEHAVIORS~~

Section

~~R6-6-901.~~ Definitions and Location of Definitions

~~R6-6-901-R6-6-902.~~ Applicability

~~R6-6-902-R6-6-903.~~ Prohibitions

~~R6-6-904.~~ Restricted Techniques

~~R6-6-904-R6-6-905.~~ ISPP Planning Team Responsibilities

~~R6-6-903-R6-6-906.~~ Program Review Committee (PRC)



- ~~R6-6-905-R6-6-907. Monitoring-Implementing Behavior Treatment Plans~~
- ~~R6-6-906-R6-6-908. Training~~
- ~~R6-6-907-R6-6-909. Sanctions~~
- ~~R6-6-908-R6-6-910. Emergency Measures~~
- ~~R6-6-909-R6-6-911. Behavior modifying Medications Psychotropic Medication~~

ARTICLE 9. MANAGING INAPPROPRIATE INTERVENTIONS FOR UNSAFE AND INAPPROPRIATE BEHAVIORS

R6-6-901. Definitions and Location of Definitions

A. Location of definitions. The following definitions applicable to this Article are found in the following Section or Citation:

| | | |
|--|------------------------|------------------------|
| <u>“Abuse”</u> | <u>R6-6-901(B)</u> | |
| <u>“Article 9 Instructor”</u> | <u>R6-6-901(B)</u> | |
| <u>“Aversive Intervention”</u> | <u>R6-6-901(B)</u> | |
| <u>“Behavior Plan”</u> | <u>R6-6-901(B)</u> | |
| <u>“Behavioral Health Professional”</u> | <u>R6-6-901(B)</u> | |
| <u>“Business Day”</u> | <u>R6-6-901(B)</u> | |
| <u>“Chemical Restraint”</u> | <u>R6-6-901(B)</u> | |
| <u>“Developmental Disability”</u> | <u>A.R.S. § 36-551</u> | |
| <u>“Direct Care Worker”</u> | <u>R6-6-901(B)</u> | |
| <u>“Division”</u> | <u>A.R.S. § 36-551</u> | |
| <u>“Emergency Measure”</u> | <u>R6-6-901(B)</u> | |
| <u>“Emergency Safety Situation”</u> | <u>R6-6-901(B)</u> | |
| <u>“Forced Compliance”</u> | <u>R6-6-901(B)</u> | |
| <u>“Habilitation”</u> | <u>A.R.S. § 36-551</u> | |
| <u>“Intermediate Care Facility for Individuals with Intellectual Disabilities”</u> | | <u>A.R.S. § 36-551</u> |
| <u>“IOC”</u> | <u>R6-6-901(B)</u> | |
| <u>“Least Intrusive”</u> | <u>R6-6-101</u> | |
| <u>“Managing Employee”</u> | <u>R6-6-901(B)</u> | |
| <u>“Mechanical Restraint”</u> | <u>R6-6-101</u> | |
| <u>“Member”</u> | <u>R6-6-901(B)</u> | |
| <u>“Neglect”</u> | <u>A.R.S. § 36-569</u> | |
| <u>“Nursing Care Institution”</u> | <u>A.R.S. § 36-401</u> | |
| <u>“Overcorrection”</u> | <u>R6-6-901(B)</u> | |
| <u>“Physical Intervention”</u> | <u>R6-6-901(B)</u> | |
| <u>“Planning Document”</u> | <u>R6-6-901(B)</u> | |
| <u>“Planning Team”</u> | <u>R6-6-901(B)</u> | |
| <u>“Program Review Committee” or “PRC”</u> | <u>R6-6-101</u> | |
| <u>“PRN”</u> | <u>R6-6-901(B)</u> | |
| <u>“Psychotropic Medication”</u> | <u>R6-6-901(B)</u> | |
| <u>“Qualified Health Care Professional”</u> | <u>R6-6-901(B)</u> | |
| <u>“Response Cost”</u> | <u>R6-6-101</u> | |
| <u>“Responsible Person”</u> | <u>A.R.S. § 36-551</u> | |
| <u>“Seclusion”</u> | <u>R6-6-901(B)</u> | |
| <u>“Service Provider”</u> | <u>R6-6-901(B)</u> | |
| <u>“Support Coordinator”</u> | <u>R6-6-901(B)</u> | |
| <u>“Unsafe Behavior”</u> | <u>R6-6-901(B)</u> | |

B. The following definitions apply to this Article:

1. “Abuse” means the same as “Abusive Treatment” under A.R.S. § 36-569.
2. “Article 9 Instructor” means an individual approved by the Division to conduct training as outlined in R6-6-908.
3. “Aversive Intervention” means a technique intended to inflict pain, discomfort, or social humiliation to modify behavior.
4. “Behavior Plan” means an integrated, individualized, written support plan which may be based on a Behavioral Health Professional’s provisional or principal diagnosis and assessment of behavior and the treatment needs, abilities, resources, and circumstances of a Member, that includes:
 - a. One or more treatment goals;
 - b. One or more treatment methods;
 - c. The date when the Member’s Behavior Plan is to be reviewed; and
 - d. The dated signature of the Member or the Member’s legal representative;
5. “Behavioral Health Professional” means:
 - a. An individual licensed under A.R.S. Title 32, Chapter 33, whose scope of practice allows the individual to:
 - i. Independently engage in the practice of behavioral health as defined in A.R.S. § 32-3251, or
 - ii. Except for a licensed substance abuse technician, engage in the practice of behavioral health as defined in A.R.S. § 32-3251 under direct supervision as defined in A.A.C. R4-6-101;
 - b. A psychiatrist, as defined in A.R.S. § 36-501;
 - c. A psychologist, as defined in A.R.S. § 32-2061;

- d. A physician, as defined in A.R.S. § 32-1401;
- e. A registered nurse practitioner licensed as an adult psychiatric and mental health nurse;
- f. A behavior analyst, as defined in A.R.S. § 32-2091; or
- g. A registered nurse with:
 - i. A psychiatric-mental health nursing certification, or
 - ii. One year of experience providing behavioral health services.
- 6. “Business Day” means Monday through Friday, excluding holidays listed in A.R.S. § 1-301.
- 7. “Chemical Restraint” means medication administered as a method of restricting a Member’s freedom of movement, physical activity, or access to the Member’s own body that is not routine treatment for a Member’s medical or behavioral health condition.
- 8. “Direct Care Worker” means a person who is employed or contracted to provide primary personal care, guidance, or supervision to a Member in a Service Provider’s care.
- 9. “Emergency Measure” means the one time use of Psychotropic Medication, a crisis team, law enforcement intervention, or Physical Intervention, in an Emergency Safety Situation.
- 10. “Emergency Safety Situation” means unanticipated Unsafe Behavior.
- 11. “Forced Compliance” means a procedure in which an individual is physically made to follow a direction or command.
- 12. “Inappropriate Behavior” means a Member’s actions which a Behavioral Health Professional, Service Provider, or Planning Team reasonably believes to be impeding an individual’s ability to interact in a socially acceptable manner as detailed in behavioral goals put forward in the Planning Document.
- 13. “IOC” means an Independent Oversight Committee, established under A.R.S. § 41-3801.
- 14. “Managing Employee” means a general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of a Service Provider.
- 15. “Member” means the same as “Client” as defined in A.R.S. § 36-551.
- 16. “Overcorrection” means, for the purpose of this Article, a group of procedures designed to reduce Inappropriate Behavior. Overcorrection includes:
 - a. Requiring a Member to improve the environment to a state better than existed prior to the occurrence of the Inappropriate Behavior; or
 - b. Requiring a Member to repeatedly practice a behavior by engaging in effortful behavior directly or logically related to repairing damage caused by the Member’s behavior as a tactic to evoke behavioral change.
- 17. “Physical Intervention” means a technique used on an emergency basis by an individual who is providing care or service to a Member to restrict the movement of the Member by direct physical contact to prevent the Member from seriously harming self or others.
- 18. “Planning Document” means a written statement of services that is separate from the Behavior Plan and is provided to a Member, including Habilitation goals and objectives, that is developed following an initial eligibility determination and revised after periodic reevaluations.
- 19. “Planning Team” means a group of people including:
 - a. The Member;
 - b. A Responsible Person;
 - c. The Support Coordinator;
 - d. Other State of Arizona Department of Economic Security staff, as necessary; and
 - e. Any person of responsible age and capacity selected by the Member, Responsible Person, or the Department.
- 20. “PRN” means administered as circumstances require but not on a regular schedule.
- 21. “Psychotropic Medication” means behavior-modifying medication that affects a Member’s mental status, behavior, or perception.
- 22. “Qualified Health Care Professional” means an individual with the authority to prescribe medication under A.R.S. Title 32.
- 23. “Seclusion” means, for the purpose of this Article, restricting a Member to a room or area, through the use of locked doors or any other device or method that precludes the Member from freely exiting the room or area, or that a reasonably prudent person would believe precludes the Member from freely exiting the room or area. In the case of a community residence, restricting a Member to the residential site, according to specific provisions of a Planning Document, Qualified Health Care Professional’s orders, temporary law enforcement directive, or court order, does not constitute Seclusion.
- 24. “Service Provider” means any individual or entity as defined in A.R.S. § 36-551 as well as Division staff who administer direct services to Members.
- 25. “Support Coordinator” means the same as “Case Manager” as defined in A.R.S. § 36-551.
- 26. “Unsafe Behavior” means a Member’s action or activity, whether intentional, unintentional, or negligent, that causes a risk of imminent harm to the Member or others.

R6-6-901-R6-6-902, Applicability

These rules apply to:

- 1. All programs operated, licensed, certified, supervised or financially supported by the Division.
- 2. All habilitation programs as defined in A.R.S. § 36-551(18), as well as all interventions included in this Article, shall be addressed in the client’s ISPP.
- A.** This Article applies to all programs operated, licensed, certified, supervised, or financially supported in whole or in part by the Division in accordance with A.R.S. §§ 36-552, 36-2939, or 36-2940, and includes all Behavior Plans implemented or monitored by a Service Provider in accordance with this Article.
- B.** For services provided in healthcare institutions as listed in R9-10-102(A), this Article only applies to the following:
 - 1. Intermediate Care Facilities for Individuals with Intellectual Disabilities; and
 - 2. Nursing Care Institutions;



- C. This Article does not apply to:
 1. Health and medical services authorized under A.R.S. § 36-2939(A)(5);
 2. Dental services authorized under A.R.S. § 36-2939(A)(6); or
 3. Behavioral Health Services under A.R.S. § 36-2939(A)(2)

~~R6-6-902~~, R6-6-903. Prohibitions

- A. The following behavioral intervention techniques are prohibited:
 1. The use of seclusion (locked time-out rooms);
 2. The use of overcorrection;
 3. The application of noxious stimuli;
 4. Physical restraints, including mechanical restraints, when used as a negative consequence to a behavior.
- B. The use of behavior modifying medications is prohibited, except as specified in R6-6-909, if:
 1. They are administered on an “as needed” or “PRN” basis; or
 2. They are in dosages which interfere with the client’s daily living activities; or
 3. They are used in the absence of a behavior treatment plan.
- C. No person shall implement a behavior treatment plan which:
 1. Is not included as a part of the ISPP; and
 2. Falls under R6-6-903(A), without approval of the PRC.

A Service Provider shall not:

1. Abuse or Neglect a Member;
2. Use a restricted technique under R6-6-904 with a Member as a negative consequence;
3. Use Psychotropic Medication as a Chemical Restraint;
4. Use Overcorrection;
5. Seclude a Member;
6. Use Physical Intervention, including Mechanical Restraints, when used as a negative consequence for a behavior;
7. Use Aversive Intervention;
8. Use techniques that in intent or execution cause physical or psychological pain or harm to a Member, or are used as a form of punishment; or
9. Administer Psychotropic Medication “as needed” or “PRN”.

R6-6-904. Restricted Techniques

A Service Provider is permitted to use the following techniques when the techniques are included in a Behavior Plan approved by the PRC and only in the manner specified in the approved Behavior Plan:

1. Forced Compliance;
2. Response Cost;
3. Administration of Psychotropic Medication for the purposes of behavior modification unless an exception is granted by the Division; or
4. Restrictions to a Member’s rights as specified in A.R.S. § 36-551.01 or other applicable laws.

~~R6-6-904~~, R6-6-905. ISPP Planning Team Responsibilities

Upon receipt of the PRC’s response and as part of its development of the client’s ISPP, the ISPP team shall either:

1. Implement the approved behavior treatment plan; or
2. Accept the PRC recommendation and incorporate the revised behavior treatment plan into the ISPP; or
3. Reject the recommendation in whole or in part and develop a new behavior treatment plan to be resubmitted to the PRC and Human Rights Committee.

The Planning Team shall:

1. Participate in the development of a Behavior Plan to modify a Member’s Unsafe Behaviors or Inappropriate Behaviors to improve the Member’s quality of life;
2. Submit all new or revised Behavior Plans to the PRC for approval;
3. If available, submit the current Planning Document and all Planning Documents from the prior year to the PRC with the documents from subsection (2) of this Section;
4. Upon receipt of provisional approval of a Behavior Plan from the PRC:
 - a. Correct all deficiencies and resubmit the Behavior Plan to the PRC within 10 Business Days; or
 - b. If the Planning Team is unable to correct all deficiencies in the Behavior Plan within 10 Business Days, submit a written request for an extension of the provisional approval from the PRC; and
5. Comply with the determination of the PRC or participate in redeveloping the Behavior Plan for resubmission to the PRC.

~~R6-6-903~~, R6-6-906. Program Review Committee (PRC)

- A. The ISPP team shall submit to the PRC and Human Rights Committee any behavior treatment plan which includes:
 1. Techniques that require the use of force;
 2. Programs involving the use of response cost;
 3. Programs which might infringe upon the rights of the client pursuant to applicable federal and state laws, including A.R.S. § 36-551.01;
 4. The use of behavior modifying medications;
 5. Protective devices used to prevent a client from sustaining injury as a result of the client’s self-injurious behavior.
- B. The PRC shall be responsible for approving or disapproving plans specified in subsection (A) above and any other matters referred by an ISPP team member.

- C.** The PRC shall review and respond in writing within ten working days of receipt of a behavior treatment plan from the ISPP team, either approving or disapproving the plan. The response shall be signed and dated by each member present and shall be transmitted to the ISPP team with a copy to the chairperson of the Human Rights Committee for review and recommendations at its next regularly scheduled meeting pursuant to R6-6-1701 et seq. The response shall include:
1. A statement of agreement that the interventions approved are the least intrusive and present the least restrictive alternative.
 2. Any special considerations or concerns including any specific monitoring instructions.
 3. Any recommendations for change, including an explanation of the recommendations.
- D.** Each PRC shall issue written reports, as prescribed by the Division, summarizing its activities, findings and recommendations while maintaining client confidentiality.
1. On a monthly basis, report to a designated Division representative, with a copy to the chairperson of the Human Rights Committee.
 2. On an annual basis, by December 31 of each calendar year, report to the Assistant Director of the Division of Developmental Disabilities, with a copy to the Developmental Disabilities Advisory Council.
- E.** The PRC shall be composed of, but not be limited to, the following persons designated by the District Program Manager:
1. The District Program Manager or his designee, who shall act as a chairperson.
 2. A person directly providing habilitation services to clients.
 3. A person qualified, as determined by the Division, in the use of behavior management techniques, such as a psychologist or psychiatrist.
 4. A parent of an individual with a developmental disability but not the parent of the individual whose program is being reviewed.
 5. A person with no ownership in a facility and who is not involved with providing services to individuals with developmental disabilities.
 6. An individual with a developmental disability when appropriate.
- F.** A PRC shall be separate from but a complement to the ISPP team, and the Human Rights Committee established pursuant to R6-6-1701 et seq.
- A.** The PRC shall include the following persons designated by the Division:
1. A Division employee who shall act as the PRC chairperson;
 2. A person qualified in the use of behavior management techniques, such as a Behavioral Health Professional;
 3. A member of the IOC;
 4. A Service Provider representative; and
 5. A community member from at least one of the following categories:
 - a. A parent of an individual with a Developmental Disability who is not the parent of the Member being reviewed;
 - b. A person with no personal or professional relationship with the Division; or
 - c. An individual with a Developmental Disability.
- B.** The PRC shall meet to review and approve or deny all submitted Behavior Plans.
- C.** The PRC chairperson shall send the PRC's written determination to the Planning Team within five Business Days of the meeting described in R6-6-906(B).
1. PRC approval of a Behavior Plan shall include:
 - a. A statement of agreement that the interventions approved are the Least Intrusive, least restrictive interventions, and that the interventions are in compliance with R6-6-904;
 - b. Any special considerations or concerns including specific monitoring instructions; and
 - c. Any formatting or PRC procedural or documentation changes that are required to be made consistent with the Behavior Plan's provisional approval and prior to the revised Behavior Plan being resubmitted to the PRC for reconsideration of full approval.
 2. PRC denial of a Behavior Plan shall include:
 - a. The reason for denial;
 - b. Recommendations for changes to the Behavior Plan; and
 - c. An explanation of the recommendations.
 3. The PRC may provide provisional approval that allows the Behavior Plan to be implemented.
 - a. The PRC shall only provide provisional approval for Behavior Plans identified in Subsection (C)(1)(c).
 - b. The PRC shall only provide provisional approval for up to 10 Business Days. After 10 Business Days, the provisional approval shall expire and the Planning Team shall be required to resubmit the Behavior Plan for PRC approval as in R6-6-905(2).
 - c. Upon receipt of a written request for an extension of a provisional approval of a Behavior Plan, the PRC shall grant an additional 10 Business Day extension if doing so is in the best interest of the Member. The PRC shall only grant one extension per Behavior Plan. Upon expiration of the extension, the Planning Team shall be required to resubmit the Behavior Plan for PRC approval as in R6-6-905(2).

R6-6-905, R6-6-907, Monitoring Implementing Behavior Treatment Plans

Each ISPP team shall specifically designate and record in the ISPP the name of a member of the team, excluding those direct service staff responsible for implementing the approved behavior treatment plan, who shall:

- A.** After a Behavior Plan is approved or provisionally approved by the PRC, the Division shall identify all Service Providers subject to the Behavior Plan and provide a copy of the Behavior Plan to those Service Providers within 10 Business Days.
- B.** A Service Provider identified in R6-6-907(A) shall:
1. Ensure that the behavior treatment plan Behavior Plan is implemented as approved by the PRC;
 2. Ensure that all persons individuals implementing the behavior treatment plan Behavior Plan have received appropriate training as specified in R6-6-906, R6-6-908 and as specified in the Member's Behavior Plan;
 3. Maintain training records of all individuals specified in R6-6-907(B)(2);



- 4. Evaluate, at least monthly, collected data and other relevant information as a measure of the effectiveness of the ~~behavior~~Behavior treatment plan;
- ~~3-5.~~ Ensure that objective, and accurate data are maintained in the client's Member's record; and
- ~~5-6.~~ Conduct on-site observations of the implementation of the Behavior Plan not less than at least twice per month once per month per Member in each Division-supported congregate setting where the Behavior Plan is being implemented and prepare, sign, and place in the client's Member's record a report of all observations.

~~R6-6-906~~R6-6-908. Training

- ~~A.~~ Any person who is involved in the use of a behavior treatment plan shall be trained by the Division or trained by an instructor approved by the Division prior to such involvement.
- ~~B.~~ Initial training shall cover at a minimum:
 - ~~1.~~ Provisions of law related to:
 - ~~a.~~ Interventions; particularly this Article and 42 CFR 483.450 (October 1, 1992), incorporated herein by reference and on file with the Office of the Secretary of State;
 - ~~b.~~ Legally mandated rights of individuals with developmental disabilities; particularly A.R.S. §§ 36-551.01, 36-561 and 42 CFR 483.420 (October 1, 1992), incorporated herein by reference and on file with the Office of the Secretary of State;
 - ~~c.~~ Confidentiality; particularly A.R.S. §§ 41-1959 and 36-586.01 and 42 CFR 483.410(e)(2) (October 1, 1992), incorporated herein by reference and on file with the Office of the Secretary of State.
 - ~~d.~~ Abuse and neglect prohibitions pursuant to A.R.S. § 36-569.
 - ~~2.~~ Intervention techniques, treatment and services, particularly addressing the risks and side effects that may adversely affect clients.
 - ~~3.~~ A general orientation to:
 - ~~a.~~ Division goals with respect to the provision of services to people with developmental disabilities.
 - ~~b.~~ Related policies and instructions of the Division.
- ~~C.~~ With respect to the use of interventions, training shall include hands-on or practical experience to be conducted by instructors approved by the Division, using a curriculum approved by the Division, and who have experience in the actual use of interventions as opposed to administrative responsibility for such use.
- ~~D.~~ In addition to initial training, the Division shall ensure that refresher training is available as necessary to maintain currency in knowledge and recent technical trends related to intervention for the management of inappropriate behavior.
- ~~E.~~ Physical management techniques shall only be used by those persons specifically trained in their use.
- ~~F.~~ The following records and documents related to training shall be maintained by the Division for five years and be available for public inspection:
 - ~~1.~~ A summary of the training plan adopted by the Division in compliance with this Section, including schedules, instructors, topics, and expressed parameters of the hands-on or practical experience component of the training.
 - ~~2.~~ Required special knowledge, skills, training, education or experience of the instructors related to managing inappropriate behaviors.
 - ~~3.~~ A list of persons satisfactorily completing initial and refresher courses and course dates.
- ~~G.~~ The Division shall review the training plan at least every two years for compliance with all applicable provisions of law and Division policy as well as for the protection of clients.
- ~~A.~~ A Service Provider shall ensure Managing Employees, Direct Care Workers, and supervisors of Direct Care Workers successfully complete Article 9 training.
- ~~B.~~ All training under this Article shall be taught by an Article 9 Instructor with a current certification as an Article 9 Instructor from the Division.
- ~~C.~~ Article 9 training shall include:
 - ~~1.~~ The requirements, restrictions, and purpose of this Article;
 - ~~2.~~ Interventions, including those described in this Article;
 - ~~3.~~ Members' rights as prescribed in statute, rule, and Division policy;
 - ~~4.~~ Confidentiality requirements; and
 - ~~5.~~ Division policies and procedures relating to this Article.
- ~~D.~~ Article 9 training shall be completed:
 - ~~1.~~ For initial training, within 90 calendar days of hire or before working directly with Members without supervision from someone with a current certification in Article 9, whichever is earlier; and
 - ~~2.~~ For recertification in Article 9 as directed by the Division.

~~R6-6-907~~R6-6-909. Sanctions

For programs operated, licensed, certified, supervised or financially supported by the Division, failure to comply with any part of this Article may be grounds for suspension or revocation of a license, for termination of contract, employment, or for any other applicable administrative or judicial remedy.

The Division may impose sanctions for failure to comply with any part of this Article, including:

- 1. Suspension or revocation of a license or certification;
- 2. Termination of a contract;
- 3. Prohibition against contact with Members; and
- 4. Any other administrative, contractual, or judicial remedies.

~~R6-6-908~~R6-6-910. Emergency Measures

- A. Physical management techniques employed in an emergency to manage a sudden, intense, or out-of-control behavior Interventions used during an Emergency Safety Situation to manage a sudden, intense, or out-of-control behavior shall be:

1. ~~Use the~~ The least amount of intervention necessary to safely physically manage an individual-Emergency Safety Situation;
 2. ~~Be used~~ Used only when less restrictive methods were attempted and were unsuccessful or are inappropriate;
 3. ~~Be used~~ Used only when necessary to prevent the individual Member from harming self or others ~~or causing severe damage to property~~;
 4. ~~Be used concurrently with the uncontrolled behavior.~~
 - 5-4. ~~Be continued for~~ Implemented during the Emergency Safety Situation for the least amount of time necessary; and to bring the individual's behavior under control.
 - 6-5. ~~Be appropriate to the situation to ensure safety. Performed only by individuals trained by an instructor currently certified by the Division in the implementation of Division-approved intervention techniques.~~
- B.** When an ~~emergency measure~~ Emergency Measure, including the use of Psychotropic Medications pursuant to ~~R6-6-909(D); R6-6-911(C) or law enforcement intervention~~, is employed to manage a sudden, intense, out-of-control behavior, the ~~person~~ Service Provider employing that ~~measure~~ Emergency Measure shall:
1. ~~Immediately~~ As soon as it is safe to do so and within 24 hours, report the circumstances of the ~~emergency measure~~ Emergency Measure to the person designated by the Division and to the ~~responsible person~~ Responsible Person.
 2. Complete and provide to the PRC and as prescribed by the Division ~~Provide~~, within one ~~working~~ Business day ~~Day~~, a ~~complete~~ written report of the circumstances of the ~~emergency measure~~ Emergency Measure to the ~~responsible person~~ the case manager, the chairperson of the Program Review Committee, and the Human Rights Committee.
 3. ~~Request that the case managers~~ Alert the Support Coordinator ~~reconvene of the need to convene~~ the ~~ISPP team~~ Planning Team to determine the need for a new or revised ~~behavior treatment plan~~ Behavior Plan when any ~~emergency measure~~ Emergency Measure is used two or more times in a 30-day period or with any identifiable pattern.
- C.** Upon receipt of an alert specified in (B)(3) of this Section, the Support Coordinator shall reconvene the Planning Team to consider the need for a new or revised Behavior Plan as soon as possible but not later than 30 Business Days after receiving the alert.
- ~~C-D.~~ Upon receipt of a written report as specified in subsection (B)(2) above, the PRC shall:
1. Review, evaluate, and track reports of ~~emergency measures~~ Emergency Measures taken; and
 2. Report, to a person designated by the Division, instances of possible excessive or inappropriate use of ~~emergency measures~~ Emergency Measures on a case-by-case basis for corrective action.
- ~~R6-6-909; R6-6-911.~~ Behavior-modifying Medications Psychotropic Medication**
- ~~A.~~** The Division shall make available the services of a consulting psychiatrist who shall review cases and provide recommendations to prescribing physicians to ensure that the medication prescribed is the most appropriate in type and dosage to meet the client's needs.
- ~~B-A.~~** Behavior-modifying medications Psychotropic Medication shall be prescribed and administered only:
1. When, in the opinion of a licensed physician, ~~they~~ Psychotropic Medication will be effective in ~~producing an increase in appropriate behaviors; assisting a Member in meeting the goals of the Planning Document~~ and it can be justified that the ~~need of Psychotropic Medication to assist in meeting these goals~~ harmful effects of the behavior clearly ~~outweigh~~ outweighs the potential negative effects of the ~~behavior modifying medication~~ Psychotropic Medication;
 2. As part of a ~~behavior treatment plan in the ISPP Behavior Plan unless there is an exception granted by the Division; and~~
 3. With the informed consent of the ~~responsible person~~ Responsible Person.
- ~~C-B.~~** The Division shall provide the following monitoring, in addition to that specified in ~~R6-6-905 R6-6-907~~, for all behavior treatment plans Behavior Plans that include the use of a behavior-modifying medication Psychotropic Medication:
1. Ensure that collected data relative to the ~~client's Member's~~ Member's response to the medication is evaluated, at least quarterly, at a medication review by the physician ~~and the member of the ISPP team designated pursuant to R6-6-905,~~ the Service Provider, and other members of the ISPP team Planning Team as needed.
 2. Ensure that each ~~client~~ Member receiving a ~~behavior-modifying medication~~ Psychotropic Medication is screened for side effects, and Tardive Dyskinesia as needed, and that the results of such screening are:
 - a. Documented in the ~~client's Member's~~ Member's case record;
 - b. ~~Provided immediately~~ If positive for side effects, provided as soon as it is safe to do so and within 24 hours to the ~~prescribing physician, responsible person~~ Responsible Person, and ISPP team Planning Team for appropriate action ~~if the screening results are positive; and~~
 - c. Provided to the ~~Program Review Committee PRC~~ and the ~~Human Rights Committee IOC~~ within ~~15 working days Business Days~~ for review of screening results that are positive.
- ~~D-C.~~** In the event of an emergency Emergency Safety Situation, a physician's Qualified Health Care Professional's order for a behavior modifying medication Psychotropic Medication may, if appropriate, be requested for a specific one-time emergency use. The person administering the medication shall, immediately as soon as it is safe to do so and within 24 hours, report it pursuant to ~~R6-6-908(B) the use of Psychotropic Medication as specified under R6-6-910(B).~~
- ~~E-D.~~** The Service Provider shall, as soon as it is safe to do so and within 24 hours, notify the responsible person Responsible Person shall, immediately be notified of any changes in medication type or dosage increase or introduction of Psychotropic Medications for a Member.
- ~~E.~~** The Service Provider shall notify the PRC within 15 Business Days of any increase or introduction of Psychotropic Medication for a Member.

NOTICES OF FINAL RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Final Rulemaking. Final rules have been through the regular rulemaking process as defined in the Administrative Procedures Act. These rules were either approved by the Governor’s Regulatory Review Council or the Attorney General’s Office. Certificates of Approval are on file with the Office.

The final published notice includes a preamble and text of the rules as filed by the agency.

Economic Impact Statements are not published but are filed by the agency with their final notice.

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the final rules should be addressed to the agency that promulgated them. Refer to item #5 to contact the person charged with the rulemaking.

The codified version of these rules will be published in the *Arizona Administrative Code*.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

[R22-82]

PREAMBLE

- | | |
|---|---------------------------------|
| 1. <u>Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
| R4-23-411 | Amend |
| R4-23-1104 | Amend |
- 2. Citations to the agency’s statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**
 Authorizing statute: A.R.S. § 32-1904(A)(1) and (B)
 Implementing statute: A.R.S. §§ 32-1923.01, 32-1925, 32-1961, and 32-1974
- 3. The effective date for the rules:**
 July 2, 2022
- 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. Citation to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**
 Notice of Rulemaking Docket Opening: 27 A.A.R. 1232, August 13, 2021
 Notice of Proposed Rulemaking: 27 A.A.R. 1219, August 13, 2021
 Notice of Supplemental Proposed Rulemaking: 28 A.A.R. 339, February 4, 2022
- 5. The agency’s contact person who can answer questions about the rulemaking:**
 Name: Kamlesh Gandhi
 Address: Board of Pharmacy
 1616 W. Adams St., Suite 120
 Phoenix, AZ 85007
 Telephone: (602) 771-2740
 Fax: (602) 771-2749
 Email: kgandhi@azpharmacy.gov
 Website: www.azpharmacy.gov
- 6. An agency’s justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**
 The Board is amending its rules to allow pharmacy technicians to perform additional duties when the duty is delegated by the pharmacist on duty. This expansion of duties performed by a pharmacy technician is consistent with the evolving national landscape for pharmacy technicians. The Board is also making minor changes needed to align the rules with statute or to incorporate changes implemented during the COVID19 emergency.
 An exemption from Executive Order 2021-02 was provided by Trista Guzman Glover in an e-mail dated May 18, 2021. Ms Guzman Glover authorized the Board to submit the rulemaking to the Council in an e-mail dated October 27, 2021. As a result of opinions expressed by the Council at its December 7, 2021, meeting, the Board decided to amend the proposed rulemaking. An

exemption from Executive Order 2021-02 for this supplemental proposed rulemaking was provided by Ms Guzman Glover in an email dated January 6, 2022. Approval to submit this rule package to the Council was provided by Brian Norman, of the Governor's Office, in an e-mail dated March 21, 2022.

- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
The Board did not review or rely on 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:**
Expanding the duties performed by pharmacy technicians will enable pharmacy permittees to serve the public more efficiently and effectively.
- 10. A description of any changes between the proposed rulemaking, including supplemental notices, and the final rulemaking:**
At its December 7, 2021, meeting, members of the Council expressed reluctance to approve R4-23-1104(B)(5), as published in the Notice of Proposed Rulemaking, because the proposed rule authorized a pharmacy technician who was trained and working under the supervision of the pharmacist on duty to administer an immunization or vaccine. The provision was removed in a Notice of Supplemental Proposed Rulemaking and a provision added at R4-23-1104(B)(5)(a) excluding a pharmacy technician from administering an immunization or vaccine unless specifically authorized by statute or rule. No changes have been made between the Notice of Supplemental Proposed Rulemaking and this Notice of Final Rulemaking.
At its study session on April 26, 2022, members of the Council requested that language in R4-23-1104(B)(5) be changed in a non-substantive manner. This was done. The subsection was also reformatted to emphasize non-delegable tasks. The reformatting involved adding subsections (B)(6) and (B)(7). None of these changes is substantial under the terms specified in A.R.S. § 41-1025(B).
- 11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to comments:**
No comments were received from members of the public regarding the Notice of Supplemental Proposed Rulemaking.
- 12. All agencies shall list any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**
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:**
Under A.R.S. § 41-1037(A)(2), the license issued to a pharmacy technician under A.R.S. § 32-1923.01 is not a general permit. A.R.S. § 32-1923.01 requires the Board to assess individual qualifications before issuing the license.
- b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**
No rule in this rulemaking is more stringent than federal law. There are numerous federal laws with which individuals dealing with drugs must comply but none is directly applicable to 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 rule:**
None
- 14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**
No rule in the rulemaking was previously made, amended, or repealed as an emergency rule.
- 15. The full text of the rules follows:**

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

ARTICLE 4. PROFESSIONAL PRACTICES

Section
R4-23-411. Pharmacist-administered or Intern-administered Immunizations

ARTICLE 11. PHARMACY TECHNICIANS

Section
R4-23-1104. Pharmacy Technicians and Pharmacy Technician Trainees

ARTICLE 4. PROFESSIONAL PRACTICES**R4-23-411. Pharmacist-administered or Intern-administered Immunizations**

- A.** Authorization to administer immunizations, vaccines, and emergency medications, as defined at A.R.S. § 32-1974(N), to an eligible adult patient or eligible minor patient. As used in this Section, “eligible adult patient” means an eligible patient 13 years of age or older and “eligible minor patient” means an eligible patient at least three years of age but less than 13 years of age. A pharmacist or an intern in the presence of and under the immediate personal supervision of a pharmacist, may administer, without a prescription, immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient, if:
1. Both the pharmacist and intern meet the qualifications and standards specified by A.R.S. § 32-1974 and this Section;
 2. The Board authorizes both the pharmacist and intern as specified in subsection (D);
 3. For an eligible adult patient, the immunization or vaccine is:
 - a. Recommended for adults by the United States Centers for Disease Control and Prevention; or
 - b. Recommended by the United States Centers for Disease Control and Prevention’s Health Information for International Travel;
 4. For an eligible adult patient, the immunization or vaccine is not on the Arizona Department of Health Services list specified in A.A.C. R9-6-1301 as required under A.R.S. § 32-1974(I);
 5. For an eligible minor patient, the immunization or vaccine is for influenza or a booster dose as described under A.R.S. § 32-1974(B)(2); and
 6. For an eligible minor patient, any immunizations or vaccines other than influenza or a booster dose as described under A.R.S. § 32-1974(B)(2) are administered in response to a public health emergency declared by the Governor under A.R.S. § 36-787.
- B.** A pharmacist or an intern in the presence of and under the immediate personal supervision of a pharmacist, may administer, with a prescription, any immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient, if:
1. Both the pharmacist and intern meet the qualifications and standards specified by A.R.S. § 32-1974 and this Section; and
 2. The Board authorizes both the pharmacist and intern as specified in subsection (D).
- C.** A pharmacist or intern who is authorized to administer immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient shall:
1. Not delegate the authority to any other pharmacist, intern, or employee not specifically authorized by rule; and
 2. Maintain their current certificate for inspection by the Board or its designee or review by the public.
- D.** Qualifications to administer immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient. After receipt of a completed application form, the Board shall authorize the administration of immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient by a pharmacist or intern who meets the following qualifications:
1. Has a current license to practice pharmacy in this state,
 2. Successfully completes a training program specified in subsection (E), and
 3. Has a current certificate in basic cardiopulmonary resuscitation.
- E.** Immunizations training program requirements. A training program for pharmacists or interns to administer immunizations, vaccines, and emergency medications to an eligible adult patient or eligible minor patient shall include the following courses of study:
1. Basic immunology and the human immune response;
 2. Mechanics of immunity, adverse effects, dose, and administration schedule of available vaccines;
 3. Response to an emergency situation as a result of the administration of an immunization, vaccine, or medication including administering an emergency medication to counteract the adverse effects of the immunization, vaccine, or medication given;
 4. Administration of intramuscular injections;
 5. Other immunization administration methods; and
 6. Recordkeeping and reporting requirements specified in subsection (F).
- F.** Recordkeeping and reporting requirements.
1. A pharmacist or intern authorized under this Section to administer immunizations, vaccines, and emergency medications to an eligible patient shall provide to the pharmacy the following information and documentation regarding each immunization, vaccine, or emergency medication administered:
 - a. The name, address, and date of birth of the patient;
 - b. The date of administration and site of injection;
 - c. The name, dose, manufacturer’s lot number, and expiration date of the vaccine, immunization, or emergency medication;
 - d. The name and address of the patient’s identified primary-care provider or physician;
 - e. The name of the pharmacist or intern administering the immunization, vaccine, or emergency medication;
 - f. A record of the pharmacist’s or intern’s consultation with the patient determining that the patient is an eligible patient as defined in R4-23-110;
 - g. Consultation or other professional information provided to the patient by the pharmacist or intern;
 - h. The name and date of the immunization or vaccine information sheet provided to the patient; and
 - i. For an immunization or vaccine given to an eligible minor patient, a consent form signed by the minor’s parent or guardian.
 2. As required under A.R.S. § 32-1974(F)(1), the pharmacist or intern shall provide a written or electronic report to the patient’s primary-care provider or physician containing the documentation required in subsection (F)(1)(a) through (d). The pharmacy shall document the time and date the report is sent and make the record of compliance with this subsection available in the pharmacy or on request, within 72 hours, for inspection by the Board or its designee.
 3. A pharmacy’s pharmacist-in-charge or permittee shall maintain the records required in subsection (F)(1) in the pharmacy or database for a minimum of seven years from the administration date.
- G.** Confidentiality of records. A pharmacist, intern, pharmacy permittee, or pharmacist-in-charge shall comply with applicable state and federal privacy statutes and rules when releasing patient health information.

- H. Pharmacist-administered or intern-administered adult immunizations that require a prescription order. A pharmacist or intern authorized by the Board to administer adult immunizations or vaccines shall not administer any immunization or vaccine listed in A.A.C. R9-6-1301 without a prescription order. In addition to filing a prescription order as required in A.R.S. § 32-1964, a pharmacist or pharmacy intern who administers an immunization or vaccine listed in A.A.C. R9-6-1301 shall comply with the recordkeeping requirements of subsection (F)(1).

ARTICLE 11. PHARMACY TECHNICIANS

R4-23-1104. Pharmacy Technicians and Pharmacy Technician Trainees

- A. Permissible tasks of a pharmacy technician trainee. Acting in compliance with all applicable statutes and rules and under the supervision of a pharmacist, a pharmacy technician trainee licensed under R4-23-1103 may assist ~~a graduate intern, pharmacy~~ an intern, or pharmacist with the following when applicable to the pharmacy practice site:
1. Record on the original prescription order the serial number of the prescription medication and date dispensed;
 2. Initiate or accept verbal or electronic refill authorization from a medical practitioner or medical practitioner's agent and record, on the original prescription order or by an alternative method approved by the Board or its designee, the medical practitioner's name, patient name, name and quantity of prescription medication, specific refill information, and name of medical practitioner's agent, if any;
 3. Record information in the refill record or patient profile;
 4. Enter information for a new or refill prescription medication as required under A.R.S. § 32-1964;
 5. Type and affix a label for the prescription medication. A pharmacist or ~~graduate or pharmacy~~ intern working under the supervision of a pharmacist shall verify the accuracy of the label as described under R4-23-402(A)(11);
 6. Reconstitute a prescription medication, if a pharmacist checks the ingredients and procedure before reconstitution and verifies the final product after reconstitution;
 7. Retrieve, count, or pour a prescription medication, if a pharmacist verifies the contents of the prescription medication against the original prescription medication container or by an alternative drug identification method approved by the Board or its designee;
 8. Prepackage drugs in accordance with R4-23-402(A); and
 9. Measure, count, pour, or otherwise prepare and package a drug needed for hospital inpatient dispensing, if a pharmacist verifies the accuracy, measuring, counting, pouring, preparing, packaging, and safety of the drug before the drug is delivered to a patient care area.
- B. Permissible tasks of a pharmacy technician. Acting in compliance with all applicable statutes and rules and under the supervision of a pharmacist, a pharmacy technician licensed under R4-23-1102 may:
1. Perform the tasks listed in subsection (A);
 2. After completing a pharmacy technician drug compounding training program developed by the pharmacy permittee or pharmacist-in-charge under R4-23-1105(C), assist a pharmacist, ~~graduate intern, or pharmacy~~ intern in compounding prescription medications and sterile or non-sterile pharmaceuticals in accordance with written policies and procedures, if the preparation, accuracy, and safety of the final product is verified by a pharmacist before dispensing;
 3. Perform a final technology-assisted verification of product if the pharmacy technician is qualified under R4-23-1104.01(D); ~~and~~
 4. If technology-assisted verification is performed, type and affix a label for the prescription medication. A pharmacist or ~~graduate or pharmacy~~ intern shall verify the accuracy of the label as described under R4-23-402(A)(12);
 5. Perform a task not related to professional judgment if the task is delegated to the pharmacy technician by the pharmacist on duty after the pharmacist on duty ensures the pharmacy technician is trained to do the task and evidence of the training exists in the pharmacy file.
 6. A pharmacist on duty shall not delegate or attempt to delegate the following tasks to a pharmacy technician:
 - a. Administering an emergency medication.
 - b. Counseling a patient.
 - c. Conducting a drug utilization review.
 - d. Performing any task that requires the exercise of clinical judgment.
 - e. Issuing a prescription order.
 - f. Receiving a new prescription order for a controlled substance, or
 - g. Transferring by telephone an existing prescription order for a controlled substance; and
 7. The pharmacist on duty shall not delegate or attempt to delegate to a pharmacy technician the administering of an immunization or vaccine unless authority for the administration is specifically provided by statute or rule.
- C. A trained and licensed pharmacy technician or pharmacy technician trainee who performs a task as authorized under subsections (A) and (B) shall ensure the task is performed accurately.
- D. Prohibited activities. A pharmacy technician or pharmacy technician trainee shall not perform a professional practice reserved for a pharmacist, ~~graduate intern, or pharmacy~~ intern in accordance with R4-23-402 or R4-23-653 unless otherwise allowed by rule.
- E. A pharmacy technician or pharmacy technician trainee shall wear a badge indicating name and title while on duty.
- F. Before employing a pharmacy technician or pharmacy technician trainee, a pharmacy permittee or pharmacist-in-charge shall develop, implement, review, and revise in the manner described in R4-23-653(A) and comply with policies and procedures outlined in subsection (G) for pharmacy technician and pharmacy technician trainee tasks.
- G. A pharmacy permittee or pharmacist-in-charge shall ensure policies and procedures required under subsection (F) include the following:
1. For all practice sites:
 - a. Supervisory controls and verification procedures to ensure the quality and safety of pharmaceutical service;
 - b. Employment performance expectations for a pharmacy technician and pharmacy technician trainee;
 - c. The tasks a pharmacy technician or pharmacy technician trainee may perform as specified under subsections (A) and (B);
 - d. Pharmacist and patient communication;

- e. Reporting, correcting, and avoiding medication and dispensing errors;
- f. Security procedures for:
 - i. Confidentiality of patient prescription records, and
 - ii. The pharmacy area;
- g. Automated medication distribution system;
- h. Compounding procedures for pharmacy technicians; and
- i. Brief overview of state and federal pharmacy statutes and rules;
- 2. For community and limited-service pharmacy practice sites:
 - a. Prescription dispensing procedures for:
 - i. Accepting a new written prescription order,
 - ii. Accepting a refill request,
 - iii. Selecting a drug product,
 - iv. Counting and pouring,
 - v. Labeling, and
 - vi. Obtaining refill authorization; and
 - b. Computer data-entry procedures for:
 - i. New and refill prescriptions,
 - ii. Patient’s drug allergies,
 - iii. Drug-drug interactions,
 - iv. Drug-food interactions,
 - v. Drug-disease state contraindications,
 - vi. Refill frequency,
 - vii. Patient’s disease and medical condition,
 - viii. Patient’s age or date of birth and gender, and
 - ix. Patient profile maintenance; and
- 3. For hospital pharmacy practice sites:
 - a. Medication order procurement and data entry,
 - b. Drug preparation and packaging,
 - c. Outpatient and inpatient drug delivery, and
 - d. Inspection of drug storage and preparation areas and patient care areas.

NOTICE OF FINAL RULEMAKING

TITLE 13. PUBLIC SAFETY

CHAPTER 15. DEPARTMENT OF PUBLIC SAFETY – RAPID DNA

[R22-83]

PREAMBLE

- | | |
|---|---------------------------------|
| <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
| Chapter 15 | New Chapter |
| Article 1 | New Article |
| R13-15-101 | New Section |
| R13-15-102 | New Section |
| R13-15-103 | New Section |
| R13-15-104 | New Section |
| R13-15-105 | New Section |
| R13-15-106 | New Section |
| R13-15-107 | New Section |
| R13-15-108 | New Section |
- 2. Citations to the agency’s statutory authority to include the authorizing statute (general) and the implementing statute (specific):**
 Authorizing statute: A.R.S. § 17-1713(A)(4)
 Implementing statute: A.R.S. § 41-1772(A) Prescribe procedures for administering Rapid DNA testing of crime scene DNA samples including procedures for approving Rapid DNA testing devices and ensuring the accuracy of results obtained from Rapid DNA testing devices; as well as qualifications for persons who conduct Rapid DNA testing and persons who instruct others on administering Rapid DNA testing.
- 3. The effective date of the rules:**
 July 3, 2022
- a. If the agency selected a date earlier than the 60 days effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**
 An earlier date was not selected.
 - b. If the agency selected a date later than the 60 days effective date as specified in A.R.S. § 41-1032(A), include**

the later date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(B):

A later date was not selected.

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: 28 A.A.R. 124, January 7, 2022

Notice of Proposed Rulemaking: 28 A.A.R. 10, January 7, 2022

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

Name: Scott Rex, Crime Laboratory Manager, Rapid DNA

Address: Arizona Department of Public Safety
POB 6638, Mail Drop 1150
Phoenix, AZ 85005-6638

Telephone: (602) 223-2339

Email: srex@azdps.gov

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

The 55th Legislature First Regular Session 2021, Chapter 403, House Bill 2893 was approved by the Governor on June 30, 2021 and filed with the Secretary of State on June 30, 2021. The legislation created A.R.S. § 41-1772 requiring rules to be adopted for Rapid DNA devices, procedures and administration.

With the implementation of this new chapter, the Department would certify Rapid DNA instruments for use in a law enforcement capacity for developing investigative leads. Additionally, the chapter will create the needed expectations and limits for administration of a Rapid DNA law enforcement program.

The Department believes that not adopting rules for the use of Rapid DNA instrumentation in law enforcement programs could result in some law enforcement agencies utilizing the technology in a manner that is not consistent with forensic laboratory and/or Federal Bureau of Investigation standards, which could ultimately negatively impact the ability of the forensic laboratory associated with the agency in question to provide forensic support through either lab work or court testimony.

The Department was granted exceptions to the rulemaking moratorium contained in Executive Order 2021-02 in an email from Megan Fitzgerald, Governor's public policy advisor to the Department, dated December 13, 2021.

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

The Department has relied on the following two manufacturer documents to validate the equipment:

- ThermoFisher Scientific, Applied Biosystems, RapidHit™ ID System v1.3.1, Publication number MAN0018938, Revision A.0, January 5, 2021.
- ThermoFisher Scientific, Applied Biosystems, User Bulletin, RapidINTEL™ Sample Cartridge for blood and saliva samples, RapidHIT™ ID System v1.1.3, Publication number MAN0018979, Revision A.0.

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

The rulemaking does not diminish a previous grant of authority.

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

The Department expects minimal economic impact to law enforcement agencies unless the legislature discontinues funding for the program or if a specific law enforcement agency decides to purchase their own instrumentation and/or implement their own stand-alone Rapid DNA program. The Department currently maintains this program with regularly allocated budget and the FY2022 allocation from the legislature for expansion of the program across the state. The FY2022 budget included \$600,000 for the Department to purchase, deploy and certify county sheriff employees. A continued allocation in funding is being requested by the Department for FY2023, along with a request for additional FTEs to support an expansion of the program. The Department does not expect other agencies to hire FTEs to administer this rulemaking and current program. Small businesses will be unaffected. Agencies purchasing their own instrumentation and/or creating their own standalone program would bear all expenses for instrumentation and supplies as well as the expense of any additional FTEs allocated to support the program. The public will benefit through improved speed in analysis of DNA samples to develop investigative leads early in the investigation.

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

There are no changes from the proposed rulemaking to the final rulemaking. A supplemental rulemaking was not conducted.

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

The Department conducted an oral public comment meeting on February 9, 2022. No members of the public attended the meeting. The Department did not receive any written comments prior to the close of record.

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

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

permit is not used:

The rules require a permit. Evidentiary Rapid DNA devices are scientific devices that must meet standards recognized by the scientific community for court proceedings. The operators and maintainers of these devices are required to testify in a court of law on their training, skills, techniques and procedures to operate or maintain these devices. Given the legal aspect that has an impact on the State’s or defendant’s case, a general permit cannot be issued.

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

There is no corresponding 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:

The Department has not received an analysis.

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

Section 101, subsection #22: Federal Bureau of Investigation, Quality Assurance Standards for Forensic DNA Testing Laboratories dated July 1, 2020.

14. Whether the rule previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-4-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

The rule was not previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

**TITLE 13. PUBLIC SAFETY
CHAPTER 15. DEPARTMENT OF PUBLIC SAFETY – RAPID DNA**

ARTICLE 1. LAW ENFORCEMENT RAPID DNA TESTING

Section

| | |
|-------------|--|
| R13-15-101. | <u>Definitions</u> |
| R13-15-102. | <u>Exemptions</u> |
| R13-15-103. | <u>Instruments; Approvals, Standards, Authorizations</u> |
| R13-15-104. | <u>Operator Certification</u> |
| R13-15-105. | <u>Testing Requirements and Procedures</u> |
| R13-15-106. | <u>Testing Site Minimum Facilities Requirements</u> |
| R13-15-107. | <u>Partner Agency Sites</u> |
| R13-15-108. | <u>Audits</u> |

ARTICLE 1. LAW ENFORCEMENT RAPID DNA TESTING

R13-15-101. Definitions

In this article, unless the context otherwise requires:

1. “Accredited laboratory” means a laboratory that currently meets ISO 17025 accreditation standards and holds accreditation through a nationally or internationally accrediting organization.
2. “Allele” means one of two or more versions of a gene.
3. “Chromosome” means the structure found in the nucleus of a cell that carries genetic information.
4. “CJIS” means “Criminal Justice Information Services”, a division of the Federal Bureau of Investigations which sets law enforcement standards for data security and encryption.
5. “Crime scene sample” means a sample collected from a crime scene believed to contain DNA of value to advance the investigation.
6. “Database” means a repository for convicted offender and arrestee samples to be used in a search against an unknown DNA profile in accordance with A.R.S. § 13-1610.
7. “Department” means the Arizona Department of Public Safety.
8. “Developmental validation” means a method, as outlined in the Quality Assurance Standards, of determining that a Rapid DNA instrument meets generally accepted scientific standards for Rapid DNA analysis. This validation is performed and/or coordinated by the manufacturer of the instrument and must be made publicly available.
9. “Director” means the Director of the Arizona Department of Public Safety.
10. “DNA” means deoxyribonucleic acid, which is the hereditary material in humans and other organisms.
11. “DNA profile” means a set of numbers from a series of genetic markers obtained from an individual’s DNA.
12. “Gene” means a unit of heredity which is transferred from a parent to an offspring that determines some characteristic of the offspring.
13. “Heredity” is the passing on of genetic characteristics from one generation to another.
14. “Internal validation” means a method performed by an accredited laboratory, as outlined in the Quality Assurance Standards, of determining that a Rapid DNA instrument meets generally accepted scientific standards for Rapid DNA analysis as used in the Rapid DNA testing program for the agency.
15. “Known reference sample” means a sample of DNA taken directly from an individual.
16. “Ladder” means a representation of the most common alleles present within a locus. The alleles present provide a reference to size the alleles present in the sample being analyzed.

17. “Locus” means the position of a gene on a chromosome.
18. “Negative control” means a quality control measure which is a sample used on the Rapid DNA instrument to detect DNA contamination in the reagents and consumables.
19. “Nucleus” means the center structure of a cell that contains genetic information.
20. “Performance check” means a series of analyses run on a Rapid DNA instrument at a Rapid DNA testing site to determine that the instrument can be put into service for Rapid DNA testing of crime scene and known reference samples.
21. “Positive control” means a known DNA sample processed on the Rapid DNA instrument that provides the expected DNA profile for that sample.
22. “Quality Assurance Standards (OAS)” means quality assurance requirements that are incorporated by reference by the Federal Bureau of Investigations, Quality Assurance Standards for Forensic DNA Testing Laboratories dated July 1, 2020.
23. “Rapid DNA” means an automated process of developing a DNA profile from a crime scene samples or known reference samples within a compressed period of time, typically under two hours.
24. “Rapid DNA Consultant” means an individual who is a forensic scientist with training and experience in DNA analysis and interpretation; who has successfully completed an agency’s Rapid DNA Operator training program; who can perform interpretations on crime scene samples or known reference samples when requested by a Rapid DNA Operator; and who may teach training classes for new Rapid DNA Operators.
25. “Rapid DNA Coordinator” means an employee of the Arizona Department of Public Safety who meets the requirements of a Rapid DNA Consultant and who oversees the operations of the Department’s Law Enforcement Rapid DNA Program.
26. “Rapid DNA instrument” means a scientific instrument used to conduct Rapid DNA analysis.
27. “Rapid DNA Operator” means an individual who has successfully completed an agency’s Rapid DNA Operator training program and can operate the Rapid DNA instrument specific to their training.
28. “Rapid DNA partner agency site” means a Rapid DNA site that has met all of the requirements for a Rapid DNA testing site and that, additionally, has partnered with the Department to access their Rapid DNA database and receive support from the Rapid DNA Coordinator.
29. “Rapid DNA testing site” means a location at a law enforcement agency in the State of Arizona that meets the specific requirements to support and maintain a Rapid DNA law enforcement program and has been approved to do so by the Department.
30. “Raw data” is data from a Rapid DNA instrument prior to any adjustments that might be made by a software program utilized by the instrument.

R13-15-102. Exemptions

Rapid DNA applications that are not being performed as part of a law enforcement program to develop investigative leads from crime scenes and known reference sample and testing sites that are not associated with an accredited laboratory through a legally binding agreement and do not use personnel for testing associated with a law enforcement agency are exempt from this chapter. These exempt applications include the following:

1. Unidentified human remains testing by medical examiner/coroner offices.
2. Victim identification in mass disaster scenarios.
3. Missing persons cases not associated with a law enforcement crime scene investigation.
4. Applications within accredited laboratories; or
5. Rapid DNA booking stations.

R13-15-103. Instruments; Approvals, Standards, Authorizations

- A.** The Director may approve instruments used to perform Rapid DNA analysis as part of a law enforcement program after receiving a report from an accredited laboratory that successfully tested a typical model of the instrument for compliance with the standards in subsection (B).
- B.** The instrument shall meet the following standards of performance:
 1. The instrument shall have a publicly-available developmental validation completed by the manufacturer which follows the requirements of the OAS and includes, where applicable:
 - a. Characterization of the genetic marker.
 - b. Species specificity.
 - c. Sensitivity studies.
 - d. Stability studies.
 - e. Reproducibility.
 - f. Case-type sample.
 - g. Population studies.
 - h. Mixture studies.
 - i. Precision and accuracy studies; and
 - j. PCR-based studies.
 2. The instrument shall have an internal validation completed by the submitting accredited laboratory which follows the requirements of the OAS and includes, where applicable:
 - a. Known and mock evidence samples.
 - b. Precision and accuracy studies.
 - c. Sensitivity and stochastic studies.
 - d. Mixture studies; and
 - e. Contamination assessments.
 3. The instrument shall allow the accredited laboratory performing the internal validation the ability to access, view and interpret raw data from the instrument in order to ensure the integrity of the analysis.
- C.** The accredited laboratory shall provide the following to the Department for approval of the Rapid DNA instrument:

1. A copy of the developmental validation.
 2. A summary of the internal validation.
 3. All data from the internal validation; and
 4. Any additional supporting documentation or calculations needed to support the internal validation.
- D.** The Department, upon specific findings that a device is unreliable, inaccurate, or otherwise unable to meet the requirements of a validation, shall publish a disapproval of use of the instrument.
- E.** The following instrument is approved by the Director:

| Instrument Device/Model | Manufacturer |
|--------------------------------|---------------------|
| RapidHIT ID | Thermofisher |

- F.** Only Rapid DNA Operators are authorized to operate approved Rapid DNA instruments for use at law enforcement agencies.
- G.** The Director may publish a temporary approval of a Rapid DNA instrument that has been successfully tested for compliance with the standards in subsection B for use prior to and pending the instrument being added to subsection E. The temporary approval shall expire three years after its effective date.

R13-15-104. Operator Certification

- A.** In order to be certified as a Rapid DNA Operator to operate a Rapid DNA instrument as part of a law enforcement program, an employee of a law enforcement agency shall successfully complete training that meets the following criteria:
1. A training program approved by the Director.
 2. The training program shall include at a minimum the following:
 - a. Information on basic biology, specifically including what DNA is and its purpose.
 - b. Information on basic DNA analysis.
 - c. Identification of appropriate sample types for analysis on Rapid DNA instrumentation.
 - d. Proper collection and preservation of samples for analysis on Rapid DNA instrumentation.
 - e. Information on clean techniques to process samples and minimize contamination.
 - f. Information on DNA databases.
 - g. Evaluation and interpretation of DNA results.
 - h. Basic knowledge of the operation of a Rapid DNA instrument.
 - i. Information on court testimony regarding Rapid DNA analysis.
 - j. Taking a sample from collection to identification of an investigative lead using the Rapid DNA instrument and where applicable any associated database.
 - k. A written examination covering the objectives in subsections (a) through (i); and
 - l. A practical examination to demonstrate competence in subsection (j).
 3. Certification as a Rapid DNA Operator is contingent upon successful completion of the approved training program as measured by the written and practical examinations associated with the program. The written examination shall be passed with a minimum score of 90% and the prospective operator shall demonstrate the ability to successfully operate the Rapid DNA instrument in a practical-use test.
 4. Maintaining certification as a Rapid DNA Operator is contingent on completing one of the following on an annual basis:
 - a. Submission to the Department of evidence of successful operation of the Rapid DNA instrument during the annual period;
or
 - b. Submission to the Department of evidence of successful completion of a proficiency test that demonstrated operation of the instrument and receiving the expected result as shown by the test record completed by the operator on the Rapid DNA instrument during the annual period.
- B.** The Department may suspend or revoke the certification of a Rapid DNA Operator for any of the following reasons:
1. Any falsified test results or false statements to the Department, other law enforcement agency or criminal justice entity.
 2. Failure of an operator to maintain quality control over sample preparation, reagents, or instrumentation during analysis of samples.
 3. Failure of the operator to provide evidence of successful operation of the instrument on an annual basis pursuant to subsection (A)(4).
 4. Failure to operate the Rapid DNA instrument according to approved procedures or methods.
 5. Undertaking actions that compromise the integrity of the results or of the Rapid DNA testing program.
- C.** The provisions of A.R.S. Title 41, Chapter 6, Article 10 are applicable to denials, revocations, suspensions and administrative appeals.

R13-15-105. Testing Requirements and Procedures

- A.** Rapid DNA testing sites shall be associated with an accredited laboratory through a legally binding agreement and use personnel for testing associated with a law enforcement agency to develop investigative leads from a crime scene and known reference samples.
- B.** Rapid DNA testing conducted at law enforcement sites shall follow the procedures or protocols outlined in the training program for that agency, site, and Rapid DNA instrument.
- C.** Rapid DNA Operators shall follow on-screen prompts on the Rapid DNA instrument when performing Rapid DNA testing.
- D.** The amount of sample used in Rapid DNA testing for a case shall not compromise the ability of the associated accredited laboratory to complete conventional DNA testing on that sample.
1. If Rapid DNA testing would consume too much of the sample to allow conventional DNA testing within the associated accredited laboratory, Rapid DNA testing shall not be conducted on that sample.

2. Consultation with the associated accredited laboratory may be necessary to determine whether the amount of sample is sufficient to complete both Rapid DNA and conventional DNA testing.
- E. Rapid DNA testing shall be conducted only on sample types approved for the specific Rapid DNA instrument being used as demonstrated by the internal validation for the instrument and as outlined in the training program for the instrument.
- F. Each instrument run shall be documented on a run log which shall include at a minimum the following:
 1. Instrument and site information.
 2. Date and time of sample run.
 3. Date and time of sample collection.
 4. Lot numbers of reagents.
 5. Case number.
 6. Agency.
 7. Operator.
 8. Type of sample.
 9. Type of case; and
 10. Results of analysis.
 - a. If profile developed.
 - b. If investigative lead developed.
- G. Run logs shall be maintained for a minimum of two years at each Rapid DNA testing site and be made immediately available for review by the Department when requested.
- H. Supplemental reports documenting the Rapid DNA test shall be included with each case file.

R13-15-106. Testing Site Minimum Facilities Requirements

- A. All Rapid DNA testing sites shall have the following:
 1. A minimum of six square feet of counter space to perform sample preparation and sample analysis.
 2. A minimum of 100 square feet of space to house the Rapid DNA instrument, a computer with monitor, and a printer.
 3. Appropriate temperature, lighting and humidity to maintain the integrity of samples, the Rapid DNA instrument, and reagents as specified by the manufacturer of the instrument and reagents.
 4. Restrictions on personnel access to reduce potential contamination of samples.
 5. Uninterrupted power supply or other backup power source to prevent damage to the instrument and to prevent failures of Rapid DNA tests due to power loss.
 6. Floors and countertops able to withstand frequent decontamination with bleach solutions, and
 7. A temperature-monitored refrigerator for storage of reagents, where applicable.
- B. Testing sites cannot be used for any other purpose besides preparation of samples for Rapid DNA analysis and running of samples on the instrument.
- C. Floors, countertops and equipment shall be decontaminated on a regular basis at minimum of every two weeks to maintain cleanliness and minimize any foreign DNA. A cleaning log should be maintained at each testing site and be made available for review by the Department when requested.
- D. Equipment calibration and maintenance shall be tracked in a log that is maintained at each Rapid DNA testing site. At a minimum the log shall contain information on the date and nature of the calibration or maintenance and include any associated paperwork from the person performing the calibration or maintenance. This log shall be made available for review by the Department when requested.

R13-15-107. Partner Agency Sites

- A. A partner agency site shall meet all the standards in R13-15-105 and R13-15-106.
- B. Additional standards include the following:
 1. The partner agency site shall comply with any additional internal program requirements of the Department which includes a memorandum of understanding (MOU) between the agencies.
 2. Run logs shall be provided to the Department on a calendar quarterly basis.

R13-15-108. Audits

- A. The testing site shall be audited at least once in any six to 18-month period by the associated accredited laboratory. An audit shall ensure the testing site is in compliance with R13-15-103(D)(E)(F)(G), R13-15-104(A), R13-15-105 and R13-15-106.
- B. If the audit of the Rapid DNA testing site determines that the site is not in compliance with the standards in subsection A, the testing site shall be suspended and cease operations until the associated accredited laboratory and the Department determines the site is once again in compliance.
- C. Documentation of audits shall be maintained at both the testing site and at the associated accredited laboratory for a minimum of five years.

NOTICES OF TERMINATION OF RULEMAKING

An agency may choose to terminate a rulemaking proceeding at any step of the regular rulemaking process under A.R.S. § 41-1021(A)(5).

Termination, as used in rulemaking, means an agency is closing its docket and withdrawing its proposed and, when applicable, supplemental proposed rulemakings from further review or comment.

An agency may terminate a rule making [sic] proceeding and commence a new rule making [sic] proceeding for the purpose of making a substantially different rule. A.R.S. § 41-1025(A).

Within 120 days after the close of the record on the proposed rule making [sic]... an agency shall terminate the proceeding by publication of a notice to that effect in the Register. A.R.S. § 41-1024(B)(2).

An agency cannot terminate a rulemaking if it has submitted its Notice of Final Rulemaking for review to Governor’s Regulatory Review Council, the Attorney General’s Office, or the notice has been approved by either entity and it has been file with the Office of the Secretary of State.

NOTICE OF TERMINATION OF RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

[R22-92]

1. The Register citation and the date of the Notice of Rulemaking Docket Opening:

Notice of Rulemaking Docket Opening: 28 A.A.R. 531, March 4, 2022

2. The Register citation and the date of the Notice of Proposed Rulemaking:

Notice of Proposed Rulemaking: 28 A.A.R. 487, March 4, 2022

3. Article, Part, or Section Affected

R20-5-601
R20-5-602

Rulemaking Action

Amend
Amend

NOTICES OF RULEMAKING DOCKET OPENING

This section of the *Arizona Administrative Register* contains Notices of Rulemaking Docket Opening under A.R.S. § 41-1021.

A docket opening is the first part of the administrative rulemaking process. It is an “announcement” that an agency intends to work on its rules.

When an agency opens a rulemaking docket to consider rulemaking, the Administrative Procedure Act (APA) requires the publication of the Notice of Rulemaking Docket Opening.

Under the APA, effective January 1, 1995, agencies must submit a Notice of Rulemaking Docket Opening before beginning the formal rulemaking process. An agency may file the Notice of Rulemaking Docket Opening along with the Notice of Proposed Rulemaking.

The Office of the Secretary of State is the filing office and publisher of these notices. Questions about the interpretation of this information should be directed to the agency contact person listed in item #4 of this notice.

NOTICE OF RULEMAKING DOCKET OPENING

DEPARTMENT OF HEALTH SERVICES FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

[R22-85]

- | | |
|--|---|
| 1. <u>Title and its heading:</u> | 9, Health Services |
| <u>Chapter and its heading:</u> | 8, Department of Health Services – Food, Recreational, and Institutional Sanitation |
| <u>Articles and their headings:</u> | 9, Manufactured Food Regulatory Program |
| <u>Section numbers:</u> | To be determined |

2. The subject matter of the proposed rules:

The Department of Health Services (Department) entered into a cooperative agreement with the Food & Drug Administration to participate in the nationally integrated food safety system that governs *Current Good Manufactured Practices*. The Department established a Manufactured Food Regulatory Program to implement an integrated, risk-based, food safety system focused on protecting the public health statewide. The Department plans to adopt rules in Arizona Administrative Code Title 9, Chapter 8, Article 9 to regulate facilities that provide manufactured foods to Arizonians. The new rules will provide minimum standards for measuring and improving the performance of prevention, intervention, and response activities of manufactured foods; and will regulate activities to reduce foodborne illness. The rules will include requirements for sanitary facilities and controls, equipment, personnel, operations, processes and controls, quality assurance, inspection, and incident investigation. The Department received an exception from the rulemaking moratorium established by Executive Order 2019-01 on January 23, 2019 and plans to adopt rules for manufactured foods through regular rulemaking. 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.

3. A citation to all published notices relating to the proceeding:

None

4. The name and address of agency personnel with whom persons may communicate regarding the rules:

Name: Jennifer Botsford, Office Chief
 Address: Arizona Department of Health Services
 Division of Public Health Services, Public Health Preparedness
 Office of Environmental Health
 150 N. 18th Ave., Suite 130
 Phoenix, AZ 85007
 Telephone: (602) 364-3142
 Fax: (602) 364-3146
 Email: Jennifer.Botsford@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
 Email: Robert.Lane@azdhs.gov

5. The time during which the agency will accept written comments and the time and place where oral comments may be made:

Written comments will be accepted at the addresses listed in item #4 until the close of record, which has not yet been determined. The Department has not scheduled any oral proceedings at this time.

6. A timetable for agency decisions or other action on the proceeding, if known:

To be announced in the Notice of Proposed Rulemaking.

NOTICE OF RULEMAKING DOCKET OPENING

**DEPARTMENT OF HEALTH SERVICES
HEALTH PROGRAMS SERVICES**

[R22-86]

1. Title and its heading:

9, Health Services

Chapter and its heading:

13, Department of Health Services - Health Programs Services

Articles and their headings:

1, Hearing Screening

Section numbers:

R9-13-101, R9-12-102, R9-13-103, R9-13-104, R9-13-105, R9-13-106, R9-12-107, R9-13-108, R9-13-109, R9-13-110, R9-13-111, R9-13-112, R9-13-113, R9-13-114, and R9-13-115. (*The Department may add, delete, or modify other Sections, as necessary.*)

2. The subject matter of the proposed rules:

Laws 2019, Ch. 316, effective August 27, 2019, requires the Arizona Department of Health Services (Department) to adopt rules for vision screening services. Pursuant to the rulemaking moratorium established by Executive Order 2021-02, the Department received an exception approval on April 13, 2021 from the moratorium to add standards and requirement for schools to provide vision screening services to enrolled students. The new rules will includes requirements for school providing vision screening services, establishes standards for vision screening training to school nurse, volunteers, and other school personnel; develops vision screening methodology; and provides for collect of school vision screening data for review and analysis by researchers, public agencies, and other organizations. The Department plans to amend 9 A.A.C. 13, Article 1 Hearing Screening rules to include the vision screening standards and requirements establish by Laws 2019, Ch. 316. The Department, as approved by the Governor, will amend Article 1 rules through regular rulemaking. The proposed amendments will conform to rulemaking format and style requirements of the Governor’s Regulatory Review Council and the Office of the Secretary of State. The Department may add, delete, or modify Sections, as necessary.

3. A citation to all published notices relating to the proceeding:

None

4. The name and address of agency personnel with whom persons may communicate regarding the rules:

Name: Laura Luna Bellucci, Bureau Chief
Address: Arizona Department of Health Services
Division of Public Health Services, Public Health Prevention
Bureau of Women’s and Children’s Health
150 N. 18th Ave., Suite 320
Phoenix, AZ 85007-3248

Telephone: (602) 542-1454
Fax: (602) 364-1496
Email: Patricia.Tarango@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
Email: Robert.Lane@azdhs.gov

5. The time during which the agency will accept written comments and the time and place where oral comments may be made:

Written comments will be accepted at the addresses listed in item #4 until the close of record, which has not yet been determined. No oral proceedings have been scheduled at this time.

6. A timetable for agency decisions or other action on the proceeding, if known:

To be announced in the Notice of Proposed Expedited Rulemaking.

NOTICE OF RULEMAKING DOCKET OPENING**INDUSTRIAL COMMISSION OF ARIZONA**

[R22-87]

- 1. Title and its heading:** 20, Commerce, Financial Institutions, and Insurance
Chapter and its heading: 5, Industrial Commission of Arizona
Article and its heading: 6, Occupational Safety and Health Standards
Section number: R20-5-601, R20-5-602, R20-5-629

2. The subject matter of the proposed rule:

Section 18(c) of the Federal Occupational Safety and Health Act of 1970 requires state-administered occupational safety and health programs to adopt standards that are at least as effective as those adopted by the United States Department of Labor, Occupational Safety and Health Administration (“OSHA”). *See also* 29 CFR 1953.5; A.R.S. § 23-405(3). The Industrial Commission of Arizona (the “Commission”) is proposing to amend R20-5-601 (“The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926”), R20-5-602 (“The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910”), and R20-5-629 (“The Occupational Injury and Illness Recordkeeping and Reporting Requirements”) to incorporate by reference the following OSHA rule updates to 29 CFR 1910 (“Occupational Safety and Health Standards”), 29 CFR 1926 (“Safety and Health Regulations for Construction”), and 29 CFR 1904 (“Recording and Reporting Occupational Injuries and Illnesses”):

- OSHA Final Rule published May 14, 2019, titled “Standards Improvement Project – Phase IV”; published in the *Federal Register* at 84 FR 21416.
- OSHA Final Rule published September 30, 2019, titled “Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors”; published in the *Federal Register* at 84 FR 51377.
- OSHA Final Rule published July 14, 2020, titled “Revising the Beryllium Standard for General Industry”; published in the *Federal Register* at 85 FR 42582.
- OSHA Final Rule published August 31, 2020, titled “Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors”; published in the *Federal Register* at 85 FR 53910.
- OSHA Final Rule published September 15, 2020, titled “Cranes and Derricks in Construction: Railroad Roadway Work”; published in the *Federal Register* at 85 FR 57109.
- OSHA Final Rule published February 24, 2021, titled “Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors: Correction”; published in the *Federal Register* at 86 FR 11119.

Standards Improvement Project – Phase IV (May 14, 2019)

The 2019 Final Rule titled “Standards Improvement Project – Phase IV” revised existing standards in the recordkeeping (29 CFR 1904), general industry (29 CFR 1910), and construction (29 CFR 1926) standards. The purpose of OSHA’s Standards Improvement Project was to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements in OSHA’s safety and health standards, which permit improved compliance by employers and reduce costs and paperwork burdens where possible, without reducing employee protections. OSHA reports that many of the revisions in the May 14, 2019 Final Rule reduce costs while improving worker safety and health or privacy. The revisions include an update to the consensus standard incorporated by reference for signs and devices used to protect workers near automobile traffic, a revision to the requirements for roll-over protective structures to comply with current consensus standards, updates for storage of digital x-rays, and the method of calling emergency services to allow for use of current technology. OSHA also revised two standards to align with current medical practice: a reduction to the number of necessary employee x-rays and updates to requirements for pulmonary function testing. To protect employee privacy and prevent identity fraud, OSHA also removed from the standards the requirements that employers include an employee’s social security number on exposure monitoring, medical surveillance, and other records.

Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors (September 30, 2019)

Under 29 CFR 1910 and 1926, employers are subject to standards for occupational exposure to beryllium. OSHA’s 2017 Final Rule titled “Occupational Exposure to Beryllium” updated existing standards for occupational exposure to beryllium and beryllium compounds. The September 30, 2019 Final Rule titled “Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors” delayed the compliance dates for all ancillary provisions of the construction standards for beryllium until September 30, 2020. The September 30, 2019 Final Rule had no effect on compliance with the PEL and STEL requirements of the existing standards.

Revising the Beryllium Standard for General Industry (July 14, 2020)

The July 14, 2020 Final Rule titled “Revising the Beryllium Standard for General Industry” amended existing general industry standards for occupational exposure to beryllium and beryllium compounds to clarify certain provisions and simplify or improve compliance. Broadly, the July 14 Final Rule added one definition and modified five existing terms in paragraph (b), Definitions; amended paragraph (f), Methods of compliance; paragraph (h), Personal protective clothing and equipment; paragraph (i), Hygiene areas and practices; paragraph (j), Housekeeping; paragraph (k), Medical surveillance; paragraph (m), Communication of hazards; and paragraph (n), Recordkeeping; and replaced the 2017 final standard’s Appendix A with a new appendix designed to supplement the proposed definition of beryllium work area. The revisions in the July 14, 2020 Final Rule are designed to maintain or enhance worker protections overall by ensuring that the Beryllium standard is well understood and compliance is more straightforward.

Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors (August 31, 2020)

The August 31, 2020 Final Rule titled “Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors” amended existing construction standards for occupational exposure to beryllium and beryllium compounds to clarify certain provisions and simplify or improve compliance. First, OSHA removed or modified some provisions which – although appropriate in the general industry context – were unnecessary or required revision to appropriately protect employees in the construction industries. Second, OSHA revised some provisions of the construction standards to avoid inconsistencies with the clarifying changes the agency made in the July 14, 2020 Final Rule (discussed above). Third, OSHA revised certain paragraphs of the construction standards to address the application of provisions related to dermal contact to materials containing beryllium in trace quantities. According to OSHA, the changes were designed to accomplish three goals: to more appropriately tailor the requirements of the construction standards to the particular exposures in these industries in light of partial overlap between the beryllium standards’ requirements and other OSHA standards; to aid compliance and enforcement across the beryllium standards by avoiding inconsistency, where appropriate, between the shipyards and construction standards and recent revisions to the general industry standard; and to clarify certain requirements with respect to materials containing only trace amounts of beryllium. The August 31, 2020 Final Rule does not affect the general industry beryllium standard.

Cranes and Derricks in Construction: Railroad Roadway Work (September 15, 2020)

The September 15, 2020 Final Rule titled “Cranes and Derricks in Construction: Railroad Roadway Work” revised the standard for cranes and derricks in construction to provide specific exemptions and clarifications with regard to the application of the standard to cranes and derricks used for railroad roadway work. The Final Rule adds exemptions pertaining to: (1) flash-butt welding trucks and equipment with similar attachments; (2) working conditions of certain employees with respect to which Federal agencies exercise statutory authority to prescribe and enforce occupational safety and health standards; (3) use of rail stops and rail claims on covered equipment; (4) work area controls when employers are subject to specified on-track safety program requirements; (5) railroad roadway maintenance machine (“RMM”) restrictions on out-of-level work; (6) use of cranes or derricks to drag a load sideways; (7) use of a hydraulic piston for raising and lowering a boom; (8) the requirement to obtain and follow equipment manufacturer’s guidance for equipment modifications for RMMs; and (9) the requirement that employers must follow the manufacturer’s guidance, instructions, procedures, prohibitions, limitations, or specifications pertaining to RMMs. According to OSHA, the exemptions and clarifications recognize the unique equipment and circumstances in railroad roadway work and reflect the pre-emption of some OSHA requirements by regulations promulgated by the Federal Railroad Administration. OSHA reports that the revised standard provides a clearer understanding of which regulatory requirements are applicable, resulting in a more effective regulatory program and ultimately improved safety.

Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors: Correction (February 24, 2021)

The February 24, 2021 Final Rule titled “Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors; Correction” corrects inadvertent errors contained in the August 31, 2020 Final Rule.

3. A citation to all published notices relating to the proceeding:

Notice of Proposed Rulemaking: 28 A.A.R. 979, May 13, 2022 (*in this issue*)

4. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Jessie Atencio, Director
 Address: Division of Occupational Safety and Health
 Industrial Commission of Arizona
 800 W. Washington St., Suite 203
 Phoenix, AZ 85007
 Telephone: (602) 542-5795
 Fax: (602) 542-1614
 Email: jessie.atencio@azdosh.gov

5. The time during which the agency will accept written comments and the time and place where oral comments may be made:

The Commission will accept written comments during a public comment period that will be noticed in the Notice of Proposed Rulemaking. Information regarding an oral proceeding will be included in the Notice of Proposed Rulemaking.

6. A timetable for agency decisions or other action on the proceeding, if known:

To be determined.

NOTICES OF ORAL PROCEEDING

Oral proceeding means a meeting conducted by an agency during the rulemaking process at which the public provides oral (spoken) comments about proposed rules.

An agency may provide notification for an oral proceeding in:

It's docket opening under A.R.S. § 41-1021(B)(5);

The Preamble of its Notice of Proposed Rulemaking. If an agency does not provide notification in this notice, an agency shall schedule an oral proceeding on a proposed rule if, within thirty days after the published notice of proposed rule making [sic], a written request for an oral pro-

ceeding is submitted to the agency personnel listed in the notice under A.R.S. § 41-1023(C); and

In an exempt rulemaking as provided in law.

The notification of proceedings are provided in Notices of Oral Proceedings in this section of the Register under A.R.S. § 41-1013(B)(5).

An oral proceeding on a proposed rule may not be held earlier than 30 days after notice of its location and time is published in the Register, therefore agencies shall refer to the Register Publishing Dates table at the back of this issue before scheduling the proceeding.

NOTICE OF ORAL PROCEEDING

ORAL PROCEEDING ON SUPPLEMENTAL PROPOSED RULEMAKING

[M22-32]

- 1. Name of the agency: Arizona Department of Insurance and Financial Institutions
2. Title and its heading: 20, Commerce, Financial Institutions, and Insurance
Chapter and its heading: 6, Department of Insurance and Financial Institutions - Insurance Division
Article and its heading: 4, Types of Insurance Companies
3. Article, Part, or Section (as applicable) being proposed: R20-6-407
Rulemaking Action: Amend
4. Citations to all notices published in the Register concerning the proposed rulemaking:
Notice of Rulemaking Docket Opening: 27 A.A.R. 1147, July 30, 2021
Notice of Proposed Rulemaking: 27 A.A.R. 1140, July 30, 2021
Notice of Supplemental Proposed Rulemaking: 28 A.A.R. 681, April 1, 2022
5. The date, time, and location of the oral proceeding:
Date: June 14, 2022
Time: 10:00 a.m. to 12:00 p.m. (MST)
This Oral Proceeding will be held virtually. Prior to the Oral Proceeding, instructions on how to attend the Oral Proceeding will be posted on the Arizona Department of Insurance and Financial Institutions' website: https://difi.az.gov under the "Announcements" section. An Agenda and meeting notice will also be posted prior to the Oral Proceeding on the Arizona Department of Administration public meetings website: https://publicmeetings.az.gov/arizona-public-meetings.
6. The name and address of agency personnel to whom questions and comments on the proposed rules may be addressed:
Name: Mary E. Kosinski
Address: Department of Insurance and Financial Institutions
100 N. 15th Ave., Suite 261
Phoenix, AZ 85007-2630
Telephone: (602) 364-3476
Email: mary.kosinski@difi.az.gov
Website: https://difi.az.gov

NOTICES OF PUBLIC INFORMATION

Agencies use Notices of Public Information to notify stakeholders about other information that pertains to rulemaking notices under A.R.S. § 41-1013(B)(14). When required by law, agencies also use this notice to notify the public about information not related to rulemaking.

The most common use for this notice is to correct errors printed in a rulemaking notice or extend a public comment period.

The Administrative Rules Division of the Office does not provide a standard template for Notices of Public Information because the content of this type of notice varies.

An agency shall follow the Office's formatting standards when preparing this type of notice and use a numbered list of questions and answers. Additionally, an agency receipt shall be filed with a Notice of Public Information.

NOTICE OF PUBLIC INFORMATION

**DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER POLLUTION CONTROL**

[M22-33]

1. Name of the Agency:

Department of Environmental Quality

2. Type of notice filed:

Reissuance of AZPDES Biosolids General Permit

3. A brief description of the proposed general permit:

The Arizona Department of Environmental Quality (ADEQ) is proposing to reissue a general permit that authorizes owners or operators of treatment works treating domestic sewage (TWTDS) to prepare biosolids for land application. This general permit is applicable to: 1) privately and publicly owned wastewater treatment plants (WWTPs) which prepare biosolids for land application and which do not have coverage under an Arizona Pollutant Discharge Elimination System (AZPDES) individual or general permit containing provisions for the treatment of biosolids, and 2) TWTDS which are not WWTPs and prepare biosolids for land application.

Under the federal Clean Water Act and associated regulations (40 CFR 122), and under A.R.S. § 49-255 *et seq.* for Arizona, TWTDS are subject to the standards for sewage sludge use and disposal in 40 CFR 503. ADEQ requires TWTDS who prepare biosolids for land application to obtain permit coverage for these activities in order to ensure that these standards are met. As an alternative to obtaining an individual AZPDES permit, TWTDS may obtain coverage under the proposed general permit.

4. A description of the permit area:

The proposed general permit covers the preparation of biosolids for land application in Arizona, except for Indian Country as defined in 18 U. S. C. 1151. USEPA Region 9 is the permitting authority for Indian lands in Arizona.

5. How to obtain copies of the draft permit documents:

Copies of the general permit and accompanying fact sheet are available upon request from the agency personnel listed in item 8, below, and on the Department's website at <http://azdeq.gov/notices>.

The proposed general permit and fact sheet are also available in the Records Center at the Arizona Department of Environmental Quality, 1110 W. Washington St., Phoenix, AZ, and may be reviewed any time between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. In Phoenix, please call (602) 771-4380 or email recordscenter@azdeq.gov 24 hours in advance to schedule an appointment to review the file.

6. The time during which the agency will accept written comments:

Comments on the proposed general permit must be submitted c/o Sondra Francis at the address, or email address provided below, and received or postmarked no later than June 26, 2022.

7. Time, Date and Location of Public Hearing:

No formal public hearing is currently scheduled. However, within the comment period, interested persons may also request a public hearing under A.A.C. R18-9-A908 concerning the proposed permit.

If the Department decides to hold a public hearing, the time and place of the public hearing will be announced on the ADEQ website under Public Hearing at <https://www.azdeq.gov/welcome-adeq>. Alternatively, interested persons may request such notification by contacting Sondra Francis at the email address, postal address, or phone number below.

8. The name, address, and telephone number of agency personnel to whom questions and comments on the general permit may be addressed:

Name: Sondra Francis
 Address: Arizona Department of Environmental Quality
 Water Quality Division, Surface Water Protection
 1110 W. Washington St.
 Phoenix, AZ 85007
 Telephone: (602) 292-4702
 Email: Biosolids@azdeq.gov

**GOVERNOR EXECUTIVE ORDER
RULEMAKING MORATORIUM**

Executive Order 2022-01 is being reproduced in each issue of the *Arizona Administrative Register* as a notice to the public regarding state agencies' rulemaking activities.

This order has been reproduced in its entirety as submitted.

EXECUTIVE ORDER 2022-01

Moratorium on Rulemaking to Promote Job Creation and Economic Development; Internal Review of Administrative Rules

[M22-03]

WHEREAS, government regulations should be as limited as possible; and

WHEREAS, burdensome regulations inhibit job growth and economic development; and

WHEREAS, in 2015 the State of Arizona implemented a moratorium on all new regulatory rulemaking by State agencies through executive order, and renewed the moratorium in 2016, 2017, 2018, 2019, 2020 and 2021; and

WHEREAS, the State of Arizona eliminated or improved 231 burdensome regulations in 2021 and for a total of 3,047 needless regulations eliminated or improved since 2015; and

WHEREAS, estimates show these eliminations saved job creators nearly \$11.6 million in operating costs in 2021 for a total of over \$169.1 million in savings since 2015; and

WHEREAS, in 2021, for every one new necessary rule added to the Administrative Code, 25 have been repealed or improved; and

WHEREAS, COVID-19 has been hard on small businesses and the economy, and administrative barriers should be removed for their sake; and

WHEREAS, all government agencies of the State of Arizona should continue to promote customer service oriented principles for the people that it serves; and

WHEREAS, each State agency shall continue to conduct a critical and comprehensive review of its administrative rules and take action to reduce the regulatory burden, administrative delay and legal uncertainty associated with government regulation while protecting the health, peace and safety of residents; and

WHEREAS, each State agency should continue to evaluate its administrative rules using any available and reliable data and performance metrics; and

WHEREAS, Article 5, Section 4 of the Arizona Constitution and Title 41, Chapter 1, Article 1 of the Arizona Revised Statutes vests the executive power of the State of Arizona in the Governor.

NOW, THEREFORE, I, Douglas A. Ducey, by virtue of the authority vested in me by the Constitution and laws of the State of Arizona hereby declare the following:

1. A State agency subject to this Order shall not conduct any rulemaking, including regular, expedited, emergency and exempt, whether informal or formal, without the prior written approval of the Office of the Governor. In seeking approval, a State agency shall address one or more of the following as justifications for the rulemaking:
 - a. To fulfill an objective related to job creation, economic development or economic expansion in this State.
 - b. To reduce or ameliorate a regulatory burden on the public, while achieving the same regulatory objective.
 - c. To prevent a significant threat to public health, peace or safety.
 - d. To avoid violating a court order or federal law that would result in sanctions by a federal court for failure to conduct the rulemaking action.
 - e. To comply with a federal statutory or regulatory requirement if such compliance is related to a condition for the receipt of federal funds or participation in any federal program.
 - f. To comply with a new state statutory requirement.
 - g. To fulfill an obligation related to fees or any other action necessary to implement the State budget that is certified by the Governor's Office of Strategic Planning and Budgeting.
 - h. To promulgate a rule or other item that is exempt from Title 41, Chapter 6, Arizona Revised Statutes, pursuant to section 41-1005, Arizona Revised Statutes.
 - i. To address matters pertaining to the control, mitigation, or eradication of waste, fraud, or abuse within an agency or wasteful, fraudulent or abusive activities perpetrated against an agency.
 - j. To eliminate rules which are antiquated, redundant or otherwise no longer necessary for the operation of state government.
2. After the public comment period and the close of the rulemaking record, a State agency subject to this Order shall not submit the proposed rules to the Governor's Regulatory Review Council without a written final approval from the Office of the Governor. Before considering rules submitted by a State agency, the Governor's Regulatory Review Council must obtain from the State agency the initial approval, referenced in Section 1, and the final approval from the Office of the Governor.
3. A State agency that submits a rulemaking request pursuant to this Order shall recommend for consideration by the Governor's Office at least *three* existing rules to eliminate for every *one* additional rule requested by the agency.

4. A State agency subject to this Order shall not publicize any directives, policy statements, documents or forms on its website unless such are explicitly authorized by the Arizona Revised Statutes or Arizona Administrative Code. Any material that is not specifically authorized must be removed immediately.
5. A State agency that issues occupational or professional licenses shall prominently post on the agency's website landing page all current state policies that ease licensing burdens and the exact steps applicants must complete to receive their license using these policies. State agencies should provide information that applies to all applicants, but have a designated area on the landing page that includes licensing information specifically for military spouses, active duty service members and veterans and all policies that make it easier for these applicant groups to receive their license. Examples of reduced licensing burdens include "universal recognition" of out-of-state licenses, availability of temporary licenses, fee waivers, exam exemptions and/or allowing an applicant to substitute military education or experience for licensing requirements. A landing page feature may link to an internal agency web page with more information, if necessary. All information must be easy to locate and written in clear and concise language.
6. A State agency that issues occupational or professional licenses must track veteran and military spouse status of applicants immediately and report that information to the Governor's Office on an annual basis, starting July 1, 2022.
7. All State agencies that are required to issue occupational or professional licenses by "universal recognition" (established by A.R.S. § 32-4302) must track all applications received for this license type immediately and report that information to the Governor's Office on an annual basis, starting July 1, 2021. Before any agency denies a professional or occupational license applied for under A.R.S. § 32-4302, the agency shall submit the application and justification for denial to the Office of the Governor for review before any official action is taken by the agency. The Governor's Office should be notified of any required timeframes, whether in statute or rule, for approval or denial of the license by the agency.
8. For the purposes of this Order, the term "State agencies" includes, without limitation, all executive departments, agencies, offices, and all state boards and commissions, except for: (a) any State agency that is headed by a single elected State official; (b) the Corporation Commission; and (c) any board or commission established by ballot measure during or after the November 1998 general election. Those state agencies, boards and commissions excluded from this Order are strongly encouraged to voluntarily comply with this Order in the context of their own rulemaking processes.
9. This Order does not confer any legal rights upon any persons and shall not be used as a basis for legal challenges to rules, approvals, permits, licenses or other actions or to any inaction of a State agency. For the purposes of this Order, "person," "rule" and "rulemaking" have the same meanings prescribed in section 41-1001, Arizona Revised Statutes.
10. This Executive Order shall expire when the provisions of this executive order are adopted in statute and become law.

IN WITNESS THEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.

Douglas A. Ducey
GOVERNOR

DONE at the Capitol in Phoenix on this nineteenth day of January in the year Two Thousand and Twenty Two and of the Independence of the United States of America the Two Hundred and Forty-Sixth.

ATTEST:

Katie Hobbs
SECRETARY OF STATE

REGISTER INDEXES

The *Register* is published by volume in a calendar year (See “General Information” in the front of each issue for more information).

Abbreviations for rulemaking activity in this Index include:

PROPOSED RULEMAKING

PN = Proposed new Section
 PM = Proposed amended Section
 PR = Proposed repealed Section
 P# = Proposed renumbered Section

SUPPLEMENTAL PROPOSED RULEMAKING

SPN = Supplemental proposed new Section
 SPM = Supplemental proposed amended Section
 SPR = Supplemental proposed repealed Section
 SP# = Supplemental proposed renumbered Section

FINAL RULEMAKING

FN = Final new Section
 FM = Final amended Section
 FR = Final repealed Section
 F# = Final renumbered Section

SUMMARY RULEMAKING**PROPOSED SUMMARY**

PSMN = Proposed Summary new Section
 PSMM = Proposed Summary amended Section
 PSMR = Proposed Summary repealed Section
 PSM# = Proposed Summary renumbered Section

FINAL SUMMARY

FSMN = Final Summary new Section
 FSMM = Final Summary amended Section
 FSMR = Final Summary repealed Section
 FSM# = Final Summary renumbered Section

EXPEDITED RULEMAKING**PROPOSED EXPEDITED**

PEN = Proposed Expedited new Section
 PEM = Proposed Expedited amended Section
 PER = Proposed Expedited repealed Section
 PE# = Proposed Expedited renumbered Section

SUPPLEMENTAL EXPEDITED

SPEN = Supplemental Proposed Expedited new Section
 SPEM = Supplemental Proposed Expedited amended Section
 SPER = Supplemental Proposed Expedited repealed Section
 SPE# = Supplemental Proposed Expedited renumbered Section

FINAL EXPEDITED

FEN = Final Expedited new Section
 FEM = Final Expedited amended Section
 FER = Final Expedited repealed Section
 FE# = Final Expedited renumbered Section

EXEMPT RULEMAKING**EXEMPT**

XN = Exempt new Section
 XM = Exempt amended Section
 XR = Exempt repealed Section
 X# = Exempt renumbered Section

EXEMPT PROPOSED

PXN = Proposed Exempt new Section
 PXM = Proposed Exempt amended Section
 PXR = Proposed Exempt repealed Section
 PX# = Proposed Exempt renumbered Section

EXEMPT SUPPLEMENTAL PROPOSED

SPXN = Supplemental Proposed Exempt new Section
 SPXR = Supplemental Proposed Exempt repealed Section
 SPXM = Supplemental Proposed Exempt amended Section
 SPX# = Supplemental Proposed Exempt renumbered Section

FINAL EXEMPT RULEMAKING

FXN = Final Exempt new Section
 FXM = Final Exempt amended Section
 FXR = Final Exempt repealed Section
 FX# = Final Exempt renumbered Section

EMERGENCY RULEMAKING

EN = Emergency new Section
 EM = Emergency amended Section
 ER = Emergency repealed Section
 E# = Emergency renumbered Section
 EEXP = Emergency expired

RECODIFICATION OF RULES

RC = Recodified

REJECTION OF RULES

RJ = Rejected by the Attorney General

TERMINATION OF RULES

TN = Terminated proposed new Sections
 TM = Terminated proposed amended Section
 TR = Terminated proposed repealed Section
 T# = Terminated proposed renumbered Section

RULE EXPIRATIONS

EXP = Rules have expired
 See also “emergency expired” under emergency rulemaking

CORRECTIONS

C = Corrections to Published Rules

**2022 Arizona Administrative Register
Volume 28 Page Guide**

| | | |
|--------------------------------------|--------------------------------------|--------------------------------------|
| Issue 1, Jan. 7, 2022.....1-156 | Issue 2, Jan. 14, 2022.....157-212 | Issue 3, Jan. 21, 2022.....213-246 |
| Issue 4, Jan. 28, 2022.....247-292 | Issue 5, Feb. 4, 2022.....293-356 | Issue 6, Feb. 11, 2022.....357-390 |
| Issue 7, Feb. 18, 2022.....391-434 | Issue 8, Feb. 25, 2022.....435-482 | Issue 9, March 4, 2022.....483-544 |
| Issue 10, March 11, 2022.....545-606 | Issue 11, March 18, 2022.....607-638 | Issue 12, March 25, 2022.....639-676 |
| Issue 13, April 1, 2022.....677-714 | Issue 14, April 8, 2022.....715-740 | Issue 15, April 15, 2022.....741-790 |
| Issue 16, April 22, 2022.....791-832 | Issue 17, April 29, 2022.....833-888 | Issue 18, May 6, 2022.....889-974 |

RULEMAKING ACTIVITY INDEX

Rulemakings are listed in the Index by Chapter, Section number, rulemaking activity abbreviation and volume page number. Use the page guide above to determine the *Register* issue number to review the rule. Headings for the Subchapters, Articles, Parts, and Sections are not indexed.

THIS INDEX INCLUDES RULEMAKING ACTIVITY THROUGH ISSUE 18 OF VOLUME 28.

| | | |
|---|--|--|
| <p>Administration, Department of - State Procurement Office</p> <p>R2-7-101. PEM-693 R2-7-B306. PEM-693 R2-7-B307. PEM-693 R2-7-C302. PEM-693 R2-7-C306. PEM-693 R2-7-C307. PEM-693 R2-7-501. PER-693 R2-7-505. PEM-693 R2-7-511. PEM-693 R2-7-B901. PEM-693 R2-7-B902. PEM-693 R2-7-B903. PEM-693</p> <p>Agriculture, Department of - Agricultural Councils and Commissions</p> <p>R3-9-601. XM-198</p> <p>Agriculture, Department of - Animal Services Division</p> <p>R3-2-901. PM-5; FM-802 R3-2-903. PM-5; FM-802 R3-2-905. PM-5; FM-802 R3-2-906. PM-5; FM-802 R3-2-907. PM-5; FM-802</p> <p>Athletic Training, Board of</p> <p>R4-49-101. FM-618 R4-49-102. FM-618 R4-49-202. FM-618 R4-49-203. FM-618 R4-49-208. FM-618 R4-49-401. FM-618 R4-49-403. FM-618 R4-49-404. FM-618</p> <p>Child Safety, Department of - Foster Home and Child Welfare Agency</p> | <p>Facility Safety</p> <p>R21-8-101. FM-809 R21-8-102. FM-809 R21-8-103. FM-809 R21-8-106. FM-809 R21-8-107. FM-809 R21-8-111. FM-809 R21-8-112. FM-809 R21-8-113. F#-809; FN-809 R21-8-114. F#-809; FM-809</p> <p>Child Safety, Department of - Permanency and Support Services</p> <p>R21-5-421. PEM-816</p> <p>Clean Elections, Citizens</p> <p>R2-20-101. FM-491</p> <p>Contractors, Registrar of</p> <p>R4-9-115. EXP-624</p> <p>Corporation Commission - Fixed Utilities</p> <p>R14-2-201. FM-564 R14-2-208. FM-564 R14-2-211. FM-564 R14-2-212. FM-564 R14-2-214. FN-564 R14-2-215. FN-564 R14-2-216. FN-564 R14-2-301. FM-564 R14-2-308. FM-564 R14-2-311. FM-564 R14-2-312. FM-564 R14-2-315. FN-564 R14-2-316. FN-564</p> <p>Corporation Commission - Transportation</p> <p>R14-5-201. PM-256 R14-5-202. PM-256</p> | <p>R14-5-203. PM-256 R14-5-204. PM-256 R14-5-205. PM-256 R14-5-207. PM-256</p> <p>Dental Examiners, State Board of</p> <p>R4-11-205. PM-161 R4-11-303. PM-161 R4-11-304. PM-161 R4-11-305. PM-161 R4-11-402. PM-161 R4-11-405. PM-161 R4-11-601. PM-161 R4-11-607. PM-161 R4-11-608. PM-161 R4-11-609. PM-161 R4-11-901. PM-161 R4-11-1202. PM-174; FM-344 R4-11-1203. PM-174 R4-11-1204. PM-174 R4-11-1205. PM-174 R4-11-1206. PM-174; FM-344 R4-11-1207. PM-174; FM-344 R4-11-1208. PM-174 R4-11-1209. PM-174 R4-11-1301. PM-161 R4-11-1302. PM-161 R4-11-1303. PM-161 R4-11-1405. PM-161</p> <p>Economic Security, Department of - Developmental Disabilities</p> <p>R6-6-1401. PN-797 R6-6-1402. PN-797 R6-6-1403. PN-797 R6-6-1404. PN-797 R6-6-1405. PN-797 R6-6-1406. PN-797 R6-6-1407. PN-797 R6-6-1408. PN-797</p> |
|---|--|--|

Education, State Board of

R7-2-614. FXM-366
 R7-2-615. FXM-180
 R7-2-617. FEM-276
 R7-2-1501. FXM-187
 R7-2-1502. FXM-187
 R7-2-1503. FXM-187
 R7-2-1504. FXM-187
 R7-2-1505. FXM-187
 R7-2-1506. FXM-187
 R7-2-1507. FXM-187
 R7-2-1508. FXM-187
 R7-2-1509. FXM-187
 R7-2-1510. FXM-187
 R7-2-1511. FXM-187

Employment Relations Board, Agricultural

R4-2-101. FM-395
 R4-2-102. FM-395
 R4-2-103. FM-395
 R4-2-104. FM-395
 R4-2-201. FM-395
 R4-2-202. FM-395
 R4-2-204. FM-395
 R4-2-205. FM-395
 R4-2-206. FM-395
 R4-2-207. FM-395
 R4-2-209. FM-395
 R4-2-210. FM-395
 R4-2-212. FM-395
 R4-2-213. FM-395
 R4-2-215. FM-395
 R4-2-216. FR-395;
 F#-395;
 FM-395
 R4-2-217. F#-395;
 FM-395
 R4-2-218. F#-395
 R4-2-302. FM-395
 R4-2-303. FM-395
 R4-2-304. FM-395
 R4-2-305. FM-395
 R4-2-407. FM-395

Environmental Quality, Department of - Administration

Table 10. PM-16

Environmental Quality, Department of - Permit and Compliance Fees

R18-14-101. PM-79
 R18-14-102. PM-79
 R18-14-104. PM-79
 R18-14-111. PN-79;
 P#-79;
 PM-79
 R18-14-112. P#-79
 R18-14-113. P#-79
 R18-14-114. PN-79;
 P#-79
 R18-14-115. PN-79

Environmental Quality, Department of - Water Pollution Control

R18-9-103. PM-22

R18-9-A601. PN-22
 R18-9-A602. PN-22
 R18-9-A603. PN-22
 R18-9-A604. PN-22
 R18-9-A605. PN-22
 R18-9-A606. PN-22
 R18-9-B607. PN-22
 R18-9-B608. PN-22
 R18-9-B609. PN-22
 R18-9-B610. PN-22
 R18-9-B611. PN-22
 R18-9-B612. PN-22
 R18-9-B613. PN-22
 R18-9-B614. PN-22
 R18-9-B615. PN-22
 R18-9-C616. PN-22
 R18-9-C617. PN-22
 R18-9-C618. PN-22
 R18-9-C619. PN-22
 R18-9-C620. PN-22
 R18-9-C621. PN-22
 R18-9-C622. PN-22
 R18-9-C623. PN-22
 R18-9-C624. PN-22
 R18-9-C625. PN-22
 R18-9-C626. PN-22
 R18-9-C627. PN-22
 R18-9-C628. PN-22
 R18-9-C629. PN-22
 R18-9-C630. PN-22
 R18-9-C631. PN-22
 R18-9-C632. PN-22
 R18-9-C633. PN-22
 R18-9-C634. PN-22
 R18-9-D635. PN-22
 R18-9-D636. PN-22
 R18-9-D637. PN-22
 R18-9-D638. PN-22
 R18-9-D639. PN-22
 R18-9-E640. PN-22
 R18-9-E641. PN-22
 R18-9-E642. PN-22
 R18-9-F643. PN-22
 R18-9-F644. PN-22
 R18-9-F645. PN-22
 R18-9-G646. PN-22
 R18-9-G647. PN-22
 R18-9-G648. PN-22
 R18-9-H649. PN-22
 R18-9-I650. PN-22
 R18-9-I651. PN-22
 R18-9-I652. PN-22
 R18-9-I653. PN-22
 R18-9-I654. PN-22
 R18-9-I655. PN-22
 R18-9-J656. PN-22
 R18-9-J657. PN-22
 R18-9-J658. PN-22
 R18-9-J659. PN-22
 R18-9-J660. PN-22
 R18-9-J661. PN-22
 R18-9-J662. PN-22
 R18-9-J663. PN-22
 R18-9-J664. PN-22
 R18-9-J665. PN-22
 R18-9-J666. PN-22

R18-9-J667. PN-22
 R18-9-J668. PN-22
 R18-9-J669. PN-22
 R18-9-J670. PN-22
 Table 1. PN-22

Game and Fish Commission

R12-4-501. PM-553
 R12-4-502. PM-553
 R12-4-507. PM-553
 R12-4-509. PM-553
 R12-4-510. PM-553
 R12-4-518. PM-553

Gaming, Department of

R19-4-101. FXM-919
 R19-4-104. FXM-919
 R19-4-105. FXM-919
 R19-4-106. FXM-919
 R19-4-107. FXM-919
 R19-4-110. FXM-919
 R19-4-113. FXM-919
 R19-4-116. FXM-919
 R19-4-120. FXM-919
 R19-4-121. FXM-919
 R19-4-126. FXM-919
 R19-4-127. FXM-919
 R19-4-129. FXM-919
 R19-4-206. FXM-925
 R19-4-208. FXM-925

Health Care Cost Containment System, Arizona (AHCCCS) - Administration

R9-22-701. FM-837
 R9-22-712.08. FN-837

Health Services, Department of - Child Care Facilities

R9-5-101. PEM-99
 R9-5-201. PEM-99
 R9-5-203. PEM-99
 R9-5-208. PEM-99
 R9-5-402. PEM-99

Health Services, Department of - Child Care Group Homes

R9-3-101. PEM-89
 R9-3-201. PEM-89
 R9-3-202. PEM-89
 R9-3-205. PEM-89
 R9-3-301. PEM-89

Health Services, Department of - Emergency Medical Services

R9-25-701. FM-842
 R9-25-703. FM-842
 R9-25-704. FM-842
 R9-25-705. FR-842;
 F#-842;
 FM-842
 R9-25-706. F#-842;
 FM-842
 R9-25-707. F#-842;
 FM-842

| | | | | | |
|---|------------------------------|---|------------------------------|---|-----------------------------|
| R9-25-708. | F#-842; FM-842 | R9-10-803. R9-10-804. | PN-765 PN-765 | R9-9-402. R9-9-403. | PN-297 PN-297 |
| R9-25-709. | F#-842; FM-842 | R9-10-805. R9-10-806. | PN-765 PN-765 | Industrial Commission of Arizona | |
| R9-25-710. | F#-842; FM-842 | R9-10-807. R9-10-808. | PN-765 PN-765 | R20-5-601. R20-5-602. | PM-487 PM-487 |
| R9-25-711. | F#-842; FM-842 | Table 8.1. R9-10-809. | PN-765 PN-765 | R20-5-602.02. R20-5-1401. | FN-589 PM-361 |
| R9-25-712. | F#-842; FM-842 | R9-10-810. R9-10-1306. | PN-765 TM-404; PEM-464 | R20-5-1405. R20-5-1406. R20-5-1407. | PN-361 PN-361 PN-361 |
| R9-25-713. | F#-842 | | | | |
| R9-25-714. | FR-842 | R9-10-1802. | FEM-871 | Insurance and Financial Institutions, Department of - Insurance Division | |
| R9-25-715. | F#-842 | R9-10-2201. | XN-927 | | |
| R9-25-716. | FR-842 | R9-10-2202. | XN-927 | | |
| R9-25-717. | FR-842 | R9-10-2203. | XN-927 | | |
| R9-25-718. | FR-842 | R9-10-2204. | XN-927 | R20-6-212. | PM-454 |
| R9-25-801. | FR-842; F#-842; FM-842 | R9-10-2205. R9-10-2206. R9-10-2207. | XN-927 XN-927 XN-927 | R20-6-212.01. R20-6-212.02. R20-6-407. | PM-454 PN-454 SPM-681 |
| R9-25-802. | F#-842; FM-842 | R9-10-2208. R9-10-2209. | XN-927 XN-927 | R20-6-1301. R20-6-1302. | PN-330 PN-330 |
| R9-25-803. | F#-842; FM-842 | R9-10-2210. R9-10-2211. | XN-927 XN-927 | R20-6-1303. R20-6-1304. | PN-330 PN-330 |
| R9-25-804. | F#-842; FM-842 | R9-10-2212. R9-10-2213. | XN-927 XN-927 | R20-6-1305. Exhibit A. | PN-330 PN-330 |
| R9-25-805. | FM-842 | R9-10-2214. | XN-927 | R20-6-1601. | F#-493 |
| R9-25-806. | FR-842 | R9-10-2215. | XN-927 | R20-6-1602. | F#-493 |
| R9-25-807. | F#-842 | R9-10-2216. | XN-927 | R20-6-1603. | F#-493 |
| Table 8.1. | FR-842 | R9-10-2217. | XN-927 | R20-6-1604. | F#-493 |
| R9-25-1201. | FM-842 | R9-10-2218. | XN-927 | R20-6-1605. | F#-493 |
| Table 12.1. | FM-842 | R9-10-2219. | XN-927 | R20-6-1606. | F#-493 |
| | | R9-10-2220. | XN-927 | R20-6-1607. | F#-493 |
| Health Services, Department of - Health Care Institution Facility Data | | R9-10-2221. | XN-927 | R20-6-1608. | F#-493 |
| R9-11-101. | PM-311 | R9-10-2222. | XN-927 | R20-6-1609. | FR-493 |
| R9-11-201. | PM-311 | R9-10-2223. | XN-927 | R20-6-1610. | F#-493 |
| R9-11-202. | PM-311 | R9-10-2224. | XN-927 | R20-6-1611. | FR-493 |
| R9-11-203. | PM-311 | R9-10-2225. | XN-927 | R20-6-1612. | FR-493 |
| R9-11-205. | PM-311 | R9-10-2226. | XN-927 | R20-6-A1601. | F#-493; FM-493 |
| R9-11-301. | PM-311 | | | R20-6-A1602. | F#-493; FM-493 |
| R9-11-402. | PM-311 | Health Services, Department of - Health Programs Services | | R20-6-A1603. | F#-493; FM-493 |
| R9-11-502. | PM-311 | R9-13-201. | FEM-226 | R20-6-A1604. | F#-493; FM-493 |
| R9-11-601. | PN-311 | R9-13-203. | FEM-226 | R20-6-A1605. | F#-493; FM-493 |
| R9-11-602. | PN-311 | | | R20-6-A1606. | F#-493; FM-493 |
| R9-11-603. | PN-311 | Health Services, Department of - Procurement Organizations | | R20-6-A1607. | F#-493; FM-493 |
| R9-11-604. | PN-311 | R9-9-101. | PN-297 | R20-6-A1608. | F#-493; FM-493 |
| Health Services, Department of - Health Care Institutions: Licensing | | R9-9-102. | PN-297 | R20-6-A1609. | F#-493; FM-493 |
| R9-10-101. | XM-927 | R9-9-103. | PN-297 | | |
| R9-10-102. | XM-927 | R9-9-104. | PN-297 | | |
| R9-10-106. | XM-927 | R9-9-105. | PN-297 | | |
| R9-10-113. | TM-404; PEM-464 | R9-9-106. R9-9-107. | PN-297 PN-297 | | |
| R9-10-230. | TM-404; PEM-464 | R9-9-108. Table 1.1. | PN-297 PN-297 | Exhibit A. Exhibit E. | FM-493 FN-493 |
| R9-10-233. | TM-404; PEM-464 | R9-9-201. R9-9-202. | PN-297 PN-297 | R20-6-B1601. R20-6-B1602. | FN-493 FN-493 |
| R9-10-407. | TM-404; PEM-464 | R9-9-203. R9-9-204. | PN-297 PN-297 | R20-6-B1603. R20-6-1801. | FN-493 FM-654 |
| R9-10-501. | XM-927 | R9-9-205. | PN-297 | R20-6-1802. R20-6-1804. | FM-654 FM-654 |
| R9-10-507. | TM-404; PEM-464 | R9-9-301. R9-9-302. | PN-297 PN-297 | R20-6-1805. R20-6-1807. | FM-654 FM-654 |
| R9-10-801. | PN-765 | R9-9-303. | PN-297 | R20-6-1808. | FM-654 |
| R9-10-802. | PN-765; FEM-869 | R9-9-304. R9-9-305. R9-9-401. | PN-297 PN-297 PN-297 | R20-6-1811. R20-6-1813. R20-6-2201. | FM-654 FM-654 FM-687 |

Insurance and Financial Institutions, Department of - Real Estate Appraisal Division

R4-46-101. FM-893
 R4-46-102. FM-893
 R4-46-106. FM-893
 R4-46-107. FM-893
 R4-46-201. FM-893
 R4-46-201.01. FM-893
 R4-46-202.01. FM-893
 R4-46-203. FM-893
 R4-46-204. FM-893
 R4-46-209. FM-893
 R4-46-301. FM-893
 R4-46-301.01. FM-893
 R4-46-302.01. FM-893
 R4-46-303.01. FM-893
 R4-46-304.01. FM-893
 R4-46-305.01. FM-893
 R4-46-306.01. FM-893
 R4-46-307.01. FM-893
 R4-46-401. FM-893
 R4-46-402. FM-893
 R4-46-403. FM-893
 R4-46-404. FM-893
 R4-46-405. FM-893
 R4-46-406. FM-893
 R4-46-408. FM-893
 R4-46-501. FM-893
 R4-46-502. FM-893
 R4-46-503. FM-893
 R4-46-504. FM-893
 R4-46-505. FM-893
 R4-46-506. FM-893
 R4-46-507. FM-893
 R4-46-508. FM-893
 R4-46-509. FM-893
 R4-46-510. FM-893
 R4-46-511. FM-893
 R4-46-601. FM-893

Lottery Commission, Arizona State

R19-3-201. PM-439
 R19-3-202. PM-439
 R19-3-202.01. PM-439
 R19-3-202.02. PM-439
 R19-3-202.03. PR-439; PN-439
 R19-3-202.04. PM-439
 R19-3-202.06. PM-439
 R19-3-203. PM-439
 R19-3-204. PM-439
 R19-3-204.01. PM-439
 R19-3-204.02. PM-439
 R19-3-204.04. PM-439
 R19-3-205. PM-439
 R19-3-206. PM-439
 R19-3-209. PM-439
 R19-3-210. PM-439
 R19-3-211. PM-439
 R19-3-212. PM-439
 R19-3-213. PM-439
 R19-3-214. PM-439
 R19-3-215. PM-439
 R19-3-216. PM-439
 R19-3-217. PM-439

Nursing, Board of

R4-19-101. XM-111
 Table 1. XM-111
 R4-19-901. XN-111
 R4-19-902. XN-111

R4-19-903. XN-111
 R4-19-904. XN-111

Osteopathic Examiners in Medicine and Surgery, Board of

R4-22-102. FXM-660

Pharmacy, Board of

R4-23-411. SPN-339
 R4-23-902. FN-611
 R4-23-1004. FN-611
 R4-23-1005. FM-611
 R4-23-1104. SPN-339
 R4-23-1201. FR-611
 R4-23-1202. FR-611
 R4-23-1203. FR-611
 R4-23-1204. FR-611
 R4-23-1205. FR-611
 R4-23-1206. FR-611
 R4-23-1207. FR-611
 R4-23-1208. FM-611
 R4-23-1209. FR-611
 R4-23-1210. FR-611
 R4-23-1211. FR-611

Psychologist Examiners, Board of

R4-26-101. PM-745
 R4-26-104. PR-745
 R4-26-105. PR-745
 R4-26-106. PM-745
 R4-26-108. PM-745
 R4-26-109. PM-745
 R4-26-110. PM-745
 R4-26-111. PM-745
 R4-26-201. PM-745
 R4-26-203. PM-745
 R4-26-203.01. PM-745
 R4-26-203.02. PM-745
 R4-26-203.03. PM-745
 R4-26-203.04. PM-745
 R4-26-204. PM-745
 R4-26-205. PM-745
 R4-26-206. PM-745
 R4-26-207. PM-745
 R4-26-210. PM-745
 R4-26-402. PM-758
 R4-26-403. PM-758
 R4-26-404.1. PM-758
 R4-26-404.2. PM-758
 R4-26-405. PM-758
 R4-26-408. PM-758
 R4-26-409. PM-758
 R4-26-417. PM-758

Podiatry Examiners, Board of

R4-25-101. PM-251
 R4-25-103. PM-251
 R4-25-301. PM-251
 R4-25-302. PM-251
 R4-25-306. PM-251
 R4-25-602. PM-251
 R4-25-605. PM-251
 R4-25-701. PN-251
 R4-25-702. PN-251

Public Safety, Department of - Private Investigators

R13-2-101. PEM-517
 R13-2-102. PEM-517
 R13-2-103. PEM-517
 R13-2-104. PEM-517
 R13-2-105. PEM-517

R13-2-201. PER-517
 R13-2-202. PEM-517
 R13-2-203. PEM-517
 R13-2-204. PEM-517
 R13-2-205. PEM-517
 R13-2-206. PEM-517
 R13-2-207. PEM-517
 R13-2-208. PEM-517
 R13-2-301. PER-517
 R13-2-302. PEM-517
 R13-2-304. PEM-517
 R13-2-306. PEM-517
 R13-2-401. PEM-517
 R13-2-402. PER-517
 R13-2-404. PEM-517

Public Safety, Department of - Private Investigator and Security Guard Hearing Board

R13-12-103. PEM-524
 R13-12-104. PEM-524
 R13-12-105. PEM-524
 R13-12-106. PEM-524

Public Safety, Department of - Rapid DNA

R13-15-101. PN-10
 R13-15-102. PN-10
 R13-15-103. PN-10
 R13-15-104. PN-10
 R13-15-105. PN-10
 R13-15-106. PN-10
 R13-15-107. PN-10
 R13-15-108. PN-10

Regulatory Board of Physician Assistants, Arizona

R4-17-203. PM-549
 R4-17-206. PM-549
 R4-17-307. PN-549

Retirement System Board, State

R2-8-104. SPM-643
 R2-8-115. SPM-643
 R2-8-118. PM-795
 R2-8-126. SPM-643
 R2-8-128. SPM-643
 R2-8-130. SPM-643
 R2-8-131. SPM-643
 R2-8-401. FM-223
 R2-8-403. FM-223
 R2-8-801. SPM-643
 R2-8-1134. SPM-643

Secretary of State, Office of the

R2-12-1201. PM-217; FM-719
 R2-12-1203. PM-217; FM-719
 R2-12-1301. PM-217; FM-719
 R2-12-1304. PM-217; FM-719
 R2-12-1307. PM-217; FM-719
 R2-12-1308. PM-217; FM-719
 R2-12-1309. PN-217; FM-719

Transportation, Department of - Title, Registration, and Driver

| | | | | | |
|---------------------------------------|---------|-------------|---------|--------------|---------|
| Licenses | | R12-15-401. | FEM-266 | R12-15-729. | FEM-909 |
| | | R12-15-701. | FEM-909 | R12-15-811. | FEM-266 |
| | EXP-121 | R12-15-704. | FEM-909 | R12-15-814. | FEM-266 |
| R17-4-510. | | R12-15-708. | FEM-909 | R12-15-1224. | FEM-266 |
| R17-4-512. | EXP-121 | R12-15-710. | FEM-909 | | |
| Water Resources, Department of | | R12-15-713. | FEM-909 | | |

OTHER NOTICES AND PUBLIC RECORDS INDEX

Other legal notices required to be published under the Administrative Procedure Act, such as Rulemaking Docket Openings, are included in this Index by volume page number. Notices of Agency Ombudsman, Substantive Policy Statements, Proposed Delegation Agreements, and other applicable public records as required by law are also listed in this Index by volume page number.

THIS INDEX INCLUDES OTHER NOTICE ACTIVITY THROUGH ISSUE 18 OF VOLUME 28.

Agency Guidance Document, Notices of

Department of Health Services; p. 703

Agency Ombudsman, Notices of

Department of Water Resources; p. 233
 Game and Fish Department; p. 373
 Real Estate, Department of; p. 625
 Retirement System Board, State; p. 373
 State Board of Dental Examiners; p. 233

Docket Opening, Notices of Rulemaking

Administration, Department of - State Procurement Office; 2 A.A.C. 7; pp. 701-702
 Agriculture, Department of - Animal Services Division; 3 A.A.C. 2; p. 123
 Child Safety, Department of - Permanency and Support Services; 21 A.A.C. 5; p. 819-820
 Criminal Justice Commission, Arizona; 10 A.A.C. 4; p. 725
 Corporation Commission - Transportation; 14 A.A.C. 5; pp. 280-281
 Dental Examiners, State Board of; 4 A.A.C. 11; pp. 201-202
 Economic Security, Department of - Developmental Disabilities; 6 A.A.C. 6; pp. 818-819
 Environmental Quality, Department of - Permit and Compliance Fees; 18 A.A.C. 14; pp. 126-127
 Environmental Quality, Department of - Water Pollution Control; 18 A.A.C. 9; pp. 124-125
 Environmental Quality, Department of - Water Quality Assurance Revolving Fund Program; 18 A.A.C. 16; p. 726
 Environmental Quality, Department of - Water Quality Standards; 18 A.A.C. 11; pp. 125-126
 Game and Fish Commission; 12 A.A.C. 4; p. 594

Health Services, Department of - Emergency Medical Services; 9 A.A.C. 25; pp. 593-594
 Health Services, Department of - Health Care Institutions: Licensing; 9 A.A.C. 10; pp. 471-472
 Health Services, Department of - Occupational Licensing; 9 A.A.C. 16; pp. 663-664
 Industrial Commission of Arizona; 20 A.A.C. 5; pp. 372, 531-532
 Insurance and Financial Institutions, Department of - Insurance Division; 20 A.A.C. 6; p. 347
 Podiatry Examiners, Board of; 4 A.A.C. 25; p. 280
 Psychologist Examiners, Board of; 4 A.A.C. 26; pp. 775-776
 Public Safety, Department of - Private Investigators; 13 A.A.C. 2; pp. 528-529
 Public Safety, Department of - Private Investigator and Security Guard Hearing Board; 13 A.A.C. 12; p. 530
 Public Safety, Department of - Rapid DNA; 13 A.A.C. 15; p. 124
 Regulatory Board of Physician Assistants, Arizona; 4 A.A.C. 17; p. 279
 Retirement System Board, State; 2 A.A.C. 8; p. 818
 Secretary of State, Office of the; 2 A.A.C. 12; p. 232

Environmental Quality, Department of; p. 777

Proposed Delegation Agreement, Notices of

Environmental Quality, Department of; pp. 374-375, 727-728

Public Information, Notices of

Environmental Quality, Department of; pp. 129-135, 405-421
 Environmental Quality, Department of - Safe Drinking Water; pp. 778-779
 Health Services, Department of - Health Care Institutions: Licensing; p. 821

Substantive Policy Statement, Notices of

Agriculture, Department of - Animal Services Division; p. 729
 Dental Examiners, State Board of; p. 961
 Environmental Quality, Department of; pp. 234-235, 533-534
 Insurance and Financial Institutions, Department of - Division of Insurance; p. 376
 Real Estate Department, State; p. 282
 Water Infrastructure Finance Authority; pp. 377-380
 Water Resources, Department of; p. 873

Governor's Office

Executive Order 2021-02: pp. 203-204

Executive Order 2022-01: pp. 236-237

Governor's Regulatory Review Council

Notices of Action Taken at Monthly Meetings: pp. 245, 432-433, 637, 886-887

Final Delegation Agreement, Notices of

RULES EFFECTIVE DATES CALENDAR

A.R.S. § 41-1032(A), as amended by Laws 2002, Ch. 334, § 8 (effective August 22, 2002), states that a rule generally becomes effective 60 days after the day it is filed with the Secretary of State's Office. The following table lists filing dates and effective dates for rules that follow this provision. Please also check the rulemaking Preamble for effective dates.

| January | | February | | March | | April | | May | | June | |
|------------|----------------|------------|----------------|------------|----------------|------------|----------------|------------|----------------|------------|----------------|
| Date Filed | Effective Date | Date Filed | Effective Date | Date Filed | Effective Date | Date Filed | Effective Date | Date Filed | Effective Date | Date Filed | Effective Date |
| 1/1 | 3/2 | 2/1 | 4/2 | 3/1 | 4/30 | 4/1 | 5/31 | 5/1 | 6/30 | 6/1 | 7/31 |
| 1/2 | 3/3 | 2/2 | 4/3 | 3/2 | 5/1 | 4/2 | 6/1 | 5/2 | 7/1 | 6/2 | 8/1 |
| 1/3 | 3/4 | 2/3 | 4/4 | 3/3 | 5/2 | 4/3 | 6/2 | 5/3 | 7/2 | 6/3 | 8/2 |
| 1/4 | 3/5 | 2/4 | 4/5 | 3/4 | 5/3 | 4/4 | 6/3 | 5/4 | 7/3 | 6/4 | 8/3 |
| 1/5 | 3/6 | 2/5 | 4/6 | 3/5 | 5/4 | 4/5 | 6/4 | 5/5 | 7/4 | 6/5 | 8/4 |
| 1/6 | 3/7 | 2/6 | 4/7 | 3/6 | 5/5 | 4/6 | 6/5 | 5/6 | 7/5 | 6/6 | 8/5 |
| 1/7 | 3/8 | 2/7 | 4/8 | 3/7 | 5/6 | 4/7 | 6/6 | 5/7 | 7/6 | 6/7 | 8/6 |
| 1/8 | 3/9 | 2/8 | 4/9 | 3/8 | 5/7 | 4/8 | 6/7 | 5/8 | 7/7 | 6/8 | 8/7 |
| 1/9 | 3/10 | 2/9 | 4/10 | 3/9 | 5/8 | 4/9 | 6/8 | 5/9 | 7/8 | 6/9 | 8/8 |
| 1/10 | 3/11 | 2/10 | 4/11 | 3/10 | 5/9 | 4/10 | 6/9 | 5/10 | 7/9 | 6/10 | 8/9 |
| 1/11 | 3/12 | 2/11 | 4/12 | 3/11 | 5/10 | 4/11 | 6/10 | 5/11 | 7/10 | 6/11 | 8/10 |
| 1/12 | 3/13 | 2/12 | 4/13 | 3/12 | 5/11 | 4/12 | 6/11 | 5/12 | 7/11 | 6/12 | 8/11 |
| 1/13 | 3/14 | 2/13 | 4/14 | 3/13 | 5/12 | 4/13 | 6/12 | 5/13 | 7/12 | 6/13 | 8/12 |
| 1/14 | 3/15 | 2/14 | 4/15 | 3/14 | 5/13 | 4/14 | 6/13 | 5/14 | 7/13 | 6/14 | 8/13 |
| 1/15 | 3/16 | 2/15 | 4/16 | 3/15 | 5/14 | 4/15 | 6/14 | 5/15 | 7/14 | 6/15 | 8/14 |
| 1/16 | 3/17 | 2/16 | 4/17 | 3/16 | 5/15 | 4/16 | 6/15 | 5/16 | 7/15 | 6/16 | 8/15 |
| 1/17 | 3/18 | 2/17 | 4/18 | 3/17 | 5/16 | 4/17 | 6/16 | 5/17 | 7/16 | 6/17 | 8/16 |
| 1/18 | 3/19 | 2/18 | 4/19 | 3/18 | 5/17 | 4/18 | 6/17 | 5/18 | 7/17 | 6/18 | 8/17 |
| 1/19 | 3/20 | 2/19 | 4/20 | 3/19 | 5/18 | 4/19 | 6/18 | 5/19 | 7/18 | 6/19 | 8/18 |
| 1/20 | 3/21 | 2/20 | 4/21 | 3/20 | 5/19 | 4/20 | 6/19 | 5/20 | 7/19 | 6/20 | 8/19 |
| 1/21 | 3/22 | 2/21 | 4/22 | 3/21 | 5/20 | 4/21 | 6/20 | 5/21 | 7/20 | 6/21 | 8/20 |
| 1/22 | 3/23 | 2/22 | 4/23 | 3/22 | 5/21 | 4/22 | 6/21 | 5/22 | 7/21 | 6/22 | 8/21 |
| 1/23 | 3/24 | 2/23 | 4/24 | 3/23 | 5/22 | 4/23 | 6/22 | 5/23 | 7/22 | 6/23 | 8/22 |
| 1/24 | 3/25 | 2/24 | 4/25 | 3/24 | 5/23 | 4/24 | 6/23 | 5/24 | 7/23 | 6/24 | 8/23 |
| 1/25 | 3/26 | 2/25 | 4/26 | 3/25 | 5/24 | 4/25 | 6/24 | 5/25 | 7/24 | 6/25 | 8/24 |
| 1/26 | 3/27 | 2/26 | 4/27 | 3/26 | 5/25 | 4/26 | 6/25 | 5/26 | 7/25 | 6/26 | 8/25 |
| 1/27 | 3/28 | 2/27 | 4/28 | 3/27 | 5/26 | 4/27 | 6/26 | 5/27 | 7/26 | 6/27 | 8/26 |
| 1/28 | 3/29 | 2/28 | 4/29 | 3/28 | 5/27 | 4/28 | 6/27 | 5/28 | 7/27 | 6/28 | 8/27 |
| 1/29 | 3/30 | | | 3/29 | 5/28 | 4/29 | 6/28 | 5/29 | 7/28 | 6/29 | 8/28 |
| 1/30 | 3/31 | | | 3/30 | 5/29 | 4/30 | 6/29 | 5/30 | 7/29 | 6/30 | 8/29 |
| 1/31 | 4/1 | | | 3/31 | 5/30 | | | 5/31 | 7/30 | | |

| July | | August | | September | | October | | November | | December | |
|------------|----------------|------------|----------------|------------|----------------|------------|----------------|------------|----------------|------------|----------------|
| Date Filed | Effective Date | Date Filed | Effective Date | Date Filed | Effective Date | Date Filed | Effective Date | Date Filed | Effective Date | Date Filed | Effective Date |
| 7/1 | 8/30 | 8/1 | 9/30 | 9/1 | 10/31 | 10/1 | 11/30 | 11/1 | 12/31 | 12/1 | 1/30 |
| 7/2 | 8/31 | 8/2 | 10/1 | 9/2 | 11/1 | 10/2 | 12/1 | 11/2 | 1/1 | 12/2 | 1/31 |
| 7/3 | 9/1 | 8/3 | 10/2 | 9/3 | 11/2 | 10/3 | 12/2 | 11/3 | 1/2 | 12/3 | 2/1 |
| 7/4 | 9/2 | 8/4 | 10/3 | 9/4 | 11/3 | 10/4 | 12/3 | 11/4 | 1/3 | 12/4 | 2/2 |
| 7/5 | 9/3 | 8/5 | 10/4 | 9/5 | 11/4 | 10/5 | 12/4 | 11/5 | 1/4 | 12/5 | 2/3 |
| 7/6 | 9/4 | 8/6 | 10/5 | 9/6 | 11/5 | 10/6 | 12/5 | 11/6 | 1/5 | 12/6 | 2/4 |
| 7/7 | 9/5 | 8/7 | 10/6 | 9/7 | 11/6 | 10/7 | 12/6 | 11/7 | 1/6 | 12/7 | 2/5 |
| 7/8 | 9/6 | 8/8 | 10/7 | 9/8 | 11/7 | 10/8 | 12/7 | 11/8 | 1/7 | 12/8 | 2/6 |
| 7/9 | 9/7 | 8/9 | 10/8 | 9/9 | 11/8 | 10/9 | 12/8 | 11/9 | 1/8 | 12/9 | 2/7 |
| 7/10 | 9/8 | 8/10 | 10/9 | 9/10 | 11/9 | 10/10 | 12/9 | 11/10 | 1/9 | 12/10 | 2/8 |
| 7/11 | 9/9 | 8/11 | 10/10 | 9/11 | 11/10 | 10/11 | 12/10 | 11/11 | 1/10 | 12/11 | 2/9 |
| 7/12 | 9/10 | 8/12 | 10/11 | 9/12 | 11/11 | 10/12 | 12/11 | 11/12 | 1/11 | 12/12 | 2/10 |
| 7/13 | 9/11 | 8/13 | 10/12 | 9/13 | 11/12 | 10/13 | 12/12 | 11/13 | 1/12 | 12/13 | 2/11 |
| 7/14 | 9/12 | 8/14 | 10/13 | 9/14 | 11/13 | 10/14 | 12/13 | 11/14 | 1/13 | 12/14 | 2/12 |
| 7/15 | 9/13 | 8/15 | 10/14 | 9/15 | 11/14 | 10/15 | 12/14 | 11/15 | 1/14 | 12/15 | 2/13 |
| 7/16 | 9/14 | 8/16 | 10/15 | 9/16 | 11/15 | 10/16 | 12/15 | 11/16 | 1/15 | 12/16 | 2/14 |
| 7/17 | 9/15 | 8/17 | 10/16 | 9/17 | 11/16 | 10/17 | 12/16 | 11/17 | 1/16 | 12/17 | 2/15 |
| 7/18 | 9/16 | 8/18 | 10/17 | 9/18 | 11/17 | 10/18 | 12/17 | 11/18 | 1/17 | 12/18 | 2/16 |
| 7/19 | 9/17 | 8/19 | 10/18 | 9/19 | 11/18 | 10/19 | 12/18 | 11/19 | 1/18 | 12/19 | 2/17 |
| 7/20 | 9/18 | 8/20 | 10/19 | 9/20 | 11/19 | 10/20 | 12/19 | 11/20 | 1/19 | 12/20 | 2/18 |
| 7/21 | 9/19 | 8/21 | 10/20 | 9/21 | 11/20 | 10/21 | 12/20 | 11/21 | 1/20 | 12/21 | 2/19 |
| 7/22 | 9/20 | 8/22 | 10/21 | 9/22 | 11/21 | 10/22 | 12/21 | 11/22 | 1/21 | 12/22 | 2/20 |
| 7/23 | 9/21 | 8/23 | 10/22 | 9/23 | 11/22 | 10/23 | 12/22 | 11/23 | 1/22 | 12/23 | 2/21 |
| 7/24 | 9/22 | 8/24 | 10/23 | 9/24 | 11/23 | 10/24 | 12/23 | 11/24 | 1/23 | 12/24 | 2/22 |
| 7/25 | 9/23 | 8/25 | 10/24 | 9/25 | 11/24 | 10/25 | 12/24 | 11/25 | 1/24 | 12/25 | 2/23 |
| 7/26 | 9/24 | 8/26 | 10/25 | 9/26 | 11/25 | 10/26 | 12/25 | 11/26 | 1/25 | 12/26 | 2/24 |
| 7/27 | 9/25 | 8/27 | 10/26 | 9/27 | 11/26 | 10/27 | 12/26 | 11/27 | 1/26 | 12/27 | 2/25 |
| 7/28 | 9/26 | 8/28 | 10/27 | 9/28 | 11/27 | 10/28 | 12/27 | 11/28 | 1/27 | 12/28 | 2/26 |
| 7/29 | 9/27 | 8/29 | 10/28 | 9/29 | 11/28 | 10/29 | 12/28 | 11/29 | 1/28 | 12/29 | 2/27 |
| 7/30 | 9/28 | 8/30 | 10/29 | 9/30 | 11/29 | 10/30 | 12/29 | 11/30 | 1/29 | 12/30 | 2/28 |
| 7/31 | 9/29 | 8/31 | 10/30 | | | 10/31 | 12/30 | | | 12/31 | 3/1 |

REGISTER PUBLISHING DEADLINES

The Secretary of State's Office publishes the Register weekly. There is a three-week turnaround period between a deadline date and the publication date of the Register. The weekly deadline dates and issue dates are shown below. Council meetings and Register deadlines do not correlate. Also listed are the earliest dates on which an oral proceeding can be held on proposed rulemakings or proposed delegation agreements following publication of the notice in the Register.

| Deadline Date Friday, 5:00 p.m. <i>(*earlier date due to holiday)</i> | Register Publication Date | Oral Proceeding may be scheduled on or after |
|---|--|---|
| December 30, 2021 | January 21, 2022 | February 22, 2022 |
| January 7, 2022 | January 28, 2022 | February 28, 2022 |
| January 14, 2022 | February 4, 2022 | March 7, 2022 |
| January 21, 2022 | February 11, 2022 | March 14, 2022 |
| January 28, 2022 | February 18, 2022 | March 21, 2022 |
| February 4, 2022 | February 25, 2022 | March 28, 2022 |
| February 11, 2022 | March 4, 2022 | April 4, 2022 |
| February 18, 2022 | March 11, 2022 | April 11, 2022 |
| February 25, 2022 | March 18, 2022 | April 18, 2022 |
| March 4, 2022 | March 25, 2022 | April 25, 2022 |
| March 11, 2022 | April 1, 2022 | May 2, 2022 |
| March 18, 2022 | April 8, 2022 | May 9, 2022 |
| March 25, 2022 | April 15, 2022 | May 16, 2022 |
| April 1, 2022 | April 22, 2022 | May 23, 2022 |
| April 8, 2022 | April 29, 2022 | May 31, 2022 |
| April 15, 2022 | May 6, 2022 | June 6, 2022 |
| April 22, 2022 | May 13, 2022 | June 13, 2022 |
| April 29, 2022 | May 20, 2022 | June 20, 2022 |
| May 6, 2022 | May 27, 2022 | June 27, 2022 |
| May 13, 2022 | June 3, 2022 | July 5, 2022 |
| May 20, 2022 | June 10, 2022 | July 11, 2022 |
| May 27, 2022 | June 17, 2022 | July 18, 2022 |
| June 3, 2022 | June 24, 2022 | July 25, 2022 |
| June 10, 2022 | July 1, 2022 | August 1, 2022 |
| June 17, 2022 | July 8, 2022 | August 8, 2022 |
| June 24, 2022 | July 15, 2022 | August 15, 2022 |
| July 1, 2022 | July 22, 2022 | August 22, 2022 |
| July 8, 2022 | July 29, 2022 | August 29, 2022 |
| July 15, 2022 | August 5, 2022 | September 6, 2022 |

GOVERNOR’S REGULATORY REVIEW COUNCIL DEADLINES

The following deadlines apply to all Five-Year Review Reports and any adopted rule submitted to the Governor’s Regulatory Review Council. Council meetings and Register deadlines do not correlate. We publish these deadlines under A.R.S. § 41-1013(B)(15).

All rules and Five-Year Review Reports are due in the Council office by 5 p.m. of the deadline date. The Council’s office is located at 100 N. 15th Ave., Suite 305, Phoenix, AZ 85007. For more information, call (602) 542-2058 or visit <http://grrc.az.gov>.

GOVERNOR’S REGULATORY REVIEW COUNCIL DEADLINES FOR 2022
(MEETING DATES ARE SUBJECT TO CHANGE)

| DEADLINE FOR PLACEMENT ON AGENDA* | FINAL MATERIALS SUBMITTED TO COUNCIL | DATE OF COUNCIL STUDY SESSION | DATE OF COUNCIL MEETING |
|-----------------------------------|--------------------------------------|-------------------------------|--------------------------------|
| Tuesday January 18, 2022 | Tuesday February 15, 2022 | Tuesday February 22, 2022 | Tuesday March 1, 2022 |
| Tuesday February 15, 2022 | Tuesday March 22, 2022 | Tuesday March 29, 2022 | Tuesday April 5, 2022 |
| Tuesday March 22, 2022 | Tuesday April 19, 2022 | Tuesday April 26, 2022 | Tuesday May 3, 2022 |
| Tuesday April 19, 2022 | Tuesday May 17, 2022 | Tuesday May 24, 2022 | Wednesday June 1, 2022 |
| Tuesday May 17, 2022 | Tuesday June 21, 2022 | Tuesday June 28, 2022 | Wednesday July 6, 2022 |
| Tuesday June 21, 2022 | Tuesday July 19, 2022 | Tuesday July 26, 2022 | Tuesday August 2, 2022 |
| Tuesday July 19, 2022 | Tuesday August 23, 2022 | Tuesday August 30, 2022 | Wednesday September 7, 2022 |
| Tuesday August 23, 2022 | Tuesday September 20, 2022 | Tuesday September 27, 2022 | Tuesday October 4, 2022 |
| Tuesday September 20, 2022 | Tuesday October 18, 2022 | Tuesday October 25, 2022 | Tuesday November 1, 2022 |
| Tuesday October 18, 2022 | Tuesday November 22, 2022 | Tuesday November 29, 2022 | Tuesday December 6, 2022 |

* Materials must be submitted by **5 PM** on dates listed as a deadline for placement on a particular agenda. Placement on a particular agenda is not guaranteed.

GOVERNOR'S REGULATORY REVIEW COUNCIL
NOTICE OF ACTION TAKEN AT THE MAY 3, 2022 MEETING

[M22-34]

A. CONSENT AGENDA ITEMS:**Rulemakings:**

1. **ARIZONA STATE RETIREMENT SYSTEM (Expedited Rulemaking)**
 Title 2, Chapter 8, Article 7

Amend: R2-8-701, R2-8-704, R2-8-706, R2-8-707
2. **ARIZONA STATE RETIREMENT SYSTEM**
 Title 2, Chapter 8, Articles 1 and 3

Amend: R2-8-117, R2-8-304
3. **ARIZONA STATE RETIREMENT SYSTEM**
 Title 2, Chapter 8, Articles 5 and 10

Amend: R2-8-501, R2-8-505, R2-8-1006
4. **ARIZONA STATE RETIREMENT SYSTEM**
 Title 2, Chapter 8, Article 8

Amend: R2-8-803, R2-8-808, R2-8-809
5. **DEPARTMENT OF HEALTH SERVICES - HEALTH CARE INSTITUTIONS: LICENSING (Expedited Rulemaking)**
 Title 9, Chapter 10, Articles 1, 2, 4, 5 and 13

Amend: R9-10-113, R9-10-230, R9-10-233, R9-10-407, R9-10-507, R9-10-1306
6. **DEPARTMENT OF HEALTH SERVICES - OCCUPATIONAL LICENSING (Expedited Rulemaking)**
 Title 9, Chapter 16, Article 1

Amend: R9-16-101 through R9-16-116
7. **DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL (Expedited Rulemaking)**
 Title 18, Chapter 2, Articles 1 and 4

Amend: R18-2-101, R18-2-404
8. **DEPARTMENT OF TRANSPORTATION - OVERSIZE AND OVERWEIGHT SPECIAL PERMITS**
 Title 17, Chapter 6, Articles 1 - 4, Article 5

Amend: R17-6-101, R17-6-102, Table 1, R17-6-103 through R17-6-109, R17-6-112, R17-6-113, R17-6-201, R17-6-203, R17-6-205, R17-6-206, Table 2, R17-6-209 through R17-6-212, R17-6-302, Ill. 1, R17-6-303, R17-6-304, Ill. 4, R17-6-305 through R17-6-307, R17-6-401 through R17-6-403, R17-6-407, R17-6-411, Tables 3.01 through 3.09, R17-6-412, Table 4, R17-6-502, R17-6-506, R17-6-508, R17-6-509

Repeal: R17-6-202, R17-6-208, R17-6-211, Table 6, Table 7, R17-6-402, R17-6-405, R17-6-409, Ill. 3

Renumber: R17-6-204, R17-6-210, Table 5, R17-6-211, R17-6-402, R17-6-403, R17-6-405, R17-6-406, R17-6-408, R17-6-409, R17-6-413, Table 5, R17-6-414, R17-6-501, R17-6-502, R17-6-503, R17-6-504, R17-6-505, R17-6-507, R17-6-508, R17-6-509, R17-6-510, R17-6-511

New Section: R17-6-207, Ill. 3, R17-6-501, R17-6-503, R17-6-504, R17-6-505
9. **PEACE OFFICERS STANDARDS AND TRAINING BOARD**
 Title 13, Chapter 4, Articles 1 and 2

Amend: R13-4-101, R13-4-103, R13-4-104, R13-4-105, R13-4-106, R13-4-110, R13-4-116, R13-4-117, R13-4-118, R13-4-201, R13-4-202, R13-4-203
10. **DEPARTMENT OF PUBLIC SAFETY - RAPID DNA**
 Title 13, Chapter 15, Article 1

New Chapter: Chapter 15

New Article: Article 1

New Section: R13-15-101 through R13-15-108

11. BOARD OF ACCOUNTANCY

Title 4, Chapter 1, Article 1

Amend: R4-1-101, R4-1-104, R4-1-115.03, R4-1-345, R4-1-453, R4-1-454, R4-1-455

COUNCIL ACTION: CONSENT AGENDA APPROVED

B. CONSIDERATION AND DISCUSSION OF RULEMAKINGS:

1. BOARD OF PHARMACY

Title 4, Chapter 23, Articles 4 and 11

Amend: R4-23-411, R4-23-1104

COUNCIL ACTION: APPROVED WITH CHANGES TO R4-23-1104

C. CONSIDERATION AND DISCUSSION OF A.R.S. § 41-1033(G) PETITION ON BOARD OF BEHAVIORAL HEALTH EXAMINERS RULE R4-6-1106(B)

COUNCIL ACTION: COUNCIL REJECTED THE PETITION

D. CONSIDERATION AND DISCUSSION OF A FIVE YEAR REVIEW REPORT RESCHEDULE REQUEST FROM THE DEPARTMENT OF HEALTH SERVICES

COUNCIL ACTION: APPROVED