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# Arizona Administrative REGISTER

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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Rules can be: made (all new text); amended (rules on file, changing text); repealed (removing text); or renumbered (moving rules to a different Section number).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New rules in this publication (whether proposed or made) are denoted with underlining; repealed text is stricken.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

July 29, 2022  
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This publication is available online for free at [www.azsos.gov](http://www.azsos.gov).

**ADMINISTRATIVE CODE**  
A price list for the *Arizona Administrative Code* is available online at [www.azsos.gov](http://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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# 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.

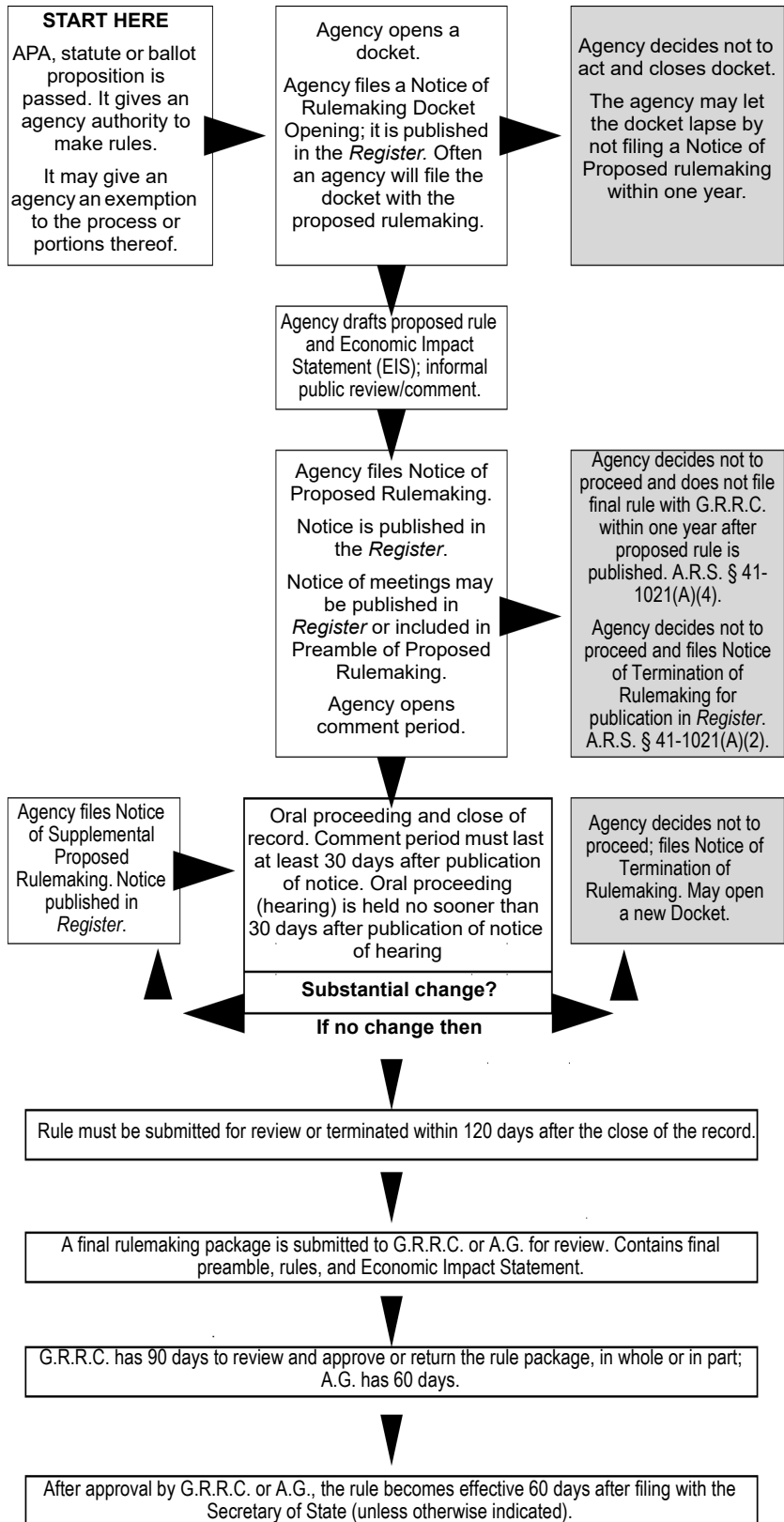
An agency may not have a public meeting scheduled on the Notice of Proposed Rulemaking. If not, you may request that the agency schedule a proceeding. This request must be put in writing within 30 days after the published Notice of Proposed Rulemaking.

## 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](http://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](http://www.azsos.gov).

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

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## NOTICES OF FINAL RULEMAKING

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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*.

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### NOTICE OF FINAL RULEMAKING

#### TITLE 18. ENVIRONMENTAL QUALITY

#### CHAPTER 1. DEPARTMENT OF ENVIRONMENTAL QUALITY ADMINISTRATION

[R22-155]

#### PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <u>Rulemaking Action</u>                                                                                             |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|
| Table 10                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Amend                                                                                                                |
| <b><u>2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                      |
| Authorizing statute: A.R.S. §§ 49-203(A)(6)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                      |
| Implementing statute: A.R.S. § 49-257.01                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                      |
| <b><u>3. The effective date for the rules:</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                      |
| September 6, 2022                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                      |
| <b><u>4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                      |
| Notices of Rulemaking Docket Opening: 25 A.A.R. 2491, September, 27, 2019                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                      |
| 26 A.A.R. 2003, September 25, 2020                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                      |
| 27 A.A.R. 1592, October 1, 2021                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                      |
| Notice of Proposed Rulemaking: 28 A.A.R. 16, January 7, 2022                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                      |
| <b><u>5. The agency's contact person who can answer questions about the rulemaking:</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                      |
| Name:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Jon Rezabek                                                                                                          |
| Address:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Arizona Department of Environmental Quality<br>Water Quality Division<br>1110 W. Washington St.<br>Phoenix, AZ 85007 |
| Telephone:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | (602) 771-8219                                                                                                       |
| Email:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | rezabek.jon@azdeq.gov                                                                                                |
| Website:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | https://azdeq.gov/UIC                                                                                                |
| <b><u>6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                      |
| <b><i>General Explanation of this Rulemaking:</i></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                      |
| The Arizona Department of Environmental Quality (ADEQ) is required under A.R.S. §§ 49-203(A)(6) and 49-257.01(A) to adopt a permit program for underground injection control (UIC), as administered under the Safe Drinking Water Act (SDWA; 42 U.S.C. § 300h et seq.). Per the conditional enactment in proposed rule R18-9-A602(A), any UIC rules promulgated by the State of Arizona shall not have the force and effect of law until the U.S. Environmental Protection Agency (EPA) approves the transfer of primary enforcement authority (referred to herein as "Primacy") through EPA's publication of a final rule granting ADEQ Primacy in the Federal Register (see 40 CFR § 145.31). ADEQ first attempted this process in the late 1990s; but those efforts ultimately failed due to insufficient statutory and regulatory authority to develop the program. In 2018 Senate Bill 1494 was passed, giving ADEQ the requisite statutory authority to promulgate a state-level UIC program as required to obtain primacy approval. |                                                                                                                      |
| In this action, ADEQ proposes new regulatory framework to articulate compliance expectations, mandate regulatory duties, and identify certain rights of those regulated through the Arizona UIC program. On May 7, 2018, the Governor's Office approved an exemption to the rulemaking moratorium in Executive Order 2018-02 so ADEQ can proceed with this rulemaking.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                      |

**Associated Rulemakings**

The Arizona UIC program is a regulatory program with associated fees and licensing time frames (LTF). A.A.C. R1-1-103(D)(4) states, "...[a]n agency shall file only one Chapter per notice for any rulemaking activity." In adherence to the rule, the program component of the Arizona UIC program, which amends A.A.C. Title 18, Chapter 9, is a separate Notice of Proposed Rulemaking filed contemporaneously with this rulemaking, which amends A.A.C. Title 18, Chapter 1. Furthermore, the Arizona UIC program amendments to the ADEQ water quality fee rules (A.A.C. Title 18, Chapter 14) has also been filed contemporaneously with the program and LTF amendments.

**What is Underground Injection?**

An injection well is used to place fluid underground into porous geologic formations. These underground formations may range from deep sandstone or limestone, to a shallow soil layer. Injected fluids may include water, wastewater, brine (salt water), or water mixed with chemicals.

**What is a well?**

A well is a bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; or a dug hole whose depth is greater than the largest surface dimension; or, an improved sinkhole; or a subsurface fluid distribution system.

**What does the Federal UIC program do?**

The UIC program protects Underground Sources of Drinking Water (USDW) through the regulation of injection wells. USDWs are:

aquifers or portions of aquifers that:

1. supply public water systems; or
2. contain a sufficient quantity of ground water to supply a public water system; and
  - a. currently supply drinking water for human consumption, or
  - b. contain fewer than 10,000 mg/l total dissolved solids; and
3. are not aquifers exempted under the UIC program.

**How does the UIC program protect USDWs?**

The UIC program requires injected fluids stay within the well or the intended injection zone. The program also regulates fluids that are directly or indirectly injected into a USDW by prohibiting the movement of fluid containing any contaminant into USDWs, if the presence of that contaminant may cause a violation of any primary drinking water regulation or may otherwise adversely affect the health of persons.

**What are the different well classifications in the UIC program?****Class I**

Class I wells are used to inject hazardous and non-hazardous wastes into deep, isolated rock formations. Class I wells are disposal wells used by the petroleum refining, metal production, chemical production, pharmaceutical production, commercial disposal, food production and municipal wastewater treatment industries (amongst others) to dispose. These deep well injections release fluids into formations below USDWs, usually formations separated by multiple geologic strata from USDWs and often times at depths thousands of feet below the surface.

**Class II**

Class II wells are used exclusively to inject fluids associated with oil and natural gas production. Class II wells fall into one of the following three categories: disposal wells, enhanced recovery wells and hydrocarbon storage wells. Class II fluids are primarily brines (salt water) that are brought to the surface while producing oil and gas. Brines are separated from hydrocarbons at the surface and reinjected into the same or similar underground formations for disposal. Enhanced recovery wells utilize fluids consisting of brine, freshwater, steam, polymers, or carbon dioxide that are injected into oil-bearing formations to recover residual oil and in limited applications, natural gas. Hydrocarbon storage wells inject liquid hydrocarbons into underground formations (such as salt caverns) where they are stored, generally, as part of the U.S. Strategic Petroleum Reserve.

**Class III**

Class III wells are used to inject fluids for the purpose of dissolving and then extracting minerals. Production wells, which bring mining fluids to the surface, are not regulated under the UIC program. Class III wells are used to mine Uranium, Salt, Copper and Sulfur. Class III injection requirements isolate fluids from underground sources of drinking water.

**Class IV**

Class IV wells are used to inject hazardous or radioactive wastes into or above a geologic formation that contains a USDW. In 1984, EPA banned the use of Class IV injection wells. ADEQ will continue this ban upon primacy. These wells may only operate as part of an EPA or state authorized ground water clean-up action. Less than 32 waste clean-up sites with Class IV wells exist in the United States.

**Class V**

Class V wells are used to inject non-hazardous fluids underground. Most Class V wells are used to dispose of wastes into or above USDWs. This disposal can pose a threat to ground water quality if not managed properly. The different types of Class V wells pose various threats. Most Class V wells are shallow disposal systems that depend on gravity to drain fluids directly in the ground. Over 20 well subtypes fall into the Class V category. There are more than 650,000 Class V wells estimated to operate in the United States. Most of these Class V wells are unsophisticated shallow disposal systems such as stormwater drainage wells, septic system leach fields and agricultural drainage wells.

**Class VI**

Class VI wells are used to inject carbon dioxide (CO<sub>2</sub>) into deep rock formations. This long-term underground storage is called geologic sequestration (GS). Geologic sequestration refers to technologies to reduce CO<sub>2</sub> emissions to the atmosphere and mitigate climate change.

**Stakeholder Composition**

Arizona currently has five (5) individual EPA UIC program permits operating within the state boundaries (not including Indian lands), all of which are for Class III wells for the purpose of extracting salts and copper. The three companies operating the five permits are Morton Salt, Inc., Excelsior Mining Arizona, Inc. and Florence Copper, Inc.

The UIC program applies to a large number of Class V injection wells through the programs “authorization by rule.” Class V authorization by rule includes initial inventorying, operators meeting a set of criteria, including a general standard to not cause fluids to move in such a way where a USDW would receive a pollutant above the standards in Table 1. Examples of Arizona Class V wells include drywells, aquifer storage recharge wells, septic systems serving greater than 20 people per day or that have a design flow of over 3,000 gallons per day and stimulation injection wells for the purpose of inert gas extraction (See proposed rule R18-9-A604(E) in Section 13 below for more examples of Class V wells). Furthermore, through stakeholder outreach, ADEQ has become aware of Arizona municipalities that are interested in developing Class I municipal wastewater disposal wells.

**What has been the stakeholder process thus far for this rulemaking?**

Statutory authority for program pursuit was passed into law through Senate Bill 1494 in 2018 at A.R.S. §§ 49-257 and 49-257.01. An exemption memo was received from the Governor’s Office in May of 2018. Since those events, ADEQ has been reaching out to UIC stakeholders throughout the state in a pre-rulemaking process known internally as “informal rulemaking”. Informal rulemaking involves developing and setting internal goals for what the rulemaking should achieve. ADEQ has held nine (9) stakeholder meetings, either presenting to stakeholders, receiving stakeholder input or both. Tribal consultation presentations were conducted three times in May 2019. Tribal correspondence has been addressed throughout the informal rulemaking phase as well.

The nine stakeholder meetings were designed to inform the regulated community of ADEQ’s progress in pursuing Primacy, as well as, explaining and presenting drafts of the state rules being developed for the ultimate purpose of administering the program. In November 2019 and November 2020, stakeholders were given access to drafts of the “program rule”. Afterwards, ADEQ solicited hundreds of comments from the regulated community, addressing and analyzing each one. Some comments led to changes in rule language, while others were determined to be inapplicable or unnecessary. All comments received were considered and are appreciated by the Agency. A repository of materials and events can be viewed on ADEQ’s “Stakeholder Materials” page for the UIC rulemaking. That webpage can be found here: <https://azdeq.gov/UIC>

**Choosing LTFs for the UIC Program**

The LTFs that are proposed in this rulemaking (pursuant to A.R.S. §§ 41-1072 et seq.) are in accordance with those established for the Aquifer Protection Permits (See Table 10. Water Permit Licensing Time-frames). UIC permit applications that ADEQ does not anticipate being significantly complicated (Classes II, III and V) are provided 35 days for the administrative completeness review and 186 days for the substantive review. This makes the overall time frame 221 days. If a public hearing is required, 45 days are added to the substantive review and the overall time frame, making 231 and 266 days, respectively. UIC permit applications that ADEQ anticipates being significantly complicated (Area Permits, Classes I and VI) are provided 35 days for the administrative completeness review and 249 days for the substantive review. This makes the overall time frame 284 days. If a public hearing is required, 45 days are added to the substantive review and the overall time frame, making 294 and 329 days, respectively. UIC Modifications are provided the same LTFs as a normal application would be allotted.

ADEQ is exploring the regulation of drywells under the UIC program as Class V wells “authorized by rule.” At primacy, ADEQ will take administrative and enforcement authority over the UIC program, including Class V regulation of drywells.

In discussion with UIC stakeholders, it was determined that a review of the revenues collected from the UIC program’s fees should take place once every three years in order to ensure that enough revenue is being collected to properly administer the program and to make sure the fees are equitable by putting the least amount of burden on the stakeholders. To that end, R18-14-115 is proposed in this rulemaking.

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

Not applicable

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

Not applicable

**9. The economic, small business, and consumer impact statement:**

This Economic, Small Business, and Consumer Impact Statement has been prepared to meet the requirements of A.R.S. § 41-1055.

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

The rulemaking addressed by this Economic, Small Business, and Consumer Impact Statement (EIS) consists of 72 new sections, as well as amendments to existing sections, made by the Arizona Department of Environmental Quality (ADEQ) to 18 A.A.C. 9, Articles 1 and 6, 18 A.A.C. 1, Article 5 and 18 A.A.C. 14, Article 1 in order to adopt the Federal Safe Drinking Water Act’s (SDWA) Underground Injection Control Program (UIC) under the relevant regulation in 40 C.F.R. Parts 144 through 146 within the State of Arizona as required under A.R.S. §§ 49-203(A)(6), 49-257.01.

Arizona Revised Statutes §§ 49-203(A)(6) and 49-257.01 mandate that ADEQ establishes the UIC Program through rule. Federal statute at 42 United States Code 300h et seq. authorizes EPA to grant states primary enforcement authority or primacy over the UIC program upon the adoption of the program in rule at the state level (see 40 CFR 145.22(a)(5)).

Control of underground injection conducted in the industrial, municipal and residential sectors is necessary in order to protect Arizona’s underground sources of drinking water (USDWs) or aquifers. In Arizona, the UIC program has been administered by the Environmental Protection Agency (EPA) for decades. Currently 5 Federal UIC permits are in effect, along with thousands of UIC Class V wells that are authorized by rule.

Arizona's program adoption will allow primacy to rest with ADEQ who is entirely focused on, and knowledgeable of, Arizona's unique geology and climate; and who deeply understand Arizona's environment, economy, and community. Additionally, program adoption will allow ADEQ to issue better permits, faster, and eliminate duplicative regulation, permitting, and permittee fees between the Federal and state programs. Adoption of this program will supplement Arizona's already existing groundwater safeguards, taking a place in conjunction with the Aquifer Protection Permit Program.

**B. A summary of the EIS:**

**General Impacts**

The primary costs of this rulemaking will be borne by UIC well permit holders and UIC wells authorized by rule. This includes in-situ copper mines, salt mines, municipal aquifer storage and recharge wells, extraction wells, carbon sequestration wells and a host of other injection wells.

There will be an increase in permitting costs due to ADEQ's fee-for-service model. The fee-for-service model institutes the charging of permittees for a significant portion of the funding needed to support the implementation of the regulatory program. The Federal UIC program operates off of a general fund model, where permittees are not charged and the cost of implementation of the regulatory program comes from specific, legislatively approved funds (usually with an origin in government tax revenue). Many of ADEQ's programs were changed after the 2008 recession from a general fund model to fee-for service model. The difference between the fee-for-service model and the general fund model is the reason the regulatory program within this rulemaking will impose a financial burden upon the permittees.

Despite the increase in permitting fees, such as annual fees, the beneficial impact to the stakeholders include permits and amendments being issued faster and the elimination of duplicative regulation, permitting, and permittee fees as a result of eliminating one of the two applicable regulatory programs for UIC permittees. ADEQ stands to benefit from this increase in fees by fulfilling a requirement of primacy. The stakeholders and the general public stand to benefit through the assurance provided that high-risk drywells in the state are being physically inspected from time to time, as opposed to rarely, as was the frequency of inspection before the ADEQ UIC program primacy.

A positive impact for all stakeholders is the protection of the environment that the program this rulemaking supports will bring. Individuals with a better understanding of Arizona's geology and climate will be developing and maintaining these permits, which will lead to better protection of the environment, which supports the economy, which supports the community.

**Specific Impacts**

While the three existing UIC permittees in the state of Arizona will see an increase in regulatory cost of conducting their business, they stand to benefit greatly in having the program administered in-state through speedier application review and permit services, the elimination of duplicative regulation between the Federal and state governments and local access to ADEQ expertise, personnel and customer service. Despite the increase in regulatory cost, the existing permittees support ADEQ's adoption of the program.

Drywell regulation in Arizona will be transitioned from dual regulation between the Federal and state governments to a singular, UIC Class V authorization by rule through a simple inventory. Arizona's more than 65,000 registered drywells will be transitioned into the UIC Class V well inventory without a charge. The former drywell registration fee of \$100 will be increased to \$200 per UIC Class V inventory.

The reason for this increase to the Drywell fees is to supplement the funds necessary to support the implementation of the Class V portion of the UIC program. This includes an EPA requirement for ADEQ to assume the inspection of responsibilities for Class V wells in the state.

**Stakeholder Process**

ADEQ and Arizona's UIC stakeholders spent many hours negotiating the fees for the UIC program in this rulemaking. The transparent and collaborative process rendered a balanced set of fees, whereupon the needs of all parties were met and the support of the stakeholders in adopting the program was preserved.

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

This rulemaking will affect state government agencies, political subdivisions, and privately-owned businesses. Additionally, the rulemaking will impact the general public.

ADEQ has identified the following list of affected persons:

*State government agencies*

State agencies benefit from the rulemaking due to the rulemaking supporting the environment, the community, and industry.

- ADEQ
- Arizona Department of Water Resources
- Arizona Department of Agriculture

*Political subdivisions*

Political subdivisions benefit from the rulemaking due to the rulemaking supporting the environment, the community, and industry. Additional benefits include faster, better permits facilitating the installation of Drywells as needed and the development of groundwater treatment facilities to support Arizona's growing potable water needs. As permittees, political subdivisions will also bear the increased cost of the new permitting fee schedule.

- Counties
- Municipalities
- Domestic Water Improvement Districts

*Privately-Owned Businesses*

Privately-owned businesses will benefit from faster, better permits reducing the costs of delays to permit issuance. As permittees, political subdivisions will also bear the increased cost of the new permitting fee schedule.



- Mines
- Mineral Extraction Companies
- Businesses which utilize drywells

*The General Public*

The general public will benefit from the environmental protection of better permits being issued by an agency with expertise specific to the permitting actions occurring in Arizona’s climate and geology. Additional benefits will be derived through the benefits industry derives which in turn supports the community and the general public.

**D. Cost/benefit analysis**

**1. Part I - Cost/Benefit Stakeholder Matrix:**

Minimal	Moderate	Substantial	Significant
\$10,000 or less	\$10,001 to \$1,000,000	\$1,000,001 or more	Cost/Burden cannot be calculated, but the Department expects it to be important to the analysis.

Description of Affected Groups	Description of Effect	Increased Cost / Decreased Revenue	Decreased Cost / Increased Revenue
<b>A. State and Local Government Agencies</b>			
ADEQ	Costs of supporting and implementing a new regulatory program Ensuring underground sources of drinking water supply or aquifers are better protected from pollution. Compliance with state and federal law. Support of ADEQ’s mission to protect and enhance public health and the environment.	Moderate	Significant Significant Significant
Political Subdivisions	Tax revenues and indirect benefits of clean underground sources of drinking water supply Regulation of desalination disposal kept local Cost savings due to the elimination of duplicative regulatory programs (Federal UIC becomes State UIC, UIC permittees no longer applicable to APP)	Significant	Significant Significant
<b>B. Privately Owned Businesses</b>			
Privately-Owned Business	Cost savings due to elimination of duplicative regulatory programs (Federal UIC becomes State UIC, UIC permittees no longer applicable to APP) Permits and Permit Amendments issued faster Localized access to ADEQ’s expertise, personnel and customer service, as well as a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs.		Moderate Significant Significant
General Public	Ensuring underground sources of drinking water supply or aquifers are better protected from pollution. ADEQ employees developing Arizona-specific permits, leading to a better protection of the environment, which supports the economy, which supports the community.		Significant Significant

**2. Part II - Individual Stakeholder Summaries/Calculations:**

This section outlines ADEQ’s analyses of the estimated costs and benefits of this rulemaking, made after consultation with ADEQ staff, as well as knowledgeable individuals in the area of groundwater protection and underground injection control.

**ADEQ**

ADEQ will incur moderate costs as a result of implementing this rulemaking and administering the program. The rulemaking process itself requires staff time for technical review, rule composition, and public input. In order to support the administration of the UIC program, ADEQ plans on hiring 3.2 new full-time employees (FTE). These 3.2 FTEs will be split primarily between permit specialist positions, inspectors and other administrative duties. Funding those positions will incur moderate costs to ADEQ annually which will be offset by permit service fees, annual fees, inventory fees, well fees and an EPA work grant.

This rulemaking will create significant benefit to ADEQ in its fulfillment of the legislative mandates at A.R.S. §§ 49-203(A)(6) and 49-257.01. Given ADEQ’s mission to protect human health and the environment, the Department acknowledges the benefits to stakeholders that will flow from the implementation of this program, including a streamlined permitting process and a reduction in cost through the elimination of duplicative regulation between Federal and state programs. Upon adoption of the program, stakeholders who would have in the past had to file dual applications, comply with dual regulatory programs, file a dual set of ongoing

reports and pay for consulting costs for dual permits will see all of those obligations consolidated into one, localized state program and permit. This fact stands to save the regulated community time, money and hardship.

#### The Number of New, Full-Time Employees Necessary to Implement and Enforce the Proposed Rule

##### 3.2

#### **Political Subdivisions**

Political subdivisions are likely to see minimal costs and minimal benefit from this rulemaking. As mentioned above, municipalities have shown interest in applying for Class I disposal well permits; however, none have been applied for at the time of this rulemaking. Until political subdivisions apply for UIC permits, they will see no costs due to this rulemaking and the UIC program. However, political subdivisions are interested in the disposal of brine from prospective desalinization plants. This rulemaking stands to localize brine disposal regulation, which would bring benefit to prospective stakeholders. Municipalities also often own a multitude of dry wells, which are to be regulated under the UIC program's Class V wells.

The UIC program exists currently, administered by the Federal government, until ADEQ achieves primary enforcement authority over the program. As is stated above, the EPA administered program is funded through an approved budget from a Federal general fund. ADEQ's funding for UIC program administration will be realized through a fee-for-service model. The fee-for-service model institutes the charging of applicants and permittees for a significant portion of the funding necessary to support the regulatory program and the personnel necessary to staff it. Many of ADEQ's programs are structured this way. The Federal UIC program does not charge applicants, but rather derives its approved funds from a Federal general fund. The difference between the fee-for-service model and the general fund model is the reason the regulatory program within this rulemaking will impose a potentially minimal financial burden upon political subdivisions.

However, when the political subdivisions choose to engage with the UIC program that is the subject of this rulemaking, the benefits include a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs. Upon adoption of the program stakeholders who would have in the past had to file dual applications, comply with dual regulatory programs, file a dual set of ongoing reports and pay for consulting costs for dual permits will see all of those obligations consolidated into one, localized state program. This fact stands to save the regulated community time, money and hardship.

#### **Privately-Owned Business**

Privately-owned business is likely to see moderate cost and moderate benefit from this rulemaking. The disparity between EPA's general fund program model and ADEQ's fee-for-service model will incur potentially moderate costs to privately-owned businesses, especially the businesses that currently have UIC permits.

However, and as mentioned above, the benefits to privately-owned business include a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs. Upon adoption of the program, stakeholders who would have in the past had to file dual applications, comply with dual regulatory programs, file a dual set of ongoing reports and pay for consulting costs for dual permits will see all of those obligations consolidated into one, localized state program. This fact stands to save the regulated community time, money and hardship.

#### **General Public**

The general public could see significant benefit from this rulemaking. The UIC program that is the subject of this rulemaking aims to protect underground sources of drinking water supply or aquifers, many of which provide drinking water to Arizonans. The price of treating contaminated water or having to resort to other sources of water for drinking water supply is potentially significant. Furthermore, A positive impact for all stakeholders is the protection of the environment that the program this rulemaking supports will bring. Individuals with a better understanding of Arizona's geology and climate will be developing and maintaining these permits, which will lead to better protection of the environment, which supports the economy, which supports the community.

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

ADEQ estimates that, for the most part, this rulemaking will not have an impact on public or private employment. However, and as mentioned above, all UIC permittees, whether public or private, stand to benefit through the state establishment of a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs. Upon adoption of the program, stakeholders who would have in the past had to file dual applications, comply with dual regulatory programs, file a dual set of ongoing reports and pay for consulting costs for dual permits will see all of those obligations consolidated into one, localized state program. This fact stands to save the regulated community time, money and hardship. Arizona environmental consultants may see a minimal detriment due to the streamlining of environmental compliance for companies using injection wells.

#### **F. A statement of the probable impact of the rules on small business:**

In this EIS, ADEQ uses the term "small business" consistent with A.R.S. § 41-1001(21), which defines a "small business" as a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year.

##### **1. An identification of the small business subject to the rules:**

Among the stakeholders listed above, only a few meet the definition of small business as set forth in A.R.S. § 41-1001(21). For example, ADEQ estimates that all three current UIC permit holders in Arizona are not small businesses. However, ADEQ has recorded with frequency around 1,000 drywell registrations annually. Drywells will be regulated under the Class V UIC program upon primacy. Small businesses will constitute a significant portion of the approximately 1,000 drywell inventories ADEQ expects annually upon primacy. In terms of UIC Class V drywell inventory-

ing, some small businesses will be affected in a minimally negative manner by this rulemaking. However, the rulemaking intends to institute some UIC Class V inspections, including drywells, which could prove minimally beneficial to certain small businesses.

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

Compliance costs associated with this rulemaking will vary based on the stakeholder involved. ADEQ's examination of compliance costs for UIC well owners regulated through a permit or an authorization by rule is addressed in the cost benefit analysis above.

**3. A description of the methods that the agency may use to reduce the impact on small businesses, as required in A.R.S. § 41-1035:**

- a. *Establishing less stringent compliance or reporting requirements in the rule for small businesses:*  
Under the SDWA, small businesses are not given special treatment when it comes to compliance or reporting requirements. In order to be eligible for EPA's transfer of primary enforcement authority of the program from Federal to State, the Federal SDWA-UIC program must be at least as stringent as the Federal program.
- b. *Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses:*  
Under the SDWA, small businesses are not given special treatment when it comes to the stringency of schedules or deadlines for compliance and reporting. Please reference subsection (F)(3)(a) above for more explanation.
- c. *Consolidating or simplifying the rule's compliance or reporting requirements for small businesses:*  
Under the SDWA, small businesses are not given special treatment when it comes to compliance and reporting requirements. Please reference subsection (F)(3)(a) above for more explanation.
- d. *Establishing performance standards for small businesses to replace design or operational standards in the rule:*  
Under the SDWA, small businesses are not given special treatment when it comes to design or operational standards. Please reference subsection (F)(3)(a) above for more explanation.
- e. *Exempting small businesses from any or all requirements of the law:*  
Under the SDWA, small businesses are not given special treatment when it comes to requirements. Please reference subsection (F)(3)(a) above for more explanation.

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

As is stated above in this EIS, the SDWA-UIC program in currently in effect, administered by the Federal government's EPA. This rulemaking is designed to support the primary enforcement authority or primacy application ADEQ has been mandated to pursue according to A.R.S. §§ 49-203(A)(6) and 49-257.01. The existing regulated parties in Arizona include three UIC Class III permittees and tens of thousands of UIC Class V wells (mostly drywells). Also stated above is the disparity in funding mechanisms between EPA's current administration of the program and ADEQ's proposed funding mechanisms in administration (EPA: General Fund based; ADEQ: Fee-For-Service based). Despite the new fees associated with Arizona's potential primacy, the state's UIC stakeholders have shown support for ADEQ's primacy pursuit. The reason for their support is the consolidation of Federal and state regulatory obligations into one, localized state program. The benefits to these private entities include the elimination of the necessity to file dual applications, to comply with dual regulatory programs, to file a dual set of ongoing reports and to pay for consulting costs for dual permits. Further benefits include the local access to ADEQ's expertise, personnel and customer service, a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs.

UIC applicants and permittees will be subject to a water quality protection service fee of \$145 an hour for application review, permit writing and other, similar services. The maximum fee for a single licensing time frame for UIC Area and Classes I, II, III and V permits are set at \$200,000. UIC Area and Classes I, II, III and V permit modification and/or permit renewal are set at a maximum of \$150,000. UIC Class VI permits maximum fee proposal is "no max". The reason why no maximum fee has been proposed for UIC Class VI is because of its complicated and unknown nature. Arizona does not have any Class VI carbon sequestration wells and the entire country only has a few in operation. ADEQ believes there is no basis for proposing a maximum on UIC Class VI wells at this time.

UIC permittees will be subject to Annual and Flat Fees, which were determined by considering the necessary revenue needed to support the administration of the program while putting the least burden possible on the stakeholders. Other factors include input from the APP program, other states' UIC programs and directly affected stakeholders.

Drywell regulation in Arizona will be transitioned from a state statutorily based regulatory program to regulation under the UIC program's Class V wells. Arizona's more than 65,000 registered drywells will be transitioned into the UIC Class V well inventory without a charge. However, there will be a cost increase between new drywell registration fees associated with the state statutory program and new inventory fees in the state-administered UIC program. Registration fees are \$100 per registration, where inventory fees will be \$200 per inventory. The reason for this increase is to supplement the funds necessary to support the administration of the Class V portion of the UIC program, including the commencement of more regular inspection of high-risk drywells in Arizona. A condition of EPA granting ADEQ primacy to administer the UIC program is the inspection of a small portion of the UIC Class V wells in the state. In order to meet this requirement, ADEQ has increased the fee required to inventory a drywell in the state.

In discussion with UIC stakeholders, it was determined that a review of the revenues collected from the UIC program's fees should take place once every three years in order to ensure that enough revenue is being collected to properly administer the program and to that the fees are equitable by putting the least amount of burden on the stakeholders. To that end, R18-14-115 is proposed in this rulemaking.

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

This rulemaking will not result in a significant increase, nor decrease in state revenues. Increased and decreased costs to ADEQ are expected to be minimal, as explained above in the analysis of costs and benefits to ADEQ. Because the UIC permittees in Arizona were permitted through the UIC program as administered by the EPA, ADEQ does not anticipate a significant decrease in business activity in the state or a corresponding loss of state tax revenues.

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

The purpose of this rulemaking is to adopt the SDWA-UIC program in Arizona rule in order to lay the groundwork for state administration of the program as required by the legislature through A.R.S. §§ 49-203(A)(6) and 49-257.01. There are no less intrusive or less costly alternative methods of achieving the purpose of the rulemaking.

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

The SDWA allows states to apply for primary enforcement authority in the administration of the UIC regulatory program (see 42 United States Code 300h et seq.). The Arizona legislature mandated pursuit of the SDWA-UIC program through the passage of the following statutes, A.R.S. §§ 49-203(A)(6) and 49-257.01. In order to achieve primacy, one requirement of a state is to put rules in place for the program to operate through (see 40 Code of Federal Regulations 145.22(a)(5)). These rules must be at least as stringent as the Federal UIC program rules in order for EPA to consider a state's primacy application. The rules must also be no more stringent than the analogous Federal rule, per Arizona state law (see A.R.S. § 49-104(16)). Given those parameters, the language for the rules in this rulemaking came largely from 40 CFR Parts 144, 145 and 146 and to a lesser extent, 40 CFR Parts 124, 141 and 142.

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

No changes

**11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:****Comment 1: Resource Extraction Industry Member – Class VI Licensing Time Frames**

What time frame is anticipated for the Class VI application?

**ADEQ Response 1:**

ADEQ appreciates the comment. Class VI Carbon Sequestration applications are considered to be significantly complicated in nature. In the proposed UIC Licensing Time Frame rules, Class VI applications (along with Area and Class I applications) have been allotted more licensing time than the not significantly complicated group of classes (Class II, III and V). The significantly complicated group has been allotted 35 days for administrative completeness, 249 for substantive review and 284 days for the overall time frame. The not significantly complicated group has been allotted 35 days for administrative completeness, 186 for substantive review and 221 days for the overall time frame.

**Comment 2: Tribal Interest Group**

The proposed Licensing Time Frame rules do not explain what is meant by “significantly complicated” versus “not significantly complicated” or how this determination was reached.

**ADEQ Response 2:**

ADEQ appreciates the comment. The UIC program regulates six classes of injection wells which are based on the characteristics of the fluids injected and the placement of the injectate in relation to Underground Sources of Drinking Water (USDW). Well construction, injection depth, design requirements, and operating techniques vary among well classes. Some wells are used to inject fluids into formations below USDWs, while others involve injection into or above USDWs. The proposed rules set out specific permitting and performance standards for each class of wells. In determining the licensing time frames for the prospective UIC applications, these factors were considered.

ADEQ categorized the prospective UIC applications by class into two categories, “significantly complicated” and “not significantly complicated”. Area, Class I, and Class VI wells are categorized as “significantly complicated”, while Class II, Class III, and Class Vs were determined to be “not significantly complicated”. The following facts were relied upon in distinguishing “significantly complicated” prospective UIC applications from the “not significantly complicated”:

1. Area Permits
  1. Comprised of multiple injection wells.
  2. Increased aquifer stresses induced by multiple injection wells.
  3. Larger Area of Review and zone of endangering influence due to the induced aquifer stress.
  4. Delineation of the Area of Review would likely require numerical groundwater modeling.
  5. Area Class III solution mining wells require hydraulic capture of lixiviant and pregnant leachate solution to prevent migration into USDWs.
  6. Monitoring networks are often a function of the Area of Review and complexity of the hydrogeology.
  7. Class III Area Permits may require an Aquifer Exemption and subsequent aquifer restoration for closure. This closure strategy will require sophisticated geochemical modeling and long-term closure and post closure monitoring.
2. Class I wells are typically deep wells that inject waste into formations below a USDW.
  1. Class I wells allow injection far below the lowermost USDW (injection zones typically range from 1,700 to more than 10,000 feet in depth).
  2. The well design for injection is complex due to the depth of the injection, high injection pressures, and often complex geochemical reactions associated with the injectate and formation water.

3. In Arizona, Class I wells are authorized to inject non-hazardous industrial waste, municipal wastewater, and radioactive waste. Hazardous waste injection is prohibited in Arizona.
4. A Class I well requires a multilayered well design to prevent fluids from entering USDWs.
5. Operation, monitoring, and testing is critical for ensuring that injected wastewater is fully confined. These functions become more complex at greater well depths.
6. Seismic hazards must be thoroughly evaluated due to the deeper injection zone.
3. Class VI wells are used to sequester carbon in deep geologic formations.
  1. Although CO<sub>2</sub> is initially captured as a gas, it is compressed into a supercritical fluid (a relatively dense fluid intermediate to a gas and a liquid) before injection and remains in that state due to high pressures in the underground formation.
  2. The CO<sub>2</sub> is injected through specially designed wells into geologic formations, typically a half a mile or more below the Earth's surface.
  3. CO<sub>2</sub> can be physically trapped in the pore space, trapped through a chemical reaction of the CO<sub>2</sub> with rock and water, dissolved into the existing fluid within the formation, or absorbed onto organic material or go through other chemical transformations. Geologic sequestration may take place over hundreds of years after injection, ultimately resulting in permanent storage of the CO<sub>2</sub>.
  4. The well design for injection is complex due to the depth of injection, high injection pressures, and often complex geochemical reactions associated with the injectate and formation water.
  5. Mechanical integrity testing must be performed routinely to verify long-term well stability and operations.
  6. Complex reservoir modeling must be conducted to determine the long-term storage capacity of a given geologic formation.
  7. Groundwater monitoring can also be complex due to the longevity of the sequestration operations and area of influence of the injectate.

**Comment 3: Tribal Interest Group**

Arizona law requires strict compliance with LTFs and issues penalties for exceedances. Additionally, EPA's current guidance (see EPA's informational webpage on Class V wells; see also 40 C.F.R. § 146.5(e); see also 40 C.F.R. 144.81) notes that by regulation, Class V wells can actually be complex under certain circumstances. This should be reflected in ADEQ's UIC Program as well.

**ADEQ Response 3:**

ADEQ appreciates the comment. Arizona law requires state agencies that issue licenses to comply with licensing time frames (LTFs) (see A.R.S. § 41-1072 et seq.). While there may be complex Class V permits, ADEQ does not feel the additional time that comes with the "complex" category is needed.

**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:**

The following statutes contain therein prescribed matters applicable to the rules in this rulemaking: A.R.S. §§ 49-203(A)(6) and (9); 49-257; 49-257.01.

**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 subject matter of this notice does not require permits but does reference permits. See item 11a in the Preamble of the Notice of Proposed Rulemaking for Title 18, Chapter 9 in the January 7, 2022 issue of the *Administrative Register* for information related to permits and general permits for Arizona's UIC Program.

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

Federal law is applicable to the UIC program. The UIC is a program authorized under the SDWA (see 42 U.S.C. § 300h et seq.), originally administered by EPA. The UIC program administration can be transferred from EPA to a state through a delineated process known as Primacy (see 42 U.S.C. § 300h-1). However, the addition of LTFs in 18 A.A.C. 1 for the purposes of the UIC program has no corresponding federal law.

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

No comparative analyses were submitted.

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

No material was incorporated by reference in this rulemaking under A.R.S. § 41-1028, nor otherwise.

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

Not applicable

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

**TITLE 18. ENVIRONMENTAL QUALITY  
CHAPTER 1. DEPARTMENT OF ENVIRONMENTAL QUALITY  
ADMINISTRATION**

**ARTICLE 5. LICENSING TIME-FRAMES**

Section  
Table 10. Water Permit Licensing Time-frames (Business Days)

**ARTICLE 5. LICENSING TIME-FRAMES**

**Table 10. Water Permit Licensing Time-Frames (Business Days)**

Permits	Authority	Administrative Completeness Review	Substantive Review	Overall Time-Frame
<b>AQUIFER PROTECTION PERMITS</b>				
<b>Individual Permit</b> No public hearing	A.R.S. §§ 49-203, 49-242 18	35	186	221
Public hearing	A.A.C. 9, Article 2	35	231 <sup>1</sup>	266
<b>Complex Individual Permit</b> No public hearing	A.R.S. §§ 49-203, 49-242 18	35	249	284
Public hearing	A.A.C. 9, Article 2	35	294 <sup>1</sup>	329
<b>Individual Permit Significant Amendment</b> No public hearing	A.R.S. §§ 49-203, 49-242 18	35	186	221
Public hearing	A.A.C. 9, Article 2	35	231 <sup>1</sup>	266
<b>Complex Individual Permit Significant Amendment</b> No public hearing	A.R.S. §§ 49-203, 49-242 18	35	249	284
Public hearing	A.A.C. 9, Article 2	35	294 <sup>1</sup>	329
<b>Individual Permit Other Amendment</b>	A.R.S. §§ 49-203, 49-242 18	35	100	135
	A.A.C. 9, Article 2			
<b>Temporary Individual Permit</b>	A.R.S. §§ 49-203, 49-242 18	35	145	180
	A.A.C. 9, Article 2			
<b>Type 3 General Permit</b>	A.R.S. § 49-245	21	60	81
	A.A.C. R18-9-D301 through R18-9-D307			
<b>4.01 General Permit</b> 300 services or less	A.R.S. § 49-245 A.A.C. R18-9-E301	42	53	95 <sup>2</sup>
More than 300 services		42	94	136 <sup>2</sup>
<b>Standard Single</b> 4.02, 4.03, 4.13, 4.14, 5.15, and 4.16 General Permits	A.R.S. § 49-245 A.A.C. R18-9-E302, R18-9-E303, R18-9-E313, R18-9-E314	42	31	73 <sup>2</sup>
<b>4.23 General Permit</b>	A.R.S. § 49-245 A.A.C. R18-9-E323	42	94	136 <sup>2</sup>
<b>Standard Combined</b> Two or three Type 4 General Permits	A.R.S. § 49-245 A.A.C. R18-9-E302 through R18-9-E323	42	53	95 <sup>2</sup>
<b>Complex Combined</b> Four or more Type 4 General Permits	A.R.S. § 49-245 A.A.C. R18-9-E302 through R18-9-E323	42	94	136 <sup>2</sup>
<b>SUBDIVISION APPROVALS</b>				
<b>Subdivision</b> Individual facilities	A.R.S. § 49-104(B)(11) A.A.C. R18-5-408	21	46	67
<b>Subdivision</b> Community facilities	A.R.S. § 49-104(B)(11) A.A.C. R18-5-403	21	37	58
<b>RECLAIMED WATER PERMITS</b>				
<b>Individual Permit</b> No public hearing	A.R.S. § 49-203	35	186	221
Public hearing	A.A.C. R18-9-702 through R18-9-707	35	231 <sup>1</sup>	266
<b>Complex Individual Permit</b> No public hearing	A.R.S. § 49-203	35	249	284
Public hearing	A.A.C. R18-9-702 through A.A.C. R18-9-707	35	294 <sup>1</sup>	329
<b>Type 3 General Permit</b>	A.R.S. § 49-203 A.A.C. R18-9-717, R18-9-718, R18-9-719	21	60	81

<b>ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM (AZPDES) PERMITS</b>				
<b>Individual Permit Major Facility<sup>5</sup></b> No public hearing Public hearing	A.R.S. § 49-255.01	35	249	284 <sup>3, 4</sup>
	18 A.A.C. 9, Article 9, Part B	35	294 <sup>1</sup>	329 <sup>3, 4</sup>
<b>Individual Permit Minor Facility<sup>6</sup></b> No public hearing Public hearing	A.R.S. § 49-255.01	35	186	221 <sup>3, 4</sup>
	18 A.A.C. 9, Article 9, Part B	35	231 <sup>1</sup>	266 <sup>3, 4</sup>
<b>Individual Permit Stormwater / Construction Activities</b> No public hearing Public hearing	A.R.S. § 49-255.01	35	126	161
	18 A.A.C. 9, Article 9, Part B	35	171 <sup>1</sup>	206 <sup>3, 4</sup>
<b>Individual Permit Major Modification</b> No public hearing Public hearing	A.R.S. § 49-255.01	35	186	221 <sup>3, 4</sup>
	18 A.A.C. 9, Article 9, Part B	35	231 <sup>1</sup>	266 <sup>3, 4</sup>
<b>LAND APPLICATION OF BIOSOLIDS REGISTRATIONS</b>				
<b>Biosolids Applicator Registration Request Acknowledgment</b>	A.R.S. § 49-255.03 A.A.C. R18-9-1004	15	0	15
<b>UNDERGROUND INJECTION CONTROL PERMITS</b>				
<b>Area Permit and Modification</b> No public hearing Public hearing	A.R.S. §§ 49-203, 49-257.01	35	249	284
	A.A.C. R18-9-C624	35	294 <sup>1</sup>	329
<b>Class I Well Permit and Modification</b> No public hearing Public hearing	A.R.S. §§ 49-203, 49-257.01	35	249	284
	A.A.C. R18-9-C616 18 A.A.C. 9, Article 6, Part E	35	294 <sup>1</sup>	329
<b>Class II Well Permit and Modification</b> No public hearing Public hearing	A.R.S. §§ 49-203, 49-257.01	35	186	221
	A.A.C. R18-9-C616 18 A.A.C. 9, Article 6, Part F	35	231 <sup>1</sup>	266
<b>Class III Well Permit and Modification</b> No public hearing Public hearing	A.R.S. §§ 49-203, 49-257.01	35	186	221
	A.A.C. R18-9-C616 18 A.A.C. 9, Article 6, Part G	35	231 <sup>1</sup>	266
<b>Class V Well Individual Permit and Modification</b> No public hearing Public hearing	A.R.S. §§ 49-203, 49-257.01	35	186	221
	A.A.C. R18-9-C616 18 A.A.C. 9, Article 6, Part I	35	231 <sup>1</sup>	266
<b>Class VI Well Permit and Modification</b> No public hearing Public hearing	A.R.S. §§ 49-203, 49-257.01	35	249	284
	A.A.C. R18-9-C616 18 A.A.C. 9, Article 6, Part J	35	294 <sup>1</sup>	329

<sup>1</sup> A request for a public hearing allows the Department 60 days to publish the notice of public hearing and for the official comment period. Forty-five business days are added to the substantive review time-frame.

<sup>2</sup> Each request for an alternative design, installation, or operational feature under R18-9-A312(G) to a Type 4 General Permit adds eight business days to the substantive review time-frame.

<sup>3</sup> EPA reserves the right, under 40 CFR 123.44, to take 90 days to supply specific grounds for objection to a draft or proposed permit when a general objection is filed within the review period. The first 30 days run concurrently with the Department’s official comment period. Forty-five business days will be added to the substantive review time-frame to allow for the EPA review.

<sup>4</sup> If a request for a variance is submitted to the Department, 40 CFR 124.62 requires that specific variances are subject to review by EPA. Under 40 CFR 123.44, EPA reserves the right to take 90-days to approve or deny the variance. Sixty-four business days will be added to the substantive review time-frame to allow for the EPA review.

<sup>5</sup> “Major facility” means any NPDES “facility or activity” classified as such by the EPA in conjunction with the Director.

<sup>6</sup> “Minor facility” means any facility that is not classified as a major facility.

**NOTICE OF FINAL RULEMAKING**

**TITLE 18. ENVIRONMENTAL QUALITY**

**CHAPTER 14. DEPARTMENT OF ENVIRONMENTAL QUALITY  
PERMIT AND COMPLIANCE FEES**

[R22-157]

**PREAMBLE**

**1. Article, Part, or Section Affected (as applicable)**  
R18-14-101

**Rulemaking Action**  
Amend

R18-14-102	Amend
R18-14-104	Amend
R18-14-111	New Section
R18-14-111	Renumber
R18-14-111	Amend
R18-14-112	Renumber
R18-14-113	Renumber
R18-14-114	New Section
R18-14-114	Renumber
R18-14-115	New Section

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

Authorizing statute: A.R.S. §§ 49-203(A)(6), 49-203(A)(9), 49-104(C)(1)  
 Implementing statute: A.R.S. § 49-257.01

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

September 6, 2022

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

Notice of Rulemaking Docket Openings: 25 A.A.R. 2491, September, 27, 2019  
 26 A.A.R. 2003, September 25, 2020  
 27 A.A.R. 1592, October 1, 2021

Notice of Proposed Rulemaking: 28 A.A.R. 16, January 7, 2022

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

Name: Jon Rezabek  
 Address: Arizona Department of Environmental Quality  
 Water Quality Division  
 1110 W. Washington St.  
 Phoenix, AZ 85007  
 Telephone: (602) 771-8219  
 Email: rezabek.jon@azdeq.gov  
 Website: https://azdeq.gov/UIC

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

**General Explanation of this Rulemaking:**

The Arizona Department of Environmental Quality (ADEQ) is required under A.R.S. §§ 49-203(A)(6) and 49-257.01(A) to adopt a permit program for underground injection control (UIC), as administered under the Safe Drinking Water Act (SDWA; 42 U.S.C. § 300h et seq.). Per the conditional enactment in proposed rule R18-9-A602(A), any UIC rules promulgated by the State of Arizona shall not have the force and effect of law until the U.S. Environmental Protection Agency (EPA) approves the transfer of primary enforcement authority (referred to herein as “Primacy”) through EPA’s publication of a final rule granting ADEQ Primacy in the Federal Register (see 40 CFR § 145.31). ADEQ first attempted this process in the late 1990s; but those efforts ultimately failed due to insufficient statutory and regulatory authority to develop the program. In 2018 Senate Bill 1494 was passed, giving ADEQ the requisite statutory authority to promulgate a state-level UIC program as required to obtain primacy approval.

In this action, ADEQ proposes new regulatory framework to articulate compliance expectations, mandate regulatory duties, and identify certain rights of those regulated through the Arizona UIC program. On May 7, 2018, the Governor’s Office approved an exemption to the rulemaking moratorium in Executive Order 2018-02 so ADEQ can proceed with this rulemaking.

**Associated Rulemakings**

The Arizona UIC program is a regulatory program with associated fees and licensing time frames (LTF). A.A.C. R1-1-103(D)(4) states, “...[a]n agency shall file only one Chapter per notice for any rulemaking activity.” In adherence to the rule, the program component of the Arizona UIC program, which amends A.A.C. Title 18, Chapter 9, is a separate Notice of Proposed Rulemaking filed contemporaneously this rulemaking, which amends A.A.C. Title 18, Chapter 14. Furthermore, the Arizona UIC program amendments to the licensing time frames (LTF) rules (A.A.C. Title 18, Chapter 1) has also been filed alongside the program and fee amendments. The LTF Notice of Proposed Rulemaking amends A.A.C. Title 18, Chapter 1.

**What is Underground Injection?**

An injection well is used to place fluid underground into porous geologic formations. These underground formations may range from deep sandstone or limestone, to a shallow soil layer. Injected fluids may include water, wastewater, brine (salt water), or water mixed with chemicals.

**What is a well?**

A well is a bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; or a dug hole whose depth is greater than the largest surface dimension; or, an improved sinkhole; or a subsurface fluid distribution system.

**What does the Federal UIC program do?**

The UIC program protects Underground Sources of Drinking Water (USDW) through the regulation of injection wells. USDWs



are:

aquifers or portions of aquifers that:

1. supply public water systems; or
2. contain a sufficient quantity of ground water to supply a public water system; and
  - a. currently supply drinking water for human consumption, or
  - b. contain fewer than 10,000 mg/l total dissolved solids; and
3. are not aquifers exempted under the UIC program.

***How does the UIC program protect USDWs?***

The UIC program requires injected fluids stay within the well or the intended injection zone. The program also regulates fluids that are directly or indirectly injected into a USDW by prohibiting the movement of fluid containing any contaminant into USDWs, if the presence of that contaminant may cause a violation of any primary drinking water regulation or may otherwise adversely affect the health of persons.

***What are the different well classifications in the UIC program?***

***Class I***

Class I wells are used to inject hazardous and non-hazardous wastes into deep, isolated rock formations. Class I wells are disposal wells used by the petroleum refining, metal production, chemical production, pharmaceutical production, commercial disposal, food production and municipal wastewater treatment industries (amongst others) to dispose. These deep well injections release fluids into formations below USDWs, usually formations separated by multiple geologic strata from USDWS and often times at depths thousands of feet below the surface.

***Class II***

Class II wells are used exclusively to inject fluids associated with oil and natural gas production. Class II wells fall into one of the following three categories: disposal wells, enhanced recovery wells and hydrocarbon storage wells. Class II fluids are primarily brines (salt water) that are brought to the surface while producing oil and gas. Brines are separated from hydrocarbons at the surface and reinjected into the same or similar underground formations for disposal. Enhanced recovery wells utilize fluids consisting of brine, freshwater, steam, polymers, or carbon dioxide that are injected into oil-bearing formations to recover residual oil and in limited applications, natural gas. Hydrocarbon storage wells inject liquid hydrocarbons into underground formations (such as salt caverns) where they are stored, generally, as part of the U.S. Strategic Petroleum Reserve.

***Class III***

Class III wells are used to inject fluids for the purpose of dissolving and then extracting minerals. Production wells, which bring mining fluids to the surface, are not regulated under the UIC program. Class III wells are used to mine Uranium, Salt, Copper and Sulfur. Class III injection requirements isolate fluids from underground sources of drinking water.

***Class IV***

Class IV wells are used to inject hazardous or radioactive wastes into or above a geologic formation that contains a USDW. In 1984, EPA banned the use of Class IV injection wells. ADEQ will continue this ban upon primacy. These wells may only operate as part of an EPA or state authorized ground water clean-up action. Less than 32 waste clean-up sites with Class IV wells exist in the United States.

***Class V***

Class V wells are used to inject non-hazardous fluids underground. Most Class V wells are used to dispose of wastes into or above USDWs. This disposal can pose a threat to ground water quality if not managed properly. The different types of Class V wells pose various threats. Most Class V wells are shallow disposal systems that depend on gravity to drain fluids directly in the ground. Over 20 well subtypes fall into the Class V category. There are more than 650,000 Class V wells estimated to operate in the United States. Most of these Class V wells are unsophisticated shallow disposal systems such as stormwater drainage wells, septic system leach fields and agricultural drainage wells.

***Class VI***

Class VI wells are used to inject carbon dioxide (CO<sub>2</sub>) into deep rock formations. This long-term underground storage is called geologic sequestration (GS). Geologic sequestration refers to technologies to reduce CO<sub>2</sub> emissions to the atmosphere and mitigate climate change.

***Stakeholder Composition***

Arizona currently has five (5) individual EPA UIC program permits operating within the state boundaries (not including Indian lands), all of which are for Class III wells for the purpose of extracting salts and copper. The three companies operating the five permits are Morton Salt, Inc., Excelsior Mining Arizona, Inc. and Florence Copper, Inc.

The UIC program applies to a large number of Class V injection wells through the programs “authorization by rule.” Class V authorization by rule includes initial inventorying, operators meeting a set of criteria, including a general standard to not cause fluids to move in such a way where a USDW would receive a pollutant above the standards in Table 1. Examples of Arizona Class V wells include drywells, aquifer storage recharge wells, septic systems serving greater than 20 people per day or that have a design flow of over 3,000 gallons per day and stimulation injection wells for the purpose of inert gas extraction (See proposed rule R18-9-A604(E) in Section 13 below for more examples of Class V wells). Furthermore, through stakeholder outreach, ADEQ has become aware of Arizona municipalities that are interested in developing Class I municipal wastewater disposal wells.

***What has been the stakeholder process thus far for this rulemaking?***

Statutory authority for program pursuit was passed into law through Senate Bill 1494 in 2018 at A.R.S. §§ 49-257 and 49-257.01. An exemption memo was received from the Governor’s Office in May of 2018. Since those events, ADEQ has been reaching out to UIC stakeholders throughout the state in a pre-rulemaking process known internally as “informal rulemaking”. Informal rulemaking involves developing and setting internal goals for what the rulemaking should achieve. ADEQ has held nine (9) stake-

holder meetings, either presenting to stakeholders, receiving stakeholder input or both. Tribal consultation presentations were conducted three times in May 2019. Tribal correspondence has been addressed throughout the informal rulemaking phase as well.

The nine stakeholder meetings were designed to inform the regulated community of ADEQ's progress in pursuing Primacy, as well as, explaining and presenting drafts of the state rules being developed for the ultimate purpose of administering the program. In November 2019 and November 2020, stakeholders were given access to drafts of the "program rule". Afterwards, ADEQ solicited hundreds of comments from the regulated community, addressing and analyzing each one. Some comments led to changes in rule language, while others were determined to be inapplicable or unnecessary. All comments received were considered and are appreciated by the Agency. A repository of materials and events can be viewed on ADEQ's "Stakeholder Materials" page for the UIC rulemaking. That webpage can be found here: <https://azdeq.gov/UIC>

In the context of stakeholder involvement, it should be noted that this set of rules, internally referred to as the "program rules," is largely the same in substance as the EPA UIC permit program, which can be viewed in the CFR (see 40 CFR Parts 144 and 146). The substantive similarities were made by design, as EPA requires a primacy applicant's administering rules to be at least as stringent as the EPA program. Furthermore, in Arizona, a number of statutes (A.R.S. §§ 41-1052(D)(9), 49-104(16) and others) prohibit a rule's passage if the rule is more stringent than a corresponding federal law unless there is statutory authority to exceed the federal requirements. Due to these limitations on stringency, the language in the EPA program was adopted largely as is. The influence of stakeholder input can be seen in R18-9-A602, R18-9-C627(B) through (F) and R18-9-C631(B).

#### ***UIC Fees***

The major factor in ADEQ's decision-making in setting fees for the UIC program is the goal of putting the least amount of burden on the stakeholders while generating enough revenue to support the administrative costs necessary to operate the program. More specifically, the rulemaking proposal in A.A.C. R18-14-102(B) includes an hourly rate for a water quality protection service associated with a UIC permit to be set at \$145 an hour. The APP program's water quality protection service fee is \$122 and was set in 2011. ADEQ determined \$145 an hour for a UIC water quality protection service fee by considering other fees in the agency, such as the Air Pollution Control permits (A.A.C. R18-2-236(2)(d) & (H)) under Subs, as well as accounting for inflationary costs since 2011. A final factor of consideration was the goal of providing adequate revenue for the purposes of supporting the administration of the program.

The rulemaking proposal in A.A.C. R18-14-102(C) includes maximum fees for a water quality protection service assessed at an hourly rate. UIC Area and Classes I, II, III and V permits are set at \$200,000. UIC Area and Classes I, II, III and V permit modification and/or permit renewal are set at a maximum of \$150,000. UIC Class VI permits maximum fee proposal is "no max". The reason why no maximum fee has been proposed for UIC Class VI is because of its complicated and unknown nature. Arizona does not have any Class VI carbon sequestration wells and the entire country only has a few in operation. ADEQ believes there is no basis for proposing a maximum on UIC Class VI wells at this time.

The Annual Fees (listed in Tables 3.1 and 3.2 of R18-14-104) and the UIC Flat Fees (listed in R18-14-111) were determined by considering the necessary revenue needed to support the administration of the program while putting the least burden possible on the stakeholders. Other factors include input from the APP program and other states' UIC programs.

ADEQ is exploring the regulation of drywells under the UIC program as Class V wells "authorized by rule." At primacy, ADEQ will take administrative and enforcement authority over the UIC program, including Class V regulation of drywells.

In discussion with UIC stakeholders, it was determined that a review of the revenues collected from the UIC program's fees should take place once every three years in order to ensure that enough revenue is being collected to properly administer the program and to make sure the fees are equitable by putting the least amount of burden on the stakeholders. To that end, R18-14-115 is proposed in this rulemaking.

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

Not applicable

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

Not applicable

**9. The economic, small business, and consumer impact statement:**

This Economic, Small Business, and Consumer Impact Statement has been prepared to meet the requirements of A.R.S. § 41-1055.

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

The rulemaking addressed by this Economic, Small Business, and Consumer Impact Statement (EIS) consists of 72 new sections, as well as amendments to existing sections, made by the Arizona Department of Environmental Quality (ADEQ) to 18 A.A.C. 9, Articles 1 and 6, 18 A.A.C. 1, Article 5 and 18 A.A.C. 14, Article 1 in order to adopt the Federal Safe Drinking Water Act's (SDWA) Underground Injection Control Program (UIC) under the relevant regulation in 40 C.F.R. Parts 144 through 146 within the State of Arizona as required under A.R.S. §§ 49-203(A)(6), 49-257.01.

Arizona Revised Statutes §§ 49-203(A)(6) and 49-257.01 mandate that ADEQ establishes the UIC Program through rule. Federal statute at 42 United States Code 300h et seq. authorizes EPA to grant states primary enforcement authority or primacy over the UIC program upon the adoption of the program in rule at the state level (see 40 CFR 145.22(a)(5)).

Control of underground injection conducted in the industrial, municipal and residential sectors is necessary in order to protect Arizona's underground sources of drinking water (USDWs) or aquifers. In Arizona, the UIC program has been administered by the Environmental Protection Agency (EPA) for decades. Currently 5 Federal UIC permits are in effect, along with thousands of UIC Class V wells that are authorized by rule.

Arizona's program adoption will allow primacy to rest with ADEQ who is entirely focused on, and knowledgeable of, Arizona's unique geology and climate; and who deeply understand Arizona's environment, economy, and community. Additionally, program adoption will allow ADEQ to issue better permits, faster, and eliminate duplicative regulation, permitting, and permittee fees between the Federal and state programs. Adoption of this program will supplement Arizona's already existing groundwater safeguards, taking a place in conjunction with the Aquifer Protection Permit Program.

**B. A summary of the EIS:**

**General Impacts**

The primary costs of this rulemaking will be borne by UIC well permit holders and UIC wells authorized by rule. This includes in-situ copper mines, salt mines, municipal aquifer storage and recharge wells, extraction wells, carbon sequestration wells and a host of other injection wells.

There will be an increase in permitting costs due to ADEQ's fee-for-service model. The fee-for-service model institutes the charging of permittees for a significant portion of the funding needed to support the implementation of the regulatory program. The Federal UIC program operates off of a general fund model, where permittees are not charged and the cost of implementation of the regulatory program comes from specific, legislatively approved funds (usually with an origin in government tax revenue). Many of ADEQ's programs were changed after the 2008 recession from a general fund model to fee-for service model. The difference between the fee-for-service model and the general fund model is the reason the regulatory program within this rulemaking will impose a financial burden upon the permittees.

Despite the increase in permitting fees, such as annual fees, the beneficial impact to the stakeholders include permits and amendments being issued faster and the elimination of duplicative regulation, permitting, and permittee fees as a result of eliminating one of the two applicable regulatory programs for UIC permittees. ADEQ stands to benefit from this increase in fees by fulfilling a requirement of primacy. The stakeholders and the general public stand to benefit through the assurance provided that high-risk drywells in the state are being physically inspected from time to time, as opposed to rarely, as was the frequency of inspection before the ADEQ UIC program primacy.

A positive impact for all stakeholders is the protection of the environment that the program this rulemaking supports will bring. Individuals with a better understanding of Arizona's geology and climate will be developing and maintaining these permits, which will lead to better protection of the environment, which supports the economy, which supports the community.

**Specific Impacts**

While the three existing UIC permittees in the state of Arizona will see an increase in regulatory cost of conducting their business, they stand to benefit greatly in having the program administered in-state through speedier application review and permit services, the elimination of duplicative regulation between the Federal and state governments and local access to ADEQ expertise, personnel and customer service. Despite the increase in regulatory cost, the existing permittees support ADEQ's adoption of the program.

Drywell regulation in Arizona will be transitioned from dual regulation between the Federal and state governments to a singular, UIC Class V authorization by rule through a simple inventory. Arizona's more than 65,000 registered drywells will be transitioned into the UIC Class V well inventory without a charge. The former drywell registration fee of \$100 will be increased to \$200 per UIC Class V inventory.

The reason for this increase to the Drywell fees is to supplement the funds necessary to support the implementation of the Class V portion of the UIC program. This includes an EPA requirement for ADEQ to assume the inspection of responsibilities for Class V wells in the state.

**Stakeholder Process**

ADEQ and Arizona's UIC stakeholders spent many hours negotiating the fees for the UIC program in this rulemaking. The transparent and collaborative process rendered a balanced set of fees, whereupon the needs of all parties were met and the support of the stakeholders in adopting the program was preserved.

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

This rulemaking will affect state government agencies, political subdivisions, and privately-owned businesses. Additionally, the rulemaking will impact the general public.

ADEQ has identified the following list of affected persons:

*State government agencies*

State agencies benefit from the rulemaking due to the rulemaking supporting the environment, the community, and industry.

- ADEQ
- Arizona Department of Water Resources
- Arizona Department of Agriculture

*Political subdivisions*

Political subdivisions benefit from the rulemaking due to the rulemaking supporting the environment, the community, and industry. Additional benefits include faster, better permits facilitating the installation of Drywells as needed and the development of groundwater treatment facilities to support Arizona's growing potable water needs. As permittees, political subdivisions will also bear the increased cost of the new permitting fee schedule.

- Counties
- Municipalities
- Domestic Water Improvement Districts

*Privately-Owned Businesses*

Privately-owned businesses will benefit from faster, better permits reducing the costs of delays to permit issuance. As permittees,

political subdivisions will also bear the increased cost of the new permitting fee schedule.

- Mines
- Mineral Extraction Companies
- Businesses which utilize drywells

*The General Public*

The general public will benefit from the environmental protection of better permits being issued by an agency with expertise specific to the permitting actions occurring in Arizona’s climate and geology. Additional benefits will be derived through the benefits industry derives which in turn supports the community and the general public.

**D. Cost/benefit analysis**

**1. Part I - Cost/Benefit Stakeholder Matrix:**

Minimal	Moderate	Substantial	Significant
\$10,000 or less	\$10,001 to \$1,000,000	\$1,000,001 or more	Cost/Burden cannot be calculated, but the Department expects it to be important to the analysis.

Description of Affected Groups	Description of Effect	Increased Cost / Decreased Revenue	Decreased Cost / Increased Revenue
<b>A. State and Local Government Agencies</b>			
ADEQ	Costs of supporting and implementing a new regulatory program  Ensuring underground sources of drinking water supply or aquifers are better protected from pollution.  Compliance with state and federal law.  Support of ADEQ’s mission to protect and enhance public health and the environment.	Moderate	Significant  Significant  Significant
Political Subdivisions	Tax revenues and indirect benefits of clean underground sources of drinking water supply  Regulation of desalination disposal kept local  Cost savings due to the elimination of duplicative regulatory programs (Federal UIC becomes State UIC, UIC permittees no longer applicable to APP)	Significant	Significant  Significant
<b>B. Privately Owned Businesses</b>			
Privately-Owned Business	Cost savings due to elimination of duplicative regulatory programs (Federal UIC becomes State UIC, UIC permittees no longer applicable to APP)  Permits and Permit Amendments issued faster  Localized access to ADEQ’s expertise, personnel and customer service, as well as a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs.		Moderate  Significant  Significant
General Public	Ensuring underground sources of drinking water supply or aquifers are better protected from pollution.  ADEQ employees developing Arizona-specific permits, leading to a better protection of the environment, which supports the economy, which supports the community.		Significant  Significant

**2. Part II - Individual Stakeholder Summaries/Calculations:**

This section outlines ADEQ’s analyses of the estimated costs and benefits of this rulemaking, made after consultation with ADEQ staff, as well as knowledgeable individuals in the area of groundwater protection and underground injection control.

**ADEQ**

ADEQ will incur moderate costs as a result of implementing this rulemaking and administering the program. The rulemaking process itself requires staff time for technical review, rule composition, and public input. In order to support the administration of the UIC program, ADEQ plans on hiring 3.2 new full-time employees (FTE). These 3.2 FTEs will be split primarily between permit specialist positions, inspectors and other administrative duties. Funding those positions will incur moderate costs to ADEQ annually which will be offset by permit service fees, annual fees, inventory fees, well fees and an EPA work grant.

This rulemaking will create significant benefit to ADEQ in its fulfillment of the legislative mandates at A.R.S. §§ 49-203(A)(6)

and 49-257.01. Given ADEQ's mission to protect human health and the environment, the Department acknowledges the benefits to stakeholders that will flow from the implementation of this program, including a streamlined permitting process and a reduction in cost through the elimination of duplicative regulation between Federal and state programs. Upon adoption of the program, stakeholders who would have in the past had to file dual applications, comply with dual regulatory programs, file a dual set of ongoing reports and pay for consulting costs for dual permits will see all of those obligations consolidated into one, localized state program and permit. This fact stands to save the regulated community time, money and hardship.

#### The Number of New, Full-Time Employees Necessary to Implement and Enforce the Proposed Rule

##### 3.2

#### **Political Subdivisions**

Political subdivisions are likely to see minimal costs and minimal benefit from this rulemaking. As mentioned above, municipalities have shown interest in applying for Class I disposal well permits; however, none have been applied for at the time of this rulemaking. Until political subdivisions apply for UIC permits, they will see no costs due to this rulemaking and the UIC program. However, political subdivisions are interested in the disposal of brine from prospective desalinization plants. This rulemaking stands to localize brine disposal regulation, which would bring benefit to prospective stakeholders. Municipalities also often own a multitude of dry wells, which are to be regulated under the UIC program's Class V wells.

The UIC program exists currently, administered by the Federal government, until ADEQ achieves primary enforcement authority over the program. As is stated above, the EPA administered program is funded through an approved budget from a Federal general fund. ADEQ's funding for UIC program administration will be realized through a fee-for-service model. The fee-for-service model institutes the charging of applicants and permittees for a significant portion of the funding necessary to support the regulatory program and the personnel necessary to staff it. Many of ADEQ's programs are structured this way. The Federal UIC program does not charge applicants, but rather derives its approved funds from a Federal general fund. The difference between the fee-for-service model and the general fund model is the reason the regulatory program within this rulemaking will impose a potentially minimal financial burden upon political subdivisions.

However, when the political subdivisions choose to engage with the UIC program that is the subject of this rulemaking, the benefits include a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs. Upon adoption of the program stakeholders who would have in the past had to file dual applications, comply with dual regulatory programs, file a dual set of ongoing reports and pay for consulting costs for dual permits will see all of those obligations consolidated into one, localized state program. This fact stands to save the regulated community time, money and hardship.

#### **Privately-Owned Business**

Privately-owned business is likely to see moderate cost and moderate benefit from this rulemaking. The disparity between EPA's general fund program model and ADEQ's fee-for-service model will incur potentially moderate costs to privately-owned businesses, especially the businesses that currently have UIC permits.

However, and as mentioned above, the benefits to privately-owned business include a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs. Upon adoption of the program, stakeholders who would have in the past had to file dual applications, comply with dual regulatory programs, file a dual set of ongoing reports and pay for consulting costs for dual permits will see all of those obligations consolidated into one, localized state program. This fact stands to save the regulated community time, money and hardship.

#### **General Public**

The general public could see significant benefit from this rulemaking. The UIC program that is the subject of this rulemaking aims to protect underground sources of drinking water supply or aquifers, many of which provide drinking water to Arizonans. The price of treating contaminated water or having to resort to other sources of water for drinking water supply is potentially significant. Furthermore, A positive impact for all stakeholders is the protection of the environment that the program this rulemaking supports will bring. Individuals with a better understanding of Arizona's geology and climate will be developing and maintaining these permits, which will lead to better protection of the environment, which supports the economy, which supports the community.

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

ADEQ estimates that, for the most part, this rulemaking will not have an impact on public or private employment. However, and as mentioned above, all UIC permittees, whether public or private, stand to benefit through the state establishment of a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs. Upon adoption of the program, stakeholders who would have in the past had to file dual applications, comply with dual regulatory programs, file a dual set of ongoing reports and pay for consulting costs for dual permits will see all of those obligations consolidated into one, localized state program. This fact stands to save the regulated community time, money and hardship. Arizona environmental consultants may see a minimal detriment due to the streamlining of environmental compliance for companies using injection wells.

#### **F. A statement of the probable impact of the rules on small business:**

In this EIS, ADEQ uses the term "small business" consistent with A.R.S. § 41-1001(21), which defines a "small business" as a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year.

#### **1. An identification of the small business subject to the rules:**

Among the stakeholders listed above, only a few meet the definition of small business as set forth in A.R.S. § 41-1001(21). For example, ADEQ estimates that all three current UIC permit holders in Arizona are not small businesses. However, ADEQ has recorded with frequency around 1,000 drywell registrations annually. Drywells will be regulated under the Class V UIC program upon primacy. Small businesses will constitute a significant portion of the approximately 1,000 drywell inventories ADEQ expects annually upon primacy. In terms of UIC Class V drywell inventorying, some small businesses will be affected in a minimally negative manner by this rulemaking. However, the rulemaking intends to institute some UIC Class V inspections, including drywells, which could prove minimally beneficial to certain small businesses.

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

Compliance costs associated with this rulemaking will vary based on the stakeholder involved. ADEQ's examination of compliance costs for UIC well owners regulated through a permit or an authorization by rule is addressed in the cost benefit analysis above.

**3. A description of the methods that the agency may use to reduce the impact on small businesses, as required in A.R.S. § 41-1035:**

**a. Establishing less stringent compliance or reporting requirements in the rule for small businesses:**

Under the SDWA, small businesses are not given special treatment when it comes to compliance or reporting requirements. In order to be eligible for EPA's transfer of primary enforcement authority of the program from Federal to State, the Federal SDWA-UIC program must be at least as stringent as the Federal program.

**b. Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses:**

Under the SDWA, small businesses are not given special treatment when it comes to the stringency of schedules or deadlines for compliance and reporting. Please reference subsection (F)(3)(a) above for more explanation.

**c. Consolidating or simplifying the rule's compliance or reporting requirements for small businesses:**

Under the SDWA, small businesses are not given special treatment when it comes to compliance and reporting requirements. Please reference subsection (F)(3)(a) above for more explanation.

**d. Establishing performance standards for small businesses to replace design or operational standards in the rule:**

Under the SDWA, small businesses are not given special treatment when it comes to design or operational standards. Please reference subsection (F)(3)(a) above for more explanation.

**e. Exempting small businesses from any or all requirements of the law:**

Under the SDWA, small businesses are not given special treatment when it comes to requirements. Please reference subsection (F)(3)(a) above for more explanation.

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

As is stated above in this EIS, the SDWA-UIC program is currently in effect, administered by the Federal government's EPA. This rulemaking is designed to support the primary enforcement authority or primacy application ADEQ has been mandated to pursue according to A.R.S. §§ 49-203(A)(6) and 49-257.01. The existing regulated parties in Arizona include three UIC Class III permittees and tens of thousands of UIC Class V wells (mostly drywells). Also stated above is the disparity in funding mechanisms between EPA's current administration of the program and ADEQ's proposed funding mechanisms in administration (EPA: General Fund based; ADEQ: Fee-For-Service based). Despite the new fees associated with Arizona's potential primacy, the state's UIC stakeholders have shown support for ADEQ's primacy pursuit. The reason for their support is the consolidation of Federal and state regulatory obligations into one, localized state program. The benefits to these private entities include the elimination of the necessity to file dual applications, to comply with dual regulatory programs, to file a dual set of ongoing reports and to pay for consulting costs for dual permits. Further benefits include the local access to ADEQ's expertise, personnel and customer service, a streamlined permitting process, and a reduction in cost through the elimination of duplicative regulation between Federal and state programs.

UIC applicants and permittees will be subject to a water quality protection service fee of \$145 an hour for application review, permit writing and other, similar services. The maximum fee for a single licensing time frame for UIC Area and Classes I, II, III and V permits are set at \$200,000. UIC Area and Classes I, II, III and V permit modification and/or permit renewal are set at a maximum of \$150,000. UIC Class VI permits maximum fee proposal is "no max". The reason why no maximum fee has been proposed for UIC Class VI is because of its complicated and unknown nature. Arizona does not have any Class VI carbon sequestration wells and the entire country only has a few in operation. ADEQ believes there is no basis for proposing a maximum on UIC Class VI wells at this time.

UIC permittees will be subject to Annual and Flat Fees, which were determined by considering the necessary revenue needed to support the administration of the program while putting the least burden possible on the stakeholders. Other factors include input from the APP program, other states' UIC programs and directly affected stakeholders.

Drywell regulation in Arizona will be transitioned from a state statutorily based regulatory program to regulation under the UIC program's Class V wells. Arizona's more than 65,000 registered drywells will be transitioned into the UIC Class V well inventory without a charge. However, there will be a cost increase between new drywell registration fees associated with the state statutory program and new inventory fees in the state-administered UIC program. Registration fees are \$100 per registration, where inventory fees will be \$200 per inventory. The reason

for this increase is to supplement the funds necessary to support the administration of the Class V portion of the UIC program, including the commencement of more regular inspection of high-risk drywells in Arizona. A condition of EPA granting ADEQ primacy to administer the UIC program is the inspection of a small portion of the UIC Class V wells in the state. In order to meet this requirement, ADEQ has increased the fee required to inventory a drywell in the state.

In discussion with UIC stakeholders, it was determined that a review of the revenues collected from the UIC program's fees should take place once every three years in order to ensure that enough revenue is being collected to properly administer the program and to that the fees are equitable by putting the least amount of burden on the stakeholders. To that end, R18-14-115 is proposed in this rulemaking.

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

This rulemaking will not result in a significant increase, nor decrease in state revenues. Increased and decreased costs to ADEQ are expected to be minimal, as explained above in the analysis of costs and benefits to ADEQ. Because the UIC permittees in Arizona were permitted through the UIC program as administered by the EPA, ADEQ does not anticipate a significant decrease in business activity in the state or a corresponding loss of state tax revenues.

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

The purpose of this rulemaking is to adopt the SDWA-UIC program in Arizona rule in order to lay the groundwork for state administration of the program as required by the legislature through A.R.S. §§ 49-203(A)(6) and 49-257.01. There are no less intrusive or less costly alternative methods of achieving the purpose of the rulemaking.

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

The SDWA allows states to apply for primary enforcement authority in the administration of the UIC regulatory program (see 42 United States Code 300h et seq.). The Arizona legislature mandated pursuit of the SDWA-UIC program through the passage of the following statutes, A.R.S. §§ 49-203(A)(6) and 49-257.01. In order to achieve primacy, one requirement of a state is to put rules in place for the program to operate through (see 40 Code of Federal Regulations 145.22(a)(5)). These rules must be at least as stringent as the Federal UIC program rules in order for EPA to consider a state's primacy application. The rules must also be no more stringent than the analogous Federal rule, per Arizona state law (see A.R.S. § 49-104(16)). Given those parameters, the language for the rules in this rulemaking came largely from 40 CFR Parts 144, 145 and 146 and to a lesser extent, 40 CFR Parts 124, 141 and 142.

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

R18-14-111(3)

- This is a new subsection that was added in order to accommodate a transferability function for UIC Class V wells authorized by rule and to follow the general fee structure of the state drywell program. The language charges \$100 for each well transferred from one owner to another.

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

**Comment 1: Resource Extraction Industry Member**

Proposed R18-14-115 should be revised to replace the words "from the date of primacy" with the words "from the date of the Environmental Protection Agency's approval of the Arizona UIC program." This is unless ADEQ prefers to define "primacy" as such in A601 and employ that term likewise in A602(A). In these provisions, ADEQ may also wish to employ the words "the Administrator" in lieu of "the Environmental Protection Agency."

**ADEQ Response 1:**

ADEQ appreciates the comment.

**Comment 2: Drywell Owners – UIC Drywell Regulation**

How will the UIC program rulemaking affect drywell regulation in Arizona? Will the existing registrations be rolled in the new UIC program? If rolled into the new UIC program, will the regulations look the same/similar as they are now for the Class V wells? Upon primacy, will drywell owners with registrations under A.R.S. § 49-332 need to inventory under the UIC program? Are Dry Wells included in a Class? If so, which Class are they included in? Under the UIC program, will drywells be assessed an annual fee or a one-time fee?

**ADEQ Response 2:**

ADEQ appreciates the comment. Currently, drywells in Arizona are regulated primarily through a statutorily-based program that can be found at A.R.S. Title 49, Chapter 2, Article 8. This program requires registration of new drywells. There are a few special circumstances where drywells are required to register and apply for an Aquifer Protection Permit (APP) (see A.A.C. Title 18, Chapter 9, Article 3, Part C. Type 2 General Permits – specifically R18-9-C301, C303 & C304).

In 2022, the Arizona State Legislature passed a bill (signed by the Governor) which repeals the state statutory drywell program. The repealed state statutory drywell program leaves drywell regulation in Arizona to the UIC program. The UIC program regulates drywells as part of its Class V wells. Upon primacy over the UIC program (projected for early 2023), ADEQ would take administrative control from EPA over the program and the drywell regulation therein. Until primacy, the Environmental Protection Agency (EPA) will continue to administer the UIC program in Arizona (including drywells which are encompassed in the Class V wells).

ADEQ is currently developing the UIC program and aims to transfer all state drywell registrations into the UIC program inventory in the process (free of charge). More information on this process will be made public as program development continues.

Class V regulations in the UIC program that are currently in effect and administered by EPA out of the Code of Federal Regulations (CFR) are nearly identical to the Class V regulation in this rulemaking.

Similar to the regulation in A.R.S. Title 49, Chapter 2, Article 8, the Class V regulation wherein drywells apply requires an inventory of new wells. Class V regulation also requires drywells to adhere to the prohibition of movement standard in rule R18-9-B608(A). This rule prohibits any injection activity in a manner that allows the movement of fluid containing any contaminant into an underground source of drinking water. The Class V-specific regulation can be found at R18-9-I650 et seq.

Under the Arizona UIC program, drywells and Class V wells are charged a one-time fee, per inventory, of \$200. Class V wells, authorized by rule, will also be charged \$100 upon transfer of the well to a new owner.

**Comment 3: Tribal Interest Group**

ADEQ has stated that it intends for the UIC Program to be almost entirely funded through collected permit fees. For many years, ADEQ has suffered from deficient state funding. ADEQ should not be pursuing UIC Program primacy without asking for sufficient funding from the Arizona Legislature. This is critical, as sufficient funding and adequate ADEQ workforce expertise must be present for ADEQ to fulfill its obligations under this Program, as well as its obligations to Arizona tribes.

**ADEQ Response 3:**

ADEQ appreciates the comment. The Arizona UIC program is proposed to operate on a fee-for-service model that derives funding from diverse sources of revenue, which includes fixed annual fees, well installation fees, an hourly fee for application and technical review, and an annual work grant from EPA. The Annual Fees (listed in the UIC Licensing Time Frame proposed rules at Tables 3.1 and 3.2, R18-14-104) and the UIC Flat Fees (listed in proposed rule R18-14-111) were determined by considering the necessary revenue needed to support the administration of the program.

Projected revenue will be augmented by an increase in the hourly rate for a UIC water quality protection service associated with a UIC permit, which has been set at \$145 an hour in proposed rule R18-14-102(B).

Furthermore, ADEQ has proposed in the Fee rulemaking the periodic review of the revenues collected from the UIC program every three years (see proposed rule R18-14-115). The reviews will ensure that enough revenue is being collected to properly administer the program. The reviews will also ensure that the fees are equitable and not overly burdensome to the stakeholders.

**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:**

The following statutes contain therein prescribed matters applicable to the rules in this rulemaking: A.R.S. §§ 49-203(A)(6) and (9); 49-257; 49-257.01.

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

See item 11a in the Preamble of the Notice of Proposed Rulemaking for Title 18, Chapter 9 in the January 7, 2022 issue of the *Administrative Register*.

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

Federal law is applicable to the UIC program. The UIC is a program authorized under the SDWA (see 42 U.S.C. § 300h et seq.), originally administered by EPA. The UIC program administration can be transferred from EPA to a state through a delineated process known as Primacy (see 42 U.S.C. § 300h-1). However, the addition of fees to 18 A.A.C. 14 has no applicable federal law.

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

No comparative analyses were submitted.

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

No material was incorporated by reference in this rulemaking under A.R.S. § 41-1028, nor otherwise.

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

Not applicable

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

**TITLE 18. ENVIRONMENTAL QUALITY  
CHAPTER 14. DEPARTMENT OF ENVIRONMENTAL QUALITY  
WATER QUALITY PERMIT AND COMPLIANCE FEES**

**ARTICLE 1. WATER QUALITY PROTECTION FEES**

Section	
R18-14-101.	Definitions
R18-14-102.	Hourly Rate and Maximum Fees for Water Quality Protection Services
R18-14-103.	Initial Fees
R18-14-104.	Annual Fees for Water Quality Protection Services
R18-14-105.	Fee Assessment and Collection
R18-14-106.	Reconsideration of a Bill; Appeal Process
R18-14-107.	Effect on County Fees
R18-14-108.	APP Water Quality Protection Services Flat Fees



R18-14-109. AZPDES Water Quality Protection Services Flat Fees  
 R18-14-110. Reclaimed Water Flat Fees  
R18-14-111. UIC Flat Fees  
~~R18-14-111~~-R18-14-112. Other Flat Fees  
~~R18-14-112~~-R18-14-113. Implementation  
~~R18-14-113~~-R18-14-114. Annual Report  
R18-14-115. UIC Fees Review

## ARTICLE 1. WATER QUALITY PROTECTION FEES

### R18-14-101. Definitions

In addition to the definitions in A.R.S. §§ 49-201, 49-241.02, 49-255, 49-331, and A.A.C. R18-9-101, A.A.C. R18-9-701, and A.A.C. R18-9-A901, the following terms apply to this Article:

1. "APP" means an Aquifer Protection Permit.
2. "Complex modification" means:
  - a. A revision of an individual Aquifer Protection Permit for a facility within a mining sector as defined in A.R.S. § 49-241.02(F)(1); and
  - b. A revision of an individual Aquifer Protection Permit for a facility within a non-mining sector due to any of the following:
    - i. An expansion of an existing pollutant management area requiring a new or relocated point of compliance
    - ii. A new subsurface disposal including injection or recharge, or new wetlands construction;
    - iii. Submission of data indicating contamination, or identification of a discharging facility or pollutants not included in previous applications that requires reevaluation of BADCT; or
    - iv. Closure of a facility that cannot meet the clean closure requirements of A.R.S. § 49-252 and requires post-closure care, monitoring, or remediation.
3. "Courtesy review" means a design review service that the Department performs within 30 days from the date of receiving the submittals, of the 60 percent completion specifications, design report, and construction drawings for a sewage collection system.
4. "Priority review" means a design review service for an APP Type 4 permit application that the Department completes using not more than 50 percent of the total review time-frame for the applicable Type 4 permit application as specified in 18 A.A.C. 1, Table 10.
5. "Request" means a written application, notice, letter, or memorandum submitted by an applicant to the Department for water quality protection services. The Department considers a request made on the date it is received by the Department.
6. "Review hours" means the hours or portions of hours that the Department's staff spends on a request for a water quality protection service. Review hours include the time spent by the project manager and technical review team members, and if requested by the applicant, the supervisor or unit manager.
7. "Review-related costs" means any of the following costs applicable to a specific request for water quality protection service:
  - a. Presiding officer services for public hearings on a permitting decision,
  - b. Court reporter services for public hearings on a permitting decision,
  - c. Facility rentals for public hearings on a permitting decision,
  - d. Charges for laboratory analyses performed during the review, and
  - e. Other reasonable and necessary review-related expenses documented in writing by the Department and agreed to by an applicant.
8. "Standard modification" means an amendment to an individual Aquifer Protection Permit that is not a complex modification.
9. "UIC" means Arizona's Underground Injection Control Program.
910. "Water quality protection service" means:
  - a. Reviewing a request for an APP determination of applicability;
  - b. Issuing, renewing, amending, modifying, transferring, or denying an aquifer protection permit, an AZPDES permit, a UIC permit, a UIC application for an aquifer exemption or an injection depth waiver or a reclaimed water permit;
  - c. Reviewing supplemental information required by a permit condition, including closure for an APP;
  - d. Performing an APP clean closure plan review;
  - e. Issuing or denying a Certificate of Approval for Sanitary Facilities for a Subdivision;
  - f. Registering or transferring registration of a dry well;
  - g. Conducting a site visit;
  - h. Reviewing proprietary and other reviewed products under A.A.C. R18-9-A309(E);
  - i. Reviewing, processing, and managing documentation related to an AZPDES general permit, including a notice of intent, notice of termination, certificate of no exposure, and waiver;
  - j. Registering and reporting land application of biosolids; or
  - k. Pretreatment program review, inspection, or audit.

### R18-14-102. Hourly Rate and Maximum Fees for Water Quality Protection Services

- A. The Department shall assess and collect an hourly rate fee for a water quality protection service, except for APP minor permit amendments specified under A.A.C. R18-9-A211(C)(1), (2) and (3) and A.A.C. R18-9-B906(B), unless a flat fee is other-wise designated in this Article, and UIC minor modifications specified under A.A.C. R18-9-C633(A).
- B. Hourly rate fees. The Department shall calculate the fee using an hourly rate of \$122, except for the UIC program, where the Department shall calculate the fee using an hourly rate of \$145. These rates shall then be multiplied by the number of review hours to provide a water quality protection service, plus any applicable review-related costs, up to the maximum fee specified in subsection (C). The Department shall not charge an applicant for the first 60 minutes of Department pre-application consultation time costs for the project manager.

C. Maximum fees for a water quality protection service assessed at an hourly rate are as follows:

**Table 1. Maximum Fees**

Program Area	Permit Type	Maximum Fee
APP	Individual or area-wide	\$200,000
APP	Complex modification to individual or area-wide	\$150,000
APP	Clean closure of facility	\$50,000
APP	Standard modification to individual or area-wide (per modification up to the maximum fee, and modification can be re-assigned under A.A.C. R18-1-516):	\$150,000
	<ul style="list-style-type: none"> <li>• Maximum fee (cumulative per submittal)</li> </ul>	No fee
	<ul style="list-style-type: none"> <li>• Modification under A.A.C. R18-9-A211(C)(1) through (3)</li> </ul>	\$5,000
	<ul style="list-style-type: none"> <li>• Modification under A.A.C. R18-9-A211(C)(4) through (6)</li> </ul>	\$15,000
	<ul style="list-style-type: none"> <li>• Modification under A.A.C. R18-9-A211(C)(7)-(D)(2)(b) through (i), and (k) through (l)</li> </ul>	\$25,000
	<ul style="list-style-type: none"> <li>• Modification under A.A.C. R18-9-A211(D)(2)(a) and (j)</li> </ul>	\$25,000
	<ul style="list-style-type: none"> <li>• Modification under A.A.C. R18-9-A211(B) that is not classified as complex modification under R18-14-101(2)</li> </ul>	\$25,000
APP	For an APP issued before July 1, 2011, the fee for a submittal required by a compliance schedule is assessed per submittal and cumulative up to the maximum fee. The applicable maximum fee for all compliance schedule submissions shall be according to one of the three maximum fee categories listed below. The maximum fee is for the lifetime of the APP unless a new compliance schedule is established in the APP due to a modification that is classified as both a significant amendment under A.A.C. R18-9-A211(B) and a complex modification under R18-14-101(2)	\$150,000
	<ul style="list-style-type: none"> <li>• For a permit with a compliance schedule where one or more submissions require a permit modification that requires a determination or reevaluation of BADCT, the fee is assessed as described above for each standard modification, with a maximum fee for the permit's entire compliance schedule of:</li> </ul>	\$100,000
	<ul style="list-style-type: none"> <li>• For a permit with a compliance schedule where one or more submissions require a permit modification, but no determination or reevaluation of BADCT is required, the fee is assessed as described above for each standard modification, with a maximum fee for the permit's entire compliance schedule of:</li> </ul>	\$100,000
	<ul style="list-style-type: none"> <li>• For a permit with a compliance schedule requiring one or more submissions that require ADEQ review but do not require a permit modification, the maximum fee for the permit's entire compliance schedule is:</li> </ul>	
APP	For an APP issued on or after July 1, 2011, the fee for a submittal required by a compliance schedule is assessed per submittal and cumulative up to the maximum fee for the lifetime of the APP	\$100,000
APP	Determination of applicability	\$15,000
APP	Reviewing proprietary and other reviewed products under A.A.C. R18-9-A309(E)	\$15,000
AZPDES	Individual permit for municipal separate storm sewer system	\$40,000
AZPDES	Individual permit for wastewater treatment plant (based on gallons of discharge per day)	
	<ul style="list-style-type: none"> <li>• 3,000 to 99,999</li> </ul>	\$15,000
	<ul style="list-style-type: none"> <li>• 100,000 to 999,999</li> </ul>	\$20,000
	<ul style="list-style-type: none"> <li>• 1,000,000 to 9,999,999</li> </ul>	\$30,000
	<ul style="list-style-type: none"> <li>• 10,000,000 or more</li> </ul>	\$50,000
AZPDES	Individual permit for a facility or activity that is not a wastewater treatment plant or a municipal separate storm sewer	\$30,000
AZPDES	Amendment to an individual permit	\$12,500
AZPDES	Approval of a new or revised pretreatment program under AZPDES	\$10,000

AZPDES	Consolidated individual permit for multiple AZPDES individual permits, as allowed under A.A.C. R18-9-B901(C)	Aggregate of the applicable maximum fees
Reclaimed	Reclaimed water individual permit	\$32,000
UIC	Area	\$200,000
	Area Modification / Renewal	\$150,000
UIC	Classes I, II, III, V Individual	\$200,000
	Classes I, II, III, V Modification / Renewal	\$150,000
UIC	Classes VI Individual	No Max
	Classes VI Modification	No Max

**R18-14-104. Annual Fees for Water Quality Protection Services Subject to Hourly Rate Fee**

A. Annual Registration Fees. The annual registration fee required under A.R.S. § 49-242 is in Table 2:

**Table 2. APP Annual Registration Fees**

Discharge or Influent per Day under the Individual APP or Notice of Disposal (in Gallons)	Annual Registration Fee	Annual Registration Fee if New Facility Under New APP Not Yet Constructed
3,000 to 9,999	\$500	\$250
10,000 to 99,999	\$1,000	\$250
100,000 to 999,999	\$2,500	\$500
1,000,000 to 9,999,999	\$6,000	\$625
10,000,000 or more	\$8,500	\$750

B. The Department shall assess an annual fee for an AZPDES-related water quality protection service subject to an hourly rate fee as listed in Table 3:

**Table 3. AZPDES Annual Registration Fees**

Permit Type	Annual Fee	Annual Fee if New Facility Under New AZPDES Not Yet Constructed
Municipal separate storm sewer system	\$10,000	N/A
Wastewater treatment plant (based on gallons of discharge per day):		
• Less than 99,999	\$250	\$250
• 100,000 to 999,999	\$500	\$500
• 1,000,000 to 9,999,999	\$2,500	\$625
• 10,000,000 or more	\$4,000	\$750
Facility or activity that is not a wastewater treatment plant or municipal separate storm sewer and designated in the permit as either:		
Major	\$2,500	\$625
Minor	\$500	\$500
Pretreatment program	\$3,000	N/A
Consolidated individual permit for multiple AZPDES individual permits, as allowed under A.A.C. R18-9-B901(C)	Aggregate of the applicable annual fees of each individual permit	Aggregate of the applicable annual fees of each individual permit

C. The Department shall assess an annual fee of \$500 for an individual reclaimed water permit.

D. The Department shall assess an annual fee and an annual waste disposal fee as applicable to UIC regulated facilities, subject to an hourly rate fee, as listed in Tables 3.1 and 3.2:

**Table 3.1. UIC Annual Fees**

Permit Type	Annual Registration Fee	Annual Waste Disposal Fee
Area	\$10,000 (and not subject to any other annual registration fee in Tables 3.1 and 3.2)	N/A
Class I	No Annual Registration Fee	\$0.002/gallon. Minimum Fee: \$10,000/year Maximum Fee: \$25,000/year
Class II	See Table 3.2	N/A
Class III	See Table 3.2	N/A
Class V "Individual"	See Table 3.2	N/A
Class VI	No Annual Registration Fee	\$0.08/ton Minimum Fee: \$10,000/year

**Table 3.2. UIC Annual Registration Fees**

Design Injection Flow Rate in Gallons per day <sup>1,2</sup>	Annual Registration Fee
3,000 to 9,999	\$600
10,000 to 99,999	\$1,200
100,000 to 999,999	\$3,000
1,000,000 to 9,999,999	\$7,000
10,000,000 or more	\$10,000

<sup>1</sup> A Class II, III or V Individual UIC permittee with multiple wells or multiple permits may consolidate their same-class wells for the purpose of “design injection flow rate in gallons per day” under Table 3.2.  
<sup>2</sup> An Area permit is not subject to Table 3.2.

**R18-14-111. UIC Flat Fees**

The Department shall assess a flat fee for the following UIC regulated facility services:

1. Well installation in an Area Permit, \$200 per well installation.
2. Class V authorization by rule, \$200 per well inventory.
3. Class V authorization by rule, \$100 per well transfer.

**R18-14-111-R18-14-112. Other Flat Fees**

Flat fees. The Department shall assess a flat fee for the following water quality protection services:

1. Dry well registration, \$100 per dry well until:
  - a. The fees in R18-14-111 are applicable, and
  - b. A.R.S Title 49, Chapter 2, Article 8 is removed.
2. Dry well transfer of registration, \$50 per transfer until:
  - a. The fees in R18-14-111 are applicable, and
  - b. A.R.S Title 49, Chapter 2, Article 8 is removed.
3. Certificate of Approval for Sanitary Facilities for Subdivisions.
  - a. Subdivision with public sewerage system: \$800 for every increment of 150 lots or less;
  - b. Subdivision with individual sewerage system:
    - i. \$500 for less than 10 lots;
    - ii. \$1,000 for greater than 10 lots but less than 50 lots;
    - iii. \$1,000 for each additional increment of 50 lots or less.
  - c. If water from a central system is not provided to the lot, the fee is one and one-half the applicable fee stated in subsection (3)(a) or (b).
  - d. Condominium subdivision: \$1,000 for every increment of 150 units or less.

**R18-14-112-R18-14-113. Implementation**

The fees in this Article apply on July 1, 2011. For fees related to the AZPDES program:

1. A person shall submit the applicable fee when requesting a water quality protection service as specified in an AZPDES General Permit or in 18 A.A.C. 9, Article 9; and
2. A person is responsible for paying the annual fee for an AZPDES general permit, even if the person filed for coverage before the effective date of these rules.

**R18-14-113-R18-14-114. Annual Report**

By December 1 of each year, the Department shall publish an accounting of Water Quality Fee Fund revenue and expenditure activity for the prior fiscal year.

**R18-14-115. UIC Fees Review**

The department shall review the revenues derived from the implementation of the UIC program from the date of primacy through June 30, 2025. By September 30, 2025, the department shall determine the adequacy of the fees in comparison to the relevant data from the time period. The department shall repeat the review every three years based on the initial review date of June 30, 2025.

**NOTICE OF FINAL RULEMAKING**

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE  
 CHAPTER 6. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS  
 INSURANCE DIVISION**

[R22-158]

**PREAMBLE**

<b><u>1. Article, Part, or Section Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
Article 13	New Article
R20-6-1301	New Section
R20-6-1302	New Section
R20-6-1303	New Section
R20-6-1304	New Section
R20-6-1305	New Section

Exhibit A

New Exhibit

**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. § 20-143

Implementing statute: Laws 2020, Chap. 4, Sec. 8. (SB1523)

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

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

Notice of Rulemaking Docket Opening: 28 A.A.R. 347, February 4, 2022

Notice of Proposed Rulemaking: 28 A.A.R. 330, February 4, 2022

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

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

In 2020, the Arizona Legislature enacted the Arizona Mental Health Parity Act (also known as "Jake's Law") at A.R.S. §§ 20-3501 through 20-3505 to implement the provisions of the federal Mental Health Parity and Addiction Equity Act ("MHPAEA" 42 U.S.C. 300gg-26 and implementing regulations) on the state level. It also charged the Department of Insurance and Financial Institutions ("Department") to: "adopt by rule both of the following: 1. Forms or worksheets that health care insurers must use to prepare the reports required by section 20-3502 . . . and 2. Standards to determine compliance with the mental health parity and addiction equity act." Laws 2020, Chap. 4, Sec. 8. (SB1523).

MHPAEA generally establishes that health insurance issuers that provide mental health or substance use disorder (MH/SUD) benefits may not, among other things, impose less favorable benefit limitations on MH/SUD benefits than on medical/surgical benefits. State insurance authorities, the U.S. Department of Health and Human Services, and the U.S. Department of Labor (U.S. DOL) have jurisdiction over applicable individual and group health insurance policies. MHPAEA regulations establish standards related to health care insurers' application of financial requirements (e.g., deductibles and co-payments), quantitative treatment limitations (e.g., visit limits), and nonquantitative treatment limitations (e.g., step therapy, prior authorization). Health care insurers cannot apply financial requirements (FRs) or quantitative treatment limitations (QTLs) to MH/SUD policy benefits that are more restrictive than the predominant financial requirements or treatment limitations that apply to substantially all medical/surgical benefits. Nor can health care insurers impose nonquantitative treatment limitations (NQTLs) with respect to MH/SUD benefits in any classification unless the processes, strategies, evidentiary standards, or other factors used in applying the NQTL to MH/SUD benefit classifications are comparable to those used with medical surgical/benefits classifications.

This rulemaking is intended to fulfill the Legislature's charge to create forms and worksheets that health care insurers must use to prepare the reports required by A.R.S. § 20-3502 and establish standards to determine compliance with MHPAEA.

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

The Department did not review and does not propose to rely on any study relevant to 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:**

The rulemaking does not diminish a previous grant of authority granted to the Department.

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

Pursuant to A.R.S. § 41-1055(A):

- The conduct the rulemaking is designed to change is the practice of health care insurers that provide mental health or substance use disorder ("MH/SUD") benefits to provide those benefits on parity with the provision of medical and surgical ("Med/Surg") benefits. This means that limitations health care insurers impose on MH/SUD benefits can be no more stringent or less favorable than the limitations the health care insurer imposes on Med/Surg benefits.

- The failure of a health care insurer to provide MH/SUD benefits on parity with Med/Surg benefits may result in having an insured unable to obtain MH/SUD medical care because the limitations imposed on those benefits are more stringent or less favorable than imposed on other types of benefits.
- The Department does not presume that the health care insurers in Arizona are non-compliant with the parity requirements of the Arizona Mental Health Parity Act (A.R.S. §§ 20-3501 through 20-3505). However, the reporting requirements of the rulemaking will ensure that health care insurers remain in compliance with the Act.
- The costs incurred by health care insurers are not expected to impact revenues or payroll expenditures. Instead, the costs incurred are compliance costs driven by the reporting requirements imposed by the proposed rulemaking. Many health care insurers are already familiar with MHPAEA and have been complying through federal regulations imposed on portions of their business. These already incurred costs are not expected to change appreciably under the proposed rulemaking. Additional costs, however, may arise in order to comply with the additional statutory reporting requirements. But, these costs are not anticipated to impact revenues or payroll expenditures.
- Groups participating in the listening sessions allowed under the bill generally requested that the Department demonstrate that it has selected an alternative that imposes the least burden and costs to persons regulated by the rule under A.R.S. § 41-1052 although they did not enumerate any anticipated costs.
- The employee listed in Item 5 may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement.

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

The following corrections have been made from the Notice of Proposed Rulemaking:

- A correction has been made to the exhibit instructions in Exhibit A. The rule reference has been corrected from Section R20-6-1303(B) to Section R20-6-1302(B).
- Citation references to the Code of Federal Regulations have been changed from “C.F.R.” to “CFR” to conform to rulewriting standards throughout.

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

The Insurance Division received a number of comments on the Proposed Rulemaking. The Division has posted the comments on its website (<https://difi.az.gov/proposed-draft-rule-public-comments>). Someone reading these comments should be aware that prior to this rulemaking, the Department opened a Docket (26 A.A.R. 1882, September 11, 2020) and published a Notice of Proposed Rulemaking (27 A.A.R. 195, February 12, 2021) on Jake’s Law which it terminated (27 A.A.R. 1037, July 9, 2021). Some commenters reference this original rulemaking in their comments.

**Opposition Comment:** Only one insurer, Medica, submitted a comment requesting that the Department postpone its rulemaking activity in anticipation of expected changes by the Federal government to MHPAEA regulations in 2022. Medica further requested alignment with other states by asking Arizona to abandon the Arizona-specific data request (Exhibit A) in favor of comparative analyses. Lastly, Medica recommended that the Department recognize the limitations of the CMS MHPAEA tool in assessing compliance.

**Department Response:** The Department declines to delay this rulemaking. As stated above, this is the Department’s second attempt to enact rules implementing Jake’s Law. The Legislature charged the Department with adopting rules on or before April 1, 2021. Laws 2020, Chap. 4, Sec. 8. (SB1523). The Department has been working diligently to comply with the Legislature’s mandate. Nothing prevents the Department from conducting future rulemakings to adopt any changes made by the Federal government in 2022 or later.

The Department recognizes the challenges posed to insurers trying to comply with different states’ regulatory schemes. However, the Legislature has charged the Department with adopting rules that comply with Arizona’s law. The Department is not authorized to adopt rules that comply with regulatory schemes in other states.

Lastly, even if the Department recognizes the limitations of the CMS MHPAEA tool in assessing compliance, it has outlined the reporting requirements the Legislature requires in order for the Department to assess compliance under Arizona law.

**Comments suggesting substantive changes to the Rulemaking:** The Department received two comments suggesting substantive changes to the Proposed Rulemaking.

**Comment #1:** The first comment came from the Arizona Psychiatric Society (“APS”). APS restricted its comment to Exhibit A, Medical Necessity Criteria and Nonquantitative Treatment Limitation (“NQTL”) Reports. APS prefaces its substantive comment with a demonstration of how the Arizona proposed MHPAEA rule is compatible with and does not exceed the comparative analysis requirements of the Federal law. The substantive change request is that the Department pluralize the terms “process,” “strategy,” “evidentiary standard,” and “other factor” at Exhibit A - Part IV to be consistent with 42 U.S.C. 300gg-26(a)(8)(A)(iv) which uses the term “analyses.”

This comment was supported by commenters Dr. Irene Kitzman, Dr. Gary Grove, Dr. Chandan Nayak, Dr. Marc Lieb, Dr. Karen Weihs, and the Arizona Medical Association.

**Department Response:** The Department agrees that its rulemaking is compatible with and does not exceed the authority granted to it by the Legislature under Jake’s Law. On the pluralization request, the Department declines to make the suggested change. Insurers should be familiar with MHPAEA and its requirements. Jake’s law states:

“Demonstrate through analysis that for any nonquantitative treatment limit applied to mental health and substance use disorder benefits in a classification of benefits, as written and in operation, **any process, strategy, evidentiary standard or**

**other factor** used in applying the nonquantitative treatment limit to mental health and substance use disorder benefits in the classification are comparable to, and applied not more stringently than, **any process, strategy, evidentiary standard or other factor** used in applying the treatment limit for medical and surgical benefits in the classification.” A.R.S. § 20-3502(B)(3). (Emphasis added.)

The Department’s position is that insurers should interpret this language to mean “every and all” processes, strategies, evidentiary standards and other factors must be reported. For insurers who fail to make complete reports, the Department is empowered to request information or data that is necessary to verify compliance pursuant to A.R.S. § 20-3502(F).

**Comment #2:** Mental Health America of Arizona/Arizona Council of Human Service Providers urged the Department to add a definition for “medical necessity/medically necessary.” The Department had added such a definition which adopted language used by CMS for Medicare coverage in a draft circulated among stakeholders during listening sessions. The Department removed it in the Proposed Rule when objected to by insurers.

This comment was supported by commenter AZ Family Peer Coalition.

**Department Response:** The Department declines to include the definition. Although the Department acknowledges that “medical necessity criteria . . . are where the most profound and consequential barriers to mental health and addiction coverage occur,” neither MHPAEA nor Jake’s Law defines “medical necessity/medically necessary.” The Department’s position is that the better place to adopt the definition is in statute and not in rule.

**Comments in support of the Rulemaking:** The remaining commenters made general, non-substantive comments in support of the rulemaking which fell into the following subject categories:

- The Kennedy Forum expressed its disappointment that the current rules are a significant step back from the prior proposed rules. It feels that oversight efforts will be more difficult and less likely to be effective in identifying potential compliance issues. This comment was supported by commenters Denise Denslow, Joanna Booher, Stacie J. Whitaker-Harris, and Nadine Smith who all expressed the need for stronger reporting requirements.
- The following commenters noted that most parity violations occur within managed care practices and urged the Department to ensure maximum transparency regarding NQTLs and medical necessity criteria: Amina Donna Kruck, Lutheran Social Services of the Southwest, Jill Friedberg, Jewish Family & Children’s Services, Melinda Hickman, Cheryl L. Martin, Christine Lee Kinchen, and the National Alliance on Mental Illness – White Mountains.
- Six commenters shared their or their family’s personal struggles with trying to obtain coverage for mental health issues and emphasized the need for equal insurance protection and its importance for Arizona’s children.

**Department’s Response:** The Department is grateful for and thanks all the individuals who took the time to make a comment in support of the Proposed Rulemaking.

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

No other matters prescribed by statute are applicable to the Insurance Division or to any specific rule or class of rules.

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

The rule does not require a permit and does not use a general permit. Instead, the rule is designed to provide guidance to health care insurers on the reporting requirements of A.R.S. § 20-3502 and the standards to determine compliance with MHPAEA.

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

The Mental Health Parity and Addiction Equity Act (“MHPAEA”) (42 U.S.C. 300gg-26 and implementing regulations) is applicable to the subject of the rule. The rule is not more stringent than the federal law and complies with the statutory mandates established by the Legislature. (Laws 2020, Chap. 4, Sec. 8.) Instead, the rule requires health care insurers to submit their analyses that demonstrate their compliance with the provisions of MHPAEA (Exhibit A).

**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 formal analysis has been submitted to the Department that compares the rule’s impact of the competitiveness of business in this state to the impact of business in other states.

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

The rule does not incorporate any reference material into the rule as specified at A.R.S. § 41-1028. However, the rule has multiple references to portions of the federal act for consistency and clarity for insurers having to comply with MHPAEA and Jake’s Law.

**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:**

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

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

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE**  
**CHAPTER 6. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS**  
**INSURANCE DIVISION**

**ARTICLE 13. RESERVEDMENTAL HEALTH PARITY**

Section

<u>R20-6-1301.</u>	<u>Definitions</u>
<u>R20-6-1302.</u>	<u>Medical Necessity Criteria and NQTL Reporting</u>
<u>R20-6-1303.</u>	<u>FR and QTL Reporting</u>
<u>R20-6-1304.</u>	<u>Additional Information or Data</u>
<u>R20-6-1305.</u>	<u>Confidentiality of Information</u>
<u>Exhibit A.</u>	<u>Medical Necessity Criteria and NQTL Reports</u>

**ARTICLE 13. RESERVEDMENTAL HEALTH PARITY**

**R20-6-1301. Definitions**

The definitions in A.R.S. § 20-3501 and the following definitions apply to this Article:

“Arizona Mental Health Parity Act” means the statutes found at A.R.S. §§ 20-3501 through 20-3505.

“Coverage unit” has the meaning prescribed at 45 CFR § 146.136(a) “Coverage unit.”

“Department of Insurance and Financial Institutions (Department)” has the meaning prescribed at A.R.S. § 20-101.

“CMS MHPAEA tool” means the Microsoft Excel Mental Health Parity tool maintained by the Center for Medicare and Medicaid Services.

“Financial requirements (FR)” has the meaning at 45 CFR § 146.136(a) “Financial requirements.”

“Health care insurer” has the meaning prescribed at A.R.S. § 20-3501(2).

“Health plan” has the meaning prescribed at A.R.S. § 20-3501(3).

“Inpatient, in-network benefits” are benefits furnished on an inpatient basis and within a network of contracted providers under a health plan.

“Inpatient, out-of-network benefits” are benefits furnished on an inpatient basis by providers without a contract under a health plan or for a health plan that has no network of providers.

“Large group health plan” is a health plan issued to an employer group that is not a small employer as defined at A.R.S. § 20-2301(A)(20).

“Medical/surgical (Med/Surg) benefits” has the meaning prescribed at 45 CFR § 146.136(a) “Medical/surgical benefits.”

“Mental (MH) health benefits” has the meaning prescribed at 45 CFR § 146.136(a) “Mental health benefits.”

“MHPAEA” means the Mental Health Parity and Addiction Equity Act prescribed in A.R.S. § 20-3501(4).

“Nonquantitative treatment limitation (NQTL)” is a limitation that restricts the scope or duration of benefits for treatment under a health plan or coverage. Illustrations of NQTLs include: medical management standards limiting or excluding benefits based on medical necessity or appropriateness or based on whether the treatment is experimental or investigative as identified under 45 CFR 146.136(c)(4)(ii)(A); formulary design for prescription drugs as identified under 45 CFR 146.136(c)(4)(ii)(B); network tier design (for health plans with multiple network tiers such as preferred providers and participating providers) as identified under 45 CFR 146.136(c)(4)(ii)(C); standards for provider admission to participate in a network, including reimbursement rates as identified under 45 CFR 146.136(c)(4)(ii)(D); methods for determining usual, customary, and reasonable charges as identified under 45 CFR 146.136(c)(4)(ii)(E); refusal to pay for higher-cost therapies until it can be shown that a lower-cost therapy is not effective (also known as “fail-first policies” or “step therapy protocols”) as identified under 45 CFR 146.136(c)(4)(ii)(F); exclusions based on failure to complete a course of treatment; and restrictions based on geographic location as identified under 45 CFR 146.136(c)(4)(ii)(G), facility type, provider specialty, and other criteria than limit the scope or duration of benefits for services provided under the health plan or coverage as identified under 45 CFR 146.136(c)(4)(ii)(H).

“Outpatient, in-network benefits” are benefits furnished on an outpatient basis and within a network of providers established or recognized under a health plan.

“Outpatient, out-of-network benefits” are benefits furnished on an outpatient basis and outside any network of providers established or recognized under a health plan or under a health plan that has no network of providers.

“Predominant test” means that if a type of FR or QTL applies to substantially all of the Med/Surg benefits in a classification, the predominant level of the FR or QTL is the level that applies to more than 1/2 of the Med/Surg benefits in that classification subject to the FR or QTL. If no single level can be determined, the health plan (or health insurance issuer) may combine levels until the combination of levels applies to more than 1/2 of Med/Surg benefits subject to the FR or QTL in the classification. The least restrictive level within the combination is considered the predominant level of that type of classification. For this purpose, a health plan may combine the most restrictive levels first with each less restrictive level added to the combination until the combination applies to more than 1/2 of the benefits subject to the FR or QTL.



“Quantitative treatment limitation (QTL)” is a limitation on the scope or duration of a benefit that can be expressed numerically that includes day or visit limits such as “50 outpatient visits per year.” QTLs include annual, episode, and lifetime day and visit limits such as number of treatments, number of visits, or days of coverage.

“Substance use disorder (SUD) benefits has the meaning prescribed at 45 CFR § 146.136(a) “Substance use disorder benefits.”

“Substantially all test” means that a FR or QTL applies to at least 2/3 of all Med/Surg benefits in a classification of benefits for a coverage unit. (For this purpose, benefits expressed as subject to a zero level of a type of FR are treated as not subject to that type of FR. In addition, benefits expressed as subject to an unlimited QTL are treated as not subject to that type of QTL.) If a type of FR or QTL does not apply to at least 2/3 of all Med/Surg benefits in a classification, then that type of FR or QTL cannot be applied to MH or SUD benefits in that classification.

#### **R20-6-1302. Medical Necessity Criteria and NOTL Reporting**

- A.** Health care insurers subject to the reporting requirement. A health care insurer that issues health plans in Arizona is required to file the reports required by this Section with the Department.
- B.** Health plans subject to reporting. A health care insurer shall submit a report for all health plans it offers in this state (including grandfathered and non-grandfathered health plans) that meet all of the criteria listed in subsections (B)(1) through (B)(4) of this Section. If a health care insurer determines that the information to be reported varies by network plan, or varies in the individual, small group, or large group market, the health care insurer must submit a separate report for each variation.
1. The health plan offers MH and/or SUD benefits in addition to Med/Surg benefits.
  2. The health plan offers MH and/or SUD benefits in at least one of the following classifications:
    - a. Inpatient, in-network;
    - b. Inpatient, out-of-network;
    - c. Outpatient, in-network;
    - d. Outpatient, out-of-network;
    - e. Emergency care; or
    - f. Prescription drugs.
  3. The health plan is offered on a group (large or small) or individual basis.
  4. The health plan has not received and notified the Department of an increased cost exemption pursuant to 45 CFR 146.136(g).
- C.** Health plans exempt from reporting. A health plan that meets the criteria of subsection (B) of this Section is exempt from reporting under this Article if it is one of the following types of health plans:
1. A small group grandfathered health plan;
  2. A small group non-grandfathered health plan subject to the HHS transitional policy; or
  3. A health plan that meets the definition of excepted benefit provided in 45 CFR 146.145(b) or 45 C.F.R. 148.220.
- D.** Required reports. A health care insurer shall file a separate report for each fully insured product network type the health care insurer issues in Arizona. If the information to be reported varies by network or health plan, or varies in the individual, small group or large group market, the health care insurer must file a separate report for each variation.
- E.** Triennial Reports.
1. Existing health care insurers. Beginning on March 15, 2023 and every third year thereafter, a health care insurer issuing health plans and collecting premium in Arizona as of January 1, 2022 shall file a triennial report with the Department for each health plan subject to reporting.
  2. Entering or re-entering health care insurers. On or before March 15 of the second year an entering or re-entering health care insurer issues health plans and collects premiums in Arizona, the health care insurer shall file an original triennial report with the Department for each health plan subject to reporting. Following the filing of the original triennial report, the health care insurer shall submit subsequent triennial reports on the schedule described in subsection (E)(1) of this Section.
  3. Due date for triennial reports. Triennial reports are due on or before March 15 of each reporting year.
  4. Content of the original triennial report. Health care insurers shall file an original triennial report with the Department under A.R.S. § 20-3502(B) that provides the required information in Exhibit A.
  5. Subsequent triennial reports.
    - a. A health care insurer must file an updated triennial report, including the information required in Exhibit A, unless the health care insurer can attest that it has made no changes since the previously filed triennial report.
    - b. As required by A.R.S. § 20-3502(E), a health care insurer shall file the following with the Department for each health plan subject to reporting:
      - i. An updated triennial report, including the information required in Exhibit A; or
      - ii. The last triennial report filed with the Department and a written attestation that the health care insurer has made no changes since it filed the previous triennial report.
- F.** Annual Reports. Pursuant to A.R.S. § 20-3502(E), on or before March 15 of each intervening year between the filing of a triennial report, a health care insurer shall file:
1. A report that summarizes any changes made to its medical necessity criteria and NOTLs (Exhibit A, Parts I, II, and III);
  2. A written attestation by an officer or director of the health care insurer that the health care insurer is in compliance with MHPAEA; and
  3. If requested by the Department, any additional data required by the Department including Exhibit A, Part IV.
- G.** Additional information. At any time after a health care insurer files a report under this Section, the Department may request additional information, including an updated triennial or annual report, by contacting the health care insurer and making the request in writing. The health care insurer shall provide contact information to the Department when it files any of the reports required by this Section. The Department may set a deadline for a health care insurer to respond to its request and specify the format for the response.

**R20-6-1303. FR and OTL Reporting**

- A.** Method of reporting. A health care insurer that issues health plans in Arizona and whose policy forms are not exempt from the form filing requirement shall demonstrate its compliance with the FR and OTL parity requirements of MHPAEA through its form and rate filings with the Department.
- B.** Department’s authority to require additional data. In addition to the forms filed by a health care insurer, the Department may require a health care insurer to submit additional data relating to its methods for meeting the MHPAEA FR and OTL standards. The Department may utilize the CMS MHPAEA tool and may request samples of a health care insurer’s internal testing to demonstrate compliance with the substantially all and predominant tests within each classification of benefits for a health plan.
- C.** Separate consolidated report for large group health plans. The Department may require a health care insurer that issues large group health plans to file a consolidated report that demonstrates compliance with the substantially all and predominant tests within each classification of benefits for a sample of large group health plans with similar benefit structures.
- D.** Special rule for FRs - Prescription Drug Classification. The multi-tiered prescription drug benefits exception of A.R.S. § 20-3502(D)(1) applies to the FRs for the prescription drug classification. For example, a health plan applies 4 tiers as follows: Tier 1: Generic Drugs for which the health plan pays 90%; Tier 2: Preferred Brand-name Drugs for which the health plan pays 80%; Tier 3: Non-preferred Brand-name Drugs for which the health plan pays 60%; and Tier 4: Specialty Drugs for which the health plan pays 50%. These FRs are applied without regard to whether a drug is prescribed for Med/Surg or MH/SUD benefits. In addition, the process for certifying a particular drug within a tier complies with the rules for NOTLs. Therefore, the FRs applied to prescription drug benefits meet the parity requirements under MHPAEA.
- E.** Special rules for FRs and QTLs.
  - 1.** In-network Classifications. The multiple network tiers exception of A.R.S. § 20-3502(D)(2) applies to the FRs and QTLs for the in-network classifications. For example, a health plan has two tiers of in-network providers: Tier 1: Preferred provider; and Tier 2: Participating provider. Placement of a provider into a tier complies with the rules for NOTLs and is determined without regard to whether the provider specializes in the treatment of Med/Surg conditions or MH/SUD disorders. The in-network classifications are divided into two subclassifications: 1. In-network preferred; and 2. In-network participating. The health plan does not impose any FR or QTL on MH/SUD benefits in either subclassification that is more restrictive than the predominant FR or QTL that applies to all Med/Surg benefits in each subclassification. Therefore, the FRs or QTLs applied to the in-network subclassifications that reflect the provider tiers meet the parity requirements under MHPAEA.
  - 2.** Outpatient Classifications. The subclassification permitted for the office visits exception of A.R.S. § 20-3502(D)(3) applies to the FRs and QTLs for the outpatient classifications. For example, a health plan divides the outpatient, in-network classification into two subclassifications: 1. In-network office visits; and 2. All other outpatient, in-network items and services. The health plan does not impose any FR or QTL on MH/SUD benefits in either subclassification that is more restrictive than the predominant FR or QTL that applies to Med/Surg benefits in each subclassification. Therefore, the FRs or QTLs applied to the outpatient subclassifications for office visits and all other outpatient items and services meet the parity requirements under MHPAEA. The health plan cannot use a subclassification for generalists and specialists. The only subclassifications permitted for the in-network classifications are: 1. Office visits (such as physician visits); and 2. All other outpatient items and services (such as outpatient surgery, facility charges for day treatment centers, laboratory charges, or other medical items).

**R20-6-1304. Additional Information or Data**

According to A.R.S. § 20-3502(F), the Department is not prohibited from otherwise requesting information or data that is necessary to verify compliance with MHPAEA and the Arizona Mental Health Parity Act.

**R20-6-1305. Confidentiality of Information**

According to A.R.S. § 20-3502(G), all documents, reports, or other materials provided to the Department under this Article are confidential and are not subject to disclosure and are subject to the restrictions of A.R.S. § 20-157.01(B).

**Exhibit A. Medical Necessity Criteria and NOTL Reports**

**Exhibit A**

**Medical Necessity Criteria and NOTL Reports**

**Instructions for Exhibit A:**

Submit an Exhibit A for each fully insured, major medical health plan subject to reporting under Section R20-6-1302(B). Please submit the information in a word-searchable PDF file which is organized and identified by the numbered sections that appear below.

**Part I: Identify Plan and Reporting Year.**

**Instructions for Part I:**

The reporting year is the year, from January 1 through December 31, immediately preceding the submission of this Exhibit A.

<b>Reporting Year:</b>	
<b>Health Care Insurer Name:</b>	
<b>Health Care Insurer NAIC Company Code:</b>	
<b>Network Name(s):</b>	
<b>Service Area:</b> (List all counties in the service area for these networks)	

<b>Covered Lives:</b> (List the number of covered lives enrolled in plans in these networks in the reporting year)		
<b>Plan Types:</b> (Check all that apply)	<input type="checkbox"/> Individual ACA-Compliant	<input type="checkbox"/> Small Group ACA-Compliant
	<input type="checkbox"/> Individual Transitional, plans include MH/SUD benefits	<input type="checkbox"/> Small Group Transitional, plans include MH/SUD benefits
	<input type="checkbox"/> Individual Grandfathered, plans include MH/SUD benefits	<input type="checkbox"/> Large Group Fully Insured, plans include MH/SUD benefits
<b>Product Types:</b> (Check all that apply)	<input type="checkbox"/> PPO	<input type="checkbox"/> HMO (HCSO)
	<input type="checkbox"/> POS	<input type="checkbox"/> Indemnity

**Part II: Medical necessity criteria.**

**Instructions for Part II:**

To comply with A.R.S. § 20-3502(B)(1), describe the process that is used to develop or select medical necessity criteria for the plan and reporting year identified in Part I. When the plan describes the process used to develop or select criteria for MH/SUD benefits, then it must also describe the process used to develop or select criteria for Med/Surg benefits.

To comply with A.R.S. § 20-3502(B)(1), report:

- A. Describe the process used to develop or select medical necessity criteria for MH/SUD benefits.
- B. Describe the process used to develop or select medical necessity criteria for Med/Surg benefits.

**Part III: Identify all NQTLs.**

**Instructions for Part III:**

To comply with A.R.S. § 20-3502(B)(2), identify all NQTLs that are applied to MH/SUD benefits and all NQTLs that are applied to Med/Surg benefits for the plan and reporting year identified in Part I. NQTLs shall be identified within each classification of benefits.

- A. Identify and report all NQTLs applied to MH/SUD benefits:
  1. All NQTLs applied to In-Patient, In-Network Classification.
  2. All NQTLs applied to In-Patient, Out-of-Network Classification
  3. All NQTLs applied to Out-Patient, In-Network Classification
  4. All NQTLs applied to Out-Patient, Out-of-Network Classification
  5. All NQTLs applied to Emergency Care
  6. All NQTLs applied to Prescription Benefits
- B. Identify and report all NQTLs applied to Med/Surg benefits:
  1. All NQTLs applied to In-Patient, In-Network Classification.
  2. All NQTLs applied to In-Patient, Out-of-Network Classification
  3. All NQTLs applied to Out-Patient, In-Network Classification
  4. All NQTLs applied to Out-Patient, Out-of-Network Classification
  5. All NQTLs applied to Emergency Care
  6. All NQTLs applied to Prescription Benefits

**Part IV: Demonstrate parity through analysis.**

**Instructions for Part IV:**

To comply with A.R.S. § 20-3502(B)(3), for **each** NQTL listed in Part III, demonstrate through analysis that the process, strategy, evidentiary standard, and other factor of applying the NQTL to MH/SUD benefits in a classification of benefits, as written and in operation, is comparable to, and applied not more stringently than, any process, strategy, evidentiary standard or other factor used in applying the NQTL to Med/Surg benefits in the same classification. The report should define each “Other Factor” and include qualitative and quantitative statistical data to support and explain the analysis.

Identify and report on the NQTLs reported in Part III as follows:

- A. Classification - Inpatient, in-network
  1. Process
    - a. Process applying NQTL to MH/SUD benefit.
    - b. Process applying NQTL to Med/Surg benefit.
    - c. Analysis showing that the process of applying the NQTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
    - d. Analysis showing that the process of applying the NQTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.
  2. Strategy
    - a. Strategy applying NQTL to MH/SUD benefit.
    - b. Strategy applying NQTL to Med/Surg benefit.

- c. Analysis showing that the strategy of applying the NQTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
    - d. Analysis showing that the strategy of applying the NQTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.
  3. Evidentiary Standard
    - a. Evidentiary standard applying NQTL to MH/SUD benefit.
    - b. Evidentiary standard applying NQTL to Med/Surg benefit.
    - c. Analysis showing that the evidentiary standard of applying the NQTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
    - d. Analysis showing that the evidentiary standard of applying the NQTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.
  4. Other Factor
    - a. Other factor applying NQTL to MH/SUD benefit.
    - b. Other factor applying NQTL to Med/Surg benefit.
    - c. Analysis showing that other factors used to apply the NQTL to MH/SUD benefits, as written, are comparable to and not applied more stringently than to Med/Surg benefits.
    - d. Analysis showing that other factors used to apply the NQTL to MH/SUD benefits, in operation, are comparable to and not applied more stringently than to Med/Surg benefits.
- B.** Classification - Inpatient, out-of-network
  1. Process
    - a. Process applying NQTL to MH/SUD benefit.
    - b. Process applying NQTL to Med/Surg benefit.
    - c. Analysis showing that the process of applying the NQTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
    - d. Analysis showing that the process of applying the NQTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.
  2. Strategy
    - a. Strategy applying NQTL to MH/SUD benefit.
    - b. Strategy applying NQTL to Med/Surg benefit.
    - c. Analysis showing that the strategy of applying the NQTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
    - d. Analysis showing that the strategy of applying the NQTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.
  3. Evidentiary Standard
    - a. Evidentiary standard applying NQTL to MH/SUD benefit.
    - b. Evidentiary standard applying NQTL to Med/Surg benefit.
    - c. Analysis showing that the evidentiary standard of applying the NQTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
    - d. Analysis showing that the evidentiary standard of applying the NQTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.
  4. Other Factor
    - a. Other factor applying NQTL to MH/SUD benefit.
    - b. Other factor applying NQTL to Med/Surg benefit.
    - c. Analysis showing that other factors used to apply the NQTL to MH/SUD benefits, as written, are comparable to and not applied more stringently than to Med/Surg benefits.
    - d. Analysis showing that other factors used to apply the NQTL to MH/SUD benefits, in operation, are comparable to and not applied more stringently than to Med/Surg benefits.
- C.** Classification - Outpatient, in-network
  1. Process
    - a. Process applying NQTL to MH/SUD benefit.
    - b. Process applying NQTL to Med/Surg benefit.
    - c. Analysis showing that the process of applying the NQTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
    - d. Analysis showing that the process of applying the NQTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.
  2. Strategy
    - a. Strategy applying NQTL to MH/SUD benefit.
    - b. Strategy applying NQTL to Med/Surg benefit.
    - c. Analysis showing that the strategy of applying the NQTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
    - d. Analysis showing that the strategy of applying the NQTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.
  3. Evidentiary Standard
    - a. Evidentiary standard applying NQTL to MH/SUD benefit.
    - b. Evidentiary standard applying NQTL to Med/Surg benefit.

- c. Analysis showing that the evidentiary standard of applying the NQTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
- d. Analysis showing that the evidentiary standard of applying the NQTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.
- 4. **Other Factor**
  - a. Other factor applying NQTL to MH/SUD benefit.
  - b. Other factor applying NQTL to Med/Surg benefit.
  - c. Analysis showing that other factors used to apply the NQTL to MH/SUD benefits, as written, are comparable to and not applied more stringently than to Med/Surg benefits.
  - d. Analysis showing that other factors used to apply the NQTL to MH/SUD benefits, in operation, are comparable to and not applied more stringently than to Med/Surg benefits.
- D. Classification - Outpatient, out-of-network**
  - 1. **Process**
    - a. Process applying NQTL to MH/SUD benefit.
    - b. Process applying NQTL to Med/Surg benefit.
    - c. Analysis showing that the process of applying the NQTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
    - d. Analysis showing that the process of applying the NQTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.
  - 2. **Strategy**
    - a. Strategy applying NQTL to MH/SUD benefit.
    - b. Strategy applying NQTL to Med/Surg benefit.
    - c. Analysis showing that the strategy of applying the NQTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
    - d. Analysis showing that the strategy of applying the NQTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.
  - 3. **Evidentiary Standard**
    - a. Evidentiary standard applying NQTL to MH/SUD benefit.
    - b. Evidentiary standard applying NQTL to Med/Surg benefit.
    - c. Analysis showing that the evidentiary standard of applying the NQTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
    - d. Analysis showing that the evidentiary standard of applying the NQTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.
  - 4. **Other Factor**
    - a. Other factor applying NQTL to MH/SUD benefit.
    - b. Other factor applying NQTL to Med/Surg benefit.
    - c. Analysis showing that other factors used to apply the NQTL to MH/SUD benefits, as written, are comparable to and not applied more stringently than to Med/Surg benefits.
    - d. Analysis showing that other factors used to apply the NQTL to MH/SUD benefits, in operation, are comparable to and not applied more stringently than to Med/Surg benefits.
- E. Classification - Emergency care**
  - 1. **Process**
    - a. Process applying NQTL to MH/SUD benefit.
    - b. Process applying NQTL to Med/Surg benefit.
    - c. Analysis showing that the process of applying the NQTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
    - d. Analysis showing that the process of applying the NQTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.
  - 2. **Strategy**
    - a. Strategy applying NQTL to MH/SUD benefit.
    - b. Strategy applying NQTL to Med/Surg benefit.
    - c. Analysis showing that the strategy of applying the NQTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
    - d. Analysis showing that the strategy of applying the NQTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.
  - 3. **Evidentiary Standard**
    - a. Evidentiary standard applying NQTL to MH/SUD benefit.
    - b. Evidentiary standard applying NQTL to Med/Surg benefit.
    - c. Analysis showing that the evidentiary standard of applying the NQTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
    - d. Analysis showing that the evidentiary standard of applying the NQTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.
  - 4. **Other Factor**
    - a. Other factor applying NQTL to MH/SUD benefit.
    - b. Other factor applying NQTL to Med/Surg benefit.

- c. Analysis showing that other factors used to apply the NQTL to MH/SUD benefits, as written, are comparable to and not applied more stringently than to Med/Surg benefits.
  - d. Analysis showing that other factors used to apply the NQTL to MH/SUD benefits, in operation, are comparable to and not applied more stringently than to Med/Surg benefits.
- F. Classification – Prescription benefits**
- 1. **Process**
    - a. Process applying NQTL to MH/SUD benefit.
    - b. Process applying NQTL to Med/Surg benefit.
    - c. Analysis showing that the process of applying the NQTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
    - d. Analysis showing that the process of applying the NQTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.
  - 2. **Strategy**
    - a. Strategy applying NQTL to MH/SUD benefit.
    - b. Strategy applying NQTL to Med/Surg benefit.
    - c. Analysis showing that the strategy of applying the NQTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
    - d. Analysis showing that the strategy of applying the NQTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.
  - 3. **Evidentiary Standard**
    - a. Evidentiary standard applying NQTL to MH/SUD benefit.
    - b. Evidentiary standard applying NQTL to Med/Surg benefit.
    - c. Analysis showing that the evidentiary standard of applying the NQTL to MH/SUD benefits, as written, is comparable to and not applied more stringently than to Med/Surg benefits.
    - d. Analysis showing that the evidentiary standard of applying the NQTL to MH/SUD benefits, in operation, is comparable to and not applied more stringently than to Med/Surg benefits.
  - 4. **Other Factor**
    - a. Other factor applying NQTL to MH/SUD benefit.
    - b. Other factor applying NQTL to Med/Surg benefit.
    - c. Analysis showing that other factors used to apply the NQTL to MH/SUD benefits, as written, are comparable to and not applied more stringently than to Med/Surg benefits.
    - d. Analysis showing that other factors used to apply the NQTL to MH/SUD benefits, in operation, are comparable to and not applied more stringently than to Med/Surg benefits.

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## NOTICES OF FINAL EXPEDITED RULEMAKING

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This section of the *Arizona Administrative Register* contains Notices of Final Expedited Rulemakings. An agency prepares these notices under A.R.S. § 41-1013(9).

Expedited rulemaking is an accelerated rulemaking process that does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. Other requirements to conduct expedited rulemaking are listed under A.R.S. § 41-1027.

Under the law an agency is required to file a Notice of Proposed Expedited Rulemaking for review. The notices in

this section includes *Register* publication dates where the Notices of Proposed Expedited Rulemakings were published.

The Office of the Secretary of State is the filing office and publisher of these rules.

Questions about the interpretation of expedited rules should be addressed to the agency promulgating the rules.

Refer to item 4 to contact the person charged with the rulemaking.

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### NOTICE OF FINAL EXPEDITED RULEMAKING

#### TITLE 9. HEALTH SERVICES

#### CHAPTER 3. DEPARTMENT OF HEALTH SERVICES CHILD CARE GROUP HOMES

[R22-159]

#### PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|--------------------------------------------------------------|--------------------------|
| R9-3-101                                                     | Amend                    |
| R9-3-201                                                     | Amend                    |
| R9-3-202                                                     | Amend                    |
| R9-3-205                                                     | Amend                    |
| R9-3-301                                                     | Amend                    |
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**  
 Authorizing statute: A.R.S. §§ 36-132(A)(1) and 36-136(G)  
 Implementing statute: A.R.S. §§ 36-897.01 through 36-897.13 and 46-811
- 3. The effective date of the rules:**  
 July 7, 2022
- 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 expedited rule:**  
 Notice of Rulemaking Docket Opening: 26 A.A.R. 2809, October 30, 2020  
 Notice of Rulemaking Docket Opening: 27 A.A.R. 2535, October 29, 2021  
 Notice of Proposed Expedited Rulemaking: 28 A.A.R. 89, January 7, 2022
- 5. The agency's contact person who can answer questions about the rulemaking:**
- Name: Thomas Salow, Branch Chief  
 Address: Arizona Department of Health Services  
 Division of Licensing Services  
 150 N. 18th Ave., Suite 400  
 Phoenix, AZ 85007
- Telephone: (602) 364-1935  
 Fax: (602) 364-4808  
 Email: Thomas.Salow@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
- 6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, under A.R.S. § 41-1027, to include an explanation about the rulemaking:**  
 The Department licenses child care group homes under Arizona Revised Statutes (A.R.S.) Title 36, Chapter 7.1, Article 3, and has adopted rules for child care group homes in Arizona Administrative Code Title 9, Chapter 3. The Department in this expedited

rulemaking clarifies requirements for personnel, volunteers, and others providing services for enrolled children who attend licensed child care group homes to ensure the health and safety of the enrolled children. To ensure that the Article 3 rules are not outdated, the amended rules will comply with Laws 2020, Ch. 86 and the Child Care and Development Block Grant Act of 2014 (P.L. 113-186) by specifying all child care personnel and volunteers shall have both a valid fingerprint clearance card issued and a background check conducted pursuant to P.L. 113-186 before starting employment or volunteer work. The current Article 3 rules contains requirements for fingerprint checks and state criminal registry verification. To ensure consistency and compliance with the P.L. 113-186, the Department plans to add requirements for background check verification that includes: the state sex offender registry, the state child abuse and neglect registries and databases, the National Crime Information Center, and the National Sex Offender Registry. Amending Article 3 will make the rules consistent with A.R.S. § 46-811, eliminate confusion related to child care fingerprinting and background check requirements, and ensure the health and safety for enrolled children attending a child care group homes. 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.

7. **A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**  
The Department did not review or rely on any study for this rulemaking.
8. **A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state.**  
Not applicable
9. **A summary of the economic, small business, and consumer impact:**  
Under A.R.S. § 41-1055(D)(2), the Department is not required to provide an economic, small business, and consumer impact statement.
10. **A description of any changes between the proposed expedited rulemaking, including supplemental notices, and the final expedited rulemaking:**  
Between the proposed expedited rulemaking and the final expedited rulemaking, no changes were made to the rulemaking.
11. **Agency's summary of the public or stakeholder comments or objections made about the rulemaking and the agency response to the comments:**  
No comments were received about this rulemaking.
12. **All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**
  - a. **Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**  
The Department, according to A.R.S. § 36-882, is required to provide licensure for child care group homes and under A.R.S. § 36-888, the Department retains the authority to deny, revoke, or suspend an applicant or a child care group home licensee's ability to operate. The Department does not use a general permit. The Department believes that under A.R.S. § 41-1037(A)(3) a general permit is not applicable.
  - b. **Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**  
A.R.S. § 46-811 provides the Department authority to require background checks for staff members and volunteers specified in the Child Care and Development Block Grant Act of 2014 (P. L. 113 – 186). The Department in this rulemaking adds background checks consistent with P. L. 113 – 186. The Department is not aware of any other federal laws applicable to the subject of this Article 1 and Article 2 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 business competitiveness analysis was received.
13. **A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:**  
Not applicable
14. **Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**  
The rule was not previously made as an emergency rule.
15. **The full text of the rule follows:**



**TITLE 9. HEALTH SERVICES**  
**CHAPTER 3. DEPARTMENT OF HEALTH SERVICES**  
**CHILD CARE GROUP HOMES**

**ARTICLE 1. GENERAL**

Section  
R9-3-101. Definitions

**ARTICLE 2. CERTIFICATION**

Section  
R9-3-201. Application for a Certification  
R9-3-202. ~~Fingerprinting and Central Registry Requirements~~ Fingerprinting and Background Check  
R9-3-205. Changes Affecting a Certificate

**ARTICLE 3. OPERATING A CHILD CARE GROUP HOME**

Section  
R9-3-301. Certificate Holder and Provider Responsibilities

**ARTICLE 1. GENERAL**

**R9-3-101. Definitions**

In addition to the definitions in A.R.S. § 36-897 and unless the context indicates otherwise, the following definitions apply in this Chapter:

1. "Abuse" has the meaning in A.R.S. § 8-201.
2. "Accident" means an unexpected occurrence that:
  - a. Causes physical injury to an enrolled child, and
  - b. May or may not be an emergency.
3. "Accredited" means approved by the:
  - a. New England, Commission of Institution of Higher Education
  - b. Middle States, Commission of Higher Education
  - c. North Central, the Higher Learning Commission
  - d. Northwest Association of Schools and Colleges,
  - e. Commission on Colleges, or
  - f. Western Association of Colleges and Schools.
4. "Activity" means an action planned by a certificate holder or staff member and performed by an enrolled child while supervised by a staff member.
5. "Adaptive device" means equipment used to augment an individual's use of the individual's arms, legs, sight, hearing, or other physical part or function.
6. "Adult" means an individual 18 years of age or older.
7. "Age-appropriate" means consistent with a child's age and age-related stage of physical growth and mental development.
8. "Applicant" means an individual or business organization requesting one of the following:
  - a. A certificate under R9-3-201, or
  - b. Approval of a change affecting a certificate under R9-3-205.
9. "Application" means the documents that an applicant is required to submit to the Department to request a certificate or approval of a request for a change affecting a certificate.
10. "Background check certification" means results identified in searches according to A.R.S. § 46-811(A) and consistent with the Child Care and Development Block Grant Act of 2014 (Public Law 113-186):
  - a. The state sex offender registry within this state and each state where a staff member resided during the preceding five years;
  - b. The state-based child abuse and neglect registries and databases within this state and each state where a staff member resided during the preceding five years;
  - c. The National Crime Information Center; and
  - d. The National Sex Offender Registry established under the Adam Walsh Child Protection and Safety Act of 2006 (42 A.S.C. 16901 et seq).
- ~~10-11.~~ "Business organization" has the same meaning as "entity" in A.R.S. § 10-140.
- ~~11-12.~~ "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.
- ~~12-13.~~ "Capacity" means the maximum number of enrolled children authorized by the Department to be present at a child care group home during hours of operation.
- ~~13-14.~~ "Certificate holder" means a person to whom the Department has issued a certificate.
- ~~14-15.~~ "Change in ownership" means a transfer of controlling legal or controlling equitable interest and authority in the operation of a child care group home.
- ~~15-16.~~ "Child" means any individual younger than 13 years of age.
- ~~16-17.~~ "Child care experience" means an individual's documented work with children in:

- a. A child care facility or a child care group home that was licensed, certified, or approved by a state in the United States or by one of the Uniformed Services of the United States;
  - b. A public school, a charter school, a private school, or an accommodation school; or
  - c. A public or private educational institution authorized under the laws of another state where instruction was provided for any grade or combination of grades between pre-kindergarten and grade 12.
- ~~17-18.~~ “Child care services” means the range of activities and programs provided by a certificate holder to an enrolled child, including personal care, supervision, education, guidance, and transportation.
- ~~18-19.~~ “Child with special needs” means:
- a. A child with a documented diagnosis from a physician, physician assistant, or registered nurse practitioner of a physical or mental condition that substantially limits the child in providing self-care or performing manual tasks or any other major life function such as walking, seeing, hearing, speaking, breathing, or learning;
  - b. A child with a “developmental disability” as defined in A.R.S. § 36-551; or
  - c. A “child with a disability” as defined in A.R.S. § 15-761.
- ~~19-20.~~ “Clean” means:
- a. To remove dirt or debris by methods such as washing with soap and water, vacuuming, wiping, dusting, or sweeping; or
  - b. Free of dirt and debris.
- ~~20-21.~~ “Communicable disease” has the meaning in A.A.C. R9-6-101.
- ~~21-22.~~ “Compensation” means money or other consideration, including goods, services, vouchers, time, government or public expenditures, government or public funding, or another benefit, that is received as payment.
- ~~22-23.~~ “Controlling person” has the meaning in A.R.S. § 36-881.
- ~~23-24.~~ “Corporal punishment” means any physical act used to discipline a child that inflicts pain to the body of the child, or that may result in physical injury to the child.
- ~~24-25.~~ “CPR” means cardiopulmonary resuscitation.
- ~~25-26.~~ “Credit hour” means an academic unit earned through an accredited college or university for completing the equivalent of one hour of class time each week during a semester or equivalent shorter course term, as designated by the accredited college or university.
- ~~26-27.~~ “Designated agent” means an individual who is authorized by an applicant or certificate holder to receive communications from the Department, including legal service of process, and to file or sign documents on behalf of the applicant or certificate holder.
- ~~27-28.~~ “Developmentally appropriate” means consistent with a child’s physical, emotional, social, cultural, and cognitive development, based on the child’s age and family background and the child’s personality, learning style, and pattern and timing of growth.
- ~~28-29.~~ “Discipline” means the on-going process of helping a child develop self-control and assume responsibility for the child’s own actions.
- ~~29-30.~~ “Documentation” means information in written, photographic, electronic, or other permanent form.
- ~~30-31.~~ “Emergency” means a potentially life-threatening occurrence involving an enrolled child or staff member that requires an immediate response or medical treatment.
- ~~31-32.~~ “Endanger” means to expose an individual to a situation where physical or mental injury to the individual may occur.
- ~~32-33.~~ “Enrolled child” means a child:
- a. Who is not a resident; and
  - b. Who has been placed by a parent or guardian to receive child care services regardless of payment.
- ~~33-34.~~ “Fall zone” means the surface under and around a piece of equipment onto which a child falling from or exiting from the equipment would be expected to land.
- ~~34-35.~~ “Field trip” means travel for a specific activity to a location away from an area of the child care group home approved for providing child care services.
- ~~35-35.~~ “Food” means a raw, cooked, or processed edible substance or ingredient, including a beverage, used or intended for use in whole or in part for human consumption.
- ~~36-36.~~ “Guidance” means the ongoing direction, counseling, teaching, or modeling of generally accepted social behavior through which a child learns to develop and maintain the self-control, self-reliance, and self-esteem necessary to assume responsibilities, make daily living decisions, and live according to generally accepted social behavior.
- ~~37-37.~~ “Hazard” means a source of endangerment.
- ~~38-38.~~ “High school equivalency diploma” means:
- a. A document issued by the Arizona State Board of Education under A.R.S. § 15-702 to an individual who passes a general educational development test or meets the requirements of A.R.S. § 15-702(B);
  - b. A document issued by another state to an individual who passes a general educational development test or meets the requirements of a state statute equivalent to A.R.S. § 15-702(B); or
  - c. A document issued by another country to an individual who has completed that country’s equivalent of a 12th grade education, as determined by the Department based upon information obtained from American or foreign consulates or embassies or other governmental entities.
- ~~39-40.~~ “Hours of operation” means the specific days of the week and time period during a day when a certificate holder provides child care services on a regular basis.
- ~~40-41.~~ “Illness” means physical manifestation or signs of sickness such as pain, vomiting, rash, fever, discharge, or diarrhea.
- ~~41-42.~~ “Immediate” or “Immediately” means without restriction, delay, or hesitation.
- ~~42-43.~~ “Inaccessible” means:
- a. Out of an enrolled child’s reach, or
  - b. Locked.

- ~~43-44.~~“Individual plan” means a written description of the daily activities required for an enrolled child with special needs.
- ~~44-45.~~“Infant” means a child 12 months of age or younger.
- ~~45-46.~~“Infestation” means the presence of lice, pinworms, scabies, or other parasites.
- ~~46-47.~~“Licensed applicator” means an individual who complies with A.A.C. R3-8-201(C).
- ~~47-48.~~“Mat” means a foam pad that has a waterproof cover.
- ~~48-49.~~“Mechanical restraint” means a device, article, or garment attached or adjacent to a child’s body that the child cannot easily remove and that restricts the child’s freedom of movement or normal access to the child’s body, but does not include a device, article, or garment:
- Used for orthopedic purposes, or
  - Necessary to allow a child to heal from a medical condition.
- ~~49-50.~~“Medication” means a substance prescribed by a physician, physician assistant, or registered nurse practitioner or that is available without a prescription for the treatment or prevention of illness or infestation.
- ~~50-51.~~“Menu” means a written description of food that a child care group home provides and serves as a meal or snack.
- ~~51-52.~~“Modification” means the substantial improvement, enlargement, reduction, alternation, or other substantial change in the facility or another structure on the premises at a child care group home.
- ~~52-53.~~“Motor vehicle” has the meaning in A.R.S. § 28-101.
- ~~53-54.~~“Neglect” has the meaning in A.R.S. § 8-201.
- ~~54-55.~~“Outbreak” has the meaning in A.A.C. R9-6-101.
- ~~55-56.~~“Parent” means:
- A natural or adoptive mother or father,
  - A legal guardian appointed by a court of competent jurisdiction, or
  - A “custodian” as defined in A.R.S. § 8-201.
- ~~56-57.~~“Perishable food” means food that becomes unfit for human consumption if not stored to prevent spoilage.
- ~~57-58.~~“Person” has the meaning in A.R.S. § 1-215.
- ~~58-59.~~“Personal items” means those articles of property that belong to an enrolled child and are brought to the child care group home for that enrolled child’s exclusive use, such as clothing, a blanket, a sheet, a toothbrush, a pacifier, a hairbrush, a comb, a washcloth, or a towel.
- ~~59-60.~~“Physician” means an individual licensed as a doctor of:
- Allopathic medicine under A.R.S. Title 32, Chapter 13;
  - Naturopathic medicine under A.R.S. Title 32, Chapter 14;
  - Osteopathic medicine under A.R.S. Title 32, Chapter 17;
  - Homeopathic medicine under A.R.S. Title 32, Chapter 29; or
  - Allopathic, naturopathic, osteopathic, or homeopathic medicine under the laws of another state.
- ~~60-61.~~“Physician assistant” means:
- The same as in A.R.S. § 32-2501, or
  - An individual licensed as a physician assistant under the laws of another state.
- ~~61-62.~~“Positioning device” means a belt or harness that prevents an enrolled infant’s movement.
- ~~62-63.~~“Premises” means a child care group home’s residence and the surrounding property, including any structures on the property, that can be enclosed by a single unbroken boundary line that does not encompass property owned or leased by another person.
- ~~63-64.~~“Registered nurse practitioner” means:
- The same as in A.R.S. § 32-1601, or
  - An individual licensed as a registered nurse practitioner under the laws of another state.
- ~~64-65.~~“Regular basis” means at recurring, fixed, or uniform intervals.
- ~~65-66.~~“Residence” means a dwelling, such as a house, used for human habitation.
- ~~66-67.~~“Resident” means an individual who receives child care services and uses a child care group home as the individual’s principal place of habitation for 30 calendar days or more during the calendar year.
- ~~67-68.~~“Sanitize” means to use heat, a chemical agent, or a germicidal solution to disinfect and reduce pathogen counts, including bacteria, viruses, mold, and fungi.
- ~~68-69.~~“School-age child” means a child who attends:
- A public school, as defined for “school” in A.R.S. § 15-101; or
  - A private school, as defined in A.R.S. § 15-101.
- ~~69-70.~~“Separate” means to exclude a child from and have the child physically move away from other children, while keeping the child under supervision.
- ~~70-71.~~“Signed” means affixed with an individual’s signature or, if the individual is unable to write the individual’s name, with a symbol representing the individual’s signature.
- ~~71-72.~~“Sippy cup” means a lidded drinking container that is designed to be leak-proof or leak-resistant and from which a child drinks through a spout or straw.
- ~~72-73.~~“Space utilization” means the designated use of specific areas on the premises for providing child care services.
- ~~73-74.~~“Staff member” means an individual who works at a child care group home providing child care services, regardless of whether compensation is received by the individual in return for providing child care services, and includes a provider.
- ~~74-75.~~“Supervision” means:
- For a child who is awake, knowledge of and accountability for the actions and whereabouts of the child, including the ability to see or hear the child at all times, to interact with the child, and to provide guidance to the child;
  - For a child who is asleep, knowledge of and accountability for the actions and whereabouts of the child, including the ability to see or hear the child at all times and to respond to the child;

- c. For a staff member who is not an adult, knowledge of and accountability for the actions and whereabouts of the staff member and the ability to interact with and provide guidance to the staff member; or
- d. For an individual other than a child or staff member, knowledge of and accountability for the actions and whereabouts of the individual, including the ability to see and hear the individual when the individual is in the presence of an enrolled child and the ability to intervene in the individual's actions to prevent harm to enrolled children.

~~75-76.~~ "Swimming pool" has the meaning in A.A.C. R18-5-201.

~~76-77.~~ "Training" means instruction received through:

- a. Completion of a live or computerized conference, seminar, lecture, workshop, class, or course; or
- b. Watching a video presentation.

~~77-78.~~ "Week" means a seven-day period beginning on Sunday at 12:00 a.m. and ending on Saturday at 11:59 p.m.

~~78-79.~~ "Working day" means the period between 8:00 a.m. and 5:00 p.m. on a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday.

## ARTICLE 2. CERTIFICATION

### R9-3-201. Application for a Certificate

An applicant for a certificate shall:

1. Be at least 21 years of age, and
2. Submit to the Department an application packet containing:
  - a. An application on a form provided by the Department that contains:
    - i. The applicant's name and date of birth;
    - ii. The name to be used for the child care group home, if any;
    - iii. The address and telephone number of the residence;
    - iv. The mailing address of the applicant, if different from the address of the residence;
    - v. The applicant's contact telephone number, if different from the telephone number of the residence;
    - vi. The applicant's e-mail address, if applicable;
    - vii. The name of the provider, if different from the applicant;
    - viii. The requested capacity for the child care group home;
    - ix. The anticipated hours of operation for the child care group home;
    - x. Whether the applicant agrees to allow the Department to submit supplemental requests for information;
    - xi. Whether the applicant or any controlling person has been denied a certificate or license to operate a child care group home or child care facility in this state or another state or has had a certificate or license to operate a child care group home or child care facility revoked in this state or another state and, if so:
      - (1) The name of the individual who had the certificate or license denied or revoked,
      - (2) The reason for the denial or revocation,
      - (3) The date of the denial or revocation, and
      - (4) The name and address of the certifying or licensing agency that denied or revoked the certificate or license;
    - xii. A statement that the applicant has read and will comply with A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter;
    - xiii. A statement that the applicant has sufficient financial resources to comply with A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter;
    - xiv. A statement that the information provided in the application packet is accurate and complete; and
    - xv. The applicant's signature and date the applicant signed the application;
  - b. A copy of the applicant's:
    - i. U.S. passport,
    - ii. Birth certificate,
    - iii. Naturalization documents, or
    - iv. Documentation of legal resident alien status;
  - c. A copy of the applicant's valid fingerprint clearance card issued, both front and back, according to A.R.S. Title 41, Chapter 12, Article 3.1;
  - ~~d.~~ A copy of the applicant's valid background check document according to A.R.S. § 46-811(A);
  - ~~e.~~ A copy of the form required in A.R.S. § 36-897.03(B) for the applicant;
  - ~~f.~~ A document issued by the Department showing that the applicant has completed Department-provided orientation training that included the Department's role in certifying and regulating child care group homes under A.R.S. Title 36, Chapter 7.1, Article 4, and this Chapter;
  - ~~g.~~ A floor plan of the residence where child care services will be provided, showing:
    - i. The location and dimensions of each room in the residence, with designation of the rooms to be used for providing child care services;
    - ii. The location of each exit from the residence;
    - iii. The location of each sink and toilet available for use by enrolled children;
    - iv. The location of each smoke detector in the residence; and
    - v. The location of each fire extinguisher in the residence;
  - ~~h.~~ A site plan of the premises showing:
    - i. The location and dimensions of the outdoor activity area;
    - ii. The height of the fence around the outdoor activity area;
    - iii. The location of each exit from the outdoor activity area;
    - iv. The location of the residence;
    - v. The location of each swimming pool, if applicable;

- vi. The location and height of the fence around each swimming pool, if applicable; and
- vii. The location and dimensions of any other building or structure on the premises, if applicable;
- ~~h.i.~~ If the child care group home is located within one-fourth of a mile of agricultural land:
  - i. The names and addresses of the owners or lessees of each parcel of agricultural land located within one-fourth mile of the child care group home, and
  - ii. A copy of an agreement complying with A.R.S. § 36-897.01(B) for each parcel of agricultural land;
- ~~i.l.~~ The applicable fee in R9-3-203; and
- ~~j.k.~~ If the applicant is a business organization, a form provided by the Department that contains:
  - i. The name, street address, city, state, and zip code of the business organization;
  - ii. The type of business organization;
  - iii. The name, date of birth, title, street address, city, state, and zip code of the designated agent;
  - iv. The name, date of birth, title, street address, city, state, and zip code of each other controlling person;
  - v. A copy of the business organization's articles of incorporation, articles of organization, partnership documents, or joint venture documents, if applicable; and
  - vi. Documentation of good standing issued by the Arizona Corporation Commission and dated no earlier than three months before the date of the application, if applicable.

**R9-3-202. ~~Fingerprinting and Central Registry Requirements~~ Fingerprinting and Background Checks**

- A. A certificate holder shall ensure that:
  - 1. A staff member completes, signs, dates, and submits to the certificate holder before the staff member's starting date of employment or volunteer service:
    - a. The form required in A.R.S. § 36-897.03(B); and
    - b. If required by A.R.S. § 8-804, the form in A.R.S. § 8-804(I); and
  - 2. An adult resident completes, signs, dates, and submits to the certificate holder before the resident's starting date of residency or the date of certification of the child care group home the form required in A.R.S. § 36-897.03(B).
- B. A certificate holder shall maintain documentation of a valid fingerprint clearance card issued under A.R.S. § 41-1758.03 and documentation of a valid background check document issued under A.R.S. § 46-811.
- C. ~~Except as provided in A.R.S. § 41-1758.03, a certificate holder shall ensure that a staff member or adult resident submits a copy of:~~
  - ~~1. A valid fingerprint clearance card, front and back, issued under A.R.S. Title 41, Chapter 12, Article 3.1; or~~
  - ~~2. The fingerprint clearance card application that was submitted to the Department of Public Safety under A.R.S. § 41-1758.02:~~
    - ~~a. For the staff member, within seven working days after the staff member's starting date of employment or volunteer service; and~~
    - ~~b. For the adult resident, within seven working days after before the resident's starting date of residency or the date of certification of the child care group home.~~

Except as provided in A.R.S. § 41-1758.03, a certificate holder shall ensure that a staff member before starting date of employment or volunteer service and an adult resident before starting date of residency or the date of certification of the child care group homes, submits a copy of a valid fingerprint clearance card, front and back, issued under A.R.S. Title 41, Chapter 12, Article 3.1.

- D. A certificate holder shall ensure that each individual who is a staff member or an adult resident submits to the certificate holder a copy of the individual's ~~valid fingerprint clearance card each time the fingerprint clearance card is issued or renewed.~~ a valid fingerprint clearance card each time the fingerprint clearance card is issued or renewed every six years.
- E. If a staff member or resident possesses a fingerprint clearance card that was issued before the staff member or resident became a staff member or resident at the child care group home, a certificate holder shall:
  - 1. Contact the Department of Public Safety ~~within seven working days after~~ before the individual becomes a staff member or resident to determine whether the fingerprint clearance card is valid; and
  - 2. Document this determination, including the name of the staff member or resident, the date of contact with the Department of Public Safety, and whether the fingerprint clearance card is valid.
- F. A certificate holder shall ensure each staff member and each adult resident submits to the certificate holder documentation of the staff member's or adult resident's valid:
  - 1. Background check issued under A.R.S. § 46-811(A) within 10 calendar days after stating date of employment or volunteer service; and
  - 2. Background check each time the background check document is issued or renewed every five years.
- ~~F.G.~~ If required by A.R.S. § 8-804, before an individual's starting date of employment or volunteer service, a certificate holder shall comply with the submission requirements in A.R.S. § 8-804(C) for the individual.
- ~~G.H.~~ A certificate holder shall not allow an adult individual to be a staff member or a resident if the individual:
  - 1. Has been denied a fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1, and has not received an interim approval under A.R.S. § 41-619.55;
  - 2. Has been denied a background check document that indicates the adult individual is not eligible for employment due to violations identified pursuant to A.R.S. § 46-811;
  - ~~2.3.~~ Receives an interim approval under A.R.S. § 41-619.55 but is subsequently denied a good cause exception under A.R.S. § 41-619.55 and a fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1;
  - ~~3.4.~~ Is a parent or guardian of a child adjudicated to be a dependent child as defined in A.R.S. § 8-201;
  - ~~4.5.~~ Has been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state;
  - ~~5.6.~~ Has had a license to operate a child care facility or certificate to operate a child care group home in this state or another state revoked for reasons related to the endangerment of the health and safety of children;

~~6.7.~~ If applicable, has stated on the form required in A.R.S. § 8-804(I) that the individual is currently under investigation for an allegation of abuse or neglect or has a substantiated allegation of abuse or neglect and has not subsequently received a central registry exception according to A.R.S. § 41-619.57; or

~~7.8.~~ If applicable, is disqualified from employment or volunteer service as a staff member according to A.R.S. § 8-804 and has not subsequently received a central registry exception according to A.R.S. § 41-619.57.

**L.** Within 30 calendar days after the day of a staff member's or adult resident's 18th birthday, the staff member or adult resident shall provide to the certificate holder copies of a valid fingerprint clearance card and a valid background check document specified in subsection (C).

**J.** Beginning November 1, 2021, certificate holders, staff members, and adult residents shall comply with A.R.S. § 46-811(A) and subsection (C)(2) by November 1, 2022.

### **R9-3-205. Changes Affecting a Certificate**

**A.** For an intended change in a certificate holder's name or the name of a child care group home:

1. The certificate holder shall send the Department written notice of the name change at least 30 calendar days before the intended date of the name change; and
2. Upon receipt of the written notice required in subsection (A)(1), the Department shall issue an amended certificate that incorporates the name change but retains the anniversary date of the certificate.

**B.** At least 30 calendar days before the date of an intended change in a child care group home's space utilization or capacity, a certificate holder shall submit to the Department a written request for approval of the intended change that includes:

1. The certificate holder's name;
2. The child care group home's name, if applicable;
3. The name, telephone number, e-mail address, and fax number of a point of contact for the request;
4. The child care group home's certificate number;
5. The type of change intended:
  - a. Space utilization, or
  - b. Capacity;
6. A narrative description of the intended change; and
7. The following additional information, as applicable:
  - a. If requesting a change in capacity, the square footage of the outdoor activity area and the square footage of the indoor areas where child care services will be provided;
  - b. If requesting a change that involves a modification of the residence that requires a building permit, a copy of the building permit;
  - c. If requesting a change in space utilization that affects individual rooms:
    - i. A floor plan of the residence that complies with ~~R9-3-201(2)(f)~~R9-3-201(2)(g) and shows the intended changes, and
    - ii. The square footage of each affected room; and
  - d. If requesting a change in space utilization that affects the outdoor activity area:
    - i. A site plan of the premises that complies with ~~R9-3-201(2)(g)~~R9-3-201(2)(h) and shows the intended changes, and
    - ii. The square footage of the intended outdoor activity area.

**C.** The Department shall review a request submitted under subsection (B) according to R9-3-102. If the intended change is in compliance with A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter, the Department shall send the certificate holder an approval of the request and, if necessary, an amended certificate that incorporates the change but retains the anniversary date of the current certificate.

**D.** A certificate holder shall not implement any change in subsection (B) until the Department issues an approval or amended certificate.

**E.** At least 30 calendar days before the date of a change in ownership:

1. A certificate holder shall send the Department written notice of the change in ownership; and
2. A person planning to assume operation of a child care group home shall obtain a new certificate as specified in R9-3-201 before beginning operation of the child care group home.

**F.** A certificate holder changing a child care group home's location shall:

1. Apply for a new certificate as prescribed in R9-3-201, and
2. Obtain a new certificate from the Department before beginning operation of the child care group home at the new location.

**G.** Within 30 calendar days after the date of a change in the business organization information provided under ~~R9-3-201(2)(j)~~R9-3-201(2)(k), other than a change in ownership, a certificate holder that is a business organization shall send the Department written notice of the change.

## **ARTICLE 3. OPERATING A CHILD CARE GROUP HOME**

### **R9-3-301. Certificate Holder and Provider Responsibilities**

**A.** A certificate holder shall:

1. Designate a provider who:
  - a. Lives in the residence;
  - b. Is 21 years of age or older;
  - c. Has a high school diploma, high school equivalency diploma, associate degree, or bachelor degree;
  - d. Meets one of the following:
    - i. Has completed at least three credit hours in child growth and development, nutrition, psychology, or early childhood education;
    - ii. Has completed at least 60 hours of training in child growth and development, nutrition, psychology, early childhood education, or management of a child care business; or
    - iii. Has at least 12 months of child care experience; and

- e. Has completed Department-provided orientation training that includes the Department's role in certifying and regulating child care group homes under A.R.S. Title 36, Chapter 7.1, Article 4 and this Chapter;
- 2. Ensure that each staff member is 16 years of age or older;
- 3. Ensure that each resident 12 years of age or older and each staff member submits, on or before the starting date of residency, employment, or volunteer services, one of the following as evidence of freedom from infectious active tuberculosis:
  - a. Documentation of a negative Mantoux skin test or other tuberculosis screening test recommended by the U.S. Centers for Disease Control and Prevention, administered within 12 months before the starting date of residency, employment, or volunteer service, that includes the date and the type of tuberculosis screening test; or
  - b. If the resident or staff member has had a positive Mantoux skin test or other tuberculosis screening test, a written statement that the resident or staff member is free from infectious active tuberculosis that is signed and dated by a physician, physician assistant, or registered nurse practitioner within six months before the starting date of residency, employment, or volunteer service; and
- 4. Ensure that the provider:
  - a. Supervises or assigns an adult staff member to supervise each staff member who is not an adult;
  - b. Maintains on the premises a file for each staff member, for 12 months after the date the staff member last worked at the child care group home, containing:
    - i. The staff member's name, date of birth, home address, and telephone number;
    - ii. The staff member's starting date of employment or volunteer service;
    - iii. The staff member's ending date of employment or volunteer service, if applicable;
    - iv. The staff member's written statement attesting to current immunity against measles, rubella, diphtheria, mumps, and pertussis;
    - v. The form required in A.R.S. § 36-897.03(B);
    - vi. For an adult staff member, a copy of the staff member's valid fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1;
    - vii. Documents required by subsection (A)(3);
    - viii. Documentation of the requirements in A.R.S. § 36-897.03(C);
    - ix. If applicable:
      - (1) The form required in A.R.S. § 8-804(I);
      - (2) Documentation of the submission required in A.R.S. § 8-804(C) and the information received as a result of the submission; and
      - (3) Documentation of the completion of the Department-provided orientation training specified in subsection (A)(1)(e), if applicable;
    - x. Documentation of the training required in R9-3-302; and
    - xi. Documentation of a high school diploma, high school equivalency diploma, associate degree, or bachelor degree, if applicable;
  - c. Maintains on the premises a file for each resident, for 12 months after the date the resident last resided at the child care group home, containing:
    - i. The resident's name and date of birth;
    - ii. The resident's relationship to the provider;
    - iii. The date the resident began residing at the child care group home;
    - iv. The date the resident last resided at the child care group home, if applicable;
    - v. A written statement by the resident or, if the resident is a minor, the provider attesting to the resident's current immunity against measles, rubella, diphtheria, mumps, and pertussis;
    - vi. If the resident is an adult, the form required in A.R.S. § 36-897.03(B);
    - vii. If the resident is an adult, the documents required by R9-3-202(C)(2) or R9-3-202(D); and
    - viii. If the resident is 12 years of age or older, the documents required by subsection (A)(3);
  - d. Prepares a dated attendance record for each day and ensures that each staff member records on the attendance record the staff member's start time and end time of providing child care services for the child care group home;
  - e. Maintains on the premises the dated attendance record required in subsection (A)(4)(d) for 12 months after the date on the attendance record;
  - f. Except as specified in R9-3-408, provides child care services only in areas:
    - i. Designated as provided in ~~R9-3-201(2)(f)(i) or R9-3-201(2)(g)(i)~~R9-3-201(2)(g)(i) or R9-3-201(2)(g)(i), or
    - ii. Approved under R9-3-205(C);
  - g. Does not engage in outside employment during hours of operation or operate another business at or out of the residence during hours of operation;
  - h. Does not allow another staff member to engage in or operate another business at or out of the residence during the staff member's assigned work hours at the child care group home;
  - i. Does not allow the operation of another business on the premises during hours of operation unless the operation of the business does not involve persons coming onto the premises during hours of operation because of the business; and
  - j. Does not allow the cultivation of medical marijuana on the premises.
- B.** A certificate holder shall ensure that all of the records required to be maintained by this Chapter either are written in English or, if written in a language other than English, include an English translation.
- C.** A certificate holder shall:
  - 1. Secure and maintain general liability insurance of at least \$100,000 for the child care group home; and
  - 2. Maintain on the premises documentation of the insurance coverage required in subsection (C)(1).
- D.** A certificate holder shall ensure that:

1. While acting on behalf of the certificate holder when the provider is not present at the child care group home, an adult staff member with a high school diploma or high school equivalency certificate and one of the following is on the premises:
    - a. At least six months of child care experience;
    - b. Two or more credit hours in child growth and development, nutrition, psychology, or early childhood education; or
    - c. At least 30 hours of training in child growth and development, nutrition, psychology, or early childhood education; and
  2. At least one adult staff member, in addition to the provider or the staff member specified in subsection (D)(1), is on the premises when six or more enrolled children are at the child care group home.
- E.** A certificate holder shall ensure that a parent, an individual designated in writing by the parent, or legal guardian of an enrolled child is allowed immediate access during hours of operation to the areas of the premises where the enrolled child is receiving child care services.
- F.** A certificate holder shall:
1. Prepare a document that includes the following information:
    - a. The name and contact telephone number of the provider;
    - b. The hours of operation of the child care group home;
    - c. Charges, fees, and payment requirements for child care services;
    - d. Whether medications are administered at the child care group home and, if so, a description of what the parent is required to give to the child care group home;
    - e. Whether enrolled children go on field trips under the supervision of a staff member;
    - f. Whether the child care group home provides transportation for enrolled children to or from school, a school bus stop, or other locations;
    - g. The mechanism by which a staff member will verify that an individual contacting the child care group home by telephone claiming to be the parent of an enrolled child is the enrolled child's parent;
    - h. A statement that a parent has access to the areas on the premises where the parent's enrolled child is receiving child care services;
    - i. A statement that inspection reports for the child care group home are available for review at the child care group home; and
    - j. The local address and contact telephone number for the Department; and
  2. Ensure that a staff member provides the document required in subsection (F)(1) to a parent of an enrolled child.
- G.** A certificate holder shall ensure that a staff member posts in a place that can be conspicuously viewed by individuals entering or leaving the child care group home:
1. The child care group home certificate;
  2. The name of the provider;
  3. The name of the staff member designated to act on behalf of the certificate holder when the provider is not present at the child care group home;
  4. The hours of operation for the child care group home;
  5. The weekly activity schedule required in R9-3-401(B)(4)(b);
  6. The amount of time in minutes enrolled children may watch television, videos, or DVDs at the child care group home; and
  7. The weekly menu, required in R9-3-406(F), before the first meal or snack of the week.
- H.** A certificate holder shall ensure that a staff member supervises any individual who is not a staff member and is on the premises where enrolled children are present.
- I.** A certificate holder shall ensure that a staff member who has current training in first aid and CPR is present during hours of operation when an enrolled child is on the premises or on a trip away from the premises under the supervision of a staff member.
- J.** A certificate holder shall ensure that if a staff member or resident lacks documentation of immunization or evidence of immunity that complies with A.A.C. R9-6-704 for a communicable disease listed in A.A.C. R9-6-702:
1. The staff member or resident is excluded from the child care group home between the start and end of an outbreak of the communicable disease at the child care group home, or
  2. The child care group home is closed until the end of an outbreak at the child care group home.
- K.** Within 72 hours after changing a provider, a certificate holder shall send the Department written notice of the change, including the name of the new provider.
- L.** Except as provided in subsections (M) and (N), a certificate holder shall notify the Department in writing of a planned change in a child care group home's hours of operation at least three calendar days before the date of the planned change, including:
1. The certificate holder's name;
  2. The child care group home's certificate number; and
  3. The current and intended hours of operation.
- M.** A certificate holder is not required to notify the Department of a change in a child care group home's hours of operation when the change in the child care group home's hours of operation is due to the occurrence of a state or federal holiday on a day of the week the child care group home regularly provides child care services.
- N.** When the premises of a child care group home are left unoccupied during hours of operation or the child care group home is temporarily closed due to an unexpected event, a certificate holder shall ensure that a staff member notifies the Department before leaving the child care group home unoccupied or closing the child care group home, stating the period of time during which the child care group home will be unoccupied or closed.



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

[R22-160]

**PREAMBLE**

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

<u>Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R9-5-101	Amend
R9-5-201	Amend
R9-5-203	Amend
R9-5-208	Amend
R9-5-402	Amend
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**  
 Authorizing statute: A.R.S. § 36-136(G)  
 Implementing statute: A.R.S. §§ 36-883.02 and 46-811
- 3. The effective date of the rules:**  
 July 7, 2022
- 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 expedited rule:**  
 Notice of Rulemaking Docket Opening: 26 A.A.R. 2810, October 30, 2020  
 Notice of Rulemaking Docket Opening: 27 A.A.R. 2536, October 29, 2021  
 Notice of Proposed Expedited Rulemaking: 28 A.A.R. 99, January 7, 2022
- 5. The agency's contact person who can answer questions about the rulemaking:**  

Name:	Thomas Salow, Branch Chief
Address:	Arizona Department of Health Services Division of Licensing Services 150 N. 18th Ave., Suite 400 Phoenix, AZ 85007
Telephone:	(602) 364-1935
Fax:	(602) 364-4808
Email:	Thomas.Salow@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
- 6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, under A.R.S. § 41- 1027, to include an explanation about the rulemaking:**  
 The Department licenses child care facilities under Arizona Revised Statutes (A.R.S.) Title 36, Chapter 7.1, Article 1, and has adopted rules for child care facilities in Arizona Administrative Code Title 9, Chapter 5. The Department in this rulemaking clarifies requirements for personnel, volunteers, and others providing services for enrolled children who attend licensed child care facilities to ensure the health and safety of the enrolled children. Article 5 rules comply with Laws 2020, Ch. 86 that specifies all child care personnel and volunteers shall have a valid fingerprint clearance card issued before starting employment or volunteer work and adds clarification for background checks pursuant to the Child Care and Development Block Grant Act of 2014 (P. L. 113-186) (Block Grant). Currently, Article 5 rules contains requirements for fingerprinting checks and state criminal registry verification. To make the Article 5 rules consistent with the Block Grant, the Department adds verification of: the state sex offender registry, the state child abuse and neglect registries and databases, the National Crime Information Center, and the National Sex Offender Registry. The Department believes amending Article 5 will make the rules consistent with A.R.S. § 46-811, eliminate confusion related to child care fingerprinting and background check requirements, and ensure the health and safety for enrolled children attending a child care facility. The Department does not expect the rulemaking will increase regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. The proposed amendments conform to rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

- 7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**  
The Department did not review or rely on any study for this rulemaking.
- 8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state.**  
Not applicable
- 9. A summary of the economic, small business, and consumer impact:**  
Under A.R.S. § 41-1055(D)(2), the Department is not required to provide an economic, small business, and consumer impact statement.
- 10. A description of any changes between the proposed expedited rulemaking, including supplemental notices, and the final expedited rulemaking:**  
Between the proposed expedited rulemaking and the final expedited rulemaking, no changes were made to the rulemaking.
- 11. Agency's summary of the public or stakeholder comments or objections made about the rulemaking and the agency response to the comments:**  
No comments were received about this rulemaking.
- 12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**  
There are no other matters prescribed by statutes applicable specifically to the Department or this specific rulemaking.
  - a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**  
The Department, according to A.R.S. § 36-882, is required to provide licensure for child care facilities and under A.R.S. § 36-888, the Department retains the authority to deny, revoke, or suspend an applicant or a child care facility licensee's ability to operate. The Department does not use a general permit. The Department believes that under A.R.S. § 41-1037(A)(3) a general permit is not applicable.
  - b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**  
A.R.S. § 46-811 provides the Department authority to require background checks for staff members and volunteers specified in the Child Care and Development Block Grant Act of 2014 (P. L. 113 – 186). The Department in this rulemaking adds background checks consistent with P. L. 113 – 186. The Department is not aware of any other federal laws applicable to the subject of this Article 1 and Article 2 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 business competitiveness analysis was received.
- 13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:**  
Not applicable
- 14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**  
The rule was not previously made as an emergency rule.
- 15. The full text of the rule follows:**

**TITLE 9. HEALTH SERVICES  
CHAPTER 5. DEPARTMENT OF HEALTH SERVICES  
CHILD CARE FACILITIES**

**ARTICLE 1. GENERAL**

Sections  
R9-5-101. Definitions

**ARTICLE 2. FACILITY LICENSURE**

Section  
R9-5-201. Facility Licensure  
R9-5-203. ~~Fingerprinting and Central Registry Requirements~~ Fingerprinting and Background Check  
R9-5-208. Changes Affecting a License

**ARTICLE 4. FACILITY STAFF**

Section  
R9-5-402. Staff Records and Reports

## ARTICLE 1. GENERAL

**R9-5-101. Definitions**

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

1. "Abuse" has the same meaning as in A.R.S. § 8-201.
2. "Accident" means an unexpected occurrence that:
  - a. Causes injury to an enrolled child,
  - b. Requires attention from a staff member, and
  - c. May or may not be an emergency.
3. "Accommodation school" has the same meaning as in A.R.S. § 15-101.
4. "Accredited" means approved by the:
  - a. New England Commission of Institution of Higher Education,
  - b. Middle States Commission of Higher Education,
  - c. North Central the Higher Learning Commission,
  - d. Northwest Commission on Colleges and Universities,
  - e. Commission on Colleges, or
  - f. Western Association of Schools and Colleges.
5. "Activity" means an action planned by a licensee and performed by an enrolled child while supervised by a staff member.
6. "Activity area" means a specific indoor or outdoor space or room of a licensed facility that is designated by a licensee for use by an enrolled child for an activity.
7. "Adaptive device" means equipment used to augment an individual's use of the individual's arms, legs, sight, hearing, or other physical part or function.
8. "Administrative completeness review time-frame" has the same meaning as in A.R.S. § 41-1072.
9. "Adult" means an individual who is at least 18 years of age.
10. "Age-appropriate" means consistent with a child's age and age-related stage of physical growth and mental development.
11. "Agency" means any board, commission, department, office, or other administrative unit of the federal government, the state, or a political subdivision of the state.
12. "Applicant" means a person or governmental agency requesting one of the following:
  - a. A license, or
  - b. Approval of a change affecting a license under R9-5-208.
13. "Application" means the documents that an applicant is required to submit to the Department for licensure or approval of a request for a change affecting a license.
14. "Assistant teacher-caregiver" means a staff member who aids a teacher-caregiver in planning, developing, or conducting child care activities.
15. "Association" means a group of individuals other than a corporation, limited liability company, partnership, joint venture, or public school who has established a governing board and bylaws to operate a facility.
16. Background check means results identified in searches according to A.R.S. § 46-811(A) and consistent with the Child Care and Development Block Grant Act of 2014 (Public Law 113-186):
  - a. The state sex offender registry within this state and each state where a staff member resided during the preceding five years;
  - b. The state-based child abuse and neglect registries and databases within this state and each state where a staff member resided during the preceding five years;
  - c. The National Crime Information Center; and
  - d. The National Sex Offender Registry established under the Adam Walsh Child Protection and Safety Act of 2006 (42 A.S.C. 16901 et seq).
- ~~16-17.~~ "Beverage" means a liquid for drinking, including water.
- ~~17-18.~~ "Business organization" has the same meaning as "entity" in A.R.S. § 10-140.
- ~~18-19.~~ "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.
- ~~19-20.~~ "Calendar week" means a seven-day period beginning on Sunday at 12:00 a.m. and ending on Saturday at 11:59 p.m.
- ~~20-21.~~ "C.C.P." means Certified Childcare Professional, a credential awarded by the National Early Childhood Program Accreditation.
- ~~21-22.~~ "C.D.A." means Child Development Associate, a credential awarded by the Council for Professional Recognition.
- ~~22-23.~~ "Change in ownership" means a transfer of controlling legal or controlling equitable interest and authority in a facility resulting from a sale or merger of a facility.
- ~~23-24.~~ "Charter school" has the same meaning as in A.R.S. § 15-101.
- ~~24-25.~~ "Child care experience" means an individual's documented work with children in:
  - a. A child care facility or a child care group home that was licensed, certified, or approved by a state in the United States or by one of the Uniformed Services of the United States;
  - b. A public school, a charter school, a private school, or an accommodation school;
  - c. A public or private educational institution authorized under the laws of another state where instruction was provided for any grade or combination of grades between pre-kindergarten and grade 12; or
  - d. One of the following professional fields:
    - i. Nursing,
    - ii. Social work,
    - iii. Psychology,
    - iv. Child development, or

- v. A closely-related field.
- ~~25-26.~~ “Child care services” means the range of activities and programs provided by a licensee to an enrolled child, including personal care, supervision, education, guidance, and transportation.
- ~~26-27.~~ “Child with special needs” means:
- A child with a health care provider’s diagnosis and record of a physical or mental condition that substantially limits the child in providing self-care or performing manual tasks or any other major life function such as walking, seeing, hearing, speaking, breathing, or learning;
  - A child with a “developmental disability” as defined in A.R.S. § 36-551; or
  - A “child with a disability” as defined in A.R.S. § 15-761.
- ~~27-28.~~ “Clean” means to remove dirt or debris by methods such as washing with soap and water, vacuuming, wiping, dusting, or sweeping.
- ~~28-29.~~ “Closely-related field” means any educational instruction or occupational experience pertaining to the growth, development, physical or mental care, or education of children.
- ~~29-30.~~ “Communicable disease” has the same meaning as in A.A.C. R9-6-101.
- ~~30-31.~~ “Compensation” means money or other consideration, including goods, services, vouchers, time, government or public expenditures, government or public funding, or another benefit, that is received as payment.
- ~~31-32.~~ “Corporal punishment” means any physical action used to discipline a child that inflicts pain to the body of the child, or that may result in physical injury to the child.
- ~~32-33.~~ “CPR” means cardiopulmonary resuscitation.
- ~~33-34.~~ “Credit hour” means an academic unit earned at an accredited college or university:
- By attending a one-hour class session each calendar week during a semester or equivalent shorter course term, or
  - Completing practical work for a course as determined by the accredited college or university.
- ~~34-35.~~ “Designated agent” means an individual who meets the requirements in A.R.S. § 36-889(D).
- ~~35-36.~~ “Developmentally-appropriate” means consistent with a child’s physical, emotional, social, cultural, and cognitive development, based on the child’s age and family background and the child’s personality, learning style, and pattern and timing of growth.
- ~~36-37.~~ “Discipline” means the on-going process of helping a child develop self-control and assume responsibility for the child’s own actions.
- ~~37-38.~~ “Documentation” means information in written, photographic, electronic, or other permanent form.
- ~~38-39.~~ “Electronic signature” has the same meaning as in A.R.S. § 41-351(9).
- ~~39-40.~~ “Emergency” means a potentially life-threatening occurrence involving an enrolled child or staff member that requires an immediate response or medical treatment.
- ~~40-41.~~ “Endanger” means to expose an individual to a situation where physical injury or mental injury to the individual may occur.
- ~~41-42.~~ “Enrolled” means placed by a parent and accepted by a licensee for child care services.
- ~~42-43.~~ “Evening and nighttime care” means child care services provided between the hours of 8:00 p.m. and 5:00 a.m.
- ~~43-44.~~ “Facility” has the same meaning as “child care facility” in A.R.S. § 36-881.
- ~~44-45.~~ “Facility director” means an individual who is designated by a licensee as the individual responsible for the daily onsite operation of a facility.
- ~~45-46.~~ “Facility premises” means property that is:
- Designated on an application for a license by the applicant; and
  - Licensed for child care services by the Department under A.R.S. Title 36, Chapter 7.1, Article 1, and this Chapter.
- ~~46-47.~~ “Fall zone” means the surface under and around a piece of equipment onto which a child falling from or exiting from the equipment would be expected to land.
- ~~47-48.~~ “Field trip” means an activity planned by a staff member for an enrolled child:
- At a location or area that is not licensed for child care services by the Department, or
  - At a child care facility in which the child is not enrolled.
- ~~48-49.~~ “Final construction drawings” means facility plans that include the architectural, structural, mechanical, electrical, fire protection, plumbing, and technical specifications of the physical plant and the facility premises and that have been approved by local government for the construction, alteration, or addition of a facility.
- ~~49-50.~~ “Food” means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.
- ~~50-51.~~ “Food preparation” means processing food for human consumption by cooking or assembling the food, but does not include distributing prepackaged food or whole fruits or vegetables.
- ~~51-52.~~ “Full-day care” means child care services provided for six or more hours per day between the hours of 5:00 a.m. and 8:00 p.m.
- ~~52-53.~~ “Governmental agency” has the same meaning as in A.R.S. § 44-7002.
- ~~53-54.~~ “Guidance” means the ongoing direction, counseling, teaching, or modeling of generally accepted social behavior through which a child learns to develop and maintain the self-control, self-reliance, and self-esteem necessary to assume responsibilities, make daily living decisions, and live according to generally accepted social behavior.
- ~~54-55.~~ “Hazard” means a source of endangerment.
- ~~55-56.~~ “Health care provider” means a physician, physician assistant, or registered nurse practitioner.
- ~~56-57.~~ “High school equivalency diploma” means:
- A document issued by the State Board of Education under A.R.S. § 15-702 to an individual who passes a general educational development test or meets the requirements of A.R.S. § 15-702(B);
  - A document issued by another state to an individual who passes a general educational development test or meets the requirements of a state statute equivalent to A.R.S. § 15-702(B); or

- c. A document issued by another country to an individual who has completed that country's equivalent of a 12th grade education, as determined by the Department based upon information obtained from American or foreign consulates or embassies or other governmental agencies.
- ~~57-58.~~ "Hours of operation" means the specific time during a day for which a licensee is licensed to provide child care services.
- ~~58-59.~~ "Illness" means physical manifestation or signs of sickness, such as pain, vomiting, rash, fever, discharge, or diarrhea.
- ~~59-60.~~ "Immediate" or "immediately" means without restriction, delay, or hesitation.
- ~~60-61.~~ "Inaccessible" means:
- Out of an enrolled child's reach, or
  - Locked.
- ~~61-62.~~ "Infant" means:
- A child 12 months of age or younger, or
  - A child 18 months of age or younger who is not yet walking.
- ~~62-63.~~ "Infant care" means child care services provided to an infant.
- ~~63-64.~~ "Infestation" means the presence of lice, pinworms, scabies, or other parasites.
- ~~64-65.~~ "Inspection" means:
- Examination of a facility by the Department to determine compliance with A.R.S. Title 36, Chapter 7.1, Article 1, and this Chapter;
  - Review of facility documents, records, or reports by the Department; or
  - Examination of a facility by a local governmental agency.
- ~~65-66.~~ "Lesson plan" means a written description of the activities scheduled in each activity area for a day.
- ~~66-67.~~ "License" means the written authorization issued by the Department to operate a facility in Arizona.
- ~~67-68.~~ "Licensed applicator" who complies with A.A.C. R3-8-201(C).
- ~~68-69.~~ "Licensed capacity" means the maximum number of enrolled children for whom a licensee is authorized by the Department to provide child care services in a facility or a part of a facility at any given time.
- ~~69-70.~~ "Licensee" means a person or governmental agency to whom the Department has issued a license to operate a facility in Arizona.
- ~~70-71.~~ "Local" means under the jurisdiction of a city or county in Arizona.
- ~~71-72.~~ "Mat" means a foam pad that has a waterproof cover and is of sufficient size and thickness to accommodate the height, width, and weight of a reclining child's body.
- ~~72-73.~~ "Medication" means a substance prescribed by a physician, physician assistant, or registered nurse practitioner or available without a prescription for the treatment or prevention of illness or infestation.
- ~~73-74.~~ "Menu" means:
- A written description of the food that a facility provides and serves as a meal or snack, or
  - The combination of food that a facility provides and serves as a meal or snack.
- ~~74-75.~~ "Motor vehicle" has the same meaning as in A.R.S. § 28-101.
- ~~75-76.~~ "N.A.C." means the National Administrator Credential, a credential issued by the National Institute of Child Care Management.
- ~~76-77.~~ "Name" means, for an individual, the individual's first name and the individual's last name.
- ~~77-78.~~ "Naptime" means any time during hours of operation, other than evening and nighttime hours, that is designated by a licensee for the rest or sleep of enrolled children.
- ~~78-79.~~ "Neglect" has the same meaning as in A.R.S. § 8-201.
- ~~79-80.~~ "One-year-old" means a child who is not an infant and at least 12 months of age but not yet two years of age.
- ~~80-81.~~ "Outbreak" has the same meaning as in A.A.C. R9-6-101.
- ~~81-82.~~ "Overall time-frame" has the same meaning as in A.R.S. § 41-1072.
- ~~82-83.~~ "Parent" means:
- A natural or adoptive mother or father,
  - A legal guardian appointed by a court of competent jurisdiction, or
  - A "custodian" as defined in A.R.S. § 8-201.
- ~~83-84.~~ "Part-day care" means child care services provided for fewer than six hours per day between the hours of 5:00 a.m. and 8:00 p.m.
- ~~84-85.~~ "Perishable food" means food that becomes unfit for human consumption if not stored to prevent spoilage.
- ~~85-86.~~ "Pesticide" has the same meaning as in A.R.S. § 32-3601.
- ~~86-87.~~ "Pesticide label" means the written, printed, or graphic matter approved by the United States Environmental Protection Agency on, or attached to, a pesticide container.
- ~~87-88.~~ "Physical injury" means temporary or permanent damage or impairment to a child's body.
- ~~88-89.~~ "Physical plant" means a building that houses a facility, or the licensed areas within a building that houses a facility, including the architectural, structural, mechanical, electrical, plumbing, and fire protection elements of the building.
- ~~89-90.~~ "Physician" means an individual licensed as a doctor of:
- Allopathic medicine under A.R.S. Title 32, Chapter 13;
  - Naturopathic medicine under A.R.S. Title 32, Chapter 14;
  - Osteopathic medicine under A.R.S. Title 32, Chapter 17;
  - Homeopathic medicine under A.R.S. Title 32, Chapter 29; or
  - Allopathic, naturopathic, osteopathic, or homeopathic medicine under the law of another state.
- ~~90-91.~~ "Physician assistant" means:
- An individual who is licensed under A.R.S. Title 32, Chapter 25; or
  - An individual who is licensed as a physician assistant under the law of another state.

- ~~91-92.~~ “Private pool” has the same meaning as “private residential swimming pool” in A.A.C. R18-5-201.
- ~~92-93.~~ “Private school” has the same meaning as in A.R.S. § 15-101.
- ~~93-94.~~ “Program” means a variety of activities organized and conducted by a staff member.
- ~~94-95.~~ “Public pool” has the same meaning as “public swimming pool” in A.A.C. R18-5-201.
- ~~95-96.~~ “Public school” has the same meaning as “school” in A.R.S. § 15-101.
- ~~96-97.~~ “Registered nurse practitioner” means:
- An individual who is licensed and certified as a “registered nurse practitioner” under A.R.S. § 32-1601, or
  - An individual who is licensed or certified as a registered nurse practitioner under the law of another state.
- ~~97-98.~~ “Regular basis” means at recurring, fixed, or uniform intervals.
- ~~98-99.~~ “Responsible party” means an individual or a group of individuals who:
- Is assigned by a public school, charter school, or governmental agency; and
  - Has general oversight of the child care facility.
- ~~99-100.~~ “Sanitize” means to use heat, chemical agents, or germicidal solutions to disinfect and reduce pathogen counts, including bacteria, viruses, mold, and fungi.
- ~~100-101.~~ “School-age child” means a child who:
- Meets one of the following:
    - Is five years old on or before January 1 of the current school year, or
    - Is five years old on or before January 1 of the most recent school year; and
  - Meets one of the following:
    - Attends kindergarten or a higher level program in a public, charter, accommodation, or private school during the current school year;
    - Attended kindergarten or a higher level program in a public, charter, accommodation, or private school during the most recent school year;
    - Is home-schooled at a kindergarten or higher level during the current school year; or
    - Was home-schooled at a kindergarten or higher level during the most recent school year.
- ~~101-102.~~ “School-age child care” means child care services provided to a school-age child.
- ~~102-103.~~ “School campus” means the contiguous grounds of a public, charter, accommodation, or private school, including the buildings, structures, and outdoor areas available for use by children attending the school.
- ~~103-104.~~ “School governing board” has the same meaning as “governing board” in A.R.S. § 15-101.
- ~~104-105.~~ “Screen time” means the use of electronic media to watch television or to watch a video, a DVD, or a movie at the facility or at another location or the use of electronic media or a computer for game-playing, entertainment, communication, or educational purposes.
- ~~105-106.~~ “Semi-public pool” has the same meaning as “semipublic swimming pool” in A.A.C. R18-5-201.
- ~~106-107.~~ “Service classification” means one of the following:
- Full-day care;
  - Part-day care;
  - Evening and nighttime care;
  - Infant care;
  - One-year-old child care;
  - Two-year-old child care;
  - Three-year-old, four-year-old, and five-year-old child care;
  - School-age child care; or
  - Weekend care.
- ~~107-108.~~ “Signatory” means an individual who is authorized by a school district governing board, school district superintendent, or governmental agency to sign a document on behalf of the school district governing board, school district superintendent, or governmental agency.
- ~~108-109.~~ “Signed” means affixed with an individual’s signature or with a symbol representing an individual’s signature if the individual is unable to write the individual’s name.
- ~~109-110.~~ “Sippy cup” means a lidded drinking container that is designed to be leak proof or leak-resistant and from which a child drinks through a spout or straw.
- ~~110-111.~~ “Space utilization” means the designated use of an area within a facility for specific child care services or activities.
- ~~111-112.~~ “Staff” or “staff member” means the same as “child care personnel” as defined in A.R.S. § 36-883.02.
- ~~112-113.~~ “Student-aide” means an individual less than 16 years of age who is participating in an educational, curriculum-based course of study; vocational education; or occupational development program and who, without being compensated by a licensee, is present at a facility to receive instruction from and supervision by staff in the provision of child care services.
- ~~113-114.~~ “Substantive review time-frame” has the same meaning as in A.R.S. § 41-1072.
- ~~114-115.~~ “Supervision” means:
- For an enrolled child, knowledge of and accountability for the actions and whereabouts of the enrolled child, including the ability to see or hear the enrolled child at all times, to interact with the enrolled child, and to provide guidance to the enrolled child; or
  - For an individual other than an enrolled child, knowledge of and accountability for the actions and whereabouts of the individual, including the ability to see and hear the individual when the individual is in the presence of an enrolled child and the ability to intervene in the individual’s actions to prevent harm to enrolled children.
- ~~115-116.~~ “Swimming pool” has the same meaning as in A.A.C. R18-5-201.
- ~~116-117.~~ “Teacher-caregiver” means a staff member responsible for developing, planning, and conducting child care activities.

- ~~47-118~~ “Teacher-caregiver-aide” means a staff member who provides child care services under the supervision of a teacher-caregiver.
- ~~48-119~~ “Training” means child care-related conferences, seminars, lectures, workshops, classes, courses, or instruction.
- ~~49-120~~ “Tummy time” means a limited period-of-time no more than 20 minutes used to allow a non-crawling infant:
- i. To strengthen the infant’s head, neck, and upper body muscles; and
  - ii. To increase the infant’s sensory perception, visual and hearing acuity, and social and emotional interaction.
- ~~20-121~~ “Volunteer” means a staff member who, without compensation, provides child care services that are the responsibility of a licensee.
- ~~21-122~~ “Working day” means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday, federal holiday, or a statewide furlough day.

## ARTICLE 2. FACILITY LICENSURE

### R9-5-201. Application for a License

- A. An applicant for a license shall:
1. Be at least 21 years of age;
  2. If an individual, be a U.S. citizen or legal resident alien and a resident of Arizona;
  3. If a corporation, association, or limited liability company, be a domestic entity or a foreign entity qualified to do business in Arizona;
  4. If a partnership, have at least one partner who is a U.S. citizen or legal resident alien and a resident of Arizona;
  5. Submit to the Department an application packet containing:
    - a. An application on a form provided by the Department that contains:
      - i. The applicant’s name;
      - ii. The applicant’s date of birth;
      - iii. The facility’s name, street address, city, state, zip code, mailing address, and telephone number;
      - iv. The requested service classifications;
      - v. Whether the applicant agrees to allow the Department to submit supplemental requests for information;
      - vi. A statement that the applicant has read and will comply with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter;
      - vii. A statement that the information provided in the application packet is accurate and complete; and
      - viii. The applicant’s signature and date the applicant signed the application;
    - b. A copy of the applicant’s:
      - i. U.S. passport,
      - ii. Birth certificate,
      - iii. Naturalization documents, or
      - iv. Documentation of legal resident alien status;
    - c. A copy of the applicant’s valid fingerprint clearance card, both front and back, issued according to A.R.S. Title 41, Chapter 12, Article 3.1;
    - ~~d.~~ A copy of the applicant’s valid background check document according to A.R.S. § 46-811(A);
    - ~~e.~~ A copy of the form required in A.R.S. § 36-883.02(C);
    - e-f. A certificate issued by the Department showing that the applicant has completed at least four hours of Department-provided training that included the Department’s role in licensing and regulating child care facilities under A.R.S. Title 36, Chapter 7.1, Article 1, and this Chapter;
    - ~~f.~~ g. Except as provided in subsection ~~(A)(5)(i)(A)(5)(j)~~, a site plan of the facility drawn to scale showing:
      - i. The drawing scale;
      - ii. The boundary dimensions of the property upon which the facility’s physical plant is located;
      - iii. If more than one building is used for the facility, the location and perimeter dimensions of each building;
      - iv. The location of each driveway on the property;
      - v. The location and boundary dimensions of each parking lot on the property;
      - vi. The location and perimeter dimensions of each outdoor activity area;
      - vii. The location, type, and height of each fence and gate; and
      - viii. If applicable, the location of any swimming pool on the property;
    - ~~g.~~ h. Except as provided in subsection ~~(A)(5)(i)(A)(5)(j)~~, a floor plan of each building to be used for child care services drawn to scale showing:
      - i. The drawing scale;
      - ii. The length and width dimensions for each indoor activity area;
      - iii. The requested licensed capacity and applicable service classification for each indoor activity area;
      - iv. The location of each diaper changing area;
      - v. The location of each hand washing, utility, and three-compartment sink, toilet, urinal, and drinking fountain; and
      - vi. The location and type of fire alarm system;
    - ~~h.~~ i. Except as provided in subsection ~~(A)(5)(i)(A)(5)(j)~~:
      - i. A copy of a certificate of occupancy issued for the facility by the local jurisdiction;
      - ii. Documentation from the local jurisdiction that the facility was approved for occupancy; or
      - iii. If the documents in subsections ~~(A)(5)(h)(i) and (ii)(A)(5)(i)(i) and (ii)~~ are not available, the seal of an architect registered as prescribed in A.R.S. § 32-121 on the site plan required in subsection ~~(A)(5)(f)(A)(5)(g)~~ and the floor plan required in subsection ~~(A)(5)(g)(A)(5)(h)~~ verifying compliance with current local building and fire codes, local zoning requirements, and this Chapter;

- ~~i-j.~~ For an applicant providing child care services to three-year-old, four-year-old, five-year-old, or school-age children in a facility located in a public school, a set of final construction drawings or a school map showing:
  - i. The location of each school building;
  - ii. The location and dimensions of each outdoor activity area to be used by enrolled children;
  - iii. The length and width dimensions for each indoor activity area;
  - iv. The requested licensed capacity and applicable service classification for each indoor activity area; and
  - v. The location of each hand-washing sink, toilet, urinal, and drinking fountain to be used by enrolled children;
- ~~j-k.~~ If the facility is located within one-fourth of a mile of agricultural land:
  - i. The names and addresses of the owners or lessees of each parcel of agricultural land located within one-fourth mile of the facility, and
  - ii. A copy of an agreement complying with A.R.S. § 36-882 for each parcel of agricultural land;
- ~~k-l.~~ The applicable fee in R9-5-206;
- ~~l-m.~~ If the applicant is a business organization, a form provided by the Department that contains:
  - i. The name, street address, city, state, and zip code of the business organization;
  - ii. The type of business organization;
  - iii. The name, date of birth, title, street address, city, state, and zip code of each controlling person;
  - iv. A copy of the business organization's articles of incorporation, articles of organization, partnership documents, or joint venture documents, if applicable;
  - v. Documentation of good standing issued by the Arizona Corporation Commission and dated no earlier than three months before the date of the application; and
  - vi. A statement signed by the applicant stating:
    - (1) That each controlling person has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and
    - (2) That each controlling person has not had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children;
- ~~m-n.~~ If the applicant is a public school, a form provided by the Department that contains:
  - i. The name of the school district;
  - ii. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals;
  - iii. A statement signed by the applicant stating:
    - (1) That each individual in subsection ~~(A)(5)(m)(ii)(A)(5)(n)(ii)~~ has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and
    - (2) That each individual in subsection ~~(A)(5)(m)(ii)(A)(5)(n)(ii)~~ has not had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children; and
  - iv. A letter from the school district governing board or school district superintendent designating a signatory, if applicable;
- ~~n-o.~~ If the applicant is a charter school, a form provided by the Department that contains:
  - i. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals;
  - ii. A statement signed by the applicant stating:
    - (1) That each individual in subsection ~~(A)(5)(n)(i)(A)(5)(o)(i)~~ has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and
    - (2) That each individual in subsection ~~(A)(5)(n)(i)(A)(5)(o)(i)~~ has not had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children; and
  - iii. A letter from the school district governing board in which the charter school is located, the Arizona State Board of Education, or the Arizona State Board for Charter Schools, approving the applicant to operate the charter school; and
- ~~o-p.~~ If the applicant is a governmental agency, a form provided by the Department that contains:
  - i. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals;
  - ii. A statement signed by the applicant stating:
    - (1) That each individual in subsection ~~(A)(5)(o)(i)(A)(5)(p)(i)~~ has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and
    - (2) That each individual in subsection ~~(A)(5)(o)(i)(A)(5)(p)(i)~~ has not had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children; and
  - iii. A letter from the individual in the senior leadership position with the agency designating a signatory.
- B.** The Department requires a separate license and a separate application for:
  - 1. Each facility owned by the same person at a different location, and
  - 2. Each facility owned by a different person at the same location.
- C.** The Department does not require a separate application and license for a structure that is:
  - 1. Located so that the structure and the facility:
    - a. Share the same street address, or
    - b. Can be enclosed by a single unbroken boundary line that does not encompass property owned or leased by another,
  - 2. Under the same ownership as the facility, and



3. Intended to be used as a part of the facility.

**R9-5-203. ~~Fingerprinting and Central Registry Requirements~~ Fingerprinting and Background Check**

- A.** A licensee shall ensure that a staff member completes, signs, dates, and submits to the licensee, before the staff member's starting date of employment or volunteer service:
1. The form required in A.R.S. § 36-883.02(C); and
  2. If required by A.R.S. § 8-804, the form in A.R.S. § 8-804(I).
- B.** A licensee shall maintain documentation of a valid fingerprint clearance card issued under A.R.S. § 41-1758.03 and valid background check document issued under in A.R.S. § 46-811.
- ~~**B.C.** Except as provided in A.R.S. § 41-1758.03, a licensee shall ensure that each staff member submits to the licensee a copy of:~~
- ~~1. The staff member's valid fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1; or~~
  - ~~2. The fingerprint clearance card application that the staff member submitted to the Department of Public Safety under A.R.S. § 41-1758.02 within seven working days after the staff member's starting date of employment or volunteer service.~~
- Except as provided in A.R.S. § 41-1758.03, a licensee shall ensure that each staff member, before starting date of employment or volunteer service, submits to the licensee a copy of the staff member's valid fingerprint clearance card, front and back, issued under A.R.S. Title 41, Chapter 12, Article 3.1.
- ~~**C.D.** A licensee shall ensure that each staff member submits to the licensee a copy of the staff member's valid fingerprint clearance card each time the fingerprint clearance card is issued or renewed.~~ valid fingerprint clearance card each time the fingerprint clearance card is issued or renewed every six years.
- ~~**D.E.** If a staff member possesses a fingerprint clearance card that was issued before the staff member became a staff member at the facility, a licensee shall:~~
- ~~1. Contact the Department of Public Safety within seven working days after before the individual becomes a staff member to determine whether the fingerprint clearance card is valid; and~~
  - ~~2. Document this determination, including the name of the staff member, the date of contact with the Department of Public Safety, and whether the fingerprint clearance card is valid.~~
- E.** A licensee shall ensure that each staff member submits to the licensee a copy of the staff member's valid:
1. Background check document issued under A.R.S. § 46-811(A) within 10 working days after starting date of employment or volunteer service; and
  2. Background check document each time a background check is issued or renewed every five years.
- ~~**F.G.** If required by A.R.S. § 8-804, before an individual's starting date of employment or volunteer service, a licensee shall comply with the submission requirements in A.R.S. § 8-804(C) for the individual.~~
- ~~**F.H.** A licensee shall not allow an individual to be a staff member if the individual:~~
- ~~1. Has been denied a fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1 and has not received an interim approval under A.R.S. § 41-619.55;~~
  - ~~2. Has been denied a background check document that indicates the individual is not eligible for employment due to violations identified pursuant to A.R.S. § 46-811;~~
  - ~~3. Receives an interim approval under A.R.S. § 41-619.55 but is subsequently denied a good cause exception under A.R.S. § 41-619.55 and a fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1;~~
  - ~~4. Is a parent or guardian of a child adjudicated to be a dependent child as defined in A.R.S. § 8-201;~~
  - ~~5. Has been denied or had revoked a certificate to operate a child care group home or a license to operate a child care facility for care of children in this state or another state;~~
  - ~~6. Has been denied or had revoked a certification to work in a child care facility or a child care group home in this state or another state;~~
  - ~~7. If applicable, has stated on the form required in A.R.S. § 8-804(I) that the individual is currently under investigation for an allegation of abuse or neglect or has a substantiated allegation of abuse or neglect and has not subsequently received a central registry exception according to A.R.S. § 41-619.57; or~~
  - ~~8. If applicable, is disqualified from employment or volunteer service as a staff member according to A.R.S. § 8-804 and has not subsequently received a central registry exception according to A.R.S. § 41-619.57.~~
- I.** Within 30 calendar days after the day of a staff member's or volunteer's 18th birthday, the staff member or volunteer shall provide to the licensee copies of a valid fingerprint clearance card and background check document specified in subsection (C).
- J.** Beginning November 1, 2021, staff members shall comply with A.R.S. § 46-811(A) and subsection (F) by November 1, 2022.

**R9-5-208. Changes Affecting a License**

- A.** At least 30 calendar days before the date of a change in a facility's name, a licensee shall send the Department written notice of the name change and the Department shall issue an amended license that incorporates the name change but retains the anniversary date of the current license.
- B.** At least 30 calendar days before the date of an intended change in a facility's service classification, space utilization, or licensed capacity, a licensee shall submit a written request for approval of the intended change to the Department that includes:
1. The licensee's name;
  2. The facility's name, street address, city, state, zip code, mailing address, and telephone number;
  3. The name, telephone number, and fax number of a point of contact for the request;
  4. The facility's license number;
  5. The type of change intended:
    - a. Service classification,
    - b. Space utilization, or
    - c. Licensed capacity;
  6. A narrative description of the intended change; and

7. The following additional information, as applicable:
  - a. If the intended change affects an activity area, the following information about each affected activity area, as applicable:
    - i. Identification of the activity area,
    - ii. Current and intended square footage,
    - iii. Current and intended operating hours,
    - iv. Current and intended service classification,
    - v. Current and intended licensed capacity, and
    - vi. Whether the activity area has or will have a diaper changing area;
  - b. If the intended change is to increase licensed capacity, the square footage of the outdoor activity area; and
  - c. If the intended change includes an alteration or addition to the physical plant of a licensed facility, the following, as applicable:
    - i. If the facility is not located in a public school or if providing child care services to infants, one-year-old children, or two-year-old children in a facility located in a public school, the information required in ~~R9-5-201(A)(5)(f) and (g)~~ R9-5-201(A)(5)(g) and (h) showing the intended change; or
    - ii. If the facility is located in a public school and provides child care only for three-year-old, four-year-old, or five-year-old, or school-age children, a set of final construction drawings or a school map, including the information required in ~~R9-5-201(5)(i)~~ R9-5-201(5)(j) showing the intended change.
- C. If the intended change in subsection (B) includes an increase in the licensed capacity, a licensee shall submit the fee for an increase in licensed capacity in R9-5-206(C) with the written request for approval.
- D. If requesting a diaper changing area outside an infant room or indoor activity area to allow privacy for diapering an enrolled child with special needs, submit a written request for an approval; and
  1. For a license application, submit physical plant documents required by ~~R9-5-201(A)(5)(g)~~ R9-5-201(A)(5)(h) that designate the location of the proposed diaper changing area;
  2. For a licensed facility, submit a drawing of the proposed diaper changing area to the Department before installing the diaper changing area. Within 30 calendar days after the date of the receipt of the request, the Department shall send written notice to the licensee of approval or disapproval. If the proposed diaper changing area:
    - a. Complies with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter and provides privacy for the enrolled child with special needs, the Department shall approve the proposed diaper changing area; or
    - b. Does not comply with A.R.S. Title 36, Chapter 7.1, Article 1 or this Chapter or provide privacy for the enrolled child with special needs, the Department shall provide the licensee with the requirements necessary for the Department to approve the requested change; and
  3. Not use a diaper changing area located outside of an activity area until the Department approves the use of the diaper changing area;
- E. The Department shall review a request submitted under subsection (B) according to R9-5-202. If the intended change is in compliance with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter and any applicable fee is submitted, the Department shall send the licensee written approval of the requested change or an amended license that incorporates the change but retains the anniversary date of the current license.
- F. A licensee shall not implement any change described under subsection (B) until the Department issues an approval or amended license.
- G. At least 30 days before the date of a change in ownership of a facility, a licensee shall send the Department written notice of the change. A new owner shall obtain a new license as prescribed in R9-5-201 before the new owner begins operating the facility.
- H. A licensee changing a facility's location shall apply for a new license as prescribed in R9-5-201.
- I. Within 30 calendar days after a change in a controlling person, a licensee shall send the Department written notice of the change that includes:
  1. The name of the licensee;
  2. A description of the change made;
  3. The name, title, street address, city, state, and zip code of each controlling person;
  4. A statement that each controlling person has not been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state;
  5. A statement that each controlling person has not had a certificate to operate a child care group home or a license to operate a child care facility revoked in this state or another state for reasons that relate to endangerment of the health and safety of children;
  6. A statement that the information provided in the written notice is accurate and complete; and
  7. The signature of the licensee.
- J. If the change in subsection (I) is a change in a controlling person who is a designated agent, a licensee shall include a copy of one of the following for the designated agent:
  1. A U.S. passport,
  2. A birth certificate,
  3. Naturalization documents, or
  4. Documentation of legal resident alien status.
- K. Within 30 calendar days after changing a responsible party, a licensee shall send the Department written notice of the change that includes:
  1. The name of the licensee;
  2. A description of the change made;
  3. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals; and

4. A statement signed by the licensee stating:
  - a. That each individual in subsection (K)(3) has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and
  - b. That each individual in subsection (K)(3) has not had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children.

#### ARTICLE 4. FACILITY STAFF

##### **R9-5-402. Staff Records and Reports**

- A. A licensee shall maintain a file for each staff member containing:
  1. The staff member's name, date of birth, home address, and telephone number;
  2. The staff member's starting date of employment or volunteer service;
  3. The staff member's ending date of employment or volunteer service, if applicable;
  4. The name and telephone number of an individual to be notified in case of an emergency;
  5. The staff member's written statement attesting to current immunity against measles, rubella, diphtheria, mumps, and pertussis;
  6. The form required in A.R.S. § 36-883.02(C);
  7. Documents required by ~~R9-5-203(A)(2)~~ or (B) R9-5-203;
  8. Documents required by R9-5-301;
  9. Documents required by R9-5-401, if applicable;
  10. If applicable:
    - a. The form required in A.R.S. § 8-804(I),
    - b. Documentation of the submission required in A.R.S. § 8-804 and the information received as a result of the submission, and
    - c. Documentation of training provided by a licensee as required by R9-5-403;
  11. A copy of any current license or certification required by A.R.S. Title 36, Chapter 7.1, Article 1, or this Chapter; and
  12. Documentation of the requirements in A.R.S. § 36-883.02(D).
- B. A licensee shall ensure that, for a staff member who is currently working at the facility, the staff member's information required by:
  1. Subsections (A)(1) through (11) is maintained in a single location on facility premises, and
  2. Subsection (A)(12) is maintained and provided to the Department within two hours of the Department's request.
- C. A licensee shall ensure that, for an individual who is not currently working at the facility, the information required in subsections (A)(1) through (12) is:
  1. Maintained for 12 months after the date the individual last worked at the facility, and
  2. Provided to the Department within two hours of the Department's request.

### NOTICE OF FINAL EXPEDITED RULEMAKING

#### TITLE 9. HEALTH SERVICES

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

[R22-161]

#### PREAMBLE

- | <u>1. Article, Part, of Section Affected (as applicable)</u>                                                                                                             | <u>Rulemaking Action</u>                                                                                           |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|
| R9-7-1302<br>Table 13.1                                                                                                                                                  | Amend<br>Amend                                                                                                     |
| <b><u>2. Citations to the agency's statutory authority for the rulemaking to include the authorizing statute (general) and the implementing statute (specific):</u></b>  |                                                                                                                    |
| Authorizing statute: A.R.S. §§ 30-654(B)(5) and 36-136(G)                                                                                                                |                                                                                                                    |
| Implementing statute: A.R.S. §§ 30-654, 30-656, 30-657, 30-671 through 30-672.01, 30-681 through 30-689, and 30-721                                                      |                                                                                                                    |
| <b><u>3. The effective date of the rules:</u></b>                                                                                                                        |                                                                                                                    |
| July 6, 2022                                                                                                                                                             |                                                                                                                    |
| <b><u>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 expedited rulemaking:</u></b> |                                                                                                                    |
| Notice of Rulemaking Docket Opening: 27 A.A.R. 2866, December 10, 2021                                                                                                   |                                                                                                                    |
| Notice of Proposed Expedited Rulemaking: 27 A.A.R. 2976, December 24, 2021                                                                                               |                                                                                                                    |
| <b><u>5. The agency's contact person who can answer questions about the rulemaking:</u></b>                                                                              |                                                                                                                    |
| Name:                                                                                                                                                                    | Brian D. Goretzki, Chief, Bureau of Radiation Control                                                              |
| Address:                                                                                                                                                                 | Arizona Department of Health Services<br>Public Health Licensing Services<br>4814 S. 40th St.<br>Phoenix, AZ 85040 |
| Telephone:                                                                                                                                                               | (602) 255-4840                                                                                                     |
| Fax:                                                                                                                                                                     | (602) 437-0705                                                                                                     |
| Email:                                                                                                                                                                   | Brian.Goretzki@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

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

Arizona Revised Statutes (A.R.S.) § 30-654(B)(5) requires the Arizona Department of Health Services (Department) to make rules deemed necessary to administer A.R.S. Title 30, Chapter 4, Control of Ionizing Radiation. The Department has adopted these rules in A.A.C. Title 9, Chapter 7. According to A.R.S. § 30-654(B)(17), the Department has established a schedule of fees to be charged to categories of licensees and registrants of radiation sources in Article 13 of the Chapter. Laws 2021, Ch. 409, § 26 requires the Department to reduce revenue generated by the fees specified in Article 13 by \$300,000. As part of the review for a five-year-review report fees, the Department has also identified that it is unclear under which category and type of license persons who service devices containing radioactive materials are regulated. These persons are currently licensed under category/type (D)(8) Health Physics Class A, but the rules would be improved by better describing the license type under which they are regulated without changing the fee currently paid by these persons. The Department believes that these changes are consistent with the purpose for A.R.S. § 41-1027 in that this rulemaking does not increase the cost of regulatory compliance, does not increase a fee, or reduce a procedural right of regulated persons. In fact, the rulemaking will not only make the rules compliant with Legislative requirements, but also reduce the regulatory burden of both persons who service devices containing radioactive materials and those who will pay the reduced fees.

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

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

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

Not applicable

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

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

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

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

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

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

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

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

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

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

These rules rely on statutory authority from state statutes, not from federal regulations.

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

No such analysis was submitted.

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

In R9-7-1302(D)(11): 10 CFR 61, revised January 1, 2015

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

The rule was not previously made as an emergency rule.

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

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

**ARTICLE 13. LICENSE AND REGISTRATION FEES**

Section

R9-7-1302. License and Registration Categories

Table 13.1. Table of Fees

**ARTICLE 13. LICENSE AND REGISTRATION FEES**

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

- A.** Category A licenses are those specific licenses that authorize a school, college, university, or other teaching facility to possess and use radioactive materials for instructional or research purposes.
1. A broad academic class A license is any category A license that meets the specifications of R9-7-310(A)(1).
  2. A broad academic class B license is any category A license other than a broad academic class A license that meets the specifications of R9-7-310(A)(2).
  3. A broad academic class C license is any category A license other than a broad academic class A or B license that meets the specifications of R9-7-310(A)(3).
  4. A limited academic license is any category A license that authorizes only those radioisotopes, forms, and quantities individually specified in the license.
- B.** Category B licenses are those specific or general licenses that authorize the application of radioactive material or the radiation from it to a human being for medical diagnostic, therapeutic, or research purposes, or the use of radioactive material in medical laboratory testing. Except for a type B6, general medical license, the Department shall not combine a category B license with a license of any other category.
1. A broad medical license is any category B license that meets the specifications of R9-7-310(A)(1) and meets the requirements of 9 A.A.C. 7, Article 7. A broad medical license may authorize any medical use other than teletherapy.
  2. A medical materials class A license is any specific category B license other than a broad medical license, that authorizes the use of radiopharmaceuticals and sealed sources containing radioactive materials for a therapeutic purpose in quantities that require hospitalization of the patient for radiation safety purposes. The license may authorize other radioactive materials and other medical uses, except teletherapy.
  3. A medical materials class B license is any specific category B license that authorizes the diagnostic or therapeutic use, other than teletherapy, of radioactive materials only in limited quantities such that the patient need not be hospitalized for radiation safety purposes.
  4. A medical materials class C license is any specific category B license that authorizes possession of specified radioisotopes only in the form of sealed sources for treatment of the eye or skin or for use in diagnostic medical imaging devices.
  5. A medical teletherapy license is a specific category B license that solely authorizes radioisotopes in the form of multi-curie sealed sources for use in external beam therapy. The Department shall not combine a medical teletherapy license with any other type of category B license.
  6. A general medical license is one that authorizes the use of radioactive material pursuant to R9-7-306(D) or R9-7-306(E). A general medical license may be combined into a broad medical, medical materials class A, or medical materials class B license.
- C.** Category C licenses are those specific or general licenses that authorize the use of radioactive materials in any activity other than those authorized by a category A, B, or D license. Except as specifically authorized in this Section, the Department shall not combine a category C license with any other type of license.
1. A broad industrial class A license is any category C license that meets the specifications of R9-7-310(A)(1). The Department may combine a broad industrial class A license with any other category C license except industrial radiography, open field irradiator, or well logging licenses.
  2. A broad industrial class B license is any category C license other than a broad industrial class A license that meets the specifications of R9-7-310(A)(2). The Department may combine a broad industrial class B license with any other category C license except industrial radiography, open field irradiator, or well logging licenses.
  3. A broad industrial class C license is any category C license other than a broad industrial class A or B license that meets the specifications of R9-7-310(A)(3). The Department may combine a broad industrial class C license with any other category C license except industrial radiography, open field irradiator, or well logging licenses.
  4. A limited industrial license is a specific category C license that authorizes the possession of the radioactive materials authorized in R9-7-305(A), or R9-7-306(A), (C), or (F) for uses authorized in those subsections, but in quantities greater than authorized by those subsections.
  5. A portable gauge license is a specific category C license that authorizes radioactive materials in the form of sealed sources for use in measuring or gauging devices designed and manufactured to be transported to the location of use. The Department may combine a portable gauge license with any broad scope industrial license or a fixed gauge class A license.
  6. A fixed gauge class A license is a specific category C license that authorizes the possession of 50 or more measuring or gauging devices containing radioactive materials, where each device is permanently mounted for use at a single location.
  7. A fixed gauge class B license is a specific category C license that authorizes the possession of 1 through 49 measuring or gauging devices containing radioactive materials, where each device is permanently mounted for use at a single location.

8. A leak detector license is a specific category C license that authorizes the use of radioisotopes in the form of a gas to test hermetic seals on electronic packages.
  9. A gas chromatograph license is a specific category C license that authorizes the use of radioactive materials as ionization sources in gas chromatography or electron capture devices.
  10. A general industrial license is one that authorizes the use of a material, source, or device generally licensed pursuant to R9-7-305 or R9-7-306, except R9-7-305(B), R9-7-306(D), or R9-7-306(E).
  11. An industrial radiography class A license is a specific category C license that authorizes industrial radiography using sealed radioisotope sources at specific facilities identified in the license conditions or at temporary field job sites.
  12. An industrial radiography class B license is a specific category C license that authorizes industrial radiography using sealed radioisotope sources only at specific facilities identified in the license conditions.
  13. An open field irradiator license is a specific category C license that authorizes the use of radioisotopes in the form of sealed sources not permanently mounted within a shielding container, for irradiation of materials.
  14. A self-shielded irradiator license is a specific category C license that authorizes the use of radioisotopes in the form of sealed sources for irradiation of materials in a shielding device from which the sources are not removed during irradiation. The Department may combine a self-shielded irradiator license with any broad license.
  15. A well logging license is a specific category C license that authorizes the use of radioactive material in sealed or unsealed sources for wireline services or field tracer studies.
  16. A research and development license is a specific category C license that authorizes a licensee to utilize radioactive material in unsealed and sealed form for industrial, scientific, or biomedical research, not including administration of radiation or radioactive material to human beings.
  17. A laboratory license is a specific category C license that authorizes a licensee to perform specific in-vitro or in-vivo medical or veterinary testing, while possessing quantities of radioactive material greater than the general license quantities authorized in R9-7-306.
- D.** Category D licenses are the following specific or general radioactive material licenses. Except for type D4, general industrial; type D5, depleted uranium; type D8 and D9, health physics; and type D14, additional facilities licenses, the Department shall not combine a category D license with any other license.
1. A distribution license is one that authorizes the commercial distribution of radioactive materials or radioisotopes in products to persons holding an appropriate general or specific license. The Department shall ensure that a distribution license does not:
    - a. Authorize distribution of radiopharmaceuticals or distribution to persons exempt from regulatory control, or
    - b. Authorize any other use of the radioactive material. An appropriate category C license is required for possession of radioisotopes and their incorporation into products.
  2. A nuclear pharmacy license is one that authorizes the preparation, compounding, packaging, or dispensing of radiopharmaceuticals for use by other licensees.
  3. A nuclear laundry license is one that authorizes the collection and cleaning of items contaminated with radioactive materials.
  4. A general industrial gauging device license is one that authorizes the use of a gauging device in accordance with R9-7-306(A). The Department may combine a general industrial gauging device license with a class A, B, or C broad industrial, limited industrial, portable gauge, or class A or B fixed gauge license.
  5. A general depleted uranium license is one that authorizes the use of the general license authorized pursuant to R9-7-305(C) or the use of depleted uranium as a concentrated mass or as shielding for another radiation source within a device or machine. The Department may combine a general depleted uranium license with a medical teletherapy; class A, B, or C broad industrial; portable gauge; class A or B fixed gauge; class A or B industrial radiography; or self-shielded irradiator license. For licensing purposes, an applicant shall follow the requirements in R9-7-305(C).
  6. A veterinary medicine license is one that authorizes the use of radioactive materials for specific applications in veterinary medicine as authorized in the license.
  7. A general veterinary medicine license is one that authorizes the use of the general license authorized in R9-7-306(E) in veterinary medicine.
  8. A health physics class A license is one that authorizes the use of radioactive materials for performing instrument calibrations, processing leak test or environmental samples, or providing radiation dosimetry services or the performance of maintenance on devices containing radioactive materials.
  9. A health physics class B license is one that authorizes only the collection, possession, and transfer of radioactive materials in the form of leak test samples for processing by others.
  10. A secondary uranium recovery license is one that authorizes the extraction of natural uranium or thorium from an ore stream or tailing that is being or has been processed primarily for the extraction of another mineral. The Department shall not combine a secondary uranium recovery license with any other license.
  11. A low-level, radioactive waste disposal facility license is a license that is issued for a “disposal facility,” as that term is used in R9-7-439 and R9-7-442, that has a closure or long-term care plan and is constructed and operated according to the requirements in 10 CFR 61, revised January 1, 2015, incorporated by reference, available under R9-7-101 and containing no future editions or amendments.
  12. A waste processor class A license is one that authorizes the incineration, compaction, repackaging, or any other treatment or processing of low-level radioactive waste prior to transfer to another person authorized to receive or dispose of the waste. The Department shall not combine a waste processor class A license with any other license.
  13. A waste processor class B license is one that authorizes a waste broker to receive prepackaged, low-level radioactive waste from other licensees; combine the waste into shipments; and transfer the waste without treating or processing the waste in any manner and without repackaging except to place damaged or leaking packages into overpacks. The Department shall not combine a waste processor class B license with any other license.

14. An additional storage and use site license is an endorsement, by license condition to an existing specific license, authorizing one or more additional separate facilities where radioactive material may be stored or used for a period exceeding six months.
  15. A possession-only license is a license of any other category that authorizes only the possession in storage, but no use of, the authorized materials. A license that has been suspended as an enforcement action is not considered a possession-only license.
  16. A reciprocal license is the general license authorized by R9-7-320. This license is subject to a special fee as provided by R9-7-1306(C) but is exempt from annual fees.
  17. Reserved
  18. An “unclassified” radioactive material license is one that authorizes radioisotopes, physical or chemical forms, possession limits, or uses not included in any other type of license specified in this Section.
  19. A NORM commercial disposal site license is one that authorizes the receipt of waste material contaminated with naturally occurring radioactive material from other licensees for permanent disposal, provided the concentration of the radioactive material does not exceed 74kBq (2,000 picocuries)/gram.
- E.** Category E registrations are those that register the possession of x-ray machine(s) under 9 A.A.C. 7, Article 2. The Department shall not combine category E registrations with any other registration.
1. An X-ray machine class A registration is one authorizing the possession of X-ray machines in a hospital or other facility offering inpatient care.
  2. An X-ray machine class B registration is one authorizing the possession of X-ray machines in a medical, osteopathic, or chiropractic office or clinic not offering inpatient care; or the possession of X-ray machines in a school, college, university, or other teaching facility.
  3. An X-ray machine class C registration is one authorizing the possession of X-ray machines in dental, podiatry, or veterinarian offices or clinics.
  4. An industrial radiation machine registration is one authorizing the possession of X-ray machines, or the possession of particle accelerators not capable of producing a high radiation area, in a nonmedical facility.
  5. An accelerator facility registration is one authorizing the possession and operation of one or more particle accelerators of any kind capable of accelerating any particle and producing a high radiation area.
  6. An “other” ionizing radiation machine registration is one authorizing possession or use of an ionizing radiation machine not included in any other category specified in subsection (E).
- F.** Category F registrations are those that register non-ionizing radiation producing sources regulated under 9 A.A.C. 7, Article 14. The Department shall not combine category F registrations with any other registration categories that have a difference in fee per unit.
1. A tanning registration authorizes the commercial operation of one or more tanning booths, beds, cabinets, or other devices in a single establishment.
  2. A Class A laser registration authorizes the operation of one to 10 laser devices subject to R9-7-1433.
  3. A Class B laser registration authorizes the operation of 11 to 49 laser devices subject to R9-7-1433.
  4. A Class C laser registration authorizes operation of 50 or more laser devices subject to R9-7-1433.
  5. A laser light show or laser demonstration registration authorizes the operation of a laser device subject to R9-7-1441.
  6. A medical laser registration authorizes the operation of one or more laser devices subject to R9-7-1440.
  7. A Class II surgical device registration authorizes the operation of one or more Class II surgical devices subject to R9-7-1438. A device is designated as a Class II surgical device by the USFDA and is labeled as such by the manufacturer.
  8. A cosmetic radiofrequency device registration authorizes the operation of one or more medical radiofrequency devices for non-ionizing cosmetic procedures.
  9. A class A industrial radiofrequency device registration authorizes the operation of one to five radiofrequency devices.
  10. A class B industrial radiofrequency device registration authorizes the operation of six to 20 radiofrequency devices.
  11. A class C industrial radiofrequency device registration authorizes the operation more than 20 radiofrequency devices.
  12. A medical radiofrequency device registration authorizes the operation of one or more medical radiofrequency devices for non-ionizing, non-cosmetic procedures.
  13. An “other” non-ionizing radiation device registration authorizes the operation of a non-ionizing radiation device or other device not included in any other category specified in subsection (F).

**Table 13.1. Table of Fees**

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

C2	Broad industrial class B	\$20,000
C3	Broad industrial class C	\$6,000
C4	Limited industrial	\$1,500
C5	Portable gauge	\$2,000
C6	Fixed gauge class A	\$2,000
C7	Fixed gauge class B	\$2,000
C8	Leak detector	\$2,000
C9	Gas chromatograph	\$2,000
C10	General industrial	\$300
C11	Industrial radiography class A	\$10,000
C12	Industrial radiography class B	\$10,000
C13	Open field irradiator	\$10,000
C14	Shelf-shielded irradiator	\$5,000
C15	Well logging	\$5,000
C16	Research and development	\$5,000
C17	Laboratory	\$3,000
D1	Distribution	\$5,000
D2	Nuclear pharmacy	\$10,000
D3	Nuclear laundry	\$25,000
D4	General industrial gauging device	\$500
D5	General depleted uranium	\$200
D6	Veterinary medicine	\$2,000
D7	General veterinary medicine	\$500
D8	Health physics class A	\$5,000
D9	Health physics class B	\$3,000
D10	Secondary uranium recovery	\$8,000
D11	Low-level radioactive waste disposal facility	According to R9-7-1306(B)
D12	Waste processor class A	\$10,000
D13	Waste processor class B	\$8,000
D14	Additional storage and use site	30% of the applicable fee for each additional site
D15	Possession-only	50% of the applicable fee for the category under which storage will occur
D16	Reciprocal	According to R9-7-1306(C)
D17	Reserved	
D18	Unclassified radioactive material	Full Cost, according to R9-7-1306(D) or (E)
D19	NORM commercial disposal site	\$600,000
E1	X-ray machine class A (per tube)	<del>\$195</del> <u>\$145</u>
E2	X-ray machine class B (per tube)	<del>\$145</del> <u>\$95</u>
E3	X-ray machine class C (per tube)	<del>\$95</del> <u>\$90</u>
E4	Industrial radiation machine (per device)	\$95
E5	Accelerator facility	\$2,500
E6	Other ionizing radiation machine	Full Cost, according to R9-7-1306(D) or (E)
F1	Tanning device (per device)	\$50
F2	Class A laser (1 to 10 laser devices)	\$300
F3	Class B laser (11 to 49 laser devices)	\$600
F4	Class C laser (50 or more laser devices)	\$1,000
F5	Laser light show or laser demonstration	\$500
F6	Medical laser (per laser device)	\$100



F7	Class II surgical device (per device)	\$100
F8	Cosmetic radiofrequency device (per device)	\$100
F9	Class A industrial (1 to 5 radiofrequency devices)	\$150
F10	Class B industrial (6 to 20 radiofrequency devices)	\$350
F11	Class C industrial (more than 20 radiofrequency devices)	\$600
F12	Medical radiofrequency (one or more device)	\$100
F13	Other non-ionizing radiation device	Full Cost, according to R9-7-1306(D) or (E)

**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**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 16. DEPARTMENT OF HEALTH SERVICES  
OCCUPATIONAL LICENSING**

[R22-162]

- 1. Title and its heading:** 9, Health Services
- Chapter and its heading:** 16, Department of Health Services - Occupational Licensing
- Articles and their headings:** 10, Out-of-State Telehealth Providers
- Section numbers:** R9-16-1001 through R9-16-1006, Table 10.1, R9-16-1007, R9-16-1008 (*The Department may add, delete, or modify other Sections, as necessary*)

- 2. The subject matter of the proposed rules:**  
 Arizona Revised Statutes (A.R.S.) §§ 36-3606 and 36-3608, as added by Laws 2021, Ch. 320, requires the Arizona Department of Health Services (Department) to allow a health care provider who is not licensed in Arizona to provide telehealth services to a client located in Arizona if the health care provider registers with the Department and pays a registration fee. The Department plans to adopt rules to implement Laws 2021, Ch. 320 in Arizona Administrative Code, Title 9, Chapter 16, which contains requirements for individuals in occupations regulated by the Department. The rulemaking is necessary to allow for the expansion of telemedicine in Arizona and provide greater opportunities for accessible medical services while protecting public health. Telehealth expands access to medical services for low-income families and those living in rural areas, protects vulnerable populations, and allows snowbirds visiting our state to receive telemedicine from their home state.

Pursuant to the rulemaking moratorium established by Executive Order 2021-02, the Department received an exception approval on June 21, 2022 to promulgate rules in 9 A.A.C. 16, Article 10. The Department anticipates that the rules may increase regulatory burden or cost on some affected persons. However, the Department believes that the benefits of the rules will far outweigh any potential cost. The proposed amendments will conform to rulemaking format and style requirements of the 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: Thomas Salow, Interim Assistant Director  
 Address: Department of Health Services  
 Public Health Licensing Services  
 150 N. 18th Ave., Suite 400  
 Phoenix, AZ 85007  
 Telephone: (602) 364-1935  
 Fax: (602) 364-3808  
 Email: [Thomas.Salow@azdhs.gov](mailto:Thomas.Salow@azdhs.gov)  
 or  
 Name: Robert Lane, Office Chief  
 Address: 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](mailto: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 future notices regarding the rulemaking.

**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**

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**REGISTER INDEXES**


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

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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  
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 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  
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**CORRECTIONS**

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**RULES EFFECTIVE DATES CALENDAR**

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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
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1/6	3/7	2/6	4/7	3/6	5/5	4/6	6/5	5/6	7/5	6/6	8/5
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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.

<b>Deadline Date</b> <b>Friday, 5:00 p.m.</b> <i>(*earlier date due to holiday)</i>	<b>Register</b> <b>Publication Date</b>	<b>Oral Proceeding may be</b> <b>scheduled on or after</b>
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
July 22, 2022	August 12, 2022	September 12, 2022
July 29, 2022	August 19, 2022	September 19, 2022
August 5, 2022	August 26, 2022	September 26, 2022
August 12, 2022	September 2, 2022	October 3, 2022
August 19, 2022	September 9, 2022	October 11, 2022
August 26, 2022	September 16, 2022	October 17, 2022
September 2, 2022	September 23, 2022	October 24, 2022
September 9, 2022	September 30, 2022	October 31, 2022
September 16, 2022	October 7, 2022	November 7, 2022
September 23, 2022	October 14, 2022	November 14, 2022
September 30, 2022	October 21, 2022	November 21, 2022
October 7, 2022	October 28, 2022	November 28, 2022
October 14, 2022	November 4, 2022	December 5, 2022
October 21, 2022	November 11, 2022	December 12, 2022
October 28, 2022	November 18, 2022	December 19, 2022
November 4, 2022	November 25, 2022	December 27, 2022
*November 10, 2022	December 2, 2022	January 2, 2023
November 18, 2022	December 9, 2022	January 9, 2023
November 25, 2022	December 16, 2022	January 16, 2023
December 2, 2022	December 23, 2022	January 23, 2023

## 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
<i>Tuesday</i> January 18, 2022	<i>Tuesday</i> February 15, 2022	<i>Tuesday</i> February 22, 2022	<i>Tuesday</i> March 1, 2022
<i>Tuesday</i> February 15, 2022	<i>Tuesday</i> March 22, 2022	<i>Tuesday</i> March 29, 2022	<i>Tuesday</i> April 5, 2022
<i>Tuesday</i> March 22, 2022	<i>Tuesday</i> April 19, 2022	<i>Tuesday</i> April 26, 2022	<i>Tuesday</i> May 3, 2022
<i>Tuesday</i> April 19, 2022	<i>Tuesday</i> May 17, 2022	<i>Tuesday</i> May 24, 2022	<b>Wednesday</b> June 1, 2022
<i>Tuesday</i> May 17, 2022	<i>Tuesday</i> June 21, 2022	<i>Tuesday</i> June 28, 2022	<b>Wednesday</b> July 6, 2022
<i>Tuesday</i> June 21, 2022	<i>Tuesday</i> July 19, 2022	<i>Tuesday</i> July 26, 2022	<i>Tuesday</i> August 2, 2022
<i>Tuesday</i> July 19, 2022	<i>Tuesday</i> August 23, 2022	<i>Tuesday</i> August 30, 2022	<b>Wednesday</b> September 7, 2022
<i>Tuesday</i> August 23, 2022	<i>Tuesday</i> September 20, 2022	<i>Tuesday</i> September 27, 2022	<i>Tuesday</i> October 4, 2022
<i>Tuesday</i> September 20, 2022	<i>Tuesday</i> October 18, 2022	<i>Tuesday</i> October 25, 2022	<i>Tuesday</i> November 1, 2022
<i>Tuesday</i> October 18, 2022	<i>Tuesday</i> November 22, 2022	<i>Tuesday</i> November 29, 2022	<i>Tuesday</i> 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.