

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE PLANT SERVICES DIVISION

[R08-184]

PREAMBLE

- | | |
|--|--|
| <u>1. Sections Affected</u>
R3-4-233 | <u>Rulemaking Action</u>
Amend |
|--|--|
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 3-107
Implementing statute: A.R.S. § 3-201.01
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 14 A.A.R. 2337, June 13, 2008 (*in this issue*)
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Carlos Ramírez, Rules Analyst
Address:	Department of Agriculture 1688 W. Adams St. Phoenix, AZ 85007
Telephone:	(602) 542-0962
Fax:	(602) 542-5420
E-mail:	cramirez@azda.gov
- 5. An explanation of the rule, including the agency's reasons for initiating the rules:**
The Arizona Department of Agriculture is proposing to amend R3-4-233 to define breeder seed, to redefine "mosaic-indexed" to require laboratories that index lettuce seed for shipment to Arizona be certified by the agricultural department of the laboratory's state of origin or by the Department, as provided by A.R.S. § 3-145, or be accredited by the National Seed Health System; and to broaden the area under quarantine to include territories of the United States. Under subsection (D)(2), the Department also proposes to require that the label for a container or sub-container of mosaic-indexed lettuce seed include the name of the certified or accredited lab that tested the seed. The proposed rulemaking also exempts breeder seed from the permitting process and broadens the permit Section to allow a person to ship unindexed lettuce seed to Arizona to be mosaic-indexed.
- 6. A reference to any study relevant to the rules that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
None
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
- 8. The summary of the economic, small business, and consumer impact:**

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The proposed rulemaking requires laboratories that index lettuce seed for commercial propagation in Arizona to apply for certification from the agricultural department of their state of origin or the Department's state agricultural laboratory, or to apply for accreditation through the National Seed Health System. Fees prescribed in R3-5-104 are \$200 for initial certification and \$100 for certification renewal. Under R3-5-111, initial certification is valid for 12 months. Fees that other states may charge to certify a laboratory are unknown. There are no fees associated with the National Seed Health System. Additional costs to the producer may result from the proposed requirement to include the name of the laboratory that performs a mosaic index test on the label for containers or sub-containers of lettuce seeds. The Department has determined that the benefits of achieving the objective of the proposed rulemaking outweigh the costs.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Carlos Ramírez, Rules Analyst
Address: Department of Agriculture
1688 W. Adams St.
Phoenix, AZ 85007
Telephone: (602) 542-0962
Fax: (602) 542-5420
E-mail: cramirez@azda.gov

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

An oral proceeding is not scheduled for these proposed rules. To request an oral proceeding or to submit comments, please contact the Rules Analyst listed in item 4 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Arizona legal holidays. If a request for an oral proceeding is not made, the public record in this rulemaking will close at 4:30 p.m. 30 days after the notice is published in the *Arizona Administrative Register*.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

Not applicable

13. The full text of the rule follows:

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE
PLANT SERVICES DIVISION

ARTICLE 2. QUARANTINE

Section
R3-4-233. Lettuce Mosaic Virus

ARTICLE 2. QUARANTINE

R3-4-233. Lettuce Mosaic Virus

A. Definitions. In addition to the definitions provided in ~~R3-4-201~~ R3-4-101, the following terms apply to this Section:

1. "Integrity" means the planting location is free from the pest.
1. "Breeder seed" means unindexed lettuce seed that a lettuce breeder or researcher controls, and that is not available for commercial sale or propagation.
2. "Breeder trial" means breeder seed grown to develop a new variety of lettuce. A breeder or researcher may conduct multiple breeder trials in Arizona under the provisions of subsection (E).
- 2-3. "Mosaic-indexed" means lettuce seed that has been tested by a laboratory approved by a state in which the laboratory is located. The testing sample shall contain at least 30,000 seeds and no seeds shall be found infected with the pest. that a laboratory tested at least 30,000 lettuce seeds from a seed lot and found that all sampled seeds were determined to be free from lettuce mosaic virus. Laboratories that index lettuce seed that is shipped to Arizona shall be certified by the agricultural department of the laboratory's state of origin or by the Arizona Department of Agriculture, in accordance with A.R.S. § 3-145, or shall be accredited by the National Seed Health System. Laboratories shall pro-

vide a copy of their certificate or accreditation letter to the Arizona Department of Agriculture by January 1 of the year that shipping will take place.

~~3-4. "Pest" means the virus, lettuce mosaic virus.~~

~~5. "Unindexed lettuce seed" means lettuce seed that is not mosaic-indexed.~~

~~B. Area Under Quarantine: All states, and districts, and territories of the United States.~~

~~C. Regulated Commodities Covered: Plants and plant parts, including seeds, of all varieties of lettuce, *Lactuca sativa*.~~

~~D. Restrictions.~~

~~1. Any lettuce seed imported into, transported within, planted, or sold in Arizona shall be mosaic-indexed unless authorized by a permit established in subsection (F).~~

~~1. A person shall not import into, transport within, plant, or sell unindexed lettuce seed in Arizona unless the unindexed seed is exempted under subsection (E) or the person obtains a permit as prescribed in subsection (F).~~

~~2. Each container or subcontainer of mosaic-indexed seed shall bear a label with the statement "Zero infected seeds per 30,000 tested (0 in 30,000)" or shall be accompanied by an official certificate from the state of origin attesting that the seed is mosaic-indexed as well as the name of the certified or accredited laboratory that tested the seed.~~

~~3. Lettuce transplants imported into, transported within, planted, or sold in Arizona shall be accompanied by an official certificate from the origin state that includes:~~

~~3. A person shall not import into, transport within, plant, or sell lettuce transplants in Arizona unless the transplants are exempted under subsection (E), or unless an original certificate, issued by the origin state, accompanies the shipment. The certificate shall declare:~~

~~a. The name of the exporter,~~

~~b. The variety name and lot number of the seed from which the transplants were grown, and~~

~~c. Verification that the seeds from which the transplants were grown meet the requirement in subsection (E)(1) were mosaic-indexed.~~

~~4. A grower shall disk or otherwise destroy all lettuce fields within 10 days after the last day of commercial harvest or abandonment, unless prevented by documented weather conditions or circumstances beyond the control of the grower.~~

~~E. Exemptions. The requirements of subsection (D) do not apply to:~~

~~a-1. Lettuce seed sold in retail packages of 1 oz. or less to the homeowner for noncommercial planting, or~~

~~b-2. Any shipments Shipments of lettuce transplants consisting of five flats or less per receiver for noncommercial planting,~~

~~3. Breeder trials for a plot of 1/20 of an acre or less, or~~

~~4. Breeder trials for a plot of greater than 1/20 of an acre but no more than 1.25 acres provided the breeder or researcher:~~

~~a. Places a flag, marked with a trial identification number, at each corner of a breeder trial plot.~~

~~b. Provides the following written information to the Department within 10 business days of planting breeder seed:~~

~~i. GPS coordinates for each breeder trial plot using NAD 83 decimal degrees.~~

~~ii. A detailed map showing the location of each breeder trial plot.~~

~~iii. An identification number for each breeder trial plot.~~

~~iv. The name, address, telephone number, and e-mail address for the breeder or researcher.~~

~~c. Monitors the lettuce for pest symptoms, and notifies the Department, by telephone, by the end of the first business day following the detection of pest symptoms.~~

~~d. Removes all plants exhibiting pest symptoms of lettuce mosaic virus, and transports the plants to a landfill in sealed containers for disposal in a landfill.~~

~~e. Labels bills of lading or invoices accompanying breeder seed into Arizona with the statement "LETTUCE SEED FOR BREEDER TRIALS ONLY."~~

~~f. Destroys lettuce plants remaining in a field within 10 days after the completion of breeding trials unless prevented by documented weather conditions or circumstances beyond the control of the researcher or breeder.~~

~~E-F. Permits.~~

~~1. A lettuce breeder or researcher may apply for a permit for lettuce seed or transplants that have not been mosaic-indexed, provided:~~

~~a. Each permit is for a 1/20 acre plot or less;~~

~~b. The applicant monitors the lettuce for pest symptoms;~~

~~e. The applicant verifies the integrity of the fields;~~

~~d. All plants exhibiting pest symptoms are destroyed, and~~

~~e. The following statement appears on the bill of lading or invoice accompanying each shipment: "This shipment meets Arizona lettuce mosaic permit requirements. Permit number _____."~~

~~2. A seed dealer may apply for a permit to import non-mosaic-indexed lettuce seed for temporary storage in Arizona, provided:~~

~~a. Non-mosaic-indexed lettuce seed is shipped out of state and not distributed for use in Arizona;~~

~~b. The seed dealer maintains and makes available for Department inspection during regular business hours an~~

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inventory record on all non-mosaic-indexed lettuce seed which includes:

- i. The quantity and lot number of non-mosaic-indexed lettuce seed;
 - ii. The date and lot number of non-mosaic-indexed lettuce seed received by the seed dealer;
 - iii. The date and lot number of non-mosaic-indexed lettuce seed shipped out of state by the seed dealer; and
 - iv. The destination of each shipment.
- e. The permit does not preclude inspection of non-mosaic-indexed lettuce seed upon entering Arizona.

1. A person may apply for a permit to import unindexed lettuce seed for temporary storage in Arizona if the person:
 - a. Maintains the identity of the seed while in Arizona.
 - b. Does not sell or distribute the seed for use in the state.
 - c. Does not transfer the seed to any other facility in the state.
 - d. Reships the seed from the state within seven days.
2. A person may apply for a permit to transport unindexed lettuce seed into Arizona to be mosaic-indexed.

~~F. A grower shall disk, or otherwise destroy all lettuce fields within 10 days after the last day of commercial harvest or abandonment, unless prevented by documented weather conditions or documented circumstances beyond the control of the grower, or in the case of a permittee, as soon as the purpose of the crop is completed.~~

~~G.H.~~ Disposition of Violation.

1. Any infected shipment of lettuce seed or transplants arriving in or found within the state, in violation of this Section, shall be immediately destroyed. The owner or the owner's agent shall bear the cost of the destruction.
2. Any ~~untested~~ shipment of unindexed lettuce seed or transplants arriving in or found within the state; in violation of this Section; shall be immediately sent out-of-state or destroyed at the option of the owner or the owner's agent. The owner or the owner's agent shall bear the cost of the destruction or of sending the lettuce seed or transplants out-of-state.
3. Any Arizona lettuce fields in violation of this Section shall be abated as established in A.R.S. §§ 3-204 and 3-205. The owner or person in charge may be assessed a civil penalty established in A.R.S. § 3-215.01.
4. Violation of any provision of ~~the~~ a permit issued under subsection (F) may result in suspension or revocation of the permit.

NOTICE OF PROPOSED RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 11. VETERINARY MEDICAL EXAMINING BOARD

[R08-185]

PREAMBLE

1. Sections Affected

R3-11-101
 R3-11-103
 R3-11-107
 R3-11-108
 Table 1
 R3-11-203
 R3-11-303
 R3-11-401
 R3-11-402
 R3-11-403
 R3-11-501
 R3-11-502
 R3-11-606
 R3-11-607
 R3-11-701

Rulemaking Action

Amend
 Amend
 Amend
 Amend
 Amend
 Amend
 Repeal
 Amend
 Amend
 Amend
 Amend
 Amend
 Amend
 Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 32-2207(8)

Implementing statutes: A.R.S. §§ 32-2201, 32-2207(2), 32-2207(3), 32-2212, 32-2213, 32-2216, 32-2218, 32-2232(12), 32-2233(B)(2), 32-2241, 32-2242, 32-2247, 32-2248, 32-2292, 32-3208, 41-1072 through 41-1079

3. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 14 A.A.R. 2041, May 23, 2008

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

Name: Jenna Jones, Executive Director
Address: 1400 W. Washington St., Suite 240
Phoenix, AZ 85007
Telephone: (602) 364-1739
Fax: (602) 364-1039
E-mail: jenna.jones@vetboard.az.gov

5. An explanation of the rules, including the agency's reasons for initiating the rules:

The Board is making technical and clarifying changes to its rules. The Board is adding definitions to clarify terms used in the rules. Other changes are being made to the continuing education provisions to clarify the ways continuing education may be obtained, allow for provider pre-approval of continuing education, and require written documentation of continuing education with a renewal application. The Board is adding requirements that are currently required by the Board on renewal applications for licensees. The Board is also clarifying how a veterinary technician student may submit an application before he/she graduates. The Board is making minor changes to the standards of practice for licensees and adding a rule that requires a sharps container in the veterinary medical premises.

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

The Board did not review or rely on any study.

7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

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

Annual cost/revenue changes are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000.

The rulemaking impacts the Board, licensed veterinarians, temporary permittees, veterinary technicians, veterinary technician students, veterinary medical premises licensees, providers of continuing education, and consumers of veterinary services. The Board bears moderate costs for writing the rules and related economic, small business, and consumer impact statement and mailing the new rules to interested persons. The Board's administrative costs to implement the rules are minimal.

The economic impact is minimal to a licensee for adding a requirement on a renewal form for mailing and practice addresses and for whether disciplinary action has been taken or is pending before a licensing authority in any state.

The economic impact is minimal to a licensee and certificate holder for clarifying the ways by which the licensee or certificate holder may obtain continuing education and the maximum number of hours in various media forms. A licensee or certificate holder who obtains continuing education from a provider who has obtained pre-approval of continuing education is benefited by R3-11-402(B) and (C) because the licensee or certificate holder will be able to know up front rather than at renewal whether the continuing education is approved by the Board. A provider of continuing education is also benefited because the provider can represent to licensees and certificate holders that the continuing education is pre-approved by the Board.

In R3-11-501(8), the Board is changing the time for a licensed veterinarian to provide an animal owner's records to an animal owner or licensed veterinarian from 10 working days to 10 calendar days. This decreases the time the licensed veterinarian has to provide the records but benefits a consumer who may need the records sooner to protect the consumer's animal. The economic impact for this change should be minimal to the licensed veterinarian.

R3-11-606(B) benefits a veterinary technician student by allowing the student to apply to take an examination even though the veterinary technician student is graduating at least 30 days before an examination date.

To be consistent with R3-11-403, the Board is adding the requirement in R3-11-607 for a veterinary technician to submit written documentation of continuing education. Because this is already a requirement there should be no additional economic impact.

The cost for a veterinary medical premises to have a sharps container as stated in R3-11-701 should be minimal. The Board believes it is important for a licensee of a veterinary medical premises to protect persons on the premises from exposure to biohazardous medical waste and considers this a safety requirement.

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The Board does not expect that consumers will be required to pay any costs as a result of the rules. Consumers benefit from the rules because the rules further the Board's mission to ensure that only competent veterinarians practice and certified veterinary technicians work in Arizona by protecting consumers from improper or inadequate delivery of veterinary medical services.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Jenna Jones, Executive Director
Address: 1400 W. Washington St., Suite 240
Phoenix, AZ 85007
Telephone: (602) 364-1739
Fax: (602) 364-1039
E-mail: jenna.jones@vetboard.az.gov

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

An oral proceeding will be conducted by the Board at the following location in the state for the purpose of taking oral and written testimony on the proposed rules from members of the public:

Date: July 14, 2008
Time: 9:00 a.m.
Location: 1400 W. Washington St., Basement Room B1
Phoenix, AZ 85007

The public record on the proposed rulemaking will close at 5:00 p.m. on July 14, 2008.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 3. AGRICULTURE

CHAPTER 11. VETERINARY MEDICAL EXAMINING BOARD

ARTICLE 1. GENERAL PROVISIONS

Section
R3-11-101. Definitions
R3-11-103. Renewal of Veterinary License
R3-11-107. Residence and Veterinary Practice Address Addresses
R3-11-108. Time-frames for Licensure, Certification, ~~and~~ Permit, and Continuing Education Approvals
Table 1. Time-frames (in days)

ARTICLE 2. APPLICATION AND EXAMINATION FOR LICENSURE

Section
R3-11-203. Information Required for Examination Qualification

ARTICLE 3. TEMPORARY PERMITEES

Section
R3-11-303. ~~Multiple Employment~~ Repealed

ARTICLE 4. CONTINUING EDUCATION REQUIREMENTS

Section
R3-11-401. Continuing Education
R3-11-402. Approval of Continuing Education

R3-11-403. Documentation of Attendance

ARTICLE 5. STANDARDS OF PRACTICE

Section

R3-11-501. Ethical Standards

R3-11-502. Standards of Practice

ARTICLE 6. VETERINARY TECHNICIANS

Section

R3-11-606. Application for a Veterinary Technician Certificate

R3-11-607. Renewal of Veterinary Technician Certificate

ARTICLE 7. VETERINARY MEDICAL PREMISES AND EQUIPMENT

Section

R3-11-701. General Veterinary Medical Premise Standards

ARTICLE 1. GENERAL PROVISIONS

R3-11-101. Definitions

The following definitions apply unless otherwise specified:

1. No change
2. No change
3. No change
4. No change
5. No change
- 7-6. “Current” means up to date and extending to the present time.
- ~~6-7.~~ No change
- ~~7-8.~~ No change
- ~~8-9.~~ No change
10. “ECFVG” means Educational Commission for Foreign Veterinary Graduates.
- ~~9-11.~~ No change
- ~~10-12.~~ No change
- 11-13. “Livestock” means the same as the ~~definition~~ definitions of livestock and ratites in A.R.S. §§ 32-1201 (5) and (9).
- ~~12-14.~~ No change
- ~~13-15.~~ No change
- ~~14-16.~~ No change
- ~~15-17.~~ No change
- ~~16-18.~~ No change
19. “PAVE” means Program for Assessment of Veterinary Education Equivalence.
- ~~17-20.~~ No change
- ~~18-21.~~ No change
- ~~19-22.~~ No change
23. “RACE” means Registry of Approved Continuing Education and is a subdivision of the American Association of Veterinary State Boards.
- ~~20-24.~~ No change
- ~~21-25.~~ No change
26. “Sharps container” means a puncture resistant, leak proof container that can be closed and is used for handling, storing, transporting, and disposing of objects that may cut or penetrate skin or mucosa, such as needles, scalpel blades, or razor blades.
27. “Veterinary assistant” means an individual who is not a veterinary technician but was employed by a veterinarian to work under the supervision of the veterinarian for at least two years as set out in A.R.S. § 32-2242(B)(2).
- ~~22-28.~~ No change
- ~~23-29.~~ No change

R3-11-103. Renewal of Veterinary License

A. No change

B. No change

C. No change

1. A renewal form, provided by the Board, that is signed and dated by the licensee and contains:
 - a. The licensee’s name, ~~social security number~~, residence, mailing and veterinary practice addresses, location name

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- b. ~~Current information concerning the license status, including whether any disciplinary action has been taken by or is pending before the Board.~~
- b. A statement of whether the licensee is licensed to practice veterinary medicine in any other state of the United States, including the name of the state, license number, license issuance date, and status of the license;
- c. A statement of whether a complaint has been filed during the two-year period preceding the renewal date against the licensee with a veterinary regulatory authority in another state, including the date of the complaint, description of the complaint, and resolution of the complaint;
- d. A statement of whether the licensee is currently under investigation by a veterinary regulatory authority in another state, including the name of the state, license number, and status of the investigation;
- e. A statement of whether, within the two-year period preceding the renewal date, any disciplinary action has been taken against the licensee's veterinary license in another state including:
 - i. The name of the state;
 - ii. The license number;
 - iii. The reason for the disciplinary action;
 - iv. Whether the disciplinary action is currently pending; and
 - v. Whether the license has been suspended, revoked or placed on probation;
- f. A statement of whether, within the two-year period preceding the renewal date, the licensee has been charged with a felony or any misdemeanor involving conduct that may affect patient health and safety including:
 - i. The charged felony or misdemeanor;
 - ii. The city, county, and state where the felony or misdemeanor took place;
 - iii. The court having jurisdiction over the felony or misdemeanor;
 - iv. Whether the charges were dismissed;
 - v. The date of the conviction;
 - vi. Whether the conviction was set aside;
 - vii. Notice of expungment, if applicable;
 - viii. Notice of restoration of civil rights, if applicable; and
 - ix. Probation officer's name, address, and telephone number, if applicable;
- g. A statement that the licensee has met the continuing education requirements in Article 4; and
- h. A statement by the licensee that the information contained on the renewal application is true and correct.

- 2. No change
- 3. No change

- D. No change
- E. No change

R3-11-107. Residence and ~~Veterinary Practice, Address~~ Veterinary Practice, Address Addresses

- A. Within 20 days after the issuance of a license, a licensee shall provide written notice to the Board of all residence and veterinary practice addresses.
- B. A licensee shall provide written notice to the Board within 20 days after a change of residence or veterinary practice addresses.

R3-11-108. Time-frames for Licensure, Certification, ~~and Permit,~~ and Continuing Education Approvals

- A. No change
 - 1. No change
 - 2. "Applicant" means an individual requesting a certificate, permit, ~~or license,~~ or continuing education approval from the Board.
 - 3. No change
 - 4. No change
- B. No change
- C. No change
 - 1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. For approval or denial of a veterinary technician certificate, when the applicant takes a national veterinary technician examination or Arizona veterinary technician examination required by A.R.S. § 32-2243; ~~or~~
 - e. For approval or denial of a veterinary medical premises license, when the Board receives an application packet;
 - f. For approval or denial of continuing education, when the Board receives an application packet containing a written request; and

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- g. For approval or denial of an animal crematory license, when the Board receives an application packet.
- 2. No change
- 3. No change
- 4. No change
- D. No change
 - 1. No change
 - 2. No change
 - 3. No change
- E. No change
- F. No change
- G. No change

Table 1. Time-frames (in days)

Type of Applicant	Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Substantive Review Time-frame
Veterinary Medical License by Examination (R3-11-201)	Approval to Take the North American Licensing Examination	A.R.S. § 32-2214	60	15	45
Veterinary Medical License by Examination, Endorsement, or for a Specialty License (R3-11-201)	Approval to Take a State Examination	A.R.S. § 32-2214	60	15	45
Temporary Permittee	Temporary Permit	A.R.S. § 32-2216	30	15	15
Veterinary License by Examination, Endorsement, for a Specialty License, or Temporary Permittee (R3-11-201 & R3-11-301)	Veterinary License	A.R.S. § 32-2212 A.R.S. § 32-2213	60	15	45
Veterinary Technician (R3-11-606)	Approval to Take a National Veterinary Technician Examination or State Examination	A.R.S. § 32-2243	60	15	45
Veterinary Technician (R3-11-606)	Veterinary Technician Certificate	A.R.S. § 32-2242 A.R.S. § 32-2244	60	30	30
Veterinary Medical Premises (R3-11-707)	Veterinary Medical Premises License	A.R.S. § 32-2271 A.R.S. § 32-2272	90	30	60
Animal Crematory (R3-11-1002)	Animal Crematory License and Renewal	A.R.S. § 32-2292	90	30	60
<u>Licensee and Certificate Holder (R3-11-402)</u>	<u>Approval for Continuing Education</u>	<u>A.R.S. § 32-2201(8)</u>	<u>60</u>	<u>30</u>	<u>30</u>
Licensee (R3-11-405)	Approval for a Continuing Education Waiver	A.R.S. § 32-2207(8)	60	30	30
<u>Person requesting continuing education pre-approval (R3-11-402)</u>	<u>Pre-approval of continuing education</u>	<u>A.R.S. § 2207(8)</u>	<u>60</u>	<u>30</u>	<u>30</u>

ARTICLE 2. APPLICATION AND EXAMINATION FOR LICENSURE

R3-11-203. Information Required for Examination Qualification

- A. No change

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- B. No change
- C. No change
- D. No change
- E. No change
- F. No change
- G. At the time of application, an applicant shall submit to the Board a typewritten letter or current resumé summarizing the applicant's experience and qualifications.

ARTICLE 3. TEMPORARY PERMITEES

R3-11-303. ~~Multiple Employment Repealed~~

~~A temporary permittee working under the direction, supervision, and control of more than 1 licensed veterinarian shall notify the Board within 24 hours of a change in a supervising veterinarian.~~

ARTICLE 4. CONTINUING EDUCATION REQUIREMENTS

R3-11-401. Continuing Education

- A. During the two-year period preceding license expiration, a licensee shall complete 20 credit hours of Board-approved continuing education, which may be obtained in any of the following ways:
 - 1. A maximum of two credit hours ~~may be~~ in practice management; ~~and~~
 - 2. ~~A maximum of five hours may be nonecontact education, of which two hours may be by tapes.~~
 - 2. One credit hour for each hour of attendance at a veterinary college seminar;
 - 3. One credit hour for each hour of attendance at a scientific meeting related to veterinary medicine;
 - 3-4. A maximum of five credits hours for:
 - a. Each hour spent developing or presenting a presentation related to veterinary medicine.
 - b. Each hour of study using tapes or CD-ROM, and
 - c. Each hour of study of articles in veterinary journals or periodicals pertaining to veterinary medicine or controlled substances; and
 - 4-5. One credit hour for each hour of continuing education obtained on the internet.
- B. No change
- C. During the two-year period preceding certificate expiration, a certificate holder shall complete 10 credit hours of Board-approved continuing education-; which may be completed in any of the following ways:
 - 1. One credit hour for each hour of attendance at a veterinary college seminar;
 - 2. One credit hour for each hour of attendance at a class at a veterinary technology school;
 - 3. One credit hour for each hour of attendance at a scientific meeting related to the work of a veterinary technician;
 - 4. A maximum of two and one half credits hours for:
 - a. Each hour spent developing or presenting a presentation related to the work of a veterinary technician;
 - b. Each hour of study using tapes or CD-ROM; and
 - c. Each hour of study of articles in veterinary journals or periodicals pertaining to veterinary medicine or controlled substances; and
 - 5. One credit hour for each hour of continuing education obtained on the internet.
- D. No change

R3-11-402. Approval of Continuing Education

- A.** The following continuing education is approved by the Board:
 - 1. No change
 - a. Continuing education taught in a ~~school of veterinary medicine~~ veterinary college; ~~or~~
 - b. Continuing education sponsored by the Arizona Veterinary Medical Association, American Association of Veterinary State Boards, ~~or~~ a state or national veterinary association or academy approved by the Board, or continuing education approved according to subsections (B) and (C); or
 - c. Continuing education approved by RACE;
 - 2. No change
 - a. No change
 - b. Continuing education sponsored by the Arizona Veterinary Medical Association or American Association of Veterinary States Boards or approved by RACE; ~~or~~
 - c. Continuing education approved by the Board that is sponsored by a state or national veterinary technician association or academy-;
 - d. Continuing education approved by RACE of the American Association of Veterinary State Boards; or
 - e. Continuing education approved according to subsections (B) and (C).
- B.** In addition to the continuing education approved according to subsection (A), a person who provides continuing education may request pre-approval of continuing education by submitting to the Board at least 75 calendar days before the continu-

ing education takes place, an application packet that contains a written request that includes:

1. A description of the continuing education;
2. The date, time, and place where the continuation education will take place;
3. The number of credit hours of the continuing education;
4. The name of each individual providing the continuing education, if available; and
5. The name of the organization providing the continuing education, if applicable.

C. In determining whether to approve the application submitted according to subsection (B), the Board shall consider whether the continuing education:

1. Is designed to provide current developments, skills, and procedures related to veterinary medicine or work of a certificate holder;
2. Is developed and provided by an individual with knowledge and experience in the subject area; and
3. Contributes directly to the professional competence of the licensee or certificate holder.

D. The Board shall approve or deny a request for pre-approval according to the time-frames set forth in Table 1.

R3-11-403. Documentation of Attendance

Except as stated in R3-11-401(B), a licensee or certificate holder shall submit a written document of continuing education with a renewal application that includes:

1. No change
2. No change
3. No change
4. No change
5. No change
6. If the continuing education was obtained on the internet, a copy of a document that states the number of hours obtained on the internet.

ARTICLE 5. STANDARDS OF PRACTICE

R3-11-501. Ethical Standards

No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. A veterinarian shall provide records or copies of records of veterinary medical services, including copies of radiographs, to an animal owner or other licensed veterinarian currently providing veterinary medical services within 10 working calendar days from the date of the animal owner's or other licensed veterinarian's request, or in less than 10 working calendar days if the animal's medical condition requires.
9. No change

R3-11-502. Standards of Practice

- A.** No change
- B.** No change
 1. No change
 2. No change
- C.** No change
- D.** No change
- E.** No change
- F.** No change
- G.** No change
- H.** No change
 1. No change
 2. No change
 3. No change
 4. No change
 5. No change
- I.** No change
- J.** No change

Notices of Proposed Rulemaking

1. No change
2. No change
- K. No change
 1. No change
 2. No change
 3. No change
- L. No change
 1. No change
 2. No change
 3. No change
 4. Results of examination, including temperature, heart rate, respiratory rate, ~~tentative or definitive diagnosis~~, and general condition of the animal, except livestock;
 5. The animal's tentative or definitive diagnosis;
 - ~~5-6.~~ No change
 - ~~6-7.~~ Name of each medication administered including:
 - a. ~~concentration~~, Concentration, except when the medication is only offered in one size and strength;
 - b. ~~amount~~, Amount;
 - c. ~~frequency~~, Frequency; and
 - d. ~~route~~ Route of administration, ~~except when the medication is only offered in one size and strength;~~
 - ~~7-8.~~ No change
 - ~~8-9.~~ No change
 - ~~9-10.~~ No change
 - ~~10-11.~~ No change
- M. No change
 1. No change
 2. No change
 3. No change
 4. No change
 5. No change
- N. No change
 1. No change
 2. No change
 - a. No change
 - b. A description of the animal that includes species, breed, sex, ~~size~~, age, and color;
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 3. No change
- O. No change
 1. No change
 2. No change

ARTICLE 6. VETERINARY TECHNICIANS

R3-11-606. Application for a Veterinary Technician Certificate

- A.** ~~No earlier than January 1 and no later than 65 days before an examination date, an applicant for a veterinary technician certificate shall submit an application packet to the Board that contains:~~
1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - i. No change
 - ii. No change
 2. No change
 3. A notarized letter, as required in A.R.S. § 32-2242, from each Arizona licensed veterinarian who employed the applicant during the 2 two years the applicant served as a veterinary ~~technician~~ assistant, verifying the employment, indi-

cating the length of employment, and recommending the applicant; and

4. No change

B. A veterinary technician student who expects to graduate at least 30 days before an examination date shall submit to the Board no later than 65 days before the examination date:

1. The application required in subsection (A), and

2. In lieu of the requirements in subsection (A)(1)(d)(i), a letter from the dean of the school that indicates the applicant is in good standing and states the expected date of graduation.

C. A veterinary technician student who submits an application according to subsection (B) shall submit to the Board the documents required in subsection (A)(1)(d)(i) no later than 15 days following the date of graduation.

R3-11-607. Renewal of Veterinary Technician Certificate

A. ~~A certified veterinary technician shall submit the renewal fee and information concerning current employment status, location of employment, and residence and practice addresses before~~ No later than February 1 of every odd-numbered year, ~~a certificate holder shall submit:~~ ~~on a~~

1. A renewal application form, provided and mailed to the ~~certified veterinary technician~~ certificate holder by the Board, that is signed and dated by the certificate holder and contains:

a. The certificate holder's name, residence, and work addresses, location of employment and telephone number for work address;

b. A statement of whether, within the two-year period preceding the renewal date, the certificate holder has been charged with a felony or any misdemeanor involving conduct that may affect patient health and safety including:

i. The charged felony or misdemeanor;

ii. The city, county, and state where the felony or misdemeanor took place;

iii. The court having jurisdiction over the felony or misdemeanor;

iv. Whether the charges were dismissed;

v. The date of the conviction;

vi. Whether the conviction was set aside;

vii. Notice of expungment, if applicable;

viii. Notice of restoration of civil rights, if applicable; and

ix. Probation officer's name, address, and telephone number, if applicable; and

c. A statement by the certificate holder that the information contained on the renewal form is true and correct.

2. The written documentation of continuing education required in R3-11-403; and

3. The fee required by the Board.

B. ~~A certified veterinary technician certificate holder who fails to submit the certificate renewal fee, and required information required in subsection (A) before February 1 of every odd-numbered year, shall forfeit~~

1. Forfeits all privileges and rights extended by the certificate, and

2. ~~The veterinary technician shall~~ Shall immediately cease performing veterinary technician services until the certificate holder:

a. ~~complying~~ Complies with the requirements of subsection (A), and

b. ~~paying~~ Pays the delinquency fee required in R3-11-105 in addition to the certificate renewal fee.

ARTICLE 7. VETERINARY MEDICAL PREMISES AND EQUIPMENT

R3-11-701. General Veterinary Medical Premises Standards

A responsible veterinarian shall ensure that:

1. No change

2. No change

3. No change

4. No change

5. No change

6. Storage space is provided on the veterinary medical premises for biohazardous medical waste pending disposal pick-up; and

7. If animals, other than livestock, will be housed on a veterinary medical premises, an individual compartment, equipped with a latch, for each animal housed on the veterinary medical premises is provided; and

8. A sharps container is provided on the veterinary medical premises.

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

[R08-181]

PREAMBLE

- 1. Sections Affected**

R4-23-110	<u>Rulemaking Action</u>
R4-23-412	Amend
R4-23-413	New Section
R4-23-617	New Section
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**

Authorizing statutes: A.R.S. §§ 32-1904(A)(1) and (2) and (B)(3)
Implementing statutes: A.R.S. § 32-1910
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 14 A.A.R. 1619, May 2, 2008
- 4. The name and address of agency personnel with whom persons may communicate regarding the rule:**

Name: Dean Wright, Compliance Officer
Address: Board of Pharmacy
1700 W. Washington St., Suite 250
Phoenix, AZ 85007
Telephone: (602) 771-2744
Fax: (602) 771-2749
E-mail: dwright@azpharmacy.gov
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**

During the 48th Legislative Session in 2007, the Legislature passed HB 2155 adding A.R.S. § 32-1910 *Emergencies; continued provision of services* to the Pharmacy Act. A.R.S. § 32-1910 requires the Board to cooperate with this state and a county, city, or town to ensure the provision of drugs, devices, and professional services to individuals affected by a declared state of emergency related to a natural disaster or terrorist attack. A.R.S. § 32-1910 allows the Board to make rules implementing the statute.

The proposed rulemaking will include necessary new definitions added to R4-23-110 (Definitions) and three new Sections: R4-23-412 (Emergency Refill Prescription Dispensing), R4-23-413 (Temporary Recognition of Non-resident Licensure), and R4-23-617 (Temporary Pharmacy Facilities or Mobile Pharmacies). The new Sections will establish requirements for the dispensing of an emergency refill prescription, temporary recognition of a non-resident licensee working in Arizona during a declared emergency, and operation of temporary pharmacy facilities or mobile pharmacies during a declared emergency. The rule will include format, style, and grammar necessary to comply with the current rules of the Secretary of State and the Governor's Regulatory Review Council.

The Board believes that amending these rules will benefit the public and the pharmacy community by clearly establishing the requirements for dispensing of an emergency refill prescription during a declared emergency, temporary recognition of a nonresident licensee working in Arizona during a declared emergency, and operation of temporary pharmacy facilities or mobile pharmacies during a declared emergency.
- 6. A reference to any study relevant to the rules that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The agency did not review or rely on any study relevant to the rule.
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

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

The proposed rules will impact the Board, pharmacists, interns, technicians, and pharmacies. The proposed rules' impact on the Board will be the usual rulemaking-related costs, which are minimal. The proposed rules will only impact the Board during a declared emergency. During such an emergency, the Board staff will be required to monitor temporary pharmacy facilities and mobile pharmacies for compliance. The Board estimates the economic impact of a declared emergency will be minimal to moderate. The cost of a compliance inspection is approximately \$250. The Board estimates a single declared emergency might require from one to 12 inspections for an estimated cost of from \$250 to \$3000.

The proposed rules will have minimal economic impact on pharmacists, interns, technicians, and pharmacies. The proposed rules are necessary implement statute. The rules will provide guidance for nonresident licensees who come to Arizona to work in a relief effort during a declared emergency. The proposed rules allow those nonresident licensees to work without obtaining an Arizona pharmacist, intern, or technician license, so there is no economic impact for those licensees. The proposed rules allow pharmacies that are damaged or destroyed by a disaster to temporarily relocate the business or to set up a mobile pharmacy to continue serving the public during the declared emergency. The proposed rules have no economic impact on the public. The public benefits from rules that ensure the provision of drugs, devices, and professional services to individuals affected by a declared state of emergency related to a natural disaster or terrorist attack.

The proposed rules will benefit the public and the pharmacy community by clearly establishing the requirements for dispensing of an emergency refill prescription during a declared emergency, temporary recognition of a nonresident licensee working in Arizona during a declared emergency, and operation of temporary pharmacy facilities or mobile pharmacies during a declared emergency.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Dean Wright, Compliance Officer
Address: Board of Pharmacy
1700 W. Washington St., Suite 250
Phoenix, AZ 85007
Telephone: (602) 771-2744
Fax: (602) 771-2749
E-mail: dwright@azpharmacy.gov

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

Comments may be written or presented orally. Written comments must be received by 5:00 p.m., Monday, July 14, 2008. An oral proceeding is scheduled for:

Date: July 14, 2008
Time: 10:30 a.m.
Location: 1700 W. Washington St., 3rd Floor Board Room
Phoenix, AZ 85007

A person may request information about the oral proceeding by contacting the person listed above.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

12. Incorporations by reference and their location in the rule:

None

13. The full text of the rule follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

ARTICLE 1. ADMINISTRATION

ARTICLE 4. PROFESSIONAL PRACTICES

Section

R4-23-412. ~~Reserved~~ Emergency Refill Prescription Dispensing

R4-23-413. ~~Reserved~~ Temporary Recognition of Nonresident Licensure

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

Section

R4-23-617. ~~Reserved~~ Temporary Pharmacy Facilities or Mobile Pharmacies

ARTICLE 1. ADMINISTRATION

R4-23-110. Definitions

In addition to definitions in A.R.S. § 32-1901, the following definitions apply to 4 A.A.C. 23:

“Active ingredient” No change

“Alternate physician” No change

“Approved course in pharmacy law” No change

“Approved Provider” No change

“Authentication of product history” No change

“Automated storage and distribution system” No change

“Batch” No change

“Beyond-use date” No change

“Biological safety cabinet” No change

“Care-giver” No change

“Community pharmacy” No change

“Component” No change

“Compounding and dispensing counter” No change

“Computer system” No change

“Computer system audit” No change

“Contact hour” No change

“Container” No change

“Continuing education” No change

“Continuing education activity” No change

“Continuing education unit” or “CEU” No change

“Correctional facility” No change

“CRT” No change

“Current good compounding practices” No change

“Current good manufacturing practice” No change

“Cytotoxic” No change

“Day” No change

“DEA” No change

“Declared disaster areas” means areas designated by the governor or by a county, city, or town under A.R.S. § 32-1910 as those areas that have been adversely affected by a natural disaster or terrorist attack and require extraordinary measures to provide adequate, safe, and effective health care for the affected population.

“Delinquent license” No change

“Dietary supplement” No change

“Digital signature” No change

“Dispensing pharmacist” No change

“Drug sample” No change

“Drug therapy management” No change

“Drug therapy management agreement” No change

“Electronic signature” No change
“Eligible patient” No change
“Extreme emergency” No change
“FDA” No change
“Immediate notice” No change
“Inactive ingredient” No change
“Internal test assessment” No change
“ISO Class 5 environment” No change
“ISO Class 7 environment” No change
“Limited-service correctional pharmacy” No change
“Limited-service long-term care pharmacy” No change
“Limited-service mail-order pharmacy” No change
“Limited-service nuclear pharmacy” No change
“Limited-service pharmacy permittee” No change
“Limited-service sterile pharmaceutical products pharmacy” No change
“Long-term care consultant pharmacist” No change
“Long-term care facility” or “LTCF” No change
“Lot” No change
“Lot number” or “control number” No change
“Materials approval unit” No change
“Mechanical counting device for a drug in solid, oral dosage form” No change
“Mechanical storage and counting device for a drug in solid, oral dosage form” No change
“Mediated instruction” No change
“Mobile pharmacy” means a pharmacy that is self propelled or movable by another vehicle that is self propelled.
“MPJE” No change
“NABP” No change
“NABPLEX” No change
“NAPLEX” No change
“Order” No change
“Other designated personnel” No change
“Outpatient” No change
“Outpatient setting” No change
“Patient profile” No change
“Pharmaceutical patient care services” No change
“Pharmaceutical product” No change
“Pharmacist-administered immunizations training program” No change
“Pharmacy counter working area” No change
“Pharmacy law continuing education” No change
“Pharmacy permittee” No change
“Precursor chemical” No change
“Prepackaged drug” No change
“Prep area” No change
“Proprietor” No change
“Provider pharmacy” No change
“Radiopharmaceutical” No change
“Radiopharmaceutical quality assurance” No change

- “Radiopharmaceutical services” No change
“Red C stamp” No change
“Refill” No change
“Regulated chemical” No change
“Remodel” No change
“Remote drug storage area” No change
“Resident” No change
“Responsible person” No change
“Score transfer” No change
“Security paper” No change
“Shared order filling” No change
“Shared order processing” No change
“Shared services” No change
“Sight-readable” No change
“Single-drug audit” No change
“Single-drug usage report” No change
“Standard-risk sterile pharmaceutical product” No change
“State of emergency” means a governmental declaration issued as a result of a natural disaster or terrorist attack that results in individuals being unable to refill existing prescriptions.
“Sterile pharmaceutical product” No change
“Strength” No change
“Substantial-risk sterile pharmaceutical product” No change
“Supervision” No change
“Supervisory physician” No change
“Supplying” No change
“Support personnel” No change
“Temporary pharmacy facility” means a facility established as a result of a declared state of emergency to temporarily provide pharmacy services within or adjacent to declared disaster areas.
“Transfill” No change
“Verified signature” or “signature verifying” No change
“Wholesale distribution” No change
“Wholesale distributor” No change

ARTICLE 4. PROFESSIONAL PRACTICES

R4-23-412. ~~Reserved~~ Emergency Refill Prescription Dispensing

- A.** When a state of emergency is declared under A.R.S. § 32-1910(A) or (B) and the state of emergency results in individuals being unable to refill existing prescriptions, a pharmacist may work in the affected county, city, or town and may dispense to an affected individual a one-time emergency refill prescription of up to a 30-day supply of a prescribed medication if both of the following apply:
1. In the pharmacist’s professional opinion the medication is essential to the maintenance of life or to the continuation of therapy, and
 2. The pharmacist makes a good faith effort to reduce the information to a written prescription marked “emergency prescription” and files and maintains the prescription as required by law.
- B.** If the state of emergency declared under A.R.S. § 32-1910(A) or (B) continues for at least 21-days after the pharmacist dispenses an emergency prescription under subsection (A), the pharmacist may dispense one additional emergency refill prescription of up to a 30-day supply of the prescribed medication if the pharmacist complies with subsection (A)(2).
- C.** A pharmacist’s authority to dispense emergency prescriptions under this Section ends when the declared state of emergency is terminated.

R4-23-413. ~~Reserved~~ Temporary Recognition of Nonresident Licensure

- A.** When a state of emergency is declared under A.R.S. § 32-1910(A) or (B):

Notices of Proposed Rulemaking

1. A pharmacist who is not licensed in this state, but who is currently licensed in another state, may dispense prescription medications in those affected counties, cities, or towns in this state during the time that a declared state of emergency exists under A.R.S. § 32-1910(A) or (B) if both of the following apply:
 - a. The pharmacist provides proof of current licensure in another state, and
 - b. The pharmacist is engaged in a legitimate relief effort during the period of time a declared state of emergency exists.
 2. Acting under the direct supervision of a pharmacist, a pharmacy technician or pharmacy intern not licensed in this state, but currently licensed or registered in another state, may assist a pharmacist in dispensing prescription medications in affected counties, cities, or towns in this state during the time that a declared state of emergency exists under A.R.S. § 32-1910(A) or (B) if both of the following apply:
 - a. The pharmacy technician or pharmacy intern provides proof of current licensure in another state, and
 - b. The pharmacy technician or pharmacy intern is engaged in a legitimate relief effort during the period of time a declared state of emergency exists.
- B.** The temporary recognition of nonresident licensure or registration shall cease with the termination of the declared state of emergency.

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

R4-23-617. ~~Reserved~~ Temporary Pharmacy Facilities or Mobile Pharmacies

- A.** Pharmacies located in declared disaster areas, nonresident pharmacies, and pharmacies licensed or permitted in another state but not licensed or permitted in this state, if necessary to provide pharmacy services during a declared state of emergency, may arrange to temporarily locate or relocate to a temporary pharmacy facility or mobile pharmacy if the temporary pharmacy facility or mobile pharmacy:
1. Is under the control and management of the pharmacist-in-charge or a designated supervising pharmacist;
 2. Is located within or adjacent to the declared disaster area;
 3. Notifies the Board of its location;
 4. Is properly secured to prevent theft and diversion of drugs;
 5. Maintains records in accordance with Arizona statutes and rules; and
 6. Ceases the provision of pharmacy services with the termination of the declared state of emergency, unless it possesses a current resident pharmacy permit issued by the Board under A.R.S. §§ 32-1929, 32-1930, and 32-1931.
- B.** The Board, in accordance with Board rules, shall have the authority to approve or deny temporary pharmacy facilities and mobile pharmacies and shall make arrangements for appropriate monitoring and inspection of the temporary pharmacy facilities and mobile pharmacies on a case-by-case basis. Approval of temporary pharmacy facilities and mobile pharmacies will be based on the need, type, and scope of the declared state of emergency, as well as the ability of the temporary pharmacy facilities or mobile pharmacies to comply with state and federal drug law.
- C.** A temporary pharmacy facility wishing to permanently operate at its temporary site shall apply for and receive a permit issued under A.R.S. §§ 32-1929, 32-1930, and 32-1931.
- D.** A mobile pharmacy, placed in operation during a declared state of emergency, shall not operate permanently.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ADMINISTRATION

[R08-188]

PREAMBLE

<u>1. Sections Affected</u>	<u>Rulemaking Action</u>
R9-22-1001	Amend
R9-22-1002	Amend
R9-22-1003	Amend
R9-22-1004	Amend
R9-22-1005	Amend
R9-22-1007	Amend
R9-22-1008	Amend

Notices of Proposed Rulemaking

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. §§ 36-2901, 36-2903(F), 36-2903.01 (K), and 36-2915

Implementing statute: A.R.S. §§ 36-2901, 36-2903(F), 36-2903.01 (K), and 36-2915

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 14 A.A.R. 2244, June 6, 2008

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

Name: Mariaelena Ugarte
Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson St., Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4693
Fax: (602) 253-9115
E-mail: AHCCCSRules@azahcccs.gov

5. An explanation of the rule, including the agency's reasons for initiating the rule:

The AHCCCS Administration proposes to amend the sections identified above as a result of a Five-Year Review Report approved by the Governor's Regulatory Review Council on May 6, 2008. The subjects requiring amendment are the definitions, payor of last resort requirements, cost avoidance requirements and other technical changes.

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

The Administration did not review any study relevant to these rules.

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

Not applicable

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

It is anticipated that the contractors, private sector, members, providers, small businesses, political subdivisions, the Department, and the Administration will be minimally impacted by the changes to the rule language. The areas requiring revision are for clarity as a result of a Five-Year Rule Review approved by the Governor's Regulatory Review Council. The Administration is proposing amendments to the rules to revise, reorganize, and clarify areas, such as, that county requirements are no longer used; reflect changes as required by DRA and 42 CFR 433.139; describe where the Administration or contractor may pay the difference between TPL, Medicare, or a contracted rate and the Capped fee-for-service schedule; and clarify the exceptions of when the Administration may not be the payor of last resort.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Mariaelena Ugarte
Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4693
Fax: (602) 253-9115
E-mail: AHCCCSRules@azahcccs.gov

Proposed rule language will be available on the AHCCCS web site www.azahcccs.gov the week of June 2, 2008. Please send written comments to the above address by 5:00 p.m., July 15, 2008. E-mail comments will also be accepted during this time-frame.

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

Date: July 15, 2008

Time: 10:00 a.m.

Location: AHCCCS
701 E. Jefferson St.
Phoenix, AZ 85034

Nature: Public Hearing

Date: July 15, 2008
Time: 10:00 a.m.

Location: ALTCS: Arizona Long-term Care System
110 S. Church, Suite 1360
Tucson, AZ 85701

Nature: Public Hearing

Date: July 15, 2008
Time: 10:00 a.m.

Location: ALTCS: Arizona Long-term Care System
3480 E. Route 66
Flagstaff, AZ 86004

Nature: Public Hearing

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

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

ARTICLE 10. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES

Section

R9-22-1001. Definitions
R9-22-1002. General Provisions
R9-22-1003. Cost Avoidance
R9-22-1004. Member Participation
R9-22-1005. Collections
R9-22-1007. Notification for Perfection, Recording, and Assignment of AHCCCS Liens
R9-22-1008. Notification Information for Liens

ARTICLE 10. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES

R9-22-1001. Definitions

In addition to the definitions in A.R.S. § 36-2901 and 9 A.A.C 22, Article 1, the following definitions apply to this Article:

“Cost avoid” means to deny a claim and return the claim to the provider for a determination of the amount of first- or third-party liability.

“First-party liability” means the obligation of any insurance or other coverage obtained directly or indirectly by a member that provides benefits directly to the member to pay all or part of the expenses for medical services incurred by AHCCCS or a member.

“Third-party” means a person, entity, or program that is, or may be, liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or member.

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“Third-party liability” means the obligation of a person, entity, or program by agreement, circumstance, or otherwise, to pay all or part of the medical expenses incurred by an applicant or member.

“Third-party liability” means any individual, entity or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished under a state plan.

R9-22-1002. General Provisions

AHCCCS is the payor of last resort unless specifically prohibited by applicable state or federal law, which includes the following entities but is not limited to:

1. IHS/638.
2. Title 4E.
3. AZIP, and
4. Contract health.

R9-22-1003. Cost Avoidance

A. AHCCCS shall cost avoid a claim if AHCCCS establishes the probable existence of first- or third-party liability or has information that establishes that first- or third-party liability exists.

B. When the amount of first- or third-party liability is determined, ~~AHCCCS~~ the Administration or a contractor, when reimbursing a non-contracting provider, shall pay no more than the difference between the Capped Fee-For-Service Schedule amount and; ~~the amount of the first- or third-party liability.~~

1. The amount of the first- or third-party liability.
2. The amount paid by Medicare, or
3. The contracted amount for a member enrolled with a contractor.

C. The requirement to cost avoid applies to all AHCCCS-covered services under Article 2 of this Chapter, unless otherwise specified in this Section. The following parties shall take reasonable measures to identify potentially legally liable first- or third-party sources:

1. AHCCCS, ~~the Administration, or contractor.~~
2. A provider;
3. A noncontracting provider; and
4. A member.

D. The following exceptions apply to subsection (B), when the Administration or a contractor find that a third party may be liable for the services provided, the Administration or contractor must pay the full amount according to the Capped-Fee-For-Service Schedule and then seek reimbursement later, when the claim is for:

1. Labor and delivery and postpartum care; or
2. When the liability is from an absent parent, prenatal care and EPSDT services.

R9-22-1004. Member Participation

A member shall cooperate in identifying potentially legally liable first- or third-parties and timely assist ~~AHCCCS~~ the Administration and a contractor, provider, or noncontracting provider in pursuing any first- or third-party who may be liable to pay for covered services.

R9-22-1005. Collections

A. Parties that notify AHCCCS. A provider or noncontracting provider shall cooperate with AHCCCS by identifying all potential sources of first- or third-party liability and notify AHCCCS of these sources.

B. Parties that pursue collection or reimbursement. AHCCCS, a provider, or noncontracting provider shall pursue collection or reimbursement from all potential sources of first- or third-party liability. When first or third party liability is found after reimbursement has been made, the provider or noncontracting provider is required to bill the liable party, and then resubmit the claim to the Administration or contractor for an adjustment.

R9-22-1007. Notification for Perfection, Recording, and Assignment of AHCCCS Liens

~~A.~~ County requirements. The member's county of residence shall notify AHCCCS under R9-22-1008 within 30 days after providing hospital or medical services to a member for an injury or condition resulting from circumstances reflecting the probable liability of a first- or third-party to enable AHCCCS to preserve lien rights under A.R.S. §§ 36-2915 and 36-2916.

~~B.~~ A. Hospital requirements. A hospital providing medical services to a member for an injury or condition resulting from circumstances reflecting the probable liability of a first- or third-party shall within 30 days after a member's discharge:

1. Notify AHCCCS via facsimile or mail under R9-22-1008, or
2. Mail AHCCCS a copy of the lien the hospital proposes to record or has recorded under A.R.S. § 33-932.

~~C.~~ B. Provider and noncontracting provider requirements. A provider or noncontracting provider, other than a hospital, rendering medical services to a member for an injury or condition resulting from circumstances reflecting the probable liability of a first- or third-party shall notify AHCCCS under R9-22-1008 within 30 days after providing the service.

R9-22-1008. Notification Information for Liens

- A. Except as provided in subsection (B), ~~a county~~, a hospital, provider, and noncontracting provider identified in R9-22-1007 shall provide the following information to AHCCCS in writing:
1. Name of the provider or noncontracting provider;
 2. Address of the provider or noncontracting provider;
 3. Name of member;
 4. Member's Social Security Number or AHCCCS identification number;
 5. Address of member;
 6. Date of member's admission;
 7. Amount estimated to be due for care of member;
 8. Date of discharge, if member has been discharged;
 9. Name of county in which injuries were sustained; and
 10. Name and address of all persons, firms, and corporations and their insurance carriers claimed by the member or legal representative to be liable for damages.
- B. If the date of discharge is not known at the time the information in subsection (A) is provided, a party identified in subsection (A) shall notify AHCCCS of the date of discharge within 30 days after the member has been discharged.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ARIZONA LONG-TERM CARE SYSTEM**

[R08-189]

PREAMBLE

1. Sections Affected

R9-28-801
R9-28-802
R9-28-803
R9-28-804
R9-28-805
R9-28-806
R9-28-807
R9-28-901
R9-28-910
R9-28-911
R9-28-912
R9-28-913
R9-28-914
R9-28-915
R9-28-916
R9-28-917
R9-28-918
R9-28-919

Rulemaking Action

New Section
Amend
Amend
Amend
Amend
Repeal
Repeal
Repeal
Repeal
Repeal
Repeal
Repeal
Repeal

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. §§ 36-2935, 36-2956.

Implementing statute: A.R.S. §§ 36-2935, 36-2956.

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 14 A.A.R. 2244, June 6, 2008

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

Name: Mariaelena Ugarte
Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson St., Mail Drop 6200

Notices of Proposed Rulemaking

Phoenix, AZ 85034

Telephone: (602) 417-4693

Fax: (602) 253-9115

E-mail: AHCCCSRules@azahcccs.gov

5. An explanation of the rule, including the agency's reasons for initiating the rule:

The AHCCCS Administration proposes to amend the sections identified above as a result of a Five-Year Review Report approved by the Governor's Regulatory Review Council on May 6, 2008. The subjects requiring amendment are the definitions, payor of last resort requirements, cost avoidance requirements and other technical changes.

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

The Administration did not review any study relevant to these rules.

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

Not applicable

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

It is anticipated that the contractors, private sector, members, providers, small businesses, political subdivisions, the Department, and the Administration will be minimally impacted by the changes to the rule language. The areas requiring revision are for clarity as a result of a Five-Year Rule Review approved by the Governor's Regulatory Review Council.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Mariaelena Ugarte

Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson St., Mail Drop 6200
Phoenix, AZ 85034

Telephone: (602) 417-4693

Fax: (602) 253-9115

E-mail: AHCCCSRules@azahcccs.gov

Proposed rule language will be available on the AHCCCS web site www.azahcccs.gov the week of June 2, 2008. Please send written comments to the above address by 5:00 p.m., July 15, 2008. E-mail comments will also be accepted during this time-frame.

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

Date: July 15, 2008

Time: 10:00 a.m.

Location: AHCCCS
701 E. Jefferson St.
Phoenix, AZ 85034

Nature: Public Hearing

Date: July 15, 2008

Time: 10:00 a.m.

Location: ALTCS: Arizona Long-term Care System
110 S. Church, Suite 1360
Tucson, AZ 85701

Nature: Public Hearing

Date: July 15, 2008
Time: 10:00 a.m.
Location: ALTCS: Arizona Long-term Care System
3480 E. Route 66
Flagstaff, AZ 86004
Nature: Public Hearing

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ARIZONA LONG-TERM CARE SYSTEM**

ARTICLE 8. ~~REPEALED~~ TEFRA LIENS AND RECOVERIES

Section

R9-28-801. ~~Repealed~~ Definitions Related to TEFRA Liens
R9-28-801.01. TEFRA Liens-General
R9-28-802. ~~Repealed~~ TEFRA Liens-Affected Members
R9-28-803. ~~Repealed~~ TEFRA Liens-Prohibitions
R9-28-804. ~~Repealed~~ TEFRA Liens-AHCCCS Notice of Intent
R9-28-805. TEFRA Liens and Estate Recovery-Member's Request for a State Fair Hearing
R9-28-806. TEFRA Liens-Recovery
R9-28-807. TEFRA Liens-Release

ARTICLE 9. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES

Section

R9-28-901. Definitions
R9-28-910. Recoveries
R9-28-911. Estate Recovery and Undue Hardship
R9-28-912. Partial Recovery
R9-28-913. ~~TEFRA Liens-General~~ Repealed
R9-28-914. ~~TEFRA Liens-Affected Members~~ Repealed
R9-28-915. ~~TEFRA Liens-Prohibitions~~ Repealed
R9-28-916. ~~TEFRA Liens-AHCCCS Notice of Intent~~ Repealed
R9-28-917. ~~TEFRA Liens and Estate Recovery Member's Request for a State Fair Hearing~~ Repealed
R9-28-918. ~~TEFRA Liens-Recovery~~ Repealed
R9-28-919. ~~TEFRA Liens-Release~~ Repealed

ARTICLE 8. ~~REPEALED~~ TEFRA LIENS AND RECOVERIES

R9-28-801. ~~Repealed~~ Definitions Related to TEFRA Liens

In addition to the definitions in A.R.S. §§ 36-2901 and 36-2931, 9 A.A.C. 22, Article 1, and 9 A.A.C. 28, Article 1, the following definitions apply to this Article:

"Consecutive days" means days following one after the other without an interruption based on discharge.

"File" means the date that AHCCCS receives a request for a State Fair Hearing under R9-28-805, as established by a date stamp on the request or other record of receipt.

"Home" means property in which a member has an ownership interest and which serves as the member's principal place of residence. This property includes the shelter in which a member resides, the land on which the shelter is located, and related outbuildings.

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“Recover” means that AHCCCS takes action to collect from a claim.

“Spouse” means husband and wife as defined in A.A.C. R9-22-101.

“TEFRA lien” means a lien under 42 U.S.C. 1396p of the Tax Equity and Fiscal Responsibility Act of 1982.

R9-28-801.01. ~~Repealed~~ TEFRA Liens

Purpose. The purpose of TEFRA is to allow AHCCCS to file a lien on an AHCCCS member’s interest in any real property before the member is deceased, including but not limited to life estates and beneficiary deeds.

R9-28-802. ~~Repealed~~ TEFRA Liens-Affected Members

A. Except for members under R9-28-803, AHCCCS shall file a TEFRA lien against the real property of all members who are:

1. Receiving ALTCS services.
2. 55 years of age or older, and
3. Permanently institutionalized.

B. A rebuttable presumption exists that a member is permanently institutionalized if the member has continually resided in a nursing facility, ICF/MR, or other medical institution defined in 42 CFR 435.1010 for 90 or more consecutive days. A member may rebut the presumption by providing a written opinion from a treating physician, rendered to a reasonable degree of medical certainty, that the member’s condition is likely to improve to the point that the member will be discharged from the medical institution and will be capable of returning home by a date certain.

R9-28-803. ~~Repealed~~ TEFRA Liens-Prohibitions

AHCCCS shall not file a TEFRA lien against a member’s home if one of the following individuals is lawfully residing in the member’s home:

1. Member’s spouse;
2. Member’s child who is under the age of 21;
3. Member’s child who is blind or disabled under 42 U.S.C. 1382c; or
4. Member’s sibling who has an equity interest in the home and who was residing in the member’s home for at least one year immediately before the date the member was admitted to the nursing facility, ICF/MR, or other medical institution as defined under 42 CFR 435.1010.

R9-28-804. ~~Repealed~~ TEFRA Liens-AHCCCS Notice of Intent

A. Time-frame. At least 30 days before filing a TEFRA lien, AHCCCS shall send the member or member’s representative a Notice of Intent.

B. Content of the notice of intent. The Notice of Intent shall include the following information:

1. A description of a TEFRA lien and the action that AHCCCS intends to take,
2. How a TEFRA lien affects a member’s property,
3. The legal authority for filing a TEFRA lien,
4. The time-frames and procedures involved in filing a TEFRA lien,
5. The member’s right to request an exemption.

C. Request for exemption. A member or a member’s representative may request an exemption. To request an exemption the member or the member’s representative shall submit a written statement to AHCCCS within 30 days from the receipt of the Notice of Intent describing the factual basis for a claim that the property should be exempt from placement of a TEFRA lien or from recovery of lien based on R9-28-802, R9-28-803 or R9-28-806. AHCCCS shall respond to the member or member’s representative in writing within 30 days of receiving a request for exemption, unless the parties mutually agree to a longer period of time.

R9-28-805. TEFRA Liens and Estate Recovery-Member’s Request for a State Fair Hearing

A. If the member or member’s representative does not request an exemption under R9-28-804(C), the member or representative is sent an AHCCCS Notice of TEFRA Lien. The member or representative may request a State Fair Hearing. The request must be filed within 30 days of the receipt of the AHCCCS Notice of a TEFRA Lien.

B. If the member requests an exemption and that request is denied, the member or representative is sent the AHCCCS Denial of a Request for Exemption. The member or representative may request a State Fair Hearing. The request must be filed within 30 days of the receipt of the AHCCCS Denial of Request for Exemption. The member or representative is then sent the AHCCCS Notice of a TEFRA Lien pursuant to subsection (A).

C. Hearings regarding TEFRA liens shall be conducted under 9 A.A.C. 34, Article 1.

R9-28-806. TEFRA Liens-Recovery

A. AHCCCS shall seek to recover a TEFRA lien upon the sale or transfer of the real property subject to the lien. However, AHCCCS shall not seek to recover the TEFRA lien or attempt recovery against any real property subject to the TEFRA lien so long as the member is survived by the member’s:

1. Spouse,

2. Child under the age of 21, or
3. Child who receives benefits under either Title II or Title XVI of the Social Security Act as blind or disabled, as defined under 42 U.S.C. 1382c.

B. AHCCCS shall not recover a TEFRA lien on an individual's home if the member is survived by:

1. A sibling of the member who currently resides in the deceased member's home and who was residing in the member's home for a period of at least one year immediately before the date of the member's admission to the nursing facility, ICF/MR, or other medical institution as defined under 42 CFR 435.1010; or
2. A child of the member resides in the deceased member's home who:
 - a. Was residing in the member's home for a period of at least two years immediately before the date of the member's admission to the nursing facility, ICF/MR, or other medical institution as defined under 42 CFR 435.1010; and
 - b. Provided care to the member, which allowed the member to reside at home rather than in an institution.

C. To determine whether a child of the member provided care under subsection (B)(2), AHCCCS shall require the following information:

1. Physician's statement that describes the member's physical condition and service needs for the previous two years;
2. Verification that the child actually lived in the member's home;
3. Statement from the child providing the services that describes and attests to the services provided;
4. Any statement made by the member prior to death regarding the services received; and
5. Statement from physician, friend, or relative as witness to the care provided.

R9-28-807. TEFRA Liens-Release

AHCCCS shall issue a release of a TEFRA lien within 30 days of:

1. Satisfaction of the lien; or
2. Notice that the member has been discharged from the nursing facility, ICF/MR, or other medical institution, defined under 42 CFR 435.1010, and the member has returned home and is physically residing in the home with the intention of remaining in the home. Discharge to an alternative HCBS setting defined at R9-28-101 does not constitute a return to the home.
3. Notice of the member's death, when a lien has been filed on a life estate.

ARTICLE 9. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES

R9-28-901. Definitions

In addition to the definitions in A.R.S. §§ 36-2901 and 36-2931, 9 A.A.C. 22, Article 1, and 9 A.A.C. 28, Article 1, the following definitions apply to this Article:

1. ~~“Consecutive days” means days following one after the other without an interruption based on discharge.~~
2. ~~“Estate” has the meaning in A.R.S. § 14-1201.~~
3. ~~“File” means the date that AHCCCS receives a request for a State Fair Hearing under R9-28-917, as established by a date stamp on the request or other record of receipt.~~
4. ~~“Home” means property in which a member has an ownership interest and which serves as the member's principal place of residence. This property includes the shelter in which a member resides, the land on which the shelter is located, and related outbuildings.~~
5. ~~“Member” means a person eligible for AHCCCS-covered services under A.R.S. Title 36, Chapter 29, Article 2.~~
6. ~~“Place” means AHCCCS recording a lien on a member's property with the judicial system.~~
7. ~~“Recover” means that AHCCCS takes action to collect from a claim.~~
8. ~~“TEFRA lien” means a lien under 42 U.S.C. 1396p of the Tax Equity and Fiscal Responsibility Act of 1982.~~

R9-28-910. Recoveries

AHCCCS shall recover funds paid predeath or after death of a member for ALTCS benefits including: capitation payments, Medicare Parts A and B premium payments, coinsurance and deductibles paid by AHCCCS, fee-for-service payments, and reinsurance payments from:

1. The estate of a member who was 55 years of age or older when the member received benefits; or
2. The estate or the property of a member under A.R.S. §§ 36-2935, 36-2956 and 42 U.S.C. 1396p.

R9-28-911. Estate Recovery and Undue Hardship

A. Any recovery of a claim by AHCCCS against a member's estate shall be made only after the death of the member's surviving spouse and only at a time:

1. When there exists no surviving minor child under age 21; and
2. When there exists no surviving child who receives benefits under either Title II or Title XVI of the Social Security Act because the child is blind or disabled as defined in 42 U.S.C. 1382c.

B. Undue hardship request. A member's representative may request an undue hardship. If the member's representative wishes to request an undue hardship, within 30 days from the receipt of the notification of AHCCCS claim against the

estate the member's representative shall submit a written statement to AHCCCS describing the factual basis for a claim that the property should be exempt from estate recovery as provided under this Section. AHCCCS shall respond to the member or member's representative in writing within 30 days of receiving an undue hardship request, unless the parties mutually agree to a longer period of time.

- C. AHCCCS shall waive a claim against a member's estate because of undue hardship if any of the following situations exist:
1. The estate consists only of real property that is listed as residential property by the Arizona Department of Revenue or County Assessor's Office, and the heir or devisee:
 - a. Owns a business that is located at the residential property and:
 - i. The business was in operation at the residential property for at least 12 months preceding the death of the member,
 - ii. The business provides more than 50 percent of the heir's or devisee's livelihood, and
 - iii. The recovery of the property would result in the heir losing the heir's or devisee's means of livelihood; or
 - b. Currently resides in the residence and:
 - i. Resided there at the time of the member's death,
 - ii. Made the residence his or her primary residence for the 12 months immediately before the death of the member, and
 - iii. Owns no other residence; or
 2. The estate consists only of personal property, and
 - a. The heir or devisee's annual gross income for the household size is less than 100 percent of the Federal Poverty Level (FPL). New sources of income such as employment or Social Security that may not have yet been received, are included in determining the household's annual gross income; and
 - b. The heir or devisee does not own a home, land, or other real property.
- D. When the estate consists of both personal property and real property that qualify for the undue hardship criteria at subsection (B), AHCCCS shall not grant an undue hardship waiver; however, AHCCCS shall adjust its claim to the value of the personal property.
- ~~E. Subsections (A), (B), and (C) are not applicable to TEFRA liens.~~
- ~~F. E.~~ AHCCCS shall exempt the following income, resources, and property of Native Americans (NA) and Alaska Natives (AN) from estate recovery:
1. Income and resources from tribal land and other resources currently held in trust and judgment funds from the Indian Claims Commission or U.S. Claims Court;
 2. Ownership interest in trust or non-trust property;
 3. Ownership interests left as a remainder in an estate in rents, leases, royalties, or usage rights related to natural resources;
 4. Any other ownership interests in or property rights that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional life style according to applicable Tribal law or custom; and
 5. Income left as a remainder in an estate derived from any property listed in subsection (E)(1)-(4), that was either collected by a NA, or by a Tribe or Tribal organization and distributed to a NA.

R9-28-912. Partial Recovery

AHCCCS shall use the following factors in determining whether to seek a partial recovery or an alternative recovery of funds when an heir or devisee does not meet the requirements of R9-28-911 and requests a partial recovery:

1. Financial and medical hardship to the heir or devisee;
2. Income of the heir or devisee and whether the heir or devisee's household gross annual income is less than 100 percent of the FPL;
3. Resources of the heir or devisee;
4. Value and type of assets;
5. Amount of AHCCCS' claim against the estate; and
6. Whether other creditors have filed claims against the estate or have foreclosed on the property.

R9-28-913. ~~TEFRA Liens General Repealed~~

- ~~A. Purpose. The purpose of TEFRA is to allow AHCCCS to place a lien on an AHCCCS member's real property before the member is deceased or to place a lien on a deceased member's estate.~~
- ~~B. Life estates and beneficiary deeds. Except for members under R9-28-915, AHCCCS shall place a TEFRA lien on a member's real property interest held in a life estate or beneficiary deed created before or after the member's eligibility. Except for members under R9-28-918, AHCCCS shall enforce recovery against the remainder beneficiary following the member's death or upon transfer of the property.~~
- ~~C. Recovery. As provided under R9-28-918, AHCCCS shall recover a TEFRA lien under R9-28-910.~~

R9-28-914. ~~TEFRA Liens Affected Members Repealed~~

- A.** Except for members under R9-28-915, AHCCCS shall place a TEFRA lien against the real property of all members who are:
1. Receiving ALTCS services;
 2. 55 years of age or older; and
 3. Permanently institutionalized.
- B.** A rebuttable presumption exists that a member is permanently institutionalized if the member has continually resided in a nursing facility, ICF/MR, or other medical institution defined in 42 CFR 435.1009 for 90 or more consecutive days. A member may rebut the presumption by providing a written opinion from a treating physician, rendered to a reasonable degree of medical certainty, that the member's condition is likely to improve to the point that the member will be discharged from the medical institution and will be capable of returning home by a date certain.

R9-28-915. ~~TEFRA Liens Prohibitions Repealed~~

AHCCCS shall not place a TEFRA lien against a member's home if one of the following individuals is lawfully residing in the member's home:

1. Member's spouse;
2. Member's child who is under the age of 21;
3. Member's child who is blind or disabled under 42 U.S.C. 1382e; or
4. Member's sibling who has an equity interest in the home and who was residing in the member's home for at least one year immediately before the date the member was admitted to the nursing facility, ICF/MR, or other medical institution as defined under 42 CFR 435.1009.

R9-28-916. ~~TEFRA Liens AHCCCS Notice of Intent Repealed~~

- A.** Time frame. At least 30 days before filing a TEFRA lien, AHCCCS shall send the member or member's representative a Notice of Intent.
- B.** Content of the notice of intent. The Notice of Intent shall include the following information:
1. A description of a TEFRA lien and the action that AHCCCS intends to take;
 2. How a TEFRA lien affects a member's property;
 3. The legal authority for filing a TEFRA lien;
 4. The time frames and procedures involved in filing a TEFRA lien;
 5. The member's right to request a State Fair Hearing; and
 6. The process and time frames for requesting a State Fair Hearing.
- C.** Request for exemption. A member's representative may request an exemption. To request an exemption the member or the member's representative shall submit a written statement to AHCCCS within 30 days from the receipt of the Notice of Intent describing the factual basis for a claim that the property should be exempt from placement of a TEFRA lien or from recovery of lien based on R9-28-914(B), R9-28-915 or R9-28-918. AHCCCS shall respond to the member or member's representative in writing within 30 days of receiving a request for exemption, unless the parties mutually agree to a longer period of time.

R9-28-917. ~~TEFRA Liens and Estate Recovery Member's Request for a State Fair Hearing Repealed~~

- A.** A member or member's representative may request a State Fair Hearing:
1. Within 30 days of the receipt of AHCCCS' Notice of Intent or notification of AHCCCS' claim against the estate; or
 2. Within 30 days of receipt of a denial of a request for exemption under R9-28-916(C) or denial of a request to waive estate recovery because of undue hardship under R9-28-911(B).
- B.** Hearings regarding AHCCCS' intent to place a TEFRA lien shall be conducted under A.A.C. Title 9, Chapter 34, Article 1.

R9-28-918. ~~TEFRA Liens Recovery Repealed~~

- A.** AHCCCS shall seek to recover a TEFRA lien upon the sale or transfer of the real property subject to the lien. However, AHCCCS shall not seek to recover the TEFRA lien or attempt recovery against any real property subject to the TEFRA lien so long as the member is survived by the member's:
1. Spouse;
 2. Child under the age of 21; or
 3. Child who receives benefits under either Title II or Title XVI of the Social Security Act as blind or disabled, as defined under 42 U.S.C. 1382e.
- B.** AHCCCS shall not recover a TEFRA lien on an individual's home if the member is survived by:
1. A sibling of the member who currently resides in the deceased member's home and who was residing in the member's home for a period of at least one year immediately before the date of the member's admission to the nursing facility, ICF/MR, or other medical institution as defined under 42 CFR 435.1009; or
 2. A child of the member resides in the deceased member's home who:

Notices of Proposed Rulemaking

- a. Was residing in the member's home for a period of at least two years immediately before the date of the member's admission to the nursing facility, ICF/MR, or other medical institution as defined under 42 CFR 435.1009; and
 - b. Provided care to the member, which allowed the member to reside at home rather than in an institution.
- c. To determine whether a child of the member provided care under subsection (B)(2), AHCCCS shall require the following information:
- 1. Physician's statement that describes the member's physical condition and service needs for the previous two years;
 - 2. Verification that the child actually lived in the member's home;
 - 3. Statement from the child providing the services that describes and attests to the services provided;
 - 4. Any statement made by the member prior to death regarding the services received; and
 - 5. Statement from physician, friend, or relative as witness to the care provided.

R9-28-919. ~~TEFRA Liens Release Repealed~~

AHCCCS shall issue a release of a TEFRA lien within 30 days of:

- 1. Satisfaction of the lien; or
- 2. Notice that the member has been discharged from the nursing facility, ICF/MR, or other medical institution, defined under 42 CFR 435.1009, and the member has returned home and is physically residing in the home with the intention of remaining in the home. Discharge to an alternative HCBS setting defined at R9-28-101(B) does not constitute a return to the home.

NOTICE OF PROPOSED RULEMAKING

TITLE 15. REVENUE

**CHAPTER 5. DEPARTMENT OF REVENUE
TRANSACTION PRIVILEGE AND USE TAX SECTION**

[R08-179]

PREAMBLE

1. Sections Affected

Article 2
R15-5-201
R15-5-201
R15-5-201
R15-5-202
R15-5-203
R15-5-204
R15-5-205
R15-5-205
R15-5-205
R15-5-206
R15-5-1860
R15-5-1862

Rulemaking Action

Amend
Repeal
Repeal
Repeal
Amend
New Section
New Section
New Section
New Section
Repeal
Repeal
Repeal
Repeal
Amend
Amend
New Section
Repeal
Repeal
Repeal

2. The specific authority for the rulemaking, including both the authorizing statutes (general) and the implementing statutes (specific):

Authorizing statutes: A.R.S. §§ 42-1005, 42-5003, and 42-5106
Implementing statutes: A.R.S. §§ 42-5101 through 42-5106

3. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 13 A.A.R. 2270, June 29, 2007

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

Name: Christie Comanita, Manager
Address: Tax Policy and Research Division
Department of Revenue
1600 W. Monroe St., Rm. 810
Phoenix, AZ 85007-2650

Notices of Proposed Rulemaking

Telephone: (602) 716-6791
Fax: (602) 716-7995
E-mail: ccomanita@azdor.gov

Please visit the ADOR web site to track the progress of these rules and other agency rulemaking matters at www.azdor.gov/ResearchStats/Proposedrulesmainmenu.htm.

5. An explanation of the rules, including the agency's reasons for initiating the rulemaking:

The Department is amending its rules addressing the Arizona transaction privilege tax consequences of selling food. The current transaction privilege tax rules on sales of food are A.A.C. R15-5-1860 and R15-5-1862. This rulemaking will amend these two rules and create four additional rules covering various issues relating to sales of food. This rule-making also moves the amended and new rules to 15 A.A.C. 5, Article 2.

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

None

7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

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

There should be no significant economic impact from adopting the amended rules. Because the amendments clarify and more accurately explain the scope and nature of the imposition of or exemptions from transaction privilege tax for sales of food by qualified retailers, a minimal impact may occur for certain vendors due to increased compliance measures. The agency expects that the benefits of the amended rules to the public and the agency from achieving a better understanding of the exemptions will be greater than the costs.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Christie Comanita, Manager
Address: Tax Policy and Research Division
Department of Revenue
1600 W. Monroe St., Rm. 810
Phoenix, AZ 85007-2650
Telephone: (602) 716-6791
Fax: (602) 716-7995
E-mail: ccomanita@azdor.gov

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

No oral proceeding is scheduled. Under A.R.S. § 41-1023(C), an oral proceeding will be scheduled if a written request is submitted to the person identified in item 4 within 30 days after publication of this notice.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Any material incorporated by reference and its location in the rules:

None

13. The full text of the rules follows:

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE
TRANSACTION PRIVILEGE AND USE TAX SECTION

ARTICLE 2. ~~INTRODUCTION~~ SALES OF FOOD

Notices of Proposed Rulemaking

- ~~R15-5-201.~~ Repealed
~~R15-5-1860.~~ ~~R15-5-201.~~ Definitions
R15-5-202. ~~Renumbered~~ Tax Exemption for Food
R15-5-203. ~~Repealed~~ Food Categories
R15-5-204. ~~Renumbered~~ Qualified Retailers
~~R15-5-205.~~ Repealed
~~R15-5-1862.~~ ~~R15-5-205.~~ Restaurant food sales Food Sales
R15-5-206. ~~Repealed~~ Health Aids

ARTICLE 18.1. SALES OF FOOD

Section

- R15-5-1860. Definitions Renumbered
R15-5-1862. Restaurant food sales Renumbered

ARTICLE 2. ~~INTRODUCTION~~ SALES OF FOOD

~~R15-5-201.~~ Repealed

~~R15-5-1860.~~ ~~R15-5-201.~~ Definitions

For the purpose of these rules, ~~unless the context requires otherwise~~ this Article, the following definitions will apply:

- ~~1. "Accessory food items" means coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments and spices, and other non-staple foods.~~
1. "Alcoholic beverage" means a beverage marketed and sold as an alcoholic beverage that contains any amount of alcohol, including non-alcoholic beer and alcohol-free beers and wines. This definition does not include a medicine or cooking extract.
2. "Attendant" means a person, generally the employee of the retailer, retailer or employee of the retailer who waits on the customers, or tends to their the needs of the retailer's customers.
3. "Automatic retailer" means a coin operated mechanical device or system which sells tangible personal property. Such device or system must itself vend or sell the items, i.e., a device or system which delivers the subject of the sale, or by automatic action physically delivers the thing sold. Vending machines are considered automatic retailers.
3. "Beverage" means any drink intended for human consumption that is in liquid or frozen form, including any milkshake or ice cream float.
4. "Caterer" means a person engaged in the business of serving meals, preparing food and drinks on the premises used by his customer, but does not include employees hired by the hour of day or beverages to be served at a location designated by the person's customer.
5. "Delicatessen" means a business which that sells specialty food items for home consumption, such as including prepared cold meats, perishable food and grocery items kept under refrigeration fish, poultry, cheese, salad, relishes, and any bottled or canned condiment.
6. "Dietary substitute" means an item intended to replace a meal or part of a meal or that is intended to substitute for another exempt qualifying food item listed in R15-5-203(B). This definition does not include an item that is defined as a dietary supplement.
7. "Dietary supplement" means an item that is ordinarily used as a health aid, therapeutic agent, or dietary deficiency corrector and is not intended for use as food. This definition includes items such as vitamins, minerals, or proteins in liquid, powered, granular, tablet, capsule, lozenge, or pill form.
8. "Food coupon" means either of the following:
 - a. An instrument issued by the United States Department of Agriculture under the Food Stamp Act of 1977, 7 U.S.C. 2011 et seq., commonly referred to as a food stamp; or
 - b. An instrument issued under the Child Nutrition Act of 1966, 42 U.S.C. 1786, commonly referred to as a WIC draft.
9. "Mobile retailer" means a street or sidewalk vendor who uses a pushcart, mobile facility, motor vehicle, snack mobile, chuck wagon, mobile hot dog stand, or other similar conveyance.
10. "Qualified retailer" means a retailer listed in A.R.S. § 42-5102(A).
11. "Qualifying food" means any substance intended for human consumption that may be purchased with food coupons. Qualifying food does not include food that is delivered to an office or other business establishment, food for consumption on the premises, or any item in a general category listed in R15-5-203(A).
12. "Tobacco products" has the same meaning as prescribed in A.R.S. § 42-3001.
13. "Vending machine" means a mechanical device or system that sells qualifying food.
6. "Facilities for the consumption of food" means appropriate furniture, tableware, or parking areas for sitting both in or on the premises of the business, either in or out of a motor vehicle.
7. "Food"

- a. Under A.R.S. § 42-1387, the Department is required to promulgate rules defining food as those items that may be purchased from an eligible grocery business with food coupons, but in no event may such definition of food include food for consumption on the premises, alcoholic beverages or tobacco. Even though alcoholic beverages and food for consumption on the premises may be intended for human consumption, such items are not considered food by the statutory provisions. In these rules, items that are considered food by the Statutes, and therefore tax exempt if sold by a qualified retailer, shall be referred to as "tax exempt foods." Other items that may be intended for human consumption but are excluded from the definition of food by the Statute, and are therefore subject to the Sales Tax, shall be referred to herein as "taxable foods."
 - b. "Food" means: Items intended for human consumption. Food is deemed to be intended for human consumption when its intended or ordinary use is as a food for human consumption or is an ingredient used in preparing food for human consumption. For example, even though animal food may be used by some humans, its ordinary or intended use is not for human consumption. Also, even though vitamins and other medication may be ingested, its intended or ordinary use is as a health aid or therapeutic agent or a deficiency corrector and is not intended for use as food. Following is a numeration of items which the Department does not consider food for human consumption:
 - i. Pet food and supplies
 - ii. Cosmetics and grooming items
 - iii. Tobacco products
 - iv. Soaps and paper products and household supplies
 - v. Dietary supplements such as vitamins or protein supplements
 - vi. Medicines
 - vii. Fertilizer
8. "Food for consumption on the premises"
- a. "Food for consumption on the premises" means the following:
 - i. Hot prepared food, including products, items or ingredients of food which are prepared and sold or are intended to be sold in a heated condition. This also includes a combination of hot and cold food items or ingredients if a single price is charged by the retailer.
 - ii. Hot or cold sandwiches including frozen sandwiches.
 - iii. Food served by an attendant to be eaten at tables, chairs, benches, booths, stools, counters and within parking areas (for in-car consumption).
 - iv. Food served with trays, glasses, dishes or other tableware. Food which is generally selected by the customer from available displays and then taken by the customer to a checkout stand for payment is not considered to be served by the retailer.
 - v. Beverages sold in cups, glasses or open containers. Beverages shall include items such as milk shakes and ice cream floats.
 - vi. Food sold by caterers.
 - vii. Food sold within the premises of theaters, exhibitions, fairs, amusement parks, bowling alleys, athletic events, and other shows or contests and any businesses which charge admission, entrance or cover fees for exhibition, amusement, entertainment or instruction. While food for consumption on the premises includes any food sold within the premises of certain businesses, including businesses that charge admission, entrance or cover fees for exhibition, amusement, entertainment or instruction, food for consumption on premises does not include sales of tax exempt food by a qualified retailer within the premises of a full time educational institution that charges tuition for a full course of studies.
 - b. Any item enumerated in subparagraph (a) which is sold on a take-out or to-go basis is still considered to be food for consumption on the premises and therefore taxable.
9. "Food intended for home consumption" means food, other than food for consumption on the premises, which is usually intended to be consumed at home. Unless the taxpayer can establish to the contrary, food delivered by a retailer to an office or other business establishment shall not be considered food intended for home consumption.
10. "Home" means a natural person's usual or habitual dwelling place, including rest homes, nursing homes, jails and other such institutions.
11. "Premises" means the total space and facilities, including buildings, grounds and parking lot that are made available for use by the retailer for the purpose of consuming food sold by such retailer.
12. "Qualified retailer"
- a. A qualified retailer or qualified retail business is one that may be eligible to sell tax exempt food without including the sale of tax exempt food items in its taxable base. A retailer other than a qualified retailer must pay a tax measured by the sale of otherwise exempt food even though the sale of such items would be exempt if sold by a qualified retailer.
 - b. Qualified retailers are:
 - i. An eligible grocery business, which includes retailers who are eligible to participate in the United States

Notices of Proposed Rulemaking

- Department of Agriculture Food Stamp Program, whether such retailer actually participates in the food stamp program. If a retailer is eligible to participate in the food stamp program, but does not participate in such program, such retailer may only be an eligible grocery business if the retailer first makes application to the Department to sell food tax exempt. Examples of retailers that might be considered eligible grocery businesses include:
- (1) Grocery stores;
 - (2) Convenience stores;
 - (3) Butcher shops;
 - (4) Bakeries;
 - (5) Dairy stores;
 - (6) Cheese stores;
 - (7) Farmer's markets.
- ii. Retailers whose primary business is not the sale of food, but who sell food in a manner similar to grocery stores. This category includes stores such as department stores, drug stores, and gas stations.
 - iii. Retailers who sell food and who do not provide any facilities for consumption of food on the premises. This category may include certain health food stores, and certain outlets retailing soda and other similar beverages in bottles or cans, but not cups.
 - iv. Delicatessen business, if such retailer conducts his business so that the sale of tax exempt foods and other taxable items may be separately accounted for, through, for example, the use of two (2) cash registers, or a cash register with at least two (2) tax computing keys which are used to record taxable and tax exempt sales.
 - v. A retailer who is a street or sidewalk vendor who uses a pushcart, mobile facility, motor vehicle, or other such conveyance. Such retailers include:
 - (1) Snackmobile;
 - (2) Chuck wagon;
 - (3) Mobile hot dog stands.
 - vi. Vending machines and other automatic retailers.
13. "Staple food" means those food items intended for home preparation and consumption, which includes meat, poultry, fish, bread and bread stuffs, cereals, vegetables, fruits, fruit and vegetable juices, and dairy products.
14. "Taxable foods" are items which may be intended for human consumption, but are still subject to the Sales Tax when sold. Examples of taxable foods would be alcoholic beverages, and food for consumption on the premises.
15. Tax exempt foods
- a. "Tax exempt foods" are generally those items of food intended for home consumption which, if purchased from an eligible grocery business, would be eligible as of January 1, 1979, to be purchased with food coupons issued by the United States Department of Agriculture.
 - b. Tax exempt food shall also include any new items of food intended for human consumption which would have been eligible for purchase with food coupons issued by the United States Department of Agriculture if such items would have existed for sale on January 1, 1979.
 - e. The following are examples of items which the Department will consider as tax exempt food:
 - bread and flour products
 - vegetables and vegetable products
 - candy and confectionery
 - sugar, sugar products and substitutes
 - cereal and cereal products
 - butter, oleomargarine, shortening and cooking oils
 - cocoa and cocoa products
 - coffee and coffee substitutes
 - milk and milk products
 - eggs and egg products
 - tea
 - meat and meat products
 - spices, condiments, extracts and food colorings
 - fish and fish products
 - frozen foods
 - soft drinks and soda (including bottles on which a deposit is required to be paid)

- fruit and fruit products
 - packaged ice cream products
 - dietary substitutes
 - ice cubes and bottled water including carbonated and mineral water
 - urchases of seed and plants for use in gardens to produce food items for personal consumption
16. ~~“Two tax computing keys” shall mean the mechanical or electronic function in a cash register which can separately record and accumulate taxable and nontaxable items without having the items presorted.~~

R15-5-202. ~~Renumbered~~ Tax Exemption for Food

- A.** Gross receipts from the sale of food are not subject to tax if the item is qualifying food, as defined in R15-5-201, and sold by a qualified retailer.
- B.** Gross receipts from the sale of food are subject to tax if the food item:
1. May not be purchased with food coupons;
 2. Is not sold by a qualified retailer;
 3. Is food for consumption on the premises, as defined in A.R.S. § 42-5101(4);
 4. Is delivered by a retailer to an office or other business establishment;
 5. Is sold as a single unit at one price in combination with tangible personal property that is subject to tax, including food sold in conjunction with a gift basket;
 6. Is not food intended for home consumption; or
 7. Is in a general category listed in R15-5-203(A).

R15-5-203. ~~Repealed~~ Food Categories

- A.** The following is a list of examples that includes without limitation general categories of food and non-food items that are subject to tax:
1. Alcoholic beverages;
 2. Cosmetics and grooming items;
 3. Dietary supplements;
 4. Fertilizers;
 5. Gourds used for ornamental purposes;
 6. Lip-block or lip balm;
 7. Nonprescription medicines;
 8. Pet food and supplies;
 9. Soaps, paper products, and other household cleaning supplies;
 10. Tobacco or tobacco products;
 11. Weight reduction aids;
 12. Items considered food for consumption on the premises, as defined in A.R.S. § 42-5101(4); and
 13. Any other food items that may not be purchased with food coupons.
- B.** The following is a list of examples that includes without limitation categories of qualifying food items that are intended for human consumption, consistent with the United States Department of Agriculture’s guidelines for food that may be purchased with food coupons:
1. Bakery items, including cakes, pies, cookies, and pastries;
 2. Bread and flour products;
 3. Butter, oleomargarine, shortening, and cooking oils;
 4. Candy and confectionery products;
 5. Cereal and cereal products;
 6. Cocoa and cocoa products;
 7. Coffee beans and coffee substitutes;
 8. Diabetic, reduced calorie, and kosher foods;
 9. Dietary substitutes;
 10. Eggs and egg products;
 11. Fish and fish products;
 12. Frozen foods, including frozen sandwiches;
 13. Fruit, fruit juices, and fruit products, including pumpkins;
 14. Ice cubes, ice blocks, dry ice used in packing, shipping or transporting food, and bottled water, including carbonated and mineral water;
 15. Meat and meat products;
 16. Milk and milk products;
 17. Packaged ice cream products;

18. Seeds and plants used to grow food for personal consumption;
19. Soft drinks, soda, and other similar beverages sold in sealed containers, including returnable containers for which a deposit is collected;
20. Spices, condiments, extracts, and food colorings;
21. Sugar, sugar products, and sugar substitutes;
22. Tea; and
23. Vegetables and vegetable products.

R15-5-204. Renumbered Qualified Retailers

- A.** The following retailers are qualified retailers and are not subject to tax on the gross receipts derived from the sale of qualifying food:
1. A retail grocery business that is eligible to participate in the United States Department of Agriculture Food Stamp Program, as provided in A.R.S. § 42-5101, including any establishment that is authorized to participate in, or proves to the satisfaction of the Department that the establishment could be eligible to participate in, the Food Stamp Program. This definition includes retail grocery businesses that offer for sale on a continuous basis a variety of foods in each of the four staple categories of meats, breads, fruits and vegetables, and dairy products or businesses that have more than 50 percent of their total gross retail sales in staple food sales.
 2. A retailer whose primary business is not the sale of food, but who sells qualifying food that is displayed, packaged and sold in a manner similar to a retail grocery business. This type of retailer includes department stores, drug stores, and gas stations.
 3. A retailer who sells qualifying food but does not provide facilities for the consumption of food on the premises, as defined in A.R.S. § 42-5101(2), including food to be eaten at tables, chairs, benches, booths, stools, counters, and within parking areas for in-car consumption.
 4. A delicatessen business, as defined in R15-5-201, if the sale of qualifying food is separately accounted for from the delicatessen's sales of food for consumption on the premises. The gross receipts from the operation of the delicatessen's sales of food for consumption on the premises are taxed under the restaurant classification. To separately account for the sale of qualifying food, the delicatessen shall use one of the following configurations:
 - a. A counter that is separate from the place where and cash register on which taxable sales are made.
 - b. A counter that has two cash registers that are used to record taxable and tax exempt sales, or
 - c. A cash register that has at least two tax computing keys that are used to record taxable and tax exempt sales.
 5. A mobile retailer, unless otherwise provided in subsection (D) of this Section.
 6. A vending machine owner or operator, unless otherwise provided in subsection (E) of this Section.
- B.** A qualified retailer's gross receipts from the sale of non-qualifying food items are subject to tax under the retail classification. For example, XYZ Grocers sells low alcohol beer containing 0.05% of alcohol, often referred to as nonalcoholic beer, and tobacco products. The gross receipts derived from the sales of nonalcoholic beer and tobacco products are subject to tax under the retail classification because both items are specifically excluded from the definition of food pursuant to A.R.S. § 42-5106(C).
- C.** A qualified retailer that also sells taxable items shall account for and record the nontaxable sales and taxable sales separately in the business's books and records. If a separate accounting is not maintained, the total amount of sales is subject to tax.
- D.** The gross receipts derived from a mobile retailer's sale of food for consumption on the premises are subject to tax. For example, the sale of a beverage in a cup or a sandwich by a mobile retailer is subject to tax. The sale of a package of chips or a can of soda by a mobile retailer is not subject to tax. The sale of ice cream by a mobile retailer is subject to tax when it is served in a dish, bowl, or other open container, but not subject to tax when the mobile retailer sells prepackaged ice cream products.
- E.** The gross receipts derived from the sale of qualifying food by a vending machine that is located on the premises of a business included in A.R.S. § 42-5101(4)(g) are subject to tax. For example, the sale of qualifying food by a vending machine located in a bowling alley is subject to tax. The sale of qualifying food by a vending machine located in a school is not subject to tax.

R15-5-205. Repealed

~~R15-5-1862, R15-5-205, Restaurant food sales~~ Food Sales

- A.** ~~Restaurants are generally not qualified retailers, and therefore cannot sell food tax free, but are taxable upon all of their gross income or gross proceeds of sale.~~
- B.** ~~If a qualified retailer also operates a restaurant, the gross income or gross receipts of a sale from the two (2) activities must be kept separate. The gross receipts or gross income from the operation of the restaurant shall always be taxable, as will the income from all sales of taxable food and nonfood items. Except for items which may be exempt under some other provision, only tax exempt foods sold by a qualified retailer not in connection with its restaurant operation shall be exempt.~~

Notices of Proposed Rulemaking

- ~~C.~~ To the extent that a delicatessen may sell taxable food, such as hot or cold sandwiches, such delicatessen will be required to report under this classification. Since a delicatessen business may constitute a qualified retailer, such business may still be eligible to sell tax exempt food, if such sales are separately accounted for.
- A. Except as provided in subsection (B), a person subject to tax under the restaurant classification is not a qualified retailer. The gross income derived from the sale of food at a restaurant is subject to tax under the restaurant classification.
- B. A person operating a restaurant business may also operate a separate business as a qualified retailer. To maintain a separate business as a qualified retailer, the person shall account for and record receipts from the two businesses separately in the business's books and records so that the receipts from each business are readily ascertainable. The person shall ensure that sales from the qualified retail business are conducted in a place that is separate from the place where restaurant sales are conducted. The retail business's receipts shall also be in an amount substantial enough to be considered separate from the restaurant business's receipts.
- C. If a person operates a restaurant business and a separate retail business, that retail business may be a qualified retailer only if the retail business, by itself, is a qualified retailer under A.R.S. § 42-5102(A). For example, the separate retail business may be a qualified retailer under A.R.S. § 42-5102(A)(5) if it operates vending machines. The separate retail business is not a qualified retailer under A.R.S. § 42-5102(A)(2), even if the business sells food that is packaged in a manner similar to a retail grocery business, if the retailer's primary retail business is the sale of qualifying food.

R15-5-206. ~~Repeated Health Aids~~

A dietary supplement is not qualifying food and is subject to tax, unless the item may be purchased with food coupons or is a prescription drug as defined in R15-5-156.

ARTICLE 18.1. SALES OF FOOD

R15-5-1860. Renumbered

R15-5-1862. Renumbered

NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

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

[R08-190]

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| Article 2 | New Article |
| R18-14-201 | New Section |
| R18-14-202 | New Section |
| Table 1 | New Table |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statutes: A.R.S. §§ 49-203, 49-351, 49-353
Implementing statutes: A.R.S. § 49-353(A)(2)(b)
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 13 A.A.R. 2690, August 3, 2007
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- | | |
|------------|--|
| Name: | Anna M. Ochoa, J.D. |
| Address: | Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007 |
| Telephone: | (602) 771-4589 |
| Fax: | (602) 771-4834 |

E-mail: ochoa.anna@azdeq.gov

5. An explanation of the rule, including the agency's reasons for initiating the rule:

A. General Explanation of Rulemaking

The purpose of this rulemaking is to adopt rules establishing fees for the Department's engineering design review services for public water systems, in accordance with A.R.S. § 49-353(A)(2)(b), which directs the Department to charge fees for this service. The statute also states that the Department shall not set a fee at more than the Department's cost of providing the service for which the fee is charged. The adoption of the fee will decrease reliance on the State General Fund.

In developing these rules, the Department prepared estimates of the direct and indirect costs associated with the public water system engineering design review program, including the receipt, processing, and review of design review applications; engineering, managerial, and administrative salaries; and overhead, travel expenses, and revenue projections. The monies to be collected will be deposited in the water quality fee fund established under A.R.S. § 49-210. The fees being proposed by the Department are anticipated to recoup most of the costs related to the technical review services provided by the Department, and will ensure that engineering reviews will continue to occur in a thorough, timely, and professional manner.

The Department is charged by A.R.S. § 49-353(A)(2) to perform pre- and post-construction plan reviews of public water system design facilities and issue Approvals to Construct (ATCs) and Approvals of Construction (AOCs). Facilities requiring reviews range from simple projects such as water line extensions and storage tanks to complex water treatment plants serving towns and cities. Issuance of these approvals involves a variety of tasks, including:

- Preliminary meetings, telephone calls, and electronic mail correspondence with owners, engineers, and applicants to provide information;
- Reviewing applications for completeness and adequacy;
- Reviewing applications for substantive compliance with the state's design regulations, including review of technical drawings, conducting pertinent calculations, and other engineering review work to ensure that system components and final water quality will meet all applicable state and federal regulatory requirements;
- Verifying the compliance status of the water system to determine if there are outstanding issues that need to be addressed prior to approving any additions to the system;
- Site visits, as needed;
- Drafting approval conditions and preparing approvals to construct, approvals of construction and approvals of sanitary facilities for subdivisions; and
- Data and file management.

Applications for ATC certificates generally include detailed construction plans and specifications, a design report, and any other data necessary to understand the plans. A Department engineer reviews the plans and determines whether they provide for the use of appropriate materials, the development of adequate water volume capacities, and the appropriate levels of water quality. If the engineer finds the plans to be technically sound, the Department will issue the applicant an ATC certificate, approve the plans and authorize construction on the project. Upon receiving an ATC, an applicant has one year to begin construction of the facility. If construction has not begun within one year of ATC issuance, construction has been halted for greater than one year, or construction cannot be completed within three years from date of issuance, the ATC will be void unless the applicant applies for and receives a time extension from the Department.

Once the facility has been constructed, the applicant must request an Approval of Construction (AOC) certificate from the Department. Similar to the ATC process, the applicant submits an application to the Department, this time including a professional engineer's Certificate of Completion, "as-built plans," inspection and testing data, and an operations and maintenance manual. A Department engineer verifies that the project was built in accordance with the approved plans, only then can an AOC certificate be issued.

The Department estimates that it spends, on average, 25 hours reviewing each ATC application. Table 1 provides the total number of applications reviewed and approved by the Department in fiscal years 2006 and 2007 and projections for fiscal year 2008 based on past data.

Table 1.

	FY 2006	FY 2007	Projected FY 2008
Approvals to Construct	584	753	656

Since it began doing the public water system design review function, the Department has not charged fees for the service. The purpose of the proposed fees is to fund the Water Quality Fee Fund FTEs approved by the Legislature in 2007.

While the Department has not charged fees for drinking water plan review, those Arizona counties with delegated review authority under A.R.S. § 49-107 (Maricopa, Pima, Yavapai and Yuma Counties) currently charge review fees and have done so for many years. As noted above, implementing the program involves a variety of activities. In order to cover some of the more unusual or infrequent costs, some delegated entities charge separate fees or higher fees for activities such as site visits, phased plan submittals, or for third-party reviews. At this time, the Department finds the proposed fee structure is adequate to cover these ancillary activities.

After careful consideration of both hourly and flat fee approaches, the Department is establishing a flat fee for engineering design review of public water systems. The flat fees are comparable to those of the delegated entities, and will generate sufficient revenue to recoup most of the expenses of the technical review portions of the program while ensuring predictability for applicants.

B. Specific Section-by-Section Explanation of Rulemaking

R18-14-201, Definitions. This rule refers to the statutory language at A.R.S. § 49-352 which states the basic concept of a public water system to include distributors, sellers and those with a least 15 service connections and serves at least 25 persons for at least 60 days a year. Other regulatory definitions used in this rule include: “licensing time-frames” as defined in 18 A.A.C. 1, Article 5; “design review” as defined in A.A.C. R18-5-505(B); and the definition of a water treatment plant remains as defined in A.A.C. R18-5-101. A new term is “design review service” which outlines the types of applications that qualify under this rule.

This rule also introduces the term “priority review” which is a design review service by which the Department agrees to review an application within 50% of the substantive review time-frame for an approval to construct license application. To qualify for priority review, the applicant must agree to pay twice the standard fee that would otherwise be applicable and the application must be found to be administratively complete.

R18-14-202, Flat Fee Rates. This rule establishes that the Department will assess flat fees for public water systems design review services. The applicant must include an administratively complete plan with the appropriate fees when submitting for review. These fees and corresponding services are set forth in Table 1 following this rule. The fees are charged per design review service and are cumulative. The rule also provides that the Department retains a portion of the fee when an applicant fails to respond to a request for additional information within a specified time period.

Table 1, Public Water System Design Review Service Fees. This Section of the rulemaking describes the design review services and the attendant fees in a tabular format. As set forth, each design review service results in a separate charge and fees are cumulative. For example, a plan incorporating a water treatment plant of less than 0.1 mgd and a booster pump would cost the applicant \$1,500 plus \$800, for a total fee of \$2,300.

C. Methodology

The methodology for developing a fee schedule for the review of applications for Approvals to Construct (ATCs) of drinking water distribution systems and infrastructure, was based primarily on a comparison of the fee schedules developed and in use by agencies in the state that have been delegated design review functions from ADEQ. Once the fee schedule was developed, ADEQ estimated the number of applications expected to be reviewed and issued by the public water system design review program in a given fiscal year. The revenue to be generated from implementing this fee schedule each fiscal year is anticipated to fund the salaries of engineering review staff in the program or approximately 70% of the program costs.

Number of Applications

Table 1 provided the total number of ATC project applications reviewed by the drinking water design review program over the past two fiscal years and subsequent year projections. Here, Table 2 shows the breakdown of the components of the infrastructure that were examined as part of the design review for the ATC projects referenced in Table 1.

Table 2.

ATC and Infrastructure Components	Fiscal Yr 2006	Fiscal Yr 2007	Projected Fiscal Yr 2008
Water Line Extensions	469	594	485
Storage Tanks	26	47	40
Booster Pumps	13	27	30
Wells	40	45	45
Water Treatment Systems	24	28	30
Project Time Extensions	12	12	26

Fees Charged by Delegated Programs and Proposed Fee Schedule

The Department surveyed the design review programs and fees currently being charged by those Arizona counties that are currently delegated portions of the public water system design review program. Currently Maricopa and Pima

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have delegations covering all aspects of public water system design review while Yavapai and Yuma counties are delegated approvals to construct for water line extensions only. All other design review services in the latter two counties are handled by the Department’s main office in Phoenix.

The Department also reviewed the fees being charged by several of the Arizona delegated entities. The Department developed the following table to provide a comparison of fees and fee structures for four Arizona delegated counties for reviews of the different components of water infrastructure. While the various programs are not structured identically, Table 3 presents an overview of the current charges for these services in comparison to ADEQ proposed fees for the various services. Several of the counties charge only flat fees, similar to the Department’s proposal. Others charge hourly fees and some, like Maricopa County use both funding methods. For example, Maricopa County will charge an initial, flat fee based on the type of project and then will charge an hourly rate not to exceed a maximum allowable fee as shown in the comparison table.

ADEQ considered an hourly fee approach, but after researching design review fees assessed by local governments in Arizona and other states in the region, the Department decided to propose a flat fee schedule. In order to decide on the amount of the various flat fees being proposed, the Department reviewed historical project review times for various types of projects, and ultimately decided to propose a flat fee schedule that incorporates break points for water service connections similar to those employed by Maricopa County’s Environmental Services Division. Instead of charging hourly fees, ADEQ is proposing to charge fees for review of water treatment facilities based on the size and complexity of the project being reviewed. While there will be relatively few very large facilities (e.g., greater than 5 mgd water treatment facilities), the larger, more complex projects require additional staff time and effort that warrant the assessment of higher fees.

Table 3. Comparison Table of Public Water System Engineering Review Fees

Component Types	ADEQ (Draft)	Maricopa County ¹		Pima County	Yavapai County	Yuma County
Approval to Construct (ATC) Public Water Supply Distribution System:						
150 or fewer service connections	\$900	\$600		\$500	\$237.50 + \$0.10 per sheet Maximum: \$452.50	\$250
151 to 300 service connections	\$1,400	\$1,200				
301 to 450 service connections	\$1,900	\$1,800				
451 to 600 service connections	\$2,400	\$2,400				
601 to 750 service connections	\$2,900	\$3,000				
Each additional 150 service connections	Add \$500	Add \$600				
Water Treatment Plants:		Initial Fee ²	Maximum Fee ²			
< 0.1 mgd	\$1,500	\$1,000	\$10,000	\$1,000	Not delegated	Not delegated
0.1 mgd and < 1.0 mgd	\$2,000	\$1,500	\$15,000			
1.0 mgd and < 5.0 mgd	\$3,000	\$3,000	\$24,000			
5.0 mgd	\$5,000	n/a	n/a			
Blending Plans	n/a	\$150	\$7,500	n/a	n/a	n/a
Other Plans	n/a	\$150	\$1,500	n/a	n/a	n/a
Well ³	\$1,250	\$675		\$1,000	Not delegated	Not delegated
New Source Approval ³	n/a	\$425		Not delegated	Not delegated	Not delegated
Storage Tank ⁴	\$800	\$675		\$1,000	Not delegated	Not delegated
Booster Station/Pump ⁴	\$800	\$675		\$1,000	Not delegated	Not delegated
Main Line Extension ⁵	\$250	n/a		Not delegated	Not delegated	Not delegated
Chlorinator and/or Disinfectant System ⁵	\$250	\$150		Not delegated	Not delegated	Not delegated
ATC Time-frame Extension	One-half initial fee, up to \$500	One-half initial fee		Not delegated	Not delegated	Not delegated
Priority Review	Double the Fee	Double the Fee		Not delegated	Not delegated	Not delegated

1. Maricopa County only has three fee categories for water treatment plan reviews; its third tier includes all drinking water plants that treat over 1 mgd.
2. Initial fee is a flat fee. The county also has an hourly fee that is assessed if it exceeds the initial flat fee, up to a maximum fee.
3. Wells and new source approvals. ADEQ includes new source approvals with well approvals; Maricopa County charges separately, but does onsite

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inspections prior to approval. Maricopa County charges \$425 for new source approval and \$150 for a blending plan if it is submitted for review separately from another plan submittal.

4. Storage tanks and booster pumps. Maricopa County has one fee for storage tanks, whether atmospheric (gravity feed) or pressurized (booster pump.) ADEQ plans to have separate fees for the two items, since the draft rule does not include an hourly rate to cover the additional time involved in reviewing more complicated plan submittals.
5. Maricopa County does not have a specific fee for disinfection units or main line extensions; presumably, if these items are part of a larger plan review submittal for a water treatment plant, there would not be a separate per unit review fee; the review costs would be covered by the county's hourly rate.

Note: Maricopa County also has separate charges for other types of plan reviews, and an annual fee for various types of operating permits.

Workload Assumptions

The salaries of the Department's current design review engineers range from \$48,500 to \$69,408. In a review of the program workload for years 2002 through 2006, based on an average review time of 25 hours per application, the Department estimated it needs at least seven design review engineers to handle the work load of the public water system design review unit. In addition to the technical review staff, the workload review shows the need for one manager for the public water system design unit and two administrative support staff. These numbers correspond to the assumptions that the engineering staff handles 70% of the review work; administrative staff handles 20% of the workload and management is responsible for 10% of the workload per application. Assuming the current average annual salaries of the staff, the Department estimates the total cost for the design review program at \$1,150,000. Using an average current engineering salary of \$56,000, the Department estimates the total costs for the seven design review engineering staff positions at approximately \$810,000 which corresponds to approximately 70% of the total program costs.

As the program has not historically been charging fees for services nor has it been tracking time spent on projects, these projections are estimates. The program has recently started tracking time per project and/or activity. This will allow the program to get more refined estimates of actual time to review specific types of plan submittals.

Projected Revenues

Based on the Department's proposed fee schedule (*see* Table 3 above and Table 1 in proposed rule text) and the types of projects in Table 2, the table below presents the estimated revenues that would have been realized had the cost schedule been in place during the period fiscal years 2006 – 2008.

Table 4.

Revenues from Components	2006	2007	Projected 2008
Water Line Extensions	\$584,000	\$753,000	\$656,000
Storage Tanks	\$15,600	\$28,200	\$24,000
Booster Pumps	\$7,800	\$16,200	\$18,000
Wells	\$30,000	\$33,750	\$33,750
Water Treatment Systems	\$24,000	\$28,000	\$30,000
Project Time Extensions	\$3,000	\$3,000	\$4,000
Total Revenue	\$664,400	\$862,150	\$765,750

Based on the fee schedule in this rulemaking, the projected fees will be sufficient to cover the needed technical engineering staff. Administrative and managerial positions, approximately 25-30% of the program costs, will continue to be funded through current funding.

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

Not applicable

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

Not applicable

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

The proposed fees are specifically authorized pursuant to A.R.S. § 49-353. Moreover, local governments to whom the Department has delegated authority for conducting engineering design reviews on behalf of the Department – e.g., the City of Phoenix, Maricopa County, and Pima County – already charge engineering review fees consistent with the fees proposed in this rulemaking. While additional project costs are not necessarily welcomed, water systems will not be unduly anxious concerning the issuance of fee rules compatible with Arizona law and that are on par with fees already being charged by currently delegated entities.

- 9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the preliminary economic, small business, and consumer impact statement:**

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A person may submit written comments to the person listed in item 4.

10. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

ADEQ has scheduled oral proceedings to receive oral comments on the rules, in accordance with A.R.S. § 41-1023; the time, place, and location of the hearings are listed below:

Date	Time	Location
July 15, 2008	1:30 p.m.	Department of Environmental Quality 1110 W. Washington St., Room 250 Phoenix, AZ 85007

ADEQ is committed to complying with the Americans With Disabilities Act. If any individual with a disability needs any type of accommodation, please contact Ms. Tricia Garland at (602) 771-4794 at least 72 hours before the hearing.

Anyone wishing to provide written comments regarding the rulemaking may submit their comments to ADEQ between 8:00 a.m. and 5:00 p.m., Monday through Friday, up until 5:00 p.m., July 15, 2008, to the person and address in item 4.

11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

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

None

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

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 14. DEPARTMENT OF ENVIRONMENTAL QUALITY
PERMITS AND COMPLIANCE FEES

ARTICLE 2. PUBLIC WATER SYSTEM DESIGN REVIEW FEES

Section

R18-14-201. Definitions

R18-14-202. Flat Rate Fees

Table 1. Service Fees

ARTICLE 2. PUBLIC WATER SYSTEM DESIGN REVIEW FEES

R18-14-201. Definitions

In addition to the definitions in A.R.S. §§ 49-351, 49-352, 49-353, and 49-353.01, the following terms apply to this Article:

“Design review” has the same meaning prescribed in A.A.C. R18-5-505(B).

“Design review service” means:

Reviewing a request for an approval to construct;

Issuing, amending, or denying an approval of an approval to construct application;

Reviewing supplemental information requested as part of review; or

Conducting a pre-application meeting or a site visit.

“Distribution system” has the same meaning prescribed in A.A.C. R18-5-101.

“Priority Review” means a design review service where a license application, meeting specific criteria, is reviewed using not more than 50% of the substantive review time-frame for an “approval to construct” license application.

“Public water system” has the same meaning prescribed in A.R.S. § 49-352.

“Licensing time-frame” means a period of time described and defined in A.R.S. Title 41, Chapter 6, Article 7.1, and 18 A.A.C. 1, Article 5.

“Water treatment plant” the same meaning prescribed in A.A.C. R18-5-101.

R18-14-202. Flat Rate Fees

A. The Department shall assess and collect a flat rate fee for design review services for public water systems.

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- B.** Design criteria for public water systems are specified in 18 A.A.C. 4 and 18 A.A.C. 5.
- C.** Public water system design review fees must be submitted with plans and specifications for public water systems, as specified in 18 A.A.C. 5, Article 5.
- D.** The flat rate fees for each design review service:
 - 1. Are established in Table 1, are assessed on a per unit basis and are cumulative unless otherwise specified in this Article.
 - 2. Shall be paid by cash, check, cashier's check, money order, or any other method acceptable to the Department.
 - 3. Shall be paid in full before the Department may issue approval of an application.
- E.** The Department shall refund 50 percent of the application fee paid by an applicant if, during the administrative completeness review time-frame period, the applicant:
 - 1. Fails to respond in a reasonably timely manner to a notice of administrative deficiencies requesting additional information under A.A.C. R18-1-503, and the Department elects to deny the application under A.A.C. R18-1-507; or
 - 2. Withdraws the application.
- F.** If an application is denied under A.A.C. R18-1-507 after the end of the administrative completeness review time-frame, the Department shall retain the flat fee paid by the Applicant.
- G.** An Applicant may elect a Priority Review and, if so, shall pay the Priority Review Fee in Table 1, in accordance with this Section.
- H.** State agencies are exempt from all fees imposed under this Article. A.R.S. § 49-353(A)(2)(b).

Table 1. Service Fees

Public Water System Design Review Application Types	Fees^{1,2}
<u>Approval to Construct Public Water Supply Distribution System:</u>	
• <u>150 or fewer service connections</u>	<u>\$900.00</u>
• <u>151 to 300 service connections</u>	<u>\$1,400.00</u>
• <u>301 to 450 service connections</u>	<u>\$1,900.00</u>
• <u>451 to 600 service connections</u>	<u>\$2,400.00</u>
• <u>601 to 750 service connections</u>	<u>\$2,900.00</u>
• <u>Each additional 150 service connections</u>	<u>Add \$500</u>
<u>Water Treatment Plants and Blending Plans (including new source approval if applicable):</u>	
• <u>< 0.1 mgd</u>	<u>\$1,500.00</u>
• <u>≥ 0.1 mgd and < 1 mgd</u>	<u>\$2,000.00</u>
• <u>≥ 1 mgd and < 5 mgd</u>	<u>\$3,000.00</u>
• <u>≥ 5 mgd</u>	<u>\$5,000.00</u>
<u>Well (including new source approval if applicable)</u>	<u>\$1,250.00</u>
<u>Storage Tank</u>	<u>\$800.00</u>
<u>Booster Pump</u>	<u>\$800.00</u>
<u>Main Line Extension</u>	<u>\$250.00</u>
<u>Chlorinators/Disinfection Devices</u>	<u>\$250.00</u>
<u>Approval to Construct Time-frame Extension³</u>	<u>50% of the application fee, not to exceed \$500.00</u>
<u>Priority Review Fee⁴</u>	<u>Double the Standard Fee</u>

¹ Fees are calculated on a per unit basis.

² Fees for each application type are cumulative; an applicant must pay the total of all pertinent fees.

³ Extensions are granted under A.A.C. R18-1-510.

⁴ Priority Review Projects require Department authorization prior to filing.