

NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. §§ 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

NOTICE OF EXEMPT RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 5. DEPARTMENT OF HEALTH SERVICES CHILD CARE FACILITIES

Editor's Note: The following Notice of Exempt Rulemaking is exempt from Laws 2010, Ch. 287, § 18. (See the text of § 18 on page 2354.)

[R10-164]

PREAMBLE

- 1. Sections Affected**

R9-5-206	<u>Rulemaking Action</u>
R9-5-208	Amend
	Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. § 36-136(F)

Implementing statute: A.R.S. §§ 36-882, 36-883, 36-883.01, 36-883.02, 36-883.04, 36-888, 36-889, 36-891, and 36-891.01

Statutes or session laws authorizing the exemption: Laws 2009, 3rd Special Session, Ch. 10, § 37 and Ch. 7, § 28 and Laws 2010, Ch. 248, § 5
- 3. The effective date of the rules:**

December 1, 2010
- 4. A list of all previous notices appearing in the *Register* addressing the exempt rule:**

Not applicable
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Lourdes Ochoa, State Licensing Manager
Address:	Arizona Department of Health Services Division of Licensing Services Office of Child Care Licensing 150 N. 18th Ave., Suite 400 Phoenix, AZ 85007
Telephone:	(602) 364-2539
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or	
Name:	Thomas Salow, Acting Manager of Administrative Counsel and Rules
Address:	Arizona Department of Health Services Office of Administrative Counsel and Rules 1740 W. Adams St., Suite 203 Phoenix, AZ 85007
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E-mail: salowt@azdhs.gov

6. An explanation of the rule, including the agency's reasons for the rule, including the statutory citation to the exemption from regular rulemaking procedures:

This rulemaking establishes a fee for a child care facility that requests an increase in the child care facility's licensed capacity during the child care facility's three-year licensure period. This change enables a child care facility to establish the child care facility's licensed capacity based on the current enrollment numbers. When a child care facility is experiencing low enrollment, the child care facility may request a lower licensed capacity which would result in the child care facility being required to submit a lower licensure fee. If enrollment increases, with a corresponding increase in revenues for the child care facility, the child care facility may request an increase in licensed capacity and pay the difference between what was paid for a lower licensed capacity and the fee for the higher licensed capacity, prorated for the months remaining in the licensure period. This change may also benefit a new child care facility by allowing the facility to begin operating with a lower licensed capacity and lower licensure fee and, as the enrollment and revenues increase, to increase the child care facility's licensed capacity. Laws 2009, 3rd Special Session, Ch. 10, § 37 and Ch. 7, § 28 and Laws 2010, Ch. 248, § 5 provide an exemption from the requirements in A.R.S. Title 41, Chapter 6, for this rulemaking.

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

None

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

Not applicable

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

Not applicable

10. A description of the changes between the proposed rules, including supplemental notices, and final rules, (if applicable):

Not applicable

11. A summary of the comments made regarding the rule and the agency response to them:

Not applicable

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

Not applicable

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

None

14. Was this rule previously made as an emergency rule? If so, please indicate the Register citation:

No

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 5. DEPARTMENT OF HEALTH SERVICES
CHILD CARE FACILITIES

ARTICLE 2. FACILITY LICENSURE

Section

R9-5-206. Licensure Fees
R9-5-208. Changes Affecting a License

ARTICLE 2. FACILITY LICENSURE

R9-5-206. Licensure Fees

A. Except as provided in subsection (B), the fees for an applicant submitting an application or a licensee submitting licensure fees are:

1. For a child care facility with a licensed capacity of ~~5~~ five to 10 children, \$1,000;
2. For a child care facility with a licensed capacity of 11 to 59 children, \$4,000; and
3. For a child care facility with a licensed capacity of 60 or more children, \$7,800.

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- B. If an applicant or licensee participates in a Department-approved program, the Department may discount the fee in subsection (A), based on available funding.
- C. The fee for a licensee requesting an increase in a facility's licensed capacity is the difference between the applicable fee in this Section for the new licensed capacity and the applicable fee in this Section for the current licensed capacity, prorated from the date the licensee submitted the request for the increase for the number of months remaining before the facility's license anniversary date specified in subsection R9-5-205.

R9-5-208. Changes Affecting a License

- A. At least 30 days before the date of a change in a facility's name, a licensee shall send the Department written notice of the name change and the Department shall issue an amended license that incorporates the name change but retains the anniversary date of the current license.
- B. At least 30 days before the date of an intended change in a facility's service classification, space utilization, or licensed capacity, a licensee shall submit a written request for approval of the intended change to the Department that includes:
 - 1. The licensee's name;
 - 2. The facility's name, street address, city, state, zip code, mailing address, and telephone number;
 - 3. The name, telephone number, and fax number of a point of contact for the request;
 - 4. The facility's license number;
 - 5. The type of change intended:
 - a. Service classification,
 - b. Space utilization, or
 - c. Licensed capacity;
 - 6. A narrative description of the intended change; and
 - 7. The following additional information, as applicable:
 - a. If the intended change affects individual rooms, the following information about each affected activity area, as applicable:
 - i. Identification of the activity area,
 - ii. Current and intended square footage,
 - iii. Current and intended operating hours,
 - iv. Current and intended service classification,
 - v. Current and intended licensed capacity, and
 - vi. Whether the activity area has or will have a diaper changing area;
 - b. If the intended change is to increase licensed capacity, the square footage of the outdoor activity area; and
 - c. If the intended change includes an alteration or addition to the physical plant of a licensed facility, the following, as applicable:
 - i. If the facility is not located in a public school or if providing child care services to infants, ~~one-year-old 1-year-old~~ children, or ~~two-year-old 2-year-old~~ children in a facility located in a public school, the information required in R9-5-201(A)(5)(f) and ~~(A)(5)(g) (g)~~ showing the intended change; or
 - ii. If the facility is located in a public school and provides child care only for ~~three-year-old 3-year-old, four-year-old 4-year-old,~~ or ~~five-year-old 5-year-old,~~ or school-age children, a set of final construction drawings or a school map, including the information required in R9-5-201(5)(i) showing the intended change.
- C. If the intended change in subsection (B) includes an increase in the licensed capacity, a licensee shall submit the fee for an increase in licensed capacity in R9-5-206(C) with the written request for approval.
- ~~C.D.~~ The Department shall review a request submitted under subsection (B) according to R9-5-202. If the intended change is in substantial compliance with A.R.S. Title 36, Chapter 7.1, Article 1 and this Chapter and any applicable fee is submitted, the Department shall send the licensee written approval of the requested change or an amended license that incorporates the change but retains the anniversary date of the current license.
- ~~D.E.~~ A licensee shall not implement any change described under subsection (B) until the Department issues an approval or amended license.
- ~~E.F.~~ At least 30 days before the date of a change in ownership of a facility, a licensee shall send the Department written notice of the change. A new owner shall obtain a new license as prescribed in R9-5-201 before the new owner begins operating the facility.
- ~~F.G.~~ A licensee changing a facility's location shall apply for a new license as prescribed in R9-5-201.
- ~~G.H.~~ Within 30 days after a change in a controlling person, a licensee shall send the Department written notice of the change that includes:
 - 1. The name of the licensee;
 - 2. A description of the change made;
 - 3. The name, title, street address, city, state, and zip code of each controlling person;
 - 4. A statement that each controlling person has not been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state;
 - 5. A statement that each controlling person has not had a certificate to operate a child care group home or a license to

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operate a child care facility revoked in this state or another state for reasons that relate to endangerment of the health and safety of children;

6. A statement that the information provided in the written notice is accurate and complete; and
7. The signature of the licensee.

H.I. If the change in subsection ~~(G)~~ (H) is a change in a controlling person who is a designated agent, a licensee shall include a copy of one of the following for the designated agent:

1. A U.S. passport,
2. A birth certificate,
3. Naturalization documents, or
4. Documentation of legal resident alien status.

H.J. Within 30 days after changing a responsible party, a licensee shall send the Department written notice of the change that includes:

1. The name of the licensee;
2. A description of the change made;
3. The name, title, street address, city, state, and zip code of each responsible party, if the responsible party is an individual, or each individual in the group, if the responsible party is a group of individuals; and
4. A statement signed by the licensee stating:
 - a. That each individual in subsection ~~(I)(3)~~ (J)(3) has not been denied a certificate or license to operate a child care group home or child care facility in this state or another state, and
 - b. That each individual in subsection ~~(I)(3)~~ (J)(3) has not had a certificate or license to operate a child care group home or child care facility revoked in this state or another state for endangering the health and safety of children.