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From the Publisher

ABOUT THIS PUBLICATION

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

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

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

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

ABOUT RULES

Rules can be: made (all new text); amended (rules on file, changing text); repealed (removing text); or renumbered (moving rules to a different Section number).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

New rules in this publication (whether proposed or made) are denoted with underlining; repealed text is stricken.

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

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

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

LEGAL CITATIONS AND FILING NUMBERS

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

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September 6, 2024
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ADMINISTRATIVE REGISTER
This publication is available online for free at www.azsos.gov.

ADMINISTRATIVE CODE
The *Arizona Administrative Code* is available online at www.azsos.gov.

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

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

Participate in the Process

Look for the Agency Notice

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

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

Attend a public hearing/meeting

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

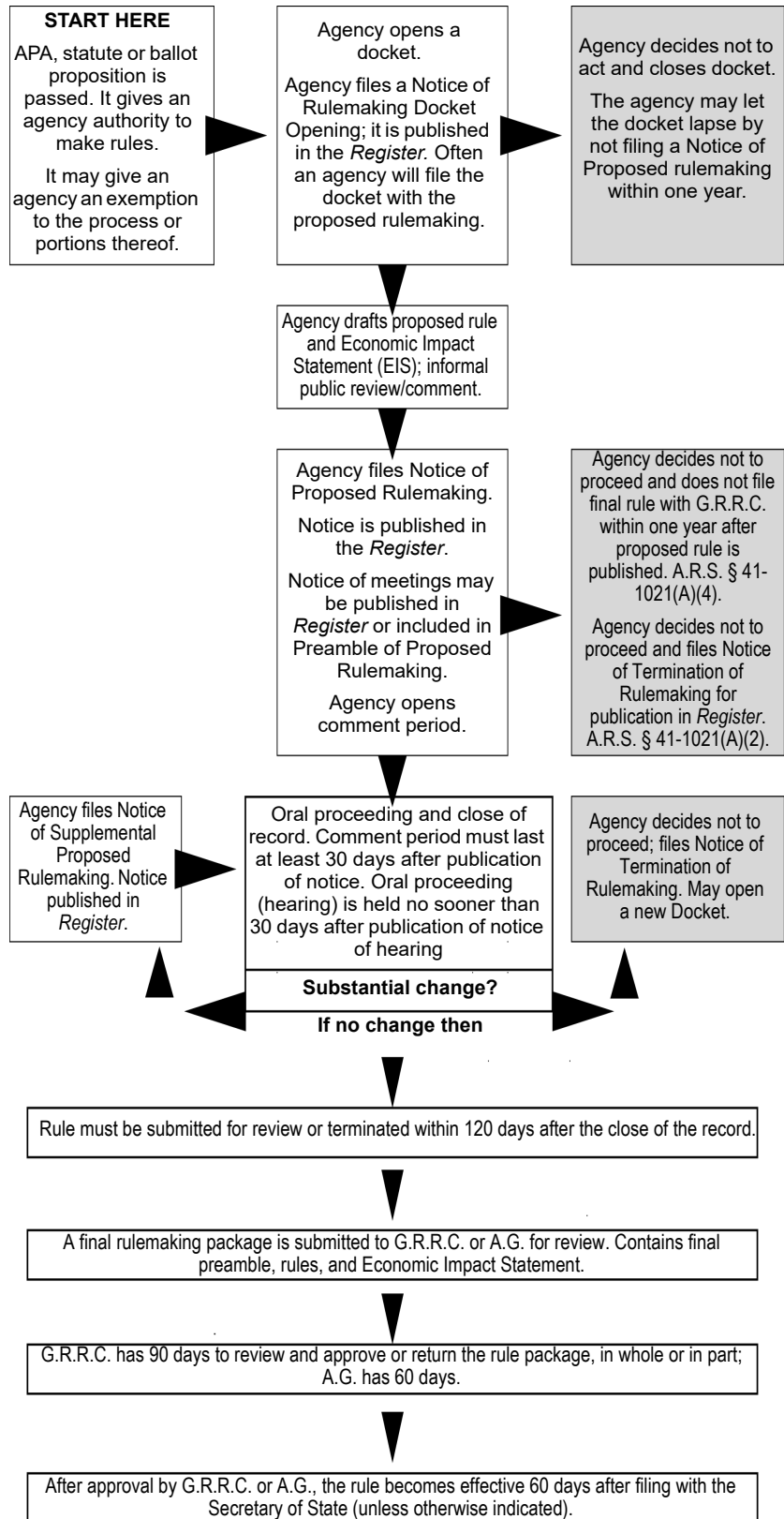
An agency may not have a public meeting scheduled on the Notice of Proposed Rulemaking. If not, you may request that the agency schedule a proceeding. This request must be put in writing within 30 days after the published Notice of Proposed Rulemaking.

Write the agency

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

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

Arizona Regular Rulemaking Process



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

Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Acronyms

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

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

APA – *Administrative Procedure Act*

A.R.S. – *Arizona Revised Statutes*

CFR – *Code of Federal Regulations*

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

FR – *Federal Register*

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

U.S.C. – *United States Code*

About Preambles

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

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

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

NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKING

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

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

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

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

NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

[R24-159]

PREAMBLE

1. Permission to proceed with this supplemental proposed rulemaking was granted under A.R.S. § 41-1039 by the governor on:

April 26, 2021

2. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the current record of the supplemental proposed rule:

Notice of Docket Opening: 30 A.A.R. 246, February 2, 2024, Issue 5

Notice of Proposed Rulemaking: 30 A.A.R. 261, February 9, 2024, Issue 6

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

Rulemaking Action

Table with 2 columns: Article, Part, or Section Affected (as applicable) and Rulemaking Action. Rows include R4-11-101 through R4-11-1307, all with 'Amend' as the action.

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

Authorizing statute: A.R.S. § 32-1207

Implementing statute: A.R.S. §§ 32-1201 et seq.

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

Name: Ryan Edmonson, Executive Director
Address: Arizona State Board of Dental Examiners, 1740 W. Adams St., Suite 2470, Phoenix, AZ 85007
Telephone: (602) 542-4493
Email: ryan.edmonson@dentalboard.az.gov

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

The Board needs to amend its rules to address permitting requirements for several types of anesthesia and sedation permits.

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

None

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

The Board received several comments during the public comment period and oral proceeding that related to General formatting



and terminology. The Board also received comments, and made changes to the proposed rules, as follows:

Dr. Caputo asked why the fees for R4-11-1302 and 1303 were decreased, while the fees for 1301 were not. The Board responded that the fees were based on renewal periods.

HIS suggested using more general language to refer to “another agency that follows the same procedures, standards, and techniques for training as the American Heart Association” and the Board determined that adding the American Heart Association was an appropriate standard.

Dr. Caputo commented that the Board should consider incorporating language to state the permit holder maintains an Action Plan for the conduct of any sedation or anesthesia procedure that includes appropriate drugs, equipment and supplies accepted according to state and national standards. The Board determined that the rules, as written, do not prohibit a licensee from creating such a plan.

Dr. Fukami commented: A neuromuscular blocker such as succinylcholine was omitted from list of emergency medications for general anesthesia. Should absolutely be included, for treatment of laryngospasm. Also would recommend anti-hypoglycemic, like IV dextrose.

Dr. Snell commented: The list of emergency drugs should include a muscle paralytic such as Succinylcholine.

The Board ensured that a neuromuscular blocker is included, but does not want to include IV dextrose specifically.

Dr. Caputo commented that the amount of CE for pediatric endorsement should count towards a Licensee’s overall CE credits.

The Board agreed and made changes to the rule language to ensure that such credit was thusly accounted.

Dr. Caputo and Dr. Fukami commented that the primary responsibility for monitoring a patient during anesthesia should be the treating dentist.

The Board agreed and made corresponding changes to ensure such.

Dr. Caputo suggested that references to specific drugs should be removed.

The Board agreed and removed references to specific drug names throughout the rules.

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

Not applicable

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

There is little to no economic, small business, or consumer impact, other than the cost to the Board to prepare the rule package, because the rulemaking simply clarifies statutory requirements that already exist. There may be some impact to dental professionals who must now obtain a pediatric endorsement in order to provide anesthesia and sedation services to patients that are less than eight years of age. However, the increased regulation is necessary to ensure that dental professionals are qualified to provide such services to patients who are less than eight years of age in order to better protect the health, safety, and welfare of those patients. The Board is also removing the requirement to obtain a permit in order to work with a qualified anesthesia provider if the treating dentist meets certain requirements that protect the health, safety, and welfare of their patients. Thus, the economic impact is minimized.

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

Name: Ryan Edmonson, Executive Director
Address: Arizona State Board of Dental Examiners
1740 W. Adams St., Suite 2470
Phoenix, AZ 85007
Telephone: (602) 542-4493
Email: ryan.edmonson@dentalboard.az.gov

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

The Department will accept comments during business hours at the address listed in Item #5. Comments will also be accepted via email at the email address provided under Item #5. Mailed written comments shall be postmarked within 30 days of this published notice.

An oral proceeding regarding the proposed rules will be held as follows:

Date: October 17, 2024
Time: 11:30 a.m.
Location: Virtual format
Video call link: <https://meet.google.com/mxy-zamg-yau>
Or dial: (US) +1 316-778-8312 PIN: 803 985 409#

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

None

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

The Board issues general permits to licensees who meet the criteria established in statute and rule.

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

Not applicable

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

No analysis was submitted.

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

None

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

ARTICLE 1. DEFINITIONS

Section

R4-11-101. Definitions

ARTICLE 3. EXAMINATIONS, LICENSING QUALIFICATIONS, APPLICATION AND RENEWAL, TIME-FRAMES

Section

R4-11-305. Application Processing Procedures: Issuance, Denial, and Renewal of ~~General Anesthesia and Deep Sedation Permits, Parenteral Sedation Permits, Oral Sedation Permits, and Permit to Employ a Physician Anesthesiologist or CRNA.~~ Section 1301 Permits, Section 1302 Permits, and Section 1303 Permits.

ARTICLE 4. FEES

Section

R4-11-406. Anesthesia and Sedation Permit Fees

ARTICLE 12. CONTINUING DENTAL EDUCATION AND RENEWAL REQUIREMENTS

Section

R4-11-1203. Dentists and Dental Consultants

ARTICLE 13. GENERAL ANESTHESIA AND SEDATION

Section

R4-11-1301. General Anesthesia and Deep Sedation

R4-11-1302. Parenteral Moderate Sedation

R4-11-1303. Enteral Moderate ~~Oral~~ Sedation

R4-11-1304. ~~Permit to Employ or Work Working~~ with a QAP Defined as a Physician Anesthesiologist or Certified Registered Nurse Anesthetist (CRNA)

R4-11-1305. Reports of Adverse Occurrences Mandatory Reporting

R4-11-1306. Education; Continued Competency-Enteral Sedation

R4-11-1307. Renewal of Permit

ARTICLE 1. DEFINITIONS

R4-11-101. Definitions

The following definitions, and definitions in A.R.S. § 32-1201, apply to this Chapter:

“ACLS” means Advanced Cardiac Life Support.

“AED” means an Automatic External Defibrillator.

“Analgesia” means a state of decreased sensibility to pain produced by using nitrous oxide (N2O) and oxygen (O2) with or without local anesthesia.

“Business Entity” means a business organization that offers to the public professional services regulated by the Board and is established under the laws of any state or foreign country, including a sole practitioner, partnership, limited liability partnership, corporation, and limited liability company, unless specifically exempted by A.R.S. § 32-1213(J).

“Calculus” means a hard mineralized deposit attached to the teeth.

“Charitable Dental Clinic or Organization” means a non-profit organization meeting the requirements of 26 U.S.C. 501(c)(3) and providing dental, dental therapy, or dental hygiene services.

“Clinical evaluation” means a dental examination of a patient named in a complaint regarding the patient's dental condition as it exists at the time the examination is performed.

“Controlled substance” has the meaning prescribed in A.R.S. § 36-2501(A)(3).



“Credit hour” means one clock hour of participation in a Recognized Continuing Dental Education program.

“Deep sedation” is a Drug-induced depression of consciousness during which a patient cannot be easily aroused but responds purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. The patient may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

“Dentist of record” means a dentist who examines, diagnoses, and formulates treatment plans for a patient and may provide treatment to the patient.

“Direct supervision” means, for purposes of Article 7 only, that a licensed dentist is present in the office and available to provide immediate treatment or care to a patient and observe a dental assistant’s work.

“Disabled” means a dentist, dental therapist, dental hygienist, or denturist has totally withdrawn from the active practice of dentistry, dental therapy, dental hygiene, or denturism due to a permanent medical disability and based on a physician’s order.

“Documentation of attendance” means documents that contain the following information:

- Name of sponsoring entity;
- Course title;
- Number of Credit Hours;
- Name of speaker; and
- Date, time, and location of the course.

“Drug” means:

- Articles recognized, or for which standards or specifications are prescribed, in the ~~official compendium~~ Official Compendium;
- Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in the human body;
- Articles other than food intended to affect the structure of any function of the human body; or
- Articles intended for use as a component of any articles specified in this definition but does not include devices or components, parts, or accessories of devices.

“Emerging scientific technology” means any technology used in the treatment of oral disease that is not currently generally accepted or taught in a recognized dental, dental therapy, or dental hygiene school and use of the technology poses material risks.

“Enteral” means any technique of administration in which the Drug is absorbed through the gastrointestinal tract.

“Epithelial attachment” means the layer of cells that extends apically from the depth of the gingival (gum) sulcus (crevice) along the tooth, forming an organic attachment.

“Ex-parte communication” means a written or oral communication between a decision maker, fact finder, or Board member and one party to the proceeding, in the absence of other parties.

“General anesthesia” is a Drug-induced loss of consciousness during which the patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. The patient often requires assistance in maintaining a patent airway, and positive-pressure ventilation may be required because of depressed spontaneous ventilation or Drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

“General supervision” means, for purposes of Article 7 only, a licensed dentist is available for consultation, whether or not the dentist is in the office, regarding procedures or treatment that the dentist authorizes and for which the dentist remains responsible.

“Homebound patient” means a person who is unable to receive dental care in a dental office as a result of a medically diagnosed disabling physical or mental condition.

“Irreversible procedure” means a single treatment, or a step in a series of treatments, that causes change in the affected hard or soft tissues and is permanent or may require reconstructive or corrective procedures to correct the changes.

“Licensee” means a dentist, dental therapist, dental hygienist, dental consultant, ~~retired~~ Retired licensee, or ~~person who holds a restricted permit~~ Restricted Permit Holder under A.R.S. §§ 32-1237 or 32-1292.

“Local anesthesia” is the elimination of sensations, such as pain, in one part of the body by the injection of an anesthetic Drug.

“Minimal sedation” is a minimally depressed level of consciousness that retains a patient’s ability to independently and continuously maintain an airway and respond ~~appropriately~~ normally to light tactile stimulation, not limited to reflex withdrawal from a painful stimulus, or verbal command and that is produced by a pharmacological or non-pharmacological method or a combination thereof. Although cognitive function and coordination may be ~~modestly~~ mildly impaired, ventilatory and cardiovascular functions are unaffected. In accord with this particular definition, the Drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely.

“Mobile dental permit holder” means a Licensee or dentist who holds a mobile permit under R4-11-1301, R4-11-1302, or R4-11-1303.

“Mobile permit” means a permit issued by the Board under R4-11-1301(G), R4-11-1302(F), or R4-11-1303(F).

“Moderate sedation” is a Drug-induced depression of consciousness during which a patient responds purposefully to verbal commands either alone or accompanied by light tactile stimulation, ~~not limited to reflex withdrawal from a painful stimulus~~. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. In accordance with this definition, the ~~The~~ Drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Repeated dosing of a Drug before the effects of previous dosing can be fully recognized may result in a greater alteration of the state of consciousness than intended by the permit holder.

“Nitrous oxide analgesia” means the use of nitrous oxide in combination with oxygen used as an inhalation analgesic.

“Official compendium” means the latest revision of the United States Pharmacopeia and the National Formulary and any current supplement.

“Oral sedation” is the enteral administration of a drug or non drug substance or combination inhalation and enterally administered drug or non drug substance in a dental office or dental clinic to achieve minimal or moderate sedation.

“PALS” means Pediatric Advanced Life Support.

“Parenteral sedation” is ~~a minimally depressed level of consciousness that allows the patient to retain the ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and is induced by a pharmacological or non pharmacological method or a combination of both methods of administration in which the drug bypasses the gastrointestinal tract of a Drug that bypasses the gastrointestinal tract to achieve a desired level of sedation or General Anesthesia.~~

“Pediatric endorsement” is a provision added to a Section 1301 Permit, Section 1302 Permit, or Section 1303 Permit allowing administration of sedation or General Anesthesia to a pediatric patient who is younger than 8 years of age according to R4-11-1301, R4-11-1302, or R4-11-1303.

“Periodontal pocket” means ~~a pathologic fissure bordered on one side by the tooth and on the opposite side by crevicular epithelium and limited in its depth by the epithelial attachment.~~

“Plaque” means a film-like sticky substance composed of mucoidal secretions containing bacteria and toxic products, dead tissue cells, and debris.

“Polishing” means a procedure limited to the removal of Plaque and extrinsic stain from exposed natural and restored tooth surfaces that utilizes an appropriate rotary instrument with rubber cup or brush and polishing agent. A Licensee or dental assistant shall not represent that this procedure alone constitutes an oral Prophylaxis.

“Prescription-only device” means:

Any device that is restricted by the federal act, as defined in A.R.S. § 32-1901, to use only under the supervision of a medical practitioner; or

Any device required by the federal act, as defined in A.R.S. § 32-1901, to bear on its label the legend “Rx Only.”

“Prescription-only Drug” does not include a Controlled Substance but does include:

Any Drug that, because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner;

Any Drug that is limited by an approved new Drug application under the federal act or A.R.S. § 32-1962 to use under the supervision of a medical practitioner;

Every potentially harmful Drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer; or

Any Drug required by the federal act to bear on its label the legend “RX Only.”

“President’s designee” means the Board’s executive director, an investigator, or a Board member acting on behalf of the Board president.

“Preventative and therapeutic agents” means substances that affect the hard or soft oral tissues to aid in preventing or treating oral disease.

“Prophylaxis” means a Scaling and Polishing procedure performed on patients with healthy tissues to remove coronal Plaque, Calculus, and stains.

“QAP” means a qualified anesthesia provider according to A.R.S. § 32-1201.

“Recognized continuing dental education” means a program whose content directly relates to the art and science of oral health and treatment, provided by a recognized dental school, recognized dental therapy school, recognized dental hygiene school, or recognized dentist school, or sponsored by a national or state dental, dental therapy, dental hygiene, or dentist association, American Dental Association, Continuing Education Recognition Program or Academy of General Dentistry, Program Approval



for Continuing Education approved provider, dental, dental therapy, dental hygiene, or dentist Study Club, governmental agency, commercial dental supplier, non-profit organization, accredited hospital, or programs or courses approved by other state, district, or territorial dental licensing boards.

“Restricted permit holder” means a dentist who meets the requirements of A.R.S. § 32-1237 or a dental hygienist who meets the requirements of A.R.S. § 32-1292 and is issued a restricted permit by the Board.

“Retired” means a dentist, dental therapist, dental hygienist, or dentist is at least 65 years old and has totally withdrawn from the active practice of dentistry, dental therapy, dental hygiene, or denturism.

“Root planing” means a definitive treatment procedure designed to remove cementum or surface dentin that is rough, impregnated with calculus, or contaminated with toxins or microorganisms.

“Scaling” means use of instruments on the crown and root surfaces of the teeth to remove Plaque, Calculus, and stains from these surfaces.

“Section 1301 permit” means a permit to administer General Anesthesia and Deep Sedation, or employ or work with a QAP a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Section 1302 permit” means a permit to administer Parenteral Moderate Sedation, or employ or work with a QAP a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Section 1303 permit” means a permit to administer Oral Enteral Moderate Sedation, or employ or work with a QAP a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Section 1304 permit” means a permit to employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Study club” means a group of at least five Arizona licensed dentists, dental therapists, dental hygienists, or denturists who provide written course materials or a written outline for a continuing education presentation that meets the requirements of Article 12.

“Treatment records” means all documentation related directly or indirectly to the dental treatment of a patient.

ARTICLE 3. EXAMINATIONS, LICENSING QUALIFICATIONS, APPLICATION AND RENEWAL, TIME-FRAMES

R4-11-305. Application Processing Procedures: Issuance, Denial, and Renewal of ~~General Anesthesia and Deep Sedation Permits, Parenteral Sedation Permits, Oral Sedation Permits, and Permit to Employ a Physician Anesthesiologist or CRNA. Section 1301 Permits, Section 1302 Permits, and Section 1303 Permits.~~

- A. The Board office shall complete an administrative completeness review within 24 days from the date of the receipt of an application for a permit.
 - 1. Within ~~30~~ 14 calendar days of receiving an initial or renewal application for a ~~General Anesthesia and Deep Sedation permit, parenteral sedation permit, Oral Sedation permit or permit to employ a physician anesthesiologist or Certified Registered Nurse Anesthetist Section 1301 Permit, Section 1302 Permit, or Section 1303 Permit,~~ the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.
 - 2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 24-day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
 - 3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 24 days after receipt by the Board office.
- B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.
- C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 10 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a permit shall apply again as required in A.A.C. Title 4, Chapter 11, Article 13.
- D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of this Section and A.A.C. Title 4, Chapter 11, Article 13.
- E. The Board shall complete a substantive review of the applicant's qualifications in no more than 120 calendar days from the date on which the administrative completeness review of an application package is complete.
 - 1. If the Board finds an applicant to be eligible for a permit and grants the permit, the Board office shall notify the applicant in writing.
 - 2. If the Board finds an applicant to be ineligible for a permit, the Board office shall issue a written notice of denial to the applicant that includes:
 - a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
 - b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
 - c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
 - d. The name and telephone number of an agency contact person who can answer questions regarding the application process.
 - 3. If the Board finds deficiencies during the substantive review of an application package, the Board office shall issue a comprehensive written request to the applicant for additional documentation.

4. The 120-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received.
 5. If the applicant and the Board office mutually agree in writing, the 120-day substantive review time-frame may be extended once for no more than 36 days.
- F. The following time-frames apply for an initial or renewal application governed by this Section:
1. Administrative completeness review time-frame: 24 calendar days.
 2. Substantive review time-frame: 120 calendar days.
 3. Overall time-frame: 144 calendar days.

ARTICLE 4. FEES

R4-11-406. Anesthesia and Sedation Permit Fees

- ~~A.~~ As expressly authorized under A.R.S. § 32-1207, the Board ~~establishes and~~ shall collect the following ~~permit and renewal fees~~:
1. ~~\$300 for a Section 1301 permit. Permit fee: \$300 plus \$25 for each additional location for the same permit, not including a Mobile Permit; or~~
 2. ~~\$180 for a Section 1302 Permit or a Section 1303 Permit, plus \$25 for each additional location for the same permit, not including a Mobile Permit; or~~
 - 2,3. ~~Section 1302 permit fee: \$300 for a Mobile Permit for a Section 1301 Permit; or plus \$25 for each additional location;~~
 3. ~~Section 1303 permit fee: \$300 plus \$25 for each additional location; and~~
 4. ~~Section 1304 permit fee: \$300 plus \$25 for each additional location.~~
 4. ~~\$180 for a Mobile Permit for a Section 1302 Permit or a Section 1303 Permit.~~
- ~~B.~~ Upon successful completion of an initial onsite evaluation and upon receipt of the required permit fee, the Board shall issue a separate Section 1301, 1302, 1303, or 1304 permit to a dentist for each location requested by the dentist. A permit expires on December 31 of every fifth year.
- ~~C.~~ Permit renewal fees:
1. ~~Section 1301 permit renewal fee: \$300 plus \$25 for each additional location;~~
 2. ~~Section 1302 permit renewal fee: \$300 plus \$25 for each additional location;~~
 3. ~~Section 1303 permit renewal fee: \$300 plus \$25 for each additional location; and~~
 4. ~~Section 1304 permit renewal fee: \$300 \$300 \$100 plus \$25 for each additional location.~~

ARTICLE 12. CONTINUING DENTAL EDUCATION AND RENEWAL REQUIREMENTS

R4-11-1203. Dentists and Dental Consultants

- Dentists and dental consultants shall complete 63 hours of Recognized Continuing Dental Education in each renewal period as follows:
1. At least 36 Credit Hours in any of the following areas: Dental and medical health, preventive services, dental diagnosis and treatment planning, dental recordkeeping, dental clinical procedures, managing medical emergencies, pain management, dental public health, and courses in corrective and restorative oral health and basic dental sciences, which may include current research, new concepts in dentistry, ~~chemical dependency, tobacco cessation and behavioral and biological sciences that are oriented to dentistry. A Licensee who holds a Section 1301 Permit, Section 1302 Permit, or Section 1303 Permit permit to administer General Anesthesia, Deep Sedation, Parenteral Sedation, or Oral Sedation who is required to obtain continuing education pursuant to Article 13 may apply those Credit Hours to the requirements of this Section;~~
 2. No more than 15 Credit Hours in the following areas: Dental practice organization and management, patient management skills, and methods of health care delivery;
 3. At least three Credit Hours in ~~opioid education~~ chemical dependency, which may include tobacco cessation;
 4. At least three Credit Hours in infectious diseases or infectious disease control;
 5. At least three Credit Hours in Basic Life Support Health Care Provider Level endorsed by the American Heart Association ear-diopulmonary resuscitation healthcare provider level, advanced cardiac life support or pediatric advanced life support. Coursework may be completed online if the course requires a physical demonstration of skills; and
 6. At least three Credit Hours in ethics or Arizona dental jurisprudence.

ARTICLE 13. GENERAL ANESTHESIA AND SEDATION

R4-11-1301. General Anesthesia and Deep Sedation

- A. Before administering General Anesthesia, or Deep Sedation by any means, ~~in a dental office or dental clinic,~~ a dentist shall possess a Section 1301 Permit issued by the Board. The dentist may renew a Section 1301 Permit every five years ~~by complying with R4-11-1307.~~
- B. To obtain or renew a Section 1301 Permit, a dentist shall:
1. Submit a completed application on a form provided by the Board office that, ~~in addition to the requirements of subsections (B)(2) and (3), and R4-11-1307,~~ includes:
 - a. General information about the applicant such as:
 - i. Name;
 - ii. Home and office addresses and telephone numbers;
 - iii. Limitations of practice;
 - iv. Hospital affiliations;
 - v. Denial, curtailment, revocation, or suspension of hospital privileges;
 - vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
 - vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
 - b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;



- 2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer General Anesthesia or Deep Sedation:
 - a. Contains the following properly operating equipment and supplies during the provision of General Anesthesia and Deep Sedation:
 - i. ~~The following emergency~~ Emergency-Drugs;
 - (1) Vasopressor;
 - (2) Corticosteroid;
 - (3) Bronchodilator;
 - (4) Opioid antagonist;
 - (5) Benzodiazepine antagonist;
 - (6) Antihistaminic;
 - (7) Anticholinergic;
 - (8) Anticonvulsant;
 - (9) Epinephrine;
 - (10) Antiarrhythmic;
 - (11) Coronary artery vasodilator; and
 - (12) Antihypertensive;
 - ii. Electrocardiograph monitor;
 - iii. Pulse oximeter;
 - iv. Cardiac defibrillator or ~~automated external defibrillator~~ AED;
 - v. Positive pressure oxygen and supplemental oxygen;
 - vi. Suction equipment, including endotracheal, tonsillar, or pharyngeal and emergency backup medical suction device;
 - vii. Laryngoscope, multiple blades, backup batteries, and backup bulbs;
 - viii. Endotracheal tubes and appropriate connectors;
 - ix. Magill forceps;
 - x. Oropharyngeal and nasopharyngeal airways;
 - xi. Auxiliary lighting;
 - xii. Stethoscope; ~~and~~
 - xiii. Blood pressure monitoring device; ~~and~~
 - xiv. End tidal capnography; and
 - b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring General Anesthesia or Deep Sedation shall hold a current course completion confirmation in Basic Life Support Health Care Provider Level endorsed by the American Heart Association cardiopulmonary resuscitation healthcare provider level;
- 3. Hold a valid license to practice dentistry in this state;
- 4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration; and
- 5. Provide confirmation of completing ACLS certification from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association coursework—within the two years prior to submitting the permit application ~~in one or more of the following~~:
 - a. ~~Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;~~
 - b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
 - e. A recognized continuing education course in advanced airway management.
- C.** Before a Section 1301 Permit holder administers General Anesthesia or Deep Sedation, by any means, in a dental office or dental clinic, to a patient who is less than eight years of age, the dentist shall possess a Pediatric Endorsement issued by the Board. A dentist who has obtained a Section 1301 Permit with a Pediatric Endorsement pursuant to this section may administer General Anesthesia and lower levels of sedation to a patient who is less than eight years of age. The dentist may renew the Pediatric Endorsement every three years by complying with subsection (D).
- D.** To obtain or renew a Pediatric Endorsement for a Section 1301 Permit, a Dentist shall:
 - 1. Maintain PALS certification; and
 - 2. Either:
 - a. Have completed a CODA-accredited residency program that has a standard for pediatric anesthesia training within the two years immediately preceding the dentist’s application for a Pediatric Endorsement, or
 - b. If the dentist completed a residency more than two years prior to the dentist’s application, submit an affidavit to the Board indicating the dentist has provided intravenous Deep Sedation or General Anesthesia for 30 pediatric patients within three years immediately preceding the dentist’s application. Cases completed with a dental practitioner who maintains a Section 1301 Permit with a Pediatric Endorsement can count towards the 30 cases; and complete 20 Credit Hours of Recognized Continuing Dental Education training over the past three years in areas of pediatric airway anatomy, physical evaluation, medical conditions, pharmacology, sedation, General Anesthesia, and medical emergencies. The 20 Credit Hours of Recognized Continuing Dental Education completed according to this section may be used to meet the Credit Hours required in these rules.
- ~~**E.** In addition to meeting the requirements of subsection (B), initial Initial applicants shall meet one or more of the following conditions by submitting to the Board verification of meeting the condition directly from the issuing institution:~~
 - 1. ~~Complete, within the three years before submitting the permit application, a full credit load, as defined by the training program, during one calendar year of training, in anesthesiology or related academic subjects, beyond the undergraduate dental school~~

level in a training program described in R4-11-1306(A), offered by a hospital accredited by the Joint Commission on Accreditation of Hospitals Organization, or sponsored by a university accredited by the American Dental Association Commission on Dental Accreditation; Submit proof to the Board directly from the issuing institution of successful completion of an accredited U.S. or Canadian residency in oral and maxillofacial surgery; or

2. Be, within the three years before submitting the permit application, a Diplomate of the American Board of Oral and Maxillofacial Surgeons or eligible for examination by the American Board of Oral and Maxillofacial surgeons, a Fellow of the American Association of Oral and Maxillofacial surgeons, a Fellow of the American Dental Society of Anesthesiology, a Diplomate of the National Dental Board of Anesthesiology, or a Diplomate of the American Dental Board of Anesthesiology; or Submit proof to the Board directly from the issuing institution of successful completion of an accredited U.S. or Canadian residency in dental anesthesiology. For graduates of a dental anesthesiology residency program prior to CODA or Canadian provincial accreditation, the program must have met the educational and duration requirements of the American Dental Association Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry at the Advanced Education Level (Part II), in effect at the time of residency completion.
3. For an applicant who completed the requirements of subsections (C)(1) or (C)(2) more than three years before submitting the permit application, provide the following documentation:
 - a. On a form provided by the Board, a written affidavit affirming that the applicant has administered general anesthesia or deep sedation to a minimum of 25 patients within the year before submitting the permit application or 75 patients within the last five years before submitting the permit application;
 - b. A copy of the general anesthesia or deep sedation permit in effect in another state or certification of military training in general anesthesia or deep sedation from the applicant's commanding officer; and
 - e. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(a) through (f).

~~D-F.~~ After submitting the application and written evidence of compliance with requirements in ~~subsection (B) and, if applicable, subsection (C)~~ (E) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer General Anesthesia or Deep Sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, a Section 1301 Permit shall be issued to the applicant.

1. The onsite evaluation team shall consist of:
 - a. Two dentists who are Board members, or Board designees for initial applications; or
 - b. One dentist who is a Board member or Board designee for renewal applications.
2. The onsite team shall evaluate the following:
 - a. The availability of equipment and personnel as specified in subsection (B)(2);
 - b. Proper administration of General Anesthesia or Deep Sedation to a patient by the applicant in the presence of the evaluation team;
 - c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
 - d. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of Controlled Substances; and
 - e. Proper recordkeeping as specified in subsection (E) (H) by reviewing the records generated for the patient specified in subsection (D)(2)(b) (F)(2)(b); and
 - f. For renewal applicants, records supporting continued competency as specified in R4-11-1306 subsection (U).
3. The evaluation team shall recommend one of the following:
 - a. Pass. Successful completion of the onsite evaluation;
 - b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
 - c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
 - d. Category 2 Evaluation Failure. The applicant must complete ~~Board approved continuing education~~ Recognized Continuing Dental Education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
 - e. Category 3 Evaluation Failure. The applicant must complete ~~Board approved remedial continuing education~~ Recognized Continuing Dental Education with the subject matter outlined in R4-11-1306 ~~this Article~~ as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.
4. The onsite evaluation of an additional dental office or dental clinic in which General Anesthesia or Deep Sedation is administered by an existing Section 1301 permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a). An applicant who meets the requirement of subsection (E)(2), does not need to complete an onsite evaluation according to this section.

~~5-G.~~ A Section 1301 mobile permit may be issued if a Section 1301 permit holder travels to dental offices or dental clinics to provide anesthesia or deep sedation. To obtain a Mobile Permit for a Section 1301 Permit, the applicant must shall submit a completed affidavit verifying:

- a. That the equipment and supplies for the provision of anesthesia or Deep Sedation as required in subsection (B)(2)(a) either travel with the Section 1301 Permit holder or are in place and in appropriate condition at the dental office or dental clinic where anesthesia or Deep Sedation is provided, and
- b. Compliance with subsection (B)(2)(b).



- ~~E.H.~~ A Section 1301 Permit holder shall keep an anesthesia or Deep Sedation record for each General Anesthesia and Deep Sedation procedure that includes the following entries:
 - ~~1. Pre-operative, Intra-operative~~ and post-operative electrocardiograph documentation;
 - ~~2. Pre-operative, intra-operative, Intra-operative~~ and post-operative pulse oximeter documentation;
 - ~~3. Pre-operative, intra-operative, Intra-operative~~ and post-operative blood pressure and vital sign documentation;
 - ~~4. Documentation of intra-operative and post-operative monitoring of ventilatory status utilizing capnography or precordial stethoscope;~~
 - ~~4-5.~~ A list of all medications given, with dosage and time intervals, and route and site of administration;
 - ~~5-6.~~ Type of catheter or portal with gauge;
 - ~~6-7.~~ Indicate nothing by mouth or time of last intake of food or water;
 - ~~7-8.~~ Consent form; and
 - ~~8-9.~~ Time of discharge and status, including name of escort.
- ~~F.I.~~ ~~The Section 1301 Permit holder shall only use intraosseous access exclusively for emergency situations. The Section 1301 permit holder, for intravenous access, shall use a new infusion set, including a new infusion line and new bag of fluid, for each patient.~~
- ~~G.J.~~ The Section 1301 Permit holder shall utilize supplemental oxygen for patients receiving General Anesthesia or Deep Sedation for the duration of the procedure as necessary.
- ~~H.K.~~ The Section 1301 Permit holder shall continuously supervise the patient from the initiation of anesthesia or Deep Sedation until termination of the anesthesia or Deep Sedation procedure and oxygenation, ventilation, and circulation are stable.
- ~~L.~~ ~~The Section 1301 Permit holder, shall establish written guidelines for discharging a patient.~~
- ~~M.~~ The Section 1301 Permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.
- ~~I.N.~~ A Section 1301 Permit holder may employ or work with a QAP ~~the following health care professionals~~ to provide anesthesia or sedation services, accepting primary responsibility for the conduct of the procedure, including review of medical records, health status classification, plan for sedation or anesthesia technique, and preparation for any emergency response, and shall ensure that the ~~health care professional~~ QAP continuously supervises the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation, and circulation are stable:
 - ~~1. An allopathic or osteopathic physician currently licensed in Arizona by the Arizona Medical Board or the Arizona Board of Osteopathic Examiners who has successfully completed a residency program in anesthesiology approved by the American Council on Graduate Medical Education or the American Osteopathic Association or who is certified by either the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology and is credentialed with anesthesia privileges through an Arizona licensed medical facility, or~~
 - ~~2. A Certified Registered Nurse Anesthetist currently licensed in Arizona who provides services under the Nurse Practice Act in A.R.S. Title 32, Chapter 15.~~
- ~~J.O.~~ A Section 1301 Permit holder may also administer ~~parenteral~~ Parenteral Moderate Sedation or lower levels of sedation without obtaining a Section 1302 Permit or a Section 1303 Permit.
- ~~P.~~ The Section 1301 Permit holder who administers General Anesthesia or Deep Sedation shall ensure that the following additional persons are present, in addition to the Section 1301 Permit holder, to assist the Section 1301 Permit holder with monitoring the patient during the procedure:
 1. One person with current certification in ACLS or PALS or completion of four-clock hours of a board approved course in advanced airway management, emergencies management or general anesthesia or deep sedation within two years prior to the procedure; and
 2. One person with current certification in Basic Life Support Healthcare Provider Level endorsed by the American Heart Association.
- ~~Q.~~ If the Section 1301 Permit holder who administers General Anesthesia or Deep Sedation to a patient is the operating dentist, the Section 1301 Permit holder shall ensure the additional person present for the procedure according to subsection (P) has the primary responsibility of monitoring the patient during the procedure.
- ~~R.~~ A Section 1301 Permit holder who has obtained a Pediatric Endorsement according to subsection (D), and who administers General Anesthesia or Deep Sedation to a patient who is less than eight years of age shall ensure:
 1. The following additional persons are present, in addition to the Section 1301 Permit holder, to assist the Section 1301 Permit holder with monitoring the patient during the procedure:
 - a. One person with current certification in ACLS or PALS or completion of four-clock hours of a board approved course in advanced airway management, emergencies management or general anesthesia or deep sedation within two years prior to the procedure; and
 - b. One person with a current certification in Basic Life Support Health Care Provider Level endorsed by the American Heart Association; and
 2. When the patient is less than eight years of age and in monitored recovery, a person with current certification in PALS or ACLS shall monitor the patient’s vital signs until the patient meets the criteria for discharge.
- ~~S.~~ Except as permitted according to subsection (C), a Section 1301 Permit holder cannot provide any anesthesia or sedation services under this section to a patient that is less than eight years of age.
- ~~T.~~ A Section 1301 Permit holder shall not perform a procedure in a dental office or dental clinic, with the administration of General Anesthesia or Deep Sedation that the Section 1301 Permit holder anticipates to be longer than five hours.
- ~~U.~~ In addition to meeting the requirements in subsection (B), in order to renew a Section 1301 Permit, the permit holder shall:
 1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
 - a. General Anesthesia.
 - b. Parenteral sedation.
 - c. Physical evaluation.

- d. Medical emergencies;
 - e. Monitoring and use of monitoring equipment; or
 - f. Pharmacology of Drugs and non-Drug Substances used in General Anesthesia or Parenteral sedation; and
 - 2. Complete at least 10 General Anesthesia or Deep Sedation cases per calendar year; and
 - 3. Apply a maximum of six hours of ACLS coursework toward the continuing education requirements for subsection (U)(1).
- V.** A Section 1301 Permit holder who meets the requirements of subsection (U), may apply those requirements to the Credit Hours required under these rules.

R4-11-1302. Parenteral Moderate Sedation

- A.** Before administering ~~parenteral~~ Parenteral Moderate sedation Sedation in a dental office or dental clinic, a dentist shall possess a Section 1302 Permit issued by the Board. The dentist may renew a Section 1302 Permit every ~~five~~ three years ~~by complying with R4-11-1307.~~
1. A Section 1301 Permit holder may also administer ~~parenteral~~ Parenteral Moderate sedation Sedation.
 2. A Section 1302 Permit holder shall not administer or employ any agents, Drugs, or techniques, or any combination thereof, which have a narrow margin for maintaining consciousness ~~including, but not limited to, ultra-short acting barbiturates, propofol, parenteral ketamine, or similarly acting Drugs, agents, or techniques, or any combination thereof~~ that would likely render a patient deeply sedated, generally anesthetized or otherwise not meeting the conditions of Moderate Sedation.
- B.** To obtain or renew a Section 1302 Permit, the dentist shall:
1. Submit a completed application on a form provided by the Board office that, ~~in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307,~~ includes:
 - a. General information about the applicant such as:
 - i. Name;
 - ii. Home and office addresses and telephone numbers;
 - iii. Limitations of practice;
 - iv. Hospital affiliations;
 - v. Denial, curtailment, revocation, or suspension of hospital privileges;
 - vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
 - vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
 - b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
 2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer ~~parenteral~~ Parenteral Moderate sedation Sedation ~~by intravenous or intramuscular route:~~
 - a. Contains the following properly operating equipment and supplies during the provision of ~~parenteral~~ Parenteral Moderate sedation Sedation by the permit holder or OAP General Anesthesia or Deep Sedation ~~by a physician anesthesiologist or Certified Registered Nurse Anesthetist:~~
 - i. The following emergency ~~Emergency~~ Drugs;
 - (1) Vasopressor;
 - (2) Corticosteroid;
 - (3) Bronchodilator;
 - (4) Opioid antagonist;
 - (5) Benzodiazepine antagonist;
 - (6) Antihistaminic;
 - (7) Anticholinergic;
 - (8) Anticonvulsant;
 - (9) Epinephrine;
 - (10) Antiarrhythmic;
 - (11) Coronary artery vasodilator; and
 - (12) Antihypertensive;
 - ii. Positive pressure oxygen and supplemental oxygen;
 - iii. Stethoscope;
 - iv. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
 - v. Oropharyngeal and nasopharyngeal airways;
 - vi. Pulse oximeter;
 - vii. Auxiliary lighting;
 - viii. Blood pressure monitoring device; and
 - ix. Cardiac defibrillator or ~~automated external defibrillator AED;~~ and
 - x. A pretracheal stethoscope, precordial stethoscope, or end tidal capnography; and
 - b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
 - i. Holds a current course completion confirmation in Basic Life Support Health Care Provider Level endorsed by the American Heart Association cardiopulmonary resuscitation healthcare provider level;
 - ii. Is present during the ~~parenteral~~ Parenteral Moderate sedation Sedation procedure to monitor appropriate physiologic parameters and to assist in any supportive or resuscitation measures; and
 - iii. After the procedure, monitors the patient until discharge;
 3. Hold a valid license to practice dentistry in this state;
 4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration;



- 5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
 - a. ~~Advanced cardiac life support (ACLS)~~ ACLS from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association; or
 - b. ~~Pediatric advanced life support (PALS) in a practice treating pediatric patients; or~~
 - e-b. ~~A recognized continuing education~~ Recognized Continuing Dental Education course in advanced airway management or Moderate Sedation.
- C.** A dentist shall not administer Parenteral Moderate Sedation to a patient who is less than eight years of age. A dentist who has obtained a Section 1302 Permit with a Pediatric Endorsement pursuant to this section may administer Enteral Moderate Sedation and lower levels of sedation to a patient who is less than eight years of age. The dentist may renew the Pediatric Endorsement every three years by complying with subsection (D).
- D.** To obtain or renew a Pediatric Endorsement for a Section 1302 Permit, a Dentist shall:
 - 1. Maintain PALS certification; and
 - 2. Have completed a CODA-accredited residency program that has a standard for pediatric anesthesia training within the two years immediately preceding the dentist's application for a Pediatric Endorsement, or
 - 3. The dentist shall submit an affidavit to the Board indicating the dentist has provided Enteral Moderate Sedation for 15 pediatric patients within three years immediately preceding the dentist's application. Cases for Enteral Moderate Sedation, completed with a dental practitioner who maintains a Section 1301 Permit, or a Section 1302 Permit, or a Section 1303 Permit, with a Pediatric Endorsement, can count towards the 15 cases; and complete 20 Credit Hours of Recognized Continuing Dental Education training over the past three years in areas of pediatric airway anatomy, physical evaluation, medical conditions, pharmacology, sedation, General Anesthesia, and medical emergencies. The 20 Credit Hours of Recognized Continuing Dental Education completed according to this section may be used to meet the Credit Hours required in these rules.
- ~~**E.**~~ Initial applicants shall meet one of the following conditions by submitting to the Board verification of meeting the condition directly from the issuing institution:
 - 1. Successfully complete Board-recognized undergraduate, graduate, or postgraduate education within the three years before submitting the permit application, that includes the following:
 - a. Sixty didactic hours of basic ~~parenteral Parenteral Moderate sedation~~ Sedation to include:
 - i. Physical evaluation;
 - ii. Management of medical emergencies;
 - iii. The importance of and techniques for maintaining proper documentation; and
 - iv. Monitoring and the use of monitoring equipment; and
 - b. Hands-on personal administration of ~~parenteral sedative~~ medications for Parenteral Moderate Sedation to at least 20 patients in a manner consistent with this Section; or
 - 2. An applicant who completed training in ~~parenteral Parenteral Moderate sedation~~ Sedation more than three years before submitting the permit application shall provide the following documentation:
 - a. On a form provided by the Board, a written affidavit affirming that the applicant has administered ~~parenteral Parenteral Moderate sedation~~ Sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;
 - b. A copy of the ~~parenteral Parenteral Moderate sedation~~ permit in effect in another state or certification of military training in parenteral Parenteral Moderate sedation from the applicant's commanding officer; and
 - c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of ~~continuing education~~ Recognized Continuing Dental Education taken within the last five years as outlined in ~~R4-11-1306(B)(1)(b) through (f)~~ this Article.
- ~~**F.**~~ After submitting the application and written evidence of compliance with requirements outlined in subsection (B) and, if applicable, subsection (C)(E) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer ~~parenteral Parenteral Moderate sedation~~ Sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1302 Permit to the applicant.
 - 1. The onsite evaluation team shall consist of:
 - a. Two dentists who are Board members, or Board designees for initial applications, or
 - b. One dentist who is a Board member or Board designee for renewal applications.
 - 2. The onsite team shall evaluate the following:
 - a. The availability of equipment and personnel as specified in subsection (B)(2);
 - b. Proper administration of ~~parenteral Parenteral Moderate sedation~~ Sedation to a patient by the applicant in the presence of the evaluation team;
 - c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
 - d. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of all Controlled Substances;
 - e. Proper recordkeeping as specified in subsection ~~(E) (D)~~ (D)(2)(b)(F)(2)(b); and
 - f. For renewal applicants, records supporting continued competency as specified in ~~subsection (K)~~ R4-11-1306.
 - 3. The evaluation team shall recommend one of the following:
 - a. Pass. Successful completion of the onsite evaluation;
 - b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;

- c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
 - d. Category 2 Evaluation Failure. The applicant must complete ~~Board approved continuing education~~ Recognized Continuing Dental Education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
 - e. Category 3 Evaluation Failure. The applicant must complete ~~Board approved continuing education~~ Recognized Continuing Dental Education with the subject matter ~~outlined in R4-11-1306~~ as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.
4. ~~The onsite evaluation of an additional dental office or dental clinic in which parenteral sedation is administered by an existing Section 1302 Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).~~
- 5.4. ~~To obtain a Mobile Permit for a Section 1302 Permit, A Section 1302 mobile permit may be issued if a Section 1302 Permit holder travels to dental offices or dental clinics to provide parenteral sedation. The~~ the applicant must shall submit a completed affidavit verifying:
- a. That the equipment and supplies for the provision of ~~parenteral~~ Parenteral Moderate sedation Sedation as required in R4-11-1302(B)(2)(a) either travel with the Section 1302 Permit holder or are in place and in appropriate working condition at the dental office or dental clinic where ~~parenteral~~ Parenteral Moderate sedation Sedation is provided, ~~and~~
 - b. Compliance with R4-11-1302(B)(2)(b).
- G.** A Section 1302 Permit holder shall complete an onsite evaluation that complies with subsection (F) in order to renew a Section 1302 Permit every six years.
- H.** A Section 1302 Permit holder does not need to comply with subsection (F)(2)(b) to renew a Section 1302 Permit.
- E-I.** ~~A Section 1302 Permit holder shall keep a parenteral Parenteral Moderate sedation Sedation record for each parenteral Parenteral Moderate sedation Sedation procedure that includes~~
- 1. ~~Includes~~ the following entries:
 - a.1. ~~Pre-operative, intra-operative, Intra-operative~~ and post-operative pulse oximeter documentation;
 - b.2. ~~Pre-operative, intra-operative, Intra-operative~~ and post-operative blood pressure and vital sign documentation;
 - 3. Documentation of intra-operative and post-operative monitoring of ventilatory status utilizing capnography or precordial stethoscope.
 - e.4. A list of all medications given, with dosage and time intervals and route and site of administration;
 - d.5. Type of catheter or portal with gauge;
 - e.6. Indicate nothing by mouth or time of last intake of food or water;
 - f.7. Consent form; ~~and~~
 - g.8. Time of discharge and status, including name of escort; ~~and~~
 - 2. May include pre-operative and post-operative electrocardiograph report.
- J.** The Section 1302 Permit holder shall only use intraosseous access exclusively for emergency situations.
- K.** In addition to meeting the requirements in subsection (B), in order to renew a Section 1302 Permit, the permit holder shall:
- 1. Participate in 18 clock hours of continuing education every three years in one or more of the following areas:
 - a. General Anesthesia.
 - b. Parenteral sedation.
 - c. Physical evaluation.
 - d. Medical emergencies.
 - e. Monitoring and use of monitoring equipment, or
 - f. Pharmacology of Drugs and non-Drug substances used in General Anesthesia or Parenteral sedation; and
 - 2. Complete at least 10 Parenteral Moderate Sedation cases per calendar year; and
 - 3. Apply a maximum of six hours of ACLS coursework toward the continuing education requirements for subsection (K)(1).
- F-L.** ~~The Section 1302 Permit holder shall establish intravenous access on each patient receiving parenteral sedation utilizing a new infusion set, including a new infusion line and new bag of fluid. The Section 1302 Permit holder shall establish a functional intravenous catheter for each patient receiving intravenous sedation services.~~
- G-M.** ~~The Section 1302 Permit holder shall utilize supplemental oxygen for patients receiving parenteral Parenteral Moderate sedation Sedation for the duration of the procedure as necessary.~~
- H-N.** ~~The Section 1302 Permit holder shall continuously supervise the patient from the initiation of parenteral Parenteral Moderate sedation Sedation until termination of the parenteral Parenteral Moderate sedation Sedation procedure and oxygenation, ventilation and circulation are stable.~~
- O.** The Section 1302 Permit holder shall establish written guidelines for discharging a patient.
- P.** The Section 1302 Permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.
- I.** ~~A Section 1302 Permit holder may employ a health care professional as specified in R4-11-1301(I).~~
- Q.** A Section 1302 Permit holder who has obtained a Pediatric Endorsement according to subsection (D), and who administers Enteral Moderate Sedation to a pediatric patient who is less than eight years of age shall ensure:
- 1. The following additional persons are present with the patient during the procedure:
 - a. One person with current certification in ACLS or PALS or completion of four-clock hours of a board approved course in advanced airway management, emergencies management or general anesthesia or deep sedation within two years prior to the procedure; and



- b. One person with current certification in Basic Life Support Health Care Provider Level endorsed by the American Heart Association; and
- 2. A person who has a current certification in PALS or ACLS and monitors the patient after the patient’s oxygenation, ventilation, and circulation are stable until the patient meets criteria for discharge using a recognized pediatric discharge scoring system.
- R.** Except as according to subsection (C), a Section 1302 Permit holder may also administer Enteral Moderate Sedation or lower levels of sedation without obtaining a Section 1303 Permit.
- S.** A Section 1302 Permit holder shall not perform a procedure, with the administration of any sedation, the Section 1302 Permit holder anticipates to be longer than five hours, in a dental office or dental clinic.
- T.** A Section 1302 Permit holder may employ or work with a QAP to provide anesthesia or sedation services, accepting primary responsibility for the conduct of the procedure, including review of medical records, health status classification, plan for sedation or anesthesia technique, and preparation for any emergency response, and shall ensure that the QAP continuously supervises the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation, and circulation are stable.

R4-11-1303. Enteral Moderate Oral Sedation

- A.** Before administering ~~Enteral Moderate Sedation Oral Sedation~~ in a dental office or dental clinic, a dentist shall possess a Section 1303 Permit issued by the Board. The dentist may renew a Section 1303 Permit every ~~five~~ three years by complying with R4-11-1307.
 - ~~1.~~ A Section 1301 Permit holder or Section 1302 Permit holder may also administer ~~oral sedation~~ Enteral Moderate Sedation without obtaining a Section 1303 Permit.
 - 2. ~~The administration of a single Drug for minimal sedation does not require a Section 1303 Permit if:~~
 - ~~a.~~ ~~The administered dose is within the Food and Drug Administration’s maximum recommended dose as printed in the Food and Drug Administration’s approved labeling for unmonitored home use;~~
 - ~~i.~~ ~~Incremental multiple doses of the drug may be administered until the desired effect is reached, but does not exceed the maximum recommended dose; and~~
 - ~~ii.~~ ~~During minimal sedation, a single supplemental dose may be administered. The supplemental dose may not exceed one half of the initial dose and the total aggregate dose may not exceed one and one half times the Food and Drug Administration’s maximum recommended dose on the date of treatment; and~~
 - ~~b.~~ ~~Nitrous oxide/oxygen may be administered in addition to the oral drug as long as the combination does not exceed minimal sedation.~~
- B.** To obtain or renew a Section 1303 Permit, a dentist shall:
 - 1. Submit a completed application on a form provided by the Board office that, ~~in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307,~~ includes:
 - a. General information about the applicant such as:
 - i. Name;
 - ii. Home and office addresses and telephone numbers;
 - iii. Limitations of practice;
 - iv. Hospital affiliations;
 - v. Denial, curtailment, revocation, or suspension of hospital privileges;
 - vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
 - vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
 - b. The dentist’s dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board’s statutes and rules;
 - 2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer Enteral Moderate Sedation ~~Oral Sedation~~:
 - a. Contains the following properly operating equipment and supplies during the provision of sedation:
 - ~~i.~~ ~~The following emergency~~ Emergency ~~Drugs;~~
 - (1) Vasopressor;
 - (2) Bronchodilator;
 - (3) Opioid antagonist;
 - (4) Benzodiazepine antagonist;
 - (5) Antihistaminic;
 - (6) Anticholinergic;
 - (7) Anticonvulsant;
 - (8) Coronary artery vasodilator;
 - ii. Cardiac defibrillator or ~~automated external defibrillator~~ AED;
 - iii. Positive pressure oxygen and supplemental oxygen;
 - iv. Stethoscope;
 - v. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
 - vi. Pulse oximeter;
 - vii. Blood pressure monitoring device; ~~and~~
 - viii. Auxiliary lighting; and
 - ix. A pretracheal or precordial stethoscope, or end tidal capnography; and
 - b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
 - i. Holds a current certificate in Basic Life Support Health Care Provider Level endorsed by the American Heart Association cardiopulmonary resuscitation healthcare provider level;

- ii. Is present during the Enteral Moderate Sedation ~~Oral Sedation~~ procedure to monitor appropriate physiologic parameters and to assist in any supportive or resuscitation measures; and
 - iii. After the procedure is completed, adequately monitors the patient on a one-on-one basis until discharge criteria is met;
 - 3. Hold a valid license to practice dentistry in this state;
 - 4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration;
 - 5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
 - a. ~~Cardiopulmonary resuscitation healthcare Provider Level ACLS~~ from the American Heart Association, American Red Cross, or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross; or
 - b. ~~Pediatric advanced life support (PALS) in a practice treating pediatric patients; or~~
 - e.b. ~~A recognized continuing education~~ Recognized Continuing Dental Education course in advanced airway management.
- C. Before administering Enteral Moderate Sedation in a dental office or dental clinic, to a patient who is less than eight years of age, a dentist shall possess a Section 1303 Permit with a Pediatric Endorsement issued by the Board. A dentist who has obtained a Section 1303 Permit with a Pediatric Endorsement pursuant to this section may utilize a QAP according to R4-11-1304. The dentist may renew the Pediatric Endorsement every three years by complying with subsection (D).
- D. To obtain or renew a Pediatric Endorsement for a Section 1303 Permit, a Dentist shall:
 - 1. Maintain a PALS certification; and
 - 2. Have completed a CODA-accredited residency program that has a standard for pediatric anesthesia training within the two years immediately preceding the dentist's application for a Pediatric Endorsement, or
 - 3. The dentist shall submit an affidavit to the Board indicating the dentist has provided Enteral Moderate Sedation for 15 patients, who are less than eight years of age, within three years immediately preceding the dentist's application. Cases for Enteral Moderate Sedation completed with a Permit Holder who maintains a Pediatric Endorsement, can count towards the 15 cases; and complete 20 Credit Hours, in addition to the 30 Credit Hours required according to subsection (E)(1), of Recognized Continuing Dental Education training over the past two years in areas of pediatric airway anatomy, physical evaluation, medical conditions, pharmacology, sedation, General Anesthesia, and medical emergencies. The 20 Credit Hours of Recognized Continuing Dental Education completed according to this section may be used to meet the Credit Hours required in these rules.
- ~~C.E.~~ Initial applicants shall meet one of the following conditions by submitting to the Board verification of meeting the condition directly from the issuing institution:
 - 1. Complete a Board-recognized post doctoral residency program that includes documented training in Oral Sedation within the last three years before submitting the permit application; or Provide a written affidavit of successfully completing 30 hours of Recognized Continuing Dental Education within the three years before submitting the permit application, that includes the following Enteral Moderate Sedation training:
 - a. Physical evaluation;
 - b. Pharmacology;
 - c. Management of medical emergencies;
 - d. The importance of, and techniques for, maintaining proper documentation; and
 - e. Monitoring and the use of monitoring equipment; or
 - 2. An applicant who completed a Board-recognized post doctoral residency program that includes documented training in Enteral Moderate Sedation ~~Oral Sedation~~ more than three years before submitting the permit application shall provide the following documentation:
 - a. On a form provided by the Board, a written affidavit affirming that the applicant has administered enteral Enteral Moderate Sedation oral sedation to a minimum of 2520 patients within the year or 75 patients within the last five years before submitting the permit application;
 - b. A copy of the Oral sedation permit in effect in another state or certification of military training in Enteral Moderate Sedation Oral Sedation from the applicant's commanding officer; and
 - c. On a form provided by the Board, a written affidavit affirming the completion of 30 hours of continuing education Recognized Continuing Dental Education taken within the last five years as outlined in R4-11-1306(C)(1)(a) through (f); or this Article.
 - 3. Provide proof of participation in 30 clock hours of Board-recognized undergraduate, graduate, or post-graduate education in oral sedation within the three years before submitting the permit application that includes:
 - a. Training in basic oral sedation;
 - b. Pharmacology;
 - e. Physical evaluation;
 - d. Management of medical emergencies;
 - e. The importance of and techniques for maintaining proper documentation; and
 - f. Monitoring and the use of monitoring equipment.
- F. To renew a Section 1303 Permit, an applicant shall provide proof of participation in 18 clock hours of Board-recognized undergraduate, graduate, or post-graduate education in Enteral Moderate Sedation within the three years before submitting the permit application that includes:
 - 1. Training in basic Enteral Moderate Sedation.
 - 2. Pharmacology.
 - 3. Physical evaluation.
 - 4. Management of medical emergencies.
 - 5. The importance of and techniques for maintaining proper documentation, and



6. Monitoring and the use of monitoring equipment.

~~D.G.~~ After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection ~~(C)~~ (E) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1303 Permit to the applicant.

1. The onsite evaluation team shall consist of:
 - a. For initial applications, two dentists who are Board members, or Board designees.
 - b. For renewal applications, one dentist who is a Board member, or Board designee.
2. The onsite team shall evaluate the following:
 - a. The availability of equipment and personnel as specified in subsection (B)(2);
 - b. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
 - c. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of Controlled Substances;
 - d. Proper recordkeeping as specified in subsection ~~(E)(1)~~ by reviewing the forms that document the oral sedation record; and
 - e. For renewal applicants, records supporting continued competency as specified in ~~R4-11-1306~~ this Article.
3. The evaluation team shall recommend one of the following:
 - a. Pass. Successful completion of the onsite evaluation;
 - b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before permit will be issued;
 - c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency; or
 - d. Category 2 Evaluation Failure. The applicant must complete ~~Board approved continuing education~~ Recognized Continuing Dental Education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency.
4. The onsite evaluation of an additional dental office or dental clinic in which Enteral Moderate Sedation ~~Oral Sedation~~ is administered by a Section 1303 Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection ~~(D)(2)(a)(G)(2)(a)~~.
5. To obtain a Mobile Permit for a Section 1303 Permit ~~A Section 1303 mobile permit may be issued if the Section 1303 Permit holder travels to dental offices or dental clinics to provide Oral Sedation. The~~ the applicant must shall submit a completed affidavit verifying:
 - a. That the equipment and supplies for the provision of Enteral Moderate Sedation ~~Oral Sedation~~ as required in R4-11-1303(B)(2)(a) either travel with the Section 1303 Permit holder or are in place and in appropriate condition at the dental office or dental clinic where Enteral Moderate Sedation ~~Oral Sedation~~ is provided, and
 - b. Compliance with R4-11-1303(B)(2)(b).

H. Notwithstanding any other section, an onsite evaluation shall be required to renew a Section 1303 Permit every six years.

~~E.L.~~ A Section 1303 Permit holder shall keep ~~a an~~ an ~~Oral~~ sedation record for each ~~Oral~~ sedation procedure that:

1. ~~Includes~~ includes the following entries:
 - ~~a.1.~~ Pre-operative, intra-operative, and post-operative, pulse oximeter oxygen saturation and pulse rate documentation;
 - ~~b.2.~~ Pre-operative, intra-operative, and post-operative blood pressure;
 - ~~e.3.~~ Documentation of intra-operative and post-operative monitoring of ventilatory status utilizing capnography or precordial stethoscope.
 4. Documented reasons for not taking vital signs if a patient’s behavior or emotional state prevents monitoring personnel from taking vital signs;
 - ~~d.5.~~ List of all medications given, including dosage and time intervals;
 - ~~e.6.~~ Patient’s weight;
 - ~~f.7.~~ Consent form;
 - ~~g.8.~~ Special notes, such as, nothing by mouth or List of the patient’s last intake of food or water; and
 - ~~h.9.~~ Evaluation of the patient’s airway;
 - ~~i.10.~~ Time of discharge and status, including name of escort; and
2. ~~May include the following entries:~~
 - ~~a. Pre-operative and post-operative electrocardiograph report; and~~
 - ~~b. Intra-operative blood pressures.~~

~~F.I.~~ The Section 1303 Permit holder shall utilize supplemental oxygen for patients receiving Enteral moderate ~~Oral~~ sedation for the duration of the procedure as necessary.

~~G.K.~~ The Section 1303 Permit holder shall ensure the continuous supervision of the patient from the administration of Enteral moderate Moderate Oral sedation Sedation until oxygenation, ventilation and circulation are stable and the patient is appropriately responsive for discharge from the dental office or dental clinic.

L. A Section 1303 Permit holder who has obtained a Pediatric Endorsement according to subsection (D), and who administers Enteral Moderate Sedation to a pediatric patient who is less than eight years of age shall ensure:

1. The following additional persons are present, in addition to the Section 1303 Permit holder, to assist the Section 1303 Permit holder with monitoring the patient during the procedure:

- a. One person with current certification in PALS or ACLS or completion of four-clock hours of a board approved course in advanced airway management, emergencies management or general anesthesia or deep sedation within two years prior to the procedure; and
- b. One person with current certification in Basic Life Support Health Care Provider Level endorsed by the American Heart Association; and
- 2. A person with current certification in PALS or ACLS and monitors the patient after the patient's oxygenation, ventilation, and circulation are stable until the patient meets criteria for discharge using a recognized pediatric discharge scoring system.
- H.** A Section 1303 permit holder may employ a health care professional to provide anesthesia services, if all of the following conditions are met:
 - 1. The physician anesthesiologist or Certified Registered Nurse Anesthetist meets the requirements as specified in R4-11-1301(I);
 - 2. The Section 1303 Permit holder has completed coursework within the two years prior to submitting the permit application in one or more of the following:
 - a. Advanced Cardiac Life Support from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
 - b. Pediatric Advanced Life Support in a practice treating pediatric patients;
 - c. A recognized continuing education course in advanced airway management;
 - 3. The Section 1303 Permit holder ensures that:
 - a. The dental office or clinic contains the equipment and supplies listed in R4-11-1304(B)(2)(a) during the provision of anesthesia or sedation by the physician anesthesiologist or Certified Registered Nurse Anesthetist;
 - b. The anesthesia or sedation record contains all the entries listed in R4-11-1304(D);
 - c. For intravenous access, the physician anesthesiologist or Certified Registered Nurse Anesthetist uses a new infusion set, including a new infusion line and new bag of fluid for each patient; and
 - d. The patient is continuously supervised from the administration of anesthesia or sedation until the termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable.
- M.** The Section 1303 Permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guidelines for discharge.
- N.** The Section 1303 Permit holder shall not use pharmacy compounded medications for sedation for a patient that is less than eight years of age.
- O.** If a patient expectorates the sedation medication, the Section 1303 Permit holder shall not administer any additional dose of any sedation medication.
- P.** All sedation medications used to achieve Enteral Moderate Sedation for a patient that is less than eight years of age, shall be administered in the immediate presence of the Section 1303 Permit holder.
- Q.** A Section 1303 Permit holder shall not perform a procedure, with the administration of sedation, the Section 1303 Permit holder anticipates to be longer than five hours, in a dental office or dental clinic.
- R.** The Section 1303 Permit holder shall establish written guidelines for discharging a patient.
- S.** A Section 1303 Permit holder may employ or work with a QAP to provide anesthesia or sedation services, accepting primary responsibility for the conduct of the procedure, including review of medical records, health status classification, plan for sedation or anesthesia technique, and preparation for any emergency response, and shall ensure that the QAP continuously supervises the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation, and circulation are stable.

R4-11-1304. ~~Permit to Employ or Work Working with a QAP-Physician Anesthesiologist or Certified Registered Nurse Anesthetist (CRNA)~~

- A.** ~~This Section does not apply to a Section 1301 permit holder or a Section 1302 permit holder practicing under the provisions of R4-11-1302(I) or a Section 1303 permit holder practicing under the provisions of R4-11-1303(H). A dentist may utilize a physician anesthesiologist or certified registered nurse anesthetist (CRNA) for anesthesia or sedation services while the dentist provides treatment in the dentist's office or dental clinic after obtaining a Section 1304 permit issued by the Board.~~
 - 1. ~~The physician anesthesiologist or CRNA meets the requirements as specified in R4-11-1301(I).~~
 - 2. ~~The dentist permit holder shall provide all dental treatment and ensure that the physician anesthesiologist or CRNA remains on the dental office or dental clinic premises until any patient receiving anesthesia or sedation services is discharged.~~
 - 3. ~~A dentist may renew a Section 1304 permit every five years by complying with R4-11-1307.~~
- B.** ~~To obtain or renew a Section 1304 permit, a dentist shall:~~
 - 1. ~~Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3), and R4-11-1307 includes:~~
 - a. ~~General information about the applicant such as:~~
 - i. ~~Name;~~
 - ii. ~~Home and office addresses and telephone numbers;~~
 - iii. ~~Limitations of practice;~~
 - iv. ~~Hospital affiliations;~~
 - v. ~~Denial, curtailment, revocation, or suspension of hospital privileges;~~
 - vi. ~~Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and~~
 - vii. ~~Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and~~
 - b. ~~The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;~~
 - 2. ~~On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist provides treatment during administration of general anesthesia or sedation by a physician anesthesiologist or CRNA:~~
 - a. ~~Contains the following properly operating equipment and supplies during the provision of general anesthesia and sedation:~~



- i. Emergency drugs;
 - ii. Electrocardiograph monitor;
 - iii. Pulse oximeter;
 - iv. Cardiac defibrillator or automated external defibrillator (AED);
 - v. Positive pressure oxygen and supplemental continuous flow oxygen;
 - vi. Suction equipment, including endotracheal, tonsillar or pharyngeal and emergency backup medical suction device;
 - vii. Laryngoscope, multiple blades, backup batteries and backup bulbs;
 - viii. Endotracheal tubes and appropriate connectors;
 - ix. Magill forceps;
 - x. Oropharyngeal and nasopharyngeal airways;
 - xi. Auxiliary lighting;
 - xii. Stethoscope; and
 - xiii. Blood pressure monitoring device; and
- b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring general anesthesia or sedation shall hold a current course completion confirmation in cardiopulmonary resuscitation (CPR) Health Care Provider level;
- 3. Hold a valid license to practice dentistry in this state; and
 - 4. Provide confirmation of completing coursework within the last two years prior to submitting the permit application in one or more of the following:
 - a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
 - b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
 - c. A recognized continuing education course in advanced airway management.
- C.** After submitting the application and written evidence of compliance with requirements in subsection (B) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue the applicant a Section 1304 permit.
- 1. The onsite evaluation team shall consist of one dentist who is a Board member, or Board designee.
 - 2. The onsite team shall evaluate the following:
 - a. The availability of equipment and personnel as specified in subsection (B)(2);
 - b. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of controlled substances; and
 - c. Proper recordkeeping as specified in subsection (E) by reviewing previous anesthesia or sedation records.
 - 3. The evaluation team shall recommend one of the following:
 - a. Pass. Successful completion of the onsite evaluation; or
 - b. Conditional approval for failing to have appropriate equipment, proper documentation of controlled substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued.
 - 4. The evaluation of an additional dental office or dental clinic in which a Section 1304 permit holder provides treatment during the administration general anesthesia or sedation by a physician anesthesiologist or CRNA may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (B)(2).
- D.** A Section 1304 permit holder shall keep an anesthesia or sedation record for each general anesthesia and sedation procedure that includes the following entries as required by a 1301 permit:
- 1. Pre-operative and post-operative electrocardiograph documentation;
 - 2. Pre-operative, intra-operative, and post-operative, pulse oximeter documentation;
 - 3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation; and
 - 4. A list of all medications given, with dosage and time intervals and route and site of administration;
 - 5. Type of catheter or portal with gauge;
 - 6. Indicate nothing by mouth or time of last intake of food or water;
 - 7. Consent form; and
 - 8. Time of discharge and status, including name of escort.
- E.** For intravenous access, a Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA uses a new infusion set, including a new infusion line and new bag of fluid for each patient.
- F.** A Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA utilizes supplemental continuous flow oxygen for patients receiving general anesthesia or sedation for the duration of the procedure.
- G.** The Section 1304 permit holder shall continuously supervise the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation, and circulation are stable. The Section 1304 permit holder shall does not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guidelines for discharge.
- A.** A dentist who is a Section 1301 Permit holder, Section 1302 Permit holder, or Section 1303 Permit holder may work with any QAP without Board notification.
- B.** A dentist who is not a Section 1301 Permit holder, Section 1302 Permit holder, or 1303 Permit holder may work with any QAP if a treating dentist involved in the case signs an affidavit attesting that a treating dentist shall ensure the QAP complies with the following rules:
- 1. Section R4-11-1301 for a QAP who is a Section 1301 Permit holder.
 - 2. Section R4-11-1302 for a QAP who is a Section 1302 Permit holder.
 - 3. Section R4-11-1303 for a QAP who is a Section 1303 Permit holder.
 - 4. Section R4-11-1304(D) for a QAP who is not a licensed dentist.

- C.** When a dentist who is not a Section 1301 Permit holder, Section 1302 Permit holder, or Section 1303 Permit holder works with any QAP, a treating dentist involved in the case shall submit the following to the Board on forms provided by the Board within 10 days of utilizing the QAP.
1. The QAP's name;
 2. The QAP's license number and the name of the licensing entity, if not the Board;
 3. The address where the dentist is utilizing the QAP.
 4. The signed affidavit from R4-11-1304(B).
- D.** When a dentist who is not a Section 1301 Permit holder, Section 1302 Permit holder, or Section 1303 Permit holder utilizes a QAP who is not a licensed dentist, a treating dentist involved in the case shall sign the affidavit according to subsection (B) and submit the notification according to subsection (C) to attest that a treating dentist shall ensure the following while the QAP is providing General Anesthesia or Deep Sedation to the patient.
1. The dental office or dental clinic contains the properly operating equipment and supplies as described in R4-11-1301(B)(2)(a).
 2. A staff of supervised personnel will be present as described in R4-11-1301(B)(2)(b).
 3. The QAP is registered by their licensing board to provide anesthesia in a dental office or dental clinic, in Arizona.
 4. The QAP maintains current certification in ACLS or if the QAP is treating a patient who is less than eight years of age, the QAP maintains current certification in PALS.
 5. If the QAP is treating a patient less than eight years of age, the QAP has completed 30 pediatric General Anesthesia or Deep Sedation cases within the last three years.
 7. The QAP maintains an anesthesia record that includes the information as described in R4-11-1301(H) and a licensed dentist involved in the case maintains a copy.
 8. The QAP only uses intraosseous access exclusively for emergency situations.
 9. The QAP utilizes supplemental oxygen for patients receiving General Anesthesia or Deep Sedation for the duration of the procedure as necessary.
 10. The QAP continuously supervises the patient from the initiation of General Anesthesia or Deep Sedation until termination of the General Anesthesia or Deep Sedation procedure and oxygenation, ventilation, and circulation are stable.
 11. The QAP establishes written guidelines for discharging a patient.
 12. The QAP does not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.
 13. The following additional persons will be present, in addition to the QAP, to assist the treating dentist with monitoring the patient during the procedure:
 - a. One person with current certification in ACLS or PALS or completion of four-clock hours of a board approved course in advanced airway management, emergency management or general anesthesia or deep sedation within two years prior to the procedure; and
 - b. One person with current certification in Basic Life Support Healthcare Provider Level endorsed by the American Heart Association.
 14. When the patient is less than eight years of age and in monitored recovery, a person with current certification in PALS or ACLS shall monitor the patient's vital signs until the patient meets the criteria for discharge.
 15. The QAP does not administer General Anesthesia or Deep Sedation for a procedure that is anticipated to last longer than five hours in a dental office or dental clinic.
- E.** A dentist shall submit a new affidavit and notification to the Board according to this section within 10 days of a change in any of the information required by this section for a dentist to work with a QAP.

R4-11-1305. Reports of Adverse Occurrences-Mandatory Reporting

If a death, or incident ~~requiring~~ involving the activation of emergency medical response, occurs in a dental office or dental clinic, ~~occurs~~ during the administration of or recovery from ~~general anesthesia, deep sedation, moderate sedation, or minimal sedation,~~ the permit holder and the treating dentist ~~involved~~ shall submit a complete Article 13 Incident Report ~~report of the incident~~ consistent with A.R.S. § 32-1272(D) to the Board within ~~10~~ seven business days after the occurrence.

R4-11-1306. Education; Continued Competency-Enteral Minimal Sedation

- ~~A.~~ To obtain a Section 1301, permit by satisfying the education requirement of R4-11-1301(B)(6), a dentist shall successfully complete an advanced graduate or post-graduate education program in pain control.
1. The program shall include instruction in the following subject areas:
 - a. Anatomy and physiology of the human body and its response to the various pharmacologic agents used in pain control;
 - b. Physiological and psychological risks for the use of various modalities of pain control;
 - e. Psychological and physiological need for various forms of pain control and the potential response to pain control procedures;
 - d. Techniques of local anesthesia, sedation, and general anesthesia, and psychological management and behavior modification, as they relate to pain control in dentistry; and
 - e. Handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway, and cardiopulmonary resuscitation.
 2. The program shall consist of didactic and clinical training. The didactic component of the program shall:
 - a. Be the same for all dentists, whether general practitioners or specialists; and
 - b. Include each subject area listed in subsection (A)(1).
 3. The program shall provide at least one calendar year of training as prescribed in R4-11-1301(B)(6)(a).
- ~~B.~~ To maintain a Section 1301 or 1302 permit under R4-11-1301 or R4-11-1302, a permit holder shall:
1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
 - a. General anesthesia;



- b. Parenteral sedation;
- e. Physical evaluation;
- d. Medical emergencies;
- e. Monitoring and use of monitoring equipment, or
- f. Pharmacology of drugs and non-drug substances used in general anesthesia or parenteral sedation; and
- 2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
 - a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
 - b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
 - e. A recognized continuing education course in advanced airway management;
- 3. Complete at least 10 general anesthesia, deep sedation or parenteral sedation cases a calendar year; and
- 4. Apply a maximum of six hours from subsection (B)(2) toward the continuing education requirements for subsection (B)(1).
- ~~C.~~ To maintain a Section 1303 permit issued under R4-11-1303, a permit holder shall:
 - 1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
 - a. Oral sedation;
 - b. Physical evaluation;
 - e. Medical emergencies;
 - d. Monitoring and use of monitoring equipment, or
 - e. Pharmacology of oral sedation drugs and non-drug substances; and
 - 2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
 - a. Cardiopulmonary resuscitation (CPR) Health Care Provider level from the American Heart Association, American Red Cross or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
 - b. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
 - e. Pediatric advanced life support (PALS);
 - d. A recognized continuing education course in advanced airway management; and
 - 3. Complete at least 10 oral sedation cases a calendar year.
- A. A treating dentist does not need to obtain a Section 1303 Permit to administer a single Enteral Drug for the purpose of achieving Minimal Sedation.
- B. The treating dentist shall not administer a single Enteral Drug in excess of the total maximum recommended dose per the package insert for that Drug for unmonitored home administration.
- C. The treating dentist may administer Nitrous oxide in combination with a single Enteral Drug for the purpose of achieving Minimal Sedation.

R4-11-1307. Renewal of Permit

- A. To renew a Section 1301 Permit, Section 1302 Permit, or Section 1303 permit-Permit, and Pediatric Endorsement, the permit holder shall:
 - 1. Provide written documentation of compliance with the applicable continuing education requirements in R4-11-1306;
 - 2. Provide written documentation of compliance with the continued competency requirements in R4-11-1306;
 - 3. 1. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1301, R4-11-1302, or R4-11-1303; and
 - 4. 2. Not less than 90 days before the expiration of a permit holder’s current permit, arrange for an onsite evaluation as applicable and described in R4-11-1301, R4-11-1302, or R4-11-1303.
- ~~B.~~ To renew a Section 1304 permit, the permit holder shall:
 - 1. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1304; and
 - 2. Not less than 90 days before the expiration of a permit holder’s current permit, arrange for an onsite evaluation as described in R4-11-1304.
- ~~C.~~ B. After the permit holder successfully completes the evaluation, where applicable, and submits the required affidavits, the Board shall renew a Section 1301 Permit, Section 1302 Permit, or Section 1303 Permit, ~~1304 permit~~, as applicable.
- ~~D.~~ C. The Board may stagger due dates for renewal applications.

NOTICES OF FINAL RULEMAKING

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

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

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

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

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

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION
STATE PERSONNEL SYSTEM

[R24-169]

PREAMBLE

1. Permission to proceed with this final rulemaking was granted under A.R.S. § 41-1039(B) by the governor on: May 24, 2024

Table with 2 columns: Article, Part, or Section Affected (as applicable) and Rulemaking Action. Lists various rule numbers (R2-5A-101 to R2-5B-403) and their corresponding actions (Amend).

3. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):
Authorizing statute: A.R.S. §§ 41-703(3), 41-743(B)(3) and 41-771
Implementing statute: A.R.S. §§ 38-611, 41-742, 41-745, 41-746, 41-747, 41-748, 41-754, 41-772 and 41-773

4. The effective date of the rule:
October 12, 2024

5. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the current record of the final rule:
Notice of Rulemaking Docket Opening: 30 A.A.R. 327, February 16, 2024
Notice of Proposed Rulemaking: 30 A.A.R. 295, February 16, 2024

6. The agency's contact person who can answer questions about the rulemaking:
Name: Christine Bronson, HR Consultant
Address: Arizona Department of Administration
Human Resources Division
100 N. 15th Ave., Suite 301
Phoenix, AZ 85007
Telephone: (602) 619-6360

Email: Christine.Bronson@azdoa.gov
or
Name: Kerry Schleppe, HR Deputy Director
Address: Arizona Department of Administration
Human Resources Division
100 N. 15th Ave., Suite 301
Phoenix, AZ 85007
Telephone: (602) 540-8309
Email: Kerry.Schleppe@azdoa.gov

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

The Department is amending the rules in 2 A.A.C. Chapter 5, Department of Administration - State Personnel System (SPS), to address issues identified during the preceding Five-year Review Report, as approved by the Governor's Regulatory Review Council on July 12, 2018. The Department is also amending several other rules to align with statutory requirements, implement the directives outlined in Executive Order 2023-24, improve the effectiveness of the rules and make them less burdensome, and make the rules consistent with other sections of the Chapter. The amended rules will conform to the rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

Section by Section Explanation of the Rulemaking:

R2-5A-101. Definitions. The rule is being amended to address issues identified during the preceding Five-year Review Report by amending the definitions of "child" and, by adding definitions of "disciplinary action" and "protected category." The Department further proposes to add a definition of "disabled veteran" which is used in R2-5A-302, in order to provide additional clarity.

R2-5A-104. Prohibition Against Discrimination, Harassment and Retaliation. The rule is being amended to address issues identified during the preceding Five-year Review Report and to improve the rule by removing repetitive language and adding the term "protected category" to the definitions listed in R2-5A-101, as described above. The Department further proposes to add clarifying language regarding "sex" to clarify that sex includes sexual orientation and gender identity.

R2-5A-105. Records. The rule is being amended to clarify references to "disciplinary action"; this is also consistent with the Department's proposal to add the definition of "disciplinary action" in R2-5A-101, Definitions, as described above.

R2-5A-305. Employment of Relatives. The rule is being amended to address issues identified during the preceding Five-year Review Report by allowing for an exception for relationship to an interviewer or panel member.

R2-5A-402. Salary Administration. The rule is being amended to address issues identified during the preceding Five-year Review Report by removing the current or former salary from the factors that must be considered when setting an employee's salary. The Department also proposes to eliminate a reporting requirement, which will reduce a regulatory burden on SPS agencies; the same regulatory objective can be achieved by auditing an agency's actions, as authorized by R2-5A-102(A)(2).

R2-5A-403. Supplemental Pay. The rule is being amended to address issues identified during the preceding Five-year Review Report by adding covered positions that require full authority peace officer certification to the exception and will also resolve the conflict between the rule and the current version of the compensation guidelines. The Department also proposes to eliminate a reporting requirement, which will reduce a regulatory burden on SPS agencies; the same regulatory objective can be achieved by auditing an agency's actions, as authorized by R2-5A-102(A)(2).

R2-5A-405. Tuition Reimbursement for Education. The rule is being amended to expand the rule to "Education Assistance" and add a new subsection for student loan repayment assistance. Student loan repayment assistance may be utilized as a recruitment and retention tool when the employee's current position requires a degree or a degree is a selective preference for the position, because tuition reimbursement would not be applicable. The proposed amendment requires an agency to develop a written policy prior to granting this assistance and also requires that the policy be submitted to ADOA for review and approval.

R2-5A-502. Hours of Work. The rule is being amended to expand this rule to "Hours and Location of Work." The increase in remote work since the COVID pandemic has made it necessary to address the location of work in rule. The proposed amendments stipulate that every employee shall have a designated State of Arizona worksite, which shall be the geographic location of the position for the purposes of determining agency employees impacted by a furlough or a reduction in force. The proposed amendments provide that an agency head may allow an employee to work from an alternate location (remote work), subject to the stated conditions.

R2-5A-504. Alcohol and Drug-free Workplace. The rule is being amended by adding a requirement for each agency to adopt a written policy for testing or retesting for the presence of alcohol or drugs of its employees and if applicable, prospective employees. The proposed amendment also requires the agency to submit its policy to ADOA for approval, similar to the wording in existing rules requiring other agency policies to be submitted to ADOA.

R2-5A-B603. Sick Leave. The rule is being amended to address issues identified during the preceding Five-year Review Report by adding the ability of an employee to use sick leave for the purposes of victim leave pursuant to R2-5A-D604.

R2-5A-B606. Civic Duty Leave. This rule is being amended pursuant to Executive Order 2023-24, Ensuring Adequate Staffing of Voting Locations, which directs the Department to conduct rulemaking to provide for civic duty leave for the purpose of serving at a voting location during a statewide election in this State.

R2-5A-B611. Meritorious Service Leave. The rule is being amended to address issues identified during the preceding Five-year Review Report by adding covered positions that require full authority peace officer certification to the exceptions. The Department

also proposes to eliminate a reporting requirement, which will reduce a regulatory burden on SPS agencies; the same regulatory objective can be achieved by auditing an agency's actions, as authorized by R2-5A-102(A)(2).

R2-5A-D601. Family and Medical Leave Act (FMLA) Leave. The rule is being amended to eliminate the combined total of FMLA leave if both spouses work for the State, thus allowing each spouse to take the full amount of FMLA leave (up to 12 or 26 workweeks, as applicable). This amendment also serves to further advance Governor Hobbs' initiative to expand family sick leave benefits to state employees (email from Governor Hobbs dated January 3, 2023).

R2-5A-D602. Industrial Leave. The rule is being amended to address issues identified during the preceding Five-year Review Report by revising the language in subsection B to "gross salary" in order to be consistent with the terminology in subsection A, paragraph 3.

R2-5A-D603. Military Leave. The rule is being amended to address issues identified during the preceding Five-year Review Report by adding language to allow an employee who has not received their military orders at the time the leave is requested to submit a copy of their orders at a later date. The Department also proposes to amend the rule to comply with a new or existing state statutory requirement. Laws 2021, Ch. 193 (HB2297) amended A.R.S. § 38-610(C)(3) by modifying the calculation of military leave of absence for public employees from days to hours.

R2-5A-701. General. This rule is being amended to address issues identified during the preceding Five-year Review Report by codifying into rule the temporary procedures initially implemented in 2015, to extend the performance appraisal exemption to all uncovered employees in political appointment positions (i.e., positions listed in A.R.S. § 41-742(F)).

R2-5A-702. Performance Management Process. This rule is being amended to conform with the temporary procedures identified in the preceding Five-year Review Report, and ensure the rule is effective for the performance management procedures being used currently.

R2-5A-803. Employee Request for Review of Disciplinary Action. The rule is being amended to address issues identified during the preceding Five-year Review Report by replacing "a state merit board or council" with "the State Personnel Board or the Law Enforcement Merit System Council" to improve clarity and eliminate any potential confusion.

R2-5B-403. Grievance Procedures. This rule is applicable only to covered employees. The rule is being amended to address issues raised by the Arizona Department of Corrections, Rehabilitation and Reentry (ADCRR), which has employees statutorily required to be covered, and the most covered employees of any agency. The current rule requires that the grievant have an oral discussion with the immediate supervisor; however, the immediate supervisor is frequently not in a position of authority to make disciplinary decisions. The Department is proposing to revise the rule to require that the oral discussion be held instead with the individual designated as the first step in the agency's grievance procedure.

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

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

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

Not applicable

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

The Department promulgates rules that provide for the direction and control of the State Personnel System (SPS). The SPS is the largest personnel system in state government, encompassing over 100 state agencies, boards, commissions and offices, and approximately 34,000 employees. SPS rules affect SPS agencies, employees, and applicants for positions within the SPS. As such, the SPS does not issue permits or licenses, or charge fees, and its rules have little to no economic impact on small businesses or other consumers. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the Department to prepare the rule package. Any financial impact or administrative expenses associated with the rules will be covered by ordinary operating funds.

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

Between the proposed rulemaking and the final rulemaking, the Department made one change to the rules. In R2-5A-101, the Department supplemented the definition of "Disabled veteran" by adding the phrase, "for the purposes of R2-5A-302, pertaining to preferences" to provide additional clarity. The Department does not consider the change to be substantially different from the proposed rule within the meaning of A.R.S. § 41-1025(B).

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

During the public comment period for the Notice of Proposed Rulemaking, the Department did not receive any written public comments. An oral proceeding was held on March 21, 2024, via Google Meet, and although several individuals attended the proceeding, there were no oral comments made during the proceeding. The record closed at 5:00 p.m. on March 21, 2024.

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

There are no other matters prescribed by statutes applicable specifically to the Department or this specific rulemaking.

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

Not applicable

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:
Not applicable

c. Whether a person submitted an analysis to the agency that compares the rule’s impact of the competitiveness of business in this state to the impact on business in other states:
No business competitiveness analysis was received by the Department.

14. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:
29 CFR 825.100 through 29 CFR 825.800, Family and Medical Leave Act (FMLA), are incorporated by reference in Section R2-5A-D601.
20 CFR 1002.1 through 20 CFR 1002.314, Uniformed Services Employment and Reemployment Rights Act (USERRA), are incorporated by reference in Section R2-5A-D603.

15. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:
Not applicable

16. The full text of the rules follows:

**TITLE 2. ADMINISTRATION
CHAPTER 5. DEPARTMENT OF ADMINISTRATION
STATE PERSONNEL SYSTEM
SUBCHAPTER A. COVERED AND UNCOVERED EMPLOYEES**

ARTICLE 1. GENERAL

- Section
- R2-5A-101. Definitions
- R2-5A-104. Prohibition Against Discrimination, Harassment and Retaliation
- R2-5A-105. Records

ARTICLE 3. RECRUITMENT, SELECTION AND APPOINTMENT

- Section
- R2-5A-305. Employment of Relatives

ARTICLE 4. COMPENSATION SYSTEM

- Section
- R2-5A-402. Salary Administration
- R2-5A-403. Supplemental Pay
- R2-5A-405. ~~Tuition Reimbursement~~ for Education Assistance

ARTICLE 5. CONDITIONS OF EMPLOYMENT

- Section
- R2-5A-502. Hours and Location of Work
- R2-5A-504. Alcohol and Drug-free Workplace

ARTICLE 6. LEAVE

PART B. PAID LEAVE

- Section
- R2-5A-B603. Sick Leave
- R2-5A-B606. Civic Duty Leave
- R2-5A-B611. Meritorious Service Leave

PART D. LEAVE THAT COULD BE EITHER PAID OR UNPAID

- Section
- R2-5A-D601. Family and Medical Leave Act (FMLA) Leave
- R2-5A-D602. Industrial Leave
- R2-5A-D603. Military Leave

ARTICLE 7. PERFORMANCE MANAGEMENT

- Section
- R2-5A-701. General
- R2-5A-702. Performance Management Process

ARTICLE 8. DISCIPLINARY ACTIONS

Section
R2-5A-803. Employee Request for Review of Disciplinary Action

SUBCHAPTER B. COVERED EMPLOYEES

ARTICLE 4. GRIEVANCES

Section
R2-5B-403. Grievance Procedures

SUBCHAPTER A. COVERED AND UNCOVERED EMPLOYEES

ARTICLE 1. GENERAL

R2-5A-101. Definitions

In this subchapter, the following words and phrases have the defined meanings unless otherwise clearly indicated by the context:

- “Agency head” means the chief executive officer of a state agency, or designee.
- “Appeal” means a covered employee’s request for a review of a disciplinary action by the State Personnel Board under A.R.S. § 41-782 or the Law Enforcement Merit System Council under A.R.S. § 41-1830.16, as applicable.
- “Applicant” means a person who seeks appointment to a position in state employment.
- “Appointing authority” means the person or group of persons authorized by law or delegated authority to make appointments to fill positions. A.R.S. § 41-741(1)
- “Appointment” means the offer to and the acceptance by a candidate of a position in a state agency.
- “*At will*” means an employment relationship where either party to the relationship may sever the relationship at any time for any reason other than an unlawful reason. A.R.S. § 41-741(2)
- “Base salary” means an employee’s salary excluding supplemental pay provided by R2-5A-403, overtime pay or other pay allowance provided by law.
- “*Break in service*” means a separation from state employment, regardless of the reason for separation. A.R.S. § 41-741(3)
- “Business day” means the hours between 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding observed state holidays.
- “Candidate” means a person whose education, experience, competencies and other qualifications meet the requirements of a position and who may be considered for employment.
- “Cause” means any of the reasons for disciplinary action provided by A.R.S. § 41-773 or these rules.
- “*Change in assignment*” means movement of an employee to a different position in the same state agency or another state agency. A.R.S. § 41-741(4)
- “Child” means, ~~for purposes of R2-5A-B603, pertaining to sick leave, and R2-5A-B605 pertaining to bereavement leave,~~ a natural child, adopted child, foster child, or stepchild.
- “Class” means a group of positions with the same title and grade because each position in the group has similar duties, scope of discretion and responsibility, required qualifications, or other job-related characteristics.
- “Class series” means a group of related classes as listed by the Arizona Department of Administration, Human Resources Division.
- “Class specification” means a description of the type and level of duties and responsibilities of the positions assigned to a class.
- “Competencies” means knowledge, skills, abilities, behaviors and other characteristics that contribute to successful job performance and the achievement of organizational results.
- “*Covered employee*” means an employee who:
 - (a) Before September 29, 2012, is in the state service, is not uncovered pursuant to section 41-742, subsection A, and has remained in covered status without a break in service since that date.
 - (b) Before September 29, 2012, is in the state service, is employed as a Correctional Officer I, Correctional Officer II, Correctional Officer III or Community Corrections Officer and has remained in covered status without a break in service since that date.
 - (c) Before September 29, 2012, is in the state service, is a full authority peace officer as certified by the Arizona Peace Officer Standards and Training Board and has remained in that status without a break in service since that date.
 - (d) On or after September 29, 2012, is a Correctional Officer I, Correctional Officer II, Correctional Officer III or Community Corrections Officer and is appointed to a position in the covered service, but does not include a position in any other class in the correctional officer class series or the community correctional officer class series or in any other correctional class series.
 - (e) On or after September 29, 2012, is a full authority peace officer as certified by the Arizona Peace Officer Standards and Training Board and is appointed to a position that requires such a certification in the covered service. A.R.S. § 41-741(5)
- “Covered position” means a position in the covered service.

“Covered service” is defined in A.R.S. § 41-741 and means that employment status conferring rights of appeal as prescribed in A.R.S. §§ 41-782 and 41-783 or A.R.S. § 41-1830.16, as applicable.

“Days” means calendar days, unless otherwise stated.

“Demotion” means a change in the assignment of an employee from a position in one class to a position in another class that has a lower grade.

“Department” means the Arizona Department of Administration.

“Director” means the Director of the Arizona Department of Administration, or the Director’s designee, who is responsible for administering the state personnel system pursuant to applicable state and federal laws. A.R.S. § 41-741(7)

“Disabled veteran” means, for the purposes of R2-5A-302, pertaining to preferences, an honorably separated veteran who served on active duty in the armed forces of the United States at any time and who has a service-connected disability.

“Disciplinary action” means a letter of reprimand, suspension, involuntary demotion, or dismissal.

“Employee” means all officers and employees of this state, whether in covered service or uncovered service, unless otherwise prescribed. A.R.S. § 41-741(8)

“Employing agency” means the agency where the employee is employed or, if an applicant, the agency to which the person has applied.

“Essential job function” means a fundamental job duty of a position that an applicant or employee must be able to perform, with or without a reasonable accommodation.

“FLSA” means the federal Fair Labor Standards Act.

“FLSA exempt” means a position that is not entitled to overtime compensation under the FLSA.

“FLSA non-exempt” means a position that is entitled to overtime compensation under the FLSA.

“FMLA” means the federal Family and Medical Leave Act.

“Full authority peace officer” means a peace officer whose authority to enforce the laws of this state is not limited by the rules adopted by the Arizona Peace Officer Standards and Training Board. A.R.S. § 41-741(9)

“Grade” means the numeric identifier associated with one or more pay ranges, used to determine the internal worth of a class relative to other classes.

“Manifest error” means an act or failure to act that is, or clearly has caused, a mistake.

“Parent” means, for purposes of R2-5A-B602, pertaining to annual leave, R2-5A-B603, pertaining to sick leave, and R2-5A-B605, pertaining to bereavement leave, a birth parent, adoptive parent, stepparent, foster parent, grandparent, parent-in-law, or anyone who can be considered “in loco parentis.”

“Part-time” means employment scheduled for less than 40 hours per week.

“3/4 time” means employment regularly scheduled for at least 30 hours but fewer than 40 hours per week.

“1/2 time” means employment regularly scheduled for at least 20 hours but fewer than 30 hours per week.

“1/4 time” means employment regularly scheduled for at least 10 hours but fewer than 20 hours per week.

“Pay status” means an employee is receiving pay for work or for a compensated absence.

“Premium/contribution” means the amount paid in exchange for insurance coverage. Depending on the type of coverage, the premium/contribution is paid by the employee, the state, or a combination of both.

“Promotion” means a change in assignment of an employee from a position in one class to a position in another class that has a higher grade.

“Protected category” means race, color, national origin, religion, age, disability, genetic information, sex (including sexual orientation and gender identity), pregnancy, military or veteran status, or any other status protected by federal law, state law, or regulation.

“Reallocation” means changing the allocation of a position to a different class if a material and permanent change in duties or responsibilities occurs.

“Reversion” means the return of a covered employee on promotional probation to a position in the class in which the employee held permanent status immediately before the promotion or to a similar position in another class at the same grade as the class the employee held permanent status if the employee possesses the qualifications for that position.

“Rules” means the rules adopted by the Department of Administration, Human Resources Division. A.R.S. § 41-741(13)

“Special assignment” means the temporary assignment, for up to six months, of the duties and responsibilities of another position to an employee in the same agency.

“State agency” means a department, board, office, authority, commission or other governmental budget unit of this state and includes an agency assigned to a department for administrative purposes. State agency does not include the legislative and judicial branches, the Arizona Board of Regents, state universities, the Arizona State Schools for the Deaf and the Blind, the Department of Public

Safety, the Arizona Peace Officer Standards and Training Board, the Cotton Research and Protection Council or public corporations. A.R.S. § 41-741(14)

“State Personnel Board” is defined in A.R.S. § 41-741 and means the board established by A.R.S. Title 41, Chapter 4, Article 6.

“State Personnel System” is defined in A.R.S. § 41-741 and means all state agencies and employees of those agencies that are not exempted by the provisions of A.R.S. Title 41, Chapter 4, Article 4.

“State service” is defined in A.R.S. § 41-741 and means all offices and positions of employment in state government that, before September 29, 2012, were subject to the provisions of A.R.S. Title 41, Chapter 4, Articles 5 and 6 that were in effect before September 29, 2012.

“Supervisor” means a state employee who has one or more other state employees reporting directly to the person and, for those state employees, typically has the authority to:

- (a) Approve sick or annual leave.
- (b) Recommend hiring, discipline or dismissal.
- (c) Assign or schedule daily work.
- (d) Complete a performance evaluation. A.R.S. § 41-741(18)

“Temporary appointment” means an appointment made for a maximum of 1,500 hours worked in any agency in each calendar year.

“Transfer” means the movement of an employee from one position to another position in the same or an equivalent grade.

“Uncovered employee” means an employee in uncovered service. A.R.S. § 41-741(19)

“Uncovered service” means employment at will and includes all state employees except those in covered service. A.R.S. § 41-741(20)

“Working day” or “working hours” means a day or the hours an employee is regularly scheduled to work.

R2-5A-104. Prohibition Against Discrimination, Harassment and Retaliation

- A. General. Agencies shall comply with all federal and state anti-discrimination laws. Agencies shall not unlawfully discriminate against any individual with regard to the terms and conditions of employment, including hiring, pay, leave, insurance benefits, retention, and rehiring. The information provided in this rule is intended to serve as a summary of agencies' and employees' obligations with regard to compliance with applicable federal and state laws, rules and regulations. Nothing in these rules shall be construed as providing rights in excess of, or in addition to those authorized under federal laws and Arizona Revised Statutes.
- B. Equal Employment Opportunity. Each agency shall provide equal employment opportunity for all individuals regardless of race, color, national origin, religion, age, disability, genetic information, sex (including sexual orientation and gender identity), pregnancy, military or veteran status, or any other status protected by federal law, state law, or regulation. It is the policy of this state that all individuals are treated in a fair and non-discriminatory manner throughout the application and employment process.
- C. Harassment Prohibited. Harassment of a sexual nature or harassment based on ~~race, color, national origin, religion, age, disability, genetic information, sex, pregnancy, military or veteran status, or any other status protected by federal law, state law, or regulation~~ any protected category is prohibited. An agency shall prohibit the unlawful harassment of any employee in the course of the employee's work by supervisors, coworkers, or third parties, such as vendors or customers. Any employee who engages in unlawful harassment may be subject to disciplinary action, up to and including termination of employment.
- D. Protection from Retaliation. The state prohibits retaliation against anyone for raising a concern about, assisting in an investigation of, or filing a complaint concerning unlawful discrimination or unlawful harassment.
- E. Complaints.
 1. An applicant for state employment who has a complaint alleging discrimination or harassment may file a complaint under the procedures in R2-5A-308.
 2. It is every employee's responsibility to promptly bring any allegation of discrimination, harassment or retaliation to the attention of the employing agency. Such complaints shall be filed under the procedures established under Article 9.

R2-5A-105. Records

- A. Definitions. For the purposes of this Section, “record” generally refers to a paper document; however, a document may be maintained electronically.
- B. Application Materials.
 1. An agency head shall maintain and keep confidential all resumés, applications, tests, test results, records, correspondence, and other documents used to seek state employment. The agency head shall not release any materials that the agency head determines would compromise the application process for future applicants and shall restrict the review of the applicant's application materials to:
 - a. The applicant,
 - b. An individual who has written authorization from the applicant,
 - c. State officials in the normal line of duty, or,
 - d. Officials acting in response to court orders or subpoenas.
 2. The Director, or designee, shall ensure that when a person makes a public records request under A.R.S. Title 39, Chapter 1, Article 2 for applicant information:
 - a. Information shall only be provided if the position under recruitment is a high-level position and the public has a legitimate interest in the names of persons being seriously considered for the position, as determined by the Director; and
 - b. Only the names and resumés of the final candidates for the position as determined by the Director shall be released.

- C. Official Personnel File.**
1. An employee's official personnel file is the official record and documentation of the employee's employment.
 2. An agency head shall, for each agency employee, maintain an official personnel file that contains:
 - a. A copy of the job application for the employee's current position;
 - b. A copy of all performance appraisals completed as required by Article 7;
 - c. Personnel action forms that authorize changes in employment status, position, classification, pay, or leave status;
 - d. Letters of commendation as established by agency policy; and
 - e. Correspondence consisting of:
 - i. ~~Letters of reprimand, suspension, demotion or dismissal~~ Disciplinary actions;
 - ii. Acknowledgments of receipt of ~~letters of reprimand or other disciplinary communications actions~~;
 - iii. Employee objections or responses to correspondence described in subsection (C)(2)(e)(i) that are not filed as complaints under Article 9 or grievances under Subchapter B, Article 4, if the objection or response is received within 30 calendar days of the date of the disciplinary action ~~or letter of reprimand~~.
 3. For the purpose of this subsection, an official is an individual who provides identification verifying that the individual is exercising powers and duties on behalf of the chief administrative head of a public body. An agency head shall limit access to an employee's official personnel file to:
 - a. The employee;
 - b. The employee's attorney or an individual who has written authorization from the employee to review the personnel file;
 - c. Agency personnel designated by the agency head as having a need for the information;
 - d. A Department official in the normal line of duty;
 - e. An official acting in response to a court order or subpoena;
 - f. An official of an agency to which the employee has applied; and
 - g. An official of an agency of the federal government, state government, or political subdivision, if the agency head of the employing agency deems access to the file to be appropriate.
 4. When an employee moves from one state agency to another, the gaining agency shall request that the losing agency forward the employee's official personnel file to the gaining agency. The losing agency shall forward the file within 20 business days of the receipt of the request.
 5. When a former employee returns to state employment within five years of the former employee's separation to an agency other than the agency in which the employee was last employed, the gaining agency shall request that the last agency forward the employee's official personnel file. The last agency shall forward the file within 20 business days of the receipt of the request.
- D. Disclosure of information.**
1. Definitions. For the purposes of this subsection:
 - ~~a. "Disciplinary actions" means letters of reprimand, suspension, demotion or dismissal.~~
 - ~~b-a. "Records that are reasonably necessary or appropriate to maintain an accurate knowledge of the employee's disciplinary actions" means the correspondence listed in subsection (D)(1)(a) and includes disciplinary actions, an official notice of charges of misconduct as applicable to covered employees, the final disciplinary letter, and any responses related to complaints, grievances or appeals upholding, amending, or overturning the discipline.~~
 - ~~e-b. "Employee responses" means any written documents, submitted and signed by the employee, either:~~
 - i. In response to an official notice of charges of misconduct;
 - ii. As a formal complaint filed under the provisions of Article 9 or a formal grievance under Subchapter B, Article 4, of these rules pertaining to a specific disciplinary action; or
 - iii. As an objection to a specific disciplinary action and contained in the employee's official personnel file under subsection (C)(2)(e)(iii).
 2. Personnel records are confidential and an agency head shall ensure that except as provided in subsection (C)(3), only the following information about a current or former employee is provided to any person making a public records request under A.R.S. Title 39, Chapter 1, Article 2.
 - a. Name of employee;
 - b. Date of employment;
 - c. Current and previous class titles and dates of appointment to the class;
 - d. Current and previous agencies to which the employee has been assigned and the location of the main office for each agency;
 - e. Current and previous salaries and dates of each change;
 - f. Name of employee's current or last known supervisor; and
 - g. Records that are reasonably necessary or appropriate to maintain an accurate knowledge of the employee's disciplinary actions, including the employee responses to all disciplinary actions, unless providing this information is contrary to law.
- E. Insurance and medical records.** An agency head:
1. May maintain group insurance enrollment forms in an employee's official personnel file for an employee hired prior to September 29, 2012.
 2. Shall maintain in a separate file that is not part of the employee's official personnel file:
 - a. Medical records, and
 - b. Group insurance enrollment forms for an employee hired on or after September 29, 2012.
- F. Employment eligibility records.** An agency head shall retain I-9 forms and other documents required by law to prove employment eligibility in a separate file that is not part of the employee's official personnel file.
- G. Employee access to files.** An employee has the right to review only the employee's official personnel file.

- H. Recordkeeping Requirements. An agency head shall ensure that agency recruitment and employee records are maintained in accordance with the General Records Retention Schedule for Human Resources/Personnel Records published by and on file with the Secretary of State, Arizona State Library, Archives and Public Records.

ARTICLE 3. RECRUITMENT, SELECTION AND APPOINTMENT

R2-5A-305. Employment of Relatives

- A. Relationship to supervisors. An individual shall not be employed in a position if the immediate supervisor of the individual is related within the third degree of affinity (marriage) or consanguinity (blood), or by adoption.
- B. Relationship to other employees. An individual shall not be employed in a position if the individual is related within the third degree to an employee who currently occupies a position under the same immediate supervisor.
- C. Exceptions. The Director may grant an exception to the prohibitions in subsections (A) and (B) if there is no other qualified person for the position at the location.
- D. Relationship to subordinate employees. A supervisor or manager at any level shall not make an employment decision specifically benefitting any individual who is related within the third degree, unless an exception under subsection (C) has been granted.
- E. Relationship to interviewer or interview panel members. An employee shall not interview or serve on an interview panel of any job candidate if the candidate is related within the third degree. An agency head may authorize an exception in an individual case. Any exception shall be documented by the agency head and subject to audit by the Director.
- F. Definition. For the purpose of this Section, persons related within the third degree include a spouse, child, parent, grandchild, grandparent, sister, brother, great grandchild, great grandparent, aunt, uncle, niece, nephew or first cousin.

ARTICLE 4. COMPENSATION SYSTEM

R2-5A-402. Salary Administration

- A. General. The Director shall develop procedures for salary administration for use by all agencies when setting the salary of an employee. In setting an employee's salary, an agency head shall consider such factors as the employee's education, experience, skills, performance, and ~~current or former salary, as well as~~ the current salaries of employees in the same class in the agency and the relative experience and performance of those employees.
- B. Classes. The Director shall assign each class to a salary range and to a grade.
- C. Salary. The base salary of an employee shall be not less than the minimum nor more than the maximum of the salary range of the class to which the employee's position is allocated, except as provided by these rules.
- D. Salary adjustment. The salary used to compute a salary adjustment is the employee's base salary. Following an adjustment to the base salary, an agency shall add to the new rate of pay any special pay supplement still valid.
- E. New hire starting rate. An agency head may offer a salary to a new hire within the salary range of the class to which the employee is being appointed in accordance with the procedures and guidelines published by the Director, unless an exception is approved by the Director.
- F. Promotion. An employee who has a change in assignment from a position in one class to a position in another class having a higher grade shall receive a salary increase as determined by the agency head in accordance with the procedures and guidelines published by the Director, unless an exception is approved by the Director.
- G. Demotion.
1. An employee who has a change in assignment from a position in one class to a position in another class having a lower grade, whether voluntary or involuntary, shall receive a salary decrease as determined by the agency head in accordance with the procedures and guidelines published by the Director, unless an exception is approved by the Director.
 2. A demoted employee shall not be eligible for an increase to base salary for six months after the effective date of the demotion to the new position, other than a salary increase that is legislatively mandated. After six months, the employee may become eligible for a salary increase only after a performance evaluation in the new position for which the employee received an overall rating of "meets expectations" or higher.
- H. Lateral transfer. An employee who has a change in assignment from a position in one class to a position in the same class or in another class having the same grade shall receive no increase in salary, unless an exception is approved by the Director. The Director may approve a salary increase based upon documentation of recruitment difficulties to fill the position, specific needs identified by the agency, or the employee's qualifications. Transferred employees are not eligible for increases to base salary during their first six months in the new job unless approved by the Director. An employee who transfers to another agency may become eligible for a salary increase only after a performance evaluation in the new position for which the employee received an overall rating of "meets expectations" or higher.
- I. Reversion of covered employee. A covered employee who is reverted under the rules in Subchapter B shall be paid the same salary as that paid prior to the promotion, plus the percentage or dollar amount of increase of an intervening general salary adjustment for which the employee was eligible.
- J. Job reallocation.
1. The base salary of an employee in a position that is reallocated to a class in a higher pay range may receive a salary increase in accordance with the procedures and guidelines published by the Director. If increasing the base salary of an employee would result in a salary level that is less than the minimum or greater than the maximum salary of the pay range, the employee's salary shall be the minimum or the maximum salary of the pay range, respectively.
 2. The base salary of an employee in a position that is reallocated to a class with the same or lower pay range shall remain the same provided that the employee's salary is within the pay range of the position. If the employee's salary is less than the minimum of the salary range or greater than the maximum salary of the new pay range, the employee's salary shall be the minimum salary or the maximum salary of the new pay range, respectively.
- K. Job regrade.

1. The base salary of an employee in a class that is reassigned to a higher grade shall be adjusted by the amount determined by the Director. If adjusting the base salary of an employee would result in a salary level that is less than the minimum or greater than the maximum salary of the pay range, the employee's salary shall be the minimum or the maximum salary of the pay range, respectively.
 2. The base salary of an employee in a class that is reassigned to a lower grade shall remain the same provided that the employee's salary is at or above the minimum salary of the new pay range of the class, and may be greater than the maximum salary of the pay range. If the employee's salary is greater than the maximum, the employee is not eligible for an increase to base pay until the employee's salary is less than the maximum salary of the new pay range.
- L. Merit increases.
1. The Director shall establish guidelines for merit increases to base pay.
 2. Merit increases shall be available:
 - a. To uncovered employees.
 - b. To covered employees only if such increases are legislatively appropriated.
 3. Subject to the guidelines established by the Director:
 - a. Merit increases may be implemented at the discretion of the agency head.
 - b. Merit increases are subject to the availability of funding and must be within an agency's appropriation unless otherwise legislatively appropriated.
 4. ~~An agency head shall report to the Director on the utilization of merit increases pursuant to the reporting requirements in the guidelines established by the Director.~~
- M. Legislatively-appropriated salary adjustments. Subject to legislative appropriation, the Director shall determine employee eligibility and criteria for salary adjustments.

R2-5A-403. Supplemental Pay

- A. General. Supplemental pay is in addition to an employee's base pay. The salary of an employee may exceed the maximum salary of the pay range for the employee's class if the excess amount is due to the receipt of supplemental pay.
- B. Shift differential. The Director may authorize a shift differential to be paid to an employee on other than a day shift. The Director shall establish a competitive shift differential rate periodically based on an annual survey of the market place. Employees in the same class in the same agency who work on the same shift shall receive the same shift differential pay.
- C. Special assignment. An employee on a special assignment shall remain in the employee's current position with no change to base salary. If the classification to which the employee is on a special assignment is a higher grade, the employee shall be provided a conditional pay supplement in an amount that, when added to the employee's base salary, would be within the range of the higher classification. If the classification to which the employee is on a special assignment is the same or a lower grade, the employee shall not be eligible for a conditional pay supplement while on special assignment. Any conditional pay supplement received by the employee for the special assignment shall be discontinued at the conclusion of the special assignment.
- D. Conditional pay supplements. The Director may establish conditional pay supplements. A conditional pay supplement provides additional compensation to an eligible employee and shall be discontinued when the qualifying conditions no longer apply. An employee may be awarded multiple conditional pay supplements. A conditional pay supplement does not:
 1. Change base salary;
 2. Provide a basis for the computation of a salary increase; or
 3. Provide a basis for the computation of pay upon an employee's promotion, demotion or transfer.
- E. Variable pay.
1. The Director may establish variable pay strategies determined to be the prevailing practices in the market and in the best interest of the state.
 2. If the Director establishes variable pay strategies, the Director shall establish guidelines for the administration of variable pay.
 3. Variable pay shall be available only to uncovered employees, except for employees in covered positions classified as Correctional Officers I, II, or III, or Community Corrections Officers, or covered positions that require full authority peace officer certification, as specified in the guidelines established by the Director.
 4. Subject to the guidelines established by the Director:
 - a. Variable pay strategies may be implemented at the discretion of the agency head.
 - b. Variable pay strategies are subject to the availability of funding and must be within an agency's appropriation unless otherwise legislatively appropriated.
 5. ~~An agency head shall report to the Director on the utilization of variable pay strategies pursuant to the reporting requirements in the guidelines established by the Director.~~

R2-5A-405. ~~Tuition Reimbursement for Education Assistance~~

- A. General. A state agency may assist an employee in the pursuit of educational goals by providing tuition reimbursement and student loan repayment assistance.
- B. ~~Procedures~~ Tuition reimbursement. Prior to granting tuition reimbursement, an agency shall establish a policy which shall include the following conditions:
 1. The educational program will provide a benefit to the state.
 2. The employee shall successfully complete the required course work or the educational requirements of the program in order to receive reimbursement.
 3. Education assistance may not exceed \$5,250 per employee in any one calendar year unless approved in advance by the Director.
 4. An employee who receives education assistance may be required to return all or a portion of the amount received if the employee does not remain employed with the agency for a defined period of time, as specified in the agency's policy.
- C. Student loan repayment assistance. An agency that provides tuition reimbursement may also provide student loan assistance to an eligible employee in the repayment of student loans obtained by the employee and used for the actual costs paid for educational

expenses and living expenses that occurred during the employee's undergraduate, graduate or professional education if the education is required or a selective preference for the employee's current position. Before granting student loan repayment assistance, an agency head shall develop a written policy that provides for equal consideration of all employees similarly situated. The policy will describe the need being addressed, and the benefit expected to be gained. The agency head shall submit the proposed policy and any subsequent changes to the Director for approval, and include at a minimum:

1. Eligibility requirements;
2. Request and approval procedures;
3. Documentation required to support the request for repayment assistance;
4. The monthly limit on student loan repayment assistance and a specified lifetime cap;
5. A requirement that the employee receiving student loan repayment assistance must provide to the agency monthly proof of payment of the monthly repayment amount for each active student loan approved for assistance;
6. Information regarding how an employee's leave of absence or separation affects student loan repayment assistance.

ARTICLE 5. CONDITIONS OF EMPLOYMENT

R2-5A-502. Hours and Location of Work

- A.** State work week. The state work week is the period of seven consecutive days starting Saturday at 12:00 a.m. and ending Friday at 11:59 p.m. An agency head may apply to the Director for an exception from the work week period for all or part of an agency workforce. The Director may grant an exception from the work week period to promote efficiency in the State Personnel System.
- B.** Hours of ~~employment~~ work.
1. An agency head shall determine the hours of employment in the work week for each agency employee.
 - ~~2.a.~~ An agency head may provide for breaks during the work period consistent with carrying out the duties of the agency.
 - ~~2.b.~~ An agency head may require an employee to work overtime.
- ~~C.~~ **C.** ~~Flexible work options.~~ 2. An agency head may offer a flexible 40-hour work week option to an employee if the agency head determines the agency's services can be maintained.
- ~~D.~~ **D.** ~~Attendance standards.~~ 3. An agency head may establish a standard of attendance.
- C.** Location of work. Every employee shall have a designated work location in the State of Arizona.
1. An agency head shall determine the work location for each agency employee.
 2. An agency head may allow an employee to work from an alternate location, subject to the employee's position requirements, the business needs of the agency, and in accordance with the procedures established by the Director. An employee who is authorized to work from an alternate location may be required to report to the employee's designated State of Arizona work location when directed.
 3. The employee's designated State of Arizona work location shall be the geographic location of the position for the purposes of R2-5A-C601, pertaining to furlough, and R2-5B-602, pertaining to reduction in force.

R2-5A-504. Alcohol and Drug-free Workplace

- A.** General. State agencies shall prohibit the manufacture, distribution, dispensation, possession or use of alcohol, illegal drugs, unauthorized drugs, inhalants, or other unauthorized controlled substances during an employee's working hours or while on state premises or worksites, including state vehicles and property leased to the state. A state employee shall not be impaired by alcohol or drugs while on duty.
- B.** Written policy. Each agency head shall adopt a written policy to address testing or retesting for the presence of alcohol or drugs of its employees and if applicable, prospective employees. The policy shall include all of the requirements listed in A.R.S. § 23-493.04. The agency head will submit its proposed alcohol and drug-free workplace policy and any subsequent changes to the Director for approval.

ARTICLE 6. LEAVE

PART B. PAID LEAVE

R2-5A-B603. Sick Leave

- A.** Definition. "Sick leave" is any approved period of paid absence granted an employee due to:
1. Illness or injury that renders the employee unable to perform the duties of the employee's position.
 2. Disability of the employee that is caused by pregnancy, childbirth, miscarriage, or abortion.
 3. Examination or treatment of the employee by a licensed health care practitioner.
 4. Illness, injury, disability caused by pregnancy or childbirth, or examination or treatment by a licensed health care practitioner of an employee's spouse, dependent child, or parent. Sick leave granted for this purpose shall be charged to the employee's sick leave account and shall not exceed 40 hours per calendar year. For the purposes of this Section:
 - a. The term "dependent child" means a natural child, an adopted child, a foster child, or a stepchild, more than one-half of whose support is received from the employee.
 - b. The term "parent" means a birth parent, adoptive parent, stepparent, foster parent, grandparent, parent-in-law, or an individual who stood "in loco parentis."
 5. Attendance at court-related proceedings by the employee under A.R.S. § 8-420 or A.R.S. § 13-4439.
- B.** Accrual.
1. All state employees, except temporary and part-time employees, shall accrue sick leave at the rate of 3.70 hours bi-weekly.
 2. Temporary employees shall not accrue sick leave.
 3. Part-time employees who:
 - a. Work 1/4 time, 1/2 time, or 3/4 time shall accrue a proportional amount of sick leave;
 - b. Work a percentage of full-time other than 1/4 time, 1/2 time, or 3/4 time will accrue sick leave at the next lower rate;
 - c. Work less than 1/4 time shall not accrue sick leave.

4. Except as provided by R2-5A-D602 for an employee on industrial leave, an eligible employee accrues sick leave each bi-weekly pay period if the employee has been in a pay status for at least one-half of the employee's scheduled work hours in that pay period or month.
 5. A sick leave accrual is credited on the last day of the bi-weekly pay period or month in which the accrual is earned and is available for use on the first day of the following pay period or month. An employee who is separating from state employment accrues leave through the employee's last date of employment for the purpose of determining the employee's accumulated sick leave at the time of the employee's separation pursuant to subsection (F).
- C. Accumulation. Sick leave accumulates without limit.
- D. Use of sick leave.
1. Sick leave may be taken when approved by the agency head.
 2. The agency head may require submission of evidence substantiating the need for sick leave. If the agency head determines the evidence is inadequate, the absence shall be charged to another category of leave or considered absence without leave.
 3. An agency head may require an employee to be examined by a licensed health care practitioner designated by the agency head.
 - a. If the licensed health care practitioner determines that the employee should not work due to illness or injury, the agency head may place the employee on sick leave or, if the employee's sick leave is exhausted, charge the absence to another category of leave or leave without pay.
 - b. The agency head may require the employee to obtain approval from the licensed health care practitioner before returning to work.
 - c. The agency shall pay for all examinations required pursuant to this subsection. The employee shall not be charged any leave while participating in or traveling to or from any examination required pursuant to this subsection.
- E. Movement to another state agency. An employee who moves to another state agency shall transfer all accumulated and unused sick leave to the employee's sick leave account in the new state agency.
- F. Separation. All sick leave credits are forfeited upon separation from state employment except as provided in A.R.S. § 38-615 or otherwise provided by law. However, an employee who returns to state employment within two years after separation shall be credited with all unused sick leave accumulated at the time of separation if the employee was not paid for accumulated sick leave pursuant to A.R.S. § 38-615.

R2-5A-B606. Civic Duty Leave

- A. General. Upon substantiated application, an employee shall receive absence with pay as civic duty leave while serving as a juror, complying with a subpoena, voting, servicing as a voting location worker, or serving as a member of a governmental board, commission, or similarly constituted governmental body, subject to the conditions set forth in this rule and the limitations in R2-5A-A601(B).
- B. Use of civic duty leave. Except for voting pursuant to A.R.S. § 16-401 (primary elections) or A.R.S. § 16-402 (general elections), an employee granted civic duty leave shall report for duty with the employing agency whenever the employee's presence is not required for the civic duty, unless:
1. The distance to the work location would preclude timely reporting for the civic duty, or
 2. The employee cannot return to work at least one hour before the end of the work shift.
- C. Appearance as a witness. An employee who is subpoenaed as a witness by any court or administrative, executive, or judicial body in this state may be absent with pay unless the testimony or evidence to be given relates to the employee's commercial, business, or personal matters.
- D. Jury and witness fees. Employees who are granted civic duty leave when called for jury duty or subpoenaed as a witness shall remit any fees to the employing agency, except for mileage allowance.
- E. Membership on a public service body. An employee serving as a member of a governmental board, commission, or similarly constituted governmental body may be absent with pay while performing official duties with the body.
- F. Servicing as a voting location worker. Subject to the guidelines established by the Director and following written approval from the employee's supervisor, an employee may be absent with pay during a statewide election in this State for the purpose of serving at a voting location and completing the required associated training. An employee who is granted civic duty leave for serving as a voting location worker shall remit to the employing agency any fees paid by the county administering the election for work performed while the employee is on civic duty leave.

R2-5A-B611. Meritorious Service Leave

- A. The Director shall establish guidelines for meritorious service leave.
- B. Except for employees in covered positions classified as Correctional Officers I, II, or III, ~~or~~ Community Corrections Officers, or positions that require full authority peace officer certification, meritorious service leave is only available to uncovered employees.
- C. The guidelines established by the Director shall include at a minimum:
1. The maximum number of hours of meritorious service leave that may be awarded to an employee per calendar year;
 2. The maximum percentage of agency employees eligible for meritorious service leave;
 3. A requirement that an employee shall use meritorious service leave within 12 months of receipt of the leave;
 4. A requirement that if the employee does not use the meritorious service leave within 12 months of receipt, that the leave is forfeited; and
 5. A statement that unused meritorious service leave is forfeited upon separation from state employment.
- D. Subject to the guidelines established by the Director, a meritorious service leave program may be implemented at the discretion of the agency head.
- E. ~~An agency head shall report to the Director on the utilization of meritorious service leave pursuant to the reporting requirements in the guidelines established by the Director.~~

PART D. LEAVE THAT COULD BE PAID OR UNPAID

R2-5A-D601. Family and Medical Leave Act (FMLA) Leave

- A.** General. All state agencies are responsible for complying with the federal Family and Medical Leave Act (FMLA) of 1993 and all applicable revisions. FMLA Regulations, 29 CFR 825.100 through 29 CFR 825.800 (July 2012), are incorporated by this reference and on file with the Department and available from the U.S. Government Printing Office, 732 North Capitol Street N.W., Washington, D.C. 20401. This incorporation by reference contains no future editions or amendments. Any interference with, restraint of, or denial of an employee's rights provided by the FMLA is strictly prohibited.
- B.** Eligible employee.
1. An eligible employee for the purposes of the FMLA is an employee who:
 - a. Is an employee of the state of Arizona;
 - b. Has been employed by the state of Arizona for at least 12 months; and
 - c. Worked for at least 1,250 hours of service during the 12 months immediately preceding commencement of the leave.
 2. An agency head shall not extend FMLA benefits to an ineligible employee.
- C.** Situations covered by the FMLA. A state agency shall grant an eligible employee FMLA leave when the employee takes leave for one or more of the following reasons:
1. The birth of a child or placement of a child with the employee for adoption or foster care, provided the leave concludes within 12 months of the birth or placement.
 2. To care for the employee's spouse, child or parent with a serious health condition.
 3. The employee is unable to work because of the employee's own serious health condition.
 4. Any qualifying exigency arising out of the fact that the employee's spouse, child or parent is a covered military member on active duty or call to active duty status in support of a contingency operation.
 5. To care for a covered service member with a serious injury or illness when the covered service member is the employee's spouse, child, parent or next of kin.
- D.** Amount of FMLA leave.
1. An employee who takes FMLA leave for any of the situations described in subsections (C)(1), (2), (3) or (4) may take a maximum of 12 workweeks of leave during any rolling 12-month period, measured backward from the first day of each approved period of FMLA leave.
 2. An employee who takes FMLA leave for the situation described in subsection (C)(5) may take up to 26 workweeks of leave in a single 12-month period.
 3. During a 12-month period, an eligible employee is able to take no more than 12 workweeks of FMLA leave for any of the situations described in subsections (C)(1), (2), (3) or (4) and a combined total of 26 workweeks of FMLA leave if the leave includes the situation described in subsection (C)(5).
 4. ~~If a husband and wife are both state employees, the husband and wife are limited in the amount of FMLA leave taken to a combined total of:~~
 - a. ~~12 workweeks of leave for the birth and care of a newborn child, placement of a child for adoption or foster care, or to care for a parent who has a serious health condition.~~
 - b. ~~26 workweeks of leave to care for a covered service member with a serious injury or illness.~~
- E.** Designation of FMLA leave. An employee need not specifically request FMLA leave to be placed on FMLA leave. If an eligible employee takes leave for any reason covered by the FMLA and has not already exhausted the employee's available FMLA leave, the agency head shall designate the employee's leave as FMLA leave.
- F.** Use of paid leave. Except for portions of industrial leave, an employee on FMLA leave shall be required to use the employee's available paid leave while on FMLA leave as follows and in the following order:
1. Sick leave or, as applicable, family sick leave subject to the provisions of R2-5A-B603.
 2. Compensatory leave subject to the provisions of R2-5A-B607.
 3. Annual leave subject to the provisions of R2-5A-B602.
 4. Leave without pay subject to the provisions of R2-5A-C602.
- G.** Insurance benefits continuation. An employee who is using leave with pay remains eligible for continued participation in the employee insurance plans and the employee's share of premiums/contributions is paid through payroll deduction. An employee who is on leave without pay while on FMLA leave may continue to participate in the employee insurance plans as follows:
1. Health benefit plan participation. An employee is eligible to continue to participate in the health benefit plan for the duration of the FMLA leave by paying the employee premium/contribution. An agency head may recover the state's portion of premium/contributions paid to maintain health coverage for an employee if the employee fails to return from FMLA leave under certain circumstances, in accordance with FMLA regulations incorporated by reference in subsection (A).
 2. Life insurance plan participation. An employee continues to participate in the Basic Life and Accidental Death and Dismemberment Insurance Plan and may continue to participate in the supplemental life and dependent life insurance coverage by paying the full premium/contribution.
 3. Termination of insurance. The insurance coverage of an employee on leave without pay who fails to pay insurance premiums/contributions when due shall terminate at 11:59 p.m. on the last day of the period covered by the last premium/contribution paid.
- H.** Return from FMLA leave. An agency head shall restore an employee returning from FMLA leave to the employee's original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. The provisions of the FMLA, not the provisions of R2-5A-C602(C), shall govern return to work from leave without pay granted to complete an FMLA-qualified leave.
- I.** Employee responsibilities. An employee is required to adhere to the employing agency's call-in procedures, give the agency 30 days' notice in the event of a foreseeable leave, provide requested documentation, and periodic updates of the employee's status and intent to return to work as requested by the agency.
- J.** Agency rights. Nothing in the FMLA or this rule should be construed as limiting an agency's right to manage, discipline or terminate an employee, including an employee's failure to comply with the agency's request for appropriate documentation to substantiate the employee's need for the leave. However, an employee's use of FMLA leave cannot be considered as a negative factor in any employment decision.

K. Conflict. If there is a conflict between the provisions of these rules and the FMLA, the provisions of the FMLA govern.

R2-5A-D602. Industrial Leave

A. Use of leave.

1. An agency head shall place an employee who sustains a job-related illness or injury that is compensable under the Workers' Compensation Law, A.R.S. Title 23, Chapter 6 on sick leave.
2. If an employee who is on leave under the Worker's Compensation laws meets Family and Medical Leave Act (FMLA) eligibility requirements and the leave qualifies for FMLA leave, an agency head shall count it as FMLA leave. An agency head shall apply industrial leave and FMLA concurrently.
3. An employee shall use leave in an amount necessary to receive total payments (leave payments plus Workers' Compensation payments) that do not exceed the gross salary of the employee.
4. If an employee exhausts all sick leave, compensatory leave and annual leave, an agency head shall place the employee on leave without pay.

B. Payments. If an employee receives a retroactive Workers' Compensation payment for any period of industrial illness or injury for which leave payments were received, the employee shall reimburse the agency for Workers' Compensation payments that exceed 100% of the employee's ~~base pay~~ gross salary before the illness or injury, and the agency head shall restore the equivalent value of leave to the employee's appropriate leave account.

C. Light duty. If an employee has a job-related illness or injury that impairs performance on the former job, the agency head shall make every effort to place the employee in a suitable position within the agency, including a light duty assignment.

D. Restriction. An agency head shall not grant sick leave or leave without pay to an employee who fails to accept compensation available under the industrial injury and disease provisions of A.R.S. §§ 23-901 to 23-1091.

E. Insurance benefits continuation. An employee who is using leave with pay in accordance with subsection (A) remains eligible for continued participation in the employee insurance plans and the employee's share of premiums/contributions is paid through payroll deduction. An employee who is on leave without pay due to an industrial illness or injury may continue to participate in the employee insurance plans as follows:

1. Health benefit plan participation.
 - a. An employee may continue to participate in the health benefit plan for a maximum of six months from the date of illness or injury by paying the employee premium/contribution.
 - b. At the end of the six-month period, an employee who remains on leave without pay due to industrial illness or injury may continue to participate in the health benefit plan by paying both the state and employee premiums/contributions, until the employee returns to work or is determined to be eligible for Medicare coverage or Long-term Disability, whichever occurs first.
2. Life insurance plan participation. An employee who is on leave without pay continues to participate in the basic life and accidental death and dismemberment insurance plan without cost for six months after the month in which the illness or injury occurs. During this six-month period, the employee may continue supplemental life and dependent life coverages that were in effect at the start of the leave by paying the applicable premium/contribution.
3. Termination of insurance. The insurance coverage of an employee on leave without pay who fails to pay insurance premiums/contributions when due shall terminate at 11:59 p.m. on the last day of the period covered by the last premium/contribution paid.

F. Accrual of leave. An employee shall continue to receive full leave accrual as long as the employee uses two or more hours of paid leave each day.

R2-5A-D603. Military Leave

An employee who requests absence with pay on military leave under A.R.S. § 26-168, 26-171, or 38-610 shall submit a copy of the orders for duty with the request for military leave. An employee who has not received the orders for duty prior to the start of the military leave shall submit a copy of the orders within five workdays of receipt. An employee may be absent with pay for military purposes for up to ~~thirty days~~ three times the average of regularly scheduled work hours in a weekly work period each year and up to six times the average of regularly scheduled work hours in a weekly work period in any two consecutive federal fiscal years. All state agencies are responsible for complying with the federal Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994 and all applicable revisions. USERRA Regulations, 20 CFR 1002.1 through 20 CFR 1002.314 (April 2012), are incorporated by this reference and on file with the Department and available from the U.S. Government Printing Office, 732 North Capitol Street N.W., Washington, D.C. 20401. This incorporation by reference contains no future editions or amendments.

ARTICLE 7. PERFORMANCE MANAGEMENT

R2-5A-701. General

A. Performance management system. The Director shall establish a performance management system to evaluate the job performance of state employees. The performance management system established by the Director shall contain performance rating levels and shall contain numerical points to apply to each performance rating level established.

B. Administration. The Director shall develop an administrative manual and training on the performance management system.

C. Exceptions. The performance management system may be used:

1. As determined by the appointing authority for the agency head, to evaluate the job performance of the agency head.
2. As determined by the agency head, to evaluate the job performance of:
 - a. ~~Each deputy director, or equivalent, of the agency.~~
 - b. ~~Each assistant director, or equivalent, of the agency~~ each subordinate uncovered employee in a position listed in A.R.S. § 41-742(F).

R2-5A-702. Performance Management Process

- A. Performance plan. For the purposes of this subsection, “performance plan” means ~~a document prepared~~ a communication by an employee’s supervisor that outlines what is expected of the employee and how the employee’s performance will be measured. Subject to review by agency management, a supervisor:
1. Shall ~~administer a performance plan for~~ communicate performance expectations with each employee within 30 days of becoming the employee’s supervisor.
 2. May modify a performance plan at any time during a performance period.
 3. Shall modify a performance plan when significant responsibilities or expectations are added to or removed from a position.
 4. Shall notify the affected employee of any modifications made to a performance plan under subsection (A)(2) or (3).
- B. Performance evaluation requirements.
1. Informal evaluation. A supervisor shall:
 - a. Monitor and evaluate an employee’s performance throughout the rating period,
 - b. Provide feedback to the employee on a regular basis, and
 - c. Attempt to correct inadequate performance where possible and appropriate.
 2. Formal evaluation. A supervisor shall:
 - a. Formally evaluate, document and rate the performance of each employee at least annually.
 - b. Submit the evaluation to agency management for review prior to the evaluation being administered to the employee.
 3. Covered probationary employees. Prior to granting a covered probationary employee permanent status, a supervisor shall evaluate a probationary employee at least once prior to the end of the employee’s probationary period.
- C. Responsibilities.
1. An employee shall comply with the performance plan established by the supervisor.
 2. A supervisor shall comply with performance evaluation requirements.
 3. An agency head shall ensure that all performance evaluations are completed as required by this Section.

ARTICLE 8. DISCIPLINARY ACTIONS**R2-5A-803. Employee Request for Review of Disciplinary Action**

- A. A covered employee who is issued a disciplinary action may have grievance or appeal rights, as applicable.
- B. An uncovered employee does not have grievance rights or the right of appeal to ~~a state merit board or council~~ the State Personnel Board or the Law Enforcement Merit System Council.
- C. A covered employee who files a complaint on a disciplinary action alleging discrimination or harassment is precluded from also filing a grievance through the agency’s grievance procedure on the same disciplinary action that is the subject of the employee’s complaint.

SUBCHAPTER B. COVERED EMPLOYEES**ARTICLE 4. GRIEVANCES****R2-5B-403. Grievance Procedures**

Content. The grievance procedure established in each state agency shall include as a minimum:

1. An initial statement that any complaint alleging unlawful discrimination or unlawful harassment will be reviewed or investigated according to the provisions of the separate complaint process outlined in Subchapter A, Article 9, and not the grievance system.
2. A requirement that the grievant have an oral discussion with the ~~immediate supervisor~~ individual designated as the first step in the agency’s grievance procedure in an attempt to resolve the employee’s disagreement with the disciplinary action, prior to initiating the written grievance procedure.
3. A requirement that the employee file the grievance in writing with the agency grievance coordinator, within 10 business days after the occurrence of the action being grieved. The date of occurrence of a:
 - a. Reprimand is the date the reprimand was issued to the employee.
 - b. Suspension is the first day of suspension.
4. A requirement that the grievance contain a complete statement of all the facts and circumstances involved and the specific redress sought.
5. A provision that the grievant may select a representative at any step in the procedure after the oral discussion with the immediate supervisor.
6. A requirement that another state employee who serves as the representative of a grievant must receive approval for annual or compensatory leave to represent the grievant.
7. A requirement that the grievant must have a minimum of five business days after receipt of a response to forward the grievance at any step, must sign the grievance at each step, and must state the reasons why the response at the previous step was unsatisfactory.
8. A requirement that the agency head will respond to the grievant not later than 30 business days after receipt of the grievance at the first step. Within the 30 business day period, the time for any step may be extended by the agency head with the concurrence of the grievant.
9. A statement that the decision of the agency head is the final step in the grievance process.

NOTICES OF PROPOSED EXPEDITED RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Proposed Expedited Rulemaking. The Office of the Secretary of State is the filing office and publisher of these rules.

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

Under A.R.S. § 41-1027(C), the Governor's Regulatory Review Council also posts Notices of Proposed Expedited Rulemakings on its website and allows any person to provide written comment for at least 30 days after posting the notice.

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

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

NOTICE OF PROPOSED EXPEDITED RULEMAKING

TITLE 9. HEALTH SERVICES

**CHAPTER 25. DEPARTMENT OF HEALTH SERVICES
EMERGENCY MEDICAL SERVICES**

[R24-164]

PREAMBLE

- 1. Permission to initiate this rulemaking was granted under A.R.S. § 41-1039(A) by the governor on:**
November 20, 2023
- 2. Article, Part or Section Affected (as applicable)** **Rulemaking Action**
R9-25-908 Amend
- 3. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
Authorizing statute: A.R.S. §§ 36-132(A)(1), 36-136(G)
Implementing statute: A.R.S. §§ 36-2201, 36-2202, 36-2204.02, 36-2211, 36-2224, 36-2232, 36-2233, 36-2237, 36-2241
- 4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**
Notice of Rulemaking Docket Opening: 30 A.A.R. 436, March 8, 2024
- 5. The agency's contact person who can answer questions about the rulemaking:**
Name: Rachel Zenuk Garcia, Bureau Chief
Address: Arizona Department of Health Services
Bureau of Emergency Medical Services and Trauma System
150 N. 18th Ave., Suite 540
Phoenix, AZ 85007-3248
Telephone: (602) 364-3150
Fax: (602) 364-3568
Email: Rachel.Garcia@azdhs.gov
or
Name: Stacie Gravito, Office Chief
Address: Arizona Department of Health Services
Office of Administrative Counsel and Rules
150 N. 18th Ave., Suite 200
Phoenix, AZ 85007-3232
Telephone: (602) 542-1020
Fax: (602) 364-1150
Email: Stacie.Gravito@azdhs.gov
- 6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**
Arizona Revised Statutes (A.R.S.) §§ 36-2202(A)(3) and (4) and 36-2209(A)(2) require the Arizona Department of Health Services (Department) to adopt standards and criteria pertaining to the quality of emergency care, rules necessary for the operation of emergency medical services, and rules for carrying out the purposes of A.R.S. Title 36, Chapter 21.1. A.R.S. Title 36, Chapter 21.1, Article 2, specifies requirements related to the regulation of ground ambulance services. The Department has adopted rules to implement these statutes in 9 A.A.C. 25, with the rules in Article 9 establishing requirements for ground ambulance certificates of necessity. As part of completing a recent rulemaking that included the rules in 9 A.A.C. 25, Article 9, the Department identified several areas that might require further discussion and revision and included a delayed implementation date for some requirements to allow for additional discussion with stakeholders. The Department initiated this rulemaking to allow for further discussion and possible changes to be made to address stakeholder concerns. After meeting with stakeholders, the Department is making changes

to reduce the regulatory burden while achieving the same objective. The proposed amendments are consistent with the purpose for A.R.S. § 41-1027 in that this rulemaking does not increase the cost of regulatory compliance, does not increase a fee, or reduce a procedural right of regulated persons, and reduces steps, procedures, or processes and amends rules that are outdated and unnecessary, while protecting the health and safety of patients and the general public.

- 7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
The Department did not review or rely on any study for this rulemaking.
- 8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
- 9. A statement that the agency is exempt from the requirements under A.R.S. § 41-1055(G) to obtain and file a preliminary summary of the economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2):**
Under A.R.S. § 41-1055(D)(2), the Department is not required to provide an economic, small business, and consumer impact statement.
- 10. Where, when, and how a person may provide written comment to the agency on the proposed expedited rule under A.R.S. § 41-1027(C):**
Close of record: Monday, September 16, 2024, 4:00 p.m.
A person may submit written comments on the proposed expedited rules no later than the close of record to either of the individuals listed in item 5.
- 11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**
 - a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**
Permits are not applicable to the content of this rulemaking. However, with reference to 9 A.A.C. 25, Article 9, a general permit is not applicable under A.R.S. § 41-1037(A)(2). The Department issues certificates of necessity under A.R.S. §§ 36-2202(A), 36-2232, 36-2233, 36-2236, and 36-2240.
 - b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**
No federal laws are applicable to this rulemaking.
 - c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**
No business competitiveness analysis was received by the Department.
- 12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:**
Not applicable
- 13. The full text of the rules follows:**

TITLE 9. HEALTH SERVICES

**CHAPTER 25. DEPARTMENT OF HEALTH SERVICES
EMERGENCY MEDICAL SERVICES**

ARTICLE 9. GROUND AMBULANCE CERTIFICATE OF NECESSITY

Section
R9-25-908. Operations (Authorized by A.R.S. §§ 36-2201(4), 36-2202(A)(5), 36-2204.02, 36-2211, 36-2224, 36-2232, 36-2233, 36-2237, 36-2241)

ARTICLE 9. GROUND AMBULANCE CERTIFICATE OF NECESSITY

R9-25-908. Operations (Authorized by A.R.S. §§ 36-2204.02, 36-2211, 36-2224, 36-2232, 36-2233, 36-2237, 36-2241)

- A. Insurance: A certificate holder shall:**
 - 1. Either:
 - a. Maintain with an insurance company authorized to transact business in this state:
 - i. A minimum single occurrence automobile liability insurance coverage of \$1,000,000 for ground ambulance vehicles;
 - ii. A minimum single occurrence professional liability insurance coverage for the ground ambulance service of \$1,000,000; and
 - iii. If the certificate holder provides ALS services or critical care services, a minimum single occurrence professional liability insurance coverage for personnel of the ground ambulance service providing ALS services or critical care services of \$1,000,000; or
 - b. Be self-insured for the amounts in subsection (A)(1)(a); and
 - 2. Submit to the Department within seven days after renewal of the insurance coverage in subsection (A)(1)(a) or a change in how the insurance coverage in subsection (A)(1)(a) or (b) is obtained:
 - a. A copy of the certificate of insurance in subsection (A)(1)(a); or

- b. Documentation of self-insurance according to subsection (A)(1)(b).
- B. Record Retention:** According to A.R.S. § 36-2241, a certificate holder shall maintain the following records for the Department's review and inspection:
1. The certificate holder's financial statements;
 2. All federal and state income tax records;
 3. All employee-related expense reports and payroll records;
 4. All bank statements and documents used to reconcile accounts;
 5. All documents establishing the depreciation of assets, such as schedules or accounting records on ground ambulance vehicles, equipment, office furniture, and other plant and equipment assets subject to depreciation;
 6. All prehospital history incident reports, as specified in subsection (J)(1);
 7. All patient billing and reimbursement records;
 8. All dispatch records, as specified in subsection (J)(2);
 9. All policies and procedures required by this Article or Article 2, 10, or 11 of this Chapter;
 10. All plans required by this Article or Article 2, 10, or 11 of this Chapter;
 11. Documentation of the analysis of response time performance according to subsection (G)(2);
 12. Documentation of the analysis of performance of interfacility transports of patients with no time-critical condition, including patients with a time-sensitive condition, according to subsection (H)(1);
 13. Documentation of notification to the Department of instances of noncompliance according to subsection (K)(1)(c);
 14. All back-up agreements, contracts, grants, and financial assistance records related to ground ambulance vehicles, ambulance response, and transport;
 15. All written complaints about the ground ambulance service; and
 16. Information about destroyed or otherwise irretrievable records in a file including:
 - a. A list of each record destroyed or otherwise irretrievable,
 - b. A description of the circumstances under which each record became destroyed or otherwise irretrievable, and
 - c. The date each record was destroyed or became otherwise irretrievable.
- C. Staffing:** A certificate holder shall ensure that:
1. If a ground ambulance vehicle is marked with a level of service, the ground ambulance vehicle is staffed to provide the level of service identified;
 2. An administrative medical director for the ground ambulance service complies with requirements in R9-25-201(F) and R9-25-502(B);
 3. Policies and procedures are established, implemented, and maintained that cover:
 - a. Job descriptions, duties, and qualifications, including required skills and knowledge for EMCTs and other employees; and
 - b. Orientation and in-service education for EMCTs and other employees;
 4. An EMCT employed by the ground ambulance service:
 - a. Is assigned patient care duties consistent with the EMCT's scope of practice and the administrative medical director's evaluation of the EMCT's skills and capabilities;
 - b. Complies with the protocols required in R9-25-201(E)(2);
 - c. Receives training on the policies and procedures required in R9-25-201(E)(3)(b); and
 - d. Receives ongoing education, training, or remediation consistent with the policies and procedures required in R9-25-201(E)(3)(b)(x); and
 5. Staffing of ground ambulance vehicles:
 - a. For the provision of BLS or ALS, is consistent with A.R.S. § 36-2239; and
 - b. ~~Effective January 1, 2025, for~~ For critical care services, includes at least one:
 - i. Paramedic with an additional endorsement, indicating additional training and authorization from the Department to provide critical care services; or
 - ii. Registered nurse.
- D. Communications and Advertising:** A certificate holder shall ensure that the ground ambulance service:
1. Makes a good faith effort to communicate information:
 - a. About its hours of operation to the general public through print media, broadcast media, the Internet, or other means; and
 - b. About resource availability and deployment to other EMS providers in overlapping and surrounding service areas;
 2. Does not advertise that the ground ambulance service:
 - a. Provides a type of service or level of service other than what is granted in the certificate of necessity,
 - b. Operates in the service area other than what is granted in the certificate of necessity, or
 - c. In a manner that circumvents the use of 9-1-1 or another similarly designated emergency telephone number;
 3. Establishes, implements, and maintains the protocol for providing information to emergency receiving facility staff concurrent with the transfer of care, required in R9-25-201(E)(2)(d)(i), which includes:
 - a. The date and time the dispatch was received by the ground ambulance service;
 - b. The unique number used by the ground ambulance service to identify the run;
 - c. The name of the ground ambulance service;
 - d. The number or other identifier of the ground ambulance vehicle used for the run;
 - e. The following information about the patient:
 - i. The patient's name;
 - ii. The patient's date of birth or age, as available;
 - iii. The principal reason for requesting services for the patient;
 - iv. The patient's medical history, including any chronic medical illnesses, known allergies to medications, and medications currently being taken by the patient;

- v. The patient's level of consciousness at initial contact and when reassessed;
 - vi. The patient's pulse rate, respiratory rate, oxygen saturation, and systolic blood pressure at initial contact and when reassessed;
 - vii. The results of an electrocardiograph, if available;
 - viii. The patient's glucose level at initial contact and when reassessed, if applicable;
 - ix. The patient's level of responsiveness score, as applicable, at initial contact and when reassessed;
 - x. The results of the patient's neurological assessment, if applicable; and
 - xi. The patient's pain level at initial contact and when reassessed; and
- f. Any procedures or other treatment provided to the patient at the scene or during transport, including any agents administered to the patient; and
4. Establishes, implements, and maintains a protocol for providing information to another certificate holder, ambulance service, EMS provider, or health care institution concurrent with the transfer of care, which includes the information in subsections (D)(3)(c), (d), (e), and (f).
- E. Dispatch and Scheduling:** A certificate holder shall ensure that:
1. A contract or other agreement, including internal policies and procedures, to provide dispatch exists and includes:
 - a. Information about other certificate holders with which the certificate holder has a back-up agreement;
 - b. The process and parameters under which a ground ambulance vehicle of another certificate holder will be dispatched to respond to a call to which a ground ambulance vehicle of the certificate holder cannot respond;
 - c. Except as specified in subsection (E)(2), for an area within the certificate holder's service area that overlaps with another certificate holder's service area, that the nearest ground ambulance vehicle to the patient's location, under either certificate holder that can provide the necessary level of service, will be directed to respond to a call made through 9-1-1 or a similar dispatch system; and
 - d. If the entity providing dispatch is external to the ground ambulance service, a requirement that the certificate holder receive a copy of each dispatch made under the contract or other agreement;
 2. If a certificate holder has a ground ambulance service contract under R9-25-1104 with a political subdivision, the ground ambulance service contract contains requirements that specify a method for dispatch, which may differ from requirements in subsection (E)(1)(c); and
 3. For an interfacility transport of a patient with no time-critical condition:
 - a. Unless already specified in a written agreement between the certificate holder and the person requesting the interfacility transport, the entity receiving the request for the interfacility transport provides an estimated time of arrival to the person requesting the interfacility transport at the time that the interfacility transport is requested;
 - b. If the estimated time of arrival provided according to subsection (E)(3)(a) changes to a later time, the ground ambulance service, either directly or indirectly, does one of the following:
 - i. Contacts another ground ambulance service to respond to the dispatch, based on the ground ambulance service's back-up plan and back-up agreements;
 - ii. Provides to the contact at the requesting health care institution the name and telephone number of another ground ambulance service with which the ground ambulance service has a back-up agreement; or
 - iii. Provides an amended estimated time of arrival to the person requesting transport that takes into consideration:
 - (1) The patient's condition and needs, and
 - (2) Health and safety;
 - c. ~~Effective January 1, 2025, unless~~ Unless otherwise specified on the certificate holder's certificate of necessity, the actual time of arrival of a ground ambulance vehicle at a health care institution for an interfacility transport of a patient who does not have a time-critical condition is within 60 minutes of the estimated time of arrival in subsection (E)(3)(a) or amended estimated time of arrival in subsection (E)(3)(b)(iii) for at least 90% of the interfacility transports; and
 - d. If the interfacility transport does not meet the standards in subsection (E)(3)(c), factors that may have contributed to not meeting the standards are considered through the quality improvement process in subsection (K)(2)(b).
- F. Transport:** A certificate holder:
1. Shall only provide ambulance response or transport within the service area identified in the certificate holder's certificate of necessity except:
 - a. When authorized by a service area's dispatch, before the service area's ground ambulance vehicle arrives at the scene;
 - b. According to a back-up agreement; or
 - c. If the area is not included in the service area of another certificate holder;
 2. Except as specified in subsection (F)(3), shall transport a patient in the certificate holder's service area who requests transport; and
 3. May deny transport to a patient in the certificate holder's service area:
 - a. As limited by A.R.S. § 36-2224;
 - b. If the patient is in a health care institution and the patient's medical condition requires a level of care or monitoring during transport that exceeds the scope of practice of the ambulance attendants' certification;
 - c. If the transport may result in an immediate threat to the ambulance attendant's safety, as determined by the ambulance attendant, the certificate holder, the administrative medical director, or a physician providing on-line medical direction and does not affect the ground ambulance service's hours of operation;
 - d. If the patient is 18 years or age or older, or meets the requirements in A.R.S. § 12-2451, 44-131, or 44-132, and refuses to be transported; or
 - e. If the patient is in a health care institution and does not meet the federal requirements for medically necessary ground vehicle ambulance transport as identified in 42 CFR 410.40.
- G. Response Time Performance:** A certificate holder shall ensure that:

1. Response times resulting from a 9-1-1 or similar system dispatch or, if applicable, a request for the interfacility transport of a patient with a time-critical condition comply with requirements of the certificate holder's certificate of necessity;
 2. Response time performance, based on the information in subsection (J)(2), is assessed at least every six months for compliance with requirements of the certificate holder's certificate of necessity;
 3. The following are reported to the Department annually, in a Department-provided format, concurrent with the submission of the information required in R9-25-909:
 - a. Response time data that complies with requirements in A.R.S. § 36-2232(A)(3), and
 - b. The results of the response time performance assessments in subsection (G)(2); and
 4. If response time performance does not comply with requirements of the certificate holder's certificate of necessity, either:
 - a. A corrective action plan, developed according to R9-25-910(E)(2)(a) through (d), is submitted to the Department with the information required in subsection (G)(3); or
 - b. The certificate holder submits to the Department with the information required in subsection (G)(3) documentation demonstrating that noncompliance was due to:
 - i. A situation specified in A.R.S. § 36-2232(G), or
 - ii. An external factor beyond the control of the certificate holder.
- H.** Performance of Interfacility Transports of Patients with No Time-Critical Condition: ~~Effective January 1, 2025, a~~ A certificate holder shall ensure that:
1. The performance of interfacility transports of patients with no time-critical condition, ~~including patients with a time-sensitive condition:~~
 - a. Is based on the information in subsection (J)(2);
 - b. Is assessed at least every six months;
 - c. Includes the analysis of:
 - i. The number of calls received;
 - ii. The time a call was received;
 - iii. The initial estimated time of arrival, according to subsection (E)(3)(a); and
 - iv. The time of arrival at the patient's location; and
 - d. May include:
 - ~~i.~~ Any other information about cancelled calls, amended estimated times of arrival, or delays that may have factored into performance; and
 - ~~ii.~~ Includes a description of any actions taken by the certificate holder to improve performance;
 2. The results of the performance assessments in subsection (H)(1) are reported to the Department annually in a Department-provided format, concurrent with the submission of the information required in R9-25-909; and
 3. If the performance of interfacility transports of patients with no time-critical condition does not comply with subsection (E)(3)(c) or requirements of the certificate holder's certificate of necessity, as applicable, either:
 - a. A corrective action plan, developed according to R9-25-910(E)(2)(a) through (d), is submitted to the Department with the information required in subsection (H)(2); or
 - b. The certificate holder submits to the Department with the information required in subsection (H)(2) documentation demonstrating that noncompliance was due to an external factor beyond the control of the certificate holder.
- I.** The Department may require that a certificate holder contract for third-party monitoring of response time performance as part of a:
1. Political subdivision contract, unless both parties to the contract waive the requirement; or
 2. Corrective action plan.
- J.** Records: A certificate holder shall ensure that:
1. A prehospital incident history report, in a Department-provided format, is created for each patient that includes the following information, as available:
 - a. The name and identification number of the ground ambulance service;
 - b. Information about the software for the storage and submission of the prehospital incident history report;
 - c. The unique number assigned to the run;
 - d. The unique number assigned to the patient;
 - e. Information about the response to the dispatch, including:
 - i. The level of service requested;
 - ii. Information obtained by the person providing dispatch about the request;
 - iii. Information about the ground ambulance vehicle assigned to the dispatch;
 - iv. Information about the EMCTs responding to the dispatch;
 - v. The priority assigned to the dispatch; and
 - vi. Response delays, as applicable;
 - f. The date and time that:
 - i. The call requesting service was received through the 9-1-1 or similar dispatch system,
 - ii. The request was received by the person providing dispatch,
 - iii. The ground ambulance service received the dispatch,
 - iv. The ground ambulance vehicle left for the patient's location,
 - v. The ground ambulance vehicle arrived at the patient's location,
 - vi. The EMCTs in the ground ambulance vehicle arrived at the patient's side,
 - vii. Transfer of care for the patient occurred at a location other than the destination,
 - viii. The ground ambulance vehicle departed the patient's location,
 - ix. The ground ambulance vehicle arrived at the destination,
 - x. Transfer of care for the patient occurred at the destination, and

- xi. The ground ambulance vehicle was available to take another call;
- g. Information about the patient, including:
 - i. The patient's first and last name;
 - ii. The address of the patient's residence;
 - iii. The county of the patient's residence;
 - iv. The country of the patient's residence;
 - v. The patient's gender, race, ethnicity, and age;
 - vi. The patient's estimated weight;
 - vii. The patient's date of birth; and
 - viii. If the patient has an alternate residence, the address of the alternate residence;
- h. The primary method of payment for services and anticipated level of payment;
- i. Information about the scene, including:
 - i. Specific information about the location of the scene;
 - ii. Whether the ground ambulance vehicle was first on the scene;
 - iii. The number of patients at the scene;
 - iv. Whether the scene was the location of a mass casualty incident; and
 - v. If the scene was the location of a mass casualty incident, triage information;
- j. Information about the reason for requesting service for the patient, including:
 - i. The date and time of onset of symptoms and when the patient was last well;
 - ii. Information about the principal reason the patient needs services;
 - iii. The patient's symptoms;
 - iv. The results of the EMCT's initial assessment of the patient;
 - v. If the patient was injured, information about the injury and the cause of the injury;
 - vi. If the patient experienced a cardiac arrest, information about the etiology of the cardiac arrest and subsequent treatment provided; and
 - vii. For an interfacility transport, the reason for the transport;
- k. Information about any specific barriers to providing care to the patient;
- l. Information about the patient's medical history, including:
 - i. Known allergies to medications,
 - ii. Surgical history,
 - iii. Current medications, and
 - iv. Alcohol or drug use;
- m. Information about the patient's current medical condition, including the information in subsections (D)(2)(e)(v) through (xi) and the time and method of assessment;
- n. Information about agents administered to the patient, including the dose and route of administration, time of administration, and the patient's response to the agent;
- o. If not specifically included under subsection (J)(1)(l), (l)(iv), (m), or (n), the information required in A.A.C. R9-4-602(A);
- p. Information about any procedures performed on the patient and the patient's response to the procedure;
- q. Whether the patient was transported and, if so, information about the transport;
- r. Information about the destination of the transport, including the reason for choosing the destination;
- s. Whether transfer of care for the patient to another EMS provider or ambulance service occurred and, if so, identification of the EMS provider or ambulance service;
- t. Unless transfer of care for the patient to another EMS provider or ambulance service occurred, information about:
 - i. Whether the destination facility was notified that the patient being transported has a time-critical condition and the time of notification,
 - ii. The disposition of the patient at the destination, and
 - iii. The disposition of the run;
- u. Any other narrative information about the patient, care received by the patient, or transport; and
- v. The name and certification level of the EMCT providing the information; and
- 2. Dispatch records for each call or request for service, including all cancelled runs, contain the following information, in a Department-provided format:
 - a. The name of the ground ambulance service;
 - b. The date;
 - c. Level of service;
 - d. Type of service;
 - e. Staffing of the run;
 - f. Time of receipt of the call;
 - g. Time of the dispatch;
 - ~~h. The estimated time of arrival, as provided according to subsection (E)(3)(a) if applicable;~~
 - ~~i. h.~~ Departure time to the patient's location;
 - ~~j. i.~~ Address of the patient's location;
 - ~~k. j.~~ Time of arrival at the patient's location;
 - ~~l. k.~~ Departure time to the destination health care institution;
 - ~~m. l.~~ Name and address of the destination health care institution;
 - ~~n. m.~~ Time of arrival at the destination health care institution;
 - ~~o. n.~~ Any type of delay, if applicable;

- ~~p-o.~~ The unique reference number used by the ground ambulance service to identify the patient, dispatch, or run;
- ~~q-p.~~ The number assigned to the ground ambulance vehicle by the certificate holder;
- ~~r-q.~~ The priority assigned by a certificate holder to the response;
- ~~s-r.~~ The scene locality; ~~and~~
- ~~t-s.~~ Whether the dispatch is a scheduled transport; ~~and~~
- t. The estimated time of arrival, as provided according to subsection (E)(3)(a), if applicable.
- K.** Assuring Consistent, Compliant Performance: A certificate holder shall:
1. Adopt, implement, and maintain policies and procedures for:
 - a. Complaint resolution;
 - b. Assessing the ground ambulance service's compliance with requirements in this Article, Articles 2, 10, or 11 of this Chapter, or A.R.S. Title 36, Chapter 21.1, including the review of:
 - i. The information provided to an emergency receiving facility for compliance with the protocol required in R9-25-201(E)(2)(d),
 - ii. Chain of custody for drugs,
 - iii. Compliance with minimum equipment requirements for a ground ambulance vehicle,
 - iv. Compliance with requirements in R9-25-201(E)(3), and
 - v. The quality improvement parameters in subsection (K)(2)(b) related to the provision of services;
 - c. Notifying the Department within 30 calendar days after completing an assessment in subsection (K)(1)(b), during which an instance of noncompliance was identified, and submitting a corrective action plan that complies with requirements in R9-25-910(E)(2)(a) through (d); and
 - d. A quality improvement process according to subsection (K)(2);
 2. Establish, document, and implement a quality improvement process, as specified in policies and procedures, through which:
 - a. Data related to initial patient assessment, patient care, transport services provided, and patient status upon arrival at the destination are:
 - i. Collected continuously;
 - ii. For the information required in subsection (J)(1), submitted to the Department, in a format specified by the Department and within 48 hours after the beginning of a run, for quality improvement purposes; and
 - iii. If notified that the submission of information to the Department according to subsection (K)(2)(a)(ii) was unsuccessful, corrected and resubmitted within seven days after notification;
 - b. Continuous quality improvement processes are developed and implemented to identify, document, and evaluate issues related to the provision of services to ensure quality patient care, including:
 - i. Care provided to patients with time-critical conditions, including deviations from national treatment standards for a patient with a time-critical condition;
 - ii. Transport, including an interfacility transport of a patient that does not have a time-critical condition;
 - iii. Documentation; and
 - iv. Patient status upon arrival at the destination;
 - c. A committee consisting of the administrative medical director, the individual managing the ground ambulance service or designee, and other employees as appropriate:
 - i. Review the data in subsection (K)(2)(a) and any issues identified in subsection (K)(2)(b) on at least a quarterly basis; and
 - ii. Implement activities to improve performance when deviations in patient care, transport, or documentation are identified; and
 - d. The activities in subsection (K)(2)(c) are documented, consistent with A.R.S. §§ 36-2401, 36-2402, and 36-2403; and
 3. Ensure that the information required in ~~subsection (J)(2)~~ subsections (J)(2)(a) through (s) is submitted to the Department, in a Department-provided format, and within 48 hours after the receipt of a call or request for service.
- L.** If a certificate holder has a reasonable basis to believe that a situation or circumstance specified according to A.R.S. § 36-2211(A) has occurred, the certificate holder shall:
1. If applicable, take immediate action to prevent the recurrence of the situation or circumstance;
 2. Report the suspected situation or circumstance to the Department and, if applicable, according to A.R.S. § 13-3620 or 46-454;
 3. Document:
 - a. The suspected situation or circumstance;
 - b. Any action taken according to subsection (L)(1); and
 - c. The report in subsection (L)(2);
 4. Maintain the documentation in subsection (L)(3) for at least 12 months after the date of the report in subsection (L)(2);
 5. Initiate an investigation of the situation or circumstance and document the following information within five working days after the report required in subsection (L)(2):
 - a. The dates, times, and description of the situation or circumstance;
 - b. A description of any injury to a patient related to the suspected situation or circumstance and any change to the patient's physical, cognitive, functional, or emotional condition;
 - c. The names of witnesses to the suspected situation or circumstance; and
 - d. The actions taken by the certificate holder to prevent the suspected situation or circumstance from occurring in the future; and
 6. Maintain a copy of the documented information required in subsection (L)(5) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.
- M.** A certificate holder shall notify the Department of a change in the number or location of suboperation stations in the certificate holder's service area, according to A.R.S. § 36-2232(C)(4), and include:

- 1. The certificate of necessity number for the ground ambulance service;
 - 2. The name of the ground ambulance services on the certificate of necessity;
 - 3. The name, title, address, e-mail address, and telephone number of an individual whom the Department may contact about the notification; and
 - 4. Information about the change, including, as applicable:
 - a. How the number of suboperation stations is changed from the information on the certificate holder’s certificate of necessity;
 - b. The address of each suboperation station that is being removed from service; and
 - c. The address, hours of operation, and telephone number of each new suboperation station located within the service area.
- N. A certificate holder shall submit to the Department, no later than 180 days after the certificate holder’s fiscal year end, the information in the Ambulance Revenue and Cost Report specified in R9-25-909(A) or (C), as appropriate to the certificate holder’s business organization.

NOTICE OF PROPOSED EXPEDITED RULEMAKING
TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 4. DEPARTMENT OF ENVIRONMENTAL QUALITY
SAFE DRINKING WATER

[R24-165]

PREAMBLE

1. Permission to proceed with this proposed expedited rulemaking was granted under A.R.S. § 41-1039 by the governor on:
May 6, 2024

<u>2. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R18-4-103	Amend
R18-4-603	Amend

3. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):
 Authorizing statute: A.R.S. §§ 49-104(B)(4), 49-353(A)(2)
 Implementing statute: A.R.S. § 49-353.01

4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the current record of the proposed expedited rule:
 Notice of Expedited Rulemaking Docket Opening: 30 A.A.R. 2087, Issue Date: June 21, 2024, Issue Number: 25, File Number: R24-104

5. The agency’s contact person who can answer questions about the rulemaking:
 Name: Tiffany Tom
 Title: Attorney
 Division: Office of Administrative Counsel
 Address: Arizona Department of Environmental Quality
 Office of Administrative Counsel
 1110 W. Washington St.
 Phoenix, AZ 85007
 Telephone: (520) 628-6355
 Email: waterqualityrulecorrections@azdeq.gov
 Website: https://www.azdeq.gov/wqd-5yr-rule-review-commitmentscleanup

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

Summary

The objective of the rulemakings is two-fold:

- 1. Fulfill five-year rule review (5YRR) commitments to the Governor’s Regulatory Review Council (GRRC), in accordance with A.R.S. § 41-1056(E), to amend rules in Chapter 4; and
- 2. Correct additional typographical errors, update outdated citations and references, clarify language, and fix similar clerical issues in Chapter 4, which will not add regulatory burden.

The Arizona Department of Environmental Quality (ADEQ) is pursuing an expedited rulemaking to amend rules related to the safe drinking water program. An expedited rulemaking is appropriate pursuant to A.R.S. §§ 41-1027(A)(1) and 41-1027(A)(6). Under A.R.S. § 41-1027(A)(1), ADEQ proposes to replace a repealed statute in a definition with a current and correct definition. Under A.R.S. § 41-1027(A)(6), ADEQ proposes to update cross-references to other ADEQ rules that have changed due to previous rulemakings. Furthermore, none of the proposed amendments will increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated.

Section by Section Explanation of Proposed Rules:

R18-4-103(B): Incorporation of 40 CFR 141, Subpart A by reference and Definitions

This rule incorporates by reference 40 CFR 141, Subpart A, and establishes specific sections of Subpart A of the Code of Federal Regulations that are not incorporated by reference. The rule defines important terms in 18 A.A.C. Chapter 4 so that the rules are understandable to the general public. This rule also establishes which sections of the Code of Federal Regulations are modified to convey the proper context that Arizona is the regulator, not the EPA. In defining “protected water source,” this rule contains an outdated reference to A.R.S. § 49-331, which was repealed. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(1), ADEQ proposes to replace the statutory reference with a reference to the correct definition found in R18-9-101(21).

R18-4-603(3): Infrastructure, Treatment, and Storage Design Requirements to Demonstrate Adequate Technical Capacity for New Public Water Systems

This rule contains references to applicable ADEQ rules which have since become outdated following previous recodifications of referenced Articles. The references to 18 A.A.C. 4, Articles 3 and 5 are now incorrect. The applicable infrastructure, treatment, and storage design requirements can now be found in 18 A.A.C. 4, Articles 1, 2, and 4 and 18 A.A.C. 5, Article 5. The following rulemakings impacted the outdated references:

1. In 2008, 18 A.A.C. 4, Article 3 was amended and treatment requirements were removed and replaced with the Monitoring Assistance Program rules. *See* 14 A.A.R. 2978, 2982 and 3015 (Aug. 1, 2008). Treatment requirements can now be found in 18 A.A.C. 4, Article 1 concerning the “National Primary Drinking Water Regulations” and Article 2 “Safe Drinking Water Regulations.” *See* 14 A.A.R. 2978, 3013-3015 (Aug. 1, 2008).
2. In 2004, the minimum design criteria for public water systems (PWS) were recodified from 18 A.A.C. 4, Article 5 to 18 A.A.C. 5, Article 5. *See generally* 10 A.A.R. 585 (Feb. 20, 2004).
3. In 2023, ADEQ updated 18 A.A.C. 4 to conform with the EPA’s final regulation entitled “Use of Free Pipes, Fittings, Fixtures, Solder, and Flux for Drinking Water,” which applies to new PWSs. *See generally* 29 A.A.R. 1472 (Jun. 30, 2023).

Updating the references to the applicable infrastructure, treatment, and storage requirements for new PWSs serves to clarify the language of R18-4-603(3) by removing references that are no longer necessary for the operation of state government. Therefore, pursuant to its authority A.R.S. § 41-1027(A)(6), ADEQ proposes to amend the outdated references to the relevant ADEQ rules.

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

Not applicable

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

Not applicable

9. A statement that the agency is exempt from the requirements under A.R.S. § 41-1055(G) to obtain and file a preliminary summary of the economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2):

This expedited rulemaking is exempt from the requirements to obtain and file an economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2).

10. Where, when, and how a person may provide written comments on the proposed expedited rule:

Close of record: October 7, 2024

Written comments may be sent to the individual listed in item 5 by the close of record.

No oral proceeding is scheduled at this time. An oral proceeding may be requested pursuant to A.R.S. § 41-1027(C) by submitting a written request to the individual listed in item 5 by the close of record.

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

There are no other matters prescribed by statute applicable specifically to ADEQ or this specific rulemaking.

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

Not applicable

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

The Safe Drinking Water Act, as amended, is applicable to the subject of this rule. *See* 40 CFR 141, Subpart A. This rulemaking is not more stringent than is required by federal law.

c. Whether a person submitted an analysis to the agency regarding the rule’s impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states under A.R.S. § 41-1055(I). If yes, include the analysis with the rulemaking package.

Not applicable

12. List all incorporated by reference material as specified in A.R.S. § 41-1028 and include a citation where the material is located:

Not applicable

13. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY**CHAPTER 4. DEPARTMENT OF ENVIRONMENTAL QUALITY
SAFE DRINKING WATER****ARTICLE 1. PRIMARY DRINKING WATER REGULATIONS**

Section

R18-4-103. General – 40 CFR 141, Subpart A

ARTICLE 6. CAPACITY DEVELOPING REQUIREMENTS FOR A NEW PUBLIC DRINKING WATER SYSTEM

Section

R18-4-603. Technical Capacity Requirements

ARTICLE 1. PRIMARY DRINKING WATER REGULATIONS**R18-4-103. General – 40 CFR 141, Subpart A**

- A.** 40 CFR 141, Subpart A (40 CFR 141.1 through 141.6), is incorporated by reference as of the date specified in R18-4-102, except for the changes listed in this Section; this incorporation does not include any later amendments or editions.
- B.** The definition of “State” in 40 CFR 141.2 is not incorporated by reference. In addition to the terms defined in A.R.S. §§ 49-201 and 49-351, and 40 CFR 141.2, in this Chapter, unless otherwise specified, the terms listed below have the following meanings.

“Air-gap separation” means a physical separation between the discharge end of a supply pipe and the top rim of its receiving vessel of at least 1 inch or twice the diameter of the supply pipe, whichever is greater.

“ANSI/NSF Standard 60” means American National Standards Institute/NSF International Standard 60 - 2014a, Drinking Water Treatment Chemicals - Health Effects, November 17, 2014, incorporated by reference and on file with the Department. This material is available from NSF International, 789 N. Dixboro Road, P.O. Box 130140, Ann Arbor, MI 48113-0140, USA; (734) 769-8010; <http://www.nsf.org>. This incorporation by reference includes no future editions or amendments.

“ANSI/NSF Standard 61” means American National Standards Institute/NSF International Standard 61 - 2014a, Drinking Water System Components - Health Effects, October 19, 2014, incorporated by reference and on file with the Department. This material is available from NSF International, 789 N. Dixboro Road, P.O. Box 130140, Ann Arbor, MI 48113-0140, USA; (734) 769-8010; <http://www.nsf.org>. This incorporation by reference includes no future editions or amendments.

“Backflow” means a reverse flow condition that causes water or mixtures of water and other liquids, gases, or substances to flow back into the distribution system. Backflow can be created by a difference in water pressure (backpressure), a vacuum or partial vacuum (backsiphonage), or a combination of both.

“Backflow-prevention assembly” means a mechanical device used to prevent backflow.

“Capacity” means the overall capability of a water system to consistently produce and deliver water meeting all national and state primary drinking water regulations in effect when new or modified operations begin. Capacity includes the technical, managerial, and financial capacities of the water system to plan for, achieve, and maintain compliance with applicable national and state primary drinking water regulations.

“Capacity development” means improving public water system finances, management, infrastructure, and operations, so that the public water system can provide safe drinking water consistently, reliably, and cost-effectively.

“Capacity development report” means an annual report adopted by the Department that describes progress made in improving technical, managerial, or financial capacity of public water systems in Arizona.

“Cross connection” means a physical connection between a public water system and any source of water or other substance that may lead to contamination of the water provided by the public water system through backflow.

“Distribution system” means a pipeline, appurtenance, device, and facility of a public water system that conducts water from a source or water treatment plant to persons served by the system.

“Department” means the Arizona Department of Environmental Quality.

“Double check valve assembly” means a backflow-prevention assembly that contains two independently acting check valves with tightly closing, resilient-seated shut-off valves on each end of the assembly and properly located, resilient-seated test cocks.

“Elementary business plan” means a document containing all of the items necessary for a complete review of the technical, managerial, and financial capacity of a new public water system under Article 6 of this Chapter.

“Entry point to the distribution system” means a compliance sampling point anywhere on a finished water line that is representative of a water source and located after the well, surface water intake, treatment plant, storage tank, or pressure tank, whichever is last in the process flow, but prior to where the water is discharged into the distribution system and prior to the first service connection.

“EPA” means the United States Environmental Protection Agency.

“Exclusion” means a waiver granted by the Department under R18-4-219 from a requirement of this Chapter that is not a requirement contained in a federal drinking water law.

“Exemption” means a form of temporary relief from a maximum contaminant level or treatment technique granted by the Department to a public water system, pending installation and operation of treatment facilities, acquisition of an alternate source, or completion of improvements in treatment processes to bring the system into compliance with drinking water regulations.

“Financial capacity” means the ability of a public water system to acquire and manage sufficient financial resources for the system to achieve and maintain compliance with the federal Safe Drinking Water Act.

“Groundwater system” means a public water system that is supplied solely by groundwater that is not under the direct influence of surface water.

“Lead-free” has the same meaning prescribed in A.R.S. § 49-353(B).

“Major stockholder” means a person who has 20% or more ownership interest in a public water system.

“Master priority list” means a list created by the Department that ranks public water systems according to the criteria in R18-4-803.

“Monitoring assistance program” means the program established by A.R.S. § 49-360 to assist public water systems with mandatory monitoring for contaminants and administered by the Department under 18 A.A.C. 4.

“Operational assistance” means professional or financial assistance provided to a public water system to improve the technical, managerial, or financial operations of the public water system.

“Protected water source” means a groundwater source that:

- Meets the requirements of A.A.C. R18-5- 502(D);
- Is not located within 100 feet of a drywell as defined by ~~A.R.S. § 49-331(3)~~ A.A.C. R18-9-101(21), and
- Is not located within 100 feet of a condition that can constitute an environmental nuisance as described in A.R.S. § 49-141(A).

“Reduced pressure principle backflow-prevention assembly” means a backflow-prevention assembly that contains two independently acting check valves; a hydraulically operating, mechanically independent pressure differential relief valve located between the two check valves; tightly closing, resilient seated shut-off valves on each end of the check valve assembly; and properly located resilient seated test cocks.

“Service connection” means a location at the meter or, in the absence of a meter, at the curbstop or building inlet.

“Service line” means the water line that runs from the corporation stop at a water main to the building inlet, including any pig-tail, gooseneck, or fitting.

“State” means the Arizona Department of Environmental Quality, except during any time period during which the Department does not have primary enforcement responsibility pursuant to Section 1413 of the Act, the term “State” means the Regional Administrator of EPA Region 9.

“System evaluation assistance” means assistance provided to assess the status of the public water system's technical, managerial, and financial components, with emphasis on infrastructure status.

“Technical assistance” means operational assistance, system evaluation assistance, or both.

“Treatment” means a process that changes the quality of water by physical, chemical, or biological means.

“Treatment technique” means a treatment procedure promulgated by EPA in lieu of an MCL.

“Variance” means relief from a maximum contaminant level or treatment technique granted by the Department to a public water system when characteristics of a system's raw water source preclude the system from complying with maximum contaminant levels prescribed by drinking water regulations, despite application of best technology treatment techniques, or other means available to the system.

“Water main” means a pipe that is exterior to buildings and is used to distribute drinking water to more than one property.

“Water Infrastructure Finance Authority” means the entity created under A.R.S. § 49-1201 et seq. to provide financial assistance to political subdivisions, Indian tribes, and eligible drinking water facilities for constructing, acquiring, or improving wastewater treatment facilities, drinking water facilities, nonpoint source projects, and other related water quality facilities and projects.

“Water treatment plant” means a process, device, or structure used to improve the physical, chemical, or biological quality of the water in a public water system. A booster chlorination facility that is designed to maintain an effective disinfectant residual in water in the distribution system is not a water treatment plant.

- C. 40 CFR 141.4, entitled “variances and exemptions,” is incorporated by reference subject to the following modifications:
1. The phrase “entity with primary enforcement responsibility” is changed to “Department.”
 2. When reviewing and acting on requests for variances and exemptions, the Department shall act in accordance with the procedures at 42 U.S.C. 300g-4 and 300g-5 (2004) of the Act (Public Health Service Act §§ 1415 and 1416), including:
 - a. The Department shall require a public water system granted a variance under subsection (C) to comply with the requirements in a compliance schedule as expeditiously as practicable.
 - b. The Department shall promptly notify EPA of all variances and exemptions granted by the Department in the manner specified in the Act.

- c. The Department shall enforce a schedule or other requirement on which a variance or exemption is conditioned under 42 U.S.C. 300g-3 and A.R.S. § 49-354, as if the schedule or other requirement is part of a national primary drinking water regulation incorporated by reference in this Chapter.
 - d. "Treatment technique requirement," for the purpose of subsection (C), means a requirement in a national primary drinking water regulation which specifies for a contaminant, in accordance with 42 U.S.C. 300f(1)(C)(ii), each treatment technique known to lead to a reduction in the level of the contaminant sufficient to satisfy the requirements of 42 U.S.C. 300g-1(b).
 - e. If the Department grants a variance or exemption, the Department shall prescribe:
 - i. A compliance schedule that includes increments of progress or measures to develop an alternative source of water supply; and
 - ii. An implementation schedule that includes such control measures as the Department deems necessary for each contaminant.
- D.** 40 CFR 142, 142.2, 142.20, and Subparts E, F, G, and K, are incorporated by reference as of the date specified in R18-4-102, with the following changes; this incorporation does not include any later amendments or editions. The following substitutions are to be applied in the listed order.
1. 40 CFR 142.46, 142.302, 142.313 are not incorporated by reference.
 2. 40 CFR 142.20(a), (b). The phrase "States with primary enforcement responsibility" is changed to "the Department"; the second sentences in 142.20(a) and 142.20(b) are deleted.
 3. 40 CFR 142.60(b), 142.61(b). The phrase "Administrator in a state that does not have primary enforcement responsibility or a state with primary enforcement responsibility (primacy state) that issues variances" is changed to "Department."
 4. 40 CFR 142.40(a), (b); 142.41; 142.50(a); 142.51. The phrase "a State that does not have primary enforcement responsibility" is changed to "Arizona".
 5. 40 CFR 142.60(b), (c), (d); 142.61(b), (c). The phrase "Administrator or ['primacy' or 'primary'] state that issues variances" is changed to "Department."
 6. 40 CFR 142.60(b), (d); 142.61(b), (d); 142.62(e), (g)(1); 142.65(a)(4). The phrase "Administrator or [the] primacy state" is changed to "Department"; the phrase "Administrator's or primacy state's" is changed to "Department's."
 7. In 40 CFR 142, Subpart K:
 - a. The phrases "['a' or 'the'] State or [the] Administrator," "Administrator or State," "the public water system, State and the Administrator," and "a State exercising primary enforcement responsibility for public water systems (or the Administrator for other systems)" are changed to "the Department."
 - b. 40 CFR 142.301. The last sentence is deleted.
 - c. 40 CFR 142.303(b). The phrase "a State exercising primary enforcement responsibility for public water systems" is changed to "the Department."
 - d. 40 CFR 142.306(b)(2). The phrase "(or by the Administrator in States which do not have primary enforcement responsibility)" is deleted.
 - e. 40 CFR 142.308(a), 142.309(c). The phrase "the State, Administrator, or [the] public water system as directed by the State or Administrator" is changed to "the Department or the public water system, as determined by the Department."
 - f. 40 CFR 142.308(b). The text of this subsection is replaced by the following: "At the time of proposal, the Department must publish a notice in the *Arizona Administrative Register* or a newspaper or newspapers of wide circulation in the affected region of the State. This notice shall include the information listed in paragraph (c) of this section."
 - g. 40 CFR 142.308(c)(7). The phrase "the primacy agency" is changed to "the Department."
 8. In all parts of 40 CFR 142 incorporated by reference other than Subpart K, the term "Administrator" is changed to "Department"; the pronoun "he" is changed to "the Department"; and the pronoun "his" is changed to "the Department's."
 9. In all parts of 40 CFR 142 incorporated by reference, the term "a state" or "the state" is changed to "the Department"; the term "the State's" is changed to "the Department's."
 10. 40 CFR 142.62(h)(3). The term "State-approved" is changed to "Department-approved."
 11. In 40 CFR 142.44(b). The text of this subsection is replaced by the following: "Public notice of an opportunity for hearing on a variance schedule shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed schedule, and shall meet the notice requirements of A.A.C. R18-1-401."
 12. In 40 CFR 142.54(b). The text of this subsection is replaced by the following: "Public notice of an opportunity for hearing on an exemption schedule shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed schedule, and shall meet the notice requirements of A.A.C. R18-1-401."
 13. 40 CFR 142.44(d), 142.54(d). The third, fourth, and fifth sentences of these subsections are deleted.
 14. 40 CFR 142.44(e), 142.54(e). The text of these subsections is replaced by the following: "A hearing convened pursuant to paragraph (d) of this section shall be conducted according to the procedural requirements of A.A.C. R18-1-402."
- E.** 40 CFR 141.5 is not incorporated by reference.

ARTICLE 6. CAPACITY DEVELOPING REQUIREMENTS FOR A NEW PUBLIC DRINKING WATER SYSTEM

R18-4-603. Technical Capacity Requirements

An owner of a new public water system shall submit the following to the Department for a determination of technical capacity:

1. Documentation of a drinking water source minimum of 50 gallons of water per person per day for a period of 100 years, a 100 year water availability designation from the Arizona Department of Water Resources (ADWR), or a Certificate of Assured Water Supply from ADWR;
2. Documentation that the drinking water served to the public will meet the safe drinking water standards of this Chapter;
3. Documentation that infrastructure, treatment, and storage design meets the requirements of this Chapter, Articles 2, 3, and 5, 2, 2, and 4, and Chapter 5, Article 5;
4. Documentation that the public water system is operated by a certified operator of the sufficient grade and type; and

5. Documentation that contains at least the following:
 - a. Day 1 to final build-out technical and engineering needs projections;
 - b. Proposed water system design specification and proposed uses including commercial and domestic use phases;
 - c. Information describing the life of the plant;
 - d. A demonstration that all site-specific components meet nationally recognized standards, such as those established by the American Water Works Association, National Sanitation Foundation, or Underwriter’s Laboratory;
 - e. Manufacturers’ specifications on components used in the construction of the water system; and
 - f. Corrective action plan to address site-specific component replacement or repair protocols based on manufacturer’s recommendations or engineer’s specification.

NOTICE OF PROPOSED EXPEDITED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 5. DEPARTMENT OF ENVIRONMENTAL QUALITY
ENVIRONMENTAL REVIEWS AND CERTIFICATION**

[R24-166]

PREAMBLE

1. Permission to proceed with this proposed expedited rulemaking was granted under A.R.S. § 41-1039 by the governor on:
May 6, 2024

<u>2. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R18-5-116	Amend
R18-5-208	Amend
R18-5-408	Amend

3. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):
 Authorizing statute: A.R.S. §§ 49-104(B)(11)-(13)
 Implementing statute: A.R.S. § 49-352, 49-353(A)(2), 49-353.01(A)(1), 49-361

4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the current record of the proposed expedited rule:
 Notice of Expedited Rulemaking Docket Opening: 30 A.A.R. 2088, Issue Date: June 21, 2024, Issue Number: 25, File Number: R24-105

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

Name: Tiffany Tom
 Title: Attorney
 Division: Office of Administrative Counsel
 Address: Arizona Department of Environmental Quality
 Office of Administrative Counsel
 1110 W. Washington St.
 Phoenix, AZ 85007
 Telephone: (520) 628-6355
 Email: waterqualityrulecorrections@azdeq.gov
 Website: https://www.azdeq.gov/wqd-5yr-rule-review-commitmentscleanup

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

Summary:

The objective of the rulemakings is two-fold:

1. Fulfill five-year rule review (5YRR) commitments to the Governor’s Regulatory Review Council (GRRC), in accordance with A.R.S. § 41-1056(E), to amend rules in Chapter 5; and
2. Correct additional typographical errors, update outdated citations and references, clarify language, and fix similar clerical issues in Chapter 5, which will not add regulatory burden.

The Arizona Department of Environmental Quality (ADEQ) is pursuing an expedited rulemaking to amend rules in Title 18, Chapter 5, Articles 1, 2, and 4. The purpose of Chapter 5, Articles 1, 2, and 4, respectively, is to establish requirements for facility operators under water quality programs, regulate the design and construction of public and semipublic pools and spas, as well as set requirements for subdivision development relative to water quality programs. Expedited rulemaking is appropriate pursuant to A.R.S. §§ 41-1027(A)(1), 41-1027(A)(3), and 41-1027(A)(6) as explained below.

Section by Section Explanation of Proposed Rules:

R18-5-116: Initial Grading and Regrading of Facilities

This rule contains references to A.R.S. Title 41, Chapter 6, Article 10 and 18 A.A.C. 1, Article 2 regarding appeal rights concerning ADEQ initially grading or regrading a facility. Appeal rights are embedded in the program and, consequently, the references

are redundant. In addition, almost all of the rules in 18 A.A.C. 1, Article 2 have either expired or been repealed, with the exception of R18-1-205, an inapplicable rule related to license applications. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(1) and A.R.S. § 41-1027(A)(6), ADEQ proposes to remove these references.

R18-5-208(C): Maximum Bathing Load

This rule contains an incorrect citation to R18-5-242, concerning semipublic pools. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ proposes to amend the incorrect citation from R18-5-242, concerning semipublic pools, to R18-5-241, concerning public pools.

18 A.A.C. 5, Article 4 provides the requirements for obtaining approval for the design, installation, and operation of on-site wastewater treatment facilities on subdivision plats. In addition, 18 A.A.C. 9, Articles 1 and 3 prescribe the requirements for permitting on-site wastewater treatment facilities under the Aquifer Protection Permit program. Currently 18 A.A.C. 5, Article 4 does not contain any reference to 18 A.A.C. 9, concerning requirements for on-site wastewater treatment facilities on subdivision plats. Therefore, ADEQ proposes updating and clarifying the rule to ensure it is congruous with the relevant on-site wastewater treatment facility requirements in Chapter 9.

R18-5-408: Requirements for the Approval of Subdivisions that Use On-site Wastewater Treatment Facilities

The rule's section heading as well as references in subsections (A), (B), (C), and (E) utilize the term "individual sewage disposal systems." "Individual sewage disposal systems" is not defined in the A.A.C. and is not a definition that is utilized in Chapter 9 to refer to these types of facilities. The correct term utilized in Chapter 9 is "on-site wastewater treatment facilities." This term is a synonym of "individual sewage disposal systems" and is, in fact, defined and utilized in Chapter 9. Therefore, the term "individual sewage disposal systems" is incorrect, and confusing to the general public.

ADEQ proposes replacing the term "individual sewage disposal systems" with "on-site wastewater treatment facilities" in the rule. This amendment clarifies the language of the rule without changing its effect. Therefore, pursuant to A.R.S. § 41-1027(A)(3), ADEQ proposes to amend the heading and R18-5-408(A), (B), (C), and (E) to change "individual sewage disposal systems" to "on-site wastewater treatment facilities."

Next, subsection (A) references guidance found in engineering bulletins for on-site wastewater treatment facilities. The applicable engineering bulletin is Engineering Bulletin #12 titled, "Minimum Requirements for the Design and Installation of Septic Tank Systems and Alternative On-site Disposal Systems," published in June 1989. Engineering Bulletin #12 is no longer used and has been replaced with the current rules found in A.A.C. Title 18, Chapter 9, Articles 1 and 3, which were adopted in 2001. In addition, subsection (A) states that there may be additional requirements provided by local health departments to assist in approval of on-site wastewater treatment facilities. Removing a reference to engineering bulletins from this subsection will not impact the availability of these bulletins to the public as a resource. In addition, removing from this subsection a reference to local health departments that may exist will not impact any applicable local health department requirements. Therefore, pursuant to A.R.S. § 41-1027(A)(6), ADEQ proposes to remove language in subsection (A) that references engineering bulletins and local health department requirements that may be required and replace the language with a reference to the applicable rules at 18 A.A.C. 9, Articles 1 and 3.

Next, subsection (E)(1) describes the qualifications of a person submitting a geological report containing the percolation tests and boring logs, which includes an engineer, geologist or other qualified person. R18-9-A310, which covers the method for percolation tests for subsurface characterization, describes in R18-9-A310(H) the qualifications for a person performing a percolation test. R18-5-408(E)(1) uses the term "geological report," while R18-9-A310(H) uses the term "site investigation," but the terms are synonyms. While the requirements of R18-9-A310(H) apply to this rule currently, including a reference to the applicable Chapter 9 rule in this rule would clarify the language in subsection (E)(1). The proposed amendment provides clarity to R18-5-408(E)(1) as to who can perform and submit a report, without changing its effect. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ proposes to amend R18-5-408(E)(1) to include a reference to R18-9-A310(H).

Next, subsection (E)(1) sets forth requirements for conducting percolation testing for subdivision plats, but it does not reference the applicable rules guiding percolation testing methods for on-site wastewater treatment facilities. These requirements are found in R18-9-A310(F)(1), which describes percolation test methods for subsurface characterization of on-site wastewater treatment facilities. While the requirements of R18-9-A310(F)(1) apply to the rule currently, a reference to the percolation test methods for subsurface characterization in Chapter 9 would clarify the language in the rule, and make subsection (E)(1) more user-friendly.

ADEQ proposes referencing the requirements of R18-9-A310(F)(1), with the exception of the requirement in R18-9-A310(F)(1)(a) because R18-5-408(E)(1) already delineates the number of percolation tests required to be performed for a subdivision. The proposed amendment to R18-5-408(E) clarifies the language of the rule without changing its effect. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ proposes to amend R18-5-408(E)(1) to include a reference to R18-9-A310(F)(1), with the exception of the requirements of R18-9-A310(F)(1)(a).

Finally, ADEQ proposes to insert a reference to the total nitrogen discharge requirements found in R18-9-A309(8)(c) for subdivisions, which are required to be included in the geological report in R18-5-408(E)(1). The proposed amendment clarifies the language of the rule without changing its effect. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ proposes to amend R18-5-408(E)(1) to include a reference to R18-9-A309(8)(c).

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

Not applicable

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

Not applicable

9. A statement that the agency is exempt from the requirements under A.R.S. § 41-1055(G) to obtain and file a preliminary summary of the economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2):

This expedited rulemaking is exempt from the requirements to obtain and file an economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2).

10. Where, when, and how a person may provide written comments on the proposed expedited rule:

Close of record: October 7, 2024

Written comments may be sent to the individual listed in item 5 by the close of record.

No oral proceeding is scheduled at this time. An oral proceeding may be requested pursuant to A.R.S. § 41-1027(C) by submitting a written request to the individual listed in item 5 by the close of record.

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

There are no other matters prescribed by statutes applicable specifically to ADEQ or this specific rulemaking.

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

Not applicable

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

The Safe Drinking Water Act, as amended, is applicable to the subject of this rule. This rulemaking is not more stringent than is required by federal law.

c. Whether a person submitted an analysis to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states under A.R.S. § 41-1055(I). If yes, include the analysis with the rulemaking package.

Not applicable

12. List all incorporated by reference material as specified in A.R.S. § 41-1028 and include a citation where the material is located:

Not applicable

13. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 5. DEPARTMENT OF ENVIRONMENTAL QUALITY
ENVIRONMENTAL REVIEWS AND CERTIFICATION**

ARTICLE 1. CLASSIFICATION OF WATER AND WASTEWATER FACILITIES AND CERTIFICATION OF OPERATORS

Section

R18-5-116. Initial Grading and Regrading of Facilities

ARTICLE 2. PUBLIC AND SEMIPUBLIC SWIMMING POOLS AND SPAS

Section

R18-5-208. Maximum Bathing Load

ARTICLE 4. SUBDIVISIONS

Section

R18-5-408. ~~Individual sewage disposal systems~~ On-Site Wastewater Treatment Facilities

ARTICLE 1. CLASSIFICATION OF WATER AND WASTEWATER FACILITIES AND CERTIFICATION OF OPERATORS

R18-5-116. Initial Grading and Regrading of Facilities

~~A.~~ The Department shall act under A.R.S. Title 41, Chapter 6, Article 10 and 18 A.A.C. 1, Article 2 when initially grading or when regrading a facility.

~~B.A.~~ If it is determining the initial grade of a facility or whether to regrade a facility, the Department shall consider the facility characteristics in R18-5-114 and R18-5-115, and whether:

1. The facility has special design features or characteristics that make it unusually difficult to operate;
2. The water or wastewater is unusually difficult to treat;
3. The facility uses effluent; or
4. The facility poses a potential risk to public health, safety or welfare.

~~C.B.~~ The owner of a facility that is regraded under this Article shall ensure that the facility is operated by an operator, in compliance with this Article, no later than one year from the effective date of the facility regrading.

ARTICLE 2. PUBLIC AND SEMIPUBLIC SWIMMING POOLS AND SPAS

R18-5-208. Maximum Bathing Load

- A. The maximum bathing load for a public or semipublic swimming pool or spa shall not be exceeded.
- B. The maximum bathing load for a public or semipublic swimming pool shall be calculated as the sum of the following:
 - 1. The shallow area of the swimming pool in square feet divided by 10 square feet, plus
 - 2. The deep area of the swimming pool in square feet minus 300 square feet for each diving board divided by 24 square feet.
- C. The maximum bathing load for a public swimming pool shall be limited by the number of users for the toilets, showers, or lavatories that are provided in the bathhouses or dressing rooms prescribed in ~~R18-5-242~~ R18-5-241.
- D. The maximum bathing load for a public or semipublic spa shall not exceed the area of the spa in square feet divided by 9 square feet.
- E. The maximum bathing load for a public or semipublic swimming pool or spa shall be posted.

ARTICLE 4. SUBDIVISIONS

R18-5-408. ~~Individual sewage disposal systems~~ On-Site Wastewater Treatment Facilities

- A. ~~Recommendations are found in the engineering bulletins of the Department and such additional requirements as may be provided by local health departments to assist in approval regarding the design, installation and operation of individual sewage disposal systems. Copies of these bulletins may be obtained from the Department.~~ On-site wastewater treatment facilities shall be governed by A.A.C. Title 18, Chapter 9, Articles 1 and 3.
- B. ~~Where soil conditions and terrain features or other conditions are such that individual sewage disposal systems on-site wastewater treatment facilities cannot be expected to function satisfactorily or where groundwater or soil conditions are such that individual sewage disposal systems on-site wastewater treatment facilities may cause pollution of groundwater, they are prohibited.~~
- C. ~~Where such installations may create an unsanitary condition or public health nuisance, individual sewage disposal systems on-site wastewater treatment facilities are prohibited.~~
- D. ~~The use of cesspools is prohibited.~~
- E. ~~Where an individual sewage disposal system on-site wastewater treatment facility is proposed, the following conditions shall be satisfied:~~
 - 1. ~~A geological report shall be made by an engineer, geologist or other qualified person who meets the qualifications in R18-9-A310(H). The geological report shall include the total nitrogen discharge requirements of R18-9-A309(8)(c). The geological report shall include results from percolation tests and boring logs obtained at locations designated by the county health departments. There shall be a minimum of one percolation test and boring log per acre, or one percolation test and boring log per lot where lots are larger than one acre, except when it can be shown by submission of other reliable data that soil conditions are such that individual disposal systems on-site wastewater treatment facilities could reasonably be expected to function properly on each lot in the proposed subdivision. The Department may require additional tests when it deems necessary. Percolation tests shall be performed in accordance with all of the requirements in R18-9-A310(F), except for the requirements in R18-9-A310(F)(1)(a).~~ The approval of a subdivision, based upon such reports, shall not extend to the plat if it is further subdivided or lot lines are substantially relocated.
 - 2. ~~Results of all tests shall be submitted to the Department and the local health department for review and approval of the subdivision for the use of individual sewage disposal systems on-site wastewater treatment facilities.~~
 - 3. ~~Such approval must be obtained in writing from the local health department and a copy of the approval shall be submitted to the Department with the subdivision application for approval.~~

NOTICE OF PROPOSED EXPEDITED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER POLLUTION CONTROL**

[R24-167]

PREAMBLE

1. Permission to proceed with this proposed expedited rulemaking was granted under A.R.S. § 41-1039 by the governor on:
May 6, 2024

<u>2. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R18-9-101	Amend
R18-9-A213	Amend
R18-9-B201	Amend
R18-9-B205	Amend
R18-9-C301	Amend
R18-9-C302	Amend
R18-9-C304	Amend
R18-9-D302	Amend
R18-9-C620	Amend
R18-9-D635	Amend
R18-9-F645	Amend
R18-9-I650	Amend
R18-9-A701	Amend

R18-9-A902	Amend
R18-9-A904	Amend
R18-9-A907	Amend
R18-9-1001	Amend

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

Authorizing statute: A.R.S. §§ 49-104 (B)(13), 49-203(A)(2), (A)(4), (A)(7), (A)(10), (A)(11)
 Implementing statute: A.R.S. §§ 49-241, 49-242, 49-245, 49-255.01(B) and (C), 49-255.02

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

Notice of Expedited Rulemaking Docket Opening: 30 A.A.R. 2088, Issue Date: June 21, 2024, Issue Number: 25, File Number: R24-106.

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

Name: Katherine Silvestri
 Address: Arizona Department of Environmental Quality
 1110 W. Washington Ave.
 Phoenix, AZ 85007
 Telephone: (602) 809-4869
 Fax: (602) 771-2366
 Email: waterqualityrulecorrections@azdeq.gov
 Website: <https://www.azdeq.gov/wqd-5yr-rule-review-commitmentscleanup>

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

The objective of this rulemaking is to fulfill five-year rule review (5YRR) commitments to the Governor’s Regulatory Review Council (GRRC), in accordance with A.R.S. § 41-1056(E), to amend rules in Chapter 9, as well as correct typographical errors, update outdated citations and references, clarify language, and fix similar clerical issues therein.

The proposed amendments to the rule are justified under the expedited rulemaking requirements in A.R.S. § 41-1027. Specifically, Subsection (A) limits an agency to conduct an expedited rulemaking only if the rulemaking “does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated and does one or more of the following [requirements outlined in (A)(1) - (A)(8)]”. The applicable requirements relied upon in this rulemaking include the following, which are individually assigned for each proposed amendment (as shown in the section by section explanation below): (A)(1) “Amends or repeals rules made obsolete by repeal or supersession of an agency’s statutory authority”; (A)(3) “Corrects typographical errors, makes address or name changes or clarifies language of a rule without changing its effect”; and (A)(6) “Amends or repeals rules that are outdated, redundant or otherwise no longer necessary for the operation of state government”.

Section by Section Explanation of Proposed Rules:

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Article 1. Aquifer Protection Permits - General Provisions
This rule provides definitions for Title 18, Chapter 9, Articles 1, 2, 3, and 4 in addition to those established in A.R.S. § 49-201.	101(21)	Update following repeal	This rule contains an outdated reference to A.R.S. § 49-331 which is repealed. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(1), ADEQ proposes to remove the statutory reference in the definition, and un-italicize the definition accordingly.

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Article 2. Aquifer Protection Permits - Individual Permits
This rule contains the requirements for the suspension, revocation, denial, or termination of an Aquifer Protection Permit (APP) individual permit.	R18-9-A213(C)(1)	Correction	This rule contains an incorrect reference to R18-9-A209 in subsection (C)(1) when referencing ADEQ’s issuance of a Permit Release Notice. The rule directs that the Director shall terminate an individual permit if the facility covered under the permit has closed and the Director has issued a Permit Release Notice. Currently the rule cites R18-9-A209(B)(3)(a)(ii) which discusses the elements of a site investigation plan under a closure plan. The reference for the Director’s determination to send a Permit Release Notice is found, instead, at R18-9-A209(B)(4)(a)(ii). Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ proposes to update the rule with the correct reference to R18-9-A209(B)(4)(a)(ii).

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Article 2. Aquifer Protection Permits - Individual Permits
<p>This rule contains general considerations and prohibitions for sewage treatment facilities permitted under an Aquifer Protection Permit (APP) individual permit.</p>	<p>R18-9-B201(I)</p>	<p>Clarification</p>	<p>There are two proposed amendments to this rule in subsection (I). First, ADEQ proposes adding a clarification to the rule language. This rule establishes setback requirements for new sewage treatment facilities or facilities undergoing a major modification. Currently the rule provides a setback table and prescribes setbacks to be measured from the treatment and disposal components within the facility. However, the rule does not clearly explain that the setbacks must be measured from the noise or odor-producing treatment and disposal components within the facility, despite this being the interpretation consistently applied by ADEQ and most reasonably applied when reading the rule as a whole and analyzing the corresponding setback table. The setback table, itself, details the required distance (in feet) of the setbacks depending on the proposed level of noise, odor, or aesthetic controls, corresponding with the design flow of the sewage treatment facility. Clarifying that the setbacks are measured from the noise or odor-producing components will assist the public with understanding how to apply and follow the required setbacks to achieve the goal and intention of the subsection, which is to mitigate and control noise and odor from facilities. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ proposes to clarify the rule by explicitly stating that setbacks are measured from the noise or odor-producing components of the facility.</p> <p>Next, ADEQ proposes clarifying the setback table within subsection (I). Currently, the setback table, as described above, prescribes the required distance (in feet) of the setbacks depending on the proposed level of noise, odor, or aesthetic controls, corresponding with the design flow of the sewage treatment facility. The table would be better understood by the public if the setback distances were, instead, clarified as “minimum” distances. This proposal clarifies the rule in accordance with the original intention of the rule, itself, evidenced by the original setback table in Chapter VI, “Sewage Treatment Works Design Considerations”, of Engineering Bulletin No. 11, published by ADHS in July 1978, upon which the setback table in R18-9-B201 was based (<i>see</i> 7 A.A.R. 294 (January 12, 2001)). There, the setback table is entitled “Minimum Setback vs. Treatment Plant Size” and the corresponding explanation of the table further explains that the distances are the required “minimum setback[s]”. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ proposes to clarify the rule by updating the setback table to make clear the fact that the setbacks are minimum distances.</p>
<p>This rule contains treatment performance requirements for an existing sewage treatment facility permitted under an Aquifer Protection Permit (APP) individual permit.</p>	<p>R18-9-B205</p>	<p>Update</p>	<p>This rule contains an outdated reference to A.R.S. § 49-201(16) for the definition of “existing facility”. The reference has since changed to A.R.S. § 49-201(18). Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(6), ADEQ proposes to update the reference from A.R.S. § 49-201(16) to A.R.S. § 49-201(18).</p>

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Article 3. Aquifer Protection Permits - General Permits
This rule sets forth the requirements for a 2.01 Aquifer Protection Permit (APP) general permit for drywells that drain areas where hazardous substances are used, stored, loaded, or treated.	R18-9-C301(B) & (H)(2)(b)	Update following repeal	<p>This rule requires an applicant for a 2.01 general permit to submit to the Department a Notice of Intent to discharge along with their “Department registration number” for the drywell. This refers to a state-based drywell registration program, previously authorized by A.R.S. Title 49 Article 8, which was repealed on September 24, 2022 in anticipation of ADEQ’s impending primacy over the Underground Injection Control (UIC) program.</p> <p>The UIC program regulates drywells as a Class V underground injection well which must be inventoried pursuant to A.A.C. R18-9-I652. The reference to a “Department registration number” in this rule is inconsistent with the requirement in R18-9-I652 to submit “inventory information” and is, furthermore, outdated following the repeal of Article 8. An applicant for a 2.01 general permit must demonstrate compliance with the UIC rules and related requirements. Removal of the outdated reference to “Department registration number” is necessary to retain functionality of the rule and increase public understanding of the requirements incumbent upon applicants for a 2.01 general permit.</p> <p>Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(1), ADEQ proposes to update the language in the rule to include a reference to the “Class V injection well inventory”.</p>
This rule sets forth the requirements for a 2.02 Aquifer Protection Permit (APP) general permit for intermediate stockpiles at mining sites.	R18-9-C302(A)	Update	<p>This rule contains an outdated reference to A.R.S. § 49-201(19) for the definition of “inert material”. The reference has since changed to A.R.S. § 49-201(22). Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(6), ADEQ proposes to update the reference from A.R.S. § 49-201(19) to A.R.S. § 49-201(22).</p>
This rule sets forth the requirements for a 2.04 Aquifer Protection Permit (APP) general permit for drywells that drain areas at motor fuel dispensing facilities where motor fuels are used, stored, or loaded.	R18-9-C304(B) & (I)(2)(b)	Update following repeal	<p>This rule requires an applicant for a 2.04 general permit to submit to the Department a Notice of Intent to discharge along with their “Department registration number” for the drywell. This refers to a state-based drywell registration program, previously authorized by A.R.S. Title 49 Article 8, which was repealed on September 24, 2022 in anticipation of ADEQ’s impending primacy over the Underground Injection Control (UIC) program.</p> <p>The UIC program regulates drywells as a Class V underground injection well which must be inventoried pursuant to A.A.C. R18-9-I652. The reference to a “Department registration number” is inconsistent with the requirement in R18-9-I652 to submit “inventory information” and is, furthermore, outdated following the repeal of Article 8. An applicant for a 2.04 general permit must demonstrate compliance with the UIC rules and related requirements. Removal of the outdated reference to “Department registration number” is necessary to retain functionality of the rule and increase public understanding of the requirements incumbent upon applicants for a 2.04 general permit.</p> <p>Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(1), ADEQ proposes to update the language in the rule to include a reference to the “Class V injection well inventory”.</p>
This rule sets forth the requirements for a 3.02 Aquifer Protection Permit (APP) general permit for process water discharges from water treatment facilities.	R18-9-D302(A)(2)	Update	<p>This rule contains an outdated reference to A.R.S. § 49-201(19) for the definition of “inert material.” This has changed in statute to (22). Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(6), ADEQ proposes to update the reference from A.R.S. § 49-201(19) to A.R.S. § 49-201(22).</p>

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Article 6. Underground Injection Control (UIC)
This rule outlines the public notice requirements for the UIC program	R18-9-C620(D)(1)(f)	Update	<p>Subsection (D)(1) in the rule is not correctly scoped to encompass the federal UIC rules in 40 CFR 124.10(C)(1)(VIII) & (XI). Currently, the language states that the Director shall give public notice of UIC permit actions and public hearings, and shall deliver a copy of the public notice to certain entities. ADEQ is applying for primacy of the Safe Drinking Water Act - Underground Injection Control regulatory program (see A.R.S. §§ 49-203(A)(6), 49-257.01). One of the requirements is for ADEQ to have rules that are at least as stringent as the Federal analog.</p> <p>Therefore, the rule needs to be scoped to match the federal rules by clarifying that a copy of the notice shall be provided to state and local oil and gas regulatory agencies for Classes I and VI injection wells. Notably, the requirement in 40 CFR 124.10(C)(1)(XI) to notify the state Director of the Public Water Supply Supervision (PWSS) program is not necessary to add in the A.A.C. because the Director of the PWSS is the Director of ADEQ, and is therefore not separately notified of permit actions.</p> <p>Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(1), ADEQ proposes to amend the language in this subsection to align the public notice requirements with the federal UIC rules by scoping Class I wells into the public notice requirements.</p>
This rule provides the general permit conditions applicable to all UIC permits	R18-9-D635(9)(d)	Correction	This rule contains a typographical error. The language in subsection (9)(d) provides that the permittee shall allow the Director to sample or monitor for the purposes of assuring permit compliance “or as otherwise authorized by this Article the SDWA...”. The language should, instead, say “...by this Article or the SDWA...”. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ proposes to revise the language and add the word “or”.
This rule sets forth the information that must be considered by the Director in authorizing Class II wells under the UIC program.	R18-9-F645(B)(2)	Correction	This rule contains a typographical error. The language in subsection (B)(2) discusses the requirement for the Director to consider a map which may show pertinent surface features “if known or suspected”. The language should, instead, say “suspected”. Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ proposes to revise the language to “suspected”.
This rule sets forth general requirements for Class V UIC wells	R18-9-I650(A)(4)(b)	Correction	This rule contains a typographical error to an incorrect citation. Subsection (A)(4)(b) cites a transfer fee rule in R18-14-111(3). The correct citation is, instead, R18-14-111(A)(3). Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ proposes to fix the error by changing the reference to R18-14-111(A)(3).

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Article 7. Use of Recycled Water
This rule provides definitions for Title 18, Chapter 9, Article 7 in addition to those established in A.R.S. § 49-201.	R18-9-A701(5)	Update	This rule contains an outdated reference to A.R.S. § 49-201(18) for the definition of “gray water”. The reference has since changed to A.R.S. § 49-201(20). Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(6), ADEQ proposes to update the reference from A.R.S. § 49-201(18) to A.R.S. § 49-201(20).
This rule provides definitions for Title 18, Chapter 9, Article 7 in addition to those established in A.R.S. § 49-201.	R18-9-A701(11)	Update	This rule contains an outdated reference to A.R.S. § 49-201(32) for the definition of “reclaimed water”. The reference has since changed to A.R.S. § 49-201(41). Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(6), ADEQ proposes to update the reference from A.R.S. § 49-201(32) to A.R.S. § 49-201(41).

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Article 9. Arizona Pollutant Discharge Elimination System
This rule outlines the relevant sections of Arizona assuming regulatory authority over the Environmental Protection Agency's National Pollutant Discharge System (NPDES).	R18-9-A902(A) & (F)	Clarification	<p>This rule should be revised to exclude outdated criteria under the public notice requirements for NPDES permittees in Arizona. Currently, the rule requires ADEQ to provide notice to all Arizona NPDES permittees, through one or more newspapers, which shall contain certain requirements as detailed in the rule. ADEQ has primacy over the Environmental Protection Agency's (EPA) NPDES program, and is authorized to implement and regulate a state-based program, AZPDES. ADEQ received authorization from the EPA to administer the NPDES Program on December 5, 2002. Now that ADEQ has administered the AZPDES program for roughly twenty-two years, these sections under R18-9-A902 are no longer necessary or appropriate.</p> <p>By updating this rule such that the Department would not be required to publish the date of EPA's approval of the AZPDES program, as well as information related to state and federal laws related to the permitting program, the contents of the public notice will be clearer and concise, fostering more public awareness of the most relevant aspects of a permit at issue. ADEQ proposes removing paragraphs (A) and (F) under this section pursuant to its authority under A.R.S. § 41-1027(A)(6) to update this rule.</p>
This rule intends to clarify that the scope of AZPDES permits do not convey property rights or special privileges.	R18-9-A904(B)	Clarification	<p>This rule would benefit from improving grammar of the language so as to make it clearer for AZPDES permittees. The purpose of this rule is to more clearly delineate that an authorization to discharge under the AZPDES program does not instill property rights in the permittee (e.g., property rights over surface water or specialized licenses/privileges beyond the scope of the AZPDES permit). While the rule currently includes language to this effect, it would benefit from clarification to the grammar and the addition of the term "to the permittee" to further clarify to whom the prohibition applies. Therefore, ADEQ seeks to add clarifying language pursuant to its authority under A.R.S. § 41-1027(A)(3).</p>
This rule outlines public notice requirements for Individual AZPDES permits.	R18-9-A907(A)(1) & (B)	Clarification	<p>This rule outlines public notice requirements for AZPDES individual permits. Subsection (A)(1) of this rule addresses public notice requirements for Individual AZPDES Permits. Subsection (B) outlines requirements for General Permits. ADEQ seeks to add clarifying language pursuant to its authority under A.R.S. § 41-1027(A)(3) for Individual Permits to make it clear that the Department has authority to post public notice to its website in order to make the information more widely available online. Furthermore, this change comports with notice requirements of the National Pollutant Discharge Elimination System (NPDES) as set forth in the Code of Federal Regulations (CFR) under 40 C.F.R. 124.10.</p> <p>Additionally, in subsection (B), the rule prescribes notice requirements for General Permits. ADEQ proposes updating the rule to add the option for ADEQ to post notice on the website, in addition to its requirement to post in the <i>Arizona Administrative Register</i>. This will allow the notice to reach potentially broader audiences and boost public engagement in the permitting process. Therefore, pursuant to its authority in A.R.S. § 41-1027(A)(3), ADEQ proposes to add this notice option to the language of the rule.</p>

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Article 10. Arizona Pollutant Discharge Elimination System – Disposal, Use, and Transportation of Biosolids
This rule provides definitions for Title 18, Chapter 9, Article 10 in addition to those established in A.R.S. § 49-225 and R18-9-A901.	R18-9-1001(26)	Correction	<p>This rule contains an incorrect reference to A.R.S. § 49-201(21) for the definition of "navigable waters." There are three issues with this rule: 1) A.R.S. § 49-201(21) defines "hazardous substance" and the reference is therefore incorrect; 2) There is no corresponding definition for "navigable waters" in the statute; and 3) The definition in the rule is not actually defining the term "navigable waters".</p> <p>The language in the rule more appropriately and accurately defines "WOTUS" which is defined in statute at A.R.S. § 49-201(53). ADEQ proposes to correct and clarify the rule by changing "navigable waters" to "WOTUS".</p> <p>Additionally, ADEQ proposes to update the reference to the definition of WOTUS in A.R.S. § 49-201(53)</p> <p>Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(3), ADEQ proposes to change the definition to "WOTUS" and update the statutory reference accordingly.</p>

Rule Content Summary	Rule(s) affected (R18-9-xxxx)	Type of Change	Explanation of Changes to: Article 10. Arizona Pollutant Discharge Elimination System – Disposal, Use, and Transportation of Biosolids
This rule provides definitions for Title 18, Chapter 9, Article 10 in addition to those established in A.R.S. § 49-225 and R18-9-A901.	R18-9-1001(29)	Update	This rule contains an outdated reference to A.R.S. § 49-201(26) for the definition of “person”. The reference has since changed to A.R.S. § 49-201(33). Therefore, pursuant to its authority under A.R.S. § 41-1027(A)(6), ADEQ proposes to update the reference from A.R.S. § 49-201(26) to A.R.S. § 49-201(33).

- 7. **A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
Not applicable
- 8. **A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
- 9. **A statement that the agency is exempt from the requirements under A.R.S. § 41-1055(G) to obtain and file a preliminary summary of the economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2):**
This rulemaking is exempt from the requirements to obtain and file an economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2).
- 10. **Where, when, and how a person may provide written comments on the proposed expedited rule:**
Close of record: October 7, 2024.
Written comments may be sent to the individual listed in Item 5 by the close of record.
No oral proceeding is scheduled at this time. An oral proceeding may be requested pursuant to A.R.S. § 41-1027(C) by submitting a written request to the individual listed in Item 5 by the close of record.
- 11. **All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**
There are no other matters prescribed by statute applicable specifically to ADEQ for this specific rulemaking.
 - a. **Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**
Not applicable.
 - b. **Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**
40 CFR 124.10 is applicable to the subject of R18-9-C620.
Additionally, 40 C.F.R. 124.10 and 40 C.F.R. 123.25 are applicable to the subject of R18-9A902, R18-9-A904, and R18-9-A907.
However, these rules are not more stringent than federal law in accordance with A.R.S. § 49-104(A)(16).
 - c. **Whether a person submitted an analysis to the agency that compares the rule’s impact of the competitiveness of business in this state to the impact on business in other states:**
Not applicable
- 12. **A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:**
Not applicable
- 13. **The full text of the rules follows:**

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER POLLUTION CONTROL**

ARTICLE 1. AQUIFER PROTECTION PERMITS – GENERAL PROVISIONS

Section
R18-9-101. Definitions

ARTICLE 2. AQUIFER PROTECTION PERMITS – INDIVIDUAL PERMITS

PART A. APPLICATION AND GENERAL PROVISIONS

Section
R18-9-A213. Permit Suspension, Revocation, Denial, or Termination

PART B. BADCT FOR SEWAGE TREATMENT FACILITIES

R18-9-B201. General Considerations and Prohibitions
R18-9-B205. Treatment Performance Requirements for an Existing Facility

ARTICLE 3. AQUIFER PROTECTION PERMITS - GENERAL PERMITS

PART C. TYPE 2 GENERAL PERMITS

Section

- R18-9-C301. 2.01 General Permit: Drywells That Drain Areas Where Hazardous Substances Are Used, Stored, Loaded, or Treated
- R18-9-C302. 2.02 General Permit: Intermediate Stockpiles at Mining Sites
- R18-9-C304. 2.04 General Permit: Drywells that Drain Areas at Motor Fuel Dispensing Facilities Where Motor Fuels are Used, Stored, or Loaded

PART D. TYPE 3 GENERAL PERMITS

- R18-9-D302. 3.02 General Permit: Process Water Discharges from Water Treatment Facilities

ARTICLE 6. UNDERGROUND INJECTION CONTROL

PART C. AUTHORIZATION BY PERMIT FOR UNDERGROUND INJECTION

Section

- R18-9-C620. Public Notice of Permit Actions and Public Comment Period

PART D. PERMIT CONDITIONS FOR UNDERGROUND INJECTION

- R18-9-D635. Conditions Applicable to All Permits

PART F. CLASS II INJECTION WELL REQUIREMENTS

- R18-9-F645. Class II; Information to be Considered by the Director

PART I. CLASS V INJECTION WELL REQUIREMENTS

- R18-9-I650. Class V; General Requirements

ARTICLE 7. USE OF RECYCLED WATER

PART A. GENERAL PROVISIONS

Section

- R18-9-A701. Definitions

ARTICLE 9. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM

PART A. GENERAL REQUIREMENTS

Section

- R18-9-A902. AZPDES Permit Transition, Applicability, and Exclusions
- R18-9-A904. Effect of a Permit
- R18-9-A907. Public Notice

ARTICLE 10. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM – DISPOSAL, USE, AND TRANSPORTATION OF BIOSOLIDS

Section

- R18-9-1001. Definitions

ARTICLE 1. AQUIFER PROTECTION PERMITS - GENERAL PROVISIONS

R18-9-101. Definitions

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
9. No change
10. No change
11. No change
12. No change
13. No change
14. No change
15. No change
16. No change
17. No change
18. No change
19. No change
20. No change

21. “Drywell” means a well which is a bored, drilled or driven shaft or hole whose depth is greater than its width and is designed and constructed specifically for the disposal of storm water. Drywells do not include class 1, class 2, class 3 or class 4 injection wells as defined by the Federal Underground Injection Control Program (P.L. 93-523, part C), as amended. ~~A.R.S. § 49-331(3)~~.
22. No change
23. No change
24. No change
25. No change
26. No change
27. No change
28. No change
29. No change
30. No change
31. No change
32. No change
33. No change
34. No change
35. No change
36. No change
37. No change
38. No change
39. No change
40. No change
41. No change
42. No change
43. No change
44. No change
45. No change
46. No change
47. No change
48. No change
49. No change
50. No change

ARTICLE 2. AQUIFER PROTECTION PERMITS - INDIVIDUAL PERMITS

PART A. APPLICATION AND GENERAL PROVISIONS

R18-9-A213. Permit Suspension, Revocation, Denial, Or Termination

- A. No change
 1. No change
 2. No change
 3. No change
 4. No change
 5. No change
 6. No change
 - a. No change
 - b. No change
- B. No change
 1. No change
 2. No change
 - a. No change
 - b. No change
 - c. No change
 3. No change
- C. The Director shall terminate an individual permit if each facility covered under the individual permit:
 1. Has closed and the Director issued a Permit Release Notice under R18-9-A209(C)(2)(c) or ~~A209(B)(3)(a)(ii)~~ A209(B)(4)(a)(ii) for the closed facility, or
 2. Is covered under another Aquifer Protection Permit.

PART B. BADCT FOR SEWAGE TREATMENT FACILITIES

R18-9-B201. General Considerations and Prohibitions

- A. No change
- B. No change
- C. No change
- D. No change
 1. No change
 2. No change
 3. No change

- 4. No change
- E. No change
- F. No change
- G. No change
- H. No change
- I. The owner or operator of a sewage treatment facility that is a new facility or undergoing a major modification shall provide setbacks established in the following table. Setbacks are measured from the noise or odor-producing treatment and disposal components within the sewage treatment facility to the nearest property line of an adjacent dwelling, workplace, or private property. If an owner or operator cannot meet a setback for a facility undergoing a major modification that incorporates full noise, odor, and aesthetic controls, the owner or operator shall not further encroach into setback distances existing before the major modification except as allowed in subsection (I)(2).

Sewage Treatment Facility Design Flow (gallons per day)	Minimum Setback Distance (feet)	
	No Noise, Odor, or Aesthetic Controls (feet)	Full Noise, Odor, and Aesthetic Controls (feet)
3000 to less than 24,000	250	25
24,000 to less than 100,000	350	50
100,000 to less than 500,000	500	100
500,000 to less than 1,000,000	750	250
1,000,000 or greater	1000	350

- 1. Full noise, odor, and aesthetic controls means that:
 - a. Noise due to the sewage treatment facility does not exceed 50 decibels at the facility property boundary on the A network of a sound level meter or a level established in a local noise ordinance,
 - b. All odor-producing components of the sewage treatment facility are fully enclosed,
 - c. Odor scrubbers or other odor-control devices are installed on all vents, and
 - d. Fencing aesthetically matched to the area surrounding the facility.
- 2. The owner or operator of a sewage treatment facility undergoing a major modification may decrease setbacks if:
 - a. Allowed by local ordinance; or
 - b. Setback waivers are obtained from affected property owners in which the property owner acknowledges awareness of the established setbacks, basic design of the sewage treatment facility, and the potential for noise and odor.
- J. The owner or operator of a sewage treatment facility shall not operate the facility so that it emits an offensive odor on a persistent basis beyond the setback distances specified in subsection (I).

R18-9-B205. Treatment Performance Requirements for an Existing Facility

For a sewage treatment facility that is an existing facility defined in ~~A.R.S. § 49-201(16)~~ A.R.S. § 49-201(18), the BADCT shall conform with the following:

- 1. No change
- 2. No change
- 3. No change

ARTICLE 3. AQUIFER PROTECTION PERMITS - GENERAL PERMITS
PART C. TYPE 2 GENERAL PERMITS

R18-9-C301. 2.01 General Permit: Drywells That Drain Areas Where Hazardous Substances Are Used, Stored, Loaded, or Treated

- A. No change
- B. Notice of Intent to Discharge. In addition to the requirements in R18-9-A301(B), an applicant shall submit:
 - 1. The ~~Department registration~~ Class V injection well inventory number for the drywell or documentation that a ~~drywell registration form~~ inventory information was submitted to the Department;
 - 2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - 3. No change
 - 4. No change
- C. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
- D. No change
 - 1. No change
 - 2. No change

- 3. No change
- 4. No change
- 5. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - e. No change
- 6. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
- E. No change
 - 1. No change
 - 2. No change
- F. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - 5. No change
 - 6. No change
- G. No change
 - 1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - i. No change
 - ii. No change
 - 2. No change
- H. Closure and decommissioning requirements.
 - 1. A permittee shall:
 - a. Retain a drywell drilling contractor, licensed under 4 A.A.C. 9, to close the drywell;
 - b. Remove sediments and any drainage component, such as standpipes and screens from the drywell's settling chamber and backfill the injection pipe with cement grout;
 - c. Remove the settling chamber;
 - d. Backfill the settling chamber excavation to the land surface with clean silt, clay, or engineered material. Materials containing hazardous substances are prohibited from use in backfilling the drywell; and
 - e. Mechanically compact the backfill.
 - 2. Within 30 days of closure and decommissioning, the permittee shall submit a written verification to the Department that all material that contributed to a discharge has been removed and any reasonable probability of further discharge from the facility and of exceeding any Aquifer Water Quality Standard at the applicable point of compliance has been eliminated to the greatest degree practical. The written verification shall specify:
 - a. The reason for the closure;
 - b. The ~~drywell registration~~ Class V injection well inventory number;
 - c. The general permit reference number;
 - d. The materials and methods used to close the drywell;
 - e. The name of the contractor who performed the closure;
 - f. The completion date;
 - g. Any sampling data;
 - h. Sump construction details, if a sump was constructed to replace the abandoned drywell; and
 - i. Any other information necessary to verify that closure has been achieved.

R18-9-C302. 2.02 General Permit: Intermediate Stockpiles at Mining Sites

- A. A 2.02 General Permit allows for intermediate stockpiles not qualifying as inert material under ~~A.R.S. § 49-201(19)~~ A.R.S. § 49-201(22) at a mining site.

- B. No change
- C. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
- D. No change
 - 1. No change
 - 2. No change

R18-9-C304. 2.04 General Permit: Drywells that Drain Areas at Motor Fuel Dispensing Facilities Where Motor Fuels are Used, Stored, or Loaded

- A. No change
 - 1. No change
 - 2. No change
 - 3. No change
- B. Notice of Intent to Discharge. In addition to the requirements in R18-9-A301(B), an applicant shall submit:
 - 1. ~~The Department registration~~ Class V injection well inventory number for the drywell or documentation that ~~a drywell registration form~~ inventory information was submitted to the Department;
 - 2. For a drywell constructed more than 90 days before submitting the Notice of Intent to Discharge to the Department, a certification signed, dated, and sealed by an Arizona-registered professional engineer or geologist that a site investigation concluded that:
 - a. Analytical results from sampling sediment from the drywell settling chamber sediment for pollutants reasonably expected to be present do not exceed either the residential soil remediation levels or the groundwater protection levels;
 - b. The settling chamber does not contain sediment that could be used to characterize and compare results to soil remediation levels and the chamber has not been cleaned out within the last six months;
 - c. Neither a soil remediation level nor groundwater protection level is exceeded in soil samples collected from a boring drilled within 5 feet of the drywell and sampled in 5 foot increments starting at a depth of 5 feet below ground surface and extending to a depth of 10 feet below the base of the drywell injection pipe; or
 - d. If coarse grained lithology prevents the collection of soil samples in a soil boring, a groundwater investigation demonstrates compliance with Aquifer Water Quality Standards in groundwater at the applicable point of compliance.
 - 3. Design information to demonstrate that the requirements in subsection (C) are satisfied.
- C. No change
 - 1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 - h. No change
 - i. No change
- D. No change
 - 1. No change
 - a. No change
 - b. No change
 - i. No change
 - ii. No change
 - c. No change
 - d. No change
 - i. No change
 - ii. No change
 - iii. No change
 - 2. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - b. No change
 - i. No change
 - ii. No change
 - c. No change
 - i. No change
 - ii. No change
 - d. No change

- i. No change
 - ii. No change
- E. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
 - 7. No change
 - 8. No change
 - 9. No change
- F. No change
 - 1. No change
 - 2. No change
- G. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - 5. No change
 - 6. No change
- H. No change
 - 1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - i. No change
 - ii. No change
 - 2. No change
- I. Closure and decommissioning requirements.
 - 1. A permittee shall:
 - a. Retain a drywell drilling contractor, licensed under 4 A.A.C. 9, to close the drywell;
 - b. Remove sediments and any drainage component, such as standpipes and screens from the drywell's settling chamber and backfill the injection pipe with cement grout;
 - c. Remove the settling chamber;
 - d. Backfill the settling chamber excavation to the land surface with clean silt, clay, or engineered material. A permittee shall not use materials containing hazardous substances in backfilling the drywell; and
 - e. Mechanically compact the backfill.
 - 2. Within 30 days of closure and decommissioning, the permittee shall submit a written verification to the Department that all material that contributed to a discharge has been removed and any reasonable probability of further discharge from the facility and of exceeding any Aquifer Water Quality Standard at the applicable point of compliance has been eliminated to the greatest degree practical. The written verification shall specify:
 - a. The reason for the closure;
 - b. ~~The drywell registration~~ Class V injection well inventory number or;
 - c. The general permit reference number;
 - d. The materials and methods used to close the drywell;
 - e. The name of the contractor who performed the closure;
 - f. The completion date;
 - g. Any sampling data;
 - h. Sump construction details, if a sump was constructed to replace the abandoned drywell; and
 - i. Any other information necessary to verify that closure has been achieved.

PART D. TYPE 3 GENERAL PERMITS

R18-9-D302. 3.02 General Permit: Process Water Discharges From Water Treatment Facilities

- A. A 3.02 General Permit allows filtration backwash and discharges obtained from sedimentation and coagulation in the water treatment process from facilities that treat water for industrial process or potable uses. The permittee shall ensure that:
 - 1. Liquid fraction. The discharge meets:
 - a. All numeric Aquifer Water Quality Standards for inorganic chemicals, organic chemicals, and pesticides established in R18-11-406(B) through (D);
 - b. The discharge meets one of the following criteria for microbiological contaminants:

- i. Either the concentration of fecal coliform organisms is not more than 2/100 ml or the concentration of E. coli bacteria is not more than 1/ 100 ml, or
 - ii. Either the concentration of fecal coliform organisms is less than 200/100 ml or the concentration of E. coli bacteria is less than 126/ 100 ml if the average daily flow processed by the water treatment facility is less than 250,000 gallons; and
 - 2. Solid Fraction. The solid material in the discharge qualifies as inert material, as defined in ~~A.R.S. § 49-201(19)~~ A.R.S. § 49-201(22).
- B.** No change
 - 1. No change
 - 2. No change
- C.** No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - a. No change
 - b. No change
 - c. No change
 - 5. No change
- D.** No change
 - 1. No change
 - a. No change
 - b. No change
 - c. No change
 - 2. No change
 - a. No change
 - b. No change
 - c. No change
- E.** No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
- F.** No change
 - 1. No change
 - 2. No change

ARTICLE 6. UNDERGROUND INJECTION CONTROL

PART C. AUTHORIZATION BY PERMIT FOR UNDERGROUND INJECTION

R18-9-C620. Public Notice of Permit Actions and Public Comment Period

- A.** No change
 - 1. No change
 - 2. No change
- B.** No change
- C.** No change
 - 1. No change
 - 2. No change
- D.** Public notice of activities described in subsection (A) shall be given by the following methods:
 - 1. Delivery of a copy of the notice to:
 - a. The applicant;
 - b. Any affected federal, state, tribal, or local agency, or council of government;
 - c. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, and the State Historic Preservation Office;
 - d. Any person who requested, in writing, notification of the activity;
 - e. Any persons on a contact list developed from past permit proceedings and public outreach; and
 - f. ~~For Class VI injection well UIC permits, mailing or e-mailing a notice to~~ State and local oil and gas regulatory agencies and State agencies regulating mineral exploration and recovery and all agencies that oversee injection wells in the State for Classes I and VI injection well UIC permits.
 - 2. For Major Facilities only, newspaper publication in accordance with A.A.C. R18-1-401(A)(1).

PART D. PERMIT CONDITIONS FOR UNDERGROUND INJECTION

R18-9-D635. Conditions Applicable To All Permits

- 1. No change
- 2. No change
- 3. No change

4. No change
5. No change
6. No change
7. No change
8. No change
9. The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:
 - a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
 - b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
 - c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
 - d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by this Article or the SDWA, any substances or parameters at any location.
10. No change
 - a. No change
 - b. No change
 - i. No change
 - ii. No change
 - c. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - vi. No change
 - d. No change
11. No change
12. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - i. No change
 - ii. No change
 - g. No change
 - h. No change
13. No change
 - a. No change
 - b. No change
 - i. No change
 - ii. No change
14. No change
15. No change
16. No change
 - a. No change
 - b. No change
17. No change
 - a. No change
 - b. No change
 - c. No change

PART F. CLASS II INJECTION WELL REQUIREMENTS

R18-9-F645. Class II; Information to be Considered by the Director

- A. No change
- B. Prior to the issuance of a permit for an existing Class II well to operate or the construction or conversion of a new Class II well the Director shall consider the following:
 1. Information required in R18-9-C616.
 2. A map showing the injection well or project area for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number or name and location of all existing producing wells, injection wells, abandoned wells, dry holes, and water wells. The map may also show surface bodies of waters, mines (surface and subsurface), quarries and other pertinent surface features including residences and roads, and faults if known or ~~suspended~~ suspected. Only information of public record and pertinent information known to the applicant is required to be included on this map. This requirement does not apply to existing Class II wells.

3. A tabulation of data reasonably available from public records or otherwise known to the applicant on all wells within the area of review included on the map required under subsection (B)(2) which penetrate the proposed injection zone or, in the case of Class II wells operating over the fracture pressure of the injection formation, all known wells within the area of review which penetrate formations affected by the increase in pressure. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and completion, and any additional information the Director may require. In cases where the information would be repetitive and the wells are of similar age, type, and construction the Director may elect to only require data on a representative number of wells. This requirement does not apply to existing Class II wells.
 4. Proposed operating data:
 - a. Average and maximum daily rate and volume of fluids to be injected;
 - b. Average and maximum injection pressure; and
 - c. Source and an appropriate analysis of the chemical and physical characteristics of the injection fluid.
 5. Appropriate geological data on the injection zone and confining zone including lithologic description, geological name, thickness and depth.
 6. Geologic name and depth to bottom of all USDWs which may be affected by the injection.
 7. Schematic or other appropriate drawings of the surface and subsurface construction details of the well.
 8. In the case of new injection wells the corrective action proposed to be taken by the applicant under R18-9-D639.
 9. A certificate that the applicant has assured through a performance bond or other appropriate means, the resources necessary to close, plug or abandon the well as required by R18-9-D636(A)(6).
- C. No change
1. No change
 2. No change
 3. No change
 4. No change
 5. No change
- D. No change
1. No change
 2. No change
 3. No change
 4. No change
 5. No change
 6. No change
- E. No change
1. No change
 2. No change
 3. No change
 4. No change
 5. No change

PART I. CLASS V INJECTION WELL REQUIREMENTS

R18-9-I650. Class V; General Requirements

- A. The following requirements apply to Class V Wells authorized by rule:
1. A Class V Injection well is authorized by rule subject to the conditions under this Section.
 2. Well authorization under this Section expires upon the effective date of a permit issued pursuant to R18-9-I651, R18-9-C616, R18-9-C624, R18-9-C625, or upon proper closure of the well.
 3. An owner or operator of a well that is authorized by rule pursuant to this Section is prohibited from injecting into the well:
 - a. Upon the effective date of an applicable permit denial;
 - b. Upon failure to submit a permit application in a timely manner pursuant to R18-9-I651 or R18-9- C616;
 - c. Upon failure to submit inventory information in a timely manner pursuant to R18-9-I652; or d. Upon failure to comply with a request for information in a timely manner pursuant to R18-9-I653.
 4. Submission of the following is required in order to transfer ownership of a well that is authorized by rule pursuant to this Section:
 - a. An inventory, and
 - b. Class V authorized by rule transfer fee pursuant to ~~R18-14-111(3)~~ R18-14-111(A)(3).
- B. No change
1. No change
 2. No change
 - a. No change
 - b. No change
 - i. No change
 - ii. No change
 - c. No change
 3. No change
 4. No change

ARTICLE 7. USE OF RECYCLED WATER**PART A. GENERAL PROVISIONS****R18-9-A701. Definitions**

1. No change
2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
3. No change
4. No change
5. “Gray water” means wastewater that has been collected separately from a sewage flow and that originates from a clothes washer or a bathroom tub, shower or sink but that does not include wastewater from a kitchen sink, dishwasher or toilet. ~~A.R.S. § 49-201(18)~~ A.R.S. § 49-201(20).
6. No change
7. No change
8. No change
9. No change
10. No change
11. “Reclaimed water” means water that has been treated or processed by a wastewater treatment plant or an on-site wastewater treatment facility. ~~A.R.S. § 49-201(32)~~ A.R.S. § 49-201(41).
12. No change
13. No change
14. No change
15. No change
16. No change

ARTICLE 9. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM**PART A. GENERAL REQUIREMENTS****R18-9-A902. AZPDES Permit Transition, Applicability, And Exclusions**

- A. Upon the effective date of EPA approval of the AZPDES program, the Department shall, under A.R.S. Title 49, Chapter 2, Article 3.1 and Articles 9 and 10 of this Chapter, administer any permit authorized or issued under the NPDES program, including an expired permit that EPA has continued in effect under 40 CFR 122.6.
 1. The Director shall give a notice to all Arizona NPDES permittees, except NPDES permittees located on and discharging in Indian Country, and shall publish a notice in one or more newspapers of general circulation in the state. The notice shall contain:
 - ~~a. The effective date of EPA approval of the AZPDES program;~~
 - ~~b.a.~~ The name and address of the Department;
 - ~~e.b.~~ The name of each individual permitted facility and its permit number;
 - ~~d.c.~~ The title of each general permit administered by the Department;
 - ~~e.d.~~ The name and address of the contact person, to which the permittee will submit notification and monitoring reports; and
 - ~~f. Information specifying the state laws equivalent to the federal laws or regulations referenced in a NPDES permit; and~~
 - ~~e.c.~~ The name, address, and telephone number of a person from whom an interested person may obtain further information about the transition.
 2. The Department shall provide the following entities with a copy of the notice:
 - a. Each county department of health, environmental services, or comparable department;
 - b. Each Arizona council of government, tribal government, the states of Utah, Nevada, New Mexico, and California, and EPA Region 9;
 - c. Any person who requested, in writing, notification of the activity;
 - d. The Mexican Secretaria de Medio Ambiente y Recursos Naturales, and
 - e. The United States Section of the International Boundary and Water Commission.
 3. If a timely application for a NPDES permit was ~~is~~ submitted to EPA before approval of the AZPDES program, the applicant may continue the process with EPA or request the Department to act on the application. In either case, the Department shall issue the permit.
 4. The terms and conditions under which the permit was issued remain the same until the permit is modified.
- B. No change
 1. No change
 2. No change
 3. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - b. No change
 4. No change

- 5. No change
- 6. No change
- 7. No change
- 8. No change
 - a. No change
 - b. No change
 - c. No change
 - i. No change
 - ii. No change
 - iii. No change
 - d. No change
- C. No change
 - 1. No change
 - 2. No change
- D. No change
 - 1. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - vi. No change
 - vii. No change
 - b. No change
 - 2. No change
 - 3. No change
- E. No change
- F. No change
 - 1. No change
 - a. No change
 - b. No change
 - 2. No change
- G. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
 - 7. No change
- H. No change
 - 1. No change
 - 2. No change
 - a. No change
 - b. No change
 - c. No change

R18-9-A904. Effect of a Permit

- A. Except for a standard or prohibition imposed under section 307 of the Clean Water Act (33 U.S.C. 1317) for a toxic pollutant that is injurious to human health and standards for sewage sludge use or disposal under Article 10 of this Chapter, compliance with an AZP-DES permit during its term constitutes compliance, for purposes of enforcement, with Article 9 of this Chapter. However, the Director may modify, revoke and reissue, suspend, or terminate a permit during its term for cause under R18-9-B906.
- B. The issuance of a permit does not convey any property rights ~~of any sort, or any~~ exclusive privilege to the permittee.
- C. The issuance of a permit does not authorize any injury to a person or property or invasion of other private rights, or any infringement of federal, state, or local law, or regulations.

R18-9-A907. Public Notice Requirements

- A. Individual permits.
 - 1. The Director shall publish a notice that a draft individual permit has been prepared, or a permit application has been tentatively denied, and may publish all notices of these activities in one or more newspapers of general circulation where the facility is located, or to the Department's website. If the Department publishes notice of a draft individual permit on the website, it shall additionally post on the website the draft permit and fact sheet for the duration of the public comment period. The notice shall contain:
 - a. The name and address of the Department;
 - b. The name and address of the permittee or permit applicant and if different, the name of the facility or activity regulated by the permit;

- c. A brief description of the business conducted at the facility or activity described in the permit application;
 - d. The name, address, and telephone number of a person from whom an interested person may obtain further information, including copies of the draft permit, fact sheet, and application;
 - e. A brief description of the comment procedures, the time and place of any hearing, including a statement of procedures to request a hearing (unless a hearing has already been scheduled), and any other procedure by which the public may participate in the final permit decision;
 - f. A general description of the location of each existing or proposed discharge point and the name of the receiving water;
 - g. For sources subject to section 316(a) of the Clean Water Act, a statement that the thermal component of the discharge is subject to effluent limitations under the Clean Water Act, section 301 (33 U.S.C. 1311) or 306 (33 U.S.C. 1316) and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under section 301 (33 U.S.C. 1311) or 306 (33 U.S.C. 1316);
 - h. Requirements applicable to cooling water intake structures at new facilities subject to 40 CFR 125, subpart I; and
 - i. Any additional information considered necessary to the permit decision.
2. No change
 3. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change

- B.** General permits. If the Director considers issuing a general permit applicable to a category of discharge under R18-9- C901, the Director shall publish a general notice of the draft permit in the Director shall publish a notice that a draft individual permit has been prepared, or a permit application has been tentatively denied; and may publish all notices of these activities in one or more newspapers of general circulation where the facility is located, or to the Department’s website. If the Department publishes notice of a draft individual permit on the website, it shall additionally post on the website the draft permit and fact sheet for the duration of the public comment period. The notice shall contain:
1. The name and address of the Department,
 2. The name of the person to contact regarding the permit,
 3. The general permit category,
 4. A brief description of the proposed general permit,
 5. A map or description of the permit area,
 6. The web site or any other location where the proposed general permit may be obtained, and
 7. The ending date for public comment

ARTICLE 10. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM - DISPOSAL, USE, AND TRANSPORTATION OF BIOSOLIDS

R18-9-1001. Definitions

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
9. No change
10. No change
11. No change
12. No change
13. No change
14. No change
15. No change
16. No change
17. No change
18. No change
19. No change
20. No change
21. No change
22. No change
23. No change
24. No change
25. No change
26. ~~“Navigable waters”~~ **“WOTUS” means the waters of the United States as defined by section 502(7) of the clean water act (33 United States Code section 1362(7)). ~~A.R.S. § 49- 201(21)~~ A.R.S. § 49- 201(53).**

- 27. No change
- 28. No change
- 29. “Person” means an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association or state, a political subdivision of this state, a commission, the United States government or a federal facility, interstate body or other entity. A.R.S. § 49-201(26) A.R.S. § 49-201(33).
- 30. No change
- 31. No change
- 32. No change
- 33. No change
- 34. No change
- 35. No change
- 36. No change
- 37. No change
- 38. No change
- 39. No change
- 40. No change
- 41. No change
- 42. No change
- 43. No change
- 44. No change
- 45. No change
- 46. No change
- 47. No change
- 48. No change
- 49. No change
- 50. No change
- 51. No change

NOTICE OF PROPOSED EXPEDITED RULEMAKING
TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER QUALITY STANDARDS

[R24-168]

PREAMBLE

1. **Permission to proceed with this proposed expedited rulemaking was granted under A.R.S. § 41-1039 by the governor on:**
 May 6, 2024
2. **Article, Part, or Section Affected (as applicable)** **Rulemaking Action**
 R18-11-101 Amend
 R18-11-301 Amend
3. **Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
 Authorizing statute: A.R.S. § 49-104(A)(1), (A)(7), (A)(10), (A)(13), (B)(4), (B)(11)
 Implementing statute: A.R.S. §§ 49-202(A), (H); 49-203(A)(1), (2), (3), (5), (6) - (10); 49-221; 49-222; 49-223
4. **Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the current record of the proposed expedited rule:**
 Notice of Expedited Rulemaking Docket Opening: 30 A.A.R. 2089, Issue Date: June 21, 2024, Issue Number: 25, File Number: R24-107
5. **The agency’s contact person who can answer questions about the rulemaking:**
 Name: Matthew O’Donnell
 Title: Attorney
 Division: Office of Administrative Counsel
 Address: Arizona Department of Environmental Quality
 Office of Administrative Counsel
 1110 W. Washington St.
 Phoenix, AZ 85007
 Telephone: (602) 809-4869
 Email: waterqualityrulecorrections@azdeq.gov
 Website: https://www.azdeq.gov/wqd-5yr-rule-review-commitmentscleanup

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

The Arizona Department of Environmental Quality (ADEQ) is pursuing an expedited rulemaking to amend rules related to water quality standards. The objective of this rulemaking is to fulfill five-year rule review (5YRR) commitments to the Governor's Regulatory Review Council (GRRC), in accordance with A.R.S. § 41-1056(E), to amend rules in Chapter 11, as well as correct typographical errors, update outdated citations and references, clarify language, and fix similar clerical issues therein.

The purpose of Chapter 11, Articles 1 and 3 is to establish standards for surface waters and reclaimed water.

The proposed amendments to Title 18, Chapter 11, Articles 1 and 3 are limited to correcting errors and amending references that are outdated.

The proposed amendments to the rule are justified under the expedited rulemaking requirements in A.R.S. § 41-1027. Specifically, Subsection (A) limits an agency to conducting an expedited rulemaking only if the rulemaking "does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated and does one or more of the following [requirements outlined in (A)(1) - (A)(8)]". The applicable requirements relied upon in this rulemaking include the following: (A)(3) "Corrects typographical errors, makes address or name changes or clarifies language of a rule without changing its effect" and (A)(6) "Amends or repeals rules that are outdated, redundant or otherwise no longer necessary for the operation of state government". This proposed expedited rulemaking is expected to fix and clarify rules without adding regulatory burden because this rulemaking consists only of minor spelling and grammar corrections and updates to reflect statute/rule renumbering and repeal. Indeed, this cleanup will serve to reduce regulatory burden by removing confusion and enhancing public understanding of the rules.

Section-by-Section Explanation of Proposed Rules:

R18-11-101 Amend to update definitions section: Add reference to A.R.S. § 49-255 to Definition (9); update A.R.S. reference in definition (33) to reflect renumbering; miscellaneous spelling and grammar changes to (51);

R18-11-301 Amend to update definitions section: Update references to A.R.S, A.A.C. to reflect renumbering; miscellaneous spelling and grammar changes.

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

Not applicable

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

Not applicable

9. A statement that the agency is exempt from the requirements under A.R.S. § 41-1055(G) to obtain and file a preliminary summary of the economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2):

This proposed expedited rulemaking is exempt from the requirements to obtain and file an economic, small business, and consumer impact under A.R.S. § 41-1055(D)(2).

10. Where, when, and how a person may provide written comments on the proposed expedited rule:

Close of record: October 7, 2004

Written comments may be sent to the individual listed in Item 5 by the close of record.

No oral proceeding is scheduled at this time. An oral proceeding may be requested pursuant to A.R.S. § 41-1027(C) by submitting a written request to the individual listed in Item 5 by the close of record.

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

There are no other matters prescribed by statutes applicable specifically to ADEQ or this specific rulemaking.

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

The proposed changes to these rules do not require a permit.

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

The Clean Water Act (CWA) [33 U.S.C. § 1251, *et seq.*], as amended, is applicable to the subject of this rule. The changes to the rule proposed in this rulemaking are not more stringent than is required by federal law.

c. Whether a person submitted an analysis to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states under A.R.S. § 41-1055(I). If yes, include the analysis with the rulemaking package.

Not applicable

12. List all incorporated by reference material as specified in A.R.S. § 41-1028 and include a citation where the material is located:

Not applicable

13. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY**CHAPTER 11. DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER QUALITY STANDARDS****ARTICLE 1. WATER QUALITY STANDARDS FOR SURFACE WATERS**

Section
R18-11-101. Definitions

ARTICLE 3. RECLAIMED WATER QUALITY STANDARDS

Section
R18-11-301. Definitions

ARTICLE 1. WATER QUALITY STANDARDS FOR SURFACE WATERS**R18-11-101. Definitions**

The following terms apply to this Article:

1. "Acute toxicity" means toxicity involving a stimulus severe enough to induce a rapid response. In aquatic toxicity tests, an effect observed in 96 hours or less is considered acute.
2. "Agricultural irrigation (AgI)" means the use of a surface water for crop irrigation.
3. "Agricultural livestock watering (AgL)" means the use of a surface water as a water supply for consumption by livestock.
4. "Annual mean" is the arithmetic mean of monthly values determined over a consecutive 12-month period, provided that monthly values are determined for at least three months. A monthly value is the arithmetic mean of all values determined in a calendar month.
5. "Aquatic and wildlife (cold water) (A&Wc)" means the use of a surface water by animals, plants, or other coldwater organisms, generally occurring at an elevation greater than 5000 feet, for habitation, growth, or propagation.
6. "Aquatic and wildlife (effluent-dependent water) (A&Wedw)" means the use of an effluent-dependent water by animals, plants, or other organisms for habitation, growth, or propagation.
7. "Aquatic and wildlife (ephemeral) (A&We)" means the use of an ephemeral water by animals, plants, or other organisms, excluding fish, for habitation, growth, or propagation.
8. "Aquatic and wildlife (warm water) (A&Ww)" means the use of a surface water by animals, plants, or other warmwater organisms, generally occurring at an elevation less than 5000 feet, for habitation, growth, or propagation.
9. "Arizona Pollutant Discharge Elimination System (AZPDES)" means the point source discharge permitting program established under A.R.S. § 49-255, et seq., and 18 A.A.C. 9, Article 9.
10. "Assimilative capacity" means the difference between the baseline water quality concentration for a pollutant and the most stringent applicable water quality criterion for that pollutant.
11. "Clean Water Act" means the Federal Water Pollution Control Act [33 U.S.C. 1251 to 1387].
12. "Complete Mixing" means the location at which concentration of a pollutant across a transect of a surface water differs by less than five percent.
13. "Criteria" means elements of water quality standards that are expressed as pollutant concentrations, levels, or narrative statements representing a water quality that supports a designated use.
14. "Critical flow conditions of the discharge" means the hydrologically based discharge flow averages that the director uses to calculate and implement applicable water quality criteria to a mixing zone's receiving water as follows:
 - a. For acute aquatic water quality standard criteria, the discharge flow critical condition is represented by the maximum one-day average flow analyzed over a reasonably representative timeframe.
 - b. For chronic aquatic water quality standard criteria, the discharge flow critical condition is represented by the maximum monthly average flow analyzed over a reasonably representative timeframe.
 - c. For human health based water quality standard criteria, the discharge flow critical condition is the longterm arithmetic mean flow, averaged over several years so as to simulate long-term exposure.
15. "Critical flow conditions of the receiving water" means the hydrologically based receiving water low flow averages that the director uses to calculate and implement applicable water quality criteria:
 - a. For acute aquatic water quality standard criteria, the receiving water critical condition is represented as the lowest one-day average flow event expected to occur once every ten years, on average (1Q10).
 - b. For chronic aquatic water quality standard criteria, the receiving water critical flow condition is represented as the lowest seven-consecutive-day average flow expected to occur once every 10 years, on average (7Q10), or
 - c. For human health based water quality standard criteria, in order to simulate long-term exposure, the receiving water critical flow condition is the harmonic mean flow.
16. "Deep lake" means a lake or reservoir with an average depth of more than 6 meters.
17. "Designated use" means a use specified in Appendix B of this Article for a surface water.
18. "Domestic water source (DWS)" means the use of a surface water as a source of potable water. Treatment of a surface water may be necessary to yield a finished water suitable for human consumption.
19. "Effluent-dependent water (EDW)" means a surface water or portion of a surface water, that consists of a point source discharge without which the surface water would be ephemeral. An effluent-dependent water may be perennial or intermittent depending on the volume and frequency of the point source discharge of treated wastewater.
20. "Ephemeral water" means a surface water or portion of surface water that flows or pools only in direct response to precipitation.
21. "Existing use" means a use attained in the waterbody on or after November 28, 1975, whether or not it is included in the water quality standards.

22. “Fish consumption (FC)” means the use of a surface water by humans for harvesting aquatic organisms for consumption. Harvestable aquatic organisms include, but are not limited to, fish, clams, turtles, crayfish, and frogs.
23. “Full-body contact (FBC)” means the use of a surface water for swimming or other recreational activity that causes the human body to come into direct contact with the water to the point of complete submergence. The use is such that ingestion of the water is likely and sensitive body organs, such as the eyes, ears, or nose, may be exposed to direct contact with the water.
24. “Geometric mean” means the n th root of the product of n items or values. The geometric mean is calculated using the following formula:

$$GM_Y = \sqrt[n]{(Y_1)(Y_2)(Y_3) \dots (Y_n)}$$

25. “Hardness” means the sum of the calcium and magnesium concentrations, expressed as calcium carbonate (CaCO₃) in milligrams per liter.
26. “Igneous lake” means a lake located in volcanic, basaltic, or granite geology and soils.
27. “Intermittent water” means a surface water or portion of surface water that flows continuously during certain times of the year and more than in direct response to precipitation, such as when it receives water from a spring, elevated groundwater table or another surface source, such as melting snowpack.
28. “Mixing zone” means an area or volume of a surface water that is contiguous to a point source discharge where dilution of the discharge takes place.
29. “Oil” means petroleum in any form, including crude oil, gasoline, fuel oil, diesel oil, lubricating oil, or sludge.
30. “Outstanding Arizona water (OAW)” means a surface water that is classified as an outstanding state resource water by the Director under R18-11-112.
31. “Partial-body contact (PBC)” means the recreational use of a surface water that may cause the human body to come into direct contact with the water, but normally not to the point of complete submergence (for example, wading or boating). The use is such that ingestion of the water is not likely and sensitive body organs, such as the eyes, ears, or nose, will not normally be exposed to direct contact with the water.
32. “Perennial water” means a surface water or portion of surface water that flows continuously throughout the year.
33. “Pollutant” means fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and mining, industrial, municipal, and agricultural wastes or any other liquid, solid, gaseous, or hazardous substance. ~~A.R.S. § 49-201(29)~~ A.R.S. § 49-201(35).
34. “Pollutant Minimization Program” means a structured set of activities to improve processes and pollutant controls that will prevent and reduce pollutant loadings.
35. “Practical quantitation limit” means the lowest level of quantitative measurement that can be reliably achieved during a routine laboratory operation.
36. “Reference condition” means a set of abiotic physical stream habitat, water quality, and site selection criteria established by the Director that describe the typical characteristics of stream sites in a region that are least disturbed by environmental stressors. Reference biological assemblages of macroinvertebrates and algae are collected from these reference condition streams for calculating the Arizona Indexes of Biological Integrity thresholds.
37. “Regional Administrator” means the Regional Administrator of Region IX of the U.S. Environmental Protection Agency.
38. “Regulated discharge” means a point-source discharge regulated under an AZPDES permit, a discharge regulated by a § 404 permit, and any discharge authorized by a federal permit or license that is subject to state water quality certification under § 401 of the Clean Water Act.
39. “Riffle habitat” means a stream segment where moderate water velocity and substrate roughness produce moderately turbulent conditions that break the surface tension of the water and may produce breaking wavelets that turn the surface water into white water.
40. “Run habitat” means a stream segment where there is moderate water velocity that does not break the surface tension of the water and does not produce breaking wavelets that turn the surface water into white water.
41. “Sedimentary lake” means a lake or reservoir in sedimentary or karst geology and soils.
42. “Shallow lake” means a lake or reservoir, excluding an urban lake, with a smaller, flatter morphology and an average depth of less than 3 meters and a maximum depth of less than 4 meters.
43. “Significant degradation” means:
 - a. The consumption of 20 percent or more of the available assimilative capacity for a pollutant of concern at critical flow conditions, or
 - b. Any consumption of assimilative capacity beyond the cumulative cap of 50 percent of assimilative capacity.
44. “Surface water” means “WOTUS” as defined in A.R.S. § 49-201(53).
45. “Total nitrogen” means the sum of the concentrations of ammonia (NH₃), ammonium ion (NH₄⁺), nitrite (NO₂), and nitrate (NO₃), and dissolved and particulate organic nitrogen expressed as elemental nitrogen.
46. “Total phosphorus” means all of the phosphorus present in a sample, regardless of form, as measured by a persulfate digestion procedure.
47. “Toxic” means a pollutant or combination of pollutants, that after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism, either directly from the environment or indirectly by ingestion through food chains, may cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction), or physical deformations in the organism or its offspring.
48. “Urban lake” means a manmade lake within an urban landscape.
49. “Use attainability analysis” means a structured scientific assessment of the factors affecting the attainment of a designated use including physical, chemical, biological, and economic factors.

50. “Variance” means a time-limited designated use and criterion for a specific ~~pollutant(s)-pollutant or pollutants~~ or water quality ~~parameter(s)-parameter or parameters~~ that reflect the highest attainable condition during the term of the variance.
51. “Wadable” means a surface water can be safely crossed on foot and sampled without a boat.
52. “Wastewater” does not mean:
- Stormwater,
 - Discharges authorized under ~~the a De Minimis-Minimis~~ General Permit, or
 - Other allowable non-stormwater discharges permitted under ~~the a~~ Construction General Permit or ~~the~~ Multi-sector General Permit, or Stormwater discharges from a municipal separate storm sewer system (MS4) containing incidental amounts of non-stormwater that the MS4 is not required to prohibit.
53. “Wetland” means an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. A wetland includes a swamp, marsh, bog, cienega, tinaja, and similar areas.
54. “Zone of initial dilution” means a small area in the immediate vicinity of an outfall structure in which turbulence is high and causes rapid mixing with the surrounding water.

ARTICLE 3. RECLAIMED WATER QUALITY STANDARDS

R18-11-301. Definitions

The terms in this Article have the following meanings:

“Direct reuse” has the meaning prescribed in ~~R18-9-701(1)~~R18-9-A701(2).

“Disinfection” means a treatment process that uses oxidants, ultraviolet light, or other agents to kill or inactivate pathogenic organisms in wastewater.

“Filtration” means a treatment process that removes particulate matter from wastewater by passage through porous media.

“Gray water” means wastewater, collected separately from a sewage flow, that originates from a clothes washer, bathtub, shower, or sink, but it does not include wastewater from a kitchen sink, dishwasher, or a toilet.

“Industrial wastewater” means wastewater generated from an industrial process.

“Landscape impoundment” means a manmade lake, pond, or impoundment of reclaimed water where swimming, wading, boating, fishing, and other water-based recreational activities are prohibited. A landscape impoundment is created for storage, landscaping, or for aesthetic purposes only.

“NTU” means ~~nephelometric~~ nephelometric turbidity unit.

“On-site wastewater treatment facility” has the meaning prescribed in ~~A.R.S. § 49-201(24)~~A.R.S. § 49-201(29).

“Open access” means that access to reclaimed water by the general public is uncontrolled.

“Reclaimed water” has the meaning prescribed in ~~A.R.S. § 49-201(31)~~A.R.S. § 49-201(41).

“Recreational impoundment” means a manmade lake, pond, or impoundment of reclaimed water where boating or fishing is an intended use of the impoundment. Swimming and other full-body recreation activities (for example, water-skiing) are prohibited in a recreational impoundment.

“Restricted access” means that access to reclaimed water by the general public is controlled.

“Secondary treatment” means a biological treatment process that achieves the minimum level of effluent quality defined by the federal secondary treatment regulation at 40 CFR § 133.102.

“Sewage” means untreated wastes from toilets, baths, sinks, lavatories, laundries, and other plumbing fixtures in places of human habitation, employment, or recreation.

NOTICES OF PUBLIC INFORMATION

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

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

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

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

NOTICE OF PUBLIC INFORMATION**DEPARTMENT OF PUBLIC SAFETY**

[M24-52]

1. Agency Name:

Department of Public Safety

2. The public information related to this notice:

The Department provides notice to the public that effective August 27, 2024, the Department has rescinded Substantive Policy Statement #HPDCVE-2, *School Bus Driver Hours Limitations* and the Department will no longer enforce R13-13-104(C) as interpreted in the statement.

Substantive Policy Statement #HPDCVE-2 originally appeared in the *Administrative Register* at 30 A.A.R. 821, dated April 26, 2024.

3. The agency contact person who can answer questions about this notice:

Name: Vernon Havens

Title: Captain, Commercial Vehicle Enforcement District, Student Transportation

Division: Highway Patrol

Address: 2102 W. Encanto Blvd.
Phoenix, AZ 85009

Telephone: (602) 223-2047

Email: vhavens@azdps.govWebsite: <https://www.azdps.gov/services/enforcement-services/student-transportation>

NOTICES OF SUBSTANTIVE POLICY STATEMENT

SUMMARIES AND LOCATION OF STATEMENTS

Substantive policy statements are written expressions that inform the general public of an agency’s current approach to rule or regulation practice as defined under A.R.S. § 41-1001(24).

Agencies are required to prepare a Notice of Substantive Policy Statement and publish the titles of its substantive policy statements, a summary of statements, and its website where full statements can be reviewed under A.R.S. § 41-1013(B)(9). These notices are published in this section of the *Register*.

Substantive policy statements are advisory only. A substantive policy statement does not include internal procedural documents that only affect an agency’s internal procedures and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the APA.

Any person may petition an agency under A.R.S. § 41-1033(A)(2) to review an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule.

Contact the agency liaison listed under Item #6.

NOTICE OF SUBSTANTIVE POLICY STATEMENT

DEPARTMENT OF AGRICULTURE ANIMAL SERVICES DIVISION

[M24-51]

- 1. Statement title and policy number:**
Arizona Department of Agriculture, Animal Services Division, Substantive Policy Statement 24-02, Exception to the Entry Permit Number Requirement under A.A.C. R3-2-602(B)
- 2. Is this a new policy or revision:**
New
- 3. Date issued and effective date (if different from the date issued):**
Date issued and effective: September 1, 2024
- 4. Policy summary:**
The Arizona Department of Agriculture (the “Department”), Animal Services Division is the agency that shall exercise general supervision over the livestock interests of the state of Arizona, pursuant to Arizona Revised Statutes (“A.R.S.”) §§ 3-1201, *et seq.*, and Title 3, Chapter 2 of the Arizona Administrative Code (“A.A.C.”). If importers, who ship livestock from another state into Arizona, utilize electronic Certificates of Veterinary Inspection (CVI) which are messaged directly to Arizona’s, U.S. Animal Health Emergency Reporting Diagnostic System (“USAHERDS”) database, the substantive policy statement provides an exception to the requirement in A.A.C. R3-2-602(B) to provide entry permit numbers for livestock imported into Arizona.
- 5. Authority (include the federal or state constitutional provision or statute, administrative rule, or regulation; or final court judgment):**
General authority: A.R.S. § 3-107
Specific authority: A.R.S. § 3-1203, and A.A.C. R3-2-101 and R3-2-602
- 6. Agency contact information:**
Name: Ryan Wolker
Title: State Veterinarian
Division: Arizona Department of Agriculture, Animal Services Division
Address: 1802 W. Jackson St., #78
Phoenix, AZ 85007
Telephone: (602) 542-4293
Fax: (602) 542-4290
Email: rwolker@azda.gov
Website: <https://agriculture.az.gov/animals>
- 7. An electronic copy of the complete policy can be viewed at:**
The substantive policy statement may be found on the official website of the Department. The URL for Department policies is <https://agriculture.az.gov/about-us/policies-statutes/substantive-policy-statements>
- 8. A paper copy of complete policy can be obtained at:**
You may obtain a paper copy of the policy, free of charge, from the Department at 1110 W. Washington St., Suite 450, Phoenix, AZ, 85007. Business hours are from 8:00 a.m. to 5 p.m., Monday through Friday, except for all major holidays. You may also contact the person listed in #6 above for other options.

REGISTER INDEXES

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

Abbreviations for rulemaking activity in this Index include:

PROPOSED RULEMAKING

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

SUPPLEMENTAL PROPOSED RULEMAKING

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

FINAL RULEMAKING

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

SUMMARY RULEMAKING**PROPOSED SUMMARY**

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

FINAL SUMMARY

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

EXPEDITED RULEMAKING**PROPOSED EXPEDITED**

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

SUPPLEMENTAL EXPEDITED

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

FINAL EXPEDITED

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

EXEMPT RULEMAKING**EXEMPT**

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

EXEMPT PROPOSED

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

EXEMPT SUPPLEMENTAL PROPOSED

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

FINAL EXEMPT RULEMAKING

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

EMERGENCY RULEMAKING

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

RECODIFICATION OF RULES

RC = Recodified

REJECTION OF RULES

RJ = Rejected by the Attorney General

TERMINATION OF RULES

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

RULE EXPIRATIONS

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

CORRECTIONS

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2024 RULES EFFECTIVE DATES CALENDAR

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

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

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

REGISTER PUBLISHING DEADLINES

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

Deadline Date Friday, 5:00 p.m.	<i>Register</i> Publication Date	Oral Proceeding may be scheduled on or after <i>(*later date due to holiday)</i>
July 5, 2024	July 26, 2024	August 26, 2024
July 12, 2024	August 2, 2024	September 3, 2024
July 19, 2024	August 9, 2024	September 9, 2024
July 26, 2024	August 16, 2024	September 16, 2024
August 2, 2024	August 23, 2024	September 23, 2024
August 9, 2024	August 30, 2024	September 30, 2024
August 16, 2024	September 6, 2024	October 7, 2024
August 23, 2024	September 13, 2024	October 15, 2024
August 30, 2024	September 20, 2024	October 21, 2024
September 6, 2024	September 27, 2024	October 28, 2024
September 13, 2024	October 4, 2024	November 4, 2024
September 20, 2024	October 11, 2024	*November 12, 2024
September 27, 2024	October 18, 2024	November 18, 2024
October 4, 2024	October 25, 2024	November 25, 2024
October 11, 2024	November 1, 2024	December 2, 2024
October 18, 2024	November 8, 2024	December 9, 2024
October 25, 2024	November 15, 2024	December 16, 2024
November 1, 2024	November 22, 2024	December 23, 2024
November 8, 2024	November 29, 2024	December 30, 2024
November 15, 2024	December 6, 2024	January 6, 2025
November 22, 2024	December 13, 2024	January 13, 2025
November 29, 2024	December 20, 2024	January 20, 2025
December 6, 2024	December 27, 2024	January 27, 2025
December 13, 2024	January 3, 2025	February 3, 2025
December 20, 2024	January 10, 2025	February 10, 2025
December 27, 2024	January 17, 2025	February 17, 2025
January 3, 2025	January 24, 2025	February 24, 2025
January 10, 2025	January 31, 2025	March 3, 2025

GOVERNOR’S REGULATORY REVIEW COUNCIL DEADLINES

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

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

GOVERNOR’S REGULATORY REVIEW COUNCIL DEADLINES FOR 2024
(MEETING DATES ARE SUBJECT TO CHANGE)

[M23-72]

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

DEADLINE FOR PLACEMENT ON AGENDA*	FINAL MATERIALS SUBMITTED TO COUNCIL	DATE OF COUNCIL STUDY SESSION	DATE OF COUNCIL MEETING
<i>Tuesday</i> February 20, 2024	<i>Tuesday</i> March 19, 2024	<i>Tuesday</i> March 26, 2024	<i>Tuesday</i> April 2, 2024
<i>Tuesday</i> March 19, 2024	<i>Tuesday</i> April 23, 2024	<i>Tuesday</i> April 30, 2024	<i>Tuesday</i> May 7, 2024
<i>Tuesday</i> April 23, 2024	<i>Tuesday</i> May 21, 2024	<i>Wednesday</i> May 29, 2024	<i>Tuesday</i> June 4, 2024
<i>Tuesday</i> May 21, 2024	<i>Tuesday</i> June 18, 2024	<i>Tuesday</i> June 25, 2024	<i>Tuesday</i> July 2, 2024
<i>Tuesday</i> June 18, 2024	<i>Tuesday</i> July 23, 2024	<i>Tuesday</i> July 30, 2024	<i>Tuesday</i> August 6, 2024
<i>Tuesday</i> July 23, 2024	<i>Tuesday</i> August 20, 2024	<i>Tuesday</i> August 27, 2024	<i>Wednesday</i> September 4, 2024
<i>Tuesday</i> August 20, 2024	<i>Tuesday</i> September 17, 2024	<i>Tuesday</i> September 24, 2024	<i>Tuesday</i> October 1, 2024
<i>Tuesday</i> September 17, 2024	<i>Tuesday</i> October 22, 2024	<i>Tuesday</i> October 29, 2024	<i>Tuesday</i> November 5, 2024
<i>Tuesday</i> October 22, 2024	<i>Tuesday</i> November 19, 2024	<i>Tuesday</i> November 26, 2024	<i>Tuesday</i> December 3, 2024
<i>Tuesday</i> December 24, 2024	<i>Tuesday</i> January 21, 2025	<i>Tuesday</i> January 28, 2025	<i>Tuesday</i> February 4, 2025