

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE – ANIMAL SERVICES DIVISION

PREAMBLE

1. Sections Affected

	<u>Rulemaking Action</u>
R3-2-301	Amend
R3-2-302	Amend
R3-2-401	Amend
R3-2-406	Amend
R3-2-407	Amend
R3-2-601	Amend
R3-2-602	Amend
R3-2-603	Amend
R3-2-604	Amend
R3-2-608	Amend
R3-2-609	Amend
R3-2-610	Amend
R3-2-617	Amend
R3-2-618	Amend
R3-2-620	Amend
Article 10	Amend
R3-2-1002	Amend
R3-2-1003	Amend
R3-2-1010	Amend

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

Authorizing statutes: A.R.S. §§ 3-107(A)(1) and 3-1203(B)(1)

Implementing statutes: A.R.S. §§ 3-1205(A), 3-1454, 3-2046, 3-2662, 3-2903, 3-2907, and 3-2908

3. The effective date of the rules:

November 9, 2002

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 7 A.A.R. 1776, April 27, 2001

Notice of Rulemaking Docket Opening: 7 A.A.R. 5489, December 14, 2001

Notice of Proposed Rulemaking: 7 A.A.R. 5538, December 21, 2001

Notice of Supplemental Proposed Rulemaking: 8 A.A.R. 1930, April 26, 2002

Notice of Supplemental Proposed Rulemaking: 8 A.A.R. 2229, May 24, 2002

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

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

In Article 3, this rulemaking prescribes uniform standards of operation for all beef cattle feedlots and advises operators of beef cattle feedlots that they are required to comply with applicable federal, state, and local laws.

In Article 4, definitions are added for "designated feedlot," "equine infectious anemia" or "EIA," and "restricted feeding pen." The definition for "free area" is deleted. R3-2-406 had regulated brucellosis control in feedlots and auction markets; the rule now regulates disease control in feedlots. Under R3-2-407, if an equine tests EIA-positive, the testing laboratory may now utilize facsimile to advise the State Veterinarian of the results.

In Article 6, R3-2-601 expands the definition of "permit number" to be interchangeable with the term "permit." Both phrases have been used interchangeably in the Article. R3-2-618, establishes specific health requirements for a psittacine bird to enter Arizona. R3-2-620(C) includes a reference to the licensing requirements of the Game and Fish Commission for importing and exhibiting zoo animals.

In Article 10, R3-2-1002(A) sets forth the aquaculture licensing fees. R3-2-1010(B) allows consignment of an imported aquaculture shipment to the holder of an aquaculture animal license issued by the Arizona Game and Fish Department. R3-2-1010(F) prescribes the circumstances in which an imported aquaculture shipment may be quarantined or destroyed.

Generally, this rulemaking clarifies existing language, removes language that is duplicative of information provided in statute, and conforms the rules to the current language standards in use by the Office of the Secretary of State.

This rulemaking evolves from procedural initiatives of the Department and changes proposed by the Division in its 1997 Five-Year Review Report.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule 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:

None

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

Not applicable

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

A. *The Arizona Department of Agriculture.*

The Department will incur modest expenses related to training staff and educating the regulated community on the amendments.

B. *Political Subdivision.*

Other than the Department of Agriculture, this rulemaking will not impact any other political subdivision.

C. *Businesses Directly Affected By the Rulemaking*

Operators of feedlots will need to become familiar with the newly defined terms and comply with the requirements of signage and movement of cattle into and out of a restricted feeding pen.

Importers of psittacine birds will need to follow the specific regulations to ensure the health of birds brought into the state.

The Department believes that the costs connected to the implementation of this rulemaking are minor. The benefit to the state in regulating these animal health issues outweighs any related costs.

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

Between the proposed rulemaking and the first supplemental proposed rulemaking:

R3-2-1010(B) was modified to add the statutory exception for imported live aquatic animals by a retail outlet as prescribed in A.R.S. § 3-2907(J). R3-2-1010(C)(3) was corrected; the information provided to the Department to obtain an import permit number may include a license issued by the Arizona Game and Fish Department.

Between the first supplemental proposed rulemaking and the second supplemental proposed rulemaking:

R3-2-301 is changed to prescribe uniform standards of operation for all feedlots, regardless of location. The standards are those prescribed in statute, at A.R.S. § 3-1454(A) and in R3-2-406. A feedlot is required to comply with applicable federal, state, and local laws; the rule does not specifically cite the laws that may be applicable.

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Between the second supplemental proposed rulemaking and the final rule:

Minor technical and grammatical changes have been made to the second supplemental proposed rule based on suggestions from Department and G.R.R.C. staff.

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

Representatives of the Arizona Cattle Feeders' Association advised the State Veterinarian that they preferred the rules governing feedlots to more fully align with the requirements in statute. The Department worked with representatives of the feedlots to revise the proposed rules and provided the requested changes in a second supplemental proposed rulemaking. Both the Department and the Cattle Feeders' are satisfied with the final rules.

The Arizona Department of Agriculture's Advisory Council requested, at its meeting on April 24, 2002, that the rule include a reference to other regulatory laws that are applicable to feedlot operators. That reference is included in a new subsection at R3-2-301(B).

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

None

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

None

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rules follows:

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE – ANIMAL SERVICES DIVISION

ARTICLE 3. FEEDING OF ANIMALS

Section

- R3-2-301. Operation of ~~beef cattle feedlots~~ Beef Cattle Feedlots
R3-2-302. ~~Requirements for permit to feed garbage to swine~~ Permit to Feed Garbage to Swine; Requirements

ARTICLE 4. ANIMAL DISEASE PREVENTION AND CONTROL

Section

- R3-2-401. Definitions
R3-2-406. ~~Bruceellosis Disease Control -- ; Feedlots and Auction Markets~~
R3-2-407. Equine Infectious Anemia

ARTICLE 6. HEALTH REQUIREMENTS GOVERNING ADMISSION OF ANIMALS

Section

- R3-2-601. Definitions
R3-2-602. ~~Requirements for Importation~~ Requirements
R3-2-603. Importation of Diseased Animals
R3-2-604. ~~Permit Required for Livestock~~ Permit Requirements; Exceptions
R3-2-608. Consignment of Animals
R3-2-609. ~~Diversions~~ Diversion; Prohibitions
R3-2-610. Test -- ; Official Confirmation
R3-2-617. Poultry
R3-2-618. Psittacine Birds
R3-2-620. Zoo Animals

ARTICLE 10. AQUACULTURE RULES

- R3-2-1002. Fees for Licenses; Inspection Authorization and Fees
R3-2-1003. General Licensing Provisions
R3-2-1010. Importation of Aquatic Animals

ARTICLE 3. FEEDING OF ANIMALS

R3-2-301. Operation of ~~beef cattle feedlots~~ Beef Cattle Feedlots

~~A. Feedlot categories~~

- ~~1. The following categories are established:~~

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- a. ~~Category A: Those feedlots located in, or immediately adjacent to, areas where feedlot operations may adversely affect considerable numbers of people, public improvements or safety as determined by the Board.~~
 - b. ~~Category B: Those feedlots which are located in rural areas where feedlot operations may adversely affect public improvements or safety, such as highways or streams, but do not affect considerable numbers of people, as determined by the Board.~~
 - c. ~~Category C: Those feedlots located in rural areas where feedlot operations do not affect considerable numbers of people or public improvements such as highways, or streams, as determined by the Board.~~
2. ~~Regarding the determination of categories of feedlots, the Board shall assign each feedlot to a specific category in accordance with the above subsection. The assigned categories are reviewable and reassignments may be made by the Board.~~

B. Performance and code of operation

1. ~~Category A feedlots shall:~~
 - a. ~~Take such steps as necessary and required as determined by the Board, to prevent any dust from arising and spreading from any feedlot which shall be dangerous to the public health or offensive to the public generally.~~
 - b. ~~Use reodorants, deodorants, or other effective and economically practical means in the pen area so that offensive odors from the feedlots are kept to limits that are determined satisfactory by the Board.~~
 - c. ~~Remove manure and clean all pens at least 3 times per year or more often if the need be determined by the Board. In enforcing this provision, consideration shall be given to the effect of inclement weather which might preclude removal.~~
 - d. ~~Keep stacked manure, after removal from pens, to a minimum and in as dry a condition as possible. Where stacking after removal is necessary, the stack shall be kept and handled in as odor free condition as practical.~~
 - e. ~~Employ methods of operation which are designed to eliminate stagnant water in feedlots.~~
 - f. ~~Employ such measures as are necessary for the control of flies and other insects.~~
2. ~~Category B feedlots shall:~~
 - a. ~~Remove manure and clean all pens at least once a year or more often if need be determined by the Board.~~
 - b. ~~Take necessary measures to prevent waste water from contaminating streams, ponds, lakes or the underground water table.~~
 - c. ~~Take such measures to control dust from the feedlot operations as are determined to be necessary by the Board.~~
3. ~~Category C feedlots shall:~~
 - a. ~~Take necessary measures to prevent waste water from contaminating streams, ponds, lakes, or the underground water tables.~~
 - b. ~~Remove manure and clean all pens at least once a year.~~

C. Rules procedure

1. ~~The Board shall hear and decide cases pertaining to feedlot complaints according to the following method:~~
 - a. ~~Receive complaints regarding feedlots. All complaints shall be in writing signed by complainant and dated.~~
 - b. ~~Make or cause to be made an investigation to determine the conditions that do exist and whether or not the complaint is justifiable. Such investigation shall be commenced within 10 days after receipt of complaint.~~
 - c. ~~Direct the complaint to the proper agency if the matter is outside the jurisdiction of the Board.~~
 - d. ~~If the complaint is within the jurisdiction of the Board, the Board will evaluate the performance of the feedlot according to the standards or codes of operation as they exist at the time of the complaint and take 1 of the following steps:~~
 - i. ~~Dismiss the complaint if unjustified.~~
 - ii. ~~Issue a written notice to the offending party describing the violation and imposing a reasonable time limit for correction and compliance with the existing standards or codes.~~
 - iii. ~~Consult with the complainant and feedlot operator together with necessary third parties, technical consultants or other members of the community, when inadequate standards exist or where no standards exist, in order to establish requirements which will bring conditions to within limits to the satisfaction of the Board.~~
 - iv. ~~Notify the complainant in writing of final disposition of complaint.~~
2. ~~The Board shall take such action as is necessary which shall be final and conclusive on all parties served with notice of such action, unless parties filed with Board notice of appeal within 5 days after decision or prior to the expiration of any compliance order, whichever period is shorter.~~
3. ~~The Board shall be responsible for enforcement of all performance standards and codes.~~
4. ~~The Board shall conduct hearings.~~
5. ~~The Board shall maintain records of proceedings including documents, testimony, summary, and decisions of the Board with number of affirmative votes on each decision.~~
6. ~~The Board shall institute regular inspection for all licensed feedlots to see that they are being operated according to Section V of these regulations and make a record of all inspections.~~

A. An operator shall manage a feedlot under the standards prescribed in A.R.S. § 3-1454(A) and R3-2-406.

B. An operator shall comply with applicable federal, state, and local laws.

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R3-2-302. ~~Requirements for permit to feed garbage to swine~~ Permit to Feed Garbage to Swine: Requirements

A swine garbage feeding permit holder holder or applicant for a permit to feed garbage to swine ~~must be in compliance~~ shall comply with the following requirements:

1. An approved cooker ~~capable of adequately processing garbage as required by law must be~~ is installed and in operating condition on the ~~premise~~ premises, and fenced off from all swine.
2. ~~An approved~~ A concrete slab, trough, or other ~~equally effective~~ easily cleanable area, ~~or~~ and equipment for feeding garbage ~~must be~~ is provided.
3. ~~Premise~~ Premises to be utilized for swine garbage feeding ~~must be~~ are reasonably clean, free of litter, adequately drained, and ~~reasonable methods provided~~ provide for removal of animal excrement and garbage not consumed ~~or used~~.
4. Individually operated swine garbage feeding premises ~~must be~~ are separated from ~~another~~ other swine feeding ~~premise~~ premises by a minimum distance of 200 feet in all directions and ~~so~~ constructed to prevent the escape of any swine.

ARTICLE 4. ANIMAL DISEASE PREVENTION AND CONTROL

R3-2-401. Definitions

The following terms apply to this Article:

“Accredited veterinarian” means a veterinarian approved by the State Veterinarian and the Deputy Administrator of VS; APHIS, USDA, to perform functions required by cooperative State-Federal animal disease control and eradication programs.

“Biologicals” means medical preparations made from living organisms and their products, including serums, vaccines, antigens, and antitoxins.

“Designated feedlot” means a confined drylot area under state quarantine that is approved and licensed by the State Veterinarian, contains restricted feeding pens, and is maintained for finish feeding of cattle or bison that do not meet the brucellosis or tuberculosis import test requirements.

“Equine infectious anemia” or “EIA” means a viral disease, also known as Swamp Fever, of members of the family equidae.

“Free area” means a feedlot pen that is separate from all restricted feeding pens, and all facilities and equipment used in the free area are separate from all facilities and equipment used in a restricted feeding pen.

“Restricted feeding pen” means an enclosed area in a designated feedlot, located at least eight feet from other pens, where cattle are maintained for feeding in a drylot without provisions for pasturing or grazing.

R3-2-406. ~~Brucellosis Disease Control -- ; Feedlots and Auction Markets~~

A. ~~Brucellosis rules and regulations governing feedlots~~

1. ~~Free Area feed pens or lots~~ A restricted feeding pen shall be:
 1. ~~areas which are~~ Be isolated from all other ~~quarantined~~ feed pens,
 2. ~~having~~ Have separate loading and unloading chutes, alleys, and handling facilities: from all other pens,
 3. ~~They must not~~ Not share water or feeding facilities accessible to ~~quarantine~~ other areas,
 4. ~~They must be~~ Be posted at all corners with permanently affixed signs stating “Free Area” “Restricted Feeding Area” and contain only free area cattle,
 5. ~~There must be~~ Have a minimum of 8 eight feet between ~~quarantined~~ restricted and ~~free area~~ other pens and facilities, and
 6. Have no common fences or gates with other pens ~~may be used, and this area cannot be used for the handling of cattle.~~
 - a. Cattle in free area pens or lots must retain their identity and be documented as such cattle.
 - b. To enter free area pens or lots, they must comply with 1 of the following:
 - i. Native Arizona cattle properly identified as non quarantined cattle with Arizona brand inspection certificate.
 - ii. Imported steers which are accompanied by a permit number and an official health certificate.
 - iii. Imported beef breed calves under 6 months of age properly identified and accompanied by a permit number and official health certificate.
 - iv. Imported dairy cattle or beef breeding cattle going into free area feedlots or pens must comply with Arizona importation regulations and be accompanied by a permit number and an official health certificate showing proper identification.
 - e. Free area feed pens or lots shall not handle improperly identified cattle or cattle whose health status is questionable.
 - d. Any violation will remove the facilities from free area to quarantine status.
2. ~~A quarantined feedlot shall be a confined area where cattle are maintained for feeding in a drylot without provisions for pasturing or grazing, except for small contiguous green pastures isolated as is the said feedlot.~~

- B.** ~~Requirements for cattle to enter and leave are~~ An operator may place cattle in a restricted feeding pen as follows:
1. All cattle, except steers and spayed heifers, shall be branded with an "F", at least two inches in height, on the jaw or adjacent to the tailhead before entering the pen; and
 - ~~a.2. Imported cattle, any age and from any area may enter if accompanied by a permit number and an official health certificate, no brucellosis or tuberculosis testing required; or~~
 - ~~b.3. Any native~~ Native Arizona cattle accompanied by an Arizona livestock inspection certificate.
- C.** An operator may remove cattle from a restricted feeding pen as follows:
- ~~e.1. All animals, except steers and spayed heifers, leaving such feedlot shall move be moved only to slaughter, to another quarantined designated feedlot, or to a specifically approved an auction market approved by the State Veterinarian or APHIS for sale to slaughter.~~
 2. A steer or spayed heifer may be moved to any location.
- B.** ~~Brucellosis rules and regulations governing auction sales~~
1. ~~Free Area Pens shall be located so they are isolated from all other pens, having separate loading and unloading chutes, alleys and handling facilities. They must not contain any common water or feeding facilities which are accessible to quarantine pens. Only free area cattle are allowed in these pens. All cattle in these pens must be identified and retain their identity as long as they remain in this area.~~
 - a. ~~Cattle requirements to enter free area pens and facilities are:~~
 - i. ~~Native Arizona cattle which are properly identified as non-restricted cattle with an Arizona livestock inspection certificate.~~
 - ii. ~~Imported steers accompanied by a permit number and official health certificate.~~
 - iii. ~~Imported beef breed calves under 6 months of age properly identified and accompanied by a permit number and an official health certificate.~~
 - iv. ~~Imported dairy or beef breeding cattle must comply with Arizona importation regulations and show proper identification.~~
 - b. ~~Any violation will remove the facilities from free area to quarantine status.~~
 2. ~~Quarantined pens shall be a confined area where cattle are maintained away from all free area facilities. They shall contain their own loading and unloading chutes, with separate driving alleys and handling facilities.~~
 - a. ~~These pens must be so identified by signs on gates and corners of total quarantine area.~~
 - b. ~~Quarantine cattle are to be sold after the free area cattle have all been sold.~~
 - c. ~~The sale ring is to be cleaned and disinfected before the next sale date.~~

R3-2-407. Equine Infectious Anemia

- A.** The Arizona official test for EIA equine infectious anemia, known as Swamp Fever or EIA, is either the agar-gel immunodiffusion test, known as the Coggins Test, or the Competitive Enzyme-Linked Immunosorbent Assay test, known as the CELISA test. The test shall be performed in a laboratory approved by APHIS and required samples shall be drawn by an accredited veterinarian, the State Veterinarian, the State Veterinarian's designee, or ~~a USDA~~ an APHIS veterinarian.
- B.** Disposal of equine testing positive.
1. When an Arizona equine tests positive to EIA, the testing laboratory shall immediately notify the State Veterinarian by telephone or fax.
 2. The EIA-positive equine shall be quarantined to the premises where tested, segregated from other equine, and shall not be moved unless authorized by the State Veterinarian. The equine shall be retested by the State Veterinarian, the State Veterinarian's designee, or ~~a USDA~~ an APHIS veterinarian within 2 two weeks of the notification.
 3. Within 14 days of being notified by the testing laboratory of a positive test conducted under subsection (B)(2), the State Veterinarian or the State Veterinarian's designee shall brand the equine on the left side of its neck with "86A" not less than 2 two inches in height.
 4. Within 10 days after being branded, the EIA-positive equine shall be:
 - a. ~~Humanely destroyed, or~~
 - b. Confined to a screened stall marked "EIA Quarantine" that is at least 200 yards from other equine, or
 - c. Consigned to slaughter at a slaughtering establishment. If consigned to slaughter, the equine shall be accompanied by a Permit for Movement of Restricted Animals, VS 1-27, issued by the State Veterinarian, the State Veterinarian's designee, or ~~a USDA~~ an APHIS veterinarian.
 5. Offspring of mares testing EIA-positive shall be quarantined, segregated from other equine, and tested for EIA at 6 six months of age. Offspring testing positive shall be handled as prescribed in ~~subsection~~ subsections (B)(3) and (B)(4).
 6. If an EIA-positive equine is located on premises other than those of the owner at the time a quarantine under this Section is effective, the State Veterinarian may authorize movement of the EIA-positive equine to the owner's premises if requested by the owner. Movement shall be under the direct supervision of the State Veterinarian or the State Veterinarian's designee. If the owner lives in another state, the owner may move the equine to that state with the permission of the Chief livestock health official of the state and ~~USDA~~ APHIS.

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- C. The State Veterinarian shall require testing of any equine located in the same facility as the EIA-positive equine or any equine considered exposed to the EIA-positive equine. The owner of the equine tested shall pay the expenses for the testing.
- D. The owner of any equine found to be ~~positive for~~ EIA-positive shall not be indemnified by the state for any loss caused by the destruction ~~and~~ or loss of value of the equine.

ARTICLE 6. HEALTH REQUIREMENTS GOVERNING ADMISSION OF ANIMALS

R3-2-601. Definitions

The following terms apply to this Article:

- 1. “Animal” means livestock, feral swine, ratite, bison, water buffalo, oxen, llama, and any exotic mammal not regulated as restricted live wildlife by the Arizona Game and Fish Department.
- 2. “Breeding swine” means any swine having the potential to breed, and includes gilts, sows, and boars.
- 3. “Cervidae” means ~~a~~ the family of cervids that includes deer, moose, elk, reindeer, and caribou.
- 4. “Dairy cattle” means cattle of dairy breeds or dairy types used for the production of milk or milk products for human consumption.
- 5. “Designated feedlot” means a confined drylot area under state quarantine that is approved and licensed by the State Veterinarian, contains a restricted feeding pen, and is maintained for finish feeding of cattle or bison that do not meet the brucellosis or tuberculosis import test requirements.
- 6. “Health certificate” means a legible record that is issued by a VS animal health official, state animal health official, or accredited veterinarian at the point of origin of a shipment of animals, conforms to the requirements of R3-2-606, and is written on a form approved by the chief animal health official of the state of origin or an equivalent form of the USDA attesting that the animal described has been inspected and found to meet the Arizona entry requirements.
- 7. “Macaque” means any monkey of the genus *Macaca* in the family *Ceropithecidae*.
- 8. “Permit number” or “permit” means a serialized number issued by the State Veterinarian’s Office that conforms to the requirements of R3-2-607 and allows the regulated movement of certain animals into Arizona.
- 9. “Specifically approved stockyard” means a stockyard specifically approved by VS and the State Veterinarian for receiving from other states cattle and bison that are not brucellosis-reactor, brucellosis-suspect, or brucellosis-exposed ~~cattle or bison~~.

R3-2-602. Requirements for Importation Requirements

- A.** ~~Unless otherwise specifically provided in this Article, all~~ All animals and poultry transported or moved into the state of Arizona, ~~unless otherwise specifically provided for in this Article,~~ must be accompanied by:
 - 1. ~~an~~ An official health certificate from the state of origin or a permit number, or both; ~~and~~
 - 2. ~~which must~~ The health documentation shall be attached to the waybill or ~~be~~ in the possession of the driver of the vehicle or person in charge of the animals.
- B.** When a single health certificate and permit number is issued for animals being moved in more than ~~1~~ one vehicle, the driver of each vehicle shall ~~have in his possession~~ retain the original or a certified copy of the health certificate and permit number. ~~(See R3-2-606(B))~~

R3-2-603. Importation of Diseased Animals

- A.** ~~No animals~~ An animal affected with or ~~which have been~~ recently exposed to any infectious, contagious, or communicable disease, or which ~~originate~~ originates in a state or ~~federally quarantined~~ federal quarantine area, ~~may shall not~~ be transported or moved into the state of Arizona unless a permit for ~~such the~~ entry is first obtained from the Arizona State Veterinarian’s Office. ~~In addition, all~~ All conditions for the movement of animals from a quarantined area established by the quarantining authority or ~~U.S. Department of Agriculture~~ APHIS ~~must shall~~ be met.
- B.** If any animal in a lot presented for shipment or movement into Arizona shows a suspicious or positive reaction to any test required for admission to Arizona, ~~no animal from that lot or from the herd in which the animal reacting to the test originates may enter the state of Arizona without special permission from the State Veterinarian or his agent.~~
The owner or owner’s agent shall obtain prior permission from the State Veterinarian to ship or move into Arizona any animal from a lot or herd from which an animal shows a suspicious or positive reaction to a test required for admission to Arizona.

R3-2-604. Permit Required for Livestock Permit Requirements; Exceptions

- A.** Livestock may not enter the state of Arizona unless accompanied by an Arizona permit. ~~This~~ Except as discussed in subsection (B), this requirement applies regardless of the species, breed, sex, class, age, point of origin, place of destination, or purpose of the movement of the livestock entering the state.

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B. Exceptions:

1. Horses, mules, and asses; or
2. Livestock consigned directly to slaughter at an ~~approved~~ state or federally licensed slaughter establishment.

R3-2-608. Consignment of Animals

~~All animals transported or moved into the state of Arizona must be consigned to or in care of an Arizona resident, or to a legal entity and address authorized by law to do business in the state of Arizona. (Excluding exhibition or show animals.) The owner, or owner's agent, of an animal transported or moved into Arizona, except an exhibition or show animal, shall consign the animal to or place it in the care of an Arizona resident or an entity authorized to do business in Arizona.~~

R3-2-609. ~~Diversions~~ Diversion; Prohibitions

~~No~~ A person consigning, transporting, or receiving ~~animals~~ an animal into the state of Arizona ~~may~~ shall not authorize, order, or carry out diversion of ~~such animals~~ the animal to a destination or consignee other than ~~as~~ set forth on the health certificate ~~or~~ and permit, if required, without first obtaining permission from the State Veterinarian ~~of Arizona authorizing such diversion.~~

R3-2-610. Tests -- Official Confirmation

~~All tests of animals required by Arizona or federal authorities as a condition for entry into Arizona must be made or confirmed by state or federal animal diagnostic laboratories. A state or federal animal diagnostic laboratory or APHIS-approved laboratory shall perform or confirm any animal testing required by a state or federal authority as a condition for entry into Arizona.~~

R3-2-617. Poultry

~~The Livestock Board~~ Department has no entry requirements on poultry provided ~~they~~ the poultry are apparently healthy, and do not originate from a poultry quarantine area, and comply with all interstate requirements of ~~A.P.H.I.S. of the U.S.D.A~~ APHIS.

R3-2-618. Psittacine Birds

~~Psittacine birds entering Arizona must comply with import regulations of the United States Public Health Service and not originate from a quarantined area.~~

- A.** The owner or the owner's agent of a psittacine bird entering Arizona shall obtain a health certificate issued by a veterinarian within 30 days of entry, certifying:
1. The bird is not infected with Chlamydia psittaci, and
 2. The bird was not exposed to birds known to be infected with avian chlamydiosis within the past 30 days.
- B.** The health certificate shall accompany the psittacine bird at time of entry into Arizona.

R3-2-620. Zoo Animals

- A.** ~~Zoo animals may be transported or moved~~ An owner or owner's agent may transport or move zoo animals into the state of Arizona ~~when if the animals are accompanied by an official health certificate, and consigned to a zoo; or in the charge of a circus or show, arrangement, etc., so long as if importation produces no undue hazard to livestock or public health.~~
- B.** Animals in "Petting Zoos" shall have been tested negative for tuberculosis within the past 12 months. The owner, or owner's agent, of an animal in a "Petting Zoo" shall have the animal tested for tuberculosis within 12 months before importation. A negative test result is required for entry into Arizona.
- C.** A business that transports or exhibits zoo animals shall be licensed by the Arizona Game and Fish Department.

ARTICLE 10. AQUACULTURE RULES

R3-2-1002. Fees for Licenses; Inspection Authorization and Fees

A. License fees are established as follows:

1. Aquaculture facility: \$100 annually.
2. Fee fishing facility: \$100 annually.
3. Aquaculture processor: \$100 annually.
4. Aquaculture transporter: \$100 annually.
5. Special licenses: \$10 annually.

~~A.B.~~ An expired license may be renewed within 90 days following after expiration by payment of an additional \$50.00 a \$50 late fee.

~~B.C.~~ Upon request of the licensee, the Department may shall assess certify that a the licensed facility and, if applicable, certify the facility is free from restrictive infectious diseases and causative agents listed in R3-2-1009 before prior to issuing a certificate of aquatic health Certificate of Aquatic Health pursuant to R3-2-1009. The Department may deputize certified inspectors, pursuant to A.R.S. § 3-2905(B), to perform the certification inspection on the Department's behalf. All expenses properly incurred in the certification procedure of the inspection, including but not limited to time, travel, and laboratory expenses, shall be paid to the Department by the licensee requesting certification prescribed in A.R.S. § 3-2905(B).

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R3-2-1003. General Licensing Provisions

- A.** ~~Applicants~~ An applicant for a license to operate an aquaculture facility, or a fee fishing facility, or to operate as an aquaculture processor or aquaculture transporter shall provide the following information on a form furnished by the Department:
1. Whether the ~~application~~ applicant is for an individual, corporation, partnership, cooperative, association, or other type of organization;
 2. The name and address of the ~~licensee~~ applicant;
 3. ~~Corporations~~ A corporation shall specify the date and state of incorporation;
 4. The principal name of the business, and all other business names ~~which that~~ that may be used;
 5. The name, mailing address, and telephone number of the ~~licensee's~~ applicant's authorized agent;
 6. The street address or legal description of the location of the facility to be licensed; and
 7. ~~Gross sales for the year prior to application.~~
 8. The signature of the person designated in subsection (A)(5), and the date the application is completed for submission to the Department.
- B.** ~~When all conditions are satisfactorily met, the~~ The Department shall grant the a license when all conditions are met and assign a Department establishment number identifying to each facility.
- C.** ~~All licenses, except special licenses, expire on December 31 for the year issued.~~
- D.** ~~The~~ A licensee shall advise the Department in writing of any change in the information provided on the application during the license year. This information shall be provided within 30 calendar days of the change.
- E.** ~~To ensure compliance with prevent the spread of diseases and causative agents listed in R3-2-1009, the Department may inspect and take samples from any facility or shipment being transported. A licensee shall notify the Department within 72 hours of becoming aware of the presence of any disease or causative agent as set forth listed in R3-2-1009 shall notify the Department within 72 hours. Aquatic animals found to be infected with a disease or causative agent listed in R3-2-1009 are prohibited from interstate or intrastate movement without prior written Department approval.~~
- F.** ~~The Department may shall quarantine or seize aquatic animals, alive or dead, plants, or products for examination or diagnostic study when there is a potential for spread of a disease or causative agents as prescribed agent listed in R3-2-1009, or any other disease or causative agent that could constitute a threat to aquatic animals or plants of the state. The Department shall issue a written notice to the licensee specifying:~~
1. The reason for the ~~Department~~ Department's action; and
 2. The licensee's ~~responsibilities, obligations, and options to the action~~ right to request a hearing as prescribed in A.R.S. § 3-2906.
- G.** ~~All A licensee shall conspicuously mark all~~ A licensee shall conspicuously mark all quarantined aquatic products and quarantined areas ~~shall be conspicuously marked by the licensee in a manner specified by the Department.~~
- H.** ~~Diagnostic A licensee shall pay all diagnostic, quarantine, and destruction costs shall be at the expense of the licensee.~~

R3-2-1010. Importation of Aquatic Animals

- A.** ~~The owner, or owner's agent, importing live~~ Live aquatic animals ~~imported~~ into the state shall ensure the animals are ~~be~~ accompanied by the following:
1. A Certificate of Aquatic Health as defined in R3-2-1001, based upon ~~a physical~~ an inspection of the originating facility within the 12 months preceding the shipment;
 2. ~~Transporter~~ A transporter license issued ~~pursuant to under~~ under R3-2-1007; and
 3. ~~Import~~ An import permit number issued by the Department ~~pursuant to under~~ under this rule, legibly written or typed on the certificate of aquatic health.
- B.** ~~Imported~~ The owner, or owner's agent, of live aquatic animals, except those imported by a retail outlet as prescribed in A.R.S. § 3-2907(J), must shall ensure that the animals are ~~be~~ consigned to or in the care of:
1. ~~an~~ An Arizona resident, ~~or legal;~~
 2. An aquaculture facility, fee fishing facility, or special license holder ~~entity~~ licensed by the Department, ~~or;~~
 3. a ~~A~~ holder of an aquatic wildlife stocking permit issued by the Arizona Game and Fish Department; or
 4. A holder of any aquatic animal license issued by the Arizona Game and Fish Department.
- C.** ~~The owner, or owner's agent, may obtain an~~ An import permit number ~~may be obtained~~ from the Department, Office of the State Veterinarian, by providing the following information:
1. Consignor's name, address, and telephone number;
 2. Consignee's name, address, and telephone number;
 3. Consignee's Department establishment number issued by the Department or a copy of an aquatic wildlife stocking permit or the ~~permit number~~ license issued by the Arizona Game and Fish Department;
 4. Origin of the shipment;
 5. Genus, species and common name of aquatic animals to be imported; and
 6. Quantity and size classification of aquatic animals to be imported.
- D.** ~~The~~ An import permit number ~~shall remain~~ remains valid for 15 calendar days from the date of issuance by the Department.

- E. The Department ~~may~~ shall refuse entry to any shipment ~~not in compliance~~ that does not comply with this rule.
- F. The Department shall quarantine and require destruction of any shipment, after its arrival, that it determines is infected with or was previously exposed to any causative agent or disease listed in R3-2-1009.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|------------------------------------|---------------------------------|
| R4-23-110 | Amend |
| R4-23-421 | New Section |
| R4-23-422 | New Section |
| R4-23-423 | New Section |
| R4-23-424 | New Section |
| R4-23-425 | New Section |
| R4-23-426 | New Section |
| R4-23-427 | New Section |
| R4-23-428 | New Section |
| R4-23-429 | New Section |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 32-1904(A)(1)
Implementing statute: A.R.S. § 32-1970
- 3. The effective date of the rules:**
November 9, 2002
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 7 A.A.R. 4096, September 14, 2001
Notice of Proposed Rulemaking: 8 A.A.R. 1760, April 12, 2002
- 5. The name and address of agency personnel with whom persons may communicate regarding the rule:**
Name: Dean Wright, Compliance Officer
Address: Board of Pharmacy
4425 W. Olive, Suite 140
Glendale, AZ 85302
Telephone: (623) 463-2727, ext. 131
Fax: (623) 934-0583
E-mail: rxcop@msn.com
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
H.B. 2415 passed in the 2000 Legislative session. The bill establishes a new statute, A.R.S. § 32-1970, that allows a pharmacist to participate in collaborative drug therapy management with a physician. H.B. 2415 mandates that the Board make rules approved by the Allopathic Board of Medical Examiners and the Board of Osteopathic Examiners in Medicine and Surgery to implement A.R.S. § 32-1970. The proposed rules fulfill that mandate by establishing specific requirements and standards for the expansion of pharmacist practice into drug therapy management and collaborative practice. The proposed rules add three new definitions to R4-23-110 and establish nine new Sections, R4-23-421 Drug Therapy Management, R4-23-422 Drug Therapy Management - Duties of the Board, R4-23-423 Drug Therapy Management Advisory Committee, R4-23-424 Drug Therapy Management - Pharmacist and Physician Qualifications, R4-23-425 Drug Therapy Management - Pharmacist Duties, R4-23-426 Drug Therapy Management - Physician Duties, R4-23-427 Drug Therapy Management - Documentation, R4-23-428 Drug Therapy Management - Quality Assurance, and R4-23-429 Drug Therapy Management - Privacy. The proposed rules establish the criteria for drug therapy management by a pharmacist under written protocol from a physician, including pharmacist qualifications, supervisory physician qualifications, approval or denial and renewal of drug therapy management agreements, time-frames, drug therapy management advisory committee, initiating an approved drug therapy management agreement, scope of practice, physician supervision requirements, documentation, quality assurance, and privacy.

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The Board believes that approval of these rules will benefit the public health and safety by expanding the use of pharmacist's under-utilized knowledge of drugs and drug therapy to manage a specific patient under written protocol from the patient's physician. Because a pharmacist is more accessible than a physician, a patient whose drug therapy is managed by a pharmacist benefits by receiving drug therapy monitoring and adjustment that reduces health care costs, including the use of fewer or less costly drugs, more effective or better tolerated drugs, early recognition and treatment of adverse drug reactions, and fewer hospital admissions.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule 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:

Johnson JA, Bootman JL. Drug-related morbidity and mortality: a cost-of-illness model. *Arch Int Med.* 1995; 155:1949-56.

Bootman JL, Harrison DL, Cox E. The health care cost of drug-related morbidity and mortality in nursing facilities. *Arch Int Med.* 1997;157:2089-96.

Ernst FR, Grizzle AJ. Drug-related morbidity and mortality: updating the cost-of-illness model. *J Am Pharm Assoc.* 2001;41:192-9.

Send reprint requests to:

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The University of Arizona
P. O. Box 210207
Tucson, AZ 85721-0207

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

Not applicable

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

The rules' impact on established Board of Pharmacy procedures and office-related costs is minimal. The Board's office-related costs will increase slightly to support the new Drug Therapy Management Advisory Committee implemented by the rule. These costs will include such things as postage, new forms, photocopies, and staff time related to drug therapy management agreement application, approval, and renewal. The Board's compliance staff will have increased costs, including compliance inspections and complaint investigations specific to drug therapy management agreements. The number of possible drug therapy management agreements the Board will see is unknown, but we do not anticipate more than 25 to 50.

For pharmacists, the main impact of the rule is meeting the qualification standards. Because providing drug therapy management is not required of all pharmacists, the cost associated with meeting the qualifications of the rule are borne by the individual pharmacist who desires to perform drug therapy management. The rule does not require participation, but rather sets the standards for participation. The pharmacist will benefit from better utilization of knowledge and skills, improved self-worth, and job satisfaction.

For pharmacies or facilities where drug therapy management occurs, the rules' main impact is increased costs related to providing space for the pharmacist-patient interaction, payment for pharmacist-time in providing drug therapy management, and other drug therapy management-related costs such as recordkeeping and communication. The pharmacy will benefit from increased revenue from billing for drug therapy management services, improved patient relations, and the provision of better patient care.

For physicians who enter into drug therapy management agreements, the rules' main impact is improved patient care through the delegation of drug therapy management to a drug therapy expert, the pharmacist, and improved time management that allows the physician to treat acutely ill patients.

For the individual patient, the rule's impact is substantial. The patient receives one-on-one consultation with a pharmacist regarding drug therapy. Pharmacist drug therapy management will increase drug regimen compliance, reduce drug-related problems and drug interactions, provide early intervention of drug-related problems and drug interactions, decrease overall drug costs, decrease hospital admissions and emergency room visits, and improve therapeutic outcomes.

For the public, the rules' economic impact is substantial. Pharmacist drug therapy management can reduce the negative therapeutic outcomes and associated costs caused by drug-related problems. The costs associated with negative therapeutic outcomes resulting from drug therapy were estimated to be between \$159.6 billion and \$195.1 billion for the year 2000, according to the article *Drug-Related Morbidity and Mortality: Updating the Cost-of-Illness Model* by Frank R. Ernst and Amy J. Grizzle in the March/April 2001 issue of the *Journal of the American Pharmaceutical Association*.

The Board, pharmacist, pharmacies, physicians, and the public benefit from a rule that is clear, concise, and understandable. The rule establishes expanded practice standards that allow the provision of pharmacy services that will decrease health care costs and save lives.

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

At the request of G.R.R.C. staff, the Board made necessary punctuation and grammar changes to produce a clear, concise, and understandable document.

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

A representative of the Arizona Pharmacy Association attended the public hearing and spoke in favor of the proposed rules. No written comments were received by the Board.

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

A.R.S. § 32-1970 requires that the Board make rules to implement the statute that are approved by the Allopathic Board of Medical Examiners and the Board of Osteopathic Examiners in Medicine and Surgery. The drug therapy management rules were approved at a public board meeting by the Allopathic Board of Medical Examiners on December 5, 2001 and the Board of Osteopathic Examiners in Medicine and Surgery on December 7, 2001. A copy of the December 5, 2001 and December 7, 2001 board meeting minutes is included in the rulemaking package.

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

None

14. Was this rule previously approved as an emergency rule?

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

ARTICLE 1. ADMINISTRATION

Section

R4-23-110. Definitions

ARTICLE 4. PROFESSIONAL PRACTICES

Section

R4-23-421. Drug Therapy Management

R4-23-422. Drug Therapy Management - Duties of the Board

R4-23-423. Drug Therapy Management Advisory Committee

R4-23-424. Drug Therapy Management - Pharmacist and Physician Qualifications

R4-23-425. Drug Therapy Management - Pharmacist Duties

R4-23-426. Drug Therapy Management - Physician Duties

R4-23-427. Drug Therapy Management - Documentation

R4-23-428. Drug Therapy Management - Quality Assurance

R4-23-429. Drug Therapy Management - Privacy

ARTICLE 1. ADMINISTRATION

R4-23-110. Definitions

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

“Active ingredient” No change

“Alternate physician” means a physician licensed under A.R.S. Title 32, Chapter 13 or 17 who signs a drug therapy management agreement to temporarily assume responsibility for supervision and evaluation of the drug therapy management performed by a pharmacist when the supervisory physician is unavailable by direct telecommunication or physical presence at the practice site.

“Approved course in pharmacy law” No change

“Approved Provider” No change

“Authentication of product history” No change

“AZPLEX” No change

“Batch” No change

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- “Beyond-use date” No change
- “Biological safety cabinet” No change
- “Certified pharmacy technician” No change
- “Class 100 environment” No change
- “Community pharmacy” No change
- “Component” No change
- “Computer system” No change
- “Computer system audit” No change
- “Container” No change
- “Continuing education” No change
- “Continuing education activity” No change
- “Continuing education unit” or “CEU” No change
- “Contact hour” No change
- “Correctional facility” No change
- “CRT” No change
- “Current good compounding practices” No change
- “Current good manufacturing practice” No change
- “Cytotoxic” No change
- “Day” No change
- “DEA” No change
- “Delinquent license” No change
- “Dispensing pharmacist” No change
- “Drug sample” No change
- “Drug therapy management” means any act or service provided by a pharmacist in compliance with a Board-approved drug therapy management agreement.
- “Drug therapy management agreement” means a written protocol, approved and signed by a supervisory physician, alternate physician, and pharmacist that specifies the conditions under which a pharmacist:
 - Assesses patient status;
 - Orders and interprets laboratory tests; and
 - Modifies, implements, or monitors patient drug therapy.
- “Extreme emergency” No change
- “FDA” No change
- “Immediate notice” No change
- “Inactive ingredient” No change
- “Internal test assessment” No change
- “Limited-service correctional pharmacy” No change
- “Limited-service mail-order pharmacy” No change
- “Limited-service nuclear pharmacy” No change
- “Limited-service pharmacy permittee” No change
- “Long-term care consultant pharmacist” No change
- “Lot” No change
- “Lot number” or “control number” No change
- “Materials approval unit” No change
- “Mediated instruction” No change
- “MPJE” No change
- “NABP” No change
- “NABPLEX” No change
- “NAPLEX” No change

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- “Other designated personnel” No change
- “Outpatient” No change
- “Outpatient setting” No change
- “Patient profile” No change
- “Pharmaceutical care” No change
- “Pharmacy law continuing education” No change
- “Pharmacy technician” No change
- “Prepackaged drug” No change
- “Provider pharmacist” No change
- “Radiopharmaceutical” No change
- “Radiopharmaceutical quality assurance” No change
- “Radiopharmaceutical services” No change
- “Red C stamp” No change
- “Remote drug storage area” No change
- “Resident” No change
- “Responsible person” No change
- “Score transfer” No change
- “Sight-readable” No change
- “Single-drug audit” No change
- “Single-drug usage report” No change
- “Sterile pharmaceutical product” No change
- “Strength” No change
- “Supervision” No change
- “Supervisory physician” means a physician licensed under A.R.S. Title 32, Chapter 13 or 17 who:
 - Writes an order in a patient’s medical record and signs a drug therapy management agreement authorizing a pharmacist to provide patient-specific drug therapy management, and
 - Assumes responsibility for the on-going supervision and evaluation of the drug therapy management performed by the pharmacist.
- “Supplying” No change
- “Support personnel” No change
- “Transfill” No change
- “Wholesale distribution” No change
- “Wholesale distributor” No change

ARTICLE 4. PROFESSIONAL PRACTICES

R4-23-421. Drug Therapy Management

- A.** A pharmacist qualified under R4-23-424 may provide drug therapy management under A.R.S. § 32-1970 after a physician’s initial diagnosis of a patient if drug therapy management:
 - 1. Is guided by a Board-approved drug therapy management agreement; and
 - 2. Occurs in one of the following pharmacy practice sites:
 - a. An acute care hospital.
 - b. A nursing care institution.
 - c. A staff model HMO, or
 - d. A community health center as defined in A.R.S. § 32-1921 and A.R.S. § 36-2907.06.
- B.** A drug therapy management agreement shall contain the following:
 - 1. The criteria and medical conditions under which the pharmacist may modify a patient’s drug therapy;
 - 2. The specific modifications of drug therapy that the pharmacist may make including drug, dose, and dosage form;
 - 3. The criteria and medical conditions under which the pharmacist may implement a patient’s drug therapy;
 - 4. The specific drug therapy that a pharmacist may implement including drug, dose, and dosage form;
 - 5. The subjective and objective patient assessment parameters that a pharmacist uses to evaluate a patient’s drug therapy at each patient visit, including ordering and interpreting a patient’s laboratory tests;

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6. The subjective and objective patient assessment criteria that indicate when a pharmacist shall consult with a supervisory physician or if unavailable, an alternate physician, including the timing and nature of a consultation with or referral to a supervisory or alternate physician and the specific procedures for a consultation with or referral to a supervisory or alternate physician;
7. The content and frequency of the periodic status report on a patient that a pharmacist shall provide in writing to or in a meeting with the supervisory physician;
8. The procedure for terminating the drug therapy management agreement;
9. The names of the supervisory physician, the alternate physician, and the pharmacist authorized to provide services under the agreement; and
10. The signature of all persons named in subsection (B)(9).

R4-23-422. Drug Therapy Management - Duties of the Board

A. The Board shall:

1. Appoint a Drug Therapy Management Advisory Committee;
2. In consultation with Board staff and the Drug Therapy Management Advisory Committee, approve or deny an initial drug therapy management agreement and the annual renewal of an existing drug therapy management agreement;
3. Terminate a pharmacist's drug therapy management agreement if the pharmacist:
 - a. Does not renew the agreement on or before the approval date anniversary; or
 - b. Is found by the Board to lack the qualifications required in R4-23-424; and
4. In processing a drug therapy management agreement application, comply with the application process established in R4-23-602, except the substantive review time-frame is 180 days and the overall time-frame is 200 days.

B. The Board may terminate a pharmacist's drug therapy management agreement if the Board determines that the pharmacist is violating the requirements of the drug therapy management agreement or federal or state drug laws.

R4-23-423. Drug Therapy Management Advisory Committee

A. The Drug Therapy Management Advisory Committee shall:

1. Consist of an osteopathic physician, an allopathic physician, and two pharmacists with prior or current experience in drug therapy management;
2. Serve at the pleasure of the Board;
3. Serve for a term of two years unless removed or reappointed by the Board;
4. Review initial and renewal drug therapy management agreement applications; and
5. Advise the Board regarding the approval or denial of reviewed drug therapy management agreement applications.

B. The Drug Therapy Management Advisory Committee members are not eligible for compensation from the Board.

R4-23-424. Drug Therapy Management - Pharmacist and Physician Qualifications

A. Pharmacist qualifications.

1. Before initiating a drug therapy management agreement with a supervisory physician, a pharmacist shall have:
 - a. A current, unrestricted license issued by the Board; and
 - b. Proof of one of the following:
 - i. Completion of a pharmacy practice residency accredited by the American Society of Health Systems Pharmacists or the American Pharmaceutical Association;
 - ii. Current board specialty certification from the Board of Pharmaceutical Specialists or current certification as a Certified Geriatric Pharmacist;
 - iii. A Doctor of Pharmacy degree and completion of an American Council on Pharmaceutical Education approved certificate program in each area of practice covered in the drug therapy management agreement; or
 - iv. A Bachelor's degree in Pharmacy, satisfactory completion of an American Council on Pharmaceutical Education approved certificate program in each area of practice covered in the drug therapy management agreement, and appropriate credentialing issued by the governing body of a qualifying Arizona practice site described in A.R.S. § 32-1970.
2. To ensure that a pharmacist who provides drug therapy management is competent to continue providing the services delineated in a drug therapy management agreement, a pharmacist shall annually complete six contact hours (0.6 CEU's) of continuing education for each area of practice covered by the pharmacist's drug therapy management agreement. The continuing education hours may be used to satisfy the continuing education requirements for licensure as a pharmacist.

B. Supervisory physician qualifications. Before initiating a drug therapy management agreement with a pharmacist, a supervisory physician shall:

1. Have a current, unrestricted license from the Allopathic Board of Medical Examiners or the Board of Osteopathic Examiners in Medicine and Surgery; and
2. Not be a resident in a post-graduate medical training program.

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C. Alternate physician qualifications. Before initiating a drug therapy management agreement with a pharmacist, an alternate physician shall:

1. Have a current, unrestricted license from the Allopathic Board of Medical Examiners or the Board of Osteopathic Examiners in Medicine and Surgery; and
2. Not be a resident in a post-graduate medical training program.

R4-23-425. Drug Therapy Management - Pharmacist Duties

A. To obtain initial approval for a drug therapy management agreement, a pharmacist shall submit a completed application, on a form furnished by the Board, that includes:

1. Pharmacist name and Arizona pharmacist license number;
2. Documentation of the pharmacist's qualifications as specified in R4-23-424;
3. Practice site name, address, mailing address if different, telephone number, and fax number;
4. Documentation of practice site qualification under A.R.S. § 32-1970;
5. Supervisory physician name, office address, mailing address if different, telephone number, and fax number;
6. Documentation of the supervisory physician's qualifications as specified in R4-23-424;
7. Alternate physician name, office address, mailing address if different, telephone number, and fax number;
8. Documentation of the alternate physician's qualifications as specified in R4-23-424;
9. Description of the pharmacist's practice area or areas for which approval is sought;
10. An original and 11 copies of the drug therapy management agreement covering each practice area for which Board approval is sought;
11. Dated and signed affirmation of the supervisory physician's acceptance of the responsibility for oversight of the pharmacist's drug therapy management;
12. Dated and signed affirmation of an alternate physician's acceptance of the responsibility for temporary oversight of the pharmacist's drug therapy management; and
13. Dated and signed affirmation of the pharmacist's acceptance of the responsibility to provide drug therapy management as described in the drug therapy management agreement.

B. To renew an existing drug therapy management agreement, a pharmacist shall submit a completed renewal application, on a form furnished by the Board, that includes, in addition to the requirements of subsection (A), the following:

1. Documentation that the supervisory physician, alternate physician, and participating pharmacist reviewed the protocols contained in the agreement;
2. Documentation that the participating pharmacist completed the continuing education requirements specified in R4-23-424; and
3. An original and 11 copies of the drug therapy management agreement covering each practice area for which renewal is sought, including highlighting any requested modifications to the agreement.

C. A pharmacist who participates in a Board-approved drug therapy management agreement shall:

1. Renew the agreement annually on or before the initial approval date anniversary;
2. Before submitting the application to renew the agreement, participate with the supervisory physician in reviewing the agreement;
3. Notify the Board within ten days of termination of the drug therapy management agreement;
4. During the first appointment with a patient under a Board-approved drug therapy management agreement:
 - a. Verify that a copy of the drug therapy management agreement, which includes the signature of the supervisory physician, alternate physician, and pharmacist, is placed in the patient's medical record;
 - b. Verify that a copy of the supervisory physician's written order, which authorizes the pharmacist to collaboratively manage the patient's drug therapy, is placed in the patient's medical record; and
 - c. Verify that a copy of the patient's written consent, which shows that the patient understands the pharmacist's role in the patient's care, the nature of the relationship with the supervisory physician, and the procedure for revoking consent, is placed in the patient's medical record;
5. Ensure compliance with the documentation requirements of R4-23-427;
6. Ensure compliance with quality assurance program required in R4-23-428;
7. Ensure compliance with the privacy requirements of R4-23-429; and
8. Comply with the Board-approved drug therapy management agreement.

R4-23-426. Drug Therapy Management - Physician Duties

A. Before referring a patient to a pharmacist, a supervisory physician who participates in a Board-approved drug therapy management agreement shall:

1. Have a physician-patient relationship with the patient and make a diagnosis of the patient;
2. Review the approved drug therapy management agreement with the patient;
3. Obtain the patient's consent to participate in the drug therapy management agreement;

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4. Document the patient's consent to participate in the drug therapy management agreement by obtaining the patient's dated and signed consent that states that the patient has read, understood, and agreed to participate in the drug therapy management agreement. The dated and signed consent shall be placed in the patient's medical records;
 5. Authorize a specific pharmacist to collaboratively manage a patient's drug therapy by placing a written order in the patient's medical record; and
 6. Place a copy of the approved drug therapy management agreement in the patient's medical record to provide notice to other health care providers of the drug therapy management.
- B.** Physician supervision. A supervisory physician who supervises a pharmacist under a Board-approved drug therapy management agreement shall:
1. Before submitting the application to renew the agreement and in consultation with the participating alternate physician and pharmacist, review and approve the drug therapy management agreement;
 2. Review and initial the pharmacist's documented care for appropriateness of care and compliance with the drug therapy management agreement when the patient visits the supervisory physician for follow-up or any other services;
 3. Routinely evaluate the patient care provided by the pharmacist as specified in the drug therapy management agreement; and
 4. Ensure that the supervisory physician or the alternate physician is readily available to the pharmacist for consultation, assistance, and direction by direct telecommunication or physical presence at the practice site.
- C.** Alternate physician duties. An alternate physician who participates in a Board-approved drug therapy management agreement shall ensure that the alternate physician is available to:
1. Temporarily assume responsibility for supervision and evaluation of the drug therapy management performed by the pharmacist;
 2. Provide consultation, assistance, and direction to the pharmacist when the supervisory physician is unavailable; and
 3. Before submitting the application to renew the agreement, participate with the supervisory physician and pharmacist in reviewing the agreement.

R4-23-427. Drug Therapy Management - Documentation

Documenting pharmacist-provided drug therapy management. A pharmacist who participates in drug therapy management under a Board-approved drug therapy management agreement shall:

1. After each patient-pharmacist appointment, document the drug therapy management for the patient in the patient's medical record at the practice site, including patient data, assessment of patient status, and treatment plan;
2. Date and sign the documentation required in subsection (1) in a patient's medical record with the pharmacist's first and last name, title, and Arizona pharmacist license number;
3. Document a consultation with or referral to the supervisory physician or the alternate physician; and
4. Document a consultation with a supervisory or alternate physician that results in a pharmacist's need to generate the physician's verbal prescription order for a drug not included in the drug therapy management agreement. The documentation shall include:
 - a. The phrase "verbal order by Dr." and the name of the supervisory physician or alternate physician authorizing the verbal prescription order,
 - b. The date and signature of the pharmacist generating the verbal prescription order in the same manner described in subsection (2), and
 - c. The countersignature of the supervisory physician or alternate physician authorizing the verbal prescription order within 72 hours of the pharmacist-generated verbal prescription order.

R4-23-428. Drug Therapy Management - Quality Assurance

- A.** A pharmacist who provides drug therapy management shall, in cooperation with the supervisory physician and the appropriate committee of the practice site, develop and implement a continuous quality assurance and improvement program that includes standards and procedures to identify, evaluate, and improve the quality of pharmacist-provided drug therapy management.
- B.** Periodic status reports or meetings between a pharmacist and supervisory physician regarding care of a patient under the drug therapy management agreement shall include evaluating and documenting patient status and the quality of care provided by the pharmacist.

R4-23-429. Drug Therapy Management - Privacy

- A.** A pharmacist who provides drug therapy management shall perform drug therapy management activities in a private and distinct area of the practice site.
- B.** In a practice site where a pharmacist provides drug therapy management under a drug therapy management agreement, a pharmacy permittee shall ensure that a private and distinct area of similar size and environment to that used by other primary care providers at the practice site is available for the performance of pharmacist-provided drug therapy management activities.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 5. DEPARTMENT OF HEALTH SERVICES

CHILD CARE FACILITIES

PREAMBLE

1. Sections Affected

Rulemaking Action

Article 1	Amend
R9-5-101	Amend
R9-5-102	New Section
R9-5-201	Amend
R9-5-202	Amend
Table 1	New Table
R9-5-203	Amend
R9-5-204	Repeal
R9-5-204	Renumber
R9-5-204	Amend
R9-5-205	Renumber
R9-5-205	Amend
R9-5-206	Renumber
R9-5-206	Amend
R9-5-207	Renumber
R9-5-207	New Section
R9-5-208	Amend
R9-5-209	Amend
R9-5-509	Amend
Article 7	Amend
R9-5-701	Repeal
R9-5-701	New Section
R9-5-702	Repeal
R9-5-702	New Section
Table 2	New Table
R9-5-703	Repeal
R9-5-703	New Section
R9-5-704	Amend
R9-5-705	Repeal
R9-5-705	New Section
R9-5-706	Repeal
R9-5-706	New Section
R9-5-707	Amend
R9-5-708	New Section
Article 8	Amend
R9-5-801	Amend
R9-5-802	Amend
R9-5-804	Amend
R9-5-806	Amend
R9-5-807	Amend
Article 9	Amend
R9-5-901	Amend
R9-5-903	Amend
R9-5-904	Amend
R9-5-905	Amend
R9-5-906	Amend
R9-5-907	Amend
R9-5-908	Amend
R9-5-909	Amend
R9-5-912	Amend
Article 10	Amend
R9-5-1001	Amend
R9-5-1003	Amend

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

Authorizing statutes: A.R.S. §§ 36-136(F), 36-883, 36-883.04, 36-897.01, and 36-897.02

Implementing statutes: A.R.S. §§ 36-882, 36-883, 36-883.02, 36-885, 36-888, 36-889, 36-897.03, 36-897.05, 36-897.06, and 36-897.08

3. The effective date of the rules:

November 10, 2002

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 8 A.A.R. 1554, March 29, 2002

Notice of Proposed Rulemaking: 8 A.A.R. 1593, April 5, 2002

Notice of Public Information: 8 A.A.R. 1859, April 12, 2002

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

Name: Kathleen Phillips, Rules Administrator

Address: Arizona Department of Health Services
Office of Administrative Rules
1740 W. Adams, Room 102
Phoenix, AZ 85007

Telephone: (602) 542-1264

Fax: (602) 364-1150

E-mail: kphilli@hs.state.az.us

or

Name: Lourdes Ochoa, Health Program Manager III

Address: Arizona Department of Health Services
Division of Assurance and Licensure Services
Office of Child Care Licensure
1647 E. Morten, Suite 230
Phoenix, AZ 85020

Telephone: (602) 674-4220

Fax: (602) 861-0674

E-mail: lochoa@hs.state.az.us

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

a. CHILD CARE FACILITIES

i. Background

A.R.S. Title 36, Chapter 7.1, Article 1 provides the Department with statutory authority to license and regulate child care facilities. The rules in 9 A.A.C. 5, Articles 2 through 6 implement those statutes by setting requirements for licensure, facility administration, facility staff, facility programs and equipment, and the physical plant of a facility. Article 2 contains provisions for initial and renewal license applications; time-frames; fingerprinting; child care service classifications; changes affecting licensure; inspections and investigations; and denial, revocation, or suspension of a license. Article 5 contains requirements for facility programs and equipment and includes food preparation and service requirements.

Laws 1998, Ch. 270 amended A.R.S. Title 36, Chapter 7.1, Article 1 by moving the responsibility for fingerprinting checks from the Department to the Department of Public Safety, adding the concept of class one and class two fingerprint clearance cards, changing the deadline for an employee of a child care facility to comply with fingerprinting requirements, and expressly requiring an applicant for licensure to have a class one or class two fingerprint clearance card.¹

¹Although Laws 1998, Ch. 270 went into effect on August 16, 1999, § 28 of the session law contains a grandfather clause for individuals who were fingerprinted before July 1, 2000, and who do not change employment, apply for certification or recertification, or enter into a contract that requires fingerprinting. The Department has, consistent with legal advice and with the apparent intention of the legislature that child care workers be fingerprinted every three years, interpreted this as providing a three-year grace period for child care workers who were fingerprinted before July 1, 2000, and who have not changed employment.

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This grace period expires on August 16, 2002. Thus, the rules require these individuals to be fingerprinted under the current process.]

Laws 1999, Ch. 11 also amended the fingerprinting provisions in A.R.S. Title 36, Chapter 7.1, Article 1 by clarifying the requirements for volunteers in child care facilities and by amending the list of offenses included.

Laws 2000, Ch. 77 amended A.R.S. Title 36, Chapter 7.1, Article 1 by defining “substantial compliance”; incorporating “substantial compliance” into licensing requirements; and amending requirements for posting information, fingerprinting, records inspection, civil penalties, and intermediate sanctions. Laws 2000, Ch. 251, § 10 further amended the fingerprinting requirements of A.R.S. Title 36, Chapter 7.1, Article 1.

Laws 2001, Ch. 152 amended A.R.S. Title 36, Chapter 7.1, Article 1 by defining “controlling person,” amending application requirements for child care facility licensure, amending eligibility requirements for child care facility licensure, requiring an applicant or licensee to provide the Department with written notice when a controlling person changes, and requiring an applicant or licensee to designate an agent to receive communications from the Department. Laws 2001, Ch. 350 amended A.R.S. § 36-883.02 by removing an exception for individuals fingerprinted under A.R.S. §§ 15-512 and 15-534. Laws 2001, Ch. 350 also added a requirement that child care personnel certify that they have not been denied or had revoked a license to operate a child care facility or a certificate to operate a child care group home in Arizona or another state and have not been denied or had revoked certification to work in a child care facility or child care group home. Finally, Laws 2001, Ch. 350 clarified that a child care facility may not allow an individual to be employed or volunteer in a child care facility if the individual has been denied a class two fingerprint clearance card or has not received an interim approval from the Board of Fingerprinting.

In addition, on October 3, 2001, the new rules for food establishments, contained in 9 A.A.C. 8, Article 1, took effect. Those rules completely replace the previous rules for food establishments, including those within child care facilities.

ii. This Rulemaking

The rules for 9 A.A.C. 5, Article 2 include the rule changes necessary to ensure consistency with the statutory changes in Laws 1998, Ch. 270; Laws 1999, Ch. 11; Laws 2000, Ch. 77 and Ch. 251; and Laws 2001, Ch. 152 and Ch. 350. This rulemaking also makes the rules consistent with the new rules for food establishments in 9 A.A.C. 8, Article 1.

The rules also increase the time-frames for child care facility licensure. The Department has tracked the child care facility licensure process since adopting time-frames in October 1997 and has determined that the substantive review time-frames for initial and renewal license applications are inadequate. In October 1997, there were only 1,671 licensed child care facilities in Arizona. Currently, there are more than 2,063 licensed child care facilities and several hundred applications pending. The Department has found that the time needed to complete a substantive review has been affected by increases in licensed capacity, a broader spectrum of services offered, location (more and more child care facilities are located in outlying areas of the state), and creative uses of physical plants for child care facilities. As the child care industry has evolved and expanded to meet the needs of the state’s increasing population, industry needs and facility inspections have become more and more complex. Thus, the Department is proposing to increase the substantive review time-frames for initial and renewal applications to better reflect the time needed to complete processing.²

[²In the past four years, the Office of Child Care Licensure has been out of compliance with its time-frames 19 times.]

As a result of the tracking process, the Department has also determined that it initially underestimated the length of time necessary to complete an administrative completeness review of and process a renewal application. Thus, the Department is also proposing to increase the administrative completeness review time-frame for renewal applications to 30 days to make it consistent with the administrative completeness review time-frame for an initial license.

In addition, the Department has determined that it needs time-frames for approval of changes affecting a license. In 1997, the Department did not consider this approval to be a “license” as defined in the Administrative Procedure Act. However, the Department has determined that this approval is indeed a “license.” Thus, this rulemaking adds time-frames for this approval process.

This rulemaking also adds a requirement that a facility licensee notify the Department in writing before it changes a facility director. Because this is not an approval process, it does not require time-frames.

This rulemaking also amends the definitions that relate to child care facilities to bring them up to date and to make them consistent with the changes in the rules. In addition, the rulemaking adds a new Section at R9-5-102 to clarify which individuals are responsible to act for an applicant or licensee in completing and signing documents, complying with fingerprinting requirements, and complying with Department-provided training requirements. In Article 5, this rulemaking amends R9-5-509 to make it consistent with the new rules for food establishments, which are contained in 9 A.A.C. 8, Article 1. Finally, this rulemaking amends the lan-

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guage of the rules to reflect current Department practices; to make the rules clear, concise, and understandable; and to bring the rules into conformance with current rulemaking format and style requirements.

b. CHILD CARE GROUP HOMES

i. Background

A.R.S. Title 36, Chapter 7.1, Article 4 provides the Department with statutory authority to certify and regulate child care group homes. The rules in 9 A.A.C. 5, Articles 7 through 10 implement those statutes by setting requirements for child care group home certification, administration, staff qualifications, programs and equipment, and physical facility standards. Currently, there are 295 certified child care group homes and 100 applications for certification pending.

Article 7 contains provisions for initial and renewal certification applications; fingerprinting; changes affecting certification; inspections and investigations; and denial, revocation, or suspension of certification. Article 7 currently lacks time-frames. When the rules were adopted in 1990, there was not yet a requirement to have time-frames, and these rules have not been amended since their adoption.

Laws 1998, Ch. 270 amended A.R.S. Title 36, Chapter 7.1, Article 4 by moving the responsibility for fingerprint checks from the Department to the Department of Public Safety, adding the concept of class one and class two fingerprint clearance cards, changing the deadline by which an employee of a child care group home is required to comply with fingerprinting requirements, and expressly requiring an applicant for child care group home certification to have a class one or class two fingerprint clearance card.³

[³Although Laws 1998, Ch. 270 went into effect on August 16, 1999, § 28 of the session law contains a grandfather clause for individuals who were fingerprinted before July 1, 2000, and who do not change employment, apply for certification or recertification, or enter into a contract that requires fingerprinting. The Department has, consistent with legal advice and with the apparent intention of the legislature that child care workers be fingerprinted every three years, interpreted this as providing a three-year grace period for child care workers who were fingerprinted before July 1, 2000, and who have not changed employment. This grace period expires August 16, 2002. Thus, the rules require these individuals to be fingerprinted under the current process.]

Laws 1999, Ch. 11 also amended the fingerprinting provisions in A.R.S. Title 36, Chapter 7.1, Article 4 by clarifying the responsibilities of volunteers and adding to the list of criminal offenses.

Laws 2000, Ch. 77 amended A.R.S. Title 36, Chapter 7.1, Article 4 by defining “substantial compliance”; incorporating “substantial compliance” into certification requirements; adding injunction authority; and amending requirements for fingerprinting, records inspection, civil penalties, and intermediate sanctions. Laws 2000, Ch. 251, §§ 11 and 12 further amended the fingerprinting requirements of A.R.S. Title 36, Chapter 7.1, Article 4.

ii. This Rulemaking

The rules for 9 A.A.C. 5, Article 7 include the rule changes necessary to ensure consistency with the statutory changes in Laws 1998, Ch. 270; Laws 1999, Ch. 11; and Laws 2000, Ch. 77 and Ch. 251.

The rules also establish time-frames for initial and renewal applications for child care group home certification and for approval of changes affecting certification.

This rulemaking also adds a requirement that a certificate holder notify the Department in writing before it changes a provider. Because this is not an approval process, it does not require time-frames.

This rulemaking also amends the definitions that relate to child care group homes to bring them up to date and to make them consistent with the changes in the rules. In addition, the rulemaking adds a new Section at R9-5-102 to clarify which individuals are responsible to act for an applicant or certificate holder in completing and signing documents, complying with fingerprinting requirements, and complying with Department-provided training requirements. Finally, this rulemaking amends the language of the rules in Article 7 to reflect current Department practices; to make the rules clear, concise, and understandable; and to bring the rules into conformance with current rulemaking format and style requirements.

In Articles 8, 9, and 10, this rulemaking changes the term “day care group home” to “child care group home” to be consistent with statutory language. In addition, R9-5-801 contains a substantive requirement previously contained in R9-5-701(B)(11).

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule 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:

Not applicable

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

Not applicable

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

The Department will incur moderate-to-substantial costs from this rulemaking. The Department will incur moderate-to-substantial costs from implementing the new time-frames for approval of a change affecting a facility license and will incur moderate costs from implementing the new time-frames for child care group homes. In addition, the Department will incur minimal-to-moderate costs from implementing the new time-frames for approval of a change affecting a child care group home certificate and will incur moderate costs from the rulemaking process itself.

The rules will minimally burden a small portion of the regulated community—only those licensees who change the locations of their facilities—because the rules eliminate a provision exempting these people from attending the four-hour Department-provided training required to obtain a new license. The Department has for some time encouraged these people to attend the training, because this type of refresher training seems to assist licensees in maintaining compliance with the rules.

Otherwise, this rulemaking benefits the public and the regulated community. Making the rules consistent with statutory requirements will minimally benefit the public and the regulated community by alleviating any confusion that exists because of the inconsistencies between the requirements in statute and in rule. This will also minimally benefit the Department, because the Department will receive fewer inquiries regarding the inconsistencies between statute and rule. In addition, amending the administrative completeness review and substantive review time-frames for the licensure of child care facilities will provide the public and the regulated community with a more accurate assessment of the length of time necessary for completing the licensure process. Establishing time-frames for the certification of child care group homes, for approval of a change affecting a license, and for approval of a change affecting a certificate will benefit the public and the regulated community by notifying the public and the regulated community of the length of time necessary to obtain these approvals. Amending the rules for licensure and certification to reflect current Department practices will also minimally benefit the public and the regulated community by clarifying the responsibilities of an applicant, licensee, or certificate holder. This clarification will also benefit the Department, because there will be less confusion surrounding these responsibilities and thus fewer inquiries to the Department regarding these responsibilities.

Updating the definitions in 9 A.A.C. 5 will also minimally benefit the public and the regulated community by alleviating any confusion caused by those definitions that are out-of-date. Updating the definitions will also minimally benefit the Department, because the Department will no longer receive inquiries regarding the meanings of the terms for which the definitions are out-of-date. In addition, adding a new Section at R9-5-102 to clarify which individuals are responsible to act for an applicant, licensee, or certificate holder in completing and signing documents, complying with fingerprinting requirements, and complying with Department-provided training requirements will minimally benefit the public and the regulated community by alleviating confusion that exists in this area and will minimally benefit the Department because the Department will no longer receive inquiries in this area.

Because the changes made in response to Laws 1998, Ch. 270; Laws 1999, Ch. 11; Laws 2000, Ch. 77 and Ch. 251; and Laws 2001, Ch. 152 and Ch. 350 are required by statute, economic impacts resulting from these changes do not result from this rulemaking and are not included within this summary. Likewise, the changes in R9-5-509 necessitated by the revision of 9 A.A.C. 8, Article 1 are not included in this summary because they derive from the revision of 9 A.A.C. 8, Article 1, not from this rulemaking.

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

The Department corrected the label for Article 1 within the text of the rules to match the table of contents.

In R9-5-101(36), the Department corrected the quoted definition of “controlling person” to be consistent with A.R.S. § 36-881.

In R9-5-101(40), the Department changed the definition of “credit hour” to accommodate academic courses that are equivalent to but shorter than semester-length courses, such as summer school or evening courses.

In R9-5-101(49), the Department changed the definition of “facility” because the term is used in Articles 7 through 10 to mean child care group home.

In R9-5-101(59), the Department changed the definition of “health care provider” to eliminate redundancy.

In R9-5-101(90), the Department changed the definition of “physician assistant” to eliminate unnecessary language.

In R9-5-101(92), the Department changed the definition of “private pool” to conform to the changes made in 9 A.A.C. 8, Article 8 effective August 8, 2002.

In R9-5-101(97), the Department changed the definition of “public pool” to conform to the changes made in 9 A.A.C. 8, Article 8 effective August 8, 2002.

In R9-5-101(98), the Department deleted “with disabilities” because some public schools offer preschool programs for children other than children with disabilities.

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In R9-5-101(103), the Department changed the definition of “school-age child” to clarify that, in addition to the criteria listed in the definition as proposed, a school-age child is required to be five years old on or before January 1 of the current school year or to have been five years old on or before January 1 of the most recent school year, which is consistent with A.R.S. § 15-821.

In R9-5-101(107), the Department changed the definition of “semi-public pool” to conform to the changes made in 9 A.A.C. 8, Article 8, effective August 8, 2002.

In R9-5-101(114), the Department eliminated the use of brackets and italics to make the definition clearer.

In R9-5-101(116), the Department changed the definition of “swimming pool” to conform to the changes made in 9 A.A.C. 8, Article 8, effective August 8, 2002.

In R9-5-201, the Department deleted the word “packet” and rewrote R9-5-201(C) to clarify the rule.

In R9-5-202, the Department rewrote R9-5-202(C)(2) to clarify when inspections will be conducted for a change affecting a license.

In R9-5-203, the Department added “within seven working days after the individual becomes a staff member or adult resident” to R9-5-203(B) to clarify the rule and to make it consistent with A.R.S. § 36-883.02(A) and deleted R9-5-203(E) and relabeled to conform because the date referenced has already passed.

In R9-5-205, the Department deleted the word “packet” to clarify the rule.

In R9-5-207(C), the Department corrected an incorrect cross-reference.

In R9-5-509(B)(2)(b), the Department changed “only once” to “on only one child and only one time” to clarify the rule.

In R9-5-701, the Department deleted the word “packet” to clarify the rule and corrected an incorrect form name in R9-5-701(2)(i)(viii).

In R9-5-702, the Department added “, a renewal certificate,” to R9-5-702(B)(1)(c) to correct an omission and rewrote R9-5-702(C)(2) to clarify when inspections will be conducted for a change affecting a certificate.

In R9-5-703, the Department added “within seven working days after the individual becomes a staff member or adult resident” to R9-5-703(B) to clarify the rule and to make it consistent with A.R.S. § 36-897.03(A) and deleted R9-5-703(E) and relabeled to conform because the date referenced has already passed.

In R9-5-704, the Department deleted the word “packet” to clarify the rule.

In R9-5-706, the Department corrected an incorrect cross-reference.

Throughout the rules, the Department made minor grammatical, punctuation, formatting, and stylistic changes to make the rules more clear, concise, and understandable and to bring the rules into compliance with current rulemaking format and style requirements.

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

The Department did not receive any comments regarding the proposed rules.

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

Not applicable

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

Not applicable

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

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

ARTICLE 1. DEFINITIONS GENERAL

Section

R9-5-101. Definitions

R9-5-102. Individuals to Act for Applicant, Licensee, or Certificate Holder Regarding Document, Fingerprinting, and Department-Provided Training Requirements

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ARTICLE 2. FACILITY LICENSURE

Section

- R9-5-201. Application for a License
- R9-5-202. ~~Initial License Application~~ Time-frames Time-frames
Table 1. Time-frames (in days)
- R9-5-203. ~~Registration and~~ Fingerprinting Requirements
- ~~R9-5-204.~~ ~~Revocation, Denial, or Reconsideration of Registration~~
- ~~R9-5-205.~~ ~~R9-5-204.~~ Child Care ~~Services~~ Service Classifications
- ~~R9-5-206.~~ ~~R9-5-205.~~ License Renewal
- ~~R9-5-207.~~ ~~R9-5-206.~~ Changes Affecting a License
- R9-5-207. Change in Director
- R9-5-208. Inspections; Investigations
- R9-5-209. Denial, Revocation, or Suspension of License

ARTICLE 5. FACILITY PROGRAM AND EQUIPMENT

Section

- R9-5-509. General Food Service and Food Handling Standards

ARTICLE 7. CHILD CARE GROUP HOME CERTIFICATION OF DAY CARE GROUP HOMES

Section

- R9-5-701. ~~Initial certification~~ Application for a Certificate
- R9-5-702. ~~Certificate to operate a day care group home~~ Time-frames
Table 2. Time-frames (in days)
- R9-5-703. ~~Denial of certification~~ Fingerprinting Requirements
- R9-5-704. Certificate ~~Renewal of certification~~
- R9-5-705. ~~Suspension or revocation of certification~~ Changes Affecting a Certificate
- R9-5-706. ~~Notice of changes~~ Change in Provider
- R9-5-707. ~~Complaints; investigations~~ Inspections; Investigations
- R9-5-708. Denial, Revocation, or Suspension of Certificate

ARTICLE 8. ~~DAY~~ CHILD CARE GROUP HOME ADMINISTRATION

Section

- R9-5-801. Provider standards and responsibilities
- R9-5-802. Personnel standards and responsibilities
- R9-5-804. Inspection reports
- R9-5-806. Children's records and reports
- R9-5-807. Attendance records; admission and release of children

ARTICLE 9. PROGRAM AND EQUIPMENT FOR ~~DAY~~ CHILD CARE GROUP HOMES

Section

- R9-5-901. General program and equipment standards
- R9-5-903. Supplemental equipment standards for school-age children
- R9-5-904. Supplemental program and equipment standards for special needs children
- R9-5-905. Supplemental program and equipment standards for night care
- R9-5-906. Illness and infestation
- R9-5-907. Emergency medical care
- R9-5-908. Medications
- R9-5-909. Discipline and guidance
- R9-5-912. Transportation of children and field trips

ARTICLE 10. ACTIVITY AREAS AND PHYSICAL FACILITY STANDARDS FOR ~~DAY~~ CHILD CARE GROUP HOMES

Section

- R9-5-1001. ~~Day~~ Child care group home activity areas
- R9-5-1003. Fire and safety

ARTICLE 1. DEFINITIONS GENERAL

R9-5-101. Definitions

In this Chapter, unless otherwise specified ~~the following terms mean:~~

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1. ~~“Abuse” means the infliction or allowing of physical injury, impairment of bodily function or disfigurement, or the infliction of or allowing another individual to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior, and which emotional damage is diagnosed by a medical doctor or psychologist as prescribed by A.R.S. § 8-223 and which is caused by the acts or omissions of an individual having care, custody, and control of a child. Abuse includes the offenses stated in A.R.S. § 8-546 (A)(2); has the same meaning as in A.R.S. § 8-201.~~
2. ~~“Accident” means an unexpected occurrence that may or may not be an emergency that:~~
 - a. ~~causes~~ Causes physical injury to a child,
 - b. ~~and requires~~ Requires attention by from a staff member, and
 - c. May or may not be an emergency.
3. “Accommodation school” has the same meaning as in A.R.S. § 15-101.
- ~~3.4.~~ “Accredited” means approved by the:
 - a. New England Association of Schools and Colleges,
 - b. Middle States Association of Colleges and Secondary Schools,
 - c. North Central Association of Colleges and Schools,
 - d. Northwest Association of Schools and Colleges,
 - e. Southern Association of Colleges and Schools, or
 - f. Western Association of Schools and Colleges.
- ~~4.5.~~ “Activity” means an action planned by a licensee, certificate holder, or provider and performed by a child while supervised by a staff member.
- ~~5.6.~~ “Activity area” means a specific indoor or outdoor space or room of a licensed facility or certified child care group home that is designated by a licensee or certificate holder for use by enrolled children for activities.
- ~~6.7.~~ “Adaptive device” means equipment used to augment an individual’s use of the individual’s arms, legs, sight, hearing, or other physical part or function.
8. “Adult” means an individual who is at least 18 years of age.
- ~~7.9.~~ “Age-appropriate” means consistent with a child’s age and age-related stage of physical growth and mental development.
10. “Agency” means any board, commission, department, office, or other administrative unit of the federal government, the state, or a political subdivision of the state.
- ~~8.11.~~ “Applicant” means an individual or business organization requesting one of the following:
 - a. The following persons requesting an An initial or renewal license:
 - i. If an individual, the individual owning the facility;
 - ii. If a corporation, any 2 officers of the corporation;
 - iii. If an association or cooperative, any 2 members of the governing board of the association or cooperative;
 - iv. If a limited liability company, the designated manager, or, if no manager is designated, any 2 members of the limited liability company;
 - v. If a partnership, any 2 of the partners;
 - vi. If a joint venture, any 2 individuals signing the joint venture agreement;
 - vii. If a public school, any individual designated in writing as signatory for the facility by the school governing board or school district superintendent;
 - viii. If a charter school, the person approved to operate a charter school in Arizona by the Arizona Board of Education, Arizona Board of Charter Schools, or a school governing board; or
 - ix. If a governmental agency, the director of the governmental agency or the individual designated in writing by the director; or
 - b. An initial or renewal certificate.
 - ~~b.c.~~ A licensee submitting a request for a modification to the physical plant of a licensed facility Approval of a change affecting a license under R9-5-206, or
 - d. Approval of a change affecting a certificate under R9-5-705.
- ~~9.12.~~ “Application” means the documents required by that an applicant is required to submit to the Department for license, ~~or registration~~ certification, or approval of a request for a change affecting a license or a certificate.
- ~~10.13.~~ “Assistant teacher-caregiver” means a staff member who, for compensation, aids a teacher-caregiver in planning, developing, or conducting child care activities.
- ~~11.14.~~ “Association or cooperative” means a group of individuals other than a corporation, limited liability company, partnership, joint venture, or public school who have established a governing board and bylaws to operate a facility or a child care group home.
15. “Beverage” means a liquid for drinking, including water.
16. “Business organization” means an entity such as an unincorporated association, a corporation, a limited liability company, a partnership, or a governmental entity.

- 12-17. "Calendar week" means a ~~7-day~~ seven-day period beginning on Sunday at 12:00 a.m. and ending on Saturday at 11:59 p.m.
- 13-18. "C.C.P." means Certified Childcare Professional, a credential awarded by the National Child Care Association to ~~individuals~~ an individual who has successfully completing completed a test of ability to work effectively with children.
- 14-19. "C.D.A." means Child Development Associate, a credential awarded by the Child Development Associate National ~~Credentiaing~~ Credentiaing Program to ~~individuals~~ an individual who has successfully completing completed a test of ability to work effectively with children.
20. "Certificate" means the written authorization issued by the Department to operate a child care group home in Arizona.
21. "Certificate holder" means a person to whom the Department has issued a certificate to operate a child care group home in Arizona.
22. "Certified capacity" means the maximum number of children for whom a certificate holder is authorized by the Department to provide child care services at a child care group home at any given time.
- 15-23. "Change in ownership" means a transfer of controlling legal or controlling equitable interest and authority in a facility or child care group home resulting from a sale or merger of a facility or child care group home.
24. "Charter school" has the same meaning as in A.R.S. § 15-101.
- 16-25. "Child" ~~has means:~~
- For a child care facility, the same ~~meaning~~ as in A.R.S. § ~~36-881(1)~~ 36-881; and
 - For a child care group home, any individual less than 13 years of age.
- 17-26. "Child care" has the same meaning as in A.R.S. § ~~36-881(2)~~ 36-881.
- 18-27. "Child care experience" means ~~written documentation of an individual's documented~~ work with children in:
- A child care facility or a child care group home that is licensed, certified, or approved by a state in the United States or by one of the Uniformed Services of the United States;
 - A public school, a charter school, or a private school, or an accommodation school ~~as defined in A.R.S. § 15-101(1); or~~
 - A public or private educational institution authorized under the laws of another state where instruction was provided for any grade or combination of grades between pre-kindergarten and grade 12; or
 - ~~The One of the following professional fields:~~
 - ~~of nursing~~ Nursing,
 - ~~social~~ Social work,
 - ~~psychology~~ Psychology,
 - ~~child~~ Child development, or
 - A closely related field.
28. "Child care group home" has the same meaning as in A.R.S. § 36-897.
- 19-29. "Child care services" means the range of activities and programs provided by a licensee or certificate holder to a child, including personal care, supervision, education, guidance, and transportation.
- 20-30. "Child Protective Services" means the Child Protective Services Program; of the Arizona Department of Economic Security.
- 21-31. "Child with special needs" means ~~a child with:~~
- A child with a health care provider's diagnosis and record of a physical or mental condition that substantially limits the child in providing self-care or performing age-appropriate manual tasks or any other major life function such as walking, seeing, hearing, speaking, breathing, or learning;
 - A child with a "developmental disability" as defined in A.R.S. § 36-551; or
 - ~~At least 1 of the developmental disabilities listed in A.R.S. § 15-761 and who requires special education~~ A "child with a disability" as defined in A.R.S. § 15-761.
- 22-32. "Clean" means to remove dirt or debris by ~~such~~ methods such as washing with soap and water, vacuuming, wiping, dusting, or sweeping.
- 23-33. "Closely related field" means any educational instruction or occupational experience pertaining to the growth, development, physical or mental care, or education of children.
- 24-34. "Communicable disease" has the same meaning as in A.A.C. ~~R9-6-101(5)~~ R9-6-101.
- 25-35. "Compensation" means money or other consideration, including goods, services, vouchers, time, or ~~other~~ another benefit, that is received by a licensee or certificate holder from any individual as payment for child care services or that is ~~paid to~~ received by a staff member ~~by~~ from a licensee or certificate holder as payment for working in a child care facility or child care group home.
36. "Controlling person" means a person who:
- Through ownership has the power to vote at least 10% of the outstanding voting securities.
 - If the applicant or licensee is a partnership, is the general partner or a limited partner who holds at least 10% of the voting rights of the partnership.

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- c. If the applicant or licensee is a corporation, an association or a limited liability company, is the president, the chief executive officer, the incorporator, an agent or any person who owns or controls at least 10% of the voting securities.
- d. Holds a beneficial interest in 10% or more of the liabilities of the applicant or the licensee.
- ~~26-37.~~ “Corporal punishment” means any physical action that inflicts pain to the body of a child, including but not limited to: shaking, spanking, punching, hitting, pinching, biting, pushing, slapping, twisting, jerking, kicking, pulling hair, or strangling a child; or any act which that may result in an abrasion, bruise, welt, contusion, laceration, burn, wound, cut, puncture, internal injury, fracture, sprain or dislocation, or a subdural hemorrhage or hematoma physical injury to a child.
- ~~27-38.~~ “C.P.C.” means Certified Professional in Childcare, a credential awarded by the National Early Care and Education Association to individuals an individual who has successfully completing completed a test of ability to work effectively with children.
- ~~28-39.~~ “CPR” means cardiopulmonary resuscitation.
- ~~29-40.~~ “Credit hour” means an ~~earned~~ academic unit of ~~study based on~~ earned at an accredited college or university by attending a 1-hour one-hour class session per each calendar week at an accredited college or university during a semester or equivalent shorter course term or completing equivalent practical work as part of a course.
- ~~30-41.~~ “Days” means calendar days, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.
- ~~42.~~ “Designated agent” means an individual who is:
- a. A controlling person;
 - b. A United States citizen or legal resident alien;
 - c. A resident of Arizona; and
 - d. Authorized by an applicant or licensee to receive communications, including service of process, from the Department and to file and sign documents for the applicant or licensee.
- ~~31-43.~~ “Developmentally appropriate” means consistent with a child’s physical, emotional, social, cultural, and cognitive development, based on the child’s age and family background and the ~~individual~~ child’s personality, learning style, and pattern and timing of growth, personality, and learning style.
- ~~32-44.~~ “Discipline” means to ~~provide correction of~~ correct a child’s behavior that does not meet generally accepted levels of social behavior.
- ~~33-45.~~ “Emergency” means a potentially life-threatening occurrence involving a child or staff member that requires an immediate response or medical treatment.
- ~~34-46.~~ “Endanger” means to expose ~~a child~~ an individual to a situation where physical or mental injury to the ~~child~~ individual may occur.
- ~~35-47.~~ “Enrolled” means ~~a child has been~~ placed by a parent and accepted by a licensee or certificate holder for child care services.
- ~~48.~~ “Evening and nighttime care” means child care services provided between the hours of 8:00 p.m. and 5:00 a.m.
- ~~36-49.~~ “Facility” means:
- a. In Articles 2 through 6, “child care facility” as defined in A.R.S. § ~~36-881(3)~~ 36-881; and
 - b. In Articles 7 through 10, “child care group home.”
- ~~37-50.~~ “Facility director” means an individual meeting the qualifications in R9-5-401(1) who is designated by a licensee as the individual responsible for the daily onsite operation of a facility.
- ~~38-51.~~ “Facility premises” means property that is:
- a. Designated on an application for a license or certificate by the applicant, and
 - b. Licensed or certified for child care services by the Department under A.R.S. § ~~36-881 et seq.~~ Title 36, Chapter 7.1, Article 1 or 4 and these rules.
- ~~39-52.~~ “Field trip” means an activity planned by ~~child care personnel~~ a staff member for:
- a. Preschool children off facility premises, or
 - b. School-age children off facility premises or school campus.
- ~~40-53.~~ “Final construction drawings” means facility plans ~~approved by local government for the construction or modification of a facility~~ that include the architectural, structural, mechanical, electrical, fire protection, plumbing, and technical specifications of the physical plant and the facility premises and that have been approved by local government for the construction or modification of a facility.
- ~~54.~~ “Food” means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.
- ~~41-55.~~ “Food preparation” or “preparing food” means ~~handling, washing, cutting, mixing, spreading, combining ingredients, and cooking foods using a utensil as defined in A.A.C. R9-8-112(35) but does not include:~~
- a. Using single service articles as defined in A.A.C. R9-8-112(30);
 - b. Handling or distributing whole fruits or vegetables;

- e. ~~Distributing prepackaged foods, or~~
 - d. ~~Combining whole uncooked foods~~ processing food for human consumption by cooking or assembling the food, but does not include distributing prepackaged food or whole fruits or vegetables.
56. ~~“Full-day care” means child care services provided for six or more hours per day between the hours of 5:00 a.m. and 8:00 p.m.~~
- 42-57. ~~“Guidance” means the ongoing direction, counseling, teaching, or modeling of~~ generally ~~accepted social behavior through which a child learns to develop and maintain the self-control, self-reliance, and self-esteem necessary to assume responsibilities, make daily living decisions, and live according to generally accepted social behavior.~~
- 43-58. ~~“Hazard” means a source of endangerment.~~
- 44-59. ~~“Health care provider” means a state board licensed, registered or certified physician; physician’s physician assistant; nurse; registered nurse practitioner; state board licensed, registered, or certified psychologist; or state board licensed, registered, or certified occupational, physical, or respiratory therapist.~~
- 45-60. ~~“High school equivalency diploma” means:~~
- a. ~~the~~ A ~~document issued by the Arizona Department of Education under A.R.S. § 15-702 or by another state, to an individual who passes a general educational development test or meets the requirements of A.R.S. § 15-702(B);~~
 - b. A document issued by another state to an individual who passes a general educational development test or meets the requirements of a state statute equivalent to A.R.S. § 15-702(B); or
 - c. A document issued by another country to an individual who has completed that country’s equivalent of a 12th grade education, as determined by the Department based upon information obtained from American or foreign consulates or embassies or other governmental entities.
- 46-61. ~~“Hours of operation” means the specific time during a day for which a licensee or certificate holder is licensed or certified to provide child care services.~~
- 47-62. ~~“Illness” means physical manifestation or signs of any sickness, or communicable disease such as pain, vomiting, rash, fever, discharge, or diarrhea.~~
- 48-63. ~~“Infant” means:~~
- a. ~~a~~ A ~~child 12 months of age or younger, or~~
 - b. ~~a~~ A ~~child 18 months of age or younger who is not yet walking.~~
64. ~~“Infant care” means child care services provided to an infant.~~
- 49-65. ~~“Infestation” means the presence of lice, pinworms, scabies, or other parasites.~~
- 50-66. ~~“Inspection” means:~~
- a. ~~onsite~~ Onsite ~~examination of a facility by the Department to determine compliance with A.R.S. § 36-881 et seq. Title 36, Chapter 7.1, Article 1 and these rules;~~
 - b. Onsite examination of a child care group home by the Department to determine compliance with A.R.S. Title 36, Chapter 7.1, Article 4 and these rules;
 - c. ~~an on-site~~ Onsite ~~review of facility or child care group home records or reports by the Department; or~~
 - d. ~~on-site~~ Onsite ~~examination of a facility or a child care group home by a local jurisdiction’s governmental entity.~~
- 51-67. ~~“Lesson plan” means a written description of the activities scheduled in each activity area for a day.~~
- 52-68. ~~“License” means the written authorization issued by the Department to operate a facility in Arizona.~~
- 53-69. ~~“Licensed capacity” means the maximum number of children for whom a licensee is licensed authorized by the Department to provide child care services in a facility or a part of a facility at any given time.~~
- 54-70. ~~“Licensee” means a person, as defined by A.R.S. § 36-881(6) 36-881, to whom the Department issues has issued a license to operate a facility in Arizona.~~
- 55-71. ~~“Local” means under the jurisdiction of a city or county in Arizona.~~
- 56-72. ~~“Mat” means a foam pad that has a waterproof cover and is of sufficient size and thickness to accommodate the height, width, and weight of a reclining child’s body.~~
- 57-73. ~~“Medication” means a substance prescribed by a physician, physician assistant, or registered nurse practitioner or available over the counter without a prescription for the treatment or prevention of illness or infestation.~~
- 58-74. ~~“Menu” means:~~
- a. ~~a~~ A ~~written description of the food provided by that a facility or child care group home provides and served serves as a meal or snack, or~~
 - b. The combination of food that a facility or child care group home provides and serves as a meal or snack.
- 59-75. ~~“Modification” means an alteration or addition to the physical plant of a licensed facility that requires may require a permit issued by local government.~~
- 60-76. ~~“Motor vehicle” has the same meaning as defined in A.R.S. § 28-101(28) 28-101.~~
- 61-77. ~~“N.A.C.” means the National Administrator Credential, an award a credential issued by the National Child Care Association to an individual who has successfully completing completed a test of ability to work effectively with children as a director of a child care facility.~~
- 62-78. ~~“Naptime” means any time during hours of operation, other than evening and nighttime hours specified in R9-5-205, that is designated by a licensee for the rest or sleep of children.~~

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- ~~63-79.~~“Neglect” has the same meaning as in A.R.S. § ~~8-546(A)(7)~~ 8-201.
80. “Nurse” means an individual who is:
- a. Licensed under A.R.S. Title 32, Chapter 15 as a practical nurse or as a registered, graduate, or professional nurse;
or
 - b. Licensed as a practical nurse or a registered nurse under the law of another state.
- 64-81.“One-year-old” means a child ~~who is at least 12 months of age or older who is~~ but not yet 2 ~~two~~ years of age.
82. “One-year-old child care” means child care services provided to a one-year-old.
- 65-83.“Parent” means:
- a. ~~a~~ A natural; or adoptive; or custodial mother or father of a child, or an
 - b. A individual who has been appointed as a legal guardian appointed by a court of competent jurisdiction, or
 - c. A “custodian” of a child by a court of competent jurisdiction as defined in A.R.S. § 8-201.
84. “Part-day care” means child care services provided for fewer than six hours per day between the hours of 5:00 a.m. and 8:00 p.m.
- 66-85.“Perishable food” means food ~~which~~ that becomes unfit for human consumption if not stored to prevent spoilage.
86. “Person” means:
- a. In Articles 2 through 6, the same as in A.R.S. § 36-881; and
 - b. In Articles 7 through 10, an individual or a business organization.
87. “Personal reference” means an adult who is familiar with a director’s, a provider’s, or a staff member’s character due to observations made as a friend or acquaintance.
- 67-88.“Physical plant” means a building that houses a facility or a child care group home, or licensed or certified areas within a building that houses a facility or a child care group home, including the architectural, structural, mechanical, electrical, plumbing, and fire protection elements of the building.
- 68-89.“Physician” means an individual licensed as a doctor currently licensed to practice of:
- a. ~~allopathic~~ Allopathic medicine under A.R.S. Title 32, Chapter 13;
 - b. Naturopathic medicine under A.R.S. Title 32, Chapter 14;
 - c. ~~or osteopathic~~ Osteopathic medicine under A.R.S. Title 32, Chapter 17;
 - d. Homeopathic medicine under A.R.S. Title 32, Chapter 29; or
 - e. ~~in any Allopathic, naturopathic, osteopathic, or homeopathic medicine under the law of another state of the United States.~~
90. “Physician assistant” means:
- a. An individual who is licensed under A.R.S. Title 32, Chapter 25; or
 - b. An individual who is licensed as a physician assistant under the law of another state.
91. “Preparing food” means processing food for human consumption by cooking or assembling the food, but does not include distributing prepackaged food or whole fruits or vegetables.
- 69-92.“Private pool” has the same meaning as “private residential swimming pool” in A.A.C. R9-8-811(J) R9-8-801.
- 70-93.“Private school” has the same meaning as in A.R.S. § ~~15-101(16)~~ 15-101.
94. “Professional reference” means an adult who is familiar with a director’s, a provider’s, or a staff member’s work abilities due to observations made as a supervisor or leader in a business, school, church, or other organizational setting.
- 71-95.“Program” means a variety of activities organized and conducted by a staff member.
96. “Provider” means the certificate holder or a person the certificate holder designates in writing who, pursuant to applicable statutes and rules, is to be responsible for direct daily supervision, operation and maintenance of the child care group home.
- 72-97.“Public pool” has the same meaning as “public swimming pool” in A.A.C. R9-8-811(K) R9-8-801.
- 73-98.“Public school” means ~~school as defined in A.R.S. § 15-101(3) and (17)~~ a government-operated educational institution established for the purpose of offering instruction to pupils in programs for preschool children, kindergarten programs, or any combination of grades one through 12.
74. “Registration” means approval by the Department to operate or work in a child care facility after an individual’s completion of the fingerprinting process required by the Department.
99. “Registered nurse practitioner” means:
- a. An individual who:
 - i. Is licensed as a registered, graduate, or professional nurse under A.R.S. Title 32, Chapter 15;
 - ii. Is certified by the Arizona State Board of Nursing through its rules for extended nursing practice; and
 - iii. Has completed a nurse practitioner education program approved or recognized by the Arizona State Board of Nursing; or
 - b. An individual who is licensed as a registered nurse practitioner under the law of another state.
- 75-100.“Regular basis” means ~~child care services are offered at a facility~~ at recurring, fixed, or uniform intervals.
- 76-101.“Resident” means:
- a. In reference to residency in a child care facility or child care group home, an individual who does not provide work in the child care facility or child care group home, but who is present in a uses the child care facility or

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- child care group home as the individual's principal place of habitation for 30 days or more during the calendar year; and
- b. In reference to residency in Arizona, the same as in A.R.S. § 43-104 for more than 30 consecutive days.
- 77-102. "Sanitize" means to use heat, chemical agents, or germicidal solutions to disinfect and reduce pathogen counts, including bacteria, viruses, mold, and fungi.
- 78-103. "School-age child" means a child who:
- a. Meets one of the following:
- i. Is five years old on or before January 1 of the current school year, or
- ii. Is five years old on or before January 1 of the most recent school year; and
- b. Meets one of the following:
- i. is 5 years of age or older before beginning Attends kindergarten or a higher level program in a public, charter, accommodation, or private school during the current school year;
- ii. in a Attended kindergarten or a higher level program in a public, charter, accommodation, or private school during the most recent school year;
- iii. Is home-schooled at a kindergarten or higher level during the current school year; or
- iv. Was home-schooled at a kindergarten or higher level during the most recent school year.
104. "School-age child care" means child care services provided to a school-age child.
- 79-105. "School campus" means the contiguous grounds of a public, charter, accommodation, or private school, including the buildings, structures, and outdoor areas available for use by children attending the school.
- 80-106. "School governing board" means has the same meaning as "governing board" as defined in A.R.S. § 15-101(8) 15-101.
- 84-107. "Semi-public pool" has the same meaning as "semipublic swimming pool" in A.A.C. R9-8-811(N) R9-8-801.
- 82-108. "Service classification" means ~~one~~ of the classifications specified in R9-5-205 following:
- a. Full-day care,
- b. Part-day care,
- c. Evening and nighttime care,
- d. Infant care,
- e. One-year-old child care, or
- f. School-age child care.
- 83-109. "Signed" means having affixed with an individual's name signature consistent with customary usage on an official document or with a symbol of the name representing an individual's signature if the individual is unable to write the individual's name.
- 84-110. "Space utilization" means the designated use of an area within a facility or a child care group home for specific child care services or activities.
- 85-111. "Staff"; or "staff member"; or "child care personnel" means any employee or volunteer working at a child care facility an individual who works in a facility or a child care group home, regardless of whether compensation is received by the individual.
- 86-112. "STRIVE" means Family, Career, and Community Leaders of America, formerly known as Students Together Rising in Vocational Education, a vocational career and technical student organization authorized by the Arizona Department of Education under A.R.S. § 15-781.01.
- 87-113. "Student-aide" means an individual 15 years of age or younger less than 16 years of age who is enrolled in an educational, curriculum-based course of study and who, without being compensated by a licensee, is present at a facility to receive instruction from and supervision by child care personnel in the provision of child care services.
88. "Substantive review" means the Department's process for determining whether an applicant for a license and an applicant's facility meet the requirements of A.R.S. § 36-881 et seq. and these rules, including an evaluation of the completed documents submitted as prescribed by R9-5-201 and R9-5-203(A) and inspection of the facility.
114. "Substantial compliance" means:
- a. For a child care facility, that the nature or number of violations revealed by any type of inspection or investigation of an applicant for licensure or a licensed child care facility does not pose a direct risk to the life, health or safety of children; and
- b. For a child care group home, that the nature or number of violations revealed by any type of inspection or investigation of an applicant for certification as a child care group home or a certified child care group home does not pose a direct risk to the life, health or safety of children.
- 89-115. "Supervision" means:
- a. The physical presence of a facility director, provider, or staff member who has responsibility for and is within sight and sound of an enrolled child, or
- b. The physical presence of a facility director, provider, or teacher-caregiver who is providing direction to and is within sight and sound of a staff member or student-aide.
- 90-116. "Swimming pool" has the same meaning as in A.A.C. R9-8-811(P) R9-8-801.

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94-117. "Teacher-caregiver" means a staff member responsible for developing, planning, and conducting child care activities.

92-118. "Training" means child care-related conferences, seminars, lectures, workshops, classes, courses, or instruction required by the Department of a licensee, certificate holder, or ~~child care personnel~~ staff member.

93-119. "Volunteer" means a staff member who works in a facility without compensation ~~by the facility~~.

R9-5-102. Individuals to Act for Applicant, Licensee, or Certificate Holder Regarding Document, Fingerprinting, and Department-Provided Training Requirements

When an applicant, licensee, or certificate holder is required by this Chapter to provide information on or sign documents, possess a class one or two fingerprint clearance card, or complete Department-provided training, the following shall satisfy the requirement on behalf of the applicant, licensee, or certificate holder:

1. If the applicant, licensee, or certificate holder is an individual, the individual;
2. If the applicant, licensee, or certificate holder is a corporation, an officer of the corporation;
3. If the applicant, licensee, or certificate holder is a partnership, two of the partners;
4. If the applicant, licensee, or certificate holder is a limited liability company, a manager or, if the limited liability company does not have a manager, a member of the limited liability company;
5. If the applicant, licensee, or certificate holder is an association or cooperative, two members of the governing board of the association or cooperative;
6. If the applicant, licensee, or certificate holder is a joint venture, two of the individuals signing the joint venture agreement;
7. If the applicant, licensee, or certificate holder is a public school, an individual designated in writing as signatory for the public school by the school governing board or school district superintendent;
8. If the applicant, licensee, or certificate holder is a charter school, the person approved to operate the charter school by the district governing board, the Arizona Board of Education, or the Arizona Board for Charter Schools;
9. If the applicant, licensee, or certificate holder is a governmental agency, the individual in the senior leadership position with the agency or an individual designated in writing by that individual; and
10. If the applicant, licensee, or certificate holder is a business organization type other than those described in subsections (2) through (9), two individuals who are members of the business organization.

ARTICLE 2. FACILITY LICENSURE

R9-5-201. Application for a License

A. An applicant for a license shall:

1. Be at least 18 years of age ~~or older~~;
 2. If an individual, be a U.S. citizen or legal resident alien and a resident of Arizona;
 3. If a corporation, association, or limited liability company, be a domestic entity or a foreign entity qualified to do business in Arizona;
 4. If a partnership, have at least one partner who is a U.S. citizen or legal resident alien and a resident of Arizona;
- ~~2-5.~~ Submit the following completed documents to the Department an application that includes:
- a. A notarized application form signed by the applicant stating:
 - i. The applicant's name;
 - ii. The facility's name, street address, mailing address, and telephone number; ~~and~~
 - iii. ~~The name and~~ applicant's type of business organization ~~applying for a license;~~
 - iv. The name and business or residential address of each controlling person;
 - v. That no controlling person has been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state;
 - vi. That no controlling person has had a certificate to operate a child care group home or a license to operate a child care facility revoked in this state or another state for reasons that relate to endangerment of the health and safety of children;
 - vii. Whether the applicant agrees to allow the Department to submit supplemental requests for information; and
 - viii. That the applicant has read and will comply with these rules and declares that the information provided in the application is accurate and complete;
 - b. ~~Organization information~~ If the applicant is a business organization, an Attachment to Application including the following organizational information about the applicant:
 - i. ~~Address~~ The address of the business organization;
 - ii. ~~Name, title, and address of the organization's statutory agent or individual designated by the organization to accept service of process and subpoenas;~~
 - ~~iii-ii.~~ Name and ~~The name, title, and address of each officer and board member or trustee, if applicable; and~~
 - ~~iv-iii.~~ Copies A copy of the business organization's Articles articles of Incorporation incorporation, articles of organization, or partnership or joint venture documents, ~~or limited liability documents, if applicable;~~

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- c. Registration documents as prescribed in R9-5-203. A copy of the applicant's valid class one or class two fingerprint clearance card issued according to A.R.S. § 41-1758.03;
- d. A Criminal History Affidavit Class I or Class II completed by the applicant and including the information required by A.R.S. § 36-883.02;
- e. A certificate issued by the Department showing that the applicant has completed at least four hours of Department-provided training that included the Department's role in licensing and regulating child care facilities under A.R.S. Title 36, Chapter 7.1, Article 1 and these rules;
- f. If the applicant is an individual, a copy of one of the following for the applicant:
 - i. A U.S. passport,
 - ii. A birth certificate,
 - iii. Naturalization documents, or
 - iv. Documentation of legal resident alien status;
- g. If the applicant is a corporation or a limited liability company, a certificate of good standing issued to the applicant by the Arizona Corporation Commission and dated within six months before the date of application;
- h. If the applicant is a partnership or an association, a copy of one of the following for one partner or association member of the applicant:
 - i. A U.S. passport,
 - ii. A birth certificate,
 - iii. Naturalization documents, or
 - iv. Documentation of legal resident alien status;
- i. The following information about the applicant's designated agent:
 - i. Name;
 - ii. Residential and business addresses;
 - iii. Residential and business telephone numbers; and
 - iv. Residential and business fax numbers, if any;
- j. A copy of one of the following for the applicant's designated agent:
 - i. A U.S. passport,
 - ii. A birth certificate,
 - iii. Naturalization documents, or
 - iv. Documentation of legal resident alien status;
- ~~d.k.~~ The physical plant documents required by R9-5-607 that include the service classifications being requested by the applicant;
- l. An Applicant, Staff, and Resident Report Form, including the applicant's name and address; a statement that the information on the form is accurate and complete; the dated signature of the applicant; and the following information about the applicant, each staff member, and each resident:
 - i. Name;
 - ii. Social security number or identification number issued by the U.S. Immigration and Naturalization Service;
 - iii. Birth date;
 - iv. Hire date, if applicable;
 - v. Job title, if a staff member, or relationship to the applicant or director, if a resident;
 - vi. Date of high school diploma or high school equivalency diploma, if applicable; and
 - vii. Information demonstrating each individual's compliance with A.R.S. § 36-883.02;
- ~~e.m.~~ An agricultural attachment that contains the information required by A.R.S. § 36-882(B) Agricultural Land Notification Form, including:
 - i. The facility's name and address;
 - ii. Whether the facility is located within one-fourth mile of agricultural land; and
 - iii. If the facility is located within one-fourth mile of agricultural land, the names and addresses of the owners or lessees of all agricultural land located within one-fourth mile of the facility;
- n. If the facility is located within one-fourth mile of agricultural land, and a child care facility has not previously been licensed at the same location, a copy of an agreement complying with A.R.S. § 36-882(D) for each parcel of agricultural land affected;
- o. A Director Qualifications Form completed by the individual that the applicant intends to have serve as facility director, including:
 - i. The name of the individual;
 - ii. The facility's name, address, and telephone number;
 - iii. A statement that the individual is at least 21 years of age, will accept the primary responsibility for the daily administration and operation of the facility, and possesses the minimum qualifications required by R9-5-401;
 - iv. An indication of the individual's credentials or academic experience complying with R9-5-401;

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- v. A list of the individual's qualifying child care experience, including beginning and ending dates; positions held; each facility's name, address, and telephone number; a description of the experience at each facility; and the number of hours per week worked at each facility;
- vi. A copy of the individual's diploma or transcript from each high school, college, university, or other educational facility attended by the individual, showing the name and location of the educational facility; the course of study pursued at the educational facility; the date of any diploma or degree attained at the educational facility; and the number of credit hours completed or the diploma or degree attained at the educational facility;
- vii. A copy of the certificate of attendance from each child-care workshop attended by the individual;
- viii. A statement that the individual has provided the licensee with the names, addresses, and telephone numbers of two professional references and two personal references and with at least one written professional reference and one written personal reference;
- ix. A statement that the information in the Director Qualifications Form is accurate and complete; and
- x. The signature of the individual; and

f.p. The fee required by A.R.S. § ~~36-882(F)~~ 36-882; .

- 3. ~~Before the issuance of a license, submit written documentation verifying that the applicant or a registered individual designated by the applicant has completed not less than 4 actual hours of Department-provided training that includes the Department's role in licensing and regulating child care facilities under A.R.S. §§ 36-881 et seq. and these rules; and~~
 - 4. ~~Demonstrate compliance with A.R.S. §§ 36-881 et seq. and these rules through a facility inspection by the Department.~~
- B.** ~~A person shall apply for a license as prescribed by this Section for~~ The Department requires a separate license and a separate application for:
- 1. ~~Each facility operated~~ owned by the same person at ~~a different locations~~ location, and
 - 2. ~~Each facility operated~~ owned by ~~a different persons~~ person at the same location.
- C.** ~~The Department does not require an a separate application and license for a supplementary structure that is:~~
- 1. Located so that the structure and the facility:
 - a. on grounds contiguous to a facility Share the same street address, or
 - b. Can be enclosed by a single unbroken boundary line that does not encompass property owned or leased by another;
 - 2. ~~under~~ Under the same ownership as the facility; ; and
 - 3. ~~intended~~ Intended to be used ~~in conjunction with a~~ as a part of the facility.

R9-5-202. Initial License Application Time frames Time-frames

- A.** ~~For an initial license, the overall time frame described in A.R.S. § 41-1072 (2) is 90 days.~~
- B.** ~~For an initial license, the administrative completeness review time frame described in A.R.S. § 41-1072(1) is 30 days and begins on the date the Department receives an application:~~
 - 1. ~~If any of the application documents are missing or if information on the submitted documents is deficient, the Department shall send to the applicant, by certified mail with return receipt, a written notice that states each deficiency and information and document needed to complete the application. The 30 day time frame for the Department to finish the administrative completeness review is suspended from the date the Department mails the deficiency notice to the applicant until the date the Department receives the deficient information or missing document.~~
 - 2. ~~If all of the documents are submitted and the information on the documents is complete, the Department shall send a written notice of administrative completeness to the applicant.~~
 - 3. ~~If the documents or information are not submitted within 180 days from the date of notice of incompleteness, the Department shall consider the application withdrawn.~~
- C.** ~~For an initial license, the substantive review time frame described in A.R.S. § 41-1072(3) is 60 days and begins on the date the Department sends written notice of administrative completeness to the applicant.~~
 - 1. ~~As part of the substantive review, the Department may schedule an inspection which may require more than 1 visit to the facility.~~
 - 2. ~~If an applicant or facility does not meet the requirements of A.R.S. §§ 36-881 et seq. and these rules, the Department shall provide to the applicant a written notice of nonconformance that states each statute and rule upon which nonconformance is based.~~
 - a. ~~Within 120 days from the date of receipt of a written notice of nonconformance the applicant shall submit, to the Department, written documentation of the corrections required in the notice of nonconformance. The 60 day time frame for the Department to finish the substantive review is suspended from the date the Department provides the written notice of nonconformance to the applicant until the Department receives documentation of corrections.~~
 - b. ~~The Department shall issue a written notice of denial of license as prescribed in A.R.S. §§ 36-888 and 41-1076, if:~~

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- ~~i. The applicant does not submit documentation of corrections within the time-frame in subsection (C)(2)(a); or~~
 - ii. Upon receipt of documentation of corrections from the applicant, the Department determines that the applicant or facility do not meet the requirements of A.R.S. §§ 36-881 et seq. and these rules.
- 3. If the applicant and facility meet the requirements of A.R.S. § 36-881 et seq. and these rules, the Department shall issue a license to the applicant.
- ~~**D.** If a time-frame's last day falls on a Saturday, Sunday, or a legal holiday, the next business day will be considered the time-frame's last day.~~
- A.** The overall time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Department under this Article is listed in Table 1. The applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. An extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.
- B.** The administrative completeness review time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Department under this Article is listed in Table 1 and begins on the date that the Department receives an application.
 - 1. The Department shall send a notice of administrative completeness or deficiencies to the applicant within the administrative completeness review time-frame.
 - a. A notice of deficiencies shall list each deficiency and the items needed to complete the application.
 - b. The administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice of deficiencies is issued until the date that the Department receives all of the missing items from the applicant.
 - c. If an applicant for an initial license, a license renewal, or an approval of a change affecting a license fails to submit to the Department all of the items listed in the notice of deficiencies within 180 days after the date that the Department sent the notice of deficiencies, the Department shall consider the application withdrawn.
 - 2. If the Department issues a license or other approval to the applicant during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.
- C.** The substantive review time-frame described in A.R.S. § 41-1072 is listed in Table 1 and begins on the date of the notice of administrative completeness.
 - 1. As part of the substantive review for an initial license application or a license renewal application, the Department shall conduct an inspection that may require more than one visit to the facility.
 - 2. As part of the substantive review for a request for approval of a change affecting a license that requires a change in the use of physical space at the facility, the Department shall conduct an inspection that may require more than one visit to the facility.
 - 3. The Department shall send a license or a written notice of approval or denial of a license or other request for approval to an applicant within the substantive review time-frame.
 - 4. During the substantive review time-frame, the Department may make one comprehensive written request for additional information, unless the Department and the applicant have agreed in writing to allow the Department to submit supplemental requests for information.
 - a. If the Department determines that an applicant or a facility is not in substantial compliance with A.R.S. Title 36, Chapter 7.1, Article 1 and these rules, the Department shall send a comprehensive written request for additional information that includes a written statement of deficiencies stating each statute and rule upon which noncompliance is based.
 - b. An applicant shall submit to the Department all of the information requested in the comprehensive written request for additional information and written documentation of the corrections required in the statement of deficiencies, if applicable:
 - i. Within 120 days after the date of the comprehensive written request for additional information, if applying for an initial license or for approval of a change affecting a license; or
 - ii. Within 10 days after the date of the comprehensive written request for additional information, if applying for a license renewal.
 - c. The substantive review time-frame and the overall time-frame are suspended from the date that the Department issues a comprehensive written request for additional information or a supplemental request for information until the date that the Department receives all of the information requested, including documentation of corrections required in a statement of deficiencies, if applicable.
 - d. If an applicant fails to submit to the Department all of the information requested in a comprehensive written request for additional information or a supplemental request for information, including documentation of corrections required in a statement of deficiencies, if applicable, within the time prescribed in subsection (C)(4)(b), the Department shall deny the application.
 - 5. The Department shall issue a license or approval if the Department determines that the applicant and facility are in substantial compliance with A.R.S. Title 36, Chapter 7.1, Article 1 and these rules, and the applicant submits documentation of corrections that is acceptable to the Department for any deficiencies.

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6. If the Department determines that a license or approval is to be denied, the Department shall send to the applicant a written notice of denial complying with A.R.S. § 36-888 and stating the reasons for denial and all other information required by A.R.S. §§ 36-888 and 41-1076.

Table 1. Time-frames (in days)

<u>Type of Approval</u>	<u>Statutory Authority</u>	<u>Overall Time-frame</u>	<u>Administrative Completeness Review Time-frame</u>	<u>Substantive Review Time-frame</u>
<u>Initial License under R9-5-201</u>	<u>A.R.S. § 36-882</u>	<u>120</u>	<u>30</u>	<u>90</u>
<u>License Renewal under R9-5-205</u>	<u>A.R.S. § 36-882</u>	<u>150</u>	<u>30</u>	<u>120</u>
<u>Approval of Change Affecting License under R9-5-206</u>	<u>A.R.S. §§ 36-882, 36-883</u>	<u>75</u>	<u>30</u>	<u>45</u>

R9-5-203. Registration and Fingerprinting Requirements

- A.** An applicant for a license shall apply for registration with the Department by submitting: A licensee shall ensure that each staff member and each adult resident at a facility:
1. Unless exempted by A.R.S. § 36-883.02, a completed and legible fingerprint card; Possesses a valid class one or class two fingerprint clearance card issued under A.R.S. § 41-1758.03; or
 2. A registration to work form, provided by the Department, completed and signed by the applicant, and notarized that contains: Submits to the licensee, within seven working days after becoming a staff member or adult resident, a copy of a fingerprint clearance card application showing that the application was submitted to the fingerprint division of the Department of Public Safety under A.R.S. § 41-1758.02.
 - a. The applicant's name, birth date, social security number, home address, telephone number, and job title;
 - b. If previously registered with the Department, the date of previous registration and name used for registration;
 - e. The facility name, address, telephone number;
 - d. An identification of whether the applicant is awaiting trial on, has been convicted of, or has admitted in open court or as prescribed by a plea agreement committing any criminal offense described in A.R.S. § 36-883.02(G);
 - e. Certification that the applicant is not a parent of a child who has been adjudicated dependent as prescribed by A.R.S. § 8-201(11); and
 - f. Certification that the applicant has not had a license to operate a facility denied or revoked in any state; and
 3. A registration recap form provided by the Department, completed by the applicant for licensure or licensee, which contains the:
 - a. Name, address, and telephone number of the facility;
 - b. Name of facility director; and
 - e. Name of each individual applying for registration.
- B.** Within 20 days from the date of employment or volunteer service of each staff member, a licensee shall submit the information in subsection (A) for each staff member who is 18 years of age or older. If a staff member or adult resident possesses a class one or class two fingerprint clearance card that was issued before the staff member or adult resident became a staff member or adult resident at the facility, the licensee shall contact the Department of Public Safety within seven working days after the individual becomes a staff member or adult resident to determine whether the class one or class two fingerprint clearance card is valid. The licensee shall make a record of this determination, including the name of the staff member or adult resident, the date of the contact with the Department of Public Safety, and whether the class one or class two fingerprint clearance card is valid.
- C.** Within 30 days of receipt of an application for registration, the Department shall return to the applicant or licensee a copy of the registration recap form with verification of the Department's receipt. The individuals listed on the verified registration recap form are registered with the Department to work in the child care facility listed on the recap form until the Department denies or revokes the registration. A licensee shall not allow an individual to be a staff member or adult resident if the individual has been denied a class two fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1 and has not received an interim approval under A.R.S. § 41-619.55(H).
- D.** A licensee shall not allow an individual to be a staff member or adult resident if the individual receives an interim approval under A.R.S. § 41-619.55(H) but is then denied a good cause exception under A.R.S. § 41-619.55 and a class two fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1.

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~~D.E.~~ A registered licensee or staff member who has had an uninterrupted association with or continuous employment in a licensed facility which changes ownership, shall submit the documents in subsections (A)(2) and (A)(3) to the Department within 20 days from the date of ownership change. A licensee shall ensure that each staff member and adult resident submits to the licensee an original of the form required in A.R.S. § 36-883.02(C). A form completed while a staff member or adult resident was a staff member or adult resident at another facility does not satisfy this subsection.

F. A licensee shall maintain documentation of compliance with this Section in each staff member's or adult resident's file throughout the time the individual is a staff member or adult resident and for 12 months after the individual ceases to be a staff member or adult resident.

R9-5-204. Denial, Revocation, or Reconsideration of Registration

A. The Department shall deny or revoke the registration of an individual:

1. Who is awaiting trial on, has been convicted of, or has admitted in open court or as prescribed by a plea agreement, committing any criminal offense listed in A.R.S. § 36-883.02(G) except as provided in A.R.S. § 36-883.02(L); or
2. Whose presence in a facility may have a detrimental effect on the health, safety, or welfare of children based on evidence obtained from:
 - a. A law enforcement agency;
 - b. Any criminal, civil, or official proceeding of record;
 - c. A written psychological evaluation or professional opinion of:
 - i. A physician licensed by a state board of medical examiners;
 - ii. A psychologist licensed by a state board of psychologist examiners;
 - iii. A behavioral health professional certified by the Arizona board of behavioral health examiners or the equivalent agency from another state; or
 - iv. A social worker, therapist, or counselor certified or licensed by a state board or by a professional accrediting organization or agency for these professions; or
 - d. Child Protective Services.

B. If the Department has determined an individual may have a detrimental effect on the health, safety, or welfare of children or an individual has committed one of the offenses listed in A.R.S. § 36-883.02(G), not subject to A.R.S. § 36-883.02(L), the Department shall send a written notice of denial or revocation of registration to the:

1. Individual, by certified mail with return receipt, that states:
 - a. The reason for the denial or revocation of registration, and
 - b. The individual's right to a hearing by the Department if requested in writing within 30 days from the receipt of the Department's notice.
2. Licensee or applicant for licensure within 5 days of the individual's receipt of the notice required in subsection (B)(1).

C. If an individual has committed one of the offenses in A.R.S. § 36-883.02(L), the Department shall determine whether the individual is a recidivist. An individual is not a recidivist if the individual meets the following requirements:

1. If the offense was a felony, 5 years or more have passed between the conviction of the offense and the date the individual submitted a complete application for registration and the individual is not awaiting trial on, has not been convicted of, or has not admitted in open court or as prescribed by a plea agreement, committing any felony within the last 5 years or any misdemeanor within the last 2 years; or
2. If the offense was a misdemeanor, 2 years or more have passed between the conviction of the offense and the date the individual submitted a complete application for registration and the individual is not awaiting trial on, has not been convicted of, or has not admitted in open court or as prescribed by a plea agreement, committing any felony within the last 5 years or any misdemeanor within the last 2 years.

D. If an individual does not meet the requirements of subsection (C), the Department shall send a written notice of denial or revocation to the:

1. Individual, by certified mail with return receipt, that states:
 - a. The reason for the denial or revocation of registration, and
 - b. The individual's right to a hearing by the Department if requested in writing within 30 days from the receipt of the Department's notice.
2. Licensee or applicant for licensure within 5 days of the individual's receipt of the notice required in subsection (B)(1).

E. If an individual meets the requirements of subsection (C), the Department shall send to the individual, by certified mail with return receipt, a written notice of intent to deny the registration. The notice shall state:

1. The criminal offense that was disclosed by the fingerprint check; and
2. The Department's process for reconsideration of the registration denial.

F. Within 30 days from the date of receipt of a notice of intent to deny a registration, an individual may submit a request for reconsideration to the Department that contains the individual's name, address, and telephone number and written documentation that demonstrates the individual is rehabilitated including:

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1. ~~Employment history of at least 6 months of continuous employment, with no more than 7 consecutive days break in employment within 2 years before the date of receipt of a completed application, including the name, address, and telephone number of each employer or educational history that shows the completion of at least 2 consecutive semesters at a post secondary education institution within 2 years before the date of receipt of a completed application, including the dates of enrollment and completion of course work;~~
 2. ~~Two written references from individuals, 18 years of age or older and not related by blood or marriage to the individual, who have known the individual for at least 6 months before the date of receipt of a completed application;~~
 3. ~~An explanation of why the individual believes the individual has been rehabilitated;~~
 4. ~~Any other documentation which the individual believes supports the individual's claim of being rehabilitated; and~~
 5. ~~A copy of any court record, such as conviction notice, plea bargain agreement, presentence investigation, minute entry, probation termination or completion document, or any expungement or pardon record that pertains to each crime for which the individual has been convicted. If the individual is unable to provide court documents for each conviction, the individual shall provide written documentation from the court having jurisdiction stating the reason the records are unavailable.~~
- ~~G. Within 30 days from the date of receipt of the written documentation required by subsection (F), the Department shall determine whether the individual meets the requirements in subsection (F). If the individual meets the requirements, the Department shall send a written notice of registration to the individual. If the individual does not meet the requirements, the Department shall deny the registration following the requirements in subsection (B).~~
- ~~H. If an individual does not request a reconsideration within 30 days from the date of receipt of the notice of intent to deny, the Department shall, by certified mail with return receipt, issue a notice of denial containing the information in subsection (B).~~
- ~~I. An individual who has been denied registration as prescribed in subsection (G) or (H) shall not submit an application for registration until 12 months has elapsed from the date of the notice of registration denial. The Department shall return an application for registration to an individual who has been denied registration as prescribed in subsection (G) or (H) if the application is submitted less than 12 months from the date of the notice of registration denial.~~

R9-5-205. R9-5-204. Child Care Services Service Classifications

- A. ~~When conducting a substantive review, the~~ The Department shall determine whether the licensee meets the licensure requirements of A.R.S. §§ 36-881 et seq. and these rules to provide child care services on a regular basis in 1 or more of licenses child care facilities using the following service classifications: :
1. ~~Full-day care: Child care services provided for 6 or more hours per day between the hours of 5 a.m. and 8 p.m.~~
 2. ~~Part-day care: Child care services provided for less than 6 hours per day between the hours of 5 a.m. and 8 p.m.~~
 3. ~~Evening and nighttime care: Child care services provided between the hours of 8 p.m. and 5 a.m.~~
 4. ~~Infant care: Child care services provided to an infant as defined in R9-5-101(48).~~
 5. ~~One-year-old child care: Child care services provided to a one-year-old child as defined in R9-5-101(64).~~ and
 6. ~~School-age child care: Child care services provided to a school-age child as defined in R9-5-101(78).~~
- B. ~~The Department shall designate, on a facility's license, the classifications of child care services~~ each service classification that the facility is licensed to provide.
- C. ~~A licensee shall not provide child care services in a service classification for which the licensee is not licensed.~~

R9-5-206. R9-5-205. License Renewal

- A. ~~At least 45 days before the expiration date of a current license, an applicant for renewal of a license shall submit to the Department an application including:~~
1. ~~A complete, signed, and notarized application form signed by the applicant that includes:~~
 - a. ~~The applicant's name;~~
 - b. ~~The facility's name, street address, mailing address, and telephone number; and~~
 - c. ~~The name and applicant's type of business organization applying for license renewal; and~~
 - d. ~~A statement that the applicant has read and will comply with these rules and declares that the information provided in the application is accurate and complete;~~
 2. ~~Any~~ An Attachment to Application including any changes to the ~~organization~~ information previously submitted as prescribed in ~~R9-5-201(A)(2)(b)~~ R9-5-201(A)(5); and
 3. ~~The fee required by A.R.S. § 36-882(F)~~ 36-882.
- B. ~~For a renewal license, the overall time frame described in A.R.S. § 41-1072(2) is 45 days. An applicant that submits the items required by subsection (A) later than 45 days before the expiration date of the current license shall pay to the Department the late filing fee required by A.R.S. § 36-882.~~
- C. ~~For a renewal license, the administrative completeness review time frame described in A.R.S. § 41-1072(1) is 15 days and begins on the date the Department receives the renewal application. If an applicant submits the items required by subsection (A) and the fee required by subsection (B), if applicable, before the expiration date of the current license, the current license does not expire until the date specified in A.R.S. § 41-1092.11(A).~~

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1. ~~If the submitted documents are deficient, the Department shall send to the applicant, by certified mail with return receipt, the submitted documents and a deficiency notice:~~
 - a. ~~The notice shall:~~
 - i. ~~State each deficiency and the information needed to complete the documents; and~~
 - ii. ~~Advise the applicant that an additional \$50 late filing fee is due if a complete renewal application is not received by the Department at least 45 days before the expiration date of the current license.~~
 - b. ~~The 15 day time frame for the Department to finish the administrative completeness review is suspended from the date the Department mails the deficiency notice to the applicant until the date the Department receives the information.~~
 - e. ~~If an applicant does not submit a complete renewal application before the expiration date of the current license, the license shall expire.~~
 2. ~~If the submitted documents are complete:~~
 - a. ~~The Department shall send a written notice of administrative completeness to the applicant; and~~
 - b. ~~The current license shall not expire until the Department issues the renewal license or written notice of denial.~~
- D.** ~~For a renewal license, the substantive review time frame described in A.R.S. § 41-1072(3) is 30 days and begins on the date the Department sends written notice of administrative completeness to the applicant.~~
1. ~~If an applicant or facility does not meet the requirements of A.R.S. § 36-881 et seq. and these rules, the Department shall provide to the applicant a written notice of nonconformance that states each statute and rule upon which nonconformance is based:~~
 - a. ~~Within 10 days from the date of receipt of a written notice of non-conformance the applicant shall submit, to the Department, written documentation of the corrections required in the notice of nonconformance. The 30 day time frame for the Department to finish the substantive review is suspended from the date the Department provides the written notice of nonconformance to the applicant until the Department receives documentation of corrections.~~
 - b. ~~The Department shall issue a written notice of denial of license as prescribed in A.R.S. §§ 36-888 and 41-1076, if:~~
 - i. ~~The applicant does not submit documentation of corrections within the time frame in subsection (D)(1)(a);~~
~~or~~
 - ii. ~~Upon receipt of documentation of corrections from the applicant, the Department determines that the applicant or facility do not meet the requirements of A.R.S. § 36-881 et seq. and these rules.~~
 2. ~~If the applicant and facility meet the requirements of A.R.S. § 36-881 et seq. and these rules, the Department shall issue a license to the applicant.~~

R9-5-207. R9-5-206. Changes Affecting a License

- A. ~~A licensee shall notify the Department in writing at At least 30 days before the date of a change in a facility's name, a licensee shall send the Department written notice of the name change.~~ Within 30 days ~~from~~ after the date of receipt of the notice, the Department shall issue an amended license that incorporates the name change but retains the expiration date of the current license.
- B. ~~A licensee shall submit a written request to the Department at At least 30 days before the date of an intended change in a facility's service classification, space utilization, or licensed capacity, that includes a licensee shall submit a written request for approval of the change to the Department. The written request shall include:~~
 1. The licensee's name;
 2. The facility's name, street address, mailing address, and telephone number;
 3. The name, telephone number, and fax number of a point of contact for the request;
 4. The facility's license number;
 5. ~~the~~ The type of change intended:
 - a. Service classification,
 - b. Space utilization, or
 - c. Licensed capacity; and
 6. a narrative description of the intended change; and
 7. The following additional information, as applicable:
 - a. If the intended change affects individual rooms, the following information about each affected room:
 - i. Room name or number,
 - ii. Square footage,
 - iii. Operating hours,
 - iv. Ages of the children to receive care in the room,
 - v. Maximum number of children to receive care in the room, and
 - vi. Whether the room has a diaper changing area;
 - b. If the intended change is to increase licensed capacity, the square footage of the outdoor activity area; and

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- c. If the intended change includes a modification to a licensed facility, the following, as applicable:
 - i. If the facility is not located in a public school, a set of final construction drawings, in compliance with R9-5-607(B);
 - ii. If the facility is located in a public school and provides child care for children younger than school-age children, a set of final construction drawings or a school map, in compliance with R9-5-607(C);
 - iii. If the facility is located in a public school and provides child care only for school-age children, two sets of final construction drawings or two school maps, in compliance with R9-5-607(D); and
 - iv. If the facility is a factory-built building, the documents required by R9-5-607(E).
- ~~1.C.~~ Within 30 days from the date of receipt of the request, the Department shall review the requested change and send written notice of the review to the licensee a request submitted under subsection (B) according to R9-5-202. If the facility will be in substantial compliance with A.R.S. Title 36, Chapter 7.1, Article 1 and these rules with the intended change:
 - a. Complies with A.R.S. §§ 36-881 et seq. and these rules, the Department shall send the licensee an amended license that incorporates the change but retains the expiration date of the current license;
 - b. Does not comply with A.R.S. §§ 36-881 et seq. and these rules, the Department shall provide the licensee with written notice stating the requirements necessary for the Department to approve the requested change.
- ~~2.D.~~ A licensee shall not implement any change described under subsection (B) until the Department issues an amended license is issued.
- ~~C.E.~~ A licensee shall notify the Department, in writing, At least 30 days before making the date of a change in the ownership of a facility, a licensee shall send the Department written notice of the change. A new owner shall obtain a new license from the Department as prescribed in R9-5-201 before beginning operation of the new owner begins operating the facility.
- ~~D.F.~~ A licensee changing a facility's location shall apply for a new license as prescribed by in R9-5-201. If the licensee has completed the training required in R9-5-201(A)(3), the licensee is not required to repeat the training.
- ~~E.~~ A licensee that is a corporation or limited liability company shall notify the Department in writing within 30 days after the date of a change in any corporate or company officer or statutory agent.
- ~~F.~~ A licensee that is a partnership or a joint venture shall notify the Department in writing within 30 days after the date of a change in members of the partnership or joint venture, or of an individual designated in writing by the licensee to accept service of process and subpoenas.
- ~~G.~~ A licensee that is an association or cooperative, school governing board, or charter school shall notify the Department in writing within 30 days after the date of a change in the officers of the association, cooperative, school governing board, or charter school, or of the statutory agent or other individual designated in writing by the licensee to accept service of process and subpoenas.
- ~~G.~~ Within 30 days after the election of a new officer to the business organization, the election of a new director to the board of directors for the business organization, or a change in a controlling person, a licensee shall send the Department written notice of the change. The written notice shall include:
 - 1. The name of the licensee;
 - 2. A description of the change made;
 - 3. The following information about each controlling person:
 - a. Name, and
 - b. Business or residential address;
 - 4. A statement that no controlling person has been denied a certificate to operate a child care group home or a license to operate a child care facility for the care of children in this state or another state;
 - 5. A statement that no controlling person has had a certificate to operate a child care group home or a license to operate a child care facility revoked in this state or another state for reasons that relate to endangerment of the health and safety of children;
 - 6. A statement that the information provided in the written notice is accurate and complete; and
 - 7. The notarized signature of the licensee.
- ~~H.~~ Within 30 days after changing its designated agent, a licensee shall send the Department written notice of the change, to include:
 - 1. The name of the new designated agent;
 - 2. The residential and business addresses of the new designated agent; and
 - 3. A copy of one of the following for the new designated agent:
 - a. A U.S. passport,
 - b. A birth certificate,
 - c. Naturalization documents, or
 - d. Documentation of legal resident alien status.

R9-5-207. Change in Director

- ~~A.~~ Except as provided in subsection (B), within 10 days before changing a facility director, a licensee shall send the Department written notice of the change.

- B.** If a licensee is not aware of a change in facility director 10 days before the effective date of the change, the licensee shall send the Department written notice within 48 hours after becoming aware of the change.
- C.** The written notice shall include a Director Qualifications Form completed as required by R9-5-201(A)(5)(o).

R9-5-208. Inspections; Investigations

- A.** The Department shall inspect each facility before issuing an initial license or a renewal license, and as often as necessary to determine compliance with A.R.S. § 36-881 et seq. Title 36, Chapter 7.1, Article 1 and these rules. Additionally, a licensee shall allow access to all areas of the facility affecting the health, safety, or welfare of a an enrolled child or to which a an enrolled child has access during hours of operation.
- B.** If the Department receives written or verbal information alleging a violation of A.R.S. § 36-881 et seq. Title 36, Chapter 7.1, Article 1 or these rules, the Department shall conduct an investigation to verify compliance. The licensee shall permit the Department to interview ~~child care personnel~~ staff members, residents, and enrolled children for the as part of an investigation.

R9-5-209. Denial, Revocation, or Suspension of License

- A.** The Department may deny, revoke, or suspend a license to operate a facility if an applicant or licensee:
 - 1. Provides false or misleading information to the Department;
 - 2. Has been denied a certificate or license to operate a child care home or a certificate or license to operate a child care facility in any state, unless the denial was based on the applicant's failure to complete the certification or licensing process in accordance with according to a required time-frame;
 - 3. Has had a certificate or license to operate a child care home or a certificate or license to operate a child care facility revoked or suspended in any state;
 - 4. Has had registration to operate or work in a child care facility in the state of Arizona revoked or denied Has been denied a fingerprint clearance card or has had a fingerprint clearance card revoked under A.R.S. Title 41, Chapter 12, Article 3.1;
 - 5. Fails to substantially comply with any provision contained in A.R.S. § 36-881 et seq. Title 36, Chapter 7.1, Article 1 or these rules; or
 - 6. Substantially complies with A.R.S. Title 36, Chapter 7.1, Article 1 and these rules, but refuses to carry out a plan acceptable to the Department to eliminate any deficiencies.
- B.** In determining whether to deny, suspend, or revoke a license, the Department shall consider the threat to the health and safety of children in a facility based on such factors as:
 - 1. Repeated violations of statutes or rules,
 - 2. Pattern A pattern of non-compliance,
 - 3. Type The type of violation,
 - 4. Severity The severity of each violation, and
 - 5. Number The number of violations.

ARTICLE 5. FACILITY PROGRAM AND EQUIPMENT

R9-5-509. General Food Service and Food Handling Standards

- A.** A licensee that prepares or serves food to enrolled children on the facility premises shall comply with 9 A.A.C. ~~R9-8-114 through R9-8-135~~, 8, Article 1 and the local ordinances, and requirements of the local health department where the facility is located. If a licensee contracts with a food service establishment defined in A.A.C. R9-8-112(13), to prepare and deliver food to the facility, the licensee shall obtain and provide the Department with a copy of the food service establishment's permit, issued as prescribed by A.A.C. ~~R9-8-119~~ under 9 A.A.C. 8, Article 1, at the following times:
 - 1. Before the Department issues a license to the facility,
 - 2. Upon contracting with the food service establishment, and
 - 3. Every 12 months from after the date the food service contract is entered into while the contract is in effect.
- B.** A licensee that stores, displays, transports, prepares, or serves food shall:
 - 1. Protect food from contamination;
 - 2. Prohibit storage of food in a bathroom;
 - 3. Store perishable foods requiring cold storage in a refrigeration unit at temperatures that do not exceed 45° F or freezer at temperatures that do not exceed 0° F. Each refrigeration unit or freezer shall be fitted with a thermometer to measure the inside air temperature;
 - 4. Maintain perishable foods requiring hot storage at a temperature of at least 140° F, except during food preparation; and
 - 5. Provide a metal stem type thermometer to measure the temperatures of foods.
- C.** A licensee shall ensure that a utensil, container, surface, or appliance used for eating, drinking, or food preparation is clean. All single-service articles as defined in A.A.C. R9-8-112(30) shall be disposed of after each use.
- D.** A licensee shall ensure that staff members wash their hands with antibacterial soap and running water before preparing or serving food or washing utensils.

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- E.** When a licensee serves milk, vegetable juice, or fruit juice, the licensee shall ensure that the staff member:
1. Serves fresh milk from a commercially filled container and does not return an unused portion to a commercial container. This rule supersedes A.A.C. R9-8-132(E)(2);
 2. Does not substitute fresh milk with dry milk that has been reconstituted;
 3. Does not replace fresh milk with any other food in the meal pattern requirement; and
 4. Serves 100% full strength fruit or vegetable juices.
- F.B.** A licensee shall ~~require~~ ensure that each child:
1. ~~Washes hands with antibacterial~~ Enrolled children, except infants and special needs children who cannot wash their own hands, wash their hands with soap and running water before handling or eating food;
 - a. ~~A staff member may use a washcloth to wash the hands of an infant or a child with special needs if indicated in the child's individualized plan; and~~
 - b. ~~To reduce the transfer of bacteria, a washcloth shall be used only once for an infant or a child with special needs;~~
 2. A staff member:
 - a. Washes with a washcloth the hands of an infant or a special needs child who cannot wash the child's own hands before the infant or special needs child handles or eats food, and
 - b. Uses each washcloth on only one child and only one time before it is laundered or discarded;
 - 2-3. ~~Is not served or~~ An enrolled child is not permitted to eat food directly off of the floor, carpet, or ground or with utensils placed directly on the floor, carpet, or ground;
 - 3-4. ~~Is encouraged but not forced by a staff member to eat foods served at a facility~~ A staff member encourages, but never forces, enrolled children to eat food;
 - 4-5. ~~Is assisted in eating when necessary~~ A staff member assists each enrolled child who needs assistance with eating; and
 - 5-6. ~~Is taught~~ A staff member teaches self-feeding skills and habits of good nutrition to each child as necessary; ;
 7. Fresh milk is served directly from the original, commercially filled container, and unused portions of individual servings are not returned to the original container;
 8. Reconstituted dry milk is not served to meet the fluid milk requirement;
 9. Juice served to children for a meal or snack is full-strength 100% vegetable or 100% fruit juice from an original, commercially filled container or reconstituted from a concentrate according to manufacturer instructions;
 10. Each staff member is informed of a modified diet prescribed for an enrolled child by the child's parent or health care provider, and the modified diet is posted in the kitchen and in the child's activity area;
 11. The food served to an enrolled child is consistent with a modified diet prescribed for the child by the child's parent or health care provider;
 12. An enrolled child is not permitted in the kitchen during food preparation or food service except as part of an activity;
 13. Enrolled children do not use the kitchen or a food storage area as a passageway; and
 14. A director or staff member:
 - a. Prepares a weekly menu at least one week in advance.
 - b. Includes on the menu the foods to be served on each day.
 - c. Dates each menu.
 - d. Posts each menu at least one day before the first meal on the menu will be served, and
 - e. Writes food substitutions on a posted menu no later than the morning of the day of meal service.
- G.** ~~Before the facility's 1st food service of the calendar week, a licensee shall ensure a dated menu specifying foods to be served on each day the facility is operating during the calendar week is posted in the facility.~~
1. ~~If a licensee serves a substitution for a food specified on the posted menu, the substitution shall be noted on the posted menu before the facility's 1st food service of the day.~~
 2. ~~A licensee shall maintain a menu on facility premises for 3 months from the date of the menu.~~
- H.** ~~When a parent provides specific dietary instructions for a child, a licensee shall post the instructions in the kitchen and the child's activity area and serve the child foods as instructed.~~
- I.** ~~A licensee shall not permit children in a kitchen during food preparation and food service except as part of an activity.~~
- J.** ~~A licensee shall not allow a food preparation or food storage area to be used as a passageway by children.~~

ARTICLE 7. CHILD CARE GROUP HOME CERTIFICATION ~~OF DAY CARE GROUP HOMES~~

R9-5-701. ~~Initial certification~~ Application for a Certificate

- A.** ~~An individual, partnership, or corporation shall not operate a day care group home unless certified by the Department.~~
- B.** ~~A completed, signed and notarized application for certification shall be submitted on forms provided by the Department, along with a non-refundable fee, pursuant to A.R.S. § 36-897.01(C) and (D), and all required attachments. An application submitted on behalf of an individual shall be signed by the individual; an application submitted on behalf of a partnership shall be signed by all partners; an application submitted on behalf of a corporation shall be signed by two officers of the Board of Directors of that corporation. The application shall contain:~~
1. ~~For each signatory on the application for certification and for all child care personnel, a completed, notarized, work registration card, a completed fingerprint card, and a non-refundable fee covering the cost of the fingerprint check;~~

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2. ~~For corporations, current Certification of Corporation status, a list of the corporate Board of Directors with designated officers, and current bylaws;~~
 3. ~~A floor plan of the proposed facility containing accurate dimensions;~~
 4. ~~A site plan, with accurate measurements, of the facility's surrounding grounds and outdoor activity area;~~
 5. ~~Name, address and telephone number of available fire, paramedic, emergency room, poison control and police services and the proximity of such services to the facility;~~
 6. ~~Address of any location serving alcoholic beverages within 500 feet of the facility;~~
 7. ~~The addresses of agricultural land within one-fourth mile of the facility;~~
 8. ~~A notarized statement that the certificate holder has sufficient financial resources to maintain and operate the facility in full compliance with the statutes and rules governing day care group homes;~~
 9. ~~Written references, as specified in R9-5-801(B)(13), from persons who are 21 years of age or older and who have personal knowledge of the provider and who will attest to the provider's good character and ability to care for children;~~
 10. ~~Verification of fingerprint registration with the Department, as specified in A.R.S. § 36-897.03, of the applicant, all personnel, and household members who are 18 years of age or older;~~
 11. ~~Documentation provided by the Department that the provider has attended the Department's orientation program for day care group home;~~
 12. ~~Copy of report of violation-free fire inspection conducted by the local fire authority or the State Fire Marshal's office. This inspection shall be conducted within 90 days prior to application for certification.~~
 13. ~~Copy of report of sanitation inspection on Department approved forms conducted within 90 days prior to application certification; and~~
 14. ~~Copy of report of violation-free gas inspection conducted by a licensed plumber or person licensed by the state to conduct inspection and repairs of gas lines and gas-fired heating and cooling devices conducted within 90 days prior to the application for certification.~~
- C.** ~~If notified by the Department that the application is not complete, the applicant shall supply the requested information within 15 calendar after receiving such notice. If the applicant fails to provide the requested information within the stated time, the application shall be denied.~~
- D.** ~~After an application for initial certification is determined to be complete, the Department shall conduct an inspection of the facility and its grounds, to determine compliance with statutes and rules governing day care group homes.~~
- E.** ~~The applicant shall sign the inspection report acknowledging the receipt of a copy of the inspection report.~~

An applicant for a certificate shall:

1. Be at least 21 years of age; and
2. Submit to the Department an application including:
 - a. A notarized application form signed by the applicant stating:
 - i. The applicant's name;
 - ii. The child care group home's name, if applicable;
 - iii. The child care group home's street address, mailing address, and telephone number;
 - iv. The applicant's type of business organization;
 - v. Whether the applicant agrees to allow the Department to submit supplemental requests for information; and
 - vi. That the applicant has read and will comply with these rules; has the financial resources to comply with A.R.S. Title 36, Chapter 7.1, Article 4 and these rules; and declares that the information provided in the application is accurate and complete;
 - b. If the applicant is a business organization, an Attachment to Application including the following organizational information about the business organization:
 - i. The address of the business organization;
 - ii. The name, title, and address of the business organization's statutory agent or of the individual designated by the business organization to accept service of process and subpoenas;
 - iii. The name, title, and address of each officer and board member or trustee; and
 - iv. A copy of the business organization's articles of incorporation, partnership or joint venture documents, or limited liability documents, if applicable;
 - c. A Child Care Information Sheet, including:
 - i. The applicant's name and telephone number;
 - ii. The child care group home's name, street address, mailing address, and telephone number;
 - iii. A list of the rooms in the child care group home indicating which rooms will be used for child care;
 - iv. A list of the child care service classifications to be provided in the child care group home; and
 - v. The applicant's signature and the date signed;
 - d. A copy of the applicant's valid class one or class two fingerprint clearance card issued according to A.R.S. § 41-1758.03;
 - e. A Criminal History Affidavit Class I or Class II completed by the applicant and including the information required by A.R.S. § 36-897.03;

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- f. A certificate issued by the Department showing that the applicant has completed at least four hours of Department-provided training that included the Department's role in certifying and regulating child care group homes under A.R.S. Title 36, Chapter 7.1, Article 4 and these rules;
- g. The following physical plant documents:
 - i. A floor plan of the child care group home showing the dimensions of the outside walls of the child care group home; the dimensions of each room to be used for child care; the location of each exit from the child care group home; the location of each sink and toilet to be used by enrolled children; and the location of each smoke or heat detector, fire extinguisher, and telephone in the child care group home;
 - ii. A site plan of the child care group home's outdoor activity area showing the dimensions of the outdoor activity area, the height of the fence around the outdoor activity area, the location of each exit from the outdoor activity area, the location of the house, the location of the shaded area required by R9-5-604(F), the location of a swimming pool, the height of the fence around the swimming pool, and the location of any other building or structure in the outdoor activity area;
 - iii. A copy of a violation-free fire inspection conducted within 90 days before the date of application by the local fire department or the Office of the State Fire Marshal; and
 - iv. If the child care group home has gas-powered appliances or heating and cooling devices, a copy of a violation-free gas inspection conducted within 90 days before the date of application by a state-licensed plumber or an individual licensed by the state to conduct inspection and repairs of gas lines and gas-fired heating and cooling devices;
- h. An Applicant, Staff, and Resident Report Form, including the applicant's name and address; a statement that the information on the form is accurate and complete; the dated signature of the applicant; and the following information about the applicant, each staff member, and each resident:
 - i. Name;
 - ii. Social security number or identification number issued by the U.S. Immigration and Naturalization Service;
 - iii. Birth date;
 - iv. Hire date, if applicable;
 - v. Job title, if a staff member, or relationship to certificate holder or provider, if a resident;
 - vi. Date of high school diploma or high school equivalency diploma, if applicable; and
 - vii. Information demonstrating each individual's compliance with A.R.S. § 36-897.03;
- i. A Provider Qualifications Form completed by the individual that the applicant intends to have serve as provider, including:
 - i. The name of the individual;
 - ii. The child care group home's name, if applicable;
 - iii. The child care group home's street address and telephone number;
 - iv. A statement that the individual is at least 21 years of age, will accept the primary responsibility for the daily administration and operation of the child care group home, and possesses the minimum qualifications required by R9-5-801;
 - v. A copy of the individual's high school diploma or high school equivalency diploma;
 - vi. A description of any additional education completed by the individual;
 - vii. A statement that the individual has on file at the child care group home the names, addresses, and telephone numbers of two professional references and two personal references for the individual;
 - viii. A statement that the information in the Provider Qualifications Form is accurate and complete; and
 - ix. The dated signature of the individual;
- j. At least one written professional reference and one written personal reference for the individual that the applicant intends to have serve as provider;
- k. Copies of certificates of general liability insurance and motor vehicle insurance that comply with R9-5-808; and
- l. The fee required by A.R.S. § 36-897.01.

R9-5-702. Certificate to operate a day care group home Time-frames

- A.** Upon determination by the Department that the application for certification is complete and the facility is in full compliance with the requirements of Article 7 through 10 of this Chapter, the Department shall issue a certificate to the provider to operate a day care group home. The certificate shall be valid for three years from the date of issuance and is nontransferable.
- B.** The certificate is valid only for the certificate holder and location identified on the certificate.
- C.** The provider shall post the certificate in the day care group home in a location where it can be seen by parents or guardians.
- D.** Each certificate shall be the property of the state of Arizona and the certificate shall be returned to the Department immediately upon suspension, revocation, expiration of the certificate, or voluntary closure, except for seasonal vacations.

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- A.** The overall time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Department under this Article is listed in Table 2. The applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. An extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.
- B.** The administrative completeness review time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Department under this Article is listed in Table 2 and begins on the date that the Department receives an application.
1. The Department shall send a notice of administrative completeness or deficiencies to the applicant within the administrative completeness review time-frame.
 - a. A notice of deficiencies shall list each deficiency and the items needed to complete the application.
 - b. The administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice of deficiencies is issued until the date that the Department receives all of the missing items from the applicant.
 - c. If an applicant for an initial certificate, a renewal certificate, or an approval of a change affecting a certificate fails to submit to the Department all of the items listed in the notice of deficiencies within 180 days after the date that the Department sent the notice of deficiencies, the Department shall consider the application withdrawn.
 2. If the Department issues a certificate or other approval to the applicant during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.
- C.** The substantive review time-frame described in A.R.S. § 41-1072 is listed in Table 2 and begins on the date of the notice of administrative completeness.
1. As part of the substantive review for an initial certificate application or a certificate renewal application, the Department shall conduct an inspection that may require more than one visit to the child care group home.
 2. As part of the substantive review for a request for approval of a change affecting a certificate that requires a change in the use of physical space at the child care group home, the Department shall conduct an inspection that may require more than one visit to the child care group home.
 3. The Department shall send a certificate or a written notice of approval or denial of a certificate or other request for approval to an applicant within the substantive review time-frame.
 4. During the substantive review time-frame, the Department may make one comprehensive written request for additional information, unless the Department and the applicant have agreed in writing to allow the Department to submit supplemental requests for information.
 - a. If the Department determines that an applicant or a child care group home is not in substantial compliance with A.R.S. Title 36, Chapter 7.1, Article 4 and these rules, the Department shall send a comprehensive written request for additional information that includes a written statement of deficiencies stating each statute and rule upon which noncompliance is based.
 - b. An applicant shall submit to the Department all of the information requested in the comprehensive written request for additional information and written documentation of the corrections required in the statement of deficiencies, if applicable:
 - i. Within 120 days after the date of the comprehensive written request for additional information, if applying for an initial certificate or for approval of a change affecting a certificate; or
 - ii. Within 10 days after the date of the comprehensive written request for additional information, if applying for a certificate renewal.
 - c. The substantive review time-frame and the overall time-frame are suspended from the date that the Department issues a comprehensive written request for additional information or a supplemental request for information until the date that the Department receives all of the information requested, including documentation of corrections required in a statement of deficiencies, if applicable.
 - d. If an applicant fails to submit to the Department all of the information requested in a comprehensive written request for additional information or a supplemental request for information, including documentation of corrections required in a statement of deficiencies, if applicable, within the time prescribed in subsection (C)(4)(b), the Department shall deny the application.
 5. The Department shall issue a certificate or approval if the Department determines that the applicant and child care group home are in substantial compliance with A.R.S. Title 36, Chapter 7.1, Article 4 and these rules, and the applicant submits documentation of corrections that is acceptable to the Department for any deficiencies.
 6. If the Department determines that a certificate or approval is to be denied, the Department shall send to the applicant a written notice of denial stating the reasons for denial and all other information required by A.R.S. § 41-1076.

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Table 2. Time-frames (in days)

<u>Type of Approval</u>	<u>Statutory Authority</u>	<u>Overall Time-frame</u>	<u>Administrative Completeness Review Time-frame</u>	<u>Substantive Review Time-frame</u>
<u>Initial Certificate under R9-5-701</u>	<u>A.R.S. § 36-897.01</u>	<u>120</u>	<u>30</u>	<u>90</u>
<u>Certificate Renewal under R9-5-704</u>	<u>A.R.S. § 36-897.01</u>	<u>90</u>	<u>30</u>	<u>60</u>
<u>Approval of Change Affecting Certificate under R9-5-705</u>	<u>A.R.S. §§ 36-897.01, 36-897.02</u>	<u>75</u>	<u>30</u>	<u>45</u>

R9-5-703. Denial of certification Fingerprinting Requirements

- A.** Initial certification to operate a day care group home shall be denied if:
1. Applicant fails to timely submit a properly completed application including required inspections and documents;
 2. Applicant provides false, incomplete, or misleading information on the application or during the application process;
 3. The applicant fails to allow the Department to enter the day care group home or to inspect required records;
 4. The applicant fails to fully comply with statutes and rules governing day care group homes or fails to correct within 30 days deficiencies cited during the initial certification inspection;
 5. After the Department has determined that an individual's presence in the facility may be detrimental to children, and after the Department has so notified the applicant, that applicant refuses to exclude said individual from the facility during the hours of operation;
 6. Applicant refuses to exclude from the day care group home during hours of operation individuals who have been denied registration pursuant to A.R.S. § 36-897.03;
 7. Applicant has been denied a certificate to operate a day care group home or a license to operate a day care center for the care of children for cause, in this state or another state, or has had such a certificate or license to operate a day care group home or day care center revoked, suspended, or not renewed;
 8. The Department has determined that the applicant is not of good character conducive to the welfare of children. An applicant who is an individual, or who is the officer of a corporation which is the applicant, or is a partner in a partnership will be considered not to have the good character conducive to the welfare of children if:
 - a. The applicant is awaiting trial on, or has been convicted of, or has admitted committing any of the following criminal offenses in this state or similar offenses in another state or jurisdiction:
 - i. Sexual abuse of a minor;
 - ii. Incest;
 - iii. First or second degree murder;
 - iv. Kidnapping;
 - v. Arson;
 - vi. Sexual assault;
 - vii. Sexual exploitation of a minor;
 - viii. Contributing to the delinquency of a minor;
 - ix. Commercial sexual exploitation of a minor;
 - x. Felony offenses involving distribution of marijuana or dangerous or narcotic drugs;
 - xi. Burglary;
 - xii. Robbery;
 - xiii. A dangerous crime against children as defined in A.R.S. § 36-897.03 or A.R.S. § 13-604.01;
 - xiv. Child abuse;
 - xv. Sexual conduct with a minor;
 - xvi. Molestation of a child;
 - b. The applicant is the parent or guardian of a child adjudicated to be a dependent child as defined in A.R.S. § 8-201(11);
 - c. The applicant, at the time of the renewal inspection, is not in full compliance with the statutes and rules governing day care group homes; or
 - d. During the most recent certification period, the applicant repeated operated in violation of statutes and rules governing day care group homes.

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- ~~B. An application for renewal of a day care group home certificate shall be denied for the reasons specified in subsection (A) of this Section.~~
- A.** A certificate holder shall ensure that each staff member and each adult resident at a child care group home:
1. Possesses a valid class one or class two fingerprint clearance card issued under A.R.S. § 41-1758.03, or
 2. Submits to the certificate holder a fingerprint clearance card application showing that the application was submitted to the fingerprint division of the Department of Public Safety under A.R.S. § 41-1758.02 within seven working days after becoming a staff member or adult resident.
- B.** If a staff member or adult resident possesses a class one or class two fingerprint clearance card that was issued before the staff member or adult resident became a staff member or adult resident at the child care group home, the certificate holder shall contact the Department of Public Safety within seven working days after the individual becomes a staff member or adult resident to determine whether the class one or class two fingerprint clearance card is valid. The certificate holder shall make a record of this determination, including the name of the staff member or adult resident, the date of the contact with the Department of Public Safety, and whether the class one or class two fingerprint clearance card is valid.
- C.** A certificate holder shall not allow an individual to be a staff member or adult resident if the individual has been denied a class two fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1 and has not received an interim approval under A.R.S. § 41-619.55(H).
- D.** A certificate holder shall not allow an individual to be a staff member or adult resident if the individual receives an interim approval under A.R.S. § 41-619.55(H) but is then denied a good cause exception under A.R.S. § 41-619.55 and a class two fingerprint clearance card under A.R.S. Title 41, Chapter 12, Article 3.1.
- E.** A certificate holder shall ensure that each staff member and each adult resident submits to the certificate holder the form required in A.R.S. § 36-897.03(B).
- F.** A certificate holder shall maintain documentation of each staff member's or adult resident's compliance with this Section in each staff member's or adult resident's file throughout the time the individual is a staff member or adult resident and for 12 months after the individual ceases to be a staff member or adult resident.

R9-5-704. Certificate Renewal of certification

- ~~A. An application for renewal of a day care group home certificate shall be submitted on forms provided by the Department no more than 60 days, but not less than 30 days, before expiration of the current certificate. At least 45 days before the expiration of a current certificate, an applicant for renewal of a certificate shall submit to the Department an application including:~~
- ~~1. A notarized application form signed by the applicant that includes:
 - a. The applicant's name;
 - b. The child care group home's name, if applicable;
 - c. The child care group home's street address, mailing address, and telephone number;
 - d. The applicant's type of business organization; and
 - e. A statement that the applicant has read and will comply with these rules; has the financial resources to comply with A.R.S. Title 36, Chapter 7.1, Article 4 and these rules; and declares that the information provided in the application is accurate and complete;~~
 - ~~2. An Attachment to Application including any changes to the information previously submitted as prescribed in R9-5-701(2); and~~
 - ~~3. The fee required by A.R.S. § 36-897.01.~~
- ~~B. When a completed application for renewal of certification is submitted prior to the expiration of the certificate, the existing certification shall remain in effect until the issuance of a final Department decision regarding that application for renewal of certification. An applicant that submits the items required by subsection (A) later than 45 days before the expiration date of the current certificate shall pay to the Department the late filing fee required by A.R.S. § 36-897.01.~~
- ~~C. If an applicant submits the items required by subsection (A) and the fee required by subsection (B), if applicable, before the expiration date of the current certificate, the current certificate does not expire until the date specified in A.R.S. § 41-1092.11(A).~~

R9-5-705. Suspension or revocation of certification Changes Affecting a Certificate

~~Certification may be suspended or revoked for any of the following:~~

- ~~1. Violation of any statute or rule governing day care group homes;~~
- ~~2. Failure to comply with child care personnel registration requirements;~~
- ~~3. Use of personnel for whom proper registration forms have not been submitted or who have been denied registration;~~
- ~~4. Omission of, or refusal to provide, information or records necessary for the Department to determine compliance with statutes and rules governing day care group homes;~~
- ~~5. Fraud or deceit in applying for certification or renewal of certification;~~
- ~~6. Failure to report abuse of a child pursuant to A.R.S. § 13-3620;~~
- ~~7. The presence in the day care group home, during hours of operation, of any personnel or household member:
 - a. Who are addicted to drugs or alcohol, or whose performance is affected by the use of drugs or alcohol;~~

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- b. ~~Who have abused any child; or~~
- e. ~~Who use or have used unacceptable disciplinary methods as defined in R9-5-909(E).~~
- A.** At least 30 days before the date of a change in a child care group home's name, a certificate holder shall send the Department written notice of the name change. Within 30 days after the date of receipt of the notice, the Department shall issue an amended certificate that incorporates the name change but retains the expiration date of the current certificate.
- B.** At least 30 days before the date of an intended change in a child care group home's space utilization or certified capacity, a certificate holder shall submit a written request for approval of the change to the Department. The written request shall include:
 - 1. The certificate holder's name;
 - 2. The child care group home's name, if applicable;
 - 3. The child care group home's street address, mailing address, and telephone number;
 - 4. The name, telephone number, and fax number of a point of contact for the request;
 - 5. The child care group home's certificate number;
 - 6. The type of change:
 - a. Space utilization, or
 - b. Certified capacity;
 - 7. A narrative description of the intended change; and
 - 8. The following additional information, as applicable:
 - a. If requesting a change in certified capacity, the square footage of the outdoor activity area and the square footage of the child care group home's indoor activity areas; and
 - b. If requesting a change in space utilization that affects individual rooms, the name and square footage of each affected room.
- C.** The Department shall review a request submitted under subsection (B) according to R9-5-702. If the child care group home will be in substantial compliance with A.R.S. Title 36, Chapter 7.1, Article 4 and these rules with the intended change, the Department shall send the certificate holder an amended certificate that incorporates the change but retains the expiration date of the current certificate.
- D.** A certificate holder shall not implement any change described under subsection (B) until the Department issues an amended certificate.
- E.** At least 30 days before the date of a change in service classification, a certificate holder shall send the Department written notice of the change.
- F.** At least 30 days before the date of a change in the ownership of a child care group home, a certificate holder shall send the Department written notice of the change. A new owner shall obtain a new certificate as prescribed in R9-5-701 before the new owner begins operating the child care group home.
- G.** A certificate holder changing a child care group home's location shall apply for a new certificate as prescribed in R9-5-701.
- H.** Within 30 days after the date of a change in any corporate or company officer or statutory agent, a certificate holder that is a corporation or a limited liability company shall send the Department written notice of the change.
- I.** Within 30 days after the date of a change in the membership of a partnership or joint venture or in the individual designated in writing to accept service of process and subpoenas, a certificate holder that is a partnership or joint venture shall send the Department written notice of the change.
- J.** Within 30 days after the date of a change in the officers of an association or cooperative or in the statutory agent or other individual designated in writing to accept service of process and subpoenas, a certificate holder that is an association or cooperative shall send the Department written notice of the change.

R9-5-706. ~~Notice of changes~~ **Change in Provider**

- A.** ~~The certificate holder shall notify the Department in writing, at least 30 days prior to the effective date, of any of the following changes or physical alterations:~~
 - 1. ~~Remodeling of the day care group home or its grounds. A copy of the remodeling building permit, if required by the local jurisdiction, shall be attached to the notification of remodeling.~~
 - 2. ~~Addition of any body of water including wells, cattle tank, swimming pool, spa, hydrotherapy pool, or decorative pond;~~
 - 3. ~~Modification of records, permits or statements, submitted to the Department as a part of the application for certification or renewal of certification; or~~
 - 4. ~~Transfer of ownership or termination of tenancy of the residence in which the child care services are provided.~~
- B.** ~~The certificate holder shall notify the Department, in writing, within 15 days of:~~
 - 1. ~~Addition or deletion of household members;~~
 - 2. ~~Voluntary closure of child care services. The provider shall submit the current certificate issued to operate the day care group home along with such notification;~~
 - 3. ~~any allegation that personnel or a household member has committed any of the crimes specified in A.R.S. § 36-897.03, or has engaged in or has observed any conduct not conducive to the welfare of the child; or~~

4. ~~The conviction or arrest of any personnel or household member for any crime specified in A.R.S. § 36-897.03.~~

At least 30 days before changing a child care group home's provider, a certificate holder shall send the Department written notice of the change. The written notice shall include a Provider Qualifications Form completed as required by R9-5-701(2)(i).

R9-5-707. ~~Complaints; investigations~~ Inspections; Investigations

- A. ~~Any person may file a written or oral complaint with the Department regarding the operation of a day care group home. The Department shall visit each day care group home as often as necessary to assure continued full compliance with law and the rules. The Department shall inspect each child care group home before issuing an initial certificate or a renewal certificate and as often as necessary to determine compliance with A.R.S. Title 36, Chapter 7.1, Article 4 and these rules. A certificate holder shall allow access to all areas of the child care group home affecting the health, safety, or welfare of an enrolled child or to which an enrolled child has access during hours of operation.~~
- B. ~~The provider shall allow representatives of the Department to inspect all areas of the day care group home to which the children have access during hours of operation. Such inspection shall include the facility and grounds, required records and reports, interviews with enrolled children, child care personnel and other household members and shall provide access to areas of the facility not used by children but which may affect their welfare or safety. If the Department receives written or verbal information alleging a violation of A.R.S. Title 36, Chapter 7.1, Article 4 or these rules, the Department shall conduct an investigation. A certificate holder shall permit the Department to interview staff members, residents, and enrolled children as part of an investigation.~~

R9-5-708. Denial, Revocation, or Suspension of Certificate

- A. The Department may deny, revoke, or suspend a certificate to operate a child care group home if an applicant or certificate holder:
1. Provides false or misleading information to the Department;
 2. Has been denied a certificate or license to operate a child care group home or a certificate or license to operate a child care facility in any state, unless the denial was based on the applicant's failure to complete the certification or licensing process according to a required time-frame;
 3. Has had a certificate or license to operate a child care group home or a certificate or license to operate a child care facility revoked or suspended in any state;
 4. Has been denied a fingerprint clearance card or has had a fingerprint clearance card revoked under A.R.S. Title 41, Chapter 12, Article 3.1;
 5. Fails to substantially comply with any provision in A.R.S. Title 36, Chapter 7.1, Article 4 or these rules; or
 6. Substantially complies with A.R.S. Title 36, Chapter 7.1, Article 4 and these rules, but refuses to carry out a plan acceptable to the Department to eliminate any deficiencies.
- B. In determining whether to deny, suspend, or revoke a certificate, the Department shall consider the threat to the health and safety of children in a child care group home based on such factors as:
1. Repeated violations of statutes or rules.
 2. A pattern of non-compliance.
 3. The type of violation.
 4. The severity of the violation, and
 5. The number of violations.

ARTICLE 8. ~~DAY~~ CHILD CARE GROUP HOME ADMINISTRATION

R9-5-801. Provider standards and responsibilities

- A. No change
1. No change
 2. No change
 3. No change
 4. ~~Have record a certificate issued by the Department showing that the provider has completed at least four hours of Department-provided training that included the Department's role in certifying and regulating child care group homes under A.R.S. Title 36, Chapter 7.1, Article 4 and these rules and records of attendance from required provider orientation as specified in R9-5-701(B)(11) and~~ all courses, workshops, seminars and training events attended.
- B. No change
1. Orient each of the facility's personnel and each household member to the statutes and rules governing day child care group homes and to the facility's policies and procedures;
 2. Ensure that the facility is operated in full compliance with statutes and rules governing day child care group homes;
 3. No change
 4. Ensure that all visitors who are present in the facility or grounds, during hours of operation, are supervised and accompanied by the day child care group home personnel;
 5. Notify parents and guardians of their right to enter the day child care group home, during hours of operation, while their child is present;

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6. No change
7. No change
 - a. Illness, injury or death of a child or other person in the ~~day~~ child care group home;
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
8. No change
9. No change
10. No change
11. No change
12. No change
13. No change

R9-5-802. Personnel standards and responsibilities

- A. No change
 1. No change
 2. No change
- B. No change
 1. Be oriented to the statutes and rules governing ~~day~~ child care group homes and to facility policies and procedures ~~prior to~~ before providing care for enrolled children;
 2. Have the physical and emotional health necessary to perform the duties and responsibilities required by the statutes and rules governing ~~day~~ child care group homes; and
 3. No change
 - a. No change
 - b. No change
 4. No change
 5. No change
 6. No change
 - a. Orientation of all new employees to the ~~day~~ child care group home and its policies and procedures;
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 - h. No change
 - i. No change
 - j. No change
 - k. No change
 7. No change

R9-5-804. Inspection reports

- A. A chronological file of all reports of inspections conducted at the ~~day~~ child care group home and documentation that required corrections have been timely made shall be kept current and maintained at the facility.
- B. No change
- C. No change

R9-5-806. Children's records and reports

- A. A ~~day~~ child care group home shall maintain at the facility an individual file for each enrolled child separate from household or personal records. The file shall be made immediately available for inspection by the Department and shall contain the following:
 1. No change
 2. No change
 3. 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
- 9. No change
- 10. No change
- 11. Ensure that no child continues enrollment at the ~~day child~~ care group home for more than 15 days after receiving notification of necessary immunizations until proof of immunizations or exemption from immunizations is provided;
- 12. No change
- 13. No change
- 14. No change
- 15. No change
- 16. No change
- 17. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change

B. No change

R9-5-807. Attendance records; admission and release of children

- A. No change
- B. No change
- C. No change
- D. The provider shall require that all authorized individuals, other than the parent or guardian, present picture identification prior to releasing the child from the ~~day child~~ care group home.
- E. No change
- F. ~~No~~ A child shall not be allowed to admit or release herself from a ~~day child~~ care group home unless ~~she~~ the child is of school age and written authorization is provided by the child's parent or guardian when the child is enrolled. If written authorization is brought to the facility by the child, the authorization shall be verified with the parent or guardian upon receipt.

ARTICLE 9. PROGRAM AND EQUIPMENT FOR ~~DAY CHILD~~ CARE GROUP HOMES

R9-5-901. General program and equipment standards

- A. ~~The day~~ A child care group home shall maintain a safe and healthful environment, free from disease and illness.
 - 1. No change
 - 2. No change
- B. ~~The day~~ A child care group home shall provide a program ~~which that~~ includes a balance of daily activities ~~which that~~ meet the age interests and developmental needs of each child including:
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
- C. No change
- D. No change
- E. No change
- F. Each ~~day child~~ care group home shall have sufficient play materials and equipment so that, at any one time, each child who is present can be individually involved in the activities outlined in the activity plan.
- G. In addition to requirements specified in this rule, a ~~day child~~ care group home providing care for three-, four- and five-year-old children shall provide the following play materials and supplies:
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
 - 7. No change

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- 8. No change
- H.** No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
- I.** No change
- J.** No change

R9-5-903. Supplemental equipment standards for school-age children

In addition to materials and supplies specified in R9-5-901(G), ~~the day a child~~ care group home shall provide play materials and equipment that meet the interests and developmental needs of children including:

- 1. No change
- 2. No change
- 3. No change
- 4. No change
- 5. No change
- 6. No change

R9-5-904. Supplemental program and equipment standards for special needs children

- A.** No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
- B.** No change
- C.** Special needs children shall be integrated into the daily activities of the ~~day child~~ care group home whenever possible within the least restrictive environment that meets the individual needs of special needs children in attendance.

R9-5-905. Supplemental program and equipment standards for night care

After consultation with the parent or guardian to establish a written plan regarding night home care, a ~~day child~~ care group home providing night home care shall comply with the following:

- 1. No change
- 2. No change
- 3. No change
- 4. No change
- 5. No change
- 6. No change

R9-5-906. Illness and infestation

- A.** No change
- B.** The provider shall not accept or allow a child to remain at the ~~day child~~ care group home if the child shows symptoms of inflammation, fever, rash, diarrhea, vomiting, pinworms, lice, or is suspected of having a contagious or infectious disease or infestation.
- C.** If a child develops symptoms of illness or infestation while at the ~~day child~~ care group home, personnel shall isolate the child from others upon discovery and shall immediately notify the child's parent or guardian to arrange for prompt removal of the child.
- D.** No change

R9-5-907. Emergency medical care

- A.** No change
- B.** A first-aid kit shall be maintained in the ~~day child~~ care group home ~~which that~~ is accessible to all personnel but out of the reach of children. The first-aid kit shall contain at a minimum:
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change

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7. No change

R9-5-908. Medications

A. No change

B. No change

1. Staff designated by the provider in writing shall be responsible for the administration of medication including the storage, recordkeeping, handling, and overseeing the child's ingestion or application of medication. Only one staff member in the day child care group home at any given time shall be designated for administration of medication;
2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
3. No change
4. The provider shall maintain a record of all medications administered to each child by day child care group home staff. The record shall contain:
 - a. No change
 - b. No change
 - c. No change
 - d. No change
5. No change
6. No change
7. No change
8. No change
9. No change

C. No change

R9-5-909. Discipline and guidance

A. No change

B. No change

C. A child whose behavior is uncontrolled may be restrained by being firmly held by day child care personnel only when all of the following conditions apply:

1. No change
2. No change
3. No change
4. No change

D. No change

E. No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change

F. No change

G. Only day child care group home personnel shall be allowed to discipline an enrolled child.

R9-5-912. Transportation of children and field trips

A. No change

B. 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

- C. 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
- D. No change
 - 1. The provider shall obtain written permission from the parent or guardian in advance of the child's participation in a field trip. The field trip permission notice shall provide details of the trip including the purpose of the field trip, time of departure and arrival at the ~~day~~ child care group home, and the address of the trip destination;
 - 2. No change
 - 3. No change
 - 4. No change

**ARTICLE 10. ACTIVITY AREAS AND PHYSICAL FACILITY STANDARDS FOR
~~DAY~~ CHILD CARE GROUP HOMES**

R9-5-1001. ~~Day~~ Child care group home activity areas

- A. No change
- B. No change
- C. No change
- D. 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

R9-5-1003. Fire and safety

- 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
- J. No change
- K. No change
- L. No change
- M. No change
- N. No change
- O. No change
- P. No change
- Q. No change
- R. No change
- S. No change
- T. No change
- U. No change
- V. ~~The day~~ A child care group home and its grounds shall be well illuminated.
- W. No change
- X. No change
- Y. No change

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

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

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| R18-9-C304 | New Section |

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

Authorizing statute: A.R.S. § 49-241

Implementing statutes: A.R.S. §§ 49-241 and 49-245

- 3. The effective date of the rules:**

The Department requests that the rule becomes effective on September 15, 2002, upon filing with the Secretary of State. The Department believes that this rule is less stringent than the rules currently in effect; that it does not have an impact on the public health, safety, welfare, or environment; and that it does not affect the public involvement and public participation process. A.R.S. § 41-1032(A)(5).

On March 7, 2001, the Department issued a moratorium on the requirement to obtain an individual Aquifer Protection Permit (APP) for motor fuel dispensing facilities with drywells that were constructed before July 1, 2001. The moratorium applied solely to facilities with underground storage tanks where petroleum is the only hazardous substance used, stored, loaded, or treated.

The moratorium was implemented to allow time to identify flow control and pretreatment technologies approved for use with drywells and to develop a general permit for motor fuel dispensing facilities. The large number of potential applicants requires a simple, streamlined permitting process. This rule was developed to provide specificity and certainty that the selected flow control or pretreatment technology will ensure compliance with the conditions of the general permit. This results in a speedy authorization to discharge while also ensuring that motor fuels will not enter the subsurface through the drywell.

The moratorium, which ended July 1, 2002, did not allow enough time for the Department to complete the rulemaking process to establish a new general permit for drywells at these facilities. To remedy this situation, stakeholders were notified on June 27, 2002, that the moratorium would be extended until September 15, 2002 (five days after the Governor's Regulatory Review Council September meeting) for facilities with drywells that can meet the new general permit requirements. The moratorium's extension, however, did not apply to facilities operating under a Notice of Disposal or Groundwater Quality Protection Permit or to facilities that fell under the moratorium, but could not meet the technical requirements of either the current R18-9-C301 or the new R18-9-C304. These facilities were encouraged to submit an individual permit application as soon as possible, but not later than September 15, 2002.

- 4. A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 8 A.A.R. 939, March 8, 2002

Notice of Proposed Rulemaking: 8 A.A.R. 2536, June 14, 2002

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

Name: Shirley J. Conard

Address: Arizona Department of Environmental Quality
1110 W. Washington, 5420E
Phoenix, AZ 85012-2809

Telephone: (602) 771-4632 (Metro-Phoenix area) or (800) 234-5677, ext. 4632 (other areas)

Fax: (602) 771-4674

E-mail: conard.shirley@ev.state.az.us

- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**

A dry well is defined in A.R.S. § 49-331(3) as "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." Although the term dry well is defined as two words under A.R.S. § 49-331(3), the Department changed the term to "drywell" in the 2001 promulgation of 18 A.A.C. 9, Articles 1, 2, and 3. The Department believed that the spelling change clarified any misunderstanding of the term and that the program was not dealing with a "dry" well, but a "drywell," which is a

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shaft or hole constructed for the disposal of stormwater. This spelling is used by the drywell industry and by the U.S. Environmental Protection Agency. At its earliest opportunity, the Department will seek the substitution of “drywell” for “dry well” in A.R.S. Title 49, Chapter 2, Article 8.

Drywells are intended to provide quick and efficient disposal of stormwater by providing a conduit for fluids to bypass surface ponding caused by slow infiltration through the soil column. Drywells are exempt from the requirement to obtain an Aquifer Protection Permit (APP) as long as they receive only stormwater. However, it is not uncommon for drywells to be located in areas where there is a potential for spills of pollutants, including hazardous substances, to enter the drywell thus posing a threat to groundwater quality. If contaminated wastewater is discharged to a drywell, minimal dispersion and attenuation of hazardous substances occurs creating a much greater risk to groundwater quality. Since program inception, individual APPs have been issued for drywells at facilities where hazardous substances are used, stored, loaded, or treated to ensure that groundwater quality is protected.

When the Department adopted the Unified Permit Rule (new Aquifer Protection Permit rule) in January 2001, it contained a Type 2 general permit, the 2.01 General Permit for Drywells That Drain Areas Where Hazardous Substances Are Used, Stored, Loaded, or Treated. See R18-9-C301. A Type 2 General Permit requires that a Notice of Intent to Discharge (NOI) be filed with the Department before the applicant is authorized to discharge. The permittee need only provide sufficient information to ensure compliance with the terms of the specific general permit. The authorization to discharge under the general permit is effective on the date the Department receives the complete NOI. The general permit requirements were based on the guidelines used by the Water Permits staff for previously issued individual APPs for these discharging facilities.

Drywells represent a special problem at service stations because they provide immediate and rapid infiltration of stormwater to the aquifer at a location where motor fuel spills also may occur. As a direct “pipeline” to groundwater, the drywell conducts the pollutants deep into the subsurface without any possibility of treatment or removal by the overlying soils. This danger can be minimized, though, because designs are available for drywell systems that remove, intercept, or collect pollutants before they enter the drywell itself. Some of these systems are patented while others simply employ sumps or other common pollution control design features. Setbacks of drywells from water supply wells offer further protection by providing dilution of pollutants within the aquifer.

Prior to January 1, 2001, a number of individual APPs had been issued to motor fuel dispensing facilities to prevent groundwater contamination. The Department received comments on the APP rules from service stations owners who expressed concern that location or construction deficiencies for previously installed drywells could prevent them from taking advantage of the 2.01 General Permit approach adopted in the rule. As a result, Department staff met with representatives of motor fuel dispensing facility owners to explore options either to develop another general permit or to develop guidance on approved flow control or pretreatment technologies that would satisfy the general permit requirements.

The Department contracted with Brown and Caldwell to compile a list of stormwater flow control or pretreatment technologies that would satisfy the requirements of the 2.01 General Permit. The ultimate goal was to have a list of “pre-approved technologies” available for use when applying for authority to discharge under this general permit. Brown & Caldwell researched and evaluated existing technologies to establish the list of technologies suitable for use in removing gasoline components as well as for use in overall stormwater pretreatment.

The Department began holding stakeholder meetings in October 2001 to provide an opportunity to develop the list of technologies to be evaluated and define the parameters to be evaluated. Brown and Caldwell then performed their analysis and developed a draft report of the results. Several drafts of the report were released for stakeholder comment. Although a final report has not been issued yet, the flow control and pre-treatment technologies in this rule are the results of this effort.

This general permit has been developed to provide clear direction to the applicant of the permit requirements. In this way, an applicant can be assured that they will receive their authorization to discharge upon the Department’s receipt of the complete Notice of Intent to Discharge.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule 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:

“Flow Control and Pre-treatment Technologies,” developed by Brown and Caldwell, 3636 N. Central Avenue, Suite 200, Phoenix 85012. This material may be viewed at the Department, 1110 W. Washington, Phoenix, AZ, or at the offices of Brown and Caldwell.

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

Not applicable

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

This rulemaking assists the Department in accomplishing its mission to protect public health and the environment by preventing inappropriate discharges to the state’s groundwater through focusing on prevention and avoiding multiple costs that accompany environmental cleanups.

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The rule provides stakeholders with the option to use a general permit rather than an individual permit, which is more costly because an individual permit application takes more effort and technical expertise to prepare, longer to process and review, and a more extensive public participation process.

Because of its specificity, general permits are simpler, have less stringent monitoring and reporting requirements, and take fewer hours to process than individual permits. The applicant must submit a Notice of Intent to Discharge and a fee for general permit coverage.

Any drywell at a motor fuel dispensing facility is eligible for coverage under this Type 2 General Permit. An applicant should realize a significant reduction in approval time because a facility is authorized to operate under a Type 2 General Permit solely by notification to the Department that it meets the technical standards specified in the general permit. The requirement that the permit must be renewed every five years, compared to most individual permits which are issued for the life of the facility, means that additional permitting costs will be incurred. However, the facility will save on the reporting time that will make up for the additional time the facility needs to process renewal applications. Although a facility will need to renew the general permit every five years, the time and cost associated with permitting, reporting, and interacting with the agency will be greatly reduced as compared to an individual Aquifer Protection Permit, which requires routine notification and reporting to the Department regarding various activities and events. For example if a spill reaches the injection pipe of the drywell, the general permit directs the permittee to proceed with drilling a subsurface boring for soil sampling. For an individual permit, the permit would typically require the permittee to submit a plan to the Department, wait for review and approval and then mobilize to perform the investigation. Overall, the general permit will facilitate more timely response to spills and reduce the cost of coordinating and reporting to the Department.

Consumers will be impacted indirectly because expenditures made to ensure the protection of groundwater from pollutants discharged as a result of various activities will be more efficiently used for the protection of public health and safety. To the extent that fewer resources will be required to obtain this general permit, many applicants will be able to obtain this permit faster and at less cost. The Department anticipates facilities that are currently discharging without a permit will take advantage of this permitting option.

In most cases, a general permit is less expensive than a single individual permit. However, a general permit must be renewed every five years. A particular facility must evaluate the economic benefit of an individual permit that does not need to be renewed versus the economic benefit of a general permit that is less expensive to permit but must be renewed every five years.

Currently the fee for a Type 2 General Permit is \$300 for a new permit, expansion, or renewal with permit change, and \$120 for a renewal with no permit change. See Table 1 in A.A.C. R18-14-102. A permittee who chooses to obtain an individual permit instead of the general permit under this rule would pay an hourly rate of \$61 for review hours and any review related costs, up \$3,300, the maximum fee specified under R18-14-104. Based on past permitting, the average hours to issue an individual permit for a facility with a drywell were 46.5 with a high of 126.1 hours and a low of 13.9 hours. These hours may not reflect some activities such as travel time, which are non-billable.

The Department believes that there are hundreds of motor fuel dispensing facilities that are eligible for this general permit. Of these facilities 25 are currently permitted under R18-9-C301 and 33 hold an individual permit. It is unlikely that a facility currently holding an individual permit, which is issued for the life of the facility, will obtain a general permit that must be renewed every five years.

Requirements of A.R.S. § 41-1035.

1. Establish less stringent compliance and reporting requirements for small businesses.

Reporting requirements for general permits are less stringent than those for individual permits.

2. Establish less stringent compliance or reporting schedules or deadlines for small businesses.

It is not possible to employ less stringent compliance or reporting schedules or deadlines for small business because all motor fuel dispensing facility owners that have drywells that drain areas where motor fuels are used, stored or loaded are required to have a permit.

3. Consolidate or simplify the rule's compliance and reporting requirements for small businesses.

This general permit promotes a uniform and simple process for all motor fuel dispensing facilities that have drywells that drain areas where motor fuels are used, stored, or loaded. General permits require minimal monitoring requirements and no reporting requirements.

4. Establish performance standards for small businesses to replace design and operational standards.

Because of the importance of reducing impacts to groundwater, the Department currently maintains a performance-based approach to permitting. This general permit provides an easy permitting process for applicants that can meet the criteria specified in the general permit.

5. Exempt small businesses from any or all requirements of the rule.

It is neither legal nor feasible to exempt any discharging facility from the requirements of this rulemaking.

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

Subsection (A)(2) has been changed as follows:

A drywell at a vehicle maintenance facility owned or operated by a commercial enterprise or by a federal, state, county, or local government is not eligible for coverage under this general permit, unless the facility design ensures that only ~~areas where~~ motor ~~fuels~~ fuel dispensing areas will drain to the drywell. Areas where hazardous substances other than motor fuels are used, stored, or loaded, (including service bays) are not covered under this general permit.

The term "on-site" was not published in the Notice of Proposed Rulemaking and has been added to subsection (I) as follows:

Recordkeeping. A permittee shall maintain for at least 10 years, the following documents on-site, or at the closest practical place of work, and make the documents available to the Department upon request:

Subsection (C) was changed as follows:

C. Design requirements. ~~An applicant shall:~~

1. ~~Drywells constructed after July 1, 2001. An applicant shall:~~
 - a. ~~Locate the drywell no closer than 100 feet from a water supply well and 20 feet from an underground storage tank;~~
 - b. ~~Locate the bottom of the drywell injection pipe at least 10 feet above the groundwater table. The applicant shall seal off any zone of perched water above the groundwater table from the drywell injection pipe following the requirements in 12 A.A.C. 15, Article 8;~~
 - 2.a. ~~Include a flow control or pretreatment device, or both, that removes, intercepts, or collects spilled motor fuel or hazardous substances before stormwater enters the drywell injection pipe;~~
 - 3.b. ~~Calculate the volume of ~~run-off~~ runoff generated in the design storm event and anticipate the maximum potential contaminant release quantity to design the treatment and holding capacity of the drywell; and~~
 - 4.c. ~~Follow local codes and regulations to meet retention periods for removing standing water;~~
 - d. ~~Locate the drywell at least 100 feet from a water supply well and 20 feet from an underground storage tank; and~~
 - e. ~~Locate the bottom of the drywell injection pipe at least 10 feet above the groundwater table. The applicant shall seal off any zone of perched water above the groundwater table from the drywell injection pipe following the requirements in R12-15-816(I)(1) and (2).~~
2. ~~An applicant that cannot meet the design requirements in subsections (C)(1)(d) and (e) shall provide the Department with the date of drywell construction, the distance from the drywell to the nearest water supply well and from the drywell to the underground storage tank, and the depth to the groundwater from the bottom of the drywell injection pipe.~~

Subsection (G) has been changed as follows:

1. A permittee shall comply with the following closure requirements:
 - a. Retain a drywell drilling contractor, licensed under 4 A.A.C. 9, to close the drywell;
 - b. Remove sediments and any drainage components, such as stand pipes and screens from the drywell's settling chamber and backfill the injection pipe with cement grout;
 - c. Remove the top of the drywell, including the upper settling chamber to a depth of at least 6 feet below the ground surface. The permittee may use a backhoe or other excavation equipment;
 - d. Fill the remaining settling chamber with clean, mechanically compacted silt, clay, similar engineered material, or ABC slurry;
 - e. Place a cement grout plug at least 2 feet thick with the top set at 4 feet below the ground surface;
 - f. Backfill the remainder of the drywell to the land surface with clean silt, clay, or engineered material ~~and mechanically compact. Materials containing hazardous substances are prohibited from use in backfilling the drywell; and~~
 - g. ~~Materials containing hazardous substances are prohibited from use in backfilling the drywell. Mechanically compact the backfill.~~
- 2.h. ~~If a permittee uses procedures other than those listed in subsections (G)(1)(a) through (G)(1)(g) are used subsection (G)(1) in closure, the permittee shall demonstrate to the Department that the those procedures used are equivalent to the procedures listed in subsection (G)(1) and will prevent any fluid migration from the ground surface to an aquifer and obtain approval before implementation;~~

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- ~~3.i. Closure Verification.~~ Within 30 days of closure, the permittee shall submit written verification of the closure procedures the permittee used to the Department with the drywell registration number or a completed registration form. The written verification shall specify:
- ~~a.i.~~ The reason for the closure;
 - ~~b.ii.~~ The materials and methods used to abandon the drywell;
 - ~~c.iii.~~ The name of the contractor who performed the closure;
 - ~~d.iv.~~ The completion date;
 - ~~e.v.~~ Any sampling data collected from the drywell investigation if performed or if required by the Department; and
 - ~~f.vi.~~ Sump construction details, if a sump is constructed to replace the abandoned drywell.
- ~~2.4. The Department may require additional investigations or corrective actions to ensure that the closure requirements have been met.~~ The Department may require additional investigations or corrective actions if any of the following conditions exist:
- a. The permittee has not satisfied the closure requirements in A.A.C. R18-9-A306.
 - b. The permittee provided incorrect or inaccurate information or there is relevant information missing from the permit application or closure reports.
 - c. The permittee has not eliminated discharges from the facility through closure activities, or
 - d. Closure and decommissioning activities have not demonstrated or achieved compliance with aquifer water quality standards.
- ~~3.5.~~ If no motor fuel or hazardous substance spill enters the drywell, the permittee complies with the closure requirements in subsections (G)(1)(a) through (G)(1)(h) satisfies closure under R18-9-A306 under R18-9-A306 by satisfying the requirements in subsections (G)(1) or (2).
- ~~4.6.~~ If a motor fuel or hazardous substance spill has entered the injection pipe, the permittee shall comply with the requirements in A.R.S. § 49-252, A.A.C. R18-9-A306, and subsection ~~(H)(3)~~ (H)(1)(c) to close the drywell.

Subsection (H) has been changed as follows:

H. Spills.

- 1. A permittee shall:
 - ~~1.a.~~ Notify the Department within 24 hours of any spill of motor fuel or hazardous substances that enters into the drywell or exceeds the treatment capacity of the pretreatment system;
 - ~~2.b.~~ Contain, cleanup, and dispose of, according to local, state, and federal requirements, any spill or leak of motor fuel and hazardous substance in the drywell drainage area and basin drainage area; and
 - ~~3.c.~~ If the spill reaches the injection pipe, drill a soil boring within 5 feet of the drywell inlet chamber and sample in 5-foot increments to a depth extending at least 10 feet below the base of the injection pipe to determine if whether a soil remediation level or groundwater protection level has been exceeded in the subsurface; ~~and~~
- ~~4.2.~~ The Department may require additional investigations or corrective actions ~~if based on its assessment of whether an exceedance of a soil remediation level or groundwater protection level has been exceeded in the soil boring poses a risk of noncompliance with human health or water quality standards.~~

Grammatical and clarification rule changes were made at the request of Council staff.

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

None

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

None

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

None

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

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

ARTICLE 3. AQUIFER PROTECTION PERMITS – GENERAL PERMITS

PART C. TYPE 2 GENERAL PERMITS

Section

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

ARTICLE 3. AQUIFER PROTECTION PERMITS – GENERAL PERMITS

PART C. TYPE 2 GENERAL PERMITS

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.** A 2.04 General Permit allows for a drywell that drains an area at a facility for dispensing motor fuel, as defined in A.A.C. R20-2-701(19), including a commercial gasoline station with an underground storage tank.
1. A drywell at a motor fuel dispensing facility using hazardous substances is eligible for coverage under this general permit.
 2. A drywell at a vehicle maintenance facility owned or operated by a commercial enterprise or by a federal, state, county, or local government is not eligible for coverage under this general permit, unless the facility design ensures that only motor fuel dispensing areas will drain to the drywell. Areas where hazardous substances other than motor fuels are used, stored, or loaded, including service bays, are not covered under this general permit.
 3. For purposes of this Section, “hazardous substances” means substances that are components of commercially packaged automotive supplies, such as motor oil, antifreeze, and routine cleaning supplies such as those used for cleaning windshields, but not degreasers, engine cleaners, or similar products.
- B.** Notice of Intent to Discharge.
1. An applicant shall provide design information to demonstrate that the requirements in subsection (C) are met.
 2. In addition to the requirements in R18-9-A301(B), an applicant shall submit:
 - a. The Department registration number for the drywell or documentation that a drywell registration form was submitted to the Department; and
 - b. For a drywell constructed more than 90 days before the Notice of Intent to Discharge is submitted, a certification signed and sealed by an Arizona-registered professional engineer or geologist that a site investigation concluded that the drywell is marked “Stormwater Only” on the surface grate or manhole cover; and
 - i. The settling chamber does not contain sediment for characterizing and comparison of results to soil remediation levels and the chamber has not been cleaned out within the last six months; or
 - ii. Analytical results from sampling of the settling chamber sediment for pollutants reasonably expected to be present do not exceed the residential soil remediation levels or groundwater protection levels; or
 - iii. Soil-borings indicate that neither a soil remediation level nor groundwater protection level is exceeded in soil beneath the drywell.
- C.** Design requirements.
1. An applicant shall:
 - a. Include a flow control or pretreatment device, or both, that removes, intercepts, or collects spilled motor fuel or hazardous substances before stormwater enters the drywell injection pipe;
 - b. Calculate the volume of runoff generated in the design storm event and anticipate the maximum potential contaminant release quantity to design the treatment and holding capacity of the drywell;
 - c. Follow local codes and regulations to meet retention periods for removing standing water;
 - d. Locate the drywell at least 100 feet from a water supply well and 20 feet from an underground storage tank; and
 - e. Locate the bottom of the drywell injection pipe at least 10 feet above the groundwater table. The applicant shall seal off any zone of perched water above the groundwater table from the drywell injection pipe following the requirements in R12-15-816(I)(1) and (2).
 2. An applicant that cannot meet the design requirements in subsections (C)(1)(d) and (e) shall provide the Department with the date of drywell construction, the distance from the drywell to the nearest water supply well and from the drywell to the underground storage tank, and the depth to the groundwater from the bottom of the drywell injection pipe.

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- D.** A permittee shall ensure that motor fuels and other hazardous substances are not discharged to the subsurface. A permittee may use any of the following flow control or pretreatment technologies:
1. Flow control. The permittee shall ensure that motor fuel and hazardous substance spills are removed before allowing stormwater to enter the drywell.
 - a. Normally closed manual or automatic valve. The permittee shall leave a normally closed valve in a closed position except when stormwater is allowed to enter the drywell;
 - b. Raised drywell inlet. The permittee shall:
 - i. Raise the drywell inlet at least 6 inches above the bottom of the retention basin or other storage structure, or install a 6-inch asphalt or concrete raised barrier encircling the drywell inlet to provide a non-draining storage capacity within the retention basin or storage structure for complete containment of a spill; and
 - ii. Ensure that the storage capacity is at least 110 percent of the combined volume of the design storm event required by the local jurisdiction and the maximum releasable quantity of spilled motor fuel;
 - c. Magnetic mat or cap. The permittee shall ensure that the drywell inlet is sealed with a mat or cap at all times, except after rainfall or storm event when the mat or cap is temporarily removed to allow stormwater to enter the drywell; and that the mat or cap is always used with a retention basin or other type of storage;
 - d. Primary sump, interceptor, or settling chamber. The permittee may use a primary sump, interceptor, or settling chamber only in combination with another flow control or pre-treatment technology.
 - i. The permittee shall remove motor fuel or hazardous substances from the sump, interceptor, or chamber before allowing stormwater to enter the drywell.
 - ii. The permittee shall install a settling chamber or sump and allow the suspended solids to settle before stormwater flows into a drywell; install the drywell injection pipe in a separate chamber and connect the sump, interceptor, or chamber to the drywell inlet by piping and valving to allow the stormwater to enter the drywell.
 - iii. The permittee may install fuel hydrocarbon detection sensors in the sump, interceptor, or settling chamber that use flow control to prevent fuel from discharging into the drywell;
 2. Pretreatment. The permittee shall prevent the bypass of motor fuels and hazardous substances from the pretreatment system to the drywell during periods of high flow.
 - a. Catch basin inlet filter. The permittee shall:
 - i. Install a catch basin inlet filter to fit inside a catchment drain to prevent motor fuels and hazardous substances from entering the drywell.
 - ii. Ensure that a motor fuel spill or a spill during a high rainfall does not bypass the system and directly release to the drywell injection pipe; and
 - iii. Combine the catch basin inlet filter with a flow control technology to prevent contaminated stormwater from entering the drywell injection pipe;
 - b. Combined settling chamber and a oil/water separator.
 - i. The permittee shall install a system that incorporates a catch basin inlet, a settling chamber, and an oil/water separator.
 - ii. The permittee may incorporate a self-sealing mechanism, such as fuel hydrocarbon detection sensors that activate a valve to cutoff flow to the drywell inlet.
 - c. Combined settling chamber and oil/water separator, and filter/adsorption. The permittee shall:
 - i. Allow for adequate collection and treatment capacity for solid and liquid separation; and
 - ii. Allow a minimum treated outflow from the system to the drywell inlet of 20 gallons per minute. If a higher outflow rate is anticipated, the applicant shall design a larger collection system with storage capacity.
 - d. Passive skimmer.
 - i. If a passive skimmer is used, the permittee shall install sufficient hydrocarbon adsorbent materials, such as pads and socks, or suspend the materials on top of the static water level in a sump or other catchment to absorb the entire volume of expected or potential spill.
 - ii. The permittee may use a passive skimmer only in combination with another flow control or pre-treatment technology.
- E.** Inspection. A permittee shall:
1. Conduct an annual inspection of the drywell for sediment accumulation in the chambers, and flow control and treatment systems to ensure that the drywell is functioning properly; and
 2. If the stormwater fails to drain through the drywell within 36 hours, inspect the treatment system and piping to ensure that it is functioning properly.
- F.** Operation and maintenance. A permittee shall:
1. Operate the drywell only for the subsurface disposal of stormwater;
 2. Remove or treat any motor fuel or hazardous substance spills;
 3. Replace the adsorbent material in skimmers when the adsorbent capacity is reached;
 4. Maintain valves and associated piping;

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5. Maintain magnetic caps and mats;
6. Remove sludge from the oil/water separator and replace the filtration or adsorption materials to maintain treatment capacity;
7. Remove sediment from the catch basin inlet filters and retention basins to maintain required storage capacity;
8. Remove accumulated sediment from the settling chamber annually or when 25 percent of the effective settling capacity is filled, whichever occurs first; and
9. Provide new employee training within one month of hire and annual employee training on how to maintain and operate flow control and pretreatment technology used in the drywell.

G. Closure Requirements.

1. A permittee shall comply with the following closure requirements:
 - a. Retain a drywell drilling contractor, licensed under 4 A.A.C. 9, to close the drywell;
 - b. Remove sediments and any drainage components, such as stand pipes and screens from the drywell's settling chamber and backfill the injection pipe with cement grout;
 - c. Remove the top of the drywell, including the upper settling chamber to a depth of at least 6 feet below the ground surface. The permittee may use a backhoe or other excavation equipment;
 - d. Fill the remaining settling chamber with clean, mechanically compacted silt, clay, similar engineered material, or ABC slurry;
 - e. Place a cement grout plug at least 2 feet thick with the top set at 4 feet below the ground surface;
 - f. Backfill the remainder of the drywell to the land surface with clean silt, clay, or engineered material. Materials containing hazardous substances are prohibited from use in backfilling the drywell; and
 - g. Mechanically compact the backfill.
2. If a permittee uses procedures other than those listed in subsection (G)(1) in closure, the permittee shall demonstrate to the Department that those procedures are equivalent to the procedures listed in subsection (G)(1) and will prevent any fluid migration from the ground surface to an aquifer and obtain approval before implementation;
3. Within 30 days of closure, the permittee shall submit written verification of the closure procedures the permittee used to the Department with the drywell registration number or a completed registration form. The written verification shall specify:
 - a. The reason for the closure;
 - b. The materials and methods used to abandon the drywell;
 - c. The name of the contractor who performed the closure;
 - d. The completion date;
 - e. Any sampling data collected from the drywell investigation if performed or if required by the Department; and
 - f. Sump construction details, if a sump is constructed to replace the abandoned drywell.
4. The Department may require additional investigations or corrective actions if any of the following conditions exist:
 - a. The permittee has not satisfied the closure requirements in A.A.C. R18-9-A306.
 - b. The permittee provided incorrect or inaccurate information or there is relevant information missing from the permit application or closure reports.
 - c. The permittee has not eliminated discharges from the facility through closure activities, or
 - d. Closure and decommissioning activities have not demonstrated or achieved compliance with aquifer water quality standards.
5. If no motor fuel or hazardous substance spill enters the drywell, the permittee complies with the closure requirements under R18-9-A306 by satisfying the requirements in subsections (G)(1) or (2).
6. If a motor fuel or hazardous substance spill has entered the injection pipe, the permittee shall comply with the requirements in A.R.S. § 49-252, A.A.C. R18-9-A306, and subsection (H)(1)(c) of this Section to close the drywell.

H. Spills.

1. A permittee shall:
 - a. Notify the Department within 24 hours of any spill of motor fuel or hazardous substances that enters into the drywell or exceeds the treatment capacity of the pretreatment system;
 - b. Contain, cleanup, and dispose of, according to local, state, and federal requirements, any spill or leak of motor fuel and hazardous substance in the drywell drainage area and basin drainage area; and
 - c. If the spill reaches the injection pipe, drill a soil boring within 5 feet of the drywell inlet chamber and sample in 5-foot increments to a depth extending at least 10 feet below the base of the injection pipe to determine whether a soil remediation level or groundwater protection level has been exceeded in the subsurface.
2. The Department may require additional investigations or corrective actions based on its assessment of whether an exceedance of a soil remediation level or groundwater protection level in the soil boring poses a risk of noncompliance with human health or water quality standards.

I. Recordkeeping. A permittee shall maintain for at least 10 years, the following documents on-site, or at the closest practical place of work, and make the documents available to the Department upon request:

1. A log book that documents drywell maintenance, inspections, employee training, and sampling activities;

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2. A site plan showing surface drainage patterns and the location of floor drains, water supply wells, monitor wells, underground storage tanks, and places where motor fuel and hazardous substances are used, stored, or loaded;
3. A design plan showing details of drywell design and drainage design, including one or a combination of the pre-approved flow control and pretreatment technologies; and
4. An operations and maintenance manual that includes:
 - a. Procedures to prevent and contain spills and minimize discharges to the drywell and a list of actions and specific methods that will be used for motor fuel and hazardous substance spills or leaks;
 - b. A method and procedures for inspection and operation and maintenance activities;
 - c. The procedure for spill response; and
 - d. A description of the employee training program.