

## NOTICES OF EXEMPT RULEMAKING

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

### NOTICE OF PROPOSED EXEMPT RULEMAKING

#### TITLE 9. HEALTH SERVICES

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

#### PREAMBLE

- 1. Sections Affected**

R9-22-101	Amend
R9-22-2101	New Section
R9-22-2102	New Section
R9-22-2103	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. § 36-2903.07  
Implementing statute: A.R.S. § 36-2903.07
- 3. The proposed effective date of the rule:**

To be determined upon filing of the Notice of Final Exempt Rulemaking with the Office of the Secretary of State.
- 4. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 9 A.A.R. 183, January 24, 2003  
Notice of Rulemaking Docket Opening: 9 A.A.R. 1203, April 11, 2003
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Claire Sinay
Address:	AHCCCS Office of Special Programs 701 E. Jefferson, Mail Drop 8500 Phoenix, AZ 85034
Telephone:	(602) 417-4178
Fax:	(602) 254-1769
- 6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from the regular rulemaking procedures:**

Proposition 202 (the Indian Gaming Preservation and Self-Reliance Act), approved by Arizona voters in November 2002, allocates Indian gaming revenues to the Trauma and Emergency Services Fund. Monies in the fund are to be used to reimburse hospitals in Arizona for unrecovered trauma center readiness costs and unrecovered emergency services costs.

A new section of state statute, A.R.S. § 36-2903.07(E), requires AHCCCS to promulgate rules for the Trauma and Emergency Services Fund and exempts the rulemaking from the provisions of Title 41, Chapter 6, Article 5. The rule prescribes the manner in which the monies are allocated and distributed.
- 7. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

Not applicable

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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 preliminary summary of the economic, small business, and consumer impact:**

Proposition 202, approved by the voters in November 2002, provides an exemption from the provisions of Title 41, Chapter 6, Article 5 under A.R.S. § 36-2903.07(E).

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

Not applicable

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

Oral proceedings regarding the rules will be held as follows:

Date: August 18, 2003

Time: 10:00 a.m.

Location: AHCCCS  
701 E. Jefferson  
Phoenix, AZ 85034  
3rd Floor, Gold Room

Nature: Public Hearing

Date: August 18, 2003

Time: 10:00 a.m.

Location: ALTCS: Arizona Long-Term Care System  
110 S. Church, Suite 3250  
Tucson, AZ 85701

Nature: Video Conference Oral Proceeding

Date: August 18, 2003

Time: 10:00 a.m.

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

Nature: Video Conference, Oral Proceeding

Proposed rule language will be available on the AHCCCS web site ([www.ahcccs.state.az.us](http://www.ahcccs.state.az.us)) by July 18, 2003. Please send written comments to the above address by 5:00 p.m., August 18, 2003. E-mail will not be accepted.

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

Not applicable

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

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 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
ADMINISTRATION

ARTICLE 1. DEFINITIONS

Section

R9-22-101. Location of Definitions

**ARTICLE 21. TRAUMA AND EMERGENCY SERVICES FUND**

Section

R9-22-2101. General Provisions

R9-22-2102. Distribution of Trauma and Emergency Services Fund: Level I Trauma Centers

R9-22-2103. Distribution of Trauma and Emergency Services Fund: Emergency Services

ARTICLE 1. DEFINITIONS

**R9-22-101. Location of Definitions**

A. Location of definitions. Definitions applicable to this Chapter are found in the following:

Definition	Section or Citation
“Accommodation”	R9-22-107
“Act”	R9-22-114
“Active case”	R9-22-109
“ADHS”	R9-22-112
“Administration”	A.R.S. § 36-2901
“Administrative law judge”	R9-22-108
“Administrative review”	R9-22-108
“Advanced Life Support” or “ALS”	R9-25-101
“Adverse action”	R9-22-114
“Affiliated corporate organization”	R9-22-106
“Aged”	42 U.S.C. 1382c(a)(1)(A) and R9-22-115
“Aggregate”	R9-22-107
“AHCCCS”	R9-22-101
“AHCCCS inpatient hospital day or days of care”	R9-22-107
“AHCCCS registered provider”	R9-22-101
“Ambulance”	A.R.S. § 36-2201
“Ancillary department”	R9-22-107
“Annual assessment period”	R9-22-109
“Annual assessment period report”	R9-22-109
“Annual enrollment choice”	R9-22-117
“Appellant”	R9-22-114
“Applicant”	R9-22-101
“Application”	R9-22-101
“Assignment”	R9-22-101
“Attending physician”	R9-22-101
“Authorized representative”	R9-22-114
“Auto-assignment algorithm”	R9-22-117
“Baby Arizona”	R9-22-114
“Basic Life Support” or “BLS”	R9-25-101
“Behavior management services”	R9-22-112
“Behavioral health evaluation”	R9-22-112
“Behavioral health medical practitioner”	R9-22-112
“Behavioral health professional”	R9-20-101
“Behavioral health service”	R9-22-112
“Behavioral health technician”	R9-20-101

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“Behavior management services”	R9-22-112
“BHS”	R9-22-114
“Billed charges”	R9-22-107
“Blind”	R9-22-115
“Board-eligible for psychiatry”	R9-22-112
“Burial plot”	R9-22-114
“Capital costs”	R9-22-107
“Capped fee-for-service”	R9-22-101
“Caretaker relative”	R9-22-114
“Case”	R9-22-109
“Case record”	R9-22-109
“Case review”	R9-22-109
“Cash assistance”	R9-22-114
“Categorically-eligible”	R9-22-101
“Certified psychiatric nurse practitioner”	R9-22-112
“Clean claim”	A.R.S. § 36-2904
“Clinical supervision”	R9-22-112
“CMDP”	R9-22-117
“CMS”	R9-22-101
“Complainant”	R9-22-108
“Continuous stay”	R9-22-101
“Contract”	R9-22-101
“Contractor”	A.R.S. § 36-2901
“Copayment”	R9-22-107
“Corrective action plan”	R9-22-109
“Cost-to-charge ratio”	R9-22-107
“Covered charges”	R9-22-107
“Covered services”	R9-22-102
“CPT”	R9-22-107
“CRS”	R9-22-114
“Cryotherapy”	R9-22-120
“Date of eligibility posting”	R9-22-107
“Date of notice”	R9-22-108
“Day”	R9-22-101
“DCSE”	R9-22-114
“De novo hearing”	42 CFR 431.201
“Dentures”	R9-22-102
“Department”	A.R.S. § 36-2901
“Dependent child”	A.R.S. § 46-101
“DES”	R9-22-101
“Diagnostic services”	R9-22-102
“Director”	R9-22-101
“Disabled”	R9-22-115
“Discussions”	R9-22-106
“Disenrollment”	R9-22-117
“District”	R9-22-109
“DME”	R9-22-102

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“DRI inflation factor”	R9-22-107
“E.P.S.D.T. services”	42 CFR 441 Subpart B
“Eligible person”	A.R.S. § 36-2901
“Emergency medical condition”	42 U.S.C. 1396b(v)(3)
“Emergency medical services”	R9-22-102
<u>“Emergency services costs”</u>	<u>A.R.S. § 36-2903.07</u>
“Encounter”	R9-22-107
“Enrollment”	R9-22-117
“Enumeration”	R9-22-101
“Equity”	R9-22-101
“Experimental services”	R9-22-101
“Error”	R9-22-109
“FAA”	R9-22-114
“Facility”	R9-22-101
“Factor”	42 CFR 447.10
“FBR”	R9-22-101
“Fee-For-Service” or “FFS”	R9-28-101
“FESP”	R9-22-101
“Finding”	R9-22-109
“First-party liability”	R9-22-110
“Foster care maintenance payment”	42 U.S.C. 675(4)(A)
“Federal poverty level” (“FPL”)	A.R.S. § 1-215
“FQHC”	R9-22-101
“Grievance”	R9-22-108
“GSA”	R9-22-101
“Health care practitioner”	R9-22-112
“Hearing”	R9-22-108
“Hearing aid”	R9-22-102
“Home health services”	R9-22-102
“Homebound”	R9-22-114
“Hospital”	R9-22-101
“Intermediate Care Facility for the Mentally Retarded” or “ICF-MR”	42 CFR 483 Subpart I
“ICU”	R9-22-107
“IHS”	R9-22-117
“IMD”	42 CFR 435.1009 and R9-22-112
“Income”	R9-22-114
“Inmate of a public institution”	42 CFR 435.1009
“Interested party”	R9-22-106
“LEEP”	R9-22-120
<u>“Level I trauma center”</u>	<u>R9-22-2101</u>
“License” or “licensure”	R9-22-101
“Mailing date”	R9-22-114
“Management evaluation review”	R9-22-109
“Medical education costs”	R9-22-107
“Medical expense deduction”	R9-22-114
“Medical record”	R9-22-101
“Medical review”	R9-22-107

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“Medical services”	A.R.S. § 36-401
“Medical supplies”	R9-22-102
“Medical support”	R9-22-114
“Medically necessary”	R9-22-101
“Medicare claim”	R9-22-107
“Medicare HMO”	R9-22-101
“Member”	A.R.S. § 36-2901
“Mental disorder”	A.R.S. § 36-501
“New hospital”	R9-22-107
“Nursing facility” or “NF”	42 U.S.C. 1396r(a)
“NICU”	R9-22-107
“Noncontracting provider”	A.R.S. § 36-2901
“Nonparent caretaker relative”	R9-22-114
“Notice of Findings”	R9-22-109
“OAH”	R9-22-108
“Occupational therapy”	R9-22-102
“Offeror”	R9-22-106
“Ownership interest”	42 CFR 455.101
“Operating costs”	R9-22-107
“Outlier”	R9-22-107
“Outpatient hospital service”	R9-22-107
“Ownership change”	R9-22-107
“Partial Care”	R9-22-112
“Party”	R9-22-108
“Peer group”	R9-22-107
“Performance measures”	R9-22-109
“Pharmaceutical service”	R9-22-102
“Physical therapy”	R9-22-102
“Physician”	R9-22-102
“Prior period coverage” or “PPC”	R9-22-107
“Post-stabilization care services”	42 CFR 422.113
“Practitioner”	R9-22-102
“Pre-enrollment process”	R9-22-114
“Preponderance of evidence”	R9-22-109
“Prescription”	R9-22-102
“Primary care provider (PCP)”	R9-22-102
“Primary care provider services”	R9-22-102
“Prior authorization”	R9-22-102
“Private duty nursing services”	R9-22-102
“Proposal”	R9-22-106
“Prospective rates”	R9-22-107
“Prospective rate year”	R9-22-107
“Psychiatrist”	R9-22-112
“Psychologist”	R9-22-112
“Psychosocial rehabilitation services”	R9-22-112
“Qualified alien”	A.R.S. § 36-2903.03
“Quality management”	R9-22-105

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“Radiology”	R9-22-102
“Random sample”	R9-22-109
“RBHA”	R9-22-112
“Rebasing”	R9-22-107
“Referral”	R9-22-101
“Rehabilitation services”	R9-22-102
“Reinsurance”	R9-22-107
“Remittance advice”	R9-22-107
“Resources”	R9-22-114
“Respiratory therapy”	R9-22-102
“Respondent”	R9-22-108
“Responsible offeror”	R9-22-106
“Responsive offeror”	R9-22-106
“Review”	R9-22-114
“Review period”	R9-22-109
“RFP”	R9-22-106
“Scope of services”	R9-22-102
“SDAD”	R9-22-107
“Section 1115 Waiver”	A.R.S. § 36-2901
“Service location”	R9-22-101
“Service site”	R9-22-101
“SESP”	R9-22-101
“S.O.B.R.A.”	R9-22-101
“Specialist”	R9-22-102
“Specified relative”	R9-22-114
“Speech therapy”	R9-22-102
“Spendthrift restriction”	R9-22-114
“Spouse”	R9-22-101
“SSA”	42 CFR 1000.10
“SSI”	42 CFR 435.4
“SSN”	R9-22-101
“Stabilize”	42 U.S.C. 1395dd
“Standard of care”	R9-22-101
“Sterilization”	R9-22-102
“Subcontract”	R9-22-101
“Submitted”	A.R.S. § 36-2904
“Summary report”	R9-22-109
“SVES”	R9-22-114
“Third-party”	R9-22-110
“Third-party liability”	R9-22-110
“Tier”	R9-22-107
“Tiered per diem”	R9-22-107
“Title IV-D”	R9-22-114
“Title IV-E”	R9-22-114
“Tolerance level”	R9-22-109
<u>“Trauma and Emergency Services Fund”</u>	<u>A.R.S. § 36-2903.07</u>
<u>“Unrecovered trauma readiness costs”</u>	<u>R9-22-2101</u>

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“Utilization management” R9-22-105

“WWHP” R9-22-120

**B. General definitions.** In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

“AHCCCS” means the Arizona Health Care Cost Containment System, which is composed of the Administration, contractors, and other arrangements through which health care services are provided to a member.

“AHCCCS registered provider” means a provider or noncontracting provider who:

Enters into a provider agreement with the Administration under R9-22-703(A); and

Meets license or certification requirements to provide AHCCCS covered services.

“Applicant” means a person who submits or whose authorized representative submits, a written, signed, and dated application for AHCCCS benefits.

“Application” means an official request for AHCCCS medical coverage made under this Chapter.

“Assignment” means enrollment of a member with a contractor by the Administration.

“Attending physician” means a licensed allopathic or osteopathic doctor of medicine who has primary responsibility for providing or directing preventive and treatment services for a fee-for-service member.

“Capped fee-for-service” means the payment mechanism by which a provider of care is reimbursed upon submission of a valid claim for a specific AHCCCS-covered service or equipment provided to a member. A payment is made in accordance with an upper, or capped, limit established by the Director.

“Categorically-eligible” means a person who is eligible under A.R.S. §§ 36-2901(6)(a)(i), (ii), or (iii) and 36-2934.

“CMS” means the Centers for Medicare and Medicaid Services.

“Continuous stay” means the period during which a member receives inpatient hospital services without interruption beginning with the date of admission and ending with the date of discharge or date of death.

“Contract” means a written agreement entered into between a person, an organization, or other entity and the Administration to provide health care services to a member under A.R.S. Title 36, Chapter 29, and this Chapter.

“Day” means a calendar day unless otherwise specified.

“DES” means the Department of Economic Security.

“Director” means the Director of the Administration or the Director’s designee.

“Eligible person” means a person as defined in A.R.S. § 36-2901.

“Enumeration” means the assignment of a specific nine-digit identification number to a person by the Social Security Administration.

“Equity” means the county assessor full cash or market value of a resource minus valid liens, encumbrances, or both.

“Experimental services” means services that are associated with treatment or diagnostic evaluation that meets one or more of the following criteria:

Is not generally and widely accepted as a standard of care in the practice of medicine in the United States;

Does not have evidence of safety and effectiveness documented in peer reviewed articles in medical journals published in the United States; or

Lacks authoritative evidence by the professional medical community of safety and effectiveness because the services are rarely used, novel, or relatively unknown in the professional medical community.

“Facility” means a building or portion of a building licensed or certified by the Arizona Department of Health Services as a health care institution, under A.R.S. Title 36, Chapter 4, to provide a medical service, a nursing service, or other health care or health-related service.

“FBR” means Federal Benefit Rate, the maximum monthly Supplemental Security Income payment rate for a member or a married couple.

“FESP” means a federal emergency services program covered under R9-22-217, to treat an emergency medical condition for a member who is determined eligible under A.R.S. § 36-2903.03(D).

“FQHC” means federally qualified health center.

“GSA” means a geographical service area designated by the Administration within which a contractor provides, directly or through a subcontract, a covered health care service to a member enrolled with that contractor.

“Hospital” means a health care institution that is licensed as a hospital by the Arizona Department of Health Services under A.R.S. Title 36, Chapter 4, Article 2, and certified as a provider under Title XVIII of the Social Security Act, as amended, or is currently determined, by the Arizona Department of Health Services as the CMS designee, to meet the requirements of certification.



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“License” or “licensure” means a nontransferable authorization that is awarded based on established standards in law, is issued by a state or a county regulatory agency or board, and allows a health care provider to lawfully render a health care service.

“Medical record” means all documents that relate to medical and behavioral health services provided to a member by a physician or other licensed practitioner of the healing arts and that are kept at the site of the provider.

“Medically necessary” means a covered service provided by a physician or other licensed practitioner of the healing arts within the scope of practice under state law to prevent disease, disability, or other adverse health conditions or their progression, or prolong life.

“Medicare HMO” means a health maintenance organization that has a current contract with Centers for Medicare and Medicaid for participation in the Medicare program under 42 CFR 417(L).

“Referral” means the process by which a member is directed by a primary care provider or an attending physician to another appropriate provider or resource for diagnosis or treatment.

“Service location” means a location at which a member obtains a covered health care service provided by a physician or other licensed practitioner of the healing arts under the terms of a contract.

“Service site” means a location designated by a contractor as the location at which a member is to receive covered health care services.

“SESP” means state emergency services program covered under R9-22-217 to treat an emergency medical condition for a qualified alien or noncitizen who is determined eligible under A.R.S. § 36-2901.06.

“S.O.B.R.A.” means Section 9401 of the Sixth Omnibus Budget Reconciliation Act, 1986, amended by the Medicare Catastrophic Coverage Act of 1988, 42 U.S.C. 1396a(a)(10)(A)(i)(IV), 42 U.S.C. 1396a(a)(10)(A)(i)(VI), and 42 U.S.C. 1396a(a)(10)(A)(i)(VII).

“Spouse” means a person who has entered into a contract of marriage, recognized as valid by Arizona.

“SSN” means social security number.

“Standard of care” means a medical procedure or process that is accepted as treatment for a specific illness, or injury, medical condition through custom, peer review, or consensus by the professional medical community.

“Subcontract” means an agreement entered into by a contractor with any of the following:

A provider of health care services who agrees to furnish covered services to a member;

A marketing organization; or

Any other organization or person who agrees to perform any administrative function or service for a contractor specifically related to securing or fulfilling the contractor’s obligation to the Administration under the terms of a contract.

**ARTICLE 21. TRAUMA AND EMERGENCY SERVICES FUND**

**R9-22-2101. General Provisions**

- A.** A.R.S. § 36-2903.07 establishes the Administration as the authority to administer the Trauma and Emergency Services Fund.
- B.** The Administration shall distribute 90% of monies from the trauma and emergency services fund to a level I trauma center, as defined in subsection (F), for unrecovered trauma center readiness costs as defined in subsection (F). Reimbursement is limited to no more than the amount of unrecovered trauma center readiness costs as determined in subsections (D) and (E) of this Section. Unexpended funds may be used to reimburse unrecovered emergency room costs under subsection (C).
- C.** The Administration shall distribute 10% of monies from the trauma and emergency services fund, for unrecovered emergency services costs, to a hospital having an emergency department, using criteria under R9-22-2103. Reimbursement is limited to no more than the amount of unrecovered emergency services costs as determined in R9-21-2103. The Administration may distribute more than 10% of the monies for unrecovered emergency room costs when there are unexpended monies under subsection (B).
- D.** The Administration shall distribute a reporting tool and guidelines to level I trauma centers to determine, on an annual basis, the unrecovered trauma center readiness costs for level I trauma centers as defined in subsection (F). The reporting time-frame is July 1 of the prior year through June 30 of the reporting year. A level I trauma center shall submit the requested data and a copy of the most recently completed uniform accounting report under A.R.S. § 36-125.04 to the Administration no later than October 31 of each reporting year.
- E.** When a level I trauma center closes in a county where there are one or more level I trauma center(s) remaining in operation, the following shall occur:
  - 1.** The closing level I trauma center shall submit the requested data under subsection (D) for the months of the reporting time-frame in which it met the definition of a level I trauma center, and

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2. The data under subsection (D), which is submitted by the closing level I trauma center, shall be added to the remaining level I trauma center(s) in that county for the current reporting time-frame only.
- F.** In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:
1. “Level I trauma center” means any acute care hospital that:
    - a. Provides in-house twenty-four hour daily dedicated trauma surgical services as defined in A.R.S. § 36-2201(26) pertaining to a trauma center, or
    - b. Is recognized as a rural regional trauma center that was providing formal organized trauma services on or before January 1, 2003.
  2. On or after January 1, 2005, “level I trauma center” means any acute care hospital designated by the Arizona Department of Health Services as a level I trauma center.
  3. “Unrecovered trauma center readiness costs” means losses incurred treating trauma patients:
    - a. Determined in accordance with Generally Accepted Accounting Principles.
    - b. Based on both clinical and professional costs incurred by a level I trauma center necessary for the provision of level I trauma care, and
    - c. Based on administrative and overhead costs directly associated with providing level I trauma care.

**R9-22-2102. Distribution of Trauma and Emergency Services Fund: Level I Trauma Centers**

- A.** On or after November 1, 2003, the Administration shall distribute monies, under R9-22-2101(B), to level I trauma centers using monies available in the trauma and emergency services fund at the time of payment. The Administration shall take into consideration the proportion of those hospitals’ trauma case volume. The Administration shall:
1. Recalculate the November 2003 payments in July 2004 using the formula in subsection (B);
  2. Recoup November 2003 overpayments by reducing the July 2004 distributions under subsection (C) as appropriate; and
  3. Redistribute recouped funds, with the July 2004 payment, to level I trauma centers underpaid in November 2003.
- B.** On or after January 31 of each year, the Administration shall distribute monies, under R9-22-2101(B), to level I trauma centers using monies available in the trauma and emergency services fund at the time of payment. The Administration shall determine each hospital’s unrecovered trauma center readiness costs for the current fiscal year using data from the most recent reporting year as provided under R9-22-2101(D) and (E). The proportion of each hospital’s share of the fund for unrecovered trauma center readiness costs is determined after considering:
1. The professional, clinical, administrative and overhead costs directly associated with providing level I trauma care, and
  2. The volume and acuity of trauma care provided by each hospital.
- C.** On or after July 31 of each year, the Administration shall distribute monies to level I trauma centers using monies, under R9-22-2101(B), available in the trauma and emergency services fund at the time of payment according to the proportions calculated and used for the January payments in the same year, under subsection (B).

**R9-22-2103. Distribution of Trauma and Emergency Services Fund: Emergency Services**

On or after June 30 of each year, the Administration shall distribute monies available in the trauma and emergency services fund at the time of payment as follows:

1. As allocated under R9-22-2101(C),
2. To hospitals that had an emergency department from July 1 through June 30 of the prior year, and
3. On a pro rata share of each hospital’s uncompensated care as a percentage of the total statewide uncompensated care provided by hospitals under subsection (2) as reported in the uniform accounting reports to the Arizona Department of Health Services under A.R.S. § 36-125.04.

NOTICE OF FINAL EXEMPT RULEMAKING

TITLE 11. MINES

CHAPTER 1. STATE MINE INSPECTOR

PREAMBLE

- |                                    |                                 |
|------------------------------------|---------------------------------|
| <b><u>1. Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
| R11-1-1402                         | New Section                     |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statute: Laws 2002, Ch. 224, § 6 (second regular session)  
Implementing statutes: A.R.S §§ 27-441 through 27-448
- 3. The effective date of the rules:**  
June 25, 2003
- 4. A list of all previous notices appearing in the Register addressing the exempt rule:**  
Notice of Proposed Exempt Rulemaking: 9 A.A.R. 1560, May 23, 2003
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Arizona State Mine Inspector  
Address: 1700 W. Washington, Suite 400  
Phoenix, AZ 85007  
Telephone: (602) 542-5971  
Fax: (602) 542-5335  
E-mail: kugalde@mi.state.az.us
- 6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from regular rulemaking procedures:**  
The Mine Inspector Office is adding this Section to establish a fee to cover the expenses of implementing Laws 2002, Ch. 224, § 6 (second regular session). This statute allows counties to form Aggregate Mining Districts and the Mine Inspector is to process community notice applications and conduct public meetings. The Mine Inspector will collect an application fee from aggregate mining operations that meet the requirements of the Section.  
This fee rule is exempted from A.R.S. Title 41, § 6.
- 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:**  
Not applicable (see Laws 2002, Ch. 224, § 6 [second regular session])
- 10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**  
None
- 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

Notices of Exempt Rulemaking

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

This rule was not an emergency rule.

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

TITLE 11. MINES

CHAPTER 1. STATE MINE INSPECTOR

ARTICLE 14. SAND AND GRAVEL OPERATIONS

Section

R11-1-1402. ~~Reserved~~ Aggregate Mining Operation Community Notice Fee

ARTICLE 14. SAND AND GRAVEL OPERATIONS

**R11-1-1402. ~~Reserved~~ Aggregate Mining Operation Community Notice Fee**

The application fee for a community notice for a new aggregate mining operation or for a major modification of an approved community notice filed pursuant to A.R.S. § 27-442 is \$1,000.

NOTICE OF EXEMPT RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

PREAMBLE

**1. Sections Affected**

R12-4-802  
R12-4-803

**Rulemaking Action**

Amend  
Amend

**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. § 17-231(A)(1) through (3)

Implementing statute: A.R.S. § 17-231(B)(2), (3), and (7)

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

August 23, 2003

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

None

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

Name: Mark E. Naugle

Address: Arizona Game and Fish Department DORR  
2221 W. Greenway Road  
Phoenix, AZ 85023-4399

Telephone: (602) 789-3289

Fax: (602) 789-3677

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

A.R.S. § 41-1005(A)(1) exempts the Commission from the rulemaking requirements of A.R.S. Title 41, Chapter 6 for wildlife area rules. The wildlife area rules provide protective measures for wildlife and habitat, allow for special management and research practices, and enhance wildlife and habitat conservation. This rulemaking amends R12-4-802 for the Becker Lake Wildlife Area that allows the area to be open to hunting in season, except as posted, and to limit firearm discharge to shotgun shooting shot and bow and arrow. Additionally, Jacques Marsh Wildlife Area would be limited to firearm discharge of shotgun shooting shot and bow and arrow. Reflexively, R12-4-803 must be amended to update and clearly define the boundary descriptions of the Becker Lake Wildlife Area.

Notices of Exempt Rulemaking

**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

**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 rulemaking will result in no new costs to the Department or any other persons. The amendment of exempt wildlife area rules that adequately protect wildlife and habitat will benefit the public and the Department.

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

Not applicable

**11. A summary of the principal comments and the agency response to them:**

Notice of the rulemaking, including an explanation of the rules and draft rule language, was presented to the public at the June 2003 Commission meeting in Phoenix, Arizona. No public comments were received on the rulemaking.

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

Not applicable

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

None

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

No

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

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 8. WILDLIFE AREAS

Section

R12-4-802. Wildlife Area Restrictions

R12-4-803. Wildlife Area Boundary Descriptions

ARTICLE 8. WILDLIFE AREAS

**R12-4-802. Wildlife Area Restrictions**

**A:** No person shall violate the following restrictions on Wildlife Areas:

1. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
2. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
3. No change
  - a. No change
  - b. No change
  - c. No change
4. No change
  - a. No change
  - b. No change

Notices of Exempt Rulemaking

- c. No change
- d. No change
- e. No change
- 5. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
  - f. No change
- 6. No change
  - a. No change
  - b. No change
  - c. No change
  - ~~d. Closed to discharge of rifled firearms.~~
  - ~~e.d.~~ Posted portions closed to public entry from December 15 to July 31 annually.
  - ~~f.e.~~ Open to hunting in season, except posted portions ~~closed to hunting from December 15 to July 31 annually.~~  
Legal weapons restricted to shotguns shooting shot and bow and arrow.
- 7. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
- 8. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
- 9. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
  - f. No change
- 10. No change
  - a. No change
  - b. No change
- 11. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
  - f. No change
  - g. No change
- 12. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
- 13. No change
  - a. No change
  - b. No change
- 14. ~~Jacques Jacques~~ Marsh Wildlife Area (located in Unit 3B):
  - a. No change

Notices of Exempt Rulemaking

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- b. No change
- c. No change
- d. Open to hunting in season. Legal weapons restricted to shotguns shooting shot and bow and arrow.
- 15. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
- 16. No change
  - a. No change
  - b. No change
- 17. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
- 18. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
- 19. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
- 20. No change
  - a. No change
  - b. No change
- 21. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
  - f. No change
  - g. No change
  - h. No change
  - i. No change
- 22. No change
  - a. No change
  - b. No change
- 23. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
  - f. No change
- 24. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change

Notices of Exempt Rulemaking

- 25. No change
  - a. No change
  - b. No change
  - c. No change
- 26. No change
  - a. No change
  - b. No change
- 27. No change
  - a. No change
  - b. No change
  - c. No change
- 28. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
- 29. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
  - f. No change
- 30. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
- 31. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
  - f. No change
- 32. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
  - f. No change

~~B.~~ Effective May 1, 2002.

**R12-4-803. Wildlife Area Boundary Descriptions**

~~A.~~ Wildlife Areas are described as follows:

- 1. No change
- 2. No change
- 3. No change
- 4. No change
- 5. No change
- 6. Becker Lake Wildlife Area: The Becker Lake Wildlife Area shall be that area including Becker Lake lying within the fenced and posted portions of:
  - T9N, R29E
  - Section 19, SE1/4SW1/4;
  - Section 20, SW1/4SW1/4, W1/2NW1/4, and NW1/4SW1/4;
  - Section 29, E1/2NE1/4;
  - Section 30, NE1/4SE1/4-;
  - Section 32, as it is described in parcels in this Section.



Notices of Exempt Rulemaking

All in the G&SRB&M, Apache County, Arizona, consisting of approximately 325 acres.

Parcel 1. Parcel 1 is located in section 30, T9N, R29E, G&SRB&M, Apache County, Arizona, and is adjacent to the western boundary of the Becker Lake Wildlife Area. The preliminary ALTA survey for the Enders property indicates that Parcel 1 is approximately 83 acres in size. Parcel 1 is also bounded by lands owned by The Hopi Tribe (26 Bar Ranch) and Arizona State Trust lands. The property is composed of Plains and Great Basin grassland habitat, and has historically been used for livestock grazing. This parcel is described by Apache County Assessor's Office parcel number 105-16-002.

Parcel 2. This parcel is located in the northeast quarter of section 32 T9N, R29E, G&SRB&M, Apache County, Arizona. The preliminary ALTA survey for the Enders property indicates that Parcel 2 is approximately 61 acres in size. Parcel 2 includes the southernmost portion of the subject property. The Becker Lake Ditch and a short reach of the Little Colorado River are located within Parcel 2. Parcel 2 is bounded by Parcel 3 to the west and Parcel 4 to the north. Privately owned lands are located to the east and south of Parcel 2. This parcel is described by Apache County Assessor's Office parcel number 105-18-008A.

Parcel 3. This parcel is located in the northwest quarter of section 32 T9N, R29E, G&SRB&M, Apache County, Arizona. The preliminary ALTA survey for the Enders property indicates that Parcel 3 is approximately 17 acres in size. The Becker Lake Ditch also is located within Parcel 3. Parcel 3 is bounded by Parcel 2 to the east, and Parcel 5 to the north. The Becker Lake Road comprises approximately half of the western boundary of Parcel 3, with a two-acre residential property located between Becker Lake Road and Becker Ditch owned by Mr. Jack Husted comprising the remainder of the western boundary of Parcel 3. Parcel 3 is described by Apache County Assessor's Office parcel number 105-18-012B.

Parcel 4. Parcel 4 is located in the southern half of section 29 T9N, R29E, G&SRB&M, Apache County, Arizona. The preliminary ALTA survey for the Enders property indicates that Parcel 4 is approximately 56 acres in size. Both the Becker Lake Ditch and an approximately a mile reach of the LCR are located within Parcel 4. Parcel 4 is bounded by Parcel 2 to the south and Parcel 5 as well as privately owned lands to the west. Private lands are also located to the north and east of Parcel 4. Highway 60 constitutes the northeast boundary of this irregularly shaped parcel. This parcel is described by Apache County Assessor's Office parcel number 105-15-014E.

Parcel 5. Parcel 5 is located in the southern half of the southwest quarter of section 29 T9N, R29E, G&SRB&M, Apache County, Arizona. The preliminary ALTA survey for the Enders property indicates that Parcel 5 is approximately 79 acres in size. The Becker Lake Ditch is also located within Parcel 5. Parcel 5 is bounded by Parcel 4 to the east and Parcel 3 to the south. The Becker Lake Wildlife Area bounds the western half of the northern boundary of this parcel. Privately owned lands are also located to the north of Parcel 5. The Springerville Airport as well as State Trust lands are located to the south of Parcel 5. Hopi Tribal Land (26 Bar Ranch) abuts the entire western boundary of this parcel. The Becker Lake Road and Becker Ditch bisect Parcel 5. This parcel is described by Apache County Assessor's Office parcel number 105-15-014E.

- 7. No change
- 8. No change
- 9. No change
- 10. No change
- 11. No change
- 12. No change
- 13. No change
- 14. No change
- 15. No change
- 16. No change
- 17. No change
- 18. No change
- 19. No change
- 20. No change
- 21. No change
- 22. No change
- 23. No change
- 24. No change
- 25. No change
- 26. No change
- 27. No change

**Notices of Exempt Rulemaking**

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- 28. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
- 29. No change
- 30. No change
- 31. No change
- 32. No change

**B.** ~~Effective May 1, 2000.~~