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 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 12. BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Editor's Note: The following two Notices of Final Rulemaking were exempt from Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 2720.)

[R14-144]

PREAMBLE

1. Articles, Parts, or Sections Affected (as applicable) — **Rulemaking Action**

R4-12-101	Amend
R4-12-602	Repeal
R4-12-612	Amend
R4-12-613	Amend
R4-12-621	Repeal
R4-12-631	Amend
R4-12-632	Repeal
R4-12-633	Amend
R4-12-634	Repeal

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

Authorizing statute: A.R.S. § 32-1307(A)(5)

Implementing statute: A.R.S. §§ 32-1301, 32-1365.01, 32-1365.02, 32-1371, 32-1372, 32-1373, 32-1393, 32-1394, 32-1397, 32-1398, 32-1398.01, 32-1399, 36-831

3. The effective date of the rule:

November 9, 2014

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

Notice of Rulemaking Docket Opening: 20 A.A.R 1111, May 16, 2014

Notice of Proposed Rulemaking: 20 A.A.R. 1101, May 16, 2014

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

Name:	Rudy Thomas, Executive Director
Address:	Board of Funeral Directors and Embalmers 1400 W. Washington St., Suite 230 Phoenix, AZ 85007
Telephone:	(602) 542-3095
Fax:	(602) 542-3093
E-mail:	rudy.thomas@funeralboard.us
Web site:	www.azfuneralboard.us

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 An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

The Board is amending its cremation rules in Article 6 to make them conform to current statutory authority and current standards for crematories; make the rules clear, concise, and understandable; correct statutory citations; and reflect the changes set out in its 2012 Five-Year Review Report. The Board is amending its definitions in R4-12-101 to make the terms understandable to the reader and afford consistent interpretation and application of the terms throughout the rules. The Board is repealing R4-12-602, Authorizing Agent, because A.R.S. § 32-1365.02 governs

most of the provisions in the rule. The Board is amending crematory requirements in R4-12-613 to ensure that certain information required by the Board's statutes as stated in the rule is conveyed to a consumer purchasing cremation. The Board is repealing R4-12-621 because many of the requirements are currently found in A.R.S. §§ 32-1365.01 and 32-1365.02 and A.R.S. § 32-1393 *et seq*. Because the records requirements for a crematory or funeral establishment that provides for cremation are the same, the Board is combining records requirements that are currently in R4-12-631 and R4-12-632 into one rule, R4-12-631. The Board is repealing R4-12-634 because authorization for cremation is set forth in A.R.S. § 32-1365.02.

The Board is submitting this rulemaking to the Secretary of state's office in accordance with the exemption authorization under item 4 of Executive Order 2012-03, State Regulatory Rulemaking Moratorium.

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

The Board did not review or rely on any study.

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

None

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

Annual cost/revenue changes are designated as minimal when less than $1,000, moderate when between $1,000 and $5,000, and substantial when greater than $5,000.

The Board will incur moderate costs to write the rules. The rules update the current practices and procedures of the Board and reflect amendments made to the Board's statutory authority in 2007. The Board is repealing four of the eight rules contained in Article 4, Chapter 12, Article 6 because the requirements are already contained in the funeral board statutes, making the rules being repealed unnecessary. The requirements in R4-12-612 should not increase costs to a crematory because the requirements clarify A.R.S. § 32-1394. Refrigeration is already required for human

remains that are not embalmed, so a crematory is required to either have a refrigerated holding facility or send the human remains to a funeral establishment or crematory that has refrigeration. The requirements in R4-12-613 ensure that certain information required by the Board's statutes is being conveyed to a consumer purchasing cremation and is already required by A.R.S. §§ 32-1371, 32-1372, and 32-1373. The amendments should not increase costs to a funeral establishment that provides for cremation. The records requirements in R4-12-631 should not increase costs to a funeral establishment that provides for cremation or crematory because the rule is being combined with R4-12-632 and the language is being amended for clarity, conciseness, and understandability. The language in R4-12-633 does not add any new requirements and should not increase costs to a funeral establishment that provides for cremation, crematories, or the Board.

The Board, crematories, funeral establishments that provide for cremations, and consumers who choose cremation as their final disposition should benefit from rules that are clearly and consistently written. A hospital or medical practice should not realize any increase in costs from the rules.

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

Minor non-substantive changes were made between the proposed and final rulemaking at the request of GRRC staff. Current provisions in R4-12-101 that were not amended were changed to "no change" in the final rulemaking. The Board added definitions of "permanent" and "harmful" as suggested in its five-year review report and renumbered the definitions in logical sequence. These changes are not substantial and make the terms used in the rules more understandable.

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

There were no comments made to the rules.

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

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

This section does not apply to this rulemaking.

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

Federal law is not applicable to the subject of the rules.

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

The Board did not receive such an analysis from any person.

13. A list of any incorporation by reference material as specified in A.R.S. § 41-1028 and its location in the rules:
None

14. Whether the rules were previously made, amended or repealed as emergency rules. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:
The rules were not made as emergency rules.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 12. BOARD OF FUNERAL DIRECTORS AND EMBALMERS

ARTICLE 1. GENERAL PROVISIONS

Section
R4-12-101. Definitions

ARTICLE 6. CREMATORY AND CREMATORY REGULATION

R4-12-602. ~~Authorizing agent~~ Repealed
R4-12-612. Crematory requirements
R4-12-613. ~~Cremation container or casket for cremation: requirements~~ Requirements for a funeral establishment that provides for cremation
R4-12-621. ~~Cremation requirements; prohibited practices~~ Repealed
R4-12-631. ~~Crematory record of cremations; retention~~ Record requirements for crematories and funeral establishments that provide for cremation
R4-12-632. ~~Cremation documentation by funeral establishments~~ Repealed
R4-12-633. Disposition of records
R4-12-634. ~~Authorization of cremation; required information~~ Repealed

ARTICLE 1. GENERAL PROVISIONS

R4-12-101. Definitions
In this Chapter:

1. No change
   a. No change
   b. No change
   c. No change
      i. No change
      ii. No change
      iii. No change
      iv. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
9. ~~"Designated funeral director" has the same meaning as responsible funeral director in A.R.S. § 32-1301.~~

~~10.~~9. No change

10. "Disposition-transit permit" means the document that meets the requirements in A.R.S. § 36-326 and A.A.C. R4-19-302.

11. No change

12. No change

13. "Funeral establishment that provides for cremation" means a funeral establishment defined in A.R.S. § 32-1301(25) that owns a crematory on or off the funeral establishments premises or contracts with a crematory for cremation.

~~13.~~14. No change

15. "Harmful" means to cause damage or impairment to an individual's body.

~~14.~~16. No change

~~15.~~17. No change

18. "Permanent" means everlasting and existing perpetually.

~~16.~~19. No change

20. "Refrigerated" means the act of maintaining human remains at or below a temperature of 38 degrees Fahrenheit.

~~17.~~ 21. No change

~~18.~~22. No change

~~19.~~23. No change

ARTICLE 6. CREMATORY AND CREMATORY REGULATION

R4-12-602. ~~Authorizing agent~~ Repealed

~~**A.** In conformity with A.R.S. §§ 36-831 and 36-831.01, the persons authorized to order the cremation of human remains have the following order of precedence.~~

~~1. Spouse of the decedent.~~

~~2. An adult child with preference given in the following order:~~

~~a. Executor of the estate.~~

~~b. Guardian of the spouse.~~

~~c. An adult child living in Arizona.~~

~~3. A parent of a minor child.~~

~~4. Any other person or organization, except the county where the death occurred, that is willing to order cremation and assume the legal and financial responsibility within 24 hours after the death. Preference shall be given in the following order:~~

~~a. A parent~~

~~b. Executor of the estate.~~

~~c. Last appointed guardian of the decedent.~~

~~**B.** If none of the persons named in subsection (A) is willing to decide whether to cremate, the public fiduciary or other representative designated to handle funeral arrangements by the county in which the death occurred may order cremation.~~

~~**C.** A crematory authority knowingly shall not cremate human remains if a challenge of the qualifications of an authorizing agent is received prior to a cremation. If there is a challenge of the qualifications of an authorizing agent, the funeral establishment shall:~~

~~1. Provide to the decedent's family or the authorizing agent all options available at the funeral establishment for preserving the body which are not in conflict with R4-12-302(A)(3); and~~

~~2. Await a court order or settlement of the dispute before cremation may occur.~~

~~**D.** If the human remains already have been delivered to the crematory, the crematory shall either place the human remains in a refrigerated holding facility or return the human remains to the custody of the funeral establishment.~~

~~**E.** If an event described in subsections (C) or (D) occurs, chronological reports of the event shall be prepared by the funeral establishment and the crematory authority. Each report shall be dated and signed by the author and shall be entered into the cremation record within 24 hours after the occurrence.~~

~~**F.** A funeral establishment or cemetery operator may challenge the authority of an authorizing agent.~~

R4-12-612. Crematory requirements

~~**A.** A crematory shall be maintained in a clean and orderly manner. "Clean and orderly" means the following:~~ In addition to the requirements in A.R.S. § 32-1394, the responsible cremationist of a crematory shall ensure:

1. ~~Absence of litter, dirt and debris inside a facility, except that which is contained in a covered receptacle no larger than 35 gallons.~~ The crematory is maintained free from dirt and debris,

2. ~~Scrupulous maintenance of the cremation chamber so that, as far as practicable, visible residue of the cremation process is removed after each cremation~~. Equipment and supplies maintained in the crematory do not impede passage

through the crematory, and

3. ~~Neat alignment of unused cremation containers, urns, boxes or other merchandise so that they do not impede passage through the facility or their placement in a separate storage area.~~ Human remains that are not embalmed are held in a refrigerated holding facility at the crematory or sent to a funeral establishment or another crematory for refrigeration.

~~**B.** Unclaimed cremated remains shall be placed in an enclosed receptacle which shall be held temporarily in a secure place which is restricted to the crematory owners, operators, employees, and public officials in the discharge of their duties.~~

~~**C.** A receptacle containing unclaimed cremated remains shall be identified clearly and indelibly with the name and location of the crematory, the name of the deceased and the date of cremation. If the receptacle containing the cremated remains is a temporary cremation box, the identification shall be affixed permanently on the cremation box. If the receptacle is an urn, the identification shall be affixed securely but temporarily to the urn.~~

~~**D.** A crematory registered pursuant to R4-12-611 shall maintain the following on its premises:~~

~~1. A cremation chamber constructed to withstand temperatures high enough to reduce human remains to bone fragments and sufficiently safe so that employees, surrounding structures, other persons and property are not subjected to damage from excessive heat or harmful emissions.~~

~~2. A holding facility which preserves the dignity of the decedent as follows:~~

~~a. Human remains which have not been embalmed shall be held at a temperature of 38 degrees Fahrenheit or below.~~

~~b. Entrance to the holding facility while human remains are being held shall be limited to authorized employees of the crematory authority, a funeral director, embalmer, public officials in the discharge of their duties or other persons having the legal right to be present.~~

~~c. Except at the request and in the presence of the authorizing agent, crematory personnel shall not open a container or casket containing human remains without the presence of a licensed funeral director or embalmer. If a container or casket is opened, the funeral director or embalmer shall prepare, execute and date a report stating the reason. The report shall be made part of the cremation record of the crematory authority.~~

~~d. Each crematory authority shall adopt, and the responsible funeral director or cemetery operator shall enforce, personnel procedures which shall assure compliance with this subsection.~~

R4-12-613. ~~Cremation container or casket for cremation: requirements~~ Requirements for a funeral establishment that provides for cremation

A. A funeral establishment that owns a crematory on or off the funeral establishment's premises shall designate a responsible cremationist.

~~A.~~B. The responsible funeral director of a funeral establishment ~~which offers~~ that provides for cremation ~~services~~ shall ~~display,~~ ensure that:

~~place on its general price list under "Direct Cremation." and make available to consumers who choose cremation services. a rigid, covered, alternative container which is constructed of a material, such as cardboard, fiberboard or unfinished wood, that shall be entirely consumed or reduced to fine residue during the cremation process.~~

1. The cost of cremation is included on its general price list required by A.R.S. § 32-1371;
2. A price card for cremation is placed as required by A.R.S. § 32-1372;
3. If the funeral establishment contracts with a licensed crematory to perform the cremation; the information required in A.R.S. § 32-1373(A) and (B) is provided to the purchaser of the cremation;
4. A consumer who chooses cremation is informed that human remains may be cremated in a cremation container capable of being entirely consumed or reduced to fine residue during the cremation process, such as a casket, unfinished wood box, or fiberboard container; and

~~**B.** A funeral establishment also may offer for sale in connection with cremation a closed casket which meets the combustibility requirements in subsection (A).~~

~~**C.**~~5. Caskets or containers constructed of metal or of a substance ~~which~~ that ~~when subjected to the cremation process emits~~ may emit harmful fumes when subjected to the cremation process ~~shall not be~~ are not sold or used for cremation.

~~**D.** If the responsible funeral director determines that there is potential for leakage from the cremation container or casket prior to the cremation, the funeral establishment shall line the container or casket with material that will prevent such occurrence or shall encase the human remains in a leakproof body pouch prior to placing the human remains in the container or casket.~~

~~**E.** Body fluids removed from the decedent prior to cremation shall not be forwarded for cremation except by the explicit request of the authorizing agent and with the knowledge and consent of the crematory authority.~~

R4-12-621. ~~Cremation requirements; prohibited practices~~ Repealed

~~**A.** A cremation chamber used for the cremation of human remains shall not be used for any other purpose without the express knowledge and consent of each authorizing agent.~~

~~**B.** Delivery of human remains to a crematory shall be made in a container meeting the requirements of R4-12-613.~~

~~**C.** No cremation shall occur except after completion of the requirements of A.A.C. Title 9, Chapter 19, compliance with A.R.S. § 11-599 and receipt of an authorization of cremation signed by the authorizing agent.~~

~~**D.** The following events shall occur only when the crematory authority has been provided with written instructions by an~~

~~authorizing agent who is a spouse or kin of the decedent or decedents, as applicable. Such instructions shall be made part of the cremation record:~~

~~1. Removal of human remains from the delivery container or casket for the purpose of preserving the casket or container from the cremation process.~~

~~2. Simultaneous cremation of the remains of more than one person.~~

~~3. Knowingly and avoidably commingling the cremated remains of more than one person.~~

~~**E.** Unless otherwise instructed by the authorizing agent, the crematory shall encase the cremated remains in a temporary cremation box or an urn and release them within seven days to the funeral establishment which initiated the funeral services contract.~~

~~**F.** Cremated remains which are not returned in person shall be shipped by a service which assigns a number to the parcel or shipment and provides a receipt of delivery to enable misdirected cremated remains to be traced.~~

~~**G.** A funeral establishment shall not advertise as a crematory unless the funeral establishment is a registered crematory authority.~~

~~**H.** Any funeral establishment may offer and advertise cremation services.~~

R4-12-631. ~~Crematory record of cremation; retention~~ Records requirements for crematories and funeral establishments that provide for cremation

A. The responsible cremationist of a crematory or funeral establishment that provides for cremation ~~authority~~ shall ~~establish and maintain~~ ensure for each cremation performed that the following records are established and maintained for ~~a period of~~ five years from the date of the cremation ~~a record of each cremation which shall include the following~~:

1. The name of the decedent and date of death;
2. ~~Authorization of cremation and any special instructions signed by the authorizing agent.~~ The authorization document required by A.R.S. § 32-1365.01, if applicable or a record of the oral or written consent of the authorizing agent that meets the requirements in A.R.S. § 32-1365.02; and
3. A ~~Copy~~ copy of the completed ~~and executed disposal/transit~~ disposition-transit permit ~~which authorizes the cremation.~~ that meets the requirements in A.R.S. § 36-326 and A.A.C. R9-19-302.

~~3. Reports or records relevant to the cremation not contained on the chronological log described in subsection B.~~

B. The responsible cremationist of a crematory or funeral establishment that provides for cremation shall establish and maintain a written permanent chronological log of cremations ~~showing the following information~~ that includes the identification number and identification information required in A.R.S. § 32-1399(1) and the following for each cremation performed:

1. The ~~Date~~ day, month, and year the human remains were received at the crematory or funeral establishment that provides for cremation~~.~~;
2. Name of the decedent~~.~~;
3. The ~~Name~~ name of the ~~person or funeral establishment forwarding the human remains.~~ responsible cremationist;
4. The ~~Type~~ type of receptacle in which the human remains were received at the crematory, such as a wooden casket or a cardboard, fiberboard, or wooden container~~, or wooden casket, etc.~~;
5. A ~~Check~~ check list showing receipt of the following:
   a. ~~Authorization of cremation.~~ The authorization document required in R4-12-631(A)(2); and
   b. ~~Disposal/transit authorizing the cremation~~ The disposition-transit permit~~.~~;

~~6. Code indicator if there are reports in the decedent's file.~~

6~~7~~. The ~~Time and date~~ time, day, month, and year of the cremation.;

7~~8~~. The ~~Name~~ printed name and signature of the ~~authorized crematory operator~~. crematorist who performed the cremation;

8~~9~~. The following information regarding ~~Disposition of~~ the cremated remains ~~including the following~~:

   a. ~~Date~~ The time, day, month, and year the cremated remains were ~~picked up, delivered or disposed of and a written record of the occurrence.~~ disposed of according to the authority set forth in A.R.S. § 32-1365.01 or 32-1365.02;
   b. ~~Signature~~ The name of the crematory, funeral establishment, or authorizing agent ~~person who delivered, shipped or disposed of the cremated remains~~ authorized according to A.R.S. § 32-1365.01 or 32-1365.02 to dispose of cremated remains; and ~~the name of the person to whom delivered.~~
   c. The ~~destination of shipment or~~ place and manner of ~~disposition~~ disposal according to A.R.S. § 32-1399(7).

~~10. If the uncremated human remains are returned to a funeral establishment, the date and time of the return and the name of the person who picked up the human remains.~~

~~11. Column for referencing a subsequent log entry.~~

C. If the uncremated human remains are returned to ~~the~~ a funeral establishment, ~~and subsequently delivered to the crematory, a new log entry shall be made~~ the responsible cremationist shall ensure that the time, day, month, and year the human remains were picked up and the name of the individual who picked up the human remains are recorded on the written chronological log required in subsection (B).

D. If a funeral establishment returns human remains that have been sent back according to subsection (C), the responsible cremationist shall ensure that a new entry that meets the requirements of subsection (B) is made.

R4-12-632. ~~Cremation documentation by funeral establishments~~ Repealed

~~**A.** A funeral establishment which contracts with a crematory for the cremation of human remains shall establish and maintain for at least five years from the last use a record of each contract which contains the following:~~

~~1. Name of the decedent and the date of death.~~
~~2. Dated copy of the funeral arrangement or cremation purchase agreement.~~
~~3. Copy of the authorization of cremation.~~
~~4 Copy of the notification to the authorizing agent of the disposition of the cremated remains.~~
~~5. If a certified letter is sent to the authorizing agent concerning unclaimed cremated remains, a copy of the letter with the certification number on it or the returned, unopened certified letter.~~
~~6. Reports, instructions or other written information originating at the funeral establishment and pertaining to the cremation.~~

~~**B.** A funeral establishment also shall maintain a permanent record of each cremation which includes the following:~~

~~1. Name of the decedent and the date of death.~~
~~2. Name of the issuing authority and the identifying number of the disposal/transit permit.~~
~~3. Date and name of the crematory to which the human remains were delivered.~~
~~4. Date of cremation.~~
~~5. Type, date and place of disposition.~~

R4-12-633. Disposition of records

A. If ~~a~~ the crematory of a funeral establishment that provides for cremation or a crematory changes ownership ~~or a crematory is sold~~, the responsible funeral director or responsible cremationist shall ensure the records described in R4-12-631 ~~and R4-12-632 shall be delivered~~ are provided to ~~and maintained by the new owners~~ the new responsible funeral director of the funeral establishment or responsible cremationist of the crematory.

B. If a funeral establishment that provides for cremation or a crematory ~~is closed~~ ceases operations, within ~~seven~~ 20 days ~~after closing~~ from the date of cessation, the responsible funeral director of the funeral establishment that provides for cremation or responsible cremationist of a crematory shall ensure that the records required in R4-12-631 ~~and R4-12-632 shall be~~ are:

1. ~~Delivered~~ Provided to the Board office in person or by certified delivery mail; or
2. ~~Delivered~~ Provided to another funeral establishment or crematory and the location of the records is provided to the Board. ~~If this option is taken, the receiver of the records shall advise the Board of their new location by certified mail within seven days after receipt.~~

R4-12-634. ~~Authorization of cremation; required information~~ Repealed

~~The funeral establishment or crematory shall require the authorizing agent to sign an authorization of cremation which meets the requirements of A.R.S. § 32-1393 and contains the following:~~

~~1. Name, address, and telephone number of the funeral establishment or crematory.~~
~~2. Name, address, and telephone number of the authorizing agent and his relationship to the decedent such as spouse, child, parent, personal representative, friend, organization, public fiduciary, etc.~~
~~3. Name of the decedent and the date and place of death.~~
~~4. Conditions under which the funeral establishment or crematory agrees to carry out the disposition of the cremated remains or the conditions under which the authorizing agent or the agent's representative will take possession of the cremated remains.~~

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 22. BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY

[R14-145]

PREAMBLE

1. Articles, Parts, and Sections Affected (as applicable)	Rulemaking Action
R4-22-101	Amend
R4-22-102	Renumber
R4-22-102	Amend
R4-22-103	Renumber
R4-22-103	New Section
R4-22-104	Renumber

R4-22-104	Amend
R4-22-105	Renumber
R4-22-105	Amend
R4-22-106	Renumber
R4-22-106	Amend
R4-22-107	Repeal
R4-22-107	Renumber
R4-22-107	Amend
R4-22-108	Renumber
R4-22-108	Amend
R4-22-110	Renumber
R4-22-111	Renumber
R4-22-112	Renumber
R4-22-115	Renumber
Article 2	Amend
R4-22-201	New Section
R4-22-202	New Section
R4-22-203	Renumber
R4-22-203	Amend
R4-22-204	New Section
R4-22-205	New Section
R4-22-206	New Section
R4-22-207	Amend
R4-22-212	Renumber
R4-22-212	New Section
Article 3	New Article
R4-22-301	New Section
R4-22-302	New Section
R4-22-303	New Section
R4-22-304	New Section
R4-22-305	New Section
Article 4	New Article
R4-22-401	Renumber
R4-22-401	Amend
R4-22-402	Renumber
R4-22-402	Amend
R4-22-403	Renumber
R4-22-403	Amend
Article 5	New Article
R4-22-501	New Section
R4-22-502	New Section
R4-22-503	New Section
R4-22-504	New Section
R4-22-505	New Section
R4-22-506	New Section
R4-22-507	New Section
R4-22-508	New Section

2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. §§ 32-1803(A)(5) and 32-1803(C)(1)

Implementing statute: A.R.S. §§ 32-1822, 32-1823, 32-1825, 32-1826, 32-1828, 32-1829, 32-1830, 32-1831, 32-1832, 32-1855, 32-1855.01, 32-1859, 32-1861, and 32-1871

3. The effective date for the rules:

November 8, 2014

a. If the agency selected a date earlier than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable

b. If the agency selected a date later than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable

4. Citation to all related notices published in the *Register* to include the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 19 A.A.R. 3988, December 6, 2013

Notice of Proposed Rulemaking: 20 A.A.R. 757, March 28, 2014

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

Name:	Jenna Jones, Executive Director
Address:	Board of Examiners in Osteopathic Medicine and Surgery 9535 E. Doubletree Ranch Rd. Scottsdale, AZ 85258
Telephone:	(602) 771-2522
Fax:	(480) 657-7715
E-mail:	Jenna.Jones@azdo.gov
Web site:	www.azdo.gov

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

The Board is making the changes identified as needed in a five-year review report approved by the Council on June 8, 2010, making new rules establishing minimum standards for dispensing drugs and office-based surgery, establishing standards for reentering medical practice, and establishing a program for treatment and rehabilitation of impaired physicians. The Board is making the rules consistent with statute, agency practice, and current rule-writing standards. The standards established by the Board fulfill part of the Board's statutory responsibility to protect public health and safety.

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

The Board did not review and does not rely on a study in its evaluation of or justification for the rules.

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

Not applicable

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

The following rule changes will have minimal economic impact on applicants and licensees:

- Increasing the charge for verification of a license issued by the Board;
- Establishing minimum requirements for dispensing drugs;
- Establishing standards for reentering medical practice;
- Establishing a program for treatment and rehabilitation of impaired physicians;
- Expanding the procedures that a medical assistant is permitted to perform under direct supervision; and
- Establishing minimum standards for performing office-based surgery.

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

In the Notice of Proposed Rulemaking, the date of the material incorporated by reference at R4-22-106(A)(1) was incorrectly listed as August 2013. The correct date is March 2013. The incorporated material has never been published with an August 2013 date so the mistake clearly is clerical. Correcting the date is not a substantial change under the standards at A.R.S. 41-1025(B).

The Board made a non-substantial change to R4-22-102(A)(5) so the rule language tracks more closely the statutory language at A.R.S. § 32-1826(A)(6).

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

The Board received no comments regarding the rulemaking and no one attended the oral proceeding on May1, 2014.

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

None

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

The licenses, registrations, and permits listed in R4-22-201 are general permits.

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

The rules are not more stringent than federal law. An osteopathic physician who dispenses a controlled substance is required under 21 CFR, Chapter II, to register with the federal Drug Enforcement Administration and to comply with provisions regarding labeling, packaging, and recordkeeping. All health care providers are required under the Health Information Technology for Economic and Clinical Health Act to make meaningful use of electronic records. The rules in Article 3 are consistent with federal law.

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

No analysis was submitted.

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

The following materials are incorporated by reference in R4-22-106:

Handbook of the Bureau of Osteopathic Specialists, revised March 2013, available from the AOA at 142 E. Ontario Street, Chicago, IL 60611, 800-621-1773, or www.osteopathic.org

ABMS Guide to Medical Specialties, 2013, available from the ABMS at 222 N. LaSalle Street, Suite 1500, Chicago, IL 60601, 312-436-2600, or www.abms.org

The following material is incorporated by reference in R4-22-402:

Standards and Guidelines for the Accreditation of Educational Programs in Medical Assisting, revised 2008, available from CAAHEP, 1361 Park Street, Clearwater, FL 33756, 727-210-2350, or www.caahep.org.

14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

None of the rules was previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 22. BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY

ARTICLE 1. GENERAL PROVISIONS

Section
R4-22-101. Definitions
~~R4-22-108.~~ R4-22-102. Fees and Charges
R4-22-103. Submitting Documents to the Board
~~R4-22-212.~~ R4-22-104. Licensing Time-frames
~~R4-22-103.~~ R4-22-105. ~~Repealed~~ Equivalents to an Approved ~~Internships and Residencies~~ Internship or Residency
~~R4-22-102.~~ R4-22-106. Specialist Designation
~~R4-22-107.~~ ~~Labeling, Recordkeeping, Storage, and Packaging of Drugs~~ Repealed
~~R4-22-115.~~ R4-22-107. ~~Petitions~~ Petition for Rulemaking or Review
~~R4-22-106.~~ R4-22-108. Rehearing or Review of Decision
R4-22-110. Renumbered
R4-22-111. Renumbered
R4-22-112. Renumbered
R4-22-115. Renumbered

ARTICLE 2. LICENSING ~~AND TIME-FRAMES~~

Section
R4-22-201. ~~Reserved~~ Application Required
R4-22-202. ~~Reserved~~ Determining Qualification for Licensure
~~R4-22-104.~~ R4-22-203. ~~Reserved~~ Examination~~;~~ ~~and Issuance of Licenses; Lapse of Application~~ Practice Equivalency to an Examination
R4-22-204. ~~Reserved~~ License Issuance; Effective Date of License
R4-22-205. ~~Reserved~~ License Renewal
R4-22-206. ~~Reserved~~ Procedure for Application to Reenter Practice
R4-22-207. Continuing Medical Education; Waiver; Extension of Time to Complete
R4-22-212. Confidential Program for Treatment and Rehabilitation of Impaired Osteopathic Physicians

ARTICLE 3. DISPENSING DRUGS

Section
R4-22-301. Registration to Dispense Required
R4-22-302. Packaging and Inventory
R4-22-303. Prescribing and Dispensing Requirements
R4-22-304. Recordkeeping and Reporting Shortages
R4-22-305. Inspections; Denial and Revocation

ARTICLE 4. MEDICAL ASSISTANTS

Section
~~R4-22-110.~~ R4-22-401. Approval of Educational Programs for Medical Assistants
~~R4-22-111.~~ R4-22-402. Medical Assistants – Authorized Procedures
~~R4-22-112.~~ R4-22-403. Medical Assistant Training Requirement

ARTICLE 5. OFFICE-BASED SURGERY

Section
R4-22-501. Definitions
R4-22-502. Health Care Institution License
R4-22-503. Administrative Provisions
R4-22-504. Procedure and Patient Selection
R4-22-505. Sedation Monitoring Standards
R4-22-506. Perioperative Period; Patient Discharge
R4-22-507. Emergency Drugs; Equipment and Space Used for Office-based Surgery
R4-22-508. Emergency and Transfer Provisions

ARTICLE 1. GENERAL PROVISIONS

R4-22-101. Definitions
In addition to the definitions in A.R.S. § 32-1800, in this Chapter:

"ABHES" means Accrediting Bureau of Health Education Schools.

"ABMS" means American Board of Medical Specialties.

"ACCME" means the Accreditation Council for Continuing Medical Education.

"ACGME" means the Accreditation Council on Graduate Medical Education.

"AOA" means the American Osteopathic Association.

"AOIA" means the American Osteopathic Information Association.

"Approved internship," "approved preceptorship," and "approved residency" mean training accredited by the AOA or ACGME.

"CAAHEP" means Commission on Accreditation of Allied Health Education Programs.

"CME" means continuing medical education.

"COMLEX" means Comprehensive Osteopathic Medical Licensing Examination.

"Continuing medical education" means a course, program, or other training that the Board approves for license renewal.

"Controlled substance" means a drug, substance, or immediate precursor, identified, defined, or listed in A.R.S. Title 36, Chapter 27, Article 2.

"FCVS" means Federal Credentials Verification Service.

"Licensee" means an individual who holds a current license issued under A.R.S. Title 32, Chapter 17.

"MAP" means Monitored Aftercare Program.

"NBME" means the National Board of Medical Examiners.

"NBOME" means the National Board of Osteopathic Medical Examiners.

"Post-graduate training program" means an approved internship or residency.

"USMLE" means United States Medical Licensing Examination.

~~R4-22-108.~~ R4-22-102. Fees and Charges

A. Under the specific authority provided by A.R.S. §§ 32-1826(A) and 32-1871(A)(5), the Board establishes and shall collect the following fees for the Board's licensing activities:
1. Application to practice osteopathic medicine, $400;
2. Issuance of initial license, $180 (~~pro-rated~~ prorated);
3. Biennial renewal of license, $636 plus the penalty and reimbursement fees specified in A.R.S. § 32-1826(B), if applicable;
4. Locum tenens registration, $300;
5. Annual registration ~~for~~ of an approved internship, residency, or clinical fellowship program or short-term residency program, $50;
6. Teaching license, $318;
7. Five-day educational teaching permit, $106; and
8. Annual registration to dispense drugs and devices, $240 (initial registration fee is ~~pro-rated~~ prorated).

B. Under the specific authority provided by A.R.S. § 32-1826(C), the Board establishes and shall collect the following charges for services provided by the Board:
1. Verification of a license to practice osteopathic medicine issued by the Board and copy of licensee's complaint history, ~~$5.00.~~ $10;
2. Issuance of a duplicate license, $10;
3. List of physicians licensed by the Board, $25.00 if for non-commercial use or $100 if for commercial use;
4. Copying records, documents, letters, minutes, applications, and files, 25¢ per page.;
5. Copy of an audio tape, $35.00; and
6. Digital medium not requiring programming, $100.

C. Except as provided under A.R.S. § 41-1077, the fees listed in subsection (A) are not refundable.

R4-22-103. Submitting Documents to the Board

An individual who wants the Board to consider a document at a meeting or hearing shall submit the document to the Board at least 15 days before the meeting or hearing or at another time as directed by the Board.

~~R4-22-212.~~ R4-22-104. Licensing Time-frames

A. The overall time-frame described in A.R.S. § 41-1072(2) for each type of license issued by the Board is listed in Table 1. An applicant and the Executive Director of the Board may agree in writing to extend the substantive review and overall time-frames by no more than 25 percent of the overall time-frame listed in Table 1.

B. The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for each type of license issued by the Board is listed in Table 1. The administrative completeness review time-frame for a particular license begins on the date the Board receives an application package for that license.
1. If the application package is incomplete, the Board shall send to the applicant a written notice specifying the missing document or incomplete information. The administrative completeness review and overall time-frames are suspended from the postmark date on the notice until the date the Board receives the missing document or incomplete information.
2. If the application package is complete, the Board shall send to the applicant a written notice of administrative completeness.
3. If the Board grants or denies a license during the administrative completeness review time-frame, the Board shall not issue a separate written notice of administrative completeness.

C. The substantive review time-frame described in A.R.S. § 41-1072(3) for each type of license issued by the Board is listed in Table 1. The substantive review time-frame begins on the postmark date of the Board's notice of administrative completeness.

1. During the substantive review time-frame, the Board may make one comprehensive written request for additional information or documentation. The substantive review and overall time-frames are suspended from the postmark date on the comprehensive written request for additional information or documentation until the Board receives the additional information or documentation. The Board and applicant may agree in writing to allow the Board to submit supplemental requests for additional information.
2. The Board shall send a written notice of approval to an applicant who meets the requirements of A.R.S. Title 32, Chapter 17 and this Chapter.
3. The Board shall send a written notice of denial to an applicant who fails to meet the requirements of A.R.S. Title 32, Chapter 17 or this Chapter.

D. The Board shall administratively close an applicant's file if the applicant fails to submit the information or documentation required under subsection (B)(1) or (C)(1) within 360 days from the date on which the application package was originally submitted. If an individual whose file is administratively closed wishes to be licensed, the individual shall file another application package and pay the application fee.

E. ~~Under A.R.S. § 41-1073(E)(2), the Board is not establishing a time-frame for issuance of the following licenses because the~~ The Board shall grant or deny ~~each license~~ the following licenses within seven days after receipt of an application:
1. Ninety-day extension of locum tenens registration ~~under A.R.S. § 32-1823(C)~~;
2. Waiver of continuing education requirements for a particular period ~~under A.R.S. § 32-1825(C)~~;
3. Extension of time to complete continuing education requirements ~~under A.R.S. § 32-1825(C)~~;
4. ~~Annual registration of an approved internship, residency, clinical fellowship program, or short-term residency program under A.R.S. § 32-1826(A)(6);~~
~~5.~~ Five-day educational training permit ~~under A.R.S. § 32-1828~~; and
~~6.~~5. Extension of one-year renewable training permit ~~under A.R.S. § 32-1829(B)~~.

F. In computing any time-frame prescribed in this Section, the day of the act or event that begins the time-frame is not included. The computation includes intermediate Saturdays, Sundays, and official state holidays. If the last day of a time-frame falls on a Saturday, Sunday, or official state holiday, the next business day is the time-frame's last day.

Table 1. Time-frames (in days)

Type of License	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Substantive Review Time-frame
License	A.R.S. § 32-1822	120	30	90
License Renewal	A.R.S. § 32-1825	120	30	90
90-day Locum Tenens Registration	A.R.S. § 32-1823	60	30	30
One-year Renewable Training Permit	A.R.S. § 32-1829(A)	60	30	30
Short-term Training Permit	A.R.S. § 32-1829(C)	60	30	30
One-year Training Permit at Approved School or Hospital	A.R.S. § 32-1830	60	30	30
Two-year Teaching License	A.R.S. § 32-1831	60	30	30
Registration to Dispense Drugs and Devices	A.R.S. § 32-1871	90	30	60
Renewal of Registration to Dispense Drugs and Devices	A.R.S. §§ 32-1826(A)(11) and 32-1871	60	30	30
~~Authorization to Read or Interpret Mammographic Images~~	~~A.R.S. § 32-2842~~	~~60~~	~~30~~	~~30~~
~~Renewal of Authorization to Read or Interpret Mammographic Images~~	~~A.R.S. § 32-2842~~	~~60~~	~~30~~	~~30~~

Approval of Educational Program for Medical Assistants	A.R.S. § ~~32-1800(19)~~ 32-1800(17)	60	30	30

~~R4-22-103.~~ R4-22-105. ~~Repealed~~ Equivalents to an Approved ~~Internships and Residencies~~ Internship or Residency

For purposes of A.R.S. § 32-1822, the equivalent of an approved internship or approved residency is any of the following:

1. One or more years of a fellowship training program approved by the ~~American Osteopathic Association (AOA)~~ AOA or the ~~Accreditation Council on Graduate Medical Education (ACGME)~~ ACGME; or
2. A current certification by the AOA in an osteopathic medical specialty~~; or~~
3. ~~For those who were awarded a Doctor of Osteopathy degree in 1946 or earlier, a minimum of 10 years of continuous active practice of osteopathic medicine and surgery immediately before applying for licensure~~.

~~R4-22-102.~~ R4-22-106. Specialist Designation

A. ~~A specialty board approved by the~~ The Board ~~includes only those~~ approves specialty boards recognized by the:

1. American Osteopathic Association Bureau of Osteopathic Specialists and listed in the ~~*Yearbook and Directory of the American Osteopathic Association*, 1991, page 643~~ *Handbook of the Bureau of Osteopathic Specialists* (BOS), revised March 2013, available from the AOA at 142 E. Ontario Street, Chicago, IL 60611, 800-621-1773, or www.osteopathic.org; ~~or the~~ and
2. American Board of Medical Specialties (ABMS) and listed in the ~~*Annual Report and Reference Handbook* of the American Board of Medical Specialties, June 1991, page 103, which are incorporated herein by reference and on file with the Office of the Secretary of State~~ *ABMS Guide to Medical Specialties*, 2013, available from the ABMS at 222 N. LaSalle Street, Suite 1500, Chicago, IL 60601, 312-436-2600, or www.abms.org.

B. The Board incorporates the materials listed in subsection (A) by reference. The materials include no future editions or amendments. The Board shall make the materials available at the Board office and on its web site.

~~R4-22-107.~~ ~~Labeling, Recordkeeping, Storage, and Packaging of Drugs~~ Repealed

~~A.~~ ~~Labeling. The following information shall be included on labels of medications being dispensed by licensed osteopathic physicians:~~

1. ~~Serial number and date dispensed.~~
2. ~~Name of the patient for whom drug was issued.~~
3. ~~Name, strength and quantity of drug dispensed.~~
4. ~~Directions for use and cautionary statement if any is contained in the prescription order for the drug.~~
5. ~~Name of drug and manufacturer or distributor in case of generic substitution.~~
6. ~~Name, address and telephone number of the dispensing physician.~~
7. ~~In the case of controlled substances, the cautionary statement "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed."~~

~~B.~~ ~~Required information. A prescription order shall contain the following information:~~

1. ~~Date of issuance.~~
2. ~~Name and address of the patient for which the prescription order has been issued.~~
3. ~~Name, strength and quantity of the drug prescribed and dispensed.~~
4. ~~Name and address of the physician dispensing the medication.~~
5. ~~Drug Enforcement Agency number of the physician dispensing for controlled substances.~~

~~C.~~ ~~Prescription recordkeeping. Prescription orders for drugs dispensed by licensed osteopathic physicians shall be:~~

1. ~~Sequentially numbered and dated on date of dispensing.~~
2. ~~Filed separately from the patient records.~~
3. ~~Filed separately for Class II controlled substances.~~
4. ~~Filed separately or marked with a prominent red "C" for Class III, IV, & V controlled substances.~~
5. ~~Listed in a log showing the name of patient, name of drug, number dispensed, and date of dispensation.~~

~~D.~~ ~~Records, receipts, refilling prescriptions.~~

1. ~~A record of refills shall be kept on the back of the prescription showing the date, name or initials of dispensing physician and quantity dispensed if that varies from the original amount ordered.~~
2. ~~Resale of medication to another licensed physician shall not exceed 5% of the seller's total annual sales of medications. A record of the sale shall be kept for a period of three years.~~
3. ~~Invoices of receipts and records of disbursement shall be maintained for all controlled substances for a period of three years.~~
4. ~~Annual inventories of all controlled substances shall be performed and available for review by Drug Enforcement Agency and other drug control agencies.~~
5. ~~Schedule II controlled substances prescription orders shall not be refilled.~~
6. ~~Schedule III, IV and V controlled substances prescription orders may be refilled a maximum of five times within six~~

~~months from date of prescription order.~~

~~**E.** Storage.~~
~~1. All medications shall be stored in a locked cabinet or room, with restricted access to the drug storage area.~~
~~2. Storage rooms should not exceed a high temperature of 85° Fahrenheit.~~
~~3. All medications shall be in current or unexpired dating or returned to source of supply.~~

~~**F.** Packaging. A medication dispensed by the physician shall be in light-resistant container with a consumer safety cap (i.e., a container cap that does not screw directly on or off the container) unless the patient and physician agree otherwise and shall be labeled by a mechanically printed label.~~

~~R4-22-115.~~ R4-22-107. ~~Petitions~~ Petition for Rulemaking or Review

A. A person may petition ~~Petitions to~~ the Board ~~pursuant to~~ under A.R.S. § 41-1033 for either a: ~~shall be made in writing by delivering or mailing to the Board a letter requesting the adoption of the rule. The letter shall state the purpose for the proposed rule, the name and address of the person requesting the adoption of the rule, and be signed by that person.~~
1. Rulemaking action relating to a Board rule, including making a new rule or amending or repealing an existing rule; or
2. Review of an existing Board practice or substantive policy statement alleged to constitute a rule.

B. A person shall submit to the Board a written petition including the following information:
1. Name, address, e-mail address, and telephone and fax numbers of the person submitting the petition;
2. Name of any person represented by the person submitting the petition;
3. If requesting a rulemaking action:
   a. Statement of the rulemaking action sought, including the A.A.C. citation of all existing rules, and the specific language of a new rule or rule amendment; and
   b. Reasons for the rulemaking action, including an explanation of why the existing rule is inadequate, unreasonable, unduly burdensome, or unlawful;
4. If requesting a review of an existing practice or a substantive policy statement:
   a. Subject matter of the existing practice or substantive policy statement, and
   b. Reasons why the existing practice or substantive policy statement constitutes a rule; and
5. Dated signature of the person submitting the petition.

C. A person may submit supporting information with a petition.

D. A person may submit a petition and any supporting information by e-mail, hand delivery, or the U.S. Postal Service.

E. The Board shall send the person submitting a petition a written response within 60 days of the date the Board receives the petition.

~~R4-22-106.~~ R4-22-108. Rehearing or Review of Decision

A. The Board shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10 and rules established by the Office of Administrative Hearings.

B. ~~A~~ Except as provided in subsection (I), a party is required to file a motion for rehearing or review of a decision of the Board to exhaust the party's administrative remedies.

C. A party may amend a motion for rehearing or review at any time before the Board rules on the motion.

D. The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
1. Irregularity in the proceedings of the Board, or any order or abuse of discretion, that deprived the moving party of a fair hearing;
2. Misconduct of the Board, its staff, an administrative law judge, or the prevailing party;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
5. Excessive penalty;
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings;
7. ~~That the~~ The Board's decision is a result of passion or prejudice; or
8. ~~That the~~ The findings of fact or decision is not justified by the evidence or is contrary to law.

E. The Board may affirm or modify a decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (D). An order modifying a decision or granting a rehearing shall specify with particularity the grounds for the order.

F. When a motion for rehearing or review is based upon affidavits, the affidavits shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. ~~The Board may extend this period for a maximum of 20 days, for good cause as described in subsection (I).~~

G. Not later ~~that~~ than 10 days after the date of a decision, after giving parties notice and an opportunity to be heard, the Board may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.

H. If a rehearing is granted, the Board shall hold the rehearing within 60 days after the issue date on the order granting the

rehearing.

I. ~~The Board may extend all time limits listed in this Section upon a showing of good cause. A party demonstrates good cause by showing that the grounds for the party's motion or other action could not have been known in time, using reasonable diligence, and:~~
1. ~~A ruling on the motion will further administrative convenience, expedition, or economy; or~~
2. ~~A ruling on the motion will avoid undue prejudice to any party.~~ If the Board makes a specific finding that a particular decision needs to be effective immediately to preserve the public peace, health, or safety and that a review or rehearing of the decision is impracticable, unnecessary, or contrary to the public interest, the Board shall issue the decision as a final decision without an opportunity for rehearing or review.

J. A party that has exhausted the party's administrative remedies may appeal a final order of the Board under A.R.S. Title 12, Chapter 7, Article 6.

R4-22-110. Renumbered

R4-22-111. Renumbered

R4-22-112. Renumbered

R4-22-115. Renumbered

ARTICLE 2. LICENSING ~~AND TIME-FRAMES~~

R4-22-201. ~~Reserved~~ Application Required

An individual or entity that seeks a license or other approval from the Board shall complete and submit an application form prescribed by the Board. The Board has prescribed the following application forms, which are available from the Board office or web site:
1. License,
2. License renewal,
3. Locum tenens registration,
4. Initial registration to dispense,
5. Registration to dispense renewal,
6. Renewable one-year post-graduate training permit,
7. Renewal of post-graduate training permit,
8. Short-term training permit,
9. Two-year teaching license, and
10. Approval of an educational program for medical assistants.

R4-22-202. ~~Reserved~~ Determining Qualification for Licensure

A. To obtain a license, an applicant shall submit:
1. The application form specified in R4-22-201;
2. The proof required under A.R.S. § 32-1822(A);
3. A list of all Board-certified specializations, the certifying entity, and a copy of each certification or letter verifying specialization;
4. A malpractice claim or suit questionnaire for each instance of medical malpractice in which there was an award, settlement, or payment;
5. A passport-size picture taken within the last 60 days; and
6. The application fee required under R4-22-102(A).

B. In addition to the materials required under subsection (A), an applicant shall have the following information submitted directly to the Board by the specified entity:
1. Professional Education Verification form or an official transcript submitted by the osteopathic college from which the applicant graduated;
2. Verification of Postgraduate Training form submitted by each postgraduate facility or program at which the applicant trained;
3. Practice Experience Verification form for at least seven of the last 10 years submitted by each health care facility or employer at which the applicant obtained experience;
4. Verification of passing the medical licensure examination if the examination was passed within the last seven years submitted by the examining entity; and
5. Verification of licensure form submitted by every state in which the applicant is or has been licensed as an osteopathic physician.

C. If an applicant has established a credentials portfolio with the FCVS or AOIA, the applicant may request that the FCVS forward to the Board some or all of the materials required under subsection (B).

D. The Board shall conduct a substantive review of the information submitted under subsections (A) and (B) and determine whether the applicant is qualified for licensure by virtue of:
1. Possessing the knowledge and skills necessary to practice medicine safely and skillfully;
2. Demonstrating a history of professional conduct; and
3. Possessing the physical, mental, and emotional fitness to practice medicine.

E. If the substantive review referenced in subsection (D) does not yield sufficient information for the Board to determine whether an applicant is qualified for licensure, the Board shall request that the applicant appear before the Board for an interview.
1. The Board shall conduct an application interview in the same manner as an informal hearing conducted under A.R.S. § 32-1855 and shall accord the applicant the same rights as a respondent.
2. In conjunction with an application interview, the Executive Director or Board may require that the applicant, at the applicant's expense:
   a. Provide additional documentation,
   b. Submit to a physical or psychological examination,
   c. Submit to a practice assessment evaluation,
   d. Pass an approved special purposes competency examination listed in R4-22-203(A)(3), or
   e. Fulfill any combination of the requirements listed in subsections (E)(2)(a) through (d).

F. If the substantive review referenced in subsection (D) reveals that an applicant has been subject to disciplinary action or criminal conviction, the Board shall consider the following factors to determine whether the applicant has been rehabilitated from the conduct underlying the disciplinary action or criminal conviction:
1. Nature of the disciplinary or criminal action including charges and final disposition;
2. Whether all terms of court-ordered sentencing or Board-issued order were satisfied;
3. Whether the disciplinary action or criminal conviction was set aside, dismissed with prejudice, or reduced;
4. Whether a diversion program was entered and completed;
5. Whether the circumstances, relationships, or personal attributes that caused or contributed to the underlying conduct changed;
6. Personal and professional references attesting to rehabilitation; and
7. Other information the Board determines demonstrates whether the applicant has been rehabilitated.

~~R4-22-104.~~ R4-22-203. ~~Reserved~~ Examination~~; and Issuance of Licenses; Lapse of Application~~ Practice Equivalency to an Examination

A. ~~Examination. Pursuant to A.R.S. § 32-1822(4), an applicant for licensure by examination must pass either the federal licensing examination (FLEX) with a grade of 75 or above in both components or the examination by the National Board of Osteopathic Examiners (NBOE) with a weighted average of 75% as determined by the NBOE.~~ Approved examinations. For the purposes of licensing, the Board approves the following examinations:
1. All levels and parts of the COMLEX required by the NBOME with a passing score determined by the NBOME;
2. All levels and parts of the USMLE required by the NBME with a passing score determined by the NBME; and
3. A special purposes competency examination given by the NBOME or NBME to an applicant at the request of the Board, with a passing score established by the NBOME or NBME.

B. ~~Waiver of examination. An applicant for licensure who is currently licensed to practice as an osteopathic physician and surgeon as specified in A.R.S. § 32-1822(4) need not take the examination referred to in subsection (A) if:~~ Practice equivalency to an examination. If an applicant has not passed an approved examination within the seven years before the date of application, the Board shall find that the applicant has practice experience equivalent to an approved examination if the applicant submits documentation of all of the following:
1. ~~The applicant has taken the FLEX or NBOE examination within the seven-year period preceding the date of application and passed with the grade level specified in subsection (A); or~~ On the date of application and continuously until the date the applicant is issued or denied a license, the applicant holds:
   a. An active license to practice osteopathic medicine issued by another state, or
   b. An active permit or temporary license to practice in an approved residency or fellowship;
2. ~~The applicant has been continuously engaged in osteopathic practice and training since initial licensure. In determining whether an applicant has been continuously engaged in osteopathic practice and training, the Board will consider the following:~~ For at least seven of the 10 years immediately before the date of application, the applicant:
   a. ~~Total length of time the individual has been in the practice of medicine.~~ Was in clinical practice providing direct patient care, or
   b. ~~Percentage of time the individual devoted to the practice of medicine while not in full time practice.~~ Was in the second or later year of an approved residency or fellowship; and
   c. ~~Type and amount of continuing medical education or professional training the individual obtained while not in full time practice.~~ Has completed a certification examination provided by a specialty board under R4-22-106; and
3. Within two years immediately before the date of application, the applicant completed at least 40 hours of approved

CME, defined and documented as specified in R4-22-207.

~~C. Personal interviews. The purpose of the personal interview required by A.R.S. § 32-1822(6) is to investigate the applicant's professional and personal background, to review the applicant's medical knowledge, to determine the applicant's ability to practice medicine in Arizona, and to clarify, explain, or amplify information obtained during the application process.~~

~~1. The personal interview may include questions relating to any or all of the following areas:~~

~~a. Substantive medical knowledge.~~

~~b. Arizona practice issues or problems.~~

~~c. Education qualifications.~~

~~d. Professional experience.~~

~~e. Applicant's moral character and fitness to practice medicine and surgery in Arizona.~~

~~2. An applicant must correctly answer 75% of the medical knowledge questions to be considered acceptable for licensure.~~

~~3. Any adverse information obtained by the Board during the personal interview may be grounds for further investigation or denial of licensure.~~

~~D. Time limitations. Each applicant for Arizona Osteopathic licensure must pass the written examination if required, and appear before the Board for the personal interview within one year from the date the application is filed. Failure to do so shall cause the application to lapse. Within six months from the date of successful completion of the personal interview, each applicant for Arizona Osteopathic licensure must complete all requirements for issuance of the license including payment of all fees and completion of an internship. Failure to do so shall cause the application to lapse.~~

R4-22-204. ~~Reserved~~ License Issuance; Effective Date of License

A. Within 90 days after an applicant for licensure receives notice from the Board that the applicant is approved, but no later than 360 days after the date on which the application was originally submitted, the approved applicant shall submit to the Board the license issuance fee required by A.R.S. § 32-1826(A) and the following information in writing:

1. Practice address and telephone number,
2. Residential address, and
3. A statement of whether the practice address or residential address should be used by the Board as the address of record.

B. The Board shall issue a license to an approved applicant that is effective on the date the information required under subsection (A) is received.

C. The Board shall administratively close an approved applicant's file if the approved applicant fails to submit the information required within the time specified under subsection (A). If an applicant whose file is administratively closed wishes to be considered further for licensure, the applicant shall reapply by complying with R4-22-202.

R4-22-205. ~~Reserved~~ License Renewal

To renew a license, the licensee shall submit to the Board the renewal application required under R4-22-201. Failure to receive notice of the need to renew does not excuse failure to renew timely.

R4-22-206. ~~Reserved~~ Procedure for Application to Reenter Practice

A. The procedures in this Section apply only to an osteopathic physician who:

1. Was licensed and practiced as an osteopathic physician in Arizona or another jurisdiction, and
2. Currently is not licensed and practicing as an osteopathic physician in Arizona or another jurisdiction.

B. All applicants to reenter practice shall:

1. Submit the application required under R4-22-201, including all documents specified in the application; and
2. Pay the fee specified in R4-22-102(A).

C. In addition to complying with subsection (B), an applicant who has been out of practice for less than two years and has no disciplinary history shall submit documentation of completing at least 40 hours of Category 1-A or Category 1 CME in the applicant's intended field of practice within the two years before the date the application to reenter practice is approved.

D. In addition to complying with subsection (B), an applicant who has been out of practice for two or more years and has no disciplinary history shall attend a Board meeting and:

1. Discuss with the Board evidence that the applicant remains competent to practice medicine; and
2. Develop a reentry plan designed to ensure that the applicant is competent to practice medicine. The re-entry plan may include any or all of the following, at the discretion of the Board:
   a. Taking a competency or specialty examination;
   b. Taking continuing education;
   c. Completing a practice assessment program;
   d. Practicing under supervision or with restrictions; and
   e. Submitting to a physical or psychological examination.

E. In addition to complying with subsection (B), an applicant who has been out of practice and has a history of disciplinary

action shall attend a Board meeting and:

1. Establish to the Board's satisfaction that the applicant is rehabilitated from the underlying unprofessional conduct. In determining whether the applicant is rehabilitated, the Board shall consider the factors listed in R4-22-202(F); and
2. If the Board determines that the applicant is rehabilitated, take the actions listed in subsection (D) to ensure that the applicant is competent to practice medicine.

R4-22-207. Continuing Medical Education; Waiver; Extension of Time to Complete

A. Under A.R.S. § 32-1825(B), a licensee is required to obtain 20 hours of Board-approved CME in each of the two years ~~preceding~~ before license renewal. The Board shall approve the CME of a licensee if the CME complies with the following:
1. At least 12 hours are obtained annually by completing ~~a~~ CME classified by the AOA as Category 1A; and
2. No more than eight hours are obtained annually by completing ~~a~~ CME classified as American Medical Association Category 1 approved by ~~the~~ an ACCME-accredited CME provider ~~as Category 1~~.

B. ~~During the first year that a licensee is licensed, the~~ A licensee may fulfill 20 hours of the CME requirement for a particular year by participating in an approved residency, internship, fellowship, or preceptorship during that year.

C. The Board shall accept the following documentation as evidence of compliance with the CME requirement:
1. For a CME under subsection (A)(1):
   a. The AOA printout of the licensee's CME~~;~~, or
   b. A copy of the certificate of attendance from the provider of the CME showing:
      i. Licensee's name,
      ii. Title of the CME,
      iii. Name of the provider of the CME,
      iv. Category of the CME,
      v. Number of hours in the CME, and
      vi. Date of attendance;
2. For a CME under subsection (A)(2)~~;~~:
   a. ~~a~~ A copy of the certificate of attendance from the provider of the CME showing the information listed in subsection (C)(1)(b); ~~and~~ or
   b. A specialty board's printout showing a licensee's completion of CME.
3. For a CME under subsection (B), either a letter from the Director of Medical Education or a certificate of completion for the approved internship, residency, fellowship, or preceptorship.

D. Waiver of CME requirements. To obtain a waiver under A.R.S. § 32-1825(C) of the CME requirements, a licensee shall submit to the Board a written request that includes the following:
1. The period for which the waiver is requested,
2. CME completed during the current license period and the documentation required under subsection (C), and
3. Reason that a waiver is needed and the applicable documentation:
   a. For military service. A copy of current orders or a letter on official letterhead from the licensee's commanding officer;
   b. For absence from the United States. A copy of pages from the licensee's passport showing exit and reentry dates;
   c. For disability. A letter from the licensee's treating physician stating the nature of the disability; or
   d. For circumstances beyond the licensee's control~~.~~ :
      i. A letter from the licensee stating the nature of the circumstances, and
      ii. ~~any supporting documentation~~ Documentation that provides evidence of the circumstances.

E. The Board shall grant a request for waiver of CME requirements that:
1. Is based on a reason listed in subsection (D)(3),
2. Is supported by the required documentation,
3. Is filed no sooner than 60 days before and no later than 30 days after the license renewal date, and
4. Will promote the safe and professional practice of osteopathy in this state.

F. Extension of time to complete CME requirements. To obtain an extension of time under A.R.S. § 32-1825(C) to complete the CME requirements, a licensee shall submit to the Board a written request that includes the following:
1. Ending date of the requested extension,
2. CME completed during the current license period and the documentation required under subsection (C),
3. Proof of registration for additional CME that is sufficient to enable the licensee to complete all CME required for license renewal before the end of the requested extension, and
4. Licensee's attestation that the CME obtained under the extension will be reported only to fulfill the current license renewal requirement and will not be reported on a subsequent license renewal application.

G. The Board shall grant a request for an extension that:
1. Specifies an ending date no later than May 1,
2. Includes the required documentation and attestation,
3. Is submitted no sooner than 60 days before and no later than 30 days after the license renewal date, and

4. Will promote the safe and professional practice of osteopathy in this state.

R4-22-212. ~~Licensing Time-frames~~ Confidential Program for Treatment and Rehabilitation of Impaired Osteopathic Physicians

A. To protect the public health and safety, a licensee is required by A.R.S. § 32-1822 to be physically, mentally, and emotionally able to practice medicine.

B. If the Board determines that a licensee may be impaired by substance abuse and there is evidence of an imminent danger to the public health and safety, the Board's Executive Director, with the concurrence of investigative staff, the medical consultant, or a Board member, may enter into:

1. A consent agreement with the licensee to restrict the licensee's practice if there is evidence that a restriction of the licensee's practice is needed to mitigate the danger to the public health and safety;
2. A stipulated agreement with the licensee requiring the licensee to complete a Board-approved evaluation and treatment program for abuse or misuse of chemical substances if there is evidence the program would be successful in enabling the licensee to return to practice safely; and
3. A stipulated agreement with the licensee to enter a Monitored Aftercare Program (MAP) if there is evidence the licensee intends to comply with a program for rehabilitation.

ARTICLE 3. DISPENSING DRUGS

R4-22-301. Registration to Dispense Required

A. An osteopathic physician shall register with the Board annually if the osteopathic physician:

1. Maintains a supply of controlled substances, as defined in A.R.S. § 32-1901(13), prescription-only drugs, as defined in A.R.S. § 32-1901(76), or prescription-only devices, as defined in A.R.S. § 32-1901(75), excluding manufacturers' samples;
2. Prescribes the items listed in subsection (A)(1) to a patient of the osteopathic physician for use outside the office of the osteopathic physician; and
3. Obtains payment for the items listed in subsection (A)(1) at a practice location in Arizona.

B. To register with the Board to dispense, an osteopathic physician shall:

1. Submit the form referenced in R4-22-201,
2. Submit a copy of the osteopathic physician's current Drug Enforcement Administration certificate of registration for each location from which the osteopathic physician will dispense a controlled substance, and
3. Pay the fee authorized by A.R.S. § 32-1826(A)(11).

C. An osteopathic physician who is registered with the Board to dispense shall renew the registration by December 31 of each year by complying with subsection (B). If an osteopathic physician submits a timely and complete application to renew a registration to dispense, the osteopathic physician may continue to dispense until the Board approves or denies the renewal application.

D. If an osteopathic physician fails to submit a timely and complete application to renew a registration to dispense, the osteopathic physician shall immediately cease dispensing.

1. If the osteopathic physician wishes to resume dispensing, the osteopathic physician shall register with the Board by complying with subsection (B) and shall not dispense until the osteopathic physician receives notice from the Board that the registration is approved.
2. If the osteopathic physician does not wish to resume dispensing, the osteopathic physician shall, as required by A.R.S. § 32-1871(F), submit to the Board an inventory disposal form, which is available from the Board office or on its web site.

R4-22-302. Packaging and Inventory

A. An osteopathic physician shall dispense a controlled substance or prescription-only drug in a prepackaged or light-resistant container with a consumer safety cap that complies with standards specified in the official compendium, as defined at A.R.S. § 32-1901(55), and state and federal law, unless a patient or the patient's representative requests a non-safety cap.

B. An osteopathic physician shall ensure that a dispensed controlled substance or prescription-only drug is labeled with the following information:

1. The name, address, and telephone number of the dispensing osteopathic physician;
2. The date the controlled substance or prescription-only drug is dispensed;
3. The patient's name;
4. The name of the controlled substance or prescription-only drug, strength, dosage, form, name of manufacturer, quantity dispensed, directions for use, and any cautionary statement necessary for the safe and effective used of the controlled substance or prescription-only drug; and
5. A beyond-use date not to exceed one year from the date of dispensing or the manufacturer's expiration date if less than one year.

C. An osteopathic physician shall:

1. Secure all controlled substances in a locked cabinet or room;
2. Control access to the locked cabinet or room by a written procedure that includes, at a minimum:
   a. Designation of the persons who have access to the locked cabinet or room, and
   b. Procedures for recording requests for access to the locked cabinet or room;
3. Make the written procedure required under subsection (C)(2) available on demand by the Board or its authorized representative for inspection or copying;
4. Store prescription-only drugs so they are not accessible to patients; and
5. Store controlled substances and prescription-only drugs not requiring refrigeration in an area where the temperature does not exceed 85° F.

D. An osteopathic physician shall maintain a dispensing log for all controlled substances and the prescription-only drug nalbuphine hydrochloride (Nubain) dispensed. The osteopathic physician shall ensure that the dispensing log includes the following information on a separate inventory sheet for each controlled substance or prescription-only drug:
1. Date the drug is dispensed;
2. Patient's name;
3. Name of controlled substance or prescription-only drug, strength, dosage, form, and name of manufacturer;
4. Number of dosage units dispensed;
5. Running total of each controlled substance or prescription-only drug dispensed; and
6. Written signature of the osteopathic physician next to each entry.

E. An osteopathic physician may use a computer to maintain the dispensing log required under subsection (D) if the log is quickly accessible through either on-screen viewing or printing a copy.

F. This Section does not apply to a prepackaged manufacturer sample of a controlled substance or prescription-only drug unless otherwise provided by federal law.

R4-22-303. Prescribing and Dispensing Requirements

A. An osteopathic physician who dispenses a controlled substance, prescription-only drug, or prescription-only device shall record the following information on the patient's medical record:
1. Name, strength, dosage, and form of the controlled substance, prescription-only drug, or prescription-only device dispensed;
2. Quantity or volume dispensed;
3. Date of dispensing;
4. Medical reasons for dispensing; and
5. Number of refills authorized.

B. Before dispensing a controlled substance, prescription-only drug, or prescription-only device, an osteopathic physician shall review the prepared controlled substance, prescription-only drug, or prescription-only device to ensure that:
1. The container label and contents comply with the prescription; and
2. The patient is informed of the name of the controlled substance, prescription-only drug, or prescription-only device, directions for use, precautions, and storage requirements.

C. An osteopathic physician shall purchase all controlled substance, prescription-only drugs, or prescription-only devices dispensed from a manufacturer or distributor approved by the United State Food and Drug Administration or a pharmacy holding a current permit from the Arizona Board of Pharmacy.

D. The individual who prepares a controlled substance, prescription-only drug, or prescription-only device for dispensing shall countersign and date the original prescription form.

R4-22-304. Recordkeeping and Reporting Shortages

A. An osteopathic physician who dispenses a controlled substance or prescription-only drug shall ensure that an original prescription order, as defined in A.R.S. § 32-1901(77), for the controlled substance or prescription-only drug dispensed is dated, consecutively numbered in the order in which originally dispensed, and filed separately from patient medical records. The osteopathic physician shall ensure that original prescription orders are maintained in three separate files, as follows:
1. Schedule II controlled substances, which are listed at A.R.S. § 36-2513;
2. Schedule III, IV, and V controlled substances, which are defined or listed at A.R.S. §§ 36-2514 through 36-2516, and
3. Prescription-only drugs.

B. An osteopathic physician shall ensure that purchase orders and invoices for all dispensed controlled substances and prescription-only drugs are maintained for three years from the date on the purchase order or invoice in three separate files as follows:
1. Schedule II controlled substances;
2. Schedule III, IV, and V controlled substances and nalbuphine; and
3. All other prescription-only drugs.

C. An osteopathic physician who discovers a theft or loss of a controlled substance or dangerous drug, as defined in A.R.S. Title 36, Chapter 27, Article 2, from the physician's office shall:

1. Immediately notify the local law enforcement agency,
2. Provide the local law enforcement agency with a written report, and
3. Send a copy of the report to the U.S. Drug Enforcement Administration and the Board within seven days of the discovery of the theft or loss.

R4-22-305. Inspections; Denial and Revocation

A. An osteopathic physician shall allow the Board or its representative access to the physician's office and the records required under this Article for inspection of compliance with A.R.S. § 32-1871 and this Article.

B. Failure to comply with A.R.S. § 32-1871 and this Article is unprofessional conduct and grounds for revocation of the physician's registration to dispense or denial of renewal of registration to dispense.

C. The Board shall revoke an osteopathic physician's registration to dispense upon the occurrence of the following:
1. Suspending, revoking, surrendering, or canceling the physician's license;
2. Failing to timely renew the physician's license; or
3. Restricting the physician's ability to prescribe or administer medication, including loss or expiration of the physician's Drug Enforcement Administration Certificate of Registration.

D. If the Board denies a registration to dispense to an osteopathic physician, the physician may appeal the decision by filing a written request with the Board no later than 30 days after service of the notice of denial.

ARTICLE 4. MEDICAL ASSISTANTS

~~**R4-22-110.**~~ **R4-22-401. Approval of Educational Programs for Medical Assistants**

A. For purposes of this Section, a Board-approved medical assistant training program is a program:
1. Accredited by the ~~Commission on Accreditation of Allied Health Education Programs (CAAHEP)~~ CAAHEP;
2. Accredited by the ~~Accrediting Bureau of Health Education Schools (ABHES)~~ ABHES;
3. Accredited by any accrediting agency recognized by the United States Department of Education; or
4. Designed and offered by a licensed osteopathic physician, that meets or exceeds the standards of one of the accrediting programs listed in subsections (A)(1) through (A)(3), and the licensed osteopathic physician verifies that those who complete the program have the entry level competencies referenced in ~~R4-22-111~~ R4-22-402.

B. A person seeking approval of a training program for medical assistants shall submit to the Board the application required under R4-22-201 and verification ~~to the Board~~ that the program meets the requirements in subsection (A).

~~**R4-22-111.**~~ **R4-22-402. Medical Assistants – Authorized Procedures**

A. A medical assistant may, under the direct supervision of ~~an~~ a licensed osteopathic physician ~~or a physician assistant~~, perform the medical procedures listed in the Commission on Accreditation of Allied Health Education Programs' *Standards and Guidelines for the Accreditation of Educational Programs in Medical Assisting ~~Educational Programs~~,* revised ~~2003~~ 2008~~, Section III(C)(3)(a) through (c)~~. This material is incorporated by reference, does not include any later revisions, amendments or editions, is on file with the Board, and may be obtained from the Commission on Accreditation of Allied Health Education Programs, 1361 Park Street, Clearwater, FL 33756, 727-210-2350, or ~~at~~ www.caahep.org.

B. Additionally, a medical assistant working under the direct supervision of ~~an~~ a licensed osteopathic physician ~~or physician assistant~~ may:
1. Perform physical medicine modalities, including administering whirlpool treatments, diathermy treatments, electronic galvanic stimulation treatments, ultrasound therapy, massage therapy, and traction treatments;
2. Apply Transcutaneous Nerve Stimulation units and hot and cold packs; ~~and~~
3. Administer small volume nebulizers~~.~~;
4. Draw blood;
5. Prepare proper dosages of medication and administer the medication as directed by the physician;
6. Assist in minor surgical procedures;
7. Perform urine analyses, strep screens, and urine pregnancy tests;
8. Perform EKGs; and
9. Take vital signs.

~~**R4-22-112.**~~ **R4-22-403. Medical Assistant Training Requirement**

A. The ~~supervising~~ licensed osteopathic physician ~~or physician assistant~~ who will provide direct supervision to a medical assistant shall ensure that ~~a~~ the medical assistant satisfies one of the following training requirements before the medical assistant is employed:
1. Completes an approved medical assistant training program,
2. Completes an unapproved medical assistant training program and passes a medical assistant examination administered by either the American Association of Medical Assistants or the American Medical Technologists, or
3. Completes a medical services training program of the Armed Forces of the United States.

B. This Section does not apply to a person who completed a medical assistant training program before ~~the effective date of~~

~~this Section~~ August 7, 2004, and was employed continuously as a medical assistant since completing the program.

ARTICLE 5. OFFICE-BASED SURGERY

R4-22-501. Definitions

In this Article,

"ACLS" means advanced cardiac life support performed according to certification standards of the American Heart Association.

"Auscultation" means the act of listening to sounds within the human body either directly or through use of a stethoscope or other means.

"BLS" means basic life support performed according to certification standards of the American Heart Association.

"Capnography" means monitoring the concentration of exhaled carbon dioxide of a sedated patient to determine adequacy of the patient's ventilatory function.

"Deep sedation" means a drug-induced depression of consciousness during which a patient:

Cannot be easily aroused, but

Responds purposefully following repeated or painful stimulation, and

May partially lose the ability to maintain ventilatory function.

"Discharge" means a written or electronic documented termination of office-based surgery provided to a patient.

"Emergency" means an immediate threat to the life or health of a patient.

"General anesthesia" means a drug-induced loss of consciousness during which a patient:

Can not be aroused even with painful stimulus; and

May partially or completely lose the ability to maintain ventilatory, neuromuscular, or cardiovascular function or airway.

"Health care professional" means a registered nurse or a registered nurse practitioner, as defined in A.R.S. § 32-1601, physician assistant, as defined in A.R.S. § 32-2501, and any individual authorized to perform surgery under A.R.S. Title 32 who participates in office-based surgery.

"Informed consent" means advising a patient of the:

Purpose for and alternatives to office-based surgery,

Risks associated with office-based surgery, and

Possible benefits and complications from office-based surgery.

"Malignant hyperthermia" means a life-threatening condition in an individual who has a genetic sensitivity to inhalant anesthetics and depolarizing neuromuscular blocking drugs that occurs during or after the administration of an inhalant anesthetic or depolarizing neuromuscular blocking drug.

"Minimal sedation" means a drug-induced state during which:

A patient responds to verbal commands,

Cognitive function and coordination may be impaired, and

A patient's ventilatory and cardiovascular functions are unaffected.

"Moderate sedation" means a drug-induced depression of consciousness during which:

A patient responds to verbal commands or light tactile stimulations, and

No interventions are required to maintain ventilatory or cardiovascular function.

"Monitor" means to assess the condition of a patient.

"Office-based surgery" means a medical procedure performed by an osteopathic physician in the physician's office or other practice location that is not part of a licensed hospital or licensed ambulatory surgical center while using sedation.

"PALS" means pediatric advanced life support performed according to certification standards of the American Academy of Pediatrics or the American Heart Association.

"Rescue" means to correct adverse physiologic consequences of deeper than intended level of sedation and return the patient to the intended level of sedation.

"Staff member" means an individual who:

Is not a health care professional, and

Assists with office-based surgery under the supervision of the osteopathic physician performing the office-based sur-

gery.

"Transfer" means a physical relocation of a patient from the office or other practice location of an osteopathic physician to a licensed health care institution.

R4-22-502. Health Care Institution License

An osteopathic physician who performs office-based surgery shall obtain a health care institution license as required by the Arizona Department of Health Services under A.R.S. Title 36, Chapter 4 and 9 A.A.C. 10.

R4-22-503. Administrative Provisions

A. An osteopathic physician who performs office-based surgery shall:
1. Establish, document, and implement written policies and procedures that cover:
   a. Patients' rights,
   b. Informed consent,
   c. Care of patients in an emergency, and
   d. Transfer of patients to a local accredited or licensed acute-care hospital;
2. Ensure that a staff member who assists with or a health care professional who participates in office-based surgery:
   a. Has sufficient education, training, and experience to perform assigned duties;
   b. If applicable, has a current license or certification required to perform assigned duties; and
   c. Performs only those acts that are within the scope of practice established in the staff member's or health care professional's governing statutes;
3. Ensure that the office or other practice location where office-based surgery is performed has all equipment necessary for:
   a. The physician to perform the office-based surgery safely,
   b. The physician or health care professional to administer the sedation safely,
   c. The physician or health care professional to monitor the use of sedation, and
   d. The physician and health care professional administering the sedation to rescue a patient after the sedation is administered if the patient enters into a deeper state of sedation than was intended by the physician;
4. Ensure that a copy of the patients' rights policy is provided to each patient before performing office-based surgery;
5. Obtain informed consent from the patient before performing office-based surgery that:
   a. Authorizes the office-based surgery, and
   b. Authorizes the office-based surgery to be performed at the specific practice location; and
6. Review all policies and procedures at least every 12 months and update as needed.

B. An osteopathic physician who performs office-based surgery shall comply with:
1. The local jurisdiction's fire code;
2. The local jurisdiction's building codes for construction and occupancy;
3. The bio-hazardous waste and hazardous waste standards in 18 A.A.C. 13, Article 14; and
4. The controlled substances administration, supply, and storage standards in 4 A.A.C. 23, Article 5.

R4-22-504. Procedure and Patient Selection

A. An osteopathic physician shall ensure that each office-based surgery performed:
1. Can be performed safely with the equipment, staff members, and health care professionals at the physician's office;
2. Is of duration and degree of complexity that allows a patient to be discharged from the physician's office within 24 hours;
3. Is within the education, training, experience, skills, and licensure of the physician; and
4. Is within the education, training, experience, skills, and licensure of the staff members and health care professionals at the physician's office.

B. An osteopathic physician shall not perform office-based surgery if the patient:
1. Has a medical condition or other condition that indicates the procedure should not be performed in the physician's office, or
2. Will require inpatient services at a hospital.

R4-22-505. Sedation Monitoring Standards

A. An osteopathic physician who performs office-based surgery when minimal sedation is administered to a patient shall ensure from the time sedation is administered until post-sedation monitoring begins that a quantitative method of assessing the patient's oxygenation, such as pulse oximetry, is used.

B. An osteopathic physician who performs office-based surgery when moderate or deep sedation is administered to a patient shall ensure from the time sedation is administered until post-sedation monitoring begins that:
1. A quantitative method of assessing the patient's oxygenation, such as pulse oximetry, is used;
2. The patient's ventilatory function is monitored by any of the following:
   a. Direct observation,
   b. Auscultation, or

c. Capnography;
3. The patient's circulatory function is monitored by:
a. Having a continuously displayed electrocardiogram,
b. Documenting arterial blood pressure and heart rate at least every five minutes, and
c. Evaluating the patient's cardiovascular function by pulse plethysmography;
4. The patient's temperature is monitored if the physician expects the patient's temperature to fluctuate; and
5. A licensed and qualified health care professional, other than the physician performing the office-based surgery, is:
a. Present throughout the office-based surgery, and
b. Has the sole responsibility of attending to the patient.

R4-22-506. Perioperative Period; Patient Discharge

An osteopathic physician performing office-based surgery shall ensure all of the following:
1. The physician is physically present in the room where office-based surgery is performed while the office-based surgery is performed;
2. After the office-based surgery is performed and until the patient's post-sedation monitoring is discontinued, a physician is at the physician's office and sufficiently free of other duties to respond to an emergency;
3. If using minimal sedation, the physician or a health care professional certified in ACLS, PALS, or BLS is at the physician's office and sufficiently free of other duties to respond to an emergency until the patient is discharged;
4. If using moderate or deep sedation, the physician or a health care professional certified in ACLS or PALS is at the physician's office and sufficiently free of other duties to respond to an emergency until the patient is discharged;
5. A discharge is documented in the patient's medical record including:
a. The date and time of the patient's discharge, and
b. A description of the patient's medical condition at the time of discharge; and
6. The patient receives discharge instructions and receipt of the discharge instructions is documented in the patient's medical record.

R4-22-507. Emergency Drugs; Equipment and Space Used for Office-based Surgery

A. In addition to the requirements in R4-22-503(A)(3) and R4-22-504(A)(1), an osteopathic physician who performs office-based surgery shall ensure that the physician's office has at a minimum:
1. The following:
a. A reliable oxygen source with a SaO_2 monitor;
b. Suction;
c. Resuscitation equipment, including a defibrillator;
d. Emergency drugs; and
e. A cardiac monitor;
2. The equipment for patient monitoring according to the standards in R4-22-505;
3. Space large enough to:
a. Allow access to the patient during office-based surgery, recovery, and any emergency;
b. Accommodate all equipment necessary to perform the office-based surgery; and
c. Accommodate all equipment necessary for sedation monitoring;
4. A source of auxiliary electrical power available in the event of a power failure;
5. Equipment, emergency drugs, and resuscitative capabilities required under this Section for patients less than 18 years of age, if office-based surgery is performed on these patients; and
6. Procedures to minimize the spread of infection.

B. An osteopathic physician who performs office-based surgery shall:
1. Ensure that all equipment used for office-based surgery is maintained, tested, and inspected according to manufacturer specifications; and
2. Maintain documentation of manufacturer-recommended maintenance of all equipment used in office-based surgery.

R4-22-508. Emergency and Transfer Provisions

A. An osteopathic physician who performs office-based surgery shall ensure that a health care professional who participates in or a staff member who assists with office-based surgery receives instruction in the following:
1. Policy and procedure in cases of emergency,
2. Policy and procedure for office evacuation, and
3. Safe and timely patient transfer.

B. When performing office-based surgery, an osteopathic physician shall not use any drug or agent that may trigger malignant hyperthermia.

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 2720.) The Governor's Office authorized the notice to proceed through the rulemaking process on May 9, 2014.

[R14-150]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) — **Rulemaking Action**

R12-15-725.01	Amend
R12-15-725.02	Repeal

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

Authorizing statute: A.R.S. §§ 45-105(B)(1) and 45-576(H)

Implementing statutes: A.R.S. § 45-576

3. The effective date of the rule:

September 12, 2014

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Pursuant to A.R.S. § 41-1032(A)(4), the rule amendment and repeal become effective on September 12, 2014. A.R.S. § 41-1032(A)(4) provides that a rule may be effective immediately if the rule provides a benefit to the public and a penalty is not associated with a violation of the rule. The amended rule and rule repeal provide a benefit to the public by allowing irrigation grandfathered right (IGRF) holders a delay in the reduction of the allocation factor used to calculate extinguishment credits in the Pinal Active Management Area (AMA) until January 1, 2019. This delay is designed to allow IGFR holders in the Pinal AMA time to explore alternatives for meeting the Pinal AMA's management goal and make recommendations to the Arizona Department of Water Resources (Department). Additionally, no penalty is associated with a violation of the rule.

b. If the agency selected a date later than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable

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

Notice of Rulemaking Docket Opening: 20 A.A.R. 1274, June 6, 2014.

Notice of Proposed Rulemaking: 20 A.A.R. 1257, June 6, 2014.

5. Agency contacts who can answer questions about the rulemaking:

Name:	Jeff Tannler Statewide Active Management Area Director
Address:	Department of Water Resources 3550 N. Central Ave. Phoenix, AZ 85012
Telephone:	(602) 771-8424
Fax:	(602) 771-8686
E-mail:	jmtannler@azwater.gov
Name:	Ayesha Vohra Deputy Counsel
Address:	Department of Water Resources 3550 N. Central Ave.

Phoenix, AZ 85012

Telephone: (602) 771-8472

Fax: (602) 771-8686

E-mail: avohra@azwater.gov

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

Reasons for Initiating the Rulemaking

Developers of new subdivisions within an Active Management Area ("AMA") must either obtain a certificate of assured water supply ("AWS") from the Arizona Department of Water Resources ("Department") or obtain a commitment of water service from a municipal water provider designated by the Department as having an AWS prior to the sale of any lots. A.R.S. § 45-576(A). One of several requirements to obtain a certificate or designation of AWS is to demonstrate that any groundwater use is consistent with the management goal of the AMA. The management goal of the Pinal AMA, where a predominately agricultural economy exists, is to allow development of non-irrigation uses and to preserve existing agricultural economies for as long as feasible, consistent with the necessity to preserve future water supplies for non-irrigation uses. A.R.S. § 45-562(B).

One method of demonstrating that groundwater use is consistent with the management goal of the AMA is through a mechanism for the extinguishment of grandfathered groundwater rights in the AMA. Under the Department's AWS Rules, when a grandfathered groundwater right is extinguished, the Department issues credits that can be used by a developer or municipal water provider to demonstrate that a specified volume of groundwater use by the development or water provider will be consistent with the management goal of the AMA.

Prior to 2007, the amount of credits issued for the extinguishment of a grandfathered groundwater right in the Pinal AMA was an annual volume that remained the same each year, regardless of when the right was extinguished. In 2007, the Department amended the rule governing the calculation of extinguishment credits in the Pinal AMA, R12-15-725, to provide for a gradual reduction in the amount of credits given for the extinguishment of grandfathered groundwater rights, depending on when the extinguishment occurs. Under the rule as amended, the first reduction in the allocation factor for calculating extinguishment credits was to take effect on January 1, 2010, with additional reductions each year thereafter until 2054, when no credits would be given for the extinguishment of a grandfathered right.

One of the major reasons for the 2007 amendment was that residential development in the Pinal AMA was increasing rapidly, and the rate of development was projected to continue for the foreseeable future. Some of this development was anticipated to result in the extinguishment of Irrigation Grandfathered Rights ("IGFRs") for extinguishment credits. Extinguishment of IGFRs under the extinguishment credit rule in effect at that time, combined with rapid development, would lead to over-allocation of unreplenished groundwater supplies. The 2007 amendment was designed to preserve sufficient groundwater supplies to meet the demands of agricultural irrigation, existing assured water supply determinations and possible future assured water supply determinations, consistent with the Pinal AMA's management goal.

Shortly after the 2007 rule amendment, the Arizona real estate market began experiencing a significant downturn, and residential development in the Pinal AMA slowed dramatically. In 2009, landowners and irrigation districts in the Pinal AMA expressed concerns to the Department that implementation of the reduction in extinguishment credits as scheduled could result in owners of farm land in the AMA prematurely extinguishing their irrigation grandfathered rights before the first reduction in credits was to take effect on January 1, 2010. It was feared that this would exacerbate the effects of the economic recession in the area by prematurely taking more lands out of agricultural production and increasing the water and power costs for those lands that continued to be farmed.

Consistent with the Pinal AMA management goal of preserving the agricultural economy for as long as feasible while ensuring water supply availability for future municipal and industrial water uses, the Department amended rule R12-15-725 in 2009 to delay the effective date of the first reduction of the allocation factor for calculating extinguishment credits in the Pinal AMA until January 1, 2014. It was felt that by 2014, economic conditions in the AMA would improve sufficiently so that implementation of the reduction in extinguishment credits at that time would not have a significant negative impact on the local economy. Through the 2009 amendment, the allocation factors for calendar years 2010 through 2013 were increased to 100, and the allocation factors for calendar years 2014 through 2016 were increased to 94, 88 and 82, respectively. No changes were made to the allocation factors for calendar years 2017 and thereafter.

In 2013, a number of landowners in the Pinal AMA requested that the Department again delay the reduction in the allocation factor used to calculate extinguishment credits in the Pinal AMA because economic conditions in the area had not improved as much as expected when rule R12-15-725 was amended in 2009. In response to this request, the Department again amended the AWS rules to temporarily delay the first reduction in the allocation factor until September 15, 2014. This was accomplished through the adoption of two new rules, R12-15-725.01 and R12-15-725.02.

R12-15-725.01 contains a table with the allocation factor for each year beginning with calendar year 2010. Under that table, the first reduction in the allocation factor occurs in calendar year 2019, with an additional reduction each year

thereafter until the allocation factor becomes zero in 2060. R12-15-725.01 contained an "automatic repeal" provision stating that the section repealed automatically effective September 15, 2014.

R12-15-725.02 contained a table of allocation factors that became effective on September 15, 2014. Under that table, the first reduction in the allocation factor occurred on September 15, 2014, with additional reductions occurring each year thereafter until the allocation factor became zero in 2055.

The combined effect of the adoption of R12-15-725.01 and R12-15-725.02 was that the first reduction in the allocation factor was delayed until September 15, 2014, when the reduction schedule adopted in 2009 was to become effective again. The temporary delay in the reduction schedule was designed to allow water users and other interested parties in the Pinal AMA to work together to examine conditions within the AMA and offer alternatives for meeting the Pinal AMA's management goal.

In late 2013 the Pinal Local Water Group (Water Group) was formed by Arizona State Representatives T.J. Shope and Frank Pratt to examine the AWS extinguishment credit rules in the Pinal AMA, explore alternatives to the existing rules, and make recommendations to the Department. The group is comprised of AMA water users including farmers, local elected officials, municipalities, developers, and real estate investors. On March 12, 2014, the Water Group requested that the Department delay, for a third time, implementation of the allocation factor reductions in the Pinal AMA to allow the Water Group additional time to explore alternative solutions to extinguishment credit reductions in the AMA and make recommendations before the first extinguishment credit reduction becomes effective. The Water Group explained that more time is needed to fully explore alternatives to the allocation factor reductions and make informed recommendations to the Department.

Specifically, the Water Group asked the Department to make the allocation factor reduction table contained in R12-15-725.01 permanent. After considering this request, the Department agrees that the reduction schedule in R12-15-725.01 should be made permanent. This means that the first allocation factor reduction will be delayed until January 1, 2019. The delay will allow the Water Group and any other interested water users in the AMA ample time to fully explore alternative long-term solutions and make suggestions to the Department.

Explanation of the Rules

Rule R12-15-725.01 is amended by deleting subsection (B), which states "[t]his section shall repeal automatically effective September 15, 2014." Rule R12-15-725.02, the rule containing the allocation factor reduction table scheduled to become effective on September 15, 2014 is repealed. Therefore, the allocation factor reduction table in R12-15-725.01 becomes permanent, thereby delaying the first reduction in the allocation factor used to calculate extinguishment credits in the Pinal AMA until January 1, 2019.

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

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

The rule amendment will have potential positive economic impacts on IGFR holders who would have prematurely extinguished their IGFRs under the existing rule, but will retain their IGFRs and continue farming under the rule amendment. These IGFR holders may benefit in the following ways: 1) by continuing farming operations so that they can receive an income from the land, 2) by maintaining the lower tax rates applicable to agricultural land uses, and 3) from an increased volume of extinguishment credits if they decide to extinguish their IGFRs between September 15, 2014 and December 31, 2059. The rule amendment will likely have positive economic impacts on businesses within the Pinal AMA that sell farming materials, such as seed and equipment.

Lastly, the rule changes may have a positive economic impact on land developers and new homeowners within the Pinal AMA who develop or purchase homes in subdivisions with AWS determinations based wholly or in part on extinguishment credits created between September 15, 2014 and December 31, 2059. Because this rulemaking delays the first extinguishment credit allocation factor reduction from September 15, 2014 to January 1, 2019 and also extends the period in which extinguishment credits can be issued from December 31, 2053 to December 31, 2059, the rulemaking may increase the total number of extinguishment credits that will be created. This will potentially reduce some of the costs associated with Central Arizona Groundwater Replenishment District membership for developers and new homeowners because it will likely allow more groundwater to be used without a replenishment obligation.

The rule amendment may have a negative short-term economic impact on governmental entities that receive tax revenues from the real estate taxes assessed on lands within the Pinal AMA, such as Pinal County and Maricopa County. Some lands within the AMA that otherwise would have been taken out of agricultural production may remain in agricultural production during the September 15, 2014 to January 1, 2019 delay period. These lands would retain their lower agricultural tax status during that period. However, the loss in real estate tax revenue may be offset by more revenues from other taxes paid by the persons farming the lands, such as income taxes and sales taxes.

The rule amendment will likely result in more unreplenished groundwater withdrawals within the Pinal AMA, as some IGFR holders will likely continue irrigating their lands with groundwater during the period from September 15, 2014 to January 1, 2019. Additionally, those IGFR holders who extinguish their rights between September 15, 2014 and December 31, 2059 will receive more extinguishment credits than they would receive without the rule amendment. These additional unreplenished groundwater withdrawals could have a slight negative economic impact on groundwater users and landowners within the general areas of the withdrawals by reducing the physical availability of groundwater supplies in those areas. The economic impact is not possible to quantify because it depends on factors such as the current groundwater levels and rates of urbanization in the areas of the withdrawals. However, the Department believes there will be no significant negative economic impact.

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

There are no changes between the proposed rules and the final rules.

11. A summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

Comment from the Pinal Partnership: The Pinal Partnership supports the proposed rulemaking and urges its expedient enactment.

Response: The Department appreciates the support and is requesting an immediate effective date for the rule amendment and repeal pursuant to A.R.S. § 45-1032(A)(4).

Comment from the Pinal Partnership: The Pinal Partnership acknowledges the need to continue to address the impacts of this rule and work toward evaluating reasonable approaches consistent with the Pinal AMA management goal. The Pinal Partnership urges ADWR to follow the enactment of this rule change with the institution of a process that engages appropriate stakeholders on a mission to evaluate the effects of the rule and develop acceptable alternatives well in advance of the rule's future effective date.

Response: The Department is making the rule change in order to provide ample time for interested persons to meet and suggest alternative solutions to the Pinal AMA extinguishment credit allocation factor reductions. The Department urges interested persons to attend the Water Group meetings. Information regarding the Water Group, including notices of its meetings, is posted on the Department's website – www.azwater.gov. The Department will continue to participate in and meet with the Pinal Local Water Group after the current rulemaking. The Department notes that the Pinal Partnership is a separate organization from the Pinal Local Water Group. Information regarding the Pinal Partnership can be found on its website http://pinalpartnership.com.

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

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

The rules do not require a permit.

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

Federal law is not applicable to the subject of the rules because the rules are based on state law.

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

No analysis was submitted.

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

None.

14. Was this rule previously made, amended, or repealed as an emergency rule?

No.

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

Section

R12-15-725.01.Pinal AMA – Extinguishment Credits Calculation~~; Automatic Repeal~~

R12-15-725.02.~~Pinal AMA – Extinguishment Credits Calculation Effective September 15, 2014~~ Repealed

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

R12-15-725.01.Pinal AMA – Extinguishment Credits Calculation~~; Automatic Repeal~~

~~**A.**~~ The Director shall calculate the extinguishment credits for the extinguishment of a grandfathered right in the Pinal AMA as follows:

1. No Change
2. No Change
   a. No Change
   b. No Change
3. No Change
4. No Change
   a. No Change
   b. No Change
      i. No Change
      ii. No Change

~~**B.** This section shall repeal automatically effective September 15, 2014.~~

R12-15-725.02.~~Pinal AMA – Extinguishment Credits Calculation Effective September 15, 2014~~ Repealed

~~Beginning September 15, 2014, the Director shall calculate the extinguishment credits for the extinguishment of a grandfathered right in the Pinal AMA as follows:~~

~~1. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate by the applicable allocation factor as determined under subsection (3) or (4) of this Section.~~
~~2. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, an amount calculated by multiplying 1.5 acre-feet by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, and then multiply that product by the applicable allocation factor as determined under subsection (3) or (4) of this Section, except that:~~
   ~~a. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, the Director shall include in the calculation only those acres associated with the portion of the right that is extinguished; and~~
   ~~b. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established underA.R.S. § 45-467, the Director shall subtract the amount of the debit from the amount of the extinguishment credits.~~
~~3. Except as provided in subsection (4) of this Section, in calculating the extinguishment credits for the extinguishment of a grandfathered right under subsection (1) or (2) of this Section, the Director shall use the allocation factor associated with the year or portion of a year in which the grandfathered right is extinguished, as shown in the table below.~~

~~Year~~	~~Allocation Factor~~
~~2010~~	~~100~~
~~2011~~	~~100~~
~~2012~~	~~100~~
~~2013~~	~~100~~
~~January 1, 2014 through September 14, 2014~~	~~100~~
~~September 15, 2014 through December 31, 2014~~	~~94~~
~~2015~~	~~88~~

~~2016~~	~~82~~
~~2017~~	~~76~~
~~2018~~	~~74~~
~~2019~~	~~72~~
~~2020~~	~~70~~
~~2021~~	~~68~~
~~2022~~	~~66~~
~~2023~~	~~64~~
~~2024~~	~~62~~
~~2025~~	~~60~~
~~2026~~	~~58~~
~~2027~~	~~56~~
~~2028~~	~~54~~
~~2029~~	~~52~~
~~2030~~	~~50~~
~~2031~~	~~48~~
~~2032~~	~~46~~
~~2033~~	~~44~~
~~2034~~	~~42~~
~~2035~~	~~40~~
~~2036~~	~~38~~
~~2037~~	~~36~~
~~2038~~	~~34~~
~~2039~~	~~32~~
~~2040~~	~~30~~
~~2041~~	~~28~~
~~2042~~	~~26~~
~~2043~~	~~24~~
~~2044~~	~~22~~
~~2045~~	~~20~~
~~2046~~	~~18~~
~~2047~~	~~16~~
~~2048~~	~~14~~
~~2049~~	~~12~~
~~2050~~	~~10~~
~~2051~~	~~8~~

~~2052~~	~~6~~
~~2053~~	~~4~~
~~2054~~	~~2~~
~~After 2054~~	~~0~~

~~4. If, before January 1, 2055, there is a moratorium on adding new member lands and member service areas in the Pinal AMA pursuant to A.R.S. § 45-576.06(A), in calculating the extinguishment credits for the extinguishment of a grandfathered right under subsection (1) or (2) of this Section, the Director shall use an allocation factor determined as follows:~~

~~a. If the grandfathered right is extinguished while the moratorium is in effect, the Director shall use the allocation factor associated with the year in which the moratorium first became effective, as shown in the table in subsection (3) of this Section.~~

~~b. If the grandfathered right is extinguished when the moratorium is no longer in effect, the Director shall use the allocation factor associated with the year determined pursuant to this subsection, as shown in the table in subsection (3) of this Section. The Director shall determine the year as follows:~~

~~i. Subtract the year in which the moratorium first became effective from the year in which the moratorium ended.~~

~~ii. Subtract the difference in subsection (4)(b)(i) of this Section from the year in which the grandfathered right was extinguished.~~

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY SOLID WASTE MANAGEMENT

Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 2720.) The Governor's Office authorized the notice to proceed through the rulemaking process on November 27, 2013.

[R14-146]

PREAMBLE

1. Articles, Parts, or Sections Affected (as applicable) — **Rulemaking Action**
R18-13-802 — New Section

2. Citations to the agency's statutory rulemaking authority to include the authorizing statutes (general) and the implementing statutes (specific):
Authorizing Statutes: A.R.S. §§ 41-1003 and 49-104
Implementing Statute: A.R.S. §§ 49-706 and 49-761

3. The effective date of the rule:
November 9, 2014

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rule:
Notice of Rulemaking Docket Opening: 20 A.A.R. 286, February 7, 2014
Notice of Proposed Rulemaking: 20 A.A.R. 1263, June 6, 2014

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

Name:	Mark Lewandowski
Address:	Department of Environmental Quality Waste Programs Division 1110 W. Washington St. Phoenix, AZ 85007
Telephone:	(602) 771-2230, or (800) 234-5677, enter 771-2230 (Arizona only)

Fax: (602) 771-4381

TTD: (602) 771-4829

E-mail: lewandowski.mark@azdeq.gov

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

Summary. The Arizona Department of Environmental Quality (ADEQ) is adopting a rule to establish a solid waste general permit under A.R.S. § 49-706 for a class of solid waste land disposal facilities that would otherwise need a solid waste facility plan under A.R.S. § 49-762. Under the final rule, the general permit offers coverage to a mining landfill if: 1) the landfill is already included as a discharging facility in an area-wide Aquifer Protection Permit (APP), or 2) the landfill would be exempt from such an APP, or 3) the landfill is part of an application for an APP and is located at a site with a groundwater protection permit.

What is a General Permit? A general permit is a single permit document written with language comprehensive enough to cover a large number of substantially similar facilities. (See the definition at A.R.S. § 41-1001.) The issuing agency and regulated facilities can realize savings through the issuance of a single document that can cover multiple facilities, a simplified application procedure, and no requirement that a hearing may potentially be held for each covered facility. Only the general permit itself requires a hearing.

A general permit can be established either outside of rules or within a rule itself. This General Permit was required to be established in rule and is written as one rule Section.

Scope of this General Permit. ADEQ regulates non-municipal solid waste landfills (NMSWLFs) under both the Solid Waste and APP Programs. These landfills are identified in A.R.S. § 49-762(A) as facilities requiring a Solid Waste Facility Plan but can be exempt from the requirement under § 49-762(B) if covered under a general permit. This General Permit is designed to cover the solid waste requirements that would be contained in Facility Plans issued under § 49-762(A).

At mining sites, NMSWLFs are generally considered discharging facilities pursuant to A.R.S. § 49-241 and are often included in what is known as an area-wide APP to specify those aquifer protection standards. Historically, rather than issuing a separate Plan Approval to identify the solid waste requirements, ADEQ has included the requirements in the area-wide APP that covers the entire mining site. Although ADEQ is allowed to set aquifer protection standards that are more stringent than federal rules, the solid waste standards for NMSWLFs may not be more stringent than or conflict with 40 CFR 257. (A.R.S. § 49-761(C)) This General Permit is drafted so that it will cover the solid waste requirements of these mining landfills with one document and is derived from 40 CFR 257 and related Arizona solid waste statutes.

Advantages of this General Permit. This General Permit will allow ADEQ permitting staff to cover multiple facilities with a single document instead of having to write the same or similar solid waste conditions in individual permits multiple times. In addition, it eliminates the inherently inefficient division of labor that results from a single permit being drafted and coordinated by both the Waste Programs and Water Quality Divisions at ADEQ.

The General Permit will also provide greater certainty to mining entities with landfills. Applicants and commenters have expressed concern about non-groundwater conditions being included in APPs. This has added confusion to discussion of permit conditions in APPs related to landfills and could easily result in permits that are not consistent. This General Permit contains uniform, specific criteria and methods that demonstrate compliance with the general performance standards in 40 CFR 257 and provide greater assurance that each similarly situated landfill is being regulated in the same way.

In order to establish a general permit under A.R.S. § 49-706, 3 conditions must be satisfied: 1) the facilities, activities or practices in the class of eligible facilities must be substantially similar; 2) there should not be environmental or public health benefits that would be gained from issuing individual permits that offset the savings of the general permit; and 3) the Director must be satisfied that the requirements in the general permit will enable the facilities covered under it to meet applicable solid waste requirements.

With this general permit, the first requirement is realized because the eligibility requirements are drafted so that the landfills described by the permit and their waste disposal practices are substantially similar. ADEQ believes that there are 10-20 of these hard rock mining landfills.

ADEQ has also determined that there would be little, if any, environmental or public health benefit gained from writing individual permits for these landfills compared to a single general permit. The solid waste requirements for these facilities are contained in 40 CFR 257 and A.R.S. Title 49 and are mostly related to public safety rather than to public health, e.g. protection from fires and explosions. The public health concerns related to impeding vector access to waste is also covered easily in a general permit since these facilities tend to be located away from populated areas.

Third, the ADEQ director is satisfied that the General Permit conditions will allow applicable requirements to be met. Although this general permit includes flexible language relating to the operating requirements in order to minimize permittee cost, there are sufficient built-in opportunities for ADEQ and the applicant to exchange information about the mechanisms the individual landfills may choose to use to meet the requirements. In order to issue authority to

operate, ADEQ looks at any individual conditions that would apply to the landfill. For example, the public access restriction can be met with any combination of signs and physical barriers taking into account the unique characteristics at each landfill, and the applicant's proposed description, if approved, becomes part of the Authority to Operate. Similarly, the landfill's choice of a cover strategy is dependent on many different factors including availability of materials and equipment as well as the physical and topological characteristics of the landfill.

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

None

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

Not applicable

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

Identification of the rulemaking:

18 A.A.C. 13, Article 8; R18-13-802. (For further information, see Part 6 of this preamble.)

This rule provides an alternative permitting mechanism and solid waste regulatory structure for non-municipal solid waste landfills (NMSWLFs) at mining sites. Entities that own and operate these landfills will be potentially affected by this rule, if they choose to apply for coverage under the General Permit. In addition, this rule affects ADEQ since it establishes an additional permit issuance procedure for these facilities.

Costs and benefits for ADEQ. This general permit rule will free ADEQ permit staff from having to write the same or similar solid waste conditions in individual permits multiple times. In addition, it eliminates the inefficient division of labor that results when a single permit needs to be drafted and coordinated by both the Waste and Water Divisions at ADEQ.

Costs and benefits for entities that own and operate mining landfills

This rule will provide greater certainty to mining entities with landfills. Applicants and commenters have expressed concern over whether and to what extent non-groundwater conditions can be included in APPs. This has complicated the negotiation of APP permit conditions related to landfills and could potentially result in permits that are not consistent in this regard. The general permit contains uniform, specific criteria and methods to demonstrate compliance with the general performance standards in 40 CFR 257 and will provide greater assurance that each similarly situated landfill is being regulated in the same way.

This general permit will also provide two other economic benefits for entities that own these landfills: a less costly and a faster alternative to obtaining Solid Waste Facility Plan approval. The initial fee prescribed by R18-13-702 to review a Solid Waste Facility Plan application for the non-APP requirements for a NMSWLF operating under an APP is $2,000 with a maximum fee of $50,000, whereas initial and maximum fees for other solid waste landfills are $20,000 and $200,000 respectively. (See R18-13-702) The billing rate for the Plan review is $122 per hour, but the actual costs are difficult to quantify as there is currently no process for obtaining Solid Waste Facility Plan approval for NMSWLFs. Costs related to solid waste requirements applicable to landfills are currently incurred by applicants during the APP permitting process, but these have varied over time, have differed between applications, and are as a rule difficult to readily isolate because ADEQ costs tied to landfill review are included in the larger overall ADEQ bills for APP processing.

In general, the process is longer for both the Solid Waste Plan approval and approval under APP and involves: 1) submitting an application; 2) obtaining agency initial review of whether the plan is administratively complete or not; 3) responding to requests for additional information from the agency; issuing a public notice of the plan and responding to public comments; responding to technical deficiencies identified by the agency; and final approval or disapproval.

In contrast, the cost to obtain coverage under this General Permit will be a one-time flat fee of $15,000. The applicant submits a Notice of Intent with the information specified in rule. The Department reviews the information and either issues (or denies) an Authority to Operate that is valid indefinitely with no requirement to renew or reapply while the owner and landfill footprint remain unchanged. The $15,000 fee is intended to cover the costs directly related to processing the Authority to Operate, as well as Department costs in developing this General Permit. It should be noted that each solid waste landfill also pays an annual registration fee authorized by A.R.S. § 49-747. That fee for NMSWLFs is $3750 per year. (See R18-13-2102)

Probable Impact on Small Businesses. ADEQ is not aware of any small business that has a landfill at a mining operation. A.R.S. § 41-1035 requires state agencies to reduce the impact of a rulemaking on small businesses, if possible. As discussed above, this general permit is expected to have a positive economic impact on all entities that choose coverage. However, if a small business was to be covered under this permit, state and federal law does not allow ADEQ to relax requirements contained in A.R.S. Title 49 or 40 CFR 257. Therefore, ADEQ would have no legal or feasible option to reduce stringency for small businesses. Moreover, in developing this general permit, ADEQ has built flexibility into the permit in the form of alternative operational requirements in subsections (H)(4), (H)(5) and (H)(6). This flexibility is beneficial to small and large businesses alike.

Conduct Change Analysis. Under A.R.S. § 41-1055(A)(1), the agency must discuss the conduct the rule is designed to affect and how it will affect that conduct. This general permit supplements general federal requirements with objective performance criteria for operation of a specific set of non-municipal solid waste landfills and deters conduct that would not meet those performance criteria. In general, the permit protects the environment and public safety and provides a level playing field for similarly situated entities.

ADEQ believes that there are 10 to 20 of these NMSWLFs at mining sites that will be eligible for coverage under this permit. Based on some preliminary outreach, ADEQ expects mining operations to put most of their existing landfills under the General Permit because of the greater clarity and certainty provided.

Probable Benefits Outweigh the Probable Costs; Rule Imposes the Least Burden Necessary to Achieve the Regulatory Objective. [A.R.S. § 41-1052(D)(3)] ADEQ has determined that its own costs to develop this rule will be relatively small-less than $50,000 in employee-related expenses with no other costs involved. The Department has also identified potential benefits for itself with more efficient permitting. In addition, ADEQ has concluded that there are significant benefits for regulated facilities that decide to obtain coverage under the General Permit in the cost of the permit. Although this may result in less revenue for ADEQ, ADEQ costs will also decrease proportionately, perhaps allowing personnel to be re-deployed to other areas. When balanced against the probable benefits resulting from reduced permit fees, faster processing, greater consistency, and reduced uncertainty, ADEQ has determined that the probable benefits outweigh the probable costs.

ADEQ has also determined that the requirements of the general permit impose the least burden necessary to achieve the regulatory objective. The regulatory objective is to establish a general permit under A.R.S. § 49-706 that contains design and operating rules for this class of landfills conforming to A.R.S. § 49-761(C). In developing this permit, ADEQ worked with regulated entities, including the Arizona Mining Association, to make sure that the appropriate solid waste requirements were in the permit, and in such a way as to provide maximum clarity and flexibility.

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

No changes were made at the time the final rule was submitted to the Governor's Regulatory Review Council (GRRC). As a result of GRRC staff review, some minor changes were made to make the rule more clear, concise and understandable.

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

ADEQ received a comment from the Arizona Mining Association that supported the rulemaking.

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

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

This rule establishes a general permit.

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

A.R.S. § 49-761(C) requires that rules ADEQ adopts for NMSWLFs may not be more stringent than or conflict with 40 CFR 257 for nonprocedural standards. A.R.S. § 49-761(C) contains another limited exception for more stringent aquifer protection standards which is not relevant for this permit since it only contains solid waste standards. A similar provision (prohibiting rules more stringent than federal standards) exists at A.R.S. § 49-104(A)(17). This general permit is not more stringent than 40 CFR 257 or 40 CFR 761.

c. Whether a person submitted an analysis to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states:

No person has submitted a competitiveness analysis under A.R.S. § 41-1055(I).

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

None

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable

15. The full text of the rule follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY
SOLID WASTE MANAGEMENT

ARTICLE 2. GENERAL PERMITS

Section
R18-13-802. Disposal General Permit: Non-Municipal Solid Waste Landfills at Mining Operations

ARTICLE 2. GENERAL PERMITS

R18-13-802. Disposal General Permit: Non-Municipal Solid Waste Landfills at Mining Operations

A. This general permit is adopted pursuant to A.R.S. § 49-706 as an alternative to plan approvals for facilities identified in A.R.S. § 49-762(A)(1). This general permit authorizes disposal of solid waste in a landfill at a mining operation if the landfill meets one of the following criteria:
1. The landfill is identified as a discharging facility in an area-wide aquifer protection permit and is located within the pollutant management area developed for that permit; or
2. The landfill is located within the pollutant management area of an area-wide aquifer protection permit but is exempt from the permit requirement because it contains only inert material as defined in A.R.S. § 49-201; or
3. The landfill is located at a site qualifying as a groundwater protection permit facility as defined in A.R.S. § 49-241.01(C) and the site has submitted an administratively complete application for an aquifer protection permit that has not been denied. Landfills that are located at mining operations and that are subject to best management practices under A.R.S. § 49-762.02(6) are required to comply with those practices and do not require coverage under this general permit.

B. Authorized and prohibited materials.
1. Disposal of the following is allowed under this general permit:
   a. Solid waste generated at the mining operation where the landfill is located; and
   b. Incidental amounts of putrescible waste generated at the mining operation where the landfill is located. For the purposes of this Section, "putrescible waste" means solid waste which contains organic matter capable of being decomposed by microorganisms and of such a character and proportion as to be capable of attracting or providing food for birds.
2. Disposal of the following is prohibited under this general permit:
   a. Used oil as defined in A.R.S. § 49-801(3).
   b. Human excreta as defined in R18-13-1102.
   c. Special waste as defined in A.R.S. § 49-851(A)(5).
   d. Biohazardous medical waste as defined in R18-13-1401.
   e. Radioactive waste material regulated for disposal pursuant to Title 12, Chapter 1 of the Arizona Administrative Code.
   f. Hazardous waste as defined in A.R.S. § 49-921(5), including hazardous waste generated by a conditionally exempt small quantity generator.
   g. Bulk or noncontainerized liquid waste.
   h. Waste containing polychlorinated biphenyls regulated for disposal pursuant to 40 CFR 761.

C. A person may operate a landfill at a mining operation under this general permit if:
1. Operation of the landfill complies with the requirements of this Section;
2. The person files a Notice of Intent to Operate that complies with subsections (D) and (E);
3. The person satisfies any requests for additional information from the Department regarding the Notice of Intent to Operate or landfill operation and receives a written Authorization to Operate from the Director; and
4. The person submits the applicable fee established in R18-13-801 for the Disposal category.

D. Notice of Intent to Operate. An applicant shall submit to the Department a Notice of Intent to Operate under this general permit. The Notice shall contain:
1. The name, address, and telephone number of the applicant;
2. The name, address, and telephone number of a contact person familiar with the operation of the facility;
3. The legal description of the landfill area, latitude and longitude coordinates, a detailed figure(s) showing both the existing landfill boundary and the anticipated future waste footprint of the landfill at the time of closure, and a map showing the location of the landfill within the mining operation;
4. A description of how the applicant will meet the public access restrictions in subsection (H)(3);
5. A description of how the applicant will meet the cover requirements in subsection (H)(4);

6. A description of how the applicant will meet the methane requirements in subsection (H)(5). For landfills that have accepted waste prior to the effective date of this Section only, the applicant shall include recent methane monitoring sampling results from either:
   a. One (1) measurement per acre of landfill waste footprint; or
   b. A minimum of four (4) monitoring probes installed to the depth of refuse around the perimeter of the landfill and measured quarterly for the presence of methane gas for a period of one (1) year;
7. A narrative description of the landfill, including whether the landfill is existing or planned, the acreage of the current and planned waste footprint, estimated disposal capacity in cubic yards, expected lifespan, projected rate of waste disposal in tons per day or per week, and sources of solid waste generation;
8. A listing of any other federal or state environmental permits issued for or needed by the landfill, including any individual plan approval, APP, Groundwater Quality Protection Permit, or Notice of Disposal; and
9. A signature on the Notice of Intent to Operate certifying that the applicant agrees to comply with all terms of this general permit.

E. Existing facility application deadline. Existing facilities that qualify for coverage under subsections (A)(1), (A)(2), or (A)(3) on the effective date of this rule shall submit a Notice of Intent to Operate within 2 years of the effective date of this rule to obtain coverage. The Director may extend this date in individual cases if the facility could not have submitted an administratively complete Notice in time with reasonable diligence.

F. Authorization review.
1. Inspection. The Department may inspect the facility to determine that the applicable terms of this general permit are being met.
2. Authority to Operate issuance.
   a. If the Department determines, based on its review and an inspection, if conducted, that the facility conforms to the requirements of this general permit, the Director shall issue an Authority to Operate.
   b. The Authority to Operate authorizes the person to operate the landfill under the terms of this general permit.
3. Authority to Operate denial. If the Department determines, based on its review and an inspection, if conducted, that the facility does not conform to the requirements of this general permit, the Director shall notify the person of the decision not to issue the Authority to Operate and the person shall not operate the landfill under this general permit. The notification shall inform the person of:
   a. The reason for the denial with reference to the statute or rule on which the denial is based;
   b. The person's right to appeal the denial, including the number of days the applicant has to file a protest challenging the denial and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and
   c. The person's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

G. Statutory requirements. The landfill shall be:
1. Located according to the applicable location restrictions in A.R.S. § 49-772; and
2. Subject to a restrictive covenant recorded pursuant to A.R.S. § 49-771.

H. Operational requirements.
1. Inspect the landfill at least quarterly and after large storm events for overall integrity and condition of the facility, including stormwater diversions, and conduct maintenance and repairs as needed. For the purposes of this Section, a "large storm event" is defined as one-half inch of precipitation in any 24-hour period.
2. Direct storm water runoff from surrounding areas away from the landfill.
3. Restrict public access to the landfill or to the mining operation site by signs or physical barriers, including natural barriers.
4. Apply cover at such frequencies and in such a manner as to control windblown dispersion of waste, reduce the risk of fire and impede disease vectors' access to the waste, taking into account the types and volumes of waste placed in the landfill, the frequency of disposal, and other relevant considerations. The Department may allow other techniques that are demonstrated to be equally protective as applying cover material.
5. Concentrations of methane gas shall not exceed 25% of the lower explosive limit in facility structures within 100 feet of the landfill boundary and shall not exceed the lower explosive limit beyond the landfill boundary.
6. Methane monitoring.
   a. For landfills that have accepted waste prior to the effective date of this Section only, the applicant shall include recent methane monitoring data as described in subsection (D)(6) with the Notice of Intent to Operate.
      i. If the data demonstrate that concentrations of methane gas do not exceed 25% of the lower explosive limit, then no methane monitoring is required in order to operate under this permit.
      ii. If the data demonstrate that concentrations of methane gas exceed 25% of the lower explosive limit, then annual methane monitoring using one of the data gathering methods described in subsection (D)(6) is required in order to operate under this permit. Results of such annual methane monitoring shall be submitted to the Department.
         (1) A person operating a landfill subject to annual methane monitoring may reduce monitoring to once

every five years if the results of three consecutive annual sampling events demonstrate that concentrations of methane gas do not exceed 25% of the lower explosive limit.

(2) A person operating a landfill subject to annual methane monitoring may request the Department to reduce or eliminate such monitoring based on any other methods approved by the Department, including consideration of the potential for methane gas to be present in facility structures within 100 feet of the landfill boundary at concentrations exceeding 25% of the lower explosive limit.

b. For landfills that have not accepted waste prior to the effective date of this Section, no methane monitoring is required in order to obtain coverage or operate under this permit.

7. Maintain an operating record that documents compliance with the conditions in this permit.

I. Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:

1. Landfill construction drawings and as-built plans, if available;
2. The operating record required by subsection (H)(7); and
3. Methane monitoring results, if any, obtained under subsection (H)(6).

J. Reporting requirements. A permittee shall report the following to the Department:

1. Methane monitoring concentrations that exceed those listed in subsection (H)(5) within 7 days of the determination.
2. A change in ownership or expansion of the planned waste footprint as soon as practicable. These events shall require the filing of a new Notice of Intent to Operate.

K. General applicability. Landfills covered under this general permit:

1. Are not subject to rules adopted by the Department under A.R.S. § 49-761.
2. Are exempt from the solid waste facility plan requirements in A.R.S. §§ 49-762.03 and 49-762.04 as provided in A.R.S. § 49-762(B).

L. For the purposes of this Section, “mining” has the definition at A.R.S. § 27-301.