NOTICES OF FINAL RULEMAKING

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

The final published notice includes a preamble and text of the rules as filed by the agency. Economic Impact Statements are not published.

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the final rules should be addressed to the agency that promulgated them. Refer to Item #5 to contact the person charged with the rulemaking. The codified version of these rules will be published in the *Arizona Administrative Code*.

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION

[R16-145]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) **Rulemaking Action**
R3-2-202 Amend

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. §§ 3-107(A)(1) and 3-1203(B)
Implementing statute: A.R.S. §§ 3-2046 and 3-2161

3. The effective date of the rule:
October 2, 2016

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. 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: 22 A.A.R. 344, February 19, 2016
Notice of Proposed Rulemaking: 22 A.A.R. 1021, May 6, 2016

5. The agency's contact person who can answer questions about the rulemaking:
Name: Rick Mann
Address: Department of Agriculture
1688 W. Adams
Phoenix, AZ 85007
Telephone: (602) 542-6398
E-mail: rmann@azda.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 purpose of this rulemaking is to update the incorporated federal regulations to the latest version in order to maintain consistent state status.

The applicable federal regulations in 9 CFR Chapter III have undergone seven rulemakings since January 1, 2013 that the Department intends to incorporate into the rule. First, generic approval of meat and poultry products labels was allowed in expanded circumstances, and the regulations that provide for the approval of labels were consolidated into a new Code of Federal Regulations part. Second, sodium benzoate, sodium propionate, and benzoic acid were removed from the list of substances prohibited for use in meat or poultry products. Third, a new inspection system for young chicken and all turkey slaughter establishments was created. Establishments that choose not to

operate under the new system may continue to use their current system. Additionally, several changes were made to the regulations covering establishments that slaughter poultry other than ratites. Fourth, a uniform compliance date for new meat and poultry product labeling regulation was established. Fifth, requirements to use a descriptive designation as part of the product name on the labels of raw meat and poultry products that contain added solutions and that do not meet a standard of identity were established. Sixth, requirements to use a descriptive designation "mechanically tenderized" blade tenderized," or "needle tenderized" on the labels of raw or partially cooked needle or blade tenderized beef products unless the products are to be fully cooked or to receive another full lethality treatment at an official establishment were created. Seventh, new record keeping requirements related to sourcing of raw ground beef were created for official establishments and retail stores that grind raw beef products for sale in commerce.

Federal regulations to establish a mandatory inspection program for fish of the order Siluriformes and products derived from these fish were also created. 80 FR 75590-01. These regulations are effective March 1, 2016 and are not included in this rulemaking which incorporates 9 CFR Chapter III as revised, January 1, 2016.

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

The conduct and its frequency of occurrence that the rule is designed to change.

The purpose of this rulemaking is to update the incorporated federal regulations to the latest version in order to maintain consistent state status. The Department believes most persons regulated by this rule are already in compliance with the current federal regulations. Therefore, the Department does not believe the target conduct occurs with significant frequency.

The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

The main harm that will result if the conduct is not addressed by updating the incorporated federal regulations is the loss of consistent state status. The Department believes the loss of consistent state status is likely if the rule is not changed.

The estimated change in frequency of the targeted conduct expected from the rule change:

As stated above, the Department does not believe the targeted conduct occurs with significant frequency, however, to the extant there may be some individuals not following current federal regulations the Department expects the rule change to further reduce the targeted conduct to even more limited frequency.

Brief summary of the information included in the economic, small business, and consumer impact statement:

None of these changes are expected to require any new full-time Department employees.

There may be some minimal cost to some individuals due the new requirements related to labeling and recordkeeping, however, the Department does not believe these costs will outweigh the benefit of maintaining consistent state status, and the Department is not able to offer any less intrusive alternatives and still be "at least equal to" federal law.

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

None

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

No comments were received.

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:

The Department received permission to conduct rulemaking from the Governor's Office in compliance with Executive Order 2016-03. Pursuant to A.R.S. § 3-104(F), the ADA Advisory Council approved this rulemaking.

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

The rule does 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:

9 CFR Chapter III is applicable to this rule. This rule is not more stringent than the 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

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:
Most of 9 CFR Chapter III is incorporated by reference in rule 202.

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 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION

ARTICLE 2. MEAT AND POULTRY INSPECTION

Section
R3-2-202. Meat and Poultry Inspection; Slaughtering Standards

ARTICLE 2. MEAT AND POULTRY INSPECTION

R3-2-202. Meat and Poultry Inspection; Slaughtering Standards
All meat and poultry inspection, slaughtering, production, processing, labeling, storing, handling, transportation and sanitation procedures shall be conducted as prescribed in 9 CFR Chapter III, revised January 1, ~~2013~~ 2016, as amended by ~~76 FR 68058-64 (November 3, 2011)~~ 80 FR 75590-01 (December 2, 2015), except sections 302.2, 307.5, 307.6, 312, 322, 327, 329.7, 329.9, 331, 335, 351, 352, 354, 355, 381.38, 381.39, 381.96 through 381.112, 381.195 through 381.209, 381.218 through 381.225, 390, 391, 392, 590 and 592. This material is incorporated by reference and does not include any later amendments or editions. A copy of the incorporated material is available from the Department and may also be viewed online at www.gpo.gov/fdsys.

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION

[R16-146]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) — **Rulemaking Action**
R3-2-801 — Amend
R3-2-806 — Amend

2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):
Authorizing statute(s): A.R.S. §§ 3-107(A)(1) and 3-605(C).
Implementing statute(s): A.R.S. § 3-606.

3. The effective date of the rule:
October 2, 2016

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. 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: 22 A.A.R. 344, February 19, 2016
Notice of Proposed Rulemaking: 22 A.A.R. 1023, May 6, 2016

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

Name: Roland Mader
Address: Department of Agriculture
1688 W. Adams St.
Phoenix, AZ 85007
Telephone: (602) 542-0884
Fax: (602) 542-4194
E-mail: rmader@azda.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 requirements of R3-2-806 are outdated. The Department is proposing to simplify and clarify the rules by removing some of the stringent and overly specific requirements. This will make compliance with the rule easier and reduce potential conflicts modern practices. R3-2-801 is being amended to remove a defined term because the provision that uses the defined term is being removed from R3-2-806.

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

The conduct and its frequency of occurrence that the rule is designed to change.

Persons constructing or extensively altering a parlor or milk room must submit the plans to the Dairy Supervisor for written approval. The Department receives plans on a bimonthly basis, approximately. Currently the rules create very specific requirements for the construction and alteration of these facilities. This rulemaking will provide more flexibility to those seeking approval of their plans.

The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

The current rules are overly specific and strict application in some situations may prohibit modern production and construction practices. For example a strict application of the rule may prevent the direct loading of milk into a tanker trunk.

The estimated change in frequency of the targeted conduct expected from the rule change:

The Department will implement the streamlined requirements as soon as this rule is effective.

Brief summary of the information included in the economic, small business, and consumer impact statement:

None of these changes are expected to require any new full-time Department employees.

The Department does not believe the changes will have a significant economic impact for business or consumers. If anything there may be some economic befits to dairy farmers due to the greater flexibility in the new rule.

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

In the proposed rulemaking, due to typographical error the Department listed A.R.S. § 3-306 as an implementing statute. The citation was corrected to A.R.S. § 3-606 in the final rulemaking.

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

No comments were received.

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:

The Department received permission to conduct rulemaking from the Governor's Office in compliance with Executive Order 2016-03. Pursuant to A.R.S. § 3-104(F), the ADA Advisory Council approved this rulemaking.

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

The rules do not require a permit. R3-2-806 requires agency approval of constructing or extensively altering a parlor or milk room. The Department issues a general approval for the entire proposed action and allow for modifications after approvals are granted. R3-2-806(A).

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:
There is not a corresponding federal law for the rules in this rulemaking.

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

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:
The Grade A Pasteurized Milk Ordinance –2013 Revision is incorporated in the definition of "PMO" in R3-2-801.

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 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION

ARTICLE 8. DAIRY AND DAIRY PRODUCTS CONTROL

Section
R3-2-801. Definitions
R3-2-806. Parlors and Milk Rooms

ARTICLE 8. DAIRY AND DAIRY PRODUCTS CONTROL

R3-2-801. Definitions
In addition to the definitions in A.R.S. §§ 3-601 and 3-661, the following terms apply to this Article:

"3-A Sanitary Standards" and "3-A Accepted Practices," as published by the International Association for Food Protection, amended May 31, 2002, means the criteria for cleanability of dairy processing equipment. This material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007 and is also available at http://www.3-A.org.

"C-I-P" means a procedure by which equipment, pipelines, and other facilities are cleaned-in-place as prescribed in the 3-A Accepted Practices.

"Converted" means the process by which a frozen dessert is changed from a frozen to semi-frozen form without any change in the ingredients.

"Fluid trade product" means any trade product as defined in A.R.S. § 3-661(5) that resembles or imitates milk, low-fat milk, chocolate milk, half and half, or cream.

"Food establishment" means any establishment, except a private residence, that prepares or serves food for human consumption, regardless of whether the food is consumed on the premises.

"Frozen desserts mix" or "mix" means any frozen dessert before being frozen.

"Grade A raw milk" means raw milk produced on a dairy farm that conforms to Section 7 of the PMO and the requirements of R3-2-805.

"Parlor" and "milk room" mean the facilities used for the production of Grade A raw milk for pasteurization.

"Plant" means any place, premise, or establishment, or any part, including specific areas in retail stores, stands, hotels, restaurants, and other establishments where frozen desserts are manufactured, processed, assembled, stored, frozen, or converted for distribution or sale, or both. A plant may consist of rooms or space where utensils or equipment is stored, washed, or sanitized and where ingredients used in manufacturing frozen desserts are stored. Plant includes:

"Manufacturing plant" means a location where frozen desserts are manufactured, processed, pasteurized, and converted.

"Handling plant" means a location that is not equipped or used to manufacture, process, pasteurize, or convert frozen desserts, but where frozen desserts are sold or offered for sale other than at retail.

~~"Plate line" means a horizontal structural member, such as a timber, that provides the bearing and anchorage for the trusses of a roof or the rafters.~~

"PMO" means the Grade A Pasteurized Milk Ordinance –2013 Revision. This material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007. A copy of the incorporated material may also be viewed at http://agriculture.az.gov.

"Retail food store" means any establishment offering packaged or bulk goods for human consumption for retail sale.

R3-2-806. Parlors and Milk Rooms

A. Construction Plans.
1. Any person constructing or extensively altering a parlor or milk room shall submit the plans and specifications to the Dairy Supervisor for written approval before work begins. The Dairy Supervisor shall approve or deny the plans within 10 business days.
2. Plans shall consist of a scaled plot design with elevations and pertinent dimensions.
3. Any deviations from the requirements in this Section and from approved plans and specifications may be made only after written approval of the Dairy Supervisor.

B. Site.
1. The parlor and milk room shall be located in a place free from contaminated surroundings.
2. Feed racks, calf pens, bull pens, hog pens, poultry pens, horse stables, horse corrals, and shelter sheds shall not be closer than 100 feet to the milk room or closer than 50 feet to the parlor.

C. Surroundings.
1. Dirt or unpaved corrals and unpaved lanes shall not be closer than 25 feet to the parlor or closer than 50 feet to the milk room; corrals shall be constructed to remove runoff from the lowest point of the grade. ~~A minimum 3% slope shall be maintained in unpaved corrals where the available space for each animal is 400 square feet or less but may be reduced proportionately to 1 1/2% slope if 800 square feet or more is provided for each animal.~~
2. A paved (concrete or equivalent) ramp or corral shall be provided to allow the animals to enter and leave the parlor. This paved area shall be curbed sufficiently high enough to contain waste material and water used to clean this area. ~~at least six inches high and six inches wide and sloped to a paved drain area. The paved area shall provide access to permanent feed racks or mangers and to water troughs. Water troughs shall be provided with an apron of concrete or equivalent at least 10 feet wide at the drinking area. The cow standing platform at permanent feed racks shall be paved with concrete or equivalent for at least 10 feet back of the stanchion line. The stanchion line shall have a curb at least one foot in height~~.

D. Drains and waste disposal systems shall be adequate to drain the volume of water used in rinsing and cleaning, as well as the waste created by animals in the parlor. ~~Floor level elevations of all structures shall be at least 15 inches above surrounding ground level and shall carry drainage 50 feet from the parlor and at least 100 feet from the milk room~~. Instead of natural drainage, automatic pumps or other means shall be provided for drainage disposal.

E. Milk room.
1. ~~The milk room shall not be more than 15 feet from the parlor and may be located under the same roof (extended) as the parlor~~. The milk room shall consist of one or more rooms for the handling of the milk and the cleaning, sanitization, and storage of the milk-handling equipment. Hot and cold running water outlets shall be provided as needed for sanitation ~~available in each room~~. There shall be a minimum of five feet between a farm milk tank at the widest point and the milk room wall where the wash vats are installed. Except for currently installed milk tanks, there shall be at least three feet between any farm tank or farm tank appurtenance and the milk room walls.
2. Passageway. The passageway between the milk room and parlor shall have at least a 3-foot clearance for ingress and egress ~~and have ceiling or roof ventilation~~. Equipment such as milk receivers, dump tanks, or coolers that are part of an enclosed milk line system may be installed in the passageway if:
   a. A 3-foot clearance is allowed for the walkway;
   b. Space is provided between walls and equipment to permit the disassembly of equipment for cleaning or inspection;
   c. The passageway between the parlor and the milk room may be closed at one end. The parlor may be separated from the passageway by a pipe rail fence if the slope of the parlor floor is away from the passageway. If the slope of the parlor floor is toward the passageway, a concrete wall between the passageway and parlor floor of at least 12 inches in height shall be provided.
   d. Rustless pipe sleeves with tight-fitting flanges and protective closures shall be installed where the milk lines, hoses for tankers, and wash lines go through the walls ~~or stationary doors~~ of the passageway.
3. Floors.
   a. The floors of the milk room, and passageway, if provided, shall be constructed of four-inch thick concrete, or other impervious material troweled smooth. The milk room floor shall slope at least 1/4 inch per 12 inches to a vented trapped drain. The passageway floor shall slope at least one inch per 10 feet toward a drain or gutter. All floor and wall junctions shall have at least a two-inch radius cove. ~~Concrete floors built on soils other than sandy loams shall have a sand or rock cushion at least six inches deep.~~
   b. Drainage from the milk room may be independent from or connected to the parlor drainage. Floor drains shall be vented, have a water trap, and a clean-out plug. All floor drains and pipes under the milk room and parlor floor shall ~~have leakproof connections and~~ meet all applicable plumbing codes.
4. Walls and ceilings.
   a. All walls and ceilings shall be constructed of a light colored, impervious material with a smooth finish. If concrete block or masonry construction is used, all voids below the floor line shall be filled with concrete.

b. The main ceiling height shall allow sufficient room for access to, and sampling from, the bulk milk storage tank. ~~be at least nine feet above the floor and not less than the height of the farm tank plus two feet. New or extensively altered ceiling shall be at least three feet above the tank. The ceiling may follow the rafters to the plate line which shall be at least 7 feet 3 inches above the floor.~~

5. Doors and windows.
   a. ~~Each room of the milk room shall have at least one glass or other light-transmitting material. The total window area in each room shall be equivalent to at least 1/10 of the floor area~~. All opening windows shall have at least 16-inch mesh screen.
   b. Exterior doors of the milk room shall open outward, be solid, self-closing, and tight fitting. Any door from the passageway shall be a solid door, metal covered on both sides of the bottom half. Wooden door jambs or frames shall terminate six inches above the floor, and the concrete floor cove shall extend to the jambs or frames.
   c. All working areas in the milk room shall contain at least 30 foot-candles of natural and/or artificial lighting.
6. Ventilation. The milk room shall provide adequate ventilation to minimize condensation on ceilings, walls and equipment. Vents shall be protected from the penetration of insects, dust and other contaminants. ~~At least two wall ventilators shall be installed horizontally not more than 10 inches nor less than four inches above the floor in each milk room. The wall ventilators shall provide openings equivalent to 2% of the floor areas. Wall vent openings shall be equipped with metal framed insect screens.~~ The milk room shall contain one or more ceiling vents. ~~In the absence of forced draft ventilation, the ceiling vents shall be shafted to a roof peak vent that is at least 12 inches in diameter to ventilate the room and exclude dust, rain, birds, insects, and trash. Ceiling vents shall provide high ventilation equivalent to an opening of 2% or more of the floor area~~. Ceiling vents shall not be installed directly above bulk milk storage tanks. ~~Oil or gas water heaters shall be vented outside above the roof edge.~~
7. Tanker loading area. A tanker-loading area, at least 10 feet by 12 feet, paved, curbed, and sloped to drain, shall be provided adjacent to the milk room where milk is transferred from a farm tank to a milk tanker. If a tanker is used instead of a farm tank, a tanker shelter shall be provided that complies with the construction, light, drainage, and general maintenance requirements of the milk room.
8. Farm tank installations. All farm tanks for the cooling and storing of milk shall be installed in the milk room. Bulk milk tanks equipped with agitator shaft opening seals may, if approved by the Dairy Supervisor, be bulk-headed through a wall.

F. Parlor.
1. Floors.
   a. The floors~~, curbs and quarters~~ shall be constructed of four-inch thick concrete or other, light-colored, impervious material, finished smooth. The floors, alleys, gutters, mangers, and curbs shall slope lengthwise ~~at least 1 1/2 inches per 10 feet~~ toward a drain or gutter. The cow standing platform in the elevated stall parlor shall slope sufficiently to provide for adequate drainage and cleaning. ~~at least 1 1/2 inches toward the floor gutter.~~
   b. Floor and wall junctions shall have at least a two-inch radius cove and shall be an integral part of the floor.
   c. ~~The cow standing platform litter alley, feed alley, and gutter shall be given a true, even surface~~. The cow standing platform, litter alley, holding corral and concrete lane shall be treated to prevent slipping. ~~Concrete floors built on soils other than sandy loams shall have a sand or rock cushion at least six inches deep.~~
2. Walls. All walls shall be constructed of a light-colored, impervious material. If necessary, means shall be provided to prevent the entrance of swine, fowl and other prohibited animals. ~~that shall extend at least four feet above the ground floor~~. All walls shall be finished smooth on the inside with the top ledge rounded on open walls. If a parlor wall forms a part of the holding corral or an entrance or exit lane, it shall be finished smooth on the outside. If a concrete block or masonry construction is used, all voids below the floor line shall be filled with concrete. In elevated stall parlors, the wall under the cow standing platform adjacent to the milking area shall be finished smooth and designed to prevent ~~drippage~~ leakage.

~~3. Plate line. The plate line in the floor level parlor shall be at least 7 feet 3 inches above the floor. In elevated stall parlors, the plate line shall be at least 6 feet 6 inches above the cow standing platform.~~

~~4. Superstructure. The exposed superstructure of the parlor or ceiling shall be constructed of smooth material. The roof sheathing in an exposed superstructure shall be applied directly to the rafters.~~

3.~~5.~~ Stalls. ~~The cow standing platform and floor level parlors shall be at least three feet wide for each cow and shall be at least four feet 10 inches and not more than six feet from the stanchion line to the gutter, depending on the size of the cattle and the design of the manger. If stanchions are not used, the cow standing platform shall be at least 7 feet in length. The cow stall in a tandem elevated stall shall be eight feet in length~~. A tandem stall and a herringbone stall shall have a smooth, flat, non-absorbent splash panel behind each cow.

4.~~6.~~ Light. ~~and airspace. The parlor shall have at least 400 cubic feet of air space for each stall. Window space, with or without glass, shall be equivalent to at least 6% of the floor area. Light-transmitting material in the roof may be substituted for window spaces~~. Natural and/or artificial light shall be at least 30 foot-candles at the floor level and located to minimize shadows in the milking area.

~~7. Alleys.~~

~~a. The litter alley, exclusive of gutter, shall be at least 4 feet 9 inches wide behind a single string of cows. In a 2-string head-out parlor, the litter alley shall be at least eight feet wide between gutters.~~

~~b. In a floor level parlor, the feed alley in single and 2-single head-out types, shall be at least 5 feet 9 inches wide between stanchion line and wall. In 2-string head-in parlors, there shall be at least 10 feet between stanchions.~~

~~c. The milking alley in the 2-string tandem elevated stall parlor shall be at least eight feet wide but may be reduced to five feet at the narrowest point if automatic feeders are installed and used. The width of the milking alley in the 2-string herringbone parlor may be reduced to five feet at the narrowest point.~~

~~d. In the single-string elevated parlor, the milking alley shall be at least eight feet wide.~~

5.~~8.~~ Gutters.

a. All parlors shall have gutters to catch the defecation of cows while in the stall and for any water used for rinsing.

~~b. Gutters in the floor level parlor may be either trench or step-off. The gutter shall be at least 14 inches wide and two inches deep at the cow standing platform. The gutter floor shall slope down away from the cow standing platform 1/2 inch across its width. The gutter shall have a uniform depth for its entire length.~~

~~c. The gutters in an elevated stall parlor shall be grate-covered in the stall and trenched along the outside wall. The stall gutter shall be located to catch defecation of cows in the stall. The stall gutter shall be at least 500 square inches in area and at least 20 inches wide and four inches deep. A herringbone parlor may have the stall gutter width reduced to 14 inches provided a 500 square inch area containing the animal is maintained. The wall gutter shall be at least eight inches wide and three inches deep and the bottom may be rounded. A trench gutter may be eliminated in an exit alley if the alley is curbed and sloped to drain.~~

b.~~d.~~ Pipe used for parlor gutter drainage shall be at least four inches in diameter and meet applicable plumbing codes.

6.~~9.~~ Curbs.

a. In elevated stall parlors, the cow standing platform shall be curbed on the side next to the milking alley and the curb shall be at least six inches in height with the top rounded to retain the elevated stall floor washings. This curb may be lowered to not less than two inches at the area where the milking machines are applied. Metal curbs shall be free of voids and sealed to stall and floor or wall.

b. Floor level parlors shall contain a curb under the stanchion line at least six inches wide, 12 inches high from the stall floor, except if metal mangers are used the top of this curb shall be rounded.

7.~~10.~~Stanchions.

a. The stanchion shall be metal or other impervious, easily cleanable material. ~~The lower horizontal line of the stanchion shall be at least two inches above the curb and at least 14 inches above the floor if no curb is provided.~~

~~b. In floor level parlors, the manger shall have:~~

~~i. A width of at least 27 inches with a back wall at least 12 inches above the floor;~~

~~ii. Rounded corners;~~

~~iii. The low point of the manger at least eight inches out from the stanchion line and three inches above the floor; and~~

~~iv. A lengthwise slope of at least 1 1/2 inches per 10 feet toward a drain or gutter.~~

b.~~c.~~ Mangers and feed boxes in all types of parlors shall be constructed of impervious materials, finished smooth, and provided with drainage outlets at low points.

8.~~11.~~Ventilation.

~~a.~~ Adequate ~~Ventilation~~ ventilation shall be provided in the parlor, holding corral, and wash area, if roofed.

~~b. Continuous open 18-inch ridge vents that rise at least six inches above the roof area are permitted. Any ridge vent continuing over the feed room shall be tightly screened.~~

~~c. If a stack vent is used, single string parlors shall have a 12-inch diameter opening, and multi-string parlors shall have a 14-inch diameter opening with not more than 10 feet between vent and wall, and vent and vent.~~

~~d. A flat ceiling shall have at least two vents, two feet by two feet or equivalent, shafted to a roof peak vent with not less than a 12-inch opening. The ceiling vents may be located directly over the cow standing platform or the milking pit. The vents shall be located not more than 10 feet between vent and wall, and vent and vent.~~

~~12. The lower half of the parlor doors shall be covered on both sides with corrosion-resistant metal.~~

G. Roof drainage from parlors~~,~~ and milk rooms~~, or shelters~~ shall not drain into a corral unless the corral is paved and properly drained.

H. If animals are fed in the parlor, feed storage facilities shall be provided. Feed storage rooms, when installed, shall be partitioned from the parlor and shall be fly and rodent proof. The feed discharge area of the bulk feed storage shall be concrete or other impervious material that is curbed and drained. Bulk feed may discharge directly into the parlor. A bulk feed tank located opposite the passageway shall be at least six feet from the milk room. Overhead feed storage is permissible if it is fly, rodent, and dust tight. Feed shall be conveyed to the manger or feed box in a tightly closed dust-free system. Overhead metal feed tanks may be used.

I. Facilities to store dairy supplies shall be provided. Only supplies that come in contact with the milk or milk contact surface of the milk-handling equipment may be stored in the milk room and shall be protected from toxic materials, vec-

tors, and dust.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 8. ACUPUNCTURE BOARD OF EXAMINERS

[R16-147]

PREAMBLE

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

Article, Part, or Section Affected (as applicable)	Rulemaking Action
R4-8-101	Amend
Table 1	Amend
R4-8-203	Amend
R4-8-403	Amend
R4-8-407	Amend
R4-8-502	Amend

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. § 32-3903(A)(1)

Implementing statute: A.R.S. §§ 32-3903(A)(6) and 32-3924

3. The effective date for the rules:

August 2, 2016 (*date filed with the Office of the Secretary of State*)

The Board respectfully requested and was granted an immediate effective date under A.R.S. § 41-1032(A)(2).

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):

Under Laws 2014, Chapter 107, § 5, the Board is required to obtain fingerprints for a state and federal background check from applicants for licensure. The requirement goes into effect on July 1, 2016. The Board respectfully requests, under A.R.S. § 41-1032(A)(2), an immediate effective date for this rulemaking so the rules will align with this statutory requirement.

The need for an immediate effective date was not created by the Board's delay or inaction. Laws 2014, Chapter 107 was effective on July 24, 2014. At that time, under Governor Brewer's interpretation of EO2012-03, it was not necessary for the Board to obtain an exemption from EO2012-03 to conduct a rulemaking so the Board did preliminary work on the required rulemaking. The need for a rulemaking exemption changed, however, when Governor Ducey issued EO2015-01 in January 2015. The Board applied for the required exemption on July 15, 2015, and was granted the exemption on July 30, 2015. After the Board resumed work on the required rulemaking, it became aware of the need for clarification of the term "relicensure," as used in the amended statute. It took several months to obtain the needed clarification from the legislators who sponsored Laws 2014, Chapter 107. This rulemaking is being completed timely after the needed clarification was obtained.

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* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 22 A.A.R. 703, April 1, 2016

Notice of Proposed Rulemaking: 22 A.A.R. 697, April 1, 2016

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

Name: Pete Gonzalez, Executive Director

Address: Acupuncture Board of Examiners
1400 W. Washington St., Suite 230
Phoenix, AZ 85007

Telephone: (602) 364-0145

Fax: (602) 542-3093

E-mail: PeteGonzalez@azacupunctureboard.us

Web site: acupuntureboard.az.gov

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

Under Laws 2014, Chapter 107, the legislature removed reference to preceptorships and required that an applicant for licensure disclose all other active and past professional health care licenses and certificates issued by any state, added qualifying education, and required submission of fingerprints for a state and federal criminal records check. The Board is making the rules required by these statutory changes.

An exemption from Executive Order 2015-01 was provided for this rulemaking by Ted Vogt, Chief of Operations in the Governor's office, in an e-mail dated July 30, 2015.

This rulemaking relates, in part, to a five-year-review report approved by the Council on December 1, 2015. The Board was unable to address all issues identified in the five-year-review report because the exemption provided to EO2015-01 was specific to issues relating to Laws 2014, Chapter 107.

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 or rely on a study in its evaluation of or justification for any rule in this rulemaking.

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

Not applicable

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

It is legislative action rather than this rulemaking that requires eliminating preceptorships, disclosure of all health care licenses, expanding qualifying education, and a criminal background check before licensure. The rulemaking simply makes the rules consistent with statutory changes and will have minimal economic impact.

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

To improve clarity, R4-8-203(A)(7) was reformatted into two subsections and conforming changes were made.

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. No one attended the oral proceeding held on May 3, 2016.

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 listed in Table 1 and issued by the Board are general permits consistent with A.R.S. § 41-1037 because they are issued to qualified individuals or entities to conduct activities that are substantially similar in nature.

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:

There are many federal laws applicable to health-care professionals and the provision of health care. However, none of these laws is directly applicable to this rulemaking.

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

No 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:

Not applicable

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:

No rule in this rulemaking was previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 8. ACUPUNCTURE BOARD OF EXAMINERS

ARTICLE 1. GENERAL PROVISIONS

Section
R4-8-101. Definitions
Table 1. Time-frames (in days)

ARTICLE 2. ACUPUNCTURE LICENSING; VISITING PROFESSOR CERTIFICATE

Section
R4-8-203. Application for Acupuncture License

ARTICLE 4. TRAINING PROGRAMS AND CONTINUING EDUCATION

Section
R4-8-403. Approval of an Acupuncture~~,~~ or Clinical Training~~, or Preceptorship Training~~ Program
R4-8-407. Program Monitoring; Records; Reporting

ARTICLE 5. SUPERVISION; RECORDKEEPING

R4-8-502. Recordkeeping

ARTICLE 1. GENERAL PROVISIONS

R4-8-101. Definitions

The definitions in A.R.S. § 32-3901 apply to this Chapter. Additionally, in this Chapter:

"ACAOM" means the Accreditation Commission for Acupuncture and Oriental Medicine.

"Acupuncture program" means a Board-approved training designed to prepare a student for the NCCAOM examination and licensure.

"Acupuncture student" means an individual enrolled in an acupuncture~~,~~ or auricular acupuncture~~, or preceptorship~~ training program.

"Acupuncturist" means an individual licensed or certified by the Board to practice acupuncture in this state.

"Administrative completeness review" means the Board's process for determining whether an applicant provided a complete application packet.

"Applicant" means an individual who applies to the Board for an initial or renewal license or certificate.

"Application packet" means the fees, forms, documents, and additional information the Board requires to be submitted by an applicant or on an applicant's behalf.

"Approved continuing education" means a planned educational experience ~~that~~ the Board determines meets the criteria in R4-8-408.

"Auricular acupuncture" means a therapy in which the five-needle protocol is used to treat alcoholism, substance abuse, or chemical dependency.

"Clean needle technique" means a manner of needle sterilization and use that avoids the spread of disease and infection, protects the public and the patient, and complies with state and federal law.

"Clinical hours" means actual clock hours that a student spends providing patient care under the supervision of an individual licensed under R4-8-203 or R4-8-208.

"Course" means a systematic learning experience that assists a participant to acquire knowledge, skills, and information relevant to the practice of acupuncture.

"Day" means calendar day.

"Five-needle protocol" means a therapy, developed by NADA to treat alcoholism, substance abuse, or chemical dependency, which involves inserting five needles into specific points on the outer ear.

"Hour" means at least 50 minutes of course participation.

"Letter of concern" means an alternative sanction that informs a licensee or certificate holder that, while the evidence does not warrant disciplinary action, the Board believes the licensee or certificate holder should change certain practices and failure to change the practices may result in disciplinary action. A letter of concern is a public document that may be used in future disciplinary proceedings.

"NADA" means the National Acupuncture Detoxification Association.

"NCCAOM" means the National Certification Commission for ~~the Certification of~~ Acupuncture and Oriental Medicine.

~~"Preceptorship training" means a program in which a student studies under a Board-approved supervisor who assumes responsibility for the didactic and clinical training of the student.~~

"Respondent" means an individual accused of violating A.R.S. Title 32, Chapter 39 or this Chapter.

"Successful completion of a clean needle technique course" means a course participant:

Attended the course, and

Received a passing score on an examination or other confirmation from the course provider that evidences ~~that~~ the participant mastered the course content.

"Supervisor" means an acupuncturist licensed by the Board who is responsible for the oversight and direction of an acupuncture student or a certificate holder.

Table 1. Time-frames (in days)

Type of license, certificate, or approval	Authority	Administrative Completeness Time-frame	Time to Complete	Substantive Review Time-frame	Time to Respond	Overall Time-frame
Acupuncture License	A.R.S. § 32-3924; R4-8-203	20	30	40	30	60
Visiting Professor Certificate	A.R.S. § 32-3926; R4-8-208	20	30	40	30	60
Auricular Acupuncture Certificate	A.R.S. § 32-3922; R4-8-301	20	30	40	30	60
Auricular Acupuncture Training Program	A.R.S. § 32-3922; R4-8-401	20	30	40	30	60
Acupuncture Program	A.R.S. § 32-3924(2); R4-8-403	20	30	40	30	60
Clinical Training Program	A.R.S. § 32-3924(2); R4-8-403	20	30	40	30	60
Clean Needle Technique Course	A.R.S. § 32-3924; R4-8-402	20	30	40	30	60
~~Preceptorship Training Program~~	~~A.R.S. § 32-3903; R4-8-411~~	~~20~~	~~30~~	~~40~~	~~30~~	~~60~~
~~Preceptorship Training Program Supervisor~~	~~A.R.S. § 32-3903; R4-8-412~~	~~20~~	~~30~~	~~40~~	~~30~~	~~60~~
Continuing Education Approval	A.R.S. § 32-3925; R4-8-409	20	30	40	30	60
Renewal of License or Certificate	A.R.S. § 32-3925; R4-8-204 or R4-8-303	20	30	40	30	60
Extension of Visiting Professor Certificate	A.R.S. § 32-3926(C); R4-8-208	20	30	40	30	60
Reinstatement of License	A.R.S. § 32-3925(D); R4-8-205	20	30	40	30	60

ARTICLE 2. ACUPUNCTURE LICENSING; VISITING PROFESSOR CERTIFICATE

R4-8-203. Application for Acupuncture License

A. No change

1. No change
   - a. No change
   - b. No change
   - c. No change
   - d. No change
   - e. No change
   - f. No change;

g. A statement of whether the applicant has ever been permitted by law to practice ~~acupuncture~~ a health-care profession in this or another state, territory, or district of the United States, or another country or subdivision of another country, and if so:
   i. A list of the jurisdictions in which the applicant has been permitted by law to practice ~~acupuncture~~ a health-care profession;
   ii. No change
   iii. No change
   iv. No change
   v. No change
   ~~vi. Current status of each license;~~ and
   ~~vii.~~vi.No change
h. No change
i. ~~A~~ If not certified by the NCCAOM, a statement of whether the applicant: ~~is certified by another certifying body, and if so, the name and address of the certifying body, and the dates of issuance and expiration of the certification;~~
   i. Has passed all the following NCCAOM modules: Point Location; Foundations of Oriental Medicine; Biomedicine; and Acupuncture; or
   ii. Has passed the State of California Acupuncture Licensing Examination;
~~j. A statement of whether the applicant has passed a certifying or licensing examination in acupuncture, and if so, the name and address of the organization administering the examination;~~
~~k.~~j. No change
~~l.~~k. No change
~~m.~~l. No change
~~n.~~m.No change
~~o.~~n. No change
~~p.~~o. No change
~~q.~~p. No change
~~r.~~q. No change

2. An official record or document that relates to the applicant's explanation of an item under subsections ~~(1)(l)~~ (A)(1)(k) through ~~(1)(r)~~ (A)(1)(q);
3. No change
   a. No change
   b. No change
   c. No change
   d. No change
4. No change
5. A 2" X 2" photograph, taken within the last year, that shows the front of the applicant's face ~~and that the applicant signs on the back or the white frame around the photograph~~;
6. No change
7. A complete set of fingerprints that meet the criteria of the Federal Bureau of Investigation and are taken by a law enforcement agency or other qualified entity;
8. The amount charged by the Department of Public Safety to process fingerprints for a state and federal criminal records check; and

~~7.~~9. No change

B. In addition to the materials required under subsection (A), an applicant shall provide evidence that the applicant completed at least 1,850 hours of training in acupuncture, including at least 800 clinical hours, by having submitted directly to the Board~~:~~

~~1. An~~ an official transcript from each school at which the applicant attended a Board-approved acupuncture program showing:

~~a.~~1. No change
~~b.~~2. No change
~~c.~~3. No change
~~d.~~4. No change
~~e.~~5. No change
~~f.~~6. Whether the applicant received a diploma or degree from the school~~, and~~.

~~2. An official record from any Board-approved preceptorship training program attended by the applicant showing:~~
   ~~a. The name and address of the preceptorship training program,~~
   ~~b. The name of the Board-approved supervising preceptor,~~
   ~~c. The dates on which the applicant attended the preceptorship training program,~~
   ~~d. The subject matter of all didactic and clinical training,~~

~~e. The number of hours spent on each subject,~~
~~f. The grade or score obtained by the applicant in each subject, and~~
~~g. Whether the applicant received a certificate of completion from the preceptorship training program.~~

C. No change

ARTICLE 4. TRAINING PROGRAMS AND CONTINUING EDUCATION

R4-8-403. Approval of an Acupuncture~~,~~ or Clinical Training~~, or Preceptorship Training~~ Program

A. No change
1. No change
2. No change

B. No change
1. No change
2. No change

~~**C.** To be approved by the Board, the provider of a preceptorship training program shall submit documentation of meeting the standards at R4-8-411.~~

R4-8-407. Program Monitoring; Records; Reporting

A. No change
1. No change
2. No change
3. No change

~~**B.** The provider of an approved preceptorship training program shall submit to the Board annually a letter attesting that the preceptorship training program continues to meet the standards at R4-8-411.~~

~~**C.**~~**B.** A representative of the Board may conduct an onsite visit of an approved acupuncture~~,~~ or clinical training~~, or preceptorship training~~ program to review and evaluate the status of the program. The provider of the approved program shall reimburse the Board for direct costs incurred in conducting this review and evaluation.

~~**D.**~~**C.** The provider of an approved acupuncture~~,~~ or clinical training~~, or preceptorship training~~ program shall ensure that all student records are maintained in English.

~~**E.**~~**D.** The provider of an approved acupuncture~~,~~ or clinical training~~, or preceptorship training~~ program shall, within 30 days, report to the Board any failure to meet the standards at R4-8-403~~,~~ or R4-8-404~~, or R4-8-411~~.

ARTICLE 5. SUPERVISION; RECORDKEEPING

R4-8-502. Recordkeeping

A. No change
1. No change
   a. No change
   b. No change
   c. No change
   d. No change
   e. No change
2. No change

B. The provider of an acupuncture, auricular acupuncture, or clinical~~, or preceptorship~~ training program shall:
1. No change
   a. No change
   b. No change
      i. No change
      ii. No change
      iii. No change
      iv. No change
      v. No change
      vi. No change
2. No change
3. No change

C. No change
1. No change
   a. No change
   b. No change
   c. No change
2. No change

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 45. BOARD OF RESPIRATORY CARE EXAMINERS

[R16-148]

PREAMBLE

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

R4-45-101	Amend
R4-45-102	Amend
R4-45-105	Amend
R4-45-201	Amend
R4-45-203	Amend
R4-45-205	Amend
R4-45-213	Repeal
R4-45-218	Amend

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. § 32-3504

Implementing statute: A.R.S. §§ 32-3504, 32-3506(C), 32-3521, 32-3522, 32-3523, 32-3524, 32-3526

3. The effective date of the rule

October 2, 2016

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

Notice of Rulemaking Docket Opening: 21 A.A.R. 3085, December 4, 2015

Notice of Proposed Rulemaking: 22 A.A.R. 549, March 11, 2016

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

Name: Jack Confer, Executive Director

Address: Board of Respiratory Care Examiners
1400 W. Washington, Suite 200
Phoenix, AZ 85007

Telephone: (602) 542-5990

Fax: (602) 542-5900

E-mail john@rb.az.gov

Website: www.respiratorycare.az.gov

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

The Board is amending and repealing some of its rules in Articles 1 and 2 to make them conform to current changes in Board policy. The Board has determined that the Registered Respiratory Therapist (RRT) credential will be required for licensure as a respiratory therapist in Arizona instead of the Certified Respiratory Therapist (CRT) credential. The Commission on Accreditation for Respiratory Care has adopted new accreditation standards for respiratory care therapists that set the standard of minimum level of competency by examination pursuant to A.R.S. § 32-3504(B). The RRT examination is a higher level of competency than the CRT examination and contains clinical questions. The CRT examination does not contain clinical questions. The rules will allow respiratory therapists with a CRT credential who apply for a license before January 1, 2017 to be "grandfathered", which allows the respiratory therapist to continue to practice or obtain a license without earning the RRT credential.

R4-45-213 for temporary licenses is being repealed because its statutory authority has been repealed and the Board no longer issues them. References to temporary licenses in the rules have been repealed throughout the rules.

The Board sent a copy of the rules to the Arizona Society of Respiratory Care and the American Association of Respiratory Care and posted the rules on the Board's website to solicit comments on the rules and the rules' economic impact. The Board did not receive any comments from these solicitations.

The Board is submitting this rulemaking to the Secretary of state's office in accordance with the exemption authorization under item (2)(b) of Executive Order 2015-01, State Regulatory Rulemaking Moratorium. The rulemaking exemption was approved by the Governor's office on February 13, 2015 and May 22, 2015.

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 changes to the rules may affect the Board, an applicant, a licensee, schools that provide a respiratory care program, health care institutions, and consumers.

The Board has determined that the RRT credential will be required for licensure as a respiratory care therapist in Arizona. Thus, the Board is changing the credential it requires of a respiratory care therapist from the CRT to the RRT. The Registry Examination system was developed to objectively measure knowledge, skills, and abilities required of advanced respiratory therapists and to set uniform standards for measuring such knowledge. Many health care institutions expect services at the RRT level, but there are no costs to them. The Board is eliminating all references to temporary licenses throughout the rules. One of these rules is R4-45-102 for Fees. The Board is not increasing or decreasing any of its fees, but is removing the reference to temporary license. The Board is not increasing costs for an application or application renewal, so all fees for applicants remain the same. Costs should not increase to schools because schools have already updated their curriculum in the accreditation process. Respiratory therapists who apply for license before January 1, 2017 may be "grandfathered" into licensing, which allows the respiratory therapist to continue to practice without earning the RRT credential. The Board should experience moderate costs for writing the rules and economic impact statement.

The Board currently licenses about 4,100 individuals. Costs should not increase to a licensee due to amendment or repeal of the rules.

Consumers benefit from rules that require respiratory therapists to qualify at a higher level. Consumers should not experience increased costs. The Board, applicants, licensees, and consumers should benefit from rules that are clearly and consistently written.

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

There are no substantial changes between the proposed rules and final rules. There are minor changes to style, format, grammar, and punctuation requested by GRRC staff.

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

The Board received the following comments regarding the rules:

Comment: Experienced therapists are and will be forced out of the field.

Response: The grandfather provision of these rules allows experienced RCPs to continue practicing while holding a CRT credential. The Board does not have jurisdiction over the employment practices of health care institutions that may require a RRT credential as a term of employment.

Comment: There is no difference between a CRT and RRT. Eventually the CRT will go away.

Response: The NBRC determines the difference in testing to obtain these credentials. The Board has determined that beginning January 1, 2017, any new applicant will be required to obtain the RRT credential as its minimum level of competency. Eventually, as RCPs retire from the industry, the number of CRTs will diminish and eventually disappear.

Comment: I am against a third party credential, a college degree should be all that is required for licensure.

Response: The Board disagrees and has established the minimum level of competency to obtain a license to practice the respiratory care profession in this state beginning January 1, 2017 is at the RRT examination and credential level.

Comment: Under the proposed rules, a "grandfathered" CRT who was unable to maintain his/her credential with the NBRC would subsequently loose his/her license and livelihood.

Response: This is not true for CRTs or RRTs; the Board only requires the credential as its current and future minimum level of competency. The Board does not require continued maintenance of that credential issued by the NBRC.

Comment: Requiring the RRT credential as a condition of licensure would force individuals to become members and pay fees for organization, which they might not otherwise do.

Response: The Board is not forcing any current licensees that hold the CRT to obtain the RRT credential. The NBRC no longer provides a stand-alone CRFT examination, so the fiscal impact to a new graduate or applicant is the same.

Comment: Let the market place take care of the market, no new law.

Response: The legislature has identified this industry as requiring regulation and oversight. The Board does not believe that regulation will change in the immediate future and does not concur with this response.

Comment: The rules are an attempt to interfere with the legal practice of respiratory therapy by credentialed respiratory practitioners.

Response: The Board will continue to protect the public's health, safety, and welfare by licensing only those individuals that meet the licensing requirements. The Board is providing a grandfather provision that will allow CRTs to continue practicing.

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:

The rules comply with A.R.S. § 41-1037 because they are issued to qualified individuals or entities to conduct activities that are substantially similar in nature.

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 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

The rules were not made as emergency rules.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 45. BOARD OF RESPIRATORY CARE EXAMINERS

ARTICLE 1. GENERAL PROVISIONS

Section
R4-45-101. Definitions
R4-45-102. Fees
R4-45-105. Electronic Communication

ARTICLE 2. LICENSURE

Section
R4-45-201. Application
R4-45-203. Examinations
R4-45-205. Application Based on Licensure By Another State
R4-45-213. ~~Temporary Licensure~~ Repealed
R4-45-218. Reinstatement Following Revocation; Modification of Probation

ARTICLE 1. GENERAL PROVISIONS

R4-45-101. Definitions

In addition to the definitions in A.R.S. § 32-3501, in this Chapter, unless otherwise specified:

"Applicant" means an individual who meets the qualifications of A.R.S. § 32-3523 and applies for licensure under A.R.S. § 32-3522.

"Approved continuing education" means a planned course or program that the Board confirms meets the criteria in R4-45-210 or is approved by the American Association for Respiratory Care or the Arizona Society for Respiratory Care.
~~"Contested case" has the same meaning as prescribed in A.R.S. § 41-1001.~~
"Continuing education unit" or "CEU" means a segment of an approved continuing education.
"CRT examination" means the objective measure of essential knowledge, skills, and abilities required of an entry-level respiratory therapist, which is approved by the Board and administered by the NBRC.
"Day" means calendar day.
"Direct supervision" means that a licensed respiratory care practitioner, or physician licensed under A.R.S. Title 32, Chapters 13 or 17, is physically present at a work site and readily available to provide respiratory care to a patient ~~or observe and direct the practice of a temporary licensee~~.
"Executive Director" means the officer employed by the Board to perform administrative and investigative functions.
"Grandfathered" means to license a respiratory therapist who has a CRT credential and applies for licensure before January 1, 2017 without meeting the qualifications required by these rules.
~~"Individual," as used in A.R.S. § 32-3521(B)(4), means only those persons listed with current, valid certifications, registrations, or licenses acting within the scope of their authorized practice.~~
"License" means the document issued by the Board to practice respiratory care in Arizona.
"License application package" means a license application form and any documents required to be submitted with the license application form.
"Licensee" means an individual who holds a current license issued under A.R.S. Title 32, Ch. 35.
"National Board for Respiratory Care, Inc." or "NBRC" means the national credentialing board for respiratory therapy.
~~"Party" has the same meaning as prescribed in A.R.S. § 41-1001.~~
"Pharmacological, diagnostic, and therapeutic agents," as used in A.R.S. § 32-3501(5), means medications that are aerosolized and given through artificial airways or vascular access.
"RRT credential" means an award issued to a respiratory therapist by the NBRC who passes the RRT examination.
"RRT examination" means the objective measure of essential knowledge, skills, and abilities at a level that is higher than the CRT examination and that is required of a respiratory therapist and approved by the Board.
~~"Temporary license" means the document issued by the Board under A.R.S. § 32-3521 that allows an applicant to practice respiratory care under direct supervision before the Board issues the applicant a license.~~
"Verification by a licensed respiratory therapist," as used in A.R.S. § 32-3521(B)(7) and (C), means a licensee's written confirmation, before equipment is delivered, that the equipment is consistent with the patient's prescription and needs.
"Verification of license" means a form the Board provides to an applicant to submit for completion by a state to confirm that the applicant currently holds or previously held a license, certification, or registration from that state.

R4-45-102. Fees

A. No change
1. No change
2. No change
3. No change
4. No change
~~5. Extension to a temporary license, $75;~~
~~6.~~5. No change
~~7.~~6. No change
   a. No change
   b. No change
~~8.~~7. No change
~~9.~~8. No change
   a. No change
   b. No change
~~10.~~9.No change
~~11.~~10.No change

B. No change

R4-45-105. Electronic Communication

A. No change
1. No change
2. No change
3. License renewal application, and
~~4. Request for an extension to a temporary license, and~~

~~5.~~4. No change
B. No change
C. No change
D. No change

ARTICLE 2. LICENSURE

R4-45-201. Application

A. In addition to meeting the qualifications listed in A.R.S. § 32-3523(A), an applicant for a license to practice as a respiratory care practitioner shall submit the following information on the Board's license application form:
1. ~~Applicant's~~ The applicant's full name and Social Security number;
2. ~~Applicant's~~ The applicant's current mailing, permanent and e-mail addresses;
3 ~~Current~~ The applicant's current employer's name, address, and telephone number;
4. ~~Current~~ The applicant's current employment position and beginning date of employment;
5. ~~Applicant's Current~~ The applicant's current supervisor's name and telephone number;
6. ~~Applicant's~~ The applicant's area of care or specialty;
7. ~~Applicant's~~ The applicant's birth date;
8. ~~Applicant's~~ The applicant's home and work telephone numbers;
9 No change
10. A statement of the facts entitling the applicant to take the ~~CRT~~ RRT examination, ~~or~~ to receive a license without examination under R4-45-206;
11. ~~Name~~ The name of any state or province in which the applicant has been granted a certification, registration, or license as a respiratory care practitioner; including the number, date issued, expiration date, and a statement whether that certificate, registration, or license has ever been the subject of discipline, censure, probation, practice restriction, suspension, revocation, or cancellation;
12. No change
13. No change
14. No change
15. No change
16. No change
17. No change
18. No change
19. ~~Applicant's~~ The applicant's physical description, including height, weight, and eye and hair color;
20. ~~Highest~~ The highest level of education completed by the applicant;
21. Evidence of the applicant's U.S. citizenship, alien status, legal residency, or lawful presence in the U.S.;
22. No change
23. No change
24. ~~Applicant's~~ The applicant's certification that the information provided is true and complete and that the applicant has not engaged in any act prohibited by Arizona law or this Chapter.

B. An applicant shall submit or have submitted on the applicant's behalf the following with the license application form:
1. If NBRC-~~certified or~~ registered, a copy of the applicant's:
   a. NBRC-issued ~~certification or~~ registration; ~~or~~
   b. ~~CRT~~ RRT examination results; or
   c. If grandfathered, CRT examination results.
2. No change
3. No change
4. No change
5. No change
6. No change

~~**C.** The Board shall issue a temporary license to an applicant who is qualified under R4-45-213.~~
~~**D.**~~**C.** No change
~~**E.**~~**D.** No change
1. No change
2. No change
3. No change

R4-45-203. Examinations

A. Except when a license may be issued without an examination under A.R.S. § 32-3524 or grandfathered, an applicant shall pass the ~~CRT~~ RRT examination. The passing score is the scaled score set by the NBRC.

B. An applicant shall inform the Board as soon as possible by one of the following methods that the applicant passed the ~~CRT~~ RRT examination:
1. No change
2. No change

R4-45-205. Application Based on Licensure by Another State

If an application for a license is based on licensure by another state, the applicant shall cause the state that issued the license to deliver to the Board:

1. No change
2. No change
3. Either a copy of the results of the ~~CRT~~ RRT examination or a copy of another examination administered to the applicant, the results of the other examination, and any information necessary to enable the Board to determine whether the other examination is equivalent to the ~~CRT~~ RRT examination.

R4-45-213. ~~Temporary Licensure~~ Repealed

~~**A.** To be considered for a temporary license, an applicant shall submit a license application package, as described in R4-45-201, and pay the application fee. The Board shall issue a temporary license, valid for eight months, to the applicant only if the Board's Executive Director determines, after reviewing the license application package, that the applicant has never held a temporary license and is eligible to receive a license except that one or more of the following documents are missing from the license application package:~~

~~1. Passing score on the CRT examination,~~
~~2. Verification of license from another state in which the applicant is or was licensed,~~
~~3. Certified copy of course transcripts and descriptive information regarding the applicant's course of study at a foreign respiratory therapy school, or~~
~~4. Completed federal and state criminal background check.~~

~~**B.** An applicant who is issued a temporary license shall:~~

~~1. Perform respiratory care services only under direct supervision,~~
~~2. Not supervise a licensee or another temporary licensee, and~~
~~3. Work as an instructor or in a management position only if issued the temporary license under A.R.S. § 32-3524.~~

~~**C.** A temporary licensee who applied for licensure under A.R.S. § 32-3524 may extend the temporary license for an additional 120 days by submitting a request for an extension to the Board on a form prescribed by the Board.~~

~~**D.** A temporary licensee who is required by A.R.S. § 32-3523 and R4-15-201 to pass the CRT examination before becoming licensed may extend the temporary license for an additional 120 days by submitting to the Board:~~

~~1. A request for an extension to a temporary license form, and~~
~~2. Evidence that the temporary licensee has either:~~
~~a. Passed the CRT examination, or~~
~~b. Attempted to pass the CRT examination and is registered to take the next scheduled CRT examination.~~

~~**E.** A temporary licensee shall ensure that a request for an extension to a temporary license:~~

~~1. Includes an address of record,~~
~~2. Is typed or written in black ink,~~
~~3. Is signed by the applicant,~~
~~4. Is accompanied by the following:~~
~~a. The fee prescribed in R4-45-102(A)(5), and~~
~~b. An affirmation that the temporary license has not expired.~~

~~**F.** A temporary licensee who is required but unable to submit the evidence under subsection (D)(2) may request an opportunity to explain this inability to the Board.~~

~~**G.** If the Board has not acted on an applicant's application for licensure, the Board shall administratively close an application for licensure if the applicant fails to apply for extension to the applicant's temporary license. The temporary licensee shall apply for extension no more than 60 days before expiration of the temporary license. An individual who wishes to be considered for licensure after the individual's file is administratively closed shall reapply.~~

~~**H.** Reapplication under subsection (G) does not qualify an individual for a second temporary license. The Board shall not issue more than one temporary license to an individual.~~

~~**I.** A temporary licensee is subject to disciplinary action by the Board under A.R.S. § 32-3553.~~

R4-45-218. Reinstatement Following Revocation; Modification of Probation

A. No change

B. If a former licensee wishes to have a revoked license reinstated after the time stated in subsection (A), the former licensee shall meet the qualifications in A.R.S. § 32-3523(A) and comply with R4-45-201. ~~The Board shall not issue a temporary license to a former licensee who applies for reinstatement.~~

C. No change

1. No change
   a. No change
   b. No change
   c. No change
   d. No change
   e. No change
   f. No change
   g. No change
2. No change

D. No change

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ADMINISTRATION

[R16-149]

PREAMBLE

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

R9-22-701	Amend
R9-22-712.35	Amend
R9-22-712.60	Amend
R9-22-712.61	Amend
R9-22-712.66	Amend
R9-22-712.67	Amend
R9-22-712.71	Amend
R9-22-712.75	Amend

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. § 36-2903.01(F)

Implementing statute: A.R.S. §§ 36-2903.01(G)(3) and 36-2903.01(G)(12)

3. The effective date of the rule:

October 1, 2016. The agency selected an effective date of October 1, 2016, as specified in A.R.S. § 41-1032(B), to coincide with the start of the contract year between the AHCCCS Administration and managed care contractors that make the majority of hospital payments. Thus good cause exists for this effective date and the effective date will not harm the public interest.

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: 22 A.A.R. 784, April 8, 2016

Notice of Proposed Rulemaking: 22 A.A.R. 761, April 8, 2016

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

Name: James Maguire
Address: AHCCCS Office of Administrative Legal Services
701 E. Jefferson St.
Phoenix, AZ 85034
Telephone: (602) 417-4232
Fax: (602) 253-9115
E-mail: AHCCCSrules@azahcccs.gov
Web site: www.azahcccs.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 proposed rulemaking will amend and clarify rules regarding payments to hospitals for inpatient and outpatient services. Specifically, this rulemaking increases payments for inpatient and outpatient services provided during a one year period to hospitals that participate in a qualifying health information exchange and have been certified as having achieved "meaningful use stage 2" with respect to the hospital's use of the health information exchange. The payment adjustments reward hospitals that have made the investment necessary to implement an effective system of electronic health records retention and exchange which actions are expected to improve patient health outcomes and reduce of the cost of care. In addition, the proposed rulemaking refines the Service Policy Adjustor associated with claims for inpatient hospital services provided to certain high-acuity children; clarifies payments for inpatient hospital services after a patient is transferred to another hospital to receive sub-acute care; and clarifies reimbursement for inpatient hospital services designated as "administrative days" – that is, when a patient must be admitted or cannot be safely discharged due to the unavailability or an appropriate setting outside the hospital.

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:

A study was not referenced or relied upon when revising these regulations.

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. The rulemaking will not diminish a previous grant of authority of a political subdivision.

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

The Administration anticipates a moderate economic impact on the implementing agency, small businesses and consumers for the rule changes:

• The Administration anticipates that the adjustments to payments for inpatient and outpatient hospital services due to Value Based Purchasing (VBP) will result in approximately $3.6 million of additional payments for the contract year October 1, 2016 through September 30, 2017 to about 19 qualifying hospitals that have met the criteria in the rule for implementation and use of electronic health records and health information exchange.

• The Administration amended rule to clarify the description of how DRG payments are made, including transplant services. The amended rule also clarifies how DRG payments are made for Administrative days and transfers. These changes are not expected to have an economic impact on any party since the changes are only for clarification and do not change a service or payment. The revisions to the rules will enhance the public's understanding.

• In addition, the Administration refined the high acuity pediatric policy adjustor for January 1, 2016 to recognize the higher cost of treating higher acuity pediatric patients. It is anticipated that the high acuity pediatric policy adjustor will result in annual additional payments of $19.4 million to 53 hospitals.

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

No changes were made between the proposed rulemaking and the final rulemaking, with exception of the technical change of removing the term "comprehensive" from the definition of subacute services as requested by a commenter.

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

The following comments were received as of the close of the comment period of May 9, 2016.

Item #	Rule Cite Line #	Comment From and Date rec'd.	Comment	Analysis/ Recommendation
1.	R9-22-701	William Timmons 05/04/16	The word "comprehensive" could mean different things to different individuals with their interpretation related to whether they work for a hospital or a health care plan. Thus, any attempt to define "comprehensive" would be difficult. For these reasons the word "comprehensive" adds no value to the definition and should be removed. The phrase "instead of" is key since it supports our pursuit of direct admissions to both hospitals so we don't have to rely just on transfers from tertiary care hospitals. The definition needs to include **what it is not, i**.e., it is not the type/level of care provided in a skilled nursing facility. The preferred definition is: **"Sub-acute services" means inpatient care for a patient with an acute illness, injury or exacerbation of a disease process when the patient does not require acute inpatient hospitalization but requires care at a level beyond that provided by a skilled nursing facility. Sub-acute care is rendered immediately after or instead of acute inpatient hospitalization.**	The Administration has agreed to remove the term "comprehensive", however, the Administration declines the suggestion to make other revisions to the definition of sub-acute services. Sub-acute services may include the level of services provided at a nursing facility, thus the recommendation to include care at a level beyond that provided by a skilled nursing facility will not be added. Nursing facilities are permitted to render sub-acute services. The federal description of nursing facility services in 42 CFR 440.155 provides that nursing facility services are services provided to persons who do not require hospital care but whose condition requires services above the level of room and board.

2.	R9-22-712.67(A)	William Timmons 05/04/16	Add the following information from the payment policies manual that AHCCCS published on October 30, 2015, this would add clarity which is important since we want to make sure that tertiary care hospitals are incentivized to transfer patients to LNH and HCH. "Clarification regarding transfers for sub-acute services: A recipient who no longer meets medical inpatient criteria may be discharged/transferred to another acute care facility without triggering a reduction to the transferring hospital via the 70 Discharge Status Code (Discharge/transfer to another type of health care institution not defined elsewhere in the code list) for the provision of sub-acute services."	The Administration has noted your comment. Hospitals that participate in AHCCCS are required to sign provider participation agreements which agreement incorporates by reference several policy manuals. Those policy manuals provide clarification and detail regarding billing instructions. Billing instructions are generally delineated in policy. Therefore, additional language is not necessary.
3.	R9-22-712.75(A)(2)	William Timmons 05/04/16	A2 use of the term "other" in this context would seem to imply that nursing facility provides sub-acute services as defined in R9-22-701. There is a difference between the levels of care provided by skilled nursing facilities and hospitals providing sub-acute services. To avoid possible confusion I suggest restating A2: "Administrative days may also occur at the end of an acute care episode, for example, when a member is not discharged while awaiting placement in a post-acute care setting, such as a nursing facility or a hospital providing sub-acute services."	The Administration declines to make the suggested change. Nursing facilities are not precluded from rendering sub-acute services. The federal description of nursing facility services in 42 CFR 440.155 provides that nursing facility services are services provided to persons who do not require hospital care but whose condition requires services above the level of room and board.
4.	R9-22-712.75(E)	William Timmons 05/04/16	For clarity purposes I suggest that R9-22-712.75E's example of "as nursing facility days" be **amended to include "as sub-acute facility days".** Also, I suggest that section E **include the phrase "Administrative days will be reimbursed using a negotiated per diem rate".** The reason is because a number of health plans have already established their own non-negotiated Administrative day rate for nursing facilities and want us to accept these much lower rates that are not commensurate with the sub-acute level of care we provide.	The rule specifies nursing facilities as an example and does not exclude days at other facilities offering sub-acute care. AHCCCS managed care organizations are permitted to establish their own rates through individually negotiated contracts with hospitals. Therefore, no changes will be made to the proposed language.
5.	General	William Timmons 05/04/16	This matter needs to be addressed: There is no financial incentive for hospitals to transfer patients to our hospitals either under the DRG system or the per diem system. Also there is no financial incentive for the health plans to authorize payment under the DRG system or the per diem system for patients transferred to our hospitals. **The result is that many infants, children and teens who no longer need care in a tertiary care hospital are not being transferred to our hospitals.**	The purpose of the rule is to establish an appropriate payment when patient is transferred from one hospital to another for sub-acute care. The rule is not intended to incentive such transfers or to incentives transfers to a particular hospital.
6.	VBP	Debbie Johnston 05/06/16	We also believe the second metric, participation in the state's health information exchange (HIE) network, will not be administratively burdensome for most hospital subtypes. However, it **will be cost-prohibitive for some hospitals.** This is particularly true for small hospitals that lack the capital resources to invest in connectivity at this time. While these facilities would like to participate in exchange, they are simply unable due to financial constraints.	The AHCCCS Administration is aware that some small hospital providers are already participating in the health information exchange. The purpose of this rulemaking is to recognize the improved health outcomes and health care costs savings expected from hospital participation in health information exchange. Alternate metrics for value based payments may be considered in future program years.

7.	VBP	Debbie Johnston 05/06/16	The proposal, however, falls short with respect to the principle that all hospitals should have an opportunity to qualify for the adjustment, regardless of subtype. As we mentioned in our December 30th letter, we are concerned that Psychiatric, Rehabilitation, and Long Term Acute Care (LTAC) hospitals will not be eligible for the differential adjustment because these hospital subtypes are currently excluded from federal MU Stage 2. We urged the Administration to adopt alternative metrics for these hospitals, which provide important transitional inpatient care to trauma and other medically complex patients on a post-acute care basis in order to restore medical and functional capacity that enable these patients to return to a community setting. Psychiatric hospitals are also critical in providing mental health and increasingly integrated services to the vast number of Medicaid recipients in need of inpatient behavioral health services**. We are disappointed that the Administration was unable to develop alternative metrics for these hospital subtypes for CYE 2017, and strongly urge their development for CYE 2018.**	Your suggestion has been noted. We will take it into consideration for CYE 2018.
8.	VBP	Debbie Johnston 05/06/16	Finally, we seek clarification on two issues related to the rulemaking. First, we would like to have a better understanding **of how the adjustment will be implemented within AHCCCS's managed care framework given rates are the product of provider-health plan negotiations.** The Preamble to the proposed rule states the differential adjustment will be made to hospitals that "satisfy specific criteria for receipt of VBP Differential Adjusted Payments by the AHCCCS Administration *as well as Managed Care Contractors*." (Emphasis added.) The Administration's criteria are set forth in the rulemaking. **Does the Administration also intend that AHCCCS health plans be permitted to set additional criteria as a prerequisite for "passing through" the payment adjustment?** We would strongly oppose such a proposal, as it could create uneven implementation of the VBP differential, increase confusion around the program, and reduce transparency. Second, we would like a better understanding of **how the adjustment is being funded.** Since the Legislature is not appropriating new funds for the adjustment, we assume funding is being reallocated from existing programs. In an effort to advance transparency, we believe it is important for the public and stakeholders to understand whether and how existing programs might be impacted.	This rule sets forth the fee-for-service payment methodology. MCOs are required by statute to use this payment methodology in the absence of a contract with a provider calling for a different methodology. This rule does not limit or restrict the ability of MCOs to contract for reimbursement on different terms. The AHCCCS Administration intends to address implementation of value-based purchasing incentives by managed care organizations through its contracts with the managed care organizations which is beyond the scope of this rule-making. The adjustment is supported by funds appropriated by the legislature. The AHCCCS Administration is not reducing payments to support the adjustment.
9.	R9-22-701	Debbie Johnston 05/06/16	We strongly support adding a definition of "sub-acute services" to the DRG regulations. We believe this definition will add much needed clarity, but recommend the following modifications: 1. The word "comprehensive" is subject to interpretation, and it is very likely providers and health plans will disagree over its meaning. Without further elaboration, we believe it adds little value to the definition. As such, we recommend eliminating the term. 2. The definition should clarify that sub-acute services is a higher level of care than skilled nursing care provided by a SNF. 3. We support the inclusion of the term "instead of" in the last sentence since patients may on occasion be directly admitted to these hospitals.	The Administration has agreed to remove the term "comprehensive", however, no other revisions to the definition will be made. Sub-acute services may include the level of services provided at a nursing facility, thus the recommendation to include care at a level beyond that provided by a skilled nursing facility will not be added. Also see response to #3.

10.	R9-22-712.67	Debbie Johnston 05/06/16	We support the definition of "transfer", but recommend the rules incorporate the following or substantially similar language from the October 30, 2015 Payment Policies Manual clarifying transfers for sub-acute services: "A recipient who no longer meets medical inpatient criteria may be discharged/transferred to another acute care facility without triggering a reduction to the transferring hospital via the 70 Discharge Status Code (Discharge/transfer to another type of health care institution not defined elsewhere in the code list) for the provision of sub-acute services."	The Administration has noted your comment. Policy manual provisions incorporated by reference into the provider participation agreement between the hospital and the administration provide clarification and detail regarding billing instructions. Billing instructions are generally delineated in policy because details such as discharge status codes are subject to potential change by the professional organizations that establish those codes. Therefore, additional language will not be added to rule.
11.	R9-22-712.75(A)(2)	Debbie Johnston 05/06/16	There is a difference between the levels of care provided by skilled nursing facilities and hospitals providing sub-acute or other post-acute care (e.g., rehabilitation). **To avoid possible confusion, we recommend restating R9-22-712(A)(2) as "Administrative days may also occur at the end of an acute care episode, for example, when a member is not discharged while awaiting placement in a post-acute care setting, such a nursing facility or hospital providing sub-acute services or other post-acute services."**	Please see the response to comment number 3.
12.	R9-22-712.75(A)(3)	Debbie Johnston 05/06/16	We recommend adding "or sub-acute facility days" after "nursing facility days" in subsection E. This would provide additional clarity by differentiating sub-acute services from skilled nursing services.	The Administration has noted your comments. The rule specifies nursing facilities as an example.
13.	R9-22-712.75(A)(3)	Debbie Johnston 05/06/16	**In addition, we recommend adding the phrase "Administrative days will be reimbursed using a negotiated per diem rate."** Hospitals providing sub-acute care services report to us a number of AHCCCS health care plans have established non-negotiated Administrative day rates for nursing facilities and expect hospitals to accept these much lower rates, which are not commensurate with the sub-acute level of care hospitals provide. If the Administration chooses not to include this language in the rule, we urge such language be included in separate policy guidance.	The rule sets forth the method by which the AHCCCS administration will reimburse hospitals on a fee-for-services basis. AHCCCS managed care organizations are permitted to establish their own rates through individually negotiated contracts with hospitals. Therefore, no changes will be made to the proposed language.
14.	R9-22-712.66	Debbie Johnston 05/06/16	We do not question the high cost of treating high acuity pediatric patients. **However, we believe for the sake of transparency that the Administration should identify any data that it relied on in making this proposal.** While the Administration may not have relied on an external study, we would assume that Administration **staff reviewed internal or other data in making the policy determination** to establish and set a high acuity pediatric weight at 1.60. **We believe this data should be made available to the public**. In addition, we would like to have a better understanding of the funding source for this policy proposal, since the Administration is proposing and implementing it outside of the legislative appropriations process.	As the commenter noted, it is generally accepted that there is a higher cost to treating high acuity pediatric patients. No specific studies or data was reviewed to arrive at this conclusion.

15.	R9-22-712.35(E)(1)	Steve Kaiser 05/09/16	Phoenix Children's Hospital has executed an agreement with a qualifying Health Information Exchange and currently is working through the process of exchanging data. Due to the complexity of the unique data flows in pediatrics, however, completing these processes may require more time than the proposed rule allows. Some of the challenges experienced in the pediatric context include obtaining appropriate parental consent when patients transfer in and out of foster care and the changing consent requirements as children get older. Furthermore, successful exchange of data requires all technology requirements be completed by both the Hospital and the HIE, and each Hospital is not in direct control of the timeline and priorities of a complex Health Information Exchange which must manage many clients. We would propose that in the first year hospitals must have an executed agreement with a qualifying Health Information Exchange and be actively engaged with the on-boarding process with the HIE. By the second year hospitals should be electronically submitting admission, discharge, and transfer information.	The purpose of this rulemaking is to recognize the improved health outcomes and health care costs savings expected from hospital that have already taken the necessary steps to participate in health information exchange. The rulemaking only impacts payments for hospital services during a one year period. Extension of an adjustment for participation in and health information exchange and/or alternate metrics for value based payments may be considered in future program years.
16.	R9-22-712.35(E)(2)	Steve Kaiser 05/09/16	As an initial matter, there is currently no mechanism within AHCCCS to receive an attestation from an inpatient children's hospital, with the most recent direction from AHCCCS being that such a mechanism will be in place in May 2016 for submission of Program Year 2015 MU attestation. It also is unclear why attestation for program year 2015 would include data from January 2016 through April of 2016. The proposed rule also does not clarify whether a children's hospital must submit attestation of inpatient meaningful use or outpatient meaningful use. Phoenix Children's Hospital proposes that because of the lack of mechanism through which to submit an attestation for 2015, and since attestation for a program year cannot be filed until the following year, **that this rules criteria be based on successfully submitting a meaningful use attestation for Program Year 2015**	At the time of the proposed rule, April 30, 2016, was the deadline established by the federal government for the approval of an attestation to meaningful use. Since that time, CMS has announced that it will establish a new deadline, but, as of this date, has announced the new deadline. As a result, the Administration has modified the rule to reflect that the last date for an attestation for a children's hospital will be the date announced by CMS. In addition, the rule has been modified to clarify that the 2016 dates refer to the dates by which the attestation must be received and that the hospital must demonstrate implementation of Stage 2 Meaningful use during a reporting period in 2015.
17.	R9-22-712.66(6)	Steve Kaiser 05/09/16	Phoenix Children's Hospital appreciates the support from AHCCCS in recognizing that higher acuity patients require more resources and care. This new ruling will allow Phoenix Children's Hospital to continue to provide the highest quality of care for patients with the most demanding needs.	Thank you for your support.
18.	R9-22-712.75(A)	Steve Kaiser 05/09/16	Phoenix Children's Hospital supports the changes to R9-22-712.75 regarding DRG Reimbursement and Payment for Administrative Days.	Thank you for your support.
19.	General Prgh 2	Jennifer Carusetta 05/09/16	The Alliance would recommend that the Administration **utilize existing nationally recognized healthcare performance measures** when determining performance benchmarks and measuring hospital progress. As noted previously, hospitals already have systems in place to provide data in response to these measures.	Your suggestion has been noted. We will take it into consideration for CYE 2018.

20.	General Prgh 3	Jennifer Carusetta 05/09/16	It continues to be our understanding that the Value-Based Purchasing project is **intended to incentivize innovation and efficiency and shall not be used to penalize providers** who are unable to meet established benchmarks. The proposed framework establishes a good construct to continue to incentivize hospitals to transition from a payment system based on inputs, to a system based on outputs, without penalizing them for any of the infrastructure or implementation challenges they currently face.	Thank you for your support.
21.	General Prgh 4	Jennifer Carusetta 05/09/16	The proposed rules also clarify the circumstances under which hospitals may bill for Administrative Stays. We are actively engaged with Mercy Maricopa Integrated Care to identify collaborative solutions to address this issue, but very much appreciate the additional clarification on how systems may be reimbursed for these hospital stays.	Thank you for your support.
22.	General Prgh 5	Jennifer Carusetta 05/09/16	The proposed definition states that **sub-acute services** occur when the patient does not require acute inpatient hospitalization, but then goes on to state that sub-acute care shall take place immediately after an inpatient hospitalization. While we believe we understand the intent of this language, **it does appear to conflict and could lead to some confusion in its interpretation and application. For this reason, we would suggest additional clarification.**	The Administration has reviewed the definition and finds that where it states "does not require acute inpatient hospitalization" is sufficiently clear in addressing the present state of the patient's condition. Therefore no changes will be made.

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:

No other matters are applicable.

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

Not applicable

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

Not applicable

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

Not applicable

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 rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ADMINISTRATION

ARTICLE 7. STANDARDS FOR PAYMENTS

Section
R9-22-701. Standard for Payments Related Definitions
R9-22-712.35. Outpatient Hospital Reimbursement: Adjustments to Fees
R9-22-712.60. Diagnosis Related Group Payments
R9-22-712.61. DRG Payments: Exceptions
R9-22-712.66. DRG Service Policy Adjustor
R9-22-712.67. DRG Reimbursement: Transfers
R9-22-712.71. Final DRG Payment
R9-22-712.75. DRG Reimbursement: Payment for Administrative Days

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-22-701. Standard for Payments Related Definitions

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

"Accommodation" means room and board services provided to a patient during an inpatient hospital stay and includes all staffing, supplies, and equipment. The accommodation is semi-private except when the member must be isolated for medical reasons. Types of accommodation include hospital routine medical/surgical units, intensive care units, and any other specialty care unit in which room and board are provided.

"Aggregate" means the combined amount of hospital payments for covered services provided within and outside the GSA.

"AHCCCS inpatient hospital day or days of care" means each day of an inpatient stay for a member beginning with the day of admission and including the day of death, if applicable, but excluding the day of discharge, provided that all eligibility, medical necessity, and medical review requirements are met.

"Ancillary service" means all hospital services for patient care other than room and board and nursing services, including but not limited to, laboratory, radiology, drugs, delivery room (including maternity labor room), operating room (including postanesthesia and postoperative recovery rooms), and therapy services (physical, speech, and occupational).

"APC" means the Ambulatory Payment Classification system under 42 CFR 419.31 used by Medicare for grouping clinically and resource-similar procedures and services.

"Billed charges" means charges for services provided to a member that a hospital includes on a claim consistent with the rates and charges filed by the hospital with Arizona Department of Health Services (ADHS).

"Business agent" means a company such as a billing service or accounting firm that renders billing statements and receives payment in the name of a provider.

"Capital costs" means costs as reported by the hospital to CMS as required by ~~42 CFR 413.20.29~~42 CFR 413.20.

"Copayment" means a monetary amount, specified by the Director, that a member pays directly to a contractor or provider at the time covered services are rendered.

"Cost-to-charge ratio" (CCR) means a hospital's costs for providing covered services divided by the hospital's charges for the same services. The CCR is the percentage derived from the cost and charge data for each revenue code provided to AHCCCS by each hospital.

"Covered charges" means billed charges that represent medically necessary, reasonable, and customary items of expense for covered services that meet medical review criteria of AHCCCS or a contractor.

"CPT" means Current Procedural Terminology, published and updated by the American Medical Association. CPT is a nationally-accepted listing of descriptive terms and identifying codes for reporting medical services and procedures performed by physicians that provide a uniform language to accurately designate medical, surgical, and diagnostic services.

"Critical Access Hospital" is a hospital certified by Medicare under 42 CFR 485 Subpart F and 42 CFR 440.170(g).

"Direct graduate medical education costs" or "direct program costs" means the costs that are incurred by a hospital for the education activities of an approved graduate medical education program that are the proximate result of training medical residents in the hospital, including resident salaries and fringe benefits, the portion of teaching physician salaries and fringe benefits that are related to the time spent in teaching and supervision of residents, and other related GME overhead costs.

"DRI inflation factor" means Global Insights Prospective Hospital Market Basket.

"Eligibility posting" means the date a member's eligibility information is entered into the AHCCCS Pre-paid Medical Management Information System (PMMIS).

"Encounter" means a record of a medically-related service rendered by an AHCCCS-registered provider to a member enrolled with a contractor on the date of service.

"Existing outpatient service" means a service provided by a hospital before the hospital files an increase in its charge master as defined in R9-22-712(G), regardless of whether the service was explicitly described in the hospital charge master before filing the increase or how the service was described in the charge master before filing the increase.

"Expansion funds" means funds appropriated to support GME program expansions as described under A.R.S. § ~~36-2903.01(H)(9)(b) and (c)(i)~~ 36-2903.01(G)(9)(b) and (c)(i).

"Factor" means a person or an organization, such as a collection agency or service bureau, that advances money to a provider for accounts receivable that the provider has assigned, sold, or transferred to the organization for an added fee or a deduction of a portion of the accounts receivable. Factor does not include a business agent.

"Fiscal intermediary" means an organization authorized by CMS to make determinations and payments for Part A and Part B provider services for a given region.

"Freestanding Children's Hospital" means a separately standing hospital with at least 120 pediatric beds that is dedicated to provide the majority of the hospital's services to children.

"GME program approved by the Administration" or "approved GME program" means a graduate medical education program that has been approved by a national organization as described in 42 CFR 415.152.
"Graduate medical education (GME) program" means an approved residency program that prepares a physician for independent practice of medicine by providing didactic and clinical education in a medical environment to a medical student who has completed a recognized undergraduate medical education program.
"HCAC" means a health care acquired condition described under ~~42 U.S.C. 1395ww(d)(4)(D)(iv)~~ 42 CFR 447.26 but does not include Deep Vein Thrombosis (DVT)/Pulmonary Embolism (PE) as related to total knee replacement or hip replacement surgery in pediatric and obstetric patients.
"HCPCS" means the Health Care Procedure Coding System, published and updated by Center for Medicare and Medicaid Services (CMS). HCPCS is a listing of codes and descriptive terminology used for reporting the provision of physician services, other health care services, and substances, equipment, supplies or other items used in health care services.
"HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as specified under 45 CFR 162, that establishes standards and requirements for the electronic transmission of certain health information by defining code sets used for encoding data elements, such as tables of terms, medical concepts, medical diagnostic codes, or medical procedure codes.
"ICU" means the intensive care unit of a hospital.
"Indirect program costs" means the marginal increase in operating costs that a hospital experiences as a result of having an approved graduate medical education program and that is not accounted for by the hospital's direct program costs.
"Intern and Resident Information System" means a software program used by teaching hospitals and the provider community for collecting and reporting information on resident training in hospital and non-hospital settings.
"Medical education costs" means direct hospital costs for intern and resident salaries, fringe benefits, program costs, nursing school education, and paramedical education, as described in the Medicare Provider Reimbursement Manual.
"Medical review" means a clinical evaluation of documentation conducted by AHCCCS or a contractor for purposes of prior authorization, concurrent review, post-payment review, or determining medical necessity. The criteria for medical review are established by AHCCCS or a contractor based on medical practice standards that are updated periodically to reflect changes in medical care.
"Medicare Urban or Rural Cost-to-Charge Ratio (CCR)" means statewide average capital cost-to-charge ratio published annually by CMS added to the urban or rural statewide average operating cost-to-charge ratio published annually by CMS.
"National Standard code sets" means codes that are accepted nationally in accordance with federal requirements under 45 CFR 160 and 45 CFR 164.
"New hospital" means a hospital for which Medicare Cost Report claim and encounter data are not available for the fiscal year used for initial rate setting or rebasing.
"NICU" means the neonatal intensive care unit of a hospital that is classified as a Level II or Level III perinatal center by the Arizona Perinatal Trust.
"Non-IHS Acute Hospital" means a hospital that is not run by Indian Health Services, is not a free-standing psychiatric hospital, such as an IMD, and is paid under ADHS rates.
"Observation day" means a physician-ordered evaluation period of less than 24 hours to determine whether a person needs treatment or needs to be admitted as an inpatient. Each observation day consists of a period of 24 hours or less.
"Operating costs" means AHCCCS-allowable accommodation costs and ancillary department hospital costs excluding capital and medical education costs.
"OPPC" means an Other Provider Preventable Condition that is: (1) a wrong surgical or other invasive procedure performed on a patient, (2) a surgical or other invasive procedure performed on the wrong body part, or (3) a surgical or other invasive procedure performed on the wrong patient.
"Organized health care delivery system" means a public or private organization that delivers health services. It includes, but is not limited to, a clinic, a group practice prepaid capitation plan, and a health maintenance organization.
"Outlier" means a hospital claim or encounter in which the operating costs per day for an AHCCCS inpatient hospital stay meet the criteria described under this Article and A.R.S. § ~~36-2903.01(H)~~ 36-2903.01(G).
"Outpatient hospital service" means a service provided in an outpatient hospital setting that does not result in an admission.
"Ownership change" means a change in a hospital's owner, lessor, or operator under 42 CFR 489.18(a).
"Participating institution" means an institution at which portions of a graduate medical education program are regularly conducted and to which residents rotate for an educational experience for at least one month.

"Peer group" means hospitals that share a common, stable, and independently definable characteristic or feature that significantly influences the cost of providing hospital services, including specialty hospitals that limit the provision of services to specific patient populations, such as rehabilitative patients or children.
"PPC" means prior period coverage. PPC is the period of time, prior to the member's enrollment, during which a member is eligible for covered services. The time-frame is the first day of the month of application or the first eligible month, whichever is later, until the day a member is enrolled with a contractor.
"PPS bed" means Medicare-approved Prospective Payment beds for inpatient services as reported in the Medicare cost reports for the most recent fiscal year for which the Administration has a complete set of Medicare cost reports for every rural hospital as determined as of the first of February of each year.
"Procedure code" means the numeric or alphanumeric code listed in the CPT or HCPCS manual by which a procedure or service is identified.
"Prospective rates" means inpatient or outpatient hospital rates set by AHCCCS in advance of a payment period and representing full payment for covered services excluding any quick-pay discounts, slow-pay penalties, and first-and third-party payments regardless of billed charges or individual hospital costs.
"Public hospital" means a hospital that is owned and operated by county, state, or hospital health care district.
"Qualifying health information exchange organization" means a non-profit health information organization as defined in A.R.S. § 36-3801 that provides the statewide exchange of patient health information among disparate health care organizations and providers not owned, operated, or controlled by the health information exchange. A qualifying health information exchange organization must include representation by the administration on its board of directors, and have a significant number of health care participants, including hospitals, laboratories, payers, community physicians and Federally Qualified Health Centers.
"Rebase" means the process by which the most currently available and complete Medicare Cost Report data for a year and AHCCCS claim and encounter data for the same year are collected and analyzed to reset the Inpatient Hospital Tiered per diem rates, or the Outpatient Hospital Capped Fee-For-Service Schedule.
"Reinsurance" means a risk-sharing program provided by AHCCCS to contractors for the reimbursement of specified contract service costs incurred by a member beyond a certain monetary threshold.
"Remittance advice" means an electronic or paper document submitted to an AHCCCS-registered provider by AHCCCS to explain the disposition of a claim.
"Resident" means a physician engaged in postdoctoral training in an accredited graduate medical education program, including an intern and a physician who has completed the requirements for the physician's eligibility for board certification.
"Revenue code" means a numeric code, that identifies a specific accommodation, ancillary service, or billing calculation, as defined by the National Uniform Billing committee for UB-04 forms.
"Sub-acute services" means inpatient care for a patient with an acute illness, injury or exacerbation of a disease process when the patient does not require acute inpatient hospitalization. Sub-acute care is rendered immediately after, or instead of, acute inpatient hospitalization.
"Specialty facility" means a facility where the service provided is limited to a specific population, such as rehabilitative services for children.
"Sponsoring institution" means the institution or entity that is recognized by the GME accrediting organization and designated as having ultimate responsibility for the assurance of academic quality and compliance with the terms of accreditation.
"Tier" means a grouping of inpatient hospital services into levels of care based on diagnosis, procedure, or revenue codes, peer group, NICU classification level, or any combination of these items.
"Tiered per diem" means an AHCCCS capped fee schedule in which payment is made on a per-day basis depending upon the tier (or tiers) into which an AHCCCS inpatient hospital day of care is assigned.
"Trip" means a one-way transport each time a taxi is called. If the taxi waits for the member then the transport continues to be part of the one-way trip. If the taxi leaves and is called to pick up the member, that is considered a new one-way trip.

R9-22-712.35. Outpatient Hospital Reimbursement: Adjustments to Fees

A. For all claims with a begin date of service on or before September 30, 2011, AHCCCS shall increase the Outpatient Capped Fee-for-service Schedule established under R9-22-712.20 (except for laboratory services and out-of-state hospital services) for the following hospitals submitting any claims:
1. By 48 percent for public hospitals on July 1, 2005, and hospitals that were public anytime during the calendar year 2004;
2. By 45 percent for hospitals in counties other than Maricopa and Pima with more than 100 Medicare PPS beds during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective;
3. By 50 percent for hospitals in counties other than Maricopa and Pima with 100 or less Medicare PPS beds during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective;

4. By 115 percent for hospitals designated as Critical Access Hospitals or hospitals that have not been designated as Critical Access Hospitals but meet the criteria during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective;
5. By 113 percent for a Freestanding Children's Hospital with at least 110 pediatric beds during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective; or
6. By 14 percent for a University Affiliated Hospital which is a hospital that has a majority of the members of its board of directors appointed by the Board of Regents during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective.

B. For all claims with a begin date of service on or after October 1, 2011, AHCCCS shall increase the Outpatient Capped Fee-for-service Schedule (except for laboratory services, and out-of-state hospital services) for the following hospitals. A hospital shall receive an increase from only one of the following categories:
1. By 73 percent for public hospitals;
2. By 31 percent for hospitals in counties other than Maricopa and Pima with more than 100 licensed beds as of October 1 of that contract year;
3. By 37 percent for hospitals in counties other than Maricopa and Pima with 100 or fewer licensed beds as of October 1 of that contract year;
4. By 100 percent for hospitals designated as Critical Access Hospitals or hospitals that have not been designated as Critical Access Hospitals but meet the critical access criteria;
5. By 78 percent for a Freestanding Children's Hospital with at least 110 pediatric beds as of October 1 of that contract year; or
6. By 41 percent for a University Affiliated Hospital, ~~which~~ this is a hospital that has a majority of the members of its board of directors appointed by the Arizona Board of Regents.

C. In addition to subsections (A) and (B), an Arizona Level 1 trauma center as defined by R9-22-2101 shall receive a 50 percent increase to the Outpatient Capped Fee-for-service Schedule (except for laboratory services and out-of-state hospital services) for Level 2 and 3 emergency department procedures.

D. Hospitals with greater than 100 pediatric beds not receiving an increase under subsection (B) shall receive an 18 percent increase to the Outpatient Capped Fee-for-service Schedule (except for laboratory services, and out-of-state hospital services).

E. For outpatient services with dates of service from October 1, 2016 through September 30, 2017, the payment otherwise required for outpatient hospital services provided by qualifying hospitals shall be increased by a percentage established by the administration. The percentage is published on the Administration's public website as part of its fee schedule subsequent to the public notice published no later than September 1, 2016. To qualify, a hospital providing outpatient hospital services must meet the following criteria:
1. By June 1, 2016, the hospital must have executed an agreement with and electronically submitted admission, discharge, and transfer information, as well as data from the hospital emergency department, to a qualifying health information exchange organization, and
2. No sooner than January 4, 2016, and no later than February 29, 2016, CMS must have approved the hospital's attestation demonstrating meaningful use stage 2 as described in 42 CFR 495.22 during an electronic health record reporting period in 2015; or, for a children's hospital that does not participate in the Medicare electronic health record incentive program, no sooner than January 4, 2016, and no later than the date established by CMS, the administration must have approved the hospital's attestation demonstrating meaningful use stage 2 as described in 42 CFR 495.22 during an electronic health record reporting period in 2015.

~~**E.**~~**F.** Fee adjustments made under subsection (A), (B), (C), ~~and~~ (D), and (E) are on file with AHCCCS and current adjustments are posted on AHCCCS' web site.

R9-22-712.60. Diagnosis Related Group Payments

A. Inpatient hospital services with discharge dates on or after October 1, 2014, shall be reimbursed using the diagnosis related group (DRG) payment methodology described in this section and sections R9-22-712.61 through R9-22-712.81.

B. Payments made using the DRG methodology shall be the sole reimbursement to the hospital for all inpatient hospital services and related supplies provided by the hospital. Services provided in the emergency room, observation area, or other outpatient departments that are directly followed by an inpatient admission to the same hospital are not reimbursed separately. Are reimbursed through the DRG methodology and not reimbursed separately.

C. Each claim for an inpatient hospital stay shall be assigned a DRG code and a DRG relative weight based on version 31 of the All Patient Refined Diagnosis Related Group (APR-DRG) classification system established by 3M Health Information Systems. If version 31 of the APR-DRG classification system will no longer support assigning DRG codes and relative weights to claims, and 3M Health Information Systems issues a newer version of the APR-DRG classification system using updated DRG codes and/or updated relative weights, then ~~the more current version~~ an updated version established by 3M Health Information Systems will be used; however, if the ~~newer~~ version employs updated relative weights, those weights will be adjusted using a single adjustment factor applied to all relative weights to ensure that the statewide weighted average of the updated relative weights does not increase or decrease from the statewide weighted average of the relative weights used under version 31.

D. Payments for inpatient hospital services reimbursed using the DRG payment methodology are subject to quick pay discounts and slow pay penalties under A.R.S. 36-2904.

E. Payments for inpatient hospital services reimbursed using the DRG payment methodology are subject to the Urban Hos-

pital Reimbursement Program under R9-22-718.

F. For purposes of this section and sections R9-22-712.61 through R9-22-712.81:
1. "DRG National Average length of stay" means the national arithmetic mean length of stay published in version 31 of the All Patient Refined Diagnosis Related Group (APR-DRG) classification established by 3M Health Information Systems.
2. "Length of stay" means the total number of calendar days of an inpatient stay beginning with the date of admission through discharge, but not including the date of discharge (including the date of a discharge to another hospital, i.e., a transfer) unless the member expires.
3. "Medicare" means Title XVIII of the Social Security Act, 42 U.S.C. 1395 *et seq*.
4. "Medicare labor share" means a hospital's labor costs as a percentage of its total costs as determined by CMS for purposes of the Medicare Inpatient Prospective Payment System.

R9-22-712.61. DRG Payments: Exceptions

A. Notwithstanding section R9-22-712.60, claims for inpatient services from the following hospitals shall be paid on a per diem basis, including provisions for outlier payments, where rates and outlier thresholds are included in the capped fee schedule published by the Administration on its website and available for inspection during normal business hours at 701 E. Jefferson, Phoenix, Arizona. If the covered costs per day on a claim exceed the published threshold for a day, the claim is considered an outlier. Outliers will be paid by multiplying the covered charges by the outlier CCR. The outlier CCR will be the sum of the urban or rural default operating CCR appropriate to the location of the hospital and the statewide capital cost-to-charge ratio in the data file established as part of the Medicare Inpatient Prospective Payment System by CMS. The resulting amount will be the total reimbursement for the claim. There is no provision for outlier payments for hospitals described under subsection (A)(3).
1. Hospitals designated as type: hospital, subtype; rehabilitation in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website in March of each year;
2. Hospitals designated as type: hospital, subtype: long term in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for March of each year;
3. Hospitals designated as type: hospital, subtype; psychiatric in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for March of each year;
4. ~~Transplant facilities to the extent the inpatient days associated with the transplant exceed the terms of the contract.~~

B. Notwithstanding section R9-22-712.60, claims for inpatient services that are covered by a RBHA or TRBHA, where the ~~primary~~ principal diagnosis on the claim is a behavioral health diagnosis, shall be reimbursed as prescribed by ~~ADHS~~ a per diem rate described by a fee schedule established by the Administration; however, if the ~~primary~~ principal diagnosis is a ~~medical~~ physical health diagnosis, the claim shall be processed under the DRG methodology described in this section, even if behavioral health services are provided during the inpatient stay.

C. Notwithstanding section R9-22-712.60, claims for services associated with transplant services shall be paid in accordance with the contract between the AHCCCS administration and the transplant facility.

D. Notwithstanding section R9-22-712.60, claims from an ~~IHS facility or from a hospital operated as a 638 facility~~ IHS facility or 638 Tribal provider shall be paid the all-inclusive rate on a per visit basis in accordance with the rates published annually by IHS in the federal register. ~~A 638 facility is a hospital operated by an Indian tribe or tribal organization, as defined in 25 USC 1603, funded, in whole or part, by the IHS as provided for in a contract or compact with IHS under 25 U.S.C. §§ 450 through 458aaa-18.~~

E. For hospitals that have contracts with the Administration for the provision of transplant services, inpatient days associated with transplant services are paid in accordance with the terms of the contract.

R9-22-712.66. DRG Service Policy Adjustor

In addition to subsection R9-22-712.65, for claims with DRG codes in the following categories, the product of the DRG base rate, the DRG relative weight for the post-HCAC DRG code, and the DRG provider policy adjustor shall be multiplied by the following service policy adjustors:
1. Normal newborn DRG codes: 1.55
2. Neonates DRG codes: 1.10
3. Obstetrics DRG codes: 1.55
4. Psychiatric DRG codes: 1.65
5. Rehabilitation DRG codes: 1.65
6. ~~Claims for members under age 19 assigned DRG codes other than listed above: 1.25~~
   Claims for members under age 19 assigned DRG codes other than listed above:
   a. 1.25 for dates of discharge occurring on or after October 1, 2014 and ending no later than December 31, 2015 regardless of severity of illness level,
   b. 1.25 for dates of discharge on or after January 1, 2016 for severity of illness levels 1 and 2,
   c. 1.60 for dates of discharge on or after January 1, 2016 for severity of illness levels 3 and 4.

R9-22-712.67. DRG Reimbursement: Transfers

A. For purposes of this ~~subsection~~ Section a "transfer" means the transfer of a member from a hospital to a short-term gen-

eral hospital for inpatient care, ~~to~~ a designated cancer center, ~~or~~ children's hospital, or a critical access hospital except when a member is moved for the purpose of receiving sub-acute services.

B. Designated cancer center or children's hospitals are those hospitals identified as such in the UB-04 billing manual published by the National Uniform Billing Committee.

C. The hospital the member is transferred from shall be reimbursed either the initial DRG base payment or the transfer DRG base payment, whichever is less.

D. The transfer DRG base payment is an amount equal to the initial DRG base payment, as determined after making any provider or service policy adjustors, divided by the DRG National Average length of stay for the DRG code multiplied by the sum of one plus the length of stay.

E. The hospital the member is transferred to shall be reimbursed under the DRG payment methodology without a reduction due to the transfer.

F. Unadjusted DRG base payment. The unadjusted DRG base payment is either the initial DRG base payment, as determined after making any provider or service policy adjustors, or the transfer DRG base payment, whichever is less.

R9-22-712.71. Final DRG Payment

The final DRG payment is the sum of the final DRG base payment, ~~and~~ the final DRG outlier add-on payment, and the Inpatient Value Based Purchasing (VBP) Differential Adjusted Payment.

~~A.~~1. The final DRG base payment is an amount equal to the product of the covered day adjusted DRG base payment and a hospital-specific factor established to limit the financial impact to individual hospitals of the transition from the tiered per diem payment methodology and to account for improvements in documentation and coding that are expected as a result of the transition.

~~B.~~2. The final DRG outlier add-on payment is an amount equal to the product of the covered day adjusted DRG outlier add-on payment and a hospital-specific factor established to limit the financial impact to individual hospitals of the transition from the tiered per diem payment methodology and to account for improvements in documentation and coding that are expected as a result of the transition.

~~C.~~3. The factor for each hospital and for each federal fiscal year is published as part of the AHCCCS capped fee schedule and is available on the AHCCCS administration's website and is on file for public inspection at the AHCCCS administration located at 701 E Jefferson Street, Phoenix, Arizona.

4. For inpatient services with a date of discharge from October 1, 2016 through September 30, 2017, the Inpatient VBP Differential Adjusted Payment is the sum of the final DRG base payment and the final DRG outlier add-on payment multiplied by a percentage published on the Administration's public website as part of its fee schedule, subsequent to the public notice published no later than September 1, 2016. To qualify for the Inpatient VBP Differential Adjusted Payment, a hospital providing inpatient hospital services must meet the following criteria:
   a. By June 1, 2016, the hospital must have executed an agreement with and electronically submitted admission, discharge, and transfer information, as well as data from the hospital emergency department, to a qualifying health information exchange organization, and
   b. No sooner than January 4, 2016, and no later than February 29, 2016, CMS must have approved the hospital's attestation demonstrating meaningful use stage 2 as described in 42 CFR 495.22 during an electronic health record reporting period in 2015; or, for a children's hospital that does not participate in the medicare electronic health record incentive program, no sooner than January 4, 2016, and no later than the date established by CMS, the administration must have approved the hospital's attestation demonstrating meaningful use stage 2 as described in 42 CFR 495.22 during an electronic health record reporting period in 2015.

R9-22-712.75. DRG Reimbursement: Payment for Administrative Days

~~A. Administrative days are days of a hospital stay in which a member does not meet criteria for an acute inpatient stay, but is not discharged because an appropriate placement outside the hospital is not available, the Administration or the contractor fail to provide for the appropriate placement outside the hospital in a timely manner, or the member cannot be safely discharged or transferred.~~

A. Administrative days are days in which a member is admitted as an inpatient to an acute care hospital, does not meet the criteria for an acute inpatient stay, but is admitted or not discharged because (1) an appropriate placement outside the hospital is not available, (2) the member cannot be safely discharged or transferred, or (3) the Administration or the contractor failed to provide for the appropriate placement outside the hospital in a timely manner.
   1. Administrative days may occur prior to an acute care episode, for example, when a woman with a high-risk pregnancy is admitted to a hospital while awaiting delivery.
   2. Administrative days may also occur at the end of an acute care episode, for example, when a member is not discharged while awaiting placement in a nursing facility or other sub-acute or post-acute setting.
   3. Administrative days may also include days in a receiving hospital when the member has been discharged from one acute care hospital for the purpose of receiving sub-acute services at the receiving hospital.

B. Administrative days do not include days when the member is awaiting appropriate placement or services that are currently available but the hospital has not transferred or discharged the member because of the hospital's administrative or operational delays.

C. Prior authorization is required for administrative days.

D. A hospital shall submit a claim for administrative days separate from any claim for reimbursement for the inpatient stay otherwise reimbursable under the DRG payment methodology.

E. Administrative days are reimbursed at the rate the claim would have paid had the services not been provided in an inpatient hospital setting but had been provided at the appropriate level of care (e.g., as nursing facility days).

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

[R16-150]

PREAMBLE

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

Article, Part, or Section Affected (as applicable)	Rulemaking Action
R12-4-701	Amend
R12-4-702	Amend
R12-4-703	Repeal
R12-4-704	Repeal
R12-4-705	Repeal
R12-4-706	Repeal
R12-4-707	Repeal
R12-4-708	Repeal

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

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-297, 17-298, 17-298.01, and 35-214

3. The effective date of the rules:

August 2, 2016

a. If the agency selected a date earlier than the 60 days 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):

The rules are effective immediately upon filing with the Secretary of State's Office as authorized under A.R.S. § 41-1032(A)(4), which authorizes an immediate effective date for a rule that provides a benefit to the public and a penalty is not associated with a violation of the rule. The Commission believes the rulemaking will result in an overall benefit to the regulated community, members of the public, and the Department due to amendments that make the grant application process less burdensome, expands opportunity to additional persons, and reduces the burdens and costs to persons regulated by the rule. An immediate effective date will allow nongovernmental organizations to be eligible to apply for Heritage grants and allow a nonprofit organization to apply directly for a Heritage grant for the 2017 grant cycle, which is scheduled to begin August 2016.

b. If the agency selected a date later than the 60 days 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 earlier effective date as provided in A.R.S. § 41-1032(A)(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 proposed rule:

Notice of Rulemaking Docket Opening: 22 A.A.R. 825, April 15, 2016

Notice of Proposed Rulemaking: 22 A.A.R. 810, April 15, 2016

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

Name: Celeste Cook, Rule Writer

Address: Game and Fish Department
5000 W. Carefree Highway
Phoenix, AZ 85086

Telephone: (623) 236-7390

Fax: (623) 236-7110

E-mail: CCook@azgfd.gov

Please visit the AZGFD web site to track progress of this rule and any other agency rulemaking matters at http://www.azgfd.gov/inside_azgfd/rules/rulemaking_updates.shtml.

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

An exemption from Executive Order 2016-03 was provided for this rulemaking by Hunter Moore, Natural

Resource Policy Advisor in the Governor's office, in an e-mail dated March 28, 2016.

Heritage Fund money comes from Arizona Lottery ticket sales and was established by voter initiative in 1990. The people of Arizona believe it is in the best interest of the general economy and welfare of Arizona and its citizens to set aside adequate state funds on an annual basis to preserve, protect and enhance Arizona's natural and cultural heritage, wildlife, biological diversity, scenic wonder and environment and provide new opportunities for outdoor recreation in Arizona. The Heritage Grant Program was established by the Arizona Game and Fish Department in 1992 as part of the overall Heritage Fund program and was initially developed as a way to promote outreach, enhance important partnerships, and generate fresh approaches in support of the Department's mission. Heritage funding goes toward conservation efforts such as protecting endangered species, educating students and the general public about wildlife and the outdoors, and creating new opportunities for outdoor recreation. From 1992 through the 2015 Heritage Grant Cycle, the Department has awarded 789 Heritage Grants. Awarded grant funds total $15,376,996 and when combined with grantee match commitments, the total benefit to the public is $22,775,782. In 2015 alone, a total of 25 grant projects were funded for a total of $408,092. When combined with grantee match commitments, the total benefit to the public is $1,040,546. Because the Department receives no state tax dollars to cover its operating budget, the Heritage Fund is critical to recovering or sustaining Arizona's unique native wildlife and to managing more than 800 native species.

The Arizona Game and Fish Commission proposes to amend its Article 7 rules, governing heritage grants, to enact amendments developed during the preceding Five-year-review.

For R12-4-701. Heritage Grant Definitions, the objective of the rule is to establish definitions that assist the regulated community and members of the public in understanding the unique terms that are used throughout 12 A.A.C. Chapter 4, Article 7. The rule was adopted to facilitate consistent interpretation and to prevent the regulated community from misinterpreting the intent of Commission rules. The Commission proposes to amend the rule to add non-governmental organizations (NGOs) to the definition of "eligible applicant" to expand opportunities for Heritage Grant funds to additional applicants. The Commission proposes to amend the rule to remove the stipulation that an eligible applicant cannot have a Heritage grant in extension as this language is more regulatory than descriptive, does not belong in the definition of "eligible applicant" and is addressed under R12-4-702. The Commission proposes to amend the rule to remove the stipulation that an eligible applicant who is a nonprofit organization must be sponsored by a public agency to reduce the costs and burdens on nonprofits and state agency sponsors. The Commission believes this amendment will make the application and grant process more efficient by removing administrative levels. The Commission also proposes to amend the rule to include "administrative sub-unit" in the definition of "public agency" to increase consistency between Article 7 rules. In addition, the Commission proposes to amend the rule to repeal the definition of "sensitive elements" as the rule that referenced the term is recommended for repeal and the term will no longer be referenced in the amended rules.

For R12-4-702. General Provisions, the objective of the rule is to establish the general provisions that apply to all grant fund applicants. The rule was adopted to provide grant applicants with the information necessary to successfully apply for a grant and ensure efficient administration of the application and monitoring processes. The Commission proposes to amend the rule to clarify potential grant recipients must have a project that is either located in Arizona or benefits Arizona wildlife or its habitat to ensure the citizens of Arizona benefit from the use of Heritage Grant funds. The Commission proposes to amend the rule to allow a participant to deposit Heritage Grant funds in an interest bearing account, provided the earned interest is either used to further the project or returned to the Department upon completion of the project, to reduce the burden on the regulated community. The Commission proposes to amend the rule to prohibit a participant from comingling grant funds with any other funds to protect Heritage Grant funds money from potential misuse. The Commission also proposes to streamline and restructure the rule to incorporate the requirements established under R12-4-704, R12-4-705, R12-4-706, R12-4-707, and R12-4-708 to provide those requirements in chronological order for ease of understanding and to make the rule more concise. As a result of this amendment, R12-4-704, R12-4-705, R12-4-706, R12-4-707, and R12-4-708 will be repealed. In addition, the Commission proposes to amend the rule to allow the Department to extend the project period to complete the final closure documents to reduce the costs and burdens to persons regulated by the rule and the Department.

For R12-4-703. Heritage Grant Program Funds, the objective of the rule is to establish the specific requirements that a project proposal must meet in order to be considered for the various Heritage Grant Program funds. The rule was adopted to provide grant applicants with specific guidance for goals and objectives listed within each grant sub-category. The Commission proposes to repeal the rule to provide the Department with greater flexibility in granting heritage funds in compliance with the manner prescribed under A.R.S. § 17-298.

For R12-4-704. Grant Application, the rule establishes the application process, criteria, and information that an applicant is required to include with a completed application. The rule was adopted to provide applicants with guidance on applying for Heritage grants. The Commission proposes to repeal this rule and incorporate its requirements into R12-4-702 to provide Heritage Grant requirements in chronological order for ease of understanding. As a result of the five-year review, the Commission does not intend to incorporate the requirement that a nonprofit pro-

vide proof of their tax exempt status. The Department determined this requirement is unnecessary because an applicant is not required to have tax exempt status in order to qualify for a Heritage grant.

For R12-4-705. Review of Proposals, the objective of the rule is to establish the Department's guidelines for the review of proposals. The rule was adopted to notify the regulated community that grant awards are made available through a competitive application process due to Heritage fund availability. Applications are not evaluated, compared, or scored against each other, but are reviewed and judged on the basis of their compatibility with the goals, needs, and priorities of the Arizona Game and Fish Department, project feasibility, merit, and usefulness of results consistent with the conservation and management of wildlife and their habitats. The Commission proposes to repeal this rule and incorporate its requirements into R12-4-702 to provide Heritage Grant requirements in chronological order for ease of understanding.

For R12-4-706. State Historic Preservation Office Review, the objective of the rule is to notify applicants that Heritage Grant funds shall not be released until after the Department has consulted with the State Historic Preservation Office and it is determined the project proposal will not have a negative impact on the State's prehistorical, historical, architectural or culturally significant values. The rule was adopted to ensure compliance with established State Historic Preservation Act statutes, (*A.R.S.* §§ 41-861 through 865) and the Arizona Antiquities Act (*A.R.S.* §§ 41-841 through 844). These statutes require that specific steps be taken to protect and preserve such properties and or discoveries and are a condition and precedent to the award of any grant funds. The Commission proposes to repeal this rule and incorporate its requirements into R12-4-702 to provide Heritage Grant requirements in chronological order for ease of understanding.

For R12-4-707. Grant Agreement, the objective of the rule is to establish the minimum terms and conditions that a grant participant must comply with. The rule was adopted to provide applicants notice of the basic terms and conditions that must be met when awarded a Heritage grant. This allows the person to decide whether they can comply with the minimum requirements before applying for a Heritage grant. The term "default" is somewhat ambiguous; the Department proposes to amend the rule to replace the term "default" with "not in compliance." In addition, the rule states the Department has the "sole discretion" to amend a Grant Agreement, which implies the participant is not allowed to provide any input in amending an agreement. This is not an accurate portrayal of the process as the participant may also make recommendations when amending an agreement and both parties are required to sign the amendment. The Department proposes to amend the rule to clarify the grant amendment process requires consensus between both parties. The Commission proposes to repeal this rule and incorporate its requirements into R12-4-702 to provide Heritage Grant requirements in chronological order for ease of understanding.

For R12-4-708. Reporting and Recordkeeping Requirements, the objective of the rule is to establish the reporting and record keeping requirements that a participant must comply with. The rule was adopted to provide applicants notice of the basic recordkeeping and reporting requirements that must be met to ensure compliance with the agreement. The Commission proposes to repeal this rule and incorporate its requirements into R12-4-702 to provide Heritage Grant requirements in chronological order for ease of understanding.

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

The agency did not rely on any study in its evaluation of or justification for the rule.

8. A showing of good cause why the rulemaking 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 Commission's intent in proposing the amendments indicated in this rulemaking is to benefit the regulated community, members of the public, and the Department by streamlining and restructuring the rule. The rulemaking will benefit the Department and those governmental entities applying for Heritage Grants by improving the accuracy, clarity, and understandability of the rules. The Commission proposes additional amendments designed to reduce burden and costs to persons regulated by the rule, where practical. The Commission anticipates the rulemaking will result in an overall benefit to the regulated community, members of the public, and the Department. The Commission anticipates the rulemaking will have little or no impact on political subdivisions of this state; private and public employment in businesses, agencies or political subdivisions, or state revenues. The Commission has determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. Therefore, the Commission has determined the benefits of the rulemaking outweigh any costs.

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

Under R12-4-702(B), rule language was corrected to indicate the Department shall provide public notice of the time, location, and due date for application submission and furnish materials necessary to complete the application. In addition, minor grammatical and style corrections were made at the request of the Governor's Regulatory

Review Council staff.

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

The Department did not receive any public or stakeholder comments in response to the proposed rulemaking during the public comment period, which ran from April 15 through May 15, 2016. However, on June 7, 2016, Sonia Perillo, Vice President and Executive Director of Audubon Arizona, submitted a letter in support of the Article 7 rulemaking. The letter stated the rulemaking is a clearly written instructional on how to be a Heritage grant applicant; and the change that allows a nonprofit to apply for grants directly without a government fiscal partner is a wonderful improvement and may result in high quality proposals from the nonprofit sector. In addition, Elizabeth Wooden, President of the Tucson Heritage Alliance and former member of the Arizona Game and Fish Commission, spoke to the Commission at the June 10, 2016 Commission meeting. Ms Woodin stated the previous Heritage grant rules needed work and the Department did a fantastic job of simplifying and clarifying the rules. Allowing nonprofits to apply for grants without a government sponsor removed a stumbling block and resulted in rules that make it easier to apply for a Heritage grant, may increase the popularity of, and result in more enthusiasm for, the Department's Heritage Grant Program.

12. All agency's 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 reason why a general permit is not used:

The rule does not require 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:

Federal law is not directly applicable to the subject of the rule. The rule is 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 other states:

The Department did not receive any analyses.

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

Not applicable

14. Whether the rule previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-4-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

The rule was not previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 7. HERITAGE GRANTS

Section
R12-4-701. Heritage Grant Definitions
R12-4-702. General Provisions; Heritage Grant Fund Requirements
R12-4-703. ~~Heritage Grant Program Funds~~ Repealed
R12-4-704. ~~Grant Application~~ Repealed
R12-4-705. ~~Review of Proposals~~ Repealed
R12-4-706. ~~State Historic Preservation Office Review~~ Repealed
R12-4-707. ~~Grant Agreement~~ Repealed
R12-4-708. ~~Reporting and Recordkeeping Requirements~~ Repealed

ARTICLE 7. HERITAGE GRANTS

R12-4-701. Heritage Grant Definitions

In addition to the definitions provided under A.R.S. §§ 17-101 and 17-296, the following definitions apply to this Article:

"Administrative subunit" means a branch, chapter, department, division, section, school, or other similar divisional entity of an eligible applicant. For example, an individual:

~~a.~~ ~~School, but not an entire school district~~ Administrative department, but not an entire city government;

~~b.~~ Field office or project office, but not an entire agency; or

~~c.~~ ~~Administrative department, but not an entire city government~~ School, but not an entire school district.

"Eligible applicant" means any public agency, non-governmental organization, or ~~non-profit~~ nonprofit organization ~~sponsored by a public agency~~ that meets the applicable requirements of this Article ~~and does not have a Heritage Fund Grant in extension as authorized under R12-4-707(B)~~.

"Facilities" means any structure or site improvements.

"Fund" means the Arizona Game and Fish Commission Heritage Fund, established under A.R.S. § 17-297.

"Grant agreement" means a document that details the terms and conditions of a grant project.

"Grant effective date" means the date the Department Director signs the Grant Agreement.

"In-kind" means contributions other than cash, which include individual and material resources that the applicant makes available to the project, e.g. a ~~permanent~~ public employee's~~'~~ salary, volunteer time, materials, supplies, space, or other donated goods and services.

"Participant" means an eligible applicant who has been awarded a grant from the Heritage Fund.

"Project" means an activity, or series of related activities, or services described in the specific project scope of work and results in specific end products.

"Project period" means the time during which a participant shall complete all approved work and related expenditures associated with an approved project.

"Public agency" means the federal government or any federal department or agency, an Indian tribe, this state, all state departments, agencies, boards, and commissions, counties, school districts, public charter schools, cities, towns, all municipal corporations, administrative subunits, and any other political subdivision.

"Publicly held lands" means federal, public, and reserved land, State Trust Land, and other lands within Arizona that are owned, controlled, or managed by the federal government, a state agency, or political subdivision.

~~"Sensitive elements" means the specific areas within the geographical area, historically or currently occupied by a species or community of species, which comprise those physical or biological features essential to the establishment or continued existence of the species. These 'sensitive elements may require special management, conservation or protection considerations.~~

"Term of public use" means the time period during which the project or facility is expected to be maintained for public use.

R12-4-702. General Provisions; Heritage Grant Fund Requirements

A. The Department, in its sole discretion, may make Heritage Fund Grants available for projects that:
1. Are located in Arizona or benefit Arizona wildlife or its habitat; and
2. Meet the criteria established in the Heritage Grant application materials.

B. ~~An applicant shall submit to the Department a Heritage Fund Grant application according to a schedule of due dates determined by the Director. In compliance with A.R.S. § 41-2702, the~~ The Department shall:
1. Provide public notice of the time, location, and due date for application submission; and
2. Furnish materials necessary to complete the application.

~~**B.** An eligible applicant, seeking Heritage Grant funding shall submit a Heritage Grant Application as established under this Article and in compliance with the Heritage Grant application materials.~~

C. An applicant seeking Heritage Grant funding shall submit to the Department a Heritage Fund Grant application according to a schedule of due dates determined by the Director. An applicant shall provide the following information on the Heritage Grant application form:
1. The name of the applicant;
2. Any county and legislative district where the project will be developed or upon which the project will have a direct impact;
3. The name, title, mailing address, e-mail address, and telephone number of the individual responsible for the day-to-day management of the proposed project;
4. Identification of the application criterion established in the Heritage Grant application materials;
5. A descriptive project title;
6. The name of the site, primary location, and any other locations of the project;
7. Description of the:
   a. Scope of work and the objective of the proposed project,
   b. Methods for achieving the objective, and
   c. Desired result of the project;
8. The beginning and ending dates for the project;
9. The resources needed to accomplish the project, including grant monies requested, and, if applicable, evidence of secured matching funds or contributions; and
10. Any additional supporting information required by the Department.
11. Signature and date. The person signing the grant application form shall have the authority to enter into agreements, accept funding, and fulfill the terms of the Grant Agreement on behalf of the applicant.

D. A person applying for multiple projects shall submit a separate application for each project.

~~C.~~**E.** An applicant shall demonstrate ownership or control of the project. Ownership or control may be demonstrated through fee title, lease, easement, or agreement. For all other project types related to sites not controlled by an applicant, an applicant shall provide written permission from the property owner authorizing the project activities and access. The applicant's proof of ownership or control or written permission shall demonstrate:

1. Permission for access is not revocable at will by the property owner, and
2. Public access will be granted to the project site for the life of the project, unless the purpose of the project proposal is to limit access.

F. Heritage Grant proposals are competitive and the Department shall make awards based on a proposed project's compatibility with the priorities of the Department, as approved by the Commission.

G. The Department may require an applicant to modify the application prior to awarding a Heritage Grant, if the Department determines that the modification is necessary for the successful completion of the project.

H. When applicable, the Department shall not release Heritage Grant funds until after the Department has consulted with the State Historic Preservation Office regarding the proposed project's potential impact on historic and archaeological properties and resources.

~~D.~~**I.** The Department shall notify an applicant in writing of the results of the applicant's submission and announce Heritage Grant awards at a regularly scheduled open meeting of the Commission.

~~E. A participant shall not begin a project described in an application until after the grant effective date.~~

J. A participant shall:

1. Sign the Grant Agreement before the Department transfers any grant funds.
2. Deposit transferred Heritage Grant funds in a dedicated account carrying the name and number of the project. In the event the funds are deposited in an interest-bearing account, any interest earned shall be:
   a. Used for the purpose of furthering the project, with prior approval from the Department; or
   b. Remitted to the Department upon completion of the project.

~~F.~~3. ~~A participant shall complete~~ Complete the project as specified under the terms and conditions of the Grant Agreement.

4. Use awarded Heritage Grant funds solely for the project described in the application and as approved by the Department.
5. Bear full responsibility for performance of its subcontractors to ensure compliance with the Grant Agreement.
6. Pay all costs associated with the operation and maintenance of properties, facilities, equipment, services, publications, and other media funded by a Heritage Grant for the term of public use as specified in the Grant Agreement.
7. Submit records that substantiate the expenditure of Heritage Grant funds. In addition, each participant shall retain and shall contractually require each subcontractor to retain all books, accounts, reports, files, and any other records relating to the acquisition and performance of the contract for a period of five years from the end date of the project period. The Department may inspect and audit participant and subcontractor records as prescribed under A.R.S. § 35-214. Upon the Department's request, a participant or subcontractor shall produce a legible copy of these records.
8. Allow Department employees or agents to conduct inspections and reviews:
   a. To ensure compliance with all terms and conditions established under the Grant Agreement.
   b. Before release of the final payment.
9. Give public acknowledgment of Heritage Fund grant assistance for the term of public use of a project. If a project involves acquisition of property, development of public access, or renovation of a habitat site, the participant shall install a permanent sign describing the funding sources. The participant may include the cost of this signage as part of the original project. The participant is responsible for maintenance or replacement of the sign as required. For other project types, the participant shall include Heritage Fund grant funding acknowledgment on any publicly available or accessible products resulting from the project.

~~G. A participant shall deposit transferred Heritage Grant Funds in a dedicated non-interest bearing account carrying the name and number of the project.~~

~~H. A participant shall use awarded Heritage Grant Funds solely for eligible purposes of the funding program as defined by law and as approved by the Department.~~

K. A participant shall not:

1. Begin a project described in the application until after the grant effective date.

~~I.~~2. ~~A participant shall not use~~ Use Heritage Grant ~~Funds~~ funds for the purpose of producing income unless authorized by the Department. A participant shall use all income generated to further the purpose of the approved project or surrender the income to the original funding source.

3. Comingle Heritage Grant funds with any other funds.
4. Use Heritage Grant funds to pay the salary of any public agency employee. A participant may use a public agency's employee's time as in-kind match for the project specified in the Grant Agreement.

L. The parties may amend the terms of the Grant Agreement by mutual written consent. The Department shall prepare any approved amendment in writing, and both the Department and the Grantee shall sign the amendment.

M. The Department and the participant may amend the Grant Agreement during the project period. A participant seeking to amend the Grant Agreement shall submit a written request that includes justification to amend the Grant Agreement. The Department shall prepare any approved amendment in writing and both the Department and the participant shall sign the amendment.

N. A participant shall submit project status reports, as required in the Grant Agreement. If a participant fails to submit a project status report, the Department may not release any remaining grant monies until the participant has submitted all past due project status reports. The project status report shall include the following information, as applicable:
1. Progress in completing approved work;
2. Itemized, cumulative project expenditures;
3. A financial accounting of:
   a. Heritage Grant Funds,
   b. Matching funds,
   c. Donations, and
   d. Income derived from project funds;
4. Any delays or problems that may prevent the on-time completion of the project; and
5. Any other information required by the Department.

O. At the end of the project period and for each year until the end of the term of public use, a participant shall:
1. Certify compliance with the Grant Agreement, and
2. Complete a post-completion report form furnished by the Department.

~~J.~~P. ~~If~~ Upon completion of approved project elements, if a balance of awarded Heritage Grant funds ~~remain~~ remains ~~upon completion of approved project elements~~, the participant may~~, with Department approval, use those~~;
1. Use the unexpended funds for an additional project consistent with the original scope of work, when approved by the Department; or ~~surrender those~~
2. Surrender the unexpended funds to the Department.

Q. Upon completion of the project a participant shall:
1. Surrender equipment with an acquisition cost of more than $500 to the Department upon completion, or
2. Use equipment purchased with Heritage Grant funds in a manner consistent with the purposes of the Grant Agreement.

~~**K.** A participant shall use equipment purchased with Heritage Grant funds in a manner consistent with the purposes of the Grant Agreement, and surrender the equipment to the Department upon completion of the project, if the equipment has an acquisition cost of more than $500.~~

~~**L.** A participant shall not use Heritage Grant funds to pay the salary of any permanent employee. A participant may use a permanent employee's time as in-kind match for the project specified in the Grant Agreement.~~

~~**M.** A participant shall allow Department employees or agents to conduct inspections and reviews:~~
~~1. To ensure compliance with all terms and conditions established under the Grant Agreement.~~
~~2. Before release of the final payment.~~

~~**N.** A participant shall submit records that substantiate the expenditure of Heritage Grant funds.~~

~~**O.** A participant shall bear full responsibility for performance by subcontractors to ensure compliance with the Grant Agreement.~~

~~**P.** A participant shall pay all costs associated with the operation and maintenance of properties, facilities, equipment, services, publications, and other media funded by a Heritage Grant for the term of public use as specified in the Grant Agreement.~~

~~**Q.** A participant shall give public acknowledgment of Heritage Fund grant assistance for the term of public use of a project. If a project involves acquisition of property, development of public access, or renovation of a habitat site, the participant shall install a permanent sign describing the funding sources. The participant may include the cost of this signage as part of the original project. The participant is responsible for maintenance or replacement of the sign as required. For other project types, the participant shall include Heritage Fund grant funding acknowledgment on any publicly available or accessible products resulting from the project.~~

R. A participant may request an extension beyond the approved project period by writing to the Department.
1. Requests for an extension shall be submitted by the participant no later than 30 days before the end of the project period.
2. If approved, an extension shall be signed by both the participant and the Department.

S. A participant that has a Heritage Grant funded project in extension shall not apply for, nor be considered for, further Heritage Grants until the administrative subunit's project under extension is completed.

T. In addition, the Department may administratively extend the project period for good cause such as, but not limited to, inclement weather, internal personnel changes, or to complete the final closure documents.

~~R.~~U. ~~An administrative subunit~~ A participant that failed to comply with the terms and conditions of a Grant Agreement shall not apply for, nor be considered for, further Heritage Grants until the ~~administrative subunit's~~ participant's project is brought into compliance.

~~**S.** An administrative subunit that has a Heritage Grant funded project in extension shall not apply for, nor be considered for, further Heritage Grants until the administrative subunit's project under extension is completed.~~

V. If a participant is not in compliance with the Grant Agreement, the Department may:
1. Terminate the Grant Agreement,
2. Seek recovery of grant monies awarded, and
3. Classify the participant as ineligible for Heritage Fund Grants for a period of up to five years.

R12-4-703. ~~Heritage Grant Program Funds~~ Repealed

~~**A.** Environmental Education Grant. An eligible applicant shall ensure a proposed project is designed to:~~

1. ~~Develop awareness, appreciation, and understanding of Arizona's wildlife and its environment and increase responsible actions toward wildlife;~~
2. ~~Use Arizona wildlife as its focus and present wildlife issues in a balanced and fair manner; and~~
3. ~~Benefit Arizona public schools, public charter schools, and students.~~

~~**B.** HAPM Grant: Identification, Inventory, Acquisition, Protection, and Management of Sensitive Elements. An eligible applicant shall ensure a proposed project is designed to:~~
1. ~~Preserve and enhance Arizona's natural biological diversity; and~~
2. ~~Incorporate identification, inventory, acquisition, protection, or management of sensitive elements.~~

~~**C.** Outdoor Education Grant: An eligible applicant shall ensure a proposed project is designed to:~~
1. ~~Provide a meaningful outdoor educational experience;~~
2. ~~Develop awareness, appreciation, and stewardship of Arizona's wildlife and wildlife habitats; and~~
3. ~~Benefit Arizona public schools, public charter schools, and students.~~

~~**D.** Public Access Grant: An eligible applicant shall ensure a proposed project:~~
1. ~~Is designed to increase or maintain public access for recreational use related to wildlife;~~
2. ~~Is in cooperation with federal land managers, local and state governments, private landowners, or public users, as applicable; and~~
3. ~~Is designed to inform and educate the public about recreational use of publicly held lands and public access to those lands.~~

~~**E.** Schoolyard Habitat Grant: An eligible applicant shall ensure a proposed project is designed to:~~
1. ~~Develop awareness, appreciation, and understanding of Arizona's wildlife and its environment;~~
2. ~~Encourage wildlife educational activities on Arizona school sites or adjacent areas;~~
3. ~~Encourage native wildlife species, utilize native plant materials, and demonstrate water conservation techniques;~~
4. ~~Allow Arizona students to actively participate in the planning, development, and construction process;~~
5. ~~Be integrated into the school curriculum; and~~
6. ~~Benefit Arizona public schools, public charter schools, and students.~~

~~**F.** Urban Wildlife and Urban Wildlife Habitat Grant. An eligible applicant shall ensure a proposed project:~~
1. ~~Is designed to conserve, enhance, and establish wildlife habitats and populations consistent with urban environments, and increase public awareness and support for urban wildlife resources; and~~
2. ~~Meets one of the following criteria:~~
   a. ~~Is within the incorporated limits of a city or town;~~
   b. ~~Is within five miles, in straight distance, of the boundary of an incorporated area; or~~
   c. ~~Is an area that receives significant impact from residential development, as determined by the Department.~~

R12-4-704. ~~Grant Application~~ Repealed

~~**A.** To be considered for a Heritage Grant, an eligible applicant shall submit a grant application as established under this Article and in compliance with the Heritage Grant Application materials.~~

~~**B.** An applicant who is applying for multiple projects, shall submit a separate application for each project.~~

~~**C.** An applicant shall provide the following information on the Heritage Grant application form:~~
1. ~~The name of the applicant;~~
2. ~~Any county and legislative district where the project will be developed or upon which the project will have a direct impact;~~
3. ~~The name, title, mailing address, e-mail address, and telephone number of the individual responsible for the day-to-day management of the proposed project;~~
4. ~~Identification of the specific Heritage Grant program fund;~~
5. ~~A descriptive project title;~~
6. ~~The name of the site, primary location, and any other locations of the project;~~
7. ~~Description of the:~~
   a. ~~Scope of work and the objective of the proposed project,~~
   b. ~~Methods for achieving the objective, and~~
   c. ~~Desired result of the project;~~
8. ~~The beginning and ending dates for the project;~~
9. ~~The resources needed to accomplish the project, including grant monies requested, and, if applicable, evidence of secured matching funds or contributions;~~
10. ~~If the eligible applicant is a non-profit organization exempt from federal income taxation under Section 501(c) of the Internal Revenue Code, documentation or other evidence of the exemption; and~~
11. ~~Any additional supporting information required by the Department.~~

~~**D.** The person signing the grant application form shall have the authority to enter into agreements, accept funding, and fulfill the terms of the Grant Agreement on behalf of the applicant.~~

R12-4-705. ~~Review of Proposals~~ Repealed

A. ~~Heritage Grant proposals are competitive and the Department shall make awards based on a proposed project's compatibility with the priorities of the Department, as approved by the Commission.~~

B. ~~The Department may require an applicant to modify the application prior to awarding a Heritage Grant, if the Depart-~~

~~ment determines that the modification is necessary for the successful completion of the project.~~

R12-4-706. ~~State Historic Preservation Office Review~~ Repealed

~~When applicable, the Department shall not release Heritage Grant Funds until after the Department has consulted with the State Historic Preservation Office regarding the proposed project's potential impact on historic and archaeological properties and resources.~~

R12-4-707. ~~Grant Agreement~~ Repealed

~~**A.** Before the Department transfers any grant funds, the applicant shall sign the Grant Agreement.~~

~~**B.** A participant may request an extension beyond the approved project period by writing to the Department. Requests for an extension shall be submitted by the participant no later than 30 days before the end of the project period. If approved, an extension shall be signed by both the participant and the Department.~~

~~**C.** Notwithstanding subsection (B), the Department may extend the project period for good cause such as, but not limited to, inclement weather or internal personnel changes.~~

~~**D.** The Department and the participant may amend the Grant Agreement during the project period. A participant seeking to amend the Grant Agreement shall submit a written request that includes justification to amend the Grant Agreement. The Department shall prepare any approved amendment in writing and both the Department and the participant shall sign the amendment.~~

~~**E.** If a participant is in default of the Grant Agreement, the Department may:~~

~~1. Terminate the Grant Agreement,~~

~~2. Seek recovery of grant monies awarded, and~~

~~3. Classify the participant as ineligible for Heritage Fund Grants for a period of up to five years.~~

~~**F.** The Department, at its sole discretion, has the authority to include additional conditions in the Grant Agreement prior to signing the Agreement and through Amendment.~~

R12-4-708. ~~Reporting and Recordkeeping Requirements~~ Repealed

~~**A.** A participant shall submit project status reports to the Department as specified in the Grant Agreement. The project status report shall include the following information, as applicable:~~

~~1. Progress in completing approved work;~~

~~2. Itemized, cumulative project expenditures;~~

~~3. A financial accounting of:~~

~~a. Heritage Grant Funds,~~

~~b. Matching funds,~~

~~c. Donations, and~~

~~d. Income derived from project funds;~~

~~4. Any delays or problems that may prevent the on-time completion of the project; and~~

~~5. Any other information required by the Department.~~

~~**B.** At the end of the project period and for each year until the end of the term of public use, a participant shall:~~

~~1. Certify compliance with the Grant Agreement, and~~

~~2. Complete a post-completion report form furnished by the Department.~~

~~**C.** A participant shall submit project status reports, as required in the grant materials. If a participant fails to submit a project status report, the Department may not release any remaining grant monies until the participant has submitted all past due project status reports.~~

~~**D.** Each participant shall retain and shall contractually require each subcontractor to retain all books, accounts, reports, files, and any other records relating to the acquisition and performance of the contract for a period of five years from the end date of the project period. The Department may inspect and audit participant and subcontractor records as prescribed under A.R.S. § 35-214. Upon the Department's request, a participant or subcontractor shall produce a legible copy of these records.~~