

NOTICE OF EXEMPT RULEMAKING
TITLE 9. HEALTH SERVICES
CHAPTER 18. DEPARTMENT OF HEALTH SERVICES
ADULT-USE MARIJUANA PROGRAM

FILED

PREAMBLE

- | | | |
|------------------|--|---------------------------------|
| <u>1.</u> | <u>Article, Part or Sections Affected (as applicable)</u> | <u>Rulemaking Action</u> |
| | R9-18-102 | Amend |
| | Table 1.1 | Amend |
| | R9-18-303 | Amend |
- 2.** **Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific) and the statute or session law authorizing the exemption:**
- Authorizing statutes: A.R.S. §§ 36-136(G) and 36-2854
 Implementing statutes: A.R.S. §§ 36-2854, 36-2858, 36-2862, 36-2865, and 41-1080.01
 Statute or session law authorizing the exemption: Proposition 207, § 8
- 3.** **The effective date of the rule and the agency’s reason it selected the effective date:**
- October 13, 2021
 This is the date the Department filed the rules being adopted in this rulemaking with the Office of the Secretary of State.
- 4.** **A list of all notices published in the Register as specified in R9-1-409(A) that pertain to the record of the exempt rulemaking:**
- Notice of Public Information: 26 A.A.R. 3155, December 11, 2020
 Notice of Exempt Rulemaking: 27 A.A.R. 140, January 29, 2021
 Notice of Exempt Rulemaking: 27 A.A.R. 693, May 7, 2021
 Notice of Exempt Rulemaking: 27 A.A.R. 696, May 7, 2021
 Notice of Exempt Rulemaking: 27 A.A.R. 747, May 14, 2021
 Notice of Exempt Rulemaking: 27 A.A.R. 897, June 18, 2021
 Notice of Exempt Rulemaking: 27 A.A.R. 1229, August 13, 2021
 Notice of Exempt Rulemaking: 27 A.A.R. 1587, October 1, 2021
- 5.** **The agency’s contact person who can answer questions about the rulemaking:**
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6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered to include an explanation about the rulemaking:

As part of the election in November 2020, voters approved Proposition 207, establishing Arizona Revised Statutes (A.R.S.) Title 36, Chapter 28.2, relating to “the responsible adult use, regulation and taxation of marijuana.” A.R.S. § 36-2854 requires the Arizona Department of Health Services (Department) to adopt rules to implement and enforce A.R.S. Title 36, Chapter 28.2, regulating “marijuana, marijuana products, marijuana establishments and marijuana testing facilities.” A.R.S. § 36-2855 requires marijuana facility agents to be registered with the Department. After receiving an exception from the rulemaking moratorium established by Executive Order 2020-02, the Department adopted rules in 9 A.A.C. 18, effective January 15, 2021, for licensing of marijuana facility agents and marijuana establishments to comply with A.R.S. Title 36, Chapter 28.2. The Department conducted subsequent rulemakings in 9 A.A.C. 18, effective May 1, 2021, for the licensing of marijuana testing facilities and the testing of marijuana and marijuana products before sale by marijuana establishments, and effective June 1, 2021, relating to requirements for licensing marijuana establishments under a “social equity ownership program” implement A.R.S. § 36-2854(A)(9). Now the Department is revising those requirements to reduce the burden on those regulated by the rules and improve their effectiveness. Pursuant to Proposition 207, the Department is exempt from the rulemaking requirement of A.R.S. Title 41, Chapters 6 and 6.1 for 60 months after the effective date of the law.

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 Department did not rely on any study in making these changes to the rules.

8. A showing of good cause why the rule 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, if applicable:

Not applicable

10. A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and final rulemaking package, (if applicable):

Not applicable

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

Not applicable

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but not be limited to:

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:

A marijuana facility agent license, issued according to A.R.S. § 36-2855, is a general permit. A marijuana establishment license or marijuana testing facility license, issued according to A.R.S. § 36-2854, is specific to the license holder, location, and scope of services provided. As such, a general permit is not applicable and is not used.

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

Not applicable

- 14. Whether this rule previously made, amended, repealed or renumbered as an emergency rule. If so, the agency shall state where the text changed between the emergency and the exempt rulemaking packages:**

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

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

TITLE 9. HEALTH SERVICES
CHAPTER 18. DEPARTMENT OF HEALTH SERVICES
ADULT-USE MARIJUANA PROGRAM
ARTICLE 1. GENERAL

Section

R9-18-102. Fees

Table 1.1. Time-frames

ARTICLE 3. MARIJUANA ESTABLISHMENTS

Section

R9-18-303. Applying for an Initial Marijuana Establishment License

ARTICLE 1. GENERAL

R9-18-102. Fees

- A. An applicant submitting an application to the Department shall submit the following nonrefundable fees:
1. Except as specified in subsection (B), for a marijuana facility agent license:
 - a. For an initial license for an applicant submitting the applicant's fingerprints on a fingerprint card, \$300;
 - b. For renewal of a license for an applicant submitting the applicant's fingerprints on a fingerprint card, \$300;
 - c. For an initial license for an applicant submitting a copy of the applicant's current level 1 fingerprint clearance card issued pursuant to A.R.S. § 41-1758.07, \$150; and
 - d. For renewal of a license for an applicant submitting a copy of the applicant's current level 1 fingerprint clearance card issued pursuant to A.R.S. § 41-1758.07, \$150;
 2. For changing information on a marijuana facility agent's license, \$10;
 3. For requesting a replacement marijuana facility agent license, \$10;
 4. Except as specified in subsection (C), for a marijuana establishment license:
 - a. An application fee for an initial license, \$25,000; and
 - b. A license fee for license renewal, \$5,000;
 5. For applying for an approval to operate, \$2,500;
 6. To change the location of a marijuana establishment's retail site, cultivation site, or manufacturing site, \$2,500;
 7. To add a cultivation site or manufacturing site, \$2,500;
 8. To change the approved activities for a marijuana establishment's retail site, cultivation site, or manufacturing site, \$2,500; and
 9. For a marijuana testing facility license:
 - a. For an initial license, \$25,000; and
 - b. For license renewal, \$5,000.
- B. An applicant for an initial marijuana facility agent license is not required to submit the applicable fee in subsection (A)(1) if the applicant, as part of the application packet in R9-18-201, submits an attestation that the applicant meets the criteria for waiver of licensing fees in A.R.S. § 41-1080.01.

- C. An applicant submitting an application to the Department for an initial marijuana establishment license under A.R.S. § 36-2854(A)(1)(f) shall submit a nonrefundable application fee of \$5,000 \$4,000.

Table 1.1. Time-frames

Type of approval	Authority (A.R.S. § or A.A.C.)	Overall Time-frame (in working days)	Time-frame for applicant to complete application (in working days)	Administrative Completeness Time-frame (in working days)	Substantive Review Time-frame (in working days)
Applying for a marijuana facility agent license	§ 36-2855 R9-18-201	15	30	5	10
Renewing a marijuana facility agent license	§ 36-2855 R9-18-202	15	15	5	10
Applying for a marijuana establishment license	§ 36-2854 R9-18-303	60 <u>90</u>	5 <u>10</u>	30	30 <u>60</u>
Applying for approval to operate a marijuana establishment	§ 36-2854 R9-18-304	90	90	30	60
Changing the location of a marijuana establishment's retail site or adding or changing a marijuana establishment's cultivation site or manufacturing site location	§ 36-2854 R9-18-306	90	90	30	60
Requesting approval to change an activity	§ 36-2854 R9-18-306	90	90	30	60
Renewing a marijuana establishment license	§ 36-2854 R9-18-307	15	15	5	10
Applying for a marijuana testing facility license	§ 36-2854	90	90	30	60
Applying for approval for	§ 36-2854	90	90	30	60

testing					
Renewing a marijuana testing facility license	§ 36-2854	15	15	5	10
Applying to add a parameter	§ 36-2854	90	90	30	60

ARTICLE 3. MARIJUANA ESTABLISHMENTS

R9-18-303. Applying for an Initial Marijuana Establishment License

- A. To apply for an initial marijuana establishment license under A.R.S. § 36-2854(A)(1)(f), an applicant shall electronically submit to the Department, ~~between during the application period~~ beginning on December 1, 2021, and ending on December 14, 2021:
1. The following information in a Department-provided format:
 - a. The legal name of the proposed marijuana establishment;
 - b. The following information for the applicant:
 - i. Name of the entity applying,
 - ii. Type of business organization,
 - iii. Arizona mailing address,
 - iv. Telephone number, and
 - v. E-mail address;
 - c. ~~For a business organization that is not a publicly traded corporation, the~~ The name, residence address, and date of birth of each principal officer and each board member, according to R9-18-301;
 - d. ~~For a business organization that is a publicly traded corporation, the~~ The name, residence address, and, if applicable, date of birth of:
 - i. ~~each principal officer and each board member, according to R9-18-301~~
For a business organization that is not a publicly traded corporation, any person who is entitled to 10% or more of the a portion of the profits of the proposed marijuana establishment; and
 - ii. For a business organization that is a publicly traded corporation, any person who is entitled to 10% or more of the profits of the proposed marijuana establishment;
 - e. Whether the applicant agrees to allow the Department to submit supplemental requests for information;
 - f. An attestation that, if the applicant is issued a marijuana establishment license, the proposed marijuana establishment will not operate until the proposed marijuana establishment is inspected and obtains an approval to operate from the Department;
 - g. An attestation that the applicant understands and will comply with the requirements in A.R.S. Title 36, Chapter 28.2, and this Chapter;

- h. An attestation that information provided to the Department to apply for a marijuana establishment license is true and correct; and
 - i. The signatures of each principal officer and each board member of the proposed marijuana establishment according to R9-18-301 and the date signed;
 - 2. Documentation that the applicant is in good standing with the Arizona Corporation Commission;
 - 3. For each principal officer and each board member listed according to subsection (A)(1)(c) or (d), documentation of the principal officer's or board member's marijuana facility agent license;
 - 4. An attestation from each principal officer and each board member listed according to subsection (A)(1)(c) or (d) that, neither the principal officer or board member nor the applicant have, directly or indirectly, entered or promised to enter into any agreements for a change in "ownership" as defined in subsection (E), that will cause the applicant to no longer qualify for a marijuana establishment license under subsection (B).
 - ~~3-5.~~ An attestation from each principal officer and each board member listed according to subsection (A)(1)(c) or (d) that, ~~subject to the completion of expungement proceedings according to A.R.S. § 36-2862 if applicable,~~ the principal officer or board member does not have an excluded felony offense, as defined in A.R.S. § 36-2801;
 - 4-6. Documentation that the applicant is eligible to apply under A.R.S. § 36-2854(A)(9), as specified in subsection (B);
 - 5-7. Documentation confirming that each principal officer or board member who meets the criteria in subsections (B)(1) and (2) cannot be removed from the principal officer's or board member's position without:
 - a. The written consent of the principal officer or board member, or
 - b. A court order for removal of the principal officer or board member; and
 - ~~6-8.~~ The application fee in R9-18-102(C) for a marijuana establishment license.
- B.** An applicant is eligible to apply for a marijuana establishment license under subsection (A) if:
 - 1. By November 17, 2021, each principal officer and each board member according to R9-18-301 has completed the Department-provided educational training course, through the Department's portal system, focusing on:
 - a. Forming and registering a business in Arizona, which may include:
 - i. Identifying potential exploitive or predatory offers,
 - ii. Benefits and drawbacks of different types of business structures,
 - iii. Purposes and importance of business documents,

- iv. Having legal review of potential contracts and documents, and
- v. Registering a business with the Arizona Corporation Commission and Arizona Department of Revenue;
- b. Obtaining financial backing, which may include:
 - i. Fundraising and investors,
 - ii. Financial modeling to estimate past and potential revenue and expenses, and
 - iii. Creating an executive summary of a business plan;
- c. The application and licensing process, which may include:
 - i. Eligibility,
 - ii. Application portal,
 - iii. Required documentation and fees,
 - iv. Availability of assistance with preparing applications,
 - v. Review of state laws and rules related to the operation of a marijuana establishment, and
 - vi. Ensuring compliance with state laws and rules related to the operation of a marijuana establishment; and
- d. Information relevant to an applicant that is successful in obtaining a license for a marijuana establishment, which may include:
 - i. Identifying and obtaining an appropriate location;
 - ii. Location considerations specific to marijuana establishments;
 - iii. Employment-related information and considerations;
 - iv. Marketing, trademarks, and branding; and
 - v. Other information related to operating a marijuana establishment;
- ~~1.2.~~ One or more of the principal officers or board members of the applying entity holds at least 51% ownership in the entity; ~~and~~
- ~~2.3.~~ Each individual specified according to subsection ~~(B)(1)~~ (B)(2) as being one or more of the principal officers or board members of the applying entity holding an aggregate of at least 51% ownership in the entity:
 - a. ~~Has a certificate of completion of the Department-provided educational training course focusing on:~~
 - i. ~~State laws and regulations related to the operation of a marijuana establishment,~~
 - ii. ~~Obtaining financial backing, and~~

- iii. ~~Specific requirements in the rules of this Chapter; and~~
- b. ~~Meets~~ meets at least three of the following four criteria:
 - i-a. ~~Had a an annual household income, as defined in A.A.C. R9-6-401, in at least three of the previous five years 2016 through 2020 that, for the respective year, was less than 400% of the federal poverty level, ~~which is the annual household income for a household of a particular size that is specified in the poverty guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services~~, as defined in A.A.C. R9-6-401, as shown by:

 - i. ~~The applicable portion of an income tax return submitted to the U.S. Internal Revenue Service by the individual or an adult in the individual's household, as defined for the individual in A.A.C. R9-6-401, for the applicable tax year; or~~
 - ii. ~~If an income tax return was not filed for an applicable year, documentation showing the amount and source of all monetary payments received by an adult in the individual's household for the applicable tax year;~~~~
 - ii-b. Has been adversely affected by the enforcement of previous marijuana laws because the individual:
 - (1)i. ~~Is eligible for and has petitioned for~~ Has been granted expungement pursuant to A.R.S. § 36-2862, as demonstrated by a copy of the expungement issued by the prosecuting state or jurisdiction; or
 - (2)ii. ~~Was convicted in Arizona of a violation of federal or state law related to marijuana or marijuana paraphernalia, and does not have an excluded felony offense as demonstrated by a copy of the court's conviction document issued by the prosecuting state or jurisdiction;~~
 - iii-c. Has been adversely affected by the enforcement of previous marijuana laws because the individual is or was related during the time-frame specified, ~~as one of the following,~~ to another individual who:
 - i. ~~was~~ Was convicted in Arizona of a violation of federal or state laws related to marijuana or marijuana paraphernalia, or is or was eligible for expungement pursuant to A.R.S. § 36-2862, as demonstrated by court documents for the other individual issued by the prosecuting state or jurisdiction; and

ii. Is one of the following, as demonstrated by applicable documentation, specified by the Department, verifying the individual's relationship to the other individual on the date of application or at the time of conviction or the event making the other individual eligible for expungement pursuant to A.R.S. § 36-2862:

- (1) Spouse, defined as an individual who is currently married to the other individual;
- (2) Surviving spouse, as defined in A.A.C. R9-1-301 defined as an individual to whom a deceased other individual was married at the time of the deceased other individual's death;
- (3) Parent, as defined in A.A.C. R9-1-301 defined as a biological, an adoptive, or a foster mother or father, including a stepmother or stepfather, whose parental rights are not terminated under A.R.S. Title 8, Chapter 4, Article 5;
- (4) Child, defined as a parent's biological, adoptive, or foster child, including stepchild;
- (5) Sibling, defined as a full- or half-, biological, adoptive, or foster sister or brother, including a stepsister or stepbrother; or
- (6) Legal guardian, as defined in A.A.C. R9-1-301 as a person appointed by a court of competent jurisdiction under A.R.S. Title 8, Chapter 4, Article 12; A.R.S. Title 14, Chapter 5; or another state's laws for the protection of minors and incapacitated persons; or

iv.d. Has a physical address, and has lived for at least three of the previous five years 2016 through 2020 at the a physical address, in a community an area that has been identified by the Department as being disproportionately affected by the enforcement of Arizona's previous marijuana laws, as demonstrated by applicable documentation specified by the Department; and

4. No individual listed according to (A)(1)(c) or (d) has entered into any pre-arranged, tentative, or final agreement or promise to sell or otherwise limit the ownership or interest of any individual listed according to (A)(1)(c) or (d) in the proposed marijuana establishment.

C. An applicant shall ensure that no principal officer, or board member, or person entitled to 10% or more of the profits of the applying entity is a principal officer or board member on more than one

other marijuana establishment license application as a principal officer, board member, or person entitled to 10% or more of the profits of the other applying entity, for a total of no more than two marijuana establishment license applications, submitted according to subsection (A).

- D.** Before an entity with a marijuana establishment license begins operating a marijuana establishment, the entity shall apply for and obtain an approval to operate a marijuana establishment from the Department.
- E.** For purposes of subsection (B), “ownership” means that an individual has an interest in an applying entity that:
1. Entitles the individual to at least that portion of distributed profits of the applying entity that is proportional to the percentage of the individual’s interest in the applying entity;
 2. Ensures that the individual has a percentage of the voting rights in the applying entity that is proportional to the percentage of the individual’s interest in the applying entity; and
 3. Is not subject to restrictions or assignments of voting rights or other arrangements that ~~causes~~ cause or may cause benefits derived from the individual’s interest in the applying entity to go to another individual due to any circumstance other than voluntary sale of the interest or the individual’s death or incapacity.