

NOTICE OF FINAL EXPEDITED RULEMAKING
TITLE 9. HEALTH SERVICES
CHAPTER 8. DEPARTMENT OF HEALTH SERVICES
FOOD, RECREATION, AND INSTITUTIONAL SANITATION

SECRETARY OF STATE

2018 FEB -7 AM 10: 04

FILED

PREAMBLE

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

	<u>Rulemaking Action</u>
Article 3	Amend
R9-8-301	Amend
R9-8-302	Amend
R9-8-303	New Section
R9-8-304	Amend
R9-8-306	Repeal
R9-8-307	Repeal
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statutes: A.R.S. §§ 36-104(1)(b)(i), 36-136(A)(7) and 36-136(G)

Implementing statutes: A.R.S. §§ 36-136(A)(6), 36-601, 36-602, and 36-603
- 3. The effective date of the rules:**

The rules are effective the day the Notice of Final Expedited Rulemaking is filed with the Office of the Secretary of State.
- 4. Citations to all related notices published in the Register that pertain to the record of the Notice of Final Expedited Rulemaking:**

Docket Opening: 23 A.A.R. 3363, December 8, 2017

Notice of Proposed Expedited Rulemaking: 23 A.A.R. 3356, December 8, 2017
- 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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The five-year-review report (Report) for 9 A.A.C. 8, Article 3, was approved by the Governor's Regulatory Review Council on September 6, 2017. The Report identified that the rules are not consistent with the statutory change under Laws 2001, Ch. 19, §1, effective August 9, 2001. Laws 2001, Ch. 19, §1 removed the Arizona Department of Health Services' (Department) authority to regulate sanitary conditions for public and semipublic buildings. The Report also identified that the rules contain citations to A.A.C. Title 18 rules that have been recodified or repealed, as well as definitions that are unnecessary or outdated. As reported, the Department plans to amend the rules to comply with Laws 2001, Ch. 19 § 1; update or delete A.A.C. Title 18 citations; and amend, add, or delete definitions to make the rules more specific to portable toilets used for special events. Amending these rules as identified in the Report meets the criteria for expedited rulemaking. The changes identified will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of a regulated person as prescribed in A.R.S. § 41-1027(A). The rulemaking further meets the criteria for expedited rulemaking by implementing a course of action proposed in a five-year-review report, prescribed in A.R.S. § 41-1027(A)(7). The Department believes amending these rules will eliminate confusion and reduce regulatory burden.

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

The Department did not review or rely on any study for this expedited 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. The agency is exempt from the requirements under ARS 41-1055(G) to prepare and file an economic, small business, and consumer impact statement under ARS 41-1055(D)(2).

The agency is excluded from providing an economic, small business, and consumer impact statement under A.R.S. § 41-1055(D)(2).

10. A description of any changes between the proposed expedited rulemaking and the final expedited rulemaking.

Between the proposed expedited rulemaking and the final expedited rulemaking, no changes were made to the expedited rulemaking.

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

The Department did not receive public or stakeholder comments about the expedited rulemaking.

12. 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:

There are no other matters prescribed by statute applicable specifically to the Department or this specific 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 the issuance of a permit.

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

Federal law does not apply to the rule.

- 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 such 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 rules:

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:

The rule was not previously made as an emergency rule.

15. The full text of the rule follows:

TITLE 9. HEALTH SERVICES
CHAPTER 8. DEPARTMENT OF HEALTH SERVICES
FOOD, RECREATION, AND INSTITUTIONAL SANITATION

ARTICLE 3. ~~PUBLIC TOILETS FACILITIES~~ PORTABLE TOILETS

Section

- R9-8-301. Definitions
- R9-8-302. ~~Persons Responsible~~ General Requirements
- R9-8-303. Public Portable Toilet Requirements
- R9-8-304. ~~Constructing and Maintaining a Portable Toilet~~ Inspections
- R9-8-306. ~~Special Events~~ Repealed
- R9-8-307. ~~Disposal of Sewage and Refuse~~ Repealed

ARTICLE 3. ~~PUBLIC TOILET FACILITIES~~ PORTABLE TOILETS

R9-8-301. Definitions

In this Article:

1. ~~"Bathroom"~~ means a restroom that contains a shower or bathtub.
1. "Clean" means free of dirt, litter, and the remains of something that has broken or torn into pieces.
2. ~~"Department"~~ means the Department of Health Services.
2. "Complaint" means information indicating the need for inspection due to possible violations of this Article.
3. ~~"Director"~~ means the Director of the Department of Health Services.
3. "Durable" means capable of withstanding expected use and remaining easily cleanable.
4. ~~"Flooded" means a sanitary fixture that is overflowing sewage or filled with sewage to the point of overflowing.~~
4. "Food establishment" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption.
5. ~~"Lavatory" means a sink or basin for cleansing hands.~~
5. "Human excreta" means fecal and urinary discharges and includes any waste that contains this material.
6. "Leakproof" means designed and constructed to prevent a substance from escaping.
7. "Non-absorbent" means incapable of being penetrated by liquid, such as a material coated or treated with rubber, plastic, or other sealing surface.
6. ~~"Person" means a governmental agency, individual, organization, association, partnership, business, corporation, or company.~~
7. ~~"Plumbing system" means sanitary fixtures, pipes, and related parts assembled to carry water into a structure and or carry sewage out of a structure.~~
8. "Portable hand-wash station" means a transportable sink or basin with a faucet for cleaning hands that supplies water and is:
 - a. Not connected to a sewage collection system,
 - b. Connected to a leakproof tank to receive and store waste water, and
 - c. Located in a public place.
8. "Portable toilet" means a transportable toilet connected to a leakproof tank to receive and store sewage temporarily.

9. “Portable toilet enclosure” means a structure that is capable of being moved and that houses a public portable toilet.
9. “Potable” means water obtained from a source or distribution system that complies with the requirements of the Department of Environmental Quality as provided in 18 A.A.C. 4.
10. “Putrescible waste” means a solid or semisolid waste material that is likely to decompose, decay, spoil, rot, or provide food for insects, rodents, birds, or other pests.
10. “Public nuisance” means activities or conditions that may be subject to A.R.S. § 36-601.
11. “Public place” means all or any portion of an area, land, or structure that is open to or may be accessed by any individual.
12. “Public portable toilet” means a toilet seat and toilet, or toilet seat, toilet, and urinal that is:
a. Not connected to a sewage collection system,
b. Connected to a leakproof tank to receive and store sewage temporarily,
c. Located in a public place, and
d. Housed in a portable toilet enclosure.
13. “Public restroom” means a structure or room that:
a. Is not connected to living or sleeping quarters;
b. Contains a lavatory and water closet or a lavatory, water closet, and urinal connected to a sewage collection system; and
c. Is located in a public place.
- 11.14. “Refuse” means putrescible and nonputrescible solid and semisolid waste, including trash, garbage, or rubbish the same as in A.A.C. R18-13-302.
15. “Regular basis” means at recurring, fixed, or uniform intervals.
16. “Regulatory authority” means:
a. The Arizona Department of Health Services; or
b. One of the following entities as specified in A.R.S. § 36-136(E):
i. A local health department;
ii. A county environmental department; or
iii. A public health services district.
17. “Responsible person” means an individual, partnership, corporation, association, governmental subdivision, state agency, or a public or private organization of any character that owns or manages the direct use of a public portable toilet within the state.

12. "Restroom" means a structure or room containing a lavatory and toilet, or lavatory, toilet, and urinal, available to a guest or customer of a business or governmental agency, and unconnected to dwelling or sleeping quarters.
18. "Sanitary" means free from filth, bacteria, viruses, mold, and fungi.
13. "Sanitary fixture" means a bathtub, floor drain, lavatory, shower, toilet, or urinal connected to a plumbing system.
- 14.19. "Sewage" means the liquid waste contained in a sanitary fixture or sanitary fixture drain pipe or any liquid-containing putrescible particles, feces, or urine the waste from a toilet, urinal, sink, and portable hand-wash station.
20. "Sewage collection system" has the same meaning as in A.A.C. R18-9-101.
21. "Sewage storage tank" means a receptacle for the collection and holding of the waste from a portable toilet.
15. "Special event" means a group of 100 or more individuals gathered together in lawful assembly for 4 or more hours in an outdoor area that does not have restroom or bathroom facilities.
22. "Toilet" means a water-flushed, chemical-flushed, or no-flush bowl for the disposal of human excreta.
23. "Toilet seat" means a detachable, split or U-shaped seat made of non-absorbent material hinged to the top of a toilet and used for sitting.
- 16.24. "Urinal" means an a water-flushed, chemical-flushed, or no-flush upright basin used by males for urination only.
25. "Vent pipe" means a hollow cylinder of metal, plastic, or other material that allows gas to escape from a sewage storage tank.
26. "Water closet" means the same as in A.R.S. § 45-311.

R9-8-302. Persons Responsible General Requirements

An owner of a bathroom, restroom, or portable toilet, or a person who administers a special event, shall comply with the provisions of this Article.

- A.** A responsible person or the responsible person's designee shall comply with the requirements in this Article and with federal and state laws and rules and local codes and ordinances governing public portable toilets.
- B.** A violation of this Article shall constitute a public nuisance under A.R.S. § 36-601.

R9-8-303. Public Portable Toilet Requirements

A. A responsible person or the responsible person's designee shall ensure that:

1. A public portable toilet:
 - a. Is clean;
 - b. Is sanitary;
 - c. Is maintained to avoid odors and insect or vermin infestation;
 - d. Has a non-absorbent, durable, smooth, leakproof, and rustproof floor, wall, ceiling, and door materials;
 - e. Has a vent pipe connected to a sewage storage tank that:
 - i. Is wide enough in diameter to prevent the build up of gasses, and
 - ii. Extends upwards from the sewage storage tank through the roof of the portable toilet enclosure;
 - f. Has a supply of toilet paper that is replenished before running out; and
 - g. Has a self-closing door and privacy latch on the door;
2. Except as provided in subsection (B), one public portable toilet is deployed for the first 100 individuals using or expected to use public portable toilet facilities and one additional public portable toilet is deployed for each additional 100 individuals;
3. Each public portable toilet's sewage storage tank is pumped out on a regular basis to keep the public portable toilet operating as designed;
4. Facilities for washing or sanitizing hands are provided as follows:
 - a. Except as provided in subsection (B), working portable hand-wash stations are deployed at a minimum rate of one per 10 public portable toilets;
 - b. Soap, water, and single use towels are continuously provided at each portable hand-wash station; and
 - c. Where conditions make the use of soap and water impractical, the regulatory authority may allow sanitizing gel in place of soap and water; and
5. Public portable toilets are located a minimum of 100 feet from any food establishment.

B. A responsible person or the responsible person's designee shall ensure that sewage, human excreta, and refuse produced in a public portable toilet:

1. Does not create a public nuisance; and
2. Is disposed of according to 18 A.A.C. 13, Article 3 or 18 A.A.C. 13, Article 11.

C. The regulatory authority may adjust the number of public portable toilets required in subsection (A)(2) and portable hand-wash stations required in (A)(5)(a) provided based on the estimated number of users, the duration of use, and the availability of public restrooms within 200 feet of the public portable toilet.

R9-8-304. Constructing and Maintaining a Portable Toilet Inspections

A portable toilet shall be built and maintained to include:

1. A sewage storage tank, toilet seat, toilet, and urinal made of durable, smooth, leakproof, and rustproof materials;
2. Waterproof and durable floor, wall, ceiling, and door materials;
3. A vent pipe 3 inches in diameter connected to the sewage storage tank and extending 6 inches above the roof of the toilet enclosure; and
4. A constant supply of toilet paper from a toilet paper dispenser.

A. If a regulatory authority receives a complaint regarding a public portable toilet, the regulatory authority may conduct an inspection.

B. If a regulatory authority conducts an inspection, the regulatory authority's inspector shall conduct the inspection according to A.R.S. § 41-1009.

R9-8-306. Special Events Repealed

A. Portable toilets and refuse containers shall be deployed at a special event as follows:

1. One portable toilet for the first 100 people, and one portable toilet for each additional 100 people, or portion thereof;
2. One refuse container for the first 100 people, and one refuse container for each additional 100 people, or portion thereof; and
3. Within 200 feet of the special event place.

B. Sewage and refuse generated at a special event shall be collected and disposed of under R9-8-307(A), (B), (C), and (E).

R9-8-307. Disposal of Sewage and Refuse Repealed

A. The collection, storage, and treatment of sewage and refuse shall comply with the requirements of the Department of Environmental Quality under:

1. 18 A.A.C. 8, Article 6, and 18 A.A.C. 9, Articles 7 and 8, for sewage; and
2. 18 A.A.C. 8, Article 5, for refuse.

B. A disposable refuse bag shall be used to store refuse generated at a special event. A full refuse bag shall be tied closed before disposal in accordance with subsection (A).

C. A refuse container in a bathroom or restroom, or at a special event, shall be free of accumulations of putrescible waste.

- D. ~~A bathroom or restroom exclusively for female use, or a combination male and female use restroom shall be provided with a refuse container with a matching lid.~~
- E. ~~An overflowing refuse container in a bathroom or restroom, or at a special event, is prohibited.~~