

NOTICE OF EXEMPT RULEMAKING
TITLE 9. HEALTH SERVICES
CHAPTER 17. DEPARTMENT OF HEALTH SERVICES
MEDICAL MARIJUANA PROGRAM

PREAMBLE

1. Permission to proceed with the exempt rulemaking was granted under A.R.S. § 41-1039 by the Governor on:

June 9, 2023

2. Article, Part or Sections Affected (as applicable) Rulemaking Action

R9-17-317

Amend

R9-17-318

Amend

R9-17-324

Amend

3. 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. §§ 36-2803, 36-2854, and 36-2858

Statute or session law authorizing the exemption: Proposition 207, § 8

4. The effective date of the rule and the agency’s reason it selected the effective date:

November 1, 2024

This delayed effective date will give the Department time to notify stakeholders of the new rules and regulated entities sufficient time to make any operational changes necessary to implement the new rules.

5. Citations to all related 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: 29 A.A.R. 2171, September 15, 2023

Notice of Exempt Rulemaking: 29 A.A.R. 2453, October 13, 2023

Notice of Exempt Rulemaking: 29 A.A.R. 3532, November 10, 2023

6. The agency’s contact person who can answer questions about the rulemaking:

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Public Health Licensing Services

Health Care Institutions Licensing
150 N. 18th Ave., Suite 400
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or

Name: Stacie Gravito, Office Chief
Address: Arizona Department of Health Services
Office of Administrative Counsel and Rules
150 N. 18th Ave., Suite 200
Phoenix, AZ 85007

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7. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered to include an explanation about the rulemaking: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,” including requirements for “dual licensees,” as defined in A.R.S. § 36-2850. A.R.S. § 36-2854(D) requires the Department to adopt rules to permit and regulate delivery by marijuana establishments to consumers no later than January 1, 2025. In this rulemaking, the Department is making changes to 9 A.A.C. 17 related to security and dual licensees corresponding to those being through a separate rulemaking in 9 A.A.C. 18, including requirements related to delivery to a consumer. 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.

8. 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.

9. 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

10. The summary of the economic, small business, and consumer impact, 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 registration certificate for a dispensary, issued according to A.R.S. § 36-2804, or a marijuana establishment license, awarded pursuant to A.R.S. § 36-2854, is specific to the certificate or license holder, type of facility, facility 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 17. DEPARTMENT OF HEALTH SERVICES
MEDICAL MARIJUANA PROGRAM
ARTICLE 3. DISPENSARIES AND DISPENSARY AGENTS

Section

R9-17-317. Product Labeling and Packaging

R9-17-318. Security

R9-17-324. Dual Licensees

ARTICLE 3. DISPENSARIES AND DISPENSARY AGENTS

R9-17-317. Product Labeling and Packaging

- A. A dispensary shall ensure that medical marijuana or a marijuana product provided by the dispensary to a qualifying patient or a designated caregiver is labeled with:
1. The dispensary's registry identification number;
 2. The amount, strain, and batch number of the medical marijuana or marijuana product;
 3. The form of the medical marijuana or marijuana product;
 4. As applicable, the weight of the medical marijuana or marijuana product;
 5. In compliance with Table 3.1, the potency of the medical marijuana or marijuana product, based on laboratory testing results, including the number of milligrams per designated unit or percentage of:
 - a. Total tetrahydrocannabinol, reported according to ~~R9-17-404.03(S)(2)(a)~~ R9-17-404.03(S)(3)(a);
 - b. Total cannabidiol, reported according to ~~R9-17-404.03(S)(2)(b)~~ R9-17-404.03(S)(3)(b); and
 - c. Any other cannabinoid for which the dispensary is making a claim related to the effect of the cannabinoid on the human body;
 6. The following statement: "ARIZONA DEPARTMENT OF HEALTH SERVICES' WARNING: Marijuana use can be addictive and can impair an individual's ability to drive a motor vehicle or operate heavy machinery. Marijuana smoke contains carcinogens and can lead to an increased risk for cancer, tachycardia, hypertension, heart attack, and lung infection. Marijuana use may affect the health of a pregnant woman and the unborn child. KEEP OUT OF REACH OF CHILDREN";
 7. If not cultivated by the dispensary, whether the medical marijuana was obtained from a qualifying patient, a designated caregiver, a marijuana establishment, or another dispensary;
 8. If not infused or prepared for sale by the dispensary, whether the marijuana product was obtained from a marijuana establishment or another dispensary;
 9. For a marijuana product:
 - a. The ingredients in order of abundance; and
 - b. If the marijuana product contains ethanol, the percentage of ethanol in the marijuana product;
 10. The date of manufacture, harvest, or sale; and
 11. The registry identification number of the qualifying patient.

- B.** If a dispensary provides medical marijuana cultivated, or a marijuana product infused or prepared for sale, by the dispensary to a marijuana establishment or another dispensary, the dispensary shall ensure that:
 - 1. The medical marijuana or marijuana product is labeled with:
 - a. The dispensary’s registry identification number or marijuana establishment’s license number, as applicable;
 - b. The amount, strain, and batch number of the medical marijuana or marijuana product; and
 - c. The date of harvest or sale; and
 - 2. A copy of laboratory testing results for the medical marijuana or marijuana product is provided to the receiving dispensary or marijuana establishment.
- C.** A dispensary shall ensure that medical marijuana or a marijuana product provided by the dispensary to a qualifying patient or a designated caregiver is dispensed in a container made of material that will not react with or leach into the medical marijuana or marijuana product.
- D.** A dispensary shall ensure that medical marijuana or a marijuana product being submitted to a laboratory for testing is labelled according to requirements in R9-17-317.01(B)(5).

R9-17-318. Security

- A.** A dispensary shall ensure that access into areas of the dispensary or the dispensary’s cultivation site where marijuana is cultivated, processed, as defined in A.R.S. § 36-2850, manufactured, or stored is limited to the dispensary’s principal officers, board members, and authorized individuals, unless the individual is supervised by an individual authorized according to subsection (G)(2)(a).
- B.** A dispensary agent may transport marijuana, marijuana plants, marijuana products, and marijuana paraphernalia between the dispensary and:
 - 1. The dispensary’s cultivation site,
 - 2. A qualifying patient,
 - 3. Another dispensary, ~~and~~
 - 4. A marijuana establishment licensed according to 9 A.A.C. 18, and
 - 5. A laboratory that has a laboratory registration certificate issued by the Department.
- C.** Before transportation, a dispensary agent shall:
 - 1. Complete a trip plan that includes:
 - a. The name of the dispensary agent in charge of transporting the marijuana, marijuana plants, marijuana products, or marijuana paraphernalia;
 - b. The date and start time of the trip;

- c. A description of the marijuana, marijuana plants, marijuana products, or marijuana paraphernalia being transported;
 - d. Any anticipated stops during the trip, including the locations of the stops and arrival time and departure time for each location; and
 - e. The anticipated route of transportation; and
2. Provide a copy of the trip plan in subsection (C)(1) to the dispensary.
- D.** During transportation, a dispensary agent shall:
- 1. Carry a copy of the trip plan in subsection (C)(1) with the dispensary agent for the duration of the trip;
 - 2. Use a vehicle that has a current registration with the Arizona Department of Motor Vehicles, issued according to A.R.S. Title 28, Chapter 7, Article 2:
 - a. Without any marijuana identification;
 - b. Equipped with a global positioning system or other means ~~of tracking for the dispensary to track the current~~ location of the vehicle at any point in time;
 - c. Capable of providing electronic information about where the vehicle has been during at least the previous 90 days;
 - ~~e.d.~~ With an operational video surveillance system and recording equipment that:
 - i. Shows the interior of the vehicle, including the driver's seat and location of the marijuana, marijuana plants, or marijuana products, ~~or marijuana paraphernalia~~ being transported;
 - ii. Is turned on for the duration of a trip while medical marijuana or a marijuana product is in the vehicle; and
 - iii. Either stores the recording for at least 30 calendar days or transmits the recorded images at the time of recording to another location, where the recorded images are stored for at least 30 calendar days; and
 - ~~e.e.~~ With a locked compartment in which any marijuana, marijuana plants, or marijuana products being transported may be stored during a trip;
 - 3. Have a means of communication with the dispensary;
 - 4. Notate the arrival time and departure time for each stop; and
 - 5. Ensure that the marijuana, marijuana plants, or marijuana products, ~~or marijuana paraphernalia~~ are stored in the locked compartment specified in subsection ~~(D)(2)(d)~~ (D)(2)(e) and are not visible.
- E.** After transportation, a dispensary agent shall:

1. ~~enter~~ Enter the end time of the trip and any changes to the trip plan on the trip plan required in subsection (C)(1), and
2. Ensure that the updated trip plan is provided to the dispensary.

F. A dispensary shall:

1. Maintain the documents required in subsection (C)(2) and (E) for at least two years after the date of the documentation;
2. If transporting a sample to a laboratory for testing, provide a copy of the trip plan to the laboratory; and
3. Provide a copy of the documents required in subsection (C)(2) and (E) to the Department for review upon request.

G. To prevent unauthorized access to medical marijuana at the dispensary and, if applicable, the dispensary's cultivation site, the dispensary shall have the following:

1. Security equipment to deter and prevent unauthorized entrance into limited access areas that include:
 - a. Devices or a series of devices to detect unauthorized intrusion, which may include a signal system interconnected with a ~~radio frequency~~ radio-frequency method, such as cellular, private radio signals, or other mechanical or electronic device;
 - b. Exterior lighting to facilitate surveillance;
 - c. Electronic monitoring including:
 - i. At least one 19-inch or greater call-up monitor;
 - ii. A printer capable of immediately producing a clear still photo from any video camera image;
 - iii. Video cameras:
 - (1) Providing coverage of all entrances to and exits from limited access areas and all entrances to and exits from the building, capable of identifying any activity occurring in or adjacent to the building; and
 - (2) Having a recording resolution of at least 704 x 480 or the equivalent;
 - iv. A video camera at each point of sale location allowing for the identification of any qualifying patient or designated caregiver purchasing medical marijuana;

- v. A video camera in each grow room capable of identifying any activity occurring within the grow room in low light conditions;
- vi. Storage of video recordings from the video cameras for at least 30 calendar days;
- vii. A failure notification system that provides an audible and visual notification of any failure in the electronic monitoring system; and
- viii. Sufficient battery backup for video cameras and recording equipment to support at least five minutes of recording in the event of a power outage; and
- d. Panic buttons in the interior of each building; and
- 2. Policies and procedures:
 - a. That provide for the identification of authorized individuals;
 - b. That deter unauthorized removal of marijuana or marijuana products from the premises, including:
 - i. Restricting access to the areas of the dispensary that contain marijuana and, if applicable, the dispensary's cultivation site to authorized individuals only; and
 - ii. Ensuring that an individual other than an authorized individual is supervised by an authorized individual when in an area specified in subsection (G)(2)(b)(i);
 - c. That prevent loitering;
 - d. For conducting electronic monitoring; and
 - e. For the use of a panic button.

R9-17-324. Dual Licensees

- A. If a dispensary is a dual licensee, the dispensary shall:
 - 1. Provide marijuana and marijuana products, according to A.A.C. R9-18-309, to consumers, as defined in A.R.S. § 36-2850, at the same location as the dispensary dispenses medical marijuana and marijuana products to qualifying patients and designated caregivers;
 - 2. Notify the Department within five calendar days after beginning to operate on a for-profit basis, as allowed by A.R.S. § 36-2858(D)(2), and, if applicable, provide to the Department the documents required in R9-17-304(C)(2) for the new organizational or corporate structure; ~~and~~
 - 3. Comply with the requirements in A.R.S. § 36-2858(D)(3); and

4. Comply with the requirements in A.R.S. § 36-2854(D) and A.A.C. R9-18-312.01.

- B.** If a dispensary is a dual licensee, the entity holding the valid dispensary registration certificate may:
1. Request that the dispensary's cultivation site, specified according to R9-17-305(A)(1)(e) or R9-17-307(A)(1), be transferred under the entity's marijuana establishment license according to A.A.C. R9-18-303(E)(3);
 2. Request approval of a change in the location in subsection (A)(1) by complying with the requirements in both:
 - a. R9-17-307(A), and
 - b. A.A.C. R9-18-306; or
 3. Transfer or assign both the dispensary registration certificate and the marijuana establishment license to the same entity.
- C.** A dispensary that is a dual licensee is exempt from the requirements in:
1. R9-17-310(A)(6), (13), and (14);
 2. R9-17-313; and
 3. R9-17-320(B)(4) and (5), but shall ensure that a dispensary agent or marijuana facility agent at the dispensary or the dispensary's cultivation site:
 - a. Reports to a principal officer or board member of the dispensary any health condition experienced by the dispensary agent or marijuana facility agent that may adversely affect the safety or quality of any medical marijuana or marijuana products with which the dispensary agent or marijuana facility agent may come into contact; and
 - b. If the principal officer or board member determines that a dispensary agent or marijuana facility agent has a health condition that may adversely affect the safety or quality of the medical marijuana or marijuana products, is prohibited from direct contact with any medical marijuana, marijuana products, or equipment or materials for processing medical marijuana, as defined in A.R.S. § 36-2850, or preparing marijuana products until the principal officer or board member determines that the dispensary agent's or marijuana facility agent's health condition will not adversely affect the medical marijuana or marijuana products.
- D.** If the Department identifies an instance of noncompliance with a requirement of both this Chapter and 9 A.A.C. 18 during an inspection of a dual licensee, the Department shall note the instance of noncompliance on a notice of deficiencies associated with the dual licensee's marijuana

establishment license under 9 A.A.C. 18, rather than on both the notice of deficiencies for the dispensary registration certificate and the notice of deficiencies for the marijuana establishment license.