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DEPARTMENT OF ENVIRONMENTAL QUALITY (Expedited Rulemaking)
Title 18, Chapter 2

Amend: R18-2-1006



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: June 1, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 12, 2022

SUBJECT: Department of Environmental Quality
Title 18, Chapter 2 (Air Pollution Control)

Amend: R18-2-1006

This expedited rulemaking from the Department of Environmental Quality seeks to amend one rule, R18-2-1006, regarding Emissions Test Procedures. In 2019 the Department executed the Vehicle Emissions Modernization Rulemaking, which brought the Vehicle Emissions Testing Program ((V)EIP) in line with federal regulations and statute. Additionally, the rulemaking introduced tables in Article 10 to simplify the way vehicles and their testing types were presented in the Article. The tables contain errors to internal citations within the VEIP regulations. Under this expedited rulemaking, the only changes that will be made to the rule are in the "Test Subsection" columns in A.A.C. R18-2-1006. These updated citations will provide clarity to Arizona citizens regarding which testing procedures apply to their vehicles.

The Department received approval from the rulemaking moratorium to initiate this expedited rulemaking on July 2, 2021 and final approval to submit it to the Council on March 18, 2022.

1. **Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?**

Yes. This rulemaking qualifies for expedited rulemaking pursuant to A.R.S. § 41-1027(A)(3) because it corrects typographical errors without changing its effect.

2. **Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

Yes. The Department cites both general and specific statutory authority for the rules.

3. **Do the rules establish a new fee or contain a fee increase?**

No, the rules do not establish a new fee or fee increase.

4. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

The Department did not receive any comments in conducting this expedited rulemaking.

5. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

No. The Department did not make any changes to the rules between the Notice of Proposed Expedited Rulemaking and the Notice of Final Expedited Rulemaking.

6. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

The Department indicates that corresponding federal law to these rules include the Code of Federal Regulations, Title 40, Chapter I, Subchapter C, Part 51 and Subpart S Inspection/Maintenance Program Requirements. The Department states that the rules are not more stringent than corresponding federal law.

7. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

No, the Department indicates the rule does not require the issuance of a permit or license.

8. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The Department did not review or rely on a study in conducting this expedited rulemaking.

9. Conclusion

In this expedited rulemaking, the Department seeks to make technical corrections to one rule in order to correct typographical errors. This expedited rulemaking meets the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)(3).

If approved, the expedited rulemaking would be effective immediately upon the Department filing its Certificate of Approval and Notice of Final Expedited Rulemaking with the Secretary of State. Council staff recommends approval of this expedited rulemaking.

Council staff recommends approval of this expedited rulemaking.



Douglas A. Ducey
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



Misael Cabrera
Director

April 4, 2022

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, #305
Phoenix, AZ 85007

Re: Rulemaking for Title 18. Environmental Quality, Chapter 2. Department of Environmental Quality-Air Pollution Control, Articles 10.

Dear Chair Sornsin:

The Arizona Department of Environmental Quality (ADEQ) hereby submits changes to Arizona Administrative Code (A.A.C) R18-2-1006 to the Governor's Regulatory Review Council (GRRC) for its consideration and approval at the Council meeting scheduled for June 1, 2022.

The following information is provided for your use in reviewing the enclosed rules for approval pursuant to A.R.S. § 41-1052 and A.A.C. R1-6-202:

I. Information Required by A.A.C. R1-6-202(A)(1)

- The public record closed for all rules on January 25, 2022 at 5:00 p.m.
- Pursuant to A.R.S. § 41-1027(A)(6), this expedited rulemaking does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of regulated persons. Under A.R.S. §41-1027(A)(3), an agency may correct typographical errors, make address or name changes, or clarify the language of a rule without changing its effect. This rulemaking performs technical corrections to address typographical errors in A.A.C. Title 18, Chapter 2, Article 10 (Motor Vehicles; Inspections and Maintenance) and will not add regulatory burden. The only changes that will be made to the rules are in the "Test Subsection" columns in A.A.C. R18-2-1006. These updated citations will provide clarity to Arizona citizens regarding which testing procedures apply to their vehicles.
- The rulemaking activity does not relate to a five-year review report.
- The Department certifies that the preamble discloses reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.

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- A list of documents enclosed under A.A.C. R1-6-202(A)(1)(e), (A)(2)-(8), which are enclosed as electronic copies:
 - This cover letter.
 - The Notice of Final Expedited Rulemaking (NFERM), including the preamble, table of contents, and text of each rule.
 - ADEQ did not receive any written comments on the Notice of Proposed Expedited Rulemaking (NPERM). No public comments were received at the January 25, 2022 public hearing on the NPERM; therefore, no record or transcript of such testimony is included in this submittal.
 - ADEQ received no analysis regarding the rules' impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states; therefore, no such analysis is included in this submittal.
 - Materials incorporated by reference as specified in A.R.S § 41-1028 and their location in the rules:
 - a. *Performing Onboard Diagnostic System Checks as Part of a Vehicle Inspection and Maintenance Program, EPA420-R-01-015, EPA, June 2001*
 - i. R18-2-1006(C)(4)(b)
 - b. *IM240 & Evap Technical Guidance, EPA420-R-00-007, EPA, April 2000*
 - i. R18-2-1006(C)(5)(a)(vii)
 - ii. R18-2-1006(C)(5)(b)(iii)
 - iii. R18-2-1006(C)(6)(c)(i)
 - c. *Society of Automotive Engineers Recommended Practice J1667, February 1996*
 - i. R18-2-1006(C)(10)(a)(i)
 - d. *40 CFR 51, Subpart S, Appendix B, Section III, amended as of July 1, 2017*
 - i. R18-2-1006(C)(6)(b)
 - e. *40 CFR 51, Subpart S, Appendix A, Section I, amended as of July 1, 2017*
 - i. R18-2-1006(C)(6)(c)(ii)
 - ii. R18-2-1006(C)(7)(b)
 - iii. R18-2-1006(C)(8)(b)
 - f. *40 CFR 51, Subpart S, Appendix B, Section II, amended as of July 1, 2017*
 - i. R18-2-1006(C)(7)(a)
 - No statute was declared unconstitutional.
 - One electronic copy of each of the following is enclosed: the general and specific statutes authorizing the rules, including relevant statutory definitions: A.R.S. §§ 49-104, 49-404, 49-425, 49-447, 49-541, 49-542, 49-542.02, 49-542.03

- No term is defined in the rule by referring to another.

Thank you for your timely review and approval. Please contact Daniel Czecholinski, Division Director, Air Quality Division, 602-771-4655 or czecholinski.daniel@azdeq.gov, if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Misael', with a long horizontal flourish extending to the right.

Misael Cabrera, P.E.
Director

Enclosures

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 A.R.S. §41-1027(A)(3), an agency may correct typographical errors, make address or name changes, or clarify the language of a rule without changing its effect. This rulemaking performs technical corrections to address typographical errors in A.A.C. Title 18, Chapter 2, Article 10 (Motor Vehicles; Inspections and Maintenance) and will not add regulatory burden.

In Fiscal Year 2019, ADEQ executed the “Vehicle Emissions Modernization Rulemaking.” The modernization rulemaking brought the Vehicle Emissions Testing Program (V)EIP in line with federal regulations, implemented HB 2357 (2005), HB 1531 (2007), and HB 2226 (2014) into rule, allowed the Arizona VEIP to leverage new technology, and codified VEIP practices that have been simplified as a result of ADEQ’s adoption of the LEAN Management System. In addition, that rulemaking introduced tables to Article 10 to simplify the way vehicles and their testing types were presented in the Article. However, the newly introduced tables contain errors to internal citations within the VEIP regulations. These minor errors are immaterial to the execution of the regulations, but may be confusing to individuals using the rules to see what type of test their vehicle must undergo.

As part of the process to update VEIP regulations, ADEQ must still update the Arizona State Implementation Plan (SIP) before the changes become effective. This is reflected in the contingent nature of some of the rule changes, which become effective after the EPA approves the already adopted regulations into the SIP.

The only changes that will be made to the rules are in the “Test Subsection” columns in A.A.C. R18-2-1006. These updated citations will provide clarity to Arizona citizens regarding which testing procedures apply to their vehicles.

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:

Not applicable.

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:

Not applicable, in accordance with A.R.S. Section 41-1055(D)(2).

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

ADEQ made no changes between the proposed expedited rulemaking and this final expedited rulemaking.

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

ADEQ did not receive public or stakeholder comments or objections about the expedited rulemaking.

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

There are no other matters prescribed by statutes applicable specifically to ADEQ 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:

This rule will 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:

According to the Code of Federal Regulations, Title 40, Chapter I, Subchapter C, Part 51, and Subpart S Inspection/Maintenance Program Requirements: Inspection/maintenance (I/M) programs are required in both ozone and carbon monoxide nonattainment areas, depending upon population and nonattainment classification or design value. This rulemaking merely clarifies minor typographical errors within Arizona's existing I/M program.

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 persons submitted an analysis to ADEQ.

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

Performing Onboard Diagnostic System Checks as Part of a Vehicle Inspection and Maintenance Program," EPA420-R-01-015, EPA, June 2001.

R18-2-1006(C)(4)(b)

IM240 & Evap Technical Guidance," EPA420-R-00-007, EPA, April 2000.

R18-2-1006(C)(5)(a)(vii)

R18-2-1006(C)(5)(b)(iii)

R18-2-1006(C)(6)(c)(i)

Society of Automotive Engineers Recommended Practice J1667, February 1996

R18-2-1006(C)(10)(a)(i)

40 CFR 51, Subpart S, Appendix B, Section III, amended as of July 1, 2017

R18-2-1006(C)(6)(b)

40 CFR 51, Subpart S, Appendix A, Section I, amended as of July 1, 2017

R18-2-1006(C)(6)(c)(ii)

R18-2-1006(C)(7)(b)

R18-2-1006(C)(8)(b)

40 CFR 51, Subpart S, Appendix B, Section II, amended as of July 1, 2017

R18-2-1006(C)(7)(a)

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 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR POLLUTION CONTROL

ARTICLE 10. MOTOR VEHICLES; INSPECTIONS AND MAINTENANCE

R18-2-1006. Emissions Test Procedures

- A. This Section establishes the testing requirements for vehicles in the State of Arizona. Subsection (B) identifies which tests apply to a particular type and model year of vehicle. Subsection (C) establishes the procedures and criteria for passing, failing, or being rejected from each test.
- B. Test applicability.
1. Area A and Area B non-diesel. The following general requirements govern test applicability for non-diesel vehicles in both Area A and Area B:
 - a. A rotary engine shall be inspected as a 4-stroke engine with four cylinders or less.
 - b. For a vehicle in which an engine has been replaced:
 - i. A vehicle owner shall not install a heavy-duty engine in a light-duty chassis.
 - ii. A vehicle owner shall not install a light-duty engine in a heavy-duty chassis.
 - iii. The replacement engine package shall include all emissions control equipment and devices that were required by the manufacturer for an engine-chassis certification. All emissions control equipment and devices shall be properly installed and in operating condition, and the resulting engine-chassis configuration shall be equivalent to a verified configuration of the same, or newer, model year as that of the vehicle chassis.
 - iv. The Department shall inspect the vehicle according to the model year of the vehicle chassis.
 2. Area A Non-Diesel. Non-diesel vehicles in Area A are subject to the test procedures identified in this subsection:
 - a. Vehicles other than alternative fuel vehicles operated by a school district in Area A, heavy duty alternative fuel vehicles, reconstructed vehicles, and constant 4-wheel-drive vehicles that are not equipped with OBD, are subject to the following test procedures until the Administrator approves subsection (B)(2)(a)(i) into the applicable implementation plan:

Area A Non-Diesel Testing Procedures Until SIP Revision is Approved				
Model Year	GVWR	Test Frequency	Tests Applicable	Test Subsection
1996 or later	8,500 pounds or less	Biennial	OBD Functional gas cap Tampering	C.4 C.16 <u>C.15</u> C.17 <u>C.16</u>
1981 through 1995	8,500 pounds or less	Biennial	Transient loaded and evaporative system pressure Functional gas cap Tampering	C.5 C.16 <u>C.15</u> C.17 <u>C.16</u>
1975 through 1980	8,500 pounds or less	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 <u>C.15</u> C.17 <u>C.16</u>
1975 or later	More than 8,500 pounds	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 <u>C.15</u> C.17 <u>C.16</u>
1967 through 1974	Any	Annual	Loaded test Functional gas cap	C.6 C.16 <u>C.15</u>

- i. Test procedures that apply after the Administrator approves this subsection, (B)(2)(a)(i), into the applicable implementation plan:

Area A Non-Diesel Testing Procedures After SIP Revision is Approved					
Model Year	GVWR	OBD Certified?	Test Frequency	Tests Applicable	Test Subsection
1996 or Later	Any	Yes	Biennial	OBD Functional gas cap Tampering	C.4 C.16 <u>C.15</u> C.17 <u>C.16</u>
1981 or later	8,500 pounds or less	No	Biennial	Transient loaded and evaporative system pressure Functional gas cap Tampering	C.5 C.16 <u>C.15</u> C.17 <u>C.16</u>
1975 through 1980	8,500 pounds or less	No	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 <u>C.15</u> C.17 <u>C.16</u>
1975 or later	More than 8,500 pounds	No	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 <u>C.15</u> C.17 <u>C.16</u>
1967 through 1974	Any	No	Annual	Loaded test Functional gas cap	C.6 C.17 <u>C.15</u>

- b. Alternative fuel vehicles operated by a school district in Area A are subject to the following testing procedures until the Administrator approves subsection

(B)(2)(b)(i) into the applicable implementation plan. After section (B)(2)(b)(i) has been approved into the applicable implementation plan, alternative fuel vehicles operated by a school district in Area A will be subject to subsection (B)(2)(b)(i).

Area A Alt. Fuel Vehicles Operated by a School District Testing Procedures Until SIP Revision is Approved				
Model Year	OBD Certified?	Test Frequency	Tests Applicable	Test Subsection
1975 or later	No	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 <u>C.15</u> C.17 <u>C.16</u>
1967 through 1974	No	Annual	Loaded test Functional gas cap	C.8 <u>C.6</u> C.16 <u>C.15</u>

C. Test procedures that apply after the Administrator approves this subsection, (B)(2)(b)(i), into the applicable implementation plan.

Area A Alt. Fuel Vehicles Operated by a School District Testing Procedures After SIP Revision is Approved				
Model Year	OBD Certified?	Test Frequency	Tests Applicable	Test Subsection
Any	Yes	Biennial	OBD Functional gas cap Tampering	C.4 C.16 <u>C.15</u> C.17 <u>C.16</u>
1975 or later	No	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 <u>C.15</u> C.17 <u>C.16</u>
1967 through 1974	No	Annual	Loaded test Functional gas cap	C.6 C.16 <u>C.15</u>

c. Heavy duty alternative fuel vehicles in Area A that are not owned by a school district are subject to the follow testing procedures.

Model Year	GVWR	OBD Certified?	Test Frequency	Tests Applicable	Test Subsection
Any	More than 14,500 pounds	Yes	Biennial	OBD Functional gas cap Tampering	C.4 C.16 <u>C.15</u> C.17 <u>C.16</u>
1975 or later	More than 14,500 pounds	No	Annual	Idle test Functional gas cap Tampering	C.8 C.16 <u>C.15</u> C.17 <u>C.16</u>
1967 through 1974	More than 14,500 pounds	No	Annual	Idle test Functional gas cap	C.8 C.16 <u>C.15</u>

3. Area B Non-Diesel. Non-diesel vehicles in Area B are subject to the test procedures identified in this subsection:

- a. Vehicles other than reconstructed vehicles and constant 4-wheel-drive vehicles that are not equipped with OBD shall be subject to the following test procedures until the Administrator approves subsection (B)(2)(a)(i) into the applicable implementation plan:

Area B Non-Diesel Testing Procedures Until SIP Revision is Approved				
Model Year	GVWR	Test Frequency	Tests Applicable	Test Subsection
1996 or later	8,500 pounds or less	Annual	OBD Functional gas cap Tampering	C.4 C.16 <u>C.15</u> C.17 <u>C.16</u>
1981 through 1995	8,500 pounds or less	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 <u>C.15</u> C.17 <u>C.16</u>
1975 through 1980	8,500 pounds or less	Annual	Idle test Functional gas cap Tampering	C.8 C.16 <u>C.15</u> C.17 <u>C.16</u>
1975 or later	More than 8,500 pounds	Annual	Idle test Functional gas cap Tampering	C.8 C.16 <u>C.15</u> C.17 <u>C.16</u>
1967 through 1974	Any	Annual	Idle test Functional gas cap	C.8 C.16 <u>C.15</u>

- i. Test procedures that apply after the Administrator approves this subsection (B)(2)(a)(i) into the applicable implementation plan:

Area B Non-Diesel Testing Procedures After SIP Revision is Approved					
Model Year	GVWR	OBD Certified?	Test Frequency	Tests Applicable	Test Subsection
Any	Any	Yes	Biennial	OBD Functional gas cap Tampering	C.4 C.16 <u>C.15</u> C.17 <u>C.16</u>
1981 or later	8,500 pounds or less	No	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 <u>C.15</u> C.17 <u>C.16</u>
1975 through 1980	8,500 pounds or less	No	Annual	Loaded Test Functional gas cap Tampering	C.6 C.16 <u>C.15</u> C.17 <u>C.16</u>
1975 or later	More than 8,500 pounds	No	Annual	Idle test Functional gas cap Tampering	C.8 C.16 <u>C.15</u> C.17 <u>C.16</u>
1967 through 1974	Any	No	Annual	Idle test Functional gas cap	C.9 C.8 C.17 <u>C.15</u>

4. Reconstructed non-diesel vehicles. Reconstructed non-diesel vehicles in both Area A and Area B are subject to the tests specified in the following table:

Model Year	Test Frequency	Tests Applicable	Test Subsection
1967 or later	Annual	Loaded test Visual gas cap	C.6 C.18 <u>C.17</u>

5. Constant 4-wheel-drive vehicles. Constant 4-wheel-drive in both Area A and Area B that are not equipped with OBD are subject to the tests specified in the following table:

Model Year	Test Frequency	Tests Applicable	Test Subsection
1975 or later	Annual	Idle Test Functional gas cap Tampering	C.8 C.16 <u>C.15</u> C.17 <u>C.16</u>
1967 through 1974	Annual	Idle Test Functional gas cap	C.8 C.16 <u>C.15</u>

6. Area A diesel. Diesel vehicles that require inspection in Area A are subject to the test procedures specified in this subsection until the Administrator approves subsection (B)(8) into the applicable implementation plan:

Area A Diesel Testing Procedures Until SIP Revision is Approved					
GVWR	OBD Certified?	Model Year	Test Frequency	Tests Applicable	Test Subsection
8,500 and less	Yes	Any	Annual	OBD Tampering	C.4 C.17 <u>C.16</u>
More than 8,500 pounds	No	1975 or later	Annual	Snap idle Tampering	C.10 C.17 <u>C.16</u>
More than 8,500 pounds	No	1967 through 1974	Annual	Snap idle	C.10
More than 4,000 and less than or equal to 8,500 pounds	No	1975 or later	Annual	Loaded opacity B Tampering	C.12 C.17 <u>C.16</u>
More than 4,000 and less than or equal to 8,500 pounds	No	1967 through 1974	Annual	Loaded opacity B	C.12
4,000 pounds or less	No	1975 or later	Annual	Loaded opacity C Tampering	C.13 C.17 <u>C.16</u>
4,000 pounds or less	No	1967 through 1974	Annual	Loaded opacity C	C.13

7. Area B Diesel. Diesel vehicles that require inspection in Area B are subject to the test procedures specified in this subsection until the Administrator approves subsection (B)(8) into the applicable implementation plan:

Area B Diesel Testing Procedures Until SIP Revision is Approved				
GVWR	Model Year	Test Frequency	Tests Applicable	Test Subsection
More than 26,000 pounds	1975 or later	Annual	Loaded opacity A	C.12 <u>C.11</u>
			Tampering	C.18 <u>C.16</u>
More than 26,000 pounds	1967 through 1974	Annual	Loaded opacity A	C.12 <u>C.11</u>
More than 10,500 and less than or equal to 26,000 pounds	1975 or later	Annual	Any of the following: Loaded opacity A	C.12 <u>C.11</u>
			Loaded opacity B	C.13 <u>C.12</u>
			Tampering	C.18 <u>C.16</u>
More than 10,500 and less than or equal to 26,000 pounds	1967 through 1974	Annual	Any of the following: Loaded opacity A	C.12 <u>C.11</u>
			Loaded opacity B	C.13 <u>C.12</u>
More than 4,000 and less than or equal to 10,500	1975 or later	Annual	Loaded opacity B	C.13 <u>C.12</u>
			Tampering	C.18 <u>C.16</u>
More than 4,000 and less than or equal to 10,500	1967 through 1974	Annual	Loaded opacity B	C.13 <u>C.12</u>
4,000 pounds or less	1975 or later	Annual	Loaded opacity C	C.14 <u>C.13</u>
			Tampering	C.18 <u>C.16</u>
4,000 pounds or less	1967 through 1974	Annual	Loaded opacity C	C.14 <u>C.13</u>

8. Test procedures that apply for diesel vehicles in both Area A and Area B after the Administrator approves this subsection (B)(8) into the applicable implementation plan:

Area A and Area B Diesel Testing Procedures After SIP Revision is Approved					
GVWR	OBD Certified?	Model Year	Test Frequency	Tests Applicable	Test Subsection
Any	Yes	Any	Biennial	OBD Tampering	C.4 C.17 <u>C.16</u>
More than 8,500 pounds	No	1975 or later	Annual	Snap idle Tampering	C.10 C.17 <u>C.16</u>
More than 8,500 pounds	No	1967 through 1974	Annual	Snap idle	C.10

More than 4,000 and less than or equal to 8,500 pounds	No	1975 or later	Annual	Loaded opacity B Tampering	C.12 C.17 <u>C.16</u>
More than 4,000 and less than or equal to 8,500 pounds	No	1967 through 1974	Annual	Loaded opacity B	C.12
4,000 pounds or less	No	1975 or later	Annual	Loaded opacity C Tampering	C.13 C.17 <u>C.16</u>
4,000 pounds or less	No	1967 through 1974	Annual	Loaded opacity C	C.13

9. Dealer Fleet Testing Procedures. The test procedures in the table in this section apply until the administrator approves sections (B)(2)(a)(i), (B)(3)(a)(i), and (B)(8) into the applicable implementation plan for used vehicles sold by a motor vehicle dealer who is a fleet operator and who has been issued a permit pursuant to §49-546. After those sections are approved into the applicable implementation plan, used vehicles sold by a motor vehicle dealer who is a fleet operator and who has been issued a permit pursuant to §49-546 will be subject to the same testing procedures as vehicles tested at state stations and the table in this section will no longer be applicable.

Area A and Area B Dealer Fleet Testing Procedures Until SIP Revision is Approved			
Model Year	Test Frequency	Tests Applicable	Test Subsection
1981 or later	Annual	Two speed idle test Functional gas cap Tampering	C.6 <u>C.7</u> C.16 <u>C.15</u> C.17 <u>C.16</u>
1975 through 1980	Annual	Idle Test Functional gas cap Tampering	C.7 <u>C.8</u> C.16 <u>C.15</u> C.17 <u>C.16</u>
1967 through 1974	Annual	Idle Test Functional gas cap	C.8 C.16 <u>C.15</u>

C. Test Requirements

1. Conditions for Pass. A vehicle passes inspection if the vehicle:
 - a. Is subjected to all applicable tests required by Subsection (B);
 - b. Is not rejected from any of the tests for any of the reasons specified in (C)(2) or (C)(3) of this subsection; and
 - c. Does not fail any of the applicable tests for any of the reasons specified in this subsection.
2. Pre-Test Safety Inspection
 - a. The Department shall inspect each vehicle visually before the emissions test for any of the following unsafe or untestable conditions:
 - i. A fuel leak that causes wetness or pooling of fuel;
 - ii. A continuous engine or transmission oil leak onto the floor;
 - iii. A continuous engine coolant leak onto the floor such that the engine is overheating or may overheat within a short time;

- iv. A tire on a driving wheel with less than 2/32-inch tread, metal protuberances, unmatched tire size, obviously low tire pressure as determined by visual inspection;
 - v. An exhaust pipe that does not allow for safe exhaust probe insertion;
 - vi. An exhaust pipe on a diesel-powered vehicle that does not allow for safe exhaust probe insertion and attachment of opacity meter sensor units;
 - vii. Improperly operating brakes;
 - viii. Any vehicle modification or mechanical condition that prevents dynamometer operation;
 - ix. Loud internal engine noise;
 - x. An obvious exhaust leak;
 - xi. Towing a trailer or carrying a heavy load;
 - xii. Carrying explosives or any hazardous material not used as a fuel for the vehicle; or
 - xiii. Any other condition that in the judgment of the inspector makes testing unsafe or the vehicle untestable.
- b. If the inspector determines that a vehicle is unsafe or otherwise untestable by the visual inspection the following shall apply:
- i. The vehicle shall be rejected without an emissions test;
 - ii. The inspector shall notify the vehicle owner or operator of all untestable or unsafe conditions found;
 - iii. A state station shall not charge a fee; and
 - iv. A state station shall not test the vehicle until the cause for rejection is repaired.
3. Test Operating Conditions. When conducting the emissions test required by this Section, the vehicle emissions inspector shall ensure that all of the following requirements are satisfied:
- a. The vehicle shall be tested in the condition presented, unless rejected under 18-2-1006(C)(2);
 - b. The vehicle's engine shall be operating at normal temperature and not be overheating as indicated by a gauge, warning light, or boiling radiator; and
 - c. All vehicle accessories shall be turned off during testing.
4. OBD Test.
- a. Test Procedure. The OBD test shall consist of:
 - i. A visual inspection of the MIL function; and
 - ii. An electronic examination of the OBD computer by connecting a scan tool to the data link connector and interrogating the OBD system to determine vehicle readiness status, MIL status, and the presence of diagnostic trouble codes.
 - b. Equipment Specifications. The OBD equipment shall conform to the requirements of "Performing Onboard Diagnostic System Checks as Part of a Vehicle Inspection and Maintenance Program," EPA420-R-01-015, EPA, June 2001 (and no future editions or amendments), which is incorporated by reference. A copy of this incorporated material is on file with the Department, the Secretary of State, and is available online at <http://azdeq.gov/VECS/Rulemaking>.
 - c. OBD scan tools shall have the most recent available software downloaded and installed before inspection.
 - d. Test Rejection. A vehicle shall be rejected from an OBD test if any of the following conditions occurs:

- i. The number of unset readiness indicators, excluding continuous indicators, is three or more for a model year 1996-2000 vehicle, or two or more for a model year 2001 and newer vehicle;
 - ii. The data link connector cannot be located or is inaccessible;
 - iii. The data link connector is loose and the scan tool cannot be inserted into the connector;
 - iv. The OBD is not communicating;
 - v. The data link connector has no voltage; or
 - vi. The eVIN and monitors are mismatched.
 - e. Test Failure. A vehicle fails the OBD test if any of the following conditions occurs:
 - i. The vehicle's MIL does not illuminate when the ignition is on and the engine is off;
 - ii. The vehicle's MIL illuminates continuously or flashes with the engine running;
 - iii. The vehicle's OBD system reports the MIL as commanded on;
 - iv. The vehicle's OBD system data is inappropriate for the vehicle being tested; or
 - v. The vehicle's OBD system data does not match the original equipment manufacturer (OEM) or an ADEQ exempted OBD software configuration.
- 5. Transient Loaded and Evaporative System Pressure Test.
 - a. Transient Loaded Test Procedure.
 - i. The transient loaded test shall consist of 147 seconds of mass emissions measurement using a constant volume sampler while the vehicle is driven by an inspector through a computer-monitored driving cycle on a dynamometer with inertial weight settings appropriate for the weight of the vehicle.
 - ii. The driving cycle shall include the acceleration, deceleration, and idle operating modes described in Table 4.
 - iii. The 147-second sequence may be ended earlier using a fast-pass or fast-fail algorithm.
 - iv. A retest algorithm shall be used to determine if a test failure is due to insufficient vehicle preconditioning. As determined by the retest algorithm, an additional test may be performed on a failing vehicle.
 - v. The highest selectable drive gear shall be used for automatic transmissions and first gear shall be used for manual transmission acceleration from idle.
 - vi. Exhaust emissions concentrations in grams per mile for HC, CO, NO_x and CO₂ shall be recorded continuously beginning with the first second.
 - vii. All testing and test equipment for the transient loaded emissions test shall conform to "IM240 & Evap Technical Guidance," EPA420-R-00-007, EPA, April 2000, and no future editions or amendments, which is incorporated by reference, except that the transient driving cycle in Table 4, the standards in Table 4, and the fast-pass, fast-fail retest algorithms described in subsection (C)(5)(a) shall be used. A copy of the incorporated material is on file with the Department, the Secretary of State, and is available online at <http://azdeq.gov/VECS/Rulemaking>.
 - viii. In determining compliance under subsection (C)(5)(d) for a vehicle that operates on natural gas, HC emissions shall be multiplied by 0.19, when

- an analyzer with a flame ionization detector is used or 0.61, when an NDIR analyzer is used.
- b. Evaporative System Pressure Test Procedure. The evaporative system pressure test shall consist of the following steps in sequence:
 - i. Connect the test equipment to either the fuel tank vent hose at the canister or the fuel tank filler neck;
 - ii. Pressurize the system to 14 ± 0.5 inches of water without exceeding 26 inches of water system pressure; and
 - iii. Close off the pressure source, seal the evaporative system, and monitor pressure decay for two minutes unless a failure is detected or a fast-pass determination is made as defined in EPA420-R-00-007, which is incorporated by reference in subsection (C)(5)(a)(vii) of this rule.
 - c. Test Rejection. A vehicle shall be rejected from the transient loaded and evaporative system pressure test if it has an audible or visible exhaust leak during emissions testing, or the vehicle displays unsafe behavior on the dynamometer during testing.
 - d. Transient Loaded Test Failure. A vehicle fails the transient loaded test if emissions measured during the test exceed the Table 3 standard applicable to the model year and type of the vehicle being tested as follows:
 - i. The average emissions measured for the entire test exceed the “composite standard” for any pollutant; or
 - ii. The average emissions measured during seconds 65 through 146 exceed the “phase-2” standard for any pollutant.
 - e. Evaporative System Pressure Test Failure. A vehicle fails the evaporative system pressure test if any of the following conditions occurs:
 - i. The evaporative system cannot maintain a system pressure above eight inches of water for two minutes after being pressurized to 14 ± 0.5 inches of water;
 - ii. The canister is missing or damaged; or
 - iii. The hose or electrical system is missing, routed incorrectly, or disconnected, according to the vehicle emissions control information label.
 - f. Test Failure. A vehicle fails the transient loaded and evaporative system pressure test if it fails the test under either subsection 10-2-1006(C)(5)(d) or 10-2-1006(C)(5)(e).
6. Loaded Test.
- a. Loaded Cruise Test Procedure.
 - i. The vehicle’s drive wheels shall be placed on a dynamometer and the vehicle shall be operated according to the Table 1 of this Article.
 - b. Besides the Arizona specific dynamometer test schedule, loaded tests shall conform to the procedures listed at 40 CFR 51, Subpart S, Appendix B, Section III, amended as of July 1st, 2017, which is incorporated by reference and on file with the Department, the Secretary of State, and is available online at <http://azdeq.gov/VECS/Rulemaking>.
 - c. Loaded Test Equipment Specifications.
 - i. The equipment used in Area A state stations for loaded cruise and curb idle testing shall conform to IM240 & Evap Technical Guidance," EPA420-R-00-007, EPA, April 2000, and no future editions or amendments, which is incorporated by reference in subsection (C)(5)(a)(vii) of this rule.

- ii. The equipment used in Area B state stations and all Arizona fleet emission testing stations for the loaded test shall comply with 40 CFR 51, Subpart S, Appendix A, Section I, amended as of July 1, 2017, which is incorporated by reference and on file with the Department, the Secretary of State, and is available online at <http://azdeq.gov/VECS/Rulemaking>.
 - d. In determining whether a vehicle that operates on natural gas complies with the HC emissions standards in Table 2 of this Article, the results of the test shall be multiplied by 0.19, when an analyzer with a flame ionization detector is used or 0.61, when an NDIR analyzer is used.
 - e. Test Rejection. A vehicle shall be rejected from a loaded cruise and curb idle test, if the CO₂ plus CO reading during the curb idle test is less than 6%.
 - f. Test Failure. A vehicle fails the loaded cruise and curb idle test if tailpipe emissions measured by the test exceed the applicable standards in Table 2 for loaded cruise mode or curb idle mode for the type and model year of the vehicle being tested.
7. Two Speed Idle Test
- a. All two speed idle testing shall conform to the procedures listed at 40 CFR 51, Subpart S, Appendix B, Section II, amended as of July 1, 2017, and no future editions or amendments, which is incorporated by reference and on file with the Department, the Secretary of State, and is available online at <http://azdeq.gov/VECS/Rulemaking>.
 - b. All equipment used for two speed idle testing shall conform with the requirements of 40 CFR 51, Subpart S, Appendix A, Section I, amended as of July 1, 2017, and no future editions or amendments, which is incorporated by reference and on file with the Department.
 - c. Test Failure. A vehicle fails the two speed idle test if tailpipe emissions measured by the test exceed the applicable standards in Table 2 for the type and model year of the vehicle being tested.
8. Idle Test
- a. All idle testing shall conform to the procedures listed at 40 CFR 51, Subpart S, Appendix B, Section I, amended as of July 1, 2017, and no future editions or amendments, which is incorporated by reference and on file with the Department, the Secretary of State, and is available online at <http://azdeq.gov/VECS/Rulemaking>.
 - b. All equipment used for two speed idle testing shall conform with the requirements of 40 CFR 51, Subpart S, Appendix A, Section I, amended as of July 1, 2017, and no future editions or amendments, which is incorporated by reference and on file with the Department.
 - c. Test Failure. A vehicle fails the idle test if tailpipe emissions measured by the test exceed the applicable standards in Table 2 for the type and model year of the vehicle being tested.
9. Exhaust Sampling Requirements for Annual Tests on Non-Diesel Vehicles.
- a. All CO and HC emissions analyzers shall have water traps incorporated in the sampling lines. Sampling probes shall be capable of taking undiluted exhaust samples from a vehicle exhaust system.
 - b. A vehicle, other than a diesel-powered vehicle, shall be inspected with a gas analyzer capable of determining concentrations of CO and HC within the ranges and tolerances specified in Table 5.
 - c. A vehicle with multiple exhaust pipes shall be inspected by collecting and averaging samples by one of the following methods:

- i. Collecting separate samples from each exhaust pipe and use the average concentration to determine the test result;
 - ii. Using manifold exhaust probes to simultaneously sample approximately equal volumes from each exhaust pipe; or
 - iii. Using manifold exhaust pipe adapters to collect approximately equal volume samples from each exhaust pipe.
- 10. Snap Idle Test.
 - a. Snap Idle Test Procedure.
 - i. The Department shall test the vehicle with a procedure that conforms to Society of Automotive Engineers Recommended Practice J1667, February 1996, incorporated by reference and on file with the Department, the Secretary of State and is available online at <http://azdeq.gov/VECS/Rulemaking>. This incorporation by reference contains no future editions or amendments.
 - ii. All testing and test equipment shall conform to the J1667 Recommended Practice.
 - iii. The procedure shall use the corrections for ambient test conditions in Appendix B of the J1667 Recommended Practice for all tests.
 - iv. To expedite testing throughput, the Department may implement rapid testing procedures.
 - v. The test results shall be reported as the percentage of smoke opacity.
 - b. Snap Idle Test Failure.
 - i. Except as provided in subsection (C)(10)(c), a vehicle fails the snap idle test if the opacity of emissions exceeds the level specified in the following table:

Model Year	Standard
1991 or later	40%
1990 or earlier	55%

- ii. The engine model year is determined by the emission control label. If the emission control label is missing, illegible, or incorrect, the test standard shall be 40%, unless a correct, legible, emission control label replacement is attached to the vehicle within 30 days of the inspection.
 - c. Alternative Opacity Standard. The Director shall identify an alternative, less stringent opacity standard for an engine family if the conditions of either subsection (C)(10)(c)(i) or (C)(10)(c)(ii) are satisfied.
 - i. The engine family exhibits smoke opacity greater than the applicable standard in subsection (C)(10)(b)(i) when in good operating condition and adjusted to the manufacturer's specifications. If this condition is satisfied, the Director shall identify a technologically appropriate less stringent standard based on a review of data obtained from engines in good operating condition and adjusted to manufacturer's specifications.
 - ii. The engine family has been granted an exemption from a standard equivalent to the applicable standard in subsection (C)(10)(b)(i) based on the J1667 Recommended Practice by the executive officer of the California Air Resources Board (CARB). If this condition is satisfied, the Director shall allow the engine family to comply with any technologically appropriate less stringent standard identified by the executive officer of CARB.

- iii. A demonstration under subsection (C)(10)(c)(i) shall be based on data from at least three vehicles. Data from official inspections under this subsection (C)(10) showing that vehicles in the engine family meet the standard may be used to rebut the demonstration.
 - iv. The Director shall implement any new standard resulting from each exemption as soon as practicable for all subsequent tests and provide notice at all affected test stations and fleets.
- 11. Loaded Opacity A Test.
 - a. Test Procedure.
 - i. The vehicle shall be tested on a chassis dynamometer beginning with no power absorption by selecting a gear ratio that produces a maximum vehicle speed of 30-35 MPH at governed or maximum rated RPM.
 - ii. If the vehicle has a manual transmission or an automatic transmission with individual gear selection, the engine shall be operated at governed or maximum rated engine RPM, at normal operating temperature under a power absorption load applied to the dynamometer until the loading reduces the engine RPM to 80% of the governed speed at wide-open throttle position.
 - iii. If the vehicle has an automatic transmission and automatic gear kickdown, the engine shall be loaded to a speed just above the kickdown speed or 80% of the governed speed, whichever is greater.
 - iv. If the chassis dynamometer does not have enough horsepower absorption capability to lug the engine down to these speeds, the vehicle's brakes may be used to assist the dynamometer.
 - b. Test Failure. A vehicle fails the test if the opacity reading for a period of 10 consecutive seconds exceeds the applicable standard in R18-2-1030(B).
- 12. Loaded Opacity B Test.
 - a. Test Procedure. The vehicle shall be tested by a loaded dynamometer test by applying a single load of 30 HP, \pm 2 HP, while operated at 50 MPH.
 - b. Test Failure. A vehicle fails the test if the opacity reading for a period of 10 consecutive seconds exceeds the applicable standard in R18-2-1030(B).
- 13. Loaded Opacity C Test.
 - a. Test Procedure. The vehicle shall be tested by a loaded dynamometer test by applying a single load of between 6.4 - 8.4 HP while operated at 30 MPH.
 - b. Test Failure. A vehicle fails the test if the opacity reading for a period of 10 consecutive seconds exceeds the applicable standard in R18-2-1030(B).
- 14. Exhaust Sampling Requirements for Diesel Vehicles Tests other than the Snap Idle Test.
 - a. For a diesel-powered vehicle equipped with multiple exhaust pipes, separate measurements shall be made on each exhaust pipe. The reading taken from the exhaust pipe that has the highest opacity reading shall be used for comparison with the standard in R18-2-1030(B).
 - b. A vehicle shall be inspected with either a full-flow or sampling-type opacity meter. The opacity meter shall be a direct reading, continuous reading light extinction-type using a collimated light source and photo-electric cell, accurate to a value within \pm 5% of filter value.
- 15. Functional Gas Cap Test.
 - a. Test Procedure.
 - i. The vehicle shall undergo a functional test of the gas cap to determine cap leakage.
 - ii. A vehicle with a non-sealing gas cap shall be checked for the presence of a properly fitting gas cap.

- b. Exemption. A vehicle with a vented fuel system is exempt from this subsection.
 - c. Test Failure.
 - i. A vehicle fails the test if cap leakage exceeds 60 cubic centimeters of air per minute at a pressure of 30 inches of water gauge.
 - ii. Notwithstanding subsection 18-2-1006(C)(15)(c)(i), a vehicle does not fail the test if the failing cap is immediately replaced at the state station by a gas cap that satisfies the requirements of this subsection.
16. Tampering Inspection.
- a. The inspection shall be based on the original configuration of the vehicle as manufactured. The Department shall verify the applicable emissions system requirements shall be verified by the "Vehicle Emission Control Information" label. "Original configuration" for a foreign manufactured vehicle means the design and construction of a vehicle produced by the manufacturer for original entry and sale in the United States.
 - b. The Department's tampering inspection shall consist of the following:
 - i. A visual inspection to determine the presence and proper installation of each required catalytic converter system or OEM equivalent;
 - ii. An examination to determine the presence of an operational injection system, if applicable;
 - iii. A visual inspection to determine the presence of an operational positive crankcase ventilation system or closed crankcase ventilation system, if applicable; and
 - iv. A visual inspection to determine the presence of an operational evaporative control system, if applicable.
17. Visual Gas Cap Test.
- a. The visual gas cap test consists of the inspector's ocular verification that a gas cap is properly fitted to the vehicle.
18. Testing Vehicles that Operate on More than One Fuel.
- a. A vehicle, other than a vehicle for which an OBD test is required, designed to operate on more than one fuel, shall be tested on the fuel in use when the vehicle is presented for inspection, except vehicles that operate on alternative fuel, as defined in A.R.S. § 1-215.
19. Testing Vehicles that Operate on Alternative Fuels.
- a. The inspector shall test vehicles that operate on an alternative fuel, as defined in A.R.S. § 1-215, other than a vehicle for which an OBD test is required, on each fuel that the vehicle is intended to operate on, using the appropriate emissions test procedure and standards for that vehicle.
 - b. The vehicle shall be operated for a minimum of 30 seconds after switching fuels and before testing begins. The vehicle shall be rejected for testing if it is not able to operate on each fuel that the vehicle is intended to operate on or if the vehicle operator cannot switch fuels.
 - c. A vehicle that operates exclusively on propane or natural gas, as defined in A.R.S. § 1-215, shall be exempt from the functional gas cap test in subsection 10-2-1006(C)(15) and the evaporative pressure system test in subsection 10-2-1006(C)(5)(b).

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

R18-2-805 effective November 15, 1993 (Supp. 93-4).

R18-2-906. Repealed**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective May 28, 1982 (Supp. 82-3). Former Section R9-3-906 renumbered without change as Section R18-2-906 (Supp. 87-3). Repealed effective February 26, 1988 (Supp. 88-1).

R18-2-907. Reserved**R18-2-908. Reserved****R18-2-909. Reserved****R18-2-910. Repealed****Historical Note**

Adopted effective August 9, 1985 (Supp. 85-4). Former Section R9-3-910 renumbered without change as Section R18-2-910 (Supp. 87-3). Repealed effective February 26, 1988 (Supp. 88-1).

R18-2-911. Reserved**R18-2-912. Reserved****R18-2-913. Repealed****Historical Note**

Adopted effective August 9, 1985 (Supp. 85-4). Former Section R9-3-913 renumbered without change as Section R18-2-913 (Supp. 87-3). Repealed effective February 26, 1988 (Supp. 88-1).

R18-2-914. Reserved**R18-2-915. Reserved****R18-2-916. Reserved****R18-2-917. Reserved****R18-2-918. Reserved****R18-2-919. Reserved****R18-2-920. Reserved****R18-2-921. Reserved****R18-2-922. Repealed****Historical Note**

Adopted effective August 9, 1985 (Supp. 85-4). Former Section R9-3-922 renumbered without change as Section R18-2-922 (Supp. 87-3). Repealed effective February 26, 1988 (Supp. 88-1).

ARTICLE 10. MOTOR VEHICLES; INSPECTIONS AND MAINTENANCE**R18-2-1001. Definitions**

The following definitions apply to this Article:

1. Abbreviations and symbols are defined as follows:
 - a. "A/F" means air/fuel,
 - b. "CO" means carbon monoxide.
 - c. "CO₂" means carbon dioxide.
 - d. "EGR" means exhaust gas recirculation.
 - e. "GVWR" means gross vehicle weight rating.
 - f. "HC" means hydrocarbon.
 - g. "HP" means horsepower.
 - h. "LNG" means liquefied natural gas.
 - i. "LPG" means liquid petroleum gas.
 - j. "MIL" means malfunction indicator lamp.
 - k. "MPH" means miles per hour.

- l. "MVD" means the Motor Vehicle Division of the Arizona Department of Transportation.
- m. "NDIR" means nondispersive infrared.
- n. "NO_x" means the sum of nitrogen oxide and nitrogen dioxide.
- o. "%" means percent.
- p. "OEM" means original equipment manufacturer.
- q. "OBD" means on-board diagnostics.
- r. "PCV" means positive crankcase ventilation.
- s. "PPM" means parts per million by volume.
- t. "RPM" means revolutions per minute.
- u. "VIN" means vehicle identification number.
2. "All-terrain vehicle" (ATV) means a vehicle that is defined as an "all-terrain vehicle" in A.R.S. § 28-101.
3. "Alternative fuel vehicle" means a vehicle powered by an alternative fuel as defined in A.R.S. § 1-215(4).
4. "Annual test" means a test for which an annual frequency is specified in the applicable table in R18-2-1006(B).
5. "Apportioned vehicle" means a vehicle that is subject to the proportional registration provisions of A.R.S. § 28-2233.
6. "Area A" has the meaning in A.R.S. § 49-541.
7. "Area B" has the meaning in A.R.S. § 49-541.
8. "Biennial test" means a test for which a biennial frequency is specified in the applicable table in R18-2-1006(B).
9. "Calibration gas" means a reference gas or gas mixture with assigned concentrations that is used to check the accuracy of emissions analyzers.
10. "Certificate of compliance" means a uniquely numbered document issued as part of the vehicle inspection report by a state station at the time of a vehicle inspection indicating that the vehicle has met the emissions standards.
11. "Certificate of exemption" means a uniquely numbered document issued by the Director providing an exemption from the testing requirements of this Article for a vehicle that is outside of the state on the emissions compliance expiration date.
12. "Certificate of inspection" means a uniquely numbered document issued by the Director indicating that a vehicle has been inspected under A.R.S. § 49-546 and has passed inspection.
13. "Certificate of waiver" means a uniquely numbered document issued by the Department indicating that the requirement of passing reinspection has been waived for a vehicle under A.R.S. § 49-542.
14. "CFR" means the Code of Federal Regulations, with standard reference in this Chapter by Title and Part, so that "40 CFR 280" means Title 40 of the Code of Federal Regulations, Part 280.
15. "Collectible vehicle" has the meaning in A.R.S. § 49-542(Z).
16. "Constant 4-wheel drive vehicle" means any 4-wheel drive vehicle that cannot be converted to 2-wheel drive except by disconnecting one of the vehicle's drive shafts, or any vehicle equipped with non-disengageable traction control which cannot be safely tested on conventional 2-wheel drive dynamometers.
17. "Constant volume sampler" means a system that dilutes engine exhaust to be sampled with ambient air so that the total combined flow rate of exhaust and dilution air mix is nearly constant for all engine operating conditions.
18. "Contractor" means a person, business, firm, partnership, or corporation with whom the Director has a contract that provides for the operation of one or more official emissions inspection stations.

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

19. "Dealer" means a person or organization licensed by the Arizona Department of Transportation as a new motor vehicle dealer or used motor vehicle dealer.
20. "Department" means the Department of Environmental Quality.
21. "Diagnostic Trouble Code" (DTC) means an alphanumeric code which is set in a vehicle's on-board diagnostic system when the OBD system detects an emissions control device or system failure.
22. "Diesel" or "Diesel Fuel" has the same meaning as in A.R.S. § 3-3401.
23. "Director" means the Director of the Department of Environmental Quality.
24. "Director's certificate" means a uniquely numbered document issued by the Director in certain circumstances for the vehicle to show evidence of meeting the minimum standards for registration.
25. "Electrically-powered vehicle" means a vehicle that uses electricity as the means of propulsion and does not require the combustion of fossil fuel within the confines of the vehicle to generate electricity.
26. "Emissions compliance expiration date" means:
 - a. Each registration expiration date for a vehicle subject to an annual test; and
 - b. The registration expiration date in the second year after the initial biennial test required under this Article or R18-2-1005(B) for a vehicle subject to a biennial test.
27. "Emissions inspection station permit" means a certificate issued by the Director authorizing the holder to perform vehicle emissions inspections under this Article.
28. "Exhaust emissions" means products of combustion emitted into the atmosphere from any opening in the exhaust system downstream of the exhaust ports of a motor vehicle engine.
29. "Exhaust pipe" means the pipe that attaches to the muffler and exits the vehicle.
30. "Fleet emissions inspection station" or "fleet station" means any vehicle emissions inspection facility operated under a permit issued pursuant to A.R.S. § 49-546.
31. "Fleet vehicle" means any vehicle owned, leased, or operated by an individual or entity granted a vehicle emissions testing license under A.R.S. § 49-546.
32. "Fuel" means any material that is burned within the confines of a vehicle to propel the vehicle.
33. "Fuel Cell Electric Vehicle" or "FCEV" means a zero-emission vehicle that runs on compressed hydrogen fed into a fuel cell stack that produces electricity to power the vehicle.
34. "Golf cart" means a motor vehicle that is defined as a "golf cart" in A.R.S. § 28-101.
35. "Government vehicle" means a registered motor vehicle exempt from the payment of a registration fee, or a federally owned or leased vehicle.
36. "Gross vehicle weight rating" (GVWR) means the maximum vehicle weight that a vehicle is designed for as established by the manufacturer.
37. "Idle test" means an exhaust emissions test conducted with the engine of the vehicle running at the manufacturer's idle speed \pm 100 RPM but without pressure exerted on the accelerator.
38. "Inspection" means the mandatory vehicle emissions inspection including the tampering inspection.
39. "Mass emissions measurement" means measurement of a vehicle's exhaust in mass units such as grams.
40. "Maximum required repair cost" means the applicable maximum required repair cost under R18-2-1010(F) or (G) for a vehicle that has failed inspection.
41. "Model year" means the date of manufacture of the original vehicle within the annual production period of the vehicle as designated by the manufacturer or, if a reconstructed vehicle, the first year of titling.
42. "Motorcycle" means a vehicle that is defined as a "motorcycle" as in A.R.S. § 28-101.
43. "New aftermarket catalytic converter" means a new catalytic converter manufactured as an OEM part that meets the standards under 40 CFR 86.
44. "On-board diagnostics" or "OBD" means an on-board diagnostic system required by Section 202(m) of the Clean Air Act. For the purposes of the Article, OBD certification refers to United States Environmental Protection Agency OBD certification.
45. "Opacity" means the degree of absorption of transmitted light.
46. "Reconditioned OEM catalytic converter" means a catalytic converter remanufactured, as a non-OEM part, with new catalytic material housed in the original catalyst casing.
47. "Recognized repair facility" means a business with an Arizona Department of Revenue transaction privilege tax license pursuant to Title 15, Chapter 5 of the Arizona Revised Statutes whose primary purpose is vehicle repair, and who has at least one employee with a nationally recognized certification for emissions-related diagnosis and repair.
48. "Reconstructed vehicle" means a vehicle that has been assembled or constructed largely by means of essential parts, new or used, derived from vehicles or makes of vehicles of various names, models and types or that, if originally otherwise constructed, has been materially altered by the removal of essential parts or by the addition or substitution of essential parts, new or used, derived from other vehicles or makes of vehicles. For the purposes of this paragraph, "essential parts" means integral and body parts, the removal, alteration or substitution of which will tend to conceal the identity or substantially alter the appearance of the vehicle.
49. "Specially constructed vehicle" means any vehicle not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles.
50. "State inspector" means an employee of the Department designated to perform quality assurance or waiver functions under this Article.
51. "State station" means a facility, other than a fleet emissions inspection station, established for the purpose of conducting inspections under A.R.S. § 49-542.
52. "Tampering" means removing, defeating, or altering an emissions control device that was installed on a vehicle at the time the vehicle was manufactured.
53. "Two-stroke vehicle" means a vehicle equipped with an engine that requires one revolution of the crankshaft for each power stroke.
54. "Vehicle" or "Motor Vehicle" means any automobile, truck, truck tractor, motor bus, or self-propelled or motor-driven vehicle registered or to be registered in this state and used upon the public highways of this state for the purpose of transporting persons or property, except implements of husbandry, roadrollers, or road machinery temporarily operated upon the highway.

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

55. "Vehicle emissions inspector" means an individual who is licensed by the Director to perform vehicle emissions inspections under this Article.
56. "Waiver inspector" means an employee of the contractor or the Department who is authorized to issue waivers under R18-2-1008.
57. "Zero Emissions Vehicle" means a battery electric vehicle that runs on electricity stored in the batteries and has only an electric motor rather than an internal combustion engine, or a fuel cell electric vehicle that produces no emissions from the on-board source of power.
3. Each vehicle registered outside Area A and Area B but used to commute to the driver's principal place of employment located within Area A or Area B;
4. Each vehicle owned by a person who is subject to A.R.S. §§ 15-1444(C) or 15-1627(G); and
5. An Area A or Area B vehicle owned or operated by the United States, this state, or a political subdivision of this state without regard to whether those vehicles are required to be registered in this state.

B. The following vehicles are exempt from the inspection requirements of this Article:

1. A vehicle manufactured in or before the 1966 model year;
2. A vehicle leased to a person residing outside Area A and Area B by a leasing company whose place of business is in Area A or Area B, except as provided in subsection (A)(3);
3. A vehicle sold between motor vehicle dealers;
4. A zero-emissions vehicle;
5. An apportioned vehicle;
6. A golf cart;
7. A vehicle with an engine displacement of less than 90 cubic centimeters;
8. A vehicle registered at the time of change of name of ownership if an emissions test is current and valid, except when the change results from the sale by a dealership whose place of business is located in Area A or Area B;
9. A vehicle for which a current certificate of exemption or Director's certificate is issued;
10. A new vehicle before the sixth registration year after initial purchase or lease; except that:
 - a. A reconstructed vehicle or specially constructed vehicle is not exempt.
 - b. A vehicle converted to operate on an alternative fuel, as defined in A.R.S. § 1-215, is not exempt.
 - c. A vehicle failing an emissions inspection the owner chooses to have under A.R.S. § 49-543 is not exempt for the current registration year.
11. A vehicle designed to operate exclusively on hydrogen, as defined in A.R.S. § 1-215;
12. A collectible vehicle;
13. A motorcycle;
14. An all-terrain vehicle (ATV);
15. These exemptions apply after the Administrator approves this subsection, (B)(15), into the applicable implementation plan:
 - a. Cranes and oversized vehicles that require permits pursuant to A.R.S. §§ 28-1100, 28-1103, and 28-1144;
 - b. A vehicle not in use and owned by a resident of this state while on active military duty outside of this state.

Historical Note

Former Section R9-3-1001 repealed, new Section R9-3-1001 adopted effective January 13, 1976 (Supp. 76-1). Former Section R9-3-1001 repealed, former Section R9-3-1002 renumbered and amended as Section R9-3-1001 effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1001 renumbered as Section R18-2-1001 and amended effective August 1, 1988 (Supp. 88-3). Amended effective September 19, 1990 (Supp. 90-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1002. Applicable Implementation Plan

- A.** Substantive revisions to the rules in this article that are included in the Arizona State Clean Air Act Implementation Plan cannot become effective until approved by the Administrator of the United States Environmental Protection Agency. Amendments adopted by the Department but not yet approved as of the date of the latest amendments are therefore identified in this Article as not applying until the Administrator approves them.
- B.** The Administrator's approvals of revisions to an applicable implementation plan are published as final rules in the Federal Register, which is available online at <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>. The Department publishes a list of Article 10 provisions approved since the last revisions to the Article at: <http://azdeq.gov/VECS/Rulemaking>.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1003. Vehicles to be Inspected by the Mandatory Vehicle Emissions Inspection Program

- A.** The following vehicles shall be inspected according to this Article:
1. A vehicle to be registered within Area A or Area B. For the purposes of this Article, registration within Area A or Area B shall be determined by the vehicle owner's permanent and actual residence. The permanent address in the MVD database shall be presumed to be the owner's permanent and actual residence. A post office box address listed on a title or registration document under A.R.S. § 28-2051(C) is not evidence of the owner's permanent and actual residence;
 2. Each vehicle delivered to a retail purchaser by a dealer licensed to sell used motor vehicles under A.R.S. Title 28 and whose place of business is located in Area A or Area B;

Historical Note

Former Section R9-3-1003 repealed, new Section R9-3-1003 adopted effective January 13, 1976; Amended as an emergency effective January 19, 1976 (Supp. 76-1). Amended effective January 3, 1977 (Supp. 77-1). Amended effective January 3, 1979 (Supp. 79-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1003 as amended effective January 3, 1979 and amended as an emergency effective January 2, 1981 now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1,

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

1986 (Supp. 85-6). Amended subsection (A) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1003 renumbered as Section R18-2-1003 and amended effective August 1, 1988 (Supp. 88-3). Amended effective September 19, 1990 (Supp. 90-3). Amended effective November 14, 1994 (Supp. 94-4). Amended effective October 15, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 2722, effective June 28, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1004. Repealed**Historical Note**

Former Section R9-3-1004 repealed, new Section R9-3-1004 adopted effective January 13, 1976 (Supp. 76-1). Amended effective January 3, 1977 (Supp. 77-1). Former Section R9-3-1004 renumbered as Section R18-2-1004 and amended effective August 1, 1988 (Supp. 88-3). Section repealed by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4).

R18-2-1005. Time of Inspection

- A.** All Area A and Area B vehicles subject to an annual test shall be inspected at the following times:
1. For a non-fleet vehicle, within 90 days before each registration expiration date.
 2. For a fleet vehicle inspected at a licensed fleet station, at least once within each 12 month period following any initial registration.
 3. For a government vehicle:
 - a. For a vehicle not exempt under R18-2-1003(B)(10), within 12 months after acquisition by the operating entity and then annually on or before the anniversary date of the previous inspection;
 - b. For a vehicle exempt under R18-2-1003(B)(10), within 90 days after the vehicle becomes subject to testing, and then annually on or before the anniversary date of the previous inspection; and
 - c. A government vehicle is subject to testing on the anniversary of its date of acquisition.
 4. For a vehicle registered outside Area A and Area B and used to commute to the driver's principal place of work located in Area A or Area B, upon vehicle registration and annually thereafter.
 5. For a vehicle owned by a person subject to A.R.S. §§ 15-1444(D) or 15-1627(G), within 30 calendar days following the date of initial registration at the institution located in Area A or Area B and annually thereafter.
- B.** All Area A and Area B vehicles subject to a biennial test shall be inspected at the following times:
1. For a non-fleet vehicle, within 90 days before the vehicle's emissions compliance expiration date.
 2. For a fleet vehicle inspected at a fleet station, at least once within each successive 24 month period following initial registration.
 3. For a government vehicle:
 - a. For a vehicle not exempt under R18-2-1003(B)(10), within 12 months after acquisition by the operating entity, and biennially thereafter, on or before the anniversary date of the previous inspection; or
 - b. For a vehicle exempt under R18-2-1003(B)(10), within 90 days after the vehicle becomes subject to

testing, and biennially thereafter, on or before the anniversary date of the previous inspection.

4. For a vehicle registered outside Area A or Area B but used to commute to the driver's principal place of employment located in Area A or Area B, upon vehicle registration and biennially thereafter.
 5. For a vehicle owned by a person subject to A.R.S. §§ 15-1444(D) or 15-1627(G), within 30 days following the date of initial registration at the institution located in Area A or Area B and biennially thereafter.
- C.** All vehicles sold by a dealer licensed to sell used motor vehicles under A.R.S. Title 28, whose place of business is located in Area A or Area B, shall pass the applicable emissions test prescribed by R18-2-1006 before delivery of the vehicle to a retail purchaser.
- D.** An Area B vehicle being registered in Area A is subject to the appropriate annual or biennial test from Area A before registration even if the Area A test, or test period, is different from the test required for the same vehicle in Area B.
- E.** Nothing in this Section shall be construed to waive a late registration fee because of failure to meet inspection requirements by the registration deadline, except that a motor vehicle that fails the initial or subsequent test shall not be subject to a penalty fee for late registration renewal if:
1. The initial test is accomplished before the emissions compliance expiration date; and
 2. The registration renewal is received by MVD within 30 days of the initial test.
- F.** An owner of a vehicle may submit the vehicle for emissions inspection more than 90 days before the emissions compliance expiration date but the inspection does not satisfy the registration testing requirement under R18-2-1003.

Historical Note

Former Section R9-3-1005 repealed, new Section R9-3-1005 adopted effective January 31, 1976 (Supp. 76-1). Amended effective January 3, 1977 (Supp. 77-1). Amended effective March 2, 1978 (Supp. 78-2). Amended effective January 3, 1979 (Supp. 79-1). Amended effective February 20, 1980 (Supp. 80-1). Amended as an emergency effective January 2, 1981 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-2). Former Section R9-3-1005 as amended effective February 20, 1980 and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1005 renumbered as Section R18-2-1005 and subsections (A) and (C) amended effective August 1, 1988 (Supp. 88-3). Amended effective September 19, 1990 (Supp. 90-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1006. Emissions Test Procedures

- A.** This Section establishes the testing requirements for vehicles in the State of Arizona. Subsection (B) identifies which tests apply to a particular type and model year of vehicle. Subsection (C) establishes the procedures and criteria for, passing, failing, or being rejected from each test.
- B.** Test applicability.

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

1. Area A and Area B non-diesel. The following general requirements govern test applicability for non-diesel vehicles in both Area A and Area B:
 - a. A rotary engine shall be inspected as a 4-stroke engine with four cylinders or less.
 - b. For a vehicle in which an engine has been replaced:
 - i. A vehicle owner shall not install a heavy-duty engine in a light-duty chassis.
 - ii. A vehicle owner shall not install a light-duty engine in a heavy-duty chassis.
 - iii. The replacement engine package shall include all emissions control equipment and devices that were required by the manufacturer for an engine-chassis certification. All emissions control equipment and devices shall be properly installed and in operating condition, and the resulting engine-chassis configuration shall be equivalent to a verified configuration of the same, or newer, model year as that of the vehicle chassis.
2. Area A Non-Diesel. Non-diesel vehicles in Area A are subject to the test procedures identified in this subsection:
 - a. Vehicles other than alternative fuel vehicles operated by a school district in Area A, heavy duty alternative fuel vehicles, reconstructed vehicles, and constant 4-wheel-drive vehicles that are not equipped with OBD, are subject to the following test procedures until the Administrator approves subsection (B)(2)(a)(i) into the applicable implementation plan:
 - iv. The Department shall inspect the vehicle according to the model year of the vehicle chassis.

Area A Non-Diesel Testing Procedures Until SIP Revision is Approved				
Model Year	GVWR	Test Frequency	Tests Applicable	Test Subsection
1996 or later	8,500 pounds or less	Biennial	OBD Functional gas cap Tampering	C.4 C.16 C.17
1981 through 1995	8,500 pounds or less	Biennial	Transient loaded and evaporative system pressure Functional gas cap Tampering	C.5 C.16 C.17
1975 through 1980	8,500 pounds or less	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 C.17
1975 or later	More than 8,500 pounds	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 C.17
1967 through 1974	Any	Annual	Loaded test Functional gas cap	C.6 C.16

- i. Test procedures that apply after the Administrator approves this subsection, (B)(2)(a)(i), into the applicable implementation plan:

Area A Non-Diesel Testing Procedures After SIP Revision is Approved					
Model Year	GVWR	OBD Certified?	Test Frequency	Tests Applicable	Test Subsection
1996 or Later	Any	Yes	Biennial	OBD Functional gas cap Tampering	C.4 C.16 C.17
1981 or later	8,500 pounds or less	No	Biennial	Transient loaded and evaporative system pressure Functional gas cap Tampering	C.5 C.16 C.17
1975 through 1980	8,500 pounds or less	No	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 C.17
1975 or later	More than 8,500 pounds	No	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 C.17
1967 through 1974	Any	No	Annual	Loaded test Functional gas cap	C.6 C.16

- b. Alternative fuel vehicles operated by a school district in Area A are subject to the following testing procedures until the Administrator approves subsection (B)(2)(b)(i) into the applicable implementation plan. After subsection (B)(2)(b)(i) has been approved into the applicable implementation plan, alternative fuel vehicles operated by a school district in Area A will be subject to subsection (B)(2)(b)(i).

Area A Alt. Fuel Vehicles Operated by a School District Testing Procedures Until SIP Revision is Approved

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

Model Year	OBD Certified?	Test Frequency	Tests Applicable	Test Subsection
1975 or later	No	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 C.17
1967 through 1974	No	Annual	Loaded test Functional gas cap	C.8 C.16

- i. Test procedures that apply after the Administrator approves this subsection, (B)(2)(b)(i), into the applicable implementation plan.

Area A Alt. Fuel Vehicles Operated by a School District Testing Procedures After SIP Revision is Approved				
Model Year	OBD Certified?	Test Frequency	Tests Applicable	Test Subsection
Any	Yes	Biennial	OBD Functional gas cap Tampering	C.4 C.16 C.17
1975 or later	No	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 C.17
1967 through 1974	No	Annual	Loaded test Functional gas cap	C.6 C.16

- c. Heavy duty alternative fuel vehicles in Area A that are not owned by a school district are subject to the following testing procedures.

Model Year	GVWR	OBD Certified?	Test Frequency	Tests Applicable	Test Subsection
Any	More than 14,500 pounds	Yes	Biennial	OBD Functional gas cap Tampering	C.4 C.16 C.17
1975 or later	More than 14,500 pounds	No	Annual	Idle test Functional gas cap Tampering	C.8 C.16 C.17
1967 through 1974	More than 14,500 pounds	No	Annual	Idle test Functional gas cap	C.8 C.16

- 3. Area B Non-Diesel. Non-diesel vehicles in Area B are subject to the test procedures identified in this subsection:
 - a. Vehicles other than reconstructed vehicles and constant 4-wheel-drive vehicles that are not

equipped with OBD shall be subject to the following test procedures until the Administrator approves subsection (B)(2)(a)(i) into the applicable implementation plan:

Area B Non-Diesel Testing Procedures Until SIP Revision is Approved				
Model Year	GVWR	Test Frequency	Tests Applicable	Test Subsection
1996 or later	8,500 pounds or less	Annual	OBD Functional gas cap Tampering	C.4 C.16 C.17
1981 through 1995	8,500 pounds or less	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 C.17
1975 through 1980	8,500 pounds or less	Annual	Idle test Functional gas cap Tampering	C.8 C.16 C.17
1975 or later	More than 8,500 pounds	Annual	Idle test Functional gas cap Tampering	C.8 C.16 C.17
1967 through 1974	Any	Annual	Idle test Functional gas cap	C.8 C.16

- i. Test procedures that apply after the Administrator approves this subsection (B)(2)(a)(i) into the applicable implementation plan:

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

Area B Non-Diesel Testing Procedures After SIP Revision is Approved					
Model Year	GVWR	OBD Certified?	Test Frequency	Tests Applicable	Test Subsection
Any	Any	Yes	Biennial	OBD Functional gas cap Tampering	C.4 C.16 C.17
1981 or later	8,500 pounds or less	No	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 C.17
1975 through 1980	8,500 pounds or less	No	Annual	Loaded Test Functional gas cap Tampering	C.6 C.16 C.17
1975 or later	More than 8,500 pounds	No	Annual	Idle test Functional gas cap Tampering	C.8 C.16 C.17
1967 through 1974	Any	No	Annual	Idle test Functional gas cap	C.9 C.16

4. Reconstructed non-diesel vehicles. Reconstructed non-diesel vehicles in both Area A and Area B are subject to the tests specified in the following table:

Model Year	Test Frequency	Tests Applicable	Test Subsection
1967 or later	Annual	Loaded test Visual gas cap	C.6 C.18

5. Constant 4-wheel-drive vehicles. Constant 4-wheel-drive vehicles in both Area A and Area B that are not equipped with OBD are subject to the tests specified in the following table:

Model Year	Test Frequency	Tests Applicable	Test Subsection
1975 or later	Annual	Idle Test Functional gas cap Tampering	C.8 C.16 C.17
1967 through 1974	Annual	Idle Test Functional gas cap	C.8 C.16

6. Area A Diesel. Diesel vehicles that require inspection in Area A are subject to the test procedures specified in this subsection until the Administrator approves subsection (B)(8) into the applicable implementation plan:

Area A Diesel Testing Procedures Until SIP Revision is Approved					
GVWR	OBD Certified?	Model Year	Test Frequency	Tests Applicable	Test Subsection
8,500 and less	Yes	Any	Annual	OBD Tampering	C.4 C.17
More than 8,500 pounds	No	1975 or later	Annual	Snap idle Tampering	C.10 C.17
More than 8,500 pounds	No	1967 through 1974	Annual	Snap idle	C.10
More than 4,000 and less than or equal to 8,500 pounds	No	1975 or later	Annual	Loaded opacity B Tampering	C.12 C.17
More than 4,000 and less than or equal to 8,500 pounds	No	1967 through 1974	Annual	Loaded opacity B	C.12
4,000 pounds or less	No	1975 or later	Annual	Loaded opacity C Tampering	C.13 C.17
4,000 pounds or less	No	1967 through 1974	Annual	Loaded opacity C	C.13

7. Area B Diesel. Diesel vehicles that require inspection in Area B are subject to the test procedures specified in this subsection until the Administrator approves subsection (B)(8) into the applicable implementation plan:

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

Area B Diesel Testing Procedures Until SIP Revision is Approved				
GVWR	Model Year	Test Frequency	Tests Applicable	Test Subsection
More than 26,000 pounds	1975 or later	Annual	Loaded opacity A Tampering	C.12 C.18
More than 26,000 pounds	1967 through 1974	Annual	Loaded opacity A	C.12
More than 10,500 and less than or equal to 26,000 pounds	1975 or later	Annual	Any of the following: Loaded opacity A Loaded opacity B Tampering	C.12 C.13 C.18
More than 10,500 and less than or equal to 26,000 pounds	1967 through 1974	Annual	Any of the following: Loaded opacity A Loaded opacity B	C.12 C.13
More than 4,000 and less than or equal to 10,500	1975 or later	Annual	Loaded opacity B Tampering	C.13 C.18
More than 4,000 and less than or equal to 10,500	1967 through 1974	Annual	Loaded opacity B	C.13
4,000 pounds or less	1975 or later	Annual	Loaded opacity C Tampering	C.14 C.18
4,000 pounds or less	1967 through 1974	Annual	Loaded opacity C	C.14

8. Test procedures that apply for diesel vehicles in both Area A and Area B after the Administrator approves this subsection (B)(8) into the applicable implementation plan:

Area A and Area B Diesel Testing Procedures After SIP Revision is Approved					
GVWR	OBD Certified?	Model Year	Test Frequency	Tests Applicable	Test Subsection
Any	Yes	Any	Biennial	OBD Tampering	C.4 C.17
More than 8,500 pounds	No	1975 or later	Annual	Snap idle Tampering	C.10 C.17
More than 8,500 pounds	No	1967 through 1974	Annual	Snap idle	C.10
More than 4,000 and less than or equal to 8,500 pounds	No	1975 or later	Annual	Loaded opacity B Tampering	C.12 C.17
More than 4,000 and less than or equal to 8,500 pounds	No	1967 through 1974	Annual	Loaded opacity B	C.12
4,000 pounds or less	No	1975 or later	Annual	Loaded opacity C Tampering	C.13 C.17
4,000 pounds or less	No	1967 through 1974	Annual	Loaded opacity C	C.13

9. Dealer Fleet Testing Procedures. The test procedures in the table in this Section apply until the administrator approves subsections (B)(2)(a)(i), (B)(3)(a)(i), and (B)(8) into the applicable implementation plan for used vehicles sold by a motor vehicle dealer who is a fleet operator and who has been issued a permit pursuant to A.R.S. § 49-546. After those sections are approved into the applicable implementation plan, used vehicles sold by a motor vehicle dealer who is a fleet operator and who has been issued a permit pursuant to A.R.S. § 49-546 will be subject to the same testing procedures as vehicles tested at state stations and the table in this Section will no longer be applicable.

Area A and Area B Dealer Fleet Testing Procedures Until SIP Revision is Approved			
Model Year	Test Frequency	Tests Applicable	Test Subsection

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

1981 or later	Annual	Two speed idle test Functional gas cap Tampering	C.6 C.16 C.17
1975 through 1980	Annual	Idle Test Functional gas cap Tampering	C.7 C.16 C.17
1967 through 1974	Annual	Idle Test Functional gas cap	C.8 C.16

C. Test Requirements

1. Conditions for Pass. A vehicle passes inspection if the vehicle:

- a. Is subjected to all applicable tests required by Subsection (B);
- b. Is not rejected from any of the tests for any of the reasons specified in (C)(2) or (C)(3) of this subsection; and
- c. Does not fail any of the applicable tests for any of the reasons specified in this subsection.

2. Pre-Test Safety Inspection

- a. The Department shall inspect each vehicle visually before the emissions test for any of the following unsafe or untestable conditions:
 - i. A fuel leak that causes wetness or pooling of fuel;
 - ii. A continuous engine or transmission oil leak onto the floor;
 - iii. A continuous engine coolant leak onto the floor such that the engine is overheating or may overheat within a short time;
 - iv. A tire on a driving wheel with less than 2/32-inch tread, metal protuberances, unmatched tire size, obviously low tire pressure as determined by visual inspection;
 - v. An exhaust pipe that does not allow for safe exhaust probe insertion;
 - vi. An exhaust pipe on a diesel-powered vehicle that does not allow for safe exhaust probe insertion and attachment of opacity meter sensor units;
 - vii. Improperly operating brakes;
 - viii. Any vehicle modification or mechanical condition that prevents dynamometer operation;
 - ix. Loud internal engine noise;
 - x. An obvious exhaust leak;
 - xi. Towing a trailer or carrying a heavy load;
 - xii. Carrying explosives or any hazardous material not used as a fuel for the vehicle; or
 - xiii. Any other condition that in the judgment of the inspector makes testing unsafe or the vehicle untestable.
- b. If the inspector determines that a vehicle is unsafe or otherwise untestable by the visual inspection the following shall apply:
 - i. The vehicle shall be rejected without an emissions test;
 - ii. The inspector shall notify the vehicle owner or operator of all untestable or unsafe conditions found;
 - iii. A state station shall not charge a fee; and
 - iv. A state station shall not test the vehicle until the cause for rejection is repaired.

3. Test Operating Conditions. When conducting the emissions test required by this Section, the vehicle emissions inspector shall ensure that all of the following requirements are satisfied:

- a. The vehicle shall be tested in the condition presented, unless rejected under 18-2-1006(C)(2);
- b. The vehicle's engine shall be operating at normal temperature and not be overheating as indicated by a gauge, warning light, or boiling radiator; and
- c. All vehicle accessories shall be turned off during testing.

4. OBD Test.

- a. Test Procedure. The OBD test shall consist of:
 - i. A visual inspection of the MIL function; and
 - ii. An electronic examination of the OBD computer by connecting a scan tool to the data link connector and interrogating the OBD system to determine vehicle readiness status, MIL status, and the presence of diagnostic trouble codes.
- b. Equipment Specifications. The OBD equipment shall conform to the requirements of "Performing Onboard Diagnostic System Checks as Part of a Vehicle Inspection and Maintenance Program," EPA420-R-01-015, EPA, June 2001 (and no future editions or amendments), which is incorporated by reference. A copy of this incorporated material is on file with the Department, the Secretary of State, and is available online at <http://azdeq.gov/VECS/Rulemaking>.
- c. OBD scan tools shall have the most recent available software downloaded and installed before inspection.
- d. Test Rejection. A vehicle shall be rejected from an OBD test if any of the following conditions occurs:
 - i. The number of unset readiness indicators, excluding continuous indicators, is three or more for a model year 1996-2000 vehicle, or two or more for a model year 2001 and newer vehicle;
 - ii. The data link connector cannot be located or is inaccessible;
 - iii. The data link connector is loose and the scan tool cannot be inserted into the connector;
 - iv. The data link connector has no voltage; or
 - v. The eVIN and monitors are mismatched.
- e. Test Failure. A vehicle fails the OBD test if any of the following conditions occurs:
 - i. The vehicle's MIL does not illuminate when the ignition is on and the engine is off;
 - ii. The vehicle's MIL illuminates continuously or flashes with the engine running;
 - iii. The OBD system is not communicating;
 - iv. The vehicle's OBD system reports the MIL as commanded on;
 - v. The vehicle's OBD system data is inappropriate for the vehicle being tested; or
 - vi. The vehicle's OBD system data does not match the original equipment manufacturer (OEM) or a Department exempted OBD software configuration.

5. Transient Loaded and Evaporative System Pressure Test.

- a. Transient Loaded Test Procedure.

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

- i. The transient loaded test shall consist of 147 seconds of mass emissions measurement using a constant volume sampler while the vehicle is driven by an inspector through a computer-monitored driving cycle on a dynamometer with inertial weight settings appropriate for the weight of the vehicle.
 - ii. The driving cycle shall include the acceleration, deceleration, and idle operating modes described in Table 4.
 - iii. The 147-second sequence may be ended earlier using a fast-pass or fast-fail algorithm.
 - iv. A retest algorithm shall be used to determine if a test failure is due to insufficient vehicle preconditioning. As determined by the retest algorithm, an additional test may be performed on a failing vehicle.
 - v. The highest selectable drive gear shall be used for automatic transmissions and first gear shall be used for manual transmission acceleration from idle.
 - vi. Exhaust emissions concentrations in grams per mile for HC, CO, NO_x and CO₂ shall be recorded continuously beginning with the first second.
 - vii. All testing and test equipment for the transient loaded emissions test shall conform to "IM240 & Evap Technical Guidance," EPA420-R-00-007, EPA, April 2000, and no future editions or amendments, which is incorporated by reference, except that the transient driving cycle in Table 4, the standards in Table 4, and the fast-pass, fast-fail retest algorithms described in subsection (C)(5)(a) shall be used. A copy of the incorporated material is on file with the Department, the Secretary of State, and is available online at <http://azdeq.gov/VECS/Rulemaking>.
 - viii. In determining compliance under subsection (C)(5)(d) for a vehicle that operates on natural gas, HC emissions shall be multiplied by 0.19, when an analyzer with a flame ionization detector is used or 0.61, when an NDIR analyzer is used.
- b. Evaporative System Pressure Test Procedure. The evaporative system pressure test shall consist of the following steps in sequence:
 - i. Connect the test equipment to either the fuel tank vent hose at the canister or the fuel tank filler neck;
 - ii. Pressurize the system to 14 ± 0.5 inches of water without exceeding 26 inches of water system pressure; and
 - iii. Close off the pressure source, seal the evaporative system, and monitor pressure decay for two minutes unless a failure is detected or a fast-pass determination is made as defined in EPA420-R-00-007, which is incorporated by reference in subsection (C)(5)(a)(vii) of this rule.
 - c. Test Rejection. A vehicle shall be rejected from the transient loaded and evaporative system pressure test if it has an audible or visible exhaust leak during emissions testing, or if the vehicle displays unsafe behavior on the dynamometer during testing.
 - d. Transient Loaded Test Failure. A vehicle fails the transient loaded test if emissions measured during the test exceed the Table 3 standard applicable to the model year and type of the vehicle being tested as follows:
 - i. The average emissions measured for the entire test exceed the "composite standard" for any pollutant; or
 - ii. The average emissions measured during seconds 65 through 146 exceed the "phase-2" standard for any pollutant.
 - e. Evaporative System Pressure Test Failure. A vehicle fails the evaporative system pressure test if any of the following conditions occurs:
 - i. The evaporative system cannot maintain a system pressure above eight inches of water for two minutes after being pressurized to 14 ± 0.5 inches of water;
 - ii. The canister is missing or damaged; or
 - iii. The hose or electrical system is missing, routed incorrectly, or disconnected, according to the vehicle emissions control information label.
 - f. Test Failure. A vehicle fails the transient loaded and evaporative system pressure test if it fails the test under either subsection R10-2-1006(C)(5)(d) or R10-2-1006(C)(5)(e).
- 6. Loaded Test.
 - a. Loaded Cruise Test Procedure. The vehicle's drive wheels shall be placed on a dynamometer and the vehicle shall be operated according to the Table 1 of this Article.
 - b. Besides the Arizona specific dynamometer test schedule, loaded tests shall conform to the procedures listed at 40 CFR 51, Subpart S, Appendix B, Section III, amended as of July 1st, 2017, which is incorporated by reference and on file with the Department, the Secretary of State, and is available online at <http://azdeq.gov/VECS/Rulemaking>.
 - c. Loaded Test Equipment Specifications.
 - i. The equipment used in Area A state stations for loaded cruise and curb idle testing shall conform to "IM240 & Evap Technical Guidance," EPA420-R-00-007, EPA, April 2000, and no future editions or amendments, which is incorporated by reference in subsection (C)(5)(a)(vii) of this rule.
 - ii. The equipment used in Area B state stations and all Arizona fleet emission testing stations for the loaded test shall comply with 40 CFR 51, Subpart S, Appendix A, Section I, amended as of July 1, 2017, which is incorporated by reference and on file with the Department, the Secretary of State, and is available online at <http://azdeq.gov/VECS/Rulemaking>.
 - d. In determining whether a vehicle that operates on natural gas complies with the HC emissions standards in Table 2 of this Article, the results of the test shall be multiplied by 0.19, when an analyzer with a flame ionization detector is used or 0.61, when an NDIR analyzer is used.
 - e. Test Rejection. A vehicle shall be rejected from a loaded cruise and curb idle test, if the CO₂ plus CO reading during the curb idle test is less than 6%.
 - f. Test Failure. A vehicle fails the loaded cruise and curb idle test if tailpipe emissions measured by the test exceed the applicable standards in Table 2 for

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

loaded cruise mode or curb idle mode for the type and model year of the vehicle being tested.

7. Two Speed Idle Test
 - a. All two speed idle testing shall conform to the procedures listed at 40 CFR 51, Subpart S, Appendix B, Section II, amended as of July 1, 2017, and no future editions or amendments, which is incorporated by reference and on file with the Department, the Secretary of State, and is available online at <http://azdeq.gov/VECS/Rulemaking>.
 - b. All equipment used for two speed idle testing shall conform with the requirements of 40 CFR 51, Subpart S, Appendix A, Section I, amended as of July 1, 2017, and no future editions or amendments, which is incorporated by reference and on file with the Department.
 - c. Test Failure. A vehicle fails the two speed idle test if tailpipe emissions measured by the test exceed the applicable standards in Table 2 for the type and model year of the vehicle being tested.
8. Idle Test
 - a. All idle testing shall conform to the procedures listed at 40 CFR 51, Subpart S, Appendix B, Section I, amended as of July 1, 2017, and no future editions or amendments, which is incorporated by reference and on file with the Department, the Secretary of State, and is available online at <http://azdeq.gov/VECS/Rulemaking>.
 - b. All equipment used for two speed idle testing shall conform with the requirements of 40 CFR 51, Subpart S, Appendix B, Section I, amended as of July 1, 2017, and no future editions or amendments, which is incorporated by reference and on file with the Department.
 - c. Test Failure. A vehicle fails the idle test if tailpipe emissions measured by the test exceed the applicable standards in Table 2 for the type and model year of the vehicle being tested.
9. Exhaust Sampling Requirements for Annual Tests on Non-Diesel Vehicles.
 - a. All CO and HC emissions analyzers shall have water traps incorporated in the sampling lines. Sampling probes shall be capable of taking undiluted exhaust samples from a vehicle exhaust system.
 - b. A vehicle, other than a diesel-powered vehicle, shall be inspected with a gas analyzer capable of determining concentrations of CO and HC within the ranges and tolerances specified in Table 5.
 - c. A vehicle with multiple exhaust pipes shall be inspected by collecting and averaging samples by one of the following methods:
 - i. Collecting separate samples from each exhaust pipe and use the average concentration to determine the test result;
 - ii. Using manifold exhaust probes to simultaneously sample approximately equal volumes from each exhaust pipe; or
 - iii. Using manifold exhaust pipe adapters to collect approximately equal volume samples from each exhaust pipe.
10. Snap Idle Test.
 - a. Snap Idle Test Procedure.
 - i. The Department shall test the vehicle with a procedure that conforms to Society of Automotive Engineers Recommended Practice J1667, February 1996, incorporated by reference and

on file with the Department, the Secretary of State and is available online at <http://azdeq.gov/VECS/Rulemaking>. This incorporation by reference contains no future editions or amendments.

- ii. All testing and test equipment shall conform to the J1667 Recommended Practice.
- iii. The procedure shall use the corrections for ambient test conditions in Appendix B of the J1667 Recommended Practice for all tests.
- iv. To expedite testing throughput, the Department may implement rapid testing procedures.
- v. The test results shall be reported as the percentage of smoke opacity.
- b. Snap Idle Test Failure.
 - i. Except as provided in subsection (C)(10)(c), a vehicle fails the snap idle test if the opacity of emissions exceeds the level specified in the following table:

Model Year	Standard
1991 or later	40%
1990 or earlier	55%

- ii. The engine model year is determined by the emission control label. If the emission control label is missing, illegible, or incorrect, the test standard shall be 40%, unless a correct, legible, emission control label replacement is attached to the vehicle within 30 days of the inspection.
- c. Alternative Opacity Standard. The Director shall identify an alternative, less stringent opacity standard for an engine family if the conditions of either subsection (C)(10)(c)(i) or (C)(10)(c)(ii) are satisfied.
 - i. The engine family exhibits smoke opacity greater than the applicable standard in subsection (C)(10)(b)(i) when in good operating condition and adjusted to the manufacturer's specifications. If this condition is satisfied, the Director shall identify a technologically appropriate less stringent standard based on a review of data obtained from engines in good operating condition and adjusted to manufacturer's specifications.
 - ii. The engine family has been granted an exemption from a standard equivalent to the applicable standard in subsection (C)(10)(b)(i) based on the J1667 Recommended Practice by the executive officer of the California Air Resources Board (CARB). If this condition is satisfied, the Director shall allow the engine family to comply with any technologically appropriate less stringent standard identified by the executive officer of CARB.
 - iii. A demonstration under subsection (C)(10)(c)(i) shall be based on data from at least three vehicles. Data from official inspections under this subsection (C)(10) showing that vehicles in the engine family meet the standard may be used to rebut the demonstration.
 - iv. The Director shall implement any new standard resulting from each exemption as soon as practicable for all subsequent tests and provide notice at all affected test stations and fleets.
11. Loaded Opacity A Test.
 - a. Test Procedure.

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

- i. The vehicle shall be tested on a chassis dynamometer beginning with no power absorption by selecting a gear ratio that produces a maximum vehicle speed of 30-35 MPH at governed or maximum rated RPM.
 - ii. If the vehicle has a manual transmission or an automatic transmission with individual gear selection, the engine shall be operated at governed or maximum rated engine RPM, at normal operating temperature under a power absorption load applied to the dynamometer until the loading reduces the engine RPM to 80% of the governed speed at wide-open throttle position.
 - iii. If the vehicle has an automatic transmission and automatic gear kickdown, the engine shall be loaded to a speed just above the kickdown speed or 80% of the governed speed, whichever is greater.
 - iv. If the chassis dynamometer does not have enough horsepower absorption capability to lug the engine down to these speeds, the vehicle's brakes may be used to assist the dynamometer.
 - b. Test Failure. A vehicle fails the test if the opacity reading for a period of 10 consecutive seconds exceeds the applicable standard in R18-2-1030(B).
12. Loaded Opacity B Test.
- a. Test Procedure. The vehicle shall be tested by a loaded dynamometer test by applying a single load of 30 HP, \pm 2 HP, while operated at 50 MPH.
 - b. Test Failure. A vehicle fails the test if the opacity reading for a period of 10 consecutive seconds exceeds the applicable standard in R18-2-1030(B).
13. Loaded Opacity C Test.
- a. Test Procedure. The vehicle shall be tested by a loaded dynamometer test by applying a single load of between 6.4 - 8.4 HP while operated at 30 MPH.
 - b. Test Failure. A vehicle fails the test if the opacity reading for a period of 10 consecutive seconds exceeds the applicable standard in R18-2-1030(B).
14. Exhaust Sampling Requirements for Diesel Vehicles Tests other than the Snap Idle Test.
- a. For a diesel-powered vehicle equipped with multiple exhaust pipes, separate measurements shall be made on each exhaust pipe. The reading taken from the exhaust pipe that has the highest opacity reading shall be used for comparison with the standard in R18-2-1030(B).
 - b. A vehicle shall be inspected with either a full-flow or sampling-type opacity meter. The opacity meter shall be a direct reading, continuous reading light extinction-type using a collimated light source and photo-electric cell, accurate to a value within \pm 2% of full scale.
15. Functional Gas Cap Test.
- a. Test Procedure.
 - i. The vehicle shall undergo a functional test of the gas cap to determine cap leakage.
 - ii. A vehicle with a non-sealing gas cap shall be checked for the presence of a properly fitting gas cap.
 - b. Exemption. A vehicle with a vented fuel system is exempt from this subsection.
 - c. Exemption. A vehicle that is manufactured without a gas cap is exempt from this subsection.
 - d. Test Failure.
 - i. A vehicle fails the test if cap leakage exceeds 60 cubic centimeters of air per minute at a pressure of 30 inches of water gauge.
 - ii. Notwithstanding subsection 18-2-1006(C)(15)(d)(i), a vehicle does not fail the test if the failing cap is immediately replaced at the state station by a gas cap that satisfies the requirements of this subsection.
16. Tampering Inspection.
- a. The inspection shall be based on the original configuration of the vehicle as manufactured. The Department shall verify the applicable emissions system requirements shall be verified by the "Vehicle Emission Control Information" label. "Original configuration" for a foreign manufactured vehicle means the design and construction of a vehicle produced by the manufacturer for original entry and sale in the United States.
 - b. The Department's tampering inspection shall consist of the following:
 - i. A visual inspection to determine the presence and proper installation of each required catalytic converter system or OEM equivalent;
 - ii. An examination to determine the presence of an operational injection system, if applicable;
 - iii. A visual inspection to determine the presence of an operational positive crankcase ventilation system or closed crankcase ventilation system, if applicable; and
 - iv. A visual inspection to determine the presence of an operational evaporative control system, if applicable.
17. Visual Gas Cap Test. The visual gas cap test consists of the inspector's ocular verification that a gas cap is properly fitted to the vehicle.
18. Testing Vehicles that Operate on More than One Fuel. A vehicle, other than a vehicle for which an OBD test is required, designed to operate on more than one fuel, shall be tested on the fuel in use when the vehicle is presented for inspection, except vehicles that operate on alternative fuel, as defined in A.R.S. § 1-215.
19. Testing Vehicles that Operate on Alternative Fuels.
- a. The inspector shall test vehicles that operate on an alternative fuel, as defined in A.R.S. § 1-215, other than a vehicle for which an OBD test is required, on each fuel that the vehicle is intended to operate on, using the appropriate emissions test procedure and standards for that vehicle.
 - b. The vehicle shall be operated for a minimum of 30 seconds after switching fuels and before testing begins. The vehicle shall be rejected for testing if it is not able to operate on each fuel that the vehicle is intended to operate on or if the vehicle operator cannot switch fuels.
 - c. A vehicle that operates exclusively on propane or natural gas, as defined in A.R.S. § 1-215, shall be exempt from the functional gas cap test in subsection 10-2-1006(C)(15) and the evaporative pressure system test in subsection 10-2-1006(C)(5)(b).

Historical Note

Former Section R9-3-1006 repealed, new Section R9-3-1006 adopted effective January 13, 1976 (Supp. 76-1).
 Amended effective November 1, 1976 (Supp. 76-5).
 Amended effective March 2, 1978 (Supp. 78-2).
 Amended effective January 3, 1979 (Supp. 79-1).
 Amended effective February 20, 1980 (Supp. 80-1). For-

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

mer Section R9-3-1006 repealed, new Section R9-3-1006 adopted as an emergency effective January 2, 1981 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1006 as amended effective February 20, 1980 repealed and a new Section R9-3-1006 adopted as an emergency effective January 2, 1981 now adopted and amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1006 renumbered as Section R18-2-1006 and subsections (A), (C) and (D) amended effective August 1, 1988 (Supp. 88-3). Amended effective September 19, 1990 (Supp. 90-3). Amended effective November 14, 1994 (Supp. 94-4). Amended effective October 15, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 2722, effective June 28, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 14 A.A.R. 2834, effective July 1, 2008 (Supp. 08-3). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1007. Evidence of Meeting State Inspection Requirements

- A. A vehicle required to be inspected under this Article shall pass inspection before registration by meeting the requirements of R18-2-1006, unless the vehicle owner obtains a certificate of waiver under R18-2-1008.
- B. The MVD or its agent may use the MVD motor vehicles emissions database, if available, as evidence that a vehicle complies with the requirements of this Article.
- C. If the MVD motor vehicles emissions database is not available, the MVD or its agent shall accept any of the following documents identified in subsections (C)(1) to (C)(5), when complete, unaltered, and dated no more than 90 days before registration expiration date, as evidence that a vehicle complies with the requirements of this Article unless the MVD or its agent has reason to believe it is false. Documents accompanying a late registration may be dated subsequent to the registration expiration date:
 1. Certificate of compliance,
 2. Certificate of waiver (except from auto dealers licensed to sell used motor vehicles under Title 28),
 3. Certificate of exemption,
 4. Director's certificate, or
 5. The upper section of the vehicle inspection report with "PASS" in the final results block.
- D. A complete certificate of inspection or government vehicle certificate of inspection dated within 12 months of registration for an annually tested vehicle and 24 months for a biennially tested vehicle shall be accepted by the MVD or its agent as evidence that a vehicle is in compliance with the requirements of this Article unless the MVD or its agent has reason to believe it is false.
- E. Documents listed in subsection (C) and originating in Area B are not acceptable for meeting the inspection requirements in Area A, unless the tests required in Area A and Area B for the vehicle under R18-2-1006 are identical.
- F. Government vehicles for which only weight fees are paid shall be registered without evidence of inspection.

Historical Note

Former Section R9-3-1007 repealed, new Section R9-3-1007 adopted effective January 13, 1976 (Supp. 76-1).
Former Section R9-3-1007 repealed, new Section R9-3-

1007 adopted effective January 3, 1977 (Supp. 77-1).
Amended effective February 20, 1980 (Supp. 80-1).
Amended effective January 1, 1986 (Supp. 85-6). Former Section R9-3-1007 renumbered without change as Section R18-2-1007 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1008. Procedure for Issuing Certificates of Waiver

- A. Unless prohibited under subsection (D), a waiver inspector shall issue a certificate of waiver after reinspection at a state station to a vehicle that failed the emissions reinspection when the vehicle owner demonstrates any of the following conditions have been satisfied:
 1. The requirements of R18-2-1009 and R18-2-1010, to the extent applicable, have been satisfied;
 2. The vehicle owner has spent the maximum required repair cost on the maintenance and repair procedures required by R18-2-1010; or
 3. Any further repairs within the maximum required repair cost would not enable the vehicle to pass the required vehicle emissions inspection.
- B. The demonstration required by subsection (A) may consist of repair receipts, emissions test results, evidence of repairs performed, under hood verification, repair cost estimates, or similar evidence.
- C. A temporary certificate of waiver may be issued to a vehicle failing the tampering inspection if the vehicle owner provides to a waiver inspector a written statement from an automobile parts or repair business that an emission control device necessary to repair the tampering is not available and cannot be obtained from any usual source of supply, and if all requirements of R18-2-1008(A) have been met. All written statements are subject to verification for authenticity and accuracy by the waiver inspector. The Department may deny a temporary certificate of waiver if the state inspector has any reason to believe the written statement is false or a usual source of supply exists and the device necessary to repair the tampering is available. Certificates of waiver may be issued under this subsection for a specified period, not to exceed 90 days, that allows sufficient time for the procurement and installation of a proper emissions control device. A receipt or bill from a vehicle repair facility or automobile parts store shall be an acceptable proof of purchase. Before the end of the specified time period, the vehicle owner shall present to the waiver inspector proof of purchase and installation of the device. The Department shall track all issued temporary certificates of waiver and if no proof of purchase and installation is received before the end of the specified time period, the Department shall forward to the MVD an order to cancel the vehicle's registration.
- D. The Director shall not issue a waiver to a vehicle under any of the circumstances described in subsections (D)(1) through (4).
 1. The vehicle failed the emissions test due to the catalytic converter system. A vehicle fails the emissions test due to the catalytic converter system if:
 - a. The vehicle has a catalytic converter system that is missing or defeated;
 - b. The vehicle is equipped with an on-board diagnostic computer (OBD) with a malfunction indicator light (MIL), "check engine" or "service engine soon" light commanded on by the computer and containing diagnostic trouble codes indicating the catalytic converter must be replaced; or

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

- c. A vehicle with a repair order or estimate paperwork provided the waiver technician at the time of waiver inspection shows that a diagnostic determination has been made by the mechanic that the catalytic converter must be replaced.
- 2. The vehicle failed the emissions test with an HC, CO, NOx, or opacity emission level greater than two times the pass-fail standard in R18-2-1006.
- 3. The same vehicle has previously received a certificate of waiver.
- 4. The waiver request is based upon repair estimates and the waiver inspector demonstrates that a recognized repair facility can repair or improve the vehicle's test readings within the repair cost limit.
- E. The fee for a certificate of waiver under this Section shall be fixed by the Director according to A.R.S. § 49-543, and shall be based upon the Director's estimated costs to the state for administering and enforcing the provisions of this Article for issuance of certificates of waiver under this Section. The fee shall be payable at the time the certificate of waiver is issued.
- F. If a waiver inspector denies a certificate of waiver under this Section, the vehicle owner may request review of the denial by a state inspector.

Historical Note

Former Section R9-3-1008 repealed, new Section R9-3-1008 adopted effective January 13, 1976 (Supp. 76-1).

Former R9-3-1008 repealed, new Section R9-3-1008 adopted effective January 3, 1977 (Supp. 77-1). Amended effective March 2, 1978 (Supp. 78-2). Amended effective January 3, 1979 (Supp. 79-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1008 as amended effective January 3, 1979, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended subsection (A) and added subsection (D) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1008 renumbered as Section R18-2-1008 and amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1009. Tampering Repair Requirements

- A. When a vehicle fails the visual inspection for properly installed catalytic converters, the vehicle owner shall replace the converters with new or reconditioned OEM converters, or equivalent new aftermarket converters.
- B. When a vehicle fails the visual inspection for the presence of an operational air injection system, the vehicle owner shall install a new, used, or reconditioned, operational air pump on the vehicle according to manufacturer specifications.
- C. When a gasoline vehicle fails the visual inspection for the presence or malfunction of the positive crankcase ventilation system, the vehicle owner shall repair or replace the system with OEM or equivalent aftermarket parts.
- D. When a diesel-powered vehicle fails the visual inspection for the presence or malfunction of the closed crankcase ventilation system, the vehicle owner shall repair or replace the system with OEM or equivalent aftermarket parts.
- E. When a vehicle fails the visual inspection for the presence or malfunction of the evaporative control system, the vehicle

owner shall repair or replace the system with OEM or equivalent aftermarket parts.

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1). Repealed effective January 3, 1977 (Supp. 77-1). New Section R9-3-1009 adopted effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1009 renumbered without change as Section R18-2-1009 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 14 A.A.R. 2834, effective July 1, 2008 (Supp. 08-3). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1010. Low Emissions Tune-up, Emissions and Evaporative System Repair

- A. Vehicle maintenance and repairs under subsection (B) and the failure-specific maintenance and repair requirements of subsection (C) must be performed before reinspection of a vehicle that fails a tailpipe emissions or OBD test under R18-2-1006.
- B. Vehicle maintenance and repairs on a non-diesel powered vehicle consists of the following procedures:
 1. Emissions Failure Diagnosis. For a computer-controlled vehicle, the on-board computer shall be accessed and any stored trouble codes recorded. For a model year 1996 or newer vehicle equipped with an OBD system, a compatible scan tool shall be used to access and record diagnostic trouble codes. The following instruments or equipment are required to complete a low emissions tune-up:
 - a. Tachometer, although for 1996 and later vehicles an OBD scanner can be used to monitor engine RPMs;
 - b. A compatible OBD scan tool, if appropriate;
 - c. Engine analyzer or oscilloscope; and
 - d. A HC/CO NDIR analyzer to make final A/F adjustments, if specified by the manufacturer.
 2. Adjustment. All adjustments shall be made according to the manufacturer's specifications and procedures. Final adjustment shall be made on the vehicle engine only after the engine is at normal operating temperature.
 3. Inspection of Air Cleaner, Choke, and Air Intake System. The vehicle owner shall repair or replace a dirty or plugged air cleaner, stuck choke, or restricted air intake system as required.
 4. Dwell and Basic Timing Check. Dwell and basic engine timing shall be checked and the vehicle owner shall make adjustments, if necessary, according to manufacturer's specifications.
 5. Inspection of PCV System. The PCV system shall be checked to ensure that it is the type recommended by the manufacturer and is correctly operating. Free flow through the PCV system passages and hoses shall be verified. The vehicle owner shall repair or replace the system as required.
 6. Inspection of Vacuum Hoses. The vacuum hoses shall be inspected for leaks, obstruction, and proper routing and connection. The vehicle owner shall repair or replace as required.
 7. Fuel Lines and System Components Inspection. A visual inspection for leaking fuel lines or system components shall be performed. The vehicle owner shall repair or replace any leaking lines or systems as required.

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

8. Idle Speed and A/F Mixture Check. The idle speed and A/F mixture shall be checked and the vehicle owner shall make adjustments according to manufacturer's specifications and procedures. If the vehicle is equipped with a fuel injection system or an alternate fuel (LPG or LNG), the manufacturer's recommended adjustment procedure shall be followed.
- C. Failure-specific recommended repairs and maintenance. If the maximum required repair cost in subsection (F) or (G) is not exceeded after the diagnosis and vehicle maintenance and repairs described in subsection (B), then the following procedures apply:
1. CO failure.
 - a. If a vehicle fails CO only, the vehicle shall be checked for:
 - i. Proper canister purge system operation,
 - ii. High float setting,
 - iii. Leaky power valve, and
 - iv. Faulty or worn needles, seats, jets or improper jet size.
 - b. If applicable, the vehicle shall be checked for the following items:
 - i. Computer,
 - ii. Engine and computer sensors,
 - iii. Engine solenoids,
 - iv. Engine thermostats,
 - v. Engine switches,
 - vi. Coolant switches,
 - vii. Throttle body or port fuel injection system,
 - viii. Fuel injectors,
 - ix. Fuel line routing and integrity,
 - x. Air in fuel system including line and pump,
 - xi. Fuel return system,
 - xii. Injection pump,
 - xiii. Fuel injection timing,
 - xiv. Routing of vacuum hoses, and
 - xv. Electrical connections.
 - c. The items in subsections (C)(1)(a) and (b) shall be repaired or replaced as required.
 2. HC, or HC and CO failure.
 - a. If a vehicle fails HC, or HC and CO emissions, the vehicle shall be checked for:
 - i. Faulty spark plugs and faulty, open, crossed, or disconnected plug wires;
 - ii. Distributor module;
 - iii. Vacuum hose routing and electrical connections;
 - iv. Distributor component malfunctions including vacuum advance;
 - v. Faulty points or condenser;
 - vi. Distributor cap crossfire;
 - vii. Catalytic converter efficiency air supply;
 - viii. Vacuum leaks at intake manifold, carburetor base gasket, EGR, and vacuum-operated components.
 - b. The vehicle owner shall repair or replace the items in subsection (C)(2)(a) as required.
 3. NOx failure.
 - a. If a vehicle fails for NOx emissions, the vehicle shall be checked for:
 - i. Removed, plugged, or malfunctioning EGR valve, exhaust gas ports, lines, and passages;
 - ii. EGR valve electrical and vacuum control circuitry, components, and computer control, as applicable;
 - iii. Above normal engine operating temperature;
 - iv. Proper air management;
 - v. Lean A/F mixture;
 - vi. Catalytic converter efficiency; and
 - vii. Over-advanced off-idle timing.
 - b. The items in subsection (C)(3)(a) shall be repaired or replaced as required.
 4. OBD failure. If the vehicle fails the OBD test, the vehicle owner shall repair the items indicated on the vehicle emissions report as causing the failure. If the failure results from diagnostic trouble codes (DTCs) that caused the malfunction indicator lamp (MIL) to be illuminated, the vehicle owner shall repair or replace the components or systems causing the DTCs. After repair of a DTC failure, and before reinspection, the vehicle shall be operated under conditions recommended by the vehicle manufacturer for the OBD computer to evaluate the repaired system.
- D. For Evaporative System Failures, the following procedures apply:
1. If a vehicle fails the evaporative system pressure test, the vehicle shall be checked for leaking or disconnected vapor hoses, line, gas cap, and fuel tank.
 2. If a vehicle fails a visual inspection of the evaporative system, the vehicle shall be checked for a missing or damaged canister, canister electrical and vacuum control circuits and components, disconnected, damaged, mis-routed or plugged hoses, and damaged or missing purge valves. The vehicle owner shall repair or replace the system with OEM or equivalent aftermarket parts.
- E. If a vehicle fails the functional gas cap pressure test described in R18-2-1006, the vehicle owner shall replace the gas cap with one that meets the requirements of that subsection. If a vehicle designed with a vented system fails a visual inspection for the presence of a gas cap, the vehicle owner shall install a properly fitting gas cap on the vehicle.
- F. The maximum required repair cost for a vehicle in Area A, not including cost to repair the vehicle for failing an evaporative system pressure test due to tampering, or other tampering repair cost, is:
1. For a diesel-powered vehicle with a GVWR greater than 26,000 pounds or a diesel-powered vehicle with tandem axles: \$500; and
 2. For a vehicle that is not a diesel-powered vehicle with a GVWR greater than 26,000 pounds and is not a diesel-powered vehicle with tandem axles:
 - a. Manufactured in or before the 1974 model year: \$200;
 - b. Manufactured in the 1975 through 1979 model years: \$300; and
 - c. Manufactured in or after the 1980 model year: \$450.
 3. Subsection (F) does not prevent a vehicle owner from authorizing or performing more than the required repairs. A vehicle operator who has a vehicle reinspected shall have the repair receipts available when requesting a certificate of waiver.
- G. The maximum required repair cost for vehicles in Area B, not including tampering repair cost, is:
1. For a diesel-powered vehicle with a GVWR greater than 26,000 pounds or a diesel-powered vehicle with tandem axles: \$300; and
 2. For a vehicle that is not a diesel-powered vehicle with a GVWR greater than 26,000 pounds and is not a diesel-powered vehicle with tandem axles:
 - a. Manufactured in or before the 1974 model year: \$50;

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

- b. Manufactured in the 1975 through 1979 model years: \$200; and
- c. Manufactured in or after the 1980 model year: \$300.
3. Subsection (G) does not prevent a vehicle owner from authorizing or performing more than the required repairs. A vehicle operator who has a vehicle reinspected shall have the repair receipts available when requesting a certificate of waiver.
- H.** Before reinspection of a diesel vehicle that has failed an inspection, the vehicle owner shall comply with the following maintenance and repair requirements to the extent that the total cost of meeting the requirements does not exceed the maximum required repair cost in subsection (F) or (G):
1. Inspect for dirty or plugged air cleaner, or restricted air intake system. Repair or replace as required.
 2. Check fuel injection system timing according to manufacturer's specifications. Adjust as required.
 3. Check for fuel injector fouling, leaking, or mismatch. Repair or replace as required.
 4. Check fuel pump and A/F ratio control according to manufacturer's specifications. Adjust as required.
 5. If the vehicle fails the J1667 procedure, check smoke-limiting devices, if any, including the aneroid valve and puff limiter. Repair or replace as required.
- I.** The vehicle owner shall use any available warranty coverage for a vehicle to obtain needed repairs before an expenditure can be counted toward the cost limits in subsection (F) and (G). If the operator of a vehicle within the age and mileage coverage of section 207(b) of the Clean Air Act presents a written denial of warranty coverage from the manufacturer or authorized dealer, warranty coverage is not considered available under this subsection.

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1). Former Section R9-3-1010 repealed, new Section R9-3-1010 adopted effective January 3, 1977 (Supp. 77-1). Amended effective March 2, 1978 (Supp. 78-2). Amended effective January 3, 1979 (Supp. 79-1). Amended effective February 20, 1980 (Supp. 80-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1010 as amended effective February 20, 1980, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1010 renumbered as Section R18-2-1010 and subsection (D) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended effective October 15, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 14 A.A.R. 2834, effective July 1, 2008 (Supp. 08-3). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1011. Vehicle Inspection Report

- A.** The Department shall provide a vehicle inspected at a state station with a uniquely numbered vehicle inspection report of a design approved by the Director that contains, at a minimum, the following information, as applicable to the tests required for the vehicle under R18-2-1006:
1. License plate number;

2. Vehicle identification number;
 3. Model year of vehicle;
 4. Make of vehicle;
 5. Style of vehicle;
 6. Type of fuel;
 7. Odometer reading;
 8. Emissions standards for idle and loaded cruise modes, if applicable;
 9. Emissions measurements during idle and loaded cruise modes, if applicable;
 10. Opacity measurements and standards, if applicable;
 11. Emissions standards and measurements for the transient loaded test, and the evaporative system pressure test, if applicable;
 12. Results of OBD test including all diagnostic trouble codes that commanded the illumination of the malfunction indicator lamp;
 13. Tampering inspection results;
 14. Repair requirements;
 15. Final test results;
 16. Repairs performed;
 17. Cost of emissions-related repairs;
 18. Cost of tampering-related repairs;
 19. Name, address, and telephone number of the business or person making repairs;
 20. Signature and certification number of person certifying repairs;
 21. Date of inspection;
 22. Test results of the previous inspection if the inspection is a reinspection;
 23. Inspection station, lane locators; and
 24. Test number and time of test.
- B.** A vehicle failing the initial inspection shall receive the Department's approved inspection report supplement containing, at a minimum, the following:
1. Diagnostic and tampering information including acceptable replacement units, and
 2. Applicable maximum repair costs.
- C.** The inspection report shall include a section that may be used as a certificate of compliance for vehicles passing the inspection or as a certificate of waiver, if applicable. The section shall contain all of the following information:
1. License plate number,
 2. Vehicle identification number,
 3. Final results,
 4. Serial number of the inspection report,
 5. Date of inspection,
 6. Model year,
 7. Make,
 8. Date of initial inspection,
 9. Inspection fee, and
 10. Label as either a certificate of compliance or a certificate of waiver.
- D.** At the time of registration, the certificate of compliance or certificate of waiver may be submitted to the Arizona Department of Transportation Motor Vehicle Division as evidence of meeting the requirements of this Article.

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1). Former Section R9-3-1011 repealed, new Section R9-3-1011 adopted effective January 3, 1977 (Supp. 77-1). Amended effective January 3, 1979 (Supp. 79-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1011 as amended effective January 3, 1979, and as amended as an emergency effective January 2,

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

1981 now amended effective April 15, 1981 (Supp. 81-2).

Amended effective January 1, 1986 (Supp. 85-6).

Amended subsections (A) and (B) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1011 renumbered as Section R18-2-1011 and amended by removing subsection (E) effective August 1, 1988 (Supp. 88-3). Amended effective September 19, 1990 (Supp. 90-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 14 A.A.R. 2834, effective July 1, 2008 (Supp. 08-3). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1012. Inspection and Reinspections; Procedures and Fee

- A.** The fees vehicle owners are required to pay for emissions inspections at a state station shall be specified in the contract between the contractor and the state of Arizona according to A.R.S. § 49-543, and shall include the full cost of the vehicle emissions inspection program including administration, implementation, and enforcement. Each fee is payable by the vehicle owner directly to the contractor at the time and place of inspection as specified in the contract, and deposited into an account established by the Department for administration of fees. The contractor will be compensated by the Department for services provided on a schedule and in a manner defined in the contract.
- B.** A vehicle failing the initial paid inspection or any subsequent paid inspection is entitled to one reinspection at no additional charge under the following conditions:
1. The vehicle is presented for inspection within 60 calendar days of the initial or any subsequent paid inspection.
 2. Emissions-related repairs or adjustments and any tampering repairs have been made.
 3. The vehicle is accompanied by the vehicle inspection report from the initial or subsequent inspection.
- C.** A vehicle failing the reinspection shall be provided a vehicle inspection report and a vehicle inspection report supplement.
- D.** A state station emissions inspector shall not recommend repairs or repair facilities.

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1). Former Section R9-3-1012 repealed, new Section R9-3-1012 adopted effective January 3, 1977 (Supp. 77-1). Amended effective January 3, 1979 (Supp. 79-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1012 as amended effective January 3, 1979, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended subsections (A) and (D) effective November 9, 1982 (Supp. 82-6). Amended effective January 1, 1986 (Supp. 85-6). Former Section R9-3-1012 renumbered as Section R18-2-1012 and amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1013. Repealed

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1). Former Section R9-3-1013 repealed, new Section R9-3-1013 adopted effective January 3, 1977 (Supp. 77-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1013 adopted effective January 3, 1977, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1013 renumbered as Section R18-2-1013 and amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Repealed by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1014. Repealed

Historical Note

Adopted effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Section repealed by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

R18-2-1015. Repealed

Historical Note

Adopted effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Section repealed by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

R18-2-1016. Licensing of Inspectors and Fleet Agents

- A.** Emissions inspectors shall be licensed as follows:
1. To obtain a license as a vehicle emissions inspector, an applicant shall pass a written test with a score greater than or equal to 80%. After passing the written test, the applicant shall pass a separate practical examination.
 - a. Applications to become an emissions inspector may be obtained from the Department and an applicant must submit a completed application to the Department. The Department must deem an application administratively complete before an applicant will be allowed to sit for the written test. If the Department finds the application to be incomplete, the applicant shall be provided an opportunity to submit sufficient information to enable the Department to deem the application administratively complete.
 - b. The written test shall cover the following subjects:
 - i. The air pollution problem in Arizona, its causes and effects;
 - ii. The purpose, function, and goals of the vehicle inspection program;
 - iii. State vehicle inspection regulations and procedures;
 - iv. Technical details of the test procedures and rationale for their design;
 - v. Emission control device function, configuration, and inspection;
 - vi. Test equipment operation, calibration, and maintenance;
 - vii. Quality control procedures and their purpose;
 - viii. Public relations; and

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

- ix. Safety and health issues related to the inspection process.
 - c. After passing the written test, the inspector applicant shall pass a practical exam where the applicant shall demonstrate the ability to conduct a proper emissions inspection, including proper use of equipment and procedures, in accordance with the testing procedures in R18-2-1006(C). An inspector applicant shall pass a practical examination for each type of test the applicant intends to perform.
2. Licenses issued to vehicle emissions inspectors shall be renewed biannually, on or before the expiration date.
 3. An inspector whose license is expired or suspended shall not inspect vehicles.
 4. A vehicle emissions inspector shall submit an application for a renewal of the vehicle emissions inspector's license at least 90 days before the current license expiration date.
 5. The Department may suspend, revoke, or refuse to renew a license if the licensee has violated any provision of A.R.S. Title 49, Chapter 3, Article 5, any provision of this Article, or fails to continue to demonstrate proficiency to the Department.
 6. A vehicle emissions inspector shall notify the Department of any change in employment status no later than fourteen days after the change.
 7. The Department shall assign a single, unique, nontransferable inspector's number to each vehicle emissions inspector.
 8. If a licensed emissions inspector fails to demonstrate the ability to conduct a proper vehicle emissions inspection during any audit, the Department shall suspend the vehicle emissions inspector's license. The suspended emissions inspector shall pass a practical examination within 30 days after suspension or the inspector's license shall be revoked. An inspector's license may be reinstated once the inspector passes a written examination with a score of 80% or greater and demonstrates the ability to properly conduct a vehicle emissions test during a practical examination.
- B. Fleet Agents shall be licensed as follows:**
1. To obtain a license as a fleet agent, an applicant shall pass a written test with a score greater than or equal to 80%. A fleet agent is an individual associated with a fleet emissions testing permit who is ultimately responsible for making sure a fleet complies with the requirements of this Article. This license is separate and distinct from a fleet emissions inspector license.
 - a. Applications to become a fleet agent may be obtained from the Department. An application must be administratively complete and submitted in the manner required by the Department before an applicant will be allowed to sit for the written test.
 - b. The written test shall cover the following subjects:
 - i. The statutes and rules governing the operation and administration of a fleet emissions inspection station.
 - ii. The duties of a fleet agent.
 - iii. How to operate an account on the Department's web portal.
 - iv. Purchasing certificates of inspection.
 2. If a licensed fleet agent fails to assure that the agent's fleet complies with this Article, the agent's license shall be suspended. The suspended agent shall pass a written test within 30 days of suspension or such license shall be revoked.
 3. Licenses issued to fleet agents shall be renewed biannually, on or before the expiration date.
 4. A fleet represented by an agent that has a suspended license may not inspect vehicles.
 5. The Department may suspend, revoke, or refuse to renew a fleet agent's license if the licensee has violated any provision of A.R.S. Title 49, Chapter 3, Article 5, any provision of this Article, or fails to continue to demonstrate proficiency to the Department as required.
 6. A fleet agent shall notify the Department of any change in employment status within seven days of the change.
 7. The Department shall assign a single, unique, nontransferable agent's number to each fleet agent.

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1).
 Amended effective January 3, 1977 (Supp. 77-1).
 Amended effective March 2, 1978 (Supp. 78-2).
 Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1016 as amended effective March 2, 1978, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1016 renumbered as Section R18-2-1016 and subsection (G) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1017. Inspection of Government Vehicles

- A. Government vehicles operated in Area A and Area B shall be inspected as follows:**
1. At a licensed fleet station operated by the government entity;
 2. At a state station upon payment of the fee; or
 3. At a state station upon payment of the contracted fee, either singly or in combination with other government fleet operators.
- B. A government vehicle, except a federally owned vehicle that is excluded from the definition of motor vehicle under 40 CFR 85.1703, shall be inspected according to this Article and shall have a government vehicle certificate of inspection (GVCOI) affixed to the vehicle if in compliance with state emissions requirements.**
1. The vehicle emissions inspector performing the inspection shall punch out the appropriate year and month on the GVCOI to designate the date of the vehicle's next annual or biennial inspection.
 2. If the vehicle emissions inspection is performed at a fleet station, the emissions inspector shall record administratively complete results of the inspection into the Department's web portal on the day of the inspection. The unique number on the GVCOI sticker must be entered along with the emissions testing results for the vehicle.
 3. A government vehicle, with the exception of a motorcycle or an undercover law enforcement vehicle, shall have the GVCOI affixed to the lower left side of the rear window as determined from a position facing the window, from outside the vehicle. If a vehicle does not have a rear window, the GVCOI shall be affixed to the lower left cor-

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

ner of the windshield as determined from the driver's position.

- C. The GVCOI shall be purchased from the Department's web portal.
1. The fee for a certificate of inspection shall be fixed by the Director according to A.R.S. § 49-543, and shall be based upon the Director's estimated costs to the state of administering and enforcing the provisions of this Article as they apply to issuance of certificates of inspections.
 2. Only the Department may sell or otherwise transfer GVCOI.

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1).
 Amended effective January 3, 1977 (Supp. 77-1).
 Amended effective January 3, 1979 (Supp. 79-1).
 Amended effective January 1, 1986 (Supp. 85-6). Former Section R9-3-1017 renumbered as Section R18-2-1017 and subsection (E) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1018. Certificate of Inspection

- A. A fleet inspector shall submit and certify administratively complete certificates of inspection (COI) to the Department through the Department's web portal. A COI is used as evidence that the vehicle it is assigned to has passed the tests required by this Article and complies with the applicable state emissions standards for that vehicle. Inspection data may be electronically transmitted to MVD under A.R.S. § 49-542(Q).
- B. On the day a vehicle is inspected, a licensed vehicle emissions inspector shall enter an administratively complete record of the inspection into the Department's web portal.
- C. A certificate of inspection issued to a fleet vehicle is valid for a period of 180 days unless the vehicle is reregistered with a new owner.
- D. The following individuals are authorized to purchase certificates of inspection as long as the fleet they are associated with meets the requirements of this article:
 1. A fleet agent who is licensed by the Department under R18-2-1016;
 2. A responsible corporate officer; or
 3. A designated responsible officer.

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1).
 Amended effective January 3, 1977 (Supp. 77-1).
 Amended effective March 2, 1978 (Supp. 78-2).
 Amended subsection (A) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1018 renumbered as Section R18-2-1018 and amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1019. Fleet Station Procedures and Permits

- A. A fleet emissions testing station applicant or permittee shall create and manage an account on the Department's web portal.

- B. To obtain a fleet emissions inspection station permit, an applicant shall:
 1. Be a registered owner or lessee of a fleet of at least 25 nonexempt vehicles.
 - a. A motor vehicle dealer's business inventory of vehicles held for resale over the previous 12 months shall be used to determine compliance with this subsection.
 - b. A motor vehicle dealer with less than 12 months of operations that applies for a fleet emissions testing permit shall certify that it intends to test at least 25 vehicles per year.
 2. Be located within Area A, within 50 miles of the border of Area A, or within Area B. A dealer outside these areas who certifies to the Department that customers who reside in Area A are the primary source of the dealer's business may also apply for a fleet permit.
 3. Maintain a facility that has space devoted principally to maintaining or repairing the fleet's motor vehicles.
 - a. The space shall be large enough to conduct maintenance or repair of at least one motor vehicle.
 - b. Any fleet station shall be exclusively rented, leased, or owned by the applicant.
 4. Own or lease the machinery, tools, and equipment required for the specific tests the applicant wishes to perform. Equipment and testing requirements are listed in R18-2-1006(C).
 5. Employ the following personnel:
 - a. At least one fleet agent licensed pursuant to R18-2-1016.
 - b. At least one emissions inspector licensed pursuant to R18-2-1016.
 - c. At least one person who is able to perform necessary emissions related repairs for fleet vehicles.
 - d. A single person may fill two or more of these roles for a fleet.
 6. Provide data to the Department as required by this Section.
 7. Pass an initial inspection to determine compliance with this Section.
 8. Submit to the ongoing inspections and audits prescribed in this Article.

- C. A fleet emissions inspection testing permittee shall continuously comply with all requirements of this Article.

- D. The equipment used at a fleet emissions inspection station is subject to the following requirements:
 1. A fleet emissions testing station applicant or permittee shall own or lease the equipment referenced in R18-2-1006 that is necessary for the specific type of testing that the permittee is licensed to perform.
 2. All testing equipment and instruments shall be maintained in accurate working condition as required by the manufacturer. An instrument requiring periodic calibration shall be calibrated according to instruction and recommendations of the instrument or equipment manufacturer. Calibration records shall be submitted through the web portal for review by the Department. The calibration records shall be certified by the technician performing each calibration.
 - a. Fleet station analyzers shall comply with, be calibrated, and be quality control checked according to 40 CFR 51, Subpart S, Appendix A, Section I, amended as of July 1, 2017, and no future editions or amendments, which is incorporated by reference in (C)(7)(b) and on file with the Department.

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

- b. A fleet station opacity meter used for emission inspections is required to read the equivalent opacity value of neutral density filter within +/- 5% opacity at any point in the range of meter.
3. Calibration gases used by the fleet station shall be subject to analysis and comparison to the Department's standard gases at any time.
4. Fleet testing equipment shall be subject to both scheduled and unscheduled audits by state inspectors.
5. A fleet's analyzer shall be calibrated at least monthly with calibration gases approved by the Department. A registered opacity meter shall be calibrated according to manufacturer's specifications before performing the first vehicle emissions inspection in any month.
- E. For every test performed by a vehicle emissions inspector, that vehicle emissions inspector shall log into the Department's web portal the same day that the inspection takes place to report the results of the test to the Department.
- F. A fleet's activities shall be governed by the following compliance and enforcement rules:
1. All requirements in this Article apply at all times after a fleet emissions testing license has been issued.
 2. The Director may suspend or revoke a fleet emissions testing license according to A.R.S. § 49-546(F) and A.R.S. Title 41, Chapter 6, if the permittee, or any person employed by the permittee:
 - a. Violates any provisions of A.R.S. Title 49, Chapter 3, Article 5 or any provision of this Article;
 - b. Misrepresents a material fact in obtaining a permit;
 - c. Fails to make, keep, and submit to the Department records for a vehicle tested; or
 - d. Does not provide a state inspector access to the information required in this Article.
 3. If a fleet emissions inspection permit is surrendered, suspended or revoked, all unused certificates of inspection shall be refunded.
 4. Any fleet vehicle is subject to inspection by a state inspector.
- G. A fleet emissions inspection station permit is non-transferable and does not expire.

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1).
 Amended effective January 3, 1977 (Supp. 77-1).
 Amended effective March 2, 1978 (Supp. 78-2).
 Amended effective January 3, 1979 (Supp. 79-1).
 Amended effective February 20, 1980 (Supp. 80-1).
 Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1019 as amended effective February 20, 1980, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1019 renumbered as Section R18-2-1019 and amended effective August 1, 1988 (Supp. 88-3).
 Amended effective September 19, 1990 (Supp. 90-3).
 Amended effective February 4, 1993 (Supp. 93-1).
 Amended effective November 14, 1994 (Supp. 94-4).
 Amended effective October 15, 1998 (Supp. 98-4).
 Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 14 A.A.R. 2834, effective July 1, 2008 (Supp. 08-3). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019

(Supp. 19-1).

R18-2-1020. Department Issuance of Alternative Fuel Certificates

Issuing Alternative Fuel Certificates. The Department shall inspect a vehicle converted to run on alternative fuel and issue an alternative fuel certificate according to A.R.S. § 28-2416(2)(b) if the vehicle is currently powered by an alternative fuel.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1021. Reserved**R18-2-1022. Procedure for Waiving Inspections Due to Technical Difficulties**

A vehicle emissions station manager employed by an official emissions inspection station may issue a Director's certificate for a vehicle that cannot be inspected as required by this Article because of technical difficulties inherent in the manufacturer's design or construction of the vehicle.

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1).
 Amended effective January 3, 1977 (Supp. 77-1).
 Amended effective March 2, 1978 (Supp. 78-2).
 Amended effective January 3, 1979 (Supp. 79-1).
 Amended effective January 1, 1986 (Supp. 85-6). Former Section R9-3-1022 renumbered without change as Section R18-2-1022 (Supp. 88-3). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1).

R18-2-1023. Certificate of Exemption for Out-of-State Vehicles

- A. If a vehicle being registered in Area A or Area B requires an emission test and will not be physically available for inspection within the state during the 90-day period before the emissions compliance expiration date, the owner or owner's agent may submit an application to the Department for a certificate of exemption.
- B. The owner or owner's agent shall apply for a certificate of exemption in the manner and form required by the Department.
- C. The Department may issue a certificate of exemption:
1. For a vehicle that will not be located in the state during the 90-day period before the emissions compliance expiration date and is located in an area where emissions testing is not available. This exemption shall only be granted if an affidavit confirming the location of the vehicle is signed and submitted with the application.
 2. For a vehicle that has passed an official emissions inspection in another state during the 90 days before emissions compliance expiration upon submission of the inspection compliance document issued by the entity conducting the inspection program.
- D. The fee for a certificate of exemption shall be fixed by the Director according to A.R.S. § 49-543 and shall be based upon the Director's estimated costs to the state of administering and enforcing the provisions of this Article as they apply to issuance of certificates of exemption. The payment for the certificates shall be included with the application for certificates.

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1).

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

Amended effective January 3, 1977 (Supp. 77-1).

Amended effective January 3, 1979 (Supp. 79-1).

Amended as an emergency effective January 2, 1981 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1023 as amended effective January 3, 1979 and amended as an emergency effective January 2, 1981 now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Former Section R9-3-1023 renumbered without change as Section R18-2-1023 (Supp. 88-3). Amended effective February 4, 1993 (Supp. 93-1). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1024. Expired**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 84, effective December 14, 2001 (Supp. 01-4). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 1128, effective April 30, 2008 (Supp. 09-2).

R18-2-1025. Inspection of Contractor's Equipment and Personnel

- A.** State inspectors shall conduct performance audits to determine whether a state station is correctly performing all inspection and functions related to inspections as follows:
1. Overt audits shall be completed at least two times each year for each inspection lane. Overt audits shall include:
 - a. A check for the observance of appropriate document security;
 - b. A check to see that required recordkeeping practices are being followed;
 - c. A check for licenses, certificates, and other required display information;
 - d. An observation and evaluation of each vehicle emissions inspector's ability to perform an inspection; and
 - e. A check to ensure all emissions testing equipment is calibrated and operating correctly.
 2. If a vehicle emissions inspector fails an audit, the vehicle emissions inspector's license may be suspended or revoked under R18-2-1016(A)(4).
 3. Vehicle emissions inspection records shall be reviewed at least monthly to assess station performance and identify any problems, potential fraud, or incompetence.
 4. Covert audits may be performed as necessary to confirm compliance with this article.
- B.** If an equipment audit indicates that equipment is not calibrated and accurate, the equipment shall not be used to conduct emissions testing until it is replaced or repaired.
- C.** Equipment that is removed from testing may be returned to service upon its repair and a state inspector's verification of a passing calibration audit.
- D.** A state inspector shall inspect on-road emissions analyzers at least monthly.

Historical Note

Adopted effective January 3, 1977 (Supp. 77-1).

Amended effective March 2, 1978 (Supp. 78-2).

Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1025 as amended effective March 2, 1978, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1,

1986 (Supp. 85-6). Amended subsection (A) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1025 renumbered as Section R18-2-1025 and subsection (C) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1026. Inspection of Fleet Stations

- A.** Equipment used to perform emissions testing shall meet the requirements for the type of testing a fleet station is licensed to perform.
- B.** A fleet station's gas analyzer shall not be used for an official emissions inspection if:
1. The calibration gases are not read within the following tolerances:
 - a. Within plus 0.50% CO to minus 0.25% CO in the range from 0 to 2% CO; and
 - b. Within plus 60 PPM HC to minus 30 PPM HC in the range from 0 to 500 PPM HC when read as N-HEX-ANE.
 2. The calibration gases are not read within the manufacturer specified tolerances;
 3. There is a leak in the sampling systems or the calibration port; or
 4. The sample handling system is restricted.
- C.** The fleet emissions testing station shall acquire and utilize calibration gases with assigned HC and CO concentrations to calibrate fleet emission analyzers.
- D.** A state inspector shall fail a fleet emissions analyzer if the analyzer does not meet the requirements of this Section. A fleet emission inspector shall not use the analyzer for inspection until the analyzer is cleared for return to service by a state inspector.
- E.** A state inspector shall conduct performance audits to determine whether a fleet emissions inspection station is correctly performing inspections and functions related to inspections as follows:
1. Overt audits at least two times each year that include:
 - a. A check for the observance of appropriate document security;
 - b. A check to see that required recordkeeping practices are being followed;
 - c. A check for licenses, certificates, and other required display information;
 - d. An observation and evaluation of each vehicle emissions inspector's ability to perform an inspection; and
 - e. A check to ensure all emissions testing equipment is calibrated and operating correctly.
 2. Fleet station and vehicle emissions inspector records shall be reviewed at least monthly to assess fleet performance and identify any problems, potential fraud, or incompetence.
 3. If a vehicle emissions inspector fails an audit, the vehicle emissions inspector's license may be suspended or revoked according to R18-2-1016(A)(4).
 4. Covert audits may be performed as necessary to confirm compliance with this Article.

Historical Note

Adopted effective January 3, 1977 (Supp. 77-1).

Amended effective January 1, 1986 (Supp. 85-6).

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

Amended subsections (A) and (J) and added subsection (K) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1026 renumbered as Section R18-2-1026 and subsections (B), (F), (G) and (H) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1027. Repealed

Historical Note

Adopted effective January 3, 1977 (Supp. 77-1). Amended effective March 2, 1978 (Supp. 78-2). Amended effective January 3, 1979 (Supp. 79-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1027 as amended effective January 3, 1979, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1027 renumbered as Section R18-2-1027 and subsections (B), (D), (F) and (G) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 14 A.A.R. 2834, effective July 1, 2008 (Supp. 08-3). Repealed by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1028. Repealed

Historical Note

Adopted effective January 1, 1986 (Supp. 85-6). Amended subsections (A) and (F) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1028 renumbered as Section R18-2-1028 and subsection (D) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Repealed by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1029. Vehicle Emission Control Devices

For the purposes of A.R.S. §§ 28-955 and 49-447, a registered motor vehicle shall have in operating condition all emission control devices installed by the vehicle manufacturer to comply with federal requirements for motor vehicle emissions or equivalent after-market replacement parts or devices.

Historical Note

Adopted effective January 3, 1977 (Supp. 77-1). Former Section R9-3-1029 renumbered as Section R18-2-1029 and amended effective August 1, 1988 (Supp. 88-3). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1).

R18-2-1030. Visible Emissions; Mobile Sources

A. A vehicle other than a diesel-powered vehicle or 2-stroke vehicle that emits any visible emissions for 10 consecutive seconds or more is “excessive” for the purposes of A.R.S. § 28-955(C).

- B. A diesel-powered vehicle shall not emit any visible emissions in excess of:
 1. Twenty percent visual opacity for 10 consecutive seconds or more at or below 2,000 feet elevation;
 2. Thirty percent visual opacity for 10 consecutive seconds or more above 2,000 feet and at or below 4,000 feet elevation; and
 3. Forty percent visual opacity for 10 consecutive seconds above 4,000 feet elevation.
- C. A vehicle that exceeds the standards in subsection (B) fails the inspection under R18-2-1006 and is considered to have “excessive” emissions under A.R.S. § 28-955(C).

Historical Note

Adopted effective January 3, 1977 (Supp. 77-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1030 as adopted effective January 3, 1977, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended subsection (C) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1030 renumbered as Section R18-2-1030 and subsection (C) amended effective August 1, 1988 (Supp. 88-3). Amended effective September 19, 1990 (Supp. 90-3). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1).

R18-2-1031. Repealed

Historical Note

Adopted effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1031 renumbered as Section R18-2-1031 and amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Repealed by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

Table 1. Dynamometer Loading Table - Annual Tests

Gross Vehicle Weight		Speed	Load
Rating (Pounds)	Engine Size	(MPH)	(HP)
8500 or less	4 cyl. or less	22-25	2.8-4.1
8500 or less	5 or 6 cyl.	29-32	6.4-8.4
8500 or less	8 cyl. or more	32-35	8.4-10.8
8501 or more	All	37-40	12.7-15.8

Historical Note

Adopted effective November 14, 1994 (Supp. 94-4).

Table 2. Emissions Standards - Annual Tests

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

MAXIMUM ALLOWABLE

Motorcycles

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
2-Stroke	All	All	18,000	5.00	18,000	5.00	N/A	N/A
4-Stroke	All	All	500	5.00	1,800	5.50	N/A	N/A

Reconstructed Vehicles

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
4-Stroke	1967-1980	All	700	5.25	1,200	7.50	1,200	5.60
4-Stroke	1980 & Newer	All	700	5.25	1,200	7.50	700	5.25

Light-Duty Vehicles

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
2-Stroke	All	All	18,000	5.00	18,000	5.00	18,000	5.00
4-Stroke	1967-1971	4 or less	450	3.75	500	5.50	500	4.20
4-Stroke	1967-1971	more than 4	380	3.00	450	5.00	450	3.75
4-Stroke	1972-1974	4 or less	380	3.50	400	5.50	400	4.20
4-Stroke	1972-1974	more than 4	300	3.00	400	5.00	400	3.75
4-Stroke	1975-1978	4 or less	120	1.00	250	2.20	250	1.65
4-Stroke	1975-1978	more than 4	120	1.00	250	2.00	250	1.50
4-Stroke	1979	4 or less	120	1.00	220	2.20	220	1.65
4-Stroke	1979	more than 4	120	1.00	220	2.00	220	1.50
4-Stroke	1980 & newer	All	100	0.50	220	1.20	220	1.20

Light-Duty Truck 1 (0-6000 lbs GVWR)

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
2-Stroke	All	All	18,000	5.00	18,000	5.00	18,000	5.00
4-Stroke	1967-1971	4 or less	450	3.75	500	5.50	500	4.20
4-Stroke	1967-1971	more than 4	380	3.00	450	5.00	450	3.75
4-Stroke	1972-1974	4 or less	380	3.50	400	5.50	400	4.20
4-Stroke	1972-1974	more than 4	300	3.00	400	5.00	400	3.75
4-Stroke	1975-1978	4 or less	120	1.00	250	2.20	250	1.65
4-Stroke	1975-1978	more than 4	120	1.00	250	2.00	250	1.50
4-Stroke	1979	4 or less	120	1.00	220	2.20	220	1.65
4-Stroke	1979	more than 4	120	1.00	220	2.00	220	1.50
4-Stroke	1980 & newer	All	100	0.50	220	1.20	220	1.20

Light-Duty Truck 2 (6001 - 8500 lbs GVWR)

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
2-Stroke	All	All	18,000	5.00	18,000	5.00	18,000	5.00
4-Stroke	1967-1971	4 or less	450	3.75	500	5.50	500	4.20
4-Stroke	1967-1971	more than 4	380	3.00	450	5.00	450	3.75

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

4-Stroke	1972-1974	4 or less	380	3.50	400	5.50	400	4.20
4-Stroke	1972-1974	more than 4	300	3.00	400	5.00	400	3.75
4-Stroke	1975-1978	All	300	3.00	350	4.00	350	3.00
4-Stroke	1979	4 or less	120	1.00	220	2.20	220	1.65
4-Stroke	1979	more than 4	120	1.00	220	2.00	220	1.50
4-Stroke	1980 & newer	All	100	0.50	220	1.20	220	1.20

Heavy-Duty Truck (8501 lbs or greater GVWR)

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
2-Stroke	All	All	18,000	5.00	18,000	5.00	18,000	5.00
4-Stroke	1967-1971	4 or less	450	3.75	500	5.50	500	4.20
4-Stroke	1967-1971	more than 4	380	3.00	450	5.00	450	3.75
4-Stroke	1972-1974	4 or less	380	3.50	400	5.50	400	4.20
4-Stroke	1972-1974	more than 4	300	3.00	400	5.00	400	3.75
4-Stroke	1975-1978	All	300	3.00	350	4.00	350	3.00
4-Stroke	1979 & newer	All	300	3.00	300	4.00	300	3.00

Historical Note

Renumbered from R18-2-1006 and amended effective November 14, 1994 (Supp. 94-4). See emergency amendment below (Supp. 94-4). Emergency amendment adopted effective December 23, 1994, pursuant to A.R.S. § 41-1026, valid for 180 days (Supp. 95-2). Emergency amendment expired, previous text placed back into effect effective June 21, 1995 (Supp. 95-3). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

Table 3. Emissions Standards - Transient Loaded Emissions Tests
FINAL STANDARDS (Standards are in grams per mile)

(i) Light Duty Vehicles

Model Years	Hydrocarbons		Carbon Monoxide		Oxides of Nitrogen	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1981-1982	3.0	2.5	25.0	21.8	3.5	3.4
1983-1985	2.4	2.0	20.0	17.3	3.5	3.4
1986-1989	1.6	1.4	15.0	12.8	2.5	2.4
1990-1993	1.0	0.8	12.0	10.1	2.5	2.4
1994+	0.8	0.7	12.0	10.1	2.0	1.9

(ii) Light Duty Trucks 1 (less than 6000 pounds GVWR)

Model Years	Hydrocarbons		Carbon Monoxide		Oxides of Nitrogen	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1981-1985	4.0	3.4	40.0	35.3	5.5	5.4
1986-1989	3.0	2.5	25.0	21.8	4.5	4.4
1990-1993	2.0	1.7	20.0	17.3	4.0	3.9
1994+	1.6	1.4	20.0	17.3	3.0	2.9

(iii) Light Duty Trucks 2 (greater than 6000 pounds GVWR)

Model Years	Hydrocarbons		Carbon Monoxide		Oxides of Nitrogen	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1981-1985	4.4	3.7	48.0	42.5	7.0	6.9
1986-1987	4.0	3.4	40.0	35.3	5.5	5.4
1988-1989	3.0	2.5	25.0	21.8	5.5	5.4
1990-1993	3.0	2.5	25.0	21.8	5.0	4.9
1994+	2.4	2.0	25.0	21.8	4.0	3.9

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

Historical Note

Adopted effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Table heading amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

Table 4. Transient Driving Cycle

Time second	Speed mph								
0	0	30	20.7	60	26	90	51.5	120	54.9
1	0	31	21.7	61	26	91	52.2	121	55.4
2	0	32	22.4	62	25.7	92	53.2	122	55.6
3	0	33	22.5	63	26.1	93	54.1	123	56
4	0	34	22.1	64	26.5	94	54.6	124	56
5	3.3	35	21.5	65	27.3	95	54.9	125	55.8
6	6.6	36	20.9	66	30.5	96	55	126	55.2
7	9.9	37	20.4	67	33.5	97	54.9	127	54.5
8	13.2	38	19.8	68	36.2	98	54.6	128	53.6
9	16.5	39	17	69	37.3	99	54.6	129	52.5
10	19.8	40	17.1	70	39.3	100	54.8	130	51.5
11	22.2	41	15.8	71	40.5	101	55.1	131	50.8
12	24.3	42	15.8	72	42.1	102	55.5	132	48
13	25.8	43	17.7	73	43.5	103	55.7	133	44.5
14	26.4	44	19.8	74	45.1	104	56.1	134	41
15	25.7	45	21.6	75	46	105	56.3	135	37.5
16	25.1	46	22.2	76	46.8	106	56.6	136	34
17	24.7	47	24.5	77	47.5	107	56.7	137	30.5
18	25.2	48	24.7	78	47.5	108	56.7	138	27
19	25.4	49	24.8	79	47.3	109	56.3	139	23.5
20	27.2	50	24.7	80	47.2	110	56	140	20
21	26.5	51	24.6	81	47.2	111	55	141	16.5
22	24	52	24.6	82	47.4	112	53.4	142	13
23	22.7	53	25.1	83	47.9	113	51.6	143	9.5
24	19.4	54	25.6	84	48.5	114	51.8	144	6
25	17.7	55	25.7	85	49.1	115	52.1	145	2.5
26	17.2	56	25.4	86	49.5	116	52.5	146	0
27	18.1	57	24.9	87	50	117	53		
28	18.6	58	25	88	50.6	118	53.5		
29	20	59	25.4	89	51	119	54		

Historical Note

Adopted effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4).

Table 5. Tolerances

	Range	State Station	Fleet Station
4 and 2 stroke vehicles: CO in MOL percent	0 to 2.0% 2 to 10.0%	±0.1% ±0.25%	±0.25% ±0.5%
4-stroke vehicles: HC as N-hexane in PPM	0 to 500 PPM 500 to 2000 PPM	±15 PPM ±50 PPM	±30 PPM ±100 PPM
2-stroke vehicles: HC as propane in PPM	0 to 25,000 PPM	±1250 PPM	±1250 PPM

Historical Note

Adopted effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

Table 6. Repealed

Historical Note
Adopted effective November 14, 1994 (Supp. 94-4). See emergency amendment below (Supp. 94-4). Emergency

amendment adopted effective December 23, 1994, pursuant to A.R.S. § 41-1026, valid for 180 days (Supp. 95-2).
Emergency amendment expired, previous text placed back into effect effective June 21, 1995 (Supp. 95-3).

General and Specific Statutes Authorizing the Rules: A.R.S. §§ 49-104, 49-404,
49-425, 49-447, 49-541, 49-542, 49-542.02, 49-542.03

A.R.S. § 49-104. Powers and duties of the department and director

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.
2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.
3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.
4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.
5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.
6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.
7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.
8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.
9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.
10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and

heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.

11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. The department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.

12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.

13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.

14. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

15. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

16. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter. This paragraph does not adversely affect standards adopted by an Indian tribe under federal law.

17. Provide administrative and staff support for the oil and gas conservation commission.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.

2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.

3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.
4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.
5. Contract with other agencies, including laboratories, in furthering any department program.
6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.
7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.
8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.
9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.
10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.
11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:
 - (a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at those places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection I, paragraph 10.

13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules may:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. The department may establish by rule a fee as a condition of licensure, including a maximum fee. As part of the rulemaking process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. The department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on:

(a) The direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.

(b) The availability of other funds for the duties performed.

(c) The impact of the fees on the parties subject to the fees.

(d) The fees charged for similar duties performed by the department, other agencies and the private sector.

18. Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the applicable provisions of title 27, chapter 4 relating to the oil and gas conservation commission.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203, except that state agencies are exempt from paying those fees that are not associated with the dredge and fill permit program established pursuant to chapter 2, article 3.2 of this title. For services provided under the dredge and fill permit program, a state agency shall pay either:

(a) The fees established by the department under the dredge and fill permit program.

(b) The reasonable cost of services provided by the department pursuant to an interagency service agreement.

2. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

3. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

A.R.S. § 49-404. State implementation plan

A. The director shall maintain a state implementation plan that provides for implementation, maintenance and enforcement of national ambient air quality standards and protection of visibility as required by the clean air act.

B. The director may adopt rules that describe procedures for adoption of revisions to the state implementation plan.

C. The state implementation plan and all revisions adopted before September 30, 1992 remain in effect according to their terms, except to the extent otherwise provided by the clean air act, inconsistent with any provision of the clean air act, or revised by the administrator. No control requirement in effect, or required to be adopted by an order, settlement agreement or plan in effect, before the enactment of the clean air act in any area which is a nonattainment or maintenance area for any air pollutant may be modified after enactment in any manner unless the modification insures equivalent or greater emission reductions of the air pollutant. The director shall evaluate and adopt revisions to the plan in conformity with federal regulations and guidelines promulgated by the administrator for those purposes until the rules required by subsection B are effective.

A.R.S. § 49-425. Rules; hearing

A. The director shall adopt such rules as the director determines are necessary and feasible to reduce the release into the atmosphere of air contaminants originating within the territorial limits of the state or any portion thereof and shall adopt, modify and amend reasonable standards for the quality of and emissions into the ambient air of the state for the prevention, control and abatement of air pollution. Additional standards shall be established for particulate matter emissions, sulfur dioxide emissions and other air contaminant emissions determined to be necessary and feasible for the prevention, control and abatement of air pollution. In fixing such ambient air quality standards, emission standards or standards of performance, the director shall give consideration but shall not be limited to the relevant factors prescribed by the clean air act.

B. No rule may be enacted or amended except after the director first holds a public hearing after thirty days' notice of such hearing. The proposed rule, or any proposed amendment of a rule, shall be made available to the public at the time of notice of such hearing.

C. The department shall enforce the rules adopted by the director.

D. All rules enacted pursuant to this section shall be made available to the public at a reasonable charge on request.

A.R.S. § 49-447. Motor vehicle and combustion engine emission; standards

The director shall adopt rules setting forth standards controlling the release into the atmosphere of air contaminants from motor vehicles and combustion engines. Any rules adopted pursuant to this section shall be consistent with provisions of federal law, if any, relating to control of emissions from motor vehicles or combustion engines. This authority shall apply to implement the provisions of sections 28-955 and 49-542.

A.R.S. § 49-541. Definitions

In this article, unless the context otherwise requires:

1. "Area A" means the area delineated as follows:

(a) In Maricopa county:

Township 8 north, range 2 east and range 3 east

Township 7 north, range 2 west through range 5 east

Township 6 north, range 5 west through range 6 east

Township 5 north, range 5 west through range 7 east

Township 4 north, range 5 west through range 8 east

Township 3 north, range 5 west through range 8 east

Township 2 north, range 5 west through range 8 east

Township 1 north, range 5 west through range 7 east

Township 1 south, range 5 west through range 7 east

Township 2 south, range 5 west through range 7 east

Township 3 south, range 5 west through range 1 east

Township 4 south, range 5 west through range 1 east

(b) In Pinal county:

Township 1 north, range 8 east and range 9 east

Township 1 south, range 8 east and range 9 east

Township 2 south, range 8 east and range 9 east

Township 3 south, range 7 east through range 9 east

(c) In Yavapai county:

Township 7 north, range 1 east and range 1 west through range 2 west

Township 6 north, range 1 east and range 1 west

2. "Area B" means the area delineated in Pima county as township 11 and 12 south, range 12 through 14 east; township 13 through 15 south, range 11 through 16 east; township 16 south, range 12 through 16 east, excluding any portion of the Coronado national forest and the Saguaro national park.
3. "Certificate of inspection" means a serially numbered device or symbol, as may be prescribed by the director, indicating that a vehicle has been inspected pursuant to the provisions of section 49-546 and has passed inspection.
4. "Certificate of waiver" means a uniquely numbered device or symbol, as may be prescribed by the director, indicating that the requirement of passing reinspection has been waived for a vehicle pursuant to the provisions of this article.
5. "Conditioning mode" means either a fast idle test or a loaded test.
6. "Curb idle test" means an exhaust emissions test conducted with the engine of a vehicle running at the manufacturer's specified idle speed plus or minus one hundred revolutions per minute but without pressure exerted on the accelerator.
7. "Emissions inspection station permit" means a certificate issued by the director authorizing the holder to perform vehicular inspections pursuant to this article.
8. "Fast idle test" means an exhaust emissions test conducted with the engine of the vehicle running under an accelerated condition to an extent prescribed by the director.
9. "Fleet emissions inspection station" means any inspection facility operated under a permit issued to a qualified fleet owner or lessee as determined by the director.
10. "Golf cart" means a motor vehicle which has not less than three wheels in contact with the ground, has an unladen weight of less than thirteen hundred pounds, is designed to be and is operated at not more than fifteen miles an hour and is designed to carry golf equipment and persons.
11. "Gross weight" has the same meaning prescribed in section 28-5431.
12. "Independent contractor" means any person, business, firm, partnership or corporation with which the director may enter into an agreement providing for the

construction, equipment, maintenance, personnel, management and operation of official emissions inspection stations pursuant to section 49-545.

13. "Loaded test" means an exhaust emissions test conducted at cruise or transient conditions as prescribed by the director.

14. "Official emissions inspection station" means an inspection facility, other than a fleet emissions inspection station, whether placed in a permanent structure or in a mobile unit for conveyance among various locations within this state, for the purpose of conducting emissions inspections of all vehicles required to be inspected pursuant to this article.

15. "Tampering" means removing, defeating or altering an emissions control device which was installed at the time a vehicle was manufactured.

16. "Vehicle" means any automobile, truck, truck tractor, motor bus or self-propelled or motor-driven vehicle registered or to be registered in this state and used upon the public highways of this state for the purpose of transporting persons or property, except implements of husbandry, road rollers or road machinery temporarily operated upon the highway.

17. "Vehicle emissions control area" means area A or area B.

A.R.S. § 49-542. Emissions inspection program; powers and duties of director; administration; periodic inspection; minimum standards and rules; exceptions; definition

(L21, Ch. 27, sec. 2 & Ch. 116, sec. 1)

A. The director shall administer a comprehensive annual or biennial emissions inspection program that shall require the inspection of vehicles in this state pursuant to this article and applicable administrative rules. Such inspection is required for vehicles that are registered in area A and area B, for those vehicles owned by a person who is subject to section 15-1444 or 15-1627 and for those vehicles registered outside of area A or area B but used to commute to the driver's principal place of employment located within area A or area B. Inspection in other counties of the state shall commence on the director's approval of an application by a county board of supervisors for participation in such inspection program. In all counties with a population of three hundred fifty thousand or fewer persons, except for the portion of counties that contain any portion of area A, the director shall as conditions dictate provide for testing to determine the effect of vehicle-related pollution on ambient air quality in all communities with a metropolitan area population of twenty thousand persons or more. If such testing detects the violation of state ambient air quality standards by vehicle-related pollution, the director shall forward a full report of such violation to the president of the senate, the speaker of the house of representatives and the governor.

B. The state's annual or biennial emissions inspection program shall provide for vehicle inspections at official emissions inspection stations or at fleet emissions inspection stations or may provide for remote vehicle inspection. Each official inspection station in area A shall employ at least one technical assistant who is available during the station's hours of operation to provide assistance for persons who fail the emissions test. An official or fleet emissions inspection station permit shall not be sold, assigned, transferred, conveyed or removed to another location except on such terms and conditions as the director may prescribe. The director shall establish a pilot program to provide for remote vehicle inspections in area A and area B. The director shall operate the pilot program for at least three consecutive years and shall complete the pilot program before July 1, 2025. On completion of the pilot program, the director shall submit to the joint legislative budget committee and the office of the governor a report summarizing the results of the pilot program. The director shall submit the report before the department implements any full scale remote vehicle

inspection program and shall include in the report a summary of the data collected during the pilot program and a certification by the director that, based on the data collected during the pilot program, a full scale implementation of a remote vehicle inspection program will increase the efficiency and reduce the costs of the vehicle emissions inspection program.

C. Vehicles required to be inspected and registered in this state, except those provided for in section 49-546, shall be inspected, for the purpose of complying with the registration requirement pursuant to subsection D of this section, in accordance with the provisions of this article not more than ninety days before each registration expiration date. A vehicle may be submitted voluntarily for inspection more than ninety days before the registration expiration date on payment of the prescribed inspection fee. That voluntary inspection may be considered as compliance with the registration requirement pursuant to subsection D of this section only on conditions prescribed by the director.

D. A vehicle shall not be registered until such vehicle has passed the emissions inspection and the tampering inspection prescribed in subsection G of this section or has been issued a certificate of waiver. A certificate of waiver shall only be issued one time to a vehicle after January 1, 1997. If any vehicle to be registered is being sold by a dealer licensed to sell motor vehicles pursuant to title 28, the cost of any inspection and any repairs necessary to pass the inspection shall be borne by the dealer. A dealer who is licensed to sell motor vehicles pursuant to title 28 and whose place of business is located in area A or area B shall not deliver any vehicle to the retail purchaser until the vehicle passes any inspection required by this article, except if the vehicle is a collectible vehicle and the retail purchaser obtains collectible vehicle or classic automobile insurance coverage as prescribed in subsection Z of this section before delivery or the vehicle is otherwise exempt under subsection J of this section.

E. On the registration of a vehicle that has complied with the minimum emissions standards pursuant to this section or is otherwise exempt under this section, the registering officer shall issue an air quality compliance sticker to the registered owner that shall be placed on the vehicle as prescribed by rule adopted by the department of transportation or issue a modified year validating tab as prescribed by rule adopted by the department of transportation. Those persons who reside outside of area A or area B but who elect to test their vehicle or are required to test their vehicle pursuant to this section and who comply with the minimum emissions standards pursuant to this section or are otherwise exempt under this section shall remit a compliance form, as prescribed by the department of transportation, and proof of compliance issued at an official emissions inspection station to the department of transportation along with the appropriate fees. The department of transportation shall then issue the person an air

quality compliance sticker that shall be placed on the vehicle as prescribed by rule adopted by the department of transportation. The registering officer or the department of transportation shall collect an air quality compliance fee of \$.25. The registering officer or the department of transportation shall deposit, pursuant to sections 35-146 and 35-147, the air quality compliance fee in the state highway fund established by section 28-6991. The department of transportation shall deposit, pursuant to sections 35-146 and 35-147, any emissions inspection fee in the emissions inspection fund. The provisions of this subsection do not apply to those vehicles registered pursuant to title 28, chapter 7, article 7 or 8, the sale of vehicles between motor vehicle dealers or vehicles leased to a person residing outside of area A or area B by a leasing company whose place of business is in area A or area B.

F. The director shall adopt minimum emissions standards pursuant to section 49-447 with which the various classes of vehicles shall be required to comply as follows:

1. For the purpose of determining compliance with minimum emissions standards in area B:

(a) A motor vehicle manufactured in or before the 1980 model year, other than a diesel powered vehicle, shall be required to take and pass the curb idle test. A diesel powered vehicle is subject to only a loaded test. The conditioning mode, at the option of the vehicle owner or owner's agent, shall be administered only after the vehicle has failed the curb idle test. On completion of such conditioning mode, a vehicle that has failed the curb idle test may be retested in the curb idle test. If the vehicle passes such retest, it is deemed in compliance with minimum emissions standards unless the vehicle fails the tampering inspection pursuant to subsection G of this section.

(b) A motor vehicle manufactured in or after the 1981 model year, other than a diesel powered vehicle, shall be required to take and pass the curb idle test and the loaded test or an onboard diagnostic check as may be required pursuant to title II of the clean air act.

2. For the purposes of determining compliance with minimum emissions standards and functional tests in area A:

(a) Motor vehicles manufactured in or after model year 1981 with a gross vehicle weight rating of eighty-five hundred pounds or less, other than diesel powered vehicles, shall be required to take and pass a transient loaded emissions test or an onboard diagnostic check as may be required pursuant to title II of the clean air act.

(b) Motor vehicles other than those prescribed by subdivision (a) of this paragraph and other than diesel powered vehicles shall be required to take and pass a steady state loaded test and a curb idle emissions test.

(c) A diesel powered motor vehicle applying for registration in area A shall be required to take and pass an annual emissions test conducted at an official emissions inspection station or a fleet emissions inspection station as follows:

(i) A loaded, transient or any other form of test as provided for in rules adopted by the director for vehicles with a gross vehicle weight rating of eight thousand five hundred pounds or less.

(ii) A test that conforms with the society for automotive engineers standard J1667 for vehicles with a gross vehicle weight rating of more than eight thousand five hundred pounds.

(d) Motor vehicles by specific class or model year shall be required to take and pass any of the following tests:

(i) An evaporative system purge test.

(ii) An evaporative system integrity test.

(e) An onboard diagnostic check may be required pursuant to title II of the clean air act.

3. Any constant four-wheel drive vehicle shall be required to take and pass a curb idle emissions test or an onboard diagnostic check as required pursuant to title II of the clean air act.

4. Fleet operators in area B must comply with this section, except that used vehicles sold by a motor vehicle dealer who is a fleet operator and who has been issued a permit under section 49-546 shall be tested as follows:

(a) A motor vehicle manufactured in or before the 1980 model year shall take and pass only the curb idle test, except that a diesel powered vehicle is subject to only a loaded test.

(b) A motor vehicle manufactured in or after the 1981 model year shall take and pass the curb idle test and a twenty-five hundred revolutions per minute unloaded test.

5. Vehicles owned or operated by the United States, this state or a political subdivision of this state shall comply with this subsection without regard to whether those vehicles are required to be registered in this state, except that alternative fuel vehicles of a school district that is located in area A shall be required to take and pass the curb idle test and the loaded test.

6. Fleet operators in area A shall comply with this section, except that used vehicles sold by a motor vehicle dealer who is a fleet operator and who has been issued a permit pursuant to section 49-546 for the purposes of determining compliance with minimum emission standards in area A shall be tested as follows:

(a) A motor vehicle manufactured in or before the 1980 model year shall take and pass the curb idle test, except that a diesel powered vehicle is subject to only a loaded test.

(b) A motor vehicle manufactured in or after the 1981 model year shall take and pass the curb idle test and a two thousand five hundred revolutions per minute unloaded test.

7. Except for any registered owner or lessee of a fleet of less than twenty-five vehicles, a diesel powered motor vehicle with a gross vehicle weight of more than twenty-six thousand pounds and for which gross weight fees are paid pursuant to title 28, chapter 15, article 2 in area A shall not be allowed to operate in area A unless it was manufactured in or after the 1988 model year or is powered by an engine that is certified to meet or surpass emissions standards contained in 40 Code of Federal Regulations section 86.088-11 in effect on July 1, 1995. This paragraph does not apply to vehicles that are registered pursuant to title 28, chapter 7, article 7 or 8.

8. For any registered owner or lessee of a fleet of less than twenty-five vehicles, a diesel powered motor vehicle with a gross vehicle weight of more than twenty-six thousand pounds and for which gross weight fees are paid pursuant to title 28, chapter 15, article 2 in area A shall not be allowed to operate in area A unless it was manufactured in or after the 1988 model year or is powered by an engine that is certified to meet or surpass emissions standards contained in 40 Code of Federal Regulations section 86.088-11 in effect on July 1, 1995. This paragraph does not apply to vehicles that are registered pursuant to title 28, chapter 7, article 7 or 8.

G. In addition to an emissions inspection, a vehicle is subject to a tampering inspection as prescribed by rules adopted by the director if the vehicle was manufactured after the 1974 model year.

H. Vehicles required to be inspected shall undergo a functional test of the gas cap to determine if the cap holds pressure within limits prescribed by the director, except for any vehicle that is subject to an evaporative system integrity test.

I. Motor vehicles failing the initial or subsequent test are not subject to a penalty fee for late registration renewal if the original testing was accomplished before the expiration date and if the registration renewal is received by the motor vehicle division or the county assessor within thirty days after the original test.

J. The director may adopt rules for purposes of implementation, administration, regulation and enforcement of the provisions of this article including:

1. The submission of records relating to the emissions inspection of vehicles inspected by another jurisdiction in accordance with another inspection law and the acceptance of such inspection for compliance with the provisions of this article.

2. The exemption from inspection of:

(a) Except as otherwise provided in this subdivision, a motor vehicle manufactured in or before the 1966 model year. If the United States environmental protection agency issues a vehicle emissions testing exemption for motor vehicles manufactured in or before the 1974 model year for purposes of the state implementation or maintenance plan for air quality, a motor vehicle manufactured in or before the 1974 model year is exempt from inspection.

(b) New vehicles originally registered at the time of initial retail sale and titling in this state pursuant to section 28-2153 or 28-2154.

(c) Vehicles registered pursuant to title 28, chapter 7, article 7 or 8.

(d) New vehicles before the sixth registration year after initial purchase or lease.

(e) Vehicles that are outside of this state at the time of registration, except the director by rule may require testing of those vehicles within a reasonable period of time after those vehicles return to this state.

(f) Golf carts.

(g) Electrically-powered vehicles.

(h) Vehicles with an engine displacement of less than ninety cubic centimeters.

(i) The sale of vehicles between motor vehicle dealers.

(j) Vehicles leased to a person residing outside of area A or area B by a leasing company whose place of business is in area A or area B.

(k) Collectible vehicles.

(l) Motorcycles.

3. Compiling and maintaining records of emissions test results after servicing.

4. A procedure that allows the vehicle service and repair industry to compare the calibration accuracy of its emissions testing equipment with the department's calibration standards.

5. Training requirements for automotive repair personnel using emissions measuring equipment whose calibration accuracy has been compared with the department's calibration standards.

6. Any other rule that may be required to accomplish the provisions of this article.

K. The director, after consultation with automobile manufacturers and the vehicle service and repair industry, shall establish by rule a definition of "vehicle maintenance and repairs" for motor vehicles subject to inspection under this article. The definition shall specify repair procedures that, when implemented, will reduce vehicle emissions.

L. The director shall adopt rules that specify that the estimated retail cost of all recommended maintenance and repairs shall not exceed the amounts prescribed in this subsection, except that if a vehicle fails a tampering inspection there is no limit on the cost of recommended maintenance and repairs. The director shall issue a certificate of waiver for a vehicle if the director has determined that all recommended maintenance and repairs have been performed and that the vehicle has failed any reinspection that may be required by rule. If the director has determined that the vehicle is in compliance with minimum emissions standards or that all recommended maintenance and repairs for compliance with minimum emissions standards have been performed, but that tampering discovered at a tampering inspection has not been repaired, the director may issue a certificate of waiver if the owner of the vehicle provides to the director a written statement from an automobile parts or repair business that an emissions control device that is necessary to repair the tampering is not available and cannot be obtained from any usual source of supply before the vehicle's current registration expires. Rules adopted by the director for the purpose of establishing the estimated retail cost of all recommended maintenance and repairs pursuant to this subsection shall specify that:

1. In area A the cost shall not exceed:

(a) \$500 for a diesel powered vehicle with a gross weight in excess of twenty-six thousand pounds.

(b) \$500 for a diesel powered vehicle with tandem axles.

(c) For a vehicle other than a diesel powered vehicle with a gross weight in excess of twenty-six thousand pounds and other than a diesel powered vehicle with tandem axles:

(i) \$200 for such a vehicle manufactured in or before the 1974 model year.

(ii) \$300 for such a vehicle manufactured in the 1975 through 1979 model years.

(iii) \$450 for such a vehicle manufactured in or after the 1980 model year.

2. In area B the cost shall not exceed:

(a) \$300 for a diesel powered vehicle with a gross weight in excess of twenty-six thousand pounds.

(b) \$300 for a diesel powered vehicle with tandem axles.

3. For a vehicle other than a diesel powered vehicle with a gross weight in excess of twenty-six thousand pounds and other than a diesel powered vehicle with tandem axles:

(a) \$50 for such a vehicle manufactured in or before the 1974 model year.

(b) \$200 for such a vehicle manufactured in the 1975 through 1979 model years.

(c) \$300 for such a vehicle manufactured in or after the 1980 model year.

M. Each person whose vehicle has failed an emissions inspection shall be provided a list of those general recommended repair and maintenance procedures for vehicles that are designed to reduce vehicle emissions levels.

N. Notwithstanding any other provisions of this article, the director may adopt rules allowing exemptions from the requirement that all vehicles must meet the minimum standards for registration.

O. The director of environmental quality shall establish, in cooperation with the assistant director for the motor vehicle division of the department of transportation:

1. An adequate method for identifying bona fide residents residing outside of area A or area B to ensure that such residents are exempt from compliance with the inspection program established by this article and rules adopted under this article.

2. A written notice that shall accompany the vehicle registration application forms that are sent to vehicle owners pursuant to section 28-2151 and that shall accompany or be included as part of the vehicle emissions test results that are provided to vehicle owners at the time of the vehicle emissions test. This written notice shall describe at least the following:

(a) The restriction of the waiver program to one time per vehicle and a brief description of the implications of this limit.

(b) The availability and a brief description of the vehicle repair and retrofit program established pursuant to section 49-558.02.

(c) Notice that many vehicles carry extended warranties for vehicle emissions systems, and those warranties are described in the vehicle's owner's manual or other literature.

P. Notwithstanding any other law, if area A or area B is reclassified as an attainment area, emissions testing conducted pursuant to this article shall continue for vehicles registered inside that reclassified area, vehicles owned by a person who is subject to section 15-1444 or 15-1627 and vehicles registered outside of that reclassified area but used to commute to the driver's principal place of employment located within that reclassified area.

Q. A fleet operator who is issued a permit pursuant to section 49-546 may electronically transmit emissions inspection data to the department of transportation pursuant to rules adopted by the director of the department of transportation in consultation with the director of environmental quality.

R. The director shall prohibit a certificate of waiver pursuant to subsection L of this section for any vehicle that has failed inspection in area A or area B due to the catalytic converter system.

S. The director shall establish provisions for rapid testing of certain vehicles and to allow fleet operators, singly or in combination, to contract directly for vehicle emissions testing.

T. Each vehicle emissions inspection station in area A shall have a sign posted to be visible to persons who are having their vehicles tested. This sign shall state that enhanced testing procedures are a direct result of federal law.

U. The initial adoption of rules pursuant to this section shall be deemed emergency rules pursuant to section 41-1026.

V. The director of environmental quality and the director of the department of transportation shall implement a system to exchange information relating to the waiver program, including information relating to vehicle emissions test results and vehicle registration information.

W. Any person who sells a vehicle that has been issued a certificate of waiver pursuant to this section after January 1, 1997 and who knows that a certificate of waiver has been issued after January 1, 1997 for that vehicle shall disclose to the buyer before completion of the sale that a certificate of waiver has been issued for that vehicle.

X. Vehicles that fail the emissions test at emission levels higher than twice the standard established for that vehicle class by the department pursuant to section 49-447 are not eligible for a certificate of waiver pursuant to this section unless the vehicle is repaired sufficiently to achieve an emissions level below twice the standard for that class of vehicle.

Y. If an insurer notifies the department of transportation of the cancellation or nonrenewal of collectible vehicle or classic automobile insurance coverage for a collectible vehicle, the department of transportation shall cancel the registration of the vehicle and the vehicle's exemption from emissions testing pursuant to this section unless evidence of coverage is presented to the department of transportation within sixty days.

Z. For the purposes of this section, "collectible vehicle" means a vehicle that complies with both of the following:

1. Either:

(a) Bears a model year date of original manufacture that is at least fifteen years old.

(b) Is of unique or rare design, of limited production and an object of curiosity.

2. Meets both of the following criteria:

(a) Is maintained primarily for use in car club activities, exhibitions, parades or other functions of public interest or for a private collection and is used only infrequently for other purposes.

(b) Has a collectible vehicle or classic automobile insurance coverage that restricts the collectible vehicle mileage or use, or both, and requires the owner to have another vehicle for personal use.

A.R.S. § 49-542.02. Mechanic education program

The director shall establish an education program for motor vehicle mechanics for the inspection and maintenance provisions used in vehicle emissions control in area A.

A.R.S. § 49-542.03. Motor vehicle dealer; emissions testing; remedies; definition

(L14, Ch. 89, sec. 4)

A. In area A or area B, if a motor vehicle dealer sells a motor vehicle that has less than one year remaining before it must undergo an emissions test or has not taken an emissions test pursuant to section 49-542 and that is not covered under a current federal emissions warranty and if the purchaser of the vehicle has the vehicle emissions tested within three days, excluding holidays, of the purchase and if the vehicle fails the test, the dealer shall do one of the following:

1. Rescind the purchase agreement and reimburse the purchaser for the cost of the test.
2. Make repairs at the dealer's expense which bring the vehicle into compliance with the emissions test.
3. Enter into a mutually acceptable alternative agreement with the purchaser.

B. A motor vehicle dealer who sells a vehicle subject to the provisions of subsection A of this section shall provide the purchaser with a written notice of the purchaser's rights pursuant to this section prior to completing the sale transaction. A motor vehicle dealer subject to the provisions of section 49-546, subsection G shall also provide a written summary of the requirements of section 49-542 to the purchaser. The notice shall be available in English and in Spanish.

C. A motor vehicle dealer who meets the requirements of section 49-546, subsection G shall conduct the dealer's business pursuant to this section for those vehicles which are required by law to be registered in area A.

D. A motor vehicle dealer in area B who sells a vehicle to a resident of area A may comply with emissions testing requirements pursuant to section 49-542, subsection F, paragraph 6 by complying with this section and the tampering inspection pursuant to section 49-542, subsection G.

E. In this section, unless the context otherwise requires, "motor vehicle dealer" means a dealer who is a fleet operator and who has been issued a permit under section 49-546.

[A.R.S. § 49-542.03. Motor vehicle dealer; emissions testing; remedies; definition](#)

(L21, Ch. 27, sec. 4. Conditionally eff.

A. In area A or area B, if a motor vehicle dealer sells a motor vehicle that has less than one year remaining before it must undergo an emissions test or has not taken an emissions test pursuant to section 49-542 and that is not covered under a current federal emissions warranty and if the purchaser of the vehicle has the vehicle emissions tested within three days, excluding holidays, of the purchase and if the vehicle fails the test, the dealer shall do one of the following:

1. Rescind the purchase agreement and reimburse the purchaser for the cost of the test.
2. Make repairs at the dealer's expense that bring the vehicle into compliance with the emissions test.
3. Enter into a mutually acceptable alternative agreement with the purchaser.

B. A motor vehicle dealer that sells a vehicle subject to subsection A of this section shall provide the purchaser with a written notice of the purchaser's rights pursuant to this section before completing the sale transaction. A motor vehicle dealer that is subject to section 49-546, subsection G shall also provide a written summary of the requirements of section 49-542 to the purchaser. The notice shall be available in English and in Spanish.

C. A motor vehicle dealer that meets the requirements of section 49-546, subsection G shall conduct the dealer's business pursuant to this section for those vehicles that are required by law to be registered in area A.

D. A motor vehicle dealer in area B that sells a vehicle to a resident of area A may comply with emissions testing requirements pursuant to section 49-542, subsection F, paragraph 5 by complying with this section and the tampering inspection pursuant to section 49-542, subsection G.

E. For the purposes of this section, "motor vehicle dealer" means a dealer that is a fleet operator and that has been issued a permit under section 49-546.

D-2

BOARD OF PODIATRY EXAMINERS

Title 4, Chapter 25

Amend: R4-25-101, R4-25-103, R4-25-301, R4-25-302, R4-25-306, R4-25-602, R4-25-605

New Article: Article 7

New Section: R4-25-701, R4-25-702



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: June 1, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 11, 2022

SUBJECT: BOARD OF PODIATRY EXAMINERS
Title 4, Chapter 25, Board of Podiatry Examiners

Amend: R4-25-101, R4-25-103, R4-25-301, R4-25-302, R4-25-306, R4-25-602,
R4-25-605

New Article: Article 7

New Section: R4-25-701, R4-25-702

Summary:

This regular rulemaking from the Board of Podiatry Examiners (Board) relates to rules in Title 4, Chapter 25. In this rulemaking, the Board seeks to update its rules to make them more clear, concise, and consistent with statute and current agency and industry practice. Further, in 2021, there were legislative changes that require the Board to make rules: to (1) address a new statutory definition for "podiatric medical assistants" in A.R.S. § 32-856 and (2) to add a fee of \$100 for telehealth registration pursuant to A.R.S. § 36-3606.

The Board received an exception to the rulemaking moratorium to initiate this rulemaking on January 6, 2022 and final approval to submit it to the Council on March 23, 2022.

1. **Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

Yes. The Board cites both general and specific statutory authority to conduct this rulemaking. The applicable statutory authority for these rules can be found [here](#).

2. **Do the rules establish a new fee or contain a fee increase?**

This rulemaking establishes a new fee for telehealth registration in the amount of \$100. The Board is establishing the new fee pursuant to statutory authority in A.R.S. § 36-3606(A)(3). This rulemaking does not contain a fee increase.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The Board did not review or rely on a study in conducting this rulemaking.

4. **Summary of the agency's economic impact analysis:**

The Board is updating its rules to make them more clear, concise and consistent with statute and current agency and industry practice. Anticipated changes include:

- adding a fee for telehealth registration;
- adding a section clarifying requirements and scope of practice for podiatric medical assistant; and
- minor technical and conforming corrections as needed.

The new fee supports the function and operating costs of the agency and the purpose of telehealth registration as set forth in statute. After registering, individuals can practice telehealth in Arizona at a cost that is lower than applying for a permanent license.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The overall economic impact of the rulemaking is expected to be minimal with the benefits outweighing the costs. There is no identified alternative or less costly alternative of which the Board is aware.

6. **What are the economic impacts on stakeholders?**

The rulemaking impacts licensed podiatrists, assistants and patients of licensed podiatrists, and the Board.

Most of the rulemaking clarifies current statutes and rules and thus, amends existing requirements already established in the rules. There is no section in the rules that relates

to podiatric medical assistants; therefore a new section was added to clarify duties and the scope of practice of podiatric medical assistants.

These changes benefit licensed podiatrists, their assistants, and their patients through the continued protection of the public through efficient and effective rules regarding the practice and education of providers.

The Board is expected to incur minimal costs in conducting this rulemaking.

7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

No. The Board did not make any changes to the rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

8. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

The Board did not receive any comments on this rulemaking.

9. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Board indicates that the rules require a license, and that it licenses podiatrists that meet the requirements in the Board's statutes and rules. The Board indicates that it is exempt from the general permit requirement of A.R.S. § 41-1037 pursuant to A.R.S. § 41-1037(A)(2) ("[t]he issuance of an alternative type of permit, license, or authorization is specifically authorized by statute"). Upon review of the applicable statutes, Council staff agrees.

10. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

The Board indicates that federal law is not applicable to these rules.

11. **Conclusion**

In this regular rulemaking, the Board seeks to update its rules and implement new legislative requirements, including a fee for telehealth registration. The Board is requesting the standard 60-day delayed effective date for this rulemaking. Council staff recommends approval of this rulemaking.



Douglas A. Ducey,
Governor

Arizona State Board of
Podiatry Examiners
“Protecting the Public’s Health”

1740 West Adams St., Suite 3004
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March 24, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Chair
Governor’s Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

Re: A.A.C. Title 4. Professions and Occupations, Chapter 25. Board of Podiatry Examiners

Dear Ms. Sornsin:

The attached final rules package is submitted for review and approval by the Council. The following information is provided for Council's use in reviewing the rule package:

A. Close of record date:

The rulemaking record was closed on March 6, 2022, following a period for public comment. This rule package is being submitted within the 120 days provided by A.R.S. §41-1024(B).

B. Relation of the rulemaking to a five-year-review report:

The rulemaking does not relate to a five-year-review report.

C. New fee:

The rulemaking establishes a new fee for telehealth registration pursuant to A.R.S. §36-3606.

D. Fee increase:

The rulemaking does not increase any fees.

E. Immediate effective date:

An immediate effective date is not requested.

F. Certification regarding studies:

I certify that the preamble accurately discloses that the Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

G. Certification that the preparer of the EIS notified the JLBC of the number of new fulltime employees necessary to implement and enforce the rule:

I certify that none of the rules in this rulemaking will require the Agency to employ a new full-time employee; therefore, no notification was required to be provided to JLBC.

H. List of documents enclosed:

- a. Cover letter signed by the Executive Director;
- b. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
- c. Economic, Small Business, and Consumer Impact Statement
- d. Final approval from the Governor's Office

Sincerely,

Heather Broaddus
Executive Director

NOTICE OF FINAL RULEMAKING
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 25. BOARD OF PODIATRY EXAMINERS

PREAMBLE

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

R4-25-101	Amend
R4-25-103	Amend
R4-25-301	Amend
R4-25-302	Amend
R4-25-306	Amend
R4-25-602	Amend
R4-25-605	Amend
Article 7	New Article
R4-25-701	New Section
R4-25-702	New Section

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

Authorizing statute: A.R.S. § 32-801

Implementing statute: A.R.S. §§ 32-801 et seq.

3. The effective date of the rule:

The rules will become effective 60 days after filing with the Secretary of State.

- 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: 26 A.A.R. 280 (January 28, 2022)

Notice of Proposed Rulemaking: 26 A.A.C. 251 (January 28, 2022)

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

Name: Heather Broaddus, Executive Director

Address: Arizona State Board of Podiatry Examiners
1740 West Adams St., Ste. 3004
Phoenix, AZ 85007

Telephone:(602) 542-8151

Fax: (602) 926-8102

E-mail: heather.broaddus@podiatry.az.gov

Website: <https://podiatry.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 updating its rules to make them more clear, concise and consistent with statute and current agency and industry practice. Law changes were implemented in 2021, for which there is currently no rule to support the changes. There is, in the new Law (A.R.S. §32-856), a new definition for podiatric medical assistants that must be addressed through rule, terms are used in law that are not defined in rule or elsewhere; without definition or clarification in rule, there may be no support or successful enforcement of the new Law. The profession may not be able to comply with the change to Law pertaining to podiatric medical assistants and the public may not be as well protected as a result. There is, in the new Law (A.R.S. §36-3606), a new requirement for telehealth registration. The proposed rules address the implementation of a fee for the telehealth registration application which is necessary to offset added administrative costs such as processing an application, correspondence with the applicant, registration issuance and other various administrative tasks that may arise during the process. More importantly, the fee also covers the additional cost of upgrading the current online licensing system to allow for the fees to be collected and the application for telehealth registration to be added to the online system and implemented pursuant to the Governor's initiative of licensure and payment by electronic means. The added nominal fee would support the function and operating expenses of the agency and the purpose of the telehealth registration as set forth by the Governor in the new law as it allows individuals to practice telehealth in Arizona at a cost that is lower than applying for a permanent license.

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

The rulemaking makes no substantive changes. It will have minimal, if any, economic impact to current licensees only. There is no economic impact to the public.

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

No substantive changes have been made to the rules.

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 by the public.

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 rule requires a license. The Board was established in 1941 and it licenses podiatrists that meet the requirements set forth in statute and rule. The Board is amending existing rules that require a license. The Board believes the general permit is not applicable based on A.R.S. §41-1037(A)(2):

If an agency proposes a new rule or an amendment to an existing rule that requires the issuance of a regulatory permit, license or agency authorization, the agency shall use a general permit if the facilities, activities or practices in the call are substantially similar in nature unless any of the following applies:

The issuance of an alternative type of permit, license or authorization is specifically authorized by statute.

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:

None.

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 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 25. BOARD OF PODIATRY EXAMINERS

ARTICLE 1. GENERAL PROVISIONS

<u>Section</u>	
<u>R4-25-101.</u>	<u>Definitions</u>
<u>R4-25-103.</u>	<u>Fees</u>

ARTICLE 3. LICENSES

<u>Section</u>	
<u>R4-25-301.</u>	<u>Application for a Regular Podiatry License</u>
<u>R4-25-302.</u>	<u>Application for a Podiatrist's License by Comity</u>
<u>R4-25-306.</u>	<u>License Renewal</u>

ARTICLE 6. DISPENSING DRUGS AND DEVICES

<u>Section</u>	
<u>R4-25-602.</u>	<u>Registration Requirements</u>
<u>R4-25-605.</u>	<u>Registration Renewal</u>

ARTICLE 7. PODIATRIC MEDICAL ASSISTANTS - AUTHORIZED PROCEDURES

<u>Section</u>	
<u>R4-25-701.</u>	<u>Approval of Podiatric Medical Assistant Clinical Certification and Radiology Certification</u>
<u>R4-25-702.</u>	<u>Podiatric Medical Assistants – Authorized Procedures</u>

ARIZONA ADMINISTRATIVE CODE (Rules)
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 25. BOARD OF PODIATRY EXAMINERS
ARTICLE 1. GENERAL PROVISIONS

R4-25-101. Definitions

The following definitions apply in this Chapter unless otherwise specified:

1. “Administer” has the same meaning as in A.R.S. § 32-1901.
2. ~~“Administrative completeness review” means the Board’s process for determining that an applicant has:~~
 - a. ~~Provided all the information and documents required by Board statute or rule for an application, and~~
 - b. ~~Taken a written examination or oral examination required by the Board.~~
3. ~~“Applicant” means an individual requesting an approval from the Board.~~
4. ~~“Application packet” means all forms, documents, and additional information required by the Board to be submitted with an application by an applicant or on the applicant’s behalf.~~
2. “Comity” means the procedure for granting an Arizona license to an applicant who is licensed as a podiatrist in another state of the United States.
6. ~~“Contested case” has the same meaning as in A.R.S. § 41-1001.~~
7. ~~“Continuing education” means a workshop, seminar, lecture, conference, class, or instruction related to the practice of podiatry.~~
3. “Controlled substance” has the same meaning as in A.R.S. § 32-1901.
4. “Council” means the Council of Podiatric Medical Education, an organization approved by the American ~~Podiatry~~ Podiatric Medical Association to govern podiatric education.
5. “Credit hour” means 60 minutes of participation in continuing education.

6. “Day” means calendar day.

7. “DEA” means The Drug Enforcement Administration in the Department of Justice

8. “DEA Registration” means the DEA Controlled Substance Registration required and permitted by 21 U.S.C. 823 of the Controlled Substances Act.

9. “Device” has the same meaning as in A.R.S. § 32-1901 and includes a prescription-only device defined in A.R.S. § 32-1901.

10. “Directly supervise” has the same meaning as “direct supervision” in A.R.S. § 32-871(D).

11. “Dispense” has the same meaning as in A.R.S. § 32-871(F).

12. “Distributor” has the same meaning as in A.R.S. § 32-1901.

13. “Drug” has the same meaning as in A.R.S. § 32-1901 and includes a controlled substance, a narcotic drug defined in A.R.S. § 32-1901, a prescription medication, and a prescription-only drug.

~~19. “Fiscal year” means the period beginning on July 1 and ending on the following June 30.~~

~~20. “Hospital” means a classification of health care institution that meets the requirements in A.R.S. Title 36, Chapter 4 and 9 A.A.C. 10, Article 2.~~

14. “Informed consent” means a document signed by a patient or patient’s representative that authorizes treatment to the patient after the treating podiatrist informs the patient or the patient’s representative of the following:

- a. A description of the treatment;
- b. A description of the expected benefits of the treatment;
- c. Alternatives to the treatment;
- d. Associated risks of the treatment, including potential side effects and complications; and
- e. The patient’s right to withdraw authorization for the treatment at any time.

- ~~22. "Label" has the same meaning as in A.R.S. § 32-1901.~~
- ~~23. "Manufacturer" has the same meaning as in A.R.S. § 32-1901.~~
- ~~24. "Medical record" has the same meaning as in A.R.S. § 12-2291(4).~~
- ~~25. "Packaging" means the act or process of a person placing a drug item in a container for the purpose of dispensing or distributing the item to another person.~~
15. "Party" has the same meaning as in A.R.S. § 41-1001.
16. "Patient" means an individual receiving treatment from a podiatrist.
17. "Prescription medication" has the same meaning as in A.R.S. § 32-1901.
18. "Prescription-only device" has the same meaning as in A.R.S. § 32-1901.
19. "Prescription-only drug" has the same meaning as in A.R.S. § 32-1901.
20. "Prescription order" has the same meaning as in A.R.S. § 32-1901.
21. "Regular podiatry license" means a license issued pursuant to the provisions of A.R.S. § 32-826(A).
22. "Representative" means a legal guardian, an individual acting on behalf of another individual under written authorization from the individual, or a surrogate according to A.R.S. § 36-3201.
- ~~34. "Substantive review" means the Board's process for determining that an applicant meets the requirements of A.R.S. §§ 32-801 through 32-871 and this Article.~~
23. "Treatment" means podiatric medical, surgical, mechanical, manipulative, or electrical treatment according to A.R.S. § 32-801.
- ~~36. "Visit" means to seek diagnosis or treatment of an ailment of the foot or leg from a podiatrist and be physically present for the diagnosis or treatment.~~

R4-25-103. Fees

The Board shall charge the following fees, which are not refundable unless A.R.S. § 41-1077 applies:

1. Application for ~~examination~~ license according to A.R.S. §§ 32-822(A) and 32-825, \$450.00.

2. Application for ~~examination~~ license according to A.R.S. § 32-827, \$450.00.
3. License issuance, \$225.00.
4. Annual renewal, \$275.00.
5. Penalty fee for late renewal after July 30, \$150.00 in addition to the regular renewal fee.
6. Certification of a licensee to authorities of another state or country, \$10.00.
7. For initial registration to dispense drugs and devices, \$200.00.
8. For annual renewal of registration to dispense drugs and devices, \$100.00.
9. Application for temporary license and issuance of license, \$100.00
10. Application for telehealth registration and issuance of registration, \$100.00.

ARTICLE 3. LICENSES

R4-25-301. Application for a Regular Podiatry License

A. An applicant for a regular license shall submit:

1. An application form approved by the Board, signed and dated by the applicant ~~and~~ ~~notarized~~ that contains questions approved by the Board.

- ~~a. The applicant's name, address, social security number, telephone number, and date of birth~~
- ~~b. The name and address of the applicant's employer at the time of application;~~
- ~~c. The name, address, and type of facility at which the applicant served as an intern or resident in podiatric medicine;~~
- ~~d. The name and address of each university or college from which the applicant graduated, dates of attendance, date of graduation, and degree received;~~
- ~~e. The name and address of the podiatric medical school from which the applicant graduated, dates of attendance, and date of graduation;~~
- ~~f. The name of each state or jurisdiction in which the applicant is currently or has been licensed as a podiatrist and address of the licensing agency;~~
- ~~g. A statement of whether the applicant has taken and passed a national podiatric~~

~~examination in any state and date of passage, if applicable;~~

~~h. A statement of whether the applicant has ever been convicted of a felony or misdemeanor involving moral turpitude;~~

~~i. A statement of whether the applicant has ever had an application for a license, certification, or registration, other than a driver's license, denied or rejected by any state or jurisdiction;~~

~~j. A statement of whether the applicant has ever had a license, certification, or registration, other than a driver's license, suspended or revoked by any state or jurisdiction;~~

~~k. A statement of whether the applicant has ever entered into a consent agreement or stipulation with any state or jurisdiction;~~

~~l. A statement of whether the applicant has ever been named as a defendant in any medical malpractice matter that resulted in a settlement or judgment against the applicant;~~

~~m. A statement of whether the applicant has any medical condition that in any way impairs or limits the applicant's ability to practice podiatric medicine; and~~

~~n. A statement, verified under oath by the applicant, that the information on the application pertains to the applicant, is true and correct, and was not procured through fraud or misrepresentation.~~

~~o. A statement of whether the applicant has taken at least three hours of opioid-related clinical education if applicant was enrolled in a public or private medical program in Arizona.~~

2. Two passport-type photographs of the applicant no larger than 1 1/2 x 2 inches taken not more than six months before the date of application;

3. A photocopy of the diploma issued to the applicant upon completion of podiatric school;

4. A photocopy of the residency certificate issued to the applicant upon completion of residency; and

5. The fee required in R4-25-103.

B. An applicant shall arrange to have a transcript of examination scores of a national board examination in podiatry sent directly to the Board office by the professional examination service preparing the examination.

R4-25-302. Application for a Podiatrist's License by Comity

A. Under A.R.S. § 32-827, an applicant for a podiatrist's license by comity shall submit to the Board, an application form approved by the Board, signed and dated by the applicant ~~and notarized~~ that contains ~~the information in R4-25-301(A)(1)~~ questions approved by the Board and the following:

1. A photocopy of a current podiatric license in good standing issued in another state or jurisdiction;
2. Written documentation of having been engaged in the practice of podiatric medicine for five of seven years immediately preceding the application;
3. Two passport-type photographs of the applicant ~~no larger than 1 1/2 x 2 inches~~ taken not more than six months before the date of application;
4. The fee required in R4-25-103.

B. An applicant shall arrange to have a transcript of examination scores of a national board examination in podiatry sent directly to the Board office by the professional examination service preparing the examination.

R4-25-306. License Renewal

On or before June 30 of each year, a licensee shall submit the renewal fee required in R4-25-103 and:

1. A renewal application approved by the Board that contains ~~the following~~ questions

approved by the Board.

~~a. The licensee's name, home and business mailing addresses, and location of practice;~~

~~b. Whether the licensee has been named as a defendant in a medical malpractice matter during the 12 months before the date of the renewal application, including:~~

~~i. The name of the court having jurisdiction over the medical malpractice matter and case number assigned to the medical malpractice matter, and~~

~~ii. Copies of all court documents relating to the medical malpractice matter;~~

~~c. Whether the licensee has been convicted of a felony or a misdemeanor involving moral turpitude during the 12 months before the date of the renewal application;~~

~~d. Whether the licensee's malpractice or professional liability insurance has been denied, suspended, or revoked during the 12 months before the date of the renewal application;~~

~~e. Whether the licensee's Drug Enforcement Administration Certificate of Registration required in R4-25-602 has been suspended or revoked during the 12 months before the date of the renewal application, or is currently under investigation;~~

~~f. Whether the licensee has had a license, certification, or registration, other than a driver's license, suspended or revoked by any state or jurisdiction during the 12 months before the date of the renewal application;~~

~~g. Whether the licensee has been treated for alcoholism or drug abuse during the 12 months before the date of the renewal application;~~

~~h. Whether the licensee has a medical condition that in any way impairs or limits~~

~~the licensee's ability to practice podiatric medicine;~~

~~i. Whether the licensee has been denied staff membership in a hospital or other health care institution, as defined in A.R.S. § 36-401, during the 12 months before the date of the renewal application;~~

~~j. Whether the licensee has been investigated by a health insurance company for health insurance fraud during the 12 months before the date of the renewal application; and~~

~~k. A statement by the licensee that the information on the renewal application is true and correct and the licensee's signature;~~

~~2. If the licensee answers yes to any of the questions in subsections (1)(c) through (1)(j), an explanation of each answer including applicable dates, outcomes, and current status; and~~

~~3. 2. The written report required in R4-25-503 for continuing education, including an notarized affirmation attestation of attendance signed by the licensee.~~

ARTICLE 6. DISPENSING DRUGS AND DEVICES

R4-25-602. Registration Requirements

An individual currently licensed as a podiatrist in this state who wishes to dispense drugs and devices shall register with the Board by submitting all of the following:

1. The podiatrist's current Drug Enforcement Administration Certificate of Registration issued by the Department of Justice under 21 U.S.C. 801 et seq.;

2. The fee required in R4-25-103; and

3. An application form provided by the Board, signed and dated by the podiatrist, ~~and notarized~~ that contains questions approved by the Board;

~~a. The podiatrist's name,~~

~~b. The address of each location where the podiatrist intends to dispense drugs and devices, and~~

~~e. The types of drugs and devices the podiatrist intends to dispense.~~

R4-25-605. Registration Renewal

A. A podiatrist shall renew a registration no later than June 30 of each year by submitting to the Board:

1. An application form provided by the Board, signed and dated by the podiatrist, ~~and notarized that~~ contains questions approved by the Board.:

~~a. The podiatrist's name,~~

~~b. The address of each location where the podiatrist dispenses drugs and devices,~~

~~c. The types of drugs and devices the podiatrist dispenses, and~~

~~d. The podiatrist's Drug Enforcement Administration registration number issued by the Department of Justice under 21 U.S.C. 801 et seq.; and~~

2. The fee required in R4-25-103.

B. If a podiatrist fails to submit the information required in subsection (A) and the registration renewal fee required in R4-25-103 by June 30, the podiatrist's registration expires. If a registration expires, the podiatrist shall:

1. Immediately cease dispensing drugs or devices, and

2. Register pursuant to R4-25-602 before dispensing drugs and devices.

ARTICLE 7. PODIATRIC MEDICAL ASSISTANTS

R4-25-701. Approval of Podiatric Medical Assistant Clinical Certification and Radiology Certification

A. For purposes of this Section, a Board-approved clinical certification program is a program:

1. Accredited by the American Society of Podiatric Medical Assistants.

B. For purposes of this Section, a Board-approved radiology certification program is a program:

1. Accredited by the American Society of Podiatric Medical Assistants.

R4-25-702. Podiatric Medical Assistants – Authorized Procedures

A. A podiatric medical assistant not working under the direct supervision of a licensed podiatric physician may:

1. Order supplies, store supplies, stock treatment rooms;
2. Clean treatment rooms;
3. Answer phones;
4. Schedule appointments;
5. Check patients in.

B. A podiatric medical assistant working under the direct supervision of a licensed podiatric physician may:

1. Obtain medical history from a patient;
2. Obtain and record vital signs of a patient;
3. Explain treatment procedures to a patient;
4. Take off a patient's shoes and put the patient's shoes back on;
5. Clip toenails on a patient;
6. Apply bandages to the feet of a patient;
7. Prepare a patient for a procedure;
8. Take x-rays if the podiatric medical assistant is certified in radiology as described in R4-25-701, Section B. A podiatric medical assistant shall not take x-rays if the podiatric medical assistant does not meet the requirement of R4-25-701, Section B;
9. The supervising licensed podiatric physician shall ensure that the podiatric medical assistant is properly trained and shall be responsible for all acts or missions of a podiatric medical assistant.

**ARIZONA STATE BOARD OF PODIATRY
ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT**

TITLE 32. PROFESSIONS AND OCCUPATIONS
CHAPTER 25. PODIATRY

1. An identification of the proposed rulemaking.

The Board is updating its rules to make them more clear, concise and consistent with statute and current agency and industry practice. A Law change was implemented/effective May 5, 2021 and September 29, 2021, for which there is currently no rule to support the changes. There is, in the new Law, a requirement to implement a telehealth registration application and a definition of podiatric medical assistants that must be addressed through Rule, terms are used in law that are not defined in Rule or elsewhere; without definition or clarification in rule, there may be no support or successful enforcement of the new Law. The profession may not be able to comply with the change to Law pertaining to podiatric medical assistants and telehealth registration and the public may not be as well protected as a result.

Anticipated changes include:

- a. Add a fee for telehealth registration.
- b. Add a section clarifying requirements and scope of practice for podiatric medical assistants.
- c. Minor technical and conforming corrections as needed.

2. An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking.

Persons affected:

The rulemaking impacts applicants, licensed podiatrists, patients of licensed podiatrists, and the Board. Most of the rulemaking clarifies current statutes and rules and thus, amends existing requirements already established in rule. There is no section in rule that pertains to podiatric medical assistants therefore a new section was added to rule to clarify duties, responsibilities and the scope of practice of the profession.

Cost Bearer:

The costs of these rule changes will be borne by the Arizona Board of Podiatry Examiners.

Beneficiaries:

Consumers, patients, licensees and the Board.

3. A cost benefit analysis of the following:

(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the economic, small business and consumer impact statement shall notify the joint legislative budget committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council.

The overall economic impact of the rulemaking is expected to be minimal with the benefits outweighing the costs. No new FTEs are required to implement the proposed rules changes.

(b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.

None apparent.

(c) The probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking.

None apparent.

4. A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rulemaking.

These changes are not expected to have any impact on private or public business/employment.

5. A statement of the probable impact of the proposed rulemaking on small businesses. The statement shall include:

(a) An identification of the small businesses subject to the proposed rulemaking.

None apparent.

(b) The administrative and other costs required for compliance with the proposed rulemaking.

The Arizona State Board of Podiatry Examiners is the only state agency affected by this rule making. The rule making is not expected to create cost to the Agency or the State and will further improve public protection.

(c) A description of the methods that the agency may use to reduce the impact on small businesses. These methods may include:

(i) Establishing less costly compliance requirements in the proposed rulemaking for small businesses.

(ii) Establishing less costly schedules or less stringent deadlines for compliance in the proposed rulemaking.

(iii) Exempting small businesses from any or all requirements of the proposed rulemaking.

For items (c)(i)(ii)(iii):

The Arizona State Board of Podiatry Examiners is a health regulatory board charged with overseeing the licensure of practitioners and to protecting public health. While some podiatrists may practice in a small business setting, the proposed rule amendments impact the podiatrists directly rather than the small business practice. Therefore, modifications or exemptions to mitigate the impact of the rules on small business is not applicable.

(d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

No cost to applicants or licensees; none to the public/consumers; 100% benefit of continued protection of the public through efficient and effective rules regarding practice and education of practitioners.

6. A statement of the probable effect on state revenues.

The Arizona State Board of Podiatry Examiners is a 90/10 agency which means that 90% of revenues are retained by the Board and 10% of the revenue is given to the State and deposited into the General Fund. Therefore, the temporary license fee does not have a detrimental effect on the General Fund.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.

There is no identified alternative or less costly alternative of which the Agency is aware.

DEPARTMENT OF HEALTH SERVICES

Title 9, Chapter 9

New Article: Article 1, Article 2, Article 3, Article 4

New Section: R9-9-101, R9-9-102, R9-9-103, R9-9-104, R9-9-105, R9-9-106, R9-9-107, R9-9-108,
Table 1.1 R9-9-201, R9-9-202, R9-9-203, R9-9-204, R9-9-205, R9-9-301, R9-9-302,
R9-9-303, R9-9-304, R9-9-305, R9-9-401, R9-9-402, R9-9-403



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: June 1, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 13, 2022

SUBJECT: DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 9, Procurement Organizations

New Article: Article 1, Article 2, Article 3, Article 4

New Section: R9-9-101, R9-9-102, R9-9-103, R9-9-104, R9-9-105, R9-9-106,
R9-9-107, R9-9-108, Table 1.1 R9-9-201, R9-9-202, R9-9-203,
R9-9-204, R9-9-205, R9-9-301, R9-9-302, R9-9-303, R9-9-304,
R9-9-305, R9-9-401, R9-9-402, R9-9-403

Summary:

This regular rulemaking from the Department of Health Services (Department) relates to rules in Title 9, Chapter 9 regarding Procurement Organizations. The Department indicates in the rulemaking that a "procurement organization" has the same meaning as "nontransplant anatomical donation organization as defined in A.R.S. § 36-841. In that statute, "nontransplant anatomical donation organization" is defined as:

[a] tissue bank or other organization that facilitates nontransplant anatomical donations, including facilitation through referrals, obtaining informed consent or authorization and assessing donor acceptability and through the acquisition, traceability, transporting, preparation, packaging, labeling, storage, release,

evaluating intended use, distribution and final disposition of nontransplant anatomical donations.

As the Department indicates in Item 6 of the Preamble, legislative changes in 2016 and 2017 require it to adopt rules relating to the “licensure of procurement organizations and the enforcement of those provisions.” Laws 2016, Ch. 292, § 4. Pursuant to these legislative changes, the Department is adding four new Articles in Chapter 9, addressing the following:

- Article 1, Procurement Organization Licensure;
- Article 2, Administration for a Non-Accredited Procurement Organization;
- Article 3, Physical Plant; Transportation for a Non-Accredited Procurement Organization; and
- Article 4, Administration for an Accredited Procurement Organization.

The Department received an exception from the rulemaking moratorium to initiate this rulemaking on June 1, 2016 and final approval to submit it to the Council on April 14, 2022.

1. **Are the rules legal, consistent with legislative intent, and within the agency’s statutory authority?**

Yes. The Department cites both general and specific statutory authority for the rules.

2. **Do the rules establish a new fee or contain a fee increase?**

Yes. This rulemaking establishes a new fee pursuant to statutory authority in A.R.S. § 36-851.01(D), which states that “[e]ach procurement organization applying for licensure or license renewal under this section shall pay all applicable fees as prescribed by the director. All fees collected pursuant to this section for the licensure and license renewal of procurement organizations shall be deposited in the health services licensing fund established by section 36-414.”

This rulemaking does not contain a fee increase.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The Department did not review or rely on a study in conducting this rulemaking.

4. **Summary of the agency’s economic impact analysis:**

The Department identifies affected persons as the Department, non-transplant procurement organizations, organ procurement organizations, providers of retail services, education and research facilities, and donors, a donor’s family, and individuals responsible for a donor.

The Department anticipates it will incur a moderate cost related to promulgating rules and establishing a program to license non-transplant procurement organizations. The Department also anticipates that a moderate benefit may occur for having rules allowing the Department to inspect non-transplant procurement organizations. Non-transplant procurement organizations may incur a moderate benefit for having an Arizona state license posted that allows individuals seeking services to confirm that a non-transplant procurement organization is licensed by the state and is compliant with state laws. Non-transplant procurement organizations may incur a moderate cost related to the licensing fee. Providers of retail services are not expected to incur additional costs or benefits from accredited non-transplant procurement organizations. Education and research facilities may receive a substantial benefit for having another source from whom non-transplant anatomical material may be procured. Lastly, the Department expects that a donor, a donor's family, and individuals responsible for a donor may receive a substantial benefit from having a state licensed non-transplant procurement organization accepting their donation that will respect and use the donation as agreed to in the donor consent form.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department indicates that the benefits for having rules that license non-transplant procurement organizations outweigh the potential costs associated with this rulemaking. The Department indicates that there are no less intrusive or less costly alternatives for achieving the purpose of the rulemaking.

6. **What are the economic impacts on stakeholders?**

The Department anticipates it will incur a moderate cost related to promulgating rules and establishing a program to license non-transplant procurement organizations, including the administration, application process, and inspections. The Department also anticipates that a moderate benefit may occur for having rules allowing the Department to inspect non-transplant procurement organizations rather than responding to a concerned citizen reporting a public nuisance.

Non-transplant procurement organizations may incur a moderate benefit for having an Arizona state license posted that allows individuals seeking services to confirm that a non-transplant procurement organization is licensed by the state and is compliant with state laws. Non-transplant procurement organizations may incur a moderate cost related to the licensing fee. However, an accredited non-transplant procurement organization who chooses to drop accreditation in favor of an Arizona state license may receive a significant benefit from reduced costs for no longer having to comply with the American Association of Tissue Bank's (AATB) required fees for accreditation. Since accredited non-transplant procurement organizations already operate according to the AATB Standards for Non-Transplant Anatomical Donations, and the accredited non-transplant procurement organizations are mostly compliant with the proposed procurement

organization rules, the Department expects an accredited non-transplant procurement organization's cost to be limited to the fee paid to obtain an Arizona license.

Providers of retail services who provide medical supplies and devices, reagents, testing materials, transport services, and other related devices, materials, and services are not expected to incur additional costs or benefits from accredited non-transplant procurement organizations. However, if a new non-transplant procurement organization were to open, providers of retail services may receive a substantial benefit for selling goods and services to a newly established licensed non-transplant procurement organization. Similarly, education and research facilities may receive a substantial benefit from having another source from which non-transplant anatomical material may be procured.

The Department expects that a donor, a donor's family, and individuals responsible for a donor may receive a substantial benefit for having a state licensed non-transplant procurement organization accepting their donation that will respect and use the donation as agreed to in the donor consent form. The Department does not expect donors, a donor's family, and individuals responsible for a donor to incur any costs, since the non-transplant procurement organizations cover costs associated with a donor or donation, including transfer of the donor, filing a death certificate, and performing final disposition (cremation).

7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

No. As indicated in Item 10 of the Preamble, the Department made certain changes to the rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking. These changes do not result in rules that are "substantially different" pursuant to A.R.S. § 41-1025.

8. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

Yes. As indicated in Item 11 of the Preamble, the Department received several written comments on this rulemaking. The Department adequately responded to the comments it received.

9. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

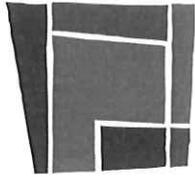
Yes. As indicated in Item 12a of the Preamble, the Department believes it is exempt from the general permit requirement of A.R.S. § 41-1037(A) pursuant to A.R.S. § 41-1037(A)(2) ("[t]he issuance of an alternative type of permit, license or authorization is specifically authorized by state statute"). Upon review of the applicable statutes, Council staff agrees.

10. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

The Department states that federal law is not applicable to the subject matter of the rules.

11. Conclusion

In this regular rulemaking, the Department is seeking to adopt rules relating to procurement organizations pursuant to legislative changes. The Department is requesting an immediate effective date for this rulemaking pursuant to A.R.S. A.R.S. § 41-1032(A)(4) (“[t]o provide a benefit to the public and a penalty is not associated with a violation of the rule”) for the reasons specified in Item 3 of the Preamble. Council staff finds that the Department demonstrates adequate justification for an immediate effective date. Council staff recommends approval of this rulemaking.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

April 18, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Chair

Governor's Regulatory Review Council

100 North 15th Avenue, Suite 305

Phoenix, Arizona 85007

RE: Department of Health Services, 9 A.A.C. 9, Regular Rulemaking

Dear Ms. Sornsin:

1. The close of record date: March 10, 2022
2. Whether the rulemaking relates to five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking for 9 A.A.C. 9 does not relate to a five-year-review report.
3. Whether the rulemaking establishes a new fee and, if so, the statutes authorizing the fee:
The rulemaking does establish a new fee pursuant to A.R.S. § 36-851.01(A).
4. Whether the rulemaking contains a fee increase:
The rulemaking does not contain a fee increase.
5. Whether an immediate effective date is requested pursuant to A.R.S. § 41-1032:
The Department is requesting an immediate effective date for the rules.

The Department certifies that the Preamble of this rulemaking discloses a reference to any study relevant to the rule that the Department reviewed and either did or did not rely on its evaluation of or justification for the rule.

The Department certifies that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule.

The following documents are enclosed:

1. Notice of Final Rulemaking, including the Preamble, Table of Contents, and text of each rule;

2. An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055;
3. General and specific statutes authorizing the rules, including relevant statutory definitions; and
4. Written comments received during 30-day public comment period.

The Department's point of contact for questions about the rulemaking documents is Teresa Koehler at Teresa.Koehler@azdhs.gov.

Sincerely,



Robert Lane
Director's Designee

RL: tk

Enclosures

Douglas A. Ducey | Governor

Don Herrington | Interim Director

NOTICE OF FINAL RULEMAKING
TITLE 9. HEALTH SERVICES
CHAPTER 9. DEPARTMENT OF HEALTH SERVICES
PROCUREMENT ORGANIZATIONS

PREAMBLE

<u>1.</u>	<u>Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
	Article 1	New
	R9-9-101.	New
	R9-9-102.	New
	R9-9-103.	New
	R9-9-104.	New
	R9-9-105.	New
	R9-9-106.	New
	R9-9-107.	New
	R9-9-108.	New
	Table 1.1	New
	Article 2	New
	R9-9-201.	New
	R9-9-202.	New
	R9-9-203.	New
	R9-9-204.	New
	R9-9-205.	New
	Article 3	New
	R9-9-301.	New
	R9-9-302.	New
	R9-9-303.	New
	R9-9-304.	New
	R9-9-305.	New
	Article 4	New
	R9-9-401.	New
	R9-9-402.	New
	R9-9-403.	New

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. §§ 36-132(A) and 36-136(G) promptly immediately

Implementing statutes: A.R.S. §§ 36-851.01, 36-851.02, and 36-581.03

3. The effective date of the rules:

The Arizona Department of Health Services (Department) requests an immediate effective date for the new rules under A.R.S. § 41-1032 (A)(4). The new rules in Chapter 9 prescribe measures necessary to provide standards for persons operating a procurement organization and provides donor services to ensure the health and safety of all individuals responsible when caring for a donor. Additionally, the rules assist individuals responsible for a donor’s wishes by providing requirements that are enforceable should a procurement organization be found to have violated a donor’s wishes. The rules are the least burdensome, benefits applicants and individuals responsible for a donor, and protects the public while not affect public involvement or public participation.

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 Proposed Rulemaking: 28 A.A.R. 297, February 4, 2022

Notice of Rulemaking Docket Opening: 27 A.A.R. 851, June 4, 2021

Notice of Rulemaking Docket Opening: 26 A.A.R. 3098, December 4, 2020

Notice of Rulemaking Docket Opening: 25 A.A.R. 3319, November 15, 2019

Notice of Rulemaking Docket Opening: 24 A.A.R. 3108, November 2, 2018

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

Name: Thomas Salow, Interim Assistant Director

Address: Arizona Department of Health Services

Public Health Licensing Services

150 N. 18th Avenue, Suite 400

Phoenix, AZ 85007-3232

Telephone: (602) 364-1935

Fax: (602) 364-4808

E-mail: Thomas.Salow@azdhs.gov

or

Name: Robert Lane

Address: Arizona Department of Health Services

Office of Administrative Counsel and Rules
150 N. 18th Ave., Suite 200
Phoenix, AZ 85007

Telephone: (602) 542-1020

Fax: (602) 364-1150

E-mail: Robert.Lane@azdhs.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:

Laws 2016, Ch. 292 § 3, added A.R.S. §§ 36-851.01, 36-851.02, and 36-851.03. A.R.S. § 36-851.01 requires that a person acting as a procurement organization in Arizona be licensed by the Department, except as provided in A.R.S. § 36-851.01(F). A.R.S. § 36-851.02 specifies requirements for accredited procurement organizations, and A.R.S. § 36-851.03 specifies requirements for procurement organizations that are not accredited. Laws 2016, Ch. 292, § 4, requires the Department to “adopt rules relating to the licensure of procurement organizations and enforcement of those provisions.” Additionally, Laws 2017, Ch. 171 in A.R.S. § 36-841 added a definition for “non-transplant anatomical donation organization” (NADO). Laws 2016, Ch. 292 added requirements specific to a NADO’s scope of practice including donor acceptability and acquisition, traceability, transport, preparation, packaging, labeling, storage, release, evaluation of intended use, distribution and final disposition of non-transplant anatomical donation. Laws 2016, Ch. 292 also requires the Department to “adopt rules relating to the licensure of procurement organizations and enforcement of those provisions” and adopts rules that follow, as nearly as practicable, requirements equivalent to the accreditation requirements of a nationally recognized accrediting agency approved by the Department specified in A.R.S. § 36-851.03. The Department approves the American Association for Tissue Banks (AATB) Standards for Non-Transplant Anatomical Donations, 2nd Edition. The rulemaking adds new: Arizona Administrative Code Title 9, Ch. 9; Article 1, Procurement Organization Licensure; Article 2, Administration for a Non-Accredited Procurement Organization; Article 3, Physical Plant; Transportation for a Non-Accredited Procurement Organization; and Article 4, Administration for an Accredited Procurement Organization. The Department plans to promulgate rules in Title 9, Ch. 9 through regular rulemaking according to A.R.S. Title 41, Chapter 6. The rulemaking conforms to rulemaking format and style requirements of the Governor’s Regulatory Review Council and the Office of the Secretary of State.

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 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:

In the 2022 Economic, Small Business, and Consumer Impact Statement, annual cost/revenue associated with this rulemaking are designated as minimal when more than \$0 and less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000. Costs and benefits are indicated as significant when meaningful or important and not readily subject to quantification. No new FTEs are required due to this rulemaking. The Department identifies affected persons as the Department, non-transplant procurement organizations, organ procurement organizations, providers of retail services, education and research facilities, and donors, a donor's family, and individuals responsible for a donor. The Department anticipates it will incur a moderate cost related to promulgating rules and establishing a program to license non-transplant procurement organizations, including the administration, application process, and inspections. The Department also anticipates that a moderate benefit may occur for having rules allowing the Department to inspect non-transplant procurement organizations rather than responding to a concerned citizen reporting a public nuisance. Non-transplant procurement organizations may incur a moderate benefit for having an Arizona state license posted that allows individuals seeking services to confirm that a non-transplant procurement organization is licensed by the state and is compliant with state laws. Non-transplant procurement organizations may incur a moderate cost related to the licensing fee. However, an accredited non-transplant procurement organizations who chooses to drop accreditation for Arizona state license may receive a significant benefit from reduced costs for no longer having to comply with AATB's required fees for accreditation. Since accredited non-transplant procurement organization already operate according to the AATB Standards for Non-Transplant Anatomical Donations and the accredited non-transplant procurement organizations are mostly compliant with the proposed procurement organization rules, the Department expects an accredited non-transplant procurement organization's cost to be limited to the fee paid to obtain an Arizona license.

Providers of retail services who provide medical supplies and devices, reagents, testing materials, transport services, and other related devices, materials, and services are not expected to incur

additional costs or benefits from accredited non-transplant procurement organizations. However, if a new non-transplant procurement organization were to open, providers of retail services may receive a substantial benefit for selling goods and services to a newly established licensed non-transplant procurement organization. Similarly, education and research facilities may receive a substantial benefit for having another source from whom non-transplant anatomical material may be procured. Lastly, the Department expects a donor, a donor's family, and individuals responsible for a donor may receive a substantial benefit for having a state licensed non-transplant procurement organization accepting their donation that will respect and use the donation as agreed to in the donor consent form. The Department does not expect donors, donor's family, and individuals responsible for a donor will incur any costs, since the non-transplant procurement organizations cover costs associated with a donor or donation, including transfer of the donor, filing death certificate, and performing final disposition (cremation). The Department has determined that the benefits received for having rules that license non-transplant procurement organization outweigh the potential costs associated with this rulemaking.

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

The Department received nine comments between the proposed rulemaking and the final rulemaking. Two comments addressed the same matter and the Department agreed with the commenters and deleted a requirement in R9-9-204(F)(3)(c) for licensed procurement organizations to maintain "Evidence of freedom from infections tuberculosis, if applicable." An additional comment was received related to International Air Transport Association and Transport Security Administration. The Department changed R9-9-304(B) to clarify use of vehicle and air transportations. The Department has identified each commenter and the Departments responses to each comment received in Item 11.

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

During the formal 30-day public comment period, the Department received three written comments from the Isaacson Law Firm, on behalf Science Care, Inc. Science Care, Inc. and six written survey comments from Willetta Partners, on behalf of Research for Life. Both are AATB accredited non-transplant procurement organization operating in Arizona.

(A.) **R9-9-106.A.2.** Respectfully request that OHS [DHS] reconsider modifying R9-9-106.A.2. by inserting "that alters the designated area for tissue recovery" after the word modification. Although Science Care recognizes that OHS [DHS] licenses the entire facility, as mentioned previously, an alteration of an office or conference room is not a change that should affect a

license. A concern is that such a modification may be made without the licensee contemplating that this could possibly impact a procurement organization's license and fail to notify the OHS [DHS]. Currently the rule states: "A proposed modification, if applicable." A licensee would probably not consider an alteration of an office or conference room as applicable to the license.

Department Response: The Department does not agree with Science Care interpretation; and the rule does not require a licensee to notify the Department of all modifications (defined in rule and definition below) made to a licensed facility. The term "modification" is defined in rule and specifies "substantial improvement." Additionally, A.R.S. § 36-841(16) specifies the services and activities a procurement organization facilitates. The Department expects a substantial improvement made at a licensed facility affecting the operations, services, and activities defined in A.R.S. § 36-841(16) requires notification be made to the Department. If a licensee operating an accredited procurement organization modifies office space that has nothing to do with the licensed facility's operation or licensed services and activities related to A.R.S. § 36-851.02, the licensee is not required to notice the Department. Note: Recall, R9-9-106 applies to non-accredited and accredited procurement organizations. In R9-9-106 (A)(2), "if applicable" is used so an accredited procurement organization licensed in Arizona – determines whether to notify or not notify the Department. Refer to: R9-9-101(22) "Modification" means the substantial improvement, enlargement, reduction, alternation, or other substantial change in the facility or another structure on the premises at a procurement organization.

The rule is consistent with AATB STANDARDS: **NT-K1.200** (13) - The design or the arrangement of the physical plant to meet operational needs such as designation of spaces, *environmental monitoring*, and security (*series of standards* at NT-K4.000). **NT-K4.100** GENERAL - The physical plant shall be designed or arranged to meet operational needs. The premises shall be maintained in a clean, and orderly manner with adequate plumbing, drainage, lighting, ventilation and space. Adequate, clean, and convenient hand-washing and eye-washing facilities *shall* be available for personnel.

(B.) R9-9-204.F.3.c. Respectfully request that OHS [DHS] reconsider requiring a non-accredited procurement organization to document individuals are free from infectious tuberculosis, if applicable. This is not something procurement organizations currently ask their employees and do not believe it is applicable to procurement organizations.

Department Response: The Department revisited AATB Standards related to stakeholder request, and after reconsideration, the Department amended R9-9-204(F)(3) and deleted subsection (c) that requested documentation applicable to an individual’s duties.

Deleted: (F)(3)(c) “Evidence of freedom from infectious tuberculosis, if applicable.”

The Department based its decision on consideration of subsection NT-K3.400 that provides “Universal Precautions, as defined by CDC¹, shall be implemented and enforce to reduce the potential exposure of staff to communicable disease.” Additionally, the CDC, National Institute for Occupational Safety and Health, published an overview stating “Exposures to blood and other body fluids occur across a wide variety of occupations. Health care workers, emergency response and public safety personnel, and other workers can be exposed to blood through needlestick and other sharps injuries, mucous membrane, and skin exposures. The pathogens of primary concern are the human immunodeficiency virus (HIV), hepatitis B virus (HBV), and hepatitis C virus (HCV). Workers and employers should take advantage of available engineering controls and work practices to prevent exposure to blood and other body fluids.

(C.) R9-9-303. Respectfully request that DHS add the additional security options outlined in the AATB standards found in NT-K4-300 by adding configuration of the physical plant. Again, ARS 36-851.03.C. states the DHS shall adopt rules that follow, as nearly as practicable, the requirements as set forth in the accreditation requirements of a nationally recognized accrediting agency that is approved by the department.

Department Response: The Department communicated with commenter, and after discussion, commenter agreed that the rule is mostly consistent with NT-K4-300. The commenter recognized that defining “configuration of the physical plant” is difficult-subjective. Commenter retracted request to add “configuration of the physical plant.”

NT-K4.300 SECURITY ... *NADOs shall maintain adequate*

- [1] physical security to safeguard *NAM* inventory and *records* as well as to **Ref. R9-9-303(B)(1)**
- [2] prevent the entry of unauthorized individuals. Such security *may* be **Ref. R9-9-303(B)**
- [3] in the form of personnel, electronic or mechanical devices, or **configuration of the physical plant.**
Ref. R9-9-303(B) includes personnel/mechanical/electronic
- [4] Limited access areas *shall be established* as appropriate, **Ref. R9-9-303(B)(5)**
- [5] permitting entry of only those personnel (including auditors and inspectors) who are authorized by supervisory personnel. **Ref. R9-9-303(B)(5)**

¹ [Bloodborne Infectious Diseases: HIV/AIDS, Hepatitis B, Hepatitis C](#)

(D.) R9-9-101.42 Requested Modification: “Transport” means a method for relocating NAM from one place to another OUTSIDE OF THE FACILITY in a manner that provides conditions necessary to maintain the quality of the NAM for its intended use.” **Reasoning:** Quality is not defined. Also, it is not reasonable to require a definition of how NAM is moved inside the facility.

Department Response:

(1) The Department does not define the word “quality” used in the definition since the word does not stand alone, and the Department expects that the dictionary definition is acceptable. As used in the definition “condition necessary to maintain the quality of the NAM for its intended use”, the NAM is expected to endure transport in a manner that will not cause the NAM to deteriorate in such a way that would cause the NAM to arrive in state that would prevent the NAM from being used as intended by an educational or research facility requesting the NAM. The Webster dictionary defines “quality” to mean a degree of excellence, essential character, and grade.

(2) The Department agrees with commenter that “how NAM is moved inside the facility” is not necessary. The Department clarifies that the word “transport” is not used in the rules for “how NAM is moved inside the facility”. The word “transport” is used in R9-9-304, Transportation Standards, and in R9-9-305, Sanitation Standards and Reporting. In R9-9-304(A), the requirement states, “If a non-accredited procurement organization owns and maintains a vehicle for transporting NAM, an administrator shall ensure the vehicle is: ...” and its subsection (B) states “If using another vehicle for transporting NTAD or NAM, an administrator ... shall ensure the other vehicle...” In R9-9-305(A)(3), a requirement requires a “licensee...shall ensure that all transport vehicles, ...”

Note: The word “transport”, as used in the rules, means a method [a vehicle] for relocating NAM from one place to another in a manner that provides conditions [a premise upon which the fulfillment of an agreement depends] necessary to maintain [to keep in an existing state] the quality [essential character] of the NAM for its intended [expected to be such in the future] use.

(E.) R9-9-104.A.1.h Requested Modification: “Whether the applicant complies with local zoning ordinances, building codes, and fire codes;” **Reasoning:** Building codes and fire codes are a local issue. While they change over time, current uses are grandfathered. This provision would create confusion.

Department Response: The Department is aware and agrees with the commenter that jurisdictions regulating local zoning ordinances, building codes, and fire codes allow for variances for various reasons. During an inspection, should the Department request information specified in rules to verifying complies with zoning ordinances, building codes, and fire codes, the accredited non-transplant procurement organization should provide the information requested including any variance provided by a local jurisdiction. There is no confusion in providing the Department with a document that explains the matter being inspected. The Department experiences this type of incident on occasion since this requirement is included in other Department rules for licensing facilities.

(F.) R9-9-204.F.3.c Requested Modification: “Evidence of freedom from infectious tuberculosis, if applicable; and” **Reasoning:** This is not applicable to procurement organizations.

Department Response: The Department received a similar comment from Science Care, above, refer to subsection (B.). The Department states it will delete the requirement to provide “Evidence of freedom from infectious tuberculosis, if applicable.”

(G.) R9-9-301.A.1c Requested Modification: “Has equipment and supplies to maintain NTAD and NAM PER STANDARD OPERATING PROCEDURES in a safe and temperature-controlled state; and” **Reasoning:** What does safe mean? It is not defined.

Department Response: The requirement in the Notice of Proposed Rulemaking states, “Has equipment and supplies to maintain NTAD and NAM in a safe and temperature-controlled;”. The Department does not define the word “safe” in the rules and rather uses the Webster dictionary to mean “free from harm or risk.” The word “safe” is also in R9-13-403, Tissue End-User, (A)(1)(d) stating “A description of the venue in which the NAM will be used and the security measures for the safe and ethical utilization of the venue:” Additionally, this requirement is cited in the AATB Standards, NT-G1.100(5) and unfortunately, the AATB Standard does not define the word “safe.” The Department expects the use of the word “safe” in this requirement is consistent with the other requirements in rule and AATB Standards.

(H.) R9-9-301.A.3.b Requested Modification: “Does not contain any items, materials, or devices associated with the preparation activities or technicians and personnel members;”

Reasoning: This issue is taken care of by item ‘a’ above.

Department Response: The Department accepts statement “This issue is taken care of by item ‘a’ above.” to mean a response by the Department is not required.

(I.) R9-9-304.B.3 Requested Modification: “If transport is by air, complies CONTRACTURALLY REQUIRE TRANSPORTATION VENDER TO COMPLY with

applicable standards established by the International Air Transport Association and Transport Security Administration.” **Reasoning:** A procurement organization has no control over or ability to manage compliance with IATA and TSA requirements. All that can be done is require compliance with IATA and TSA requirements in the contracts with transportation vendors.

Department Response: The Department reviewed the request to add “contractually require transportation vender to comply” in R9-9-304(B)(3). The Department also understands that a licensed non-accredited procurement organization has no control over or ability to manage an air transportation vendor’s compliance with IATA and TSA guidelines. To clarify, the intent of the rule is for a licensed non-accredited procurement organization in an agreement with an air transportation vender include a statement that the air transportation vender acknowledges services provided are consistent with IATA and TSA guidelines when transporting NTAD or NAM. The Department understands that an air transportation vender may not comply with IATA or TSA guidelines whether do to an accident, error, or willful neglect. The Department changes the requirement, as shown below, to make clearer the intent of the requirement in R9-9-304(B)(3). The Department expects procurement organizations will also clarify the rules intent in its SOP governing NTAD and NAM transportation.

B. If ~~uses~~ using another vehicle or type of transport for ~~transporting~~ NTAD or NAM, an administrator of a non-accredited procurement organization shall ensure that another vehicle or type of transport:

1. Is properly equipped for the transportation of NTAD or NAM;
2. Is compliant with all state laws and rule pertaining to transporting humans remains; and
3. If transport is by air, complies with ~~the air transportation vender provides statement that air transportation services for NTAD or NAM are~~ applicable standards established by the International Air Transport Association and Transport Security Administration.

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:

There are no other matters prescribed by statutes 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:

In R9-9-102, the rule specifies that a person may not act as a procurement organization in Arizona unless the person is licensed by the Department as a procurement organization and a general permit is not used. The Department cites A.R.S. § 36-851.01 that requires

the Department to grant a procurement organization license to a person if the procurement organization is accredited by a nationally recognized accrediting agency approved by the Department or meets the requirements prescribed in rules adopted by the Department. Additionally, the Department cites A.R.S. § 41-1037(A)(2)² that exempts the Department from requirement to issue a general permit specified in A.R.S. § 41-1037(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:

No federal law is applicable to the subject of 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 analysis comparing competitiveness was received by the Department.

13. Incorporated by reference and their location in the rules:

Not applicable

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

The rule was not previously made as an emergency rule.

15. The full text of the rules follows:

² The issuance of an alternative type of permit, license or authorization is specifically authorized by state statute.

TITLE 9. HEALTH SERVICES
CHAPTER 9. DEPARTMENT OF HEALTH SERVICES – PROCUREMENT
ORGANIZATIONS

ARTICLE 1. PROCUREMENT ORGANIZATION LICENSURE

Section

- R9-9-101. Definitions
- R9-9-102. Licensure Requirements; Accreditation; Exemptions
- R9-9-103. Individuals to Act for an Applicant or Licensee
- R9-9-104. Application for Licensure
- R9-9-105. Application for License Renewal
- R9-9-106. Changes Affecting a License
- R9-9-107. Denial, Suspension, Revocation, Enforcement
- R9-9-108. Time-frames
- Table 1.1 Time-frames (in calendar days)

ARTICLE 2. ADMINISTRATION FOR A NON-ACCREDITED PROCUREMENT
ORGANIZATION

Section

- R9-9-201. Administration
- R9-9-202. Quality Management
- R9-9-203. Contracted Services
- R9-9-204. Medical Director, Administrator, Technicians, and Personnel Members
- R9-9-205. Donor Records

ARTICLE 3. PHYSICAL PLANT; TRANSPORTATION FOR A NON-ACCREDITED
PROCUREMENT ORGANIZATION

Section

- R9-9-301. General Plant Standards; Environmental Services
- R9-9-302. Emergency and Safety Standards
- R9-9-303. Security Standards; NTAD/NAM Inventory Controls
- R9-9-304. Transportation Standards
- R9-9-305. Cleaning and Sanitation Standards

ARTICLE 4. ADMINISTRATION FOR AN ACCREDITED PROCUREMENT
ORGANIZATION

Section

R9-9-401. General Responsibilities

R9-9-402. Donor Consent; NTAD and NAM Identification

R9-9-403. Tissue End-Users

ARTICLE 1. PROCUREMENT ORGANIZATION LICENSURE

R9-9-101. Definitions

In addition to the definitions in A.R.S. § 36-841, the following apply in this Chapter unless otherwise specified:

1. “Acceptability assessment” means the evaluation of available, if applicable, medical information about a donor to determine whether the donor meets qualifications as established by SOPs specified in R9-9-201(E)(4).
2. “Accrediting body” means a nationally recognized agency, approved by the Department, that provides certification for a person operating a procurement organization.
3. “Acquisition” means activities required to obtain a NTAD that is intended for use in education or research.
4. “Administrative completeness review time-frame” has the same meaning as in A.R.S. § 41-1072.
5. “Administrator” means the individual responsible for the services and activities provided by a procurement organization.
6. “Applicant” means an individual or business organization requesting approval to operate a procurement organization.
7. “Application packet” means the information, documents, and fees required by the Department for licensure of a procurement organization.
8. “Authorization” means permission given for NTAD acquisition by a donor or individual authorized by law.
9. “Business organization” means the same as “entity” in A.R.S. § 10-140.
10. “Calendar day” means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
11. “Controlling person” means an individual who, with respect to a business organization:
 - a. Has the power to vote at least 10% of the outstanding voting securities of the business organization;
 - b. If the business organization is a partnership, is a general partner or is a limited partner who holds at least 10% of the voting rights of the partnership;
 - c. If the business organization is a corporation, association, or limited liability company, is the president, the chief executive officer, the incorporator, an agent,

- or any individual who owns or controls at least 10% of the voting securities; or
- d. Holds a beneficial interest in 10% or more of the liabilities of the business organization.
12. “Contracted services” means functions pertaining to the acquisition, screening, testing, preparing, storage, and distribution of NAM that another establishment agrees to perform.
13. “Department” means the Arizona Department of Health Services.
14. “Distribution” means a process that includes selection and evaluation of intended use of NAM for release to another procurement organization, an education facility, or a research facility.
15. “Donor consent form” means the same as “document of gift” defined A.R.S. § 36-841.
16. “Environmental services” means activities such as housekeeping, laundry, facility maintenance, or equipment maintenance.
17. “Exceptional release” means NAM that is approved for usage before a donor acceptability assessment or by a researcher requesting NAM that would not normally meet the established acceptability criteria.
18. “Final disposition” means the disposal of NAM through incineration, cremation, bio-cremation, burial, fully depleted by virtue of a particular use, or by another legal means.
19. “Licensee” means a person to whom the Department has issued a license to operate a non-transplant procurement organization or person designated by the licensee.
20. “Medical director” means a physician licensed in this state pursuant to A.R.S. Title 32, Chapter 13 or 17 who provides medical guidance for a licensed procurement organization according to A.R.S. § 36-851.03 or person designated by the medical director.
21. “Misuse” means to use NTAD and NAM for purposes other than for:
- a. Education or research, and
- b. Uses specified on a donor consent form.
22. “Modification” means the substantial improvement, enlargement, reduction, alternation, or other substantial change in the facility or another structure on the premises at a procurement organization.
23. “Non-transplant anatomical donation” or “NTAD” means a donation of a whole body, organs or tissues authorized and used for education and research prior to release to distribution inventory.
24. “Non-transplant anatomical material” or “NAM” means a whole body or parts of a body donated for use in education or research that has been prepared, packaged, labeled, and released to distribution inventory.

25. “Overall time-frame” means the same as in A.R.S. § 41-1072.
26. “Person” means the same as in A.R.S. § 36-841.
27. “Personnel member” means individuals identified as employees, students, or volunteer who provides services and activities for a procurement organization.
28. “Pest control” means activities that minimize the presence of insects and vermin in a procurement organization to ensure the quality of NTAD and NAM and the health and safety of persons occupying or visiting.
29. “Physical assessment” means a postmortem documented evaluation of a deceased donor's body that may identify evidence of: high-risk behaviors, signs of HIV infection or hepatitis infection, other viral or bacterial infections, and trauma.
30. “Premises” mean a facility and surrounding grounds that are:
- a. Designated by an applicant or a licensee;
 - b. Used for providing procurement organization services and activities; and
 - c. Licensed by the Department as a procurement organization.
31. “Preparation” means any activity performed other than donor screening, donor testing, acquisition, storage, distribution, or dispensing functions to enable the use of NAM for education or research. It includes, but is not limited to, cleaning, preservation, disarticulation, dissection, skeletonization, plastination, packaging, and labeling of NAM.
32. “Procurement organization” means the same as “nontransplant anatomical donation organization” as defined in A.R.S. § 36-841 and may be either accredited by an accrediting body or non-accredited.
33. “Quality management program” means ongoing activities designed and implemented by a procurement organization to improve the delivery of services and activities related to NAM.
34. “Quarantine” means the identification of NTAD or NAM as not acceptable or yet to be determined as eligible for use in education or research, including NTAD or NAM whose suitability has not been determined.
35. “Release” means NAM approved by a procurement organization in accordance with criteria established by the medical director for transfer to an approved education and research facility.
36. “Risk assessment” means collecting and evaluating relevant medical history and social behavior obtained from an individual or individuals who have knowledge about the donor.

37. “Standard operating policies and procedures” or “SOPs” means a group of documents detailing the specific purposes and services provided by a licensed procurement organization including activities and methods by staff and personnel members in support of conducting business operations.
38. “Storage” means a designated area that contains equipment, instruments, and supplies to maintain NTAD or NAM until distribution or final disposition.
39. “Substantive review time-frame” means the same as in A.R.S. § 41-1072.
40. “Traceability” means the method to locate NTAD and NAM during any step of NTAD including obtaining authorization, acquisition, transport, assessing donor acceptability, preparation, packaging, labeling, storage, release, evaluation intended use, distribution, and final disposition.
41. “Transfer” means the conveyance or relocation of NAM to:
- a. An education facility,
 - b. A research facility,
 - c. Another procurement organization, or
 - d. A distribution inventory.
42. “Transport” means a method for relocating NAM from one place to another in a manner that provides conditions necessary to maintain the quality of the NAM for its intended use.
43. “Universal precautions” means the same as in A.R.S. § 32-1301.
44. “Working day” means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state and federal holiday or a statewide furlough day.

R9-9-102. Licensure Requirements; Accreditation; Exemptions

- A.** A person may not act as a procurement organization in this state unless the person is licensed by the Department as a procurement organization.
- B.** A procurement organization shall provide a designated area for tissue recovery that does not operate in a funeral establishment specified in A.R.S. § 32-1301, for the recovery of whole bodies for medical research and education according to A.R.S. §§ 36-851.02(3) and 36-851.03(A)(5)(b).
- C.** A non-accredited procurement organization is subject to inspection by the Department at any time to evaluate compliance with A.R.S. Title 36, Chapter 7, Article 3 and this Chapter according to A.R.S. § 36-851.03(A)(5)(a) and (C).
- D.** An accredited procurement organization is subject to inspection by the Department at any time to evaluate compliance with requirements in A.R.S. § 36-851.02(2) and the rules adopted pursuant to A.R.S. § 36-851.02(2).

E. An accredited procurement organization whose certificate of accreditation has expired or is revoked, suspended, or denied by the accrediting body, shall provide written notification to the Department within ten working days of expiration or receipt of a revocation, suspension, or denial.

F. This Chapter does not apply to a procurement organization identified in A.R.S. § 36-851.01(F).

R9-9-103. Individuals to Act for an Applicant or Licensee

When an applicant or licensee is required by this Chapter to provide information on or sign an application form or other document, the following shall satisfy the requirement on behalf of the applicant or licensee:

1. If the applicant or licensee is an individual, the individual; and
2. If the applicant or licensee is a business organization, the individual who the business organization has designated to act on the business organization's behalf for purposes of this Chapter and who:
 - a. Is a controlling person of the business organization,
 - b. Is a U.S. citizen or legal resident, and
 - c. Has an Arizona address.

R9-9-104. Application for Licensure

A. An applicant applying for a procurement organization license shall submit an application packet that contains:

1. An application, in a Department-provided format, according to A.R.S. § 36-851.01(A) that includes:
 - a. The applicant's name, mailing address, e-mail address, and telephone number;
 - b. The name or proposed name of the procurement organization, including the:
 - i. Business street address;
 - ii. Business mailing address, if different from the street address;
 - iii. Telephone number;
 - iv. E-mail address; and
 - v. Tax ID number;
 - c. If part of a business institution, the institution's:
 - i. Name;
 - ii. Street address;
 - iii. Mailing address, if different from the street address;
 - iv. Telephone number; and
 - v. E-mail address;

- d. Whether the procurement organization is ready for a licensing inspection by the Department, if applicable;
 - e. If the procurement organization is not ready for a licensing inspection specified in (d), the date the Department may perform a licensing inspection, if applicable;
 - f. The name and contact information of an individual acting on behalf of the applicant specified in R9-9-103, if applicable;
 - g. If applicable, the medical director's:
 - i. Name,
 - ii Telephone number,
 - iii. E-mail address, and
 - iv. License number;
 - h. Whether the applicant complies with local zoning ordinances, building codes, and fire codes;
 - j. Whether the applicant agrees to allow the department to submit supplemental requests for information under R9-9-108; and
 - k. The applicant's signature and the date signed;
2. A copy of the procurement organization's current certificate of accreditation from an accrediting body, if applicable;
 3. Documentation for the applicant that complies with A.R.S. § 41-1080;
 4. A copy of the procurement organization labeled floor plan, including technical and administrative function areas, if applicable; and
 5. A licensing fee of \$2,000.

B. Upon receipt of the application packet in subsection (A), the Department shall conduct an inspection of the procurement organization, if applicable.

C. The Department shall issue or deny a license to an applicant as specified in R9-9-108.

R9-9-105. Application for License Renewal

A. A license is valid for two years from the date of issuance or renewal as specified in A.R.S. § 36-851.01(C).

B. At least 30 calendar days before the expiration date indicated on a procurement organization's license to operate a licensee shall submit to the Department an application packet for renewal of the license that contains:

1. An application, in a Department-provided format, that includes:
 - a. The applicant's name, mailing address, e-mail address, and telephone number;
 - b. The procurement organization's licensing number; and

- c. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-9-108;
 - 2. If applicable, documentation of the most recent certificate of accreditation from an accrediting body; and
 - 3. A licensing renewal fee of \$2,000.
 - C. The Department shall renew or deny renewal of a license to operate as specified in R9-9-108.
- R9-9-106. Changes Affecting a License**
- A. A licensee shall notify the Department in writing at least 30 calendar days before the effective date of:
 - 1. Termination of operation, including:
 - a. The proposed termination date; and
 - b. The address and contact information for the location where the procurement organization records will be retained as required in R9-9-205;
 - 2. A proposed modification, if applicable;
 - 3. A change in the legal name of a procurement organization;
 - 4. A change in the legal name of a licensee including the licensee's new name; and
 - 5. A change in the address of a procurement organization, including the new address.
 - B. A licensee shall notify the Department in writing at least 30 calendar days after the effective date of a change in:
 - 1. The e-mail address or mailing address of a procurement organization including the new e-mail address or mailing address;
 - 2. The e-mail address or telephone number of a licensee, including the new e-mail address or telephone number;
 - 3. An administrator, including the name, telephone number, and e-mail address;
 - 4. A medical director, including the name and e-mail address; and
 - 5. The name, telephone number, and e-mail address of an individual acting on behalf of the licensee specified in R9-9-103.
 - C. If the Department receives the notification of termination of operation in subsection (A)(1), the Department shall void the licensee's license to operate a procurement organization as of the termination date specified by the licensee.
 - D. If the Department receives a notification in subsection (A)(2) of a proposed modification, the Department:
 - 1. May conduct an inspection of the premises as allowed by A.R.S. § 36-851.03(C); and

2. Shall issue to the licensee an amended license that incorporates the modification and retains the expiration date of the existing license, if the procurement organization is compliant with A.R.S. Title 36, Chapter 7, Article 3 and this Chapter.

E. If the Department receives a notification in subsection (A)(3) of a legal name change for a procurement organization, the Department shall issue to the licensee an amended license showing the licensee's legal name.

F. If the Department receives notice for a change in the legal name of a licensee in subsection (A)(4), the Department shall void licensee's license to operate upon issuance of a new license to operate.

G. If the Department receives the notice for a change in the address of a procurement organization in subsection (A)(5), the Department shall review the application for a new license, submitted consistent with R9-9-104.

H. An individual or business organization planning to take ownership of an existing procurement organization shall obtain a new license before beginning operation.

R9-9-107. Denial, Suspension, Revocation, Enforcement

A. The Department may:

1. Deny a license as specified in subsection (B);
2. Suspend or revoke a license under A.R.S. § 36-851.01(E) and subsection (B); or
3. Assess or impose a civil penalty under A.R.S. § 36-851.01(E) and subsection (B).

B. The Department may impose civil penalties, deny an application or suspend or revoke a license to operate a procurement organization, if:

1. An applicant or licensee does not meet the application requirements contained in R9-9-104 and R9-9-105, as applicable;
2. A licensee does not comply with requirements in A.R.S. §§ 36-851.01 through 36-851.03 and this Chapter, if applicable;
3. A licensee does not correct the deficiencies identified during an inspection according to the plan of correction;
4. An applicant or licensee provides false or misleading information to the Department; or
5. The nature or number of violations revealed by any type of inspection or investigation of a procurement organization poses a direct risk to the life, health, or safety of individuals on the premises.

C. In determining which action in subsection (A) is appropriate, the Department shall consider:

1. Repeated violations of statutes or rules,
2. Pattern of violations,

3. Severity of violations, and

4. Number of violations.

D. The Department may suspend or revoke an accredited procurement organization's license if the Department receives notice that the accredited procurement organization's accreditation has expired or has been suspended or revoked by the accrediting body.

E. An applicant or licensee may appeal the Department's determination in this Section according to A.R.S. Title 41, Chapter 6, Article 10.

R9-9-108. Time-frames

A. The overall time-frame for a license granted by the Department under this Chapter is set forth in Table 1.1. The applicant or licensee and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. An extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.

B. The administrative completeness review time-frame for a license granted by the Department under this Chapter is set forth in Table 1.1 and begins on the date that the Department receives an application packet:

1. The Department shall send a notice of administrative completeness or deficiencies to the applicant or licensee within the administrative completeness review time-frame:

a. A notice of deficiencies shall list each deficiency and the information or items needed to complete the application;

b. The administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice of deficiencies is sent until the date that the Department receives all of the missing information or items from the applicant or licensee;

c. If an applicant or licensee fails to submit to the Department all of the information or items listed in the notice of deficiencies within 120 calendar days after the date that the Department sent the notice of deficiencies or within a time period the applicant or licensee and the Department agree upon in writing, the Department shall consider the application withdrawn; and

2. If the Department issues a license during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.

C. The substantive review time-frame is set forth in Table 1.1 and begins on the date of the notice of administrative completeness:

1. As part of the substantive review of an application for a license, the Department may

- conduct an inspection according to A.R.S. § 36-851.03(C) that may require more than one visit to complete.
2. The Department shall send a license or a written notice of denial of a license within the substantive review time-frame.
 3. During the substantive review time-frame, the Department may make one comprehensive written request for additional information, unless the applicant or licensee has agreed in writing to allow the Department to submit supplemental requests for information:
 - a. The Department shall send a comprehensive written request for additional information that includes a written statement of deficiencies, stating each statute and rule upon which noncompliance is based, if the Department determines that an applicant or licensee, and the procurement organization, including the premises are not in substantial compliance with A.R.S. Title 36, Chapter 7, Article 3 or this Chapter;
 - b. An applicant or licensee shall submit to the Department all of the information requested in a comprehensive written request for additional information or a supplemental request for information, including, if applicable, documentation of the corrections required in a statement of deficiencies, within 30 calendar days after the date of the comprehensive written request for additional information or the supplemental request for information or within a time period the applicant or licensee and the Department agree upon in writing;
 - c. The substantive review time-frame and the overall time-frame are suspended from the date that the Department sends a comprehensive written request for additional information or a supplemental request for information until the date that the Department receives all of the information requested, including, if applicable, documentation of corrections required in a statement of deficiencies; and
 - d. If an applicant or licensee fails to submit to the Department all of the information requested in a comprehensive written request for additional information or a supplemental request for information, including, if applicable, documentation of corrections required in a statement of deficiencies, within the time prescribed in subsection (C)(3)(b), the Department shall deny the application.
 4. The Department shall issue a license if the Department determines that the applicant or licensee and the procurement organization, including the premises, are in substantial compliance with A.R.S. Title 36, Chapter 7, Article 3 and this Chapter.

5. If the Department denies a license, the Department shall send to the applicant or licensee a written notice of denial setting forth the reasons for denial and all other information required by A.R.S. §§ 41-1076 and 41-1092.03.

Table 1.1 Time-frames (in calendar days)

<u>Type of Approval</u>	<u>Statutory Authority</u>	<u>Overall Time-Frame</u>	<u>Administrative Completeness Review Time-Frame</u>	<u>Substantive Review Time-Frame</u>
<u>Application for Licensure</u>	<u>A.R.S. § 36-851.01</u>	<u>90</u>	<u>30</u>	<u>60</u>
<u>Application for License Renewal</u>	<u>A.R.S. § 36-851.01</u>	<u>30</u>	<u>10</u>	<u>20</u>
<u>Modification Change Request Affecting License</u>	<u>A.R.S. § 36-851.01</u>	<u>60</u>	<u>30</u>	<u>30</u>

ARTICLE 2. ADMINISTRATION FOR A NON-ACCREDITED PROCUREMENT ORGANIZATION

R9-9-201. Administration

A. A licensee for a non-accredited procurement organization:

1. Is responsible for all issues of liability, ethical considerations, fiduciary issues, and compliance with applicable laws and regulations:
 - a. SOPs for all activities and services the procurement organization provides;
 - b. The qualifications for an administrator:
 - i. Who has at least a bachelor’s degree in a health science or other science related field, and
 - ii. Is responsible for all services and activities at a procurement organization; and
 - c. The qualifications for a medical director:
 - i. Who is licensed pursuant to A.R.S. Title 32, Chapter 13 or 17; and
 - ii. Provides medical guidance to determine donor eligibility;
2. Shall adopt a quality management program; and
3. Shall review and evaluate the effectiveness of the quality management program in R9-9-202 at least once every 12 months.

B. An administrator of a non-accredited procurement organization:

1. Is directly accountable to the licensee for the operation, including all services and activities, provided by or at the procurement organization;
2. Has the authority and responsibility to manage the procurement organization as specified in SOPs;
3. Designates, in writing, an individual who is on the procurement organization's premises and is available when the administrator is not present on the premises.

C. A medical director of a non-accredited procurement organization:

1. Shall provide medical guidance to determine and establish donor eligibility as established in R9-9-204; and
2. May be the same individual as the administrator, if the individual's qualifications include management for all services and activities provided at a procurement organization.

D. A licensee of a non-accredited procurement organization shall ensure that the following programs at the procurement organization are established and maintained in compliance with state and federal laws and regulations:

1. A safety awareness and blood-borne pathogen training program; and
2. A cleaning program that mitigates potential cross-contamination between NTAD.

E. A licensee of a non-accredited procurement organization shall ensure that:

1. The procurement organization complies with vital records requirements in A.R.S. § 36-325;
2. An identification system according to A.R.S. § 36-851.03(A)(3)(b) for donors:
 - a. Is established and maintained, and
 - b. Assigns a unique identification number according to A.R.S. § 36-851.03(A)(6)(a);
 - i. For each donor, and
 - ii. Used to identify all NAM from a donor that is recovered and distributed;
3. SOPs are established, documented, and implemented that includes:
 - a. Job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for technicians and personnel members;
 - b. Orientation and in-service education for technicians and personnel members;
 - c. How a technician may submit a complaint related to services provided;
 - d. Donor records, including electronic records;
 - e. A quality management program, including incident reports;
 - f. Ethical practices;
 - g. An infectious control program;

- h. Security, including evacuation procedures in the event of fire or disaster;
 - i. NTAD and NAM inventory controls; and
 - j. Contracted services;
4. SOPs for all services and activities are established, documented, and implemented for:
- a. The proper use and maintenance of a donor consent form according to A.R.S. § 36-851.03(A)(3)(a);
 - b. Protocols and materials used to screen end-users prior to release and transfer of NAM according to A.R.S. § 36-851.03(A)(3)(c);
 - c. Donor screening and testing plan, including:
 - i. Acceptability assessment,
 - ii. Donor risk assessment,
 - iii. Medical records review,
 - iv. Donor eligibility, and
 - v. Infectious disease testing;
 - d. Acquisition of NTAD;
 - i. Donor verification;
 - ii. Donor identity;
 - iii. Acquisition records;
 - iv. Packaging, including packaging insert form that discloses disease status of tissue to the end-user;
 - v. Labeling;
 - vi. Transport; and
 - vii. Storage;
 - e. Preparation methods, including:
 - i. Receipt of NAM;
 - ii. Prevent airborne transmission, and
 - iii. Quarantine and storage, if applicable;
 - f. Release and transfer, including:
 - i. End-user eligibility review;
 - ii. Quality control review;
 - iii. Release of NAM;
 - iv. Exceptional release;
 - v. Failing review process; and

- vi. Transfer to distribution for use, including out-of-state and international shipping;
 - g. Final disposition of donation according to A.R.S. § 36-851.03(A)(3)(f) and consistent with:
 - i. Board of Funeral Directors and Embalmers specified in 4 A.A.C. 12, Articles 3, 5, and 6;
 - ii. Vital Records and Public Health Statistics specified in A.R.S. Title 36, Chapter 3;
 - iii. Vital Records and Statistics specified in 9 A.A.C. 19;
 - iv. Health menaces specified in A.R.S. Title 36, Chapter 6, Article 1;
 - v. Disposition of Human Bodies specified in A.R.S. Title 36, Chapter 7; and
 - vi. Communicable Diseases and Infestations specified in 9 A.A.C. 6;
- 5. SOPs that all NTAD acquired by the procurement organization shall bear a label that:
 - a. Is written, printed, or graphic material used to identify NTAD/NAM, blood specimens, or other donor specimens; and
 - b. States according to A.R.S. § 36-851.03(A)(6)(b):
 - i. The NTAD or NAM is not for transplant or clinical use;
 - ii. Any condition and any limitation regarding the use of the NTAD or NAM;
 - iii. That universal precautions shall be used; and
 - iv. The contact information for the procurement organization;
- 6. SOPs are:
 - a. Maintained at the procurement organization and copies available to the Department for review upon request;
 - b. Reviewed at least once every three years and updated as needed; and
 - c. Available to technicians and personnel members; and
- 7. A loss or theft of NTAD or NAM is documented and reported to the appropriate law enforcement agency within 24 hours of discovery.
- F.** An administrator of a non-accredited procurement organization shall immediately report suspected misuse of NTAD or NAM.
- G.** An administrator of a non-accredited procurement organization shall ensure that a report specified in subsection (F) is documented and maintained in the donor's record as specified in R9-9-205(E).

H. A licensee of a non-accredited procurement organization shall ensure that the following information or documents are conspicuously posted on the premises:

1. The procurement organization's current license,
2. The name of the administrator and medical director,
3. The hours of operation, and
4. The evacuation plan listed in R9-9-302.

R9-9-202. Quality Management

A licensee of a non-accredited procurement organization shall ensure that:

1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:
 - a. A method to identify, document, and evaluate incidents;
 - b. A method to collect data to evaluate procurement organization services provided;
 - c. A method to evaluate the data collected to identify a concern about the delivery of procurement organization services;
 - d. A method to make changes or take action as a result of the identification of a concern about the delivery of procurement organization services; and
 - e. The frequency of submitting a documented report required in subsection (2) to the licensee.
2. A documented report is submitted to the licensee that includes:
 - a. An identification of each concern about the delivery of procurement organization services; and
 - b. Any changes made or actions taken as a result of the identification of a concern about the delivery of procurement organization services.
3. The report required in subsection (2) and the supporting documentation for the report is maintained for 12 months by the procurement organization after the date the report is submitted to the licensee.

R9-9-203. Contracted Services

A licensee of a non-accredited procurement organization shall ensure that:

1. Contracted services are documented by agreement specified in SOPs.
2. If a procurement organization contracts with a laboratory for infectious disease testing of NAM, the contracted laboratory is registered with the Food and Drug Administration as a tissue establishment, specified in 21 C.F.R. § 1271.3, for testing and is either:

- a. Certified to perform such testing on human specimens in accordance with Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. § 263a) and 42 C.F.R. Part 493; or
 - b. Meets equivalent requirements as determined by the Centers for Medicare and Medicaid Services.
3. A list of contracted service providers is maintained and includes a description of the specific services provided.

R9-9-204. Medical Director, Administrator, Technicians, and Personnel Members

A. A licensee of a non-accredited procurement organization shall ensure that the medical director:

- 1. Establishes, reviews, and approves all SOPs of a medical nature, including:
 - a. Donor eligibility related to:
 - i. Screenings,
 - ii. Testing plans,
 - iii. Acceptability assessment;
 - b. Sampling plan and methods verifying NTAD release;
 - c. Exceptional release criteria and processes of NAM; and
 - d. Pre-established release criteria;
- 2. Reviews all SOPs of a medical nature at least every three years;
- 3. Approves a designee having training and education for performing tasks and functions assigned by the medical director;
- 4. Has oversight and performs review of designee activities according to procedures established by the licensee;
- 5. Makes a determination regarding the eligibility criteria of each donor based on a comparison with predetermined donor criteria;
- 6. Prior to release for use or distribution, signs the donor eligibility statement and NAM disposition or release statement; and
- 7. Establish a criteria that ensures all appropriate parties are notified of confirmed positive infectious disease test results.

B. A licensee of a non-accredited procurement organization shall ensure that the administrator:

- 1. Has at least three years of experience in tissue banking or other related fields;
- 2. Shall define NTAD or NAM activities that a technician may provide;
- 3. Shall define the methods used to provide clinical oversight and training including when clinical oversight and training is provided to an individual or a group; and
- 4. Shall ensure a technician's personnel record includes:

- a. Documentation of all completed training and education; and
- b. A written job description, including all primary duties.

C. A licensee of a non-accredited procurement organization shall ensure that a technician:

- 1. Has the educational background, experience, and training sufficient to assure assigned tasks will be performed in accordance with the established SOPs;
- 2. Provides a copy of a transcript or diploma in health science or other field of science for which the technician received a degree or certificate, if applicable;
- 3. Demonstrates competency to perform assigned tasks; and
- 4. Has duties required by the technician described in a written job description.

D. A licensee of a non-accredited procurement organization shall ensure that:

- 1. The qualifications, skill, and knowledge required for each type of technician and personnel member is based on the activities and services a personnel member may provide as established in the personnel job description; and
- 2. A personnel member's qualifications, skills, and knowledge are verified and documented:
 - a. Before the personnel member provides procurement organization services and
 - b. According to SOPs.

E. A licensee of a non-accredited procurement organization shall ensure that a personnel member does not have direct interaction with NTAD and NAM unless specifically authorized by the licensee or administrator.

F. A licensee of a non-accredited procurement organization shall ensure a personnel record is established for the administrator, technicians, and personnel members that includes:

- 1. The individual's name, date of birth, home address, and contact telephone number;
- 2. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and
- 3. Documentation applicable to an individual's duties, as required by SOPs, including the individual's:
 - a. Education and experience;
 - b. In service education and continuing education, if applicable; and
 - c. Evidence of Hepatitis B vaccination or refusal of Hepatitis B vaccine for individuals whose job-related responsibilities involve the potential exposure to blood-borne pathogens, if applicable.

G. A licensee of a non-accredited procurement organization shall ensure that a personnel record is:

- 1. Maintained throughout an individual's period of employment or volunteer service in or for the procurement organization;

2. Maintained for at least three years after the last date that an individual's employment or volunteer service in or for the procurement organization; and
3. Provided to the Department when requested.

R9-9-205. Donor Records

- A.** A non-accredited procurement organization shall maintain a legible, reproducible record for each donor from whom it obtains NAM for at least 10 years beyond the date of final disposition according to A.R.S. § 36-851.03(A)(7).
- B.** To ensure traceability of NTAD and NAM, a non-accredited procurement organization shall:
1. Document each procedure performed on a NTAD and NAM related to processing and storing NAM;
 2. For each document created in subsection (1), include:
 - a. The date and time for each procedure completed; and
 - b. The name of the technician who performed the procedure; and
 3. Submit information required to register the death of a NTAD within seven calendar days after receiving the NTAD according to A.R.S. § 36-325.
- C.** A non-accredited procurement organization shall ensure a donor record is:
1. Confidential and kept in a location with controlled access,
 2. Stored in a manner to prevent unauthorized access, and
 3. Maintained in a manner to preserve the donor record's completeness and accuracy.
- D.** A non-accredited procurement organization shall ensure a donor record shall include the following donor information:
1. The donor's name;
 2. The donor's unique identifying number specified in A.R.S. § 36-851.03(A)(6);
 3. The donor's date of birth and date of death; and
 4. The name and contact information of the person responsible for a donor's anatomical gift; if applicable.
- E.** A non-accredited procurement organization shall include the following donor records, as applicable:
1. Donor consent form or documentation of authorization for an anatomical gift includes:
 - a. The intended use of the NAM;
 - b. How the NAM may be used;
 - c. A statement that the NAM will be treated with dignity at all times; and
 - d. A statement that the NAM may require international export to an end-user;

2. Document of authorization – a legal record of the gift, to take place postmortem, permitting and defining the scope of the postmortem acquisition and use of NAM for education and research, signed or otherwise recorded by the authorizing person, pursuant to law;
3. Documentation of gift – the donor’s legal record of the gift of NAM permitting and defining the scope of the postmortem acquisition and use of NAM for education and research. It must be signed or otherwise recorded by the donor or individual authorized under law to make a gift during the donor’s lifetime;
4. Donor’s death record specified in A.A.C. R9-19-303;
5. Human remains release form specified in A.A.C. R9-19-301;
6. Information for a death record specified in A.A.C. R9-19-302 for transporting human remains into the state;
7. Disposition-transit permit specified in A.A.C. R9-19-308;
8. Medical examiner’s release of information specified in A.R.S. § 36-861;
9. All documents and permits that establish the chain of custody and identifies the individuals and organizations that had physical custody of the NAM;
10. Medical records, including:
 - a. Donor’s physical assessment;
 - b. Risk assessment questionnaire;
 - c. Pathology and laboratory testing and reports;
 - d. Physician summaries;
 - e. Transfusion or infusion information; and
 - f. Plasma dilution calculations;
11. Information from the donor referral source;
12. Donor eligibility;
13. Donor acceptability assessment;
14. Physical assessment questionnaire;
15. Documentation related to distribution;
16. Serological results, when applicable;
17. Cremation authorization document;
18. Documentation related to NAM recovery, storage, and distribution activities;
19. Final disposition documentation, including all records demonstrating chain of custody;
and
20. Documentation of the report in R9-9-201(F) and (G).

- F.** A donor's consent form shall be accessible to the donor's known consentor.
- G.** Upon demonstration of a legal right to acquire a donor's record, a non-accredited procurement organization shall provide access to:
1. An agent legally authorized or other individual designated at the time a donor gives consent;
 2. An individual appointed by a court or authorized by state laws;
 3. An individual of a procurement organization as identified by SOPs;
 4. An individual from an approving accrediting body, if applicable; and
 5. An individual from the Department or other regulatory agency authorized by state and federal laws or regulations.
- H.** Except for a donor record specified in subsection (A), a non-accredited procurement organization shall maintain documentation required by this Chapter for at least three years after the date of the documentation and provide copies of the documentation to the Department for review upon request.

**ARTICLE 3. PHYSICAL PLANT; TRANSPORTATION FOR A NON-ACCREDITED
PROCUREMENT ORGANIZATION**

R9-9-301. General Plant Standards; Environmental Services

- A.** A licensee of a non-accredited procurement organization shall ensure that a procurement organization facility:
1. Is in a building that:
 - a. Has a commercial occupancy according to the local zoning jurisdiction;
 - b. Is free of any plumbing, electrical, ventilation, mechanical, or structural hazard that may jeopardize the security and quality of the NTAD, NAM, and the health or safety of the public;
 - c. Has equipment and supplies to maintain NTAD and NAM in a safe and temperature-controlled state; and
 - d. Provides a separate and designated area for tissue recovery.
 2. Has premises that are:
 - a. Sufficient to provide for a procurement organization's services and activities;
 - b. Cleaned and disinfected according to the procurement organization's SOPs to prevent, minimize, and control illness and infection and mitigate potential cross-contamination between NTAD and NAM;
 - c. Clean and free from accumulations of dirt, garbage, and rubbish; and
 - d. Free from a condition or situation that may cause an individual to suffer physical

injury;

3. Provides a restroom for clients:
 - a. Free from contamination and cross-contamination of NAM; and
 - b. Does not contain any items, materials, or devices associated with the preparation activities or technicians and personnel members;
4. Implements and documents a pest control program that:
 - a. Requires a pest control service that uses certified applicators as specified in 3 A.A.C. 8, Article 2; and
 - b. Retains annual pest control service records for at least 12 months from date of service; and
5. Does not maintain a public health nuisance or engage in any act, condition, or thing, specified in A.R.S. § 36-601, or any practice contrary to the health laws of this state.

B. A licensee of a non-accredited procurement organization shall ensure that a procurement organization:

1. Has preparation rooms that:
 - a. Are maintained in a clean and sanitary condition at all times;
 - b. Are only used for examining and preparing NTAD;
 - c. Contain equipment, instruments, and supplies necessary for examining and preparing NTAD and are disinfected or sterilized, as applicable, after each use to protect the health and safety of technicians and personnel members;
 - d. Have sanitary flooring, drainage, and ventilation;
 - e. Have proper and convenient receptacles for refuse, bandages, and all other waste materials; and
 - f. Are thoroughly cleansed and disinfected with a 1% solution of chlorinated soda, or other suitable and effective disinfectant:
 - i. Immediately after obvious spill of blood or other potentially infectious materials, and
 - ii. At the end of each shift or on a regular basis that provides equivalent safety for all work surfaces;
2. Has refrigeration equipment used to store NTAD and NAM that:
 - a. Is only used for NTAD and NAM;
 - b. Is maintained in working order and kept in a clean and sanitary condition;
 - c. If a walk-in cooler, maintains a temperature between 36°F and 45°F;
 - d. If a freezer, maintains a temperature at or below 32°F;

- e. Is monitored by a temperature sensor system that:
 - i. Measures temperatures continuously and document when a unit is out of the required temperature range, and
 - ii. Alert technicians or other designated individuals when temperatures are outside of the acceptable limits; and
- 3. Has equipment at the procurement organization that is:
 - a. Sufficient to support the service;
 - b. Maintained in working condition;
 - c. Maintained in a clean and sanitary condition;
 - d. Used according to the manufacturer's recommendations;
 - e. If used during an examination or preparation of NTAD, cleaned and sanitized specified in subsection (B)(1)(f)(ii); and
 - f. If applicable, tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in SOPs.
- C.** A licensee of a non-accredited procurement organization shall maintain documentation of equipment tests, calibrations, and repairs for at least 12 months after the date of testing, calibration, or repair.
- D.** A licensee of a non-accredited procurement organization shall ensure that:
 - 1. Biohazardous material or medical waste and other potentially hazardous materials are removed and disposed by a facility licensed by the Arizona Department of Environmental Quality pursuant to 18 A.A.C. 8 and 13; and
 - 2. Combustible or flammable liquids are stored in a labeled containers or safety containers in a secured area and properly identified to ensure individuals health and safety.

R9-9-302. Emergency and Safety Standards

- A.** An administrator of a non-accredited procurement organization shall ensure:
 - 1. SOPs for emergency transfer of NTAD and NAM to a designated back up storage facility with an acceptable coolant and monitoring system in the event of mechanical failure or loss of coolant, including:
 - a. Tolerance limits or temperatures and time limits;
 - b. Methods and actions to be taken; and
 - c. Specific labeling indicating that the transported NTAD and NAM shall remain untouched until returned to the licensed non-accredited procurement facility after the mechanical failure or loss of coolant has been restored;

2. There is a first aid kit available at a procurement organization;
3. There are smoke detectors installed according to building size and local zoning jurisdiction;
4. A smoke detector required in subsection (A)(3):
 - a. Is maintained in an operable condition; and
 - b. Is battery operated or, if hard-wired into the electrical system of a procurement organization, has a back-up battery;
5. A procurement organization has a portable fire extinguisher that is labeled 2A-10-BC by the Underwriters Laboratory and is readily available for use;
6. A portable fire extinguisher required in subsection (A)(5) is:
 - a. If a disposable fire extinguisher, replaced when the fire extinguisher's indicator reaches the red zone; or
 - b. Serviced at least every 12 months and has a tag attached to the fire extinguisher that includes the date of service; and
7. A written fire and evacuation plan is established and maintained.

B. An administrator of a non-accredited procurement organization shall:

1. Obtain a fire inspection conducted according to the time-frame established by the local fire department or the State Fire Marshal;
2. Make any repairs or corrections stated on the fire inspection report; and
3. Maintain documentation of a current fire inspection for at least two years.

R9-9-303. Security Standards; NTAD/NAM Inventory Controls

A. A licensee of a non-accredited procurement organization shall ensure that access to the enclosed-locked areas where NTAD and NAM is located is limited to individuals authorized by the licensee or administrator.

B. To prevent unauthorized access to NTAD and NAM inventory, an administrator of a non-accredited procurement organization shall:

1. Have personnel or security equipment to deter and prevent unauthorized entrance into limited access areas that includes:
 - a. Devices or a series of devices to detect unauthorized intrusion, which may include a signal system interconnected with a radio frequency method, such as cellular, private radio signals, or other mechanical or electronic devices;
 - b. Exterior lighting to facilitate surveillance; and
 - c. Electronic monitoring using video cameras shall provide coverage of:
 - i. Entrances to and exits from limited access areas;

- ii. Entrances to and exits from the buildings; and
 - iii. Entrances and exits capable of identifying any activity occurring within the limited access area.
 - 2. Maintain video recordings from the video cameras for at least 30 calendar days.
 - 3. Have a failure notification system that provides an audible and visual notification of any failure in the electronic monitoring system.
 - 4. Have battery backup for video cameras and recording equipment to support in the event of a power outage.
 - 5. SOPs:
 - a. That restricts access to the areas of the building that contain NTAD and NAM inventory and donor records;
 - b. That provides for identification of authorized individuals; and
 - c. For conducting electronic monitoring.
- C.** A licensee of a non-accredited procurement organization shall establish and implement a NTAD and NAM inventory tracking system that:
- 1. Contains all NTAD received and NAM released for distribution;
 - 2. Lists release documentation verified for each NAM prior to transferring NAM to inventory;
 - 3. Documents the date, time, and location for NAM transferred for use, including the name of the individual performing the transfer;
 - 4. Documents the date, time, and location for NAM that is moved between locations controlled by the procurement organization, including the name of the individual overseeing the move; and
 - 5. Ensures NAM that can no longer be used is removed from inventory and disposed according to applicable SOPs.

R9-9-304. Transportation Standards

- A.** If a non-accredited procurement organization owns and maintains a vehicle for transporting NAM, an administrator shall ensure the vehicle is:
- 1. Not used for a purpose other than transporting NTAD and NAM or conducting procurement organization business;
 - 2. Only operated by a procurement organization technician or designated individual authorized to transport NTAD or NAM;
 - 3. Maintained in clean and sanitary condition; and
 - 4. Locked and secured at all times during transport of NTAD or NAM.

- B.** If using another vehicle or type of transport for NTAD or NAM, an administrator of a non-accredited procurement organization shall ensure that another vehicle or type of transport:
1. Is properly equipped for the transportation of NTAD or NAM;
 2. Is compliant with all state laws and rules pertaining to transporting humans remains; and
 3. If transport is by air, complies with applicable standards established by the International Air Transport Association and Transport Security Administration.
- C.** An administrator of a non-accredited procurement organization shall ensure that NTAD and NAM transported into the state has information of death documentation specified in A.A.C. R9-19-302 prior to transport.

R9-9-305. Sanitation Standards and Reporting

- A.** A licensee of a non-accredited procurement organization shall ensure that:
1. Areas used to receive, prepare, label, package, and store NAM are:
 - a. Properly ventilated, and
 - b. Protected from dust, dirt, flies, and other contamination.
 2. All refuse and waste products produced from receiving, preparing, packaging, distributing, and transporting NAM are removed from the premises as needed.
 3. All transport vehicles, trays, other receptacles, racks, tables, shelves, knives, saws, other utensils, or machinery used to move, handle, separate, package or other processes be cleaned as specified in SOPs and this Article.
- B.** A technician or personnel member of a non-accredited procurement organization shall report to the administrator or medical director:
1. Any concern related to receiving, preparing, packaging, distributing, or transporting NTAD or NAM that may adversely affect the health and safety of others.
 2. Any personal health condition experienced related to receiving, preparing, packaging, distributing, or transporting NTAD or NAM.
- C.** If an administrator or medical director of a non-accredited procurement organization determines a health condition in subsection (B)(1) has occurred, the administrator or medical director shall:
1. Follow SOPs to secure the area and eliminate exposure to others;
 2. Notify appropriate health and law enforcement agencies, as applicable; and
 3. Report the incident to the Department within five working days of determination that a health condition in subsection (B)(2) has occurred.
- D.** A licensee, administrator, or medical director of a non-accredited procurement organization shall report a health condition experienced by a technician or personnel member to the Department

within five calendar days of determination that the individual has a personal health condition specified in subsection (B)(1).

ARTICLE 4. ADMINISTRATION FOR AN ACCREDITED PROCUREMENT ORGANIZATION

R9-9-401. General Responsibilities

- A.** A licensee of an accredited procurement organization shall provide a copy of a renewed accreditation to the Department within 30 calendar days from the date of issuance.
- B.** A licensee of an accredited procurement organization shall ensure that a procurement organization facility is in a building that provides a separate and designated area for tissue recovery according to A.R.S. § 36-851.02(3).
- C.** A licensee of an accredited procurement organization shall ensure SOPs are established, documented, and implemented that cover:
 - 1.** Labeling;
 - 2.** Packaging, including a packaging insert form that discloses disease status of tissue to end-user according to A.R.S. § 36-851.02(2)(d);
 - 3.** Transport;
 - 4.** Distribution; and
 - 5.** Final disposition.

R9-9-402. Donor Consent; NTAD and NAM Identification

In addition to the requirements in Article 1, a licensee of an accredited procurement organization shall ensure that:

- 1.** A donor consent form includes:
 - a.** The intended use of the NAM,
 - b.** How the NAM may be used,
 - c.** A statement that the NAM will be treated with dignity at all times, and
 - d.** A statement that the NAM may require international export to an end-user.
- 2.** A donor consent form is maintained in the donor's record and retained for at least 10 years beyond the date of final disposition.
- 3.** An electronic identification system for donors is established and maintained for NTAD or NAM:
 - a.** Assigns a unique identifier using a combination of letters, numbers, and symbols for NTAD or NAM;
 - b.** Tracks the complete history of all NAM; and
 - c.** Records the date and staff member involved in each significant step of the operation from the time of NTAD acquisition through final disposition.

4. The information required to register the death of a NTAD is submitted within seven calendar days after receiving the NTAD according to A.R.S. § 36-325.

R9-9-403. Tissue End-Users

A. A licensee of an accredited procurement organization shall establish, document, and implement SOPs to properly screen an end-user that includes:

1. A written request for NAM, including:
 - a. The name, address and affiliation of educator and research accepting responsibility for the acceptance, use, and disposition of the NAM;
 - b. A description of the intended use;
 - c. The date and the approximate duration of NAM use;
 - d. A description of the venue in which the NAM will be used and the security measures for the safe and ethical utilization of the venue;
 - e. An assurance that universal precautions will be used when handling NAM;
 - f. The proposed final disposition of the NAM;
 - g. An agreement to comply with procurement organization's policies, as applicable;
 - h. An outline of proposed promotional materials to be disseminated in connection with the use of NAM; and
 - i. Other supporting documentation that is relevant to the request; and
2. The criteria for approving requested NAM for use, including:
 - a. The acceptability of the educator and researcher for NAM utilization;
 - b. The appropriateness of the intended use;
 - c. Type of venue in which the NAM will be used;
 - d. Proposed final disposition of the NAM unless returned to the procurement organization; and
 - e. Proposed promotional materials.

B. A licensee of an accredited procurement organization shall establish, document, and implement a procedure that allows an end-users to request an exceptional release of NAM.



Teresa Koehler <teresa.koehler@azdhs.gov>

Notice of Proposed Rulemaking; Procurement Organizations

1 message

Marie Isaacson <marie@isaacsonlawaz.com>

Sun, Feb 20, 2022 at 8:18 PM

To: "thomas.salow@azdhs.gov" <thomas.salow@azdhs.gov>

Cc: "robert.lane@azdhs.gov" <robert.lane@azdhs.gov>, Teresa Koehler <teresa.koehler@azdhs.gov>, "Huston, Mike" <Mike.Huston@sciencecare.com>, Don Isaacson <don@isaacsonlawaz.com>

Mr. Salow:

On behalf of our client, Science Care, please find attached our comments to the DHS Notice of Proposed Rulemaking; Procurement Organizations.

Respectfully,

Marie

Marie Isaacson, Principal

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 **Science Care Response to Proposed Rulemaking; Procurement Org.pdf**
544K

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February 20, 2022

Thomas Salow, Branch Chief
Arizona Department of Health Services
Public Health Licensing Services
150 N. 18th Avenue, Suite 400
Phoenix, Arizona 85007-3232

Re: Notice of Proposed Rulemaking; Procurement Organizations

Dear Mr. Salow:

On behalf of our client, Science Care, Inc., we respectfully submit the attached suggested changes regarding the proposed procurement rules.

Science Care has taken each opportunity to provide feedback to the DHS regarding these rules. We appreciate the DHS collaborative approach over the last three years. Through this process, we believe the procurement rules are more clear, concise, understandable, and consistent with legislative intent and within the DHS' statutory authority. Teresa Koehler has assisted the industry throughout this process in a very helpful and professional manner. We greatly appreciate her guidance and assistance.

If we can answer any questions or provide any additional information, please do not hesitate to contact me.

Respectfully,



Marie Isaacson

c: Robert Lane, Chief, Administrative Counsel and Rules
Mike Huston, Vice-President Laboratory Operations, Science Care, Inc.

Procurement Rules – suggested edits

Reduce the industry burden, align with statutory authority, or align with current best practices.

1. R9-9-106.A.2. Respectfully request that DHS reconsider modifying R9-9-106.A.2. by inserting “that alters the designated area for tissue recovery” after the word modification. Although Science Care recognizes that DHS licenses the entire facility, as mentioned previously, an alteration of an office or conference room is not a change that should affect a license. A concern is that such a modification may be made without the licensee contemplating that this could possibly impact a procurement organization’s license and fail to notify the DHS. Currently the rule states: “A proposed modification, if applicable.” A licensee would probably not consider an alteration of an office or conference room as applicable to the license.
2. R9-9-204.F.3.c. Respectfully request that DHS reconsider requiring a non-accredited procurement organization to document individuals are free from infectious tuberculosis, if applicable. This is not something procurement organizations currently ask their employees and do not believe it is applicable to procurement organizations.
3. R9-9-303. Respectfully request that DHS add the additional security options outlined in the AATB standards found in NT-K4-300 by adding configuration of the physical plant. Again, ARS 36-851.03.C. states the DHS shall adopt rules that follow, as nearly as practicable, the requirements as set forth in the accreditation requirements of a nationally recognized accrediting agency that is approved by the department.

March 5, 2022

Thomas Salow, Branch Chief
Arizona Department of Health Services
Public Health Licensing Services
150 N. 18th Avenue, Suite 400
Phoenix, AZ 85007

Re: Notice of Proposed Rulemaking

Dear Mr. Salow:

On behalf of our client, **Research for Life**, I have attached suggested changes to the draft rules governing procurement organizations.

From the beginning of the stakeholder process we have been participating under the leadership of Teresa Koehler. As a result of this collaboration, we believe the rules are more clear, more concise, and better aligned with the statutory authorization for these rules than they were at the outset of this process.

The comments attached to this letter reflect our remaining concerns regarding these rules as they apply to both accredited and non-accredited organizations. Note the new language is in ALL CAPS and the deletions have a line through them.

Sincerely, Brian Tassinari Partner

1. **R9-9-101.42 Requested Modification:** "Transport" means a method for relocating NAM from one place to another OUTSIDE OF THE FACILITY in a manner that provides conditions necessary to maintain the quality of the NAM for its intended use." Reasoning: Quality is not defined. Also, it is not reasonable to require a definition of how NAM is moved inside the facility.
2. **R9-9-104.A.1.h Requested Modification:** "Whether the applicant complies with local zoning ordinances, building codes, and fire codes;" Reasoning: Building codes and fire codes are a local issue. While they change over time, current uses are grandfathered. This provision would create confusion.
3. **R9-9-204.F.3.c Requested Modification:** "Evidence of freedom from infectious tuberculosis, if applicable; and" Reasoning: This is not applicable to procurement organizations.
4. **R9-9-301.A.1c Requested Modification:** "Has equipment and supplies to maintain NTAD and NAM PER STANDARD OPERATING PROCEDURES in a safe and temperature-controlled state; and" Reasoning: What does safe mean? It is not defined.
5. **R9-9-301.A.3.b Requested Modification:** "Does not contain any items, materials, or devices associated with the preparation activities or technicians and personnel members;" Reasoning: This issue is taken care of by item 'a' above.
6. **R9-9-304.B.3 Requested Modification:** "If transport is by air, complies CONTRACTURALLY REQUIRE TRANSPORTATION VENDER TO COMPLY with applicable standards established by the International Air Transport Association and Transport Security Administration." Reasoning: A procurement organization has no control over or ability to manage compliance with IATA and TSA requirements. All that can be done is require compliance with IATA and TSA requirements in the contracts with transportation vendors.



**ARIZONA DEPARTMENT
OF HEALTH SERVICES**

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

MARCH 2022

TITLE 9. HEALTH SERVICE

CHAPTER 9. DEPARTMENT OF HEALTH SERVICES – PROCUREMENT ORGANIZATIONS

ARTICLE 1. PROCUREMENT ORGANIZATION LICENSURE

ARTICLE 2. ADMINISTRATION FOR A NON-ACCREDITED PROCUREMENT ORGANIZATION

**ARTICLE 3. PHYSICAL PLANT; TRANSPORTATION FOR A NON-ACCREDITED PROCUREMENT
ORGANIZATION**

ARTICLE 4. ADMINISTRATION FOR AN ACCREDITED PROCUREMENT ORGANIZATION

2022 ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 9. DEPARTMENT OF HEALTH SERVICES – PROCUREMENT ORGANIZATIONS

1. An identification of the rulemaking:

Laws 2016, Ch. 292, § 3 adds Arizona Revised Statutes (A.R.S.) §§ 36-851.01, 36-851.02, and 36-851.03. A.R.S. § 36-851.01 requires that a person acting as a procurement organization in Arizona be licensed by the Arizona Department of Health Services (Department), except as provided in A.R.S. § 36-851.01(F). A.R.S. § 36-851.02 specifies requirements for accredited¹ procurement organizations, and A.R.S. § 36-851.03 specifies requirements for procurement organizations that are not accredited. Laws 2016, Ch. 292, § 4, requires the Department to “adopt rules relating to the licensure of procurement organizations and enforcement of those provisions.” A procurement organization is defined in rule to mean the same as “non-transplant anatomical donation organization” as defined in A.R.S. § 36-841². On June 1, 2016, the Department received an exception from the rulemaking moratorium, established by Executive Order 2016-03. The Department intended to adopt rules to comply with the requirements in Laws 2016, Ch. 292 § 3. During the rulemaking process the Department determined that the draft rules could not be completed due to definitions in A.R.S. §§ 36-841 and 36-851.01. On April 18, 2017, the Governor approved Laws 2017, Ch. 171 and made the changes needed to complete with the rulemaking. The Department plans to adopt rules at Arizona Administrative Code Chapter 9, Title 9 for procurement organizations. The rulemaking adds four Articles that provide general applicability that prescribes requirements and minimum standards for procurement organization initial and renewal licensure and enforcement; minimum standards for the administration of a non-accredited procurement organization; requirements for physical plant, transportation, and

¹ A.R.S. § 36-851.01(B) specifies “accredited” by a nationally recognized accrediting agency approved by the Department.

² (23) “Procurement organization” means any of the following: (e) A nontransplant anatomical donation organization.
(16) “Nontransplant anatomical donation organization” means a tissue bank or other organization that facilitates nontransplant anatomical donations, including facilitation through referrals, obtaining informed consent or authorization and assessing donor acceptability and through the acquisition, traceability, transporting, preparation, packaging, labeling, storage, release, evaluating intended use, distribution and final disposition of nontransplant anatomical donations.

security for a non-accredited procurement organization; and minimum standards for the administration of an accredited procurement organization.

2. Identification of the persons, who will be directly affected by, bears the costs of, or directly benefits from the rules:

- The Department;
- Persons planning to operate a non-accredited procurement organizations;
- Accredited procurement organizations operating in Arizona;
- Federally designated organ procurement organizations operating in Arizona;
- Providers of retail services;
- Education and research facilities;
- A donor, a donor's family; and individuals responsible for a donors; and
- The general public

3. Cost/benefit analysis:

This analysis covers costs and benefits associated with the new rules for licensing procurement organizations defined in A.R.S. § 36-841(23)(e). No new full-time employees are required due to this rulemaking. This rulemaking establishes licensing fees authorized by A.R.S. § 36-851.01(D)³ and fees collected are deposited in the health services licensing fund. The annual costs and revenues are designated as minimal when \$1,000 or less, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or more in additional costs or revenues. Costs and benefits are listed as significant when meaningful or important, but not readily subject to quantification. The Department clarifies the estimated costs and benefits identified in this Economic, Small Business, and Consumer Impact Statement (EIS) related to the new requirements and standards in this rulemaking and required by the statutory authority cited in Item 1.

³ A.R.S. § 36-851.01 (D) ... Each procurement organization applying for licensure or license renewal under this section shall pay all applicable fees as prescribed by the director. All fees collected pursuant to this section for the licensure and license renewal of procurement organizations shall be deposited in the health services licensing fund established by section 36-414.

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Benefits	Decreased Cost/ Increased Benefits
A. State and Local Government Agencies			
The Department	Draft new rules for procurement organization, both non-accredited and accredited, operating in Arizona	Moderate	Significant
	Establish program to administer and issue licenses to procurement organizations wishing to operate in Arizona	Moderate	Moderate
	Licensing fees	None	Moderate
B. Small Businesses			
Persons planning to operate a non-accredited procurement organizations	Apply for Arizona procurement organization license	Minimal-Moderate	Substantial
	Licensing fee	Minimal	Substantial
	Comply with Article 2 and 3 for operating a procurement organization	Moderate	Significant
Accredited procurement organizations	Apply for Arizona procurement organization license	Minimal	Significant
	Licensing fee	Minimal	Significant
	Comply with Article 4 for operating a procurement organization	Minimal	Significant
Federally designated organ procurement organizations	Having others sources for placing non-transplant anatomical donation	None	Significant
	Apply for Arizona procurement organization license	Minimal	Moderate
	Licensing fee	Minimal	Moderate
	Comply with Articles 2 and 3 for operating a procurement organization	Moderate	Moderate
Providers of retail services	Increase sales of medical products, medical equipment, and shipping	None	Significant
	Decrease in the number of services provided for deceased person	None	Significant
	Increase in the number of deceased person cremated	None	Significant

Education and research facilities	Increased number of sources for procuring non-transplant anatomical donation and materials ⁴	None	Significant
C. Consumers			
Donors, donors' families, and individuals responsible for a donor	Increase accountability and quality of care provided by a procurement organization	None	Significant
	Increase in number of procurement organization in Arizona	None	Significant
Public	Increase in public health and safety	None	Significant

- **The Department**

A.R.S. §§ 36-851.02 and 36-851.03 requires the Department to establish new rules for licensing procurement organization in Arizona. A procurement organization is the same as a “nontransplant anatomical donation organization” defined in A.R.S. § 36-841(16). A nontransplant anatomical donation organization means a tissue bank or other organization that facilitates nontransplant anatomical donations, including facilitation thorough referrals, obtaining informed consent or authorization and assessing donor acceptability and through the acquisition, traceability, transporting, preparation, packaging, labeling, storage, release, evaluating intended use, distribution and final disposition of nontransplant anatomical donations. A.R.S. § 36-851.01(A) specifically states that “A person may not act as a procurement organization in this state unless the person is licensed by the department of health services as a procurement organization.” Additionally, A.R.S. § 36-851.03(B) requires the Department to “adopt rules that follow, as nearly as practicable, the requirements on equivalent subjects specified...that are set forth in the accreditation requirements of a nationally recognized accrediting agency that is approved by the department.”

To comply with A.R.S. § 36-851.03(B), the Department has approved the American Association of Tissue Banks⁵ (AATB) as a nationally recognized accrediting agency. AATB is a professional, non-profit, scientific, and educational organization. AATB

⁴ Non-transplant anatomical donation (NTAD) and non-transplant anatomical materials (NAM). Terms are defined in R9-9-101(23) and (24); refer to page 10 for NTAD and NAM definitions

⁵ [AATB \[https://www.aatb.org/about\]](https://www.aatb.org/about): The Association was founded in 1976 by doctors and scientists who had started in 1949 the nation’s first tissue bank, the United States Navy Tissue Bank.

promotes the safe use of donated human tissue and focuses on the quality and availability of donated human tissue to tissue banks for donor transplant and to non-transplant anatomical donor organizations for education and research. The AATB tissue bank and non-transplant anatomical donor organization standards model the federal and state regulations and are the only private tissue banking standards published in the United States. The tissue banking standards establish comprehensive and safe human tissue practices for AATB national accreditation program approving tissue banks and non-transplant anatomical donor organization who complaint with tissue banking standards and physical plant inspection. Currently, AATB has accredited 127 tissue banks and non-transplant anatomical donor organization located in the United States, Netherlands, Canada, South Korea, Taiwan, India, and Singapore. Of the 127 tissue banks and non-transplant anatomical donor organization in the United States, seven are non-transplant anatomical donor organizations. Four of the non-transplant anatomical donor organizations are located in Arizona and the others in Maryland, Oregon, and Tennessee. In addition to the four AATB accredited non-transplant procurement organizations, Arizona also has five AATB accredited transplant organ organizations operating in the state. The Department is not aware of any non-accredited procurement organizations operating in the state. Note: Transplant organ organizations are regulated by the Health Resources and Services Administration that oversees the organ transplant system in the United States.

The Department in this rulemaking establish standards and requirements for licensing persons who wish to operate a procurement organization at Arizona Administrative Code (A.A.C.) Title 9, Chapter 9. The rules provide licensing for both non-accredited procurement organizations and accredited procurement organizations recognized by AATB. Chapter 9 includes new:

Article 1, Procurement Organization Licensure;

Article 2, Administration for a Non-Accredited Procurement Organization;

Article 3, Physical Plant; Transportation for a Non-Accredited Procurement Organization; and

Article 4, Administration for an Accredited Procurement Organization.

The rules in Article 2 and Article 3 are consisted A.R.S. § 36-851.03(B) and follow, as nearly as practicable, the requirements on equivalent subjects set forth in the AATB Non-Transplant Anatomical Donor Organization Standards (AATB Standards). The Department anticipates that the cost associated with the rulemaking to be moderate for a rule analyst and program staff to

draft new rules in Chapter 9, Article 1 through 4 and to communicate with stakeholders to ensure that the Department is aware of concerns stakeholders may have, and as appropriate, change the draft rules. The Department also expects that the benefit of having the rules will be significant and responsive to the public call for regulating procurement organizations as reported in a 2019 **azcentral.com** article “Despite 2-year-old state law, Arizona’s body donation industry still unregulated.”⁶ The article states “...there have been a sufficient number of cases where misrepresentations have been made.” The Department has followed its statutory authority carefully in drafting the rules and expect that the rules will decrease the number of cases where misrepresentations may occur. And with this type of license being new to the Department, the Department uses “significant” to define benefit since the Department is not able to readily determine a more accurate quantification.

Additionally, the Department anticipates that the Department will incur a moderate cost to establish a program with staff that will process, review, and approve applications and staff who may inspect procurement organizations, as required by the rules. Further, the Department expects to incur costs for office equipment, development of a computer database for procurement organizations, creating a procurement organization webpage, including updates and maintenance for the two, and other miscellaneous cost for travel, security, utilities, insurances, and the like. The Department expects the number of licenses that may be issued by the Program will most likely be three of the four accredited non-transplant procurement organizations currently operating in Arizona. The Department does not include the fourth accredited non-transplant procurement organization due to not having any communications with the fourth since before COVID. Note: Due to concerns related to COVID and the nature of the non-transplant procurement organization business, rulemaking activities were suspended from April 2020 until July 2021. Using the Department’s estimated annual costs of \$6,800, documented in Attachment A, and the estimated number of licenses that may be issued, the Department establishes an annual licensing fee of \$1,000. The Department expects the fee to be reasonable and both the initial and renewal applications cover a two-years period. The fee is considered a moderate benefit for the Department and consistent with the Department’s costs. The Department also look at accredited non-transplant procurement organizations revenues, however, information about revenues is limited. In October 2017, Reuters, article “[The Body Trade](#),” reported that Science Care “reaps

⁶ <https://www.azcentral.com/in-depth/news/local/arizona-health/2019/06/10/despite-state-law-arizonas-body-donation-industry-still-unregulated/2918524002/>

\$27 million in annual revenue by recruiting body donors...” Additionally, ProPublica in [Nonprofit Explorer](#) reported that United Tissue Network Inc, in their 2019 tax filing had a total revenue of \$5,029,546. Additionally, Business Insider in a June 2, 2016 article, [The body donation industry is aiming for more life-saving research – and fewer chainsaw dissections](#) stated that owner-operator of Research for Life, believes his company is currently the second-largest tissue bank in the country. He also stated that Research for Life makes on average of about \$2,500 per cadaver donated and processes more than 1,000 cadavers per year. When calculated, Research for Life’s estimated revenue would include \$2,500,000 for annual cadaver donations. Based on the information provided by these articles, the Department expects an accredited non-transplant procurement organization may incur minimal cost for licensing, however, the benefit to continuing to operate in Arizona is far greater than the cost. The Department expects that the rulemaking provides a significant benefit to the Department for having rules that are effective, understandability, and provide a significantly benefit in the health and safety of Arizonans.

- **Persons planning to operate a non-accredited procurement organization**

The Department expect persons planning to operate a non-accredited procurement organization may incur a minimal to moderate cost for an administrator to complete and submit an initial application and to assist with any inspection performed by the Department. In addition to the initial application, an initial application fee of \$2,000 is required at the time the application is submitted. The Department expects the fee is a moderate cost; however, since a license has a renewal cycle of two-years, the Department expects a more likely cost incurred may be minimal when the cost is divided by the two-years and yields an annual cost of \$1,000. In addition, the Department anticipates that persons operating a non-accredited procurement organization may receive a substantial benefit for having a non-accredited procurement organization license, issued by the Department, that allows the licensee to collect revenue from operating said business. The Department also expect a benefit is provided since the Department does not require a fee for the inspection of a non-accredited procurement organization during an initial application required in R9-9-104, Application for Licensure.

The Department believes the Article 2 and Article 3 rules provide minimal operating standards and requirements required by statutes, specified in A.R.S. §36-841(16)⁷, and anticipates that the rules may cause a person wishing to operate a non-accredited procurement organization to incur a

⁷ Refer to Page 2, Note 2

moderate cost for ensuring the administrative and physical plant requirements are consistent with the rules. The rules for non-accredited procurement organization are established by A.R.S. §§ 36-851.01 and 36-851.03 and as specified in A.R.S. § 36-851.03(B) are to “as nearly as practicable” follow a nationally recognized accrediting agency approved by the Department. As stated previously, the Department reviewed the AATB Standards, Second Edition 2017 and Bulletins published in 2019 and 2022, to ensure the rules are “as nearly as practicable” consistent. As such, the Department is not aware of how the rules may be less burdensome since this type of business mandate standards and practices that may be more costly than other business types. In comparison, procurement organizations receive donors and prepare each donor for use by educational and research organizations, and if remains are returned, the procurement organization will provide final disposition that may include cremation and burial. In addition, the Department expects a person wishing to operate a non-accredited procurement organization may receive a significant benefit for complying with Articles 2 and 3 rules that allow the person to operate a procurement organization that otherwise, the person would not be allowed to open. Further, the Department anticipates that the start up costs of a non-accredited procurement organization to be much greater than the costs related to the licensing fee and rules identified in Article 2 and Article 3. Based on the donor and services these business owner are offering; the Department expects it is not unreasonable to expect that these business owners know that the donors and services offered require a high standard of care and due diligence to ensure a donor’s consent form is fulfilled as agreed. The Department anticipates these business owners will benefit greatly for having the rules and licensure compared to the costs related to opening a new business of this type.

- **Accredited procurement organizations, same as accredited non-transplant**

Arizona accredited procurement organizations obtained accredited through the AATB, a nationally recognized accrediting agency, approved by the Department specified in A.R.S. §§ 36-851.01 and 36-851.3(B). The Department anticipates accredited procurement organizations may incur a significant benefit for having an Arizona state license posted that allows individuals seeking information-services to confirm that the accredited procurement organization is licensed by the state and is compliant with state laws that states, “A person may not act as a procurement organization in this state unless the person is licensed by the department of health services as a procurement organization.” The Department does not expect accredited procurement organizations operating in the state will choose to close as a result of the new rules and may benefit and appreciate having rules that require non-accredited procurement organizations be

licensed to safeguard the reputations of all non-transplant procurement organizations operating in Arizona. The Department anticipates accredited procurement organizations may incur a minimal cost for administrative time to complete and submit an application. However, after receiving a license to operate an accredited procurement organization in Arizona, a licensed-accredited procurement organization could receive a significant benefit from the rulemaking if the licensed-accredited procurement organization elected not to renew their AATB accreditation. An Arizona accredited procurement organization shared that their last renewal fee was \$8,000⁸ for a three-year renewal period and is equal to an annual fee of \$2,667. Hence, over a three-year renewal period, the savings is \$5,001. In addition to the AATB renewal fee, AATB requires a percentage of all revenues based on an accredited procurement organization's volume. The accredited procurement organization did not share that amount with the Department. A second Arizona accredited procurement organization shared that their renewal fee was \$15,000⁸ plus an additional amount based on a percentage of annual revenues (volume). Note: The Department expects that the difference in the amount of renewal fees paid may result from the second accredited procurement organization having a primary facility and a satellite facility which would explain a higher renewal fee. Accredited procurement organizations are also inspected each renewal period, and the Department expects accredited procurement organizations are required to pay an inspection fee since an inspection fee requirement is listed on the AATB initial application. The Department is not aware of the AATB inspection fee amount. Additionally, since an accredited procurement organization is inspected by the AATB, as required by AATB accreditation, the Department accepts the AATB inspection upon receipt of an accredited procurement organization's current certificate of accreditation submitted with an initial application or renewal application required in R9-9-104(A)(2) and R9-9-105(B)(2). The rulemaking does not require an inspection of accredited procurement organizations at the time of initial application or renewal and expect accredited procurement organization receive a minimal benefit for not having to endure additional inspections by the state.

The Department expects the licensing fee to be minimal cost for the same reason provided for non-accredited procurement organizations. Both having a renewal cycle of two-years, the Department expects a minimal cost when divided by the two-years and yields an annual cost of \$1,000. Since accredited procurement organizations already operate according to the AATB

⁸ Information from 1st accredited NADO was collected in 2022; information from 2nd accredited NADO was collected in 2019.

Standards for Non-Transplant Anatomical Donations; the accredited procurement organizations are compliant with standards more stringent than the rules. The Department in the Article 4 rules include requirements for matters identified in A.R.S. § 36-851.02, and the rules are “as nearly as practicable” consistent with AATB Standards. The Department anticipates that accredited procurement organizations may incur a minimal cost for administrative staff to verify that existing SOPs⁹ and practices include donor consent form, an electronic identification system, tissue end-users, and donor distribution and final disposition. The Department expects it is possible that a minor change(s) to SOPs is reasonable and any minimal affect will most likely not cause an accredited procurement organization to incur any cost. The Department expects the rules will provide a greater benefit that allow accredited procurement organizations to operate than any minimal costs incurred from rule.

- **Federally designated organ procurement organizations**

Federally designated organ procurement organizations (organ procurement organization) are nonprofit organizations that coordinate organ, eye, and tissue donations for transplantation. The Department understands that organ procurement organization may receive full body donors and the organ procurement organization may, after carrying out activities for an organ transplant, may return the donors to their families or if directed, to a funeral establishment, crematorium, or non-transplant procurement organization. The Department expects organ procurement organizations may receive a significant benefit from the rules for having additional non-accredited procurement organization to choose from when determining transfer of NTAD and NAM.¹⁰ The Department also speculates that it may be reasonable for an Arizona AATB accredited organ procurement organization may contemplate applying for a state license as a non-accredited procurement organization. It is reasonable to consider that an accredited organ procurement organization that have established administrative staff and required medical professionals, including physical space may easily modified their business model to include preparation and processing of NTAD and NAM for use by educational and research facilities. Having a license to provide non-transplant

⁹ R9-9-101 (37) “Standard operating policies and procedures” or “SOPs” means a group of documents detailing the specific purposes and services provided by a licensed procurement organization including activities and methods by staff and personnel members in support of conducting business operations.

¹⁰ 23. “Non-transplant anatomical donation” or “NTAD” means a donation of a whole body, organs or tissues authorized and used for education and research prior to release to distribution inventory.

24. “Non-transplant anatomical material” or “NAM” means a whole body or parts of a body donated for use in education or research that has been prepared, packaged, labeled, and released to distribution inventory.

procurement services would create another source of revenue for an owner of an accredited organ procurement organization and would provide benefits to donor families for not having to make arrangements with another procurement organization should their loved one also be a donor for education and research. The Department reasons that adding non-transplant procurement organization services could provide a significant to substantial benefit. Additionally, an organ procurement organization will incur cost for an initial application to operate as a non-transplant procurement organization. The Department expects an organ procurement organization may incur a minimal to moderate cost for an administrator to complete and submit an application and to assist with any inspection performed by the Department. Also, the initial application fee of \$2,000 is required at the time the initial application is submitted. The Department expects the fee is a moderate cost; however, with a renewal cycle of two-years, the Department expects the more likely cost incurred to be minimal when the cost is divided by the two-years for an annual minimal cost of \$1,000.

The Department expects that the Article 2 and Article 3 rules for organ procurement organization to be somewhat similar to persons planning to operate a non-accredited procurement organization. The rules provide minimal operating standards and requirements required by statutes, specifically, A.R.S. § 36-841(16) and may cause an organ procurement organization to incur a moderate cost to ensure the administrative and physical plant standards and requirements are consistent with the rules. Article 2 rules include scope of practices and requirements for quality management, contracted services, medical director and other employees, and donor records requirements. Additionally, Article 3 rules provide for general plant standards and include environmental services, emergency and safety, security and inventory controls, transportation, and sanitation and reporting. The Department expects organ procurement organization may receive a significant benefit for complying with Articles 2 and 3 rules that allow for the approval to operate a non-transplant procurement organization that otherwise, would not be allowed to open. The Department anticipates that the start up costs for an organ procurement organization to be less than a person planning to operate a non-accredited procurement organization since a business structure is generally in place; and most likely, the increased cost may be more specific to drafting scope of practice standards, possible hiring additional employees, and ensuring physical plant and security and inventory controls standards are in place. The Department anticipates that the costs related to the Article 2 and Article 3 standards and requirements may be moderate. The Department anticipates that the benefit of having non-transplant procurement organization rules is significant in that the rules offers organ procurement organizations another

option for assisting donors, donor families, and individuals responsible for a donor, as well the general public.

- **Providers of retail services**

Providers of retail services are persons who provide funeral and crematorium services, medical supplies and devices, reagents, testing materials, transport services, shipping services for NTAD and NAM, and other related devices, materials, and services required for the operations of a non-accredited procurement organization. The Department expect that newly licensed non-accredited procurement organizations may provide a significant benefit to providers for retail services with whom the licensed non-accredited procurement organization choose to purchase in the course of establishing and operating a new business. It is difficult for the Department to determine an exact benefit a provider of retail services may receive without having knowledge about a non-accredited procurement organization's specific needs and the number of new non-accredited procurement organizations that may open. In addition, due to the lack of public interest that occurred during the rulemaking, the Department does not expect to receive any initial applications other than the initial applications that may be submitted from AATB accredited non-transplant procurement organizations currently operating in Arizona.

In Arizona, as of February 2022, there are 180 licensed funeral establishments and 54 licensed crematorium. The Department anticipates that some funeral establishments may see a decrease in requests for funeral services if newly licensed non-transplant procurement organizations open and individuals and families determine not to have a traditional funeral, and rather choose services provided by a licensed non-accredited procurement organization. The costs of funeral services are increasing and many individuals and families are not able to pay funeral services fees and rather choose to become a donor. Arizona, Lincoln Heritage¹¹ reports-estimates that an average full-service funeral is \$8,533 and a direct cremation is \$1,612. Additionally, the Department notes that accredited non-transplant procurement organizations and the AATB¹² clarify that most accredited non-transplant procurement organizations cover all costs, including cremation, associated with a donor/donation consistent with a donor's consent form. Accredited non-transplant procurement organizations are more likely to request payment for a service that is not a services provided by the accredited non-transplant procurement organization. Because of higher

¹¹ [Lincoln Heritage Life Insurance Company](#)

¹² [AATB: Non-Transplant Anatomical Donation](#)

cost for traditional funerals and the decline in traditional funerals, the Department anticipates the number of services provided by a crematorium will increase and provide crematoriums with a significant benefit. The Department anticipates that accredited non-transplant procurement organizations currently operating in Arizona will most likely not have an affect on providers of retail services' costs or benefits related to the rulemaking since already established. The Department anticipates that the benefit of having the procurement organization rules is significant in that the rules allow for new business and existing businesses to benefit from an increase in demand for products and services that they provide.

- **Education and research facilities**

The Department identifies educational and research facilities as universities offering medical programs that teach human anatomy or provides surgical trainings using cadaver; colleges that offer medical training for procedures related to health professionals such as paramedics performing a tracheostomy; research facilities and centers who focus on cures for cancers and viruses such as HIV and COVID. Others may include organizations that develop surgical instrument; the U.S. military related to weapons development; automobile manufactures for impact testing; and pharmaceutical companies. The Department expects educational and research facilities may receive a significant benefit depending on the number of persons that apply and are issued a non-transplant procurement organization license after the rules become effective later this year. The Department expects that the more licensed non-accredited procurement organizations available, the more NTAD and NAM will be available for educational and research facilities to choose. Additionally, having more choices may make for better pricing, and possible, an increase in options, such as the types of non-transplant anatomical material, may lead to research facilities finding cures sooner rather than later. Also, having a state licensing program for non-accredited procurement organizations may provide a significant benefit for educational and research facilities for increased confidence and willingness to do business with. The Department does not expect educational and research facilities will incur costs related to the rulemaking and rather may receive a significant benefit for having additional sources from whom non-transplant anatomical material may be obtained. The Department expects the benefit to be significant since some educational and research facilities already acquire NTAD and NAM from the four AATB accredited non-transplant procurement organizations currently operating in Arizona.

- **Donors, donors' families; and individuals responsible for a donor**

The Department expects donors, donors' family, and individuals responsible for a donor may receive a significant benefit for having a state licensed non-accredited procurement organization accepting their donation knowing the donor will be treated respectfully and used as agreed to in the donor consent form specified in state statutes and rules. The Department also expects a donor's family and an individual responsible for a donor may receive an additional benefit for knowing that the non-accredited procurement organization who cares for their donor is regulated by the state and may see a license suspended or revoked should the non-accredited procurement organization fail to act and provide services as agreed to in the donor consent form, statutes, and the rules in this Chapter. The Department does not expect a donor, a donor's family, or an individual responsible for a donor will incur any costs related to the rulemaking. The Department reiterates that accredited non-transplant procurement organizations and the AATB¹³ clarify most non-transplant procurement organizations cover all costs associated with a donor/donation, including transfer of the donor, filing death certificate, and performing final disposition (cremation or burial). Further, AATB adds that non-transplant procurement organizations fund their operations by charging a fee for service to those "who are requesting and being provided non-transplant gifts [NTAD and NAM]." The Department also considers that additional non-transplant procurement organizations in Arizona may be beneficial for donors, donors' family, and individuals responsible for a donor. Although, for these affected persons, the Department believes that additional services provided by non-transplant procurement organizations may not be as beneficial, and rather, a greater benefit arises from non-transplant procurement organizations being held accountable for a wrong action against a donor and whom, due to this rulemaking, may have action taken to have a license suspended or revoked, as well as incur a civil penalty.

- **General public**

The Department expects that the public will not incur any costs related to the rulemaking. The public, in the same way as donors and donor families, may receive a significant benefit for having rules that require a person operating a non-transplant procurement organization in the state to have a license issued by the Department. The standards and requirements in Chapter 9 ensure licensed non-transplant procurement organizations are held accountable for the quality of care

¹³ [AATB: Non-Transplant Anatomical Donation](#)

provided to NTAD and NAM and the use of NTAD and NAM as agreed to and documented in a donor consent form specified in R9-9-205. The rules not only require proper care of NTAD and NAM, the rules also require each donor have a record that documents chain of custody and an administrator to immediately report suspected misuse of NTAD and NAM. The rules, in R9-9-107, also contain authority for the Department to deny, suspend or revoke a license, and may assess or impose a civil penalty on a non-transplant procurement organization who does not comply with the requirements. In this way, the rules increase health and safety for the general public. Additionally, the Department consider how the rulemaking may effect employment in Arizona, and as stated previously, the Department expects the numbers of new jobs created will most likely not create enough new opportunities that would provide the public with even a substantial benefit considering Arizona's total workforce population. Although the rules may not create new employment, the public may still receive a significant benefit related to the rulemaking for the increase accountability non-transplant procurement organizations will be held to. The Department expect the rules may provide a significant increases in safety for Arizonians and has determined that the benefits received for having rules that license non-transplant procurement organizations in Arizona outweigh the potential costs associated with this rulemaking.

4. A general description of the probable impact on private and public employment in business, agencies, and political subdivisions of this state directly affected by the rulemaking.

The Department does not expect private and public employment in business, agencies, and political subdivisions will be negatively impacted by the rulemaking. The rulemaking allows for new businesses (non-transplant procurement organizations) to open and more jobs to be created. The Department does not expect public employment will be affected. However, as non-transplant procurement organizations open and create opportunity for employment, the Department reasons that these new businesses may include employment for: medical directors (medical doctor), administrators (bachelor's degree in health science or other science), technicians (educational background, experience, and training sufficient to assure assigned tasks), and personnel members (individuals who do not have contact with NTAD and NAM and support non-medical activities). The Department is not able to effectively estimate how many new non-transplant procurement organizations may open or employment positions added. However, it is interesting to note that during the rulemaking process members of the public did not comment on the draft rules nor did members of the public request information from the Department. As stated previously, currently four accredited non-transplant procurement organizations are operating in Arizona; the Department estimates that existing accredited non-transplant procurement organization provide

employment for maybe three to five technicians and personnel members. The Department does not expect the rulemaking to cause accredited non-transplant procurement organizations to add any new employment. Additionally, the Department does not expect providers of retail services and education and research facilities to increase revenues and services enough to require additional employees.

5. A statement of the probable impact of the rules on small businesses:

a. An identification of the small business subject to the rulemaking:

Small businesses effected by the rulemaking are accredited non-transplant procurement organizations and may include accredited organ procurement organization, providers of retail services, and educational and research organizations.

b. The administrative and other costs required for compliance with the rules:

The probable impact of the rules on small businesses includes the small business listed above. The administrative and other costs for an accredited non-transplant procurement organization is significant to minimal for employees to verify that scope of practices for donor consent, tissue end-user, labeling, packaging, transport, distribution, and final disposition are in place and consistent with rules in Article 4. The rules do not directly impact accredited organ procurement organizations and no administrative or other costs are incurred. Likewise, there are no administrative and other costs for providers of retail services and educational and research organizations. These small business may benefit for having new customers to purchase their goods or for having another source from where NTAD and NAM may be obtained. Additional cost and benefit analysis is provided in Item 3.

c. A description of the methods that the agency may use to reduce the impact on small businesses:

The rules are consistent with A.R.S. Title 36, Chapter 7, Article 3 and the Department knows of no other methods to further reduce the impact on small businesses.

d. The probable costs and benefits to private persons and consumers who are directly affected by the rulemaking:

Private persons and consumers are not expected to incur any costs related to the rulemaking. However, private persons and consumers may receive a significant benefit for having licensed non-transplant procurement organization should a private person or consumer be in need of donor services, as well as, possible having additional licensed non-transplant procurement organization available.

6. A statement of the probable effect on state revenues:

The Department does not expect the rules to have an effect on state revenues. The rulemaking includes licensing fees for non-transplant procurement organization and potentially civil penalties for non-transplant procurement organizations who violate A.R.S. Title 36, Chapter 7, Article 3, and 9 A.A.C. 9. A.R.S. § 36-851.01 requires all fees collected be deposited into the health services licensing fund established by A.R.S. § 36-414. Additionally, during the Fifty-Second Legislature, Second Regular Session, the Health and Human Services Committee Fact Sheet for H.B. 2307 indicated “There is no anticipated fiscal impact to the state General Fund associated with this legislation.”

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking:

The Department has determined that there are no less intrusive or less costly alternatives for achieving the purpose of the rulemaking.

8. A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data:

Not applicable.

ATTACHMENT A: Non-Transplant Procurement Organizations 2022

Personnel and Functions	Annual Costs
Surveyor: assuming 5% of FTE making \$50,000/year – Process initial applications and inspections – Process renewal applications and inspections – Process request for change affecting a non-transplant donation organization – Respond to public comments and questions – Complaint inspections and reports – Update non-transplant donation organization database – Administration time for rulemaking process	\$2,500
Supervisor: assuming 5% of FTE making \$60,000/year – Supervise surveyor – Respond to public comments and questions – Complaint inspections and reports – Administration of database for non-transplant donation organization data – Administration of non-transplant donation organization webpage, including all forms, applications, and other required electronic documents – Process fees and maintain accounting records – Administration time for rulemaking process; tracking legislative activities/A.R.S. amends	\$3,000
Travel (assuming 400 miles at \$0.75 per mile/2-years)	\$300
Other indirect cost: – Equipment: computers, printers, telephones, including other office materials – NADO database/maintenance – Webpage updates/maintenance – Office space, security, rent, utilities, insurance, etc. – Automobiles, maintenance, gas, etc.	\$1,000
Total	\$6,800
Two-year licensing period ¹⁴ : $\$6,800/2\text{-years} = \$3,400/3 = \$1,133$ Arizona NADOs: Research for Life, Science Care, and Southwest Institute for Bio-Advancement United Tissue Bank (?)	Application fee: \$2,000

- **California:** \$950 for initial and renewal license. California reduced tissue bank fees to \$500; did not locate non-transplants?
- **Florida:** \$1,000 initial application fee; annual fee of \$1,000 or .25% of total revenues produced from procurement in the state. (F.S.A. § 765.544) ✓
- **Maryland:** \$200 initial application and renewal fee.
- **Georgia:** O.C.G.A. Title 44, Ch. 5, Art. 6: (44-5-149) revised uniform anatomical gifts
- **Oregon:** \$1,750 for initial or renewed license. (333-081-0035); expires every two-years \$875 (333-081-0030) ✓
- **Oklahoma:** \$1,000 application or renewal non-refundable fee; permit for a period not to exceed thirty-six month (310: 505-5-2) ✓
- **Nevada:** \$1,750 initial application non-refundable; \$892.50 renewal certificate non-refundable

¹⁴ A license is valid for two years from the date of issuance or renewal as specified in A.R.S. § 36-851.01(C).

36-851.01. Procurement organizations; licensure; renewal; fees; penalties; exceptions

- A. A person may not act as a **procurement organization** in this state unless the person is licensed by the department of health services as a **procurement organization**. The person shall apply in writing to the director of the department on a form specified by the director, shall include all information requested in the application and shall pay the fees prescribed by the director.
- B. The director shall grant a **procurement organization** license to a person if the organization either is accredited by a nationally recognized accrediting agency that is approved by the department of health services and maintains full accreditation with the accrediting agency or meets the requirements prescribed in section 36-851.03 and the rules adopted by the department.
- C. A license under this section is valid for two years and must be renewed every two years. A person shall file an application for renewal at least thirty days before the expiration of the current license.
- D. Each **procurement organization** applying for licensure or license renewal under this section shall pay all applicable fees as prescribed by the director. All fees collected pursuant to this section for the licensure and license renewal of **procurement organizations** shall be deposited in the health services licensing fund established by section 36-414.
- E. The director may sanction, impose civil penalties on or, pursuant to title 41, chapter 6, article 10, suspend or revoke, in whole or in part, the license of any **procurement organization** if any person who is an owner, officer, agent or employee of the **procurement organization** is in or continues to be in violation of this article or the rules of the department of health services adopted pursuant to this article.
- F. This section does not apply to any of the following:
 - 1. An organ **procurement organization** as described by 42 United States Code section 273 that is designated for this state by the secretary of the United States department of health and human services pursuant to 42 United States Code section 1320b-8.
 - 2. A **procurement organization** that is regulated by the United States food and drug administration in connection with the recovery of human tissue intended for transplantation pursuant to 21 Code of Federal Regulations part 1270.
 - 3. A **procurement organization** as defined in section 36-841, paragraph 23, subdivision (d).
 - 4. A **procurement organization** that is affiliated with an accredited educational institution in connection with the education of students enrolled in a degree-granting program for health professionals.
 - 5. A **procurement organization** that recovers anatomical gifts for research or education, including for quality improvement or quality assurance and that is affiliated with a hospital that is licensed pursuant to chapter 4 of this title.
 - 6. A hospital that is licensed pursuant to chapter 4 of this title.

36-851.02. Procurement organizations; deemed status; requirements; inspection

A **procurement organization** that is licensed pursuant to section 36-851.01 by virtue of its accreditation status:

1. Is deemed to meet health and safety requirements that are equivalent to those set forth in section 36-851.03 and is not required to meet the requirements prescribed in section 36-851.03 except as specified in paragraph 2 of this section if the **procurement organization** maintains its accredited status with the accrediting agency.
2. Shall comply with all of the following as adopted in rule by the department of health services:
 - (a) The proper use and maintenance of donor consent forms.
 - (b) The implementation and maintenance of proper identification systems for bodies and disarticulated items.
 - (c) The implementation and maintenance of protocols and materials for procedures used by the **procurement organization** to properly screen end users.
 - (d) The proper documentation and disclosure of the disease status of tissue specimens to end users.
 - (e) Labeling, packaging, transport and distribution policies and procedures.
 - (f) Final disposition procedures.
3. Shall provide a designated area for tissue recovery that does not operate in a funeral establishment for the recovery of whole bodies for medical research and education.
4. Is subject to inspection by the department of health services at any time with respect to compliance with the requirements of paragraph 2 of this section.

36-851.03. Procurement organizations; requirements; records; rules; inspection

- A. Except as provided in section 36-851.02, each **procurement organization** that is required to be licensed pursuant to section 36-851.01 shall do all of the following:
1. Designate a medical director who is a physician licensed pursuant to title 32, chapter 13 or 17 and who provides medical guidance to determine donor eligibility.
 2. Employ a director who holds at least a bachelor's degree in a related science from an accredited university and who is responsible for all licensed activities of the organization.
 3. Comply with all of the following as adopted in rule by the department of health services:
 - (a) The proper use and maintenance of donor consent forms.
 - (b) The implementation and maintenance of proper identification systems for bodies and disarticulated items.
 - (c) The implementation and maintenance of protocols and materials for procedures used by the **procurement organization** to properly screen end users.
 - (d) The proper documentation and disclosure of the disease status of tissue specimens to end users.
 - (e) Labeling, packaging, transport and distribution policies and procedures.
 - (f) Final disposition procedures.
 4. Implement and maintain all of the following:
 - (a) Standard operating procedures for all licensed functions of the organization.
 - (b) A safety awareness and blood-borne pathogen training program that complies with state and federal law.
 - (c) A cleaning program that mitigates potential cross-contamination between donors.
 5. Provide a designated area for tissue recovery that:
 - (a) Is open to inspection by the department of health services with or without notice.
 - (b) Does not operate in a funeral establishment for the recovery of whole bodies for medical research and education.
 6. Properly track donors and label tissue by doing both of the following:
 - (a) Assigning a unique identifying number to each donor and using this number for all tissue from that donor that is recovered and distributed.
 - (b) Affixing labels with the following information on all nontransplant tissue specimens:
 - (i) A statement that universal precautions will be used.
 - (ii) A statement that the specimen is not for transplant or clinical use.
 - (iii) Any condition or limitation regarding the use of the specimen.
 - (iv) Contact information for the **procurement organization**.
 7. Maintain the following records for ten years after the last date of tissue distribution:

- (a) A copy or recorded consent of the donation authorization.
- (b) A copy of the donor's death certificate and transit permit issued by the state where the death occurred.
- (c) A copy of the donor's physical assessment and risk assessment questionnaire.
- (d) A copy of the donor's serological results, when applicable.
- (e) A copy of all documentation relating to tissue recovery, storage and distribution activities.

B. The department of health services shall adopt rules that follow, as nearly as practicable, the requirements on equivalent subjects specified in subsection A of this section that are set forth in the accreditation requirements of a nationally recognized accrediting agency that is approved by the department.

C. A **procurement organization** that is subject to the requirements of this section is subject to inspection by the department of health services at any time to evaluate the compliance by the **procurement organization** with the requirements of this article and the rules adopted by the department.

INDUSTRIAL COMMISSION OF ARIZONA

Title 20, Chapter 5

Amend: R20-5-1041

New Section: R20-5-1405, R20-5-1406, R20-5-1407



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: June 1, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 11, 2022

SUBJECT: INDUSTRIAL COMMISSION OF ARIZONA
Title 20, Chapter 5

Amend: R20-5-1041

New Section: R20-5-1405, R20-5-1406, R20-5-1407

Summary:

This regular rulemaking from the Industrial Commission of Arizona (Commission) seeks to amend one rule and add three (3) rules in Title 20, Chapter 5, Article 14 related to the Municipal Firefighter Cancer Reimbursement Fund and Firefighter and Firefighter Investigator Cancer Claim Reporting. Specifically, A.R.S. § 23-971, enacted in 2021, requires insurance carriers, self-insured employers, and self-insurance pools that provide workers' compensation coverage to firefighters and fire investigators to "compile and report to the [C]ommission claim and claim reserve information for all cancer-related claims filed by or on behalf of firefighters and fire investigators." A.R.S. § 23-971(A)-(B). The Commission is required to aggregate and make the data available to insurance carriers, rating organizations, employers, public safety workers and workers' compensation pools "to assist with the setting of workers' compensation insurance rates and to ensure the adequate reserving for cancer claims for the class codes associated with firefighters and fire investigators." A.R.S. § 23-971(D).

The proposed rules are intended to: (1) specify who may complete cancer-related claim reporting under A.R.S. § 23-971 on behalf of an insurance carrier, self-insured employer, or self-insurance pool; (2) establish the method by which cancer-related claim data is to be submitted to the Commission; (3) prescribe the durations of time that a cancer-related claim must be reported; (4) establish an annual reporting cycle with a designated reporting deadline; and (5) define the general and specific data elements that must be included in annual reporting to ensure accuracy and consistency. The proposed rules seek to add detail and clarity to the general requirements in A.R.S. § 23-971, which the Commission anticipates will ultimately reduce the burden and uncertainty associated with cancer-related claim reporting.

1. **Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

The Commission cites both general and specific statutory authority for these rules.

2. **Do the rules establish a new fee or contain a fee increase?**

This rulemaking does not establish a new fee or contain a fee increase.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The Commission did not review or rely on any study in conducting this rulemaking.

4. **Summary of the agency's economic impact analysis:**

The rules require insurance carriers, self-insured employers, and self-insurance pools that provide workers compensation coverage to firefighters and fire investigators to “compile and report to the Commission claim and claim reserve information for all cancer-related claims files by or on behalf of firefighters and fire investigators.” The proposed rules seek to add detail and clarity to the general requirements in A.R.S. § 23-971, which the Commission anticipates will ultimately reduce the burden and uncertainty associated with cancer-related claim reporting.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Commission indicates it crafted the proposed rulemaking to promote clarity, efficiency, and consistency for the cancer-related claim reporting process. The Commission states there was no less intrusive or less costly alternative method considered.

6. **What are the economic impacts on stakeholders?**

The identified stakeholders are the Commission and entities that are self-insured or who participate in a self-insurance pool. The Commission will be responsible for collecting and publishing firefighter and fire investigator cancer data. However, no new full-time employees

will be required as a result of the rulemaking. The proposed rulemaking will significantly assist the Commission in complying with A.R.S. § 23-971 and ensuring that well-defined, consistent, and reliable data is collected and published.

The rulemaking applies to political subdivisions and small businesses who are self-insured or who participate in a self-insurance pool. The proposed rules are intended to: (1) specify who may complete cancer-related claim reporting under A.R.S. § 23-971 on behalf of an insurance carrier, self-insured employer, or self-insurance pool; (2) establish the method by which cancer-related claim data is to be submitted to the Commission; (3) prescribe the durations of time that a cancer-related claim must be reported; (4) establish an annual reporting cycle with a designated reporting deadline; and (5) define the general and specific data elements that must be included in annual reporting to ensure accuracy and consistency. Because the proposed rulemaking is primarily responsive to A.R.S. § 23-971, the Commission does not anticipate that the proposed rulemaking will add any significant costs to impacted insurance carriers, self-insuring employers, and self-insurance pools.

7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

The Commission indicates there were no changes to the rules between the Notice of Proposed Rulemaking published in the Administrative Register and the Notice of Final Rulemaking now before the Council.

8. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

The Commission indicates it received no written or oral comments related to this rulemaking.

9. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The rules do not require the issuance of a permit, license, or agency authorization.

10. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

Not applicable. The Commission indicates there is no corresponding federal law directly applicable to the subject of the proposed rulemaking.

11. **Conclusion**

This regular rulemaking from the Commission seeks to amend one rule and add three (3) rules in Title 20, Chapter 5, Article 14 related to the Municipal Firefighter Cancer Reimbursement Fund and Firefighter and Firefighter Investigator Cancer Claim Reporting in

order to comply with the requirements of A.R.S. § 23-971. Specifically, the Commission indicates the revisions to the rules will add detail and clarity to the general requirements in A.R.S. § 23-971, which the Commission anticipates will ultimately reduce the burden and uncertainty associated with cancer-related claim reporting.

The Commission is requesting an immediate effective date for the proposed amendments to the rules under A.R.S. § 41-1032(A)(1) (“To preserve the public peace, health or safety.”); A.R.S. § 41-1032(A)(2) (“To avoid a violation of . . . state law, if the need for an immediate effective date is not created due to the agency’s delay or inaction.”); and A.R.S. § 23-1032(A)(4) (“To provide a benefit to the public and a penalty is not associated with a violation of the rule.”).

Pursuant to A.R.S. § 41-1032(A)(1), the Commission states an immediate effective date will allow the Commission to promptly begin collecting and publishing firefighter and fire investigator cancer data, which will benefit insurance carriers, rating organizations, employers, public safety workers, and workers’ compensation pools and “assist with the setting of workers’ compensation insurance rates and [] ensure the adequate reserving for cancer claims for the class codes associated with firefighters and fire investigators.” A.R.S. § 23-971(D). The Commission states collection and publication of firefighter and fire investigator cancer data will ultimately contribute to the preservation of the health and safety of Arizona’s firefighters and fire investigators.

Pursuant to A.R.S. § 41-1032(A)(2), the Commission indicates A.R.S. § 23-971 imposes legal obligations on insurance carriers, self-insured employers, and self-insurance pools, but does not provide sufficient detail and clarity for impacted stakeholders to comply with the new statutory requirements. The Commission states the proposed rules aim to add clarity and a reporting framework to the general requirements in A.R.S. § 23-971 to assist the regulated community in complying with the new state law. The Commission states the need for an immediate effective date was not created due to the Commission’s delay or inaction. A.R.S. § 23-971 did not become law until September 29, 2021, and the Commission has acted expeditiously by working with stakeholders to develop the proposed rules.

Finally, pursuant to A.R.S. § 41-1032(A)(4), the Commission states the proposed rules will ultimately benefit the public by adding clarity and a reporting framework that will support the prompt collection and publication of firefighter and fire investigator cancer data beginning in Fiscal Year 2023. No penalty is associated with a violation of the proposed rules.

Council staff believes the Commission has provided adequate justification for an immediate effective date for the rules. Council staff recommends approval of this rulemaking.

THE INDUSTRIAL COMMISSION OF ARIZONA
OFFICE OF THE DIRECTOR



DALE L. SCHULTZ, CHAIRMAN
JOSEPH M. HENNELLY, JR., VICE CHAIR
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JAMES ASHLEY, DIRECTOR
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April 18, 2022

Sent via e-mail to grrc@azdoa.gov

Nicole Sornsins, Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Request for Approval of Rulemaking: A.A.C. Title 20, Chapter 5, Article 14
("Municipal Firefighter Cancer Reimbursement Fund and Firefighter and Fire
Investigator Cancer Claim Reporting")

Dear Ms. Sornsins:

The Industrial Commission of Arizona (the "Commission") requests that the Governor's Regulatory Review Council (the "Council") approve the above-referenced rulemaking. Pursuant to A.A.C. R1-6-201(A)(1), the Commission provides the following information:

a. The close of record date.

March 21, 2022.

b. Whether the rulemaking activity relates to a five-year review report and, if applicable, the date the report was approved by the Council.

The subject rulemaking activity does not relate to a five-year review report.

c. Whether the rule establishes a new fee and, if it does, citation of the statute expressly authorizing the new fee.

The subject rulemaking does not establish a new fee.

d. Whether the rule contains a fee increase.

The subject rulemaking does not contain a fee increase.

e. Whether an immediate effective date is requested for the rule under A.R.S. § 41-1032.

The Commission is requesting an immediate effective date under A.R.S. § 41-1032(A)(1), (2), and (4).

- f. A certification that the preamble discloses a reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.**

The Commission did not rely on a study for justification of the subject rulemaking.

- g. If one or more full-time employees are necessary to implement and enforce the rule, a certification that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule.**

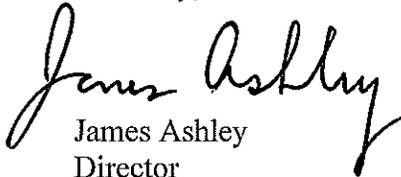
The Commission does not anticipate that it will be necessary to hire any new full-time employees to implement or enforce the subject rulemaking.

- h. A list of all documents enclosed.**

Governor's Office Approvals of Initial and Final Rulemaking
Notice of Final Rulemaking
Economic Impact Statement
General and Specific Statutes Authorizing Rulemaking
Defined Terms

Thank you for your consideration. Should you have any questions regarding the amendments, please contact Gaetano Testini, Chief Legal Counsel, at 602-542-5781.

Sincerely,


James Ashley
Director

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable):</u>	<u>Rulemaking Action:</u>
R20-5-1401	Amend
R20-5-1405	New Section
R20-5-1406	New Section
R20-5-1407	New Section

2. Citations to agency’s statutory rulemaking authority to include the authorizing statute and the implementing statutes:

Authorizing statute: A.R.S. §§ 23-107(A)(1), 23-921(B)

Implementing statutes: A.R.S. § 23-971

Note: An exception from the moratorium on rulemaking, Executive Order 2022-01, was initially provided for this rulemaking by Brian Norman, Policy Advisor in the Office of the Arizona Governor, by e-mail dated January 26, 2022. A final exception from the moratorium on rulemaking was provided by Brian Norman by e-mail dated April 12, 2022.

3. The effective date of the rules:

The Industrial Commission of Arizona (the “Commission”) requests an immediate effective date under A.R.S. § 41-1032(A)(1) (“To preserve the public peace, health or safety.”); A.R.S. § 41-1032(A)(2) (“To avoid a violation of . . . state law, if the need for an immediate effective date is not created due to the agency’s delay or inaction.”); and A.R.S. § 23-1032(A)(4) (“To provide a benefit to the public and a penalty is not associated with a violation of the rule.”).

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):

A.R.S. § 23-971, enacted in 2021, requires insurance carriers, self-insured employers, and

self-insurance pools that provide workers' compensation coverage to firefighters and fire investigators to "compile and report to the [C]ommission claim and claim reserve information for all cancer-related claims filed by or on behalf of firefighters and fire investigators." A.R.S. § 23-971(A)-(B). The Commission is then required to aggregate and make the data available to insurance carriers, rating organizations, employers, public safety workers and workers' compensation pools "to assist with the setting of workers' compensation insurance rates and to ensure the adequate reserving for cancer claims for the class codes associated with firefighters and fire investigators." A.R.S. § 23-971(D). An immediate effective date is requested for the following reasons:

- **A.R.S. § 41-1032(A)(1):** An immediate effective date will allow the Commission to promptly begin collecting and publishing firefighter and fire investigator cancer data, which will benefit insurance carriers, rating organizations, employers, public safety workers, and workers' compensation pools and "assist with the setting of workers' compensation insurance rates and [] ensure the adequate reserving for cancer claims for the class codes associated with firefighters and fire investigators." A.R.S. § 23-971(D). Collection and publication of firefighter and fire investigator cancer data will ultimately contribute to the preservation of the health and safety of Arizona's firefighters and fire investigators.
- **A.R.S. § 41-1032(A)(2):** A.R.S. § 23-971 imposes legal obligations on insurance carriers, self-insured employers, and self-insurance pools, but does not provide sufficient detail and clarity for impacted stakeholders to comply with the new statutory requirements. The proposed rules aim to add clarity and a reporting framework to the general requirements in A.R.S. § 23-971 to assist the regulated community in complying with the new state law. The need for an immediate effective date was not created due to the Commission's delay or inaction. A.R.S. § 23-971 did not become law until September 29, 2021, and the Commission has acted expeditiously by working with stakeholders to develop the proposed rules.
- **A.R.S. § 41-1032(A)(4):** Finally, the proposed rules will ultimately benefit the public by adding clarity and a reporting framework that will support the prompt collection and publication of firefighter and fire investigator cancer data beginning in Fiscal Year 2023. No penalty is associated with a violation of the proposed rules.

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: 28 A.A.R. 372, February 11, 2022

Notice of Proposed Rulemaking: 28 A.A.R. 361, February 11, 2022

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

Name: Gaetano Testini, Chief Counsel
Address: Industrial Commission of Arizona
800 W. Washington St.
Phoenix, AZ 85007
Telephone: (602) 542-5905
Fax: (602) 542-6783
E-mail: gaetano.testini@azica.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:

A.R.S. § 23-971, enacted in 2021, requires insurance carriers, self-insured employers, and self-insurance pools that provide workers' compensation coverage to firefighters and fire investigators to "compile and report to the [C]ommission claim and claim reserve information for all cancer-related claims filed by or on behalf of firefighters and fire investigators." A.R.S. § 23-971(A)-(B). The Commission is required to aggregate and make the data available to insurance carriers, rating organizations, employers, public safety workers and workers' compensation pools "to assist with the setting of workers' compensation insurance rates and to ensure the adequate reserving for cancer claims for the class codes associated with firefighters and fire investigators." A.R.S. § 23-971(D).

The proposed rules are intended to: (1) specify who may complete cancer-related claim reporting under A.R.S. § 23-971 on behalf of an insurance carrier, self-insured employer, or self-insurance pool; (2) establish the method by which cancer-related claim data is to be submitted to the Commission; (3) prescribe the durations of time that a cancer-related claim

must be reported; (4) establish an annual reporting cycle with a designated reporting deadline; and (5) define the general and specific data elements that must be included in annual reporting to ensure accuracy and consistency. The proposed rules seek to add detail and clarity to the general requirements in A.R.S. § 23-971, which the Commission anticipates will ultimately reduce the burden and uncertainty associated with cancer-related claim reporting.

7. A reference to any study relevant to the rule that the agency reviewed and proposes either to 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 Commission did not review or rely on any study relevant to the proposed rules.

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

Not applicable.

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

A.R.S. § 23-971 requires insurance carriers, self-insured employers, and self-insurance pools who cover firefighters and fire investigators to “compile and report to the [C]ommission claim and claim reserve information for all cancer-related claims filed by or on behalf of firefighters and fire investigators.” A.R.S. § 23-971(A)-(B). The proposed rulemaking is primarily responsive to § 23-971, and, as such, creates minimal economic, small business, or consumer impact beyond that already created by § 23-971.

The Commission anticipates that the proposed rules will reduce regulatory burden and uncertainty by establishing a streamlined process and timeline for reporting cancer-related claim data to the Commission. The proposed rules will: (1) allow designees of impacted stakeholders, such as an adjuster or third-party administrator, to complete claim reporting; (2) establish that reporting is required only once per year; (3) establish specific reporting durations for claims to eliminate the need for impacted stakeholders to continue reporting on claims after the data is no longer valuable; (4) establish a streamlined electronic process for submitting data to the Commission; and (5) define the data elements that must be reported, which will assist impacted stakeholder in reporting consistent and accurate data. The

proposed rules promote clarity, efficiency, and consistency for the cancer-related claim reporting process. The proposed rules will have minimal, if any, adverse economic impact on small businesses or consumers.

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

No changes were made to the proposed rulemaking.

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

No written or oral comments were received by the Commission.

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:

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 proposed rules do not require issuance of a regulatory permit or license.

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 no federal law directly applicable to the subject of the proposed 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:

An analysis was not 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. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

**ARTICLE 14. MUNICIPAL FIREFIGHTER CANCER REIMBURSEMENT FUND AND
FIREFIGHTER AND FIRE INVESTIGATOR CANCER CLAIM REPORTING**

<u>Section</u>	<u>Title</u>
R20-5-1401	<u>Application of the Article and Definitions</u>
R20-5-1405	<u>Cancer Claim Reporting Method; Frequency; Deadlines; Duration</u>
R20-5-1406	<u>Cancer Reporting; Required General Data Elements</u>
R20-5-1407	<u>Cancer Reporting; Required Claim-Specific Data Elements</u>

**ARTICLE 14. MUNICIPAL FIREFIGHTER CANCER REIMBURSEMENT FUND AND
FIREFIGHTER AND FIRE INVESTIGATOR CANCER CLAIM REPORTING**

R20-5-1401 Application of the Article and Definitions

A. This Article applies to reimbursement claims submitted to the Municipal Firefighter Cancer Reimbursement Fund under Arizona Revised Statutes (“A.R.S.”), Title 23, Chapter 11, and firefighter and fire investigator cancer claim reporting under A.R.S. § 23-971.

B. The definitions in A.R.S. §§ 23-1701 and 23-901.09 apply in this Article.

C. “Cancer-related claims” as used in A.R.S. § 23-971 and this Article shall mean Arizona workers’ compensation claims involving any disease, infirmity, or impairment of health that is caused by cancer.

D. “Fiscal year” or “reporting period” shall mean the 12-month cycle that begins on July 1 and ends on June 30.

E. “Loss valuation date” shall mean the last day of the reporting period and the date on which firefighter and fire investigator cancer claim data shall be determined for reporting purposes.

E. An “open” claim shall mean a workers’ compensation claim that is eligible for temporary compensation and/or active medical treatment. A “closed” claim shall mean a workers’ compensation claim in which temporary compensation and active medical treatment have been terminated.

R20-5-1405 Cancer Claim Reporting Method; Frequency; Deadlines; Duration

A. Cancer-related claim reporting under A.R.S. § 23-971 and this Article shall be performed electronically through the commission’s electronic claims portal. Insurance carriers, self-insured employers, self-insurance pools, or a designee (including third-party administrators or an adjuster) are authorized to complete required claim reporting. Duplicate reporting of the same claim information is prohibited.

B. Subject to the claim reporting durations specified in subsection D of this section, insurance carriers, self-insured employers, and self-insurance pools subject to A.R.S. § 23-971

shall annually report the data elements specified in R20-5-1407 and R20-5-1408 for cancer-related claims filed by or on behalf of firefighters and fire investigators.

C. Claim data reported pursuant to subsection B of this section shall be determined as of the loss valuation date for the applicable reporting period.

D. Claim reporting shall be completed within 31 days after each applicable reporting period, i.e., no later than July 31 of each year.

E. Claim reporting under A.R.S. § 23-971 is subject to the following claim reporting durations:

1. Denied Claims: Reported one time following the reporting period during which the claim is denied by a notice of claim status. Reporting is not required for claims denied prior to July 1, 2021.
2. Claims Accepted on or after July 1, 2021: Reported for the longer of: (a) the duration the claim remains open plus two additional annual reports after the claim is closed; or (b) ten annual reports after acceptance of the claim.
3. Claims Accepted before July 1, 2021: If the claim was open on July 1, 2021, the claim shall be reported for the duration the claim remains open plus two additional annual reports after the claim is closed. If the claim was closed as of July 1, 2021, and was accepted on or after July 1, 2011, the claim shall be reported for two annual reports. If the claim was closed as of July 1, 2021, and was accepted prior to July 1, 2011, reporting is not required.
4. Reopened Claims: Reported for the longer of: (1) the duration the claim remains open (following acceptance of the petition to reopen), plus two additional annual reports after the claim is closed; or (2) ten annual reports after acceptance of the petition to reopen.
5. Claims that Develop into Cancer-Related Claims: If a claim develops into a cancer-related claim, reporting should begin following the reporting period in which the claim developed into a cancer-related claim. In these circumstances, the claim shall be reported for the longer of: (1) the duration the claim remains open plus two additional annual reports after the claim is closed; or (2) ten annual reports.
6. Non-Cancer-Related Claims: If a cancer-related claim develops into a claim that no longer meets the definition of a cancer-related claim, no further annual reporting is required.
7. Informational Claims: Claims that have been filed but have not been accepted or denied as of the applicable loss valuation date shall not be reported.

R20-5-1406 Cancer Reporting; Required General Data Elements

A. Name of Data Provider (i.e., What entity is reporting the data?): The name of the insurance carrier, self-insured employer, self-insurance pool, or designee submitting the cancer-related claim data.

B. Data Provider Type Code: Insurance Carrier; Self-Insured Employer; Self-Insurance Pool; Third-Party Administrator; or Other Designee.

C. Name of Person Submitting Data: The name of the individual submitting the cancer-related claim data.

D. Name of Data Provider Primary Contact: The name of the individual designated by the Data Provider who can be contacted regarding the data submission. (May be the same as the “Name of Person Submitting the Data.”)

E. Data Provider Primary Contact Phone Number: The phone number of the Data Provider Primary Contact.

F. Data Provider Primary Contact Email Address: The email address of the Data Provider Primary Contact.

G. Loss valuation date: The last day of the 12-month reporting period.

H. Total Number of New Cancer-Related Claims: Total number of cancer-related claims filed by or on behalf of firefighters and fire investigators during the applicable reporting period (whether or not the claims are included in the detailed reporting).

1. Accepted: Total number of new cancer-related claims accepted during the applicable reporting period.

2. Denied: Total number of cancer-related claims denied during the applicable reporting period.

3. Pending: Total number of cancer-related claims pending decision on the applicable loss valuation date.

R20-5-1407 Cancer Reporting: Required Claim-Specific Data Elements

A. Unique Claim Identifier: The unique, alphanumeric claim identifier (up to 20 characters, but no less than 7 characters) assigned by the carrier, self-insured employer, or self-insurance pool to a specific claim. The claim identifier shall remain the same throughout the life of the claim. Usage of the commission’s claim number is prohibited. Usage of claimant name, personally-identifiable information, or carrier/self-insured employer/self-insurance pool name in identifier is prohibited.

B. Transaction Type Code: The code that identifies a report as an initial report (01) or subsequent report (02).

C. Occupational Descriptor Code: (01) = Firefighter (02) = Fire Investigator.

D. Sex Code: The sex of the injured worker. (M = Male, F = Female, N = Not Reported.)

- E.** Birth Year: The 4-digit birth year of the injured worker.
- F.** Year Claim Reported: The 4-digit year the claim was reported to the carrier/self-insured employer/self-insurance pool.
- G.** Year of Loss: The 4-digit year when the injury (cancer) became manifest.
- H.** Year of Hire: The 4-digit year when the injured worker was hired by the employer as a firefighter or fire investigator (either full-time or part-time). If unknown, enter (U).
- I.** Name of Carrier, Self-Insured Employer, or Self-Insurance Pool: Complete business name of insurance carrier or self-insured employer/pool responsible for the claim.
- J.** Employer Name: The complete business name of the employer (including a DBA, if applicable) related to the claim.
- K.** County Code: The code corresponding to Arizona county primarily served by the employer. (01) = Apache; (2) = Cochise; (3) = Coconino; (4) = Gila; (5) = Graham; (6) = Greenlee; (7) = La Paz; (8) = Maricopa; (9) = Mohave; (10) = Navajo; (11) = Pima; (12)= Pinal; (13) = Santa Cruz; (14) = Yavapai; (15) = Yuma.
- L.** Claim Acceptance Date: The date the claim was first accepted as compensable. If the claim was denied, enter (D).
- M.** Claim Denial Code: The code corresponding to the reason a claim was denied. (01) = Claim not compensable; (02) No coverage; (03) Other reason. If the claim was accepted, enter (A).
- N.** Claims Status Code: The code corresponding to the claim's status as of the loss valuation date. (01) = claim is open (not reopened) on the loss valuation date; (02) = claim is closed on the loss valuation date; (03) = claim is reopened on the loss valuation date. If the claim was denied, enter (D).
- O.** Benefit Code: The code that identifies under which provision of the law benefits are being paid on the loss valuation date. (01) = Death; (02) = Permanent Total Disability; (03) Permanent Partial Disability - Unscheduled; (04) Permanent Partial Disability – No Loss; (05) Temporary Total Disability; (06) Temporary Partial Disability; (07) Claim Denied.
- P.** Settlement Code: (00) = Claim not subject to settlement during the reporting period; (01) = Full and final settlement during the reporting period; (03) Stipulated award during the reporting period; (05) Noncompensable settlement during the reporting period; (06) = Compromise settlement during the reporting period; (09) Other settlement during the reporting period; (10) Multiple settlements during the reporting period.
- Q.** Lump Sum Indicator: Indicates whether the claim has been settled by a lump sum amount. N = No; Y =Yes.
- R.** Closed Date: If the claim closed during the reporting period, report the date of claim closure. (Required if the claim closed during the reporting period.)

S. Reopened Date: If the claim re-opened during reporting period, report the date of claim reopening. (Required if the claim reopened during the reporting period.)

T. Primary Type of Cancer Code: The primary type of cancer involved in the claim on the loss valuation date. Options are brain (01), bladder (02), rectal (03), colon (04), lymphoma (05), leukemia (06), adenocarcinoma (07), mesothelioma of the respiratory tract (08), buccal cavity (09), pharynx (10), esophagus (11), large intestine (12), lung (13), kidney (14), prostate (15), skin (16), stomach (17), ovarian (18), breast (19), testicular (20), non-Hodgkin's lymphoma (21), multiple myeloma (22), and malignant melanoma (23). Non-listed cancers may be designated as "other" (30).

U. Secondary Type of Cancer Code: If applicable, the secondary type of cancer involved in the claim on the loss valuation date. Options are brain (01), bladder (02), rectal (03), colon (04), lymphoma (05), leukemia (06), adenocarcinoma (07), mesothelioma of the respiratory tract (08), buccal cavity (09), pharynx (10), esophagus (11), large intestine (12), lung (13), kidney (14), prostate (15), skin (16), stomach (17), ovarian (18), breast (19), testicular (20), non-Hodgkin's lymphoma (21), multiple myeloma (22), and malignant melanoma (23). Non-listed cancers may be designated as "other" (30). (Required if applicable.)

V. Amounts Paid (as of loss valuation date):

- 1.** Indemnity Paid: The total amount of paid indemnity for the claim as of the loss valuation date. These losses consist of all paid benefits due to an employee's lost wages or inability to work, including compensation paid to a deceased claimant prior to death, burial expense, claimant's attorney fees, vocational rehabilitation benefits, indemnity settlement payments, and employer's liability losses and expenses. Allocated loss adjustment expense ("ALAE") for other than employer's liability coverage shall be excluded from indemnity losses.
- 2.** Medical Paid: The total amount of medical losses paid for the claim as of the loss valuation date, including medical settlement payments.
- 3.** ALAE Paid: The total amount of ALAE paid for the claim as of the loss valuation date.
- 4.** Death Benefits Paid: The total amount of death benefits paid for the claim as of the loss valuation date.

W. Incurred Amounts (as of loss valuation date):

- 1.** Incurred Indemnity Amount: The total of "Indemnity Paid" plus the current outstanding reserve indemnity benefits, excluding loss adjustment expenses (e.g., ALAE and unallocated loss adjustment expense ("ULAE")).
- 2.** Incurred Medical Amount: The total of "Medical Paid" plus the current outstanding reserve medical benefits, excluding loss adjustment expenses (e.g., ALAE and ULAE).

3. Incurring ALAE Amount: The total of “ALAE Paid” plus the current outstanding reserve ALAE.
4. Incurring Death Benefits Amount: The total of “Death Benefits Paid” plus the current outstanding reserve death benefits, excluding loss adjustment expenses (e.g., ALAE and ULAE).

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

**ARTICLE 14. MUNICIPAL FIREFIGHTER CANCER REIMBURSEMENT
FUND AND FIREFIGHTER AND FIRE INVESTIGATOR CANCER CLAIM
REPORTING**

1. Identification of the proposed rulemaking:

A.R.S. § 23-971, enacted in 2021, requires insurance carriers, self-insured employers, and self-insurance pools that provide workers’ compensation coverage to firefighters and fire investigators to “compile and report to the [C]ommission claim and claim reserve information for all cancer-related claims filed by or on behalf of firefighters and fire investigators.” A.R.S. § 23-971(A)-(B). The Commission is required to aggregate and make the data available to insurance carriers, rating organizations, employers, public safety workers and workers’ compensation pools “to assist with the setting of workers’ compensation insurance rates and to ensure the adequate reserving for cancer claims for the class codes associated with firefighters and fire investigators.” A.R.S. § 23-971(D).

The proposed rules are intended to: (1) specify who may complete cancer-related claim reporting under A.R.S. § 23-971 on behalf of an insurance carrier, self-insured employer, or self-insurance pool; (2) establish the method by which cancer-related claim data is to be submitted to the Commission; (3) prescribe the durations of time that a cancer-related claim must be reported; (4) establish an annual reporting cycle with a designated reporting deadline; and (5) define the general and specific data elements that must be included in annual reporting to ensure accuracy and consistency. The proposed rules seek to add detail and clarity to the general requirements in A.R.S. § 23-971, which the Commission anticipates will ultimately reduce the burden and uncertainty associated with cancer-related claim reporting.

2. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking:

A.R.S. § 23-971 requires insurance carriers, self-insured employers, and self-insurance pools that provide workers’ compensation coverage to firefighters and fire

investigators to “compile and report to the [C]ommission claim and claim reserve information for all cancer-related claims filed by or on behalf of firefighters and fire investigators.” A.R.S. § 23-971(A)-(B). The Commission is then required to aggregate and make the data available to insurance carriers, rating organizations, employers, public safety workers and workers’ compensation pools “to assist with the setting of workers’ compensation insurance rates and to ensure the adequate reserving for cancer claims for the class codes associated with firefighters and fire investigators.” A.R.S. § 23-971(D).

The proposed rules will facilitate the collection and publication of well-defined, consistent, and reliable firefighter and fire investigator cancer data, which will ultimately assist insurance carriers, rating organizations, employers, public safety workers, and workers’ compensation pools “with the setting of workers’ compensation insurance rates” and “ensure the adequate reserving for cancer claims for the class codes associated with firefighters and fire investigators.” A.R.S. § 23-971(D). Collection and publication of this data will ultimately contribute to the preservation of the health and safety of Arizona’s firefighters and fire investigators.

Moreover, A.R.S. § 23-971 imposes reporting obligations on certain insurance carriers, self-insuring employers, and self-insurance pools who provide coverage to firefighters and fire investigators, but does not provide the necessary clarity or reporting framework for stakeholders to comply with the new statutory requirements. The proposed rules will directly affect the impacted insurance carriers, self-insured employers, and self-insurance pools by adding clarity and a reporting framework to the general requirements in A.R.S. § 23-971. Specifically, the proposed rules are intended to: (1) specify who may complete cancer-related claim reporting under A.R.S. § 23-971 on behalf of an insurance carrier, self-insured employer, or self-insurance pool; (2) establish the method by which cancer-related claim data is to be submitted to the Commission; (3) prescribe the durations of time that a cancer-related claim must be reported; (4) establish an annual reporting cycle with a designated reporting deadline; and (5) define the general and specific data elements that must be included in annual reporting to ensure accuracy and consistency. The Commission anticipates that the proposed rules will assist the regulated community in complying with the new statutory reporting requirements and ensure that well-defined, consistent, and reliable data is provided to the Commission. Because the proposed

rulemaking in primarily responsive to A.R.S. § 23-971, the Commission does not anticipate that the proposed rulemaking will add any significant costs to impacted insurance carriers, self-insuring employers, and self-insurance pools.

3. A cost benefit analysis of the following:

(a) Costs and benefits to state agencies directly affected by the rulemaking, including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

To the extent that the State of Arizona, as a self-insured employer, is subject to the reporting requirements in A.R.S. § 23-971 or would benefit from the publication of firefighter and fire investigator cancer data, the proposed rulemaking would apply directly to the Arizona Department of Administration, Risk Management. For further discussion regarding the anticipated costs and benefits to entities affected by the rulemaking, *see supra* Section 2.

The Commission will also be directly affected by the rulemaking, as it is the agency responsible for collecting and publishing firefighter and fire investigator cancer data. However, no new full-time employees will be required as a result of the rulemaking. The proposed rulemaking will significantly assist the Commission in complying with A.R.S. § 23-971 and ensuring that well-defined, consistent, and reliable data is collected and published.

(b) Costs and benefits to political subdivisions directly affected by the rulemaking;

The rulemaking applies to political subdivisions who are self-insured or who participate in a self-insurance pool. For further discussion regarding the anticipated costs and benefits to entities affected by the rulemaking, *see supra* Section 2.

(c) Costs and benefits to businesses directly affected by the rulemaking:

For further discussion regarding the anticipated costs and benefits to entities affected by the rulemaking, *see supra* Section 2.

4. Impact on private and public employment in businesses, agencies and political subdivisions:

The Commission does not anticipate that the rulemaking will have an impact on private and public employment in businesses, agencies, and political subdivisions.

5. Impact on small businesses:

(a) Identification of the small businesses subject to the rulemaking:

Because A.R.S. § 23-971 and the proposed rulemaking apply primarily to insurance carriers, self-insured employers, and self-insurance pools who provide workers' compensation coverage to firefighters and fire investigators, the Commission does not anticipate that any small businesses will be subject to the rulemaking. All employers, however, will have access to the cancer data published by the Commission.

(b) Administrative and other costs required for compliance with the rulemaking:

The rulemaking does not impose costs for compliance on small businesses. Instead, the amendments are intended to reduce regulatory burden on impacted stakeholders. *See supra* Section 2.

(c) Description of the methods that may be used to reduce the impact on small businesses:

Not applicable.

(d) Cost and benefit to private persons and consumers who are directly affected by proposed rulemaking:

The proposed rulemaking does not establish any costs on private persons or consumers and instead is expected to contribute to the preservation of the health and safety of Arizona's firefighters and fire investigators.

6. Probable effect on state revenues:

The Commission does not anticipate that the proposed rulemaking will have an effect on state revenues.

7. Less intrusive or less costly alternative methods considered:

Not applicable. The Commission crafted the proposed rulemaking to promote clarity, efficiency, and consistency for the cancer-related claim reporting process. *See supra* Section 2.

8. Data on which the rule is based:

The Commission did not perform any studies or review data as a basis for the rulemaking.

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

11. The presiding ALJ shall issue a short form decision within five business days after the matter is deemed submitted.

Historical Note

New Section made by final rulemaking at 22 A.A.R. 1730, effective October 1, 2016 (Supp. 16-2).

ARTICLE 14. MUNICIPAL FIREFIGHTER CANCER REIMBURSEMENT FUND AND FIREFIGHTER AND FIRE INVESTIGATOR CANCER CLAIM REPORTING

R20-5-1401. Application of the Article and Definitions

- A. This Article applies to reimbursement claims submitted to the Municipal Firefighter Cancer Reimbursement Fund under Arizona Revised Statutes (“A.R.S.”), Title 23, Chapter 11.
- B. The definitions in A.R.S. § 23-1701 apply in this Article.
- C. “Fiscal year” shall mean the 12-month cycle that begins on July 1 and ends on June 30.

Historical Note

New Section made by final exempt rulemaking at 27 A.A.R. 2920 (December 17, 2021), effective January 1, 2022 (Supp. 21-4).

R20-5-1402. Reimbursement Claims

- A. A Municipal Payor seeking reimbursement from the Fund shall submit a reimbursement claim in writing on the Municipal Firefighter Cancer Reimbursement Form approved by the Commission.
- B. The Municipal Firefighter Cancer Reimbursement Form shall include the following attestations, which shall be made by an authorized representative of a Municipal Payor seeking reimbursement from the Fund:
1. The reimbursement request includes only eligible compensation and benefits paid under A.R.S. § 23-1702(A) on municipal firefighter or municipal fire investigator workers’ compensation claims accepted under A.R.S. § 23-901.09.
 2. The reimbursement request only includes amounts actually paid by the Municipal Payor for compensation and benefits under A.R.S. § 23-1702(A) during the immediately preceding fiscal year.
 3. The reimbursement request does not include amounts paid for expenses relating to case management, vocational rehabilitation, or similar nonmedical costs.
 4. The information included in, or submitted with, the Municipal Firefighter Cancer Reimbursement Form is true and correct.
- C. The Municipal Firefighter Cancer Reimbursement Form shall not be changed, amended, or otherwise altered without the prior written approval of the Commission.
- D. A Municipal Payor seeking reimbursement from the Fund for compensation and benefits paid during a fiscal year shall submit a reimbursement claim to the Commission between July 1

and August 31 immediately following the applicable fiscal year.

- E. Failure to timely submit a reimbursement claim for compensation and benefits paid during a fiscal year before the claim submission deadline in subsection (D) will be deemed a waiver of the right of the Municipal Payor to request reimbursement for amounts paid during the applicable fiscal year. Failure to include all eligible compensation or benefits in a reimbursement claim before the claim submission deadline in subsection (D) will be deemed a waiver of the right of the Municipal Payor to request reimbursement for any omitted amounts paid during the applicable fiscal year.
- F. The Commission shall process reimbursements pursuant to A.R.S. § 23-1702(C) on or before December 31 of each year.
- G. The maximum annual amount of aggregate reimbursements paid by the Fund shall in no event exceed the total amount of monies in the Fund as of close of business on June 30 of the applicable fiscal year.

Historical Note

New Section made by final exempt rulemaking at 27 A.A.R. 2920 (December 17, 2021), effective January 1, 2022 (Supp. 21-4).

R20-5-1403. Recordkeeping and Record Inspections

- A. Municipal Payors seeking reimbursement from the Fund shall maintain all records supporting amounts included in a reimbursement claim for at least ten years after the reimbursement claim is filed.
- B. Municipal Payor records supporting amounts included in a reimbursement claim shall always be open for inspection by the Commission or representatives of the Commission to ascertain information necessary for its administration of A.R.S. §§ 23-1701 through 23-1703. Upon request, a Municipal Payor shall make such records available to the Commission within 30 days.

Historical Note

New Section made by final exempt rulemaking at 27 A.A.R. 2920 (December 17, 2021), effective January 1, 2022 (Supp. 21-4).

R20-5-1404. Fund Overpayments

- A. A Municipal Payor that discovers an error in a reimbursement claim which may result or has resulted in an overpayment from the Fund shall notify the Commission of the error within three business days of discovery of the error.
- B. Overpayments made by the Fund to Municipal Payors that are discovered through inspection of records, or otherwise, shall be returned to the Fund by the applicable Municipal Payor within 30 days of notification by the Commission.

Historical Note

New Section made by final exempt rulemaking at 27 A.A.R. 2920 (December 17, 2021), effective January 1, 2022 (Supp. 21-4).

GENERAL AND SPECIFIC STATUTES

23-107. General powers

A. The commission has full power, jurisdiction and authority to:

1. Formulate and adopt rules and regulations for effecting the purposes of this article.
2. Administer and enforce all laws for the protection of life, health, safety and welfare of employees in every case and under every law when such duty is not specifically delegated to any other board or officer, and, when such duty is specifically delegated, to counsel, advise and assist in the administration and enforcement of such laws and for such purposes may conduct investigations.
3. Promote the voluntary arbitration, mediation and conciliation of disputes between employers and employees.
4. License and supervise the work of private employment offices, bring together employers seeking employees and working people seeking employment, and make known the opportunities for employment in the state.
5. Collect, collate and publish all statistical and other information relating to employees, employers, employments and places of employment with other appropriate statistics.
6. Act as the regulatory agency insuring that workers' compensation carriers are processing claims in accordance with chapter 6 of this title.
7. Provide nonpublic, confidential or privileged documents, materials or other information to another state, local or federal regulatory agency for the purpose of the legitimate administrative needs of the programs administered by that agency if the recipient agency agrees and warrants that it has the authority to maintain and will maintain the confidentiality and privileged status of the documents, materials or other information.
8. Receive nonpublic documents, materials and other information from another state, local or federal regulatory agency to properly administer programs of the commission. The commission shall maintain as confidential or privileged any document, material or other information that is identified by the exchange agency as confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.
9. Enter into agreements that govern the exchange of nonpublic documents, materials and other information that are consistent with paragraphs 7 and 8. The commission may request nondisclosure of information that is identified as privileged or confidential. Any disclosure pursuant to paragraph 7 or 8 or this paragraph is not a waiver of any applicable privilege or claim of confidentiality in the documents, materials or other information.

23-921. Administration of chapter

A. The industrial commission of Arizona is charged with the duties of the administration of this chapter, and with the adjudication of claims for compensation arising out of provisions of this chapter and any of its members or assistants so authorized may:

1. Hold hearings at any place within the state or without the state by agreement of the parties.

2. Administer oaths.

3. Issue and serve by the commission's representatives, or by any sheriff, subpoenas for the attendance of witnesses and claimants and the production of reports, papers, contracts, books, accounts, documents and testimony. The commission may require the attendance and testimony of employers, their officers and representatives before any proceeding of the commission, and the production by employees of books, records, papers and documents.

4. Generally provide for the taking of testimony and for the recording of proceedings held in accordance with this chapter.

B. The commission may make and declare all rules and regulations which are reasonably required in the performance of its duties, including but not limited to rules of practice and procedure in connection with hearing and review proceedings. Such rules and regulations may provide for informal prehearing conferences in order to expedite claim adjudication, amicably dispose of controversies, narrow issues and simplify the method of proof at hearings.

C. The commission may incur such expenses as it determines are reasonably necessary to perform its authorized functions, which expenses shall be a charge against the administrative fund.

D. The commission may charge any person with contempt who refuses to comply with any order of the commission, upon application to the superior court. Any person held in contempt may be punished by a fine of not to exceed one thousand dollars.

23-971. Firefighter and fire investigator cancer claim information; data sharing; definitions

A. All insurance carriers, self-insuring employers and workers' compensation pools securing workers' compensation for firefighters and fire investigators pursuant to this chapter shall compile and report to the commission claim and claim reserve information for all cancer-related claims filed by or on behalf of firefighters and fire investigators.

B. The information required by subsection A of this section shall include all of the following:

1. The type of cancer.
2. The total claim costs.
3. The claim reserved by the insurance carrier, self-insuring employer or workers' compensation pool.
4. Any other information requested by the commission.

C. Notwithstanding subsections A and B of this section, the commission may not require or obtain any personally identifiable information for any claimant.

D. The commission shall compile and make available to insurance carriers, rating organizations, employers, public safety workers and workers' compensation pools the claim-related information collected pursuant to this section to assist with the setting of workers' compensation insurance rates and to ensure the adequate reserving for cancer claims for the class codes associated with firefighters and fire investigators.

E. For the purposes of this section, "firefighter" and "fire investigator" have the same meanings prescribed in section 23-901.09.

DEFINED TERMS

23-1701. Definitions

In this article, unless the context otherwise requires:

1. "Commission" means the industrial commission of Arizona.
2. "Firefighter" has the same meaning prescribed in section 23-901.09.
3. "Fire investigator" has the same meaning prescribed in section 23-901.09.
4. "Fund" means the municipal firefighter cancer reimbursement fund.
5. "Municipal payor" means any of the following:
 - (a) A workers' compensation insurer used by a city or town.
 - (b) A self-insurance program approved pursuant to section 23-961 used by a city or town.
 - (c) A public agency pool that is established pursuant to section 11-952.01 and that is used by a city or town.

23-901.09. Presumption; cancers; firefighters and fire investigators; applicability; definitions

F. For the purposes of this section:

1. "Firefighter" means a full-time firefighter who was regularly assigned to hazardous duty.
2. "Fire investigator" means a person who is employed full time by a municipality or fire district and who is trained in the process of and responsible for determining the origin, cause and development of a fire or explosion.

23-971 Cancer-related claims

(A) All insurance carriers, self-insuring employers and workers' compensation pools securing workers' compensation for firefighters and fire investigators pursuant to this chapter shall compile and report to the commission claim and claim reserve information for all cancer-related claims filed by or on behalf of firefighters and fire investigators.

ARIZONA STATE RETIREMENT SYSTEM

Title 2, Chapter 8

Amend: R2-8-118



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: June 1, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 16, 2022

SUBJECT: ARIZONA STATE RETIREMENT SYSTEM
Title 2, Chapter 8

Amend: R2-8-118

Summary:

This regular rulemaking from the Arizona State Retirement System (ASRS) seeks to amend one rule in Title 2, Chapter 8, Article 1 related to Application of Interest Rates. Specifically, ASRS seeks to amend rule R2-8-118 relating to interest rates in order to provide notice to the public of the new interest rate for the upcoming fiscal year. In 2021, the ASRS Board approved a new assumed rate of return and matching interest rate for fiscal year 2022-2023. ASRS indicates these rules will increase understandability of what interest rate will be applied to various transactions.

1. **Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

ASRS cites both general and specific statutory authority for these rules.

2. **Do the rules establish a new fee or contain a fee increase?**

This rulemaking does not establish a new fee or contain a fee increase.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

ASRS did not review or rely on any study in conducting this rulemaking.

4. **Summary of the agency's economic impact analysis:**

Each fiscal year, ASRS collects approximately \$2.7 billion in contributions from members and employers. Each fiscal year, active members' accounts earn interest at the Assumed Actuarial Investment Earnings Rate. Any missed contributions are charged interest at the Assumed Actuarial Investment Earnings Rate. In the 2021, ASRS processed 2,279 service purchases. These were charged as a result of an employer failing to remit contribution, or a member purchasing service credit. Additionally, within the past fiscal year, the ASRS collected approximately \$3.2 million owed to the agency including any applicable interest at the applicable Assumed Actuarial Investment Earnings Rate.

The rulemaking will help ASRS with clarifying its rules to better reflect the interest rate applied in various transactions. The economic impact of this rule on stakeholders is expected to be minimal.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

ASRS believes this is the least costly and least intrusive method of enforcing the rule without imposing additional requirements on the public.

6. **What are the economic impacts on stakeholders?**

Those who will be affected by the rulemaking include: employers and members of the ASRS, ASRS, and their beneficiaries. ASRS currently has an approximate membership of 627,975 employees and 664 employers. The cost imposed on stakeholders is expected to be minimal, if any, since the rule only provides clarification.

ASRS will incur the cost of rulemaking. However, there is little to no economic impact on ASRS, other than the minimal cost to prepare the rule package. The rule will have minimal economic impact, if any, because it only clarifies what interest rate is applied. Additionally, no new full time employees will be needed to enforce the rules.

All ASRS members, beneficiaries, and employers are directly affected by the rulemaking. The rule will benefit these stakeholders since it increases understanding of how employers remit contribution, and how members' benefits may be affected.

7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

ASRS indicates there were no changes to the rules between the Notice of Proposed Rulemaking published in the Administrative Register and the Notice of Final Rulemaking now before the Council.

8. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

ASRS indicates it received no written comments regarding the rulemaking.

9. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The rules do not require the issuance of a permit, license, or agency authorization.

10. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

Not applicable. ASRS indicates there is no corresponding federal law directly applicable to the subject of the proposed rulemaking.

11. **Conclusion**

This regular rulemaking from ASRS seeks to amend rule R2-8-118 relating to interest rates in order to provide notice to the public of the new interest rate for the upcoming fiscal year. ASRS indicates these rules will increase understandability of what interest rate will be applied to various transactions.

ASRS is requesting an immediate effective date for this amendment pursuant to A.R.S. § 41-1032(A)(1), to preserve public health and safety, and A.R.S. § 41-1032(A)(4), to provide a benefit without imposing any penalty. ASRS states it collects contributions and distributes retirement benefits for public employees throughout Arizona based on the Actuarial Investment Earnings Rate established by the Board. As of July 1, 2018, ASRS indicates the Actuarial Investment Earnings Rate has been 7.50%. However, ASRS states the new Actuarial Investment Earnings Rate for FY2022 will be 7.00%. ASRS states, without this rulemaking, employers and members will not know what the new interest rate is and when it will be applied. ASRS indicates this could cause significant confusion with regard to how various transactions and payments are processed and calculated, resulting in significant administrative errors that would require additional agency resources to correct.

ASRS states that this rulemaking needs to be effective immediately upon filing with the Secretary of State in order to preserve retirees' access to accurately calculated retirement benefits. By promulgating this rulemaking with an immediate effective date, ASRS states it will

minimize any potential confusion regarding how employers should remit contributions for their employees, how ASRS shall disburse benefits, how a member should pay for a service purchase, how ASRS will collect an overpayment, etc. ASRS states providing such notice to employers and members as quickly as possible will ensure that the correct interest rate is applied, thereby reducing the amount of errors and necessary adjustments.

Council staff believes ASRS has provided adequate justification for an immediate effective date for the rules. Council staff recommends approval of this rulemaking.

May 23, 2022

Ms. Nicole Sornsin, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 305
Phoenix, AZ 85007

**Re: A.A.C. Title 2. Administration
Chapter 8. State Retirement System Board**

Dear Ms. Sornsin:

The attached final rule package is submitted for review and approval by the Council. The following information is provided for Council's use in reviewing the rule package:

1. Close of record date: The rulemaking record was closed on May 23, 2022 following a period for public comment and an oral proceeding.
2. Relation of the rulemaking to a five-year-review report: This rulemaking does not relate to a Five-year Review Report.
3. New fee or fee increase: This rulemaking does not establish a new fee or increase an existing fee.
4. Immediate effective date: An immediate effective date is requested pursuant to A.R.S. § 41-1032(A).
5. Certification regarding studies: I certify that the Board did not rely on any studies for this rulemaking.
6. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that the rules in this rulemaking will not require a state agency to employ a new full-time employee. No notification was provided to JLBC.
7. List of documents enclosed:
 - a. Cover letter signed by the Board's Assistant Director;
 - b. Notice of Final Rulemaking including the preamble, table of contents for the rulemaking, and rule text; and
 - c. Economic, Small Business, and Consumer Impact Statement.

Sincerely,



Jeremiah Scott
Assistant Director

NOTICE OF FINAL RULEMAKING
TITLE 2. ADMINISTRATION
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD
PREAMBLE

<u>1. Articles, Parts, and Sections Affected</u>	<u>Rulemaking Action</u>
R2-8-118	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. § 38-714(E)(4)

Implementing statutes: A.R.S. §§ 38-711 et seq.

3. The effective date for the rules:

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):

An immediate effective date is justified under A.R.S. §41-1032(A)(1) and (A)(4) to preserve public health and safety and to provide a benefit without imposing any penalty. The ASRS collects contributions and distributes retirement benefits for public employees throughout Arizona based on the Actuarial Investment Earnings Rate established by the Board. As of July 1, 2018, the Actuarial Investment Earnings Rate has been 7.50%. However, the new Actuarial Investment Earnings Rate for FY2022 will be 7.00%. Without this rulemaking, employers and members will not know what the new interest rate is and when it will be applied. This could cause significant confusion with regard to how various transactions and payments are processed and calculated, resulting in significant administrative errors that would require additional agency resources to correct. This rulemaking needs to be effective immediately upon filing with the Secretary of State in order to preserve retirees' access to accurately calculated retirement benefits.

By promulgating this rulemaking with an immediate effective date, the ASRS will minimize any potential confusion regarding how employers should remit contributions for their employees, how the ASRS shall disburse benefits, how a member should pay for a service purchase, how the ASRS will collect an overpayment, etc. Providing such notice to employers and members as quickly as possible will ensure that the correct interest rate is applied, thereby reducing the amount of errors and necessary adjustments.

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):

None

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: 28 A.A.R. 818, April 22, 2022

Notice of Proposed Rulemaking: 28 A.A.R. 795, April 22, 2022

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

Name: Jessica A.R. Thomas, Rules Writer
Address: Arizona State Retirement System
3300 N. Central Ave., Ste. 1400

Phoenix, AZ 85012-0250
Telephone: (602) 240-2039
E-Mail: Ruleswriter@azasrs.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 ASRS needs to amend its rules relating to interest rates in order to provide notice to the public of the new interest rate for the upcoming fiscal year. In 2021, the ASRS Board approved a new assumed rate of return and matching interest rate for FY2022-2023. These rules will increase understandability of what interest rate will be applied to various transactions.

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:

No study was reviewed.

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

Not applicable.

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

The ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administrates how public-sector employers and employees participate in the ASRS. As such, the ASRS does not issue permits or licenses, or charge fees, and its rules have little to no economic impact on private-sector businesses, with the exception of some employer partner charter schools, which have voluntarily contracted to join the ASRS. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rule will have minimal economic impact, if any, because it merely clarifies what interest rate is applied.

10. A description of any changes between the proposed rulemaking, including 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:

The ASRS received no written comments regarding the rulemaking. No one attended the oral proceeding on May 23, 2022.

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 rules do not require a permit.

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

There are no federal laws applicable to these 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:

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:

No materials are incorporated by reference.

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 2. ADMINISTRATION
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD
ARTICLE 1. RETIREMENT SYSTEM**

Section

R2-8-118. Application of Interest Rates

ARTICLE 1. RETIREMENT SYSTEM

R2-8-118. Application of Interest Rates

A. Application of interest from inception of the ASRS Plan through the present is as follows:

Effective Date of Interest Rate Change	Assumed Actuarial Investment Earnings Rate	Interest Rate Used to Determine Return of Contributions Upon Termination of Membership by Separation from Service by Other Than Retirement or Death
7-1-1953	2.50%	2.50%
7-1-1959	3.00%	3.00%
7-1-1966	3.75%	3.75%
7-1-1969	4.25%	4.25%
7-1-1971	4.75%	4.75%
7-1-1975	5.50%	5.50%
7-1-1976	6.00%	5.50%
7-1-1981	7.00%	5.50%
7-1-1982	7.00%	7.00%
7-1-1984	8.00%	8.00%

7-1-2005	8.00%	4.00%
7-1-2013	8.00%	2.00%
7-1-2018	7.50%	2.00%
<u>7-1-2022</u>	<u>7.00%</u>	<u>2.00%</u>

B. At the beginning of each fiscal year, interest is credited to the retirement account of each member on the June 30 that marks the end of the fiscal year based on the balance in the member's account as of the previous June 30. The balance on which interest is credited includes:

1. Employer and employee contributions;
2. Voluntary additional contributions made by members pursuant to A.R.S. §§ 38-742, 38-743, 38-744, and 38-745, if applicable;
3. Amounts credited by transfer under 2 A.A.C. 8, Article 11; and
4. Interest credited in previous years.

C. Notwithstanding subsection (B), the retirement account of each member stops accruing interest the last full month prior to the member's retirement date.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT¹

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

1. Identification of the rulemaking:

The ASRS needs to amend its rules relating to interest rates in order to provide notice to the public of the new interest rate for the upcoming fiscal year. In 2021, the ASRS Board approved a new assumed rate of return and matching interest rate for FY2022-2023. The Assumed Actuarial Investment Earnings Rate in R4-8-118(A) serves as the interest rate that is applicable to the majority of ASRS transactions, including service purchases, collection of overpayments, and remittance of contributions. These rules will increase understandability of what interest rate will be applied to such various transactions.

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

Each fiscal year, ASRS collects approximately \$2.7 billion in contributions from members and employers. Each fiscal year, active members' accounts earn interest at the Assumed Actuarial Investment Earnings Rate. Any missed contributions are charged interest at the Assumed Actuarial Investment Earnings Rate applicable for the fiscal year in which the contributions were missed. In the past fiscal year, the ASRS processed approximately 2,279 service purchases, many of which included interest that was charged either as a result of the employer failing to remit a contribution on time or as part of the member's Payroll Deduction Agreement to purchase service credit. Additionally, within the past fiscal year, the ASRS collected approximately \$3.2 million owed to the agency including any applicable interest at the applicable Assumed Actuarial Investment Earnings Rate. The ASRS needs to

¹ If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).

update its rules to clarify and better reflect the interest rate that is applied in various transactions.

- b. 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:

Without this rulemaking, members and employers will not have adequate notice about the interest rate that will be applied to various transactions. Notice of such information is necessary in order to ensure that the correct amounts of payments made to and from members and employers. By promulgating these rules, members and employers will have a better understanding of the applicable interest rate and when it is applied. Increasing understanding of how the ASRS applies the applicable interest rate for various transactions should reduce appeals that arise out of members' and employers' misunderstanding of the applicable interest rate.

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

This rulemaking will clarify how the ASRS applies the Assumed Actuarial Investment Earnings Rate, thereby increasing understandability of how employers remit contributions and how members' benefits may be affected, thereby increasing the efficiency of the administration. Clarifying how the ASRS applies interest will ensure that collection and payment efforts are processed more efficiently. As discussed above and below, these rules will increase the clarity and effectiveness of the applicable interest rate, which should result in reducing confusion, as well as any potential administrative delay caused by a misunderstanding of how interest is applied in various transactions.

2. A brief summary of the information included in the economic, small business, and consumer impact statement:

The ASRS promulgates rules that allow the agency to provide for the proper administration of the state retirement trust fund. ASRS rules affect ASRS members and ASRS employers regarding how they contribute to, and receive benefits from, the ASRS. The ASRS effectively administrates how public-sector employers and employees participate in the ASRS. As such, the ASRS does not issue permits or licenses, or charge fees, and its rules have little to no economic impact on private-sector businesses, with the exception of some employer partner charter schools, which have voluntarily contracted to join the ASRS. Thus, there is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rule will have minimal economic impact, if any, because it merely clarifies what interest rate is applied.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: Jessica A.R. Thomas, Rules Writer
Address: Arizona State Retirement System
3300 N. Central Ave., Suite 1400
Phoenix, AZ 85012-0250
Telephone: (602) 240-2039
E-mail: JessicaT@azasrs.gov

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

All employers and members of the ASRS, as well as their beneficiaries, will be directly affected by, bear the costs of, and directly benefit from this rulemaking. The ASRS incurred the cost of the rulemaking. The ASRS currently has a total membership of approximately 627,975 and 664 employers.

5. Cost-benefit analysis:

- a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

This rulemaking does not directly affect state agencies and the ASRS has determined that no new full-time employees will be required to implement and enforce the rules.

b. Costs and benefits to political subdivisions directly affected by the rulemaking:

This rulemaking does not provide any benefits or impose any costs on political subdivisions.

c. Costs and benefits to businesses directly affected by the rulemaking:

No businesses are directly affected by the rulemaking.

6. Impact on private and public employment:

The rulemaking will have no impact on private or public employment.

7. Impact on small businesses²:

a. Identification of the small business subject to the rulemaking:

No businesses, regardless of size, are subject to the rulemaking.

b. Administrative and other costs required for compliance with the rulemaking:

Not applicable.

c. Description of methods that may be used to reduce the impact on small businesses:

Not applicable.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

All ASRS retired members, beneficiaries, and Employers are directly affected by the rulemaking. The effect has been previously described above.

² Small business has the meaning specified in A.R.S. § 41-1001(20).

9. Probable effects on state revenues:

There will be no effect on state revenues.

10. Less intrusive or less costly alternative methods considered:

The ASRS believes this is the least costly and least intrusive method because it will clarify how the ASRS applies the Assumed Actuarial Investment Earnings Rate without imposing additional requirements on the public.

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TITLE 2. ADMINISTRATION
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD
Supp. 21-1

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of January 1, 2021 through March 31, 2021.

Title 2

Questions about these rules? Contact:

Name: Jessica A.R. Thomas, Rules Writer
 Address: Arizona State Retirement System
 3300 N. Central Ave., Suite 1400
 Phoenix, AZ 85012-0250
 Telephone: (602) 240-2039
 E-mail: Ruleswriter@azasrs.gov

TITLE 2. ADMINISTRATION
CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Authority: A.R.S. § 38-701 et seq.

ARTICLE 1. RETIREMENT SYSTEM

Section		
R2-8-101.	Repealed	4
R2-8-102.	Repealed	4
R2-8-103.	Repealed	4
R2-8-104.	Definitions	4
R2-8-105.	Repealed	4
R2-8-106.	Reserved	4
R2-8-107.	Reserved	4
R2-8-108.	Reserved	4
R2-8-109.	Reserved	4
R2-8-110.	Reserved	4
R2-8-111.	Reserved	4
R2-8-112.	Reserved	4
R2-8-113.	Emergency Expired 4	
R2-8-114.	Emergency Expired	5
R2-8-115.	Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death 5	
R2-8-116.	Alternate Contribution Rate 6	
R2-8-117.	Return to Work After Retirement	7
R2-8-118.	Application of Interest Rates	7
R2-8-119.	Expired	8
R2-8-120.	Repealed	8
R2-8-121.	Employer Payments for Ineligible Contributions; Unfunded Liability Invoice	8
R2-8-122.	Remittance of Contributions	8
R2-8-123.	Actuarial Assumptions and Actuarial Value of Assets	8
Table 1.	Expired	9
Table 2.	Expired	9
Table 3.	Repealed	9
Table 3A.	Expired 9	
Table 3B.	Expired	9
Table 4.	Expired 9	
Table 4A.	Repealed	10
Table 4B.	Repealed	10
Table 4C.	Repealed	10
Table 5.	Expired	

	10		
Table 6.	Expired		
	10		
Table 7.	Expired		
	10		
R2-8-124.	Termination Incentive Program by Agreement; Unfunded Liability Calculations		10
R2-8-125.	Termination Incentive Program by 30% Salary Increase; Unfunded Liability Calculations		11
R2-8-126.	Retirement Application		
	12		
R2-8-127.	Re-Retirement Application		
	14		
R2-8-128.	Joint and Survivor Retirement Benefit Options		
	15		
R2-8-129.	Period Certain and Life Annuity Retirement Options		
	.....	15	
R2-8-130.	Rescind or Revert Retirement Election; Change of Contingent Annuitant		
	.....	15	
R2-8-131.	Designating a Beneficiary; Spousal Consent to Beneficiary Designation		
	.....	17	
R2-8-132.	Survivor Benefit Options		
	18		
R2-8-133.	Survivor Benefit Applications	19	
Table 1.	Repealed	21	
Table 2.	Repealed	21	
Table 3.	Repealed	21	
Table 4.	Repealed	22	
Table 5.	Repealed	22	
Table 6.	Repealed	22	
Table 7.	Repealed	22	
Table 8.	Repealed	22	
Table 9.	Repealed	22	
Table 10.	Repealed	22	
Table 11.	Repealed	22	
Exhibit A.	Repealed	22	
Exhibit B, Table 1.....	Repealed	22	
Exhibit B, Table 2.....	Repealed	22	
Exhibit B, Table 3.....	Repealed	22	
Exhibit C.	Repealed	23	
Exhibit D, Table 1.....	Repealed	23	
Exhibit D, Table 2.....	Repealed	23	
Exhibit D, Table 3.....	Repealed	23	
Exhibit D, Table 4.....	Repealed	23	
Exhibit D, Table 5.....	Repealed	23	
Exhibit D, Table 6.....	Repealed	23	
Exhibit E, Table 1.....	Repealed	23	
Exhibit E, Table 2.....	Repealed	23	
Exhibit E, Table 3.....	Repealed	23	
Exhibit E, Table 4.....	Repealed	24	
Exhibit E, Table 5.....	Repealed	24	
Exhibit E, Table 6.....	Repealed	24	
Exhibit F, Table 1.....	Repealed	24	
Exhibit F, Table 2.....	Repealed	24	
Exhibit F, Table 3.....	Repealed	24	
Exhibit F, Table 4.....	Repealed	24	
Exhibit F, Table 5.....	Repealed	24	
Exhibit F, Table 6.....	Repealed	24	24
Exhibit G.	Repealed	24	
Exhibit H.	Repealed	25	
Exhibit I.	Repealed	25	
Exhibit J.	Repealed	25	
Exhibit K.	Repealed	25	
Exhibit L, Table 1.....	Repealed	25	
Exhibit L, Table 2.....	Repealed	25	
Exhibit L, Table 3.....	Repealed	25	
Exhibit L, Table 4.....	Repealed	25	
Exhibit L, Table 5.....	Repealed	25	
Exhibit L, Table 6.....	Repealed	26	
Exhibit L, Table 7.....	Repealed	26	
Exhibit M, Table 1.....	Repealed	26	
Exhibit M, Table 2.....	Repealed	26	
Exhibit M, Table 3.....	Repealed	26	

Exhibit M, Table 4.....	Repealed	26
Exhibit M, Table 5.....	Repealed	26
Exhibit M, Table 6.....	Repealed	26

ARTICLE 2. HEALTH INSURANCE PREMIUM BENEFIT

Article 2, consisting of R2-8-201 through R2-8-207, made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017; under the authority of A.R.S. § 38-714(E)(4)

(Supp. 17-2).

Article 2,

consisting of R2-8-201 through R2-8-207, made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2).

Section		
R2-8-201.	Definitions	26
R2-8-202.	Premium Benefit Eligibility and Benefit Determination	27
R2-8-203.	Payment of Premium Benefit	27
R2-8-204.	Premium Benefit Calculation	28
R2-8-205.	Premium Benefit Documentation ...	28
R2-8-206.	Six-Month Reimbursement Program	28
R2-8-207.	Optional Premium Benefit	29

ARTICLE 3. LONG-TERM DISABILITY

Article 3, consisting of R2-8-301 through R2-8-306, made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

Section		
R2-8-301.	Definitions	30
R2-8-302.	Application for Long-Term Disability Benefit	30
R2-8-303.	Long-Term Disability Calculation ...	30
R2-8-304.	Payment of Long-Term Disability Benefit	30
R2-8-305.	Social Security Disability Appeal ...	31
R2-8-306.	Approval of Social Security Disability	31

ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD

Article 4,

consisting of R2-8-401 through R2-8-405, made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

Section		
R2-8-401.	Definitions	31
R2-8-402.	General Procedures	31
R2-8-403.	Letters of Appeal; Request for a Hearing of an Appealable Agency Action	31
R2-8-404.	Board Decisions on Hearings before the Office of Administrative Hearings	32
R2-8-405.	Motion for Rehearing Before the Board; Motion for Review of a Final Decision	32

ARTICLE 5. PURCHASING SERVICE CREDIT

Article 5, consisting of R2-8-501 through R2-8-521, made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2).

Section		
R2-8-501.	Definitions	33
R2-8-502.	Request to Purchase Service Credit and Notification of Cost	34
R2-8-503.	Requirements Applicable to All Service Credit Purchases	34
R2-8-504.	Service Credit Calculation for Purchasing Service Credit	34
R2-8-505.	Restrictions on Purchasing Overlapping Service Credit	35
R2-8-506.	Cost Calculation for Purchasing Service Credit	35
R2-8-507.	Required Documentation and Calculations for Forfeited Service Credit	35
R2-8-508.	Required Documentation and Calculations for Leave of Absence Service Credit	35
R2-8-509.	Required Documentation and Calculations for Military Service Credit	36
R2-8-510.	Required Documentation and Calculations for Military Call-up Service Credit	36
R2-8-511.	Required Documentation and Calculations for Other Public Service Credit	37
R2-8-512.	Purchasing Service Credit by Check, Cashier's Check, or Money Order	37
R2-8-513.	Purchasing Service Credit by Irrevocable PDA	37
R2-8-513.01.....	Irrevocable PDA and Transfer of Employment to a Different Employer	39

R2-8-513.02.....	Termination Date	
	39	
R2-8-514.	Purchasing Service Credit by Direct Rollover or Trustee-to-Trustee Transfer	
	.....	39
R2-8-515.	Repealed	40
R2-8-516.	Expired	40
R2-8-517.	Expired	41
R2-8-518.	Repealed	41
R2-8-519.	Purchasing Service Credit by Termination Pay	41
R2-8-520.	Termination of Employment and Request Return of Retirement Contributions or Death of Member While Purchasing Service Credit by an Irrevocable PDA	
	.....	41
R2-8-521.	Adjustment of Errors	
	42	

ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING

Article 6, consisting of R2-8-601 through R2-8-607, made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

Section		
R2-8-601.	Definitions	
	42	
R2-8-602.	Reviewing Agency Rulemaking Record and Directory of Substantive Policy Statements	
	.....	42
R2-8-603.	Petition for Rulemaking	
	42	
R2-8-604.	Review of a Rule, Agency Practice, or Substantive Policy Statement	
	.....	42
R2-8-605.	Objection to Rule Based Upon Economic, Small Business and Consumer Impact	
	.....	42
R2-8-606.	Oral Proceedings	
	43	
R2-8-607.	Petition for Delayed Effective Date	
	43	

ARTICLE 7. CONTRIBUTIONS NOT WITHHELD

Article 7, consisting of R2-8-701 through R2-8-709, made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

Section		
R2-8-701.	Definitions	
	43	
R2-8-702.	General Information	
	43	
R2-8-703.	Employer's Discovery of Error	
	44	
R2-8-704.	Member's Discovery of Error	
	44	
R2-8-705.	ASRS' Discovery of Error	
	44	
R2-8-706.	Determination of Contributions Not Withheld	
	44	
R2-8-707.	Submission of Payment	
	45	
R2-8-708.	Expired	45
R2-8-709.	Repealed	45

ARTICLE 8. RECOVERY OF OVERPAYMENTS

Article 8, consisting of R2-8-801 through R2-8-810, made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Section		
R2-8-801.	Definitions	45
R2-8-802.	Estimated Social Security Disability Income Amount and Revised Social Security Disability Income Amount	
	.....	45
R2-8-803.	Reimbursement of Overpayments	
	46	
R2-8-804.	Collection of Overpayments from Forfeiture	
	46	
R2-8-805.	Collection of Overpayments from Retirement Benefit	
	.....	46
R2-8-806.	Collection of Overpayments from Survivor Benefit	

	.....	46
R2-8-807.	Collection of Overpayments from LTD Benefit	
	47	
R2-8-808.	Collection of Overpayments by the Attorney General	
	.....	47
R2-8-809.	Collection of Overpayments by the Arizona Department of Revenue	
	.....	47
R2-8-810.	Collection of Overpayments by Garnishment or Levy	
	.....	47

ARTICLE 9. COMPENSATION

Article 9, consisting of new Sections R2-8-901 through R2-8-904, made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 20-1).

Article 9, consisting of R2-8-901 through R2-8-905, made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Article 9, consisting of R2-8-901 through R2-8-905, expired at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

Section		
R2-8-901.	Definitions	47
R2-8-902.	Remitting Contributions	47
R2-8-903.	Accrual of Credited Service	47
R2-8-904.	Compensation from An Additional Employer	47
R2-8-905.	Expired	48

ARTICLE 10. MEMBERSHIP

Article 10, consisting of Sections R2-8-1001 through R2-8-1005, made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

Section		
R2-8-1001.	Definitions	
	48	
R2-8-1002.	Employee Membership	
	48	
R2-8-1003.	Charter School Employer Membership	
	49	
R2-8-1004.	Other Political Subdivision and Political Subdivision Entity Employer Membership	
	49	
R2-8-1005.	Employer Reporting	
	50	
R2-8-1006.	Prior Service Purchase Cost for New Employers	
	.....	51

ARTICLE 11. TRANSFER OF SERVICE CREDIT

Section		
R2-8-1101.	Definitions	
	51	
R2-8-1102.	Required Documentation and Calculations for Transfer In Service Credit	
	.....	52
R2-8-1103.	Transferring Service to Other Retirement Plans	
	53	

ARTICLE 1. RETIREMENT SYSTEM

R2-8-101. Repealed

Historical Note

Former Rule, Social Security Regulation 1; Former Section R2-8-01 renumbered as Section R2-8-101 without change effective May 21, 1982 (Supp. 82-3). Amended subsections (A) and (C) effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

R2-8-102. Repealed

Historical Note

Former Rule, Social Security Regulation 2; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-02 renumbered as Section R2-8-102 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule, subsections (A), (B), and (D), amended effective April 12, 1984 (Supp. 84-2). Correction, subsection (B), as amended effective April 12, 1984 (Supp. 84-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

R2-8-103. Repealed

Historical Note

Former Rule, Social Security Regulation 3; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-03 renumbered as Section R2-8-103 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule, subsections (A) thru (C), amended effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

R2-8-104. Definitions

A. The definitions in A.R.S. § 38-711 apply to this Chapter.

B. Unless otherwise specified, in this Chapter:

1. "Actuarial assumption" means an estimate of an uncertain future event that affects pension liabilities, or assets, or both.
2. "Assumed actuarial investment earnings rate" means the assumed rate of investment return approved by the Board and contained in R2-8-118(A).
3. "Authorized employer representative" means an individual specified by the Employer to provide the ASRS with information about a member who previously worked for the ASRS employer.
4. "Contribution" means:
 - a. Amounts required by A.R.S. Title 38, Chapter 5, Articles 2 and 2.1 to be paid to the ASRS by a member or an employer on behalf of a member;
 - b. Any voluntary amounts paid to the ASRS pursuant to 2 A.A.C. 8, Article 5 by a member to be placed in the member's account; and
 - c. Amounts credited by transfer under 2 A.A.C. 8, Article 11.
5. "Day" means a calendar day, and excludes the:
 - a. Day of the act or event from which a designated period of time begins to run; and
 - b. Last day of the period if a Saturday, Sunday, or official state holiday.
6. "Designated beneficiary" means the same as in A.R.S. § 38-762(G) or another person designated as a beneficiary by law.
7. "Director" means the Director appointed by the Board as provided in A.R.S. § 38-715.
8. "Individual retirement account" or "IRA" means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(a) and (b).
9. "Party" means the same as in A.R.S. § 41-1001(14).
10. "Person" means the same as in A.R.S. § 41-1001(15).
11. "Plan" means the same as "defined benefit plan" in A.R.S. § 38-712(B), and as administered by the ASRS.
12. "Retirement account" means the same as in A.R.S. § 38-771(J)(2).
13. "Rollover" means a contribution to the ASRS by an eligible member of an eligible rollover distribution from one or more of the retirement plans listed in A.R.S. § 38-747(H)(2) and (H)(3).
14. "Terminate employment" means to end the employment relationship between a member and an ASRS employer with the intent that the member does not return to employment with an ASRS employer.
15. "United States" means the same as in A.R.S. § 1-215(39).

Historical Note

Former Rule, Social Security Regulation 4; Former Section R2-8-04 renumbered as Section R2-8-104 without change effective May 21, 1982 (Supp. 82-3). Amended subsections (G), (J), and (K) effective April 12, 1984 (Supp. 84-2). Typographical error corrected in subsection (5)(c) "required" corrected to "required" (Supp. 97-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

R2-8-105. Repealed

Historical Note

Former Rule, Social Security Regulation 5; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-05 renumbered as Section R2-8-105 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule amended effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

R2-8-106. Reserved

R2-8-107. Reserved

R2-8-108. Reserved

R2-8-109. Reserved

R2-8-110. Reserved

R2-8-111. Reserved

R2-8-112. Reserved

R2-8-113. Emergency Expired

Historical Note

New Section made by emergency rulemaking at 11 A.A.R. 579, effective January 4, 2005 (05-1). Emergency rule expired (Supp. 05-2).

R2-8-114. Emergency Expired

Historical Note

New Section made by emergency rulemaking at 11 A.A.R. 579, effective January 4, 2005 (05-1). Emergency rule expired (Supp. 05-2).

R2-8-115. Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death

- A.** The following definitions apply to this Section unless otherwise specified:
1. "DRO" means the same as "domestic relations order" in A.R.S. § 38-773(H)(1).
 2. "Eligible retirement plan" means the same as in A.R.S. § 38-770(D)(3).
 3. "Employer Number" means a unique identifier the ASRS assigns to a member employer.
 4. "Employer plan" means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(c), (d), (e), and (f).
 5. "LTD" Means the same as in R2-8-301.
 6. "On File" means ASRS has received the information.
 7. "Process date" means the calendar day the ASRS generates contribution withdrawal documents to be sent to a member.
 8. "Warrant" means a voucher authorizing payment of funds due to a member.
- B.** A member who terminates from all ASRS employment by other than retirement or death and desires a return of the member's contributions, including amounts received for the purchase of service, any employer contributions authorized under A.R.S. § 38-740, and interest on the contributions, shall request from the ASRS, in writing or verbally, the documents necessary to apply for the withdrawal of the member's contributions.
- C.** Upon request to withdraw by the member, the ASRS shall provide:
1. An Application for Withdrawal of Contributions and Termination of Membership form to the member, and
 2. An Ending Payroll Verification - Withdrawal of Contribution and Termination of Membership form to the employer, if ASRS has received contributions for the member within the six months immediately preceding the date the member submitted the request to ASRS.
- D.** The member shall complete and return to the ASRS the Application for Withdrawal of Contributions and Termination of Membership form that includes the following information:
1. The member's full name;
 2. The member's Social Security number or U.S. Tax Identification number;
 3. The member's current mailing address, if not On File with ASRS;
 4. The member's birth date, if not On File with ASRS;
 5. Notarized signature of the member certifying that the member:
 - a. Is no longer employed by any Employer;
 - b. Is neither under contract nor has any verbal or written agreement for future employment with an Employer;
 - c. Is not currently in a leave of absence status with an Employer;
 - d. Understands that each of the member's former Employers will complete an ending payroll verification form if ASRS has received contributions for the member within the six months immediately preceding the date the member submitted the request to ASRS;
 - e. Understands that the member's most recent Employer will complete an ending payroll verification form for the member if the member has reached the member's required beginning date pursuant to A.R.S. § 38-775;
 - f. Has read and understands the Special Tax Notice Regarding Plan Payments the member received with the application and the member elects to waive the member's 30-day waiting period to consider a roll over or a cash distribution;
 - g. Understands that the member is forfeiting all future retirement rights and privileges of membership with ASRS;
 - h. Understands that LTD benefits will be canceled if the member elects to withdraw contributions while receiving or electing to receive long-term disability benefits;
 - i. Understands that if the member elects to roll over all or any portion of the member's distribution to another employer plan, it is the member's responsibility to verify that the receiving employer plan will accept the rollover and, if applicable, agree to separately account for the pre-tax and post-tax amounts rolled over and the related subsequent earnings on the amounts;
 - j. Understands that if the member elects to roll over all or any portion of the member's distribution to an individual retirement account, it is the member's responsibility to separately account for pre-tax and post-tax amounts; and
 - k. Understands that if the member elects a rollover to another employer plan or individual retirement account, any portion of the distribution not designated for roll over will be paid directly to the member and any taxable amounts will be subject to applicable state and federal tax withholding;
 - l. Understands that the member is not considered terminated and cannot withdraw the member's ASRS contribution if the member was called to active military service and is not currently performing services for an Employer;
 - m. Understands that any person who knowingly makes any false statement with an intent to defraud the ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793.

6. Specify that:
 - a. The entire amount of the distribution be paid directly to the member,
 - b. The entire amount of the distribution be rolled over to an eligible retirement plan, or
 - c. An identified amount of the distribution be rolled over to an eligible retirement plan and the remaining amount be paid directly to the member; and
7. If the member selects all or a portion of the withdrawal be rolled over to an eligible retirement plan, specify:
 - a. The type of eligible retirement plan; and
 - b. The name and mailing address of the eligible retirement plan.
- E. If ASRS has received contributions for the member within six months immediately preceding the date the member submitted the request to ASRS each Employer shall complete an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form electronically that includes the following information:
 1. The member's full name;
 2. The member's Social Security number or U.S. Tax Identification number;
 3. The member's termination date;
 4. The member's final pay period ending date;
 5. The final amount of contributions, including any adjustments or corrections, but not including any long-term disability contributions;
 6. The Employer's name and telephone number;
 7. The Employer Number;
 8. The name and title of the authorized Employer representative;
 9. Certification by the authorized Employer representative that:
 - a. The member Terminated Employment and is neither under contract nor bound by any verbal or written agreement for employment with the Employer;
 - b. There is no agreement to re-employ the member;
 - c. Any person who knowingly makes any false statement or who falsifies any record of the retirement plan with an intent to defraud the plan, is guilty of a Class 6 felony according to A.R.S. § 38-793; and
 - d. The authorized Employer representative certifies that they are the Employer user named on the Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form and their title and contact information is current and correct.
- F. If the member has attained a required beginning distribution date as of the date the member submitted the request to ASRS, the most recent Employer shall complete an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form electronically that includes the information contained in subsection (E).
- G. If the member requests a return of contributions and a Warrant is distributed during the fiscal year that the member began membership in the ASRS, no interest is paid to the account of the member.
- H. If the member requests a return of contributions after the first fiscal year of membership, the ASRS shall credit interest at the rate specified in Column 3 of the table in R2-8-118(A) to the account of the member as of June 30 of each year, on the basis of the balance in the account of the member as of the previous June 30. The ASRS shall credit interest for a partial fiscal year of membership in the ASRS on the previous June 30 balance based on the number of days of membership up to and including the day the ASRS issues the Warrant divided by the total number days in the fiscal year. Contributions made after the previous June 30 are returned without interest.
- I. Upon submitting to the ASRS the completed and accurate Application for Withdrawal of Contributions and Termination of Membership form and, if applicable, after the ASRS has received any Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership forms, a member is entitled to payment of the amount due to the member as specified in subsection (G) or (H) unless a present or former spouse submits to the ASRS a certified copy or original DRO that specifies entitlement to all or part of the return of contributions under A.R.S. § 38-773 before the ASRS returns the contributions as specified by the member.
- J. A member may cancel an Application for Withdrawal of Contributions and Termination of Membership form at any time before the return of contributions is disbursed by submitting written notice to ASRS to cancel the request.
- K. If an Application for Withdrawal of Contributions and Termination of Membership form is completed through the member's secure ASRS account, the secure login and successful submission of the knowledge based answers shall serve as the member's notarized signature required under subsection (D)(5).

Historical Note

Former Rule, Social Security Regulation 1; Amended effective Dec. 20, 1979 (Supp. 79-6). Former Section R2-8-15 renumbered as Section R2-8-115 without change effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 11 A.A.R. 1416, effective April 5, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 644, effective February 7, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

R2-8-116. Alternate Contribution Rate

- A. For purposes of this Section, the following definitions apply:
 1. "ACR" means an alternate contribution rate pursuant to A.R.S. § 38-766.02, the resulting amount of which is not deducted from the employee's compensation.
 2. "Class of positions" means all employment positions of the employer that perform the same, or substantially similar, function or duties, for the employer as determined by the ASRS in subsection (B).
 3. "Compensation" has the same meaning as A.R.S. § 38-711(7) and does not include ACR amounts.
 4. "Leased from a third party" means:
 - a. The employee is not employed by an employer; and
 - b. A co-employment relationship, as defined in A.R.S. § 23-561(4), does not exist.
- B. An employer that employs a retired member shall pay an ACR to the ASRS, unless the employer provides proof that:
 1. The retired member is leased from a third party; and
 2. All employees in the entire class of positions, to which the retired member's position belongs, have been leased from a third party; and
 3. No employee who has not been leased is performing the same, or substantially similar, function or duties, as the retired member.
- C. In order to determine whether an employer satisfies the criteria in subsection (B), the employer shall submit information and documentation, pursuant to A.R.S. § 38-766.02(E), within 14 days of written request by the ASRS.

- D. The employer shall directly remit payment of an ACR to the ASRS from the employer’s funds, through the employer’s secure ASRS account within 14 days of the first pay period end date after the hire of the retired member.
- E. If the employer does not remit the ACR by the date it is due pursuant to subsection (D), the ASRS shall charge interest on the ACR amount from the date it was due to the date the ACR payment is remitted to the ASRS at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- F. A payment of an ACR on behalf of a retired member pursuant to A.R.S. § 38-766.02, shall not entitle a retired member to a refund of an ACR payment or any additional ASRS benefit as described in A.R.S. § 38-766.01(E).

Historical Note

Former Rule, Retirement System Regulation 2; Former Section R2-8-16 renumbered as Section R2-8-116 without change effective May 21, 1982 (Supp. 82-3). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 22 A.A.R. 1341, effective July 4, 2016 (Supp. 16-2). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

R2-8-117. Return to Work After Retirement

- A. Unless otherwise specified, in this Section:
 - 1. “Commencing employment” means the date a retired member who is not independently contracted or leased from a third party pursuant to R2-8-116(A)(4) renders services directly to an Employer for which the retired member is entitled to be paid.
 - 2. “Returns to work” means the member retired from the ASRS prior to Commencing Employment with an Employer.
- B. Pursuant to A.R.S. § 38-766.01(C), a retired member who returns to work directly with an Employer shall submit a Working After Retirement form to each of the retired member’s current Employers through the retired member’s secure website account within 30 days of the retired member Commencing Employment with an Employer.
- C. Pursuant to A.R.S. § 38-766.02(E), within 14 days of receipt of a Working After Retirement form, an Employer shall verify the retired member’s employment information and submit the verified Working After Retirement form to the ASRS through the Employer’s secure website account for each retired member who returns to work with the Employer.
- D. After a retired member returns to work, the Employer shall submit a verified Working After Retirement form to the ASRS through the Employer’s secure website account within 30 days of a change in the actual hours or intent of each retired member’s employment that results in:
 - 1. The member’s number of hours worked per week increasing from less than 20 hours per week to 20 or more hours per week; or
 - 2. The member’s number of weeks worked in a fiscal year increasing from less than 20 weeks per fiscal year to 20 or more weeks per fiscal year.
- E. The Working After Retirement form shall contain the following information:
 - 1. The retired member’s Social Security number or U.S. Tax Identification number;
 - 2. The retired member’s full name;
 - 3. The date the member retired;
 - 4. Whether the retired member terminated employment, and if so, the date the retired member terminated employment;
 - 5. The first date of Commencing Employment upon the retired member’s return to work;
 - 6. The intent of the retired member’s employment reflected as:
 - a. The anticipated number of hours the retired member is engaged to work per week and the anticipated number of weeks the retired member is engaged to work per fiscal year; or
 - b. The actual number of hours the retired member works for an Employer per week and the actual number of weeks the retired member works for an Employer in a fiscal year.
 - 7. Acknowledgement by the retired member that the retired member has read the Return to Work information on the ASRS website and intends to submit the Working After Retirement form to the Employer and submit any additional Working After Retirement forms to the Employer as required.
- F. Upon discovering that the retired member’s employment violates A.R.S. §§ 38-766 or 38-766.01, the ASRS shall send the retired member a Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form.
- G. By the due date specified on the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form, the retired member shall return the completed form and any supporting documentation to the ASRS indicating the action the retired member will take to correct the violation of A.R.S. §§ 38-766 or 38-766.01.
- H. If the member does not submit the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form pursuant to subsection (G), the ASRS shall suspend the retired member’s retirement benefits from the date on the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form.
- I. If the ASRS suspends the retired member’s retirement benefits pursuant to subsection (H), the ASRS shall reinstate the retired member’s retirement benefits upon notice from the Employer that all violations pursuant to subsection (F) have been corrected.

Historical Note

Former Rule, Retirement System Regulation 3; Former Section R2-8-17 renumbered as Section R2-8-117 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). New Section made by final rulemaking at 23 A.A.R. 209, effective March 5, 2017 (Supp. 17-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

R2-8-118. Application of Interest Rates

- A. Application of interest from inception of the ASRS Plan through the present is as follows:

Effective Date of Interest Rate Change	Assumed Actuarial Investment Earnings Rate	Interest Rate Used to Determine Return of Contributions Upon Termination of Membership by Separation from Service by Other Than Retirement or Death
7-1-1953	2.50%	2.50%
7-1-1959	3.00%	3.00%
7-1-1966	3.75%	3.75%

7-1-1969	4.25%	4.25%
7-1-1971	4.75%	4.75%
7-1-1975	5.50%	5.50%
7-1-1976	6.00%	5.50%
7-1-1981	7.00%	5.50%
7-1-1982	7.00%	7.00%
7-1-1984	8.00%	8.00%
7-1-2005	8.00%	4.00%
7-1-2013	8.00%	2.00%
7-1-2018	7.50%	2.00%

- B.** At the beginning of each fiscal year, interest is credited to the retirement account of each member on the June 30 that marks the end of the fiscal year based on the balance in the member's account as of the previous June 30. The balance on which interest is credited includes:
1. Employer and employee contributions;
 2. Voluntary additional contributions made by members pursuant to A.R.S. §§ 38-742, 38-743, 38-744, and 38-745, if applicable;
 3. Amounts credited by transfer under 2 A.A.C. 8, Article 11; and
 4. Interest credited in previous years.
- C.** Notwithstanding subsection (B), the retirement account of each member stops accruing interest the last full month prior to the member's retirement date.

Historical Note

Former Rule, Retirement System Regulation 4; Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Former Section R2-8-18 renumbered and amended as Section R2-8-118 effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 11 A.A.R. 1416, effective April 5, 2005 (Supp. 05-2). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

R2-8-119. Expired

Historical Note

Former Rule, Retirement System Regulation 5; Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Former Section R2-8-19 renumbered and amended as Section R2-8-119 effective May 21, 1982 (Supp. 82-3). Section R2-8-119 and Appendix A and B expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

R2-8-120. Repealed

Historical Note

Former Rule, Social Security Regulation 6; Amended effective June 19, 1975 (Supp. 75-1). Amended effective July 13, 1979 (Supp. 79-4). Former Section R2-8-20 renumbered and amended as Section R2-8-120 effective May 21, 1982 (Supp. 82-3). Repealed effective July 24, 1985 (Supp. 85-4). New Section made by final rulemaking at 20 A.A.R. 2236, effective October 4, 2014 (Supp. 14-3). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Repealed by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

R2-8-121. Employer Payments for Ineligible Contributions; Unfunded Liability Invoice

- A.** Upon calculating an unfunded liability amount under A.R.S. § 38-748, the ASRS shall send an Unfunded Liability Invoice to the Employer through the Employer's secure ASRS account.
- B.** An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-748, shall remit full payment of the unfunded liability amount within 90 days of being notified of the unfunded liability pursuant to subsection (A).
- C.** Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount within 90 days of being notified of the unfunded liability amount, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- D.** The ASRS may collect any unfunded liability and interest amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

Historical Note

Former Rule, Retirement System Regulation 7; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-21 renumbered as Section R2-8-121 without change effective May 21, 1982 (Supp. 82-3). Amended subsection (A) effective May 30, 1985 (Supp. 85-3). Section repealed by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (05-1). New Section made by final rulemaking at 27 A.A.R. 458, effective May 2, 2021 (Supp. 21-1).

R2-8-122. Remittance of Contributions

- A.** Each Employer shall remit the amount of employee member contributions to the ASRS not later than 14 days after the last day of each payroll period. Payments of employee member contributions not received in the offices of the ASRS by the 14th day after the last day of the applicable payroll period shall become delinquent after that date and shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A) per annum from and after the date of delinquency until payment is received by the ASRS.
- B.** Each Employer shall remit the amount of employer contributions to the ASRS not later than 14 days after the last day of each payroll period. Payments of employer contributions not received in the offices of the ASRS by the 14th day after the last day of the applicable payroll period shall become delinquent after that date and shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A) per annum from and after the date of delinquency until payment is received by the ASRS.
- C.** Each Employer shall remit contributions pursuant to this Section based on the contribution rate in effect on the pay period end date.
- D.** Each Employer shall certify on each payroll that each employee included on that payroll has met the requirements for active member eligibility and that all contributions to be remitted are for eligible compensation under A.R.S. § 38-711.

- E. If an Employer improperly certifies that an employee has met the requirements for active member eligibility and that all contributions remitted for the employee are eligible for compensation under subsection (D), the ASRS may charge the employer an unfunded liability amount under A.R.S. § 38-748.

Historical Note

Former Rule, Retirement System Regulation 8; Amended effective Dec. 8, 1978 (Supp. 78-6). Former Section R2-8-22 renumbered as Section R2-8-122 without change effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 371, effective April 11, 2020 (Supp. 20-1). Section amended by final rulemaking at 27 A.A.R. 458, effective May 2, 2021 (Supp. 21-1).

R2-8-123. Actuarial Assumptions and Actuarial Value of Assets

- A. For the purposes of this Section, “market value” means an estimated monetary worth of an asset based on the current demand for the asset and the amount of that type of asset available for sale.
- B. The Board adopts the following actuarial assumptions and asset valuation method:
1. The interest and investment return rate assumptions are determined by the Board.
 2. The actuarial value of assets equals the market value of assets:
 - a. Minus a 10-year phase-in of the excess for years in which actual investment return exceeds expected investment return; and
 - b. Plus a 10-year phase-in of the shortfall for years in which actual investment return falls short of expected investment return.

Historical Note

Adopted effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Amended effective December 20, 1977 (Supp. 77-6). Former Section R2-8-23 renumbered and amended as Section R2-8-123 effective May 21, 1982 (Supp. 82-3). Emergency amendments effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent amendments adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 1006, effective February 24, 2003 for a period of 180 days (Supp. 03-1). Emergency rulemaking renewed at 9 A.A.R. 3963, effective August 21, 2003 for a period of 180 days (Supp. 03-3). Amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 20 A.A.R. 3043, effective January 3, 2015 (Supp. 14-4). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

Table 1. Expired

Historical Note

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 1 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 2. Expired

Historical Note

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 2 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 3. Repealed

Historical Note

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 3 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Table 3 repealed; new Table 3 renumbered from Table 4 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Table 3A. Expired

Historical Note

New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 3B. Expired

Historical Note

New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 4. Expired

Historical Note

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table 4 renumbered as Table 3 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 4A. Repealed

Historical Note

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Table 4B. Repealed

Historical Note

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Table 4C. Repealed

Historical Note

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Table 5. Expired

Historical Note

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table 5 repealed, new Table 5 adopted by emergency action effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Table 5 repealed, new Table 5 adopted by regular rulemaking action effective September 12, 1997 (Supp. 97-3). Table 5 repealed; new Table 5 renumbered from Table 6 and amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed; new Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Former Table 5 renumbered to Table 6; new Table 5 made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 6. Expired

Historical Note

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table repealed, new Table adopted effective September 12, 1997 (Supp. 97-3). Former Table 6 renumbered to Table 5; new Table 6 renumbered from Table 7 and amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed; new Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Former Table 6 renumbered to Table 7; new Table 6 renumbered from Table 5 and amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 7. Expired

Historical Note

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table repealed, new Table adopted effective September 12, 1997 (Supp. 97-3). Renumbered to Table 6 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table 7 renumbered from Table 6 and amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

R2-8-124. Termination Incentive Program by Agreement; Unfunded Liability Calculations

- A. The following definitions apply to this Section unless otherwise specified:
1. "Compensation" means the same as in A.R.S. § 38-711(7).
 2. "Termination Incentive Program" means the same as in A.R.S. § 38-749(D)(2).
- B. An Employer that intends to implement a Termination Incentive Program shall provide the following information to the ASRS through the Employer's secure ASRS account:
1. Within 90 days before implementation of the program, a complete description of the program terms and conditions, including the program contract, understanding, or agreement; and
 2. Within 90 days before implementation of the program, the following information for each member who may be eligible to participate in the program:
 - a. The member's full name;
 - b. The member's date of birth; and
 - c. The member's current Compensation;
- C. The ASRS may use the information provided by the Employer pursuant to subsection (B) and the information on file with the ASRS to determine an estimated unfunded liability amount in consultation with the ASRS actuary, which may result from the implementation of the Employer's Termination Incentive Program.
- D. If the ASRS determines an estimated unfunded liability amount pursuant to subsection (C), the ASRS may send a Notice of Estimated Liability to the Employer through the Employer's secure ASRS account, in order to notify the Employer of the estimated unfunded liability amount the Employer may owe to the ASRS as a result of implementing the Termination Incentive Program identified under subsection (B). An Employer may owe the ASRS more or less than the estimated unfunded liability amount based on actual employee participation in the Employer's Termination Incentive Program pursuant to subsection (F).
- E. Within 30 days of termination of employment of each member who participated in a Termination Incentive Program identified under subsection (B), the Employer shall provide the following information to the ASRS through the Employer's secure ASRS account:
1. The member's full name;
 2. The member's date of birth;
 3. The member's Compensation at termination;
 4. The date the member terminated employment; and
 5. The amount and type of any additional pay the member received, or was entitled to receive, from the Employer as a result of participating in the Employer's Termination Incentive Program.
- F. Upon receipt of all the information identified in subsection (E) and in consultation with the ASRS actuary, the ASRS shall calculate the actual unfunded liability amount which resulted from the implementation of the Employer's Termination Incentive Program.
- G. If the ASRS calculates an unfunded liability of less than \$0.00 for any member who participated in the Employer's Termination Incentive Program, the amount will be applied against the aggregate unfunded liability of the Employer.
- H. Upon calculating the unfunded liability pursuant to subsections (F) and (G), the ASRS shall send the Employer a Termination Incentive Program Liability Invoice through the Employer's secure ASRS account.
- I. An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-749, shall remit full payment of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice.
- J. Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- K. The ASRS may collect any unfunded liability amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

Historical Note

Adopted as an emergency effective August 25, 1975 (Supp. 75-1). Former Section R2-8-24 renumbered as Section R2-8-124 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 23 A.A.R. 2743, effective January 1, 2018 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

R2-8-125. Termination Incentive Program by 30% Salary Increase; Unfunded Liability Calculations

- A. The following definitions apply to this Section unless otherwise specified:
1. "Average monthly compensation" means the same as in A.R.S. § 38-711(5).
 2. "Baseline salary" means a member's Average Monthly Compensation during the 12 consecutive months in which the member received Compensation immediately preceding the first month of Compensation used to calculate the member's retirement benefit. The Baseline Salary shall include only Compensation from the Same Employer that paid the Compensation used in the calculation of a member's retirement benefit. If the member has less than 12 consecutive months in which the member received Compensation immediately preceding the first month of Compensation used to calculate the member's retirement benefit, then the ASRS will calculate the member's Baseline Salary as the total of the 12 months of Compensation the member received:
 - a. Starting with the first month of Compensation the member received in the 12 months immediately preceding the member's Average Monthly Compensation, or within the Average Monthly Compensation; and
 - b. Ending with the 12th month of Compensation the member received after the first month of Compensation used in subsection (A)(2)(a).
 3. "Compensation" means the same as in A.R.S. § 38-711(7).
 4. "Job reclassification" means a change in the classification of an employment position made by the Employer when it finds the duties and responsibilities of the position have changed significantly, materially, and permanently from when the position was last

classified.

5. "Promotion" means, excluding a Salary Regrade or Job Reclassification, the act of advancing an employee to a higher salary or higher rank within the organization, which is characterized by:
 - a. A change in the employee's primary job responsibilities; and
 - b. A pay increase that is supported by a standard salary administration practice that is documented by the Employer; and
 - c. A competitive selection process or a noncompetitive selection process supported by a standard hiring practice that is documented by the Employer.
6. "Salary regrade" means a change in the salary scale of an employment position made by the Employer in order to align the position's salary scale with market factors and/or the Employer's current salary practices.
7. "Same employer" means the Employer has the same ownership as another Employer, except that for purposes of this Section, each agency, board, commission, and department of the State of Arizona shall be considered a separate Employer.
8. "Termination Incentive Program" means the same as in A.R.S. § 38-749(D)(1).
- B. Upon a member's retirement on or after January 1, 2018, the ASRS shall compare the member's Baseline Salary to the Average Monthly Compensation for each consecutive 12 months of Compensation used to calculate the member's retirement benefit in order to determine whether an Employer utilized a Termination Incentive Program as defined in A.R.S. § 38-749(D)(1). This subsection only applies to members who earned the Compensation used to calculate the member's Baseline Salary, on or after July 1, 2005.
- C. Upon determining that a Termination Incentive Program exists under subsection (B), the ASRS shall send a Request for Documentation to the Employer through the Employer's secure ASRS account, in order to notify the Employer that the ASRS has identified a Termination Incentive Program for a particular member and the Employer may be required to pay the ASRS for the unfunded liability resulting from the Termination Incentive Program, unless the Employer can prove the increase in the member's salary was the result of a Promotion.
- D. Within 90 days of the date on the Request for Documentation, the Employer shall respond to the Request for Documentation by:
 1. Submitting documentation through the Employer's secure ASRS account that shows the member's increase in Compensation was the result of a Promotion; or
 2. Acknowledging in writing that the increase in the member's salary was not the result of a Promotion.
- E. Pursuant to subsection (D), the Employer bears the burden of producing evidence that a Promotion has occurred as defined in subsection (A)(5).
- F. The ASRS shall use any evidence the Employer submits to the ASRS pursuant to subsection (D) to determine whether a Promotion occurred.
- G. If the Employer does not respond to the Request for Documentation within 90 days of the date on the Request for Documentation, the ASRS shall determine that the increase in the member's salary was not the result of a Promotion.
- H. If the ASRS determines that the increase in the member's salary was not the result of a Promotion pursuant to subsections (F) or (G), the ASRS shall calculate the unfunded liability amount pursuant to subsection (I).
- I. In consultation with the ASRS actuary, the ASRS shall use a determination under subsection (B) to calculate the unfunded liability resulting from the implementation of the Employer's Termination Incentive Program.
- J. Upon calculating an unfunded liability amount pursuant to subsection (I), the ASRS shall send a Termination Incentive Program Liability Invoice to the Employer through the Employer's secure ASRS account, in order to notify the Employer of the unfunded liability amount the Employer shall owe to the ASRS as a result of implementing the Termination Incentive Program identified under subsection (B).
- K. An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-749, shall remit full payment of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice.
- L. Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- M. The ASRS may collect any unfunded liability amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

Historical Note

Adopted as an emergency effective July 30, 1975 (Supp. 75-1). Former Section R2-8-25 renumbered as Section R2-8-125 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 23 A.A.R. 2743, effective January 1, 2018 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

R2-8-126. Retirement Application

- A. For the purposes of this Section, the following definitions apply, unless stated otherwise:
 1. "Acceptable documentation" means any written request containing all the accurate, required information, dates, and signatures necessary to process the request.
 2. "Acceptable form" means any ASRS form request containing all the accurate, required information, dates, and signatures necessary to process the form request.
 3. "Applicable retirement date" means the later of:
 - a. The date a member retires from the ASRS for the first time; or
 - b. The date a member re-retires from the ASRS after returning to active membership.
 4. "Conservator" means the same as in A.R.S. § 14-7651.
 5. "DRO" means the same as in R2-8-115.
 6. "Joint and survivor retirement benefit option" means an optional form of retirement benefits described in A.R.S. § 38-760(B)(1).
 7. "Legal documentation" means:
 - a. One document issued from a United States government entity; or
 - b. Two documents issued from one or more federal, state, local, sovereign, medical, or religious institution.
 8. "LTD" means the same as in R2-8-301.
 9. "Irrevocable PDA" means the same as in R2-8-501.
 10. "On File" means the same as in R2-8-115.
 11. "Original retirement date" means the later of:
 - a. The date a member retires from the ASRS for the first time; or
 - b. The date a member re-retires from the ASRS after returning to active membership for 60 consecutive months or more according to A.R.S. § 38-766(C).

11. "Period certain and life annuity retirement benefit option" means an optional form of retirement benefits described in A.R.S. § 38-760(B)(2).
 12. "Spouse" means the individual to whom a member is married under Arizona law.
 13. "Straight life annuity" means the same as monthly life annuity according to A.R.S. § 38-757.
- B.** A member may retire from the ASRS by submitting a Retirement Application to the ASRS that contains the following information:
1. The member's full name;
 2. The member's Social Security number or U.S. Tax Identification number;
 3. The member's marital status, if not On File with ASRS;
 4. The member's current mailing address; if not On File with ASRS;
 5. The member's date of birth, if not On File with ASRS;
 6. A retirement date according to A.R.S. § 38-764(A);
 7. The retirement option the member is electing;
 8. If the member is electing to roll over a lump sum distribution amount to another retirement account, then:
 - a. The type of account and account number, if applicable, to which the member is electing to roll over the lump sum distribution; and
 - b. The name and address of the financial institution of the account to which the member is electing to roll over the lump sum distribution;
 9. The following information for each primary beneficiary, unless the member is receiving a mandatory lump sum distribution under subsection (M):
 - a. The beneficiary's full name;
 - b. The beneficiary's Social Security number, if the beneficiary is a U.S. citizen;
 - c. The beneficiary's date of birth;
 - d. The beneficiary's relationship to the member; and
 - e. The percent of benefit the beneficiary may receive upon death of the member, if the member is designating more than one beneficiary.
 10. Whether the member is electing the Optional Health Insurance Premium Benefit;
 11. The following spousal consent information, if the member is married and is electing a retirement option other than a Joint and Survivor Retirement Benefit Option with at least 50% of the retirement benefit designated to the member's spouse:
 - a. Whether the member's spouse consents to the member making a beneficiary election that provides the member's spouse with less than 50% of the member's account balance;
 - b. Whether the member's spouse consents to the member electing a retirement option other than a Joint and Survivor Retirement Benefit Option;
 - c. The member's spouse's full name; and
 - d. The member's spouse's notarized signature;
 12. Whether the member is electing to receive a partial lump sum distribution according to A.R.S. § 38-760 and if so:
 - a. How many months of annuity, up to 36 months, the member is electing to receive as a partial lump sum;
 - b. Whether the member is electing to directly receive the partial lump sum distribution reduced by applicable tax withholding amounts;
 - c. Whether the member is electing to roll over all or a portion of the partial lump sum distribution amount to one other retirement account; and
 - d. Whether the member is electing to use the partial lump sum distribution to purchase service credit with ASRS based on a service purchase request dated before January 6, 2013;
 13. Acknowledgement of the following statements of understanding:
 - a. The member is aware of the member's LTD stop-payment date and any disability benefits the member is receiving shall cease upon the retirement date the member elects according to subsection (B)(6);
 - b. The member understands that if an overpayment exists, ASRS shall collect the remaining overpayment amount according to 2 A.A.C. 8, Article 8 and all repayment plans previously established with ASRS LTD claims administrator shall cease;
 - c. The member understands that if the member is submitting written notice of a changed retirement date, benefit option, or partial lump sum increment selection, ASRS shall distribute the member's benefit as of the later of:
 - i. The date ASRS receives the most recent Acceptable Documentation; or
 - ii. The retirement date contained in the most recent Acceptable Documentation.
 - d. The member has received the Special Tax Notice Regarding Plan Payments;
 - e. The member has received the Return to Work information and will comply with the laws and rules governing the member's return to work;
 - f. The member authorizes ASRS and the banking institution identified in subsection (W) to debit the member's account for the purposes of correcting errors and returning any payments inadvertently made after the member's death;
 - g. The member understands that the member may have a one-time option to rescind a Joint and Survivor Retirement Benefit Option or a Period Certain and Life Annuity Retirement Benefit Option according to R2-8-130;
 - h. The member understands that any person who knowingly makes any false statement with the intent to defraud ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793; and
 - i. The member acknowledges that the member has complied with A.R.S. §§ 38-755 and 38-776 regarding spousal consent; and
 14. The member's notarized signature.
- C.** If a Retirement Application is completed through the member's secure ASRS account, the member's notarized signature is not required under subsection (B)(14).
- D.** If the retirement date the member elects according to subsection (B)(6) is not allowed, the ASRS shall change the retirement date to the earliest eligible date according to A.R.S. 38-764(A), unless the member is not eligible to retire.
- E.** A member who elects to roll over all or a portion of the partial lump sum distribution amount according to subsection (B)(12)(c), shall submit the following written information to the ASRS:
1. The type of account and account number to which the member is electing to roll over;
 2. The name and address of the financial institution of the account to which the member is electing to roll over; and
 3. If the member is electing to roll over a portion of the partial lump sum distribution, then the amount the member is electing to roll over.

- F. If the member elects to roll over all or a portion of their lump sum or partial lump sum distribution, the ASRS shall only roll over the distribution to one retirement account.
- G. Any portion of the partial lump sum distribution that is not rolled over to another retirement account according to subsection (B) shall be distributed directly to the member.
- H. If the member elects to use the partial lump sum distribution to purchase service credit according to subsection (B)(12)(d) the member shall submit the following written information to the ASRS:
 - 1. The number of the service purchase invoice;
 - 2. Whether the member is electing to apply the partial lump sum distribution to all eligible service on that invoice;
 - 3. If the member is not electing to apply the partial lump sum distribution to all eligible service on that invoice, then:
 - a. The amount of the partial lump sum distribution to be applied to that invoice; or
 - b. The number of years on that invoice the member is electing to purchase with the partial lump sum distribution;
 - 4. If the member is electing to make a payment on that service purchase invoice with after-tax payments, a rollover, or termination pay according to A.R.S. § 38-747;
 - 5. Whether the member is electing to authorize the ASRS to increase the number of months of annuity, not to exceed 36 months, to purchase the eligible service on that service purchase invoice, if the member elected an insufficient number of months of annuity to receive as a partial lump sum according to subsection (G) to complete the service purchase invoice;
 - 6. If the member does not have eligible service to purchase on that invoice, whether the member is electing to cancel the member's election to receive a partial lump sum distribution.
- I. A member who elects to receive a partial lump sum distribution shall receive an actuarially reduced annuity retirement benefit according to A.R.S. § 38-760.
- J. ASRS shall disburse any partial lump sum amount that is not applied to a service purchase invoice according to subsection (G) directly to the member after withholding applicable taxes.
- K. After submitting a Retirement Application according to subsection (B), a member may make changes to the member's Retirement Application by submitting written notice to the ASRS of the specific changes according to A.R.S. § 38-764(H).
- L. If ASRS has received contributions for the member within the three years immediately preceding the member's retirement date, the ASRS shall send a New Retirement Ending Payroll Verification form to the Employer. If ASRS has received contributions for the member within the six months immediately preceding the member's retirement date and the member shall receive a one-time lump sum payment according to subsection (P), the ASRS shall send a New Retirement Ending Payroll Verification form to the Employer.
- M. If the member has reached the age for minimum required distribution according to A.R.S. § 38-775(H)(4), the ASRS shall send a New Retirement Ending Payroll Verification form to the member's most recent Employer.
- N. The Employer shall submit the completed New Retirement Ending Payroll Verification form to ASRS with the following information:
 - 1. The member's Termination date or last day of ASRS membership with that Employer, if applicable;
 - 2. The member's total salary paid during their last fiscal year;
 - 3. The member's compensation for the last pay period;
 - 4. The name and title of the authorized Employer representative;
 - 5. Certification by the authorized Employer representative that:
 - a. Any person who knowingly makes any false statement or who falsifies any record of the retirement plan with an intent to defraud the plan, is guilty of a Class 6 felony according to A.R.S. § 38-793; and
 - b. The authorized Employer representative certifies that they are the Employer user named on the New Retirement Ending Payroll Verification form and their title and contact information is current and correct.
- O. The ASRS shall cancel a member's Retirement Application if ASRS does not receive all forms and information required under this Section within six months immediately after the member's retirement date.
- P. As authorized under A.R.S. § 38-764(F), if a member's Straight Life Annuity, after any applicable early retirement reduction factor, is less than a monthly amount of \$100, the ASRS shall not pay the annuity. Instead, the ASRS shall make a one-time mandatory lump sum payment in the amount determined by using appropriate actuarial assumptions.
- Q. For purposes of calculating a member's retirement benefit according to A.R.S. §§ 38-758 and 38-759, ASRS shall calculate age to the nearest day as of the member's retirement date.
- R. Based on the retirement option the member elects according to A.R.S. § 38-760, the ASRS shall calculate a member's actuarially reduced benefits, based on the attained age of the member, and if necessary, the attained age of the contingent annuitant as of the date of the member's retirement as follows:
 - 1. For a partial lump sum retirement benefit option, ASRS shall calculate age to the nearest day as of the member's retirement date;
 - 2. For a Joint and Survivor Retirement Benefit Option, ASRS shall calculate age to the nearest day as of the member's retirement date; and
 - 3. For a mandatory lump sum payment according to subsection (O) or a Period Certain and Life Annuity Retirement Benefit Option, ASRS shall calculate age to the nearest full month in addition to calculating age according to subsection (P) as necessary.
- S. If the ASRS is unable to verify the age of the member or a contingent annuitant, the member or contingent annuitant shall provide Legal Documentation showing the member's or contingent annuitant's age.
- T. If a member does not retire by the date minimum distribution payments are required according to A.R.S. §§ 38-759 and 38-775, the required minimum distribution payments will accrue interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) and in effect on the date the required minimum distribution payments should have begun.
- U. The ASRS shall distribute any required minimum distribution payments with interest according to subsection (T) with the member's first finalized benefits payment.
- V. If a member submits a retirement application after the member's minimum required distribution date, the ASRS shall determine that the member's Applicable Retirement Date is the date the required minimum distribution payments should have begun.
- W. Notwithstanding any other Section, an inactive member who does not have contributions related to compensation is not eligible for retirement.
- X. The ASRS shall issue a debit benefit card, if the annuitant does not provide the following direct deposit information through the annuitant's secure ASRS account or by a notarized Direct Deposit form:
 - 1. The member's full name;
 - 2. The member's bank account routing number;
 - 3. The member's bank account number; and
 - 4. The type of the account.

- Y. The ASRS shall disburse benefits payments according to subsection (R), only retroactive to the later date specified in A.R.S. § 38-759(B).

- Z. ASRS shall not issue additional estimate checks to a member whose retirement is canceled.

Historical Note

Adopted effective September 12, 1977 (Supp. 77-5). Amended effective July 13, 1979 (Supp. 79-4). Former Section R2-8-26 renumbered and amended as Section R2-8-126 effective May 21, 1982 (Supp. 82-3). Amended subsections (A) through (D) effective October 18, 1984 (Supp. 84-5). Amended subsections (A) through (D) effective July 24, 1985 (Supp. 85-4). Amended by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Amended by final rulemaking at 19 A.A.R. 332, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 22 A.A.R. 3081, effective December 3, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

R2-8-127. Re-Retirement Application

- A. The definitions in R2-8-126 apply to this Section.
- B. If a member has previously retired from ASRS, the member may re-retire from ASRS by submitting a Re-Retirement Application to the ASRS that contains:
1. The information identified in R2-8-126(B)(1) through (B)(8);
 2. The retirement option the member is electing, if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
 3. The information identified in R2-8-126(B)(11);
 4. Whether the member is electing the Optional Health Insurance Premium Benefit, if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
 5. The information identified in R2-8-126(B)(13), if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
 6. Acknowledgement of the following statements of understanding:
 - a. The member's signature confirms the member's intent to re-retire and applies to all the sections included in the Re-Retirement Application.
 - b. The member understands that as a re-retiree, the member must keep the same retirement option and beneficiary the member elected when the member previously retired from ASRS, unless the member returned to active membership for 60 consecutive months or more according to A.R.S. § 38-766(C);
 - c. The member may change the member's beneficiary after re-retiring and changing the beneficiary may change the member's monthly annuity;
 - d. The member has complied with A.R.S. §§ 38-755 and 38-766 regarding spousal consent;
 - e. The member certifies that the member has read and understands the instructions and Special Tax Notice Regarding Plan Payments;
 - f. The member authorizes ASRS and the banking institution the member listed for direct deposit to debit the member's account for the purpose of correcting errors and returning any payments inadvertently paid after the member's death;
 - g. The member understands that any person who knowingly makes any false statement with the intent to defraud ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793; and
 - h. The member understands that if an overpayment exists, the ASRS shall collect the remaining overpayment amount according to 2 A.A.C. 8, Article 8 and all repayment plans previously established with the ASRS LTD claims administrator shall cease.
 7. The member's notarized signature.
- C. If the retirement date the member elects according to R2-8-126(B)(6) is not allowed, the ASRS shall change the retirement date to the earliest eligible date according to A.R.S. 38-764(A), unless the member is not eligible to retire.

Historical Note

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

R2-8-128. Joint and Survivor Retirement Benefit Options

- A. The definitions in R2-8-126 apply to this Section.
- B. A member who is ten years and one day, or more, older than the member's non-spouse contingent annuitant is not eligible to elect a 100% Joint and Survivor Retirement Benefit Option.
- C. A member who is 24 years and one day, or more, older than the member's non-spouse contingent annuitant is not eligible to elect a 66 2/3% Joint and Survivor Retirement Benefit Option.
- D. For members whose Original Retirement Date is on or after March 6, 2016, notwithstanding subsection (B), a member who is ten years and one day, or more, older than the member's ex-spouse contingent annuitant is eligible to participate in a 100% Joint and Survivor Retirement Benefit Option, if:
1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
 2. The member submits an original or certified copy of a DRO to ASRS which requires the ex-spouse to remain as the contingent annuitant on the member's account.
- E. For members whose Original Retirement Date is on or after March 6, 2016, notwithstanding subsection (C), a member who is 24 years and one day, or more, older than the member's ex-spouse contingent annuitant is eligible to participate in a 66 2/3% Joint and Survivor Retirement Benefit Option, if:
1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
 2. The member submits an original or certified copy of a DRO to the ASRS which requires the ex-spouse to remain as the contingent annuitant on the member's account.
- F. Notwithstanding any other Section, for purposes of determining whether a member is eligible to participate in a Joint and Survivor Retirement Benefit Option, the ASRS shall calculate the difference in a member's age and the contingent annuitant's age based on the

birthdates of the member and the contingent annuitant. For purposes of this Section, a contingent annuitant must be a living person.

Historical Note

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

R2-8-129. Period Certain and Life Annuity Retirement Options

- A. The definitions in R2-8-126 apply to this Section.
- B. An individual who is 104 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option.
- C. An individual who is 93 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option with ten years certain or 15 years certain.
- D. An individual who is 85 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option with 15 years certain.
- E. The ASRS shall calculate the period certain term as beginning on the first day of the first full calendar month following the member's Applicable Retirement Date.
- F. Notwithstanding subsection (E), the ASRS shall calculate the period certain term as beginning on the member's Applicable Retirement Date if the member's Applicable Retirement Date is the first day of the month.

Historical Note

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

R2-8-130. Rescind or Revert Retirement Election; Change of Contingent Annuitant

- A. The definitions in R2-8-126 apply to this Section.
- B. According to A.R.S. § 38-760(B)(2), for a member whose Original Retirement Date is after August 9, 2001, upon the expiration of a member's period certain term the ASRS shall rescind the member's election and the ASRS shall provide the member a Straight Life Annuity retirement benefit subject to any retirement reductions applicable at the member's Original Retirement Date.
- C. According to A.R.S. § 38-760(B)(2), a member whose Original Retirement Date is after August 9, 2001 and before July 1, 2008 and who elected a Period Certain and Life Annuity Retirement Benefit Option, may rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the expiration of the member's period certain term.
- D. According to A.R.S. § 38-760(B)(1), a member whose Original Retirement Date is before July 1, 2008 and who elected a Joint and Survivor Retirement Benefit Option may rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the member's death.
- E. A member whose Original Retirement Date is on or after July 1, 2008 and who elected a Period Certain and Life Annuity Retirement Benefit Option may exercise a one-time election to rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the expiration of the member's period certain term if the member provides proof to ASRS of the death of the primary beneficiary or an original or certified copy of a DRO showing that the primary beneficiary has ceased to be a primary beneficiary.
- F. A member whose Original Retirement Date is on or after July 1, 2008 and who elected a Joint and Survivor Retirement Benefit Option may exercise a one-time election to rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the death of the member if the member provides proof to ASRS of the death of the contingent annuitant or an original or certified copy of a DRO showing that the contingent annuitant has ceased to be a contingent annuitant.
- G. A member who elected to rescind a Period Certain and Life Annuity Retirement Benefit Option according to subsection (C) may elect to revert to the Period Certain and Life Annuity Retirement Benefit Option by submitting an Application to Rescind, Revert or Change Contingent Annuitant as specified in subsection (M).
- H. A member who elected to rescind a Joint and Survivor Retirement Benefit Option according to subsection (D) may elect to revert to the Joint and Survivor Retirement Benefit Option by submitting an Application to Rescind, Revert or Change Contingent Annuitant as specified in subsection (M).
- I. A member may only revert to the same Period Certain and Life Annuity Retirement Benefit Option the member rescinded according to subsection (C) prior to the expiration of the period certain term the member elected at the member's most recent retirement.
- J. A member who rescinds their election according to subsections (E) or (F) is not eligible to revert to a Period Certain and Life Annuity Retirement Benefit Option or a Joint and Survivor Retirement Benefit Option.
- K. Notwithstanding any other provision, the time period of a Period Certain and Life Annuity Retirement Benefit Option shall be continuous from the member's retirement date until the term expires regardless of whether the member rescinds or reverts to another retirement option.
- L. A member who wants to rescind or revert a retirement election according to subsections (C) through (H) shall ensure ASRS receives an Application to Rescind, Revert or Change Contingent Annuitant at least one day prior to the member's death.
- M. In order to rescind, revert, or change a contingent annuitant, the member shall submit an Application to Rescind, Revert or Change Contingent Annuitant with the following information:
 - 1. The member's full name;
 - 2. The member's Social Security number or U.S. Tax Identification number;
 - 3. The member's marital status, if not On File with ASRS;
 - 4. Whether the member is electing to rescind, revert, or change a contingent annuitant;
 - 5. The member's notarized signature acknowledging the following statements of understanding:
 - a. For rescinding a retirement election:
 - i. By this action, and the member's signature, the member is aware that the member's designated beneficiary or contingent annuitant will not continue with monthly benefits after the member's death;
 - ii. The member is aware that a certified copy of the member's designated beneficiary's or contingent annuitant's death certificate or an original or certified copy of a DRO is required if the member retired or re-retired on or after July 1, 2008;
 - iii. At the time of the member's death, if the ASRS has not disbursed the total employee contributions on the member's account, plus interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) through the month prior to the member's retirement date, the balance will be payable in a lump sum to the beneficiary named on the member's most recent Acceptable Form.
 - b. For changing a contingent annuitant or beneficiary:
 - i. For a Joint and Survivor Retirement Benefit Option, by this action, and the member's signature, the contingent annuitant named on the member's most recent Acceptable Form will receive the previously elected percentage amount of the

- F. The ASRS shall honor a beneficiary designation last made or a retirement election submitted before July 1, 2013, even if the beneficiary designation or retirement election fails to comply with subsection (E).
- G. Subsection (E) does not apply to a member who is receiving a mandatory lump sum distribution according to A.R.S. § 38-764.
- H. Subsection (E) does not apply to a member who submits a Spousal Consent Exception form that contains the member's notarized signature to the ASRS affirming under penalty of perjury that the member's spouse's consent is not required because of one of the reasons specified in A.R.S. § 38-776(C).
- I. In order to change a beneficiary designation, a member shall submit the information contained in subsection (B) and:
 - 1. A married member who changes a beneficiary designation on or after July 1, 2013, shall ensure the new beneficiary designation is consistent with subsection (E); or
 - 2. A married member who retired before July 1, 2013, and who wishes to change the contingent annuitant or beneficiary, shall ensure that the new designation is consistent with subsection (E).
- J. A married member who re-retires according to A.R.S. § 38-766:
 - 1. Within less than 60 consecutive months of active membership from the member's previous retirement date, is not eligible to elect a different annuity option or different beneficiary than the member elected at the time of the previous retirement; or
 - 2. At least 60 consecutive months of active membership after the member's previous retirement date, may elect a different annuity option and different beneficiary than the member elected at the time of the previous retirement, and the election shall comply with subsection (E).
- K. If a married member submits a retirement application that fails to comply with subsection (E), the member shall submit a new retirement application or written notice of new retirement elections that comply with subsection (E) within six months of the member's Original Retirement Date. The member's new Original Retirement Date is the date ASRS receives the new application or written notice unless the member elects a later date according to A.R.S. § 38-764.
- L. If a married member made a beneficiary designation on or after July 1, 2013 that is not consistent with the requirements specified in subsection (E), the ASRS shall, at the time of the member's death:
 - 1. Notify both the spouse and designated beneficiary and:
 - a. Provide the spouse with an opportunity to waive the right under subsection (E); and
 - b. Provide the designated beneficiary with an opportunity to provide documentation that revokes the spouse's right under subsection (E); and
 - 2. Designate 50% of the member's retirement benefit to the spouse if neither the spouse nor designated beneficiary respond to notification according to subsection (L)(1) within 30 days after notification.
- M. If a married member designated a beneficiary before July 1, 2013 that does not comply with subsection (E), upon the death of the member, the member's spouse may submit written notice to the ASRS prior to disbursement of the member's account with the following information:
 - 1. The member's full name;
 - 2. The member's Social Security number or U.S. Tax Identification number;
 - 3. The spouse's assertion to the spouse's right to community property;
 - 4. An original or copy of the marriage certificate; and
 - 5. An original or certified copy of the member's death certificate.
- N. If a spouse submits written notice according to subsection (M), the ASRS shall designate the spouse as beneficiary of a percentage of the member's account according to A.R.S. §§25-211 and 25-214 and notify the member's designated beneficiary of the spouse's assertion.
- O. The ASRS shall determine a spouse's percentage of the member's account according to subsection (L) based on the amount of service credit the member acquired during the marriage divided by the total amount of service credit the member acquired, multiplied by 50%.
- P. If a beneficiary is notified of a spouse's assertion according to subsection (N), then before ASRS disburses a survivor benefit, the beneficiary may notify ASRS of the beneficiary's intent to appeal the spouse's right to a survivor benefit.
- Q. Within 30 days, a beneficiary who has notified ASRS of the beneficiary's intent to appeal a survivor benefit disbursement according to subsection (P), shall submit an appeal to ASRS according to 2 A.A.C. 8, Article 4.
- R. An original or certified copy of a DRO may supersede the requirements in subsection (B).
- S. To consent to an alternative retirement benefit option or beneficiary designation, a member's spouse shall complete and have notarized a Spousal Consent form containing the following information:
 - 1. Member's full name;
 - 2. Member's Social Security number or U.S. Tax Identification number;
 - 3. Whether the member's spouse is consenting to one or more of the following:
 - a. The member making a beneficiary designation that provides the spouse with less than 50% of the member's account balance;
 - b. The member electing a retirement option other than a Joint and Survivor Retirement Benefit Option;
 - c. The member naming a contingent annuitant other than the spouse; and
 - d. The spouse's notarized signature.
- T. A member's spouse may revoke the spouse's consent to an alternative retirement benefit option or beneficiary designation by sending written notice to ASRS with the following information:
 - 1. The member's full name
 - 2. The member's Social Security number or U.S. Tax Identification number;
 - 3. The spouse's full name;
 - 4. The spouse's dated signature indicating the spouse is revoking all previous Spousal Consent forms.
- U. A spouse who is revoking a Spousal Consent form shall ensure the written notice is received no later than the earlier of one day before the member dies or ASRS disburses a retirement benefit to the member.

Historical Note

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

R2-8-132. Survivor Benefit Options

- A. The definitions in R2-8-126 apply to this Section.
- B. If the beneficiary is eligible to elect the survivor benefit as monthly income for life according to A.R.S. § 38-762(C), the ASRS shall calculate the benefits based on the attained age of the beneficiary, calculated to the nearest full month, as of the date of the member's death.
- C. If the beneficiary elects to receive the survivor benefit as monthly income for life according to A.R.S. § 38-762(C), the ASRS shall calculate the benefits effective date as of the day after the member's death and the ASRS shall pay interest up to the benefits effective

date.

- D. According to A.R.S. § 38-763, if the member elected a Period Certain and Life Annuity Retirement Benefit Option and deceases prior to the expiration of the period certain term, the member's beneficiary may elect to complete the remaining period certain term or the beneficiary may elect to receive a lump sum distribution which is the greater of:
 - 1. The present value of the benefits based on the remaining period certain term; or
 - 2. The member's ASRS account balance plus interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) through the month prior to the member's retirement date, reduced by all retirement benefits due to the member.
- E. Notwithstanding subsection (D), a beneficiary is not eligible to elect to complete the remaining period certain term if the period certain term has expired.
- F. If the beneficiary elects to complete the remaining period certain term or elects to receive a lump sum that is the present value of the benefits based on the remaining period certain term according to subsection (D), the ASRS shall not pay interest.
- G. If a member's beneficiary or contingent annuitant does not want to receive a survivor benefit according to 26 U.S.C. § 2518, within nine months after the member's death, the beneficiary or contingent annuitant may submit a written request to the ASRS with the following information for the beneficiary or contingent annuitant:
 - 1. Full name;
 - 2. Social Security number if the beneficiary or contingent annuitant is a U.S. citizen;
 - 3. Address; and
 - 4. Notarized signature acknowledging the following statements:
 - a. The beneficiary or contingent annuitant is aware that, as a beneficiary or contingent annuitant of the member, the beneficiary or contingent annuitant is entitled to a survivor benefit in the amount specified by the ASRS;
 - b. The beneficiary is renouncing a portion or all of the beneficiary's rights to the member's benefit;
 - c. The contingent annuitant is renouncing all of the contingent annuitant's rights to the member's benefit;
 - d. The beneficiary understands that by renouncing rights to the member's benefit, the portion that the beneficiary is renouncing will be paid to any other survivor on the member's account, or if there is no other designated survivor, the benefit will be paid to the member's estate; and
 - e. The contingent annuitant understands that by renouncing rights to the member's benefit, the ASRS shall pay the member's ASRS account balance plus interest at the Assumed Actuarial Interest and Investment Return Rate specified in R2-8-118(A) through the month prior to the member's retirement date, reduced by all retirement benefits due to the member, to any other survivor on the member's account, or if there is no other designated survivor, to the member's estate.
- H. According to 26 U.S.C. § 2518, a minor beneficiary's or contingent annuitant's survivor benefit cannot be renounced.

Historical Note

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

R2-8-133. Survivor Benefit Applications

- A. The definitions in R2-8-126 apply to this Section.
- B. The ASRS shall not distribute a survivor benefit until a claimant notifies the ASRS of a member's death by telephone or submission of a death certificate, unless the member elected a Joint and Survivor Benefit Option upon retirement.
- C. Upon notification of the death of a member, the ASRS shall distribute the survivor benefits according to the most recent, Acceptable Form that is On File with the ASRS that was received at least one day prior to the date of the member's death, unless otherwise provided by law.
- D. The designated beneficiary or other person specified in A.R.S. § 38-762(E) shall provide the following:
 - 1. An original certified death certificate or a certified copy of a court order that establishes the member's death;
 - 2. If the claimant is not a designated beneficiary, but is a person specified in A.R.S. § 38-762(E), a copy of a document issued from a federal, state, local, sovereign, or medical institution showing the claimant's relationship to the deceased member;
 - 3. A certified copy of the court order of appointment as administrator, if applicable; and
 - 4. Except if the deceased member was retired and elected the joint and survivor option, complete and have notarized an Application for Survivor Benefits, provided by the ASRS that includes:
 - a. The deceased member's full name,
 - b. The deceased member's Social Security number or U.S. Tax Identification number,
 - c. The benefit the designated beneficiary or other person specified in A.R.S. § 38-762(E) is electing;
 - d. If the designated beneficiary or other person specified in A.R.S. § 38-762(E) is electing to roll over a benefit, the following information:
 - i. The claimant's full name;
 - ii. The name of the institution to which the claimant is electing to roll over;
 - iii. The address of the institution to which the claimant is electing to roll over;
 - iv. The full name of the authorized representative of the institution to which the claimant is electing to roll over;
 - v. The signature of the authorized representative of the institution to which the claimant is electing to roll over;
 - e. If the beneficiary is electing to have any of the survivor benefits directly deposited into a bank account, the following information:
 - i. Whether the bank account is a checking or savings account;
 - ii. The name of the banking institution to which the benefit is being sent;
 - iii. The routing number;
 - iv. The account number; and
 - f. The following information for the designated beneficiary or other person specified in A.R.S. § 38-762(E):
 - i. Full name;
 - ii. Mailing address, if not On File with ASRS;
 - iii. Date of birth, if applicable; and
 - iv. Social Security number or U.S. Tax Identification number, if not On File with ASRS.
 - g. The following statements of understanding:
 - i. The designated beneficiary or other person specified in A.R.S. § 38-762(E) has read and understands the Special Tax Notice Regarding Plan Payments they received with this application;

- ii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) authorizes the ASRS to make payments as indicated above and agree on behalf of themselves and their heirs that such payments shall be a complete discharge of the claim and shall constitute a release of the ASRS from any further obligation on account of the benefit;
 - iii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) authorizes the ASRS and the Banking Institution listed above to debit their account for the purposes of correcting errors and returning any payments inadvertently made after their death;
 - iv. Under penalties of perjury, the designated beneficiary or other person specified in A.R.S. § 38-762(E) certifies that:
 - (1) The Social Security number or U.S. Tax Identification number shown on this application is correct;
 - (2) They are not subject to backup withholding because:
 - (a) They are exempt from backup withholding, or
 - (b) They have not been notified by the Internal Revenue Service that they are subject to backup withholding as a result of a failure to report all interest or dividends, or
 - (c) The Internal Revenue Service has notified them that they are no longer subject to backup withholding; and
 - (3) They are a legal resident of the United States, unless they are an estate or trust.
 - v. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands their right to a 30-day notice period to consider a rollover or a cash distribution and they elect to waive the notice period by their election for payment on this application;
 - vi. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over all or any portion of their distribution to another eligible retirement plan, it is their responsibility to verify that the receiving plan will accept the rollover and, if applicable, agree to separately account for the taxable and nontaxable amounts rolled over and the related subsequent earnings on such amounts;
 - vii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over all or any portion of their distribution to an IRA plan, it is their responsibility to verify that the receiving IRA institution will accept the rollover and, if applicable, it is their responsibility to separately account for taxable and nontaxable amounts;
 - viii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to another eligible retirement plan, any portion of the distribution not designated for a rollover will be paid directly to them and any taxable amounts will be subject to federal and state income tax withholding;
 - ix. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to an inherited IRA plan, any portion of the distribution not designated for a rollover will be paid directly to them and any taxable amounts will be subject to federal and state income tax withholding.
 - xi. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to an inherited IRA plan, they may be required to receive a minimum distribution and they certify that the date of birth shown on this form is correct.
5. For a member who elected a Joint and Survivor Retirement Benefit Option, a contingent annuitant shall submit a Joint and Survivor Certification form containing:
- a. The following information for the member:
 - i. Full name;
 - ii. Social Security number or U.S. Tax Identification number;
 - iii. Date of death; and
 - b. The following information for the beneficiary:
 - i. Legal relationship to the member;
 - ii. Full name;
 - iii. Social Security number or United States Tax Identification number, if not On File with ASRS;
 - iv. Mailing address, if not On File with ASRS;
 - v. Date of birth, if not On File with ASRS;
 - vi. If the contingent annuitant is electing to have any of the survivor benefits directly deposited into a bank account, the following information:
 - (1) Whether the bank account is a checking or savings account;
 - (2) The name of the banking institution to which the benefit is being sent;
 - (3) The routing number;
 - (4) The account number; and
 - c. The following statements of understanding:
 - i. The contingent annuitant has read and understands the Special Tax Notice Regarding Plan Payments they received with the Joint and Survivor Certification form;
 - ii. The contingent annuitant authorizes the ASRS to make payments as indicated above and agree on behalf of themselves and their heirs that such payments shall be a complete discharge of the claim and shall constitute a release of the ASRS from any further obligation on account of the benefit; and
 - iii. The contingent annuitant authorizes the ASRS and the Banking Institution listed above to debit their account for the purposes of correcting errors and returning any payments inadvertently made after their death.
 - d. The contingent annuitant's notarized signature.
- E.** Notwithstanding R2-8-132(H), if the beneficiary or contingent annuitant is a minor as of the date of the member's death, the beneficiary or contingent annuitant may submit a written request with the information contained in R2-8-132(G)(1) through (4) within nine months after the minor attains 18 years of age.
- F.** For a member who deceases prior to the member's retirement date, if there is no designation of beneficiary or if the designated beneficiary predeceases the member, the ASRS shall pay a survivor benefit as specified in A.R.S. § 38-762(E).
- G.** The ASRS shall begin disbursing a survivor benefit to a contingent annuitant according to A.R.S. § 38-760(B)(1) upon notification and verification of the member's death by a third party.
- H.** The ASRS shall suspend a survivor benefit for a contingent annuitant unless the contingent annuitant provides the information in subsection (D) within two months of the ASRS disbursing a survivor benefit.
- I.** If the member is domiciled in Arizona, according to A.R.S. § 14-3971, and there is no designated beneficiary, the ASRS shall distribute the balance of a member's account to a claimant if the claimant submits an Affidavit for Collection of Personal Property to ASRS with the following:
- 1. The claimant's name;

2. The claimant's Social Security number or U.S. Tax Identification number;
3. The claimant's mailing address;
4. The member's name;
5. The member's Social Security number or U.S. Tax Identification number;
6. The date of the member's death;
7. The state and county where the member died;
8. Statements indicating:
 - a. According to A.R.S. § 14-3971(B)(2)(a), no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction and the value of the member's entire estate, less liens and encumbrances, does not exceed the amount in A.R.S. § 14-3971 as valued as of the date of the member's death;
 - b. According to A.R.S. § 14-3971(B)(2)(b), the personal representative has been discharged, or more than a year has elapsed since a closing statement has been filed and the value of the member's entire estate, less liens and encumbrances, does not exceed the amount in A.R.S. § 14-3971 as valued as of the date the ASRS receives the Affidavit for Collection of Personal Property;
 - c. The claimant is the successor of the member and is entitled to the member's personal property because:
 - i. The claimant is named in the member's will; or
 - ii. The member did not have a will and the claimant is entitled to the member's personal property by right of intestate succession according to A.R.S. § 14-2103;
 - d. If the claimant is entitled to the member's personal property according to subsection (I)(8)(c)(i), then a copy of the member's will;
 - e. If the claimant is entitled to the member's personal property according to subsection (I)(8)(c)(ii), then the relationship between the member and the claimant and whether there are other surviving heirs;
 - f. If there are other surviving heirs, then the name and relationship of each surviving heir;
 - g. A statement indicating the claimant is making the Affidavit for Collection of Personal Property according to A.R.S. § 14-3971 for the purpose of making a claim to the member's ASRS account; and
 - h. The claimant's notarized signature.
- J. If the member is not domiciled in Arizona and there is no designated beneficiary, the ASRS shall distribute the balance of a member's account to a claimant if the claimant submits legal documentation to claim the member's ASRS account that complies with the statutory requirements of the state in which the member was domiciled at the time of the member's death.
- K. Notwithstanding any other provision, if the amount of the survivor benefit as valued at the date of disbursement is less than \$10,000 per annum, the ASRS shall not distribute a survivor benefit to a minor beneficiary unless the minor beneficiary's legal guardian submits the following written information:
 1. The member's full name;
 2. The member's Social Security number or U.S. Tax Identification number;
 3. The minor beneficiary's full name;
 4. The minor beneficiary's Social Security number or U.S. Tax Identification number;
 5. The full name of the minor beneficiary's legal guardian;
 6. The minor beneficiary's legal guardian's address, if not On File with ASRS; and
 7. The minor beneficiary's legal guardian's signature certifying the minor beneficiary's legal guardian has care and custody of the minor beneficiary.
- L. Notwithstanding any other provision, if the amount of the survivor benefit as valued at the date of disbursement is \$10,000 or more per annum, the ASRS shall not distribute a survivor benefit to a minor beneficiary unless the minor beneficiary's conservator submits proof of court-appointed fiduciary responsibility for the minor beneficiary.
- M. The ASRS shall remit payment to the minor beneficiary according to subsection (K) by sending the minor beneficiary's conservator a check, if the document providing proof of the court-appointed fiduciary responsibility requires payment to be made to a restricted or secure account.
- N. If a person claims that a beneficiary or claimant is not entitled to a survivor benefit, then before ASRS disburses a survivor benefit, the person may notify ASRS of the person's intent to appeal the beneficiary's or claimant's right to a survivor benefit.
- O. Within 30 days, a person who has notified ASRS of the person's intent to appeal a survivor benefit disbursement according to subsection (N), shall submit an appeal to ASRS according to 2 A.A.C. 8, Article 4.
- P. If the ASRS receives documentation from, or confirmed by, a law enforcement agency, that a beneficiary or claimant may be guilty of the felonious and intentional killing of the member, the ASRS shall not distribute any benefits to the beneficiary or claimant that may be guilty of the felonious and intentional killing of the member until the matter has been adjudicated.
- Q. If the member's estate has an appointed personal representative, the member's estate shall submit a court document identifying the personal representative for the member's estate before ASRS may distribute a survivor benefit.
- R. If the member's estate is closed, the person claiming a right to the member's ASRS account shall provide a court document proving the estate is closed.
- S. If the survivor receives a monthly annuity and does not provide the direct deposit information according to subsection (D)(4)(e) or (D)(5)(b)(vi), ASRS shall issue a debit benefit card.

Historical Note

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

Table 1. Repealed

Historical Note

Adopted effective September 12, 1977 (Supp. 77-5). Table 1 repealed, new Table 1 adopted effective July 24, 1985 (Supp. 85-4).

Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 2. Repealed

Historical Note

Exhibit M, Table 2. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit M, Table 3. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit M, Table 4. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit M, Table 5. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit M, Table 6. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

ARTICLE 2. HEALTH INSURANCE PREMIUM BENEFIT

R2-8-201. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "Coverage" means a medical and/or dental insurance plan a retired member, Disabled member, or beneficiary obtains through the ASRS or an Employer.
2. "Contingent annuitant" means the same as in A.R.S. § 38-711(8) and the person is eligible for Coverage.
3. "Disabled" means the member has a disability and is receiving long-term disability benefits pursuant to A.R.S. § 38-797 et seq.
4. "Family calculation" means the family Coverage premium described in A.R.S. § 38-783(B).
5. "Joint & survivor" means the annuity option described in A.R.S. § 38-760(B)(1).
6. "Net premium" means the amount of the Coverage premium reduced by the amount of the Premium Benefit provided by the ASRS.
7. "On file" means the same as in R2-8-115.
8. "Original retirement date" means the same as in R2-8-126.
9. "Optional premium benefit" means the election, upon retirement, to have the Premium Benefit paid on behalf of the member's Contingent Annuitant upon death of the member pursuant to A.R.S. § 38-783.
10. "Period-certain" means the annuity option described in A.R.S. § 38-760(B)(2).
11. "Premium benefit" means the amount the ASRS provides on behalf of a retired member or Disabled member in order to offset the Coverage premium of the retired or Disabled member pursuant to A.R.S. § 38-783.
12. "Single calculation" means the single Coverage premium calculation described in A.R.S. § 38-783(A).
13. "Subsidized" means the same as in A.R.S. § 38-783(M)(4).

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective May 31, 2015 (Supp. 16-4). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

R2-8-202. Premium Benefit Eligibility and Benefit Determination

- A. A retired member or Disabled member who has five or more years of service and who elects to maintain Coverage is eligible for a Premium Benefit as follows:
1. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member only, is eligible for a Single Calculation of the Premium Benefit as described in R2-8-204(A);

2. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and a dependent who is not a retired member or Disabled member is eligible for a Family Calculation of the Premium Benefit as described in R2-8-204(B).
3. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and a dependent who is a retired member or Disabled member is eligible for the greater of:
 - a. Two Single Calculations of the Premium Benefit described in R2-8-204(A); or
 - b. One Family Calculation of the Premium Benefit described in R2-8-204(B).
4. A retired member or Disabled member who is enrolled as a dependent on a member's insurance plan is eligible for a Single Calculation of the Premium Benefit described in R2-8-204(A) if:
 - a. The retired member has an Original Retirement Date prior to August 2, 2012; or
 - b. The Disabled member became Disabled prior to August 2, 2012;
5. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and multiple dependents, some of whom are retired members or Disabled members, is eligible for the greater of:
 - a. Two Single Calculations of the Premium Benefit described in R2-8-204(A); or
 - b. One Family Calculation of the Premium Benefit described in R2-8-204(B).
- B. Pursuant to A.R.S. § 38-783(E), a retired member who returns to work with an Employer and elects to maintain Coverage is eligible to receive a Premium Benefit if the member has an Original Retirement Date prior to August 2, 2012.
- C. Pursuant to A.R.S. § 38-783(E), a Disabled member who elects to maintain Coverage is eligible to receive a Premium Benefit if the Disabled member became Disabled prior to August 2, 2012.
- D. A member who receives a lump sum distribution from the ASRS upon retirement is eligible to receive a Premium Benefit pursuant to this Article.
- E. Notwithstanding any other Section, a retired member who has an Original Retirement Date on or after August 2, 2012, or a Disabled member who became Disabled on or after August 2, 2012 is eligible to receive a Premium Benefit pursuant to this Article, only if Coverage is not Subsidized.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Amended by emergency rulemaking at 10 A.A.R. 4259, effective September 30, 2004 (Supp. 04-3). Amended by final rulemaking at 10 A.A.R. 4346, effective October 5, 2004 (Supp. 04-3). Section amended and Table 1 repealed by final rulemaking at 13 A.A.R. 4581, effective February 2, 2008 (Supp. 07-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

R2-8-203. Payment of Premium Benefit

- A. Every month, the ASRS shall provide a Premium Benefit to the Employer on behalf of a retired member, Disabled member, or Contingent Annuitant who maintains Coverage and is eligible to receive a Premium Benefit pursuant to R2-8-202.
- B. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the Arizona Department of Administration or the ASRS, the ASRS shall reduce the retired member's pension amount by the amount of the retired member's Net Premium for Coverage pursuant to this Article, unless the Net Premium exceeds the pension amount.
- C. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the ASRS and the Net Premium exceeds the retired member's pension amount, the retired member shall be responsible for remitting the Net Premium to the retired member's insurance company and the ASRS shall:
 1. Not reduce the retired member's pension amount; and
 2. Remit payment of the Premium Benefit to the retired member's insurance company.
- D. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the Arizona Department of Administration and the Net Premium exceeds the retired member's pension amount, the retired member shall be responsible for remitting the Net Premium to the Arizona Department of Administration and the ASRS shall:
 1. Not reduce the retired member's pension amount; and
 2. Remit payment of the Premium Benefit to the Arizona Department of Administration.
- E. If a Disabled member who is eligible to receive a Premium benefit pursuant to R2-8-202 maintains Coverage with the Arizona Department of Administration, the ASRS shall remit the Premium Benefit to the Arizona Department of Administration, unless the Disabled member is participating in the Six-Month Reimbursement Program pursuant to R2-8-206.
- F. If a Disabled member who is eligible to receive a Premium Benefit pursuant to R2-8-202 maintains Coverage with the ASRS, the ASRS shall remit the Premium Benefit to the Disabled member's insurance company and the Disabled member shall be responsible for remitting the Net Premium to the Disabled member's insurance company.
- G. If a retired member or Disabled member who is eligible to receive a Premium Benefit pursuant to R2-8-202 maintains Coverage with an Employer other than the ASRS or the Arizona Department of Administration, the ASRS shall remit the Premium Benefit to the retired member's or Disabled member's Employer, unless the retired member or Disabled member is participating in the Six-Month Reimbursement Program pursuant to R2-8-206.
- H. If a retired member or Disabled member is eligible to receive a Premium Benefit pursuant to R2-8-202, the ASRS shall provide the lesser of the following for any one retired member or Disabled member:
 1. The actual cost of the Coverage premium; or
 2. The greatest Premium Benefit calculation for which the retired member or Disabled member is eligible pursuant to R2-8-202.
- I. If a retired member is eligible to receive a Premium Benefit pursuant to R2-8-202 and the member retires from the ASRS in addition to retiring from another State retirement system or plan described in A.R.S. § 38-921, each month, the ASRS shall remit any Premium Benefit for which the retired member is eligible under this Article to the other State retirement system or plan from which the member retired.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2).

R2-8-204. Premium Benefit Calculation

- A. A Single Calculation for a Premium Benefit is based on the retired member's or Disabled member's Coverage election, years of service, and Medicare or non-Medicare status.
- B. A Family Calculation for a Premium Benefit is based on the retired member's or Disabled member's Coverage election, years of service, and Medicare or Non-Medicare status, and the Medicare or Non-Medicare status of any dependents for which the retired member or Disabled member has obtained Coverage.
- C. A Contingent Annuitant who is eligible to receive an Optional Premium Benefit pursuant to R2-8-207 shall receive an Optional Premium Benefit amount based on:
 - 1. The retired member's years of service and optional retirement benefit election pursuant to A.R.S. § 38-760; and
 - 2. The Contingent Annuitant's Coverage and Medicare or non-Medicare status.
- D. Notwithstanding R2-8-203(H), if a Contingent Annuitant is a retired member, the Contingent Annuitant may be entitled to receive more than one Premium Benefit.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

R2-8-205. Premium Benefit Documentation

- A. Every year, prior to the effective date of Coverage, an Employer shall report to the ASRS all the Coverage plans and premium rates the Employer offers to its retired or Disabled employees.
- B. An Employer shall inform the ASRS of any changes to the retired member's, Disabled member's, or Contingent Annuitant's Coverage, including enrollment in Coverage, maintained through the Employer within 30 days of the changes taking effect.
- C. Using the Employer's secure ASRS website account, or another ASRS approved method, an Employer shall submit the following health insurance enrollment, change, and/or deletion information pursuant to subsection (B):
 - 1. The retired member's, Disabled member's, or Contingent Annuitant's Social Security number or U.S. Tax Identification number;
 - 2. The retired member's, Disabled member's, or Contingent Annuitant's full name;
 - 3. The retired member's, Disabled member's, or Contingent Annuitant's date of birth;
 - 4. The Coverage in which the retired member, Disabled member, or Contingent Annuitant is enrolling;
 - 5. The type of change that is being made to the Coverage;
 - 6. The following information for each dependent enrolled in, or to be enrolled in, Coverage:
 - a. First and last name;
 - b. Social Security number or U.S. Tax Identification number;
 - c. Date of birth; and
 - d. Medicare number, if applicable.
 - 7. The old and new premium amounts for Coverage;
 - 8. The effective date of the change, deletion, and/or enrollment;
 - 9. The Employer's name and telephone number;
 - 10. A certification by the Employer representative's dated signature that the information is current and correct.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

R2-8-206. Six-Month Reimbursement Program

- A. For a retired member or Disabled member who is eligible for a Premium Benefit pursuant to R2-8-202(A)(4) or (B), the ASRS shall remit the Premium Benefit to the retired member or Disabled member pursuant to subsection (B).
- B. Pursuant to subsection (A), the ASRS shall remit the Premium Benefit to the retired member or Disabled member every six months, payable in July and January. For purposes of this Section, the Premium Benefit shall be the aggregate amounts of the Premium Benefit the retired member or Disabled member is entitled to receive during the previous six months.
- C. In order to receive a Premium Benefit payment pursuant to subsection (B), a retired member or Disabled member shall submit to the ASRS the Reimbursement of Medical and/or Dental Cost (Six-Month Reimbursement Program) form after the last day of the last month for which the retired member or Disabled member is seeking reimbursement.
- D. The Reimbursement of Medical and/or Dental Cost (Six-Month Reimbursement Program) form that a retired member or Disabled member submits pursuant to subsection (C) shall include the following information:
 - 1. The retired member's or Disabled member's Social Security number or U.S. Tax Identification number;
 - 2. The retired member's or Disabled member's full name;
 - 3. The retired member's or Disabled member's mailing address and phone number;
 - 4. The retired member's or Disabled member's date of birth;
 - 5. The retired member's or Disabled member's status with the ASRS;
 - 6. The retired member's or Disabled member's status with the retired member's or Disabled member's Employer;
 - 7. The following Coverage information for the Coverage policy holder:
 - a. First and last names;
 - b. Social Security number or U.S. Tax Identification number;
 - c. Date of birth;
 - d. Effective date of Coverage;
 - 8. The following information for each dependent enrolled in, or to be enrolled in, Coverage:
 - a. First and last name;
 - b. Social Security number or U.S. Tax Identification number;
 - c. Date of birth;
 - d. Effective date of Coverage;

9. Six-month reimbursement totals identified by:
 - a. The month and year the premium is due for Coverage;
 - b. The total medical plan premium per month;
 - c. The total dental plan premium per month;
 - d. The employee's out-of-pocket payroll deduction for a medical premium per month;
 - e. The employee's out-of-pocket payroll deduction for a dental premium per month;
 - f. The employee's total out-of-pocket payroll deduction for medical and dental premiums per month;
10. The Employer's name;
11. The Employer's phone number;
12. The Employer's email address;
13. The name of the Employer's representative; and
14. The dated signature of the Employer's representative.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

R2-8-207. Optional Premium Benefit

- A.** A member who retires on or after January 1, 2004 is eligible to elect the Optional Premium Benefit to be effective on the date of the retired member's retirement and may designate a Contingent Annuitant to receive the Optional Premium Benefit upon the death of the retired member if:
 1. The retired member elects a retirement option under A.R.S. § 38-760; and
 2. The retired member elects to maintain Coverage.
- B.** A retired member who returns to active membership for 60 consecutive months or more before retiring again, may elect or re-elect the Optional Premium Benefit pursuant to subsection (A).
- C.** A retired member who does not return to active membership for 60 consecutive months or more before retiring again is not eligible to elect the Optional Premium Benefit pursuant to subsection (A) unless the retired member elected the Optional Premium Benefit to be effective on the date of the retired member's Original Retirement Date.
- D.** In order to elect, re-elect, or terminate the Optional Premium Benefit pursuant to subsection (A), the retired member shall submit to the ASRS the Optional Premium Benefit Program Election or Termination form containing the following information:
 1. The retired member's Social Security number or U.S. Tax Identification number;
 2. Whether the retired member is electing, declining, or terminating the Optional Premium Benefit;
 3. The following information for the Contingent Annuitant if the retired member is electing or re-electing the Optional Premium Benefit:
 - a. The Social Security number or U.S. Tax Identification number;
 - b. The full name; and
 - c. The date of birth, if not On File; and
 4. Certification of understanding by the retired member's dated signature of the following statements:
 - a. I have a one-time election at the time of retirement for this benefit, and have a retirement date on or after January 1, 2004;
 - b. I must elect a Joint & Survivor or Period-Certain annuity option;
 - c. If I elect to participate, my Contingent Annuitant must be either participating or eligible to participate in my retiree health care plan at the time of my death;
 - d. I must provide proof of birth date for my Contingent Annuitant;
 - e. The Premium Benefit will be actuarially reduced for the remainder of my benefit and my Contingent Annuitant's benefit as long as the Optional Premium Benefit is elected; and
 - f. I may rescind the election at any time and be eligible for the unreduced Premium Benefit payable as provided by law.
- E.** In order to elect or re-elect the Optional Premium Benefit, a member shall submit the Optional Premium Benefit Program Election or Termination form to the ASRS prior to the member's Original Retirement Date.
- F.** A Contingent Annuitant the retired member designates to receive the Optional Premium Benefit upon the retired member's death is eligible to receive a Premium Benefit if:
 1. The retired member designates the Contingent Annuitant as the primary beneficiary on the member's retirement account;
 2. The Contingent Annuitant is enrolled in a Coverage plan at the time of the member's death or the Contingent Annuitant enrolls in a Coverage plan within six months of the retired member's death pursuant to A.R.S. § 38-782(A); and
 3. The Contingent Annuitant is eligible to receive at least one monthly payment.
- G.** Upon the death of a retired member who elected the Optional Premium Benefit pursuant to subsection (A), the ASRS shall provide the Optional Premium Benefit on behalf of the retired member's Contingent Annuitant who is eligible to receive the Optional Premium Benefit pursuant to subsection (F).
- H.** Notwithstanding subsection (G), the amount of the Optional Premium Benefit the ASRS provides on behalf of a Contingent Annuitant shall not exceed the actual amount of the Coverage premium.
- I.** Unless otherwise indicated by law, the Optional Premium Benefit shall not terminate upon the death of the retired member if a Contingent Annuitant is eligible for the Optional Premium Benefit pursuant to subsection (F).

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective May 31, 2015 (Supp. 16-4). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

ARTICLE 3. LONG-TERM DISABILITY

R2-8-301. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "Attending Physician" means a provider:
 - a. Who is a qualified medical provider or other legally qualified practitioner of a healing art that the claims administrator recognizes or is required by law to recognize;
 - b. Whose medical training and clinical experience are qualified to treat the member's disabling condition;
 - c. Whose diagnosis and treatment is consistent with the diagnosis of the disabling condition, according to guidelines established by medical, research, and rehabilitative organizations;
 - d. Who is licensed to practice in the jurisdiction where care is being given;
 - e. Who is practicing within the scope of the license; and
 - f. Who is not related to the member by blood or marriage.
2. "Direct Care" means the member is actively receiving treatment from a provider for the member's disability at least once per calendar year.
2. "Estimated Social Security disability income amount" means the same as in R2-8-801(2).
3. "Legal proceeding" means an appeal of an appealable agency decision at the Office of Administrative Hearings pursuant to A.R.S. § 41-1092 et seq. or an appeal of a Social Security determination at the Social Security Administration, or any other review by a formal body, which determines the rights and responsibilities of the member or survivor.
4. "LTD" means the Long-Term Disability program described in A.R.S. § 38-797 et seq.
5. "LTD benefit" means the amount of funds the member receives from the ASRS or the ASRS contracted LTD claims administrator, for the period of time a member has an eligible disability as described in A.R.S. § 38-797.07(A)(11).
6. "LTD contribution" means the amount of funds the member remits to the ASRS from the member's compensation as payment for the LTD program.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

R2-8-302. Application for Long-Term Disability Benefit

- A. In order to claim an LTD benefit, a disabled member shall submit to the disabled member's Employer all the completed forms prescribed by the ASRS contracted LTD claims administrator within 12 months of the date the disabled member became disabled.
- B. Pursuant to A.R.S. § 38-797.07(D), in order to continue receiving an LTD benefit, a disabled member shall submit documentation regarding the disabled member's ongoing disability and occupation as required by the ASRS contracted LTD claims administrator to determine the disabled member's continuing eligibility for an LTD benefit.
- C. Pursuant to A.R.S. § 38-797.07(11), in order to submit an application for an LTD benefit, a member must provide objective medical evidence from an Attending Physician.
- D. Pursuant to A.R.S. § 38-797.07(7)(b)(i), in order to continue receiving an LTD benefit, the disabled member must be under the Direct Care of a doctor.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

R2-8-303. Long-Term Disability Calculation

- A. The ASRS contracted LTD claims administrator shall calculate an LTD benefit for a member using the member's monthly compensation as described in A.R.S. § 38-797(11).
- B. For a member whose monthly compensation is \$0 as of the date of disability, the ASRS shall pay a monthly benefit of \$50 unless the benefit is reduced pursuant to R2-8-807 or required to be reduced pursuant to A.R.S. § 38-797.07(A)(2).
- C. The ASRS shall reduce a member's LTD benefit in accordance with A.R.S. § 38-797.07(A).
- D. Notwithstanding any other section, a member who became disabled on or after August 27, 2019, shall not receive a benefit under this article that would increase the member's monthly compensation after disability to an amount that exceeds 100% of the member's monthly compensation before disability.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3). Amended by final rulemaking at 27 A.A.R. 89, effective March 9, 2021 (Supp. 21-1).

R2-8-304. Payment of Long-Term Disability Benefit

- A. The ASRS contracted LTD claims administrator shall begin providing an LTD benefit to an eligible disabled member no sooner than six months after the date the disabled member became disabled.
- B. Notwithstanding subsection (A), the ASRS contracted LTD claims administrator may begin providing an LTD benefit to an eligible disabled member sooner than six months if the disability is related to the member's disability that occurred within six months immediately preceding the disability.
- C. The ASRS contracted LTD claims administrator may provide an eligible disabled member's LTD benefit to a third party pursuant to A.R.S. § 38-797.09.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

R2-8-305. Social Security Disability Appeal

- A. Upon request by the ASRS contracted LTD claims administrator, a member who claims an LTD benefit pursuant to R2-8-302(A) shall submit a Social Security disability income application as prescribed by the ASRS contracted LTD claims administrator.
- B. In order to continue receiving an LTD benefit, a member whose application for Social Security disability income has been denied or terminated must appeal the most recent determination of denial or termination through a hearing before an administrative law judge pursuant to A.R.S. § 38-797.07(A)(10)(a) until the ASRS contracted LTD claims administrator or the Social Security Claims Administrator determines the member is not eligible for a Social Security benefit.

- C. Within 10 days after a member receives notice of the status of the member's Social Security disability income application, the member shall notify:
 - 1. The ASRS of the member's application status by submitting a copy of the notice identifying the status of the member's Social Security disability income application to the ASRS, if the member is not receiving an LTD benefit; or
 - 2. The ASRS contracted LTD claims administrator of the member's application status by submitting a copy of the notice identifying the status of the member's Social Security disability income application to the ASRS contracted LTD claims administrator, if the member is not receiving an LTD benefit.
- D. A member who disagrees with an LTD determination by the ASRS contracted LTD claims administrator may submit an appeal pursuant to 2 A.A.C. 8, Article 4.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

R2-8-306. Approval of Social Security Disability

Upon receipt of a Social Security disability income benefit, a member shall immediately remit to:

- 1. The ASRS the amount of the Social Security disability income benefit necessary to offset the LTD benefit; or
- 2. The ASRS contracted LTD claims administrator the amount of the Social Security disability income benefit necessary to offset the LTD benefit.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD

R2-8-401. Definitions

The following definitions apply to this Article, unless otherwise specified:

- 1. "Appealable agency action" has the same meaning as in A.R.S. § 41-1092.
- 2. "Board" means, if established, a Committee designated by the Board to take action on appeals as described in A.R.S. § 38-714(E) (1) or, if a Committee is not established, the same as in A.R.S. § 38-711(6).
- 3. "Final administrative action" has the same meaning as in A.R.S. § 41-1092 and is rendered by the Board.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1). Amended by final rulemaking at 23 A.A.R. 2749, effective November 13, 2017 (Supp. 17-3).

R2-8-402. General Procedures

In computing any time period, parties shall exclude the day from which the designated time period begins to run. Parties shall include the last day of the period unless it falls on a Saturday, Sunday, or legal holiday. When the time period is 10 days or less, parties shall exclude Saturdays, Sundays, and legal holidays.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

R2-8-403. Letters of Appeal; Request for a Hearing of an Appealable Agency Action

- A. After receipt of an agency decision, a person who is not satisfied with the agency decision, may submit a letter of appeal:
 - 1. To the ASRS's vendor for long-term disability benefits, if the appeal relates to a long-term disability decision; or
 - 2. To the ASRS Member Services Division Assistant Director, or such director's designee, if the appeal relates to an agency decision other than a long-term disability decision.
- B. Upon receipt of a letter of appeal, the long-term disability vendor, or the Member Services Division Assistant Director, or such director's designee, shall send a response letter to the person requesting the appeal notifying the person of:
 - 1. The decision the agency is making in response to the letter of appeal; and
 - 2. The person's right to appeal the agency response by submitting a letter of appeal to the ASRS Director or such director's designee.
- C. A person who is not satisfied with the agency response pursuant to subsection (B) may submit a letter of appeal to the ASRS Director or such director's designee within 60 days of the date on the agency response letter.
- D. Within 30 days of the date the ASRS receives a letter of appeal pursuant to subsection (C), the ASRS director or such director's designee shall send a response letter by certified mail to the person requesting the appeal that includes:
 - 1. The agency action the ASRS is taking in response to the letter of appeal; and
 - 2. Notice of Appealable Agency Action, as required pursuant to A.R.S. § 41-1092.03 informing the person requesting the appeal, that the person has a right to appeal the agency action by submitting a Request for Hearing pursuant to subsections (E) and (F).
- E. For an appealable agency action, a person who is not satisfied with an agency action pursuant to subsection (D) may file a Request for a Hearing, in writing, with the ASRS. The date the Request is filed is established by the ASRS date stamp on the face of the first page of the Request. The Request shall include the following:
 - 1. The name and mailing address of the member, employer, or other person filing the Request;
 - 2. The name and mailing address of the attorney for the person filing the Request, if applicable;
 - 3. A concise statement of the reasons for the appeal.
- F. The person requesting a hearing shall file the Request for a Hearing with the ASRS within 30 days after receiving a response letter including a Notice of an Appealable Agency Action, pursuant to subsection (E).
- G. Upon receipt of the Request for a Hearing, the ASRS shall notify the Office of Administrative Hearings as required in A.R.S. § 41-1092.03(B).
- H. Pursuant to subsection (B):
 - 1. The long-term disability vendor shall send a response letter to the person requesting the appeal within 120 days of the date the long-term disability vendor receives the letter of appeal; and
 - 2. The Member Services Division Assistant Director, or such director's designee, shall send a response letter to the person requesting the appeal within 30 days of the date the ASRS receives the letter of appeal.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1).

R2-8-404. Board Decisions on Hearings before the Office of Administrative Hearings

A recommended decision from the Office of Administrative Hearings that is sent to ASRS at least 30 days before the Board's next regular meeting, shall be reviewed by the Board at that meeting. At the meeting, the Board shall render a decision to accept, reject, or modify the findings of fact, conclusions of law and recommendations in whole or in part. If the Board modifies or rejects a recommended decision, the Board shall state the reasons for the modification or rejection. The Board shall deliver the Board's final decision to the Office of Administrative Hearings within five days after the meeting at which the Board made the final decision.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

R2-8-405. Motion for Rehearing Before the Board; Motion for Review of a Final Decision

- A. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party in an appealable agency action may file with the Board a Motion for Rehearing Before the Board, in writing, specifying the particular grounds for rehearing before the Board.
- B. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party of an appealable agency action may file with the Board a Motion for Review of a Final Decision, in writing, specifying the particular grounds for reviewing the Board's final administrative decision.
- C. A party may amend a Motion for Rehearing Before the Board or a Motion for Review of a Final Decision at any time before the Board rules on the motion. A party may file a response within 15 days after the motion or the amended motion is filed. The Board may require the filing of written briefs upon the issues raised in the motion or the amended motion, and may provide for oral argument.
- D. The Board may grant a Motion for Rehearing Before the Board or a Motion for Review of a Final Decision for any of the following causes that materially affects the moving party's rights:
 1. Irregularity in the administrative proceedings of the agency or the hearing officer, or any order or abuse of discretion that deprives the moving party of a fair hearing;
 2. Misconduct of the Board, the hearing officer, or the prevailing party;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the process of the action; or
 7. That the decision, or findings of fact, is not justified by the evidence or is contrary to law.
- E. The Board may affirm or modify the final administrative decision or grant a rehearing before the Board or review of final administrative decision to all or any of the parties on all or part of the issues for any of the reasons in subsection (C). An order granting a rehearing or review shall specify with particularity the grounds for the order.
- F. Not later than 10 days after the final administrative decision, the Board may, after giving each party notice and an opportunity to be heard, order a rehearing or review of its final administrative decision for any reason for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the order granting a rehearing or review shall specify the grounds on which it is granted.
- G. When a motion for rehearing or review is based upon an affidavit, the affidavit shall be filed with the motion. An opposing party may, within 15 days after filing, file an opposing affidavit. The Board may extend the period for filing an opposing affidavit for not more than 20 days for good cause shown or by written stipulation of the parties. The Board may permit a reply affidavit.
- H. The Board shall rule on the motion within 15 days after the response to the motion is filed or if a response is not filed, within five days of the expiration of the response period.
- I. If the Board makes a specific finding that the immediate effectiveness of a particular decision is necessary for the preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, an application for judicial review of the decision may be made within the time limits permitted for applications for judicial review of the Board's final decisions.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1).

ARTICLE 5. PURCHASING SERVICE CREDIT

R2-8-501. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "Active duty" means full-time duty in a branch of the United States uniformed service, other than Active Reserve Duty.
2. "Active reserve duty" means participating in required meetings and annual training in a Reserve or National Guard branch of the United States uniformed service.
3. "Actuarial present value" means an amount in today's dollars of a member's future retirement benefit calculated using appropriate actuarial assumptions and the:
 - a. Eligible Member's Current Years of Credited Service;
 - b. Eligible Member's age as of the date the Eligible Member submits to the ASRS a request to purchase service pursuant to this Article;
 - c. Amount of Service Credit the member wishes to purchase; and
 - d. Member's current annual compensation.

4. "Authorized representative" means an individual who has been delegated the authority to act on behalf of a Custodian, Trustee, Plan Administrator, or a member, if the member's IRA or 403(b) is not maintained by the member's Employer.
5. "Current years of credited service" means the amount of credited service a member has earned or purchased, and the amount of Service Credit for which an Irrevocable PDA is in effect for which the member has not yet completed payment, but does not include any current requests to purchase Service Credit for which the member has not yet paid.
6. "Custodian" means a financial institution that holds financial assets for guaranteed safekeeping.
7. "Direct rollover" means distribution of Eligible Funds made payable to the ASRS as a contribution for the benefit of an eligible member from a retirement plan listed in A.R.S. § 38-747(H)(2) or (H)(3).
8. "Eligible funds" means payments listed in A.R.S. § 38-747(H)(2) and (H)(3).
9. "Eligible member" means a member who is eligible to purchase service pursuant to A.R.S. §§ 38-742, 38-743, 38-744, or 38-745.
10. "Forfeited service" means credited service for which the ASRS has returned retirement contributions to the member under A.R.S. § 38-740.
11. "IRC" means the same as "Internal Revenue Code" in A.R.S. § 38-711(18).
12. "Irrevocable PDA" means an irrevocable "Payroll Deduction Authorization" contract between an Eligible Member, an Employer, and the ASRS that requires the Employer to withhold payments from an Eligible Member's pay for a specified amount and for a specified number of payments, as provided in A.R.S. § 38-747.
13. "Leave of absence service" means an approved leave of absence without pay as specified in A.R.S. § 38-744.
14. "LTD" means the same as in R2-8-301.
15. "Military Call-up service" means a member is called to Active Duty in a branch of the United States Uniformed Services.
16. "Military service" means Active Duty or Active Reserve Duty with any branch of the United States Uniformed Services or the Commissioned Corps of the National Oceanic and Atmospheric Administration.
17. "Military service record" means a United States Uniformed Services or National Oceanic and Atmospheric Administration document that provides the following information:
 - a. The member's full name;
 - b. The member's Social Security number;
 - c. Type of discharge the member received; and
 - d. Active Duty dates, if applicable; or
 - e. Active Reserve Duty dates, if applicable; and
 - f. Point history for Active Reserve Duty dates, if applicable.
18. "Other public service" means previous employment listed in A.R.S. § 38-743(A).
19. "PDA pay-off invoice" means written correspondence from the ASRS to an Eligible Member that specifies the amount necessary to be paid by the Eligible Member to complete an Irrevocable PDA to receive the total credited service specified in the Irrevocable PDA.
20. "Plan administrator" means the person authorized to represent a specific eligible plan as addressed in IRC § 414(g).
21. "Service credit" means Forfeited Service, Leave of Absence Service, Military Service and Military Call-up Service under A.R.S. § 38-745, and Other Public Service that an Eligible Member may purchase.
22. "SP invoice" means a written correspondence from the ASRS informing an Eligible Member of the amount of money required to purchase a specified amount of Service Credit.
23. "Termination pay" means an Employer's payment to the ASRS of an Eligible Member's pay received as a result of terminating employment to purchase Service Credit as specified in A.R.S. § 38-747(B)(2).
24. "Three full calendar months" means the first day of the first full month through the last day of the third consecutive full month.
25. "Transfer employment" means to terminate employment with one Employer with which an Eligible Member has an Irrevocable PDA:
 - a. After accepting an offer to work for a new Employer;
 - b. While working as an active member for a different Employer; or
 - c. Before returning to work with any Employer within 120 days of terminating employment.
26. "Trustee-to-Trustee transfer" means a transfer of assets to the ASRS as authorized in A.R.S. § 38-747(I), from a retirement program from which, at the time of the transfer, a member is not eligible to receive a distribution.
27. "Uniformed services" means the United States Army, Army Reserve, Army National Guard, Navy, Navy Reserve, Air Force, Air Force Reserve, Air Force National Guard, Marine Corps, Marine Corps Reserve, Coast Guard, Coast Guard Reserve, and the Commissioned Corps of the Public Health Service.
28. "Window credit" means overpayments made on previously purchased Service Credit by members of the ASRS as provided by Laws 1997, Ch. 280, § 21, and Laws 2003, Ch. 164, § 3.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-502. Request to Purchase Service Credit and Notification of Cost

- A. An Eligible Member may request to purchase Service Credit electronically. The Eligible Member shall verify at the time of request, the following information for the Eligible Member:
 1. Name;
 2. Mailing address;
 3. Date of birth;
 4. Marital status;
 5. Gender;
 6. Primary email address;
 7. Primary phone number; and
 8. Which category of Service Credit the Eligible Member is requesting to purchase.
- B. An Eligible Member who requests to purchase Service Credit pursuant to subsection (A) shall acknowledge the following statements of understanding:

1. Any person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the retirement plan with an intent to defraud the plan is guilty of a class 6 felony per A.R.S. § 38-793; and
 2. This transaction is subject to audit. If any errors or misrepresentations are discovered as a result of an audit, the Eligible Member's total credited service with the ASRS will be adjusted as necessary and if the Eligible Member is retired, the Eligible Member's retirement benefit will also be adjusted. Any overpayment or overpayments will be refunded. However, if a payment made with a rollover or pre-tax dollars is returned to the Eligible Member, there may be tax consequences as a result of this refund.
- C. Upon receipt of the documentation required by this Article from the Eligible Member and if the Eligible Member's request to purchase Service Credit meets the requirements of this Article, the ASRS shall provide the following to the Eligible Member:
1. An SP Invoice stating the cost to purchase the amount of Service Credit the member is eligible to purchase;
 2. Instructions for electing method of payment; and
 3. The date payment election is due.
- D. An Eligible Member who requests to purchase Service Credit pursuant to this Section shall elect one or more methods of payment and submit the election to the ASRS by the date payment election is due.
- E. An Eligible Member who elects to purchase Service Credit using after-tax payments shall acknowledge the following information:
1. After-tax payments must be from the Eligible Member and remitted to the ASRS by the Eligible Member;
 2. After-tax payments cannot be used to purchase political subdivision employment with a United States territory, commonwealth, overseas possession, or insular area; and
 3. If the Eligible Member joined the ASRS on or after July 1, 1999, §§ 415(b) and 415(c) of the IRC limit the after-tax money the Eligible Member can use to purchase Service Credit.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

R2-8-503. Requirements Applicable to All Service Credit Purchases

- A. To purchase Service Credit at the amount provided in an SP Invoice, an Eligible Member shall purchase the Service Credit by check or money order, or request an Irrevocable PDA, Direct Rollover, Trustee-to-Trustee Transfer, or Termination Pay as specified in this Article, by the due date specified by the method of payment the Eligible Member elected.
- B. An Eligible Member may purchase all of the Service Credit or a portion of the Service Credit. If the Eligible Member wishes to purchase only a portion of the Service Credit, the Eligible Member shall specify:
 1. Either the number of years or partial years of Service Credit the Eligible Member wishes to purchase; or
 2. The cost for the number of years or partial years of Service Credit the Eligible Member wishes to purchase, not exceeding the years or partial years and cost specified on the SP Invoice.
- C. The ASRS shall not consider more than one active request at a time from a member to purchase Service Credit in a single category. The categories are:
 1. Leave of Absence Service;
 2. Military Service;
 3. Forfeited Service; and
 4. Other Public Service.
- D. An Eligible Member may cancel an active request by notifying the ASRS in writing.
- E. If an Eligible Member is entitled to a Window Credit, the Eligible Member may apply the Window Credit to purchase Service Credit. To apply a Window Credit to a purchase of Service Credit, the Eligible Member shall make a request to the ASRS in writing by the date payment election is due as specified on the SP Invoice and include the following information:
 1. The amount the Eligible Member wants to apply, and
 2. The Eligible Member's dated signature
- F. On or before the due date specified on the SP Invoice, an Eligible Member may request an extension of a due date for purchasing Service Credit.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-504. Service Credit Calculation for Purchasing Service Credit

- A. An Eligible Member who purchases Service Credit shall receive one month of credited service for one or more days of service in a calendar month.
- B. Pursuant to A.R.S. 38-739(B), an Eligible Member who purchases Service Credit shall receive a proportionate amount of credited service based on the length of the Eligible Member's service year.
- C. Notwithstanding any other provision, an Eligible Member whose membership date is on or after July 20, 2011, cannot purchase more than five years of Service Credit for each of the following based on the length of the Eligible Member's service year:
 1. Leave of Absence Service;
 2. Military Service; and
 3. Other Public Service.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-505. Restrictions on Purchasing Overlapping Service Credit

The ASRS shall not permit an Eligible Member to purchase Service Credit that, when added to credited service earned in any plan year, results in more than:

1. One year of credited service in any plan year, or

2. One month of credited service in any one calendar month.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-506. Cost Calculation for Purchasing Service Credit

- A. For Service Credit for Leave of Absence Service, Military Service, and Other Public Service, the ASRS shall calculate, as of the date of the request to purchase Service Credit:
 1. The Actuarial Present Value of the future retirement benefit for the Eligible Member including the Service Credit that the Eligible Member requests to purchase, and
 2. The Actuarial Present Value of the future retirement benefit for the Eligible Member without the Service Credit that the Eligible Member requests to purchase.
- B. The cost for purchasing the Service Credit that the Eligible Member requests to purchase is the difference between the Actuarial Present Value in subsection (A)(1) and the Actuarial Present Value in subsection (A)(2).

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-507. Required Documentation and Calculations for Forfeited Service Credit

- A. An Eligible Member who requests to purchase Service Credit for Forfeited Service under A.R.S. § 38-742 shall provide the ASRS:
 1. The name of an Employer, if known, for which the Eligible Member is requesting to purchase Service Credit for Forfeited Service; and
 2. The year and month the Eligible Member believes the ASRS returned retirement contributions.
- B. Upon receipt of payment as specified in subsection (D), the ASRS shall apply the Service Credit to the Eligible Member's account based on the most recent Forfeited Service available for purchase.
- C. Notwithstanding subsection (B), if an Eligible Member has more than one return of contributions pursuant to A.R.S. § 38-740, the Eligible Member may elect to purchase Forfeited Service for any of the return of contributions and the ASRS shall apply the Service Credit to the Eligible Member's account based on the most recent Forfeited Service available for purchase.
- D. The amount the Eligible Member shall pay to purchase Service Credit for previously Forfeited Service is the amount of retirement contributions that the ASRS issued, plus interest on that amount from the date on the return of retirement contributions check to the date of redeposit at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A).

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Amended by final expedited rulemaking at 27 A.A.R. 479, with an immediate effective of March 5, 2021 (Supp. 21-1).

R2-8-508. Required Documentation and Calculations for Leave of Absence Service Credit

- A. An Eligible Member who requests to purchase Service Credit for Leave of Absence Service under A.R.S. § 38-744 shall provide to the ASRS an Approved Leave of Absence form that includes:
 1. The following information completed by the Eligible Member:
 - a. The start date and end date of the approved leave of absence;
 - b. The date the Eligible Member returned to work or a statement of why employment was not resumed;
 - c. The name of the Employer;
 - d. Whether the Eligible Member participated in another public retirement system during this leave of absence; and
 - e. If the Eligible Member participated in another public retirement system during the leave of absence, whether the Eligible Member is receiving a benefit or is eligible to receive a benefit, from the other public retirement system; and
 2. Acknowledgement of the following statements of understanding:
 - a. The Eligible Member understands that up to one year of Service Credit may be purchased for each approved leave of absence, if the Eligible Member returns to work for the Employer that approved the leave of absence unless employment could not be resumed because of disability or nonavailability of a position;
 - b. The Eligible Member authorizes the Employer to provide any necessary personal information to ASRS in order to process this request; and
 - c. The Eligible Member certifies that if the Eligible Member participated in another public retirement system during the approved leave of absence, the Eligible Member is not receiving, and is not eligible to receive, a benefit from the other public retirement system for the time during the approved leave of absence; and
 3. The Eligible Member's dated signature.
- B. Pursuant to A.R.S. § 38-744, a member who participated in another public retirement system during the leave of absence, and is receiving a benefit or is eligible to receive a benefit from the other public retirement system, is not an Eligible Member for purposes of this Section.
- C. If the information provided by the Eligible Member pursuant to subsection (A) is correct, the Employer shall validate the information and submit the information to the ASRS through the Employer's secure ASRS account. If the information provided by the Eligible Member pursuant to subsection (A) is incorrect, the Employer shall correct the information and submit the information to the ASRS through the Employer's secure ASRS account.
- D. Upon submitting the information specified in subsection (B), the Employer shall acknowledge the following statements of understanding:
 1. The Employer has verified all the dates for the approved leave of absence period are correct; and
 2. The contact individual has the legal power to bind the Employer in transactions with the ASRS.
- E. The amount the Eligible Member shall pay to purchase Service Credit for an approved leave of absence is determined as provided in R2-8-506.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-509. Required Documentation and Calculations for Military Service Credit

- A. An Eligible Member who requests to purchase Service Credit for Military Service under A.R.S. § 38-745(A) and (B) shall provide to the ASRS:
1. A copy of the Eligible Member's Military Service Record within 30 days of the Eligible Member's request to purchase Service Credit; and
 2. A Military Service form that contains:
 - a. Whether the Eligible Member is receiving a benefit or is eligible to receive a benefit, from the military.
 - b. The branch of the Uniformed Services the Eligible Member was in;
 - c. Whether the Eligible Member was on Active Duty or Active Reserve Duty;
 - d. The start date and end date of the Eligible Member's Military Service for which the Eligible Member is requesting to purchase Service Credit;
 - e. Acknowledgement that the Eligible Member will submit to the ASRS:
 - i. Proof of honorable separation for each type of Military Service listed on the form; and
 - ii. The Eligible Member's Military Service Record that supports all of the service listed on the form;
 - f. Acknowledgement of the following statements of understanding:
 - i. The Eligible Member understands that the service listed on this form does not include time that the Eligible Member either volunteered or was ordered into Active Duty service as part of a military call-up while employed by an Employer. This service is purchased under Military Call-up Service and requires a Military Call-up form to be completed by the Eligible Member's Employer; and
 - ii. The Eligible Member understands that any time the Eligible Member has listed on this form for Reserve or National Guard time reflects the months that the Eligible Member attended at least one drill or assembly for each month listed.
- B. The amount the Eligible Member pays to purchase Service Credit for Military Service is determined as provided in R2-8-506.
- C. The ASRS determines the amount of Service Credit an Eligible Member receives for Active Duty and Active Reserve Duty time by the time listed on the Military Service form, if the service listed is supported by the information contained in the Eligible Member's Military Service Record.
- D. If the ASRS has not received complete and correct documents pursuant to this Section within 30 days of the request to purchase Service Credit, the ASRS shall cancel the Eligible Member's request to purchase Service Credit.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-510. Required Documentation and Calculations for Military Call-up Service Credit

- A. An Eligible Member who meets the requirements under A.R.S. § 38-745(D) shall receive up to 60 months of Service Credit, not to exceed 5 years of Service Credit for Military Call-up Service under A.R.S. § 38-745(D) through (K). In order to determine the amount of contributions the Employer owes to purchase Service Credit for Military Call-up Service, the Eligible Member's Employer shall provide to the ASRS a copy of the Eligible Member's Military Service Record and a completed Military Call-up form that includes the following:
1. The Eligible Member's full name;
 2. The Eligible Member's Social Security number;
 3. The start date of Military Call-up Service;
 4. The end date of Military Call-up Service;
 5. The date the Eligible Member returned to work for the Employer;
 6. The salary for each pay period in each fiscal year while the Eligible Member was on military call-up, including any salary increases the Eligible Member would have received had the Eligible Member not left work due to military call-up;
 7. The name of a contact individual for the Employer, and that individual's business telephone number;
 8. The contact individual's dated signature;
 9. If applicable, the dates that the Eligible Member was hospitalized and released from the hospital as a result of participating in a military call-up.
 10. If applicable, the date the Eligible Member became disabled during or as a result of participating in a military call-up;
 11. If applicable, the date of the Eligible Member's death during or as a result of participating in a military call-up; and
 12. Acknowledgement of the following statements of understanding:
 - a. All the dates and payroll information for the Military Call-up Service are correct;
 - b. The Eligible Member:
 - i. Was honorably separated from Active Duty and returned to the same Employer within 90 days of either discharge from Active Duty or release from service-related hospitalization; or
 - ii. Was disabled and unable to return to work; or
 - iii. Died during or as a result of Active Duty.
 - c. The Employer must pay both the employee and Employer contributions in a lump sum upon the Eligible Member returning to employment, receipt of a declaration of disability, or receipt of a death certificate. These contributions are based on the salary the Eligible Member would have earned if the Eligible Member had not volunteered or been ordered into Active Duty;
 - d. The Eligible Member may receive a maximum of 60 months of Service Credit for Military Call-up Service pursuant to A.R.S. § 38-745; and
 - e. The contact individual has the legal power to bind the Employer in transactions with the ASRS.
- B. An Employer shall make the request to purchase Service Credit for Military Call-up Service within 30 days after the earlier of the dates listed in A.R.S. § 38-745(E).
- C. The ASRS calculates the amount the Employer pays to purchase Military Call-up Service pursuant to A.R.S. § 38-745(G) by multiplying the Eligible Member's salary per pay period at the time Active Duty commences, by the contribution rate in effect for the period of

Active Duty. Included in the calculation are any salary increases the Eligible Member would have received if the Eligible Member had not left work to participate in a military call-up.

- D. The ASRS shall send the Employer a statement of cost for purchase of the Service Credit for Military Call-up Service based on the calculation in subsection (C). Within 90 days from the date on the ASRS statement of cost, the Employer shall pay to the ASRS the amount on the statement. If the Employer fails to make full payment within 90 days, interest shall accrue on the unpaid balance at the Assumed Actuarial Investment Earnings Rate in effect on the date of the statement of cost as specified in R2-8-118(A). The ASRS may collect the unpaid balance plus interest pursuant to A.R.S. § 38-735(C).
- E. If an Employer remits retirement or long-term disability contributions on behalf of an Eligible Member while the Eligible Member is on military call-up, the Employer shall reverse the contributions after the ASRS receives the information in subsection (A).
- F. If an Employer remits retirement contributions on behalf of an Eligible Member while the Eligible Member is on military call-up, and the Eligible Member does not return to the Employer after separation from active Military Service, the ASRS shall apply the retirement contributions to the Eligible Member's credited service.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-511. Required Documentation and Calculations for Other Public Service Credit

- A. An Eligible Member who requests to purchase Service Credit for Other Public Service under A.R.S. § 38-743 shall provide to the ASRS a completed Other Public Service form, signed and dated by the Eligible Member, that includes the following:
 - 1. The name and mailing address of the Other Public Service employer;
 - 2. The position the Eligible Member held while working for the Other Public Service employer;
 - 3. The start date and end date of the Eligible Member's employment with the Other Public Service employer;
 - 4. The actual months and years the Eligible Member was employed with the Other Public Service employer;
 - 5. A statement of whether the Eligible Member participated in the Other Public Service employer's retirement plan;
 - 6. If the Eligible Member participated in the Other Public Service employer's retirement plan, the name of the retirement plan, identifying whichever one of the following applies:
 - a. The approximate date the Eligible Member took a return of retirement contributions;
 - b. The plan is non-contributory and the Eligible Member is not eligible for benefits from the plan; or
 - c. That, if not using all of the retirement contributions as a rollover, the Eligible Member will request a return of retirement contributions and forfeit all rights to any benefits from the plan and provide the ASRS with documentation that the Eligible Member has forfeited all rights to benefits from the plan no later than the due date specified on the SP Invoice; and
 - 7. Acknowledgement that
if an audit determines that the Eligible Member is eligible for a benefit from the Other Public Service employer's retirement plan, the Eligible Member is required to take necessary steps to forfeit the benefit, and if the forfeiture is not completed within 90 days of being notified of the audit results, the Service Credit purchase listed on this application will be revoked and any funds paid to purchase the Service Credit will be refunded to the member.
- B. The amount the Eligible Member shall pay to purchase Service Credit for Other Public Service is determined as provided in R2-8-506.
- C. Notwithstanding R2-8-512, the ASRS shall not accept after-tax monies for the purchase of Service Credit for Other Public Service with a territory, commonwealth, overseas possession or insular area pursuant to A.R.S. § 38-743.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-512. Purchasing Service Credit by Check, Cashier's Check, or Money Order

- A. An Eligible Member may purchase Service Credit by personal check in the Eligible Member's name, cashier's check, or money order remitted by the Eligible Member.
- B. By the due date specified by the method of payment the Eligible Member elected, the Eligible Member shall ensure that the ASRS receives a check, cashier's check, or money order made payable to the ASRS in the amount to purchase the requested Service Credit.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-513. Purchasing Service Credit by Irrevocable PDA

- A. An Eligible Member may purchase Service Credit by Irrevocable PDA.
- B. If the Eligible Member elects to pay for Service Credit by Irrevocable PDA, the Eligible Member shall elect the terms of the Irrevocable PDA and submit the Irrevocable PDA to the ASRS and the Employer with the following:
 - 1. Acknowledgements:
 - a. This Irrevocable PDA is binding and irrevocable;
 - b. This Irrevocable PDA shall remain in effect until the earlier of:
 - i. The authorized payroll deductions are completed; or
 - ii. The Eligible Member terminates employment.
 - c. The ASRS cannot terminate the Irrevocable PDA due to financial hardship;
 - d. The amount of Irrevocable PDA payments the Eligible Member makes is subject to federal laws;
 - e. The cost to purchase Service Credit by Irrevocable PDA includes an administrative interest charge at the Assumed Actuarial Investment Earnings Rate in effect at the time of the authorization as specified in R2-8-118(A);
 - f. Payments specified in this Irrevocable PDA are in addition to the regular contributions required pursuant to A.R.S. §§ 38-736 and 38-797.05;
 - g. The ASRS shall apply credited service to the Eligible Member's account upon receipt of payments authorized by the Eligible Member under this Irrevocable PDA; and

- h. The ASRS shall not transfer, refund, or disburse the administrative interest that the ASRS charges pursuant to subsection (B) (1)(e); and
2. Statements of Understanding:
 - a. It is the Eligible Member's responsibility to ensure the Eligible Member's Employer properly deducts payments and submits contributions as provided by the terms of the Irrevocable PDA;
 - b. Payments specified by the terms of this Irrevocable PDA shall be made directly to the ASRS from the Eligible Member's Employer and the Eligible Member does not have the option of receiving such payments directly from the Employer;
 - c. The Eligible Member's Employer shall make payments pursuant to this Irrevocable PDA after other mandatory deductions are made;
 - d. The Eligible Member's Employer cannot accept an election to change this Irrevocable PDA;
 - e. The Eligible Member has up to 14 days to request the ASRS calculate the remaining balance of this Irrevocable PDA after the earlier of:
 - i. Terminating employment;
 - ii. Terminating LTD without returning to work with an Employer; or
 - iii. The effective ASRS retirement date;
 - f. The Eligible Member must complete a purchase of the remaining balance on this Irrevocable PDA by the due date specified on the PDA Pay-off Invoice;
 - g. It is the Eligible Member's responsibility to notify the ASRS of any changes in the Eligible Member's employment that may affect the status of this Irrevocable PDA;
 - h. If the Eligible Member terminates employment and returns to work with an Employer within 120 days of terminating employment, this Irrevocable PDA must continue with the new Employer pursuant to R2-8-513.01; and
 - i. If the Eligible member terminates employment and does not return to work with an Employer within 120 days of terminating employment, the ASRS shall terminate this Irrevocable PDA pursuant to R2-8-513.01.
- C. By submitting the Irrevocable PDA to the ASRS, the Irrevocable PDA is deemed to be signed by the Eligible Member.
- D. At the time the Eligible Member elects the Irrevocable PDA, the Eligible Member may elect to use Termination Pay towards the balance of the Irrevocable PDA if the Eligible Member terminates employment. If the Eligible Member elects to use Termination Pay, the Eligible Member shall submit the Irrevocable PDA to the ASRS with the following information:
 1. A statement that the Eligible Member:
 - a. Understands and agrees that the Eligible Member must continue working at least Three Full Calendar Months after the date of submission of the form before Termination Pay may be used on a pre-tax basis;
 - b. Understands that if the Termination Pay exceeds the balance owed on the Irrevocable PDA, the overage will be returned to the Employer to be distributed to the Eligible Member;
 - c. Understands that the election to use Termination Pay is binding and irrevocable;
 - d. The Eligible Member's Termination Pay must be received and processed before the ASRS will accept any other form of payment;
 - e. The Eligible Member's Employer is required to make payment directly to the ASRS after mandatory deductions are made, and the Eligible Member does not have the option of receiving the funds directly from the Employer;
 - f. It is the Eligible Member's responsibility to ensure that the Eligible Member's Employer properly deducts Termination Pay;
 - g. The amount of Termination Pay the Eligible Member elects is irrevocable pursuant to § 414(h)(2) of the IRC;
 - h. If the Eligible Member terminates employment and immediately retires, the Eligible Member's retirement processing may be delayed; and
 2. Whether the Eligible Member is electing either all Termination Pay or a specified amount of Termination Pay to be applied to the balance of the Irrevocable PDA.
- E. The ASRS shall:
 1. Charge interest on the unpaid balance at the Assumed Actuarial Investment Earnings Rate in effect at the time the Eligible Member submitted the request to purchase service as specified in R2-8-118(A);
 2. Limit the payroll deduction time period to a maximum of 520 payments; and
 3. Require a minimum payment of \$10.00 per payroll period, or payment in an amount to purchase at least .001 years of Service Credit per payroll period, whichever is greater.
- F. The Employer shall implement the payroll deduction on the first pay period after receiving the Irrevocable PDA.
- G. If a deduction is not made under an Irrevocable PDA within six months after the Eligible Member submits the authorization, the authorization lapses and the Eligible Member may make another request, which is recalculated based on the new request date unless the failure to begin deductions is due to an ASRS error.
- H. A period of leave of absence, LTD, or military call-up shall not cancel the Irrevocable PDA. The Employer shall resume deductions immediately upon the Eligible Member's return to that Employer. The period during which the Eligible Member is on leave of absence, on LTD, or leaves work because of a military call-up is not included in the payment time limitation under subsection (D)(2). If the Eligible Member does not return to active working status, whether due to termination of employment or retirement, the Eligible Member may elect to purchase the balance of unpaid service under the Irrevocable PDA at the time of termination or retirement as specified in this Section.
- I. Deductions made pursuant to an Irrevocable PDA continue until the:
 1. Irrevocable PDA is completed;
 2. Eligible Member retires, whether or not the Eligible Member continues employment as allowed in A.R.S. §§ 38-766.01 and 38-764(I);
 3. Eligible Member terminates all ASRS employment without transferring employment; or
 4. Date of the Eligible Member's death.
- J. If an Eligible Member retires or terminates employment from all Employers without transferring employment as stated in R2-8-513.01 before all deductions are made as authorized by the Irrevocable PDA, the ASRS shall cancel the Eligible Member's Irrevocable PDA unless the Eligible Member notifies the ASRS of the Eligible Member's intent to purchase the remaining amount within 14 days after the earlier of either termination or retirement.
- K. When the Eligible Member notifies the ASRS of retirement or termination from all ASRS employment and requests to pay off the Irrevocable PDA, the ASRS shall send the Eligible Member a PDA Pay-off Invoice through the Eligible Member's secure ASRS account. The ASRS shall calculate the amount owed by the Eligible Member.
- L. By the date payment election is due, the Eligible Member shall ensure that the ASRS receives the information specified in R2-8-502(C).

- M.** The Eligible Member may purchase the remaining Service Credit by one or more of the following methods by the due date specified on the PDA Pay-off Invoice:
1. By any method specified in R2-8-512;
 2. By making a request to the ASRS for a rollover or transfer under R2-8-514 and completing the rollover or transfer by the due date specified on the PDA Pay-off Invoice; or
 3. By Termination Pay under R2-8-519, if the Eligible Member authorized this option at the time the Eligible Member signed the Irrevocable PDA.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-513.01. Irrevocable PDA and Transfer of Employment to a Different Employer

- A.** If an Eligible Member Transfers Employment, the Eligible Member's new Employer shall continue to make deductions pursuant to an Irrevocable PDA.
- B.** If an Eligible Member terminates employment without having accepted an offer to work with an Employer, the ASRS shall terminate an Irrevocable PDA.
- C.** Notwithstanding subsection (B), if a retirement contribution is due from a new Employer within 120 days from the Eligible Member's termination date with the previous Employer, the ASRS shall determine that the Eligible Member Transferred Employment, unless the Eligible Member notified the ASRS of the termination of employment.
- D.** If an Eligible Member who has elected Termination Pay pursuant to R2-8-513(D) Transfers Employment, the ASRS shall not accept any Termination Pay that the ASRS receives from the Eligible Member's previous Employer.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-513.02. Termination Date

For the purpose of an Irrevocable PDA, the date an Eligible Member is considered terminated from an Employer is:

1. For an Eligible Member terminating employment, the Eligible Member's last pay period end date with that Employer;
2. For an Eligible Member on military call-up who does not return to the same Employer:
 - a. 90 days from the date of separation from military call-up;
 - b. 90 days from the date released from the hospital, if injured while on military call-up; or
 - c. The date the Eligible Member has been hospitalized for two years for injuries sustained as a result of participating in a military call-up.
3. For an Eligible Member on leave of absence without pay who does not return to the same Employer, the date the Employer required the Eligible Member to return to work;
4. For an Eligible Member who is unable to work because of a disability, the later of:
 - a. The date the Eligible Member's request for long-term disability benefits are denied;
 - b. The date the Eligible Member no longer has leave with pay available; or
 - c. For an Eligible Member on long-term disability who does not return to the same Employer or Transfer Employment, the date long-term disability benefits are terminated.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-514. Purchasing Service Credit by Direct Rollover or Trustee-to-Trustee Transfer

- A.** An Eligible Member may purchase Service Credit by Direct Rollover or Trustee-to-Trustee Transfer pursuant to this Article.
- B.** By the due date specified by the method of payment the Eligible Member elected, the Eligible Member shall ensure that the ASRS receives the payment for the service purchase and a completed Direct Rollover/Transfer Certification to Purchase Service Credit form.
- C.** An Eligible Member who chooses to purchase Service Credit shall provide the following to the ASRS:
1. The name of the financial institution or plan;
 2. Whether the Eligible Member is choosing to rollover/transfer the entire balance of their account and if not, the amount of the rollover/transfer;
 3. Acknowledgement of the following information:
 - a. After-tax funds are only acceptable from 401(a) and 403(b) plans and must be listed separately from the portion that is pre-tax on the payment as after-tax amounts. This information must be provided to the ASRS with the payment.
 - b. The only fund types that the ASRS accepts are:
 - i. 401(a);
 - ii. 401(k) pre-tax only;
 - iii. 403(b);
 - iv. Governmental 457 pre-tax only;
 - v. 403(a) pre-tax only;
 - vi. 408 Traditional IRA pre-tax only;
 - vii. 408(k) SEP IRA pre-tax only;
 - viii. 408(p) Simple IRA pre-tax only and only if the Eligible Member participated for at least 2 years in this plan;
 - c. The ASRS shall not accept the following fund types:
 - i. Roth funds;
 - ii. Funds already distributed to the Eligible Member from a retirement plan listed in subsection (C)(3)(b);
 - iii. Inherited IRA;
 - iv. Coverdale Education Savings Account funds;
 - v. Hardship distributions;

- vi. Funds not includable in gross income;
 - vii. Funds required under § 401(a)(9) of the IRC because the Eligible Member have attained age 70 1/2;
 - viii. One of a series of substantially equal periodic payments made at least annually for the Eligible Member's life;
 - ix. One of a series of substantially equal periodic payments made for 10 years or more;
 - x. After-tax contributions from any plan other than a 401(a) or 403(b) qualified plan;
- d. The funds must be sent as a Direct Rollover from a plan listed in subsection (C)(3)(b) and issued to the ASRS for the benefit of the Eligible Member. If the payment is issued to anyone other than the ASRS, including the Eligible Member, then within 60 days of the plan issuing the payment, the Eligible Member must place the payment into a plan specified in subsection (C)(3)(b) to be reissued directly to the ASRS.
 - e. It is the Eligible Member's responsibility to contact the administrator of the plan from which the Direct Rollover will be made and have it initiated. The Eligible Member must also ensure all rollovers are completed by the due date. If the ASRS does not receive payment by the due date, the invoice will expire and the payment will be returned to the Eligible Member.
 - f. If the ASRS accepts a rollover and later determines that it was not eligible, the ASRS will distribute the invalid payment directly to the Eligible Member. Any taxes, penalties, and interest that the IRS, any taxing authority, or financial institution may assess against the Eligible Member due to an invalid payment are solely the Eligible Member's responsibility.
 - g. The plan from which the Eligible Member is rolling over funds must be solely in the Eligible Member's name. The Eligible Member may be a spousal beneficiary of a deceased person or an alternate payee on the plan from which the Eligible Member is rolling over funds.
- D.** An Eligible Member who chooses to purchase Service Credit pursuant to this Section shall submit a Direct Rollover/Transfer Certification to Purchase Service Credit form that includes:
- 1. The Eligible Member's full name;
 - 2. The last 4 digits of the Eligible Member's Social Security number;
 - 3. The Eligible Member's signature certifying that the Eligible Member understands the requirements, limitations, and entitlements for the rollover/transfer that is being used to purchase Service Credit, and has read and understands the Direct Rollover/Transfer Certification to Purchase Service Credit form and any accompanying instructions and information;
 - 4. The Authorized Representative's name and title;
 - 5. The Authorized Representative's telephone number; and
 - 6. Certification by the Authorized Representative's dated signature that:
 - a. The plan is either:
 - i. A qualified pension, profit sharing, or 401(k) plan described in IRC § 401(a), or a qualified annuity plan described in IRC § 403(a);
 - ii. A deferred compensation plan described in IRC § 457(b) maintained by a state of the United States, a political subdivision of a state of the United States, or an agency or instrumentality of a state of the United States;
 - iii. An annuity contract described in IRC § 403(b); or
 - iv. An IRA described in A.R.S. § 38-747(H)(3);
 - b. The rollover/transfer specified on the form from which the pre-tax funds are being rolled over or transferred is intended to satisfy the requirements of the applicable Section of the IRC;
 - c. The Authorized Representative is not aware of any plan provision or any other reason that would cause the plan/IRA not to satisfy the applicable Section of the IRC; and
 - d. The funds will be sent to the ASRS as a direct plan rollover, IRA rollover, or a Trustee-to-Trustee Transfer.
- E.** The Eligible Member shall contact the Plan Administrator to have the funds distributed and transferred to the ASRS. Unless the ASRS receives a check for the correct amount from the plan and all documents required by this Article by the due date specified by the method of payment the Eligible Member elected, the ASRS shall cancel the request to purchase Service Credit.
- F.** The Eligible Member shall ensure that the ASRS receives a check from the plan, made payable to the ASRS, for an amount that does not exceed the amount specified on the SP Invoice.
- G.** If the payment from the eligible plan exceeds the amount specified on the SP Invoice, the ASRS shall return the entire payment to the Eligible Member.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Citations to subsection (C)(3)(b) corrected in subsections (C)(3)(c)(ii) and (C)(3)(d) (Supp. 20-1).

R2-8-515. Repealed

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-516. Expired

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3195, effective October 11, 2016 (Supp. 16-3).

R2-8-517. Expired

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3195, effective October 11, 2016 (Supp. 16-3).

R2-8-518. Repealed

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4).

R2-8-519. Purchasing Service Credit by Termination Pay

- A. To purchase Service Credit using Termination Pay, an Eligible Member shall elect to use Termination Pay by the date payment election is due.
- B. An Eligible Member who elects to use Termination Pay pursuant to this Section, shall provide the ASRS with the Eligible Member's anticipated termination date which cannot be more than six months from the date the ASRS issues the SP Invoice and must be at least Three Full Calendar Months after the date the Eligible Member elects and submits Termination Pay as a method of payment.
- C. An Eligible Member who elects to use Termination Pay pursuant to this Section, shall provide the ASRS with a Termination Pay Authorization for the Purchase of Service Credit form with the following information:
 1. The name of the Employer that will be submitting the Termination Pay to the ASRS;
 2. Whether the Eligible Member elects to use all Termination Pay or a specific amount of Termination Pay;
 3. Signature of the Eligible Member, certifying that the Eligible Member understands that:
 - a. The Eligible Member is required to continue working at least Three Full Calendar Months after the date the Eligible Member submits the Termination Pay Authorization for the Purchase of Service Credit form before Termination Pay may be used on a pre-tax basis;
 - b. If the Eligible Member terminates employment more than six months after the date on the SP Invoice, the Eligible Member may purchase the Service Credit at a newly calculated rate and possibly at a higher cost;
 - c. The terms elected in the Termination Pay Authorization for the Purchase of Service Credit form are binding and irrevocable;
 - d. The Eligible Member's Employer is required to make payment directly to the ASRS after mandatory deductions are made, and the Eligible Member does not have the option of receiving the funds directly from the Employer;
 - e. The Eligible Member's Termination Pay must be received and processed before the ASRS will accept any other form of payment;
 - f. It is the Eligible Member's responsibility to ensure that the Eligible Member's Employer properly deducts Termination Pay, as provided in the Termination Pay Authorization for the Purchase of Service Credit form; and
 - g. The amount of Termination Pay the Eligible Member elects is irrevocable pursuant to § 414(h)(2) of the IRC;
 - h. If the Termination Pay exceeds the balance due on the SP Invoice, the ASRS will return the difference to the Eligible Member's Employer to be distributed to the Eligible Member;
 - i. If the Eligible Member terminates employment and immediately retires, the Eligible Member's retirement processing may be delayed; and
 - j. The ASRS will send a notification to the Eligible Member's Employer two weeks prior to the Eligible Member's termination date, as indicated on the Termination Pay Authorization form, to notify the Employer that the Eligible Member's Termination Pay must be sent directly to the ASRS.
- D. The ASRS shall not apply Termination Pay to an SP Invoice covered by an Irrevocable PDA in effect at the time of termination, unless the Eligible Member elected the Termination Pay pursuant to R2-8-513(D) at the time the member authorized the Irrevocable PDA.
- E. If an Eligible Member elects to use Termination Pay to purchase Service Credit, the ASRS shall not apply any other form of payment to the Service Credit purchase until the ASRS receives the Termination Pay.
- F. Notwithstanding any other Section, if an Eligible Member dies prior to terminating employment, the ASRS shall not accept Termination Pay.
- G. If an Eligible Member Transfers Employment, the ASRS shall not accept Termination Pay from the Eligible Member's previous Employer.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-520. Termination of Employment and Request Return of Retirement Contributions or Death of Member While Purchasing Service Credit by an Irrevocable PDA

- A. If an Eligible Member terminates employment without transferring employment as specified in R2-8-513.01 while purchasing Service Credit by an Irrevocable PDA and requests return of retirement contributions pursuant to A.R.S. § 38-740, the ASRS shall return any principal payments made for the purchase of Service Credit including interest earned on those principal payments at the interest rate specified in R2-8-118(A), column 3.
- B. If an Eligible Member dies while purchasing Service Credit, the ASRS shall credit the Eligible Member's account with:
 1. The Service Credit for which the ASRS received payment pursuant to a PDA before the Eligible Member's death;
 2. The principal payments made by the Eligible Member; and
 3. Interest earned on payment through the date of distribution at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A).
- C. If an Eligible Member dies while purchasing Service Credit, the ASRS shall not permit the survivor or an estate to purchase the remaining balance.
- D. The ASRS shall not transfer, disburse, or refund the administrative interest the ASRS charged as part of an Irrevocable PDA as specified in R2-8-513.
- E. The ASRS shall not credit a member's account with the administrative interest the ASRS charged as part of an Irrevocable PDA as specified in R2-8-513.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-521. Adjustment of Errors

- A. If the ASRS determines an error has been made in the information provided by the member or in the calculations made by the ASRS, the ASRS shall make an adjustment to the member's account and return ineligible payments, if any.
- B. The ASRS shall notify the member in writing of any adjustments.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING

R2-8-601. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "Rulemaking record" means a file the ASRS maintains as specified in A.R.S. § 41-1029.
2. "Oral proceeding" means a public gathering the ASRS holds for the purpose of receiving comment and answering questions about a proposed rule as specified in A.R.S. § 41-1023.
3. "Presiding officer" means an individual selected by the ASRS Director to oversee oral proceedings.
4. "Substantive policy statement" means the same as in A.R.S. § 41-1001(22).

Historical Note

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

R2-8-602. Reviewing Agency Rulemaking Record and Directory of Substantive Policy Statements

Except on a state holiday, a person may review a rulemaking record or the directory of substantive policy statements at the Phoenix office of the ASRS, Monday through Friday, from 8:00 a.m. until 5:00 p.m.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

R2-8-603. Petition for Rulemaking

- A. A person submitting a petition to the ASRS to make or amend a rule under A.R.S. § 41-1033 shall include the following in the petition:
 1. The name and current address of the person submitting the petition;
 2. An identification of the rule to be made or amended;
 3. The suggested language of the rule;
 4. The reason why a new rule should be made or a current rule should be amended with supporting information, including:
 - a. An identification of the persons who would be affected by the rule and how the persons would be affected; and
 - b. If applicable, statistical data with references to attached exhibits;
 5. The signature of the person submitting the petition; and
 6. The date the person signs the petition.
- B. The ASRS shall send a written notice of the ASRS's decision regarding the Petition for Rulemaking to the person within 60 days of receipt of the petition.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

R2-8-604. Review of a Rule, Agency Practice, or Substantive Policy Statement

- A. A person submitting a petition to the ASRS under A.R.S. § 41-1033 requesting that the ASRS review an agency practice or substantive policy statement that the person alleges constitutes a rule shall include the following in the petition:
 1. The name and current address of the person submitting the petition,
 2. The reason the person alleges that the agency practice or substantive policy statement constitutes a rule,
 3. The signature of the person submitting the petition, and
 4. The date the person signs the petition.
- B. The person who submits a petition under subsection (A) shall attach a copy of the substantive policy statement or a description of the agency practice to the petition.
- C. The ASRS shall send a written notice of the ASRS's decision regarding the petition to the person within 60 days of receipt of the petition.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

R2-8-605. Objection to Rule Based Upon Economic, Small Business and Consumer Impact

- A. A person submitting an objection to a rule based upon the economic, small business and consumer impact under A.R.S. § 41-1056.01 shall include the following in the objection:
 1. The name and current address of the person submitting the objection;
 2. Identification of the rule;
 3. Either evidence that the actual economic, small business and consumer impact:
 - a. Significantly exceeded the impact estimated in the economic, small business and consumer impact statement submitted during the making of the rule with supporting information attached as exhibits; or
 - b. Was not estimated in the economic, small business and consumer impact statement submitted during the making of the rule and that actual impact imposes a significant burden on persons subject to the rule with supporting information attached as

- exhibits; or
 - c. Reflects that the ASRS did not select the alternative that imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.
 - 4. The signature of the person submitting the objection; and
 - 5. The date the person signs the objection.
- B.** The ASRS shall respond to the objection as specified in A.R.S. § 41-1056.01(C).

Historical Note

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

R2-8-606. Oral Proceedings

- A.** A person requesting an oral proceeding under A.R.S. § 41-1023(C) shall submit a written request to the ASRS that includes:
1. The name and current address of the person making the request;
 2. If applicable, the name of the public or private organization, partnership, corporation or association, or the name of the governmental entity the person represents; and
 3. Reference to the proposed rule including, if known, the date and issue of the Arizona Administrative Register in which the Notice of Proposed Rulemaking was published.
- B.** The ASRS shall record an oral proceeding by either electronic or stenographic means and any CDs, cassette tapes, transcripts, lists, speaker slips, and written comments received shall become part of the official record.
- C.** A presiding officer shall perform the following acts on behalf of the ASRS when conducting an oral proceeding as prescribed under A.R.S. § 41-1023:
1. Provide a method for a person who attends the oral proceeding to voluntarily note the person's attendance;
 2. Provide a Request to Present Oral Comment form that includes space for:
 - a. The name of the person submitting the Request to Present Oral Comment form,
 - b. The entity the person represents, if applicable, and
 - c. The rule on which the person wishes to comment or about which the person has a question;
 3. Open the proceeding by identifying the rules to be considered, the location, date, time, purpose of the proceeding, and the agenda;
 4. Explain the background and general content of the proposed rulemaking;
 5. Provide for public comment as specified in A.R.S. § 41-1023(D); and
 6. Close the oral proceeding by announcing the location where written public comments are to be sent and specifying the close of record date and time.
- D.** A presiding officer may limit comments to a reasonable time period, as determined by the presiding officer. Oral comments may be limited to prevent undue repetition.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

R2-8-607. Petition for Delayed Effective Date

- A.** A person who wishes to delay the effective date of a rule under A.R.S. § 41-1032 shall file a petition with the ASRS prior to the proposed rule's close of record date. The petition shall contain the:
1. Name and current address of the person submitting the petition;
 2. Identification of the proposed rule;
 3. Need for the delay, specifying the undue hardship or other adverse impact that may result if the request for a delayed effective date is not granted;
 4. Reason why the public interest will not be harmed by the delayed effective date;
 5. Signature of the person submitting the petition; and
 6. Date the person signs the petition.
- B.** The ASRS shall send a written notice of the ASRS's decision to the person within 30 days of receipt of the Petition for Delayed Effective Date.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

ARTICLE 7. CONTRIBUTIONS NOT WITHHELD

R2-8-701. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "218 agreement" means a written agreement between the state, political subdivision, or political subdivision entity and the Social Security Administration, under the provisions of § 218 of the Social Security Act, to provide Social Security and Medicare or Medicare-only coverage to employees of the state, political subdivision, or political subdivision entity.
2. "Documentation" means a pay stub, completed W-2 form, completed Verification of Contributions Not Withheld form, Employer letter or spreadsheet, completed State Personnel Action Request Form, Social Security Earnings Report, employment contract, payroll record, timesheet, or other Employer-provided form that includes:
 - a. Whether the employee was covered under the Employer's 218 Agreement prior to July 24, 2014,
 - b. The number of hours the member worked for the Employer per pay period, and
 - c. The amount and type of compensation earned by the member within each pay period.
3. "Eligible service" means employment with an Employer:
 - a. That is no more than 15 years before the date the ASRS receives written credible evidence that less than the correct amount of contributions were paid into the ASRS or the ASRS otherwise determines that less than the correct amount of contributions were made as specified in A.R.S. § 38-738(C); and
 - b. In which the member was Engaged to Work for an Employer.
4. "Engaged to Work" means the same as in R2-8-1001.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-702. General Information

- A. The Employer shall pay the Employer's portion of the contributions the ASRS determines is owed under R2-8-706 whether or not the member pays the member's portion of the contributions.
- B. The person who initiates the claim that contributions were not withheld for Eligible Service has the burden to prove a contribution error was made.
- C. The ASRS shall not waive payment of contributions or interest owed under this Article.
- D. If a member is not able to establish eligibility for purchasing service credit pursuant to this Article, the member may be eligible to purchase service pursuant to A.R.S. § 38-743 and Article 5 of this Chapter.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-703. Employer's Discovery of Error

If an Employer determines that any amount of contributions have not been withheld for a member for a period of Eligible Service, the Employer shall notify the ASRS by submitting through the Employer's secure ASRS account a Verification of Contributions Not Withheld form with the following information:

1. The member's full name;
2. The member's Social Security number;
3. The range of dates that any contribution was not withheld;
4. The member's position title during the date range listed in subsection (3);
5. The amount and type of compensation the member was entitled to receive, and the number of hours the member worked for the Employer per pay period for each fiscal year;
6. The member's hire date;
7. Whether the member was Engaged to Work for the Employer;
8. Whether the position was covered under the Employer's 218 Agreement for periods prior to July 24, 2014; and
9. The dated signature of the Employer's authorized agent certifying:
 - a. All the dates and salary information is correct;
 - b. The person submitting this form has the legal power to enter into binding transactions with the ASRS;
 - c. Acknowledgement the Employer will receive an invoice for the contributions owed for Eligible Service only, as well as the accumulated interest on the contributions that were not withheld for both the member and Employer contributions; and
 - d. Acknowledgement the member will receive an invoice for their contributions owed.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-704. Member's Discovery of Error

- A. If a member believes that an Employer has not withheld contributions for the member for a period of Eligible Service, the member shall:
 1. Notify the member's Employer that the Employer has not withheld contributions correctly by contacting the Employer directly; or
 2. Submit to the ASRS a Contributions Not Withheld Request form through the member's secure ASRS account with the following:
 - a. The name of the Employer that should have remitted contributions;
 - b. The range of dates that any contribution was not withheld;
 - c. The member's position title during the date range listed in subsection (b);
 - d. Whether the member was Engaged to Work for the Employer; and
 - e. Dated signature of the member certifying the member understands:
 - i. The ASRS will be providing the member's Social Security number to the Employer for verification; and
 - ii. If the member's Employer cannot verify this request, it is the member's responsibility to provide Documentation of Eligible Service.
- B. If the information provided by the eligible member pursuant to subsection (A) is correct, the Employer shall validate the information and submit the information to the ASRS through the Employer's secure ASRS account. If the information provided by the eligible member pursuant to subsection (A) is incorrect, the Employer shall correct the information and submit the information to the ASRS through the Employer's secure ASRS account, along with the information identified in R2-8-703.
- C. If the Employer refuses to fill out the Verification of Contributions Not Withheld form, or if the member disputes the information the Employer completes on the form, the member shall provide the ASRS with the Documentation the member believes supports the allegation that contributions should have been withheld.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section amended by final rulemaking at 22 A.A.R. 3326, effective January 1, 2017 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-705. ASRS' Discovery of Error

If the ASRS determines, as specified in A.R.S. § 38-738(B)(7), that all contributions have not been withheld for a member for a period of Eligible Service, the ASRS shall notify the Employer in writing and shall request the Employer submit through the Employer's secure ASRS account a Verification of Contributions Not Withheld form pursuant to R2-8-703.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-706. Determination of Contributions Not Withheld

- A. Upon receipt of the information listed in R2-8-703, R2-8-704, or R2-8-705, the ASRS shall review the information to determine whether or not member contributions should have been withheld by the Employer, the length of time those contributions should have been withheld, and the amount of contributions that should have been withheld.
- B. Except for a member who met the requirements to be an active member while simultaneously contributing to another retirement plan listed in subsection (B)(2), for purposes of this Article, the ASRS shall determine that contributions should not have been withheld for the period of service in question if:
 1. An Employer remits an accurate ACR amount pursuant to R2-8-116; or
 2. The employee participates in:
 - a. Another Arizona retirement plan listed in A.R.S. Title 38, Chapter 5, Articles 3, 4, or 6; or
 - b. In an optional retirement plan listed in A.R.S. Title 15, Chapter 12, Article 3 or A.R.S. Title 15, Chapter 13, Article 2.
- C. Except for returning to work under A.R.S. § 38-766.01, the presence of a contract between a member and the Employer does not alter the contribution requirements of A.R.S. §§ 38-736 and 38-737.
- D. If there is any discrepancy between the Documentation provided by the Employer and the Documentation provided by the member, a document used in the usual course of business prepared at the time in question is controlling.
- E. The ASRS shall provide to each, the Employer and the member, an invoice with the following:
 1. The amount of Eligible Service for which contributions were not withheld,
 2. The dollar amount of the contributions to be paid to the ASRS by the Employer,
 3. The interest on the Employer contributions and member contributions to be paid to the ASRS by the Employer pursuant to A.R.S. § 38-738,
 4. The amount of the delinquent interest late charge to be paid to the ASRS by the Employer pursuant to A.R.S. § 38-735, and
 5. The dollar amount of contributions to be paid to the ASRS by the member.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section amended by final rulemaking at 22 A.A.R. 3326, effective January 1, 2017 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-707. Submission of Payment

- A. Within 90 days from the date on the statement identified in R2-8-706(E), the Employer shall pay to the ASRS the amount due to be paid by the Employer. An Employer who makes payment under A.R.S. § 38-738(B)(3) is not liable for additional interest that may accrue as a result of a member's failure to remit payment required by A.R.S. § 38-738(B)(1). If the ASRS does not receive full payment of the Employer's amount due within 90 days after the ASRS notifies the Employer of the amount due, the full amount due will accrue interest as provided in A.R.S. § 38-738. The ASRS may collect the unpaid balance plus interest pursuant to A.R.S. § 38-735(C).
- B. The member shall make payment to the ASRS pursuant to A.R.S. § 38-738 by the due date specified on the member's invoice identified in R2-8-706(E).
- C. If the ASRS does not receive full payment of the member's amount due by the due date specified on the member's invoice identified in R2-8-706(E), the full amount due will accrue interest, as provided in A.R.S. § 38-738.
- D. A member does not receive service credit or credit for salary until both the Employer and member portions of the contributions and all interest has been paid pursuant to A.R.S. § 38-738.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-708. Expired

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2982, effective September 15, 2016 (Supp. 16-3).

R2-8-709. Repealed

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

ARTICLE 8. RECOVERY OF OVERPAYMENTS

R2-8-801. Definitions

For purposes of this article, the following definitions apply, unless specified otherwise:

1. "DRO" means the same as in R2-8-120.
2. "Estimated Social Security disability income amount" and "Revised Social Security disability income amount" mean the amount of funds the ASRS is entitled to collect pursuant to R2-8-802.
3. "LTD" means long-term disability program as described in A.R.S. § 38-797 et seq.
4. "LTD benefit" means the same as in R2-8-301
5. "Overpayment" means:
 - a. Any funds the ASRS distributes in excess of the amount to which the recipient is legally entitled; and
 - b. Any estimated social security disability income amount or revised social security disability income amount the ASRS is entitled to collect pursuant to A.R.S. § 38-765.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8-802. Estimated Social Security Disability Income Amount and Revised Social Security Disability Income Amount

- A. The ASRS contracted LTD claims administrator shall determine a member's estimated Social Security disability income amount as follows:
1. Prior to the death, retirement, or forfeiture of a member, the estimated Social Security disability income amount shall be equal to the member's full monthly LTD benefit reduced by \$50 per month pursuant to A.R.S. § 38-797.07(A)(9); and
 2. Upon the member's death, retirement, or forfeiture, the estimated Social Security disability income amount shall be equal to the total amount of the member's LTD benefit, reduced by \$50 per month pursuant to A.R.S. § 38-797.07(A)(9).
- B. A member or survivor who disputes the estimated Social Security disability income amount based on the conclusions of a legal proceeding may request a revised Social Security disability income amount by submitting supporting documentation from the legal proceeding to the ASRS contracted LTD claims administrator within 30 days of the date of conclusion of the legal proceeding.
- C. Pursuant to subsection (B), the ASRS or the ASRS contracted LTD claims administrator shall determine whether the estimated Social Security disability income amount needs to be revised based on the conclusions of the legal proceeding.
- D. If the ASRS or the ASRS contracted LTD claims administrator determines the estimated Social Security disability income amount was inaccurate, the ASRS or the ASRS contracted LTD claims administrator shall calculate a revised Social Security disability income amount based on the supporting documentation provided by the member or survivor pursuant to subsection (B).
- E. Pursuant to subsection (B), if the revised Social Security disability amount is less than the amount of the estimated Social Security disability benefit, the ASRS or the ASRS contracted LTD claims administrator shall:
1. Refund a portion of the amount of the estimated Social Security disability benefit that the ASRS retained upon forfeiture of the member in order to offset the difference between the estimated Social Security disability income amount and the revised Social Security disability income amount, or
 2. Adjust the member's retirement benefits or the survivor's benefits to offset the difference between the estimated Social Security disability income amount and the revised Social Security disability income amount.
- F. If a member or survivor is not satisfied with the determination on the request for a revised Social Security disability income amount, the member or survivor may appeal the determination pursuant to 2 A.A.C. 8, Article 4.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8-803. Reimbursement of Overpayments

- A. Upon the ASRS discovering that it has made an overpayment to a member, survivor, or alternate payee, the ASRS shall send a letter to notify the necessary person that an overpayment was provided and the person shall reimburse the ASRS in the amount of the overpayment.
- B. A person who reimburses the ASRS for an overpayment shall do so by remitting a check, made payable to the ASRS, by the due date specified in the letter providing notice of the overpayment.
- C. If the ASRS is unable to collect the amount of an overpayment by reducing future payments to members, survivors, or alternate payees as provided in this Article, the ASRS shall allow the appropriate person to reimburse the ASRS for the amount of the overpayment by making payments over the course of as many months as the number of months in which an overpayment was made by the ASRS, not to exceed 36 months.
- D. A person may request to reimburse the amount of the overpayment to the ASRS sooner than provided in this Article.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8-804. Collection of Overpayments from Forfeiture

- A. Unless a member cancels a forfeiture request by submitting written notice to the ASRS within 30 days of the request to forfeit, the ASRS shall reduce a member's refund amount in order to offset the member's overpayment amount pursuant to subsection (B).
- B. The ASRS shall reduce the member's refund amount by the amount of any overpayment and the ASRS shall:
1. Pursue collection of any remaining overpayment amount pursuant to this Article; and
 2. Distribute the remaining refund amount to the member pursuant to R2-8-115.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8-805. Collection of Overpayments from Retirement Benefit

- A. Notwithstanding A.R.S. § 38-768, the ASRS may reduce a person's benefit pursuant to this Section.
- B. Upon retirement, the ASRS shall reduce the amount of a member's retirement benefit by the amount of any overpayments that have not been reimbursed to the ASRS, pursuant to R2-8-803 as follows:
1. If the member elects to receive a lump sum or partial lump sum benefit, the amount of the lump sum or partial lump sum shall be reduced by the amount of the overpayment to no less than \$5.00 and the ASRS shall pursue overpayment collections for any remaining overpayment amount pursuant to this Article;
 2. If the member elects to receive retirement benefits as a monthly annuity and the amount of the overpayment is equal to or less than the amount of the member's first annuity disbursement minus \$5.00, the ASRS shall reduce the amount of the first annuity disbursement by the amount of any overpayment to no less than \$5.00;
 3. If the member elects to receive retirement benefits as a monthly annuity and the amount of the overpayment exceeds the amount of the member's first annuity disbursement plus \$5.00, the ASRS shall reduce the amount of the first annuity disbursement by the amount of the overpayment to no less than \$5.00 and pursue collection pursuant to subsection (C).
- C. The ASRS shall reduce a member's or alternate payee's monthly annuity as follows in order to offset any overpayments which have not been reimbursed or collected pursuant to this Article:
1. The ASRS shall reduce the member's monthly annuity by up to 10% for 36 months, if the amount of the overpayment can be collected by the ASRS within that time.
 2. If the amount of the overpayment cannot be collected pursuant to subsection (C)(1), the ASRS will notify the member that the member must make payment arrangements within 60 days of the date on the notice. If the member does not make payment arrangements within 60 days of the date on the notice, the ASRS shall actuarially reduce the amount of the member's monthly annuity.

- D. Notwithstanding subsection (B), the ASRS shall not reduce a member's or alternate payee's monthly annuity by an estimated Social Security disability income amount while the member is pursuing a Social Security disability income determination pursuant to R2-8-305, if the member submits documentation to the ASRS every six months informing the ASRS of the status of the member's Social Security disability income request until a determination is made regarding the amount of Social Security disability income.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8-806. Collection of Overpayments from Survivor Benefit

- A. Notwithstanding A.R.S. § 38-768, the ASRS may reduce a person's benefit pursuant to this Section.
- B. If a member, survivor, or alternate payee does not repay the amount of an overpayment pursuant to this Article, the ASRS shall reduce the necessary person's amount of benefits pursuant to subsection (C).
- C. The ASRS shall collect the amount of any remaining overpayment by reducing the necessary person's monthly annuity over the same number of months in which the overpayment was made, up to 3 months for each month an overpayment was made by the ASRS.
- D. If the ASRS is unable to collect the amount of any overpayment pursuant to subsection (C), the ASRS shall pursue collection of any remaining overpayment amount pursuant to this Article.
- E. Notwithstanding subsection (C), the ASRS shall not reduce a survivor's monthly annuity by an estimated Social Security disability income amount while the survivor is pursuing a Social Security disability income determination on behalf of the member pursuant to R2-8-305, if the survivor submits documentation to the ASRS every six months informing the ASRS of the status of the member's Social Security disability income request until a determination is made regarding the amount of Social Security disability income to which the member was entitled.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8-807. Collection of Overpayments from LTD Benefit

Upon disability of the member, the ASRS shall reduce the amount of the disabled member's LTD benefit by the amount of any overpayment the member received from the ASRS and has not reimbursed pursuant to this Section.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

R2-8-808. Collection of Overpayments by the Attorney General

If a member does not reimburse the ASRS for an overpayment pursuant to R2-8-802, the ASRS may submit the overpayment amount for collection by the Arizona Attorney General's Office.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8-809. Collection of Overpayments by the Arizona Department of Revenue

If a member does not reimburse the ASRS for an overpayment pursuant to R2-8-802, the ASRS may submit the overpayment amount for collection by the Arizona Department of Revenue.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8-810. Collection of Overpayments by Garnishment or Levy

Pursuant to A.R.S. § 38-723, the ASRS may collect the amount of any overpayment that has not been reimbursed or collected pursuant to this article by garnishing wages and/or placing a levy on the appropriate person's bank account.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

ARTICLE 9. COMPENSATION

R2-8-901. Definitions

"Services rendered" means the duties which a member performs for an Employer as required by the member's employment with the Employer.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

R2-8-902. Remitting Contributions

Pursuant to A.R.S. §§ 38-736, 38-737, and 38-797.05, an Employer shall remit contributions to the ASRS through the Employer's secure ASRS account for any payment the Employer provides to the member that is eligible to be included as compensation under this Section.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

R2-8-903. Accrual of Credited Service

- A. A member shall accrue service credits pursuant A.R.S. § 38-739 for each month in which the Employer’s pay period ends and for which contributions have been remitted to the ASRS, except for pay the member receives from the Employer for services rendered in a prior pay period for which contributions were remitted pursuant to R2-8-902.
- B. Regardless of whether the member meets membership requirements with more than one Employer, a member may not earn more than one month of service credit in a calendar month and not more than one year of service credit during a fiscal year.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

R2-8-904. Compensation from An Additional Employer

- A. For purposes of remitting contributions pursuant to R2-8-902, compensation includes pay the member receives from an additional Employer if:
 - 1. The member meets membership pursuant to A.R.S. § 38-711 with at least one Employer;
 - 2. The member was employed with the additional Employer and did not meet membership with the additional Employer pursuant to A.R.S. § 38-711 between January 1, 2005 through December 31, 2009;
 - 3. The member resumed or continued employment with the additional Employer and did not meet membership with the additional Employer prior to January 1, 2012; and
 - 4. The member does not leave employment with an Employer or the additional Employer in an unpaid status for more than 30 consecutive days during the member’s service year.
- B. For purposes of calculating average monthly compensation according to A.R.S. § 38-711, compensation includes the pay identified in subsection (A).
- C. Notwithstanding any other subsection, for a member whose membership began after December 31, 2009, compensation includes pay the member receives from an additional Employer if the member meets membership pursuant to A.R.S. § 38-711 with the additional Employer.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2). New Section made by final rulemaking at 27 A.A.R. 91, effective March 9, 2021 (Supp. 21-1).

R2-8-905. Expired

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3).

Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

ARTICLE 10. MEMBERSHIP

R2-8-1001. Definitions

The following definitions apply to this Article unless otherwise specified:

- 1. “218 Agreement” means the same as in R2-8-701.
- 2. “218 Resolution” means written authorization for a potential Employer to provide Social Security and Medicare or Medicare-only coverage to employees under the provisions of § 218 of the Social Security Act.
- 3. “Acceptable Documentation” means the same as in R2-8-115.
- 4. “Designated Employer Administrator” means an individual designated by the Employer and who has authorized access to the Employer’s secure ASRS account in order to fulfill the Employer’s responsibilities.
- 5. “Engaged To Work” means the earlier of:
 - a. The date the employee begins rendering services for the Employer and the Employer intends the employee to work for at least 20 hours a week for at least 20 weeks in a fiscal year or;
 - b. The week an employee renders services to an Employer for at least 20 hours a week for at least 20 weeks in a fiscal year.
- 6. “Leasing An Employee From A Third Party” means the same as “Leased from a third party” in R2-8-116.
- 7. “State Social Security Administrator” means the ASRS staff designated by the Board to approve 218 Agreements.
- 8. “Week” means 12:00 a.m. on Sunday through 11:59 p.m. on the following Saturday.

Historical Note

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

R2-8-1002. Employee Membership

- A. For purposes of active member eligibility, an employee of an Employer becomes a member of the ASRS pursuant to A.R.S. § 38-711(23) when the employee is Engaged To Work for the Employer.
- B. If the Employer does not provide an accurate date for which an employee was Engaged To Work pursuant to subsection (A), the ASRS shall determine that an employee’s membership effective date will be the member’s hire date, if provided by the Employer and within 30 days of the first pay period end date after the hire date, for which the Employer was required to submit contributions.
- C. If the Employer does not provide a hire date pursuant to subsection (B), the effective date is the first pay period end date of contributions received for that member.
- D. Unless a member terminates employment or retires from the ASRS, for purposes of determining active member eligibility, a member will continue to be an active member for the remainder of a fiscal year in which the employee met the requirements to be an active member in the ASRS with that Employer pursuant to A.R.S. § 38-711.
- E. Within 30 days of employment, an employee who is eligible for ASRS membership pursuant to A.R.S. § 38-711(23) shall create a secure ASRS account and submit to the ASRS through the employee’s secure ASRS account the following information:
 - 1. The Employee’s full name;
 - 2. The Employee’s Social Security number;

3. The Employee's date of birth;
 4. The Employee's gender;
 5. The Employee's marital status;
 6. The Employee's primary phone number;
 7. The Employee's personal email address;
 8. The Employee's current mailing address; and
 9. The Employee's designated beneficiary.
- F.** Within 30 days of a change in the member's name, the member shall submit to the ASRS through the member's secure ASRS account a Change of Name form that contains:
1. The member's full name that is on file with the ASRS;
 2. The member's Social Security number;
 3. The member's current mailing address;
 4. The member's date of birth;
 5. The member's personal email address;
 6. The member's primary phone number;
 7. The member's gender;
 8. The member's marital status;
 9. The member's retired, active, inactive, or LTD status with the ASRS;
 10. The member's new full name;
 11. The type of legal document establishing the member's new name;
 12. A copy of the legal document establishing the member's new name; and
 13. The member's dated signature.
- G.** Within 30 days of a change in the member's contact information, the member shall notify the ASRS of the change.
- H.** If an employee of an Employer meets the requirements of A.R.S. § 38-727(A)(8), the employee may elect to not participate in the ASRS.
- I.** Within 30 days after employment, an Employer whose employee is 65 years of age or older as of the date of employment and who has elected not to participate in the ASRS pursuant to subsection (H), shall submit to the ASRS through the Employer's secure ASRS account a 65+ Membership Waiver form that contains:
1. The employee's full name;
 2. The employee's Social Security number;
 3. The employee's current mailing address;
 4. The employee's date of birth;
 5. The employee's dated signature acknowledging the following statements:
 - a. The employee is electing to waive any rights to ASRS membership and the employee will not be eligible for any retirement, disability, or health insurance benefits offered by the ASRS;
 - b. The employee is not a member of the ASRS as of the date of employment; and
 - c. The employee understands that this election is irrevocable for the remainder of the employee's employment with that Employer and the time the employee works under this election is not eligible for purchase in the ASRS;
 6. The Employer's name;
 7. The date employee's employment began; and
 8. The name and dated signature of the Employer's representative.
- J.** A corrected and completed 65+ Membership Waiver form must be resubmitted to the ASRS pursuant to subsection (I) within 14 days of the date the ASRS notifies the employee that the 65+ Membership Waiver form is incorrect or incomplete.

Historical Note

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

R2-8-1003. Charter School Employer Membership

- A.** Pursuant to A.R.S. § 15-187(C), a charter school in Arizona is considered a political subdivision that is eligible to participate in the ASRS if the charter school is sponsored by:
1. A state university;
 2. A community college district;
 3. A group of community college districts;
 4. The state board of education; or
 5. The state board for charter schools.
- B.** In order to participate as an Employer in the ASRS, a charter school shall notify the ASRS in writing of the charter school's intent to join the ASRS and provide:
1. A copy of the current and active Charter Contract, including any amendments, which is approved by the entity sponsoring the charter school pursuant to subsection (A);
 2. Documentation showing the name and location of all schools authorized by the Charter Contract identified in subsection (B)(1); and
 3. Documentation showing the charter school board's approval to pursue ASRS membership and complete ASRS requirements for membership.
- C.** Upon receipt of the information contained in subsection (B), the ASRS shall determine if the charter school is eligible to participate in the ASRS. If the charter school is not eligible to participate in the ASRS, the ASRS shall send the charter school a notice of ineligibility. If the charter school is eligible to participate, the ASRS shall provide the charter school a Potential New Employer Letter.
- D.** In order to participate as an Employer in the ASRS, an eligible charter school shall submit to the ASRS the following original documents by the due date listed on the Potential New Employer Letter:
1. The current retirement plan or a statement signed by the designated authorized agent for the charter school acknowledging there is no current retirement plan.
 2. Two ASRS Agreements showing:
 - a. The legal name and current mailing address of the charter school as sponsored pursuant to subsection (A);
 - b. What amount of prior service the charter school shall purchase for employees pursuant to R2-8-1006;
 - c. The approximate number of employees that will become members upon the effective date of the ASRS Agreement;
 - d. The name, title, email address, and telephone number of the designated authorized agent for the charter school;

- e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
 - f. The ASRS Agreement is binding and irrevocable;
 - g. The effective date of the ASRS Agreement;
 - h. The charter school agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law; and
 - i. The dated signature of the designated authorized agent for the charter school.
3. Two ASRS Resolutions showing:
 - a. The legal name of the charter school as sponsored pursuant to subsection (A);
 - b. The charter school is adopting a supplemental ASRS retirement plan pursuant to A.R.S. § 38-729;
 - c. The charter school agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law;
 - d. The designated authorized agent for the charter school;
 - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
 - f. The dated and notarized signature of the designated authorized agent.
 4. Two 218 Agreements either electing or declining coverage. If the charter school is electing coverage pursuant to a 218 Agreement, the 218 Agreement must be completed and approved by the Social Security Administration prior to joining the ASRS.
 5. Two 218 Resolutions, if the charter school is electing coverage pursuant to subsection (D)(4). The 218 Resolutions must be completed and approved by the Social Security Administration prior to joining the ASRS.
- E.** Upon receipt of Acceptable Documentation identified in subsection (D), the ASRS may approve the charter school's request for membership pursuant to A.R.S. § 38-729. If the request to join the ASRS is approved, the state Social Security administrator shall sign the 218 Agreements and the ASRS Director shall sign the ASRS Agreements before the ASRS shall send one of each of the original documents identified in subsection (D) to the charter school.
- F.** Any charter school that is established under the charter contract of a participating charter school shall participate in the ASRS.

Historical Note

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

R2-8-1004. Other Political Subdivision and Political Subdivision Entity Employer Membership

- A.** A political subdivision or political subdivision entity, other than a charter school, may be eligible to participate in the ASRS pursuant to A.R.S. §§ 38-711 and 38-729 if it notifies the ASRS in writing of the political subdivision's or political subdivision entity's intent to join the ASRS and provides to the ASRS:
1. A copy of the current legal authority establishing the political subdivision or political subdivision entity;
 2. Documentation showing the name and location of the political subdivision or political subdivision entity; and
 3. Documentation showing the political subdivision or political subdivision entity has taken the necessary legal action to be eligible to participate pursuant to A.R.S. § 38-729.
- B.** Upon receipt of the information contained in subsection (C), the ASRS shall determine if the political subdivision or political subdivision entity is eligible to participate in the ASRS. If the political subdivision or political subdivision entity is not eligible to participate in the ASRS, the ASRS shall send the political subdivision or political subdivision entity a notice of ineligibility. If the political subdivision or political subdivision entity is eligible to participate, the ASRS shall provide the political subdivision or political subdivision entity a Potential New Employer Letter.
- C.** In order to participate as an Employer in the ASRS, an eligible political subdivision or political subdivision entity shall submit to the ASRS the following original documents by the due date listed on the Potential New Employer Letter:
1. The current retirement plan or a statement signed by the designated authorized agent for the political subdivision or political subdivision entity acknowledging there is no current retirement plan.
 2. Two ASRS Agreements showing:
 - a. The legal name and current mailing address of the political subdivision or political subdivision entity;
 - b. What amount of prior service the political subdivision or political subdivision entity shall purchase for employees pursuant to R2-8-1006;
 - c. The approximate number of employees that will become members upon the effective date of the ASRS Agreement;
 - d. The name, title, email address, and telephone number of the designated authorized agent for the political subdivision or political subdivision entity;
 - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
 - f. The ASRS Agreement is binding and irrevocable;
 - g. The effective date of the ASRS Agreement;
 - h. The political subdivision or political subdivision entity agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law; and
 - i. The dated signature of the designated authorized agent for the political subdivision or political subdivision entity.
 3. Two ASRS Resolutions showing:
 - a. The legal name of the political subdivision or political subdivision entity;
 - b. The political subdivision or political subdivision entity is adopting a supplemental ASRS retirement plan pursuant to A.R.S. § 38-729;
 - c. The political subdivision or political subdivision entity agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law;
 - d. The designated authorized agent for the political subdivision or political subdivision entity;
 - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
 - f. The dated and notarized signature of the designated authorized agent.

4. Two 218 Agreements either electing or declining coverage. If the political subdivision or political subdivision entity is electing coverage pursuant to a 218 Agreement, the 218 Agreement must be completed and approved by the Social Security Administration prior to joining the ASRS.
 5. Two 218 Resolutions, if the political subdivision or political subdivision entity is electing coverage pursuant to subsection (C)(4). The 218 Resolutions must be completed and approved by the Social Security Administration prior to joining the ASRS.
- D.** Upon receipt of Acceptable Documentation identified in subsection (B), the ASRS may approve the political subdivision's or political subdivision entity's request for membership pursuant to A.R.S. § 38-729. If the request to join the ASRS is approved, the state Social Security administrator shall sign the 218 Agreements and the ASRS Director shall sign the ASRS Agreements before the ASRS shall send one of each of the original documents identified in subsection (B) to the political subdivision or political subdivision entity.

Historical Note

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

R2-8-1005. Employer Reporting

- A.** An Employer shall submit contribution information and contribution payments pursuant to A.R.S. § 38-735, through the Employer's secure ASRS account.
- B.** Within 14 days of receiving the information contained in subsection R2-8-1002(E)(1) through (E)(3), the Employer shall:
1. Verify the information the employee provided;
 2. Confirm the employee meets membership requirements pursuant to A.R.S. § 38-711; and
 3. Submit the verified information to the ASRS through the Employer's secure ASRS account.
- C.** For an Employer whose employee elects to participate in an Optional Retirement Plan in lieu of the ASRS pursuant to A.R.S. §15-1628, within 30 days of electing to participate in an Optional Retirement Plan, the Employer shall submit to the ASRS through the Employer's secure ASRS account the:
1. Employee's full name;
 2. Employee's Social Security number;
 3. Date of the employee's employment; and
 4. Date of the employee's Optional Retirement Plan election.
- D.** For an Employer who has submitted information pursuant to subsection (C), within 30 days of that employee terminating employment with that Employer, the Employer shall notify the ASRS through the Employer's secure ASRS account of the employee's termination date.
- E.** Within 14 days before the effective date of joining the ASRS, an Employer shall submit an initial online authorization and designation form in writing to the ASRS with the following information:
1. The Employer's name;
 2. The following information for the person authorized by the Employer to approve the Employer's Designated Employer Administrator:
 - a. The person's full name;
 - b. The person's title;
 - c. The person's phone number;
 - d. The person's email address;
 - e. The person's dated signature affirming that person has the authority to approve the Employer's Designated Employer Administrator;
 3. The full name of the individual the Employer is designating as the Employer's Designated Employer Administrator;
 4. The title of the individual the Employer is designating as the Employer's Designated Employer Administrator;
 5. The phone number of the individual the Employer is designating as the Employer's Designated Employer Administrator;
 6. The email address of the individual the Employer is designating as the Employer's Designated Employer Administrator;
 7. The dated signature of the individual the Employer is designating as the Employer's Designated Employer Administrator.
- F.** An Employer's Designated Employer Administrator shall establish a new Employer's Designated Employer Administrator as needed through the Employer's secure ASRS account.
- G.** Within 30 days of an Employer no longer having an Employer's Designated Employer Administrator, the Employer shall submit in writing an initial online authorization and designation form pursuant to subsection (E).
- H.** Within 30 days of change in the Employer's address, the Employer shall notify the ASRS of the change through the Employer's secure ASRS account.
- I.** Within 10 days of any change in the name or ownership of the Employer, the Employer shall provide written notice of the change to the ASRS through the Employer's secure ASRS account by providing the Employer's previous account information and the changes to that information.
- J.** Within 30 days of any change in the character of an Employer's organizational structure, the Employer shall send to the ASRS through the Employer's secure ASRS account, written notice of the previous organizational structure and the effective changes to the Employer's organizational structure.
- K.** Within 30 days of Leasing An Employee From A Third Party, an Employer shall submit the following information:
1. The employee's full name;
 2. The number of hours per week the employee works for the Employer;
 3. The title of the employee's position;
 4. A copy of the agreement showing the Employer Leasing An Employee From A Third Party; and
 5. Whether the employee is retired from the ASRS.

Historical Note

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

R2-8-1006. Prior Service Purchase Cost for New Employers

- A.** Pursuant to A.R.S. § 38-729, upon the effective date of joining the ASRS, an Employer may elect to purchase service credit for a period of employment prior to the effective date of joining the ASRS for employees Engaged To Work for the Employer on the effective date of joining the ASRS who are members of the ASRS as of the effective date of joining the ASRS.
- B.** The ASRS may provide to a potential Employer an estimated cost to purchase service credit pursuant to this Section. In order for the ASRS to estimate the cost to purchase service pursuant to this Section, a potential Employer shall provide the following information to

the ASRS for each employee of the potential Employer who is Engaged To Work for the potential Employer and for whom the potential Employer intends to purchase service credit pursuant to this Section:

1. The employee's full name;
 2. The employee's date of birth;
 3. The employee's Social Security number;
 4. The employee's current salary; and
 5. The date the employee began employment with the potential Employer.
- C. An Employer who elects to purchase service credit pursuant to this Section shall submit the following information for each member for which the Employer is purchasing service credit:
1. Member's full name;
 2. Member's date of birth;
 3. Member's Social Security number;
 4. Member's date of employment;
 5. Documentation showing the Member is Engaged To Work for the Employer as of the effective date of joining the ASRS;
 6. Member's current salary as of the effective date of joining the ASRS; and
 7. The number of years the Employer is electing to purchase for the member pursuant to this Section or the dollar amount the Employer is electing to pay to purchase service for the member pursuant to this Section.
- D. The cost to purchase service credit pursuant to this Section shall be determined using an actuarial present value calculation.
- E. An Employer who elects to purchase service credit pursuant to this Section shall submit payment for the full cost of the service purchase to the ASRS within 90 days of the date of notification by the ASRS.
- F. If an Employer who elects to purchase service credit pursuant to this Section does not submit payment for the full cost of the service purchase within 90 days of the date of notification, the Employer is not eligible to purchase service credit pursuant to this Section.

Historical Note

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

ARTICLE 11. TRANSFER OF SERVICE CREDIT

R2-8-1101. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "Actuarial present value" means an amount in today's dollars of a member's future retirement benefit calculated using appropriate actuarial assumptions and the:
 - a. Member's Current Years of Credited Service;
 - b. Member's age as of the date the Member submits to the ASRS a request to transfer service credit pursuant to this Article; and
 - c. Member's most recent annual compensation.
2. "Current years of credited service" means:
 - a. For Transfer In Service, the amount of credited service a member has earned or purchased, and the amount of service credit for which an Irrevocable PDA is in effect for which the member has not yet completed payment, but does not include any current requests to purchase service credit for which the member has not yet paid;
 - b. For transferring service credit to the Other Retirement Plan, the amount of credited service a member has earned or purchased, but does not include service credit for which the member has not yet paid.
3. "Irrevocable PDA" means the same as in R2-8-501.
4. "Funded Actuarial Present Value" means the Actuarial Present Value reduced to the extent funded on market value basis as of the most recent actuarial evaluation of the ASRS.
5. "Member's accumulated contribution account balance" means the sum of all the member's retirement contributions and any principal payments made for:
 - a. The purchase of service credit;
 - b. Contributions not withheld; and
 - c. Previous transfers of service credit.
6. "Other retirement plan" means the state retirement plans specified in A.R.S. § 38-921, other than the ASRS, or a retirement plan of a charter city as specified in A.R.S. § 38-730.
7. "Other Retirement Plan's cost" means the amount determined by the ASRS pursuant to R2-8-1102(D).
8. "Other public service" means the same as in R2-8-501.
9. "Transfer in service" means credited service with the Other Retirement Plan that a member is eligible to transfer to the ASRS pursuant to A.R.S. §§ 38-730 and 38-921.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-1102. Required Documentation and Calculations for Transfer In Service Credit

- A. A member who is eligible to Transfer In Service credit, may request to transfer service credit by providing a Transfer In form to the ASRS with the following:
1. The name of the Other Retirement Plan;
 2. The date the member either terminated employment with an employer of the Other Retirement Plan or ceased to participate in the Other Retirement Plan;
 3. The date the member began employment with the employer through which the member was participating in the Other Retirement Plan;
 4. The number of years the member participated in the Other Retirement Plan;
 5. Acknowledgement the member agrees that:
 - a. Knowingly making a false statement or falsifying or permitting falsification of any record of the ASRS with an intent to defraud ASRS is a Class 6 felony, pursuant to A.R.S. § 38-793; and
 - b. The Transfer In Service credit transaction is subject to audit and if any errors are discovered, the ASRS shall adjust a member's account, or if the member is already retired, adjustments to the member's account may affect the member's retirement benefit.

- B. Upon receipt of the information specified in subsection (A), the ASRS shall submit the information to the Other Retirement Plan and request:
 - 1. The Other Retirement Plan's Funded Actuarial Present Value pursuant to A.R.S. §§ 38-730 and 38-922;
 - 2. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan;
 - 3. The amount of service credit the member has accumulated in the Other Retirement Plan; and
 - 4. The start date and end date for the member's participation in the Other Retirement Plan.
- C. Upon receipt of the information specified in subsection (B), the ASRS shall calculate the Actuarial Present Value as specified in R2-8-506 necessary to transfer full service credit to the ASRS.
- D. The ASRS shall calculate the Other Retirement Plan's Cost as follows:
 - 1. If the ASRS Actuarial Present Value is greater than the Other Retirement Plan's Funded Actuarial Present Value, then the Other Retirement Plan's Cost is the greater of:
 - a. The Other Retirement Plan's Funded Actuarial Present Value; or
 - b. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan;
 - 2. If the ASRS Actuarial Present Value is less than or equal to the Other Retirement Plan's Funded Actuarial Present Value, then the Other Retirement Plan's Cost is the greater of:
 - a. The ASRS Actuarial Present Value; or
 - b. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan.
- E. The ASRS shall compare the Other Retirement Plan's Cost to the ASRS Actuarial Present Value calculated pursuant to subsection (C) and:
 - 1. If the Other Retirement Plan's Cost is less than the ASRS Actuarial Present Value, then the member may elect to transfer service credit to the ASRS and:
 - a. Pay the difference between the Other Retirement Plan's Cost and the ASRS Actuarial Present Value; or
 - b. Accept a proportionately reduced amount of service credit;
 - 2. If the Other Retirement Plan's Cost is greater than or equal to the ASRS Actuarial Present Value, then the member may elect to transfer the service to the ASRS pursuant to subsection (F).
- F. Upon completion of the comparison specified in subsections (D) and (E), the ASRS shall send the member a transfer in invoice notifying the member of the member's options to complete the transfer of service credit through the member's secure ASRS account.
- G. The member may elect to complete a transfer of service credit pursuant to this Section by submitting the member's election by the election due date specified on the transfer in invoice.
- H. Upon receipt of the member's election to complete a transfer of service credit, the ASRS shall send the transfer in invoice to the Other Retirement Plan and the Other Retirement Plan shall make payment to the ASRS by submitting a check made payable to the ASRS for the Other Retirement Plan's Cost specified on the transfer in invoice by the payment due date specified on the transfer in invoice.
- I. If a member elects to pay the total difference between the ASRS Actuarial Present Value and the Other Retirement Plan's Cost pursuant to R2-8-1102(E), the member shall elect the method of payment by the payment due date specified on the transfer in invoice.
- J. A member may elect to pay the total difference between the ASRS Actuarial Present Value and the Other Retirement Plan's Cost pursuant to R2-8-1102(E) by any one or more methods specified in R2-8-512, R2-8-513, R2-8-514, or R2-8-519.
- K. For a member who elects to accept a proportionately reduced amount of service pursuant to subsection (E)(1)(b), the ASRS shall calculate the proportionately reduced amount of service credit based on the member's service credits in the Other Retirement Plan multiplied by the ratio of the Other Retirement Plan's Cost to the ASRS Actuarial Present Value.
- L. The member shall submit payment to transfer service credit pursuant to this Section by the payment due date specified on the transfer in invoice.
- M. If the member does not submit payment for the total difference in the calculations pursuant to R2-8-1102(E) by the payment due date specified on the transfer in invoice, the member may be eligible to purchase the remaining service credit as Other Public Service, and the member is not eligible to purchase the remaining service credit based on the cost specified in the transfer in invoice.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-1103. Transferring Service to Other Retirement Plans

- A. Upon receipt of a request to transfer a member's service credit from the ASRS to the Other Retirement Plan, the ASRS shall calculate:
 - 1. The ASRS Funded Actuarial Present Value pursuant to A.R.S. §§ 38-730 and 38-922; and
 - 2. The Member's Accumulated Contribution Account Balance in the ASRS.
- B. Upon completing the calculations specified in subsection (A), the ASRS shall submit the calculations and member information to the Other Retirement Plan with a due date for the Other Retirement Plan to submit a fund request to the ASRS pursuant to subsection (C).
- C. If a member elects to transfer service credit to the Other Retirement Plan, the member shall ensure that the Other Retirement Plan submits a fund request on the Other Retirement Plan's letterhead by the due date specified in subsection (B) to the ASRS with the following information:
 - 1. The member's full name;
 - 2. The last four digits of the member's Social Security number;
 - 3. The name of the Other Retirement Plan; and
 - 4. The Actuarial Present Value necessary to transfer full service credit to the Other Retirement Plan.
- D. Upon receipt of the information specified in subsection (C), the ASRS shall compare the calculations specified in subsection (A) to the Other Retirement Plan's Actuarial Present Value specified in subsection (C) and transfer funds as follows:
 - 1. If the Other Retirement Plan's Actuarial Present Value specified in subsection (C) is greater than the ASRS Funded Actuarial Present Value specified in subsection (A), then the ASRS shall transfer the greater of:
 - a. The ASRS Funded Actuarial Present Value specified in subsection (A); or
 - b. The Member's Accumulated Contribution Account Balance in the ASRS.
 - 2. If the Other Retirement Plan's Actuarial Present Value specified in subsection (C) is less than or equal to the ASRS Funded Actuarial Present Value, then the ASRS shall transfer the greater of:
 - a. The Other Retirement Plan's Actuarial Present Value specified in subsection (C); or
 - b. The Member's Accumulated Contribution Account Balance in the ASRS.
- E. Transferring service credit to the Other Retirement Plan pursuant to this Section constitutes a withdrawal from ASRS membership and results in a forfeiture of all other benefits under ASRS.

- F. Notwithstanding subsection (E), pursuant to A.R.S. § 38-750, a transferred employee who continues an Irrevocable PDA after transferring service credit to the Other Retirement Plan may be eligible to:
1. Transfer service credit associated with the remaining balance of the Irrevocable PDA for which the transferred employee paid for the purchase of service credit plus interest at the Assumed Actuarial Investment Earnings Rate pursuant to A.R.S. § 38-922, not including any administrative interest charge the transferred employee paid pursuant to an Irrevocable PDA; or
 2. Receive a return of contributions plus interest as specified in R2-8-118(A), column 3, pursuant to A.R.S. § 38-740.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

38-711. Definitions

In this article, unless the context otherwise requires:

1. "Active member" means a member as defined in paragraph 23, subdivision (b) of this section who satisfies the eligibility criteria prescribed in section 38-727 and who is currently making member contributions as prescribed in section 38-736.

2. "Actuarial equivalent" means equality in value of the aggregate amounts expected to be received under two different forms of payment, based on mortality and interest rate assumptions approved from time to time by the board.

3. "ASRS" means the Arizona state retirement system established by this article.

4. "Assets" means the resources of ASRS including all cash, investments or securities.

5. "Average monthly compensation" means:

(a) For a member whose membership in ASRS commenced before January 1, 1984 and who left the member's contributions on deposit or reinstated forfeited credited service pursuant to section 38-742 for a period of employment that commenced before January 1, 1984, the higher of either:

(i) The monthly average of compensation that is calculated pursuant to subdivision (b) of this paragraph.

(ii) The monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which the member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation is based on the total consecutive months worked. Payments for accumulated vacation or annual leave, sick leave, compensatory time or other forms of termination pay that, before August 12, 2005, constitute compensation for members whose membership in ASRS commenced before January 1, 1984, do not cease to be included as compensation if paid in the form of nonelective employer contributions under a 26 United States Code section 403(b) plan if all payments of employer and employee contributions are made at the time of termination. Contributions shall be made to ASRS on these amounts pursuant to sections 38-735, 38-736 and 38-737.

(b) For a member whose membership in ASRS commenced on or after January 1, 1984 but before July 1, 2011, the monthly average of compensation on which contributions were remitted during a period of thirty-six consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The thirty-six consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than thirty-six consecutive months, the average monthly compensation shall be based on the total consecutive months worked.

(c) For a member whose membership in ASRS commenced on or after July 1, 2011, the monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation shall be based on the total consecutive months worked.

6. "Board" means the ASRS board established in section 38-713.

7. "Compensation" means:

(a) For members whose membership began on or before December 31, 2019, the gross amount paid to a member by an employer as salary or wages, including amounts that are subject to deferred compensation or tax shelter agreements, for services rendered to or for an employer, or that would have been paid to the member except for the member's election or a legal requirement that all or part of the gross amount be used for other purposes, but does not include amounts paid in excess of compensation limits established in section 38-746. Compensation includes amounts paid as salary or wages to a member by a second employer if the member meets the requirements prescribed in paragraph 23, subdivision (b) of this section with that second employer. Compensation, as provided in paragraph 5, subdivision (b) or (c) of this section, does not include:

(i) Lump sum payments, on termination of employment, for accumulated vacation or annual leave, sick leave, compensatory time or any other form of termination pay whether the payments are made in one payment or by installments over a period of time.

(ii) Damages, costs, attorney fees, interest or other penalties paid pursuant to a court order or a compromise settlement or agreement to satisfy a grievance or claim even though the amount of the payment is based in whole or in part on previous salary or wage levels, except that, if the court order or compromise settlement or agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time. If the amount directed to be paid is less than the actual salary or wages that would have been paid for the period if service had been performed, the contributions for the period shall be based on the amount of compensation that would have been paid if the service had been performed.

(iii) Payment, at the member's option, in lieu of fringe benefits that are normally paid for or provided by the employer.

(iv) Merit awards pursuant to section 38-613 and performance bonuses paid to assistant attorneys general pursuant to section 41-192.

(v) Amounts that are paid as salary or wages to a member for which employer contributions have not been paid.

(b) For a member whose membership began on or after January 1, 2020, only gross wages paid to a member by the employer for services rendered to the employer during the period considered as credited service, including amounts reported as wages and tips and other compensation on the member's federal form W-2 wage and tax statement, including pretax deductions, except for the following:

- (i) Payments made for accrued leave that is not being used to replace regular work hours, whether paid in a lump sum or in installments.
- (ii) Payments made on termination from employment, whether paid in a lump sum or in installments or as a bonus or an incentive for termination or retirement.
- (iii) Employer-paid contributions that are made to, and any distributions from, plans, programs or arrangements qualified under section 117, 125, 129, 401, 403, 408 or 457 of the internal revenue code.
- (iv) Payments for allowances.
- (v) Reimbursements for employee business expenses or employee personal expenses.
- (vi) Employer-paid contributions for coverage under, or distributions from, an accident, health or life insurance plan, program or arrangement.
- (vii) Payments made in lieu of any employer-paid insurance coverage.
- (viii) Workers' compensation, unemployment compensation payments and disability payments.
- (ix) Merit awards pursuant to section 38-613.
- (x) Payments paid pursuant to a court order or settlement agreement to satisfy a claim even though the amount of the payment is based on previous salary or wage levels, except if the court order or settlement agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time.
- (xi) Payments made in the form of goods or services in lieu of gross wages.
- (xii) Any other payment that is not reported as wages and tips and other compensation on the member's federal W-2 wage and tax statement for actual services rendered.
- (xiii) Payments in excess of the section 415 of the internal revenue code limits established in section 38-746.
- (xiv) Payments for any other employment benefit.
- (xv) Payments for which employer or employee contributions have not been paid.

8. "Contingent annuitant" means the person named by a member to receive retirement income payable following a member's death after retirement as provided in section 38-760.

9. "Credited service" means, subject to section 38-739, the number of years standing to the member's credit on the books of ASRS during which the member made the required contributions.

10. "Current annual compensation" means the greater of:

(a) Annualized compensation of the typical pay period amount immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745. The typical pay period amount shall be determined by taking the five pay periods immediately before the date of a request, disregarding the highest and lowest compensation amount pay periods and averaging the three remaining pay periods.

(b) Annualized compensation of the partial year, disregarding the first compensation amount pay period, if the member has less than twelve months total compensation on the date of a request to purchase credited service pursuant to section 38-743, 38-744 or 38-745.

(c) The sum of the twelve months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745.

(d) The sum of the thirty-six months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745 divided by three.

(e) If the member has retired one or more times from ASRS, the average monthly compensation that was used for calculating the member's last pension benefit times twelve.

11. "Early retirement" means retirement before a member's normal retirement date after five years of total credited service and attainment of age fifty.

12. "Effective date" means July 1, 1970, except with respect to employers and members whose contributions to ASRS commence thereafter, the effective date of their membership in ASRS is as specified in the applicable joinder agreement.

13. "Employer" means:

(a) This state.

(b) Participating political subdivisions.

(c) Participating political subdivision entities.

14. "Employer contributions" means all amounts paid into ASRS by an employer on behalf of a member.

15. "Fiscal year" means the period from July 1 of any year to June 30 of the following year.

16. "Inactive member" means a member who previously made contributions to ASRS and who satisfies each of the following:

(a) Has not retired.

(b) Is not eligible for active membership in ASRS.

(c) Is not currently making contributions to ASRS.

(d) Has not withdrawn contributions from ASRS.

17. "Interest" means the assumed actuarial investment earnings rate approved by the board.

18. "Internal revenue code" means the United States internal revenue code of 1986, as amended.

19. "Investment manager" means the persons, companies, banks, insurance company investment funds, mutual fund companies, management or any combinations of those entities that are appointed by ASRS and that have responsibility and authority for investment of the monies of ASRS.

20. "Late retirement" means retirement after normal retirement.

21. "Leave of absence" means any unpaid leave authorized by the employer, including leaves authorized for sickness or disability or to pursue education or training.

22. "Life annuity" means equal monthly installments payable during the member's lifetime after retirement.

23. "Member":

(a) Means any employee of an employer on the effective date.

(b) Means all employees of an employer who are eligible for membership pursuant to section 38-727 and who are engaged to work at least twenty weeks in each fiscal year and at least twenty hours each week.

(c) Means any person receiving a benefit under ASRS.

(d) Means any person who is a former active member of ASRS and who has not withdrawn contributions from ASRS pursuant to section 38-740.

(e) Does not include any employee of an employer who is otherwise eligible pursuant to this article and who begins service in a limited appointment for not more than eighteen months on or after July 1, 1979. If the employment exceeds eighteen months, the employee shall be covered by ASRS as of the beginning of the nineteenth month of employment. In order to be excluded under this subdivision, classifications of employees designated by employers as limited appointments must be approved by the director.

(f) Does not include any leased employee. For the purposes of section 414(n) of the internal revenue code, "leased employee" means an individual who:

(i) Is not otherwise an employee of an employer.

(ii) Pursuant to a leasing agreement between the employer and another person, performs services for the employer on a substantially full-time basis for at least one year.

(iii) Performs services under the primary direction or control of the employer.

24. "Member contributions" means all amounts paid to ASRS by a member.

25. "Normal costs" means the sum of the individual normal costs for all active members for each fiscal year. The normal cost for an individual active member is the cost that is assigned to the fiscal year, through June 29, 2016, using the projected unit credit method and, beginning June 30, 2016, using the actuarial cost method determined by the board pursuant to section 38-714.

26. "Normal retirement age" means the age at which a member reaches the member's normal retirement date.

27. "Normal retirement date" means the earliest of the following:

(a) For a member whose membership commenced before July 1, 2011:

(i) A member's sixty-fifth birthday.

(ii) A member's sixty-second birthday and completion of at least ten years of credited service.

(iii) The first day that the sum of a member's age and years of total credited service equals eighty.

(b) For a member whose membership commenced on or after July 1, 2011:

(i) A member's sixty-fifth birthday.

(ii) A member's sixty-second birthday and completion of at least ten years of credited service.

(iii) A member's sixtieth birthday and completion of at least twenty-five years of credited service.

(iv) A member's fifty-fifth birthday and completion of at least thirty years of credited service.

28. "Political subdivision" means any political subdivision of this state and includes a political subdivision entity.

29. "Political subdivision entity" means an entity:

(a) That is located in this state.

(b) That is created in whole or in part by political subdivisions, including instrumentalities of political subdivisions.

(c) Where a majority of the membership of the entity is composed of political subdivisions.

(d) Whose primary purpose is the performance of a government-related service.

30. "Retired member" means a member who is receiving retirement benefits pursuant to this article.

31. "Service year" means fiscal year, except that:

(a) If the normal work year required of a member is less than the full fiscal year but is for a period of at least nine months, the service year is the normal work year.

(b) For a salaried member employed on a contract basis under one contract, or two or more consecutive contracts, for a total period of at least nine months, the service year is the total period of the contract or consecutive contracts.

(c) In determining average monthly compensation pursuant to paragraph 5 of this section, the service year is considered to be twelve months of compensation.

32. "State" means this state, including any department, office, board, commission, agency, institution or other instrumentality of this state.

33. "Vested" means that a member is eligible to receive a future retirement benefit.

38-714. Powers and duties of ASRS and board

A. ASRS shall have the powers and privileges of a corporation, shall have an official seal and shall transact all business in the name "Arizona state retirement system", and in that name may sue and be sued.

B. The board is responsible for supervising the administration of this article by the director of ASRS.

C. The board is responsible for the performance of fiduciary duties and other responsibilities required to preserve and protect the retirement trust fund established by section 38-712.

D. The board shall not advocate for or against legislation providing for benefit modifications, except that the board shall provide technical and administrative information regarding the impact of benefit modification legislation.

E. The board may:

1. Determine the rights, benefits or obligations of any person under this article and any member under articles 2.1 and 7 of this chapter and afford any person dissatisfied with a determination a hearing on the determination. The board may delegate the duty and authority to act on the board's behalf to a committee of the board for the purposes of this paragraph and title 41, chapter 6, article 10 relating to any decision made under this paragraph by that committee of the board.

2. Determine the amount, manner and time of payment of any benefits under this article.

3. Recommend amendments to this article and articles 2.1 and 7 of this chapter that are required for efficient and effective administration.

4. Adopt, amend or repeal rules for the administration of the plan, this article and articles 2.1 and 7 of this chapter.

F. Beginning June 30, 2016, the board shall determine which of the generally accepted actuarial cost methods shall be used in the annual actuarial valuation of the plan.

G. The board and ASRS are not subject to title 41, chapter 6, except title 41, chapter 6, article 10, for actuarial assumptions and calculations, investment strategy and decisions and accounting methodology.

H. The board shall submit to the governor and legislature for each fiscal year no later than eight months after the close of the fiscal year a report of its operations and the operations of ASRS. The report shall follow generally accepted accounting principles and generally accepted financial reporting standards and shall include:

1. A report on an actuarial valuation of ASRS assets and liabilities.
2. Any other statistical and financial data that may be necessary for the proper understanding of the financial condition of ASRS and the results of board operations.
3. On request of the governor or the legislature, a list of investments owned. This list shall be provided in an electronic format.
4. An estimate of the aggregate fees paid for private equity investments, including management fees and performance fees.

I. The board shall:

1. Prepare and publish a synopsis of the annual report for the information of ASRS members.
2. Contract for a study of the mortality, disability, service and other experiences of the members and employers participating in ASRS. The study shall be conducted for fiscal year 1990-1991 and for at least every fifth fiscal year thereafter. A report of the study shall be completed within eight months after the close of the applicable fiscal year and shall be submitted to the governor and the legislature.
3. Conduct an annual actuarial valuation of ASRS assets and liabilities.

J. The auditor general may make an annual audit of ASRS and transmit the results to the governor and the legislature.

38-783. Retired members; dependents; health insurance; premium payment; separate account; definitions

A. Subject to subsections G, H and I of this section, the board shall pay from ASRS assets part of the single coverage premium of any health and accident insurance for each retired member, contingent annuitant or member with a disability of ASRS if the member elects to participate in the coverage provided by ASRS or section 38-651.01 or elects to participate in a health and accident insurance program provided or administered by an employer or paid for, in whole or in part, by an employer to an insurer. A contingent annuitant must be receiving a monthly retirement benefit from ASRS in order to obtain any premium payment provided by this section. The board shall pay:

1. Up to \$150 per month for a member of ASRS who is not eligible for medicare if the retired member or member with a disability has ten or more years of credited service.
2. Up to \$100 per month for each member of ASRS who is eligible for medicare if the retired member or member with a disability has ten or more years of credited service.

B. Subject to subsections G, H and I of this section, the board shall pay from ASRS assets part of the family coverage premium of any health and accident insurance for a retired member, contingent

annuitant or member with a disability of ASRS who elects family coverage and who otherwise qualifies for payment pursuant to subsection A of this section. If a member of ASRS and the member's spouse are both either retired or have disabilities under ASRS and apply for family coverage, the member who elects family coverage is entitled to receive the payments under this section as if they were both applying under a single coverage premium unless the payment under this section for family coverage is greater. Payment under this subsection is in the following amounts:

1. Up to \$260 per month if the member of ASRS and one or more dependents are not eligible for medicare.

2. Up to \$170 per month if the member of ASRS and one or more dependents are eligible for medicare.

3. Up to \$215 per month if either:

(a) The member of ASRS is not eligible for medicare and one or more dependents are eligible for medicare.

(b) The member of ASRS is eligible for medicare and one or more dependents are not eligible for medicare.

C. In addition each retired member, contingent annuitant or member with a disability of ASRS with less than ten years of credited service and a dependent of such a retired member, contingent annuitant or member with a disability who elects to participate in the coverage provided by ASRS or section 38-651.01 or who elects to participate in a health and accident insurance program provided or administered by an employer or paid for, in whole or in part, by an employer to an insurer is entitled to receive a proportion of the full benefit prescribed by subsection A or B of this section according to the following schedule:

1. 9.0 to 9.9 years of credited service, ninety percent.

2. 8.0 to 8.9 years of credited service, eighty percent.

3. 7.0 to 7.9 years of credited service, seventy percent.

4. 6.0 to 6.9 years of credited service, sixty percent.

5. 5.0 to 5.9 years of credited service, fifty percent.

6. Those with less than five years of credited service do not qualify for the benefit.

D. The board shall not pay more than the amount prescribed in this section for a member of ASRS.

E. Notwithstanding subsections A, B and C of this section, for a member who retires on or after August 2, 2012, the board shall not make a payment under this section to a retired member, contingent annuitant or member with a disability who is enrolled in an employer's active employee group health and accident insurance program either as the insured or as a dependent, except that if the retired member, contingent annuitant or member with a disability is enrolled as a dependent and the premium paid to the employer's active employee group health and accident insurance program is

not subsidized by the employer, the retired member, contingent annuitant or member with a disability is entitled to receive the amount provided in subsection A of this section.

F. The board shall establish a separate account that consists of the benefits provided by this section. The board shall not use or divert any part of the corpus or income of the account for any purpose other than the provision of and the cost of administering the benefits under this section or the self-insurance program pursuant to section 38-782 unless the liabilities of ASRS to provide the benefits are satisfied. If the liabilities of ASRS to provide the benefits described in this section and section 38-782 are satisfied, the board shall return any amount remaining in the account to the employer.

G. Payment of the benefits provided by this section is subject to the following conditions:

1. The payment of the benefits is subordinate to the payment of retirement benefits payable by ASRS.
2. The total of contributions for the benefits and actual contributions for life insurance protection, if any, shall not exceed twenty-five percent of the total actual employer and employee contributions to ASRS, less contributions to fund past service credits, after the day the account is established.
3. The board shall deposit the benefits provided by this section in the account.
4. The contributions by the employer to the account shall be reasonable and ascertainable.

H. A member who elects to receive a retirement benefit pursuant to section 38-760, subsection B, paragraph 1 may elect at the time of retirement an optional form of health and accident insurance premium benefit payment pursuant to this subsection as follows:

1. The optional premium benefit payment shall be an amount prescribed by subsection A, B or C of this section that is actuarially reduced to the retiring member for life. The amount of the optional premium benefit payment shall be the actuarial equivalent of the premium benefit payment to which the retired member would otherwise be entitled. The election in a manner prescribed by the board shall name the contingent annuitant and may be revoked at any time before the retiring member's effective date of retirement. At any time after benefits have commenced, the member may name a different contingent annuitant or rescind the election by written notice to the board as follows:

- (a) If the retired member names a different contingent annuitant, the optional premium benefit payment shall be adjusted to the actuarial equivalent of the original premium benefit payment based on the age of the new contingent annuitant. The adjustment shall include all postretirement increases or decreases in amounts prescribed by subsection A, B or C of this section that are authorized by law after the retired member's date of retirement. Payment of this adjusted premium benefit payment shall continue under the provisions of the optional premium benefit payment previously elected by the retired member. A retired member cannot name a different contingent annuitant if the retired member has at any time rescinded the optional form of health and accident insurance premium benefit payment.

- (b) If the retired member rescinds the election, the retired member shall thereafter receive the premium benefit payment that the retired member would otherwise be entitled to receive if the retired member had not elected the optional premium benefit payment, including all postretirement increases or decreases in amounts prescribed by subsection A, B or C of this section that are authorized by law after the member's date of retirement. The increased benefit payment shall

continue during the remainder of the retired member's lifetime. The decision to rescind shall be irrevocable.

2. If, at the time of the retired member's death:

(a) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection B or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

(b) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection A or C of this section and the contingent annuitant is eligible for single health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

(c) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is not eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

I. A member who elects to receive a retirement benefit pursuant to section 38-760, subsection B, paragraph 2 may elect at the time of retirement an optional form of health and accident insurance premium benefit payment pursuant to this subsection as follows:

1. The optional premium benefit payment shall be an amount prescribed by subsection A, B or C of this section that is actuarially reduced with payments for five, ten or fifteen years that are not dependent on the continued lifetime of the retired member but whose payments continue for the retired member's lifetime beyond the five, ten or fifteen year period. The election in a manner prescribed by the board shall name the contingent annuitant and may be revoked at any time before the retiring member's effective date of retirement. At any time after benefits have commenced, the member may name a different contingent annuitant or rescind the election by written notice to the board. If the retired member rescinds the election, the retired member shall thereafter receive the premium benefit payment that the retired member would otherwise be entitled to receive if the retired member had not elected the optional premium benefit payment, including all postretirement increases or decreases in amounts prescribed by subsection A, B or C of this section that are authorized by law after the member's date of retirement. The increased benefit payment shall continue during the remainder of the retired member's lifetime. The decision to rescind shall be irrevocable.

2. If, at the time of the retired member's death:

(a) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection B or C of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

(b) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection A or C of this section and the contingent annuitant is eligible for single health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

(c) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is not eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

J. If, at the time of retirement, a retiring member does not elect to receive a reduced premium benefit payment pursuant to subsection H or I of this section, the retired member's contingent annuitant is not eligible at any time for the optional premium benefit payment.

K. If a member who is eligible for benefits pursuant to this section forfeits the member's interest in the account before the termination of ASRS, an amount equal to the amount of the forfeiture shall be applied as soon as possible to reduce employer contributions to fund the benefits provided by this section.

L. A contingent annuitant is not eligible for any premium benefit payment if the contingent annuitant was not enrolled in an eligible health and accident insurance plan at the time of the retired member's death or if the contingent annuitant is not the dependent beneficiary or insured surviving dependent as provided in section 38-782.

M. For the purposes of this section:

1. "Account" means the separate account established pursuant to subsection F of this section.
2. "Credited service" includes prior service.
3. "Prior service" means service for this state or a political subdivision of this state before membership in the defined contribution program administered by ASRS.
4. "Subsidized" means a portion of the total premium is paid by the employer, but does not necessarily mean a plan in which the employer uses blended rates to determine the total premium.

38-711. Definitions

In this article, unless the context otherwise requires:

1. "Active member" means a member as defined in paragraph 23, subdivision (b) of this section who satisfies the eligibility criteria prescribed in section 38-727 and who is currently making member contributions as prescribed in section 38-736.

2. "Actuarial equivalent" means equality in value of the aggregate amounts expected to be received under two different forms of payment, based on mortality and interest rate assumptions approved from time to time by the board.

3. "ASRS" means the Arizona state retirement system established by this article.

4. "Assets" means the resources of ASRS including all cash, investments or securities.

5. "Average monthly compensation" means:

(a) For a member whose membership in ASRS commenced before January 1, 1984 and who left the member's contributions on deposit or reinstated forfeited credited service pursuant to section 38-742 for a period of employment that commenced before January 1, 1984, the higher of either:

(i) The monthly average of compensation that is calculated pursuant to subdivision (b) of this paragraph.

(ii) The monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which the member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation is based on the total consecutive months worked. Payments for accumulated vacation or annual leave, sick leave, compensatory time or other forms of termination pay that, before August 12, 2005, constitute compensation for members whose membership in ASRS commenced before January 1, 1984, do not cease to be included as compensation if paid in the form of nonelective employer contributions under a 26 United States Code section 403(b) plan if all payments of employer and employee contributions are made at the time of termination. Contributions shall be made to ASRS on these amounts pursuant to sections 38-735, 38-736 and 38-737.

(b) For a member whose membership in ASRS commenced on or after January 1, 1984 but before July 1, 2011, the monthly average of compensation on which contributions were remitted during a period of thirty-six consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The thirty-six consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than thirty-six consecutive months, the average monthly compensation shall be based on the total consecutive months worked.

(c) For a member whose membership in ASRS commenced on or after July 1, 2011, the monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be

excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation shall be based on the total consecutive months worked.

6. "Board" means the ASRS board established in section 38-713.

7. "Compensation" means:

(a) For members whose membership began on or before December 31, 2019, the gross amount paid to a member by an employer as salary or wages, including amounts that are subject to deferred compensation or tax shelter agreements, for services rendered to or for an employer, or that would have been paid to the member except for the member's election or a legal requirement that all or part of the gross amount be used for other purposes, but does not include amounts paid in excess of compensation limits established in section 38-746. Compensation includes amounts paid as salary or wages to a member by a second employer if the member meets the requirements prescribed in paragraph 23, subdivision (b) of this section with that second employer. Compensation, as provided in paragraph 5, subdivision (b) or (c) of this section, does not include:

(i) Lump sum payments, on termination of employment, for accumulated vacation or annual leave, sick leave, compensatory time or any other form of termination pay whether the payments are made in one payment or by installments over a period of time.

(ii) Damages, costs, attorney fees, interest or other penalties paid pursuant to a court order or a compromise settlement or agreement to satisfy a grievance or claim even though the amount of the payment is based in whole or in part on previous salary or wage levels, except that, if the court order or compromise settlement or agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time. If the amount directed to be paid is less than the actual salary or wages that would have been paid for the period if service had been performed, the contributions for the period shall be based on the amount of compensation that would have been paid if the service had been performed.

(iii) Payment, at the member's option, in lieu of fringe benefits that are normally paid for or provided by the employer.

(iv) Merit awards pursuant to section 38-613 and performance bonuses paid to assistant attorneys general pursuant to section 41-192.

(v) Amounts that are paid as salary or wages to a member for which employer contributions have not been paid.

(b) For a member whose membership began on or after January 1, 2020, only gross wages paid to a member by the employer for services rendered to the employer during the period considered as credited service, including amounts reported as wages and tips and other compensation on the member's federal form W-2 wage and tax statement, including pretax deductions, except for the following:

(i) Payments made for accrued leave that is not being used to replace regular work hours, whether paid in a lump sum or in installments.

(ii) Payments made on termination from employment, whether paid in a lump sum or in installments or as a bonus or an incentive for termination or retirement.

(iii) Employer-paid contributions that are made to, and any distributions from, plans, programs or arrangements qualified under section 117, 125, 129, 401, 403, 408 or 457 of the internal revenue code.

(iv) Payments for allowances.

(v) Reimbursements for employee business expenses or employee personal expenses.

(vi) Employer-paid contributions for coverage under, or distributions from, an accident, health or life insurance plan, program or arrangement.

(vii) Payments made in lieu of any employer-paid insurance coverage.

(viii) Workers' compensation, unemployment compensation payments and disability payments.

(ix) Merit awards pursuant to section 38-613.

(x) Payments paid pursuant to a court order or settlement agreement to satisfy a claim even though the amount of the payment is based on previous salary or wage levels, except if the court order or settlement agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time.

(xi) Payments made in the form of goods or services in lieu of gross wages.

(xii) Any other payment that is not reported as wages and tips and other compensation on the member's federal W-2 wage and tax statement for actual services rendered.

(xiii) Payments in excess of the section 415 of the internal revenue code limits established in section 38-746.

(xiv) Payments for any other employment benefit.

(xv) Payments for which employer or employee contributions have not been paid.

8. "Contingent annuitant" means the person named by a member to receive retirement income payable following a member's death after retirement as provided in section 38-760.

9. "Credited service" means, subject to section 38-739, the number of years standing to the member's credit on the books of ASRS during which the member made the required contributions.

10. "Current annual compensation" means the greater of:

(a) Annualized compensation of the typical pay period amount immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745. The typical pay period amount shall be determined by taking the five pay periods immediately before the

date of a request, disregarding the highest and lowest compensation amount pay periods and averaging the three remaining pay periods.

(b) Annualized compensation of the partial year, disregarding the first compensation amount pay period, if the member has less than twelve months total compensation on the date of a request to purchase credited service pursuant to section 38-743, 38-744 or 38-745.

(c) The sum of the twelve months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745.

(d) The sum of the thirty-six months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745 divided by three.

(e) If the member has retired one or more times from ASRS, the average monthly compensation that was used for calculating the member's last pension benefit times twelve.

11. "Early retirement" means retirement before a member's normal retirement date after five years of total credited service and attainment of age fifty.

12. "Effective date" means July 1, 1970, except with respect to employers and members whose contributions to ASRS commence thereafter, the effective date of their membership in ASRS is as specified in the applicable joinder agreement.

13. "Employer" means:

(a) This state.

(b) Participating political subdivisions.

(c) Participating political subdivision entities.

14. "Employer contributions" means all amounts paid into ASRS by an employer on behalf of a member.

15. "Fiscal year" means the period from July 1 of any year to June 30 of the following year.

16. "Inactive member" means a member who previously made contributions to ASRS and who satisfies each of the following:

(a) Has not retired.

(b) Is not eligible for active membership in ASRS.

(c) Is not currently making contributions to ASRS.

(d) Has not withdrawn contributions from ASRS.

17. "Interest" means the assumed actuarial investment earnings rate approved by the board.

18. "Internal revenue code" means the United States internal revenue code of 1986, as amended.
19. "Investment manager" means the persons, companies, banks, insurance company investment funds, mutual fund companies, management or any combinations of those entities that are appointed by ASRS and that have responsibility and authority for investment of the monies of ASRS.
20. "Late retirement" means retirement after normal retirement.
21. "Leave of absence" means any unpaid leave authorized by the employer, including leaves authorized for sickness or disability or to pursue education or training.
22. "Life annuity" means equal monthly installments payable during the member's lifetime after retirement.
23. "Member":
- (a) Means any employee of an employer on the effective date.
 - (b) Means all employees of an employer who are eligible for membership pursuant to section 38-727 and who are engaged to work at least twenty weeks in each fiscal year and at least twenty hours each week.
 - (c) Means any person receiving a benefit under ASRS.
 - (d) Means any person who is a former active member of ASRS and who has not withdrawn contributions from ASRS pursuant to section 38-740.
 - (e) Does not include any employee of an employer who is otherwise eligible pursuant to this article and who begins service in a limited appointment for not more than eighteen months on or after July 1, 1979. If the employment exceeds eighteen months, the employee shall be covered by ASRS as of the beginning of the nineteenth month of employment. In order to be excluded under this subdivision, classifications of employees designated by employers as limited appointments must be approved by the director.
 - (f) Does not include any leased employee. For the purposes of section 414(n) of the internal revenue code, "leased employee" means an individual who:
 - (i) Is not otherwise an employee of an employer.
 - (ii) Pursuant to a leasing agreement between the employer and another person, performs services for the employer on a substantially full-time basis for at least one year.
 - (iii) Performs services under the primary direction or control of the employer.
24. "Member contributions" means all amounts paid to ASRS by a member.
25. "Normal costs" means the sum of the individual normal costs for all active members for each fiscal year. The normal cost for an individual active member is the cost that is assigned to the fiscal

year, through June 29, 2016, using the projected unit credit method and, beginning June 30, 2016, using the actuarial cost method determined by the board pursuant to section 38-714.

26. "Normal retirement age" means the age at which a member reaches the member's normal retirement date.

27. "Normal retirement date" means the earliest of the following:

(a) For a member whose membership commenced before July 1, 2011:

(i) A member's sixty-fifth birthday.

(ii) A member's sixty-second birthday and completion of at least ten years of credited service.

(iii) The first day that the sum of a member's age and years of total credited service equals eighty.

(b) For a member whose membership commenced on or after July 1, 2011:

(i) A member's sixty-fifth birthday.

(ii) A member's sixty-second birthday and completion of at least ten years of credited service.

(iii) A member's sixtieth birthday and completion of at least twenty-five years of credited service.

(iv) A member's fifty-fifth birthday and completion of at least thirty years of credited service.

28. "Political subdivision" means any political subdivision of this state and includes a political subdivision entity.

29. "Political subdivision entity" means an entity:

(a) That is located in this state.

(b) That is created in whole or in part by political subdivisions, including instrumentalities of political subdivisions.

(c) Where a majority of the membership of the entity is composed of political subdivisions.

(d) Whose primary purpose is the performance of a government-related service.

30. "Retired member" means a member who is receiving retirement benefits pursuant to this article.

31. "Service year" means fiscal year, except that:

(a) If the normal work year required of a member is less than the full fiscal year but is for a period of at least nine months, the service year is the normal work year.

(b) For a salaried member employed on a contract basis under one contract, or two or more consecutive contracts, for a total period of at least nine months, the service year is the total period of the contract or consecutive contracts.

(c) In determining average monthly compensation pursuant to paragraph 5 of this section, the service year is considered to be twelve months of compensation.

32. "State" means this state, including any department, office, board, commission, agency, institution or other instrumentality of this state.

33. "Vested" means that a member is eligible to receive a future retirement benefit.

[41-1092.01. Office of administrative hearings; director; powers and duties; fund](#)

A. An office of administrative hearings is established.

B. The governor shall appoint the director pursuant to section 38-211. At a minimum, the director shall have the experience necessary for appointment as an administrative law judge. The director also shall possess supervisory, management and administrative skills, as well as knowledge and experience relating to administrative law.

C. The director shall:

1. Serve as the chief administrative law judge of the office.

2. Make and execute the contracts and other instruments that are necessary to perform the director's duties.

3. Subject to chapter 4, article 4 of this title, hire employees, including full-time administrative law judges, and contract for special services, including temporary administrative law judges, that are necessary to carry out this article. An administrative law judge employed or contracted by the office shall have graduated from an accredited college of law or shall have at least two years of administrative or managerial experience in the subject matter or agency section the administrative law judge is assigned to in the office.

4. Make rules that are necessary to carry out this article, including rules governing ex parte communications in contested cases.

5. Submit a report to the governor, speaker of the house of representatives and president of the senate by November 1 of each year describing the activities and accomplishments of the office. The director's annual report shall include a summary of the extent and effect of agencies' utilization of administrative law judges, court reporters and other personnel in proceedings under this article and recommendations for changes or improvements in the administrative procedure act or any agency's practice or policy with respect to the administrative procedure act. The director shall provide a copy of the report to the secretary of state.

6. Secure, compile and maintain all decisions, opinions or reports of administrative law judges issued pursuant to this article and the reference materials and supporting information that may be appropriate.

7. Develop, implement and maintain a program for the continuing training and education of administrative law judges and agencies in regard to their responsibilities under this article. The program shall require that an administrative law judge receive training in the technical and subject matter areas of the sections to which the administrative law judge is assigned.

8. Develop, implement and maintain a program of evaluation to aid the director in the evaluation of administrative law judges appointed pursuant to this article that includes comments received from the public.

9. Annually report the following to the governor, the president of the senate and the speaker of the house of representatives and provide a copy of this report to the secretary of state by December 1 for the prior fiscal year:

(a) The number of administrative law judge decisions rejected or modified by agency heads.

(b) By category, the number and disposition of motions filed pursuant to section 41-1092.07, subsection A to disqualify office administrative law judges for bias, prejudice, personal interest or lack of expertise.

(c) By agency, the number and type of violations of section 41-1009.

10. Schedule hearings pursuant to section 41-1092.05 on the request of an agency or the filing of a notice of appeal pursuant to section 41-1092.03.

D. The director shall not require legal representation to appear before an administrative law judge.

E. Except as provided in subsection F of this section, all state agencies supported by state general fund sources, unless exempted by this article, and the registrar of contractors shall use the services and personnel of the office to conduct administrative hearings. All other agencies shall contract for services and personnel of the office to conduct administrative hearings.

F. An agency head, board or commission that directly conducts an administrative hearing as an administrative law judge is not required to use the services and personnel of the office for that hearing.

G. Each state agency, and each political subdivision contracting for office services pursuant to subsection I of this section, shall make its facilities available, as necessary, for use by the office in conducting proceedings pursuant to this article.

H. The office shall employ full-time administrative law judges to conduct hearings required by this article or other laws as follows:

1. The director shall assign administrative law judges from the office to an agency, on either a temporary or a permanent basis, at supervisory or other levels, to preside over contested cases and appealable agency actions in accordance with the special expertise of the administrative law judge in the subject matter of the agency.

2. The director shall establish the subject matter and agency sections within the office that are necessary to carry out this article. Each subject matter and agency section shall provide training in

the technical and subject matter areas of the section as prescribed in subsection C, paragraph 7 of this section.

I. If the office cannot furnish an office administrative law judge promptly in response to an agency request, the director may contract with qualified individuals to serve as temporary administrative law judges. These temporary administrative law judges are not employees of this state.

J. The office may provide administrative law judges on a contract basis to any governmental entity to conduct any hearing not covered by this article. The director may enter into contracts with political subdivisions of this state, and these political subdivisions may contract with the director for the purpose of providing administrative law judges and reporters for administrative proceedings or informal dispute resolution. The contract may define the scope of the administrative law judge's duties. Those duties may include the preparation of findings, conclusions, decisions or recommended decisions or a recommendation for action by the political subdivision. For these services, the director shall request payment for services directly from the political subdivision for which the services are performed, and the director may accept payment on either an advance or reimbursable basis.

K. The office shall apply monies received pursuant to subsections E and J of this section to offset its actual costs for providing personnel and services.

L. The office shall receive complaints against a county, a local government as defined in section 9-1401 or a video service provider as defined in section 9-1401 or 11-1901 and shall comply with the duties imposed on the office pursuant to title 9, chapter 13 for complaints involving local governments and title 11, chapter 14 for complaints involving counties.

41-1092.02. Appealable agency actions; application of procedural rules; exemption from article

A. This article applies to all contested cases as defined in section 41-1001 and all appealable agency actions, except contested cases with or appealable agency actions of:

1. The state department of corrections.
2. The board of executive clemency.
3. The industrial commission of Arizona.
4. The Arizona corporation commission.
5. The Arizona board of regents and institutions under its jurisdiction.
6. The state personnel board.
7. The department of juvenile corrections.
8. The department of transportation, except as provided in title 28, chapter 30, article 2.
9. The department of economic security except as provided in section 46-458.

10. The department of revenue regarding:

(a) Income tax or withholding tax.

(b) Any tax issue related to information associated with the reporting of income tax or withholding tax unless the taxpayer requests in writing that this article apply and waives confidentiality under title 42, chapter 2, article 1.

11. The board of tax appeals.

12. The state board of equalization.

13. The state board of education, but only in connection with contested cases and appealable agency actions related to either:

(a) Applications for issuance or renewal of a certificate and discipline of certificate holders and noncertificated persons pursuant to sections 15-203, 15-505, 15-534, 15-534.01, 15-535, 15-545 and 15-550.

(b) The Arizona empowerment scholarship account program pursuant to title 15, chapter 19.

14. The board of fingerprinting.

15. The department of child safety except as provided in sections 8-506.01 and 8-811.

B. Unless waived by all parties, an administrative law judge shall conduct all hearings under this article, and the procedural rules set forth in this article and rules made by the director apply.

C. Except as provided in subsection A of this section:

1. A contested case heard by the office of administrative hearings regarding taxes administered under title 42 shall be subject to section 42-1251.

2. A final decision of the office of administrative hearings regarding taxes administered under title 42 may be appealed by either party to the director of the department of revenue, or a taxpayer may file and appeal directly to the board of tax appeals pursuant to section 42-1253.

D. Except as provided in subsections A, B, E, F and G of this section and notwithstanding any other administrative proceeding or judicial review process established in statute or administrative rule, this article applies to all appealable agency actions and to all contested cases.

E. Except for a contested case or an appealable agency action regarding unclaimed property, sections 41-1092.03, 41-1092.08 and 41-1092.09 do not apply to the department of revenue.

F. The board of appeals established by section 37-213 is exempt from:

1. The time frames for hearings and decisions provided in section 41-1092.05, subsection A, section 41-1092.08 and section 41-1092.09.

2. The requirement in section 41-1092.06, subsection A to hold an informal settlement conference at the appellant's request if the sole subject of an appeal pursuant to section 37-215 is the estimate of value reported in an appraisal of lands or improvements.

G. Auction protest procedures pursuant to title 37, chapter 2, article 4.1 are exempt from this article.

41-1092.03. Notice of appealable agency action or contested case; hearing; informal settlement conference; applicability

A. Except as provided in subsection D of this section, an agency shall serve notice of an appealable agency action or contested case pursuant to section 41-1092.04. The notice shall:

1. Identify the statute or rule that is alleged to have been violated or on which the action is based.
2. Identify with reasonable particularity the nature of any alleged violation, including, if applicable, the conduct or activity constituting the violation.
3. Include a description of the party's right to request a hearing on the appealable agency action or contested case.
4. Include a description of the party's right to request an informal settlement conference pursuant to section 41-1092.06.

B. A party may obtain a hearing on an appealable agency action or contested case by filing a notice of appeal or request for a hearing with the agency within thirty days after receiving the notice prescribed in subsection A of this section. The notice of appeal or request for a hearing may be filed by a party whose legal rights, duties or privileges were determined by the appealable agency action or contested case. A notice of appeal or request for a hearing also may be filed by a party who will be adversely affected by the appealable agency action or contested case and who exercised any right provided by law to comment on the action being appealed or contested, provided that the grounds for the notice of appeal or request for a hearing are limited to issues raised in that party's comments. The notice of appeal or request for a hearing shall identify the party, the party's address, the agency and the action being appealed or contested and shall contain a concise statement of the reasons for the appeal or request for a hearing. The agency shall notify the office of the appeal or request for a hearing and the office shall schedule an appeal or contested case hearing pursuant to section 41-1092.05, except as provided in section 41-1092.01, subsection F.

C. If good cause is shown an agency head may accept an appeal or request for a hearing that is not filed in a timely manner.

D. This section does not apply to a contested case if the agency:

1. Initiates the contested case hearing pursuant to law other than this chapter and not in response to a request by another party.
2. Is not required by law, other than this chapter, to provide an opportunity for an administrative hearing before taking action that determines the legal rights, duties or privileges of an applicant for a license.

41-1092.04. Service of documents

Unless otherwise provided in this article, every notice or decision under this article shall be served by personal delivery or certified mail, return receipt requested, or by any other method reasonably calculated to effect actual notice on the agency and every other party to the action to the party's last address of record with the agency. Each party shall inform the agency and the office of any change of address within five days of the change.

41-1092.05. Scheduling of hearings; prehearing conferences

A. Except as provided in subsections B and C, hearings for:

1. Appealable agency actions shall be held within sixty days after the notice of appeal is filed.
2. Contested cases shall be held within sixty days after the agency's request for a hearing.

B. Hearings for appealable agency actions of or contested cases with self-supporting regulatory boards that meet quarterly or less frequently shall be held at the next meeting of the board after the board receives the written decision of an administrative law judge or the issuance of the notice of hearing, except that:

1. If the decision of the administrative law judge is received or the notice of hearing is issued within thirty days before the board meets, the hearing shall be held at the following meeting of the board.
2. If good cause is shown, the hearing may be held at a later meeting of the board.

C. The date scheduled for the hearing may be advanced or delayed on the agreement of the parties or on a showing of good cause.

D. The agency shall prepare and serve a notice of hearing on all parties to the appeal or contested case at least thirty days before the hearing. The notice shall include:

1. A statement of the time, place and nature of the hearing.
2. A statement of the legal authority and jurisdiction under which the hearing is to be held.
3. A reference to the particular sections of the statutes and rules involved.
4. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. After the initial notice and on application, a more definite and detailed statement shall be furnished.

E. Notwithstanding subsection D, a hearing shall be expedited as provided by law or upon a showing of extraordinary circumstances or the possibility of irreparable harm if the parties to the appeal or contested case have actual notice of the hearing date. Any party to the appeal or contested case may file a motion with the director asserting the party's right to an expedited hearing. The right to an expedited hearing shall be listed on any abatement order. The Arizona health care cost containment system administration may file a motion with every member grievance and eligibility appeal that cites federal law and that requests that a hearing be set within thirty days after the motion is filed.

F. Prehearing conferences may be held to:

1. Clarify or limit procedural, legal or factual issues.
2. Consider amendments to any pleadings.
3. Identify and exchange lists of witnesses and exhibits intended to be introduced at the hearing.
4. Obtain stipulations or rulings regarding testimony, exhibits, facts or law.
5. Schedule deadlines, hearing dates and locations if not previously set.
6. Allow the parties opportunity to discuss settlement.

41-1092.06. Appeals of agency actions and contested cases; informal settlement conferences; applicability

A. If requested by the appellant of an appealable agency action or the respondent in a contested case, the agency shall hold an informal settlement conference within fifteen days after receiving the request. A request for an informal settlement conference shall be in writing and shall be filed with the agency no later than twenty days before the hearing. If an informal settlement conference is requested, the agency shall notify the office of the request and the outcome of the conference, except as provided in section 41-1092.01, subsection F. The request for an informal settlement conference does not toll the sixty day period in which the administrative hearing is to be held pursuant to section 41-1092.05.

B. If an informal settlement conference is held, a person with the authority to act on behalf of the agency must represent the agency at the conference. The agency representative shall notify the appellant in writing that statements, either written or oral, made by the appellant at the conference, including a written document, created or expressed solely for the purpose of settlement negotiations are inadmissible in any subsequent administrative hearing. The parties participating in the settlement conference shall waive their right to object to the participation of the agency representative in the final administrative decision.

41-1092.07. Hearings

A. A party to a contested case or appealable agency action may file a nonperemptory motion with the director to disqualify an office administrative law judge from conducting a hearing for bias, prejudice, personal interest or lack of technical expertise necessary for a hearing.

B. The parties to a contested case or appealable agency action have the right to be represented by counsel or to proceed without counsel, to submit evidence and to cross-examine witnesses.

C. The administrative law judge may issue subpoenas to compel the attendance of witnesses and the production of documents. The subpoenas shall be served and, on application to the superior court, enforced in the manner provided by law for the service and enforcement of subpoenas in civil matters. The administrative law judge may administer oaths and affirmations to witnesses.

D. All parties shall have the opportunity to respond and present evidence and argument on all relevant issues. All relevant evidence is admissible, but the administrative law judge may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues or by considerations of undue delay, waste of time or needless presentation of cumulative

evidence. The administrative law judge shall exercise reasonable control over the manner and order of cross-examining witnesses and presenting evidence to make the cross-examination and presentation effective for ascertaining the truth, avoiding needless consumption of time and protecting witnesses from harassment or undue embarrassment.

E. All hearings shall be recorded. The administrative law judge shall secure either a court reporter or an electronic means of producing a clear and accurate record of the proceeding at the agency's expense. Any party that requests a transcript of the proceeding shall pay the costs of the transcript to the court reporter or other transcriber.

F. Unless otherwise provided by law, the following apply:

1. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to adhere to the rules of evidence required in judicial proceedings is grounds for reversing any administrative decision or order if the evidence supporting the decision or order is substantial, reliable and probative.

2. Copies of documentary evidence may be received in the discretion of the administrative law judge. On request, parties shall be given an opportunity to compare the copy with the original.

3. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be used in the evaluation of the evidence.

4. On application of a party or the agency and for use as evidence, the administrative law judge may permit a deposition to be taken, in the manner and on the terms designated by the administrative law judge, of a witness who cannot be subpoenaed or who is unable to attend the hearing. Subpoenas for the production of documents may be ordered by the administrative law judge if the party seeking the discovery demonstrates that the party has reasonable need of the materials being sought. All provisions of law compelling a person under subpoena to testify are applicable. Fees for attendance as a witness shall be the same as for a witness in court, unless otherwise provided by law or agency rule. Notwithstanding section 12-2212, subpoenas, depositions or other discovery shall not be permitted except as provided by this paragraph or subsection C of this section.

5. Informal disposition may be made by stipulation, agreed settlement, consent order or default.

6. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

7. A final administrative decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Conclusions of law shall specifically address the agency's authority to make the decision consistent with section 41-1030.

G. Except as otherwise provided by law:

1. At a hearing on an agency's denial of a license or permit or a denial of an application or request for modification of a license or permit, the applicant has the burden of persuasion.

2. At a hearing on an agency action to suspend, revoke, terminate or modify on its own initiative material conditions of a license or permit, the agency has the burden of persuasion.

3. At a hearing on an agency's imposition of fees or penalties or any agency compliance order, the agency has the burden of persuasion.

4. At a hearing held pursuant to chapter 23 or 24 of this title, the appellant or claimant has the burden of persuasion.

H. Subsection G of this section does not affect the law governing burden of persuasion in an agency denial of, or refusal to issue, a license renewal.

41-1092.08. Final administrative decisions: review: exception

A. The administrative law judge of the office shall issue a written decision within twenty days after the hearing is concluded. The written decision shall contain a concise explanation of the reasons supporting the decision, including the findings of fact and conclusions of law. The administrative law judge shall serve a copy of the decision on the agency. On request of the agency, the office shall also transmit to the agency the record of the hearing as described in section 12-904, except as provided in section 41-1092.01, subsection F.

B. Within thirty days after the date the office sends a copy of the administrative law judge's decision to the head of the agency, executive director, board or commission, the head of the agency, executive director, board or commission may review the decision and accept, reject or modify it. If the head of the agency, executive director, board or commission declines to review the administrative law judge's decision, the agency shall serve a copy of the decision on all parties. If the head of the agency, executive director, board or commission rejects or modifies the decision, the agency head, executive director, board or commission must file with the office, except as provided in section 41-1092.01, subsection F, and serve on all parties a copy of the administrative law judge's decision with the rejection or modification and a written justification setting forth the reasons for the rejection or modification of each finding of fact or conclusion of law. If there is a rejection or modification of a conclusion of law, the written justification shall be sent to the president of the senate and the speaker of the house of representatives.

C. A board or commission whose members are appointed by the governor may review the decision of the agency head, as provided by law, and make the final administrative decision.

D. Except as otherwise provided in this subsection, if the head of the agency, the executive director or a board or commission does not accept, reject or modify the administrative law judge's decision within thirty days after the date the office sends a copy of the administrative law judge's decision to the head of the agency, executive director, board or commission, as evidenced by receipt of such action by the office by the thirtieth day, the office shall certify the administrative law judge's decision as the final administrative decision. If the board or commission meets monthly or less frequently, if the office sends the administrative law judge's decision at least thirty days before the next meeting of the board or commission and if the board or commission does not accept, reject or modify the administrative law judge's decision at the next meeting of the board or commission, as evidenced by receipt of such action by the office within five days after the meeting, the office shall certify the administrative law judge's decision as the final administrative decision.

E. For the purposes of subsections B and D of this section, a copy of the administrative law judge's decision is sent on personal delivery of the decision or five days after the decision is mailed to the head of the agency, executive director, board or commission.

F. The decision of the agency head is the final administrative decision unless either:

1. The agency head, executive director, board or commission does not review the administrative law judge's decision pursuant to subsection B of this section or does not reject or modify the administrative law judge's decision as provided in subsection D of this section, in which case the administrative law judge's decision is the final administrative decision.

2. The decision of the agency head is subject to review pursuant to subsection C of this section.

G. If a board or commission whose members are appointed by the governor makes the final administrative decision as an administrative law judge or on review of the decision of the agency head, the decision is not subject to review by the head of the agency.

H. A party may appeal a final administrative decision pursuant to title 12, chapter 7, article 6, except as provided in section 41-1092.09, subsection B and except that if a party has not requested a hearing on receipt of a notice of appealable agency action pursuant to section 41-1092.03, the appealable agency action is not subject to judicial review.

I. This section does not apply to the Arizona peace officer standards and training board established by section 41-1821.

41-1092.09. Rehearing or review

A. Except as provided in subsection B of this section:

1. A party may file a motion for rehearing or review within thirty days after service of the final administrative decision.

2. The opposing party may file a response to the motion for rehearing within fifteen days after the date the motion for rehearing is filed.

3. After a hearing has been held and a final administrative decision has been entered pursuant to section 41-1092.08, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.

B. A party to an appealable agency action of or contested case with a self-supporting regulatory board shall exhaust the party's administrative remedies by filing a motion for rehearing or review within thirty days after the service of the administrative decision that is subject to rehearing or review in order to be eligible for judicial review pursuant to title 12, chapter 7, article 6. The board shall notify the parties in the administrative decision that is subject to rehearing or review that a failure to file a motion for rehearing or review within thirty days after service of the decision has the effect of prohibiting the parties from seeking judicial review of the board's decision.

C. Service is complete on personal service or five days after the date that the final administrative decision is mailed to the party's last known address.

D. Except as provided in this subsection, the agency head, executive director, board or commission shall rule on the motion within fifteen days after the response to the motion is filed or, if a response is not filed, within five days of the expiration of the response period. A self-supporting regulatory board shall rule on the motion within fifteen days after the response to the motion is filed or at the board's next meeting after the motion is received, whichever is later.

41-1092.10. Compulsory testimony; privilege against self-incrimination

A. A person may not refuse to attend and testify or produce evidence sought by an agency in an action, proceeding or investigation instituted by or before the agency on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture unless it constitutes the compelled testimony or the private papers of the person that would be privileged evidence either pursuant to the fifth amendment of the Constitution of the United States or article II, section 10, Constitution of Arizona, and the person claims the privilege before the production of the testimony or papers.

B. If a person asserts the privilege against self-incrimination and the agency seeks to compel production of the testimony or documents sought, the office or agency as provided in section 41-1092.01, subsection F may issue, with the prior written approval of the attorney general, a written order compelling the testimony or production of documents in proceedings and investigations before the office or agency as provided in section 41-1092.01, subsection F or apply to the appropriate court for such an order in other actions or proceedings.

C. Evidence produced pursuant to subsection B of this section is not admissible in evidence or usable in any manner in a criminal prosecution, except for perjury, false swearing, tampering with physical evidence or any other offense committed in connection with the appearance made pursuant to this section against the person testifying or the person producing the person's private papers.

41-1092.11. Licenses; renewal; revocation; suspension; annulment; withdrawal

A. If a licensee makes timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

B. Revocation, suspension, annulment or withdrawal of any license is not lawful unless, before the action, the agency provides the licensee with notice and an opportunity for a hearing in accordance with this article. If the agency finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the agency may order summary suspension of a license pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

41-1092.12. Private right of action; recovery of costs and fees; definitions

A. If an agency takes an action against a party that is arbitrary, capricious or not in accordance with law, the action is an appealable agency action if all of the following apply:

1. Within ten days after the action that is arbitrary, capricious or not in accordance with law, the party notifies the director of the agency in writing of the party's intent to file a claim pursuant to this section. This notice shall include a description of the action the party claims to be arbitrary,

capricious or not in accordance with law and reasons why the action is arbitrary, capricious or not in accordance with law.

2. The agency continues the action that is arbitrary, capricious or not in accordance with law more than ten days after the agency receives the notice.

3. The action is not excluded from the definition of appealable agency action as defined in section 41-1092.

B. This section only applies if an administrative remedy or an administrative or a judicial appeal of final agency action is not otherwise provided by law.

C. If the party prevails, the agency shall pay reasonable costs and fees to the party from any monies appropriated to the agency and available for that purpose or from other operating monies of the agency. If the agency fails or refuses to pay the award within fifteen days after the demand, and if no further review or appeal of the award is pending, the prevailing party may file a claim with the department of administration. The department of administration shall pay the claim within thirty days in the same manner as an uninsured property loss under title 41, chapter 3.1, article 1, except that the agency is responsible for the total amount awarded and shall pay it from its operating monies. If the agency had appropriated monies available for paying the award at the time it failed or refused to pay, the legislature shall reduce the agency's operating appropriation for the following fiscal year by the amount of the award and shall appropriate that amount to the department of administration as reimbursement for the loss.

D. If the administrative law judge determines that the appealable agency action is frivolous, the administrative law judge may require the party to pay reasonable costs and fees to the agency in responding to the appeal filed before the office of administrative hearings.

E. For the purposes of this section:

1. "Action against the party" means any of the following that results in the expenditure of costs and fees:

(a) A decision.

(b) An inspection.

(c) An investigation.

(d) The entry of private property.

2. "Agency" means the department of environmental quality established pursuant to title 49, chapter 1, article 1.

3. "Costs and fees" means reasonable attorney and professional fees.

4. "Party" means an individual, partnership, corporation, association and public or private organization at whom the action was directed and who has expended costs and fees as a result of the action against the party.

DEPARTMENT OF ECONOMIC SECURITY

Title 6, Chapter 3



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 1, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 12, 2022

SUBJECT: Arizona Department of Economic Security
Title 6, Chapter 3

This Five-Year-Review Report (5YRR) from the Department of Economic Security relates to rules in Title 6, Chapter 3 regarding Unemployment Insurance.

In the last 5YRR of these rules the Department indicated it had received an exception to the rule moratorium to amend six of its rules. The Department completed the rulemaking in 2018. Additionally, the Department also proposed to amend several of the rules in Chapter 3, and planned to complete a rulemaking by February 2019. The Department indicates they did not complete the rulemaking due to various reasons, including an extended waiting period for approval of the exception request, reprioritization of staff and resources in response to the pandemic.

Proposed Action

For the reasons mentioned in the report, the Department is proposing to amend several of its rules to improve their overall clarity, conciseness, understandability, enforcement, and consistency with other rules and statutes. The Department plans to submit a Notice of Final Rulemaking to the Council by December 2022.

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes, the Department cites to both general and specific statutory authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department of Economic Security (DES) states that many of the rules in Chapter 3 were adopted without accompanying Economic Impact Statements. The Department indicates that the Unemployment Insurance (UI) program had 151,070 employers as of September 2021, with the number fluctuating regularly as businesses open and close. They also state that the data indicates that the unemployment rate in Arizona significantly increased due to the economic turmoil caused by the COVID-19 pandemic beginning in March 2020. The Department reviewed the rules and indicate that they have not received complaints that compliance has been costly or burdensome, leading to the conclusion that the original projection of possible economic impacts was correct. Stakeholders include the Department, employers who pay unemployment insurance taxes and workers who have the opportunity to file for and receive unemployment insurance benefits.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department states that the Division of Employment and Rehabilitation Services (DERS) subject matter experts and the Financial Services Administration conducted an analysis of the rules and conclude that the rules impose the least burden and cost to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Department indicates they have not received written criticisms to the rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, for the reasons mentioned in the report the Department indicates several of the rules are not clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, for the reasons mentioned in the report the Department indicates the following rules are not consistent with other rules and statutes:

- R6-3-1502 - Appeals Process, General
- R6-3-1503 - Proceedings Before and Appeal Tribunal
- R6-3-1504 - Review of Appeal Tribunal Decisions

R6-3-1506 - Contribution Cases
R6-3-1507 - Appeals from Labor Dispute Determinations
R6-3-50235 - Health or physical conditions (V L 235)
R6-3-50190 - Evidence (V L 190)
R6-3-51190 - Evidence (Misconduct 190)
R6-3-53150 - Distance to work (Refusal of Work 150)
R6-3-52190 - Evidence (Able and Available 190)
R6-3-52295 - Length of unemployment (Able and Available 295)
R6-3-50475 - Union Relations (V L 475)

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, for the reasons mentioned in the report the Department indicates several of the rules are not effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Department indicates the rules are not enforced as written:

R6-3-1502 - Appeals Process, General
R6-3-1503 - Proceedings Before and Appeal Tribunal
R6-3-1504 - Review of Appeal Tribunal Decisions
R6-3-1506 - Contribution Cases
R6-3-1507 - Appeals from Labor Dispute Determinations
R6-3-1809 - Eligibility for Approved Training
R6-3-50190 - Evidence (V L 190)
R6-3-51190 - Evidence (Misconduct 190)
R6-3-53150 - Distance to work (Refusal of Work 150)
R6-3-52190 - Evidence (Able and Available 190)
R6-3-52305 - Military Service (Able and Available 306)
R6-3-53235 - Health of Physical Condition (Refusal of Work 235 120)

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

No, the Department indicates the rules are not more stringent than the corresponding federal laws; 15 U.S.C. 1671, 26 U.S.C. 3301, 29 U.S.C. 201, 206, 207, 794, 42 U.S.C. 502(a), 1101, 1201, and 12132.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable, the rules do not require the issuance of a regulatory permit or license.

11. **Conclusion**

As mentioned above and for the reasons mentioned in the report the Department is proposing to amend several of its rules. The Department plans to complete the Notice of Final Rulemaking that addresses the issues identified in the report by December 2022.

Council staff recommends approval of this report.



DEPARTMENT OF ECONOMIC SECURITY

Your Partner For A Stronger Arizona

Douglas A. Ducey
Governor

Michael Wisehart
Director

January 26, 2022

Ms. Nicole Sornsin
Council Chair
Governor's Regulatory Review Council
Department of Administration
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

Dear Ms. Sornsin:

Attached is the Arizona Department of Economic Security (Department) Five-Year Review Report for Arizona Administrative Code (A.A.C.) Title 6, Chapter 3. Also attached are copies of the Governor's Office approval to submit this report, authorizing statutes, and current rules.

Pursuant to A.R.S. § 41-1056(A) and A.A.C. R1-6-301(C)(4), the Department certifies that it is in compliance with A.R.S. § 41-1091.

Thank you for your attention to this report. The Department will be present at the Council meetings to respond to any questions the Council members may have about the report.

If you have any questions, please contact Melissa Henry, Deputy Administrator, Governance and Innovation Administration, at (480) 647-3110.

Sincerely,

Nicole Davis

Nicole Davis
Office of General Counsel

Attachment

-Preface-

Arizona Department of Economic Security Five – Year Review Reports

A.R.S. § 41-1056 requires that at least once every five years, each agency shall review its administrative rules and produce reports that assess the rules with respect to considerations including the rule’s effectiveness, clarity, conciseness and understandability. The reports also describe the agency’s proposed action to respond to any concerns identified during the review. The reports are submitted in compliance with the schedule provided by the Governor’s Regulatory Review Council (GRRC). A.R.S. § 18-305, enacted in 2016, requires that statutorily required reports be posted on the agency's website.

**Arizona Department of Economic Security
Title 6, Chapter 3
Five-Year Review Report**

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 41-1003 and 41-1954(A)(3)

Specific Statutory Authority: 15 U.S.C. 1671 et seq.; 26 U.S.C. 3301 et seq.; 29 U.S.C. 201 et seq.; 29 U.S.C. 206 and 207; 29 U.S.C. 794; 42 U.S.C. 502(a); 42 U.S.C. 1101 et seq.; 42 U.S.C 1201 et seq.; 42 U.S.C. 12132 et seq.; 20 CFR 676 and 677; and A.R.S. § 23-601 et seq.

2. The objective of each rule

Rule	Objective
R6-3-1301	The objective of this rule is to define terms used in Chapter 3, Articles 14-18 and Articles 50-56, which regulates the Arizona Department of Economic Security (DES or Department) Unemployment Insurance (UI) program.
R6-3-1401	The objective of this rule is to describe the Department's policy of nondiscrimination as it pertains to the administration of UI benefits and services, including initial and continuing eligibility for claimants and recipients and employer liability for employer taxes.
R6-3-1403	The objectives of this rule are to describe the Department's requirement to keep information obtained from employer reports and investigations of claims for UI benefits confidential and establish guidelines in which such information may be released in accordance with law.
R6-3-1404	The objective of this rule is to ensure that the Department follows a consistent and transparent process for determining timeliness with respect to payments, appeals, notices, requests for benefits, and other submissions to the Department by establishing guidelines for determining whether or not a submission is timely and provides guidelines for accepting untimely submissions. This rule also establishes guidelines for the grant of extensions to submission deadlines.
R6-3-1405	The objective of this rule is to explain application procedures and requirements for the UI Shared Work Program.
R6-3-1406	The objective of this rule is to explain how an employer with employees working in more than one state may elect to cover those workers in Arizona.
R6-3-1407	The objective of this rule is to explain who is considered an interested party of various UI determinations and appeal decisions issued by the Department.
R6-3-1408	The objectives of this rule are to define specific terms related to seasonal employment and provide guidelines for administering the qualified transient lodging exception to the payment of UI.
R6-3-1502	The objective of this rule is to describe general guidelines of the UI appeals

	process.
R6-3-1503	The objective of this rule is to describe how the Department prepares and processes UI hearing requests, providing guidelines for appeals before the Appeal Tribunal, the lower level appeal process for UI.
R6-3-1504	The objectives of this rule are to describe the DES Appeals Board's process for reviewing Appeal Tribunal decisions and provide guidelines for review requests submitted to the DES Appeals Board, the higher-level appeal process for UI.
R6-3-1505	The objectives of this rule are to describe the appointment of an acting DES Appeals Board member when required, and the waiver of a bond when an interested party to a UI decision pursues an appeal to the Arizona Court of Appeals.
R6-3-1506	The objective of this rule is to explain how any interested party to a reconsidered determination may petition the DES Appeals Board for review of the reconsidered determination.
R6-3-1507	The objective of this rule is to explain the process for appeals from a determination denying or awarding benefits for unemployment due to a labor dispute.
R6-3-1601	The objectives of this rule authorize transfer and refund of funds from the Unemployment Compensation Fund Clearing Account by warrant for specified purposes.
R6-3-1701	The objective of this rule is to describe the requirements for employers to identify workers covered by Employment Security Law in Arizona by obtaining each worker's Social Security account number and reporting a worker's Social Security account number when making any report required by the Department.
R6-3-1702	The objectives of this rule are to describe requirements for the maintenance and inspection of records, specify which records and documents employers must maintain regarding their workers, establish record retention standards, and stipulate that such records be available for Department inspection.
R6-3-1703	The objective of this rule is to describe the requirements for an employing unit to report any required information to the Department, specify the information that must be included in employers' quarterly contribution and wage reports, describe the process for employers to request a suspension of quarterly filings, and describe the process for reporting changes to the Department.
R6-3-1704	The objectives of this rule are to explain the due dates of quarterly reports, contributions, and payments in lieu of contributions that an employing unit must submit to the Department and the interest rate to be charged for delinquent reports and payments.
R6-3-1705	The objective of this rule is to ensure a uniform understanding of the term "wages" as used in the administration of UI.
R6-3-1706	The objectives of this rule are to explain how the Department prescribes the terms "employment" as used in A.R.S. § 23-615 and to define the term "pay period."
R6-3-1708	The objective of this rule is to explain how the Department prescribes various employer charges, explaining when charges to an experience rating account will be applied and/or ended under various special circumstances.
R6-3-1709	The objectives of this rule are to define "to the same extent" in regards to

	employment as used in A.R.S. § 23-727(E) and A.A.C. R6-3-1708(E), explain how the Department prescribes part-time employment and employers' responsibilities, and provide guidelines under which an employer will be relieved of charges to the employer's experience rating account when the employer continues to employ a claimant part-time.
R6-3-1710	The objectives of this rule are to explain the notification and review of charges to employers' experience rating accounts and the process for an employer to request a redetermination of those charges.
R6-3-1711	The objectives of this rule are to describe the computation of experience rates and how the Department computes each employer's annual experience rate.
R6-3-1712	The objectives of this rule are to explain the requirements for joint, multiple, and combined employer experience rating accounts and provide guidelines for the establishment of joint, multiple, and combined employer experience rating accounts.
R6-3-1713	The objectives of this rule are to clarify requirements with respect to business transfers and provide guidelines for determining the nature of total and partial business transfers, including successorships and severable portion transfers.
R6-3-1715	The objectives of this rule are to explain the computation of adjusted contribution rates and how DES computes the adjusted contribution rates for employers.
R6-3-1716	The objective of this rule is to explain how the Department prescribes voluntary and required contributions according to A.R.S. § 23-726.
R6-3-1717	The objectives of this rule are to explain the special provisions for reimbursement employers and describe the Department's methodology for handling reimbursement employers.
R6-3-1718	The objective of this rule is to explain employer refunds and how the Department refunds or credits an employer who has overpaid UI taxes.
R6-3-1720	The objectives of this rule are to identify employment that is exempt according to A.R.S. § 23-617, describe exemption determination criteria for certain types of employers regarding UI participation, and define "direct sellers" and "income tax preparers," for whom employment is exempt from taxes.
R6-3-1721	The objectives of this rule are to explain liability determinations and the actions the Department takes when an employer alleges that a reconsidered determination on employer liability is defective.
R6-3-1722	The objective of this rule is to define "casual labor," "regularly employed by an employing unit," and "service not in the course of the employing unit's trade or business."
R6-3-1723	The objectives of this rule are to define "employee," "control," and "method," and describe the requirements for determining whether or not an individual is an employee with respect to UI.
R6-3-1725	The objectives of this rule are to explain the exemption from employment services performed by individuals as insurance, real estate, security, and cemetery sales, and describe the special compensation plans or agreements that are not included in the "compensation solely by way of commission" employment exemption.

R6-3-1726	The objective of this rule is to explain when tips are considered wages for UI purposes.
R6-3-1727	The objective of this rule is to explain under what circumstances meals or lodging furnished by an employer to a worker is considered wages for UI purposes.
R6-3-1803	The objective of this rule is to explain how DES provides benefit notice and determination to a claimant and an affected employer in connection with the filing of a UI claim.
R6-3-1806	The objective of this rule is to require the Department's participation in the Interstate Benefit Payment Plan as the agent for other states and Canada who subscribe to the Plan, according to A.R.S. § 23-644.
R6-3-1808	The objectives of this rule are to describe payment on account of retirement and explain how the receipt of a pension affects UI benefits.
R6-3-1809	The objectives of this rule are to explain the eligibility requirements for approved training according to A.R.S. § 23-771.01 with respect to UI and who is eligible to receive UI benefits while participating in an approved training program.
R6-3-1810	The objectives of this rule are to explain how DES applies definitions of wages in R6-3-1705 to determine whether an individual has earned sufficient wages for UI requalification purposes and what qualifies as wages to meet the various requalification requirements.
R6-3-1811	The objectives of this rule are to explain how benefits are redetermined when required by a statutory change, explain how UI weekly benefit amounts and unpaid balances are recalculated, and establish claimant protest rights.
R6-3-1812	The objective of this rule is to describe how interest on benefit overpayments is computed according to A.R.S. § 44-1201.
R6-3-1813	The objective of this rule is to allow recoupment of overpayments by tax offset under certain conditions in accordance with A.R.S. § 23-787(D).
R6-3-5005	The objective of this rule is to define terms specific to Article 50 for the purpose of interpreting A.R.S. § 23-775(1) and A.R.S. § 23-727(D).
R6-3-5040	The objective of this rule is to explain the difference between a worker who leaves a job to attend school and a worker approved for and attending training as prescribed in A.R.S. § 23-771-01 and R6-3-1809.
R6-3-50135	The objective of this rule is to explain the distinction between a quit and discharge when determining a worker's separation from employment.
R6-3-50135.01	The objective of this rule is to explain the distinction between a quit and discharge when a separation occurs because of a worker's absence from work and a discharge is not established.
R6-3-50135.02	The objective of this rule is to explain when a worker's separation from employment due to the worker volunteering for layoff or furlough based on a reduction in the workforce is considered a quit or discharge.
R6-3-50135.03	The objectives of this rule are to define "leave of absence" and provide guidelines for determining whether a worker's separation from employment because of a leave of absence from work is considered a quit or a discharge.
R6-3-50135.04	The objective of this rule is to explain when a worker's separation from employment

	due to an investigative or disciplinary suspension is considered a quit or discharge.
R6-3-50135.05	The objective of this rule is to establish guidelines to determine when a worker's separation from a business in which the worker was a corporate officer is considered a quit or a discharge.
R6-3-50135.06	The objective of this rule is to explain when a worker's separation from a temporary services employer or leasing employer, as defined in A.R.S. § 23-614(G), is considered a quit or a discharge.
R6-3-50138	The objective of this rule is to explain what does and does not constitute good cause when a worker leaves employment due to disciplinary action taken against the worker.
R6-3-50150	The objective of this rule is to establish guidelines for determining when a worker leaves employment because of transportation or commuting distance is or is not for good cause.
R6-3-50155	The objective of this rule is to establish guidelines for determining when a worker leaves employment due to domestic circumstances is or is not for good cause.
R6-3-50190	The objectives of this rule are to explain what constitutes evidence, establish where the burden of proof lies when an individual has voluntarily separated from employment, and explain how the weight and sufficiency of evidence is determined.
R6-3-50210	The objective of this rule is to establish how DES determines "good cause" when considering a worker's voluntary separation from employment.
R6-3-50235	The objective of this rule is to establish how DES determines "good cause" when considering a worker's voluntary separation from employment due to the worker's health or physical condition; actual or risk of illness or injury; and pregnancy.
R6-3-50315	The objective of this rule is to establish how DES determines if a worker has left work voluntarily or has refused an offer of new work when the worker resigns rather than accepting conditions of employment that are different from those under which the worker had been previously working.
R6-3-50345	The objective of this rule is to establish how DES determines whether a worker who retires is considered leaving employment voluntarily with or without good cause.
R6-3-50360	The objective of this rule is to explain the difference between a worker who leaves employment to care for personal affairs and a worker who leaves employment due to compelling personal reasons that leave the worker no alternative to quitting.
R6-3-50365	The objective of this rule is to establish how DES determines whether a worker who leaves employment because of the prospect of other work or a desire to enter self-employment is considered leaving employment with or without good cause.
R6-3-50450	The objective of this rule is to establish how DES determines whether a worker who leaves employment due to an objection to working a particular day or days, or the hours for which the worker is scheduled, is considered leaving employment with or without good cause.
R6-3-50475	The objective of this rule is to establish how DES determines whether a worker who leaves employment due to an alleged or actual violation of a collective bargaining agreement or due to a refusal to join or retain membership in a union, is considered leaving employment with or without good cause.

R6-3-50500	The objective of this rule is to establish how DES determines whether a worker who leaves employment due to various circumstances concerning wages is considered leaving employment with or without good cause.
R6-3-50515	The objective of this rule is to establish how DES determines whether a worker who leaves employment due to dissatisfaction with working conditions is considered leaving employment with or without good cause.
R6-3-5105	The objectives of this rule are to define “misconduct” and to explain when a worker’s discharge is considered leaving employment for compelling personal reasons.
R6-3-5115	The objective of this rule is to establish how DES determines misconduct when a worker is discharged from employment due to absenteeism.
R6-3-5145	The objective of this rule is to establish how DES determines misconduct when a worker is discharged from employment due to attitudes or actions toward an employer.
R6-3-5185	The objective of this rule is to establish how DES determines misconduct connected with the work when a worker is discharged from employment due to a worker’s act or acts in connection with the work.
R6-3-51140	The objective of this rule is to establish how DES determines misconduct when a worker is discharged from employment due to misappropriation of funds or property, or the falsification of employment records.
R6-3-51190	The objectives of this rule are to explain what constitutes evidence, establish where the burden of proof lies, and explain how the weight and sufficiency of evidence is determined when an individual has been discharged from employment.
R6-3-51235	The objective of this rule is to establish that a discharge due to an individual’s pregnancy is never disqualifying, but under certain conditions may be for compelling personal reasons not attributable to the employer.
R6-3-51255	The objective of this rule is to establish how DES determines misconduct when a worker is discharged from employment due to insubordination.
R6-3-51270	The objective of this rule is to establish how DES determines misconduct when a worker is discharged from employment due to intoxication or the use of intoxicants, including illegal drugs.
R6-3-51300	The objectives of this rule are to define “ordinary care” and to establish how DES determines misconduct when a worker is discharged from employment due to failing to exercise ordinary care in the performance of job duties.
R6-3-51310	The objective of this rule is to establish how DES determines misconduct when a worker is discharged from employment due to neglect of duty.
R6-3-51345	The objectives of this rule are to establish how DES determines when a worker is discharged from employment for nondisqualifying reasons when a worker has no alternative to retiring or leaving employment because of a requirement imposed by the employer or a collective bargaining agreement and how DES determines an employer’s chargeability for benefits according to A.R.S. § 23-727 and R6-3-1708.
R6-3-51385	The objectives of this rule are to establish how DES determines misconduct when a worker is discharged from employment due to an act or acts committed by the worker and the burden falls on the employer to establish a causal relationship

	between the worker's act or acts and the worker's discharge.
R6-3-51390	The objectives of this rule are to establish how DES determines misconduct when a worker is discharged from employment due to relations with fellow employees, including the use of abusive or profane language, altercation or assault, and annoyance of a fellow employee.
R6-3-51435	The objective of this rule is to establish how DES determines misconduct when a worker is discharged from employment due to tardiness.
R6-3-51475	The objective of this rule is to establish how DES determines misconduct when a worker is discharged from employment due to union activity.
R6-3-51485	The objective of this rule is to establish how DES determines misconduct when a worker is discharged from employment due to violations of company rule.
R6-3-51490	The objective of this rule is to establish how DES determines misconduct when a worker is discharged from employment due to a violation of a public law or rule.
R6-3-5205	The objective of this rule is to ensure a uniform understanding of a claimant's ability and availability for work with respect to UI, providing general guidelines determining if an individual is able and available for work.
R6-3-5240	The objective of this rule is to ensure that Department procedures pertaining to attendance at a school or training course are uniformly enforced, providing guidelines for determining if an individual attending school or a training course is available for work.
R6-3-5245	The objective of this rule is to ensure that Department procedures pertaining to security clearance requirements are uniformly enforced, providing guidelines for determining if an individual who has been denied access to classified security information is available for work.
R6-3-5270	The objective of this rule is to ensure that Department procedures pertaining to citizenship and residence requirements are uniformly enforced, providing guidelines for determining if an individual who is not a citizen of the United States is available for work.
R6-3-5290	The objective of this rule is to ensure that Department procedures pertaining to limited work availability due to conscientious objection are uniformly enforced, providing guidelines for determining if an individual who self-restricts hours or days of work for religious reasons is available for work.
R6-3-52105	The objective of this rule is to ensure that Department procedures pertaining to work availability and contract obligations are uniformly enforced, providing guidelines for determining if an individual who has restrictions due to contract obligations is available for work.
R6-3-52150	The objective of this rule is to ensure that Department procedures pertaining to distance to work are uniformly enforced, providing guidelines for determining if an individual who resides a substantial distance from the labor market, is in transient status, or has a transportation restriction or is available for work.
R6-3-52155	The objective of this rule is to ensure that Department procedures pertaining to domestic circumstances are uniformly enforced, providing guidelines for determining if an individual with restrictions caused by domestic obligations is available for work.

R6-3-52160	The objective of this rule is to ensure that Department procedures pertaining to an effort to secure employment and a willingness to work are uniformly enforced, providing guidelines for determining if an individual is following a course of action reasonably designed to result in prompt reemployment.
R6-3-52165	The objective of this rule is to ensure that Department procedures pertaining to employers' rights to establish requirements are uniformly enforced, providing guidelines for determining if an individual who cannot meet the job requirements of certain employers is available for work.
R6-3-52180	The objective of this rule is to ensure that Department procedures pertaining to work-required equipment are uniformly enforced, providing guidelines for determining if an individual who works in an occupation that may require tools or other special equipment, and does not possess such tools or special equipment, is available for work.
R6-3-52190	The objective of this rule is to ensure that Department procedures pertaining to evidence are uniformly enforced, establishing where the burden of proof lies in determining eligibility on certain able to work and available for work issues.
R6-3-52235	The objective of this rule is to ensure the Department procedures pertaining to an individual's health and physical condition are uniformly enforced, providing guidelines for determining if an individual with certain health-related or physical condition-related restrictions is able to work.
R6-3-52250	The objective of this rule is to ensure that Department procedures pertaining to incarceration or other legal detention are uniformly enforced, providing guidelines for determining if an individual who is incarcerated or has other legal restrictions is available for work.
R6-3-52285	The objective of this rule is to ensure that Department procedures pertaining to leave of absence are uniformly enforced, providing guidelines for determining if an individual who is on vacation or a leave of absence is available for work.
R6-3-52295	The objective of this rule is to ensure that Department procedures pertaining to the length of unemployment are uniformly enforced, providing guidelines for factoring the length of time an individual has been unemployed in determining whether the individual is available for work.
R6-3-52305	The objective of this rule is to ensure that Department procedures pertaining to military service are uniformly enforced, providing guidelines for determining if an individual who is waiting for induction into the military service or for a call up to active duty is available for work.
R6-3-52320	The objective of this rule is to ensure that Department procedures pertaining to notification of address are uniformly enforced, specifying that, in order to be considered available for work, an individual must keep the Department and any employer with whom the individual is subject to recall, informed of the individual's current mailing address.
R6-3-52370	The objective of this rule is to ensure that Department procedures pertaining to public service are uniformly enforced, providing guidelines for determining if an individual who has public service or civic obligations such as jury duty or serving in a public office is available for work.
R6-3-52375	The objective of this rule is to ensure that Department procedures pertaining to the

	receipt of disability compensation, pension, or health insurance benefits are uniformly enforced, providing guidelines for determining if an individual that is receiving disability or pension payments, or group health benefits for a period of recuperation, is available for and able to work.
R6-3-52415	The objective of this rule is to ensure that Department procedures pertaining to self-employment or other work are uniformly enforced, providing guidelines for determining if an individual who is engaged in a self-employment venture is available for work.
R6-3-52450	The objective of this rule is to ensure that Department procedures pertaining to time requirements are uniformly enforced, providing guidelines for determining if an individual who self-restricts the hours that the individual is willing to work is available for work.
R6-3-52475	The objective of this rule is to ensure that Department procedures pertaining to union relation requirements are uniformly enforced, establishing that both an individual who obtains work through a union and an individual who does not belong to a union can be considered available for work.
R6-3-52500	The objective of this rule is to ensure that Department procedures pertaining to wage requirements are uniformly enforced, providing guidelines for determining if an individual's wage demands render the individual unavailable for work.
R6-3-52510	The objective of this rule is to ensure that Department procedures pertaining to the nature of an individual's work are uniformly enforced, providing guidelines for determining if an individual who is unable to work in the individual's normal occupation is available for work.
R6-3-5305	The objective of this rule is to ensure a uniform understanding of essential terms used in the administration of the refusal to work benefit policy, providing definitions and general guidelines.
R6-3-53150	The objective of this rule is to ensure that Department procedures pertaining to the distance to work requirements are uniformly enforced, providing guidelines for determining whether disqualification is appropriate when an individual has refused a job because of the commuting distance.
R6-3-53170	The objective of this rule is to ensure that Department procedures pertaining to offers of, and referrals to work are uniformly enforced, specifying factors to be considered in determining whether an individual actually refused to accept a referral to a job.
R6-3-53195	The objective of this rule is to ensure that Department procedures pertaining to experience or training requirements are uniformly enforced, providing guidelines for considering an individual's training and experience when determining disqualification is appropriate for refusing a job or a referral to a job.
R6-3-53235	The objective of this rule is to ensure that Department procedures pertaining to an individual's health or physical condition are uniformly enforced, providing guidelines for considering any potential health risk when determining the suitability of an offered job or referral.
R6-3-53265	The objective of this rule is to ensure that Department procedures pertaining to an individual's interview and acceptance of employment are uniformly enforced, specifying that a disqualification may be applied if an individual by word or action

	indicates to an employer that the individual is not applying for a job in good faith.
R6-3-53295	The objective of this rule is to ensure that Department procedures pertaining to an individual's length of unemployment are uniformly enforced, establishing that, when determining the suitability of offered work, the length of time an individual has been unemployed is to be considered.
R6-3-53330	The objective of this rule is to ensure that Department procedures pertaining to an offer of work are uniformly enforced, establishing that before a disqualification can be assessed it must be established that there was a bona fide offer of work and that the offer was made since the individual became unemployed.
R6-3-53335	The objective of this rule is to ensure that Department procedures pertaining to offered work previously left or refused are uniformly enforced, providing guidelines for determining if an offer of a position previously held by an individual is to be considered an offer of suitable work.
R6-3-53365	The objective of this rule is to ensure that Department procedures pertaining to the prospect of other work are uniformly enforced, explaining that, when determining whether a job is suitable, the individual's prospects for other work are to be considered.
R6-3-53380	The objective of this rule is to ensure that Department procedures pertaining to polygraph examination requirements are uniformly enforced, stipulating that an individual shall not be denied benefits for refusing a job because the submittal to a polygraph test was a condition of the job.
R6-3-53450	The objective of this rule is to ensure that Department procedures pertaining to time and hour requirements are uniformly enforced, providing guidelines for considering the hours of work when determining the suitability of an offered job or referral.
R6-3-53475	The objective of this rule is to ensure that Department procedures pertaining to union relations are uniformly enforced, specifying that an individual shall not be denied benefits for refusing a job if the individual would have been required to either join a union or resign from a union.
R6-3-53480	The objective of this rule is to explain the term "labor dispute," ensuring an understanding and correct application of the term and to explain that benefits cannot be denied to an otherwise eligible claimant for refusing to accept new work if an offered position is vacant due to a circumstance of a labor dispute.
R6-3-53500	The objective of this rule is to ensure that Department procedures pertaining to wages are uniformly enforced, providing guidelines for considering the rate of pay when determining the suitability of an offered job or referral.
R6-3-53510	The objective of this rule is to ensure that Department procedures pertaining to the customary nature of work are uniformly enforced, specifying that an individual's customary occupation is to be taken into consideration when determining the suitability of an offered job or referral.
R6-3-53515	The objective of this rule is to ensure that Department procedures pertaining to working conditions are uniformly enforced, providing guidelines for considering the working conditions when determining the suitability of an offered job or referral.
R6-3-5460	The objective of this rule is to ensure a uniform understanding of the benefit disqualification period, explaining when a disqualification begins on a separation

	from employment for a voluntary quit or a discharge.
R6-3-5475	The objective of this rule is to ensure that Department procedures pertaining to claims and registration requirements are uniformly enforced, providing the requirements for filing a claim for benefits and for participating in reemployment services and various types of eligibility interviews.
R6-3-5495	The objectives of this rule are to explain the term “last employment,” ensuring an understanding and correct application of the term and to explain what constitutes last employment for the purposes of disqualification from benefits, specifying that a disqualification can only be assessed on a separation from an individual’s last employer.
R6-3-54100	The objective of this rule is to clarify terms and procedures used in the implementation of provisions specific to the denial of extended benefits for failure to accept suitable work or actively seek work when an individual files a claim under the interstate benefit payment plan.
R6-3-54340	The objective of this rule is to ensure that Department procedures pertaining to overpayments and administrative penalties associated with an individual making false statements or misrepresentations are uniformly enforced, explaining the penalty and the application of penalty for making a fraudulent statement.
R6-3-55415	The objective of this rule is to ensure that Department procedures pertaining to commission sales positions are uniformly enforced, providing guidelines for determining whether an individual engaged in commission sales is available for work and thus eligible for benefits.
R6-3-55460	The objective of this rule is to ensure that Department procedures pertaining to types of compensation are uniformly enforced, explaining how the receipt of various types of separation pay, as well as the receipt of unused vacation, back pay awards, holiday, or sick pay affects the receipt of benefits.
R6-3-5601	The objective of this rule is to explain terms used in Article 56, to ensure an understanding and interpretation of how article rules are applied in regard to determining if a labor dispute exists.
R6-3-5602	The objective of this rule is to clarify requirements pertaining to the provision of information regarding a labor dispute to the Department, specifying labor dispute information that employers and labor organizations are required to provide to the Department upon request.
R6-3-5603	The objective of this rule is to ensure that Department procedures pertaining to eligibility during a labor dispute are uniformly enforced, providing guidelines for determining if a person is unemployed due to specifically addressed labor dispute circumstances.
R6-3-5604	The objective of this rule is to ensure that Department procedures pertaining to termination of the labor dispute disqualification are uniformly enforced, providing guidelines for determining whether a disqualification because of a labor dispute remains in effect if, during the dispute, the individual quits, is discharged, accepts new work, or experiences other specified circumstances.

3. **Are the rules effective in achieving their objectives?** Yes No

If not, please identify the rule(s) that is ineffective and provide an explanation for why the

rule(s) is ineffective.

Rule	Explanation
R6-3-1404	This rule is ineffective in achieving the objective because the reasons for the Department to consider a late submission of a document as timely does not include when an individual submits a change of address to the Department.
R6-3-1408	This rule is ineffective in achieving the objective because it contains unnecessary and misleading details about locations of and methods for an employer to obtain an application to request to take part in qualified transient lodging employment, which is available via the Department website and not by visiting any UI office or any UI tax representative.
R6-3-1502	This rule is ineffective in achieving the objective because it does not establish an interested party's ability to submit documents electronically, provides incorrect timeline for delivery of notice of continued hearing to interested parties and submission of a written statement setting forth the facts of the case by an interested party to the Office of Appeals.
R6-3-1503	This rule is ineffective in achieving the objective because it provides incorrect timelines for filing a request for review with the appeals board, when a party can request to reopen a hearing, file an appeal, or file a petition to review an Appeal Tribunal decision.
R6-3-1504	This rule is ineffective in achieving the objective because it provides an incorrect timeline for an interested party to petition the Appeals Board for review.
R6-3-1506	This rule is ineffective in achieving the objective because it provides an incorrect timeline for an interested party to petition the DES Appeals Board to review a reconsidered determination.
R6-3-1716	This rule is ineffective in achieving the objective because it incorrectly provides an employer the date of January 31 instead of February 28 as the date by which an employer's voluntary contributions must be postmarked.
R6-3-1722	This rule is ineffective in achieving the objective because it includes definitions that are out of place, making it difficult for the reader to reference.
R6-3-1727	This rule is ineffective in achieving the objective because the rule establishes a minimum value of meals and lodging that is outdated and purposeless.
R6-3-1803	This rule is ineffective in achieving the objective because it does not specify whether "days" refers to calendar days or business days in regards to the length of time an employer may protest payment to a claimant.
R6-3-1809	This rule is ineffective in achieving the objective because it does not specify whether "days" refers to calendar days or business days in regards to when a claim is timely filed.
R6-3-50135	This rule is ineffective in achieving the objective because it does not specify whether "days" refers to calendar days or business days in regards to the length of time in which a worker's separation from employment is considered a quit.
R6-3-50135.04	This rule is ineffective in achieving the objective of ensuring that Department procedures pertaining to separations from employment are uniformly enforced because it references an "unreasonable period of time" without defining what will be considered "unreasonable."
R6-3-50135.05	This rule is ineffective in achieving its objective of ensuring that Department procedures pertaining to separations from employment are uniformly enforced because it is not clearly stated that a corporate officer's separation from a business

	in which the worker was a corporate officer is not a layoff.
R6-3-50155	This rule is ineffective in achieving its objective of ensuring that Department procedures pertaining to leaving employment are uniformly enforced, because it does not include the Department's rules for adjudicating a leave on the basis of a personal matter, such as divorce proceedings.
R6-3-50190	This rule is ineffective in achieving its objective of ensuring that Department procedures relative to evidence are uniformly enforced because it contains a definition for "evidence" that is not compliant with U.S. Department of Labor (USDOL) guidance contained in Employment and Training Handbook No. 301.
R6-3-50210	This rule is ineffective in achieving its objective of explaining the term "good cause" because it is composed entirely of extensive procedural information that is inappropriate for administrative rule.
R6-3-50475	This rule is ineffective in achieving its objective of ensuring that Department procedures pertaining to leaving employment are uniformly enforced because it provides extensive information about one's right to refuse to join or retain membership in a union, which is unnecessary because a specific statute (A.R.S. § 23-1302) has been adopted to establish Arizona as a "right-to-work" state.
R6-3-51190	This rule is not efficient in achieving its objective of ensuring that Department procedures pertaining to evidence relative to a discharge for misconduct are uniformly enforced because it contains a definition for "evidence" that is not compliant with USDOL guidance contained in Employment and Training Handbook No. 301.
R6-3-5245	This rule is ineffective at achieving its objective of ensuring that Department procedures pertaining to security clearance requirements are uniformly enforced because it is entitled "Disloyalty," making it difficult to know that it pertains to a worker's ability to obtain and maintain a required Security Clearance.
R6-3-52150	This rule is ineffective at achieving its objective of ensuring that Department procedures pertaining to distance to work are uniformly enforced because it contains standards for ability and availability to work based on transportation and travel that are vague, leaving much open to interpretation.
R6-3-52160	This rule is ineffective in achieving the objective of assisting claimants in obtaining prompt reemployment. A.R.S. § 23-771 does not allow for any exception to the requirement to actively seek work, other than for an individual who is applying for shared work benefits. The current language allows for additional exceptions that could result in barriers to reemployment. It also contains arbitrary examples that do not apply in every circumstance.
R6-3-52190	This rule is not efficient in achieving its objective of ensuring that Department procedures pertaining to evidence are uniformly enforced because it contains a definition for "evidence" that is not compliant with USDOL guidance contained in Employment and Training Handbook No. 301.
R3-6-52295	This rule is ineffective at achieving its objective of ensuring that Department procedures pertaining to the length of unemployment are uniformly enforced because it is not compliant with A.R.S. § 23-776, which states that, during the first four weeks of a benefit period, a claimant shall not be determined unavailable because the claimant restricts the claimant's work search or willingness to work at the claimant's highest skill level. This rule currently states that this time period is not absolute.

R6-3-53150	This rule is ineffective at achieving its objective of ensuring that Department procedures pertaining to the distance to work requirements are uniformly enforced because it is not compliant with A.R.S. § 23-776, which states that during the first four weeks of a benefit period, the Department shall consider the claimant's length of unemployment and prospects for securing local work in the claimant's customary occupation and the distance of the available work from the claimant's residence.
R6-3-53195	This rule is ineffective at achieving its objective of ensuring that Department procedures pertaining to experience or training requirements are uniformly enforced because it is not compliant with A.R.S. § 23-776, which states that, during the first four weeks of a benefit period, a claimant will not be required to accept work at a level less than their highest skill. This rule currently states that this time period is not absolute.
R6-3-53235	This rule is ineffective at achieving its objective of ensuring that Department procedures pertaining to an individual's health or physical condition are uniformly enforced because there is a missing evidence requirement for "Risk of Illness or injury," although the Department does require evidence, in accordance with state and federal law, in these circumstances.
R6-3-53295	This rule is ineffective at achieving its objective of ensuring that Department procedures pertaining to an individual's length of unemployment are uniformly enforced because it is not in compliant with A.R.S. § 23-776, which states that during the first four weeks of a benefit period, ta claimant shall not be considered unavailable if the claimant does not consider employment outside of the claimant's primary occupation.
R6-3-53335	This rule is ineffective at achieving its objective of ensuring that Department procedures pertaining to offered work previously left or refused are uniformly enforced because it is not in compliant with A.R.S. § 23-776, which states that, during the first four weeks of a benefit period, work shall not be deemed suitable if a claimant was previously disqualified in connection with the claimant's separation or was previously disqualified for refusing a job offer for such a position .
R6-3-53500	This rule is ineffective at achieving its objective of ensuring that Department procedures pertaining to wages are uniformly enforced because it is not in compliance with A.R.S. § 23-776, which states that, during the first four weeks of a benefit period, a claimant will not be required to accept work at a level less than their highest skill. This rule currently states that this time period is not absolute.
R6-3-53510	This rule is ineffective at achieving its objective of ensuring that Department procedures pertaining to the customary nature of work are uniformly enforced because it is not in compliant with A.R.S. § 23-776, which states that, during the first four weeks of a benefit period, a claimant shall not be considered unavailable for work if the claimant has only considered work in the claimant's customary occupation.
R6-3-54340	This rule is ineffective at achieving the objective of ensuring that Department procedures pertaining to overpayments and administrative penalties associated with an individual making false statements or misrepresentations are uniformly enforced because, although the body of the rule contains information regarding administrative penalties, it is entitled "Overpayments (Miscellaneous)," making it difficult to locate pertinent information.

4. **Are the rules consistent with other rules and statutes?**

Yes

No

If not, please identify the rule(s) that is inconsistent. Also, provide an explanation and identify the provisions that are inconsistent with the rule.

Rule	Explanation
R6-3-1502	This rule is inconsistent with A.R.S. § 23-682, which provides that the appeal tribunal or appeals board may serve or deliver any notice, decision or order or any other document by electronic means when the party being served consents in writing or on the record of service by electronic means. The rule does not allow for use of electronic means of delivery.
R6-3-1503	This rule is inconsistent with A.R.S. § 23-671, which allows 30 days for filing a petition with the appeals board to review an appeal tribunal decision. The rule currently states that only 15 days are allowed.
R6-3-1504	This rule is inconsistent with A.R.S. § 23-671, which allows 30 days for filing a petition with the appeals board to review an appeal tribunal decision. The rule currently states that only 15 days are allowed.
R6-3-1506	This rule is inconsistent with A.R.S. § 23-671, which allows 30 days for filing a petition with the appeals board to review an appeal tribunal decision. The rule currently states that only 15 days are allowed.
R6-3-1507	This rule is inconsistent with A.R.S. § 23-671, which allows 30 days for filing a petition with the appeals board to review an appeal tribunal decision. The rule currently states that only 15 days are allowed.
R6-3-50235	This rule is inconsistent with legislative change H.B. 2667 (2014), which amended several A.R.S. sections to change all forms of the words “handicap” and “disabled” to “disability” or “with a disability.”
R6-3-50190	This rule is inconsistent with USDOL guidance provided in Employment and Training Handbook No. 301, which defines evidence acceptable for UI eligibility and offers guidelines for making a “reasonable attempt” to obtain evidence necessary to determine a claimant’s eligibility. As written, this rule provides a general definition for “evidence” that is not compliant with the federal definition applicable to UI. While consistent with R6-3-51190 and R6-3-52190, it is also redundant as it contains the same information regarding the definition of evidence.
R6-3-51190	This rule is inconsistent with USDOL guidance provided in Employment and Training Handbook No. 301, which defines evidence acceptable for UI eligibility and offers guidelines for making a “reasonable attempt” to obtain evidence necessary to determine a claimant’s eligibility. As written, this rule provides a general definition for “evidence” that is not compliant with the federal definition applicable to UI. While consistent with R6-3-50190 and R6-3-52190, it is also redundant as it contains the same information regarding the definition of evidence.
R6-3-53150	This rule is inconsistent with A.R.S. § 23-776, which states that after the first four weeks of a benefit period, the Department shall consider any employment offer that pays one hundred twenty percent of the individual’s weekly benefit amount to be suitable work. The rule as written does not make it clear that the standard changes after four weeks.
R6-3-52160	This rule is inconsistent with A.R.S. § 23-771, which does not allow for any exception to the requirement to actively seek work other than for an individual who is applying for shared work benefits. The current language allows for additional exceptions that conflict with statute.

R6-3-52190	This rule is inconsistent with USDOL guidance provided in Employment and Training Handbook No. 301, which defines evidence acceptable for UI eligibility and offers guidelines for making a “reasonable attempt” to obtain evidence necessary to determine a claimant’s eligibility. As written, this rule provides a general definition for “evidence” that is not compliant with the federal definition applicable to UI. While consistent with R6-3-50190 and R6-3-51190, it is also redundant as it contains the same information regarding the definition of evidence.
R6-3-52295	This rule is inconsistent with A.R.S. § 23-776, which states that after the first four weeks of a benefit period, the Department shall consider any employment offer that pays one hundred twenty percent of the individual’s weekly benefit amount to be suitable work. The rule as currently written provides alternative methods for determining suitability after the first four weeks of a benefit period.
R6-3-50475	This rule is inconsistent with A.R.S § 23-1302 because the rule relates to refusal to join or retain membership in a union but a specific statute has been adopted to establish Arizona as a “right to work” state, making this part of the rule irrelevant.

5. Are the rules enforced as written?

Yes

No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency’s proposal for resolving the issue.

Rule	Explanation
R6-3-1502	The rule is not enforced as written because it does not include information regarding the provision of a notice of continued hearing, but the Department has internal standards for providing these notices. Additionally omitted from the rule is the ability for the Department to deliver notices electronically; however, the Department does currently deliver some notices electronically. The Department proposes to amend the rule to add the timeline within which a notice of continued hearing must be provided, as well as to expand the methods by which notices may be delivered.
R-6-3-1503	This rule is not enforced as written because it states a 15-day timeline for filing a request for review with the appeals board when the statutory limit (A.R.S. § 23-671) is 30 days. The Department follows the provisions of statute rather than any outdated language in current rules. The Department proposes to convert all 15-day references to 30.
R6-3-1504	This rule is not enforced as written because it is inconsistent with A.R.S. § 23-671, which allows 30 days for filing a petition with the appeals board to review an appeal tribunal decision; however, the rule currently states that only 15 days are allowed. The Department follows the provisions of statute rather than outdated language in rule. The Department proposes to amend this rule to state that 30 days are allowed for filing a petition for review. Additionally, the rule does not include the ability for an interested party to submit a petition by fax or electronically; however, the Department does currently accept these methods. The Department proposes to amend the rule to expand the methods by which a petition may be submitted.
R6-3-1506	This rule is not enforced as written because it is inconsistent with A.R.S. § 23-671, which allows 30 days for filing a petition with the appeals board to review an appeal tribunal decision; however, the rule currently states that only 15 days are allowed. The Department follows the provisions of statute rather than outdated language in rule. The Department proposes to amend this rule to state that 30

	days are allowed for filing a petition for review.
R6-3-1507	This rule is not enforced as written because it is inconsistent with A.R.S. § 23-671, which allows 30 days for filing a petition with the appeals board to review an appeal tribunal decision; however, the rule currently states that only 15 days are allowed. The Department follows the provisions of statute rather than outdated language in rule. The Department proposes to amend this rule to state that 30 days are allowed for filing a petition for review.
R6-3-1809	This rule is not enforced as written because it incorrectly cites to the Job Training Partnership Act, which was superseded by the Workforce Investment Act in 1998, and again by the Workforce Innovation and Opportunity Act in 2014.
R6-3-50190	This rule is not enforced as written because it conflicts with USDOL guidance provided in Employment and Training Handbook No. 301, which defines evidence acceptable for UI eligibility and offers guidelines for making a “reasonable attempt” to obtain evidence necessary to determine a claimant’s eligibility. As written, this rule provides a general definition for “evidence” that is not compliant with the federal definition applicable to UI. The Department follows federal guidance rather than any outdated language in current rules. The Department proposes to remove the definition for “evidence” and replace it with a reference to the federal guidance
R6-3-51190	This rule is not enforced as written because it conflicts with USDOL guidance provided in Employment and Training Handbook No. 301, which defines evidence acceptable for UI eligibility and offers guidelines for making a “reasonable attempt” to obtain evidence necessary to determine a claimant’s eligibility. As written, this rule provides a general definition for “evidence” that is not compliant with the federal definition applicable to UI. The Department follows federal guidance rather than any outdated language in current rules. The Department proposes to remove the definition for “evidence” and replace it with a reference to the federal guidance guidelines for making a “reasonable attempt” to obtain evidence necessary to determine a claimant’s eligibility. As written, this rule provides a general definition for “evidence” that is not compliant with the federal definition applicable to UI. The Department follows federal guidance rather than any outdated language in current rules.
R6-3-52160	This rule is not enforced as written because it is inconsistent with A.R.S. § 23-771, and the Department follows the provisions of statute rather than outdated language in rule. The Department proposes to amend this rule to remove exceptions to the requirement to actively seek work that is not allowed by law.
R6-3-52190	This rule is not enforced as written because it conflicts with USDOL guidance provided in Employment and Training Handbook No. 301, which defines evidence acceptable for UI eligibility and offers guidelines for making a “reasonable attempt” to obtain evidence necessary to determine a claimant’s eligibility. As written, this rule provides a general definition for “evidence” that is not compliant with the federal definition applicable to UI. The Department follows federal guidance rather than any outdated language in current rules. The Department proposes to remove the definition for “evidence” and replace it with a reference to the federal guidance.
R6-3-52295	This rule is not enforced as written because it is inconsistent with A.R.S. § 23-776, which states that after the first four weeks of a benefit period, the Department shall consider any employment offer that pays one hundred twenty percent of the individual’s weekly benefit amount to be suitable work. The rule as currently written provides alternative methods for determining suitability after the first four weeks of a benefit period. The Department follows the provisions of statute rather than any outdated language in current rules. The Department proposes to amend the rule to

	remove the alternative methods for determining suitable work related to an offer of employment.
R6-3-52305	This rule is not enforced as written because it does not state that a claimant who has been notified that the claimant will be placed on active duty or active duty for training on or before a definite date and is limited to accepting temporary work shall be willing to accept temporary work without additional personal restrictions. The Department proposes to amend the rule to make it clear a claimant awaiting to return to active duty shall be willing to accept temporary work.
R6-3-53150	This rule is not enforced as written because it is inconsistent with A.R.S. § 23-776, which states that after the first four weeks of a benefit period, the Department shall consider any employment offer that pays one hundred twenty percent of the individual's weekly benefit amount to be suitable work. The rule as written does not make it clear that the standard changes after four weeks. The Department follows the provisions of statute rather than any outdated language in current rules. The Department proposes to amend the rule to align with A.R.S. § 23-776 (B)(2) and (C) to make it clear that the standard changes after four weeks.
R6-3-53235	This rule is not enforced as written because it is missing the evidence requirement for "Risk of Illness or injury;" however, the Department does require evidence in this case. The Department proposes to add the evidence requirement to the rule.

6. Are the rules clear, concise, and understandable?

Yes

No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation
R6-3-1403	This rule is not clear, concise, or understandable as written because the defined terms are not capitalized and there are missed opportunities for abbreviation, such as shortening "unemployment insurance" to "UI" and "the Department of Economic Security" to "the Department." Additionally, the requirements for what an individual must provide before the Department releases information should be formatted as a list and more clearly stated. The Department proposes to capitalize defined terms, abbreviate terms where possible, and clarify language concerning the release of information.
R6-3-1404	This rule is not clear, concise, or understandable as written because it is self-referential, directing the audience to "Department regulation," and the formatting used for citing other rules is incorrect. Additionally, the rule unnecessarily lists various examples of documents and there is an addendum about address change that requires its own subsection. There is also outdated language such as "must" where "shall" would be appropriate. The Department proposes to remove the reference to Department regulation, correct the citation formatting, remove the examples for documents and simply state "documents," and establish a separate subsection for the address change item.
R6-3-1405	This rule is not clear, concise, or understandable as written because it has grammatical errors, including incorrect capitalization for defined terms throughout and use of numbers for amounts of 10 or less. Additionally, it defines terms that are already defined in statute (A.R.S. § 23-764). The Department proposes to capitalize defined terms, spell out numbers for amounts of 10 or less, and remove

	the definitions already included in statute.
R6-3-1406	This rule is not clear as written because it has grammatical errors including incorrect capitalization for defined terms throughout and use of numbers for amounts of 10 or less. The Department proposes to capitalize defined terms and spell out amounts of ten or more.
R6-3-1407	This rule is not clear as written because it has grammatical errors including incorrect capitalization for defined terms throughout and use of numbers for amounts of 10 or less. The Department proposes to capitalize defined terms and spell out amounts of ten or more.
R6-3-1408	This rule is not clear, concise, or understandable as written because it has grammatical errors including incorrect capitalization for defined terms throughout. Additionally, this rule includes definitions that are outdated. One definition is not appropriate for rule (“1-year period prior to such slowdown”) and other definitions are out of place in this section (“full-time equivalent” and “previous year”). Lastly, this rule contains unnecessary and misleading details about locations of and methods for obtaining documents. The Department proposes to capitalize all defined terms, update and refine the definitions appropriate for rule and move them to their own section, and to delete the definition inappropriate for rule. The Department also proposes to remove the extraneous information relating to document availability and incorporate that information in policy.
R6-3-1502	This rule is not clear as written because it has grammatical errors including incorrect capitalization for defined terms throughout and use of numbers for amounts of 10 or less. Additionally, this rule uses outdated and imprecise language and is missing important items such as an interested party’s ability to submit documents electronically and timelines for delivery of notice of continued hearing. This rule also contains extraneous A.R.S. references. The Department proposes to capitalize defined terms and spell out amounts of ten or more. Additionally, the Department proposes to update the outdated and imprecise language, including removing unnecessarily elaborate phrases and A.R.S. references. Lastly, the Department proposes to introduce information regarding the ability to submit documents electronically and the timeframe for receiving a notice of continued hearing.
R6-3-1503	This rule is not clear, concise, or understandable as written because it has minor formatting issues, including blocks of text containing list items and outdated language (section A and B(2)). Additionally, this rule has grammatical errors including incorrect capitalization for defined terms throughout and use of numbers for amounts of 10 or less. Lastly, the rule states a 15-day timeline for filing a request for review with the appeals board, when the statutory limit is 30 days. The Department proposes to correct the minor grammatical errors, including capitalizing defined terms and spelling out amounts of ten or more. The Department also proposes to break the text blocks into list format, update outdated language, and change the 15-day references to 30.
R6-3-1504	This rule is not clear as written because: <ul style="list-style-type: none"> ● This rule has grammatical errors including incorrect capitalization for defined terms throughout and use of numbers for amounts of 10 or less. ● This rule uses outdated and imprecise language such as “will” instead of “shall,” and passive voice rather than identifying which party will take certain actions ● This rule does not include the ability to petition for review electronically. ● This rule states a 15-day timeline for filing a request for review with the appeals board when the statutory limit is 30 days.

	The Department proposes to correct the minor grammatical errors, including capitalizing defined terms, spelling out amounts of ten or more, and updating the outdated and imprecise language, including removing unnecessarily elaborate phrases and passive voice. The Department also proposes to change the 15-day references to 30 and include the ability to petition for review electronically.
R6-3-1505	This rule is not clear, concise, or understandable as written because it contains outdated phrasing, specifically saying “an appeal is taken against the Department...” The Department proposes to amend the language and use active language to improve clarity.
R6-3-1506	This rule is not clear, concise, or understandable as written because it has unnecessary and inaccurate A.R.S. citations and minor grammatical issues including incorrect capitalization for defined terms throughout and use of numbers for amounts of 10 or less. Additionally, the rule states a 15-day timeline for filing a request for review with the appeals board, when the statutory limit is 30 days. The Department proposes to remove the extraneous A.R.S. citations and correct the grammar errors, including capitalizing defined terms and spelling out amounts of ten or more. Lastly, the Department proposes to change the 15-day references to 30 and include the ability to petition for review electronically.
R6-3-1507	This rule is not clear, concise, or understandable as written because it has unnecessary and inaccurate A.R.S. citations and minor grammatical issues including incorrect capitalization for defined terms throughout and use of numbers for amounts of 10 or less. The Department proposes to remove the extraneous A.R.S. citations and correct the grammar errors by capitalizing defined terms and spelling out amounts of ten or more.
R6-3-1601	This rule is not clear, concise, or understandable as written because it has unnecessary A.R.S. citations and minor grammatical issues including incorrect capitalization for defined terms throughout. The Department proposes to remove the extraneous A.R.S. citations and correct the grammar errors by capitalizing defined terms.
R6-3-1701	This rule is not clear, concise, or understandable because it has grammatical errors including incorrect capitalization for defined terms throughout, as well as outdated language (using “in” instead of “when”). The Department proposes to correct the grammar errors by capitalizing defined terms and updating the language to contemporary usage.
R6-3-1702	This rule is not clear, concise, or understandable because it has grammatical errors including incorrect capitalization for defined terms throughout and use of numbers for amounts of 10 or less. Additionally, the rule contains an unnecessary A.R.S. citation (it includes a definition that is already stated in A.R.S. § 23-614) and improper formatting for other rules or sections of rule. This rule also uses outdated wording, making the rule more lengthy than necessary. The Department proposes to correct the grammar errors by capitalizing defined terms and spelling out amounts of 10 or less. The Department also proposes to remove the A.R.S. citation and correct the formatting for other rules or sections of other rules and to remove or shorten outdated language
R6-3-1703	This rule is not clear, concise, or understandable because it has grammatical errors including incorrect capitalization for defined terms throughout and use of numbers for amounts of 10 or less. This rule also uses improper formatting for other rules or sections of rule and a block of text composed of a list of distinct items. The Department proposes to correct the grammar errors by capitalizing defined terms and spelling out amounts of 10 or less. The Department also proposes to reformat

	the rules or sections or rules to comply with the standard and to break the block of text into numbered list items.
R6-3-1704	This rule is not clear, concise, or understandable because it has grammatical errors including incorrect capitalization for defined terms throughout, use of numbers for amounts of 10 or less, and outdated, gender-specific language. This rule also makes inconsistent references to due dates and uses improper formatting for references to statute. The Department proposes to correct the grammar errors by capitalizing defined terms and spelling out amounts of 10 or less. The Department also proposes to replace all gender-specific references with gender-neutral wording and align all references to due dates, as well as properly format statutory references.
R6-3-1705	This rule is not clear, concise, or understandable because it has grammatical errors including incorrect capitalization for defined terms throughout. This rule also includes misplaced definitions within the body of the text and outdated language that makes the rule more lengthy than necessary. The Department proposes to correct the grammar errors by capitalizing defined terms.
R6-3-1706	This rule is not clear, concise, or understandable because it has grammatical errors including incorrect capitalization for defined terms throughout and numbers for amounts of 10 or less. This rule also uses incorrect formatting for citing statute, and includes sections of statute that are not appropriate or necessary to enter in rule. Lastly, the rule contains a misplaced definition for “pay period” and contains multiple list items in one block of text. The Department proposes to correct the grammar errors by capitalizing defined terms and spelling out numbers of 10 or less. Additionally, the Department proposes to amend statutory citations to align with the standard and remove the sections of statute not appropriate for rule. Lastly, the Department proposes to remove the definition for “pay period,” moving it to R6-3-1701, and separate all list items into individually numbered items.
R6-3-1708	This rule is not clear, concise, or understandable because it has grammatical errors including incorrect capitalization for defined terms throughout and use of numbers for amounts of 10 or less. Additionally, some references to other rules in this section are outdated and the rule contains misplaced definitions, such as “retirement pay plan” and “collective retirement plan”. The Department proposes to correct the grammar errors by capitalizing defined terms and spelling out amounts of 10 or more, correct the references to other rules, amend the definitions for length and move them to the definitions section (R6-3-1701).
R6-3-1709	This rule is not clear, concise, or understandable because it has grammatical errors including incorrect capitalization for defined terms throughout and use of numbers for amounts of 10 or less. Additionally, this rule contains unnecessary A.R.S. citations and extraneous definitions such as a multi-part definition for “employment to the same extent.” The Department proposes to correct the grammar errors by capitalizing defined terms and spelling out amounts of 10 or more. The Department also proposes to remove the A.R.S. citations, and amend the definitions for length and move them to the definitions section (R6-3-1701).
R6-3-1710	This rule is not clear, concise, or understandable because it has grammatical errors including incorrect capitalization for defined terms throughout, and it uses an incorrect format for citing statute and provides extraneous information regarding statute. The Department proposes to correct the grammatical errors by capitalizing defined terms and to remove the unnecessary references to and descriptions of statute.
R6-3-1711	This rule is not clear, concise, or understandable because it has grammatical errors

	including incorrect capitalization for defined terms throughout and use of numbers for amounts of 10 or less. Additionally, this rule contains an unnecessary definition for “chargeable,” and some references to other rules in this section are outdated or not properly formatted. The Department proposes to correct the grammar errors by capitalizing defined terms and spelling out amounts of 10 or more, remove the unnecessary definition, and correct and reformat the references to other rules.
R6-3-1712	This rule is not clear, concise, or understandable because it has grammatical errors including incorrect capitalization for defined terms throughout and use of numbers for amounts of 10 or less. Additionally, this rule contains definitions that are not appropriate for this section, such as “Joint experience rating accounts,” “Combined experience rating accounts,” “Multiple experience rating accounts,” “General coverage,” “Agricultural coverage,” and “Domestic coverage.” The Department proposes to correct the grammar errors by capitalizing defined terms and spelling out amounts of 10 or more, as well as to amend the definitions for length and move them to the definitions section (R6-3-1701).
R6-3-1713	This rule is not clear, concise, or understandable because it uses incorrect capitalization for defined terms throughout and outdated wording. This rule also contains inaccurate references to other rules and definitions that are verbose and not appropriate to include in this section, such as “Reasonable value” and “Necessary information establishing the separate identity of the account.” The Department proposes to correct the grammatical errors by capitalizing defined terms, update the wording, correct the references to other rules, delete extraneous definitions and edit the remaining definitions for length before moving them to the definitions section (R6-3-1701).
R6-3-1715	This rule is not clear, concise, or understandable because it has grammatical errors including incorrect capitalization for defined terms throughout and use of numbers for amounts of 10 or less, as well as outdated wording. This rule is missing necessary references to statute (such as A.R.S. § 23-729) while including unnecessary references (“Reed Bill”), and it contains formulae that are already included in statute or are not appropriate to include in administrative rule (see Section D, Method of computation). The Department proposes to correct the grammatical errors by capitalizing defined terms and spelling out amounts of 10 or more, update the wording, include necessary references to statute, and remove the extraneous formulae.
R6-3-1716	This rule is not clear, concise, or understandable because it has minor grammatical errors including incorrect capitalization for defined terms throughout. This rule also includes unnecessary explanation of statute and an incorrect date by which voluntary contributions must be postmarked. The Department proposes to correct the grammatical errors by capitalizing defined terms, remove the extraneous explanation, and correct the date by which voluntary contributions must be postmarked.
R6-3-1717	This rule is not clear, concise, or understandable because it has minor grammatical errors including incorrect capitalization for defined terms throughout and outdated wording (gender-specific references). The rule also uses improper formatting for citing other rules. The Department proposes to correct the capitalization by capitalizing defined terms, update the wording to remove gender-specific references and correct the formatting for other rules that are cited.
R6-3-1718	This rule is not clear because it contains incorrect capitalization for defined terms throughout, as well as incorrect formatting for an A.R.S. citation. The Department proposes to correct the capitalization and the formatting.

R6-3-1720	This rule is not clear, concise, or understandable because it contains unnecessary definitions for “consumer goods,” “primarily resulting,” “preparation,” “tax returns,” “related schedules and documents” and “profits” as well as a misplaced definition for “overrides.” This rule also has minor grammatical issues throughout, such as incorrect capitalization for defined terms and imprecise language. The rule explains in detail the actions that might result from filing a tax return improperly, which are already outlined in A.R.S. § 42-1125.01. The Department proposes to remove the unnecessary definitions, relocate the misplaced definition to this article’s definitions section, and correct the grammatical issues by capitalizing defined terms. The Department also proposes to remove the information already contained in statute.
R6-3-1721	This rule is not clear, concise, or understandable because it has A.R.S. references that are improperly formatted and grammatical errors such as outdated language, incorrect capitalization for defined terms, and incorrect tense. The Department proposes to correct the formatting to standard A.R.S. citation format and correct the grammatical errors by using correct tense and capitalizing defined terms.
R6-3-1722	This rule is not clear, concise, or understandable because it consists of definitions that are out of place. The Department proposes to remove the definitions from this section and incorporate them to the definitions section (R6-3-1701) which relates to the entire article.
R6-3-1723	This rule is not clear, concise, or understandable because it contains unnecessary or out-of-place definitions and minor grammatical issues such as incorrect capitalization and imprecise language. The Department proposes to remove the unnecessary definitions and correct the grammatical issues.
R6-3-1725	This rule is not clear, concise, or understandable because it has grammatical errors such as outdated language (gender-specific) and incorrect capitalization. The rule also uses improper formatting for citing other rules. The Department proposes to correct the grammatical errors including capitalizing defined terms and update the language to avoid gender specificity, as well as to correct the formatting for other rules that are cited.
R6-3-1726	This rule is not clear, concise, or understandable because it has A.R.S. references that are improperly formatted and grammatical errors such as incorrect capitalization for defined terms. The rule also uses improper formatting for citing other rules. The Department proposes to correct the formatting and grammatical errors, including capitalizing all defined terms, as well as to correct the formatting for other rules that are cited.
R6-3-1727	This rule is not clear, concise, or understandable because it has grammatical errors such as incorrect capitalization for defined terms, and the values stated for meals and lodging have not been adjusted for inflation and increased cost of living since 1988, making them unusable by contemporary standards. The Department proposes to correct the grammatical errors, including correct capitalization for defined terms, and to update the values for meals and lodging.
R6-3-1803	This rule is not clear, concise, or understandable because it has grammatical errors including incorrect capitalization for defined terms throughout, use of numbers for amounts of 10 or less, outdated sentence structure, and does not specify whether “days” refers to calendar days or business days. The Department proposes to correct the grammar errors by capitalizing defined terms, spelling out numbers of 10 or less, updating sentence structure and replacing “days” with “Business Days”.
R6-3-1806	This rule is not clear, concise, or understandable because it is formatted incorrectly in terms of sentence structure. The Department proposes to correct the formatting in terms of sentence structure.

R6-3-1808	This rule is not clear, concise, or understandable because it has grammatical errors including incorrect capitalization for defined terms throughout, use of numbers for amounts of 10 or less, and incorrect articles of grammar. Additionally, there is an improper use of “%” rather than “percent.” The Department proposes to correct the grammatical errors, including correct capitalization for defined terms, spelling out numbers less than ten, and replacing the articles of grammar where appropriate. Additionally, the Department proposes to replace “%” with “percent.”
R6-3-1809	This rule is not clear, concise, or understandable because it has grammatical errors including incorrect capitalization for defined terms throughout, incorrect abbreviations, outdated sentence structure, and use of numbers for amounts of 10 or less. The rule cites an incorrect federal law (Job Training Partnership Act). Lastly, the rule uses incorrect formatting for citing other rules and does not specify whether “days” refers to calendar days or business days. The Department proposes to correct the grammatical errors, including correct capitalization for defined terms, abbreviating terms where appropriate, updating sentence structure, and spelling out numbers of 10 or less. Additionally, the Department proposes to update the reference to federal law, replacing “Job Training Partnership Act” with “Workforce Innovation and Opportunity Act (20 CFR 676 and 677).” Lastly, the Department proposes to correct all improperly formatted references to other rules and replace “days” with “Calendar Days,” as appropriate.
R6-3-1810	This rule is not clear, concise, or understandable because it has grammatical errors including incorrect capitalization for defined terms throughout and incorrect abbreviations. The rule also uses improper formatting for citing sections within the rule and referencing statute. Also, the rule refers to “definitions” in section R6-3-1705, but that rule does not contain definitions. The Department proposes to correct the grammatical errors, including capitalizing all defined terms, and applying abbreviations where appropriate. The Department also proposes to correct the formatting for other sections and statutes cited in the rule, and to update the reference to R3-6-1705, to state that terms are “discussed” rather than “defined.”
R6-3-1811	This rule is not clear, concise, or understandable because it has grammatical errors including incorrect capitalization for defined terms throughout, incorrect abbreviation, outdated spelling and word choice (“insure” and “utilized”), and the incorrect use of the “cents” symbol. The rule also uses improper formatting for citing sections within the rule. The Department proposes to correct the grammatical errors, including capitalizing all defined terms, abbreviating where appropriate, updating spelling and word choices (“ensure” and “used”), and converting “cents” to a fraction of one dollar. Additionally, the Department proposes to correct the formatting for other sections cited in the rule.
R6-3-1812	This rule is not clear, concise, or understandable because it has grammatical errors including incorrect capitalization for defined terms throughout, improper verb tense, and incorrect abbreviations. The Department proposes to correct the grammatical errors, including capitalizing all defined terms, using proper verb tense, and abbreviating where appropriate.
R6-3-1813	This rule is not clear, concise, or understandable because it has grammatical errors including incorrect capitalization for defined terms, it contains unnecessary A.R.S. citations, improper use of symbols (%) instead of the word “percent.” Additionally, as currently worded, this rule contains a definition for “no reasonable attempt,” which is not used anywhere else in 6AAC3. The Department proposes to correct the grammatical errors, including correct capitalization for defined terms, remove the unnecessary A.R.S. citations and update “%” to “percent” throughout.

	Additionally, the Department proposes to rephrase the rule as a standard, rather than a definition.
R6-3-5005	This rule is not clear, concise, and understandable because it does not clearly define the necessary terms used within the rules in Article 50. The Department proposes to include updated terminology, definitions, and an index of definitions consistent with current federal regulation and relevant to the Unemployment Insurance program.
R6-3-5040	This rule is not clear, concise, or understandable as written because it has minor grammatical errors such as incorrect capitalization for defined terms and imprecise language such as the use of “worker” rather than “claimant.” Additionally, the rule uses improper formatting for citing other rules. The Department proposes to correct the grammatical errors by using correct capitalization and to correctly format references to other rules. Additionally, the Department proposes to update imprecise language.
R6-3-50135	This rule is not clear, concise, or understandable as written because it has minor grammatical errors, including incorrect capitalization and failure to capitalize defined terms. Additionally, the rule uses improper formatting for citing other rules and is vague regarding whether “days” refers to calendar or business days. The Department proposes to correct the grammatical errors, capitalizing where appropriate, and to correctly format references to other rules. Lastly, the Department proposes to change “days” to “Calendar Days.”
R6-3-50135.01	This rule is not clear, concise, or understandable as written because it is improperly formatted, with incorrect section numbering and unnecessarily repetitive wording. Additionally, although it is not a new section, the rule is missing from the Table of Contents. The Department proposes to update the formatting to be consistent with other rules and add the rule to the Table of Contents.
R6-3-50135.02	This rule is not clear, concise, or understandable as written because it is improperly formatted, with incorrect section numbering and unnecessarily repetitive wording. Additionally, although it is not a new section, the rule is missing from the Table of Contents. Lastly, defined terms are not capitalized. The Department proposes to update the formatting to be consistent with other rules and add the rule to the Table of Contents, as well as to capitalize all defined terms.
R6-3-50135.03	This rule is not clear, concise, or understandable as written because it contains definitions that are misplaced, has minor grammatical errors and although it is not a new section, the rule is missing from the Table of Contents. Additionally, the rule uses improper formatting for citing other rules. The Department proposes to remove the definitions from this section and incorporate them into the definitions section (R6-3-1301), update the formatting to be consistent with other rules, and add the rule to the Table of Contents. The Department also proposes to correct the capitalization and tense errors and to correctly format references to other rules
R6-3-50135.04	This rule is not clear, concise, or understandable as written because it contains minor grammatical errors, unnecessarily references another rule to be used for determining good cause, contains detailed descriptions regarding types of separation, which are not appropriate for administrative rules, references an “unreasonable period of time” without defining what will be considered “unreasonable”, and although it is not a new section, the rule is missing from the Table of Contents. The Department proposes to incorporate the content of R-6-50138 into this rule, remove the descriptions for types of separation and incorporate them into Department policy, add a section defining what the

	Department will consider an “unreasonable amount of time,” and correct the grammatical errors by capitalizing defined terms and spelling out numbers of 10 or less. Lastly, the Department proposes to add the rule to the Table of Contents.
R6-3-50135.05	This rule is not clear, concise, or understandable as written because it is not clearly stated that when a corporate officer separates from a business, this should not be considered a layoff. Additionally, this rule is improperly formatted, with incorrect section numbering and, although it is not a new section, the rule is missing from the Table of Contents. Lastly, the rule has grammatical errors including incorrect capitalization for defined terms throughout and use of numbers for amounts of 10 or less. The Department proposes to clearly state that a corporate officer’s separation is not considered a layoff, update the formatting to be consistent with other rules, add the rule to the Table of Contents, and correct the grammatical errors by capitalizing all defined terms and spelling out numbers of 10 or less.
R6-3-50135.06	This rule is not clear, concise, or understandable as written because it contains a reference to A.R.S. § 23-614 (G) that is inaccurate. The terms “temporary services employer” and “leasing employer” are not defined in statute, as the rule states. Additionally, there are minor grammatical errors such as improper use of articles. The Department proposes to remove the reference to statute and instead define the terms in question within rule. Additionally, the Department proposes to correct the improper articles.
R6-3-50138	This rule is not clear, concise, or understandable as written because, as a whole, it is redundant with some sections of R6-3-50135.04, which also relates to disciplinary action. The Department proposes to repeal this rule and move the relevant sections, specifically what constitutes good cause in terms of disciplinary action, to R6-3-50135.04.
R6-3-50150	This rule is not clear, concise, or understandable as written because it has grammatical errors including incorrect capitalization for defined terms throughout, use of numbers for amounts of 10 or less, use of fractions rather than decimals, and incorrect tense. The Department proposes to correct these errors by capitalizing all defined terms, spelling out numbers of 10 or less, converting fractions to decimals, and correcting tense where appropriate.
R6-3-50155	This rule is not clear, concise, or understandable as written because it has grammatical errors, uses improper formatting for citing other rules and statute, uses improper section formatting, includes misplaced definitions, and does not include the Department's rules for adjudicating a leave on the basis of a personal matter, such as divorce proceedings. The Department proposes to correct the grammatical errors by capitalizing all defined terms, spelling out numbers of 10 or less, correcting the articles of grammar, removing the outdated wording, and correcting tense where appropriate. Additionally, the Department proposes to correct formatting for both citing other rules and dividing sections. The Department proposes to move the misplaced definitions to the definitions section for the entire article (R6-3-5005) and to correct the reference to statute so that it is clear the statute does not define terms. Lastly, the Department proposes that this rule should receive the information from R6-3-50360, relating to separation due to personal matters.
R6-3-50190	This rule is not clear, concise, or understandable as written because it contains a definition for “evidence” that is not compliant with USDOL guidance contained in

	<p>Employment and Training Handbook No. 301. The rule contains formatting errors, such as incorrect references to other sections of rule, and also contains redundant statements about burden of proof and detailed process descriptions that are not suitable for administrative rule. Lastly, the rule contains grammatical errors such as incorrect capitalization and verb tenses.</p> <p>The Department proposes to remove the definition for “evidence” and replace it with a reference to the federal guidance, correct the formatting errors by removing the unnecessary references to other sections of rule, and correct the grammatical errors by capitalizing all defined terms and ensuring that proper verb tense is used throughout. Lastly, the Department proposes to remove the redundant statements and those inappropriate for administrative rule and instead incorporate them into Department policy where appropriate.</p>
R6-3-50210	This rule is not clear, concise, or understandable as written because it is composed of extensive procedural information that is inappropriate for administrative rule. The Department proposes to repeal the rule and incorporate appropriate sections into Department policy and procedures.
R6-3-50235	This rule is not clear, concise, or understandable as written because it uses outdated language: specifically, the use of the terms “handicap” and “physical condition,” in various forms, as well as gendered language. Additionally, the rule has grammatical errors such as incorrect capitalization of defined terms and the use of “worker” rather than “claimant.” The rule contains examples that are inappropriate for the Administrative Code but would be appropriate for Department policy. Lastly, some references to other rules are improperly formatted. The Department proposes that all forms of the word “handicap” be replaced with the corresponding form of the word “Disability,” and reference to “physical condition” be changed to the corresponding form of the term “health condition.” The Department proposes to amend all gender-specific language to be gender-neutral, and to properly format rule citations. Lastly, the Department proposes to address grammatical errors by capitalizing all defined terms and changing “worker” to “claimant” where appropriate.
R6-3-50315	This rule is not clear, concise, or understandable as written because it has minor grammatical errors such as incorrect tense and capitalization of defined terms, as well as outdated wording such as gender-specific references. Additionally, this rule contains formatting inconsistencies from other rules (section numbering is not uniform). The Department proposes to update the section numbering to conform to other rules and to correct the grammatical errors and outdated wording by capitalizing all defined terms and removing gender-specific references.
R6-3-50345	This rule is not clear, concise, or understandable as written because it uses incorrect capitalization for defined terms throughout and uses improper formatting for citing other rules. The Department proposes to capitalize all defined terms and correct the formatting for citing other rules.
R6-3-50360	This rule is not clear, concise, or understandable as written because it provides a description of compelling personal reasons for leaving in relation to personal affairs that is not independent or substantial enough to require its own section. The Department proposes to repeal the section and move the contents to R6-3-51055.
R6-3-50365	This rule is not clear, concise, or understandable as written because it contains improper citations to other rules; minor grammatical errors throughout; the

	subsection relates to voluntary leaving due to an objection to the current work, rather than the prospect of other work; and extraneous and vague information about an “unreasonable time-lapse” between the former job and the prospective job that is inappropriate for rule. The Department proposes to correct the formatting of the citations for other rules, correct the grammatical errors by capitalizing all defined terms and converting gender-specific language to be gender-neutral, remove the subsection relating to objection to current work (already addressed in R6-3-53515), and remove the subsection relating the the “unreasonable time-lapse,” instead incorporating this information into Department policy, where appropriate.
R6-3-50450	This rule is not clear, concise, or understandable as written because it contains grammatical errors throughout; ,detailed information regarding what constitutes a reasonable objection to work hours or work days that is too lengthy and specific for the rule; and improper citations for other rules. The Department proposes to correct the grammatical errors by capitalizing all defined terms, addressing areas of incorrect syntax, converting all verbs to the proper tense, removing gender-specific language and replacing it with gender-neutral language, and converting all areas with passive voice to active voice, making it clear which party is expected to perform certain actions. Additionally, the Department proposes to remove the extraneous descriptions of reasonable objection examples from sections (B) and (C), instead incorporating that information into Department policy. Finally, the Department proposes to correct citations for other rules, amending them to the proper format.
R6-3-50475	This rule is not clear, concise, or understandable as written because it contains a lengthy citation from the Constitution of Arizona relating to refusal to join or retain membership in a union. The citation is both unnecessary and outdated, as a specific statute (A.R.S. § 23-1302) has been adopted to establish Arizona as a “right to work” state. Additionally, the rule uses outdated language and contains unnecessary references to other rules. The Department proposes to remove the constitutional citation and references to other rules and to update the outdated language.
R6-3-50500	This rule is not clear, concise, or understandable as written because it contains unnecessary elaboration about what may cause a worker to be dissatisfied with wages and contains extraneous descriptions about what parts of a pay agreement might be defective or what situations might constitute good cause to leave in association with a wage disagreement. This level of detail is inappropriate for administrative rules. Additionally, the rule uses “claimant” when referring to individuals who may not have claimed benefits, and it contains grammatical errors such as improper capitalization and outdated (gender-specific) language. The Department proposes to remove all unnecessary descriptions and examples from the rule and incorporate them into Department policy where appropriate. The Department also proposes to convert “claimant” to “worker” when referring to an individual who has made no claim for benefits. Lastly, the Department proposes to capitalize all defined terms and replace gender-specific with gender-neutral language.
R6-3-50515	This rule is not clear, concise, or understandable as written because it contains unnecessary elaboration about the conditions of work that may or may not substantiate good cause for leaving, which are not appropriate to include in the rule. Additionally, the rule includes subsection numbers that do not align with the

	<p>standard format. Lastly, the rule contains minor grammatical errors, such as improper capitalization for defined terms and improper verb tenses. The Department proposes to remove the details regarding conditions of work and good cause for leaving, and instead incorporate these into Department policy where appropriate. The Department also proposes to align subsection headers with standard format and correct the grammatical errors by capitalizing all defined terms and updating verb tense where necessary.</p>
R6-3-5105	<p>This rule is not clear, concise, or understandable as written because it has formatting errors. Additionally, it has grammatical errors including incorrect capitalization, abbreviation, and articles of grammar. It also includes detailed process descriptions for the considerations the Department must undergo during adjudication, examples of compelling personal reasons that are arbitrary and non-exhaustive, as well as an unnecessarily lengthy description of what the Department would “normally” do, and how this rule deviates, instead of simply presenting the acceptable deviation. All of these are inappropriate for administrative rule. The Department proposes to correct the formatting errors by removing the extraneous information from the section header. The Department also proposes to capitalize all defined terms, abbreviate terms where appropriate, and ensure correct usage of articles of grammar. Lastly, the Department proposes to remove the aforementioned sections that are not appropriate for rule and introduce them into Department policy where appropriate.</p>
R6-3-5115	<p>This rule is not clear, concise, or understandable as written because it has formatting errors, including extraneous descriptions and subsection references in the section headers. This rule also contains grammatical errors including incorrect capitalization and verb tense. The rule includes detailed examples of absences and exceptions to the rule that are situational, arbitrary, and non-exhaustive, which are inappropriate for administrative rule. The rule uses the term “claimant” to refer to individuals who may not have claimed benefits and uses outdated (gender-specific) language. The Department proposes to correct the formatting errors by removing the extraneous information from the section headers and to correct the grammatical errors by capitalizing all defined terms and section headers, where appropriate. Additionally, the Department proposes to ensure proper verb tenses.</p>
R6-3-5145	<p>This rule is not clear, concise, or understandable as written because it has formatting errors, including extraneous descriptions and subsection references in the section headers. This rule also contains grammatical errors including incorrect capitalization, spelling errors, and verb tense issues. The rule uses the term “claimant” to refer to individuals who may not have claimed benefits and uses outdated (gender-specific) language. Additionally, the rule contains many arbitrary and non-exhaustive examples of attitude toward an employer and theoretical explanations for the rule that are not appropriate for the administrative code. The Department proposes to correct the formatting errors by removing the extraneous information from the section headers and to correct the grammatical errors by capitalizing all defined terms, fix the spelling errors, and ensure correct verb tenses. Additionally, the Department proposes to convert the word “claimant” to “worker” where necessary and convert all gender-specific language to be gender-neutral. Lastly, the Department proposes to remove the arbitrary and non-exhaustive examples of attitude toward an employer and theoretical explanations for the rule and instead incorporate these into Department policy where appropriate.</p>

R6-3-5185	This rule is not clear, concise, or understandable as written because it is its own section but relates to every type of misconduct. This rule also has formatting errors, including extraneous descriptions and subsection references in the section headers and grammatical errors including incorrect capitalization and spelling errors. Lastly, this rule unnecessarily includes a list of other rules to reference. The Department proposes to repeal this rule and move the contents to the General Misconduct section (R6-3-5105). The Department also proposes to remove the extraneous descriptions and subsection references, capitalize all defined terms and correct the spelling errors. Finally, the Department proposes to remove the list of other rules.
R6-3-51140	This rule is not clear, concise, or understandable as written because it uses improper formatting for citing other sections of the rule and includes unnecessary citations for other sections. Additionally, this rule contains many arbitrary and non-exhaustive examples of insubordination that are not appropriate for administrative rule. The Department proposes to remove the unnecessary citations for other sections of the rule and remove the arbitrary examples from this rule, incorporating them in Department policy where appropriate.
R6-3-51190	This rule is not clear, concise, or understandable as written because it conflicts with USDOL guidance provided in Employment and Training Handbook No. 301, which defines evidence acceptable for UI eligibility and offers guidelines for making a “reasonable attempt” to obtain evidence necessary to determine a claimant’s eligibility. As written, this rule provides a general definition for “evidence” that is not compliant with the federal definition applicable to UI. Additionally, this definition is repeated two other times in different articles. The rule also includes unnecessary citations for other sections and detailed procedural information regarding determining the burden of proof and weighing evidence that is not appropriate for administrative rule. The Department proposes to remove the definition for “evidence” and replace it with a reference to the federal guidance, as well as to ensure that this reference is not multiplicative by adding that this reference is specifically related to misconduct. The Department also proposes to remove all unnecessary section and subsection citations and to transfer the procedural information to Department policy, where appropriate.
R6-3-51235	This rule is not clear, concise, or understandable as written because it is worded in a manner that makes it difficult to understand what party will decide whether the discharge is attributable to the employer. Additionally, there are extraneous descriptions and subsection references in the section headers. The Department proposes rewording the section to make it clear that the Department is responsible for determining whether the discharge is attributable to the employer and to remove the extraneous descriptions and subsection references from the header.
R6-3-51255	This rule is not clear, concise, or understandable as written because it uses improper formatting for citing other sections of the rule and includes unnecessary citations for other sections. Additionally, this rule contains many arbitrary and non-exhaustive examples of insubordination that are not appropriate for administrative rule. The Department proposes to remove the unnecessary citations for other sections of rule and remove the arbitrary examples from this rule, incorporating them in Department policy where appropriate

R6-3-51270	This rule is not clear, concise, or understandable as written because it uses the term “claimant” to refer to an individual who may or may not have actually applied for benefits. The rule uses improper formatting for citing other sections of the rule and includes unnecessary citations for other sections. Lastly, the rule includes a wordy explanation of when off-duty intoxication may be considered disqualifying, which is in part unnecessary and in part could be worded in a more concise manner. The Department proposes to change all incorrect references of “claimant” to “worker,” remove the unnecessary citations for other sections of the rule, and reword the subsection relating to off-duty intoxication, retaining the necessary wording only.
R6-3-51300	This rule is not clear, concise, or understandable as written because it uses improper formatting for citing other sections of the rule and includes unnecessary citations for other sections. The rule also lists out arbitrary, non-exhaustive items for the Department to consider, such as specific examples and situational descriptions which are not appropriate for administrative rule. Lastly, this rule contains misplaced definitions for “ordinary care” and “accident.” The Department proposes to remove the unnecessary citations for other sections of the rule and remove the arbitrary examples and descriptions from this rule, incorporating them in Department policy if appropriate. Lastly, the Department proposes to move the misplaced definitions to the definitions section for this article, R6-3-5101.
R6-3-51310	This rule is not clear, concise, or understandable as written because it uses improper formatting for citing other sections of the rule and includes unnecessary citations for other sections. This rule also lists out arbitrary, non-exhaustive items for the Department to consider, which are not appropriate for administrative rule. The Department proposes to remove the unnecessary citations for other sections of rule and remove the arbitrary items for consideration to Department policy, introducing them as non-exhaustive examples wherever appropriate.
R6-3-51345	This rule is not clear, concise, or understandable as written because it contains grammatical errors including improper capitalization and formatting errors including a rule citation that is out of compliance with the standard. The Department proposes to capitalize all defined terms and reformat the rule citation to come into compliance with the standard.
R6-3-51385	This rule is not clear, concise, or understandable as written because it relates exclusively to misconduct, which is a general reason for discharge. As there is already a “general” section of rule for this article, the Department proposes to repeal R6-3-51385 and move its contents to the general section, R6-3-5105.
R6-3-51390	This rule is not clear, concise, or understandable as written because it uses improper formatting for citing other sections of the rule and includes unnecessary citations for other sections. This rule also uses outdated, gender-specific language and improper verb tense or passive voice. Additionally, the rule contains an arbitrary example of profane language, which is not appropriate for administrative rule. The Department proposes to remove the unnecessary citations for other sections of rule and to amend all gender-specific language to be gender-neutral, as well as convert all instances of passive voice to active voice and ensure proper verb tense throughout. Lastly, the Department proposes to remove the arbitrary example and incorporate it into Department policy as appropriate.
R6-3-51435	This rule is not clear, concise, or understandable as written because it relates to tardiness, which is not independent of absence, and absence has its own section.

	<p>Additionally, the rule contains multiple examples of tardiness, which is not appropriate for administrative rule. The Department proposes to repeal this rule and move relevant sections, without the examples, to R6-3-5115, the rule relating to absence. Relevant examples may be considered for inclusion in Department policy if applicable.</p>
R6-3-51475	<p>This rule is not clear, concise, or understandable as written because it contains grammatical errors including improper capitalization and verb tense. It also uses outdated, gender-specific language and cites lengthy sections of the Constitution of Arizona unnecessarily. The Department proposes to correct the grammatical errors by capitalizing all defined terms and ensuring proper verb tense is used throughout. Additionally, the Department proposes to convert all gender-specific language to be gender-neutral. Lastly, the Department proposes to remove the constitutional citations and summarize the portions relevant to this rule.</p>
R6-3-51485	<p>This rule is not clear, concise, or understandable as written because it uses improper formatting and contains grammatical errors, including improper capitalization and verb tense when referring to other sections of rule and when citing federal law; explains in detail the theoretical basis for the rule; gives unnecessary examples and explanations that are inappropriate for administrative rules; contains a misplaced definition; and contains procedural information in relation to adjudicating safety violations, which is not appropriate for administrative rules. The Department proposes to correct the formatting for or remove unnecessary citations of other sections of rule and federal law and correct the grammatical errors by capitalizing all defined terms and ensuring proper verb tense throughout; remove the detailed theoretical explanation for the rule; remove all unnecessary examples and explanations that are inappropriate for administrative rules and instead incorporate these into Department policy; relocate the definition to R6-3-5101; and remove the procedural information in relation to adjudicating safety violations and incorporate it into Department policy where appropriate.</p>
R6-3-51490	<p>This rule is not clear, concise, or understandable as written because it has grammatical errors including incorrect capitalization for defined terms throughout. Additionally, the sections are improperly formatted, using numbers where letters should be used. The Department proposes to correct these errors by capitalizing all defined terms and correct the section numbering to align with the standard.</p>
R6-3-5205	<p>This rule is not clear, concise, or understandable as written because it has grammatical errors including incorrect capitalization for defined terms throughout, and use of numbers for amounts of 10 or less.</p> <p>The Department proposes to correct the grammatical errors by capitalizing all defined terms and spelling out numbers of 10 or less.</p>
R6-3-5240	<p>This rule is not clear, concise, or understandable as written because it has grammatical errors including incorrect capitalization for defined terms throughout, missed abbreviations, issues with verb tense, and use of numbers for amounts of 10 or less. Additionally, this rule is improperly formatted, with incorrect section numbering, and contains a misplaced definition for “full-time student.” The Department proposes to move the definition of “full-time student” to the definitions section for this article (R6-3-5201). Also, the Department proposes to correct the improper formatting and grammatical errors by capitalizing all defined terms, confirming proper verb tense, abbreviating where appropriate, and spelling out numbers of 10 or less. The Department also proposes to correct the section</p>

	formatting to align with the standard.
R6-3-5245	<p>This rule is not clear, concise, or understandable because it is entitled “Disloyalty” but the body of the rule contains information regarding a worker’s availability for work in reference to the ability to obtain and maintain a required Security Clearance. The rule also contains outdated (gender-specific) language and an unnecessary citation of another section of the rule.</p> <p>The Department proposes to correct the title of the section by changing “Disloyalty” to “Security Clearance,” remove the reference to another section of the rule, and change all gender-specific language to gender-neutral.</p>
R6-3-5270	<p>This rule is not clear, concise, or understandable as written because of the improper capitalization of and unnecessary subsection citations in the section heading. Additionally, this rule has minor grammatical issues including the general use of “individual” when referring to specific categories of individuals, and the specificity is material to the rule. The rule also uses gender-specific terms such as “he” and “his.” The Department proposes to capitalize words in the section heading as appropriate and remove subsection citations from the section heading. The Department also proposes to remove “individual” and replace it with “worker,” and to convert the gender-specific language to gender-neutral.</p>
R6-3-5290	<p>This rule is not clear, concise, or understandable as written because it uses “claimant” to refer to a person who may not have claimed benefits, uses gender-specific terms such as “he” and “his,” contains improper capitalization of the section heading, and contains unnecessary subsection citations in the heading. The Department proposes to change the word “claimant” to “worker” where applicable, convert the gender-specific language to gender-neutral, capitalize words in the section heading as appropriate, and remove subsection citations from the section heading.</p>
R6-3-52105	<p>This rule is not clear, concise, or understandable as written because of the improper capitalization of defined terms and section headings. Additionally, this rule has minor grammatical issues including the general use of “individual” when referring to specific categories of individuals, and the specificity is material to the rule. This rule also uses “claimant” to refer to a person who may not have claimed benefits, and uses gender-specific terms such as “he” and “his”. Lastly, the rule contains arbitrary examples for interpreting the contract to determine if a claimant is unavailable, which are inappropriate for administrative rule. The Department proposes addressing the minor grammatical errors by capitalizing all defined terms and section headings as appropriate, removing “individual” and replacing it with “worker” and replacing “claimant” with “worker.” Also, the Department proposes to convert all gender-specific language to gender-neutral and to remove examples for interpreting the contract to determine if a claimant is unavailable, instead incorporating this information into Department policy, where appropriate.</p>
R6-3-52150	<p>This rule is not clear, concise, or understandable as written because it contains various examples of commuting distance that are not appropriate to include in the rule. Additionally, there are some grammatical errors such as incorrect tenses and capitalization of defined terms. The standards for ability and availability to work based on transportation and travel are vague, leaving much open to interpretation. The Department proposes that the examples of commuting distance be removed and incorporated into Department policy. The Department proposes to correct grammatical errors by updating the tense where incorrect and capitalizing all</p>

	defined terms. The Department proposes that the standard for ability and availability to work, in terms of travel and transportation, state that a claimant who does not have access to public transportation must arrange personal transportation to be considered able and available to work.
R6-3-52155	This rule is not clear, concise, or understandable as written because it contains detailed explanations of and examples for domestic circumstances, which are not appropriate to include in administrative rules. The Department proposes to remove these and instead incorporate them into Departmental policy.
R6-3-52160	This rule is not clear, concise, or understandable as written because it contains misspelled words, incorrect capitalization, missing abbreviations, and outdated (gender-specific and archaic) language. This rule also contains unnecessary subsection citations in the headings. The rule does not specify that a work search is required as part of a course of action reasonably designed to result in prompt reemployment. The rule contains union-specific information irrelevant in Arizona, which is a “right to work” state, and it allows for exceptions to the work search requirement that conflict with A.R.S. § 23-771. The rule also does not account for modern methods of searching for work, including electronically. Lastly, this rule contains sections that are inappropriate for administrative rule because they provide arbitrary examples or recommend procedures to be followed. The Department proposes to correct the misspellings, capitalize all defined terms and section headings where appropriate, abbreviate wherever appropriate, convert all gender-specific language to gender-neutral and modernize the word choices throughout. The Department proposes to remove section citations from the headings and to remove both the union-specific language and language that is not aligned with statute regarding exceptions to the requirement to search for work. The Department proposes to add the ability for claimants to search for work using electronic sources, including social networks and/or electronic publications, and to add that a work search is required as part of a course of action reasonably designed to result in prompt reemployment. Lastly, the Department proposes to move the arbitrary examples and recommend procedures to Department policy, as appropriate.
R6-3-52165	This rule is not clear, concise, or understandable as written because it contains arbitrary and situation-specific examples that are inappropriate for administrative rules. This rule also contains unnecessary subsection citations in the heading and lacks necessary capitalization. The Department proposes to add a general statement covering unreasonable discrimination on the part of an employer, in terms of non-work-related requirements, and to move the examples that are inappropriate for the rule to Department policy where applicable. The Department also proposes to remove unnecessary subsection citations and add necessary capitalization in the heading.
R6-3-52190	This rule is not clear, concise, or understandable as written because it conflicts with USDOL guidance provided in Employment and Training Handbook No. 301, which defines evidence acceptable for UI eligibility and offers guidelines for making a “reasonable attempt” to obtain evidence necessary to determine a claimant’s eligibility. As written, this rule provides a general definition for “evidence” that is not compliant with the federal definition applicable to UI. Additionally, this definition is repeated two other times in different articles. The rule also lacks capitalization of defined terms and contains arbitrary and situation-specific examples that are inappropriate for administrative rule.

	<p>Additionally, the rule uses the term “physical disability” when referring to both physical and mental disabilities. Lastly, the rule contains unnecessary subsection citations in the heading. The Department proposes to remove the definition for “evidence” and replace it with a reference to the federal guidance, as well as to ensure that this reference is not multiplicative by adding that this reference is specifically related to the ability to and availability for work. The Department also proposes to capitalize all defined terms and to add “mental disability” where appropriate. Additionally, the Department proposes to move the examples that are inappropriate for the rule to Department policy where applicable. The Department also proposes to remove unnecessary subsection citations in the heading.</p>
R6-3-52235	<p>This rule is not clear, concise, or understandable as written because of the need for capitalization of defined terms and section formatting issues. The Department proposes to correct the capitalization of the defined terms where applicable and correct the section formatting to align with the standard.</p>
R6-3-52250	<p>This rule is not clear, concise, or understandable as written because it contains grammatical errors such as improper tense, improper capitalization of defined terms, and colloquial language. Additionally, the rule contains a section that is inappropriate for administrative code. This rule also uses the word “individual” or “person” when specifically referring to a claimant and includes definitions within the body of the rule. Lastly, the rule contains unnecessary subsection citations in the heading. The Department proposes to correct the grammatical errors including the capitalization of defined terms and heading and to remove the section that is inappropriate for the rule to Department policy as well as to remove the colloquial language. The Department proposes as well to move the definitions to the definitions section of this article and to replace “individual” and “person” with “claimant.” The Department also proposes to remove unnecessary subsection citations in the heading.</p>
R6-3-52285	<p>This rule is not clear, concise, or understandable as written because it contains minor grammatical errors such as “must,” uses outdated (gender-specific) language, and lacks capitalization of defined terms. The rule contains instructions for issuing determinations that are procedural and not appropriate for administrative rule. Lastly, this rule contains unnecessary subsection citations in the heading. The Department proposes to correct the grammatical errors including converting gender-specific language to gender-neutral, replacing “must” with “shall,” and capitalizing all defined terms. Also, the Department proposes to remove the sections inappropriate for rule and instead incorporate them into Departmental policy. The Department also proposes to remove unnecessary subsection citations in the heading.</p>
R3-6-52295	<p>This rule is not clear, concise, or understandable as written because it uses incorrect capitalization for a defined term and in the section headings. This rule is not compliant with A.R.S. § 23-776, which states that, during the first four weeks of a benefit period, a claimant will not be required to accept work at a level less than their highest skill. This rule currently states that this time period is not absolute. Lastly, this rule contains detailed explanations of examples for determining the availability of an individual to work, which are not appropriate to include in administrative rules. The Department proposes to capitalize all defined terms and the section heading. The Department proposes to remove the sections not in compliance with A.R.S. § 23-776 and to instead specify that during the first four weeks of a benefit period, a claimant will not be required to accept work at a level</p>

	less than their highest skill. Also, the Department proposes to remove the sections inappropriate for rule and instead incorporate them into Departmental policy.
R6-3-52305	This rule is not clear, concise, or understandable as written because it does not capitalize a defined term and uses “must” instead of “shall.” The rule has section formatting issues and contains instructions for issuing determinations that are procedural and not appropriate for administrative rule. Lastly, the rule contains unnecessary subsection citations in the heading. The Department proposes to capitalize all defined terms, convert “must” to “shall” where necessary, and correct the section numbering to align with proper formatting. Also, the Department proposes to remove the unnecessary subsection citations and the sections inappropriate for rule and instead incorporate them into Departmental policy.
R6-3-52320	This rule is not clear, concise, or understandable as written because the section heading is improperly capitalized and the rule contains outdated wording, such as gender-specific references. Lastly, this rule contains unnecessary subsection citations in the heading. The Department proposes to properly capitalize the section heading and convert gender-specific references to be gender-neutral. Also, the Department proposes to remove the unnecessary subsection citations.
R6-3-52370	This rule is not clear, concise, or understandable as written because it contains incorrect capitalization throughout the rule, and it uses the general term “individual” in reference to a claimant. This rule also is vague regarding in what context a claimant must be a witness, claimant, or defendant. This rule also uses outdated (gender-specific) language, contains unnecessary statements regarding availability, and contains unnecessary subsection citations in the heading. Lastly, this rule contains detailed explanations of examples for determining the availability of an individual to work, which are not appropriate to include in administrative rules. The Department proposes to correct the capitalization errors, convert the gender-specific language to be gender-neutral, and replace “individual” with “claimant”. Also, the Department proposes to remove the unnecessary statements that are inappropriate for rule and instead incorporate them into Departmental policy where applicable.
R6-3-52375	This rule is not clear, concise, or understandable as written because it contains minor grammatical errors such as capitalization of defined terms, uses outdated (gender-specific) wording, and contains detailed explanations of reasons for determining the availability of an individual to work, which are not appropriate to include in administrative rules. Lastly, this rule contains unnecessary subsection citations in the heading. The Department proposes to capitalize all defined terms, convert the gender-specific language to be gender-neutral, and remove the sections inappropriate for rule and instead incorporate them into Departmental policy where applicable. Also, the Department proposes to remove the unnecessary subsection citations.
R6-3-52415	This rule is not clear, concise, or understandable as written because it contains incorrect capitalization throughout the rule, and it uses the general term “individual” in reference to a claimant. This rule also contains unnecessary subsection citations in the heading and section formatting errors throughout. Lastly, this rule contains detailed explanations of examples for determining the availability of an individual to work, which are not appropriate to include in administrative rules. The Department proposes to correct the capitalization errors, convert “individual” to “claimant” where applicable, remove the subsection citations, and correct the section

	formatting to align with the standard. Lastly, the Department proposes to remove the sections inappropriate for rule and instead incorporate them into Departmental policy.
R6-3-52450	This rule is not clear, concise, or understandable as written because it contains minor grammatical errors such as incorrect tense and capitalization of defined terms, outdated wording such as gender-specific references, and the terms “may be” and “must.” Additionally, this rule contains details of what to consider to make a determination that are not appropriate for administrative rule. The Department proposes to correct the grammatical errors and outdated wording by capitalizing all defined terms. removing gender-specific references and changing “may” and “must” to “shall.” The Department proposes to remove details of what to consider to make a determination and incorporate those details into Department policy.
R6-3-52475	This rule is not clear, concise, or understandable as written because it contains minor grammatical errors such as incorrect tense and capitalization of defined terms, outdated wording such as gender-specific references, “will” and “does.” The Department proposes to correct the grammatical errors and outdated wording by capitalizing all defined terms. removing gender-specific references and changing “will” and “does” to “shall.”
R6-3-52500	This rule is not clear, concise, or understandable as written because it contains minor grammatical errors such as incorrect tenses and capitalization of defined terms. Additionally, this rule contains details of what to consider when making a determination that is not appropriate for administrative rule. The Department proposes to correct the grammatical errors and outdated wording by capitalizing all defined terms. The Department proposes to remove the details of what to consider to make a determination and incorporate those details into Department policy.
R6-3-52510	This rule is not clear, concise, or understandable as written because it is exclusively comprised of information already stated in R6-3-52235. The Department proposes to repeal this rule.
R6-3-5305	This rule is not clear, concise, or understandable as written because it contains minor grammatical errors such as incorrect capitalization of defined terms, as well as spelling out numbers of 10 or less. Additionally, this rule contains formatting inconsistencies from other rules (section numbering is not uniform). The Department proposes to update the section numbering to conform to other rules and to correct the grammatical errors and outdated wording by capitalizing all defined terms and spelling out numbers of 10 or less.
R6-3-53150	This rule is not clear, concise, or understandable as written because it uses incorrect capitalization for defined terms throughout. The rule contains details of what to consider to make a determination that are not appropriate for inclusion in Administrative rules. Additionally, the rule is not compliant with A.R.S. § 23-776, which states that after the first four weeks of a benefit period, the Department shall consider any employment offer that pays one hundred twenty percent of the individual’s weekly benefit amount to be suitable work. The rule as written does not make it clear that the standard changes after four weeks. The Department proposes to amend the rule to align with A.R.S. § 23-776 (B)(2) and (C) to make it clear that the standard changes after four weeks, to capitalize all defined terms, and to remove examples not appropriate for the rule and incorporate them into Department policy.
R6-3-53170	This rule is not clear, concise, or understandable as written because it contains

	<p>minor grammatical errors such as incorrect tense and capitalization of defined terms, including inappropriate use of “should”. Additionally, this rule contains outdated terms such as “call in card” which is no longer used by the Department, and the details of what to consider to make a determination which are not appropriate for administrative rule. The Department proposes to correct the grammatical errors and outdated wording by capitalizing all defined terms, removing “should” and replacing with “shall”, and removing references to the call-in card. The Department proposes to remove the details of what to consider to make a determination and incorporate those details into Department policy.</p>
R6-3-53195	<p>This rule is not clear, concise, or understandable as written because it contains minor grammatical errors such as incorrect tenses and capitalization of defined terms. The rule also uses outdated (gender-specific) terminology. Additionally, the rule is not compliant with A.R.S. § 23-776, which states that after the first four weeks of a benefit period, the Department shall consider any employment offer that pays one hundred twenty percent of the individual’s weekly benefit amount to be suitable work. The rule as written does not make it clear that the standard changes after four weeks. This rule also contains details of what to consider when making a determination that are not appropriate for inclusion in Administrative rules. The Department proposes to amend the rule to align with A.R.S. § 23-776 (B)(2) and (C) to make it clear that the standard changes after four weeks. The Department also proposes to correct the outdated wording by converting gender-specific language to gender-neutral. It proposes to capitalize all defined terms. The Department proposes to remove the details of what to consider when making a determination and incorporate those details into Department policy.</p>
R6-3-53235	<p>This rule is not clear, concise, or understandable as written because it contains minor grammatical errors such as incorrect tenses and capitalization of defined terms. Additionally, this rule is missing an evidence requirement for “Risk or Illness or injury.” The heading needs to include “mental” as part of “Health condition” and it contains unnecessary subsection citations. The Department proposes to capitalize all defined terms and add the evidence requirement and “mental” as a health condition in the heading. The Department also proposes to remove unnecessary subsections in the heading.</p>
R6-3-53265	<p>This rule is not clear, concise, or understandable as written because it contains minor grammatical errors such as incorrect tenses and capitalization of defined terms. This rule contains details of what should be considered when making a determination that is not appropriate for administrative rule. Lastly, the rule contains unnecessary subsection citations in the heading. The Department proposes to correct the grammatical errors by capitalizing all defined terms and ensuring proper tense is used, the details of what to consider to make a determination should be removed and incorporated into Department policy. The Department also proposes to remove unnecessary subsection citations in the heading.</p>
R6-3-53295	<p>This rule is not clear, concise, or understandable as written because it is not in compliance with A.R.S. § 23-776, which states that after the first four weeks of a benefit period, the Department shall consider any employment offer that pays one hundred twenty percent of the individual’s weekly benefit amount to be suitable work. The Department proposes to repeal this rule because the Department provides alternative methods for determining suitability after the first four weeks of a benefit period.</p>

R6-3-53330	This rule is not clear, concise, or understandable as written because it contains minor grammatical errors such as incorrect tense and capitalization of defined terms, as well as outdated wording such as gender-specific references and uses language such as “must.” Lastly, this rule contains unnecessary subsection citations in the heading. The Department proposes to correct the grammatical errors and outdated wording by capitalizing all defined terms. removing gender-specific references and changing “must” to “shall.” The Department also proposes to remove unnecessary subsection citations in the heading.
R6-3-53335	This rule is not clear, concise, or understandable as written because it contains minor grammatical errors such as incorrect tense and capitalization of defined terms, as well as outdated wording such as gender-specific references. Additionally, this rule is not in compliance with state law A.R.S.§ 23-776. Lastly, the rule contains unnecessary subsection citations in the heading. The Department proposes to amend the rule to incorporate state law, A.R.S.§ 23-776 (B)(2) and (C) to add the requirements outlined after the first four weeks of a benefit period the Department shall consider any employment offer that pays one hundred twenty percent of the individual’s weekly benefit amount to be suitable work. The Department also proposes to correct the grammatical errors and outdated wording by capitalizing all defined terms and removing gender-specific references. The Department also proposes to remove unnecessary subsection citations in the heading.
R6-3-53365	This rule is not clear, concise, or understandable as written because it contains minor grammatical errors such as incorrect tenses and capitalization of defined terms. This rule also contains a generalization that is inappropriate for administrative rule, as well as unnecessary subsection citations in the heading. The Department proposes to correct the grammatical errors and outdated wording by capitalizing all defined terms. The Department also proposes to remove unnecessary subsection citations in the heading and to remove the generalization.
R6-3-53380	This rule is not clear, concise, or understandable as written because it contains minor grammatical errors such as incorrect tense and capitalization of defined terms, as well as outdated wording such as gender-specific references. Lastly, this rule contains unnecessary subsection citations in the heading. The Department proposes to correct the grammatical errors and outdated wording by capitalizing all defined terms and removing gender-specific references. The Department also proposes to remove unnecessary subsection citations in the heading.
R6-3-53450	This rule is not clear, concise, or understandable as written because it contains minor grammatical errors, outdated language, and formatting issues. Additionally, this rule contains details of what to consider to make a determination that are not appropriate for administrative rule. Lastly, the rule contains unnecessary subsection citations in the heading. The Department proposes to correct the grammatical errors, outdated language, and remove gender-specific references . The Department proposes removing the details of what to consider to make a determination and incorporating those details into Department policy. The Department also proposes to remove unnecessary subsection citations in the heading.
R6-3-53475	This rule is not clear, concise, or understandable as written because it contains minor grammatical errors such as incorrect tense and capitalization of defined terms, as well as outdated wording such as gender-specific references and

	incomplete language for A.R.S. § 23-776 (B). The Department proposes to correct the grammatical errors and outdated wording by capitalizing all defined terms and removing gender-specific references and incomplete language for A.R.S. § 23-766 (B), as complete language is available in the state law.
R6-3-53480	This rule is not clear, concise, or understandable as written because it only reiterates state law A.R.S. § 23-776(C) (1). The Department proposes to repeal this rule as it does not provide additional information from statute and is therefore not necessary.
R6-3-53500	This rule is not clear, concise, or understandable as written because it contains minor grammatical errors such as incorrect tense and capitalization of defined terms such as gender-specific references and outdated wording such as “need” and unnecessary keywords and phrases. Additionally, this rule is not in compliance with A.R.S. § 23-776. The Department proposes to amend the rule to incorporate A.R.S. § 23-776 (B)(2) and (C) to add the requirements outlined after the first four weeks of a benefit period the Department shall consider any employment offer that pays one hundred twenty percent of the individual’s weekly benefit amount to be suitable work. The Department also proposes to correct the grammatical errors and outdated wording by capitalizing all defined terms, removing gender-specific references and changing “need” to “shall”.
R6-3-53510	This rule is not clear, concise, or understandable as written because it contains minor grammatical errors such as incorrect tenses and capitalization of defined terms. Additionally, this rule is not in compliance with A.R.S. § 23-776. The Department proposes to amend the rule to incorporate state law, A.R.S. § 23-776 (B)(2) and (C) to add the requirements outlined after the first four weeks of a benefit period the Department shall consider any employment offer that pays one hundred twenty percent of the individual’s weekly benefit amount to be suitable work. The Department also proposes to correct the grammatical errors and outdated wording by capitalizing all defined terms.
R6-3-53515	This rule is not clear, concise, or understandable as written because it contains minor grammatical errors such as incorrect tense and capitalization of defined terms, gender-specific references, and outdated terms such as “must” and “which should”. Additionally, this rule contains details of what to consider when making a determination that belongs in policy. This rule also contains unnecessary subsection citations in the heading. The Department proposes to correct the grammatical errors and outdated wording by capitalizing all defined terms, changing “must” to “shall” and “which should” to “that shall” and removing the details of what to consider to make a determination and incorporating those details into Department policy. The Department also proposes to remove unnecessary subsection citations in the heading.
R6-3-5460	This rule is not clear, concise, or understandable because it has grammatical errors including incorrect capitalization for defined terms throughout, and has outdated wording such as gender-specific references. This rule also contains unnecessary subsection citations in the heading. The Department proposes to correct the grammatical errors by capitalizing defined terms and address the gender specific references by replacing “he’ and ‘his” with “the Claimant.” The Department also proposes to remove unnecessary subsection citations in the heading.
R6-3-5475	This rule is not clear, concise, or understandable because it has grammatical errors including incorrect capitalization for defined terms throughout, includes misplaced

	<p>definitions such as “Department” and “Personal Identification Number (PIN)”, uses improper formatting for citing other rules, and does not specify whether “days’ refers to calendar days or business days. This rule also neglects to mention the Department’s responsibility to provide individuals with information about how to file a claim. The Department proposes to correct the grammatical errors by capitalizing defined terms, move the misplaced definitions to R6-3-1301, correct the formatting for citing other rules, and replace “days” with “Calendar days,” and add information regarding the Department’s responsibility to provide information about how to file a claim.</p>
R6-3-5495	<p>This rule is not clear, concise, or understandable because it has grammatical errors including incorrect capitalization for defined terms throughout, outdated sentence structure, and includes a misplaced definition (“last employment”). This rule also contains section formatting not compliant with the standard. The Department proposes to correct the grammatical errors by capitalizing defined terms, update sentence structure, relocate the misplaced definition to this article's definitions section and remove “Definition of Last Employment” from the title. The Department also proposes to correct the section formatting to comply with other sections.</p>
R6-3-54100	<p>This rule is not clear, concise, or understandable because it has grammatical errors including incorrect capitalization for defined terms throughout, outdated sentence structure, and uses improper formatting for citing other rules. This rule also contains misplaced definitions and section formatting not compliant with the standard, as well as incorrect A.R.S. citations. The Department proposes to correct the grammatical errors by capitalizing defined terms, updating sentence structure, and correcting the formatting for other rules. The Department also proposes to move the misplaced definitions to the definitions section for this article. The Department also proposes to correct the section formatting to comply with other sections and to update the A.R.S. citations that are inaccurate.</p>
R6-3-54340	<p>This rule is not clear, concise, or understandable because it is entitled “Overpayments (Miscellaneous)” but the title is misleading because the body of the rule contains information regarding administrative penalties. This rule contains a lengthy quotation from statute and uses improper section formatting. This rule contains multiple misplaced definitions. Also, this rule has grammatical errors including incorrect capitalization for defined terms throughout. The Department proposes to correct the title of R6-3-54340 with the title of “Administrative Penalty” and capitalize all defined terms. The Department also proposes to remove the quotation and replace it with a reference to the applicable statute, and to correct the section formatting to align with the standard. Lastly, the Department proposes to remove the definitions from the rule and relocate them to the definitions section for this article.</p>
R6-3-55415	<p>This rule is not clear, concise, or understandable because it pertains to availability and ability to work which is covered in Article 52 and this rule is currently part of Article 55, relating to total and partial unemployment. The Department proposes to repeal this rule and move the rule content to R6-3-52415 as section C.</p>
R6-3-55460	<p>This rule is not clear, concise, or understandable because it has grammatical errors such as improper capitalization and abbreviation. This rule also uses improper formatting for citing other rules, the A.R.S., and the federal rule for unpaid overtime or minimum wages. The Department proposes to correct the grammatical errors by capitalizing defined terms and abbreviating where appropriate, correcting the formatting for other rules and the A.R.S. that are cited, and add the Code of Federal Regulations (29 CFR 548) to the rule.</p>

R6-3-5601	This rule is not clear, concise, or understandable because it has outdated terminology and definitions, and it has grammatical errors including incorrect capitalization for defined terms throughout. This rule also uses improper sentence structure. The Department proposes to update the terminology, correct the grammatical errors and sentence structure, and include introductory sentences for the section including the location of definitions and the section containing the definitions themselves.
R6-3-5602	This rule is not clear, concise, or understandable because it has grammatical errors including incorrect capitalization for defined terms throughout. The Department proposes to correct the grammar errors by capitalizing defined terms and removing capitalization for undefined terms in the section headings
R6-3-5603	This rule is not clear because it has grammatical errors. The Department proposes to change “the” to “a” where applicable.
R6-3-5604	This rule is not clear, concise, or understandable because it has grammatical errors, use of numbers for amounts of 10 or less, uses improper formatting for citing other rules, and includes a misplaced definition for “good faith”. The Department proposes to correct the grammatical errors by spelling out numbers of 10 or less, correct the formatting for other rules that are cited, and move the misplaced definition to the definitions section for this article, section R6-3-5601.

7. Has the agency received written criticisms of the rules within the last five years?

Yes No

If yes, please fill out the table below:

Commenter	Comment	Agency’s Response
N/A	N/A	N/A

8. Economic, small business, and consumer impact comparison:

Many of the rules in Chapter 3 were adopted without accompanying Economic Impact Statements. The Department prepared the following information to assist in an economic analysis of the current impact of these rules on Arizona.

The Unemployment Insurance Program had 151,070 employers as of September 2021, with the number fluctuating regularly as businesses open and close. Below is a summary of claims load and benefit payment activity for the past three years:

Fiscal Year	Number of Individuals Receiving at Least One Week of Regular UI	Amount of Regular UI Benefits Paid
October 1, 2020 - September 30, 2021	288,176	\$594,041,228
October 1, 2019 -	416,029	\$1,236,925,024

September 30, 2020		
October 1, 2018 - September 30, 2019	75,730	\$203,219,246

The data indicates that the unemployment rate in Arizona significantly increased due to the economic turmoil caused by the COVID-19 pandemic beginning in March 2020.

ARTICLE 13. DEFINITIONS

Article 13 consists of definitions for the terms used in various rules contained in Chapter 3 as well as related statutes. The Article was last amended in 1995, at which time the Department projected there would be no significant impact on either employers or workers, primarily due to the fact that the Article is limited to a glossary of definitions. To date, the Department has not received complaints that compliance has been costly or burdensome, leading to the conclusion that the Department’s 1995 assessment appears to have been correct.

ARTICLE 14. ADMINISTRATION AND ENFORCEMENT, ARTICLE 15. DECISIONS, HEARINGS, AND ORDERS

Article 14 contains rules for administering the UI program. The Department’s original projection at the time of adoption and subsequent amendment of the rules contained in Articles 14 and 15 was that they would not result in a significant tax increase for employers, nor would they reduce workers’ opportunity to file for and receive unemployment insurance benefits. The Department has not received complaints that compliance has been costly or burdensome, leading to the conclusion that the original projection was correct.

ARTICLE 16. FUNDS

This rule provides guidelines for issuing warrants from the unemployment insurance clearinghouse account; therefore, it has no economic impact on the taxing of employers or the paying of benefits to workers.

ARTICLE 17. CONTRIBUTIONS

The rules in Article 17 implement the state and federal mandates related to the payment of unemployment insurance taxes. Six of these rules were amended in 1995 and 1997, at which time the Department assessed economic impact and concluded that the Department’s implementation of state and federal law would not result in any significant increase in taxes or administrative burden for employers. The Department has not received complaints that

compliance has been costly or burdensome, leading to the conclusion that the original projection was correct.

ARTICLE 18. BENEFITS

For the five rules adopted in 1995 and 1997, the Department projected that the rules would not result in any substantial economic impact on workers or employers. In fact, R6-3-1810, R6-3-1811, and R6-3-1812 merely assist with the interpretation of federal and state statutes. The Department has not received complaints that compliance has been costly or burdensome, leading to the conclusion that the original projection was correct.

ARTICLE 50. VOLUNTARY LEAVING BENEFIT POLICY

Five of the rules in this article were amended in 1995 and 1997, and R6-3-50155 was amended in 2006. At the time of each amendment, the Department conducted an economic impact assessment and concluded these rules would not result in any significant increase in financial burden for employers or withholding of benefits for claimants. The Department has not received complaints that compliance has been costly or burdensome, leading to the conclusion that the original projection was correct.

The remaining rules in Article 50 were adopted with no specific economic impact assessment; however, the Department believes that the insignificant economic impact related to the five rules discussed above can be considered representative of the entire article. Moreover, there is little room for flexibility as these rules relate to the assessment of a disqualification from the receipt of unemployment insurance benefits when an individual has voluntarily left employment without good cause, which is mandated by federal and state statutes. The rules in this article merely implement this requirement.

ARTICLE 51. DISCHARGE BENEFIT POLICY

At the time of rulemaking, an assessment of the economic impact of the rules in Article 51 projected no significant costs to any person or group. Additionally, when six of these rules were amended in 1995, 1997, 2001, 2006, and 2018 the Department completed economic impact statements that confirmed the projected minimal economic impact. The Department has not received complaints that compliance has been costly or burdensome, leading to the conclusion that the original projection was correct. The assessment of a disqualification from the receipt of unemployment insurance benefits when an individual has been discharged for willful or negligent misconduct is mandated by federal and state statutes. The rules in this article merely implement this requirement.

ARTICLE 52. ABLE AND AVAILABLE BENEFIT POLICY

With the exception of R6-3-5240, which was amended in 1997, and R6-3-5205, R6-3-5240, and R6-3-52235, which were amended in 2018, the rules in Article 52 have not been changed since they were adopted in 1977 with no economic impact assessment. However, the Department believes that the determination made in 1997 and 2018, that amendments would result in no significant increase in the withholding of benefits to claimants, applies to all of the rules in Article 52. The Department has not received complaints that compliance has been costly or burdensome, leading to the conclusion that the original projection was correct. The rules in this article implement the federal and state mandate that the Department assures unemployment insurance recipients are able to and available for work.

ARTICLE 53. REFUSAL OF WORK BENEFIT POLICY

All of the rules in Article 53 were adopted prior to the requirement for completing an economic impact statement, except for R6-3-5305, which was adopted in 1997 and at which time no significant negative economic impact was projected. The Department has not received complaints that compliance has been costly or burdensome, leading to the conclusion that the original projection was correct. The Department currently maintains the position that all rules in this article have no adverse effect upon claimants' receipt of unemployment insurance benefits. Federal and state laws mandate that an individual's refusal of an offer of suitable work without good cause result in disqualification from the receipt of benefits. The rules in this section merely implement that mandate.

ARTICLE 54. BENEFIT CLAIMS, COMPUTATION, EXTENSION, AND OVERPAYMENT

When the Department amended R6-3-5460 in 2018, R6-3-5475 in 2008, and R6-3-5495 in 1997, it was projected that there would be no significant economic impact on the receipt of benefits. The remaining rules contained in Article 54 were adopted and amended prior to the requirement for completing an economic impact statement. However, eligibility for and receipt of unemployment insurance benefits is controlled by federal and state statutes. The rules in this article merely explain and implement these statutes and do not impact the receipt of unemployment insurance benefits. The Department has not received complaints that compliance has been costly or burdensome, leading to the conclusion that the original projection was correct.

ARTICLE 55. TOTAL AND PARTIAL UNEMPLOYMENT BENEFIT POLICY

Article 55 encompasses two rules: R6-3-55415 and R6-3-55460. No economic impact

statement accompanied these rules when they were adopted; however, R6-3- 55460 was amended in 2018 with the projection of minimal economic impact. The rules merely explain how the Department will apply federal and state unemployment statutes. The Department has not received complaints that compliance has been costly or burdensome, leading to the conclusion that the original projection was correct.

ARTICLE 56. LABOR DISPUTE BENEFIT POLICY

When the rules contained in Article 56 were adopted in 1997, the Department projected that they would have no significant economic impact on workers or employers. This was primarily due to the fact that the rules are extensions of federal and state statutes governing the receipt of benefits during a labor dispute, providing the Department with little discretion or flexibility. The Department has not received complaints that compliance has been costly or burdensome, leading to the conclusion that the original projection was correct.

9. Has the agency received any business competitiveness analyses of the rules?

Yes No

DES did not receive a business competitiveness analysis during this report period.

10. Has the agency completed the course of action indicated in the agency's previous five-year review report? Yes No

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

In the Department's 2016 Five-Year Review Report (submitted and approved in 2017), the Department indicated that it had received an exception to the regulatory moratorium imposed by Executive Order 2016-03 in March 2016 to make amendments to R6-3-51140, R6-3-5205, R6-3-5240, R6-3-52235, and R6-55460. These rules were amended by final rulemaking at 24 A.A.R. 1417, effective June 19, 2018 (Supp. 18-2).

In that same Five-Year Review Report, the Department also indicated that it had requested an additional exception to the regulatory moratorium that was approved in June 2017, to modify rules throughout Chapter 3, to update and revise the rules to reflect current statutes and practices, and to make the rules more clear, concise, and understandable. The Department anticipated filing a Notice of Final Rulemaking with the Council in February 2019. That action was delayed for various reasons including an extended waiting period for approval of the exception request, the reprioritization of staff and resources in response to the ongoing COVID-19 pandemic and pandemic-related economic and employment

downturns, internal staff turnover, and incomplete efforts to finalize a Notice of Proposed Rulemaking (NPR) draft for submittal to the Secretary of State for publication and public comment. The Department also anticipated COVID-19 response legislation specific to Unemployment Insurance benefits that required additional modification of the rules. The draft rules will be posted for informal stakeholder input in February 2022 for a 60-day comment period to ensure the Department adequately considered stakeholders' comments and concerns early in the rule writing process.

Finally, the Department also committed to analyze the Department's sixteen Substantive Policy Statements in the previous 5YRR pertaining to the Unemployment Insurance Program, and to incorporate appropriate eliminations of, and updates to, the statements and the rules as a result of the analysis. The completion of this task is pending, as drafting of the Notice of Proposed Rulemaking is completed.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Division of Employment and Rehabilitation Services subject matter experts and the Financial Services Administration conducted an analysis of the rules and concluded that the rules impose the least burden and cost to persons regulated by these rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives.

12. **Are the rules more stringent than corresponding federal laws?** Yes No

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

15 U.S.C. 1671 et seq.; 26 U.S.C. 3301 et seq.; 29 U.S.C. 201 et seq.; 29 U.S.C. 206 and 207; 29 U.S.C. 794; 42 U.S.C. 502(a); 42 U.S.C. 1101 et seq.; 42 U.S.C 1201 et seq.; and 42 U.S.C. 12132 et seq.

DES has determined that the rules in Chapter 3, Articles 13 through 18 and 50 through 56, are not more stringent than the corresponding federal authorities cited.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

DES has determined that A.R.S. § 41-1037 does not apply to these rules because the Agency is not proposing a new rule or an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization.

14. Proposed course of action:

If possible, please identify a month and year by which the agency plans to complete the course of action.

On July 17, 2017, the Governor's Office approved an exception to the moratorium on rulemaking declared in Executive Order 2017-02, allowing the Department to conduct rulemaking to align Title 6, Chapter 3 with federal and state laws and regulations, to address inconsistencies addressed in this report, and to make the Article more clear, concise, and understandable to the public.

While the Department provides a significant amount of clarifying information via direct claimant notifications and general public communication (including on its website and through press releases and social media posts), these methods do not carry the prescriptive effect of enactments that the Arizona Administrative Code does. Therefore, the rules require amendment to increase clarity, consistency, and conformity.

This report identifies rules in Chapter 3 that contain language that is not clear, concise, or grammatically correct. Other rules do not comply with Arizona Revised Statutes and federal law. As a result, external stakeholders including members of the general public may find it difficult to understand the operation of the UI program. Additionally, increased conformity with state and federal law mitigates against potential litigation or corrective action requirements for the Department.

DES is fortunate to have an engaged stakeholder community that actively participates in the rule writing process. The draft rules will be posted for informal stakeholder input in February 2022 for a 60-day comment period to ensure the Department adequately considered stakeholders' comments and concerns early in the rule writing process. The Department expects to receive significant feedback on the draft rules. The Department will address stakeholder feedback prior to filing a Notice of Proposed Rulemaking with the Secretary of State, which will reduce the risk of needing to engage in supplemental rulemaking and further delaying the Notice of Final Rulemaking (NFR). The Department plans to file a NFR by December 2022.

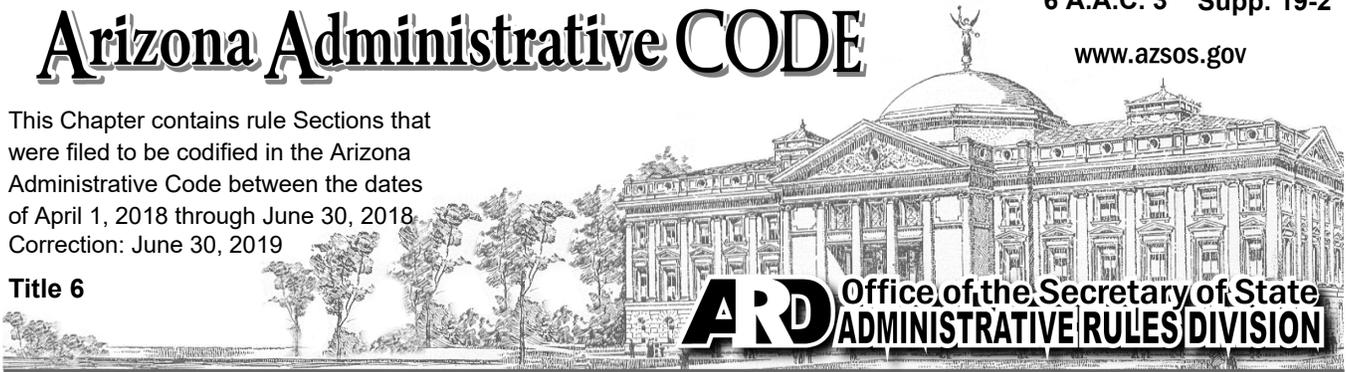
Arizona Administrative CODE

6 A.A.C. 3 Supp. 19-2

www.azsos.gov

This Chapter contains rule Sections that were filed to be codified in the Arizona Administrative Code between the dates of April 1, 2018 through June 30, 2018. Correction: June 30, 2019

Title 6



TITLE 6. ECONOMIC SECURITY

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

The table of contents on the first page contains quick links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

Rule text under R6-3-921 was not removed when the Section was recodified to A.A.C. R6-13-921 in Code Supp. 96-1.

The clerical error was corrected at the request of the Department (File No. 18-213). Since the error is being corrected this Chapter is being electronically authenticated in Supp. 19-2.

No other changes have been made to Sections in this Chapter since Supp. 18-2.

Questions about these rules? Contact:

Agency: Department of Economic Security
Department: Unemployment Insurance Administration
P. O. Box 29225
Phoenix, Arizona 85038-9225
Telephone: Toll Free: 1 (877) 600-2722
E-mail: UIAClientAdvocate@azdes.gov
Website: <https://des.az.gov/services/employment/unemployment-individual>

The release of this Chapter in Supp. 19-2 replaces Supp. 18-2, pages 1-99

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into titles. Titles are divided into chapters. A chapter includes state agency rules. Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2019 is cited as Supp. 19-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, www.azleg.gov. An agency’s authority

note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor’s notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

This chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

Rhonda Paschal, managing rules editor, assisted with the editing of this chapter.



Administrative Rules Division
The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

TITLE 6. ECONOMIC SECURITY

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

Editor's Note: Rule text under R6-3-921 was not removed when the Section was recodified to A.A.C. R6-13-921 in Code Supplement 96-1. The clerical error was corrected at the request of the Department, File No. 18-213. Clerical changes were also made to the Chapter with all "Reserved" Sections listed, with the removal of "through" where applicable, to help maintain the codification outline in the table of contents.

ARTICLE 1. RECODIFIED

Article 1, consisting of Section R6-3-103, recodified to R6-1-501, effective February 13, 1996 (Supp. 96-1). [R6-3-101, R6-3-102, and R6-3-104 previously repealed.]

Section
R6-3-101. Repealed 28
R6-3-102. Repealed 28
R6-3-103. Recodified 28
R6-3-104. Repealed 28

ARTICLE 2. RECODIFIED

Article 2, consisting of Sections R6-3-201 through R6-3-207, R6-3-209, R6-3-211, R6-3-212, and R6-3-214 through R6-3-216, recodified to A.A.C. R6-13-201 through R6-13-207, R6-13-209, R6-13-211, R6-13-212, and R6-13-214 through R6-13-614, effective February 13, 1996 (Supp. 96-1). [Sections R6-3-208, R6-3-210, and R6-3-213 previously repealed.]

Section
R6-3-201. Recodified 28
R6-3-202. Recodified 28
R6-3-203. Recodified 28
R6-3-204. Recodified 28
R6-3-205. Recodified 28
R6-3-206. Recodified 28
R6-3-207. Recodified 28
R6-3-208. Repealed 28
R6-3-209. Recodified 28
R6-3-210. Repealed 28
R6-3-211. Recodified 28
R6-3-212. Recodified 28
R6-3-213. Repealed 28
R6-3-214. Recodified 29
R6-3-215. Recodified 29
R6-3-216. Recodified 29

ARTICLE 3. RECODIFIED

Article 3, consisting of Sections R6-3-301 through R6-3-307, R6-3-309 through R6-3-311, R6-3-313, R6-3-314, R6-3-314.01, R6-3-315, R6-3-316, and R6-3-318 through R6-3-322, recodified to A.A.C. R6-13-301 through R6-13-307, R6-13-609 through R6-13-311, R6-13-313, R6-13-314, R6-13-314.01, R6-13-315, R6-13-316, and R6-13-318 through R6-13-322 effective February 13, 1996 (Supp. 96-1). [Sections R6-3-308, R6-3-312, R6-3-317, R6-3-324, and R6-3-325 previously repealed.]

Section
R6-3-301. Recodified 29
R6-3-302. Recodified 29
R6-3-303. Recodified 29
R6-3-304. Recodified 29
R6-3-305. Recodified 29
R6-3-306. Recodified 29
R6-3-307. Recodified 29

R6-3-308. Repealed29
R6-3-309. Recodified29
R6-3-310. Recodified29
R6-3-311. Recodified29
R6-3-312. Repealed29
R6-3-313. Recodified29
R6-3-314. Recodified29
R6-3-314.01. Recodified30
R6-3-315. Recodified30
R6-3-316. Recodified30
R6-3-317. Repealed30
R6-3-318. Recodified30
R6-3-319. Recodified30
R6-3-320. Recodified30
R6-3-321. Recodified30
R6-3-322. Recodified30
R6-3-323. Reserved30
R6-3-324. Repealed30
R6-3-325. Repealed30

ARTICLE 4. REPEALED

Article 4 repealed as follows: R6-3-416, R6-3-417, and R6-3-419 repealed effective March 26, 1976; R6-3-434 and R6-3-435 repealed effective October 13, 1977; R6-3-410 repealed effective June 15, 1978; and R6-3-401 through R6-3-409, R6-3-411 through R6-3-415, R6-3-418, and R6-3-420 through R6-3-433 repealed effective November 9, 1995.

Section
R6-3-401. Repealed30
R6-3-402. Repealed30
R6-3-403. Repealed30
R6-3-404. Repealed30
R6-3-405. Repealed31
R6-3-406. Repealed31
R6-3-407. Repealed31
R6-3-408. Repealed31
R6-3-409. Repealed31
R6-3-410. Repealed31
R6-3-411. Repealed31
R6-3-412. Repealed31
R6-3-413. Repealed31
R6-3-414. Repealed31
R6-3-415. Repealed31
R6-3-416. Repealed31
R6-3-417. Repealed31
R6-3-418. Repealed31
R6-3-419. Repealed31
R6-3-420. Repealed32
R6-3-421. Repealed32
R6-3-422. Repealed32
R6-3-423. Repealed32
R6-3-424. Repealed32
R6-3-425. Repealed32

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-426.	Repealed	32
R6-3-427.	Repealed	32
R6-3-428.	Repealed	32
R6-3-429.	Repealed	32
R6-3-430.	Repealed	32
R6-3-431.	Repealed	32
R6-3-432.	Repealed	32
R6-3-433.	Repealed	32
R6-3-434.	Repealed	32
R6-3-435.	Repealed	32

ARTICLE 5. REPEALED

Article 5, consisting of Sections R6-3-501 through R6-3-510 and R6-3-512 through R6-3-517, repealed effective November 9, 1995 (Supp. 96-1).

Section		
R6-3-501.	Repealed	32
R6-3-502.	Repealed	32
R6-3-503.	Repealed	32
R6-3-504.	Repealed	32
R6-3-505.	Repealed	33
R6-3-506.	Repealed	33
R6-3-507.	Repealed	33
R6-3-508.	Repealed	33
R6-3-509.	Repealed	33
R6-3-510.	Repealed	33
R6-3-511.	Reserved	33
R6-3-512.	Repealed	33
R6-3-513.	Repealed	33
R6-3-514.	Repealed	33
R6-3-515.	Repealed	33
R6-3-516.	Repealed	33
R6-3-517.	Repealed	33

ARTICLE 6. RECODIFIED

Article 6, consisting of Sections R6-3-601 through R6-3-604, recodified to R6-13-601 through R6-13-604 effective February 13, 1996 (Supp. 96-1). [Sections R6-3-605 through R6-3-615 previously repealed.]

Section		
R6-3-601.	Recodified	33
R6-3-602.	Recodified	33
R6-3-603.	Recodified	33
R6-3-604.	Recodified	33
R6-3-605.	Repealed	33
R6-3-606.	Repealed	33
R6-3-607.	Repealed	33
R6-3-608.	Repealed	33
R6-3-609.	Repealed	33
R6-3-610.	Repealed	34
R6-3-611.	Repealed	34
R6-3-612.	Repealed	34
R6-3-613.	Repealed	34
R6-3-614.	Repealed	34
R6-3-615.	Repealed	34

ARTICLE 7. RECODIFIED

Article 7, consisting of Section R6-3-701, recodified effective February 13, 1996 (Supp. 96-1).

Article 7 consisting of Section R6-3-701 adopted effective January 10, 1985.

Former Article 7 consisting of Sections R6-3-701 through R6-3-705, R6-3-707 through R6-3-716 and R6-3-720 repealed effective January 10, 1985.

Section		
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R6-3-701.	Recodified	34
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ARTICLE 8. RECODIFIED

Article 8, consisting of Sections R6-3-801 through R6-3-809, recodified to A.A.C. R6-13-801 through R6-13-809 effective February 13, 1996 (Supp. 96-1).

Article 8, consisting of Sections R6-3-801 through R6-3-809, adopted effective October 27, 1993 (Supp. 93-4).

Article 8, consisting of Sections R6-3-801 through R6-3-806, repealed effective October 27, 1993 (Supp. 93-4).

Section		
R6-3-801.	Recodified	34
R6-3-802.	Recodified	34
R6-3-803.	Recodified	34
R6-3-804.	Recodified	34
R6-3-805.	Recodified	34
R6-3-806.	Recodified	34
R6-3-807.	Recodified	34
R6-3-808.	Recodified	34
R6-3-809.	Recodified	35

ARTICLE 9. RECODIFIED

Article 9, consisting of Sections R6-3-901 through R6-3-922, recodified to A.A.C. R6-13-901 through R6-13-922 effective February 13, 1996 (Supp. 96-1).

Section		
R6-3-901.	Recodified	35
R6-3-902.	Recodified	35
R6-3-903.	Recodified	35
R6-3-904.	Recodified	35
R6-3-905.	Recodified	35
R6-3-906.	Recodified	35
R6-3-907.	Recodified	35
R6-3-908.	Recodified	35
R6-3-909.	Recodified	35
R6-3-910.	Recodified	35
R6-3-911.	Recodified	35
R6-3-912.	Recodified	35
R6-3-913.	Recodified	35
R6-3-914.	Recodified	35
R6-3-915.	Recodified	35
R6-3-916.	Recodified	35
R6-3-917.	Recodified	35
R6-3-918.	Recodified	36
R6-3-919.	Recodified	36
R6-3-920.	Recodified	36
R6-3-921.	Recodified	36
R6-3-922.	Recodified	36

ARTICLE 10. REPEALED

Article 10, consisting of Sections R6-3-1001 through R6-3-1015, repealed effective November 9, 1995 (Supp. 95-4).

Article 10, consisting of Sections R6-3-1001 through R6-3-1015, adopted effective March 26, 1976.

Former Article 10, consisting of Sections R6-3-1001 through R6-3-1021, repealed effective March 26, 1976.

Section		
R6-3-1001.	Repealed	36
R6-3-1002.	Repealed	36
R6-3-1003.	Repealed	36
R6-3-1004.	Repealed	36
R6-3-1005.	Repealed	36
R6-3-1006.	Repealed	36
R6-3-1007.	Repealed	36

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-1008. Repealed 36
R6-3-1009. Repealed 36
R6-3-1010. Repealed 36
R6-3-1011. Repealed 36
R6-3-1012. Repealed 36
R6-3-1013. Repealed 37
R6-3-1014. Repealed 37
R6-3-1015. Repealed 37

ARTICLE 11. REPEALED

Article 11 consisting of Sections R6-3-1101 through R6-3-1111 repealed effective March 26, 1976.

Section
R6-3-1101. Repealed 37
R6-3-1102. Repealed 37
R6-3-1103. Repealed 37
R6-3-1104. Repealed 37
R6-3-1105. Repealed 37
R6-3-1106. Repealed 37
R6-3-1107. Repealed 37
R6-3-1108. Repealed 37
R6-3-1109. Repealed 37
R6-3-1110. Repealed 37
R6-3-1111. Repealed 37

ARTICLE 12. RECODIFIED

Article 12, consisting of Sections R6-3-1201 through R6-3-1204 and R6-3-1206 through R6-3-1213, recodified to A.A.C. R6-13-1201 through R6-13-1204 and R6-13-1206 through R6-13-1213 effective February 13, 1996 (Supp. 96-1). [R6-3-1205 previously repealed.]

Section
R6-3-1201. Recodified 37
R6-3-1202. Recodified 37
R6-3-1203. Recodified 37
R6-3-1204. Recodified 37
R6-3-1205. Repealed 37
R6-3-1206. Recodified 37
R6-3-1207. Recodified 38
R6-3-1208. Recodified 38
R6-3-1209. Recodified 38
R6-3-1210. Recodified 38
R6-3-1211. Recodified 38
R6-3-1212. Recodified 38
R6-3-1213. Recodified 38

ARTICLE 13. DEFINITIONS

Section
R6-3-1301. Definitions 38

ARTICLE 14. ADMINISTRATION AND ENFORCEMENT

Section
R6-3-1401. Policy of Nondiscrimination 39
R6-3-1402. Repealed 40
R6-3-1403. Disclosure of Information and Confidentiality .. 40
R6-3-1404. Date of Submission and Extension of Time for Payments, Appeals, Notices, Etc. 40
R6-3-1405. Shared Work 40
R6-3-1406. Employer Elections to Cover Multi-state Workers 41
R6-3-1407. Interested Party 42
R6-3-1408. Seasonal Employment Status; Qualified Transient Lodging Employment 42

ARTICLE 15. DECISIONS, HEARINGS, AND ORDERS

Section

R6-3-1501. Renumbered43
R6-3-1502. Appeals Process, General43
R6-3-1503. Proceedings Before an Appeal Tribunal44
R6-3-1504. Review of Appeal Tribunal Decisions45
R6-3-1505. Appeals Board Proceedings46
R6-3-1506. Contribution Cases46
R6-3-1507. Appeals from Labor Dispute Determinations47

ARTICLE 16. FUNDS

Section
R6-3-1601. Transfers and warrants47

ARTICLE 17. CONTRIBUTIONS

Section
R6-3-1701. Identification of Workers Covered by Employment Security Law of Arizona47
R6-3-1702. Maintenance and inspection of records47
R6-3-1703. Employer reports48
R6-3-1704. Due date of quarterly reports, contributions, and payments in lieu of contributions49
R6-3-1705. Wages49
R6-3-1706. Combining included and excluded services50
R6-3-1707. Repealed50
R6-3-1708. Employer Charges50
R6-3-1709. Part-time Employment -- Employer Responsibilities51
R6-3-1710. Notification and review of charges to experience rating accounts51
R6-3-1711. Computation of experience rates51
R6-3-1712. Joint, Multiple, and Combined Employer Experience Rating Accounts52
R6-3-1713. Business transfers53
R6-3-1714. Repealed54
R6-3-1715. Computation of adjusted contribution rates54
R6-3-1716. Voluntary contributions55
R6-3-1717. Special Provisions for Reimbursement Employers55
R6-3-1718. Employer Refunds56
R6-3-1719. Repealed56
R6-3-1720. Exempting Certain Direct Sellers and Income Tax Preparers56
R6-3-1721. Liability determinations; review; finality57
R6-3-1722. Casual labor57
R6-3-1723. Employee defined58
R6-3-1724. Repealed61
R6-3-1725. Licensed real estate, insurance, security and cemetery salesmen61
R6-3-1726. Tips as wages61
R6-3-1727. Meals or lodging as wages61

ARTICLE 18. BENEFITS

Section
R6-3-1801. Repealed62
R6-3-1802. Repealed62
R6-3-1803. Benefit Notice and Determination62
R6-3-1804. Repealed62
R6-3-1805. Repealed62
R6-3-1806. Interstate Claimants62
R6-3-1807. Repealed62
R6-3-1808. Payment on Account of Retirement62
R6-3-1809. Eligibility for Approved Training63
R6-3-1810. Qualifications64
R6-3-1811. Redetermination of benefits64
R6-3-1812. Interest on benefit overpayments65
R6-3-1813. Overpayment Deduction Percentage65

ARTICLE 19. RECODIFIED

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

Article 19, consisting of Sections R6-3-1901 through R6-3-1911, recodified to A.A.C. R6-14-101 through R6-14-111 effective February 13, 1996 (Sup. 96-1). [Sections R6-3-1912 through R6-3-1916 previously repealed.]

Article 19, consisting of Sections R6-3-1901 through R6-3-1911, adopted effective May 24, 1979.

Former Article 19, consisting of Sections R6-3-1901 through R6-3-1916, repealed effective May 24, 1979.

Table listing sections R6-3-1901 through R6-3-1916 with their status (Recodified or Repealed) and page numbers.

ARTICLE 20. RECODIFIED

Article 20, consisting of Sections R6-3-2001 through R6-3-2018, recodified to A.A.C. R6-14-201 through R6-14-218 effective February 13, 1996 (Supp. 96-1). [R6-3-2019 and R6-3-2020 previously repealed.]

Article 20, consisting of Sections R6-3-2001 through R6-3-2018, adopted effective May 24, 1979.

Former Article 20, consisting of Sections R6-3-2001 through R6-3-2020, repealed effective May 24, 1979.

Table listing sections R6-3-2001 through R6-3-2020 with their status (Recodified or Repealed) and page numbers.

ARTICLE 21. RECODIFIED

Article 21, consisting of Sections R6-3-2101 through R6-3-2120 and R6-14-2122 through R6-3-2127 recodified to A.A.C. R6-14-301 through R6-14-320 and R6-14-322 through R6-14-328, effective February 13, 1996 (Supp. 96-1). [R6-3-2121 and R6-3-2128 through R6-3-2140 previously repealed.]

Article 21 consisting of Sections R6-3-2101 through R6-3-2128 adopted effective May 24, 1979.

Former Article 21 consisting of Sections R6-3-2101 through R6-3-2140 repealed effective May 24, 1979.

Table listing sections R6-3-2101 through R6-3-2140 with their status (Recodified or Repealed) and page numbers.

ARTICLE 22. RECODIFIED

Article 22, consisting of Sections R6-3-2201 and R6-3-2203, recodified to A.A.C. R6-14-401 and R6-14-402 effective February 13, 1996 (Supp. 96-1). [R6-3-2202 and R6-3-2204 through R6-3-2225 previously repealed.]

Article 22 consisting of Sections R6-3-2201 through R6-3-2203 adopted effective May 24, 1979.

Former Article 22 consisting of Sections R6-3-2201 through R6-3-2225 repealed effective May 24, 1979.

Table listing sections R6-3-2201 through R6-3-2209 with their status (Recodified or Repealed) and page numbers.

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-2210.	Repealed	71
R6-3-2211.	Repealed	71
R6-3-2212.	Repealed	71
R6-3-2213.	Repealed	71
R6-3-2214.	Repealed	71
R6-3-2215.	Repealed	71
R6-3-2216.	Repealed	71
R6-3-2217.	Repealed	71
R6-3-2218.	Repealed	71
R6-3-2219.	Repealed	71
R6-3-2220.	Repealed	71
R6-3-2221.	Repealed	71
R6-3-2222.	Repealed	71
R6-3-2223.	Repealed	71
R6-3-2224.	Repealed	71
R6-3-2225.	Repealed	71

ARTICLE 23. RECODIFIED

Article 23, consisting of Sections R6-3-2301 through R6-3-2307, recodified to A.A.C. R6-14-501 through R6-14-507 effective February 13, 1996 (Supp. 96-1). [R6-3-2308 through R6-3-2320 previously repealed.]

Section		
R6-3-2301.	Recodified	71
R6-3-2302.	Recodified	71
R6-3-2303.	Recodified	71
R6-3-2304.	Recodified	72
R6-3-2305.	Recodified	72
R6-3-2306.	Recodified	72
R6-3-2307.	Recodified	72
R6-3-2308.	Repealed	72
R6-3-2309.	Repealed	72
R6-3-2310.	Repealed	72
R6-3-2311.	Repealed	72
R6-3-2312.	Repealed	72
R6-3-2313.	Repealed	72
R6-3-2314.	Repealed	72
R6-3-2315.	Repealed	72
R6-3-2316.	Repealed	72
R6-3-2317.	Repealed	72
R6-3-2318.	Repealed	73
R6-3-2319.	Repealed	73
R6-3-2320.	Repealed	73

ARTICLE 24. RECODIFIED

Article 24, consisting of Sections R6-3-2401, R6-3-2402, R6-3-2404 through R6-3-2408, and R6-3-2410, recodified to A.A.C. R6-14-601, R6-14-602, R6-14-604 through R6-14-608, and R6-14-610 effective February 13, 1996 (Supp. 96-1). [R6-3-2403 previously repealed.]

Article 24 consisting of Sections R6-3-2401 through R6-3-2410 adopted effective May 24, 1979.

Former Article 24 consisting of Sections R6-3-2401 through R6-3-2403 repealed effective May 24, 1979.

Section		
R6-3-2401.	Recodified	73
R6-3-2402.	Recodified	73
R6-3-2403.	Repealed	73
R6-3-2404.	Recodified	73
R6-3-2405.	Recodified	73
R6-3-2406.	Recodified	73
R6-3-2407.	Recodified	73
R6-3-2408.	Recodified	73
R6-3-2409.	Reserved	73
R6-3-2410.	Recodified	73

ARTICLE 25. REPEALED

Article 25, consisting of Sections R6-3-2501 through R6-3-2507, repealed effective September 12, 1997 (Supp. 97-3).

Article 25 consisting of Sections R6-3-2501 through R6-3-2507 adopted as an emergency effective March 5, 1984, expired. New Article 25 consisting of Sections R6-3-2501 through R6-3-2507 adopted as a permanent Article effective June 29, 1984 (Supp. 84-3).

Former Article 25 consisting of Sections R6-3-2501 through R6-3-2515 repealed effective May 24, 1979 (Supp. 84-2).

Section		
R6-3-2501.	Repealed	73
R6-3-2502.	Repealed	73
R6-3-2503.	Repealed	73
R6-3-2504.	Repealed	74
R6-3-2505.	Repealed	74
R6-3-2506.	Repealed	74
R6-3-2507.	Repealed	74

ARTICLE 26. REPEALED

Former Article 26 consisting of Sections R6-3-2601 through R6-3-2623 repealed effective May 24, 1979.

Section		
R6-23-2601.	Repealed	74
R6-23-2602.	Repealed	74
R6-23-2603.	Repealed	74
R6-23-2604.	Repealed	74
R6-23-2605.	Repealed	74
R6-23-2606.	Repealed	74
R6-23-2607.	Repealed	74
R6-23-2608.	Repealed	74
R6-23-2609.	Repealed	74
R6-23-2610.	Repealed	74
R6-23-2611.	Repealed	74
R6-23-2612.	Repealed	74
R6-23-2613.	Repealed	74
R6-23-2614.	Repealed	74
R6-23-2615.	Repealed	74
R6-23-2616.	Repealed	74
R6-23-2617.	Repealed	74
R6-23-2618.	Repealed	74
R6-23-2619.	Repealed	74
R6-23-2620.	Repealed	74
R6-23-2621.	Repealed	74
R6-23-2622.	Repealed	74
R6-23-2623.	Repealed	75

ARTICLE 27. REPEALED

Former Article 27 consisting of Section R6-3-2701 repealed effective May 24, 1979.

Section		
R6-23-2701.	Repealed	75

ARTICLE 28. RESERVED

ARTICLE 29. RESERVED

ARTICLE 30. RESERVED

ARTICLE 31. RESERVED

ARTICLE 32. RESERVED

ARTICLE 33. RESERVED

ARTICLE 34. RESERVED

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

ARTICLE 35. REPEALED

Former Article 35 consisting of Sections R6-3-3501 through R6-3-4003 repealed effective February 15, 1978 (Supp. 78-1). R6-3-3501 through R6-3-4003, 502 Sections repealed 75

ARTICLE 36. REPEALED

Former Article 36 consisting of Sections R6-3-3501 through R6-3-4003 repealed effective February 15, 1978 (Supp. 78-1).

ARTICLE 37. REPEALED

Former Article 37 consisting of Sections R6-3-3501 through R6-3-4003 repealed effective February 15, 1978 (Supp. 78-1).

ARTICLE 38. REPEALED

Former Article 38 consisting of Sections R6-3-3501 through R6-3-4003 repealed effective February 15, 1978 (Supp. 78-1).

ARTICLE 39. REPEALED

Former Article 39 consisting of Sections R6-3-3501 through R6-3-4003 repealed effective February 15, 1978 (Supp. 78-1).

ARTICLE 40. REPEALED

Former Article 40 consisting of Sections R6-3-3501 through R6-3-4003 repealed effective February 15, 1978 (Supp. 78-1).

ARTICLE 41. REPEALED

Former Article 41 consisting of Sections R6-3-4101 through R6-3-4106 repealed effective July 9, 1980 (Supp. 80-4).

Section R6-23-4101. Repealed 75 R6-23-4102. Repealed 75 R6-23-4103. Repealed 75 R6-23-4104. Repealed 75 R6-23-4105. Repealed 75 R6-23-4106. Repealed 75

ARTICLE 42. RESERVED

ARTICLE 43. RESERVED

ARTICLE 44. RESERVED

ARTICLE 45. RESERVED

ARTICLE 46. RESERVED

ARTICLE 47. RESERVED

ARTICLE 48. RESERVED

ARTICLE 49. RESERVED

ARTICLE 50. VOLUNTARY LEAVING BENEFIT POLICY

Section R6-3-5001. Reserved 75 R6-3-5002. Reserved 75 R6-3-5003. Reserved 75 R6-3-5004. Reserved 75 R6-3-5005. General Provisions 75 R6-3-5006. Reserved 75 R6-3-5007. Reserved 76 R6-3-5008. Reserved 76 R6-3-5009. Reserved 76 R6-3-5010. Reserved 76 R6-3-5011. Reserved 76 R6-3-5012. Reserved 76 R6-3-5013. Reserved 76 R6-3-5014. Reserved 76 R6-3-5015. Reserved 76

R6-3-5016. Reserved76 R6-3-5017. Reserved76 R6-3-5018. Reserved76 R6-3-5019. Reserved76 R6-3-5020. Reserved76 R6-3-5021. Reserved76 R6-3-5022. Reserved76 R6-3-5023. Reserved76 R6-3-5024. Reserved76 R6-3-5025. Reserved76 R6-3-5026. Reserved76 R6-3-5027. Reserved76 R6-3-5028. Reserved76 R6-3-5029. Reserved76 R6-3-5030. Reserved76 R6-3-5031. Reserved76 R6-3-5032. Reserved76 R6-3-5033. Reserved76 R6-3-5034. Reserved76 R6-3-5035. Reserved76 R6-3-5036. Reserved76 R6-3-5037. Reserved76 R6-3-5038. Reserved76 R6-3-5039. Reserved76 R6-3-5040. Attendance at School or Training Course76 R6-3-5041. Reserved76 R6-3-5042. Reserved76 R6-3-5043. Reserved76 R6-3-5044. Reserved76 R6-3-5045. Reserved76 R6-3-5046. Reserved76 R6-3-5047. Reserved76 R6-3-5048. Reserved76 R6-3-5049. Reserved76 R6-3-5050. Repealed76 R6-3-5051. Reserved76 R6-3-50134. Reserved [Total Reserved 45,113]76 R6-3-50135. Quit or Discharge76 R6-3-50135.06. ...Quit or Discharge; Temporary Service Employer and Leasing Employer78 R6-3-50136. Reserved78 R6-3-50137. Reserved78 R6-3-50138. Disciplinary action (V L 138)78 R6-3-50139. Reserved78 R6-3-50140. Reserved78 R6-3-50141. Reserved78 R6-3-50142. Reserved78 R6-3-50143. Reserved78 R6-3-50144. Reserved78 R6-3-50145. Reserved78 R6-3-50146. Reserved78 R6-3-50147. Reserved78 R6-3-50148. Reserved78 R6-3-50149. Reserved78 R6-3-50150. Distance to Work78 R6-3-50151. Reserved79 R6-3-50152. Reserved79 R6-3-50153. Reserved79 R6-3-50154. Reserved79 R6-3-50155. Domestic Circumstances79 R6-3-50156. Reserved80 R6-3-50157. Reserved80 R6-3-50158. Reserved80 R6-3-50159. Reserved80 R6-3-50160. Reserved80

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-50161.	Reserved	80	R6-3-50227.	Reserved	81
R6-3-50162.	Reserved	80	R6-3-50228.	Reserved	81
R6-3-50163.	Reserved	80	R6-3-50229.	Reserved	81
R6-3-50164.	Reserved	80	R6-3-50230.	Reserved	81
R6-3-50165.	Reserved	80	R6-3-50231.	Reserved	81
R6-3-50166.	Reserved	80	R6-3-50232.	Reserved	81
R6-3-50167.	Reserved	80	R6-3-50233.	Reserved	81
R6-3-50168.	Reserved	80	R6-3-50234.	Reserved	81
R6-3-50169.	Reserved	80	R6-3-50235.	Health or physical condition (V L 235)	81
R6-3-50170.	Reserved	80	R6-3-50236.	Reserved	82
R6-3-50171.	Reserved	80	R6-3-50237.	Reserved	82
R6-3-50172.	Reserved	80	R6-3-50238.	Reserved	82
R6-3-50173.	Reserved	80	R6-3-50239.	Reserved	82
R6-3-50174.	Reserved	80	R6-3-50240.	Reserved	82
R6-3-50175.	Reserved	80	R6-3-50241.	Reserved	82
R6-3-50176.	Reserved	80	R6-3-50242.	Reserved	82
R6-3-50177.	Reserved	80	R6-3-50243.	Reserved	82
R6-3-50178.	Reserved	80	R6-3-50244.	Reserved	82
R6-3-50179.	Reserved	80	R6-3-50245.	Reserved	82
R6-3-50180.	Reserved	80	R6-3-50246.	Reserved	82
R6-3-50181.	Reserved	80	R6-3-50247.	Reserved	82
R6-3-50182.	Reserved	80	R6-3-50248.	Reserved	82
R6-3-50183.	Reserved	80	R6-3-50249.	Reserved	82
R6-3-50184.	Reserved	80	R6-3-50250.	Reserved	83
R6-3-50185.	Reserved	80	R6-3-50251.	Reserved	83
R6-3-50186.	Reserved	80	R6-3-50252.	Reserved	83
R6-3-50187.	Reserved	80	R6-3-50253.	Reserved	83
R6-3-50188.	Reserved	80	R6-3-50254.	Reserved	83
R6-3-50189.	Reserved	80	R6-3-50255.	Reserved	83
R6-3-50190.	Evidence (V L 190)	80	R6-3-50256.	Reserved	83
R6-3-50191.	Reserved	81	R6-3-50257.	Reserved	83
R6-3-50192.	Reserved	81	R6-3-50258.	Reserved	83
R6-3-50193.	Reserved	81	R6-3-50259.	Reserved	83
R6-3-50194.	Reserved	81	R6-3-50260.	Reserved	83
R6-3-50195.	Reserved	81	R6-3-50261.	Reserved	83
R6-3-50196.	Reserved	81	R6-3-50262.	Reserved	83
R6-3-50197.	Reserved	81	R6-3-50263.	Reserved	83
R6-3-50198.	Reserved	81	R6-3-50264.	Reserved	83
R6-3-50199.	Reserved	81	R6-3-50265.	Reserved	83
R6-3-50200.	Reserved	81	R6-3-50266.	Reserved	83
R6-3-50201.	Reserved	81	R6-3-50267.	Reserved	83
R6-3-50202.	Reserved	81	R6-3-50268.	Reserved	83
R6-3-50203.	Reserved	81	R6-3-50269.	Reserved	83
R6-3-50204.	Reserved	81	R6-3-50270.	Reserved	83
R6-3-50205.	Reserved	81	R6-3-50271.	Reserved	83
R6-3-50206.	Reserved	81	R6-3-50272.	Reserved	83
R6-3-50207.	Reserved	81	R6-3-50273.	Reserved	83
R6-3-50208.	Reserved	81	R6-3-50274.	Reserved	83
R6-3-50209.	Reserved	81	R6-3-50275.	Reserved	83
R6-3-50210.	Good cause (V L 210)	81	R6-3-50276.	Reserved	83
R6-3-50211.	Reserved	81	R6-3-50277.	Reserved	83
R6-3-50212.	Reserved	81	R6-3-50278.	Reserved	83
R6-3-50213.	Reserved	81	R6-3-50279.	Reserved	83
R6-3-50214.	Reserved	81	R6-3-50280.	Reserved	83
R6-3-50215.	Reserved	81	R6-3-50281.	Reserved	83
R6-3-50216.	Reserved	81	R6-3-50282.	Reserved	83
R6-3-50217.	Reserved	81	R6-3-50283.	Reserved	83
R6-3-50218.	Reserved	81	R6-3-50284.	Reserved	83
R6-3-50219.	Reserved	81	R6-3-50285.	Reserved	83
R6-3-50220.	Reserved	81	R6-3-50286.	Reserved	83
R6-3-50221.	Reserved	81	R6-3-50287.	Reserved	83
R6-3-50222.	Reserved	81	R6-3-50288.	Reserved	83
R6-3-50223.	Reserved	81	R6-3-50289.	Reserved	83
R6-3-50224.	Reserved	81	R6-3-50290.	Reserved	83
R6-3-50225.	Reserved	81	R6-3-50291.	Reserved	83
R6-3-50226.	Reserved	81	R6-3-50292.	Reserved	83

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-50293.	Reserved	83	R6-3-50359.	Reserved	84
R6-3-50294.	Reserved	83	R6-3-50360.	Personal affairs (V L 360)	84
R6-3-50295.	Reserved	83	R6-3-50361.	Reserved	84
R6-3-50296.	Reserved	83	R6-3-50362.	Reserved	84
R6-3-50297.	Reserved	83	R6-3-50363.	Reserved	84
R6-3-50298.	Reserved	83	R6-3-50364.	Reserved	84
R6-3-50299.	Reserved	83	R6-3-50365.	Prospect of other work (V L 365)	84
R6-3-50300.	Reserved	83	R6-3-50366.	Reserved	85
R6-3-50301.	Reserved	83	R6-3-50367.	Reserved	85
R6-3-50302.	Reserved	83	R6-3-50368.	Reserved	85
R6-3-50303.	Reserved	83	R6-3-50369.	Reserved	85
R6-3-50304.	Reserved	83	R6-3-50370.	Reserved	85
R6-3-50305.	Repealed	83	R6-3-50371.	Reserved	85
R6-3-50306.	Reserved	83	R6-3-50372.	Reserved	85
R6-3-50307.	Reserved	83	R6-3-50373.	Reserved	85
R6-3-50308.	Reserved	83	R6-3-50374.	Reserved	85
R6-3-50309.	Reserved	83	R6-3-50375.	Reserved	85
R6-3-50310.	Reserved	83	R6-3-50376.	Reserved	85
R6-3-50311.	Reserved	83	R6-3-50377.	Reserved	85
R6-3-50312.	Reserved	83	R6-3-50378.	Reserved	85
R6-3-50313.	Reserved	83	R6-3-50379.	Reserved	85
R6-3-50314.	Reserved	83	R6-3-50380.	Repealed	85
R6-3-50315.	New work (V L 315)	83	R6-3-50381.	Reserved	85
R6-3-50316.	Reserved	83	R6-3-50382.	Reserved	85
R6-3-50317.	Reserved	83	R6-3-50383.	Reserved	85
R6-3-50318.	Reserved	83	R6-3-50384.	Reserved	85
R6-3-50319.	Reserved	84	R6-3-50385.	Repealed	85
R6-3-50320.	Reserved	84	R6-3-50386.	Reserved	85
R6-3-50321.	Reserved	84	R6-3-50387.	Reserved	85
R6-3-50322.	Reserved	84	R6-3-50388.	Reserved	85
R6-3-50323.	Reserved	84	R6-3-50389.	Reserved	85
R6-3-50324.	Reserved	84	R6-3-50390.	Reserved	85
R6-3-50325.	Reserved	84	R6-3-50391.	Reserved	85
R6-3-50326.	Reserved	84	R6-3-50392.	Reserved	85
R6-3-50327.	Reserved	84	R6-3-50393.	Reserved	85
R6-3-50328.	Reserved	84	R6-3-50394.	Reserved	85
R6-3-50329.	Reserved	84	R6-3-50395.	Reserved	85
R6-3-50330.	Reserved	84	R6-3-50396.	Reserved	85
R6-3-50331.	Reserved	84	R6-3-50397.	Reserved	85
R6-3-50332.	Reserved	84	R6-3-50398.	Reserved	85
R6-3-50333.	Reserved	84	R6-3-50399.	Reserved	85
R6-3-50334.	Reserved	84	R6-3-50400.	Reserved	85
R6-3-50335.	Reserved	84	R6-3-50401.	Reserved	85
R6-3-50336.	Reserved	84	R6-3-50402.	Reserved	85
R6-3-50337.	Reserved	84	R6-3-50403.	Reserved	85
R6-3-50338.	Reserved	84	R6-3-50404.	Reserved	85
R6-3-50339.	Reserved	84	R6-3-50405.	Reserved	85
R6-3-50340.	Reserved	84	R6-3-50406.	Reserved	85
R6-3-50341.	Reserved	84	R6-3-50407.	Reserved	85
R6-3-50342.	Reserved	84	R6-3-50408.	Reserved	85
R6-3-50343.	Reserved	84	R6-3-50409.	Reserved	85
R6-3-50344.	Reserved	84	R6-3-50410.	Reserved	85
R6-3-50345.	Retirement	84	R6-3-50411.	Reserved	85
R6-3-50346.	Reserved	84	R6-3-50412.	Reserved	85
R6-3-50347.	Reserved	84	R6-3-50413.	Reserved	85
R6-3-50348.	Reserved	84	R6-3-50414.	Reserved	85
R6-3-50349.	Reserved	84	R6-3-50415.	Reserved	85
R6-3-50350.	Reserved	84	R6-3-50416.	Reserved	85
R6-3-50351.	Reserved	84	R6-3-50417.	Reserved	85
R6-3-50352.	Reserved	84	R6-3-50418.	Reserved	85
R6-3-50353.	Reserved	84	R6-3-50419.	Reserved	85
R6-3-50354.	Reserved	84	R6-3-50420.	Reserved	85
R6-3-50355.	Reserved	84	R6-3-50421.	Reserved	85
R6-3-50356.	Reserved	84	R6-3-50422.	Reserved	85
R6-3-50357.	Reserved	84	R6-3-50423.	Reserved	85
R6-3-50358.	Reserved	84	R6-3-50424.	Reserved	85

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-50425.	Reserved	85	R6-3-50491.	Reserved	88
R6-3-50426.	Reserved	85	R6-3-50492.	Reserved	88
R6-3-50427.	Reserved	85	R6-3-50493.	Reserved	88
R6-3-50428.	Reserved	85	R6-3-50494.	Reserved	88
R6-3-50429.	Reserved	85	R6-3-50495.	Repealed	88
R6-3-50430.	Reserved	85	R6-3-50496.	Reserved	88
R6-3-50431.	Reserved	85	R6-3-50497.	Reserved	88
R6-3-50432.	Reserved	85	R6-3-50498.	Reserved	88
R6-3-50433.	Reserved	85	R6-3-50499.	Reserved	88
R6-3-50434.	Reserved	85	R6-3-50500.	Wages (V L 500)	88
R6-3-50435.	Reserved	85	R6-3-50501.	Reserved	89
R6-3-50436.	Reserved	85	R6-3-50502.	Reserved	89
R6-3-50437.	Reserved	85	R6-3-50503.	Reserved	89
R6-3-50438.	Reserved	85	R6-3-50504.	Reserved	89
R6-3-50439.	Reserved	86	R6-3-50505.	Repealed	89
R6-3-50440.	Repealed	86	R6-3-50506.	Reserved	89
R6-3-50441.	Reserved	86	R6-3-50507.	Reserved	89
R6-3-50442.	Reserved	86	R6-3-50508.	Reserved	89
R6-3-50443.	Reserved	86	R6-3-50509.	Reserved	89
R6-3-50444.	Reserved	86	R6-3-50510.	Reserved	89
R6-3-50445.	Reserved	86	R6-3-50511.	Reserved	89
R6-3-50446.	Reserved	86	R6-3-50512.	Reserved	89
R6-3-50447.	Reserved	86	R6-3-50513.	Reserved	89
R6-3-50448.	Reserved	86	R6-3-50514.	Reserved	89
R6-3-50449.	Reserved	86	R6-3-50515.	Working conditions (V L 515)	89
R6-3-50450.	Time (V L 450)	86			
R6-3-50451.	Reserved	87	ARTICLE 51. DISCHARGE BENEFIT POLICY		
R6-3-50452.	Reserved	87	Section		
R6-3-50453.	Reserved	87	R6-3-5101.	Reserved	90
R6-3-50454.	Reserved	87	R6-3-5102.	Reserved	90
R6-3-50455.	Reserved	87	R6-3-5103.	Reserved	90
R6-3-50456.	Reserved	87	R6-3-5104.	Reserved	90
R6-3-50457.	Reserved	87	R6-3-5105.	General (Misconduct)	90
R6-3-50458.	Reserved	87	R6-3-5106.	Reserved	91
R6-3-50459.	Reserved	87	R6-3-5107.	Reserved	91
R6-3-50460.	Reserved	87	R6-3-5108.	Reserved	91
R6-3-50461.	Reserved	87	R6-3-5109.	Reserved	91
R6-3-50462.	Reserved	87	R6-3-5110.	Reserved	91
R6-3-50463.	Reserved	87	R6-3-5111.	Reserved	91
R6-3-50464.	Reserved	87	R6-3-5112.	Reserved	91
R6-3-50465.	Reserved	87	R6-3-5113.	Reserved	91
R6-3-50466.	Reserved	87	R6-3-5114.	Reserved	91
R6-3-50467.	Reserved	87	R6-3-5115.	Absence (Misconduct 15)	91
R6-3-50468.	Reserved	87	R6-3-5116.	Reserved	92
R6-3-50469.	Reserved	87	R6-3-5117.	Reserved	92
R6-3-50470.	Reserved	87	R6-3-5118.	Reserved	92
R6-3-50471.	Reserved	87	R6-3-5119.	Reserved	92
R6-3-50472.	Reserved	87	R6-3-5120.	Reserved	92
R6-3-50473.	Reserved	87	R6-3-5121.	Reserved	92
R6-3-50474.	Reserved	87	R6-3-5122.	Reserved	92
R6-3-50475.	Union relations (V L 475)	87	R6-3-5123.	Reserved	92
R6-3-50476.	Reserved	87	R6-3-5124.	Reserved	92
R6-3-50477.	Reserved	87	R6-3-5125.	Reserved	92
R6-3-50478.	Reserved	87	R6-3-5126.	Reserved	92
R6-3-50479.	Reserved	87	R6-3-5127.	Reserved	92
R6-3-50480.	Reserved	87	R6-3-5128.	Reserved	92
R6-3-50481.	Reserved	87	R6-3-5129.	Reserved	92
R6-3-50482.	Reserved	87	R6-3-5130.	Reserved	92
R6-3-50483.	Reserved	87	R6-3-5131.	Reserved	92
R6-3-50484.	Reserved	87	R6-3-5132.	Reserved	92
R6-3-50485.	Reserved	87	R6-3-5133.	Reserved	92
R6-3-50486.	Reserved	87	R6-3-5134.	Reserved	92
R6-3-50487.	Reserved	88	R6-3-5135.	Reserved	92
R6-3-50488.	Reserved	88	R6-3-5136.	Reserved	92
R6-3-50489.	Reserved	88	R6-3-5137.	Reserved	92
R6-3-50490.	Reserved	88	R6-3-5138.	Reserved	92

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-5139.	Reserved	92	R5-3-51150.	Reserved	95
R6-3-5140.	Reserved	92	R5-3-51151.	Reserved	95
R6-3-5141.	Reserved	92	R5-3-51152.	Reserved	95
R6-3-5142.	Reserved	92	R5-3-51153.	Reserved	95
R6-3-5143.	Reserved	92	R5-3-51154.	Reserved	95
R6-3-5144.	Reserved	92	R5-3-51155.	Reserved	95
R6-3-5145.	Attitude toward employer (Misconduct 45)	92	R5-3-51156.	Reserved	95
R6-3-5146.	Reserved	94	R5-3-51157.	Reserved	95
R6-3-5147.	Reserved	94	R5-3-51158.	Reserved	95
R6-3-5148.	Reserved	94	R5-3-51159.	Reserved	95
R6-3-5149.	Reserved	94	R5-3-51160.	Reserved	95
R6-3-5150.	Reserved	94	R5-3-51161.	Reserved	95
R6-3-5151.	Reserved	94	R5-3-51162.	Reserved	95
R6-3-5152.	Reserved	94	R5-3-51163.	Reserved	95
R6-3-5153.	Reserved	94	R5-3-51164.	Reserved	95
R6-3-5154.	Reserved	94	R5-3-51165.	Reserved	95
R6-3-5155.	Reserved	94	R5-3-51166.	Reserved	95
R6-3-5156.	Reserved	94	R5-3-51167.	Reserved	95
R6-3-5157.	Reserved	94	R5-3-51168.	Reserved	95
R6-3-5158.	Reserved	94	R5-3-51169.	Reserved	95
R6-3-5159.	Reserved	94	R5-3-51170.	Reserved	95
R6-3-5160.	Reserved	94	R5-3-51171.	Reserved	95
R6-3-5161.	Reserved	94	R5-3-51172.	Reserved	95
R6-3-5162.	Reserved	94	R5-3-51173.	Reserved	95
R6-3-5163.	Reserved	94	R5-3-51174.	Reserved	95
R6-3-5164.	Reserved	94	R5-3-51175.	Reserved	95
R6-3-5165.	Reserved	94	R5-3-51176.	Reserved	95
R6-3-5166.	Reserved	94	R5-3-51177.	Reserved	95
R6-3-5167.	Reserved	94	R5-3-51178.	Reserved	95
R6-3-5168.	Reserved	94	R5-3-51179.	Reserved	95
R6-3-5169.	Reserved	94	R5-3-51180.	Reserved	95
R6-3-5170.	Reserved	94	R5-3-51181.	Reserved	95
R6-3-5171.	Reserved	94	R5-3-51182.	Reserved	95
R6-3-5172.	Reserved	94	R5-3-51183.	Reserved	95
R6-3-5173.	Reserved	94	R5-3-51184.	Reserved	95
R6-3-5174.	Reserved	94	R5-3-51185.	Reserved	95
R6-3-5175.	Reserved	94	R5-3-51186.	Reserved	95
R6-3-5176.	Reserved	94	R5-3-51187.	Reserved	95
R6-3-5177.	Reserved	94	R5-3-51188.	Reserved	95
R6-3-5178.	Reserved	94	R6-3-51189.	Reserved	95
R6-3-5179.	Reserved	94	R6-3-51190.	Evidence (Misconduct 190)	95
R6-3-5180.	Reserved	94	R6-3-51191.	Reserved	96
R6-3-5181.	Reserved	94	R6-3-51192.	Reserved	96
R6-3-5182.	Reserved	94	R6-3-51193.	Reserved	96
R6-3-5183.	Reserved	94	R6-3-51194.	Reserved	96
R6-3-5184.	Reserved	94	R6-3-51195.	Reserved	96
R6-3-5185.	Connected with work (Misconduct 85)	94	R6-3-51196.	Reserved	96
R6-3-5186.	Reserved	94	R6-3-51197.	Reserved	96
	through		R6-3-51198.	Reserved	96
R6-3-51134.	Reserved [45,948 Sections Reserved]	94	R6-3-51199.	Reserved	96
R6-3-51135.	Repealed	94	R6-3-51200.	Reserved	96
R6-3-51136.	Reserved	94	R6-3-51201.	Reserved	96
R6-3-51137.	Reserved	94	R6-3-51202.	Reserved	96
R6-3-51138.	Reserved	94	R6-3-51203.	Reserved	96
R6-3-51139.	Reserved	94	R6-3-51204.	Reserved	96
R6-3-51140.	Misappropriation of Funds or Property; Falsification of Employment Records	94	R6-3-51205.	Reserved	96
R5-3-51141.	Reserved	95	R6-3-51206.	Reserved	96
R5-3-51142.	Reserved	95	R6-3-51207.	Reserved	96
R5-3-51143.	Reserved	95	R6-3-51208.	Reserved	96
R5-3-51144.	Reserved	95	R6-3-51209.	Reserved	96
R5-3-51145.	Reserved	95	R6-3-51210.	Reserved	96
R5-3-51146.	Reserved	95	R6-3-51211.	Reserved	96
R5-3-51147.	Reserved	95	R6-3-51212.	Reserved	96
R5-3-51148.	Reserved	95	R6-3-51213.	Reserved	96
R5-3-51149.	Reserved	95	R6-3-51214.	Reserved	96
			R6-3-51215.	Reserved	96

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-51216.	Reserved	96	R6-3-51281.	Reserved	97
R6-3-51217.	Reserved	96	R6-3-51282.	Reserved	97
R6-3-51218.	Reserved	96	R6-3-51283.	Reserved	97
R6-3-51219.	Reserved	96	R6-3-51284.	Reserved	97
R6-3-51220.	Reserved	96	R6-3-51285.	Reserved	97
R6-3-51221.	Reserved	96	R6-3-51286.	Reserved	97
R6-3-51222.	Reserved	96	R6-3-51287.	Reserved	97
R6-3-51223.	Reserved	96	R6-3-51288.	Reserved	97
R6-3-51224.	Reserved	96	R6-3-51289.	Reserved	97
R6-3-51225.	Reserved	96	R6-3-51290.	Reserved	97
R6-3-51226.	Reserved	96	R6-3-51291.	Reserved	97
R6-3-51227.	Reserved	96	R6-3-51292.	Reserved	97
R6-3-51228.	Reserved	96	R6-3-51293.	Reserved	97
R6-3-51229.	Reserved	96	R6-3-51294.	Reserved	97
R6-3-51230.	Reserved	96	R6-3-51295.	Reserved	97
R6-3-51231.	Reserved	96	R6-3-51296.	Reserved	97
R6-3-51232.	Reserved	96	R6-3-51297.	Reserved	97
R6-3-51233.	Reserved	96	R6-3-51298.	Reserved	97
R6-3-51234.	Reserved	96	R6-3-51299.	Reserved	97
R6-3-51235.	Health or physical condition (Misconduct 235)	96	R6-3-51300.	Manner of performing work (Misconduct 300)	97
R6-3-51236.	Reserved	96	R6-3-51301.	Reserved	98
R6-3-51237.	Reserved	96	R6-3-51302.	Reserved	98
R6-3-51238.	Reserved	96	R6-3-51303.	Reserved	98
R6-3-51239.	Reserved	96	R6-3-51304.	Reserved	98
R6-3-51240.	Reserved	96	R6-3-51305.	Reserved	98
R6-3-51241.	Reserved	96	R6-3-51306.	Reserved	98
R6-3-51242.	Reserved	96	R6-3-51307.	Reserved	98
R6-3-51243.	Reserved	96	R6-3-51308.	Reserved	98
R6-3-51244.	Reserved	96	R6-3-51309.	Reserved	98
R6-3-51245.	Reserved	96	R6-3-51310.	Neglect of duty (Misconduct 310)	98
R6-3-51246.	Reserved	97	R6-3-51311.	Reserved	98
R6-3-51247.	Reserved	97	R6-3-51312.	Reserved	98
R6-3-51248.	Reserved	97	R6-3-51313.	Reserved	98
R6-3-51249.	Reserved	97	R6-3-51314.	Reserved	98
R6-3-51250.	Reserved	97	R6-3-51315.	Reserved	98
R6-3-51251.	Reserved	97	R6-3-51316.	Reserved	98
R6-3-51252.	Reserved	97	R6-3-51317.	Reserved	98
R6-3-51253.	Reserved	97	R6-3-51318.	Reserved	98
R6-3-51254.	Reserved	97	R6-3-51319.	Reserved	98
R6-3-51255.	Insubordination (Misconduct 255)	97	R6-3-51320.	Reserved	98
R6-3-51256.	Reserved	97	R6-3-51321.	Reserved	98
R6-3-51257.	Reserved	97	R6-3-51322.	Reserved	98
R6-3-51258.	Reserved	97	R6-3-51323.	Reserved	98
R6-3-51259.	Reserved	97	R6-3-51324.	Reserved	98
R6-3-51260.	Reserved	97	R6-3-51325.	Reserved	98
R6-3-51261.	Reserved	97	R6-3-51326.	Reserved	98
R6-3-51262.	Reserved	97	R6-3-51327.	Reserved	98
R6-3-51263.	Reserved	97	R6-3-51328.	Reserved	99
R6-3-51264.	Reserved	97	R6-3-51329.	Reserved	99
R6-3-51265.	Reserved	97	R6-3-51330.	Reserved	99
R6-3-51266.	Reserved	97	R6-3-51331.	Reserved	99
R6-3-51267.	Reserved	97	R6-3-51332.	Reserved	99
R6-3-51268.	Reserved	97	R6-3-51333.	Reserved	99
R6-3-51269.	Reserved	97	R6-3-51334.	Reserved	99
R6-3-51270.	Intoxication and use of intoxicants (Misconduct 270)	97	R6-3-51335.	Reserved	99
R6-3-51271.	Reserved	97	R6-3-51336.	Reserved	99
R6-3-51272.	Reserved	97	R6-3-51337.	Reserved	99
R6-3-51273.	Reserved	97	R6-3-51338.	Reserved	99
R6-3-51274.	Reserved	97	R6-3-51339.	Reserved	99
R6-3-51275.	Reserved	97	R6-3-51340.	Reserved	99
R6-3-51276.	Reserved	97	R6-3-51341.	Reserved	99
R6-3-51277.	Reserved	97	R6-3-51342.	Reserved	99
R6-3-51278.	Reserved	97	R6-3-51343.	Reserved	99
R6-3-51279.	Reserved	97	R6-3-51344.	Reserved	99
R6-3-51280.	Reserved	97	R6-3-51345.	Retirement	99
			R6-3-51346.	Reserved	99

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-51347.	Reserved	99	R6-3-51411.	Reserved	100
R6-3-51348.	Reserved	99	R6-3-51412.	Reserved	100
R6-3-51349.	Reserved	99	R6-3-51413.	Reserved	100
R6-3-51350.	Reserved	99	R6-3-51414.	Reserved	100
R6-3-51351.	Reserved	99	R6-3-51415.	Reserved	100
R6-3-51352.	Reserved	99	R6-3-51416.	Reserved	100
R6-3-51353.	Reserved	99	R6-3-51417.	Reserved	100
R6-3-51354.	Reserved	99	R6-3-51418.	Reserved	100
R6-3-51355.	Reserved	99	R6-3-51419.	Reserved	100
R6-3-51356.	Reserved	99	R6-3-51420.	Reserved	100
R6-3-51357.	Reserved	99	R6-3-51421.	Reserved	100
R6-3-51358.	Reserved	99	R6-3-51422.	Reserved	100
R6-3-51359.	Reserved	99	R6-3-51423.	Reserved	100
R6-3-51360.	Reserved	99	R6-3-51424.	Reserved	100
R6-3-51361.	Reserved	99	R6-3-51425.	Reserved	100
R6-3-51362.	Reserved	99	R6-3-51426.	Reserved	100
R6-3-51363.	Reserved	99	R6-3-51427.	Reserved	100
R6-3-51364.	Reserved	99	R6-3-51428.	Reserved	100
R6-3-51365.	Reserved	99	R6-3-51429.	Reserved	100
R6-3-51366.	Reserved	99	R6-3-51430.	Reserved	100
R6-3-51367.	Reserved	99	R6-3-51431.	Reserved	100
R6-3-51368.	Reserved	99	R6-3-51432.	Reserved	100
R6-3-51369.	Reserved	99	R6-3-51433.	Reserved	100
R6-3-51370.	Reserved	99	R6-3-51434.	Reserved	100
R6-3-51371.	Reserved	99	R6-3-51435.	Tardiness (Misconduct 435)	100
R6-3-51372.	Reserved	99	R6-3-51436.	Reserved	101
R6-3-51373.	Reserved	99	R6-3-51437.	Reserved	101
R6-3-51374.	Reserved	99	R6-3-51438.	Reserved	101
R6-3-51375.	Reserved	99	R6-3-51439.	Reserved	101
R6-3-51376.	Reserved	99	R6-3-51440.	Reserved	101
R6-3-51377.	Reserved	99	R6-3-51441.	Reserved	101
R6-3-51378.	Reserved	99	R6-3-51442.	Reserved	101
R6-3-51379.	Reserved	99	R6-3-51443.	Reserved	101
R6-3-51380.	Reserved	99	R6-3-51444.	Reserved	101
R6-3-51381.	Reserved	99	R6-3-51445.	Reserved	101
R6-3-51382.	Reserved	99	R6-3-51446.	Reserved	101
R6-3-51383.	Reserved	99	R6-3-51447.	Reserved	101
R6-3-51384.	Reserved	99	R6-3-51448.	Reserved	101
R6-3-51385.	Relation of offense to discharge (Misconduct 385)	99	R6-3-51449.	Reserved	101
			R6-3-51450.	Reserved	101
R6-3-51386.	Reserved	99	R6-3-51451.	Reserved	101
R6-3-51387.	Reserved	99	R6-3-51452.	Reserved	101
R6-3-51388.	Reserved	99	R6-3-51453.	Reserved	101
R6-3-51389.	Reserved	99	R6-3-51454.	Reserved	101
R6-3-51390.	Relations with fellow employees (Misconduct 390)	99	R6-3-51455.	Reserved	101
			R6-3-51456.	Reserved	101
R6-3-51391.	Reserved	100	R6-3-51457.	Reserved	101
R6-3-51392.	Reserved	100	R6-3-51458.	Reserved	101
R6-3-51393.	Reserved	100	R6-3-51459.	Reserved	101
R6-3-51394.	Reserved	100	R6-3-51460.	Reserved	101
R6-3-51395.	Reserved	100	R6-3-51461.	Reserved	101
R6-3-51396.	Reserved	100	R6-3-51462.	Reserved	101
R6-3-51397.	Reserved	100	R6-3-51463.	Reserved	101
R6-3-51398.	Reserved	100	R6-3-51464.	Reserved	101
R6-3-51399.	Reserved	100	R6-3-51465.	Reserved	101
R6-3-51400.	Reserved	100	R6-3-51466.	Reserved	101
R6-3-51401.	Reserved	100	R6-3-51467.	Reserved	101
R6-3-51402.	Reserved	100	R6-3-51468.	Reserved	101
R6-3-51403.	Reserved	100	R6-3-51469.	Reserved	101
R6-3-51404.	Reserved	100	R6-3-51470.	Reserved	101
R6-3-51405.	Reserved	100	R6-3-51471.	Reserved	101
R6-3-51406.	Reserved	100	R6-3-51472.	Reserved	101
R6-3-51407.	Reserved	100	R6-3-51473.	Reserved	101
R6-3-51408.	Reserved	100	R6-3-51474.	Reserved	101
R6-3-51409.	Reserved	100	R6-3-51475.	Union relations (Misconduct 475)	101
R6-3-51410.	Reserved	100	R6-3-51476.	Reserved	101

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-51477.	Reserved	101	R6-3-5250.	Reserved	104
R6-3-51478.	Reserved	101	R6-3-5251.	Reserved	104
R6-3-51479.	Reserved	101	R6-3-5252.	Reserved	104
R6-3-51480.	Reserved	101	R6-3-5253.	Reserved	104
R6-3-51481.	Reserved	101	R6-3-5254.	Reserved	104
R6-3-51482.	Reserved	101	R6-3-5255.	Reserved	104
R6-3-51483.	Reserved	101	R6-3-5256.	Reserved	104
R6-3-51484.	Reserved	101	R6-3-5257.	Reserved	104
R6-3-51485.	Violation of company rule (Misconduct 485) ..	101	R6-3-5258.	Reserved	104
R6-3-51486.	Reserved	102	R6-3-5259.	Reserved	104
R6-3-51487.	Reserved	102	R6-3-5260.	Reserved	104
R6-3-51488.	Reserved	102	R6-3-5261.	Reserved	104
R6-3-51489.	Reserved	102	R6-3-5262.	Reserved	104
R6-3-51490.	Violation of law (Misconduct 490)	102	R6-3-5263.	Reserved	104
ARTICLE 52. ABLE AND AVAILABLE FOR WORK			R6-3-5264.	Reserved	104
Section			R6-3-5265.	Reserved	104
R6-3-5201.	Reserved	102	R6-3-5266.	Reserved	104
R6-3-5202.	Reserved	102	R6-3-5267.	Reserved	104
R6-3-5203.	Reserved	102	R6-3-5268.	Reserved	104
R6-3-5204.	Reserved	102	R6-3-5269.	Reserved	104
R6-3-5205.	General	102	R6-3-5270.	Citizenship or residence requirements (Able and Available 70)	104
R6-3-5206.	Reserved	103	R6-3-5271.	Reserved	105
R6-3-5207.	Reserved	103	R6-3-5272.	Reserved	105
R6-3-5208.	Reserved	103	R6-3-5273.	Reserved	105
R6-3-5209.	Reserved	103	R6-3-5274.	Reserved	105
R6-3-5210.	Reserved	103	R6-3-5275.	Reserved	105
R6-3-5211.	Reserved	103	R6-3-5276.	Reserved	105
R6-3-5212.	Reserved	103	R6-3-5277.	Reserved	105
R6-3-5213.	Reserved	103	R6-3-5278.	Reserved	105
R6-3-5214.	Reserved	103	R6-3-5279.	Reserved	105
R6-3-5215.	Reserved	103	R6-3-5280.	Reserved	105
R6-3-5216.	Reserved	103	R6-3-5281.	Reserved	105
R6-3-5217.	Reserved	103	R6-3-5282.	Reserved	105
R6-3-5218.	Reserved	103	R6-3-5283.	Reserved	105
R6-3-5219.	Reserved	103	R6-3-5284.	Reserved	105
R6-3-5220.	Reserved	103	R6-3-5285.	Reserved	105
R6-3-5221.	Reserved	103	R6-3-5286.	Reserved	105
R6-3-5222.	Reserved	103	R6-3-5287.	Reserved	105
R6-3-5223.	Reserved	103	R6-3-5288.	Reserved	105
R6-3-5224.	Reserved	103	R6-3-5289.	Reserved	105
R6-3-5225.	Reserved	103	R6-3-5290.	Conscientious objection (Able and Available 90)	105
R6-3-5226.	Reserved	103	R6-3-5291.	Reserved	105
R6-3-5227.	Reserved	103		through	
R6-3-5228.	Reserved	103	R6-3-52104.	Reserved [46,813 Sections Reserved]	105
R6-3-5229.	Reserved	103	R6-3-52105.	Contract obligation (Able and Available 105) ..	105
R6-3-5230.	Reserved	103	R6-3-52106.	Reserved	105
R6-3-5231.	Reserved	103	R6-3-52107.	Reserved	105
R6-3-5232.	Reserved	103	R6-3-52108.	Reserved	105
R6-3-5233.	Reserved	103	R6-3-52109.	Reserved	105
R6-3-5234.	Reserved	103	R6-3-52110.	Reserved	105
R6-3-5235.	Reserved	103	R6-3-52111.	Reserved	105
R6-3-5236.	Reserved	103	R6-3-52112.	Reserved	105
R6-3-5237.	Reserved	103	R6-3-52113.	Reserved	105
R6-3-5238.	Reserved	103	R6-3-52114.	Reserved	105
R6-3-5239.	Reserved	103	R6-3-52115.	Reserved	105
R6-3-5240.	Attendance at School or Training Course	103	R6-3-52116.	Reserved	105
R6-3-5241.	Reserved	104	R6-3-52117.	Reserved	105
R6-3-5242.	Reserved	104	R6-3-52118.	Reserved	105
R6-3-5243.	Reserved	104	R6-3-52119.	Reserved	105
R6-3-5244.	Reserved	104	R6-3-52120.	Reserved	105
R6-3-5245.	Disloyalty (Able and Available 45)	104	R6-3-52121.	Reserved	105
R6-3-5246.	Reserved	104	R6-3-52122.	Reserved	105
R6-3-5247.	Reserved	104	R6-3-52123.	Reserved	105
R6-3-5248.	Reserved	104	R6-3-52124.	Reserved	105
R6-3-5249.	Reserved	104			

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-52125.	Reserved	105	R6-3-52188.	Reserved	109
R6-3-52126.	Reserved	105	R6-3-52189.	Reserved	109
R6-3-52127.	Reserved	105	R6-3-52190.	Evidence (Able and Available 190)	109
R6-3-52128.	Reserved	105	R6-3-52191.	Reserved	110
R6-3-52129.	Reserved	106	R6-3-52192.	Reserved	110
R6-3-52130.	Reserved	106	R6-3-52193.	Reserved	110
R6-3-52131.	Reserved	106	R6-3-52194.	Reserved	110
R6-3-52132.	Reserved	106	R6-3-52195.	Reserved	110
R6-3-52133.	Reserved	106	R6-3-52196.	Reserved	110
R6-3-52134.	Reserved	106	R6-3-52197.	Reserved	110
R6-3-52135.	Reserved	106	R6-3-52198.	Reserved	110
R6-3-52136.	Reserved	106	R6-3-52199.	Reserved	110
R6-3-52137.	Reserved	106	R6-3-52200.	Reserved	110
R6-3-52138.	Reserved	106	R6-3-52201.	Reserved	110
R6-3-52139.	Reserved	106	R6-3-52202.	Reserved	110
R6-3-52140.	Reserved	106	R6-3-52203.	Reserved	110
R6-3-52141.	Reserved	106	R6-3-52204.	Reserved	110
R6-3-52142.	Reserved	106	R6-3-52205.	Reserved	110
R6-3-52143.	Reserved	106	R6-3-52206.	Reserved	110
R6-3-52144.	Reserved	106	R6-3-52207.	Reserved	110
R6-3-52145.	Reserved	106	R6-3-52208.	Reserved	110
R6-3-52146.	Reserved	106	R6-3-52209.	Reserved	110
R6-3-52147.	Reserved	106	R6-3-52210.	Reserved	110
R6-3-52148.	Reserved	106	R6-3-52211.	Reserved	110
R6-3-52149.	Reserved	106	R6-3-52212.	Reserved	110
R6-3-52150.	Distance to work (Able and Available 150)	106	R6-3-52213.	Reserved	110
R6-3-52151.	Reserved	107	R6-3-52214.	Reserved	110
R6-3-52152.	Reserved	107	R6-3-52215.	Reserved	110
R6-3-52153.	Reserved	107	R6-3-52216.	Reserved	110
R6-3-52154.	Reserved	107	R6-3-52217.	Reserved	110
R6-3-52155.	Domestic circumstances (Able and Available 155)	107	R6-3-52218.	Reserved	110
R6-3-52156.	Reserved	107	R6-3-52219.	Reserved	110
R6-3-52157.	Reserved	107	R6-3-52220.	Reserved	110
R6-3-52158.	Reserved	107	R6-3-52221.	Reserved	110
R6-3-52159.	Reserved	107	R6-3-52222.	Reserved	110
R6-3-52160.	Effort to secure employment or willingness to work (Able and Available 160)	107	R6-3-52223.	Reserved	110
R6-3-52161.	Reserved	108	R6-3-52224.	Reserved	110
R6-3-52162.	Reserved	108	R6-3-52225.	Reserved	110
R6-3-52163.	Reserved	108	R6-3-52226.	Reserved	110
R6-3-52164.	Reserved	108	R6-3-52227.	Reserved	110
R6-3-52165.	Employer requirements (Able and Available 165)	108	R6-3-52228.	Reserved	110
R6-3-52166.	Reserved	108	R6-3-52229.	Reserved	110
R6-3-52167.	Reserved	108	R6-3-52230.	Reserved	110
R6-3-52168.	Reserved	108	R6-3-52231.	Reserved	110
R6-3-52169.	Reserved	108	R6-3-52232.	Reserved	110
R6-3-52170.	Reserved	108	R6-3-52233.	Reserved	110
R6-3-52171.	Reserved	108	R6-3-52234.	Reserved	110
R6-3-52172.	Reserved	108	R6-3-52235.	Health or Physical Condition	110
R6-3-52173.	Reserved	108	R6-3-52236.	Reserved	111
R6-3-52174.	Reserved	108	R6-3-52237.	Reserved	111
R6-3-52175.	Reserved	108	R6-3-52238.	Reserved	111
R6-3-52176.	Reserved	108	R6-3-52239.	Reserved	111
R6-3-52177.	Reserved	108	R6-3-52240.	Reserved	111
R6-3-52178.	Reserved	108	R6-3-52241.	Reserved	111
R6-3-52179.	Reserved	108	R6-3-52242.	Reserved	111
R6-3-52180.	Equipment (Able and Available 180)	108	R6-3-52243.	Reserved	111
R6-3-52181.	Reserved	109	R6-3-52244.	Reserved	111
R6-3-52182.	Reserved	109	R6-3-52245.	Reserved	111
R6-3-52183.	Reserved	109	R6-3-52246.	Reserved	111
R6-3-52184.	Reserved	109	R6-3-52247.	Reserved	111
R6-3-52185.	Reserved	109	R6-3-52248.	Reserved	111
R6-3-52186.	Reserved	109	R6-3-52249.	Reserved	112
R6-3-52187.	Reserved	109	R6-3-52250.	Incarceration or other legal detention (Able and Available 250)	112
			R6-3-52251.	Reserved	112
			R6-3-52252.	Reserved	112

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-52253.	Reserved	112	R6-3-52316.	Reserved	113
R6-3-52254.	Reserved	112	R6-3-52317.	Reserved	113
R6-3-52255.	Reserved	112	R6-3-52318.	Reserved	113
R6-3-52256.	Reserved	112	R6-3-52319.	Reserved	113
R6-3-52257.	Reserved	112	R6-3-52320.	Notification of address (Able and Available 320)	113
R6-3-52258.	Reserved	112		.....	113
R6-3-52259.	Reserved	112	R6-3-52321.	Reserved	113
R6-3-52260.	Reserved	112	R6-3-52322.	Reserved	113
R6-3-52261.	Reserved	112	R6-3-52323.	Reserved	113
R6-3-52262.	Reserved	112	R6-3-52324.	Reserved	113
R6-3-52263.	Reserved	112	R6-3-52325.	Reserved	114
R6-3-52264.	Reserved	112	R6-3-52326.	Reserved	114
R6-3-52265.	Reserved	112	R6-3-52327.	Reserved	114
R6-3-52266.	Reserved	112	R6-3-52328.	Reserved	114
R6-3-52267.	Reserved	112	R6-3-52329.	Reserved	114
R6-3-52268.	Reserved	112	R6-3-52330.	Reserved	114
R6-3-52269.	Reserved	112	R6-3-52331.	Reserved	114
R6-3-52270.	Reserved	112	R6-3-52332.	Reserved	114
R6-3-52271.	Reserved	112	R6-3-52333.	Reserved	114
R6-3-52272.	Reserved	112	R6-3-52334.	Reserved	114
R6-3-52273.	Reserved	112	R6-3-52335.	Reserved	114
R6-3-52274.	Reserved	112	R6-3-52336.	Reserved	114
R6-3-52275.	Reserved	112	R6-3-52337.	Reserved	114
R6-3-52276.	Reserved	112	R6-3-52338.	Reserved	114
R6-3-52277.	Reserved	112	R6-3-52339.	Reserved	114
R6-3-52278.	Reserved	112	R6-3-52340.	Reserved	114
R6-3-52279.	Reserved	112	R6-3-52341.	Reserved	114
R6-3-52280.	Reserved	112	R6-3-52342.	Reserved	114
R6-3-52281.	Reserved	112	R6-3-52343.	Reserved	114
R6-3-52282.	Reserved	112	R6-3-52344.	Reserved	114
R6-3-52283.	Reserved	112	R6-3-52345.	Reserved	114
R6-3-52284.	Reserved	112	R6-3-52346.	Reserved	114
R6-3-52285.	Leave or absence or vacation (Able and Available 285)	112	R6-3-52347.	Reserved	114
			R6-3-52348.	Reserved	114
R6-3-52286.	Reserved	112	R6-3-52349.	Reserved	114
R6-3-52287.	Reserved	112	R6-3-52350.	Reserved	114
R6-3-52288.	Reserved	112	R6-3-52351.	Reserved	114
R6-3-52289.	Reserved	112	R6-3-52352.	Reserved	114
R6-3-52290.	Reserved	112	R6-3-52353.	Reserved	114
R6-3-52291.	Reserved	112	R6-3-52354.	Reserved	114
R6-3-52292.	Reserved	112	R6-3-52355.	Reserved	114
R6-3-52293.	Reserved	113	R6-3-52356.	Reserved	114
R6-3-52294.	Reserved	113	R6-3-52357.	Reserved	114
R6-3-52295.	Length of unemployment (Able and Available 295)	113	R6-3-52358.	Reserved	114
			R6-3-52359.	Reserved	114
R6-3-52296.	Reserved	113	R6-3-52360.	Reserved	114
R6-3-52297.	Reserved	113	R6-3-52361.	Reserved	114
R6-3-52298.	Reserved	113	R6-3-52362.	Reserved	114
R6-3-52298.	Reserved	113	R6-3-52363.	Reserved	114
R6-3-52299.	Reserved	113	R6-3-52364.	Reserved	114
R6-3-52300.	Reserved	113	R6-3-52365.	Reserved	114
R6-3-52301.	Reserved	113	R6-3-52366.	Reserved	114
R6-3-52302.	Reserved	113	R6-3-52367.	Reserved	114
R6-3-52303.	Reserved	113	R6-3-52368.	Reserved	114
R6-3-52304.	Reserved	113	R6-3-52369.	Reserved	114
R6-3-52305.	Military service (Able and Available 305)	113	R6-3-52370.	Public service (Able and Available 370)	114
R6-3-52306.	Reserved	113	R6-3-52371.	Reserved	114
R6-3-52307.	Reserved	113	R6-3-52372.	Reserved	114
R6-3-52308.	Reserved	113	R6-3-52373.	Reserved	114
R6-3-52309.	Reserved	113	R6-3-52374.	Reserved	114
R6-3-52310.	Reserved	113	R6-3-52375.	Receipt of other payments (Able and Available 375)	114
R6-3-52311.	Reserved	113		.....	114
R6-3-52312.	Reserved	113	R6-3-52376.	Reserved	115
R6-3-52313.	Reserved	113	R6-3-52377.	Reserved	115
R6-3-52314.	Reserved	113	R6-3-52378.	Reserved	115
R6-3-52315.	Reserved	113	R6-3-52379.	Reserved	115

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-52380.	Reserved	115	R6-3-52443.	Reserved	116
R6-3-52381.	Reserved	115	R6-3-52444.	Reserved	116
R6-3-52382.	Reserved	115	R6-3-52445.	Reserved	116
R6-3-52383.	Reserved	115	R6-3-52446.	Reserved	116
R6-3-52384.	Reserved	115	R6-3-52447.	Reserved	116
R6-3-52385.	Reserved	115	R6-3-52448.	Reserved	116
R6-3-52386.	Reserved	115	R6-3-52449.	Reserved	116
R6-3-52387.	Reserved	115	R6-3-52450.	Time (Able and Available 450)	116
R6-3-52388.	Reserved	115	R6-3-52451.	Reserved	116
R6-3-52389.	Reserved	115	R6-3-52452.	Reserved	116
R6-3-52390.	Reserved	115	R6-3-52453.	Reserved	116
R6-3-52391.	Reserved	115	R6-3-52454.	Reserved	116
R6-3-52392.	Reserved	115	R6-3-52455.	Reserved	116
R6-3-52393.	Reserved	115	R6-3-52456.	Reserved	116
R6-3-52394.	Reserved	115	R6-3-52457.	Reserved	116
R6-3-52395.	Reserved	115	R6-3-52458.	Reserved	116
R6-3-52396.	Reserved	115	R6-3-52459.	Reserved	116
R6-3-52397.	Reserved	115	R6-3-52460.	Reserved	116
R6-3-52398.	Reserved	115	R6-3-52461.	Reserved	116
R6-3-52398.	Reserved	115	R6-3-52462.	Reserved	116
R6-3-52399.	Reserved	115	R6-3-52463.	Reserved	116
R6-3-52400.	Reserved	115	R6-3-52464.	Reserved	116
R6-3-52401.	Reserved	115	R6-3-52465.	Reserved	116
R6-3-52402.	Reserved	115	R6-3-52466.	Reserved	116
R6-3-52403.	Reserved	115	R6-3-52467.	Reserved	116
R6-3-52404.	Reserved	115	R6-3-52468.	Reserved	116
R6-3-52405.	Reserved	115	R6-3-52469.	Reserved	116
R6-3-52406.	Reserved	115	R6-3-52470.	Reserved	116
R6-3-52407.	Reserved	115	R6-3-52471.	Reserved	116
R6-3-52408.	Reserved	115	R6-3-52472.	Reserved	117
R6-3-52408.	Reserved	115	R6-3-52473.	Reserved	117
R6-3-52409.	Reserved	115	R6-3-52474.	Reserved	117
R6-3-52410.	Reserved	115	R6-3-52475.	Union relations (Able and Available 475)	117
R6-3-52411.	Reserved	115	R6-3-52476.	Reserved	117
R6-3-52412.	Reserved	115	R6-3-52477.	Reserved	117
R6-3-52413.	Reserved	115	R6-3-52478.	Reserved	117
R6-3-52414.	Reserved	115	R6-3-52479.	Reserved	117
R6-3-52415.	Self-employment or other work (Able and Available 415)	115	R6-3-52480.	Reserved	117
R6-3-52416.	Reserved	116	R6-3-52481.	Reserved	117
R6-3-52417.	Reserved	116	R6-3-52482.	Reserved	117
R6-3-52418.	Reserved	116	R6-3-52483.	Reserved	117
R6-3-52419.	Reserved	116	R6-3-52484.	Reserved	117
R6-3-52420.	Reserved	116	R6-3-52485.	Reserved	117
R6-3-52421.	Reserved	116	R6-3-52486.	Reserved	117
R6-3-52422.	Reserved	116	R6-3-52487.	Reserved	117
R6-3-52423.	Reserved	116	R6-3-52488.	Reserved	117
R6-3-52424.	Reserved	116	R6-3-52489.	Reserved	117
R6-3-52425.	Reserved	116	R6-3-52490.	Reserved	117
R6-3-52426.	Reserved	116	R6-3-52491.	Reserved	117
R6-3-52427.	Reserved	116	R6-3-52492.	Reserved	117
R6-3-52428.	Reserved	116	R6-3-52493.	Reserved	117
R6-3-52429.	Reserved	116	R6-3-52494.	Reserved	117
R6-3-52430.	Reserved	116	R6-3-52495.	Reserved	117
R6-3-52431.	Reserved	116	R6-3-52496.	Reserved	117
R6-3-52432.	Reserved	116	R6-3-52497.	Reserved	117
R6-3-52433.	Reserved	116	R6-3-52498.	Reserved	117
R6-3-52434.	Reserved	116	R6-3-52499.	Reserved	117
R6-3-52435.	Reserved	116	R6-3-52500.	Wages (Able and Available 500)	117
R6-3-52436.	Reserved	116	R6-3-52501.	Reserved	117
R6-3-52437.	Reserved	116	R6-3-52502.	Reserved	117
R6-3-52438.	Reserved	116	R6-3-52503.	Reserved	117
R6-3-52439.	Reserved	116	R6-3-52504.	Reserved	117
R6-3-52440.	Reserved	116	R6-3-52505.	Reserved	117
R6-3-52441.	Reserved	116	R6-3-52506.	Reserved	117
R6-3-52442.	Reserved	116	R6-3-52507.	Reserved	117
			R6-3-52508.	Reserved	117

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-52509.	Reserved	118	R6-3-53168.	Reserved	119
R6-3-52510.	Work, nature of (Able and Available 510)	118	R6-3-53169.	Reserved	119
ARTICLE 53. REFUSAL OF WORK BENEFIT POLICY			R6-3-53170.	Employment office or other agency referral (Refusal of Work 170)	119
Section			R6-3-53171.	Reserved	119
R6-3-5301.	Reserved	118	R6-3-53172.	Reserved	119
R6-3-5302.	Reserved	118	R6-3-53173.	Reserved	119
R6-3-5303.	Reserved	118	R6-3-53174.	Reserved	119
R6-3-5304.	Reserved	118	R6-3-53175.	Reserved	119
R6-3-5305.	General; Definitions	118	R6-3-53176.	Reserved	119
R6-3-5306.	Reserved	118	R6-3-53177.	Reserved	119
R6-3-5307.	Reserved	118	R6-3-53178.	Reserved	119
R6-3-5308.	Reserved	118	R6-3-53179.	Reserved	119
R6-3-5309.	Reserved	118	R6-3-53180.	Reserved	119
R6-3-5310.	Reserved	118	R6-3-53181.	Reserved	119
R6-3-5311.	Reserved	118	R6-3-53182.	Reserved	119
R6-3-5312.	Reserved	118	R6-3-53183.	Reserved	119
R6-3-5313.	Reserved	118	R6-3-53184.	Reserved	119
R6-3-5314.	Reserved	118	R6-3-53185.	Reserved	119
R6-3-5315.	Reserved	118	R6-3-53186.	Reserved	119
R6-3-5316.	Reserved	118	R6-3-53187.	Reserved	119
R6-3-5317.	Reserved	118	R6-3-53188.	Reserved	119
R6-3-5318.	Reserved	118	R6-3-53189.	Reserved	119
R6-3-5319.	Reserved	118	R6-3-53190.	Reserved	119
R6-3-5320.	Reserved	118	R6-3-53191.	Reserved	119
R6-3-5321.	Reserved	118	R6-3-53192.	Reserved	119
R6-3-5322.	Reserved	118	R6-3-53193.	Reserved	119
R6-3-5323.	Reserved	118	R6-3-53194.	Reserved	119
R6-3-5324.	Reserved	118	R6-3-53195.	Experience or training (Refusal of Work 195)	119
R6-3-5325.	Reserved	118	R6-3-53196.	Reserved	120
R6-3-5326.	Reserved	118	R6-3-53197.	Reserved	120
R6-3-5327.	Reserved	118	R6-3-53198.	Reserved	120
R6-3-5328.	Reserved	118	R6-3-53199.	Reserved	120
R6-3-5329.	Reserved	118	R6-3-53200.	Reserved	120
R6-3-5330.	Reserved	118	R6-3-53201.	Reserved	120
R6-3-5331.	Reserved	118	R6-3-53202.	Reserved	120
R6-3-5332.	Reserved	118	R6-3-53203.	Reserved	120
R6-3-5333.	Reserved	118	R6-3-53204.	Reserved	120
R6-3-5334.	Reserved	118	R6-3-53205.	Reserved	120
R6-3-5335.	Reserved	118	R6-3-53206.	Reserved	120
R6-3-5336.	Reserved	118	R6-3-53207.	Reserved	120
R6-3-5337.	Reserved	118	R6-3-53208.	Reserved	120
R6-3-5338.	Reserved	118	R6-3-53209.	Reserved	120
R6-3-5339.	Reserved	118	R6-3-53210.	Reserved	120
R6-3-5340.	Repealed	118	R6-3-53211.	Reserved	120
R6-3-5341.	Reserved	118	R6-3-53212.	Reserved	120
	through		R6-3-53213.	Reserved	120
R6-3-53149.	Reserved [47,808 Sections Reserved]	118	R6-3-53214.	Reserved	120
R6-3-53150.	Distance to work (Refusal of Work 150)	118	R6-3-53215.	Reserved	120
R6-3-53151.	Reserved	119	R6-3-53216.	Reserved	120
R6-3-53152.	Reserved	119	R6-3-53217.	Reserved	120
R6-3-53153.	Reserved	119	R6-3-53218.	Reserved	120
R6-3-53154.	Reserved	119	R6-3-53219.	Reserved	120
R6-3-53155.	Reserved	119	R6-3-53220.	Reserved	120
R6-3-53156.	Reserved	119	R6-3-53221.	Reserved	120
R6-3-53157.	Reserved	119	R6-3-53222.	Reserved	120
R6-3-53158.	Reserved	119	R6-3-53223.	Reserved	120
R6-3-53159.	Reserved	119	R6-3-53224.	Reserved	120
R6-3-53160.	Reserved	119	R6-3-53225.	Reserved	120
R6-3-53161.	Reserved	119	R6-3-53226.	Reserved	120
R6-3-53162.	Reserved	119	R6-3-53227.	Reserved	120
R6-3-53163.	Reserved	119	R6-3-53228.	Reserved	120
R6-3-53164.	Reserved	119	R6-3-53229.	Reserved	120
R6-3-53165.	Reserved	119	R6-3-53230.	Reserved	120
R6-3-53166.	Reserved	119	R6-3-53231.	Reserved	120
R6-3-53167.	Reserved	119	R6-3-53232.	Reserved	120

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-53233.	Reserved	120	R6-3-53297.	Reserved	121
R6-3-53234.	Reserved	120	R6-3-53298.	Reserved	121
R6-3-53235.	Health or physical condition (Refusal of Work 235) 120		R6-3-53299.	Reserved	121
R6-3-53236.	Reserved	120	R6-3-53300.	Reserved	121
R6-3-53237.	Reserved	120	R6-3-53301.	Reserved	121
R6-3-53238.	Reserved	120	R6-3-53302.	Reserved	121
R6-3-53239.	Reserved	120	R6-3-53303.	Reserved	121
R6-3-53240.	Reserved	120	R6-3-53304.	Reserved	121
R6-3-53241.	Reserved	120	R6-3-53305.	Reserved	121
R6-3-53242.	Reserved	120	R6-3-53306.	Reserved	121
R6-3-53243.	Reserved	120	R6-3-53307.	Reserved	121
R6-3-53244.	Reserved	120	R6-3-53308.	Reserved	121
R6-3-53245.	Reserved	120	R6-3-53309.	Reserved	121
R6-3-53246.	Reserved	120	R6-3-53310.	Reserved	121
R6-3-53247.	Reserved	120	R6-3-53311.	Reserved	121
R6-3-53248.	Reserved	120	R6-3-53312.	Reserved	121
R6-3-53249.	Reserved	120	R6-3-53313.	Reserved	121
R6-3-53250.	Reserved	120	R6-3-53314.	Reserved	121
R6-3-53251.	Reserved	120	R6-3-53315.	Reserved	121
R6-3-53252.	Reserved	120	R6-3-53316.	Reserved	121
R6-3-53253.	Reserved	120	R6-3-53317.	Reserved	121
R6-3-53254.	Reserved	120	R6-3-53318.	Reserved	122
R6-3-53255.	Reserved	120	R6-3-53319.	Reserved	122
R6-3-53256.	Reserved	120	R6-3-53320.	Reserved	122
R6-3-53257.	Reserved	120	R6-3-53321.	Reserved	122
R6-3-53258.	Reserved	121	R6-3-53322.	Reserved	122
R6-3-53259.	Reserved	121	R6-3-53323.	Reserved	122
R6-3-53260.	Reserved	121	R6-3-53324.	Reserved	122
R6-3-53261.	Reserved	121	R6-3-53325.	Reserved	122
R6-3-53262.	Reserved	121	R6-3-53326.	Reserved	122
R6-3-53263.	Reserved	121	R6-3-53327.	Reserved	122
R6-3-53264.	Reserved	121	R6-3-53328.	Reserved	122
R6-3-53265.	Interview and acceptance (Refusal of Work 265)	121	R6-3-53329.	Reserved	122
R6-3-53266.	Reserved	121	R6-3-53330.	Offer of work (Refusal of Work 330)	122
R6-3-53267.	Reserved	121	R6-3-53331.	Reserved	122
R6-3-53268.	Reserved	121	R6-3-53332.	Reserved	122
R6-3-53269.	Reserved	121	R6-3-53333.	Reserved	122
R6-3-53270.	Reserved	121	R6-3-53334.	Reserved	122
R6-3-53271.	Reserved	121	R6-3-53335.	Offered work previously left or refused (Refusal of Work 335)	122
R6-3-53272.	Reserved	121	R6-3-53336.	Reserved	122
R6-3-53273.	Reserved	121	R6-3-53337.	Reserved	122
R6-3-53274.	Reserved	121	R6-3-53338.	Reserved	122
R6-3-53275.	Reserved	121	R6-3-53339.	Reserved	122
R6-3-53276.	Reserved	121	R6-3-53340.	Reserved	122
R6-3-53277.	Reserved	121	R6-3-53341.	Reserved	122
R6-3-53278.	Reserved	121	R6-3-53342.	Reserved	122
R6-3-53279.	Reserved	121	R6-3-53343.	Reserved	122
R6-3-53280.	Reserved	121	R6-3-53344.	Reserved	122
R6-3-53281.	Reserved	121	R6-3-53345.	Reserved	122
R6-3-53282.	Reserved	121	R6-3-53346.	Reserved	122
R6-3-53283.	Reserved	121	R6-3-53347.	Reserved	122
R6-3-53284.	Reserved	121	R6-3-53348.	Reserved	122
R6-3-53285.	Reserved	121	R6-3-53349.	Reserved	122
R6-3-53286.	Reserved	121	R6-3-53350.	Reserved	122
R6-3-53287.	Reserved	121	R6-3-53351.	Reserved	122
R6-3-53288.	Reserved	121	R6-3-53352.	Reserved	122
R6-3-53289.	Reserved	121	R6-3-53353.	Reserved	122
R6-3-53290.	Reserved	121	R6-3-53354.	Reserved	122
R6-3-53291.	Reserved	121	R6-3-53355.	Reserved	122
R6-3-53292.	Reserved	121	R6-3-53356.	Reserved	122
R6-3-53293.	Reserved	121	R6-3-53357.	Reserved	122
R6-3-53294.	Reserved	121	R6-3-53358.	Reserved	122
R6-3-53295.	Length of unemployment	121	R6-3-53359.	Reserved	122
R6-3-53296.	Reserved	121	R6-3-53360.	Reserved	122
			R6-3-53361.	Reserved	122

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-53362.	Reserved	122	R6-3-53438.	Reserved	123
R6-3-53363.	Reserved	122	R6-3-53439.	Reserved	123
R6-3-53364.	Reserved	122	R6-3-53440.	Reserved	123
R6-3-53365.	Prospect of other work (Refusal of Work 365)	122	R6-3-53441.	Reserved	123
R6-3-53366.	Reserved	122	R6-3-53442.	Reserved	123
R6-3-53367.	Reserved	123	R6-3-53443.	Reserved	123
R6-3-53368.	Reserved	123	R6-3-53444.	Reserved	123
R6-3-53369.	Reserved	123	R6-3-53445.	Reserved	123
R6-3-53370.	Reserved	123	R6-3-53446.	Reserved	123
R6-3-53371.	Reserved	123	R6-3-53447.	Reserved	123
R6-3-53372.	Reserved	123	R6-3-53448.	Reserved	123
R6-3-53373.	Reserved	123	R6-3-53449.	Reserved	123
R6-3-53374.	Reserved	123	R6-3-53450.	Time -- hours (Refusal of Work 450 - 450.15)	123
R6-3-53375.	Reserved	123	R6-3-53451.	Reserved	124
R6-3-53376.	Reserved	123	R6-3-53452.	Reserved	124
R6-3-53377.	Reserved	123	R6-3-53453.	Reserved	124
R6-3-53378.	Reserved	123	R6-3-53454.	Reserved	124
R6-3-53379.	Reserved	123	R6-3-53455.	Reserved	124
R6-3-53380.	Polygraph examination requirement	123	R6-3-53456.	Reserved	124
R6-3-53381.	Reserved	123	R6-3-53457.	Reserved	124
R6-3-53382.	Reserved	123	R6-3-53458.	Reserved	124
R6-3-53383.	Reserved	123	R6-3-53459.	Reserved	124
R6-3-53384.	Reserved	123	R6-3-53460.	Reserved	124
R6-3-53385.	Reserved	123	R6-3-53461.	Reserved	124
R6-3-53386.	Reserved	123	R6-3-53462.	Reserved	124
R6-3-53387.	Reserved	123	R6-3-53463.	Reserved	124
R6-3-53388.	Reserved	123	R6-3-53464.	Reserved	124
R6-3-53389.	Reserved	123	R6-3-53465.	Reserved	124
R6-3-53390.	Reserved	123	R6-3-53466.	Reserved	124
R6-3-53391.	Reserved	123	R6-3-53467.	Reserved	124
R6-3-53392.	Reserved	123	R6-3-53468.	Reserved	124
R6-3-53393.	Reserved	123	R6-3-53469.	Reserved	124
R6-3-53394.	Reserved	123	R6-3-53470.	Reserved	124
R6-3-53395.	Reserved	123	R6-3-53471.	Reserved	124
R6-3-53396.	Reserved	123	R6-3-53472.	Reserved	124
R6-3-53397.	Reserved	123	R6-3-53473.	Reserved	124
R6-3-53398.	Reserved	123	R6-3-53474.	Reserved	124
R6-3-53399.	Reserved	123	R6-3-53475.	Union relations (Refusal of Work 475)	124
R6-3-53410.	Reserved	123	R6-3-53476.	Reserved	124
R6-3-53411.	Reserved	123	R6-3-53477.	Reserved	124
R6-3-53412.	Reserved	123	R6-3-53478.	Reserved	124
R6-3-53413.	Reserved	123	R6-3-53479.	Reserved	124
R6-3-53414.	Reserved	123	R6-3-53480.	Vacant due to labor dispute (Refusal of Work 480)	124
R6-3-53415.	Reserved	123			
R6-3-53416.	Reserved	123	R6-3-53481.	Reserved	125
R6-3-53417.	Reserved	123	R6-3-53482.	Reserved	125
R6-3-53418.	Reserved	123	R6-3-53483.	Reserved	125
R6-3-53419.	Reserved	123	R6-3-53484.	Reserved	125
R6-3-53420.	Reserved	123	R6-3-53485.	Reserved	125
R6-3-53421.	Reserved	123	R6-3-53486.	Reserved	125
R6-3-53422.	Reserved	123	R6-3-53487.	Reserved	125
R6-3-53423.	Reserved	123	R6-3-53488.	Reserved	125
R6-3-53424.	Reserved	123	R6-3-53489.	Reserved	125
R6-3-53425.	Reserved	123	R6-3-53490.	Reserved	125
R6-3-53426.	Reserved	123	R6-3-53491.	Reserved	125
R6-3-53427.	Reserved	123	R6-3-53492.	Reserved	125
R6-3-53428.	Reserved	123	R6-3-53493.	Reserved	125
R6-3-53429.	Reserved	123	R6-3-53494.	Reserved	125
R6-3-53430.	Reserved	123	R6-3-53495.	Reserved	125
R6-3-53431.	Reserved	123	R6-3-53496.	Reserved	125
R6-3-53432.	Reserved	123	R6-3-53497.	Reserved	125
R6-3-53433.	Reserved	123	R6-3-53498.	Reserved	125
R6-3-53434.	Reserved	123	R6-3-53499.	Reserved	125
R6-3-53435.	Reserved	123	R6-3-53500.	Wages (Refusal of Work 500)	125
R6-3-53436.	Reserved	123	R6-3-53501.	Reserved	126
R6-3-53437.	Reserved	123	R6-3-53502.	Reserved	126

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-53503.	Reserved	126	R6-3-5460.	Benefit computation factors (Miscellaneous 60)	
R6-3-53504.	Reserved	126		.....	127
R6-3-53505.	Reserved	126	R6-3-5461.	Reserved	127
R6-3-53506.	Reserved	126	R6-3-5462.	Reserved	127
R6-3-53507.	Reserved	126	R6-3-5463.	Reserved	127
R6-3-53508.	Reserved	126	R6-3-5464.	Reserved	127
R6-3-53509.	Reserved	126	R6-3-5465.	Reserved	127
R6-3-53510.	Work, nature of (Refusal of Work 510)	126	R6-3-5466.	Reserved	127
R6-3-53511.	Reserved	126	R6-3-5467.	Reserved	127
R6-3-53512.	Reserved	126	R6-3-5468.	Reserved	127
R6-3-53513.	Reserved	126	R6-3-5469.	Reserved	127
R6-3-53514.	Reserved	126	R6-3-5470.	Repealed	127
R6-3-53515.	Working conditions (Refusal of Work 515)	126	R6-3-5471.	Reserved	128
			R6-3-5472.	Reserved	128
			R6-3-5473.	Reserved	128
			R6-3-5474.	Reserved	128
			R6-3-5475.	Claims and Registration	128
			R6-3-5476.	Reserved	130
			R6-3-5477.	Reserved	130
			R6-3-5478.	Reserved	130
			R6-3-5479.	Reserved	130
			R6-3-5480.	Reserved	130
			R6-3-5481.	Reserved	130
			R6-3-5482.	Reserved	130
			R6-3-5483.	Reserved	130
			R6-3-5484.	Reserved	130
			R6-3-5485.	Reserved	130
			R6-3-5486.	Reserved	130
			R6-3-5487.	Reserved	130
			R6-3-5488.	Reserved	130
			R6-3-5489.	Reserved	130
			R6-3-5490.	Reserved	130
			R6-3-5491.	Reserved	130
			R6-3-5492.	Reserved	130
			R6-3-5493.	Reserved	130
			R6-3-5494.	Reserved	130
			R6-3-5495.	Disqualification; Definition of Last Employment	
				.....	130
			R6-3-5496.	Reserved	130
			R6-3-5497.	Reserved	130
			R6-3-5498.	Reserved	130
			R6-3-5499.	Reserved	130
			R6-3-54100.	Extended benefits	130
			R6-3-54101.	Reserved	131
			R6-3-54102.	Reserved	131
			R6-3-54103.	Reserved	131
			R6-3-54104.	Reserved	131
			R6-3-54105.	Reserved	131
			R6-3-54106.	Reserved	131
			R6-3-54107.	Reserved	131
			R6-3-54108.	Reserved	131
			R6-3-54109.	Reserved	131
			R6-3-54110.	Reserved	131
			R6-3-54111.	Reserved	131
			R6-3-54112.	Reserved	131
			R6-3-54113.	Reserved	131
			R6-3-54114.	Reserved	131
			R6-3-54115.	Reserved	131
			R6-3-54116.	Reserved	131
			R6-3-54117.	Reserved	131
			R6-3-54118.	Reserved	131
			R6-3-54119.	Reserved	131
			R6-3-54120.	Reserved	131
			R6-3-54121.	Reserved	131
			R6-3-54122.	Reserved	131
			R6-3-54123.	Reserved	131

ARTICLE 54. BENEFIT CLAIMS, COMPUTATION, EXTENSION, AND OVERPAYMENT

Section

R6-3-5401.	Reserved	126
R6-3-5402.	Reserved	127
R6-3-5403.	Reserved	127
R6-3-5404.	Reserved	127
R6-3-5405.	Reserved	127
R6-3-5406.	Reserved	127
R6-3-5407.	Reserved	127
R6-3-5408.	Reserved	127
R6-3-5409.	Reserved	127
R6-3-5410.	Reserved	127
R6-3-5411.	Reserved	127
R6-3-5412.	Reserved	127
R6-3-5413.	Reserved	127
R6-3-5414.	Reserved	127
R6-3-5415.	Reserved	127
R6-3-5416.	Reserved	127
R6-3-5417.	Reserved	127
R6-3-5418.	Reserved	127
R6-3-5419.	Reserved	127
R6-3-5420.	Reserved	127
R6-3-5421.	Reserved	127
R6-3-5422.	Reserved	127
R6-3-5423.	Reserved	127
R6-3-5424.	Reserved	127
R6-3-5425.	Reserved	127
R6-3-5426.	Reserved	127
R6-3-5427.	Reserved	127
R6-3-5428.	Reserved	127
R6-3-5429.	Reserved	127
R6-3-5430.	Reserved	127
R6-3-5431.	Reserved	127
R6-3-5432.	Reserved	127
R6-3-5433.	Reserved	127
R6-3-5434.	Reserved	127
R6-3-5435.	Reserved	127
R6-3-5436.	Reserved	127
R6-3-5437.	Reserved	127
R6-3-5438.	Reserved	127
R6-3-5439.	Reserved	127
R6-3-5440.	Repealed	127
R6-3-5441.	Reserved	127
R6-3-5442.	Reserved	127
R6-3-5443.	Reserved	127
R6-3-5444.	Reserved	127
R6-3-5445.	Reserved	127
R6-3-5446.	Reserved	127
R6-3-5447.	Reserved	127
R6-3-5448.	Reserved	127
R6-3-5459.	Reserved	127

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-54124.	Reserved	131	R6-3-54190.	Reserved	132
R6-3-54125.	Reserved	131	R6-3-54191.	Reserved	132
R6-3-54126.	Reserved	131	R6-3-54192.	Reserved	132
R6-3-54127.	Reserved	131	R6-3-54193.	Reserved	132
R6-3-54128.	Reserved	131	R6-3-54194.	Reserved	132
R6-3-54129.	Reserved	131	R6-3-54195.	Reserved	132
R6-3-54130.	Reserved	131	R6-3-54196.	Reserved	132
R6-3-54131.	Reserved	131	R6-3-54197.	Reserved	132
R6-3-54132.	Reserved	131	R6-3-54198.	Reserved	132
R6-3-54133.	Reserved	131	R6-3-54199.	Reserved	132
R6-3-54134.	Reserved	131	R6-3-54200.	Reserved	132
R6-3-54135.	Reserved	131	R6-3-54201.	Reserved	132
R6-3-54136.	Reserved	131	R6-3-54202.	Reserved	132
R6-3-54137.	Reserved	131	R6-3-54203.	Reserved	132
R6-3-54138.	Reserved	131	R6-3-54204.	Reserved	132
R6-3-54139.	Reserved	132	R6-3-54205.	Reserved	132
R6-3-54140.	Reserved	132	R6-3-54206.	Reserved	132
R6-3-54141.	Reserved	132	R6-3-54207.	Reserved	132
R6-3-54142.	Reserved	132	R6-3-54208.	Reserved	132
R6-3-54143.	Reserved	132	R6-3-54209.	Reserved	132
R6-3-54144.	Reserved	132	R6-3-54210.	Reserved	132
R6-3-54145.	Reserved	132	R6-3-54211.	Reserved	132
R6-3-54146.	Reserved	132	R6-3-54212.	Reserved	132
R6-3-54147.	Reserved	132	R6-3-54213.	Reserved	132
R6-3-54148.	Reserved	132	R6-3-54214.	Reserved	132
R6-3-54149.	Reserved	132	R6-3-54215.	Reserved	132
R6-3-54150.	Reserved	132	R6-3-54216.	Reserved	132
R6-3-54151.	Reserved	132	R6-3-54217.	Reserved	132
R6-3-54152.	Reserved	132	R6-3-54218.	Reserved	132
R6-3-54153.	Reserved	132	R6-3-54219.	Reserved	132
R6-3-54154.	Reserved	132	R6-3-54220.	Reserved	132
R6-3-54155.	Reserved	132	R6-3-54221.	Reserved	132
R6-3-54156.	Reserved	132	R6-3-54222.	Reserved	132
R6-3-54157.	Reserved	132	R6-3-54223.	Reserved	132
R6-3-54158.	Reserved	132	R6-3-54224.	Reserved	132
R6-3-54159.	Reserved	132	R6-3-54225.	Reserved	132
R6-3-54160.	Reserved	132	R6-3-54226.	Reserved	132
R6-3-54161.	Reserved	132	R6-3-54227.	Reserved	133
R6-3-54162.	Reserved	132	R6-3-54228.	Reserved	133
R6-3-54163.	Reserved	132	R6-3-54229.	Reserved	133
R6-3-54164.	Reserved	132	R6-3-54230.	Reserved	133
R6-3-54165.	Reserved	132	R6-3-54231.	Reserved	133
R6-3-54166.	Reserved	132	R6-3-54232.	Reserved	133
R6-3-54167.	Reserved	132	R6-3-54233.	Reserved	133
R6-3-54168.	Reserved	132	R6-3-54234.	Reserved	133
R6-3-54169.	Reserved	132	R6-3-54235.	Reserved	133
R6-3-54170.	Reserved	132	R6-3-54236.	Reserved	133
R6-3-54171.	Reserved	132	R6-3-54237.	Reserved	133
R6-3-54172.	Reserved	132	R6-3-54238.	Reserved	133
R6-3-54173.	Reserved	132	R6-3-54239.	Reserved	133
R6-3-54174.	Reserved	132	R6-3-54240.	Reserved	133
R6-3-54175.	Reserved	132	R6-3-54241.	Reserved	133
R6-3-54176.	Reserved	132	R6-3-54242.	Reserved	133
R6-3-54177.	Reserved	132	R6-3-54243.	Reserved	133
R6-3-54178.	Reserved	132	R6-3-54244.	Reserved	133
R6-3-54179.	Reserved	132	R6-3-54245.	Reserved	133
R6-3-54180.	Reserved	132	R6-3-54246.	Reserved	133
R6-3-54181.	Reserved	132	R6-3-54247.	Reserved	133
R6-3-54182.	Reserved	132	R6-3-54248.	Reserved	133
R6-3-54183.	Reserved	132	R6-3-54249.	Reserved	133
R6-3-54184.	Reserved	132	R6-3-54250.	Reserved	133
R6-3-54185.	Reserved	132	R6-3-54251.	Reserved	133
R6-3-54186.	Reserved	132	R6-3-54252.	Reserved	133
R6-3-54187.	Reserved	132	R6-3-54253.	Reserved	133
R6-3-54188.	Reserved	132	R6-3-54254.	Reserved	133
R6-3-54189.	Reserved	132	R6-3-54255.	Reserved	133

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-54256.	Reserved	133	R6-3-54322.	Reserved	134
R6-3-54257.	Reserved	133	R6-3-54323.	Reserved	134
R6-3-54258.	Reserved	133	R6-3-54324.	Reserved	134
R6-3-54259.	Reserved	133	R6-3-54325.	Reserved	134
R6-3-54260.	Reserved	133	R6-3-54326.	Reserved	134
R6-3-54261.	Reserved	133	R6-3-54327.	Reserved	134
R6-3-54262.	Reserved	133	R6-3-54328.	Reserved	134
R6-3-54263.	Reserved	133	R6-3-54329.	Reserved	134
R6-3-54264.	Reserved	133	R6-3-54330.	Reserved	134
R6-3-54265.	Reserved	133	R6-3-54331.	Reserved	134
R6-3-54266.	Reserved	133	R6-3-54332.	Reserved	134
R6-3-54267.	Reserved	133	R6-3-54333.	Reserved	134
R6-3-54268.	Reserved	133	R6-3-54334.	Reserved	134
R6-3-54269.	Reserved	133	R6-3-54335.	Reserved	134
R6-3-54270.	Reserved	133	R6-3-54336.	Reserved	134
R6-3-54271.	Reserved	133	R6-3-54337.	Reserved	134
R6-3-54272.	Reserved	133	R6-3-54338.	Reserved	134
R6-3-54273.	Reserved	133	R6-3-54339.	Reserved	134
R6-3-54274.	Reserved	133	R6-3-54340.	Overpayments (Miscellaneous 340)	134
R6-3-54275.	Reserved	133	R6-3-54341.	Reserved	134
R6-3-54276.	Reserved	133	R6-3-54342.	Reserved	134
R6-3-54277.	Reserved	133	R6-3-54343.	Reserved	134
R6-3-54278.	Reserved	133	R6-3-54344.	Reserved	134
R6-3-54279.	Reserved	133	R6-3-54345.	Reserved	134
R6-3-54280.	Reserved	133	R6-3-54346.	Reserved	135
R6-3-54281.	Reserved	133	R6-3-54347.	Reserved	135
R6-3-54282.	Reserved	133	R6-3-54348.	Reserved	135
R6-3-54283.	Reserved	133	R6-3-54349.	Reserved	135
R6-3-54284.	Reserved	133	R6-3-54350.	Reserved	135
R6-3-54285.	Reserved	133	R6-3-54351.	Reserved	135
R6-3-54286.	Reserved	133	R6-3-54352.	Reserved	135
R6-3-54287.	Reserved	133	R6-3-54353.	Reserved	135
R6-3-54288.	Reserved	133	R6-3-54354.	Reserved	135
R6-3-54289.	Reserved	133	R6-3-54355.	Reserved	135
R6-3-54290.	Reserved	133	R6-3-54356.	Reserved	135
R6-3-54291.	Reserved	133	R6-3-54357.	Reserved	135
R6-3-54292.	Reserved	133	R6-3-54358.	Reserved	135
R6-3-54293.	Reserved	133	R6-3-54359.	Reserved	135
R6-3-54294.	Reserved	133	R6-3-54360.	Reserved	135
R6-3-54295.	Reserved	133	R6-3-54361.	Reserved	135
R6-3-54296.	Reserved	133	R6-3-54362.	Reserved	135
R6-3-54297.	Reserved	133	R6-3-54363.	Reserved	135
R6-3-54298.	Reserved	133	R6-3-54364.	Reserved	135
R6-3-54299.	Reserved	133	R6-3-54365.	Reserved	135
R6-3-54300.	Reserved	133	R6-3-54366.	Reserved	135
R6-3-54301.	Reserved	133	R6-3-54367.	Reserved	135
R6-3-54302.	Reserved	133	R6-3-54368.	Reserved	135
R6-3-54303.	Reserved	133	R6-3-54369.	Reserved	135
R6-3-54304.	Reserved	133	R6-3-54370.	Reserved	135
R6-3-54305.	Reserved	133	R6-3-54371.	Reserved	135
R6-3-54306.	Reserved	133	R6-3-54372.	Reserved	135
R6-3-54307.	Reserved	133	R6-3-54373.	Reserved	135
R6-3-54308.	Reserved	133	R6-3-54374.	Reserved	135
R6-3-54309.	Reserved	133	R6-3-54375.	Reserved	135
R6-3-54310.	Reserved	133	R6-3-54376.	Reserved	135
R6-3-54311.	Reserved	133	R6-3-54377.	Reserved	135
R6-3-54312.	Reserved	133	R6-3-54378.	Reserved	135
R6-3-54313.	Reserved	133	R6-3-54379.	Reserved	135
R6-3-54314.	Reserved	133	R6-3-54380.	Reserved	135
R6-3-54315.	Reserved	134	R6-3-54381.	Reserved	135
R6-3-54316.	Reserved	134	R6-3-54382.	Reserved	135
R6-3-54317.	Reserved	134	R6-3-54383.	Reserved	135
R6-3-54318.	Reserved	134	R6-3-54384.	Reserved	135
R6-3-54319.	Reserved	134	R6-3-54385.	Reserved	135
R6-3-54320.	Reserved	134	R6-3-54386.	Reserved	135
R6-3-54321.	Reserved	134	R6-3-54387.	Reserved	135

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-54388. Reserved 135
 R6-3-54389. Reserved 135
 R6-3-54390. Reserved 135
 R6-3-54391. Reserved 135
 R6-3-54392. Reserved 135
 R6-3-54393. Reserved 135
 R6-3-54394. Reserved 135
 R6-3-54395. Reserved 135
 R6-3-54396. Reserved 135
 R6-3-54397. Reserved 135
 R6-3-54398. Reserved 135
 R6-3-54399. Reserved 135
 R6-3-54400. Reserved 135
 R6-3-54401. Reserved 135
 R6-3-54402. Reserved 135
 R6-3-54403. Reserved 135
 R6-3-54404. Reserved 135
 R6-3-54405. Reserved 135
 R6-3-54406. Reserved 135
 R6-3-54407. Repealed 135

ARTICLE 55. TOTAL AND PARTIAL UNEMPLOYMENT BENEFIT POLICY

Section
 R6-3-5501. Reserved 135
 through
 R6-3-55414. Reserved [49,913 Sections Reserved] 135
 R6-3-55415. Self-employment or other work (Total and Partial Unemployment 415) 135
 R6-3-55416. Reserved 136
 R6-3-54417. Reserved 136
 R6-3-54418. Reserved 136
 R6-3-54419. Reserved 136
 R6-3-54420. Reserved 136
 R6-3-54421. Reserved 136
 R6-3-54422. Reserved 136
 R6-3-54423. Reserved 136
 R6-3-54424. Reserved 136
 R6-3-54425. Reserved 136
 R6-3-54426. Reserved 136
 R6-3-54427. Reserved 136
 R6-3-54428. Reserved 136
 R6-3-54429. Reserved 136
 R6-3-54430. Reserved 136
 R6-3-54431. Reserved 136
 R6-3-54432. Reserved 136
 R6-3-54433. Reserved 136
 R6-3-54434. Reserved 136
 R6-3-54435. Reserved 136
 R6-3-54436. Reserved 136
 R6-3-54437. Reserved 136
 R6-3-54438. Reserved 136
 R6-3-54439. Reserved 136
 R6-3-54440. Reserved 136
 R6-3-54441. Reserved 136
 R6-3-54442. Reserved 136
 R6-3-54443. Reserved 136
 R6-3-54444. Reserved 136
 R6-3-54445. Reserved 136
 R6-3-54446. Reserved 136
 R6-3-54447. Reserved 136
 R6-3-54448. Reserved 136
 R6-3-54449. Reserved 136
 R6-3-54450. Reserved 136
 R6-3-54451. Reserved 136
 R6-3-54452. Reserved 136

R6-3-54453. Reserved 136
 R6-3-54454. Reserved 136
 R6-3-54455. Reserved 136
 R6-3-54456. Reserved 136
 R6-3-54457. Reserved 136
 R6-3-54458. Reserved 136
 R6-3-54459. Reserved 136
 R6-3-54460. Type of Compensation 136

ARTICLE 56. LABOR DISPUTE BENEFIT POLICY

Section
 R6-3-5601. Definitions and Explanation of Terms 137
 R6-3-5602. Labor Dispute Notice 138
 R6-3-5603. Eligibility During a Labor Dispute 138
 R6-3-5604. Termination of the Labor Dispute Disqualification 138
 R6-3-5605. Repealed 139
 R6-3-5606. Reserved 139
 R6-3-5606. Reserved 139
 R6-3-5607. Reserved 139
 R6-3-5608. Reserved 139
 R6-3-5609. Reserved 139
 R6-3-5610. Reserved 139
 R6-3-5611. Reserved 139
 R6-3-5612. Reserved 139
 R6-3-5613. Reserved 139
 R6-3-5614. Reserved 139
 R6-3-5615. Reserved 139
 R6-3-5616. Reserved 139
 R6-3-5617. Reserved 139
 R6-3-5618. Reserved 139
 R6-3-5619. Reserved 139
 R6-3-5620. Reserved 139
 R6-3-5621. Reserved 139
 R6-3-5622. Reserved 139
 R6-3-5623. Reserved 139
 R6-3-5624. Reserved 139
 R6-3-5625. Reserved 139
 R6-3-5626. Reserved 139
 R6-3-5627. Reserved 139
 R6-3-5628. Reserved 139
 R6-3-5629. Reserved 139
 R6-3-5630. Reserved 139
 R6-3-5631. Reserved 139
 R6-3-5632. Reserved 139
 R6-3-5633. Reserved 139
 R6-3-5634. Reserved 139
 R6-3-5635. Repealed 139
 R6-3-5636. Reserved 139
 through
 R6-3-56124. Reserved [50,488 Sections Reserved] 139
 R6-3-56125. Repealed 139
 R6-3-56126. Reserved 139
 R6-3-56127. Reserved 139
 R6-3-56128. Reserved 139
 R6-3-56129. Reserved 139
 R6-3-56130. Repealed 139
 R6-3-56131. Reserved 139
 R6-3-56132. Reserved 139
 R6-3-56133. Reserved 139
 R6-3-56134. Reserved 139
 R6-3-56135. Reserved 139
 R6-3-56136. Reserved 139
 R6-3-56137. Reserved 139
 R6-3-56138. Reserved 139
 R6-3-56139. Reserved 139

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-56140.	Reserved	139	R6-3-56206.	Reserved	140
R6-3-56141.	Reserved	139	R6-3-56207.	Reserved	140
R6-3-56142.	Reserved	139	R6-3-56208.	Reserved	140
R6-3-56143.	Reserved	139	R6-3-56209.	Reserved	140
R6-3-56144.	Reserved	139	R6-3-56210.	Reserved	140
R6-3-56145.	Reserved	139	R6-3-56211.	Reserved	140
R6-3-56146.	Reserved	139	R6-3-56212.	Reserved	140
R6-3-56147.	Reserved	139	R6-3-56213.	Reserved	140
R6-3-56148.	Reserved	139	R6-3-56214.	Reserved	140
R6-3-56149.	Reserved	139	R6-3-56215.	Reserved	140
R6-3-56150.	Reserved	139	R6-3-56216.	Reserved	140
R6-3-56151.	Reserved	139	R6-3-56217.	Reserved	140
R6-3-56152.	Reserved	139	R6-3-56218.	Reserved	140
R6-3-56153.	Reserved	139	R6-3-56219.	Reserved	140
R6-3-56154.	Reserved	139	R6-3-56220.	Repealed	140
R6-3-56155.	Reserved	139	R6-3-56221.	Reserved	140
R6-3-56156.	Reserved	139	R6-3-56222.	Reserved	140
R6-3-56157.	Reserved	140	R6-3-56223.	Reserved	140
R6-3-56158.	Reserved	140	R6-3-56224.	Reserved	140
R6-3-56159.	Reserved	140	R6-3-56225.	Reserved	140
R6-3-56160.	Reserved	140	R6-3-56226.	Reserved	140
R6-3-56161.	Reserved	140	R6-3-56227.	Reserved	140
R6-3-56162.	Reserved	140	R6-3-56228.	Reserved	140
R6-3-56163.	Reserved	140	R6-3-56229.	Reserved	140
R6-3-56164.	Reserved	140	R6-3-56230.	Reserved	140
R6-3-56165.	Reserved	140	R6-3-56231.	Reserved	140
R6-3-56166.	Reserved	140	R6-3-56232.	Reserved	140
R6-3-56167.	Reserved	140	R6-3-56233.	Reserved	140
R6-3-56168.	Reserved	140	R6-3-56234.	Reserved	140
R6-3-56169.	Reserved	140	R6-3-56235.	Reserved	141
R6-3-56170.	Reserved	140	R6-3-56236.	Reserved	141
R6-3-56171.	Reserved	140	R6-3-56237.	Reserved	141
R6-3-56172.	Reserved	140	R6-3-56238.	Reserved	141
R6-3-56173.	Reserved	140	R6-3-56239.	Reserved	141
R6-3-56174.	Reserved	140	R6-3-56240.	Reserved	141
R6-3-56175.	Repealed	140	R6-3-56241.	Reserved	141
R6-3-56176.	Reserved	140	R6-3-56242.	Reserved	141
R6-3-56177.	Reserved	140	R6-3-56243.	Reserved	141
R6-3-56178.	Reserved	140	R6-3-56244.	Reserved	141
R6-3-56179.	Reserved	140	R6-3-56245.	Reserved	141
R6-3-56180.	Reserved	140	R6-3-56246.	Reserved	141
R6-3-56181.	Reserved	140	R6-3-56247.	Reserved	141
R6-3-56182.	Reserved	140	R6-3-56248.	Reserved	141
R6-3-56183.	Reserved	140	R6-3-56249.	Reserved	141
R6-3-56184.	Reserved	140	R6-3-56250.	Reserved	141
R6-3-56185.	Reserved	140	R6-3-56251.	Reserved	141
R6-3-56186.	Reserved	140	R6-3-56252.	Reserved	141
R6-3-56187.	Reserved	140	R6-3-56253.	Reserved	141
R6-3-56188.	Reserved	140	R6-3-56254.	Reserved	141
R6-3-56189.	Reserved	140	R6-3-56255.	Reserved	141
R6-3-56190.	Reserved	140	R6-3-56256.	Reserved	141
R6-3-56191.	Reserved	140	R6-3-56257.	Reserved	141
R6-3-56192.	Reserved	140	R6-3-56258.	Reserved	141
R6-3-56193.	Reserved	140	R6-3-56259.	Reserved	141
R6-3-56194.	Reserved	140	R6-3-56260.	Reserved	141
R6-3-56195.	Reserved	140	R6-3-56261.	Reserved	141
R6-3-56196.	Reserved	140	R6-3-56262.	Reserved	141
R6-3-56197.	Reserved	140	R6-3-56263.	Reserved	141
R6-3-56198.	Reserved	140	R6-3-56264.	Reserved	141
R6-3-56199.	Reserved	140	R6-3-56265.	Reserved	141
R6-3-56200.	Reserved	140	R6-3-56266.	Reserved	141
R6-3-56201.	Reserved	140	R6-3-56267.	Reserved	141
R6-3-56202.	Reserved	140	R6-3-56268.	Reserved	141
R6-3-56203.	Reserved	140	R6-3-56269.	Reserved	141
R6-3-56204.	Reserved	140	R6-3-56270.	Reserved	141
R6-3-56205.	Repealed	140	R6-3-56271.	Reserved	141

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-56272.	Reserved	141	R6-3-56338.	Reserved	142
R6-3-56273.	Reserved	141	R6-3-56339.	Reserved	142
R6-3-56274.	Reserved	141	R6-3-56340.	Reserved	142
R6-3-56275.	Reserved	141	R6-3-56341.	Reserved	142
R6-3-56276.	Reserved	141	R6-3-56342.	Reserved	142
R6-3-56277.	Reserved	141	R6-3-56343.	Reserved	142
R6-3-56278.	Reserved	141	R6-3-56344.	Reserved	142
R6-3-56279.	Reserved	141	R6-3-56345.	Reserved	142
R6-3-56280.	Reserved	141	R6-3-56346.	Reserved	142
R6-3-56281.	Reserved	141	R6-3-56347.	Reserved	142
R6-3-56282.	Reserved	141	R6-3-56348.	Reserved	142
R6-3-56283.	Reserved	141	R6-3-56349.	Reserved	142
R6-3-56284.	Reserved	141	R6-3-56350.	Reserved	142
R6-3-56285.	Reserved	141	R6-3-56351.	Reserved	142
R6-3-56286.	Reserved	141	R6-3-56352.	Reserved	142
R6-3-56287.	Reserved	141	R6-3-56353.	Reserved	142
R6-3-56288.	Reserved	141	R6-3-56354.	Reserved	142
R6-3-56289.	Reserved	141	R6-3-56355.	Reserved	142
R6-3-56290.	Reserved	141	R6-3-56356.	Reserved	142
R6-3-56291.	Reserved	141	R6-3-56357.	Reserved	142
R6-3-56292.	Reserved	141	R6-3-56358.	Reserved	142
R6-3-56293.	Reserved	141	R6-3-56359.	Reserved	142
R6-3-56294.	Reserved	141	R6-3-56360.	Reserved	142
R6-3-56295.	Reserved	141	R6-3-56361.	Reserved	142
R6-3-56296.	Reserved	141	R6-3-56362.	Reserved	142
R6-3-56297.	Reserved	141	R6-3-56363.	Reserved	142
R6-3-56298.	Reserved	141	R6-3-56364.	Reserved	142
R6-3-56299.	Reserved	141	R6-3-56365.	Reserved	142
R6-3-56300.	Reserved	141	R6-3-56366.	Reserved	142
R6-3-56301.	Reserved	141	R6-3-56367.	Reserved	142
R6-3-56302.	Reserved	141	R6-3-56368.	Reserved	142
R6-3-56303.	Reserved	141	R6-3-56369.	Reserved	142
R6-3-56304.	Reserved	141	R6-3-56370.	Reserved	142
R6-3-56305.	Reserved	141	R6-3-56371.	Reserved	142
R6-3-56306.	Reserved	141	R6-3-56372.	Reserved	142
R6-3-56307.	Reserved	141	R6-3-56373.	Reserved	142
R6-3-56308.	Reserved	141	R6-3-56374.	Reserved	142
R6-3-56309.	Reserved	141	R6-3-56375.	Reserved	142
R6-3-56310.	Reserved	141	R6-3-56376.	Reserved	142
R6-3-56311.	Reserved	141	R6-3-56377.	Reserved	142
R6-3-56312.	Reserved	141	R6-3-56378.	Reserved	142
R6-3-56313.	Reserved	141	R6-3-56379.	Reserved	142
R6-3-56314.	Reserved	141	R6-3-56380.	Reserved	142
R6-3-56315.	Reserved	141	R6-3-56381.	Reserved	142
R6-3-56316.	Reserved	141	R6-3-56382.	Reserved	142
R6-3-56317.	Reserved	141	R6-3-56383.	Reserved	142
R6-3-56318.	Reserved	141	R6-3-56384.	Reserved	142
R6-3-56319.	Reserved	141	R6-3-56385.	Reserved	142
R6-3-56320.	Reserved	141	R6-3-56386.	Reserved	142
R6-3-56321.	Reserved	141	R6-3-56387.	Reserved	142
R6-3-56322.	Reserved	141	R6-3-56388.	Reserved	142
R6-3-56323.	Reserved	142	R6-3-56389.	Reserved	142
R6-3-56324.	Reserved	142	R6-3-56390.	Reserved	142
R6-3-56325.	Reserved	142	R6-3-56391.	Reserved	142
R6-3-56326.	Reserved	142	R6-3-56392.	Reserved	142
R6-3-56327.	Reserved	142	R6-3-56393.	Reserved	142
R6-3-56328.	Reserved	142	R6-3-56394.	Reserved	142
R6-3-56329.	Reserved	142	R6-3-56395.	Reserved	142
R6-3-56330.	Reserved	142	R6-3-56396.	Reserved	142
R6-3-56331.	Reserved	142	R6-3-56397.	Reserved	142
R6-3-56332.	Reserved	142	R6-3-56398.	Reserved	142
R6-3-56333.	Reserved	142	R6-3-56399.	Reserved	142
R6-3-56334.	Reserved	142	R6-3-56400.	Reserved	142
R6-3-56335.	Reserved	142	R6-3-56401.	Reserved	142
R6-3-56336.	Reserved	142	R6-3-56402.	Reserved	142
R6-3-56337.	Reserved	142	R6-3-56403.	Reserved	142

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-56404. Reserved 142
 R6-3-56405. Reserved 142
 R6-3-56406. Reserved 142
 R6-3-56407. Repealed 142
 R6-3-56408. Reserved 143
 R6-3-56409. Reserved 143
 R6-3-56410. Reserved 143
 R6-3-56411. Reserved 143
 R6-3-56412. Reserved 143
 R6-3-56413. Reserved 143
 R6-3-56414. Reserved 143
 R6-3-56415. Reserved 143
 R6-3-56416. Reserved 143
 R6-3-56417. Reserved 143
 R6-3-56418. Reserved 143
 R6-3-56419. Reserved 143
 R6-3-56420. Reserved 143
 R6-3-56421. Reserved 143
 R6-3-56422. Reserved 143
 R6-3-56423. Reserved 143
 R6-3-56424. Reserved 143
 R6-3-56425. Reserved 143
 R6-3-56426. Reserved 143
 R6-3-56427. Reserved 143
 R6-3-56428. Reserved 143
 R6-3-56429. Reserved 143
 R6-3-56430. Reserved 143
 R6-3-56431. Reserved 143
 R6-3-56432. Reserved 143
 R6-3-56433. Reserved 143
 R6-3-56434. Reserved 143
 R6-3-56435. Reserved 143
 R6-3-56436. Reserved 143
 R6-3-56437. Reserved 143
 R6-3-56438. Reserved 143
 R6-3-56439. Reserved 143
 R6-3-56440. Reserved 143
 R6-3-56441. Reserved 143
 R6-3-56442. Reserved 143
 R6-3-56443. Reserved 143
 R6-3-56444. Reserved 143
 R6-3-56445. Repealed 143
 R6-3-56446. Reserved 143
 R6-3-56447. Reserved 143
 R6-3-56448. Reserved 143
 R6-3-56449. Reserved 143
 R6-3-56450. Reserved 143
 R6-3-56451. Reserved 143
 R6-3-56452. Reserved 143
 R6-3-56453. Reserved 143
 R6-3-56454. Reserved 143
 R6-3-56455. Reserved 143
 R6-3-56456. Reserved 143
 R6-3-56457. Reserved 143
 R6-3-56458. Reserved 143
 R6-3-56459. Reserved 143
 R6-3-56460. Reserved 143
 R6-3-56461. Reserved 143
 R6-3-56462. Reserved 143
 R6-3-56463. Reserved 143
 R6-3-56464. Reserved 143
 R6-3-56465. Repealed 143
 R6-3-56466. Reserved 143
 R6-3-56467. Reserved 143
 R6-3-56468. Reserved 143
 R6-3-56469. Reserved 143

R6-3-56470. Repealed 143

ARTICLE 57. RESERVED

ARTICLE 58. RESERVED

ARTICLE 59. RESERVED

ARTICLE 60. REPEALED

Former Article 60, consisting of Sections 6-3-6001 through R6-3-6006, repealed effective February 1, 1995 (Supp. 95-1).

Section
 R6-3-6001. Repealed 143
 R6-3-6002. Repealed 143
 R6-3-6003. Repealed 144
 R6-3-6004. Repealed 144
 R6-3-6005. Repealed 144
 R6-3-6006. Repealed 144

ARTICLE 61. REPEALED

Former Article 61, consisting of Sections R6-3-6101 through R6-3-6107, repealed effective February 1, 1995 (Supp. 95-1).

Section
 R6-3-6101. Repealed 144
 R6-3-6102. Repealed 144
 R6-3-6103. Repealed 144
 R6-3-6104. Repealed 144
 R6-3-6105. Repealed 144
 R6-3-6106. Repealed 144
 R6-3-6107. Repealed 144

ARTICLE 62. REPEALED

Former Article 62, consisting of Sections R6-3-6201 through R6-3-6205, repealed effective February 1, 1995 (Supp. 95-1).

Section
 R6-3-6201. Repealed 144
 R6-3-6202. Repealed 144
 R6-3-6203. Repealed 144
 R6-3-6204. Repealed 144
 R6-3-6205. Repealed 144

ARTICLE 63. REPEALED

Former Article 63, consisting of Sections R6-3-6301 through R6-3-6304, repealed effective February 1, 1995 (Supp. 95-1).

Section
 R6-3-6301. Repealed 144
 R6-3-6302. Repealed 144
 R6-3-6303. Repealed 144
 R6-3-6304. Repealed 144

ARTICLE 64. REPEALED

Former Article 64, consisting of Section R6-3-6401, repealed effective February 1, 1995 (Supp. 95-1).

Section
 R6-3-6401. Repealed 144

ARTICLE 65. REPEALED

Former Article 65, consisting of Section R6-3-6501, repealed effective February 1, 1995 (Supp. 95-1).

Section
 R6-3-6501. Repealed 144

ARTICLE 66. REPEALED

Former Article 66, consisting of Sections R6-3-6601 through R6-3-6606, repealed effective February 1, 1995 (Supp. 95-1).

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

Section		R6-3-6604.	Repealed	145
R6-3-6601.	Repealed	R6-3-6605.	Repealed	145
R6-3-6602.	Repealed	R6-3-6606.	Repealed	145
R6-3-6603.	Repealed			

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

All forms referred to in this Chapter can be obtained from the Department of Economic Security.

ARTICLE 1. RECODIFIED**R6-3-101. Repealed****Historical Note**

Former Section R6-3-101 repealed, new Section R6-3-101 adopted effective March 26, 1976 (Supp. 76-2). Repealed effective November 3, 1983 (Supp. 83-6).

R6-3-102. Repealed**Historical Note**

Former Section R6-3-102 repealed, new Section R6-3-102 adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). Repealed effective November 3, 1983 (Supp. 83-6).

R6-3-103. Recodified**Historical Note**

Former Section R6-3-103 repealed, new Section R6-3-103 adopted effective March 26, 1976 (Supp. 76-2). Former Section R6-3-103 recodified to A.A.C. R6-1-501 effective February 13, 1996 (Supp. 96-1).

R6-3-104. Repealed**Historical Note**

Former Section R6-3-104 repealed, new Section R6-3-104 adopted effective March 26, 1976 (Supp. 76-2). Repealed effective November 3, 1983 (Supp. 83-6).

ARTICLE 2. RECODIFIED**R6-3-201. Recodified****Historical Note**

Former Rule 3-200; Former Section R6-3-201 repealed, new Section R6-3-201 adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). R6-3-201 recodified to A.A.C. R6-13-201 effective February 13, 1996 (Supp. 96-1).

R6-3-202. Recodified**Historical Note**

Former Rule 3-201; Former Section R6-3-202 repealed, new Section R6-3-202 adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). R6-3-202 recodified to A.A.C. R6-13-202 effective February 13, 1996 (Supp. 96-1).

R6-3-203. Recodified**Historical Note**

Former Rule 3-202; Former Section R6-3-203 repealed, new Section R6-3-203 adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). R6-3-203 recodified to A.A.C. R6-13-203 effective February 13, 1996 (Supp. 96-1).

R6-3-204. Recodified**Historical Note**

Former Rule 3-203; Former Section R6-3-204 repealed, new Section R6-3-204 adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). Section repealed, new Section adopted effective November 17, 1993 (Supp. 93-4). R6-3-204 recodified to A.A.C. R6-13-204 effective February 13, 1996 (Supp. 96-1).

R6-3-205. Recodified**Historical Note**

Former Rule R3-204; Former Section R6-3-205 repealed, new Section R6-3-205 adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). Amended effective June 15, 1978 (Supp. 78-3). R6-3-205 recodified to A.A.C. R6-13-205 effective February 13, 1996 (Supp. 96-1).

R6-3-206. Recodified**Historical Note**

Former Rule 3-205; Former Section R6-3-206 repealed, new Section R6-3-206 adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). R6-3-206 recodified to A.A.C. R6-13-206 effective February 13, 1996 (Supp. 96-1).

R6-3-207. Recodified**Historical Note**

Former Rule 3-206; Former Section R6-3-207 repealed, new Section R6-3-207 adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). Amended effective June 15, 1978 (Supp. 78-3). Amended as an emergency effective October 3, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-5). Former Emergency Adoption now adopted effective April 23, 1980 (Supp. 80-2). R6-3-207 recodified to A.A.C. R6-13-207 effective February 13, 1996 (Supp. 96-1).

R6-3-208. Repealed**Historical Note**

Former Rule 3-207, 3-207.2; Repealed effective March 26, 1976 (Supp. 76-2).

R6-3-209. Recodified**Historical Note**

Former Rule 3-208; Former Section R6-3-209 repealed, new Section R6-3-209 adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). R6-3-209 recodified to A.A.C. R6-13-209 effective February 13, 1996 (Supp. 96-1).

R6-3-210. Repealed**Historical Note**

Former Rule 3-209; Repealed effective March 26, 1976 (Supp. 76-2).

R6-3-211. Recodified**Historical Note**

Former Rule 3-210; Former Section R6-3-211 repealed, new Section R6-3-211 adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). R6-3-211 recodified to A.A.C. R6-13-211 effective February 13, 1996 (Supp. 96-1).

R6-3-212. Recodified**Historical Note**

Former Rule 3-211; Former Section R6-3-212 repealed, new Section R6-3-212 adopted effective March 26, 1976 (Supp. 76-2). R6-3-212 recodified to A.A.C. R6-13-212 effective February 13, 1996 (Supp. 96-1).

R6-3-213. Repealed**Historical Note**

Former Rule 3-212; Repealed effective March 26, 1976

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

(Supp. 76-2).

R6-3-214. Recodified**Historical Note**

Former Rule 3-213; Former Section R6-3-214 repealed, new Section R6-3-214 adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). R6-3-214 recodified to A.A.C. R6-13-214 effective February 13, 1996 (Supp. 96-1).

R6-3-215. Recodified**Historical Note**

Former Rule 3-214; Former Section R6-3-215 repealed, new Section R6-3-215 adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). Amended effective June 15, 1978 (Supp. 78-3). R6-3-215 recodified to A.A.C. R6-13-215 effective February 13, 1996 (Supp. 96-1).

R6-3-216. Recodified**Historical Note**

Former Rule 3-215; Former Section R6-3-216 repealed, new Section R6-3-216 adopted effective March 26, 1976 (Supp. 76-2). R6-3-216 recodified to A.A.C. R6-13-216 effective February 13, 1996 (Supp. 96-1).

ARTICLE 3. RECODIFIED**R6-3-301. Recodified****Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). R6-3-301 recodified to A.A.C. R6-13-301 effective February 13, 1996 (Supp. 96-1).

R6-3-302. Recodified**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). Amended effective June 15, 1978 (Supp. 78-3). R6-3-302 recodified to A.A.C. R6-13-302 effective February 13, 1996 (Supp. 96-1).

R6-3-303. Recodified**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Former Section R6-3-304 renumbered and amended as Section R6-3-303 effective October 13, 1977 (Supp. 77-5). R6-3-303 recodified to A.A.C. R6-13-303 effective February 13, 1996 (Supp. 96-1).

R6-3-304. Recodified**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Former Section R6-3-303 renumbered and amended as Section R6-3-304 effective October 13, 1977 (Supp. 77-5). R6-3-304 recodified to A.A.C. R6-13-304 effective February 13, 1996 (Supp. 96-1).

R6-3-305. Recodified**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). R6-3-305 recodified to A.A.C. R6-13-305 effective February 13, 1996 (Supp. 96-1).

R6-3-306. Recodified**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). Amended effective June 15, 1978 (Supp. 78-3). R6-3-306 recodified to A.A.C. R6-13-306 effective February 13, 1996 (Supp. 96-1).

R6-3-307. Recodified**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Amended effective March 14, 1977; Amended as an emergency effective March 21, 1977 (Supp. 77-2). Amended effective June 17, 1977 (Supp. 77-3). Amended effective October 13, 1977 (Supp. 77-5). R6-3-307 recodified to A.A.C. R6-13-307 effective February 13, 1996 (Supp. 96-1).

R6-3-308. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Repealed effective October 13, 1977 (Supp. 77-5).

R6-3-309. Recodified**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). Amended effective June 15, 1978 (Supp. 78-3). R6-3-309 recodified to A.A.C. R6-13-309 effective February 13, 1996 (Supp. 96-1).

R6-3-310. Recodified**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). R6-3-310 recodified to A.A.C. R6-13-310 effective February 13, 1996 (Supp. 96-1).

R6-3-311. Recodified**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). R6-3-311 recodified to A.A.C. R6-13-311 effective February 13, 1996 (Supp. 96-1).

R6-3-312. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Repealed effective October 13, 1977 (Supp. 77-5).

R6-3-313. Recodified**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Amended effective March 14, 1977 (Supp. 77-2). Amended effective October 13, 1977 (Supp. 77-5). Amended effective June 15, 1978 (Supp. 78-3). R6-3-313 recodified to A.A.C. R6-13-313 effective February 13, 1996 (Supp. 96-1).

R6-3-314. Recodified**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Former Section R6-3-314 repealed, new Section R6-3-314 adopted effective October 13, 1977 (Supp. 77-5). Amended effective June 15, 1978 (Supp. 78-3). Amended as an emergency effective October 3, 1979, pursuant to

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

A.R.S. § 41-1003, valid for only 90 days (Supp. 79-5). Former emergency adoption now adopted and amended effective April 9, 1980 (Supp. 80-2). Section repealed, new Section adopted effective November 17, 1993 (Supp. 93-4). R6-3-314 recodified to A.A.C. R6-13-314 effective February 13, 1996 (Supp. 96-1).

R6-3-314.01. Recodified**Historical Note**

Adopted effective November 17, 1993 (Supp. 93-4). R6-3-314.01 recodified to A.A.C. R6-13-314.01 effective February 13, 1996 (Supp. 96-1).

R6-3-315. Recodified**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). R6-3-315 recodified to A.A.C. R6-13-315 effective February 13, 1996 (Supp. 96-1).

R6-3-316. Recodified**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Former Section R6-3-316 repealed, new Section R6-3-316 adopted effective October 13, 1977 (Supp. 77-5). R6-3-316 recodified to A.A.C. R6-13-316 effective February 13, 1996 (Supp. 96-1).

R6-3-317. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Former Section R6-3-317 repealed effective October 13, 1977 (Supp. 77-5).

R6-3-318. Recodified**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Former Section R6-3-318 repealed, new Section R6-3-318 adopted effective October 13, 1977 (Supp. 77-5). Former Section R6-3-318 repealed, new Section R6-3-318 adopted as an emergency effective October 3, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-5). Emergency expired, Section R6-3-318 in effect prior to emergency repeal placed back into effect January 2, 1980. Section repealed, new Section adopted effective November 17, 1993 (Supp. 93-4). R6-3-318 recodified to A.A.C. R6-13-318 effective February 13, 1996 (Supp. 96-1).

R6-3-319. Recodified**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Former Section R6-3-319 repealed, new Section R6-3-319 adopted effective October 13, 1977 (Supp. 77-5). Amended effective June 15, 1978 (Supp. 78-3). Former Section R6-3-319 repealed, new Section R6-3-319 adopted as an emergency effective October 3, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-5). Former emergency adoption now adopted and amended effective April 9, 1980 (Supp. 80-2). R6-3-319 recodified to A.A.C. R6-13-319 effective February 13, 1996 (Supp. 96-1).

R6-3-320. Recodified**Historical Note**

Former Section R6-3-324 renumbered and amended as

Section R6-3-320 effective October 13, 1977 (Supp. 77-5). Amended effective June 15, 1978 (Supp. 78-3). R6-3-320 recodified to A.A.C. R6-13-320 effective February 13, 1996 (Supp. 96-1).

R6-3-321. Recodified**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Former Section R6-3-325 renumbered and amended as Section R6-3-321 effective October 13, 1977 (Supp. 77-5). R6-3-321 recodified to A.A.C. R6-13-321 effective February 13, 1996 (Supp. 96-1).

R6-3-322. Recodified**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Former Section R6-3-322 repealed, new Section R6-3-322 adopted effective March 14, 1977 (Supp. 77-5). Former Section R6-3-322 repealed effective October 13, 1977 (Supp. 77-5). New Section R6-3-322 adopted as an emergency effective October 3, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-5). Former Emergency Adoption now adopted and amended effective April 17, 1980 (Supp. 80-2). R6-3-322 recodified to A.A.C. R6-13-322 effective February 13, 1996 (Supp. 96-1).

R6-3-323. Reserved**R6-3-324. Repealed****Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Former Section R6-3-324 repealed effective October 13, 1977 (Supp. 77-5).

R6-3-325. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Former Section R6-3-325 repealed effective October 13, 1977 (Supp. 77-5).

ARTICLE 4. REPEALED**R6-3-401. Repealed****Historical Note**

Former Rule 3-400; Former Section R6-3-401 repealed, new Section R6-3-401 adopted effective March 26, 1976 (Supp. 76-2). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-402. Repealed**Historical Note**

Former Rule 3-401; Former Section R6-3-402 repealed, new Section R6-3-402 adopted effective March 26, 1976 (Supp. 76-2). Former Section R6-3-402 repealed, new Section R6-3-402 adopted effective October 13, 1977 (Supp. 77-5). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-403. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-404. Repealed**Historical Note**

Former Rule 3-402; Former Section R6-3-404 repealed,

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

new Section R6-3-404 adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-4). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-405. Repealed**Historical Note**

Former Rule 3-403; Former Section R6-3-405 repealed, new Section R6-3-405 adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5) Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-406. Repealed**Historical Note**

Former Rule 3-404; Former Section R6-3-406 repealed, new Section R6-3-406 adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-407. Repealed**Historical Note**

Former Rule 3-405; Amended effective September 24, 1975 (Supp. 75-1). Former Section R6-3-407 repealed, new Section R6-3-407 adopted effective March 26, 1976 (Supp. 76-2). Amended effective March 14, 1977 (Supp. 77-2). Amended effective October 13, 1977 (Supp. 77-5). Amended effective June 15, 1978 (Supp. 78-3). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-408. Repealed**Historical Note**

Former Rule 3-406; Former Section R6-3-408 repealed, new Section R6-3-408 adopted effective March 26, 1976 (Supp. 76-2). Former Section R6-3-408 repealed, new Section R6-3-408 adopted effective October 13, 1977 (Supp. 77-5). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-409. Repealed**Historical Note**

Former Rule 3-407; Former Section R6-3-409 repealed, new Section R6-3-409 adopted effective March 26, 1976 (Supp. 76-2). Amended effective March 21, 1977 (Supp. 77-2). Correction, amended effective March 21, 1977 (Supp. 77-2) should read amended as an emergency effective March 21, 1977 (Supp. 77-2); Amended effective June 17, 1977 (Supp. 77-3). Former Section R6-3-409 repealed, new Section R6-3-409 adopted effective October 13, 1977 (Supp. 77-5). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-410. Repealed**Historical Note**

Former Rule 3-408; Amended effective November 26, 1974 (Supp. 75-1). Former Section R6-3-410 repealed, new Section R6-3-410 adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). Repealed effective June 15, 1978 (Supp. 78-3).

R6-3-411. Repealed**Historical Note**

Former Rule 3-409; Former Section R6-3-411 repealed effective March 26, 1976 (Supp. 76-2). Former Section

R6-3-322 renumbered and amended as Section R6-3-411 effective October 13, 1977 (Supp. 77-5). Amended effective June 15, 1978 (Supp. 78-3). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-412. Repealed**Historical Note**

Former Rule 3-410; Amended effective November 26, 1974 (Supp. 75-1). Former Section R6-3-412 repealed, new Section R6-3-412 adopted effective March 26, 1976 (Supp. 76-2). Former Section R6-3-412 repealed, new Section R6-3-412 adopted effective October 13, 1977 (Supp. 77-5). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-413. Repealed**Historical Note**

Former Rule 3-411; Former Section R6-3-413 repealed, new Section R6-3-413 adopted effective March 26, 1976 (Supp. 76-2). Former Section R6-3-413 repealed, new Section R6-3-413 adopted effective October 13, 1977 (Supp. 77-5). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-414. Repealed**Historical Note**

Former Rule 3-412; Amended effective October 23, 1975, AP Exhibit IV-B repealed effective October 23, 1975 (Supp. 75-1). Former Section R6-3-414 repealed, new Section R6-3-414 adopted effective March 26, 1976 (Supp. 76-2). Former Section R6-3-414 repealed, new Section R6-3-414 adopted effective October 13, 1977 (Supp. 77-5). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-415. Repealed**Historical Note**

Former Rule 3-420; Former Section R6-3-415 repealed, new Section R6-3-415 adopted effective March 26, 1976 (Supp. 76-2). Former Section R6-3-415 repealed, new Section R6-3-415 adopted effective October 13, 1977 (Supp. 77-5). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-416. Repealed**Historical Note**

Former Rule 3-421; Former Section R6-3-416 repealed effective March 26, 1976 (Supp. 76-2).

R6-3-417. Repealed**Historical Note**

Former Rule 3-422; Former Section R6-3-417 repealed effective March 26, 1976 (Supp. 76-2).

R6-3-418. Repealed**Historical Note**

Former Rule 3-423; Former Section R6-3-418 repealed, new Section R6-3-418 adopted effective March 26, 1976 (Supp. 76-2). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-419. Repealed**Historical Note**

Former Rule 3-424; Former Section R6-3-419 repealed effective March 26, 1976 (Supp. 76-2).

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-420. Repealed**Historical Note**

Former Rule 3-425; Former Section R6-3-420 repealed, new Section R6-3-420 adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). Amended effective June 15, 1978 (Supp. 78-3). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-421. Repealed**Historical Note**

Former Rule 3-426; Former Section R6-3-421 repealed, new Section R6-3-421 adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-422. Repealed**Historical Note**

Former Rule 3-427; Former Section R6-3-422 repealed, new Section R6-3-422 adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-423. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-424. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). Amended effective June 15, 1978 (Supp. 78-3). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-425. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-426. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Amended effective June 15, 1978 (Supp. 78-3). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-427. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). Amended effective June 15, 1978 (Supp. 78-3). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-428. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-429. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2).

Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-430. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Former Section R6-3-430 repealed, new Section R6-3-430 adopted effective October 13, 1977 (Supp. 77-5). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-431. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-432. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-433. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). Amended effective June 15, 1978 (Supp. 78-3). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-434. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Former Section R6-3-434 repealed effective October 13, 1977 (Supp. 77-5).

R6-3-435. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Former Section R6-3-435 repealed effective October 13, 1977 (Supp. 77-5).

ARTICLE 5. REPEALED**R6-3-501. Repealed****Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-502. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-503. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). Amended as an emergency effective September 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Emergency expired. Amended effective May 2, 1984 (Supp. 84-3). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-504. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Repealed effective November 9, 1995 (Supp. 95-4).

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-505. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2).
Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-506. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2).
Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-507. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2).
Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-508. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2).
Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-509. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2).
Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-510. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2).
Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-511. Reserved**R6-3-512. Repealed****Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2).
Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-513. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2).
Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-514. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2).
Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-515. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Former Section R6-3-515 repealed, new Section R6-3-515 adopted as an emergency effective October 3, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-5). Former Emergency Adoption now adopted and amended effective April 17, 1980 (Supp. 80-2). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-516. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2).
Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-517. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2).
Repealed effective November 9, 1995 (Supp. 95-4).

ARTICLE 6. RECODIFIED**R6-3-601. Recodified****Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Section repealed, new Section adopted effective October 2, 1986 (Supp. 86-2). Amended effective May 2, 1990 (Supp. 90-2). R6-3-601 recodified to A.A.C. R6-13-601 effective February 13, 1996 (Supp. 96-1).

R6-3-602. Recodified**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Section repealed, new Section adopted effective October 2, 1986 (Supp. 86-2). Amended effective May 2, 1990 (Supp. 90-2). R6-3-602 recodified to A.A.C. R6-13-602 effective February 13, 1996 (Supp. 96-1).

R6-3-603. Recodified**Historical Note**

Former Section R6-3-603 adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). Amended effective June 15, 1978 (Supp. 78-3). Section repealed, new Section adopted effective October 2, 1986 (Supp. 86-2). Section R6-3-603 renumbered to R6-3-604, new Section R6-3-603 adopted effective May 2, 1990 (Supp. 90-2). R6-3-603 recodified to A.A.C. R6-13-603 effective February 13, 1996 (Supp. 96-1).

R6-3-604. Recodified**Historical Note**

Former Section R6-3-604 adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). Repealed effective October 2, 1986 (Supp. 86-5). New Section R6-3-604 renumbered from R6-3-603 effective May 2, 1990 (Supp. 90-2). R6-3-604 recodified to A.A.C. R6-13-604 effective February 13, 1996 (Supp. 96-1).

R6-3-605. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2).
Repealed effective October 2, 1986 (Supp. 86-5).

R6-3-606. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2).
Repealed effective October 2, 1986 (Supp. 86-5).

R6-3-607. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2).
Amended effective October 13, 1977 (Supp. 77-5).
Repealed effective October 2, 1986 (Supp. 86-5).

R6-3-608. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2).
Amended effective October 13, 1977 (Supp. 77-5).
Repealed effective October 2, 1986 (Supp. 86-5).

R6-3-609. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2).
Repealed effective October 13, 1977 (Supp. 77-5).

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-610. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2).
Repealed effective October 13, 1977 (Supp. 77-5).

R6-3-611. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2).
Repealed effective October 2, 1986 (Supp. 86-5).

R6-3-612. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2).
Repealed effective October 2, 1986 (Supp. 86-5).

R6-3-613. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2).
Repealed effective October 2, 1986 (Supp. 86-5).

R6-3-614. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2).
Repealed effective October 2, 1986 (Supp. 86-5).

R6-3-615. Repealed**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2).
Repealed effective October 2, 1986 (Supp. 86-5).

ARTICLE 7. RECODIFIED**R6-3-701. Recodified****Historical Note**

Former Rule 3-700; Former Section R6-3-701 repealed, new Section R6-3-701 adopted effective March 26, 1976 (Supp. 76-2). Amended effective March 14, 1977 (Supp. 77-2). Amended effective October 13, 1977 (Supp. 77-5). Former Section R6-3-701 repealed, new Section R6-3-701 adopted effective January 10, 1985 (Supp. 85-1). Amended effective July 30, 1992 (Supp. 92-3). R6-3-701 recodified to A.A.C. R6-13-701 effective February 13, 1996 (Supp. 96-1).

ARTICLE 8. RECODIFIED**R6-3-801. Recodified****Historical Note**

Former Rule 3-800; Former Section R6-3-801 repealed, new Section R6-3-801 adopted effective March 26, 1976 (Supp. 76-2). Former Section R6-3-801 repealed, new Section R6-3-801 adopted effective June 15, 1978 (Supp. 78-3). Section repealed, new Section adopted effective October 27, 1993 (Supp. 93-4). R6-3-801 recodified to A.A.C. R6-13-801 effective February 13, 1996 (Supp. 96-1).

R6-3-802. Recodified**Historical Note**

Former Rule 3-801; Former Section R6-3-802 repealed, new Section R6-3-802 adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). Former Section R6-3-802 repealed, new Section R6-3-802 adopted effective June 15, 1978 (Supp. 78-3). Section repealed, new Section adopted effective October 27, 1993 (Supp. 93-4). R6-3-802 recodified to A.A.C. R6-13-802 effective February 13, 1996 (Supp. 96-1).

96-1).

R6-3-803. Recodified**Historical Note**

Former Rule 3-802; Former Section R6-3-803 repealed, new Section R6-3-803 adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). Former Section R6-3-803 repealed, new Section R6-3-803 adopted effective June 15, 1978 (Supp. 78-3). Section repealed, new Section adopted effective October 27, 1993 (Supp. 93-4). R6-3-803 recodified to A.A.C. R6-13-803 effective February 13, 1996 (Supp. 96-1).

R6-3-804. Recodified**Historical Note**

Former Rule 3-803; Former Section R6-3-804 repealed, new Section R6-3-804 adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). Former Section R6-3-804 repealed, new Section R6-3-804 adopted effective June 15, 1978 (Supp. 78-3). Section repealed, new Section adopted effective October 27, 1993 (Supp. 93-4). R6-3-804 recodified to A.A.C. R6-13-804 effective February 13, 1996 (Supp. 96-1).

R6-3-805. Recodified**Historical Note**

Former Rule 3-804; Former Section R6-3-805 repealed, new Section R6-3-805 adopted effective March 26, 1976 (Supp. 76-2). Former Section R6-3-805 repealed, new Section R6-3-805 adopted effective June 15, 1978 (Supp. 78-3). Section repealed, new Section adopted effective October 27, 1993 (Supp. 93-4). R6-3-805 recodified to A.A.C. R6-13-805 effective February 13, 1996 (Supp. 96-1).

R6-3-806. Recodified**Historical Note**

Former Rule 3-805; Former Section R6-3-806 repealed, new Section R6-3-806 adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). Former Section R6-3-806 repealed, new Section R6-3-806 adopted effective June 15, 1978 (Supp. 78-3). Section repealed, new Section adopted effective October 27, 1993 (Supp. 93-4). R6-3-806 recodified to A.A.C. R6-13-806 effective February 13, 1996 (Supp. 96-1).

R6-3-807. Recodified**Historical Note**

Former Rule 3-806; Former Section R6-3-807 repealed, new Section R6-3-807 adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). Repealed effective June 15, 1978 (Supp. 78-3). New Section adopted effective October 27, 1993 (Supp. 93-4). R6-3-807 recodified to A.A.C. R6-13-807 effective February 13, 1996 (Supp. 96-1).

R6-3-808. Recodified**Historical Note**

Adopted effective March 26, 1976 (Supp. 76-2). Repealed effective June 15, 1978 (Supp. 78-3). New Section adopted effective October 27, 1993 (Supp. 93-4). R6-3-808 recodified to A.A.C. R6-13-808 effective February 13, 1996 (Supp. 96-1).

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-809. Recodified**Historical Note**

Adopted effective October 27, 1993 (Supp. 93-4). R6-3-809 recodified to A.A.C. R6-13-809 effective February 13, 1996 (Supp. 96-1).

ARTICLE 9. RECODIFIED**R6-3-901. Recodified****Historical Note**

Former Rule 3-900; Former Section R6-3-901 repealed, new Section R6-3-901 adopted effective March 26, 1976 (Supp. 76-2). R6-3-901 recodified to A.A.C. R6-13-901 effective February 13, 1996 (Supp. 96-1).

R6-3-902. Recodified**Historical Note**

Former Rule 3-901; Former Section R6-3-902 repealed, new Section R6-3-902 adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). R6-3-902 recodified to A.A.C. R6-13-902 effective February 13, 1996 (Supp. 96-1).

R6-3-903. Recodified**Historical Note**

Former Rule 3-902; Former Section R6-3-903 repealed, new Section R6-3-903 adopted effective March 26, 1976 (Supp. 76-2). R6-3-903 recodified to A.A.C. R6-13-903 effective February 13, 1996 (Supp. 96-1).

R6-3-904. Recodified**Historical Note**

Former Rule 3-903; Former Section R6-3-904 repealed, new Section R6-3-904 adopted effective March 26, 1976 (Supp. 76-2). R6-3-904 recodified to A.A.C. R6-13-904 effective February 13, 1996 (Supp. 96-1).

R6-3-905. Recodified**Historical Note**

Former Rule 3-904; Former Section R6-3-905 repealed, new Section R6-3-905 adopted effective March 26, 1976 (Supp. 76-2). R6-3-905 recodified to A.A.C. R6-13-905 effective February 13, 1996 (Supp. 96-1).

R6-3-906. Recodified**Historical Note**

Former Rule 3-905; Amended effective September 24, 1975 (Supp. 76-1). Former Section R6-3-906 repealed, new Section R6-3-906 adopted effective March 26, 1976 (Supp. 76-2). R6-3-906 recodified to A.A.C. R6-13-906 effective February 13, 1996 (Supp. 96-1).

R6-3-907. Recodified**Historical Note**

Former Rule 3-906; Former Section R6-3-907 repealed, new Section R6-3-907 adopted effective March 26, 1976 (Supp. 76-2). R6-3-907 recodified to A.A.C. R6-13-907 effective February 13, 1996 (Supp. 96-1).

R6-3-908. Recodified**Historical Note**

Former Rule 3-907; Former Section R6-3-908 repealed, new Section R6-3-908 adopted effective March 26, 1976 (Supp. 76-2). R6-3-908 recodified to A.A.C. R6-13-908 effective February 13, 1996 (Supp. 96-1).

R6-3-909. Recodified**Historical Note**

Former Rule 3-908; Amended effective September 24, 1975 (Supp. 75-1). Former Section R6-3-909 repealed, new Section R6-3-909 adopted effective March 26, 1976 (Supp. 76-2). R6-3-909 recodified to A.A.C. R6-13-909 effective February 13, 1996 (Supp. 96-1).

R6-3-910. Recodified**Historical Note**

Former Rule 3-909; Amended effective September 24, 1975 (Supp. 75-1). Former Section R6-3-910 repealed, new Section R6-3-910 adopted effective March 26, 1976 (Supp. 76-2). R6-3-910 recodified to A.A.C. R6-13-910 effective February 13, 1996 (Supp. 96-1).

R6-3-911. Recodified**Historical Note**

Former Rule 3-910; Former Section R6-3-911 repealed, new Section R6-3-911 adopted effective March 26, 1976 (Supp. 76-2). R6-3-911 recodified to A.A.C. R6-13-911 effective February 13, 1996 (Supp. 96-1).

R6-3-912. Recodified**Historical Note**

Former Rule 3-911; Former Section R6-3-912 repealed, new Section R6-3-912 adopted effective March 26, 1976 (Supp. 76-2). R6-3-912 recodified to A.A.C. R6-13-912 effective February 13, 1996 (Supp. 96-1).

R6-3-913. Recodified**Historical Note**

Former Rule 3-912; Former Section R6-3-913 repealed, new Section R6-3-913 adopted effective March 26, 1976 (Supp. 76-2). R6-3-913 recodified to A.A.C. R6-13-913 effective February 13, 1996 (Supp. 96-1).

R6-3-914. Recodified**Historical Note**

Former Rule 3-913; Former Section R6-3-914 repealed, new Section R6-3-914 adopted effective March 26, 1976 (Supp. 76-2). R6-3-914 recodified to A.A.C. R6-13-914 effective February 13, 1996 (Supp. 96-1).

R6-3-915. Recodified**Historical Note**

Former Rule 3-914; Former Section R6-3-915 repealed, new Section R6-3-915 adopted effective March 26, 1976 (Supp. 76-2). R6-3-915 recodified to A.A.C. R6-13-915 effective February 13, 1996 (Supp. 96-1).

R6-3-916. Recodified**Historical Note**

Former Rule 3-920; Former Section R6-3-916 repealed, new Section R6-3-916 adopted effective March 26, 1976 (Supp. 76-2). R6-3-916 recodified to A.A.C. R6-13-9216 effective February 13, 1996 (Supp. 96-1).

R6-3-917. Recodified**Historical Note**

Former Rule 3-921; Former Section R6-3-917 repealed, new Section R6-3-917 adopted effective March 26, 1976 (Supp. 76-2). R6-3-917 recodified to A.A.C. R6-13-917 effective February 13, 1996 (Supp. 96-1).

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-918. Recodified**Historical Note**

Former Rule 3-922; Former Section R6-3-918 repealed, new Section R6-3-918 adopted effective March 26, 1976 (Supp. 76-2). R6-3-918 recodified to A.A.C. R6-13-918 effective February 13, 1996 (Supp. 96-1).

R6-3-919. Recodified**Historical Note**

Former Rule 3-923; Former Section R6-3-919 repealed, new Section R6-3-919 adopted effective March 26, 1976 (Supp. 76-2). R6-3-919 recodified to A.A.C. R6-13-919 effective February 13, 1996 (Supp. 96-1).

R6-3-920. Recodified**Historical Note**

Former Rule 3-924; Former Section R6-3-920 repealed, new Section R6-3-920 adopted effective March 26, 1976 (Supp. 76-2). R6-3-920 recodified to A.A.C. R6-13-920 effective February 13, 1996 (Supp. 96-1).

R6-3-921. Recodified**Historical Note**

Former Rule 3-925; Former Section R6-3-921 repealed, new Section R6-3-921 adopted effective March 26, 1976 (Supp. 76-2). R6-3-921 recodified to A.A.C. R6-13-921 effective February 13, 1996 (Supp. 96-1). Rule language under this recodified Section was not removed when the Section was recodified to A.A.C. R6-13-921 in *Code Supplement 96-1*; The clerical error was corrected at the request of the Department at File No. 18-213 (Supp. 19-2).

R6-3-922. Recodified**Historical Note**

Former Rule 3-926; Former Section R6-3-922 repealed, new Section R6-3-922 adopted effective March 26, 1976 (Supp. 76-2). Section repealed, new Section adopted effective November 17, 1993 (Supp. 93-4). R6-3-922 recodified to A.A.C. R6-13-922 effective February 13, 1996 (Supp. 96-1).

ARTICLE 10. REPEALED**R6-3-1001. Repealed****Historical Note**

Former Rule 3-1100; Amended effective November 26, 1974 (Supp. 75-1). Former Section R6-3-1001 repealed, new Section R6-3-1001 adopted effective March 26, 1976 (Supp. 76-2). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-1002. Repealed**Historical Note**

Former Rule 3-1101; Amended effective November 26, 1974 (Supp. 75-1). Former Section R6-3-1002 repealed, new Section R6-3-1002 adopted effective March 26, 1976 (Supp. 76-2). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-1003. Repealed**Historical Note**

Former Rule 3-1102; Amended effective November 26, 1974 (Supp. 75-1). Former Section R6-3-1003 repealed, new Section R6-3-1003 adopted effective March 26, 1976 (Supp. 76-2). Repealed effective November 9, 1995

(Supp. 95-4).

R6-3-1004. Repealed**Historical Note**

Former Rule 3-1103; Amended effective November 26, 1974 (Supp. 75-1). Former Section R6-3-1004 repealed, new Section R6-3-1004 adopted effective March 26, 1976 (Supp. 76-2). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-1005. Repealed**Historical Note**

Former Rule 3-1104; Former Section R6-3-1005 repealed, new Section R6-3-1005 adopted effective November 26, 1974 (Supp. 75-1). Former Section R6-3-1005 repealed, new Section R6-3-1005 adopted effective March 26, 1976 (Supp. 76-2). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-1006. Repealed**Historical Note**

Former Rule 3-1105; Amended effective September 24, 1975 (Supp. 75-1). Former Section R6-3-1006 repealed, new Section R6-3-1006 adopted effective March 26, 1976 (Supp. 76-2). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-1007. Repealed**Historical Note**

Former Rule 3-1106; Amended effective September 24, 1975 (Supp. 75-1). Former Section R6-3-1007 repealed, new Section R6-3-1007 adopted effective March 26, 1976 (Supp. 76-2).

R6-3-1008. Repealed**Historical Note**

Former Rule 3-1107; Amended effective September 24, 1975 (Supp. 75-1). Former Section R6-3-1008 repealed, new Section R6-3-1008 adopted effective March 26, 1976 (Supp. 76-2). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-1009. Repealed**Historical Note**

Former Rule 3-1108; Amended effective September 24, 1975 (Supp. 75-1). Former Section R6-3-1009 repealed, new Section R6-3-1009 adopted effective March 26, 1976 (Supp. 76-2). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-1010. Repealed**Historical Note**

Former Rule 3-1109; Former Section R6-3-1010 repealed, new Section R6-3-1010 adopted effective March 26, 1976 (Supp. 76-2). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-1011. Repealed**Historical Note**

Former Rules 3-1110 through 3-1119; Former Section R6-3-1011 repealed effective March 26, 1976 (Supp. 76-2).

R6-3-1012. Repealed**Historical Note**

Former Rule 3-1120; Former Section R6-3-1012

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

repealed, new Section R6-3-1012 adopted effective March 26, 1976 (Supp. 76-2). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-1013. Repealed**Historical Note**

Former Rule 3-1121; Not in original publication, correction, R6-3-1013(A)(4), R6-3-1013(B)(1) through (6), R6-3-1013(C), other revisions amended effective September 24, 1975 (Supp. 75-1). Former Section R6-3-1013 repealed, new Section R6-3-1013 adopted effective March 26, 1976 (Supp. 76-2). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-1014. Repealed**Historical Note**

Former Rule 3-1122; Amended effective September 24, 1975 (Supp. 75-1). Former Section R6-3-1014 repealed, new Section R6-3-1014 adopted effective March 26, 1976 (Supp. 76-2). Repealed effective November 9, 1995 (Supp. 95-4).

R6-3-1015. Repealed**Historical Note**

Former Rule 3-1123; Former Section R6-3-1015 repealed, new Section R6-3-1015 adopted effective March 26, 1976 (Supp. 76-2). Repealed effective November 9, 1995 (Supp. 95-4).

ARTICLE 11. REPEALED

Former Article 11 consisting of Sections R6-3-1101 through R6-3-1111 repealed effective March 26, 1976.

R6-3-1101. Repealed**Historical Note**

Section R6-3-1101 repealed effective March 26, 1976.

R6-3-1102. Repealed**Historical Note**

Section R6-3-1102 repealed effective March 26, 1976.

R6-3-1103. Repealed**Historical Note**

Section R6-3-1103 repealed effective March 26, 1976.

R6-3-1104. Repealed**Historical Note**

Section R6-3-1104 repealed effective March 26, 1976.

R6-3-1105. Repealed**Historical Note**

Section R6-3-1105 repealed effective March 26, 1976.

R6-3-1106. Repealed**Historical Note**

Section R6-3-1106 repealed effective March 26, 1976.

R6-3-1107. Repealed**Historical Note**

Section R6-3-1107 repealed effective March 26, 1976.

R6-3-1108. Repealed**Historical Note**

Section R6-3-1108 repealed effective March 26, 1976.

R6-3-1109. Repealed**Historical Note**

Section R6-3-1109 repealed effective March 26, 1976.

R6-3-1110. Repealed**Historical Note**

Section R6-3-1110 repealed effective March 26, 1976.

R6-3-1111. Repealed**Historical Note**

Section R6-3-1111 repealed effective March 26, 1976.

ARTICLE 12. RECODIFIED**R6-3-1201. Recodified****Historical Note**

Former Rule 3-1300; Former Section R6-3-1201 repealed, new Section R6-3-1201 adopted effective March 26, 1976 (Supp. 76-2). Former Section R6-3-1201 repealed, new Section R6-3-1201 adopted effective October 13, 1977 (Supp. 77-5). R6-3-1201 recodified to A.A.C. R6-13-1201 effective February 13, 1996 (Supp. 96-1).

R6-3-1202. Recodified**Historical Note**

Former Rule 3-1301; Former Section R6-3-1202 repealed, new Section R6-3-1202 adopted effective March 26, 1976 (Supp. 76-2). Amended effective March 14, 1977 (Supp. 77-2). Amended effective October 13, 1977 (Supp. 77-5). R6-3-1202 recodified to A.A.C. R6-13-1202 effective February 13, 1996 (Supp. 96-1).

R6-3-1203. Recodified**Historical Note**

Former Rule 3-1302; Former Section R6-3-1203 repealed, new Section R6-3-1203 adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). R6-3-1203 recodified to A.A.C. R6-13-1203 effective February 13, 1996 (Supp. 96-1).

R6-3-1204. Recodified**Historical Note**

Former Rule 3-1303; Former Section R6-3-1204 repealed, new Section R6-3-1204 adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). R6-3-1204 recodified to A.A.C. R6-13-1204 effective February 13, 1996 (Supp. 96-1).

R6-3-1205. Repealed**Historical Note**

Former Rule 3-1304; Former Section R6-3-1204 repealed effective March 26, 1976 (Supp. 76-2).

R6-3-1206. Recodified**Historical Note**

Former Rule 3-1305; Former Section R6-3-1206 repealed, new Section R6-3-1206 adopted effective March 26, 1976 (Supp. 76-2). Former Section R6-3-1206 repealed, new Section R6-3-1206 adopted effective June 15, 1978 (Supp. 78-3). Former Section R6-3-1206 repealed, new Section R6-3-1206 adopted effective January 2, 1985 (Supp. 85-1). R6-3-1206 recodified to A.A.C. R6-13-1206 effective February 13, 1996 (Supp. 96-1).

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-1207. Recodified**Historical Note**

Former Rule 3-1306; Former Section R6-3-1207 repealed, new Section R6-3-1207 adopted effective March 26, 1976 (Supp. 76-2). R6-3-1207 recodified to A.A.C. R6-13-1207 effective February 13, 1996 (Supp. 96-1).

R6-3-1208. Recodified**Historical Note**

Former Rule 3-1307; Former Section R6-3-1208 repealed, new Section R6-3-1208 adopted effective March 26, 1976 (Supp. 76-2). Amended effective June 9, 1978 (Supp. 78-3). Former Section R6-3-1208 repealed, new Section R6-3-1208 adopted as an emergency effective October 3, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-5). Former Emergency Adoption now adopted and amended effective April 23, 1980 (Supp. 80-2). Amended effective September 6, 1985 (Supp. 85-5). R6-3-1208 recodified to A.A.C. R6-13-1208 effective February 13, 1996 (Supp. 96-1).

R6-3-1209. Recodified**Historical Note**

Former Rule 3-1308; Former Section R6-3-1209 repealed, new Section R6-3-1209 adopted effective March 26, 1976 (Supp. 76-2). R6-3-1209 recodified to A.A.C. R6-13-1209 effective February 13, 1996 (Supp. 96-1).

R6-3-1210. Recodified**Historical Note**

Former Rule 3-1309; Former Section R6-3-1210 repealed, new Section R6-3-1210 adopted effective March 26, 1976 (Supp. 76-2). R6-3-1210 recodified to A.A.C. R6-13-1210 effective February 13, 1996 (Supp. 96-1).

R6-3-1211. Recodified**Historical Note**

Former Rule 3-1310; Former Section R6-3-1211 repealed effective March 26, 1976 (Supp. 76-2). New Section R6-3-1211 adopted effective October 13, 1977 (Supp. 77-5). R6-3-1211 recodified to A.A.C. R6-13-1211 effective February 13, 1996 (Supp. 96-1).

R6-3-1212. Recodified**Historical Note**

Former Rule 3-1311; Former Section R6-3-1212 repealed, new Section R6-3-1212 adopted effective March 26, 1976 (Supp. 76-2). Amended effective October 13, 1977 (Supp. 77-5). R6-3-1212 recodified to A.A.C. R6-13-1212 effective February 13, 1996 (Supp. 96-1).

R6-3-1213. Recodified**Historical Note**

Former Rule 3-1312; Former Section R6-3-1213 repealed, new Section R6-3-1213 adopted effective March 26, 1976 (Supp. 76-2). R6-3-1213 recodified to A.A.C. R6-13-1213 effective February 13, 1996 (Supp. 96-1).

ARTICLE 13. DEFINITIONS**R6-3-1301. Definitions**

The following definitions apply in A.R.S. Title 23, Chapter 4 (A.R.S. § 23-601 et seq.) and in Articles 13 through 18 and 50 through 56 of this Chapter unless the context otherwise requires:

1. "Agent State" means a state in which an individual files a claim for benefits against another state.
2. "Agricultural employer" means an employer defined in A.R.S. § 23-631(B).
3. "Appeal tribunal", as described in A.R.S. § 23-671, means a hearing officer as defined in A.R.S. § 23-609.01.
4. "Benefit overpayment" means a payment of unemployment insurance benefits in an amount exceeding the amount of benefits to which a person was lawfully entitled.
5. "Benefit overpayment caused by Department error" means an overpayment which resulted from an error committed by Department personnel.
6. "Benefit overpayment classified administrative" means an overpayment which occurred without fault on the part of the claimant.
7. "Benefit overpayment classified fraud" means an overpayment occurred because a claimant knowingly misrepresented or concealed material facts in order to obtain benefits to which the claimant was not lawfully entitled.
8. "Benefit overpayment classified non-fraud" means an overpayment created because the claimant unintentionally gave incorrect or incomplete information.
9. "Board" means the Department's Appeals Board described in A.R.S. § 23-672.
10. "Claimant" means a person who has filed a claim for unemployment insurance benefits.
11. "Combined wage claim" or "a claim filed under the Interstate Arrangement for Combining Wages and Employment" means an unemployment insurance claim based on wages earned in more than 1 state.
12. "Daughter" means a birth, foster, step, or legally adopted female child.
13. "Deputy" means a Department employee who performs claims-taking or adjudication duties in the unemployment insurance program.
14. "Director" means the Director of the Department of Economic Security.
15. "Domestic employer" means an employer defined in A.R.S. § 23-613(C).
16. "Domestic service" means service of a household nature performed by an employee for a person or for a local college club or local chapter of a college sorority or fraternity in or about the private home of the employer or in or about a college club or sorority or fraternity house in connection with the maintenance of the home or premises, or for the comfort and care of the person, family, or members, as distinguished from service which is directly related to the business or career of the employer.
 - a. Domestic service includes:
 - i. "Family", for purposes of this Section, includes foster relationships and relationships by blood, marriage, and adoption.
 - ii. "Private home" means the social unit formed by a person or family residing in a private household. Private home includes the fixed place of abode of a person or family in a private house, or in a separate and distinct dwelling unit in an apartment house, hotel, or other similar establishment. Private home also includes a summer or winter home of a person or family. Private home does not include any dwelling house or premises used primarily as a boarding

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

- or lodging house for the purpose of supplying board or lodging to the public as a business enterprise, or used primarily for the purpose of furnishing accommodations or entertainment to clients, customers, or patrons.
- iii. "Service of a household nature" means service customarily rendered by cooks, waiters, butlers, housekeepers, nannies, companions, valets, janitors, laundry workers, caretakers, handypersons, gardeners, and by chauffeurs of automobiles. Service of a household nature does not include service performed by private secretaries, tutors, librarians, or musicians, or by carpenters, plumbers, electricians, painters, or other skilled craftspersons, or by professional or highly trained persons such as registered nurses, licensed practical nurses, and airplane pilots.
- b. Domestic service does not include:
- i. Service of a household nature performed in or about a private home in the employ of any employing unit engaged in a business the purpose of which is to furnish services of a household nature to the public.
- ii. Service of a household nature performed in connection with the operation of rooming, lodging, or boarding houses, hotels, hospitals, eleemosynary institutions, or commercial offices or establishments.
17. "Employment Security Law of Arizona" means A.R.S. Title 23, Chapter 4.
18. "Experience rating account" means a separate account the Department maintains for each employer in accordance with A.R.S. § 23-727.
19. "Father" means a birth, foster, step, or legally adoptive male parent.
20. "Federal Unemployment Tax Act" (FUTA) means 26 U.S.C.A. 3301 et seq.
21. "Interstate benefit payment plan" means the plan approved by the Interstate Conference of Employment Security Agencies for payment of benefits to a person who is absent from the state in which the person accumulated benefit credits.
22. "Interstate claimant" means an individual who claims benefits under the unemployment insurance law of a liable state through the facilities of an agent state.
23. "Liable state" means any state against which an individual files a claim for benefits through another state.
24. "Mass separation" means a situation where more than 50 employees of an employing unit have separated from employment for the same reason, for a separation period of at least 1 week.
25. "Mother" means a birth, foster, step, or legally adoptive female parent.
26. "Partially unemployed individual" means a person who is regularly employed full time by an employer but who, during a particular week:
- a. Worked less than the customary full-time hours for such employer because of lack of full-time work,
- b. Earned less than the person's weekly benefit amount.
27. "Part-time employment" means employment of a person who, during a particular week, earned less than the person's weekly benefit amount and worked less than full time.
28. "Pay period" means that period of time during which the wages due on any pay day were earned.
29. "Paying state" means the state against which a combined wage claim is filed.
30. "Payments in lieu of contributions" means monetary payments which an employing unit makes to the state unemployment compensation fund, pursuant to an election the employing unit has made.
31. "Regular employer", as used in Articles 13 and 17, means an employer who is liable for contributions and subject to the experience rating provisions of the Employment Security Law of Arizona.
32. "Reimburse", as used in A.R.S. § 23-706, means that the Department is either crediting an employer's quarterly statement of account or issuing the employer a refund by warrant.
33. "Reimbursement employer" means an employer who makes payments in lieu of contributions.
34. "Son" means a birth, foster, step, or legally adopted male child.
35. "Spouse" means the lawful husband of a woman or the lawful wife of a man.
36. "Taxable year" means a calendar year.
37. "Transferring state" means a state that transfers wages to a paying state for purposes of establishing a combined wage claim.
38. "Week", except as otherwise defined for a specific rule or in A.R.S. Title 23, Chapter 4, means a calendar week. The term "calendar week" means 7 consecutive days ending at midnight Saturday. For the purposes of A.R.S. §§ 23-613, 23-615(6), and 23-725(B) and (F), if any calendar week includes both December 31 and January 1, the days up to January 1 shall be deemed 1 calendar week and the days beginning January 1 another calendar week.
39. "Week of unemployment", as used in R6-3-1806, is the week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed.

Historical Note

Former Rule 3-1319; Amended effective April 17, 1975 (Supp. 75-1). Amended effective January 18, 1978 (Supp. 78-1). Amended effective February 10, 1978 (Supp. 78-1). Amended effective March 28, 1978 (Supp. 78-2). Amended effective August 3, 1978 (Supp. 78-4). Amended as an emergency effective August 1, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-4). Amended effective February 7, 1980 (Supp. 80-1). Amended subsection (B) effective July 9, 1980. Amended subsection (O) effective July 24, 1980 (Supp. 80-4). Section repealed, new Section adopted effective December 20, 1995 (Supp. 95-4).

ARTICLE 14. ADMINISTRATION AND ENFORCEMENT**R6-3-1401. Policy of Nondiscrimination**

- A. In the administration of the unemployment insurance program, the Department shall not discriminate against any claimant or employer because of age, race, sex, color, religious creed, national origin, handicap, disability, or political affiliation or belief.
- B. The Department shall determine initial and continuing eligibility for benefits and liability for employer taxes and administer program services without discrimination, as prescribed by 29 U.S.C. 794 and 42 U.S.C. 1201 et seq.

Historical Note

Former Regulation 40-14. Section R6-3-1401 renum-

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

bered to R6-3-1406, new Section R6-3-1401 adopted effective December 20, 1995 (Supp. 95-4).

R6-3-1402. Repealed**Historical Note**

Former Regulation 30-6. Section repealed effective July 22, 1997 (Supp. 97-3).

R6-3-1403. Disclosure of Information and Confidentiality

A. Information obtained from employer reports and investigations of claims for unemployment insurance benefits is strictly confidential and shall not be published or disclosed to others except as permitted by authorized personnel within the strict limitations hereinafter stated:

1. To individual employers or their authorized agents if the information directly concerns their liability as an employer or their account with the Department or the information was initially obtained from the employer or the employer's predecessor;
2. To individual claimants or their authorized representatives if the information directly concerns their status as a claimant;
3. To public employees in the performance of their official duties, provided the information so disclosed and the source of such information is kept confidential and used only for authorized governmental purposes;
4. To an agent of the Department designated as such in writing for the purposes of accomplishing certain of the Department's functions, with the proviso the information so obtained or the source of such information is kept confidential and used only for the purpose for which the entity was designated as an agent of the Department;
5. To the general public when such information does not include information identifiable either directly or indirectly to individual claimants or employing units;
6. To an outside party after the party has obtained written authorization which has been provided directly to the Department from the employer or claimant permitting the Department to release certain specified information;
7. To authorized personnel of a requesting entity authorized to receive the information under a data-share agreement established with the Department in accord with the terms of such an agreement.

B. No employee or agent of the Department shall testify or give evidence before any court or in any quasi-judicial proceeding concerning unemployment insurance records or information except as herein provided, or as instructed by legal counsel to the Department.

C. Employees of the Department of Economic Security shall not disclose any information obtained in the course of their duties, whether the information is within their personal knowledge or from files, records, reports, or other documents of the Department, unless they are the individual authorized to disclose such information within the strict limitations imposed above.

Historical Note

Adopted effective July 26, 1978 (Supp. 78-4). Amended effective December 20, 1995 (Supp. 95-4).

R6-3-1404. Date of Submission and Extension of Time for Payments, Appeals, Notices, Etc.

A. Except as otherwise provided by statute or by Department regulation, any payment, appeal, application, request, notice, objection, petition, report, or other information or document submitted to the Department shall be considered received by and filed with the Department:

1. If transmitted via the United States Postal Service or its successor, on the date it is mailed as shown by the postmark or, in the absence of a postmark the postage meter mark, of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.
2. If transmitted by any means other than the United States Postal Service or its successor, on the date it is received by the Department.
3. Computation of time shall be made in accordance with and limited to subdivision (a) of Rule 6 of the Rules of Civil Procedure.

B. The submission of any payment, appeal, application, request, notice, objection, petition, report, or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the Department that the delay in submission was due to: Department error or misinformation, delay or other action of the United States Postal Service or its successor, or when the delay in submission was because the individual changed his mailing address at a time when there would have been no reason for him to notify the Department of the address change.

1. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.
2. The Director shall designate personnel who are to decide whether an extension of time shall be granted.
3. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the Department after considering the circumstances in the case.
4. If submission is not considered timely, and the subject matter is one for which A.R.S. Chapter 4, Title 23 provides administrative appeal rights, the Department shall issue an appealable decision to the interested party. The decision shall contain the reasons therefor, a statement that the party has the right to appeal the decision, and the period and manner in which such appeal must be filed under the provisions of the Arizona Employment Security Law.

C. Any notice, report form, determination, decision, assessment, or other document mailed by the Department shall be considered as having been served on the addressee on the date it is mailed to the addressee's last known address if not served in person. However, when it is established the interested party changed his mailing address at a time when there would have been no reason to notify the Department, it shall be considered as having been served on the addressee on the date it is personally delivered or remailed to his current mailing address. The date mailed shall be presumed to be the date of the document, unless otherwise indicated by the facts.

Historical Note

Adopted effective August 3, 1978 (Supp. 78-4).
Amended effective May 8, 1979 (Supp. 79-3).

R6-3-1405. Shared Work

A. Shared Work Plans

1. Participation. The Department shall not permit an employee to participate concurrently in more than 1 shared work plan.
2. Amendment. Upon written request by the shared work employer, the Department shall:
 - a. Approve the transfer of an eligible employee from 1 approved plan to another approved plan; or

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

- b. Amend the plan to include an eligible employee who was omitted from the approved plan.
- B.** Shared Work Employer's Contribution Rate. When any of the members of a Joint Experience Rating Account established under the provisions of R6-3-1712(A) have an approved shared work plan, the Department shall assign the members a contribution rate as prescribed in A.R.S. § 23-765.
- C.** Shared Work Benefits
1. Normal Weekly Hours. In A.R.S. § 23-764, the phrase "normal weekly hours of work for which the employer would not compensate the employee" means the number of hours, as defined in A.R.S. § 23-761(3), less the weekly hours of work for which the employer would compensate the employee, or for which the employer would compensate the employee had the employee worked.
 - a. Normal weekly hours of work include the hours calculated by a shared work employer converting the amount of an employee's average weekly earnings to an hourly equivalent.
 - b. Weekly hours of work for which the employer would compensate the employee include, to the nearest 10th of an hour, actual hours of work and other hours for which the employee has been or will be compensated, such as holiday pay, sick leave pay, and vacation or annual leave pay.
 2. Weekly Certification. For each week of shared work benefits claimed by an employee in an affected group, the employer shall, in a format prescribed by the Department, provide and certify the following information:
 - a. The hours of work for which the employer compensated the employee, and
 - b. Whether the employee refused to accept any work offered by the employer.
 3. Refusal of work. The statutory disqualification prescribed in A.R.S. § 23-776 applies when the Department determines that a shared work claimant failed to accept suitable full-time work offered by the shared work employer. The Department shall determine the suitability of the work offered as prescribed in A.R.S. § 23-776.
 4. Previously assessed disqualification. Designation of an employee as a participant in an affected group does not terminate or suspend a previously assessed disqualification. For purposes of A.R.S. § 23-778, a weekly shared work claim is a valid claim for benefits.
 5. Retirement pay. When retirement pay is deductible as prescribed in A.R.S. § 23-791, the Department shall deduct the weekly retirement amount from the computed shared work benefit amount.
 6. Extended benefits. A shared work claimant is eligible to receive shared work benefits under the extended benefit program if the claimant meets the requirements of A.R.S. § 23-634.
 7. Backdating. In the manner prescribed in R6-3-5475(E)(1), the Department shall backdate the effective date of a shared work initial claim for benefits to an earlier date if the claimant received misinformation about the filing of a claim from the shared work employer or the Department, except that the Department shall not backdate the effective date to a date prior to the effective date of the approved plan showing the claimant as a member of an affected group.
 8. Dual claims. The Department shall not permit a claimant to receive regular benefits and shared work benefits concurrently.
 9. Termination of shared work employment. A shared work claimant who terminates employment with, or is terminated by, the shared work employer is not eligible for shared work compensation for the calendar week in which the termination occurred. When a termination occurs, the shared work employer shall enter the date of termination on the weekly certification.
 10. Offset. The Department shall use shared work benefits to offset any indebtedness to the Department as provided for in A.R.S. § 23-787.
- D.** Other Employment. The Department shall not charge the account of a base-period employer who is not the shared work employer, but who continues to employ a shared work claimant, for benefits paid to the claimant, if the base period employer submits written information of the continued employment within 10 days of the date of the Department's notice that the claimant has 1st filed a claim for benefits.

Historical Note

Adopted effective December 2, 1983 (Supp. 83-6).

Amended effective July 22, 1997 (Supp. 97-3).

R6-3-1406. Employer Elections to Cover Multi-state Workers

- A.** Scope and definitions.
1. This rule governs the Department in its administrative cooperation with other states participating in the Interstate Reciprocal Coverage Arrangement ("the Arrangement").
 2. In this rule:
 - a. "Agency" means a person or entity lawfully authorized to administer the unemployment compensation law of a state participating in the Arrangement.
 - b. "Services customarily performed" means services performed by an individual in more than 1 state, if the nature of the services gives reasonable assurance that they will continue to be performed in more than 1 state or if such services are required or expected to be performed in more than 1 state under the election.
- B.** Submission and approval of coverage elections under the Interstate Reciprocal Coverage Arrangement.
1. Any employing unit may file an election to cover under the law of a single participating state all of the services performed for the employing unit by any individual who customarily works for the employing unit in more than 1 participating state. Such an election may be filed, with respect to an individual, with any participating state in which:
 - a. Any part of the individual's services are performed,
 - b. The individual has residence, or
 - c. The employing unit maintains a place of business to which the individual's services bear a reasonable relation.
 2. The agency of the elected state (thus selected and determined) shall initially approve or disapprove the election. If such agency approves the election, the agency shall forward a copy thereof to the agency of each other participating state specified thereon, under whose unemployment compensation law the individual or individuals in question, in the absence of such election, might be covered. Each such interested agency shall approve or disapprove the election as promptly as practicable and shall notify the agency of the elected state accordingly. If its law so requires, any such interested agency, before taking such action, may require from the electing employing unit satisfactory evidence that the affected employees

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

have been notified of, and have acquiesced in, the election.

3. If the agency of the elected state, or the agency of any interested state, disapproves the election, the disapproving agency shall notify the elected state, and the electing employing unit of its action and of its reasons therefor.
 4. Such an election shall take effect as to the elected state only if approved by its agency and by 1 or more interested agencies. An election thus approved shall take effect, as to any interested agency, only if it is approved by such agency.
 5. If an election is approved only in part, or is disapproved by some of such agencies, the electing employing unit may withdraw its election within 10 days after being notified of such action.
- C. Effective period of elections**
1. Commencement
 - a. An election duly approved under this rule shall become effective at the beginning of the calendar quarter in which the election was submitted, unless the election, as approved, specifies the beginning of a different calendar quarter.
 - b. If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, such earlier date may be approved solely as to those interested states in which the employer had no liability to pay contributions for the earlier period in question.
 2. Termination
 - a. The application to any individual under this rule shall terminate, if the agency of the elected state finds that the nature of the services customarily performed by the individual for the electing unit has changed so that they are no longer customarily performed in more than 1 participating state. Such termination shall be effective as of the close of the calendar quarter in which notice of such finding is mailed to all parties affected.
 - b. Except as provided in subsection (C)(2)(a), each election approved hereunder shall remain in effect through the close of the calendar year in which it is submitted, and thereafter until the close of the calendar quarter in which the electing unit gives written notice of the termination to all affected agencies.
 - c. Whenever an election under this rule ceases to apply to any individual, under subsections (C)(2)(a) or (b), the electing unit shall notify the affected individual accordingly.
- D. Reports and notices by the electing unit**
1. The electing unit shall promptly notify each individual affected by its approved election, on the form supplied by the elected state, and shall furnish the elected agency a copy of such notice.
 2. Whenever an individual covered by election under this rule is separated from employment, the electing unit shall again notify the individual, forthwith, as to the state under whose unemployment compensation law the individual's services have been covered. If, at the time of termination, the individual is not located in the elected state, the electing unit shall notify the individual as to the procedure for filing interstate benefit claims.
 3. The electing unit shall immediately report to the elected state any change which occurs in the conditions of employment pertinent to its election, such as cases when an individual's services for the employer cease to be customarily performed in more than one participating state

or when a change in the work assigned to an individual requires the individual to perform services in a new participating state.

- E. Approval of reciprocal coverage elections.** The Department shall approve or disapprove reciprocal coverage elections in accordance with this rule.

Historical Note

Renumbered from R6-3-1401 and amended effective December 20, 1995 (Supp. 95-4).

R6-3-1407. Interested Party

- A.** An interested party to a benefit or chargeability determination is:
1. A claimant whose right to benefits is affected;
 2. A claimant's most recent employing unit or employer, or any base-period employer, if the employer:
 - a. Returns the Department's Notice to Employer, with a signed statement of facts providing information that may affect the claimant's eligibility for benefits, or information on the issue of separation from employment, within 10 business days of the date on the Notice to Employer the Department mails to the employer's address of record; or
 - b. Responds electronically to the Department's Notice to Employer within 10 business days of the date the Department transmits the Notice to the employer's electronic address on file, provided the response contains:
 - i. A statement of facts providing information that may affect the claimant's eligibility for benefits or information on the issue of separation from employment with the employer,
 - ii. The last date worked for this employer, and
 - iii. The name of the individual responsible for providing this information; or
 - c. Makes a bona fide offer of work to the claimant during a week for which the claimant files a claim for benefits, and sends the Department written notification of the offer within five business days of the date the employer makes the offer.
 3. The claimant's most recent employing unit or employer, when the claimant is disqualified on the basis of the claimant's separation from employment with the employing unit or employer.
- B.** The Department shall make a previously excluded party an interested party to a decision involving whether wages are usable for a claim when the Department determines that the decision could adversely affect the excluded party.

Historical Note

New Section R6-3-1407 renumbered from R6-3-1501 and amended effective July 22, 1997 (Supp. 97-3). Amended by final rulemaking at 17 A.A.R. 1088, effective May 3, 2011 (Supp. 11-2).

R6-3-1408. Seasonal Employment Status; Qualified Transient Lodging Employment

- A.** As used in A.R.S. § 23-793:
1. A "full-time equivalent" means the number of hours in the employing unit's normal work week the employing unit considers a full-time work week, or 40 hours, whichever is less.
 2. "1-year period prior to such slowdown" means the 52 completed calendar weeks immediately preceding the start date of the anticipated slowdown period.
 3. "Previous year" means the same as "1-year period prior to such slowdown."

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

- B.** For the purpose of A.R.S. § 23-793(B), an application is the form provided by the Department and available to the employer at any unemployment insurance office of the Department or from any unemployment insurance tax representative. The employer shall provide the following information:
1. Identifying information, including the federal employer identification number and transient lodging privilege license number;
 2. The anticipated period of the substantial slowdown of operations, the reason for the anticipated slowdown, and the expected number of full-time equivalents in the workforce during the slowdown;
 3. The previous year's slowdown period, the reason for the slowdown, and the number of full-time equivalents in the employer's workforce in the 12 highest weeks of unemployment during the previous year; and
 4. A copy of the employer's written notice to employees that the employment is seasonal.
- C.** Notwithstanding the Department's approval of the employer's application, the Department shall not deny a worker, who has filed a claim for benefits during a substantial slowdown period, the use of wages earned from the employer if the employer, in response to the Department's notice that the worker has filed a claim for benefits, does not provide written information that the worker is unemployed due solely to the substantial slowdown in operations within 10 days of the notice date.
- Historical Note**
Adopted effective July 22, 1997 (Supp. 97-3).
- ARTICLE 15. DECISIONS, HEARINGS, AND ORDERS**
- R6-3-1501. Renumbered**
- Historical Note**
Former Regulation 20-5; Amended effective February 15, 1978 (Supp. 78-1). Amended as an emergency effective August 1, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-4). Former Section R6-3-1501 amended effective February 7, 1980 (Supp. 80-1). Amended by adding subsection (B) effective July 9, 1980 (Supp. 80-4). Correction, paragraph (2), subparagraph (b) as certified effective February 7, 1980 (Supp. 81-2). Additional correction to subsection (A), paragraph (2), subparagraph (b), "simultaneous" deleted as certified February 7, 1980 (Supp. 81-5). R6-3-1501 renumbered to R6-3-1407 and amended effective July 22, 1997 (Supp. 97-4).
- R6-3-1502. Appeals Process, General**
- A.** The Board or a hearing officer in the Department's Office of Appeals may informally dispose of an appeal or petition without further appellate review on the merits:
1. By withdrawal, if the appellant withdraws the appeal in writing or on the record at any time before the decision is issued; or
 2. By dismissal, if the appellant fails to file the appeal within the time permitted by the Employment Security Law or Department rules; or
 3. By stipulation, if the parties agree on the record or in writing at any time before the decision is issued, subject to approval by the Appeals Tribunal; or
 4. By default, if the appellant fails to appear or waives appearance at the scheduled hearing.
- B.** Notice of hearing
1. Place of hearing. Hearings shall be held at those regularly established hearing locations most convenient to the interested parties, or, at the discretion of the presiding officer, by telephone. Written notice will advise any interested party that the party has a right to be present in person or through counsel, or both, or to send written questions to the hearing officer, who will ensure that the questions are asked of the other party or appropriate witnesses, provided the questions are received prior to the designated hearing date and are germane to the issues to be decided.
 2. Time and contents of notice. All interested parties to a hearing shall be given at least 10 business days' notice of hearing, except that any interested party may waive, either in writing or on the record, the right to notice. The notice shall contain the time and place of hearing, the issues involved, and the name of the hearing officer who will hold the hearing, but if, by reason of the nature of the proceedings, the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issues is necessary, the issues shall be fully stated as soon as practicable. In any event, reasonable opportunity shall be afforded all parties to become aware of the issues and to present evidence and argument with respect thereto.
 3. Continued, reopened, or rescheduled hearings. Notice of time, place and purpose of any continued, reopened, or rescheduled hearing shall be given to all interested parties.
 4. Mailing of notices. Notices of hearings shall be mailed to the interested parties by regular mail, 1st class, postage prepaid.
- C.** Consolidation of cases. When the same or substantially similar evidence is relevant and material to the issues in more than one case, proceedings thereon may be conducted jointly, a single record of the proceedings made and evidence introduced with respect to one case considered as introduced in the others, unless the hearing officer determines that such consolidation would be prejudicial to the interests or rights of any interested party.
- D.** Witnesses and subpoenas
1. An interested party shall arrange for the presence of that party's witnesses at a hearing.
 2. A notice to attend a hearing, or a subpoena, may be issued by the hearing officer on the hearing officer's own motion.
 3. Subpoenas requiring the attendance of witnesses or the production of documentary evidence at a hearing may be issued by the hearing officer on the hearing officer's own motion or upon written application by an interested party or the Deputy. Such request shall contain the name of the individual or documents desired, the address at which the subpoena may be served, and a brief statement of the facts which the applicant expects to prove by the individual or documents requested. The application shall be submitted to the Department at least 5 calendar days before the hearing to permit preparation and service of the subpoena before the hearing.
 4. Witnesses subpoenaed who attend hearings shall be allowed fees at the same rate as paid by the Superior Court.
- E.** Information. In any hearing in which a claimant appears before the Appeals Board, the employing unit shall submit sworn or unsworn reports with respect to such person employed by it, which the Board deems necessary for the proper presentation of the claimant's claim.
- F.** Postponement of hearing. A hearing officer shall determine and order hearing postponements as prescribed in A.R.S. § 23-681(A) and (B).

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

- G.** Disqualification for cause. No person shall participate on behalf of the Department in any case in which the person is an interested party. A challenge regarding the interest of a hearing officer may be heard and decided by that hearing officer, or, upon written request by the party making the challenge, referred to the hearing officer's immediate supervisor. Challenges regarding the interest of a member of the Appeals Board shall be decided by the remaining members of the Board, based upon A.R.S. § 38-503. When a challenge is sustained, or the member voluntarily withdraws from the case, the Chairman of the Board shall so advise the Director, who may appoint an individual to act for the member of the Board in the particular case.
- H.** Change of hearing officer. Not later than 5 days prior to the date set for the hearing, any interested party may file a written request for change of hearing officer. The Appeal Tribunal shall immediately transfer the matter to another hearing officer who shall conduct the hearing. No more than 1 change of hearing officer shall be granted to any 1 party.
- I.** Representation of interested parties.
1. In proceedings before the Board or a hearing officer, parties may be represented as authorized by Supreme Court rules.
 2. An Appeal Tribunal or the Appeals Board may refuse to allow any person who intentionally and repeatedly interferes with the orderly conduct of a proceeding before an Appeal Tribunal or the Board or who fails to comply with the provisions of the Employment Security Law or the rules or orders of the Department to represent an interested party in the proceeding.
- J.** Fees. To determine the reasonableness of a proposed fee in excess of \$750, the Appeal Tribunal or Board shall consider the following factors:
1. The amount of time devoted to the representation,
 2. The difficulty of the case and the novelty or complexity of the issues,
 3. The experience of the attorney or agent handling the case,
 4. The merits of the claims or defenses presented by the opposing party,
 5. Whether the attorney or agent's efforts were superfluous to the results achieved in the case,
 6. The results achieved by the agent or attorney, and
 7. Any other relevant factors.
- K.** Written statement. Within 10 days prior to the hearing, an interested party may submit to the Department a written statement setting forth the facts of the case.
- L.** Hearings. All interested parties shall be ready and present with all witnesses and documents at the time and place specified in the notice of hearing and shall be prepared at such time to dispose of all issues and questions involved in the appeal or petition.
1. Public hearings. All hearings before an Appeal Tribunal or the Appeals Board shall be open to the public, but the hearing officer conducting a hearing may close the hearing to other than interested parties to the extent necessary to protect the interests and rights of the interested parties, within the requirements of A.R.S. §§ 23-722, 38-431.01, and 38-431.03.
 2. Stipulations. The parties to an appeal, with the consent of the hearing officer, may stipulate to the facts involved in writing or in open forum and may also waive the hearing. The case may be decided based on such stipulations, or such additional evidence may be required or obtained as necessary to render a fair and complete decision.
 3. Record of the hearing. A full and complete record, including properly identified exhibits, shall be kept of all proceedings in connection with an appeal or petition, and such record shall be open for inspection by any interested party. When a transcript of the proceedings is made for the Department's use or for further proceedings, a copy may, upon written request be furnished to interested parties.
 4. Oral arguments and briefs. At the conclusion of any hearing, the interested parties shall be granted a reasonable opportunity to present argument on all issues of fact and law to be decided. The hearing officer shall afford interested parties an opportunity either to present oral argument or to file briefs, or both; however, any party not represented as set forth in subsection (I)(1) shall be permitted oral argument. The hearing officer may limit the time of oral argument.
 5. Continuances or re-openings. The hearing officer may, on the hearing officer's own motion or at the request of any interested party, upon a showing of good cause, continue the hearing to a future time or reopen a hearing before a decision is issued to take additional evidence.
- M.** Decision.
1. Contents of the decision. All evidence, including records and documents of the Department which the Tribunal or Appeals Board makes a part of the record of the hearing shall be considered in determination of the case. Pursuant to A.R.S. § 23-674, every decision shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law.
 2. Mailing to interested parties; notice of appeal rights. A copy of such decision, together with an explanation of appeal rights, shall be personally delivered or sent by either regular 1st class, postage prepaid mail or certified mail to each interested party or the party's representative or attorney of record.

Historical Note

Former Regulation 20-1; Amended as an emergency effective April 28, 1976 (Supp. 76-2). Former Section R6-3-1502 repealed, new Section R6-3-1502 adopted as an emergency effective August 1, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-4). Former emergency adoption now adopted and amended effective March 11, 1980 (Supp. 80-2). Amended subsections (C) and (J) effective September 23, 1981 (Supp. 81-5). Amended effective September 25, 1991 (Supp. 91-3). Amended effective December 20, 1995 (Supp. 95-4).

R6-3-1503. Proceedings Before an Appeal Tribunal

- A.** Filing an appeal. Any interested party to a determination of a Deputy may appeal to an Appeal Tribunal within the time limits listed in A.R.S. § 23-773(B). The appellant may file the appeal personally, or by mail, fax, telephone, or Internet.
1. If the appellant files the appeal personally, by mail, or by fax the appellant or authorized agent shall sign the appeal and file through any public employment office in the United States or Canada, or directly with the Department of Economic Security.
 2. If the appellant files the appeal by telephone, the appellant shall use the telephone number listed on the determination.
 3. If the appellant files by Internet, the appellant shall use the Internet application maintained for that purpose on the Department's web site.
- B.** Appeal Tribunal hearings
1. Manner of holding hearings. The Appeal Tribunal shall conduct all hearings in accordance with A.R.S. § 23-674, in a manner that shall ascertain the substantial rights of all

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

the interested parties. The Appeal Tribunal shall require all testimony to be taken under oath or affirmation.

2. Jurisdiction. The Appeal Tribunal's decision and authority is confined solely to issues arising under the Employment Security Law, A.R.S. Title 23, Chapter 4. In every case, the Appeal Tribunal shall render a decision on the issues stated in the notice of hearing. The Appeal Tribunal may also hear and decide any issues not previously considered by the Deputy that arise during the hearing, provided all interested parties waive the right to notice on the issues. If any interested party is surprised by a new issue, and unprepared to proceed, the Appeal Tribunal may continue the hearing, or may remand the matter to the Deputy for consideration and action upon the issue.
 3. Failure of a party to appear
 - a. If an interested party fails to appear at a scheduled hearing, the Appeal Tribunal may:
 - i. Adjourn the hearing to a later date; or
 - ii. Proceed to review the evidence of record and other admissible evidence as may be presented at the scheduled hearing, and make a disposition or decision on the merits of the case.
 - b. If the Appeal Tribunal issues a decision adverse to any interested party that failed to appear at a scheduled hearing, that party may file one written request for a hearing to determine whether good cause exists to reopen the hearing. The interested party shall file the request to reopen within 15 calendar days of the mailing date of the decision or disposition, and shall list the reasons for the failure to appear.
 - c. The Appeal Tribunal shall hold a hearing to determine whether there was good cause for the failure to appear, and in the discretion of the hearing officer, to review the merits of the case. Upon a finding of good cause for failure to appear at the scheduled hearing, the Appeal Tribunal shall vacate the disposition or decision on the merits and reschedule the case for hearing under R6-3-1502, unless the hearing on the merits is held concurrently with the good cause hearing.
 - d. A party shall establish good cause warranting reopening of a case upon proof that both the failure to appear and failure to timely notify the hearing officer were either beyond the reasonable control of the nonappearing party or due to excusable neglect.
 - e. A party may obtain only one good cause hearing for each hearing scheduled on the merits, therefore:
 - i. If a party does not appear at the scheduled good cause hearing, a party may file a written request for review to determine whether good cause exists for failure to appear at both the good cause hearing and the original hearing on the merits.
 - ii. If the Appeal Tribunal reopens a case upon a finding of good cause, and the party fails to appear at the time and date of the new hearing, the party may file a written request for review to determine whether good cause exists for failure to appear at the new hearing.
 - f. A request for review of an Appeal Tribunal decision shall state the reasons for the party's failure to appear. The party shall attach copies of any documentation supporting the request.
 - g. The Appeal Tribunal shall review the request and the evidence of record to determine whether there is good cause to reopen the hearing on the issue of good cause or on the merits and shall issue a decision accordingly.
 - h. An interested party may file any request to reopen personally, or by mail, fax, or internet.
 - i. Any interested party may appeal, in writing, to the Unemployment Insurance Appeals Board from the decision of a hearing officer that denies reopening for lack of good cause, as defined in subsection (B)(3)(d). The party shall file the appeal within 15 calendar days after mailing or electronic transmission of the decision denying reopening. If the Unemployment Insurance Appeals Board reverses the denial to reopen, the Board shall remand the case to the Appeal Tribunal and the Tribunal shall reschedule the case for hearing on the merits in accordance with R6-3-1502.
 - j. If an appellant fails to appear or waive appearance, the Appeal Tribunal may enter a default disposition in accordance with R6-3-1502(A)(4) without further right to appeal except as provided in this Section.
 - k. Notwithstanding the foregoing provisions, an appellee who fails to appear may appeal to the Appeals Board from an adverse decision on the merits within 15 calendar days after mailing or electronic transmission of the decision is served on the party.
- C. Finality of Appeal Tribunal decision. Under A.R.S. § 23-671, the decision of the Appeal Tribunal becomes final unless an interested party files a written petition for review within 15 calendar days after mailing or electronic transmission to the interested parties, or the Appeals Board assumes jurisdiction over the matter on its own motion. After a decision of the Appeal Tribunal has become final, the matter shall not be reopened, reconsidered, or reheard, and the decision shall not be changed except to correct clerical errors. Any interested party may file a petition for review personally, or by mail, fax, or Internet.

Historical Note

Former Regulation 20-2; Amended as an emergency effective April 28, 1976 (Supp. 76-2). Former Section R6-3-1503 repealed, new Section R6-3-1503 adopted as an emergency effective August 1, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-4). Former emergency adoption now adopted and amended effective December 3, 1979 (Supp. 79-6). Amended subsection (B)(3) effective September 11, 1981 (Supp. 81-5). Amended effective December 20, 1995 (Supp. 95-4). Amended by final rulemaking at 6 A.A.R. 3648, effective August 28, 2000 (Supp. 00-3). Amended by final rulemaking at 19 A.A.R. 1793, effective September 7, 2013 (Supp. 13-3).

R6-3-1504. Review of Appeal Tribunal Decisions

- A. Petition for review.
1. Any appeal will be entertained. An interested party to an Appeal Tribunal decision may petition for review of the decision. Petition for review may be based upon one or more of the following grounds:
 - a. Irregularity on part of presiding officer or other party to proceedings.
 - b. Abuse of discretion on part of hearing officer whereby petitioner was deprived of a fair hearing.
 - c. Newly discovered evidence which could not with reasonable diligence have been discovered and produced at time of original hearing.
 - d. There was error in admission or exclusion of evidence in Tribunal hearing.

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

- e. There was error in law in Tribunal hearing.
 - f. Other good and sufficient grounds.
2. The petition shall be in writing and must be filed within 15 calendar days after mailing of the decision. The petition must be signed by the appellant or the appellant's authorized agent. The petition may be filed personally or by mail through any public employment office in the United States or Canada or directly with the Department of Economic Security, Phoenix, Arizona. The Board shall mail copies of such petition to the other interested parties and to the Deputy.
- B. Powers of the Board.** Upon receipt of a timely petition for review, the Board shall be furnished the complete record of the case, including transcript unless the parties stipulate otherwise. Thereafter the Board may:
1. Affirm, reverse, modify or set aside the decision of the Appeal Tribunal on the basis of the record in the case, or
 2. Order the taking of additional evidence, or
 3. Issue a disposition in accordance with R6-3-1502(A).
- C. Removal or referral to the Board**
1. Referral to Board by Appeal Tribunal. In accordance with A.R.S. § 23-671(B), an Appeal Tribunal may refer any case before it or any question involved therein to the Board. Such referral shall be in writing, specifying the reasons therefor and signed by the Appeal Tribunal. The Board shall mail copies of such referral to all interested parties.
 - a. If the entire case is accepted by the Board, the Board shall be furnished the complete record of the case, including a transcript of any proceedings held. Thereafter, the Board may, after affording the parties reasonable opportunity for a fair hearing:
 - i. Affirm, reverse, modify or set aside the determination of the Deputy on the basis of the record in the case, or
 - ii. Order the taking of additional evidence, and decide the case.
 - b. If a question involved in a case is accepted by the Board, the Board shall be furnished with such information as the Board deems necessary to resolve the question. Thereafter the interested parties and the Appeal Tribunal shall be informed, in writing, of the Board's resolution of the question. Upon resolution of the question, the Appeal Tribunal shall proceed with the case.
 2. Removal from Appeal Tribunal by Board. In accordance with A.R.S. § 23-671(D) and (E), the Board may remove to itself any matter before an Appeal Tribunal if the Tribunal decision has not become final. If such action is taken, the Board shall mail written notice of the removal to the interested parties. The Board shall be furnished the complete record of the case, including a transcript of any proceedings held. Thereafter, the Board may:
 - a. Set aside the decision of the Appeal Tribunal and remand the proceedings to another Appeal Tribunal for review and decision; or
 - b. Order the taking of additional evidence; or
 - c. Remove the proceedings to itself for review and decision; or
 - d. Order the taking of additional evidence, and affirm, reverse, modify or set aside the determination of the Deputy or the decision of the Appeal Tribunal.

Historical Note

Former Regulation 20-3; Amended as an emergency effective April 30, 1976 (Supp. 76-2). Amended effective August 3, 1978 (Supp. 78-4). Former Section R6-3-1504

repealed, new Section R6-3-1504 adopted as an emergency effective August 1, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-4). New Section R6-3-1504 adopted effective February 7, 1980 (Supp. 80-1). Amended subsection (A) effective September 23, 1980 (Supp. 80-5). Amended effective December 20, 1995 (Supp. 95-4).

R6-3-1505. Appeals Board Proceedings

- A. Acting Member.** If a Board member is unable, for any reason, to participate in a case or cases, upon request of the Chairperson of the Appeals Board, the Director shall appoint an individual to act for the member.
- B. Waiver of Bond on Filing of Appeals.** When an appeal is taken against the Department to the Court of Appeals, the Board shall waive filing of the bond, as provided by Rule 10(a) of the Arizona Rules of Civil Appellate Procedure.

Historical Note

Former Rule 10-3; Amended effective January 3, 1975 (Supp. 75-1). Amended effective December 17, 1975 (Supp. 75-2). Repealed effective August 3, 1978 (Supp. 78-4). New Section R6-3-1505 adopted as an emergency effective August 2, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-4). New Section R6-3-1505 adopted effective February 7, 1980 (Supp. 80-1). Amended effective July 22, 1997 (Supp. 97-3).

R6-3-1506. Contribution Cases

- A.** This rule applies to petitions for review and appeals arising under A.R.S. §§ 23-724, 23-732, 23-733, and 23-750.
- B. Petition for hearing or review**
1. Any interested party to a reconsidered determination or a denial of application for reconsidered determination or a petition for reassessment may petition the Appeals Board for review. The petition shall be in writing and shall be signed by the appellant or the authorized agent. The petition shall be filed within 15 calendar days after the mailing of the reconsidered determination or denial thereof involving 1 of the following issues:
 - a. Benefits paid and chargeable to the account (A.R.S. § 23-732);
 - b. The rate of contributions (A.R.S. § 23-732);
 - c. Transfer of experience rating account of a distinct and severable portion of an employing unit (A.R.S. § 23-733);
 - d. Delinquency, deficiency, or jeopardy assessment (A.R.S. §§ 23-738, 23-738.01, and 23-739).
 2. The petition must be filed within 30 days (unless the time is extended for good cause) after mailing of the reconsidered determination or denial thereof involving one of the following issues:
 - a. An employing unit constitutes an employer (A.R.S. § 23-724);
 - b. A nonprofit or governmental employing unit constitutes a rated or reimbursing employer (A.R.S. § 23-750(B));
 - c. Services performed for or in connection with the business or the employing unit constitute employment (A.R.S. § 23-724);
 - d. Remuneration for services constitute wages (A.R.S. § 23-724);
 - e. The amount of payments in lieu of contributions due from the employing unit (A.R.S. § 23-750(C));
 - f. Transfer of the entire experience rating account of predecessor employer to successor (A.R.S. § 23-733);

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

- g. Liability of successor employer for predecessor's unpaid contributions (A.R.S. § 23-733).
- C. Requirement for hearing or review. A petition for hearing or review shall be denied if the employer fails to comply with the contribution and wage report requirements of A.R.S. § 23-724 within 30 days of service of a reconsidered determination or disposition. The Department may, upon its finding of good cause, extend the 30-day period for filing the required reports. Upon denial of a petition for hearing or review, the prior reconsidered determination or disposition shall become final.

Historical Note

Former Regulation 20-4; Amended as an emergency effective April 30, 1976 (Supp. 76-2). Correction to subsection (D), paragraph (1) Supp. 76-2 (Supp. 77-6). Former Section R6-3-1506 repealed, new Section R6-3-1506 adopted as an emergency effective August 1, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-4). Former emergency adoption now adopted and amended effective March 21, 1980 (Supp. 80-2). Amended effective April 9, 1981 (Supp. 81-2). Amended effective December 20, 1995 (Supp. 95-4).

R6-3-1507. Appeals from Labor Dispute Determinations

- A. This rule applies to appeals from determinations released under A.R.S. § 23-673.
- B. Filing of appeal. Any interested party to a determination of a deputy denying or awarding benefits under the provisions of A.R.S. § 23-777 for unemployment due to a labor dispute may file an appeal within 15 calendar days after the determination is mailed to the interested party. The appeal shall be in writing, signed by the appellant or the appellant's authorized agent, and may be filed personally or by mail through any public employment office in the United States or Canada or directly with the Department of Economic Security. Any appeal so filed is removed to the Appeals Board under the provisions of A.R.S. § 23-673(B).
- C. Disposition by the Appeals Board
1. Determination based on hearing. If the determination appealed from was based on a fair hearing, the Appeals Board may:
 - a. Make its decision based on the evidence previously submitted, or
 - b. Order the taking of additional evidence.
 2. Determination based on investigation. If the determination appealed from was based upon investigation without hearing, the Appeals Board shall direct that a hearing be held.

Historical Note

Adopted as an emergency effective August 1, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-4). Former emergency adoption now adopted and amended effective December 3, 1979 (Supp. 79-6). Amended effective December 20, 1995 (Supp. 95-4).

ARTICLE 16. FUNDS**R6-3-1601. Transfers and warrants**

In conformity with sections 23-701, 23-702, 23-703 and 23-704 of the Employment Security Law of Arizona, transfers and refunds of funds from the Unemployment Compensation Fund -- Clearing Account shall be made by warrant issued by the Department only for the following purposes:

- A. To transfer monies to the Secretary of the Treasury of the United States to the credit of the account of this state in the Unemployment Trust Fund.
- B. To refund monies to employers for overpayments of contributions, interest and penalties collected.

- C. To transfer penalties and interest collected from employers to the Special Administration Fund.
- D. To transfer lien fees collected from employers to the Administration Fund.
- E. To transfer monies erroneously deposited to the clearing account to the proper account or fund.

Historical Note

Former Regulation 10-7.

ARTICLE 17. CONTRIBUTIONS**R6-3-1701. Identification of Workers Covered by Employment Security Law of Arizona**

- A. An employer shall ascertain the Social Security account number of each worker in employment with the employer.
- B. The employer shall report the worker's Social Security account number in making any report required by the Department in the administration of the Employment Security Law with respect to a worker.
- C. If an employer has a worker engaged in employment who does not have a Social Security number, the employer shall ask the worker to show a receipt issued by an office of the Social Security Administration acknowledging that the worker has filed an application for an account number. The receipt shall be retained by the worker. In making any report required by the Department with respect to such a worker, the employer shall report the date of issue of the receipt, its termination date, the address of the issuing office, and the name and address of the worker exactly as shown in the receipt.

Historical Note

Former Regulation 10-1. Amended effective December 20, 1995 (Supp. 95-4).

R6-3-1702. Maintenance and inspection of records

- A. Each employing unit, as defined in A.R.S. § 23-614, including any employing unit which considers that it is not an employer subject to the Act or that services performed for it constitute exempt employment or do not constitute employment, shall establish and preserve true and accurate records of all disbursements made in cash, by check, or in any other medium. Such records shall contain the date of disbursement, the amount, or a clear identity of the form of remuneration if in any medium other than cash, the name of the payee and the purpose for the disbursement. Examples of records which shall be made available for audit, inspection or copying, as provided by subsections (C) and (E) of this regulation, include, but are not limited to, the following:
1. Check stubs and cancelled checks for all payments.
 2. Cash receipts and disbursement records.
 3. Payroll journal.
 4. Purchase journal.
 5. General journal.
 6. General ledger.
 7. Payroll tax reports for all federal and state agencies.
 8. Individual earnings records.
- B. Each employing unit shall establish and preserve records with respect to services performed for it which shall contain the following:
1. For each pay period:
 - a. The beginning and ending dates of such period.
 - b. The total amount of remuneration whether in cash, by check or in any other medium paid in such pay period and the date of such payment.
 - c. The dates in each calendar week on which there were the largest number of workers in employment and the number of such workers.
 2. For each worker:

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

- a. Full name.
 - b. Social Security account number.
 - c. Date on which the individual was hired, rehired, or returned to work after temporary layoff.
 - d. Date of and reason for separation from work.
 - e. Amount of remuneration whether in cash, by check, or in any other medium paid in each calendar quarter.
 - f. The place in which the services are performed. For the purpose of this record, the place where the services are performed shall be reported as the city or town in which the services are performed in Arizona, or the county in which the services are performed in Arizona, if outside such a city. If the services are performed in more than one such city, town, or county in Arizona, the place where the services are performed shall be reported as the city, town, or county in Arizona in which the base of operation is located. If the services are performed both within and without Arizona, the place where the services are performed shall be reported as the city, town, or county in Arizona in which the base of operations is located; or if the base of operations is not located in Arizona, as the city, town, or county in Arizona from which the services are directed or controlled; or if the place from which the services are directed or controlled is also outside Arizona, as the city, town, or county in Arizona where the individual resides.
 - g. The remuneration paid for each period showing separately:
 - i. Money wages, excluding special payments.
 - ii. Reasonable cash value, as determined by the Department, of the remuneration paid by the employing unit in any medium other than cash, but in no event shall such determined value be in an amount less than that provided by Department regulation where so provided, excluding special payments in a medium other than cash.
 - iii. Special payments which are not due on any pay day, including annual bonuses, gifts, and prizes. Value of special payments other than cash shall be determined as set forth in (ii) above.
3. In order for a determination of an employer's liability to be made, the employer's records are required to contain the information required in subparagraph (B)(1)(c) of this regulation. If the employer's records do not contain this information, it shall be presumed that all of the individuals performing services in the pay period performed services for some portion of the same day which is the day in which the largest number of individuals performed services in each week of the pay period.
- C.** The records required to be preserved in subsections (A) and (B) of this regulation shall be preserved for a period of not less than 4 full calendar years. Such records together with all other business records which, as determined by the Department, are reasonably necessary to verify the entries in such records or for a proper determination of coverage or tax liability or benefit eligibility shall be made available for audit, inspection or copying by the Department at any reasonable time and as often as may be necessary.
- D.** An employing unit shall no longer be required to preserve the records specified in subsections (A) and (B) with regard to all or certain individuals, services and remuneration after being notified in writing by the Department that those records are no longer required. Such notice from the Department shall be given only after the Department determines that the individuals, services and remuneration are not subject to the Act.
- E.** Any employing unit that does not maintain records in this state that contain the information prescribed in this regulation pertaining to services performed for it in this state shall, upon the request of a representative of the Department, make such information available to the Department at a location specified by the Department without reasonable delay.
- Historical Note**
Former Regulation 40-1; Amended effective June 2, 1980 (Supp. 80-3). Amended effective November 18, 1981 (Supp. 81-6).
- R6-3-1703. Employer reports**
- A.** General. Each employing unit shall fully and clearly report to the Department any information required in a manner designated by the Department. Unless otherwise specified, the information shall be returned within 10 days after the date of mailing of a request required to be returned to the Department.
- B.** Quarterly Contribution and Wage Reports
1. Except as provided in paragraph (3) of this subsection, each employer as defined in A.R.S. § 23-613 shall file with the Department a completed Contribution and Wage Report within the time prescribed in A.C.R.R. R6-3-1704. The information required shall include, but is not limited to:
 - a. Total number of employees each month of the quarter on all types of payrolls for the payroll period which includes the 12th of each month in the quarter;
 - b. Total wages paid in the quarter;
 - c. Total wages paid in the quarter which are in excess of the first \$7,000 paid to each employee within any calendar year which begins after December 31, 1982; and for quarters prior to January 1, 1983, total wages paid in the quarter which are in excess of the first \$6,000 paid to each individual employee within the calendar year;
 - d. Total taxable wages paid in the quarter;
 - e. A listing of employees which includes each employee's name, social security number, and total gross wages paid that employee in the quarter.
 2. Failure to receive a quarterly Contribution and Wage Report form shall not relieve the employer of the responsibility for filing the report.
 3. Request for suspension of quarterly filing requirements. An employer who continues operations but has discontinued paying wages to employees and does not expect to pay wages in the near future may request in writing that the Department suspend quarterly filing requirements. The request shall include the date on which the employer ceased paying wages. When the employer's request for suspension is approved, the employer will not be required to file quarterly Contribution and Wage Reports or pay contributions until the next regular reporting date after wages to employees are again paid, and the absence of such quarterly reports or contributions shall not make such employer delinquent upon the records of the Department.
- C.** Report of changes. Each employer as defined in A.R.S. § 23-613 shall promptly notify the Department in writing of any change in its business operations. Changes include: the acquisition or disposal of all or any part of the business operations or assets; a change in business name or address; bankruptcy or receivership; or any other change pertaining to the operation or ownership of the business operations. The notification shall

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

include the date of change, and the name, address, and telephone number of the person, firm, corporation or official placed in charge of the organization, trade or assets of the business.

Historical Note

Former Regulation 40-2; Amended effective January 10, 1977 (Supp. 77-1). Correction, subsection (B), paragraph (1) (Supp. 81-6). Former Section R6-3-1703 repealed, new Section R6-3-1703 adopted effective October 24, 1983 (Supp. 83-5).

R6-3-1704. Due date of quarterly reports, contributions, and payments in lieu of contributions

- A.** Received date. If any due date prescribed in this regulation falls on a Saturday or Sunday, or a legal holiday, the due date shall be the next following business day. Quarterly reports, contributions, and payments in lieu of contributions, if mailed, shall be considered as received on the date shown on the postmark of the envelope in which they are received by the Department.
- B.** Regular due date. Each employing unit which is a covered employer subject to Title 23, Chapter 4, A.R.S., shall file with the Department quarterly reports on or before the due date; any employer failing to file a quarterly report when due is delinquent. Except as otherwise provided in this regulation, quarterly contribution and wage reports are due and contributions are due and payable on or before the last day of the month following the close of each calendar quarter in which the wages were paid, except that the contributions with respect to wages which are constructively paid shall be payable for the quarter in which such wages are constructively paid as provided by regulation R6-3-1705. Payments in lieu of contributions are due and payable on or before the last day of the second month following the close of each calendar quarter in which benefit claims are paid. Quarterly notification of the amount of payments in lieu of contributions due from an employer shall be mailed to his last known address following the end of each calendar quarter.
- C.** Due date for new employer. Quarterly contribution and wage reports due from an employer for the first time by reason of said employer's becoming subject during a current calendar year shall be deemed due on all wages paid by said employer for the preceding portion of that year on the last day of the month following the calendar quarter during which said employer became subject to Title 23, Chapter 4, A.R.S. Contributions due from such an employer who is liable for contributions shall be deemed due and payable on all wages paid by said employer for the preceding portion of that year on the same day as his quarterly contribution and wage reports for such period are due.
- D.** Delinquent date, and penalty, and interest. A quarterly report or contributions payment or payment in lieu of contributions which is not received on or before the due date is delinquent.
1. An employer who fails to file on or before the due date a contribution and wage report shall pay to the Department for each such delinquent report, subject to waiver for good cause shown, a penalty as prescribed in A.R.S. § 23-723(A).
No penalty shall apply to delinquent reports when the employer proves to the satisfaction of the Department that no wages were paid and no contributions were due.
 2. An employer who has not paid contributions or payments in lieu of contributions on or before the due date shall pay interest on the whole or part thereof remaining unpaid at the rate of 1% per month, or fraction thereof, from and after the due date until payment is received by the Department

unless good cause is shown why such interest shall be waived.

- E.** Due date upon demand. If the Department finds that the collection of any contribution or payment in lieu of contributions will be jeopardized by delaying the collection thereof until the date otherwise prescribed, upon written demand by the Department such contribution or payment in lieu of contributions shall become immediately payable, and if not submitted within 10 days after such demand shall become delinquent.
- F.** Extension of time for submission of reports
1. When an employer files a written request for an extension of time for filing any quarterly contribution and wage report before the due date for the report, the Department may grant, in writing, an extension for filing such report and paying the contributions due thereon if good cause is shown for the employer being unable to file the report by the due date. No extension shall postpone the due date for more than 30 days nor shall any extension be granted solely to defer the payment of contributions.
 2. Subject to waiver for good cause shown, an employer who has been granted an extension and who fails to file the report and to pay his contributions on or before the termination of the period of such extension, shall be assessed the penalty for late filing and interest shall be due and payable from the original due date as if no extension had been granted.

Historical Note

Former Regulation 40-3; Amended effective January 3, 1975 (Supp. 75-1). Amended as an emergency effective August 1, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-4). Former emergency adoption now adopted effective October 30, 1979 (Supp. 79-5). Amended effective November 18, 1981 (Supp. 81-6).

R6-3-1705. Wages

- A.** "Wages paid" includes both wages actually received by the worker and wages constructively paid. Wages are constructively paid when they are credited to the account of or set apart for an employee so that they may be drawn upon by him at any time although not then actually received. To constitute payment in such cases the wages must be credited or set apart to the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to him so that they may be drawn at any time, and their payment brought within his own control and disposition.
- B.** The name by which the remuneration for employment, or potential employment as provided in subsection (E) of this rule, is designated or the basis on which the remuneration is paid is immaterial. It may be paid in cash or in a medium other than cash, on the basis of piece work or percentage of profits, or it may be paid on an hourly, daily, weekly, monthly, annual or other basis. The remuneration may also be paid on the basis of an estimated or agreed upon amount in order to resolve an issue arising out of an employment or potential employment relationship. Remuneration paid in goods or services shall be computed on the basis of the reasonable cash value of the goods or services at the time of payment.
- C.** When an employer succeeds to the business or a part of the business of a predecessor employer, wages for employment covered by A.R.S. Title 23, Chapter 4, paid to an individual by the predecessor and reported to the Department shall be used in determining the wages subject to contributions paid to such individual for continued employment by the successor employer.

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

- D. The provisions of subsection (C) of this rule do not apply to an employer for any calendar year for which the employer is liable for payments in lieu of contributions.
- E. Wages include payments made to an individual by an employer arising out of an actual or potential employment relationship. Such payments include:
1. An award of unpaid minimum wages or overtime compensation under the Fair Labor Standards Act.
 2. An order of the National Labor Relations Board to compensate for the loss of pay.
 3. An order of any federal or state agency on account of real or alleged discrimination in hiring, promotion, salary administration or termination in violation of law.
 4. A decision of a court or an arbitrator in a dispute over an actual or alleged breach of contract pertaining to wages, hours of work or other conditions of employment.
 5. A private agreement between the parties in settlement of any of the above situations in lieu of an award, order or decision.
 6. Any other payments made on account of the employment relationship, except those listed in subsection (F) of this rule.
- F. Wages do not include:
1. Payments by an employer made to an individual which are identified in an award, order, decision or agreement as exemplary damages or medical expenses.
 2. Payment by employers made to a plan exempt under section 501(c)(17) of the Internal Revenue Code of 1986 for the payment of supplemental unemployment benefits.

Historical Note

Former Regulation 40-4; Amended effective January 10, 1977 (Supp. 77-1). Amended effective November 4, 1980 (Supp. 80-4). Amended subsections (B) through (F) effective April 30, 1982 (Supp. 82-2). Correction, subsection (D), deleted reference to subsection (F) of this regulation (Supp. 83-3). Former Section R6-3-1705 repealed, new Section R6-3-1705 adopted effective March 16, 1988 (Supp. 88-1).

R6-3-1706. Combining included and excluded services

Section 23-615 of the Employment Security Law of Arizona provides that: "'Employment' means any service of whatever nature performed by an employee for the person employing him, . . ." In conformity with this section, the Department of Economic Security prescribes:

- A. If 1/2 or more of the services performed during any period by an employee for the person employing him constitutes employment, all of the services of such employee for such period shall be deemed to be employment, but if more than 1/2 of the services performed during any such pay period by an employee for the person employing him does not constitute employment, then none of the services of such employee for such period shall be deemed to be employment.
- B. As used in this regulation the term "pay period" means a period of not more than 31 consecutive days for which payment of remuneration is ordinarily made to the employee by the person employing him.

Historical Note

Former Regulation 40-5.

R6-3-1707. Repealed**Historical Note**

Former Rule 10-3; Amended effective January 3, 1975 (Supp. 75-1). Repealed effective August 3, 1978 (Supp.

78-4).

R6-3-1708. Employer Charges

- A. In conformity with A.R.S. §§ 23-727, 23-773, and 23-777, the Department of Economic Security prescribes:
- B. When the Department establishes a benefit overpayment, the Department shall proportionately credit the amount of the overpayment to the experience rating accounts of the claimant's base-period employers, who are being charged as of the calendar quarter the overpayment is established.
- C. When the Department transfers wage credits to another state for use in establishing a claim, the Department shall:
1. Not charge an experience rating account for any benefits paid when the transferred wage credits are insufficient to establish a claim in this state; or
 2. Determine chargeability of the experience rating account as prescribed in A.R.S. § 23-727(D) when the wage credits are sufficient to establish a claim, except, if the account is charged, total charges shall not exceed the maximum amount payable by this state; or
 3. Not relieve a reimbursement employer of payments in lieu of contributions, including charges exceeding the maximum amount payable by this state.
- D. Except as otherwise provided by A.R.S. § 23-727(E) and A.A.C. R6-3-1708(E), once the Department noncharges the experience rating account of an employer for benefits paid during the benefit year, the account remains noncharged for the duration of the benefit year. If the employer reemploys the claimant during the benefit year, the circumstances of the reemployment separation determine chargeability of the employer's account for any benefits paid during a benefit year beginning after the reemployment separation.
- E. As required by A.R.S. § 23-777(C):
1. The Department shall end the noncharge to the experience rating account of a base-period employer of a worker who is unemployed due to a labor dispute and shall determine the employer's chargeability for benefits in accordance with A.R.S. § 23-727 in the following circumstances:
 - a. The labor dispute ended and the worker returned to work or refused an offer of work with the employer involved in the labor dispute; or
 - b. The dispute is ongoing and the worker:
 - i. Had bona fide intervening employment that meets the provisions of R6-3-5604(C) and is no longer unemployed due to the labor dispute, or
 - ii. Was permanently replaced by the labor dispute employer.
 2. When a worker remains unemployed after a labor dispute ends, the Department shall continue to noncharge the experience rating account of the worker's base-period employer if the labor-dispute employer presents evidence, within 10 days of the Department's request, that the employer has a continuing employer-employee relationship with the worker. Evidence establishing the relationship may include:
 - a. Placement of the worker's name on the recall list;
 - b. Continuation of the worker's benefits, including insurance, profit sharing, vacation, and sick leave; and
 - c. Retention of the worker's seniority rights.
 3. When the worker's continued unemployment ceases to be a result of the labor dispute, the Department shall redetermine the employer's chargeability for benefits paid to the worker as prescribed in A.R.S. § 23-727.
- F. For the purpose of applying A.R.S. § 23-727(F):

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

1. A retirement pay plan is a plan provided by either a non-governmental individual employer or group of employers in a collective retirement plan, and
2. A collective retirement plan is a group of employers and workers in an industry that pay into 1 fund for the workers' retirement.

Historical Note

Former Regulation 30-9; Amended effective March 26, 1979 (Supp. 79-2). Section repealed; new Section adopted effective July 22, 1997 (Supp. 97-3).

R6-3-1709. Part-time Employment -- Employer Responsibilities

- A.** As used in A.R.S. § 23-727(E) and A.A.C. R6-3-1708(E), the phrase "to the same extent," means:
1. When applied to an employee who is not paid by commissions, that the weekly wages earned in part-time employment during the weeks of a calendar quarter in which benefits are claimed are not less than 90% of the weekly wages earned in part-time employment during the last calendar quarter of the base period; and
 2. When applied to an employee paid on a commission basis, that:
 - a. The employer-employee relationship has not terminated; and
 - b. The employment opportunity the employer has made available to the employee, during the calendar quarter in which the employee is claiming benefits, is no less than the opportunity made available during the last calendar quarter of the base period.
- B.** The Department may require an employer to submit proof that the employer is offering employment to the same extent, by sending the employer a written request for such information.
- C.** Within 10 work days of the mailing date of the request, the employer shall send the Department:
1. A week-by-week record of wages the employee has earned for part-time employment during the last 13 weeks of the base period; or
 2. A written certification that the employer-employee relationship of an employee paid on a commission basis has not terminated and that the employer continues to provide such employee with an employment opportunity which is no less than the employer provided during the last quarter of the base period.

Historical Note

Former Regulation 30-12. Amended effective December 20, 1995 (Supp. 95-4).

R6-3-1710. Notification and review of charges to experience rating accounts

Section 23-727 of the Employment Security Law of Arizona requires the Department to maintain an account for each employer and to make appropriate charges and credits to the account. Section 23-732 of the Employment Security Law of Arizona provides for annual notice to the employer of his contribution rate, the procedure for review or redetermination, and for quarterly notification of benefits charged.

In conformity with the above sections, the Department of Economic Security prescribes:

- A.** Quarterly notification to an employer of benefits charged to his account shall be mailed to his last known address following the end of each calendar quarter. The notification shall set forth the name, social security account number, and the amount charged for each individual whose benefits are charged against the employer's account. The charges set forth in the notification shall become conclusive and binding upon

the employer for all purposes unless within 15 days after notification was mailed to him the employer files an application for redetermination.

- B.** If written request for redetermination of the charging of benefits to an employer's account is filed and is timely, the Department shall grant such request if the notice of benefit charges:
1. Includes an error in the amount or in the identity of the claimant or the employer; or
 2. Includes charges for any benefits which are not chargeable under the provisions of regulation R6-3-1708 and the Department failed to give any required notification to the employer of the claim filing, determination, or decision on which the charges are based.

Historical Note

Former Regulation 40-8; Amended as an emergency effective August 1, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-4). Former emergency adoption now adopted effective October 30, 1979 (Supp. 79-5).

R6-3-1711. Computation of experience rates

- A.** An employer whose account has been chargeable for benefits throughout the twelve month period immediately preceding the July 1 computation date shall receive a computed rate for the following calendar year as prescribed in A.R.S. § 23-730.
- B.** The term chargeable means that an employer has been subject to potential charges resulting from benefit payments that could have been made if claims were filed. For purposes of establishing the rate for new accounts, the date upon which an employer's account becomes chargeable for benefit payments is either the first day of the second quarter following the end of the first quarter of wage payments after coverage began, or on the first day of the calendar quarter after the quarter in which the employer became liable under A.R.S. § 23-613, whichever is later.
- C.** The amount of contributions used to compute an employer's reserve ratio includes all contributions paid on or before July 31 or the next business day if July 31 falls on a Saturday, Sunday, or a legal holiday. Contributions shall not include payments of interest or penalties, or payments of contributions paid on or before July 31 and subsequently refunded on or before October 31.
- D.** The amount of benefit charges to compute an employer's reserve ratio includes the employer's share of the amount of all checks issued on or before June 30 for the payment of benefit claims determined chargeable against the employer's account. Credits resulting from erroneous payment of benefits shall be reflected in the quarter in which the error was established pursuant to A.C.R.R. R6-3-1708(B).
- E.** Average annual payroll used to compute an employer's reserve ratio includes the average of the taxable wages reported on or before the following October 31, or estimates and assessments made for the required quarterly reports through the period ending June 30.
- F.** Estimates of taxable payroll as provided in A.R.S. § 23-731 for any quarter in which a required report has not been filed shall be based on the best information available to the Department or the highest amount of taxable payroll reported on the last three quarterly reports submitted immediately preceding the delinquent quarter(s). However, when no reports have been filed or when the reports submitted reflect no wages paid, the estimate(s) shall be based on the average of taxable wages for all experience rated employers for the prior fiscal year.
- G.** Notwithstanding subsections (A) and (B), an employer who succeeds to or acquires a business or a distinct and severable portion of a business between July 1 and December 31 of a

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

calendar year, shall have the experience rating account of the predecessor used in computing its rate for the following calendar year if either the predecessor or successor informs the Department of the acquisition prior to the date its rate becomes final for the calendar year following the year of acquisition. If only a portion of the business was acquired, the provisions of A.R.S. § 23-733(B) and A.C.R.R. R6-3-1713(D) must also be met.

Historical Note

Former Regulation 40-7; Former Section R6-3-1711 repealed, new Section R6-3-1711 adopted effective October 24, 1983 (Supp. 83-5). Correction, subsection (G), reference to A.C.R.R. R6-3-1713(B) should read A.C.R.R. R6-3-1713(D) (Supp. 84-2).

R6-3-1712. Joint, Multiple, and Combined Employer Experience Rating Accounts**A. Joint experience rating accounts**

1. Joint experience rating account means a combined experience rating account established for 2 or more employers owned or controlled directly or indirectly by the same interests.
2. Employers may request establishment of a joint experience rating account by sending the Department a written request before March 1 of the calendar year for which the joint experience rating account is sought. The request shall identify all employers to be included as members in the joint experience rating account and provide documentation that the members are owned or controlled directly or indirectly by the same interests.
3. The Department shall approve a request for a joint experience rating account when:
 - a. The request is received before March 1 of the calendar year for which the joint experience rating account is sought;
 - b. Each member identified in the request is owned or controlled directly or indirectly by the same interests; and
 - c. The experience rating account of each member has been chargeable with benefits throughout the 12 consecutive calendar months ending on June 30 of the year preceding the calendar year for which the joint experience rating account is requested.
4. The average annual payroll for a joint experience rating account shall be the sum of the average annual payrolls of the members of such account.
5. A member of a joint experience rating account may withdraw from a joint account as of January 1 of any year after participating in the joint account for at least 2 calendar years. To withdraw, the member shall file a written request for withdrawal before March 1 of the calendar year for which the withdrawal is sought. Upon approval of the withdrawal:
 - a. The Department shall give the withdrawing member the member's portion of the joint experience rating account and a contribution rate computed on the member's separate experience, and
 - b. The Department shall give the remaining members a contribution rate computed on the experience of the remaining members.
6. The Department shall remove a member from a joint experience rating account when the Department determines that common ownership or control has ceased to exist between 2 or more members of a joint account:
 - a. The Department shall give the removed member, as of the date of the change of common ownership or

control, a separate experience rating account and a contribution rate computed on the removed member's portion of the joint experience rating account;

- b. The remaining members shall:
 - i. Retain the contribution rate of the joint experience rating account for the remainder of the calendar year in which the change occurred; and
 - ii. Receive a contribution rate for the following calendar year computed on the basis of the experience of the remaining members.

B. Multiple experience rating accounts.

1. Multiple experience rating account means an experience rating account established for an employer which permits separate employer account numbers and quarterly reports for separately identified operations of the employer.
2. The Department may approve a request for a multiple experience rating account effective with the year in which the employer submits a written application for such account.
3. The notices of benefit charges sent to the employer shall identify charges to each operation, but the contribution rate for the employer shall be a single rate based on the combined experience of all operations.
4. Upon written request of the employer, the Department shall close 1 or more separate accounts in a multiple experience rating account and transfer the experience to a remaining account of the employer as of the beginning of the calendar year of the written request.
5. When an operation which is a part of a multiple account is sold or transferred, the Department shall transfer the experience rating reserve if the provisions of A.R.S. § 23-733 and A.A.C. R6-3-1713 are met.

C. Combined experience rating accounts

1. Combines experience rating account means an experience rating account established for an employer which requires separate employer account numbers, quarterly reports, and charge notices for separately identified operations that meet more than 1 of the coverage provisions described below, except that a combined account will not be established for agricultural employers if the employees covered under general coverage are in the agricultural industry. The contribution rate for the employer is a single rate based on the combined experience of all operations.
 - a. General coverage means coverage on the basis of employment of 1 or more individuals for 20 weeks in a calendar year, payment of \$1500 or more wages in a calendar quarter, successorship, common ownership or control, voluntary election, or coverage under the Federal Unemployment Tax Act.
 - b. Agricultural coverage means coverage on the basis of employment of 10 or more individuals in agricultural labor for 20 weeks in a calendar year or payment of cash wages of \$20,000 or more in a calendar quarter, voluntary election, successorship, or coverage under the Federal Unemployment Tax Act.
 - c. Domestic coverage means coverage on the basis of payment of cash wages of \$1000 or more in a calendar quarter for domestic service, voluntary election, successorship, or coverage under the Federal Unemployment Tax Act.
2. The Department shall establish a combined experience rating account only on its own initiative for the reasons set forth in this Article.

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

3. The Department shall not permit the members to voluntarily withdraw from a combined account.
4. The Department shall remove a member of a combined account when a change of ownership occurs as provided in R6-3-1713 and A.R.S. § 23-733.
5. If the operation of a member of a combined experience rating account qualifies for termination under the provisions of A.R.S. § 23-725, the Department shall terminate the experience of the member's account and assign a rate for the combined experience rating account of the remaining members for the next calendar year, based on the remaining members' own experience.

Historical Note

Former Regulation 40-9; Amended effective March 28, 1978 (Supp. 78-2). Amended by deleting language prior to subsection (A) and amending subsection (A), paragraph (2) (Supp. 80-4). Correction, Historical Note for Supp. 80-4 should read effective July 9, 1980 (Supp. 80-6). Amended effective February 7, 1984 (Supp. 84-1). Amended effective December 20, 1995 (Supp. 95-4).

R6-3-1713. Business transfers**A. General**

1. The manner in which an organization, trade or business is acquired or succeeded to is not determinative of successor status. A business may be acquired or succeeded to "in any manner" which includes, but is not limited to, acquisition by purchase, lease, repossession, bankruptcy proceedings, default, or through the transfer of a third party.
2. An "organization, trade or business" as used in A.R.S. §§ 23-613 and 23-733(A) through (D) is acquired if the factors of an employer's organization, trade or business succeeded to are sufficient to constitute an entire existing operating business unit as distinguished from the acquisition of merely dry assets from which a new business may be built. The question of whether an organization, trade or business is acquired is determined from all the factors of the particular case. Among the factors to be considered are:
 - a. The place of business
 - b. The trade name
 - c. The staff of employees
 - d. The customers
 - e. The goodwill
 - f. The inventory
 - g. The accounts receivable/accounts payable
 - h. The tools and fixtures
 - i. Other assets.
3. For the purpose of determining successorship status under A.R.S. §§ 23-613(A)(3) and 23-733(A) or (B), an individual or employing unit who in any manner acquires or succeeds to all or a part of an organization, trade or business from an employer as defined in A.R.S. § 23-613 shall be deemed the successor employer provided the organization, trade or business is continued. Continuation of the organization, trade or business shall be presumed if the normal business activity was not interrupted for more than 30 days before or after the date of transfer. However, the interruption of business activity of a seasonal enterprise during its off season shall not be considered an interruption of normal business activity.

B. Special provisions

1. An individual or employing unit shall be determined a successor under the provisions of A.R.S. § 23-733(A) and receive the experience rating account of the predecessor

when the organization, trade or business acquired or succeeded to constitutes all of the predecessor's employment generating enterprise upon which the experience rating account was primarily established without regard to those factors retained by the predecessor which represent:

- a. Exempt employment; or
- b. Employment necessary for the liquidation of the trade or business; or
- c. Employment arising from the activities establishing another trade or business; or
- d. Employment as a result of an organization, trade or business succeeded to or acquired within two calendar days of the date of transfer of the enterprise upon which the experience rating account is based.

2. When the members of a partnership are changed, the new partnership will be treated as the same employing unit if more than 50% of the ownership existing prior to the change is retained. However, when a partnership dissolves and each partner takes a separately identifiable portion of the business which by itself would be an employer as provided in A.R.S. § 23-613, the reserve shall be proportionately transferred to each former partner provided the requirements of A.R.S. § 23-733(B) are met.
3. An individual or employing unit who acquires or succeeds to the organization, trade or business for which a separate account in a combined experience rating account is required under the provisions of R6-3-1301(C) shall receive the entire experience rating account for the operation transferred except that the experience attributable to domestic employment shall not be transferred.

C. Transfer of entire business

1. When the Department determines that an individual or employing unit is a successor and shall inherit the experience rating account of the predecessor as provided in A.R.S. § 23-733(A), the determination shall be subject to the same provisions as determinations made in accordance with A.R.S. § 23-724.
2. When the experience rating account is transferred to the successor, the successor's account shall be charged with benefits determined chargeable as a result of the employment in the organization, trade or business acquired, and the successor's contribution rate shall be determined in accordance with A.R.S. § 23-733(C) for the calendar year beginning on the date of acquisition.

D. Transfer of severable portion

1. The successor to a part of an organization, trade or business shall be determined a successor employer as defined in A.R.S. § 23-613(A) and subsections (A) and (B) above provided the portion acquired either during the calendar year in which the acquisition occurred or in the preceding calendar year had sufficient employment or wage history as specified in A.R.S. § 23-613 to be an employer without the remaining portion(s).
2. Application and required information
 - a. The reserve account of a distinct and severable portion of an organization, trade or business shall be transferred to an employing unit which has acquired such portion only if the successor employing unit:
 - i. Files with the Department a written application, approved in writing by the predecessor, within 180 days after the date of acquisition, unless the time is extended for good cause shown; and
 - ii. Submits necessary information establishing the separate identity of the account within 30 days after the Department's request is mailed to it

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

- unless the time is extended for good cause shown; and
- iii. Continues to operate the acquired portion of the business.
 - b. "Necessary information establishing the separate identity of the account" includes but is not limited to:
 - i. Written agreement to the transfer by the predecessor; and
 - ii. The date the portion of the business was acquired; and
 - iii. The date employees were first hired for both the retained and transferred portions of the predecessor's business; and
 - iv. The amount of quarterly taxable wages attributable to each of the retained and transferred portions beginning with the 12th calendar quarter preceding the date of acquisition or beginning with the date employees were first hired if a portion of the business existed for less than 12 calendar quarters.
 3. Portion of reserve and payrolls transferred. When the requirements for transfer have been met, there shall be transferred to the successor's account as of the date of acquisition a percentage of the predecessor's experience rating account. The percentage is arrived at by dividing the taxable payroll of the transferred portion by the predecessor's taxable payroll for the period beginning with the first day of the 12th calendar quarter preceding the quarter of the transfer, or the date employees were first hired for any portion of the business if subsequent to the first day of the 12th calendar quarter.
 4. Benefit charges. After the date of the transfer, benefits paid to the predecessor's former employees, based on wages paid prior to the transfer date, shall be charged to both the predecessor's and successor's experience rating accounts in the same proportion as the percentage of the predecessor's experience rating account allocated to each at the date of transfer.
- E. Liability for predecessor's debt**
1. Notwithstanding subsections (A) and (B) above, when an individual or employing unit in any manner succeeds to or acquires the organization, trade or business, or substantially all of the assets of an employer as defined in A.R.S. § 23-613, the successor shall be equally liable along with the predecessor for the contributions, interest and penalties due or accrued and unpaid by the predecessor as provided in A.R.S. § 23-733(D).
 2. When the Department determines an individual or employing unit is equally liable for the unpaid contributions, interest and penalties of another as provided in A.R.S. § 23-733(D), the determination shall be subject to the same provisions as determinations made in accordance with A.R.S. § 23-724. The Department shall furnish the successor with a written statement of the amount of contributions, interest, and penalties due and unpaid by the predecessor unless the liability is waived under the provisions of A.R.S. § 23-733(D).
 3. "Reasonable value" as used in A.R.S. § 23-733(D) means the price that would be arrived at in good faith negotiations between a knowledgeable and willing buyer and a knowledgeable and willing seller.
 4. Waiver of the successor's liability for the predecessor's debt as provided in A.R.S. § 23-733(D) shall not be granted when any ownership interest of the predecessor's business is found present in the ownership of the successor or when there is a reasonable basis for the successor to believe that there may be amounts due or accrued and unpaid by the predecessor employer.
- Historical Note**
- Former Regulation 40-10; Amended as an emergency effective August 1, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-4). Former emergency adoption now adopted effective October 30, 1979 (Supp. 79-5). Former Section R6-3-1713 repealed, new Section R6-3-1713 adopted effective December 2, 1983 (Supp. 83-6).
- R6-3-1714. Repealed**
- Historical Note**
- Former Regulation 40-11; Repealed effective August 23, 1984 (Supp. 84-4).
- R6-3-1715. Computation of adjusted contribution rates**
- A.** The fund means the Unemployment Compensation Trust Fund which shall include:
1. Funds which have been credited to the Trust Fund by the United States Treasury under the Employment Security Administrative Financing Act of 1954 (Reed Bill) on or before July 31 and which have not been appropriated by the Legislature.
 2. The amount of contribution collections from experience rated employers consisting of all amounts deposited in the bank on or before July 31 for calendar quarters ending the preceding June 30.
 3. The amount of contribution collections from experience rated employers deposited in the bank after July 31 which were received or postmarked on or before July 31 and which apply to calendar quarters ending the preceding June 30, but shall not include the amount of contribution credit balances (accounts payable) not refunded to the employer for calendar quarters ending the preceding June 30 or not used by the employer on or before July 31 for the payment of contributions, interest or penalty due.
 4. The amount of payments in lieu of contributions consisting of all amounts deposited in the bank on or before August 31 for reimbursing benefits paid in calendar quarters ending the preceding June 30.
 5. The amount of payments in lieu of contributions deposited in the bank after August 31 which were received or postmarked on or before August 31 and which apply to calendar quarters ending the preceding June 30, but shall not include the amount of contribution credit balances (accounts payable) not refunded to the employer for calendar quarters ending the preceding June 30 or not used by the employer on or before August 31 for the reimbursement of benefits paid, interest or penalty due.
 6. The amount on deposit with the State Treasurer and/or the bank for payment of unemployment compensation benefits, for which benefit checks have not been issued on or before July 31.
 7. The interest earned on monies in the fund during the twelve-month period immediately preceding the computation date and credited to the fund by the United States Treasury on or before October 31 following the computation date.
- B.** Total taxable payrolls of all employers during the twelve-month period immediately preceding the July 1 computation date shall be used in computing adjusted contribution rates for the next calendar year. If an employer's entire taxable payroll for the twelve-month period ending June 30 is reported on or before the following October 31, the reported payroll shall be

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

used. If an employer's entire taxable payroll for the twelve-month period ending June 30 is not reported on or before the following October 31, the estimate made in accordance with A.R.S. § 23-731 and R6-3-1711(F) shall be used.

- C. Total taxable payrolls for the preceding twelve-month period ending June 30 of employers whose accounts are inactive on October 31 of the year preceding the calendar year for which the adjusted rates are applicable shall be included with total taxable payrolls in the new employer rate group of two and seven-tenths percent.
- D. Method of computation:
1. Compute the fund ratio by dividing the total assets of the fund by the total taxable payrolls.
 2. Determine the required income rate using the table contained in A.R.S. § 23-730(3).
 3. Compute the estimated net required tax yield by multiplying the total taxable payrolls by the required income rate and subtracting the interest earned as defined by A.R.S. § 23-730(3).
 4. Compute the estimated yield from unadjusted contribution rates by:
 - a. Multiplying the taxable payrolls for employers ineligible for a reserve ratio by the new employer contribution rate of 2.7 percent.
 - b. Multiplying the taxable payrolls for inactive employers by the new employer contribution rate of 2.7 percent.
 - c. For all other employers, multiplying the unadjusted contribution rate for each reserve ratio defined in A.R.S. §§ 23-730(1) and 23-730(2) by the taxable payrolls for all employers having that reserve ratio.
 - d. Summing the results of steps (4)(a), (4)(b), and (4)(c)
 5. Compute the unadjustable yield by:
 - a. Summing the estimated yields for employers ineligible for a reserve ratio and inactive employers.
 - b. If the estimated yield exceeds the estimated required tax yield, add the estimated yields for employers with a negative reserve balance and employers with a reserve ratio of 13% or more to the sum determined in (5)(a).
 6. Compute the adjustment factor by dividing in the following manner:
the estimated required tax yield, less the unadjustable yield ÷ the estimated yield derived from unadjusted contribution rates, less the unadjustable yield.
 7. Compute the adjusted contribution rates by multiplying the unadjusted contribution rates for each reserve ratio subject to adjustment by the adjustment factor and round the result to the nearest .01% (or down if there is no nearest .01 percent).
 8. Compute the estimated average tax rate by dividing the net required yield by the taxable payrolls and round to the nearest .01 percent.

Historical Note

Former Regulation 40-12; Amended effective March 29, 1978 (Supp. 78-2). Amended effective November 15, 1978 (Supp. 78-6). Amended effective March 5, 1982 (Supp. 82-2). Amended effective December 23, 1985 (Supp. 85-6).

R6-3-1716. Voluntary contributions

Section 23-726 of the Employment Security Law of Arizona provides for an employer to make voluntary payments in addition to required contributions, which are credited to his account and included in the computation of the employer's experience rate.

In conformity with this section, the Department of Economic Security prescribes:

- A. Separate accounting records of voluntary contributions shall be established for each employer making such contributions. Money so paid and credited may not be credited to the separate account of employer contributions required on wages paid. Voluntary contributions shall be in any amount desired by the employer and need not bear any relationship to wages paid. When such voluntary payments have been received by the Department and credited in the voluntary contribution account of the employer, they may not be returned to the employer and shall be deposited in the trust fund of the Department.
- B. The Department shall supply on request of the employer, received before January 31 of any calendar year, information as to the effect of any voluntary contribution on the yearly contribution rate commencing January 1 of such calendar year. Any voluntary contribution received by the Department post marked on or before January 31 of any calendar year shall be used in computing the rate for that calendar year.

Historical Note

Former Regulation 40-13.

R6-3-1717. Special Provisions for Reimbursement Employers

- A. Reimbursement for benefits paid. The amount of benefits chargeable against or reimbursable from each base-period employer shall bear the same ratio to the total benefits paid to an individual as the base-period wages paid to the individual by the employer bear to the total amount of base-period wages paid to the individual by all his base-period employers. The provisions of sections 23-727, 23-773, and 23-777 which relieve an employer's account of charges for benefit payments do not apply to reimbursement employers. A reimbursement employer shall reimburse the Department for its proportionate share of all regular benefits and 1/2 of its proportionate share of all extended benefits paid which were based upon wages paid during the effective period of the employer's election to make payments in lieu of contributions; chargeable benefits paid based upon wages paid during a period when no such election is in effect shall be charged to the employer's experience rating account.
- B. Acquisition of a business
1. When a regular employer acquires the entire business of a reimbursement employer, all benefits paid which were based upon wages paid after the date of acquisition shall be charged to the successor's experience rating account. Benefits paid which were based upon wages paid prior to the date of acquisition shall be reimbursed to the Department by the predecessor.
 2. When a reimbursement employer acquires the entire business of a reimbursement employer, all benefits paid which were based upon wages paid after the date of acquisition shall be reimbursed to the Department by the successor. Benefits paid which were based upon wages paid prior to the date of acquisition shall be reimbursed to the Department by the predecessor.
 3. When a reimbursement employer acquires the entire business of a regular employer, all benefits paid which were based upon wages paid after the date of acquisition shall be reimbursed to the Department by the successor. Benefits paid which were based upon wages paid prior to the date of acquisition shall be charged to the predecessor's experience rating account.
 4. When an employing unit eligible for reimbursement option reorganizes or changes ownership other than in a manner as provided for in paragraph (1), (2) or (3) above,

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

the option of the predecessor shall be binding upon the successor.

5. A successor employer shall be liable for any unpaid amounts due from a predecessor reimbursement employer when the total business is acquired in the same manner and to the same extent as a successor employer is liable for unpaid contributions, penalties, and interest of a predecessor.
- C. Reimbursement required when a request for redetermination is pending. When a reimbursement employer files a timely application for redetermination of payments due and no redetermination has been received on or before the 30th day after the billing for that quarter(s) was mailed by the Department, the employer shall pay the bill before the delinquent date, and at the same time may give notice to the Department that all or part of the payment is made under protest.
- D. Group accounts
1. Group accounts shall become effective only at the beginning of a calendar year, and applications for a group account shall be made no later than 30 days prior to the effective date of such account.
 2. Employers forming a group account shall remain reimbursement employers for not less than three years from the effective date of the group account without regard to the date they originally became reimbursement employers. A group account shall be terminated only at the end of a calendar year by written application made not later than 30 days prior to the date the account is to be terminated, provided the group account has been in effect for three calendar years.
 3. A new employer may be added to a group account only at the beginning of a calendar year and only by making written application not later than 30 days prior to the beginning of the calendar year for which the application is to be effective.
 4. A member may withdraw from a group account only at the end of a calendar year and only by making written application to do so not later than 30 days prior to the effective date of the withdrawal, provided the group account will have been in existence for at least three calendar years as of the effective date of the withdrawal.
 5. The employees and wages paid in each unit of a group account shall be separately identified on the quarterly wage report submitted for the group.
- E. Effective date of election for payment in lieu of contributions
1. When a nonprofit organization has been granted exempt status by the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code and, after providing the Department with a copy of the exempt determination, is determined to be a liable employer according to A.R.S. § 23-613(A)(2)(c), the effective date of a timely election to make payment in lieu of contributions shall be the effective date of the exempt status as determined by the Internal Revenue Service or the effective date of coverage, whichever is later.
 2. When a nonprofit organization previously determined to be a liable employer on a basis other than A.R.S. § 23-613(A)(2)(c), provides the Department with a copy of a determination issued by the Internal Revenue Service granting exempt status to the organization under section 501(c)(3) of the Internal Revenue Code, which eliminates the liability of the organization under the Employment Security Law, the liability of the employing unit shall be removed effective with the effective date of the exempt status as determined by the Internal Revenue Service.

The employing unit shall be eligible for refund or adjustment within the limitations provided by A.R.S. § 23-742.

3. When a nonprofit organization previously determined to be a liable employer on a basis other than A.R.S. § 23-613(A)(2)(c), provides the Department a copy of a determination issued by the Internal Revenue Service granting exempt status to the organization under section 501(c)(3) of the Internal Revenue Code within 90 days of the date issued, and remains a liable employer according to A.R.S. § 23-613(A)(2)(c), the effective date of a timely election to make payment in lieu of contributions shall be the effective date of exempt status as determined by the Internal Revenue Service. If, however, such an organization does not provide the Department a copy of the exempt determination within 90 days, the effective date of a timely election to make payment in lieu of contributions shall be the first day of the calendar quarter in which the copy of the exempt determination is received by the Department. Payment of contributions because evidence of exempt status had not been furnished to the Department by the organization shall not be considered due to the fault or mistake of the Department.

Historical Note

Former Regulation 40-15; Amended effective January 10, 1977 (Supp. 77-1). Amended subsection (E) effective August 28, 1980 (Supp. 80-4). Typographical correction to change "on" to "or" as adopted by the Department (Supp. 94-4).

R6-3-1718. Employer Refunds

- A. When a contribution overpayment has been established within the statutory period provided by section 23-742, the Department may credit the employing unit's account or, in its discretion, refund the overpayment provided the employing unit has no report delinquency or balance due on its account.
- B. When an overpayment to a claimant has been established as provided in A.R.S. § 23-742, and a reimbursing employer has made payment in lieu of contributions for the benefits overpaid, the Department shall give the employer credit against the employer's next quarterly statement of account of an amount not to exceed the amount recovered by the fund through offset or repayment. If the benefit overpayment was attributable to Department fault, mistake, or omission, the Department shall give the reimbursing employer a credit for the amount of the benefit overpayment, regardless of whether the overpayment has been repaid. The Department shall allow a reimbursing employer a refund of any credit balance remaining in the employer's account after the Department determines that there will be no further charges to the account.
- C. The Department shall issue a warrant drawn on the Unemployment Compensation Fund -- Clearing Account for any employer refund.

Historical Note

Former Regulation 40-16; Amended effective March 11, 1977 (Supp. 77-2). Amended subsection (A) effective June 17, 1985 (Supp. 85-3). Amended effective December 20, 1995 (Supp. 95-4).

R6-3-1719. Repealed**Historical Note**

Adopted effective October 20, 1978 (Supp. 78-5). Repealed effective December 2, 1983 (Supp. 83-6).

R6-3-1720. Exempting Certain Direct Sellers and Income Tax Preparers

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

- A. Direct sellers.** This subsection governs the determination of whether employment is exempt under A.R.S. § 23-617(22).
1. "Consumer goods" means tangible personal property normally used for personal, family, or household purposes, including property meant to be attached to or installed in any real property, regardless of whether such tangible property is actually attached or installed. Consumer goods do not include such things as:
 - a. Services,
 - b. Intangible property,
 - c. Real property, or
 - d. Goods held for resale or investment purposes.
 2. When the solicitation or sale includes services or merchandise not within the definition of consumer goods, the exemption shall be allowed only if the services or merchandise not within the definition of consumer goods are incidental to the consumer goods and do not equal 50% or more of the total purchase price.
 3. Compensation received by direct sellers may be "overrides" (commissions paid to direct sellers based on sales of other direct sellers) or "profits" (the difference between the price the direct seller pays for consumer goods purchased and the resale price the seller charges the consumer for the goods) as well as commissions.
 4. "Primarily resulting" means that substantially all (80% or more) of the solicitations or sales of consumer goods are made by the direct seller "in person", "in the home" of the prospective consumer. Boiler room telephone-type operations will not fall within this exemption as they are not "in person" nor are they solicitations or sales consummated "in the home".
- B. Income Tax Preparers.** This subsection governs the determination of whether employment is exempt under A.R.S. § 23-617(23).
1. "Tax returns" means returns required to be filed under federal or state income tax laws.
 2. "Related schedules and documents" means schedules and documents which accompany the tax returns, any forms prepared by the tax preparer in lieu of regular income tax forms, and information documents prepared from client interviews. Related schedules and documents do not include accounting records or financial statements.
 3. "Preparation" of tax returns means obtaining necessary information from the taxpayer, deciding which tax rules apply and how, computing the tax, or completing the necessary forms. To qualify under the exemption, a tax preparer need not actually fill out or review the forms. However, preparation does not include the mere typing, reproducing, or reviewing of the forms.
 4. The services of the tax preparer will not be exempt if such individual doing the work is subject to any controls, whether exercised or not, other than those required by the IRS. The IRS exercises control over tax preparers by imposing a penalty if the tax preparer:
 - a. Does not sign the return (manual signature).
 - b. Does not furnish an employer's ID number and a Social Security Number.
 - c. Does not show the business address where the return was completed.
 - d. Does not keep copies or records of a return for three years available for inspection by the IRS.
 - e. Does not provide a copy of the complete return to the taxpayer.
 - f. Negligently or intentionally disregards the rules and regulations for preparing tax returns.
 - g. Willfully understates tax liability (preparer must ask reasonable questions when the information furnished by the taxpayer seems to be incomplete or incorrect, and some deductions require specific documentation which a preparer must be satisfied actually exists).
 - h. Endorses a refund check (excepting bank tax preparers).
 - i. Does not file an annual information report, Form 5717, by July 31 of each year.

Historical Note

Adopted effective November 15, 1978 (Supp. 78-6).
Amended effective December 20, 1995 (Supp. 95-4).

R6-3-1721. Liability determinations; review; finality

- A.** If an employer alleges a reconsidered determination issued in accordance with subsection (F) of A.R.S. § 23-724, or subsection (A) of A.R.S. § 23-732, is defective and so specifies in writing within the appeal period specified by law, the Department shall review its reconsidered determination for completeness as required by A.R.S. § 23-724(F), considering any alleged defects identified in writing by the employer within the appeal period.
- B.** Any defects found may be cured by issuing a corrected reconsidered determination and stating therein that all time periods applicable to the determination were suspended from the date of the original reconsidered determination to the date of the corrected reconsidered determination.
- C.** Any further defect alleged in the corrected reconsidered determination will be handled in the manner so specified in this regulation.
- D.** If the allegation of a defect in the reconsidered determination is not submitted within the period for appeal, an examination of the reconsidered determination reveals no defect of consequence, and the employer did not file a timely petition for hearing or review, the employer shall be notified in writing of the untimeliness of the allegation of defect, and that the reconsidered determination has become final. If, however, the employer had submitted timely petition for hearing or review, the employer shall be notified of the untimeliness of his allegation of defect, and that the matter is now with the appeals board for consideration of his petition for hearing or review.
- E.** If the allegation of defect in the reconsidered determination is not submitted within the period for the appeal, and upon examination of the reconsidered determination a defect of consequence is found to exist, a corrected reconsidered determination shall be issued which will include a statement that all time periods applicable to the determination were suspended from the date of the original reconsidered determination to the date of the corrected reconsidered determination.
- F.** If the allegation of defect in the reconsidered determination is submitted timely, but upon review defect is not found by the Department to exist, the employer shall be notified in writing that the reconsidered determination is considered adequate, and that the matter shall become final unless he notifies the Department in writing within 15 days that he wishes his timely allegation of defect to be considered a petition for hearing or review.

Historical Note

Adopted as an emergency effective August 1, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-4). Former emergency adoption now adopted effective October 30, 1979 (Supp. 79-5).

R6-3-1722. Casual labor

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

- A. "Casual labor" means service not in the course of the employing unit's trade or business performed by an employee in any calendar quarter in which:
1. Cash remuneration paid for such service is less than \$50; and
 2. The services are performed by an individual who is not regularly employed by the employing unit to perform such services.
- B. "Regularly employed by an employing unit" means that an employee performed similar services for the employing unit for some portion of each of 24 days during the calendar quarter in question or the preceding calendar quarter.
- C. "Service not in the course of the employing unit's trade or business" means service that does not directly promote or advance the trade or business of the employing unit. This term does not apply to domestic services in the private home of the employer or services performed for a corporation.

Historical Note

Adopted as an emergency effective August 1, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-4). New rule adopted effective November 6, 1979 (Supp. 79-6). Amended effective December 17, 1981 (Supp. 81-6). Former Section R6-3-1722 repealed, new Section R6-3-1722 adopted effective March 16, 1988 (Supp. 88-1).

R6-3-1723. Employee defined

- A. "Employee" means any individual who performs services for an employing unit, and who is subject to the direction, rule or control of the employing unit as to both the method of performing or executing the services and the result to be effected or accomplished. Whether an individual is an employee under this definition shall be determined by the preponderance of the evidence.
1. "Control" as used in A.R.S. § 23-613.01, includes the right to control as well as control in fact.
 2. "Method" is defined as the way, procedure or process for doing something; the means used in attaining a result as distinguished from the result itself.
- B. "Employee" as defined in subsection (A) does not include:
1. An individual who performs services for an employing unit in a capacity as an independent contractor, independent business person, independent agent, or independent consultant, or in a capacity characteristic of an independent profession, trade, skill or occupation. The existence of independence shall be determined by the preponderance of the evidence.
 2. An individual subject to the direction, rule, control or subject to the right of direction, rule or control of an employing unit "... solely because of a provision of law regulating the organization, trade or business of the employing unit". This paragraph is applicable in all cases in which the individual performing services is subject to the control of the employing unit only to the extent specifically required by a provision of law governing the organization, trade or business of the employing unit.
 - a. "Solely" means, but is not limited to: Only, alone, exclusively, without other.
 - b. "Provision of law" includes, but is not limited to: statutes, regulations, licensing regulations, and federal and state mandates.
 - c. The designation of an individual as an employee, servant or agent of the employing unit for purposes of the provision of law is not determinative of the status of the individual for unemployment insurance purposes. The applicability of paragraph (2) of this subsection shall be determined in the same manner as if no such designated reference had been made.
- C. The following services are exempt employment under this Chapter, unless there is evidence of direction, rule or control sufficient to satisfy the definition of an employee under subsection (A) of this Section, which is distinct from any evidence of direction, rule or control related to or associated with establishing the nature or circumstances of the services considered pursuant to this subsection:
1. Services by an individual for an employing unit which are not a part or process of the organization, trade or business of the employing unit, and the individual is not treated by the employing unit in a manner generally characteristic of the treatment of employees.
 - a. Services by an individual not treated by the employing unit in a manner generally characteristic of the treatment of employees means the individual performing the services is not treated by the employing unit in substantially the same manner as employees of that employing unit.
 - b. The words "part" and "process" are not synonymous. If the individual performs services which are either a part of or process in the organization, trade or business, the conditions of this paragraph are not met and the services cannot be exempt under this paragraph. "Process" refers to those services which are directly responsible for carrying out the fundamental purpose or purposes for which the organization, trade or business exists; e.g., painting and repairing automobile bodies in an automobile body paint and repair shop. "Part" refers to any other services which are essential to the operation or maintenance of the organization, trade or business; e.g., routine cleaning of premises and maintenance of tools, equipment and building. In addition to services which are a part of or process in the organization, trade or business, there are those services which are for the purposes of the organization, trade or business but are merely ancillary or incidental and are not essential or necessary to the conduct of the organization, trade or business; e.g., landscaping area around the automobile body paint and repair shop.
 2. Services by an individual for an employing unit through isolated or occasional transactions, regardless of whether such services are a part or process of the organization, trade or business of the employing unit.
 - a. The phrase "isolated or occasional" has its commonly understood meaning. The intent of the relationship between the employing unit and the individual performing the services is to be considered with the intent of the parties being that it is on a permanent basis or for a long period; e.g., an individual employed who either quits or is discharged after a brief period of employment, would not be considered an isolated or occasional transaction regardless of how brief the period of employment may be.
 - b. An individual who performs services on less than thirteen days in a calendar quarter will be presumed to be performing isolated or occasional transactions. An individual who performs services on thirteen days or more in a calendar quarter will be presumed not to be performing isolated or occasional transactions. In all cases in which there is a standing or continuing arrangement with an individual to perform

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

required services on either a regularly scheduled basis or on call as requested, it will be presumed the individual is not performing isolated or occasional transactions.

- D.** In determining whether an individual who performs services is an employee under the general definition of subsection (A), all material evidence pertaining to the relationship between the individual and the employing unit must be examined. Control as to the result is usually present in any type of contractual relationship, but it is the additional presence of control, as determined by such control factors as are identified in paragraph (2) of this subsection, over the method in which the services are performed, that may create an employment relationship.
1. The existence of control solely on the basis of the existence of the right to control may be established by such action as: reviewing written contracts between the individual and the employing unit; interviewing the individual or employing unit; obtaining statements of third parties; or examining regulatory statutes governing the organization, trade or business. In any event, the substance, and not merely the form of the relationship must be analyzed.
 2. The following are some common indicia of control over the method of performing or executing the services:
 - a. Authority over individual's assistants. Hiring, supervising, and payment of the individual's assistants by the employing unit generally shows control over the individuals on the job. Sometimes, one worker may hire, supervise, and pay other workers. He may do so as the result of a contract in which he agrees to provide materials and labor and under which he is responsible only for the attainment of a result; in which case he may be independent. On the other hand, if he does so at the direction of the employing unit, he may be acting as an employee in the capacity of a foreman for or representative of the employer.
 - b. Compliance with instructions. Control is present when the individual is required to comply with instructions about when, where and how he is to work. Some employees may work without receiving instructions because they are highly proficient in their line of work and can be trusted to work to the best of their abilities; however, the control factor is present if the employer has the right to instruct or direct. The instructions may be oral or may be in the form of manuals or written procedures which show how the desired result is to be accomplished.
 - c. Oral or written reports. If regular oral or written reports bearing upon the method in which the services are performed must be submitted to the employing unit, it indicates control in that the worker is required to account for his actions. Periodic progress reports relating to the accomplishment of a specific result may not be indicative of control if, for example, the reports are used to establish entitlement to partial payment based upon percentage of completion. Completion of forms customarily used in the particular type of business activity, regardless of the relationship between the individual and the employing unit, may not constitute written reports for purposes of this factor; e.g., receipts to customers, invoices, etc.
 - d. Place of work. Doing the work on the employing unit's premises is not control in itself; however, it does imply that the employer has control, especially when the work is of such a nature that it could be done elsewhere. A person working in the employer's place of business is physically within the employer's direction and supervision. The fact that work is done off the premises does indicate some freedom from control; however, it does not by itself mean that the worker is not an employee. In some occupations, the services are necessarily performed away from the premises of the employing unit. This is true, for example, of employees in the construction trades, or employees who must work over a fixed route, within a fixed territory, or at any outlying work station.
 - e. Personal performance. If the services must be rendered personally it indicates that the employing unit is interested in the method as well as the result. The employing unit is interested not only in getting a desired result, but, also, in who does the job. Personal performance might not be indicative of control if the work is very highly specialized and the worker is hired on the basis of his professional reputation, as in the case of a consultant known in academic and professional circles to be an authority in the field. Lack of control may be indicated when an individual has the right to hire a substitute without the employing unit's knowledge or consent.
 - f. Establishment of work sequence. If a person must perform services in the order of sequence set for him by the employing unit, it indicates the worker is subject to control as he is not free to follow his own pattern of work, but must follow the established routines and schedules of the employing unit. Often, because of the nature of an occupation, the employing unit does not set the order of the services, or sets them infrequently. It is sufficient to show control, however, if the employing unit retains the right to do so.
 - g. Right to discharge. The right to discharge, as distinguished from the right to terminate a contract, is a very important factor indicating that the person possessing the right has control. The employing unit exercises control through the ever present threat of dismissal, which causes the worker to obey any instructions which may be given. The right of control is very strongly indicated if the worker may be terminated with little or no notice, without cause, or for failure to use specified methods, and if the worker does not make his services available to the public on a continuing basis. An independent worker, on the other hand, generally cannot be terminated as long as he produces an end result which measures up to his contract specifications. Many contracts provide for termination upon notice or for specified acts of nonperformance or default, and may not be indicative of the existence of the right to control. Sometimes, an employing unit's right to discharge is restricted because of a contract with a labor union or with other entities. Such a restriction does not detract from the existence of an employment relationship.
 - h. Set hours of work. The establishment of set hours of work by the employing unit is a factor indicative of control. This condition bars the worker from being master of his own time, which is a right of the independent worker. Where fixed hours are not practical because of the nature of the occupation, a require-

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

ment that the worker work at certain times is an element of control.

- i. Training. Training of an individual by an experienced employee working with him, by required attendance at meetings, and by other methods, is a factor of control because it is an indication that the employer wants the services performed in a particular method or manner. This is especially true if the training is given periodically or at frequent intervals. An independent worker ordinarily uses his own methods and receives no training from the purchaser of his services.
 - j. Amount of time. If the worker must devote his full time to the activity of the employing unit, the employing unit has control over the amount of time the worker spends working and, impliedly, restricts him from doing other gainful work. An independent worker, on the other hand, is free to work when and for whom he chooses. Full time does not necessarily mean an 8-hour day or a 5- or 6-day week. Its meaning may vary with the intent of the parties, the nature of the occupation and customs in the locality. These conditions should be considered in defining "full time". Full-time services may be required even though not specified in writing or orally. For example, a person may be required to produce a minimum volume of business which compels him to devote all of his working time to that business, or he may not be permitted to work for anyone else, and to earn a living he necessarily must work full time.
 - k. Tools and materials. The furnishing of tools, materials, etc. by the employing unit is indicative of control over the worker. When the worker furnishes the tools, materials, etc., it indicates a lack of control, but lack of control is not indicated if the individual provides tools or supplies customarily furnished by workers in the trade.
 - l. Expense reimbursement. Payment by the employing unit of the worker's approved business and/or traveling expenses is a factor indicating control over the worker. Conversely, a lack of control is indicated when the worker is paid on a job basis and has to take care of all incidental expenses. Consideration must be given to the fact some independent professionals and consultants require payment of all expenses in addition to their fees.
- E. Among the factors to be considered in addition to the factors of control, such as those identified in subsection (D), when determining if an individual performing services may be independent when paragraph (1) of subsection (B) is applicable, are:
1. Availability to public. The fact that an individual makes his services available to the general public on a continuing basis is usually indicative of independent status. An individual may offer his services to the public in a number of ways. For example, he may have his own office and assistants, he may display a sign in front of his home or office, he may hold a business license, he may be listed in a business directory or maintain a business listing in a telephone directory, he may advertise in a newspaper, trade journal, magazine, or he may simply make himself available through word of mouth, where it is customary in the trade or business.
 2. Compensation on job basis. An employee is usually, but not always, paid by the hour, week or month; whereas, payment on a job basis is customary where the worker is independent. Payment by the job may include a predetermined lump sum which is computed by the number of hours required to do the job at a fixed rate per hour. Payment on a job basis may involve periodic partial payments based upon a percent of the total job price or the amount of the total job completed. The guarantee of a minimum salary or the granting of a drawing account at stated intervals, with no requirement for repayment of the excess over earnings, tends to indicate that existence of an employer-employee relationship.
 3. Realization of profit or loss. An individual who is in a position to realize a profit or suffer a loss as a result of his services is generally independent, while the individual who is an employee is not in such a position. Opportunity for profit or loss may be established by one or more of a variety of circumstances; e.g.:
 - a. The individual has continuing and recurring significant liabilities or obligations in connection with the performance of the work involved, and success or failure depends, to an appreciable degree, on the relationship of receipts to expenditures.
 - b. The individual agrees to perform specific jobs for prices agreed upon in advance, and pays expenses incurred in connection with the work, such as wages, rents or other significant operating expenses.
 4. Obligation. An employee usually has the right to end his relationship with his employer at any time he wishes without incurring liability, although he may be required to provide notice of his termination for some period in advance of the termination. An independent worker usually agrees to complete a specific job. He is responsible for its satisfactory completion and would be legally obligated to make good for failure to complete the job, if legal relief were sought.
 5. Significant investment. A significant investment by a person in facilities used by him in performing services for another tends to show an independent status. On the other hand, the furnishing of all necessary facilities by the employing unit tends to indicate the absence of an independent status on the part of the worker. Facilities include equipment or premises necessary for the work, but not tools, instruments, clothing, etc., that are provided by employees as a common practice in their particular trade. If the worker makes a significant investment in facilities, such as a vehicle not reasonably suited to personal use, this is indicative of an independent relationship. A significant expenditure of time or money for an individual's education is not necessarily indicative of an independent relationship.
 6. Simultaneous contracts. If an individual works for a number of persons or firms at the same time, it indicates an independent status because, in such cases, the worker is usually free from control by any of the firms. It is possible, however, that a person may work for a number of people or firms and still be an employee of one or all of them. The decisions reached on other pertinent factors should be considered when evaluating this factor.
- F. Whether the preponderance of the evidence is being weighed to determine if the individual performing services for an employing unit is an employee under the general definition of employee contained in subsection (A), or may be independent when paragraph (1) of subsection (B) is applicable, the factors considered shall be weighed in accordance with their appropriate value to a correct determination of the relationship under the facts of the particular case. The weight to be given to a factor is not always constant. The degree of importance may vary,

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

depending upon the occupation or work situation being considered and why the factor is present in the particular situation. Some factors may not apply to particular occupations or situation, while there may be other factors not specifically identified herein that should be considered.

- G.** An individual is an employee if he performs services which are subject to the Federal Unemployment Tax Act or performs services which are required by federal law to be covered by state law.

Historical Note

Adopted as an emergency effective August 1, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-4). Former emergency adoption now adopted and amended effective November 6, 1979 (Supp. 79-6). Amended subsection (B), paragraph (1) effective October 2, 1980 (Supp. 80-5). Amended effective March 5, 1982 (Supp. 82-2).

R6-3-1724. Repealed**Historical Note**

Adopted effective September 23, 1980 (Supp. 80-5). Repealed effective December 20, 1995 (Supp. 95-4).

R6-3-1725. Licensed real estate, insurance, security and cemetery salesmen

A.R.S. § 23-617 exempts from employment services performed by individuals as insurance, real estate, security and cemetery salesmen, if compensated solely by way of commission.

1. Special compensation plans or agreements such as the following are not commissions: Stabilized earning programs, training allowances, sales incentive plans, payment of living expenses, and advances in excess of commissions earned when repayment is not required. Any such payment(s) nullifies the exemption for the calendar year in which the special payment(s) is made. Payment of an individual's business expenses is not considered a special compensation plan.
2. Special compensation payments do not include payments excluded from the definition of wages as defined in A.R.S. § 23-622(B).

Historical Note

Adopted effective September 23, 1980 (Supp. 80-5).

R6-3-1726. Tips as wages

- A.** Any tip, gratuity or service charge received by or for an employee in the course of employment from persons other than the employing unit shall be considered wages if:
1. The tip, gratuity, or service charge is received on or after January 1, 1986, and is reported by the employee in writing to the employing unit on or before the 10th day of the month following the month in which it is received; or
 2. The employing unit has actual knowledge of tips, gratuities, or service charges not accounted for by the employee and either:
 - a. The tip, gratuity, or service charge is specified and collected by the employing unit; or
 - b. The tip, gratuity, or service charge is used by the employing unit on or after August 3, 1984, in order to conform to the minimum wage requirement of federal or state law.
- B.** No benefits shall be paid based on any tip, gratuity, or service charge which the claimant failed to report as specified in subsection (A), paragraph (1) of this rule, unless the provisions of subsection (A), paragraph (2) apply.
- C.** For the purposes of reporting and paying contributions on any tip, gratuity, or service charge described in subsection (A) and

(B) of this rule, the date on which the employer compensates the employee for the pay period in which either the tip, gratuity, or service charge has been reported to the employer by the employee or in which the employer has allocated the tip, gratuity, or service charge to the employee shall be considered the date the tip, gratuity or service charge is paid.

Historical Note

Adopted effective March 16, 1988 (Supp. 88-1).

R6-3-1727. Meals or lodging as wages

- A.** The money value of board or lodging, or both, furnished a worker shall be the reasonable cash value thereof as determined by the Department. In arriving at the reasonable cash value, the Department shall consider the cost to persons other than the employee of similar goods and services in the vicinity. Unless in a given case a rate for board and lodging is determined by the Department, board or lodging furnished shall be deemed to have not less than the following values:

Breakfast	\$1.25
Lunch	\$1.50
Dinner	\$2.00
Lodging - per day	\$4.00
Meals only - per month	\$142.50
Lodging only - per month	\$120.00
Full room and board - monthly	\$262.50

- B.** The term "wages" does not include the value of any meals or lodging furnished to an employee by the employer for the convenience of the employer if, in the case of meals, the meals are furnished on the business premises of the employer, or in the case of lodging, the employee is required to accept such lodging on the business premises of the employer as a condition of his employment.
1. Meals will be regarded as furnished for the convenience of the employer when they are furnished during regular working hours to have the employee on call during the meal period, or they are furnished during regular working hours because the employer's business is such that the employee could not be expected to eat elsewhere in such a short period, or they are furnished during regular working hours because the employee could not otherwise secure meals in the area in which he works. Meals furnished before or after the working hours of the employee will not be regarded as furnished for the convenience of the employer except when they are furnished to a restaurant employee or other food service employee for each meal period in which the employee works, provided the meal is furnished immediately before or immediately after the working hours of the employee. Meals furnished on days in which the employee performs no services will not be regarded as furnished for the convenience of the employer unless they are furnished in connection with lodging which is furnished for the convenience of the employer.
 2. Lodging an employee is required to accept on the business premises of the employer as a condition of his employment will be regarded as furnished for the convenience of the employer when the employee is required to be available for duty at all times, or the employee could not perform the services required of him unless furnished such lodging. Lodging furnished an employee providing managerial, maintenance or security services in an apartment of similar residential complex will be regarded as furnished for the convenience of the employer.
 3. Meals or lodging furnished an employee will not be deemed furnished for the convenience of the employer if the employee has the option of receiving other compensa-

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

tion in lieu of meals or lodging or if the employer reduces the cash wages of the employee or otherwise charges for the meals or lodging provided.

Historical Note

Adopted effective March 16, 1988 (Supp. 88-1).

ARTICLE 18. BENEFITS**R6-3-1801. Repealed****Historical Note**

Former Regulation 10-2; Former Section R6-3-1801 repealed, new Section R6-3-1801 adopted effective December 17, 1981 (Supp. 81-6). Repealed effective December 2, 1983 (Supp. 83-6).

R6-3-1802. Repealed**Historical Note**

Former Regulation 30-1; Amended effective March 11, 1977 (Supp. 77-2). Amended effective May 21, 1979 (Supp. 79-3). Amended effective March 5, 1981 (Supp. 81-2). Repealed effective December 20, 1995 (Supp. 95-4).

R6-3-1803. Benefit Notice and Determination

- A. When the claimant files a claim to establish a benefit year, the Department shall prepare a statement showing the claimant's weekly benefit amount, total benefits, base-period wages, and benefit year. Prior to the expiration of the benefit year, the claimant may protest the statement if the claimant has reason to believe base-period wages are omitted or incorrect. Upon receipt of a protest, the Department shall investigate and revise the statement or issue a determination, as prescribed in A.R.S. § 23-773, explaining why the original statement is correct.
- B. As prescribed in A.R.S. § 23-772, when an initial claim for benefits is filed, the Department shall promptly notify the claimant's most recent employing unit or employer of the claim filing. The notice shall contain the reason given by the claimant for separation from employment and shall advise the employer that the employer may protest payment to the claimant upon any statutory grounds, if such grounds exist, by returning the protest within 10 days after the date of the notice.
- C. In administering A.R.S. § 23-706(A), the Department shall issue a determination to a reimbursement employer on whether a benefit overpayment classified as administrative is a benefit overpayment caused by Department error.

Historical Note

Former Regulation 30-2; Amended as an emergency effective August 1, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-4). Former emergency adoption now adopted effective October 30, 1979 (Supp. 79-5). Amended effective June 11, 1980 (Supp. 80-3). Amended effective December 20, 1995 (Supp. 95-4). Amended effective July 22, 1997 (Supp. 97-3).

R6-3-1804. Repealed**Historical Note**

Former Regulation 10-3; Repealed effective August 3, 1978 (Supp. 78-4). New Section R6-3-1804 adopted effective March 26, 1979 (Supp. 79-2). Section repealed effective July 22, 1997 (Supp. 97-3).

R6-3-1805. Repealed**Historical Note**

Former Regulation 30-11; Amended effective August 19, 1981 (Supp. 81-4). Section repealed effective July 22,

1997 (Supp. 97-3).

R6-3-1806. Interstate Claimants

Under A.R.S. § 23-644, the Department shall participate in the Interstate Benefit Payment Plan and shall act as the agent for the other states and Canada who subscribe to the Plan.

Historical Note

Former Regulation 30-4; Amended effective December 17, 1975 (Supp. 75-2). Section repealed; new Section adopted effective July 22, 1997 (Supp. 97-3).

R6-3-1807. Repealed**Historical Note**

Former Regulation 30-5. Section repealed effective July 22, 1997 (Supp. 97-3).

R6-3-1808. Payment on Account of Retirement

- A. Pension Defined. Pension, as used in A.R.S. §§ 23-791 and 23-624, does not include survivor's benefit payments or other periodic payment which bears no direct relationship to the level of prior remuneration or the length of past employment of the claimant.
- B. Weekly Deduction.
 1. The Department shall determine the amount of pension attributed to a week by dividing the pension recipient's monthly pension by 4.333 and rounding the result to the lowest dollar.
 2. When the recipient contributed at least 45% of the amount for the pension, the Department shall determine the deductible amount by multiplying the weekly pension by .45 and rounding the result to the lowest dollar.
- C. Effective Date. The effective date of a reduction in benefits required by A.R.S. § 23-791(A) begins with the 1st week in which either of the following occurs:
 1. The recipient receives a pension payment; or
 2. The recipient receives a determination or official notification from the pension source that provides the effective date and the amount of the pension payment and the payment will be made for the week in question.
- D. Retroactive Payments.
 1. An overpayment shall not result from retroactive pension payments for weeks prior to receipt of official notification, nor shall an overpayment result from any retroactive recomputation of the pension payment, unless the recipient fails to disclose the recomputation.
 2. The Department shall not pay retroactive benefits previously denied due to the claimant's receipt of a pension payment that was made in error and must be repaid.
- E. Lump-sum Payments. The Department shall:
 1. Allocate a pension received in 1 lump-sum payment to the week in which the payment is received;
 2. Treat a yearly lump-sum pension payment as a periodic payment and allocate the payment over 52 weeks;
 3. Disregard a lump-sum or yearly lump-sum payment that is rolled over into a non-taxable retirement plan in accordance with provisions of the Internal Revenue Code; and
 4. Disregard a lump-sum payment or other type payoff made because of a separation occurring before the time the recipient meets the length of service terms and age requirement established by the pension plan even if the payment includes pension funds.

Historical Note

Former Regulation 30-7; Repealed effective February 18, 1977 (Supp. 77-1). Adopted as an emergency effective June 18, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-3). Former emergency adoption

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

now adopted and amended effective November 7, 1979 (Supp. 79-6). Amended effective March 5, 1982 (Supp. 82-2). Amended effective July 22, 1997 (Supp. 97-3).

R6-3-1809. Eligibility for Approved Training

- A.** Approved training under A.R.S. § 23-771.01 includes vocational training or academic courses that provide a claimant the opportunity to achieve reemployment through the development of the claimant's skills and abilities.
1. A claimant is "in training with the approval of the department" when the claimant presents a document from the sponsoring agency that the claimant is participating in 1 of the programs listed in this subsection.
 - a. Training, except for on-the-job training, under Titles II, III, or IV of the Job Training Partnership Act, or its successor.
 - b. A vocational rehabilitation program sponsored or administered by the Department or another public agency.
 - c. Training sponsored or administered by 1 or more programs of the Department.
 - d. Training designed to improve a claimant's understanding of the fundamentals of English or mathematics or training that is intended to result in a general equivalency diploma (GED), unless the claimant is a student enrolled in and regularly attending a public or private secondary educational institution.
 - e. Training recommended or financed by the claimant's only base-period employer who is subject to charges for benefits paid to the claimant.
 2. If the training does not meet any of the provisions of subsection (A)(1), the claimant is in training with the approval of the Department if all the following conditions are met:
 - a. The training facility is registered with the Department of Education or its successor, or a comparable agency of another state, and is located within the United States.
 - b. The training course is approved by the Department of Education or its successor, or a comparable agency of another state and:
 - i. Is for a duration of at least 4 weeks but not more than 52 weeks of instruction; and
 - ii. At an academic institution, requires either a minimum of 12 credit hours during fall and spring semesters or at least 6 credit hours during summer sessions, and results in a training certificate; or
 - iii. At a vocational training facility, requires a minimum of 20 hours per week of supervised participation.
 - c. Either the claimant's:
 - i. Prospects for continuing employment for which the claimant is fitted by training and experience are minimal and are not likely to improve in the foreseeable future in the locality in which the claimant resides or is seeking work; or
 - ii. Training, skills, and past work history establish that the claimant only qualifies for jobs that normally pay at or within \$1.00 of the minimum wage and are unlikely to provide advancement opportunity.
 - d. The claimant possesses aptitudes or skills which can be usefully supplemented by retraining and has the qualifications and aptitudes necessary to reasonably assure successful completion of the training course.
- B.** Weekly Eligibility.
1. The Department shall pay unemployment insurance benefits, including extended benefits under A.R.S. §§ 23-626 through 23-639, to an otherwise eligible claimant while the claimant is in approved training if the claimant files a timely claim for a week of benefits in the format prescribed by the Department:
 - a. The claim shall include the following information for the applicable claim period,
 - i. A statement of any employment the claimant held and any wages the claimant earned,
 - ii. A statement of any training assistance the claimant received or will receive,
 - iii. A statement as to whether the claimant missed any scheduled training,
 - iv. The claimant's signature or personal identification number,
 - v. A statement from the training facility as to whether the claimant is enrolled in training and satisfactorily pursuing the training course, and
 - vi. The signature or identification number of the training facility's representative which is on file with the Department as being authorized to certify to the claimant's training attendance and progress.
 - b. The claim is timely filed when the Department receives the claim within 14 days of the claim week ending date. If the claim is not received within 14 days, the claimant shall establish good cause for the untimeliness as prescribed in R6-3-5475(H).
 - c. If the training facility has a temporary break in training of less than 6 weeks, and the facility notifies the Department by telephone or in writing that the claimant will continue the training after the break, the Department shall deem the claimant in training.
 2. For purposes of A.R.S. § 23-771.01(B), the Department shall deem subsistence benefits received from a governmental, nonprofit, or community agency for the claimant's own personal entitlement as a training allowance.
 - a. A subsistence payment for the claimant's own personal entitlement includes funds covering transportation or meal costs, but does not include funds covering course costs, tuition, books, supplies, tools, or an allowance for dependents.
 - b. The Department shall allocate the training allowance for each week claimed starting with the week the claimant 1st receives the allowance or the week the claimant receives notice from the agency paying the allowance of the amount to be paid, whichever occurs 1st.
 - c. An overpayment shall not result from retroactive payments for weeks prior to the paying agency notice or 1st payment, unless the claimant fails to tell the Department about the allowance.

Historical Note

Former Regulation 30-8; Amended effective January 3, 1975 (Supp. 75-1). Amended effective March 1, 1978 (Supp. 78-2). Amended effective July 27, 1981 (Supp. 81-4). Adopted as an emergency effective October 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Amended effective Jan 10, 1984

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

(Supp. 84-1). Section repealed; new Section adopted effective July 22, 1997 (Supp. 97-3).

R6-3-1810. Requalifications

- A.** The Department shall apply the definitions of wages in R6-3-1705 for requalification under this Section.
- B.** In determining whether a claimant has earned sufficient wages to requalify under A.R.S. §§ 23-634.01, 23-771(A)(7), 23-775(1), (2), or 23-776(A), the following shall apply:
1. The Department shall use both insured and non-insured wages, but shall not use income from self-employment.
 2. The Department shall use any income, including wages from agricultural and domestic work, that would be reportable as wages on a continued claim for unemployment insurance, but shall not use income from self-employment.
- C.** In determining whether wages are usable for requalification purposes, the following shall apply:
1. In considering requalification under A.R.S. §§ 23-775(1), (2), and 23-776(A), the Department shall consider services performed subsequent to the date of the act that resulted in the disqualification.
 2. In considering requalification under A.R.S. § 23-771(A)(7), the Department shall consider services performed during the period starting with the beginning date of a benefit year and prior to the effective date of a subsequent benefit year.
 3. In considering requalification under A.R.S. § 23-634.01, the Department shall consider services performed subsequent to the week in which the failure to apply for, accept, or seek work occurred. The claimant shall document that the claimant has worked in each of at least four calendar weeks and the claimant's total wages equal at least four times the weekly benefit amount. The weeks need not be consecutive.
- D.** The proof required to establish wages for requalification under A.R.S. §§ 23-634.01, 23-771(A)(7), 23-775(1), (2), or 23-776(A) may consist of a check stub or other payment record, an employer statement, or W-2 form. When the employer's quarterly wage reports submitted to the Department show the contended wage items, the Department may accept the reports as proof of the wages.
- E.** Except for wages that are included on an employer's quarterly wage reports to the Department, the burden of establishing requalifying wages shall rest on the claimant. The Department may assist the claimant in the verification of wages that the claimant states the claimant has earned but has no proof, or insufficient proof, by contacting the employer either by telephone, in writing, or through electronic communication.
- F.** The Department shall not terminate a disqualification period before the end of the week in which the claimant's wages total an amount sufficient to requalify.
- G.** In determining whether a disqualification carries over from one benefit year to a subsequent benefit year, the following shall apply:
1. Unless a disqualification is terminated within the benefit year, the Department shall carry over a disqualification assessed in a benefit year under A.R.S. §§ 23-775(1), (2), or 23-776(A) unless the Department's wage records establish that the claimant earned sufficient wages to requalify subsequent to the date of the act that resulted in the disqualification.
 2. The Department shall not carry over a disqualification assessed under A.R.S. § 23-634.01 into a subsequent benefit year.
- H.** In determining the amount of wages required to requalify after disqualifications, the following shall apply:

1. The amounts required to requalify after disqualification imposed under A.R.S. §§ 23-634.01, 23-775(1), (2), or 23-776(A) shall not be cumulative. The amount of wages required to terminate the largest disqualification shall remove all disqualifications, as long as the wages that are used to requalify were earned subsequent to the date of occurrence of the act that resulted in the disqualification.
 2. For disqualifications under A.R.S. § 23-634.01, the work shall have been performed subsequent to the week of occurrence of the act that resulted in the disqualification and in each of at least four weeks, as shown in subsection (C)(3).
- I.** In determining the amount of wages required to requalify:
1. The amount of required wages to requalify under A.R.S. §§ 23-634.01, 23-775(1), (2), or 23-776(A) is based on the weekly benefit amount payable at the time the disqualification is imposed. When a revised determination of wages earned results in a change in the weekly benefit amount, the Department shall adjust the amount required to requalify after any disqualification not previously terminated, in accordance with the new weekly benefit amount and notify the claimant of the change.
 2. The amount of required wages to requalify under A.R.S. § 23-771(A)(7) is based on the weekly benefit amount that would be calculated under A.R.S. § 23-779 for a subsequent benefit year. If a revised determination of wages earned results in an increase in the weekly benefit amount, the claimant shall requalify in terms of the increased weekly benefit amount. If the claimant cannot requalify at the higher amount, and has received benefits based on requalification at the previous lower amount, the Department shall establish an overpayment.

Historical Note

Adopted effective April 17, 1975 (Supp. 75-1). Amended effective December 10, 1976 (Supp. 76-5). Amended effective January 10, 1977 (Supp. 77-1). Correction, subsection (A), paragraph (2) incorrectly shown as amended effective January 10, 1977, subsection (B), paragraph (2) amended effective January 10, 1977 (Supp. 77-4). Amended effective August 3, 1978 (Supp. 78-4). Amended effective February 24, 1982 (Supp. 82-1). Amended by deleting subsection (I) effective August 29, 1984 (Supp. 84-4). Amended by final rulemaking at 15 A.A.R. 176, effective March 7, 2009 (Supp. 09-1).

R6-3-1811. Redetermination of benefits

- A.** When a statutory revision of the Arizona Employment Security Law requires UI benefits (awards and unpaid balances) to be redetermined for claims with a benefit year current as of the effective date of the revision (law revision date) and requires payments for weeks beginning on or after the law revision date to be paid at the redetermined rate, the redetermination and related actions shall be made as stated below.
- B.** The claimant's benefits shall be redetermined as follows:
1. The weekly benefit amount payable for weeks beginning on or after the law revision date shall be recomputed in accordance with A.R.S. § 23-779.
 2. A maximum benefit amount (MBA) shall be computed in accordance with A.R.S. § 23-780, using the new weekly amount in the recomputation. This MBA shall be utilized to redetermine the balance payable indicated in paragraph (3) below.
 3. When the old balance payable is equal to the old MBA, the new balance shall be equal to the recomputed MBA. When the old balance is less than the old MBA (payments, statutory deductions, etc. were made prior to the

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

redetermination), the new balance shall be redetermined by dividing the new MBA by the old MBA and multiplying that result by the old balance. The computed amount shall then be rounded to the nearest dollar with 50¢ being rounded to the next higher dollar.

4. A redetermination notice shall be issued to a claimant only if the recomputed weekly benefit amount is greater than the old weekly amount.
- C. After the law revision date, benefit payments and other transactions for periods prior to the law revision date shall be computed using the old weekly benefit amount in the computation. The new balance payable of many claims will have been increased as indicated in (B)(3) above; therefore, the balance shall be adjusted by the transaction amount after it is adjusted by a computation similar to that in (B)(3). This will insure claimants having delayed claims transactions will be treated as equals to claimants whose transactions were processed before the law revision date.
- D. Claimants are entitled to file a protest when they believe the results of the redetermination of benefits to be incorrect. The Department shall check the redetermination results by manually recomputing the claimant's benefits as indicated in (B) above. A corrected Wage Statement shall be issued if the original redetermination is found to be incorrect. If the redetermination is found to be correct, a written appealable decision shall be issued.

Historical Note

Adopted effective June 3, 1975 (Supp. 75-1). Amended effective December 17, 1975 (Supp. 75-2). Repealed effective May 3, 1978 (Supp. 78-3). Adopted as an emergency effective August 1, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-4). Former emergency adoption now adopted and amended effective October 30, 1979 (Supp. 79-5).

R6-3-1812. Interest on benefit overpayments

- A. Interest will be computed in accordance with the provisions of A.R.S. § 44-1201 on the last day of each calendar month on all outstanding unemployment insurance overpayments with the following exceptions:
1. No interest shall be computed on any overpayment established during that same month.
 2. The accumulation of interest on overpayments created through no fault on the part of the claimant will not begin until the sixth calendar month following the month in which the overpayment was established. If, however, a claimant not at fault in creating the overpayment has entered into an acceptable agreement for repayment and is conforming to the conditions of the agreement, the accumulation of interest will continue to be postponed as long as these conditions are met.
 3. If the recoupment of an overpayment has been waived, this waiver will include any interest due at the time of waiver and no further interest will be computed.
- B. Interest shall be computed monthly on the unpaid balance of the overpayment.
- C. Cash payments submitted by a claimant on an unemployment insurance overpayment shall be applied first to the unpaid balance of the overpayment, next to any accumulated interest, and finally to any lien filing and/or any lien release fees.

Historical Note

Adopted effective October 13, 1977 (Supp. 77-5). Repealed effective July 26, 1978 (Supp. 78-4). New Section R6-3-1812 adopted effective February 24, 1982

(Supp. 82-1).

R6-3-1813. Overpayment Deduction Percentage

- A. As used in A.R.S. § 23-787(D), the phrase "no reasonable attempt" means:
1. At least 12 months have elapsed since the Department established the overpayment and issued the most recent benefit payment; and
 2. During the most recent 12 months, the claimant has not repaid at least \$250 or 20% of the unpaid principal and interest balance, whichever is less. For the purpose of this subsection, the Department shall not consider funds recouped through setoff of tax refunds or Arizona lottery winnings, wage garnishments, or any other involuntary recoupment methods.
- B. When the deduction amount is raised to 50%, as provided in A.R.S. § 23-787(D), it shall remain at 50% until the Department has recouped the entire overpayment.

Historical Note

Adopted effective December 20, 1995 (Supp. 95-4).

ARTICLE 19. RECODIFIED**R6-3-1901. Recodified****Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-1901 repealed, new Section R6-3-1901 adopted effective May 24, 1979 (Supp. 79-3). R6-3-1901 recodified to A.A.C. R6-14-101 effective February 13, 1996 (Supp. 96-1).

R6-3-1902. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-1902 repealed, new Section R6-3-1902 adopted effective May 24, 1979 (Supp. 79-3). R6-3-1902 recodified to A.A.C. R6-14-102 effective February 13, 1996 (Supp. 96-1).

R6-3-1903. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-1903 repealed, new Section R6-3-1903 adopted effective May 24, 1979 (Supp. 79-3). R6-3-1903 recodified to A.A.C. R6-14-103 effective February 13, 1996 (Supp. 96-1).

R6-3-1904. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-1904 repealed, new Section R6-3-1904 adopted effective May 24, 1979 (Supp. 79-3). R6-3-1904 recodified to A.A.C. R6-14-104 effective February 13, 1996 (Supp. 96-1).

R6-3-1905. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-1905 repealed, new Section R6-3-1905 adopted effective May 24, 1979 (Supp. 79-3). R6-3-1905 recodified to A.A.C. R6-14-105 effective February 13,

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

1996 (Supp. 96-1).

R6-3-1906. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-1906 repealed, new Section R6-3-1906 adopted effective May 24, 1979 (Supp. 79-3). R6-3-1906 recodified to A.A.C. R6-14-106 effective February 13, 1996 (Supp. 96-1).

R6-3-1907. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Amended effective May 17, 1976 (Supp. 76-3). Former Section R6-3-1907 repealed, new Section R6-3-1907 adopted effective May 24, 1979 (Supp. 79-3). R6-3-1907 recodified to A.A.C. R6-14-107 effective February 13, 1996 (Supp. 96-1).

R6-3-1908. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-1908 repealed, new Section R6-3-1908 adopted effective May 24, 1979 (Supp. 79-3). R6-3-1908 recodified to A.A.C. R6-14-108 effective February 13, 1996 (Supp. 96-1).

R6-3-1909. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-1909 repealed, new Section R6-3-1909 adopted effective May 24, 1979 (Supp. 79-3). R6-3-1909 recodified to A.A.C. R6-14-109 effective February 13, 1996 (Supp. 96-1).

R6-3-1910. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-1910 repealed, new Section R6-3-1910 adopted effective May 24, 1979 (Supp. 79-3). R6-3-1910 recodified to A.A.C. R6-14-110 effective February 13, 1996 (Supp. 96-1).

R6-3-1911. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Amended effective May 17, 1976 (Supp. 76-3). Former Section R6-3-1911 repealed, new Section R6-3-1911 adopted effective May 24, 1979 (Supp. 79-3). R6-3-1911 recodified to A.A.C. R6-14-111 effective February 13, 1996 (Supp. 96-1).

R6-3-1912. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-1913. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-1914. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-1915. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-1916. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed effective May 24, 1979 (Supp. 79-3).

ARTICLE 20. RECODIFIED**R6-3-2001. Recodified****Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2001 repealed, new Section R6-3-2001 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2001 recodified to A.A.C. R6-14-201 effective February 13, 1996 (Supp. 96-1)

R6-3-2002. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2002 repealed, new Section R6-3-2002 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2002 recodified to A.A.C. R6-14-202 effective February 13, 1996 (Supp. 96-1)

R6-3-2003. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2003 repealed, new Section R6-3-2003 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2003 recodified to A.A.C. R6-14-203 effective February 13, 1996 (Supp. 96-1)

R6-3-2004. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2004 repealed, new Section R6-3-2004 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2004 recodified to A.A.C. R6-14-204 effective February 13, 1996 (Supp. 96-1).

R6-3-2005. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975, Amended effective October 9, 1975 (Supp. 75-1). Former Section R6-3-2005

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

repealed, new Section R6-3-2005 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2005 recodified to A.A.C. R6-14-205 effective February 13, 1996 (Supp. 96-1).

R6-3-2006. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2006 repealed, new Section R6-3-2006 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2006 recodified to A.A.C. R6-14-206 effective February 13, 1996 (Supp. 96-1).

R6-3-2007. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2007 repealed, new Section R6-3-2007 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2007 recodified to A.A.C. R6-14-207 effective February 13, 1996 (Supp. 96-1).

R6-3-2008. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2008 repealed, new Section R6-3-2008 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2008 recodified to A.A.C. R6-14-208 effective February 13, 1996 (Supp. 96-1).

R6-3-2009. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2009 repealed, new Section R6-3-2009 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2009 recodified to A.A.C. R6-14-209 effective February 13, 1996 (Supp. 96-1).

R6-3-2010. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2010 repealed, new Section R6-3-2010 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2010 recodified to A.A.C. R6-14-210 effective February 13, 1996 (Supp. 96-1).

R6-3-2011. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2011 repealed, new Section R6-3-2011 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2011 recodified to A.A.C. R6-14-211 effective February 13, 1996 (Supp. 96-1).

R6-3-2012. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2012 repealed, new Section R6-3-2012 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2012 recodified to A.A.C. R6-14-212 effective February 13,

1996 (Supp. 96-1).

R6-3-2013. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2013 repealed, new Section R6-3-2013 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2013 recodified to A.A.C. R6-14-213 effective February 13, 1996 (Supp. 96-1).

R6-3-2014. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2014 repealed, new Section R6-3-2014 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2014 recodified to A.A.C. R6-14-214 effective February 13, 1996 (Supp. 96-1).

R6-3-2015. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2015 repealed, new Section R6-3-2015 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2015 recodified to A.A.C. R6-14-215 effective February 13, 1996 (Supp. 96-1).

R6-3-2016. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2016 repealed, new Section R6-3-2016 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2016 recodified to A.A.C. R6-14-216 effective February 13, 1996 (Supp. 96-1).

R6-3-2017. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Amended effective March 2, 1976 (Supp. 76-2). Former Section R6-3-2017 repealed, new Section R6-3-2017 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2017 recodified to A.A.C. R6-14-217 effective February 13, 1996 (Supp. 96-1).

R6-3-2018. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2018 repealed, new Section R6-3-2018 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2018 recodified to A.A.C. R6-14-218 effective February 13, 1996 (Supp. 96-1).

R6-3-2019. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2020. Repealed

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

Historical Note

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed effective May 24, 1979 (Supp. 79-3).

ARTICLE 21. RECODIFIED**R6-3-2101. Recodified****Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2101 repealed, new Section R6-3-2101 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2101 recodified to A.A.C. R6-14-301 effective February 13, 1996 (Supp. 96-1).

R6-3-2102. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2102 repealed, new Section R6-3-2102 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2102 recodified to A.A.C. R6-14-302 effective February 13, 1996 (Supp. 96-1).

R6-3-2103. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2103 repealed, new Section R6-3-2103 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2103 recodified to A.A.C. R6-14-303 effective February 13, 1996 (Supp. 96-1).

R6-3-2104. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2104 repealed, new Section R6-3-2104 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2104 recodified to A.A.C. R6-14-304 effective February 13, 1996 (Supp. 96-1).

R6-3-2105. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2105 repealed, new Section R6-3-2105 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2105 recodified to A.A.C. R6-14-305 effective February 13, 1996 (Supp. 96-1).

R6-3-2106. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Amended effective May 17, 1976 (Supp. 76-3). Former Section R6-3-2106 repealed, new Section R6-3-2106 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2106 recodified to A.A.C. R6-14-306 effective February 13, 1996 (Supp. 96-1).

R6-3-2107. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former

Section R6-3-2107 repealed, new Section R6-3-2107 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2107 recodified to A.A.C. R6-14-307 effective February 13, 1996 (Supp. 96-1).

R6-3-2108. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2108 repealed, new Section R6-3-2108 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2108 recodified to A.A.C. R6-14-308 effective February 13, 1996 (Supp. 96-1).

R6-3-2109. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2109 repealed, new Section R6-3-2109 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2109 recodified to A.A.C. R6-14-309 effective February 13, 1996 (Supp. 96-1).

R6-3-2110. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2110 repealed, new Section R6-3-2110 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2110 recodified to A.A.C. R6-14-310 effective February 13, 1996 (Supp. 96-1).

R6-3-2111. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2111 repealed, new Section R6-3-2111 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2111 recodified to A.A.C. R6-14-311 effective February 13, 1996 (Supp. 96-1).

R6-3-2112. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2112 repealed, new Section R6-3-2112 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2112 recodified to A.A.C. R6-14-312 effective February 13, 1996 (Supp. 96-1).

R6-3-2113. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Amended effective May 17, 1976 (Supp. 76-3). Former Section R6-3-2113 repealed, new Section R6-3-2113 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2113 recodified to A.A.C. R6-14-313 effective February 13, 1996 (Supp. 96-1).

R6-3-2114. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2114 repealed, new Section R6-3-2114 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2114

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

recodified to A.A.C. R6-14-314 effective February 13, 1996 (Supp. 96-1).

(Supp. 96-1).

R6-3-2115. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2115 repealed, new Section R6-3-2115 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2115 recodified to A.A.C. R6-14-315 effective February 13, 1996 (Supp. 96-1).

R6-3-2116. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2116 repealed, new Section R6-3-2116 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2116 recodified to A.A.C. R6-14-316 effective February 13, 1996 (Supp. 96-1).

R6-3-2117. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2117 repealed, new Section R6-3-2117 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2117 recodified to A.A.C. R6-14-317 effective February 13, 1996 (Supp. 96-1).

R6-3-2118. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2118 repealed, new Section R6-3-2118 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2118 recodified to A.A.C. R6-14-318 effective February 13, 1996 (Supp. 96-1).

R6-3-2119. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2119 repealed, new Section R6-3-2119 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2119 recodified to A.A.C. R6-14-319 effective February 13, 1996 (Supp. 96-1).

R6-3-2120. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2120 repealed, new Section R6-3-2120 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2120 recodified to A.A.C. R6-14-320 effective February 13, 1996 (Supp. 96-1).

R6-3-2121. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Amended effective May 17, 1976 (Supp. 76-3). Repealed effective May 24, 1979 (Supp. 79-3). R6-3-2121 recodified to A.A.C. R6-14-321 effective February 13, 1996

R6-3-2122. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2122 repealed, new Section R6-3-2122 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2122 recodified to A.A.C. R6-14-322 effective February 13, 1996 (Supp. 96-1).

R6-3-2123. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2123 repealed, new Section R6-3-2123 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2123 recodified to A.A.C. R6-14-323 effective February 13, 1996 (Supp. 96-1).

R6-3-2124. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2124 repealed, new Section R6-3-2124 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2124 recodified to A.A.C. R6-14-324 effective February 13, 1996 (Supp. 96-1).

R6-3-2125. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2125 repealed, new Section R6-3-2125 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2125 recodified to A.A.C. R6-14-325 effective February 13, 1996 (Supp. 96-1).

R6-3-2126. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2126 repealed, new Section R6-3-2126 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2126 recodified to A.A.C. R6-14-326 effective February 13, 1996 (Supp. 96-1).

R6-3-2127. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Amended effective March 2, 1976 (Supp. 76-2). Former Section R6-3-2127 repealed, new Section R6-3-2127 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2127 recodified to A.A.C. R6-14-327 effective February 13, 1996 (Supp. 96-1).

R6-3-2128. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2129. Repealed

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

Historical Note

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2130. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2131. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2132. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2133. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2134. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2135. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2136. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2137. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2138. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2139. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2140. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed effective May 24, 1979 (Supp. 79-3).

ARTICLE 22. RECODIFIED**R6-3-2201. Recodified****Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2201 repealed, new Section R6-3-2201 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2201 recodified to A.A.C. R6-14-401 effective February 13, 1996 (Supp. 96-1).

R6-3-2202. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2203. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2203 repealed, new Section R6-3-2203 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2203 recodified to A.A.C. R6-14-402 effective February 13, 1996 (Supp. 96-1).

R6-3-2204. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2205. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2206. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2207. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2208. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2209. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1).

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2210. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1).
Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2211. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1).
Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2212. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1).
Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2213. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1).
Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2214. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1).
Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2215. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1).
Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2216. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1).
Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2217. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1).
Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2218. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1).
Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2219. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1).
Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2220. Repealed**Historical Note**

Not in original publication, correction, Amended as an

emergency effective June 16, 1975 (Supp. 75-1).

Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2221. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1).
Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2222. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1).
Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2223. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1).
Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2224. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1).
Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2225. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1).
Repealed effective May 24, 1979 (Supp. 79-3).

ARTICLE 23. RECODIFIED**R6-3-2301. Recodified****Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2301 repealed, new Section R6-3-2301 adopted as an emergency effective May 24, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-3). Former Emergency Adoption now adopted and amended effective March 11, 1980 (Supp. 80-2). R6-3-2301 recodified to A.A.C. R6-14-501 effective February 13, 1996 (Supp. 96-1).

R6-3-2302. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2302 repealed, new Section R6-3-2302 adopted as an emergency effective May 24, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-3). Former Emergency Adoption now adopted and amended effective March 11, 1980 (Supp. 80-2). R6-3-2302 recodified to A.A.C. R6-14-502 effective February 13, 1996 (Supp. 96-1).

R6-3-2303. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2303 repealed, new Section R6-3-2303 adopted as an emergency effective May 24, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

3). Former Emergency Adoption now adopted effective March 11, 1980 (Supp. 80-2). R6-3-2303 recodified to A.A.C. R6-14-503 effective February 13, 1996 (Supp. 96-1).

R6-3-2304. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2304 repealed, new Section R6-3-2304 adopted as an emergency effective May 24, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-3). Former Emergency Adoption now adopted and amended effective March 11, 1980 (Supp. 80-2). R6-3-2304 recodified to A.A.C. R6-14-504 effective February 13, 1996 (Supp. 96-1).

R6-3-2305. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2305 repealed, new Section R6-3-2305 adopted as an emergency effective May 24, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-3). Former Emergency Adoption now adopted effective March 11, 1980 (Supp. 80-2). R6-3-2305 recodified to A.A.C. R6-14-505 effective February 13, 1996 (Supp. 96-1).

R6-3-2306. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2306 repealed, new Section R6-3-2306 adopted as an emergency effective May 24, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-3). Former Emergency Adoption now adopted and amended effective March 11, 1980 (Supp. 80-2). R6-3-2306 recodified to A.A.C. R6-14-506 effective February 13, 1996 (Supp. 96-1).

R6-3-2307. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2307 repealed, new Section R6-3-2307 adopted as an emergency effective May 24, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-3). Former Emergency Adoption now adopted and amended effective March 11, 1980 (Supp. 80-2). R6-3-2307 recodified to A.A.C. R6-14-507 effective February 13, 1996 (Supp. 96-1).

R6-3-2308. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed as an emergency effective May 24, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-3). Repealed effective March 11, 1980 (Supp. 80-2).

R6-3-2309. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed as an emergency effective May 24, 1979, pur-

suant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-3). Repealed effective March 11, 1980 (Supp. 80-2).

R6-3-2310. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed as an emergency effective May 24, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-3). Repealed effective March 11, 1980 (Supp. 80-2).

R6-3-2311. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed as an emergency effective May 24, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-3). Repealed effective March 11, 1980 (Supp. 80-2).

R6-3-2312. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed as an emergency effective May 24, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-3). Repealed effective March 11, 1980 (Supp. 80-2).

R6-3-2313. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed as an emergency effective May 24, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-3). Repealed effective March 11, 1980 (Supp. 80-2).

R6-3-2314. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed as an emergency effective May 24, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-3). Repealed effective March 11, 1980 (Supp. 80-2).

R6-3-2315. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed as an emergency effective May 24, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-3). Repealed effective March 11, 1980 (Supp. 80-2).

R6-3-2316. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed as an emergency effective May 24, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-3). Repealed effective March 11, 1980 (Supp. 80-2).

R6-3-2317. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed as an emergency effective May 24, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp.

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

79-3). Repealed effective March 11, 1980 (Supp. 80-2).

R6-3-2318. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed as an emergency effective May 24, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-3). Repealed effective March 11, 1980 (Supp. 80-2).

R6-3-2319. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed as an emergency effective May 24, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-3). Repealed effective March 11, 1980 (Supp. 80-2).

R6-3-2320. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Repealed as an emergency effective May 24, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-3). Repealed effective March 11, 1980 (Supp. 80-2).

ARTICLE 24. RECODIFIED**R6-3-2401. Recodified****Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Amended effective May 6, 1976 (Supp. 76-3). Former Section R6-3-2401 repealed, Section R6-3-2402 renumbered as Section R6-3-2401 effective July 25, 1977 (Supp. 77-4). Former Section R6-3-2401 repealed, new Section R6-3-2401 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2401 recodified to A.A.C. R6-14-601 effective February 3, 1996 (Supp. 96-1).

R6-3-2402. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2402 repealed, new Section R6-3-2402 adopted effective May 6, 1976 (Supp. 76-3). Former Section R6-3-2402 renumbered as Section R6-3-2401, Section R6-3-2403 renumbered as Section R6-3-2402 effective July 25, 1977 (Supp. 77-4). Former Section R6-3-2402 repealed, new Section R6-3-2402 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2402 recodified to A.A.C. R6-14-602 effective February 3, 1996 (Supp. 96-1).

R6-3-2403. Repealed**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Former Section R6-3-2403 repealed, new Section R6-3-2403 adopted effective May 6, 1976 (Supp. 76-3). Former Section R6-3-2403 renumbered as Section R6-3-2402, Section R6-3-2404 renumbered as Section R6-3-2403 effective July 25, 1977 (Supp. 77-4). Repealed effective May 24, 1979 (Supp. 79-3).

R6-3-2404. Recodified**Historical Note**

Not in original publication, correction, Amended as an emergency effective June 16, 1975 (Supp. 75-1). Amended effective May 6, 1976 (Supp. 76-3). Former Section R6-3-2404 renumbered as Section R6-3-2403 effective July 25, 1977 (Supp. 77-4). New Section R6-3-2404 adopted effective May 24, 1979 (Supp. 79-3). R6-3-2404 recodified to A.A.C. R6-14-604 effective February 3, 1996 (Supp. 96-1).

R6-3-2405. Recodified**Historical Note**

Adopted effective May 24, 1979 (Supp. 79-3). R6-3-2405 recodified to A.A.C. R6-14-605 effective February 3, 1996 (Supp. 96-1).

R6-3-2406. Recodified**Historical Note**

Adopted effective May 24, 1979 (Supp. 79-3). R6-3-2406 recodified to A.A.C. R6-14-606 effective February 3, 1996 (Supp. 96-1).

R6-3-2407. Recodified**Historical Note**

Adopted effective May 24, 1979 (Supp. 79-3). R6-3-2407 recodified to A.A.C. R6-14-607 effective February 3, 1996 (Supp. 96-1).

R6-3-2408. Recodified**Historical Note**

Adopted effective May 24, 1979 (Supp. 79-3). R6-3-2408 recodified to A.A.C. R6-14-608 effective February 3, 1996 (Supp. 96-1).

R6-3-2409. Reserved**R6-3-2410. Recodified****Historical Note**

Adopted effective May 24, 1979 (Supp. 79-3). R6-3-2410 recodified to A.A.C. R6-14-610 effective February 3, 1996 (Supp. 96-1).

ARTICLE 25. REPEALED**R6-3-2501. Repealed****Historical Note**

Adopted as an emergency effective March 5, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-2). Emergency expired. New Section R6-3-2501 now adopted as a permanent rule effective June 29, 1984 (Supp. 84-3). Repealed effective September 12, 1997 (Supp. 97-3).

R6-3-2502. Repealed**Historical Note**

Adopted as an emergency effective March 5, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-2). Emergency expired. New Section R6-3-2502 now adopted as a permanent rule effective June 29, 1984 (Supp. 84-3). Repealed effective September 12, 1997 (Supp. 97-3).

R6-3-2503. Repealed**Historical Note**

Adopted as an emergency effective March 5, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp.

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

84-2). Emergency expired. New Section R6-3-2503 now adopted as a permanent rule effective June 29, 1984 (Supp. 84-3). Repealed effective September 12, 1997 (Supp. 97-3).

R6-3-2504. Repealed**Historical Note**

Adopted as an emergency effective March 5, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-2). Emergency expired. New Section R6-3-2504 now adopted as a permanent rule effective June 29, 1984 (Supp. 84-3). Repealed effective September 12, 1997 (Supp. 97-3).

R6-3-2505. Repealed**Historical Note**

Adopted as an emergency effective March 5, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-2). Emergency expired. New Section R6-3-2505 now adopted as a permanent rule effective June 29, 1984 (Supp. 84-3). Repealed effective September 12, 1997 (Supp. 97-3).

R6-3-2506. Repealed**Historical Note**

Adopted as an emergency effective March 5, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-2). Emergency expired. New Section R6-3-2506 now adopted as a permanent rule effective June 29, 1984 (Supp. 84-3). Repealed effective September 12, 1997 (Supp. 97-3).

R6-3-2507. Repealed**Historical Note**

Adopted as an emergency effective March 5, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-2). Emergency expired. New Section R6-3-2507 now adopted as a permanent rule effective June 29, 1984 (Supp. 84-3). Repealed effective September 12, 1997 (Supp. 97-3).

ARTICLE 26. REPEALED

Former Article 26 consisting of Sections R6-3-2601 through R6-3-2623 repealed effective May 24, 1979.

R6-23-2601. Repealed**Historical Note**

Section R6-3-2601 repealed effective May 24, 1979.

R6-23-2602. Repealed**Historical Note**

Section R6-3-2602 repealed effective May 24, 1979.

R6-23-2603. Repealed**Historical Note**

Section R6-3-2603 repealed effective May 24, 1979.

R6-23-2604. Repealed**Historical Note**

Section R6-3-2604 repealed effective May 24, 1979.

R6-23-2605. Repealed**Historical Note**

Section R6-3-2605 repealed effective May 24, 1979.

R6-23-2606. Repealed**Historical Note**

Section R6-3-2606 repealed effective May 24, 1979.

R6-23-2607. Repealed**Historical Note**

Section R6-3-2607 repealed effective May 24, 1979.

R6-23-2608. Repealed**Historical Note**

Section R6-3-2608 repealed effective May 24, 1979.

R6-23-2609. Repealed**Historical Note**

Section R6-3-2609 repealed effective May 24, 1979.

R6-23-2610. Repealed**Historical Note**

Section R6-3-2610 repealed effective May 24, 1979.

R6-23-2611. Repealed**Historical Note**

Section R6-3-2611 repealed effective May 24, 1979.

R6-23-2612. Repealed**Historical Note**

Section R6-3-2612 repealed effective May 24, 1979.

R6-23-2613. Repealed**Historical Note**

Section R6-3-2613 repealed effective May 24, 1979.

R6-23-2614. Repealed**Historical Note**

Section R6-3-2614 repealed effective May 24, 1979.

R6-23-2615. Repealed**Historical Note**

Section R6-3-2615 repealed effective May 24, 1979.

R6-23-2616. Repealed**Historical Note**

Section R6-3-2616 repealed effective May 24, 1979.

R6-23-2617. Repealed**Historical Note**

Section R6-3-2617 repealed effective May 24, 1979.

R6-23-2618. Repealed**Historical Note**

Section R6-3-2618 repealed effective May 24, 1979.

R6-23-2619. Repealed**Historical Note**

Section R6-3-2619 repealed effective May 24, 1979.

R6-23-2620. Repealed**Historical Note**

Section R6-3-2620 repealed effective May 24, 1979.

R6-23-2621. Repealed**Historical Note**

Section R6-3-2621 repealed effective May 24, 1979.

R6-23-2622. Repealed

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

Historical Note

Section R6-3-2622 repealed effective May 24, 1979.

R6-23-2623. Repealed**Historical Note**

Section R6-3-2623 repealed effective May 24, 1979.

ARTICLE 27. REPEALED

Former Article 27 consisting of Section R6-3-2701 repealed effective May 24, 1979.

R6-23-2701. Repealed**Historical Note**

Section R6-3-2701 repealed effective May 24, 1979.

ARTICLE 28. RESERVED**ARTICLE 29. RESERVED****ARTICLE 30. RESERVED****ARTICLE 31. RESERVED****ARTICLE 32. RESERVED****ARTICLE 33. RESERVED****ARTICLE 34. RESERVED****ARTICLE 35. REPEALED**

Former Article 35 consisting of Sections R6-3-3501 through R6-3-4003 repealed effective February 15, 1978 (Supp. 78-1).

R6-3-3501 through R6-3-4003, 502 Sections repealed**ARTICLE 36. REPEALED**

Former Article 36 consisting of Sections R6-3-3501 through R6-3-4003 repealed effective February 15, 1978 (Supp. 78-1).

ARTICLE 37. REPEALED

Former Article 37 consisting of Sections R6-3-3501 through R6-3-4003 repealed effective February 15, 1978 (Supp. 78-1).

ARTICLE 38. REPEALED

Former Article 38 consisting of Sections R6-3-3501 through R6-3-4003 repealed effective February 15, 1978 (Supp. 78-1).

ARTICLE 39. REPEALED

Former Article 39 consisting of Sections R6-3-3501 through R6-3-4003 repealed effective February 15, 1978 (Supp. 78-1).

ARTICLE 40. REPEALED

Former Article 40 consisting of Sections R6-3-3501 through R6-3-4003 repealed effective February 15, 1978 (Supp. 78-1).

ARTICLE 41. REPEALED

Former Article 41 consisting of Sections R6-3-4101 through R6-3-4106 repealed effective July 9, 1980 (Supp. 80-4).

R6-23-4101. Repealed**Historical Note**

Section R6-3-4101 repealed effective July 9, 1980 (Supp. 80-4)

R6-23-4102. Repealed**Historical Note**

Section R6-3-4102 repealed effective July 9, 1980 (Supp. 80-4).

R6-23-4103. Repealed**Historical Note**

Section R6-3-4103 repealed effective July 9, 1980 (Supp. 80-4).

R6-23-4104. Repealed**Historical Note**

Section R6-3-4104 repealed effective July 9, 1980 (Supp. 80-4).

R6-23-4105. Repealed**Historical Note**

Section R6-3-4105 repealed effective July 9, 1980 (Supp. 80-4).

R6-23-4106. Repealed**Historical Note**

Section R6-3-4106 repealed effective July 9, 1980 (Supp. 80-4).

ARTICLE 42. RESERVED**ARTICLE 43. RESERVED****ARTICLE 44. RESERVED****ARTICLE 45. RESERVED****ARTICLE 46. RESERVED****ARTICLE 47. RESERVED****ARTICLE 48. RESERVED****ARTICLE 49. RESERVED****ARTICLE 50. VOLUNTARY LEAVING BENEFIT POLICY****R6-3-5001. Reserved****R6-3-5002. Reserved****R6-3-5003. Reserved****R6-3-5004. Reserved****R6-3-5005. General Provisions**

- A.** For the purpose of interpreting A.R.S. § 23-775(1), the following phrases have the meanings prescribed in this subsection:
1. "In connection with the employment" means a condition related to employment caused a worker to leave employment. If the employer changes the conditions or terms of employment, and the changes affect the worker's personal affairs, the worker leaves employment in connection with the employment rather than as a result of personal circumstances.
 2. "Left work voluntarily" means that a worker terminated the worker-employer relationship and intended to do so.
- B.** For the purpose of interpreting A.R.S. § 23-727(D), the following phrases have the meanings prescribed in this subsection:
1. "Compelling personal reasons" mean causes which arise from a worker's personal circumstances rather than from a condition created by or relating solely to the employment and which leave the worker with no reasonable alternative but to end the employment relationship.
 2. "Not attributable to the employer" means that an employer committed no act or omission to make an employment relationship unsuitable for a worker.

Historical Note

Former Rule number - Voluntary Leaving 5. - 5.1. Former Rule repealed, new Section R6-3-5005 adopted effective January 24, 1977 (Supp. 77-1). Amended effective February 15, 1978 (Supp. 78-1). Amended subsection (C), paragraphs (1) and (2) effective July 24, 1980 (Supp. 80-4). Section repealed; new Section adopted effective July 22, 1997 (Supp. 97-3).

R6-3-5006. Reserved

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-5007.	Reserved	Rule repealed, new Section R6-3-5040 adopted effective January 24, 1977 (Supp. 77-1). Amended effective July 22, 1997 (Supp. 97-3).
R6-3-5008.	Reserved	
R6-3-5009.	Reserved	
R6-3-5010.	Reserved	R6-3-5041. Reserved
R6-3-5011.	Reserved	R6-3-5042. Reserved
R6-3-5012.	Reserved	R6-3-5043. Reserved
R6-3-5013.	Reserved	R6-3-5044. Reserved
R6-3-5014.	Reserved	R6-3-5045. Reserved
R6-3-5015.	Reserved	R6-3-5046. Reserved
R6-3-5016.	Reserved	R6-3-5047. Reserved
R6-3-5017.	Reserved	R6-3-5048. Reserved
R6-3-5018.	Reserved	R6-3-5049. Reserved
R6-3-5019.	Reserved	R6-3-5050. Repealed
R6-3-5020.	Reserved	Historical Note Former Rule number - Voluntary Leaving 50. Former Rule repealed, new Section R6-3-5050 adopted effective January 24, 1977 (Supp. 77-1). Section repealed effective July 22, 1997 (Supp. 97-3).
R6-3-5021.	Reserved	
R6-3-5022.	Reserved	
R6-3-5023.	Reserved	R6-3-5051. Reserved
R6-3-5024.	Reserved	through
R6-3-5025.	Reserved	R6-3-50134. Reserved [Total Reserved 45,113]
R6-3-5026.	Reserved	R6-3-50135. Quit or Discharge
R6-3-5027.	Reserved	A. Distinguishing Quits and Discharges
R6-3-5028.	Reserved	1. Except as otherwise provided in this Chapter, a worker's separation from employment is either a quit or a discharge.
R6-3-5029.	Reserved	a. The separation is a quit when the worker acts to end the employment and intends this result.
R6-3-5030.	Reserved	b. The separation is a discharge when the employer acts to end the employment and intends this result. A discharge includes:
R6-3-5031.	Reserved	i. A layoff for lack of work, and
R6-3-5032.	Reserved	ii. A request by the employer for the worker's resignation.
R6-3-5033.	Reserved	2. The Department shall determine whether a separation is a quit or discharge by considering all relevant factors, including:
R6-3-5034.	Reserved	a. Both parties' remarks and actions,
R6-3-5035.	Reserved	b. Who initiated the separation, and
R6-3-5036.	Reserved	c. The parties' intentions.
R6-3-5037.	Reserved	3. A party's expression of criticism or effort to clarify the position of the other party does not by itself constitute notice of intent to quit or to discharge.
R6-3-5038.	Reserved	4. When the worker or the employer gives notice of intent to end an employment relationship, later attempts to withdraw the termination do not change the type of separation, except as otherwise provided in subsection (A)(5).
R6-3-5039.	Reserved	a. The type of separation does not change even if:
		i. The party who causes the separation allows the other party to choose the time or type of separation, or
		ii. The parties agree to delay the date of separation.
		b. A separation is a quit when the worker tells the employer the worker is quitting but agrees to work long enough to train a replacement. The separation remains a quit even if the employer later fails to temporarily keep the worker.
R6-3-5040. Attendance at School or Training Course		
A. Leaving to Attend School.	Except as provided in subsection (B), a worker who leaves a job to attend school or training quits voluntarily without good cause in connection with the work.	
B. Leaving for Approved Training.	A worker approved for and attending training as prescribed in A.R.S. § 23-771.01 and A.A.C. R6-3-1809 leaves work for a compelling personal reason if the work:	
1.	Was temporary employment during school vacation periods or other breaks and the worker leaves work to continue training when school reopens; or	
2.	Hinders the worker from making satisfactory progress in school.	
	Historical Note Former Rule number - Voluntary Leaving 40. Former	

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

5. A separation is a quit when an employer, who previously gave a worker notice of intent to end the employment relationship, on or before the intended termination date offers continued employment under conditions not amounting to new work, and the worker elects to leave as of the original termination date.
- B. Leaving before Effective Date of Discharge**
1. Unless a worker establishes good cause or a compelling personal reason for leaving, as prescribed in this Article, a worker who quits before the effective date of discharge leaves work without good cause in connection with the work.
 2. When a worker quits because the employer has told the worker that the worker is to be discharged for acts or omissions amounting to misconduct connected with the work, as determined by the Department, the rules in Article 51 governing separation for misconduct apply.
- C. Leaving in Anticipation of Discharge.** If a worker, based on information other than the employer's authorized notification of discharge, believes that the employer intends to discharge the worker, the worker shall take steps, prior to leaving, to find out if the worker is, in fact, to be discharged. If the worker fails to do so and was not to be discharged, the worker leaves work voluntarily without good cause in connection with the work.
- D. Discharge before Effective Date of Resignation**
1. If a worker submits a resignation with a specific effective date, and the employer discharges the worker before the effective date:
 - a. The separation is a discharge for reasons other than work-connected misconduct if the discharge is because of the resignation and is 15 days or more before the effective date of the resignation; and
 - b. The separation is a quit if the discharge is because of the resignation and is less than 15 days before the effective date of the resignation. The reason for the resignation shall determine whether the worker had good cause for quitting or was compelled to quit.
 2. If the discharge is not because of the resignation, the Department shall determine whether to assess a disqualification based on the reason for discharge, in accordance with Article 51 of this Chapter.

Historical Note

Former Rule number -- Voluntary Leaving 135. - 135.5. Former Rule repealed, new Section R6-3-50135 adopted effective January 24, 1977 (Supp. 77-1). Amended effective January 23, 1979 (Supp. 79-1). Amended by adding subsection (H) effective July 27, 1983 (Supp. 83-4). Section repealed; new Section adopted effective July 22, 1997 (Supp. 97-3).

R6-3-50135.01. Quit or Discharge; Absence From Work

Except as provided in R6-3-50135.03 and R6-3-50135.04, when a separation occurs because of a worker's absence from work, and a discharge is not established:

1. The separation is a discharge if:
 - a. The worker had a reason for the absence,
 - b. The worker intended to return to work upon a certain occurrence, and
 - c. The worker tried to return to work; or
2. The separation is a quit if:
 - a. The worker did not intend to return to work, and
 - b. Made no attempt to preserve the job.

Historical Note

Adopted effective July 22, 1997 (Supp. 97-3).

R6-3-50135.02. Quit or Discharge; Volunteering for Layoff

When a worker's separation is the result of the worker volunteering for a layoff or furlough due to a reduction in the work force, the Department shall determine whether a disqualification is assessed based on whether the employer or the worker initiated the action.

1. The separation is a discharge for nondisqualifying reasons when the employer determines that a layoff is to occur and then asks if there are workers who will volunteer for the layoff or volunteer to accept the employer's retirement plan.
2. The separation is a voluntary leaving without good cause when a worker requests or volunteers for layoff status prior to any specific announcement by the employer and the employer acts upon the request, unless the worker establishes that the leaving was for a compelling personal reason.

Historical Note

Adopted effective July 22, 1997 (Supp. 97-3).

R6-3-50135.03. Quit or Discharge; Leave of Absence

A. "Leave of absence" means an agreement between an employer and a worker in which the employer promises the worker that the worker may return to work on a particular date or when a reasonably foreseeable event occurs.

1. A leave of absence agreement may be oral or written.
2. A leave of absence may, but is not required to be, based on a collective bargaining agreement or a company policy.

B. An agreement in which an employer offers a worker only a preference for rehire is not a leave of absence.

C. If a worker does not return to work at the end of a leave of absence for a definite period, the worker's reason for not returning determines the type of separation.

D. If a worker who is on a leave of absence for a definite period asks to return to work prior to the end of the leave, and work is not available until the leave ends, the separation is for a compelling personal reason.

E. If the worker described in subsection (D) later fails to return to work when the leave period ends, and work is available, the Department shall determine that the worker separated as of the 1st working day after the leave expires and shall determine whether to assess a disqualification based on the worker's reason for not returning to work.

F. A separation is a layoff when a worker on a leave of absence tries to return to work at the end of a definite leave period, or following a foreseeable event, but the employer has no work for the worker.

G. When a worker on a leave of absence applies for benefits without 1st notifying the employer of the worker's availability for work, the worker's reason for not attempting to return determines the type of separation.

Historical Note

Adopted effective July 22, 1997 (Supp. 97-3).

R6-3-50135.04. Quit or Discharge; Investigative or Disciplinary Suspension

A. If an employer places a worker on a suspension without pay, pending the investigation of an alleged wrongdoing or as a disciplinary action, the employer-employee relationship is presumed to continue during the suspension period unless 1 of the following events occurs during the suspension period.

1. The worker gives notice to the employer that the worker does not intend to return to work. When the reason for the leaving is because of the worker's objection to a disciplinary action, the worker's eligibility is determined in accordance with R6-3-50138.

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

2. The employer notifies the worker that the job will not be available at the end of the suspension. The Department shall determine the reason for separation based on the reason the job is no longer available.
 3. The worker files a claim for benefits.
- B.** When a worker files a claim for benefits during the suspension period, the Department shall determine the type of separation based on the worker's reason for filing the claim and subsections (B)(1) through (5).
1. If the suspension is for an unreasonable period of time and the worker cannot reasonably be expected to remain ready to return to work at the end of the suspension, the suspension terminates the employer-employee relationship and the worker is discharged on the date the worker was suspended and for the reason the worker was suspended.
 2. If the suspension period is not unreasonable, the separation is a voluntary quit.
 3. For the purpose of this rule, a suspension of 16 or more of the employer's workdays is a suspension for an unreasonable period of time.
 4. If returning to work at the end of the suspension would create an intolerable work situation for the worker, pursuant to R6-3-50515, the separation is a voluntary leaving with good cause in connection with the work.
 5. If personal circumstances deemed compelling pursuant to this Article arise during the suspension, making it unreasonable for the worker to return to work, the worker leaves for compelling personal reasons not attributable to the employer.

Historical Note

Adopted effective July 22, 1997 (Supp. 97-3).

R6-3-50135.05. Quit or Discharge; Corporate Officer

When a worker separates from a business in which the worker was a corporate officer, the Department shall use the following guidelines to determine whether to assess a disqualification.

1. A corporate officer who, on the officer's own accord or as a participant in a decision made by a majority of the officers, decides to sell or close the business or to otherwise separate from the corporation, leaves voluntarily. The reason for the sale or closure determines whether the corporate officer left for compelling personal reasons or had good cause for leaving.
2. If the corporation is sold because of declining income and increasing indebtedness, the corporate officer leaves voluntarily without good cause unless the corporation could not have continued.
3. If a corporate officer is forced out by a majority decision of the other officers, the corporate officer is discharged for reasons other than misconduct unless the termination was for reasons which constitute misconduct as defined in A.R.S. § 23-619.01 and Article 51 of this Chapter.

Historical Note

Adopted effective July 22, 1997 (Supp. 97-3).

R6-3-50135.06. Quit or Discharge; Temporary Service Employer and Leasing Employer

- A.** If a worker separates from a temporary services employer or leasing employer, both as defined in A.R.S. § 23-614(G), after finishing work for the employer's client, the separation is either a quit or a layoff due to lack of work.
1. If the worker has, in accordance with the temporary services or leasing employer's rules and procedures about which the worker knew or should have known, failed to report to the employer regarding subsequent work, the

separation is a quit and the Department shall determine the worker's eligibility, in accordance with Article 50 of this Chapter.

2. If the worker reported to the employer in the manner required and the employer did not immediately refer the worker to a new assignment, the separation is a layoff for lack of work.
 3. If the worker reported to the employer and was referred to a new assignment which the worker refused, the separation is either a voluntary leaving or a discharge and refusal of new employment as prescribed in R6-3-50315.
- B.** If a worker separates from the employer before finishing a contracted assignment, the separation is either a quit or a discharge based on the reason for the noncompletion.

Historical Note

Adopted effective July 22, 1997 (Supp. 97-3).

R6-3-50136. Reserved

R6-3-50137. Reserved

R6-3-50138. Disciplinary action (V L 138)

- A.** A worker may leave because of disciplinary action taken against him by his employer. He leaves without good cause in connection with the work if:
1. The event which resulted in the disciplinary action was within his control, or
 2. He was responsible for the event.
- B.** He leaves with good cause in connection with the work if he makes a reasonable attempt to adjust his grievance prior to leaving and the disciplinary action was:
1. Discriminatory, or
 2. Unreasonable, or
 3. Unduly severe.

Historical Note

Former Rule number -- Voluntary Leaving 138. Former Rule repealed, new Section R6-3-50138 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-50139. Reserved

R6-3-50140. Reserved

R6-3-50141. Reserved

R6-3-50142. Reserved

R6-3-50143. Reserved

R6-3-50144. Reserved

R6-3-50145. Reserved

R6-3-50146. Reserved

R6-3-50147. Reserved

R6-3-50148. Reserved

R6-3-50149. Reserved

R6-3-50150. Distance to Work

- A.** Transportation
1. When a worker quits because of transportation difficulties, it must be determined if the worker left without good cause in connection with the work, or whether the worker separated for compelling personal reasons not attributable to the employer and not warranting disqualification. Factors to be considered are:
 - a. Availability of transportation, both public and private;
 - b. Time, distance, and cost of travel in relation to wages paid;

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

- c. Customary practice of workers in claimant's locality;
 - d. Customary practice in worker's trade;
 - e. Worker's past pattern of transportation;
 - f. Relocation of work site;
 - g. Adverse effect of travel on claimant's health;
 - h. Prospects of obtaining other work without serious transportation problems.
2. If a worker quits because the employer violates an agreement to provide transportation, the worker leaves with good cause connected with the work.
- B. Commuting distance**
1. If a worker elects to move the worker's residence beyond reasonable commuting distance for non-compelling reasons and quits work for that reason, the worker's leaving is without good cause in connection with the work.
 2. If a worker quits because the employer moves the work premises beyond reasonable commuting distance, the worker leaves with good cause in connection with the work.
 3. If a worker whose residence or work location has not substantially changed quits work because the commuting distance is excessive, the worker leaves without good cause unless:
 - a. The travel time or expense was excessive, and the worker has reasonable prospects of other, more suitable work; or
 - b. The travel time or expense was unreasonable.
 4. "Beyond reasonable commuting distance" is determined from all surrounding facts and circumstances but shall be presumed when the claimant:
 - a. Resides more than 30 miles from the claimant's place of employment; or
 - b. Has a 1-way commuting time of more than 1 1/2 hours between the claimant's residence and place of employment;
 - c. Has commuting expenses equal to 15% or more of a claimant's gross wage, unless such expenses are customary for the claimant or for workers residing in the same locality as the claimant.
 5. The Department accepts the mileage allowance paid state of Arizona employees for use of their private vehicles for official travel as the standard for determining cost of travel to the claimant.
- Historical Note**
- Former Rule number -- Voluntary Leaving 150. - 150.2. Former Rule repealed, new Section R6-3-50150 adopted effective January 24, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Amended effective December 20, 1995 (Supp. 95-4).
- R6-3-50151. Reserved**
- R6-3-50152. Reserved**
- R6-3-50153. Reserved**
- R6-3-50154. Reserved**
- R6-3-50155. Domestic Circumstances**
- A. General.**
1. A worker who left work because of a domestic obligation involving a legal or moral responsibility of such a compelling nature that the worker could not disregard it left work for a compelling personal reason not attributable to the employer.
 2. However, the mere existence of such a domestic obligation under subsection (A)(1) does not of itself mean that the worker was compelled to leave. If the worker had a reasonable alternative to leaving work that the worker failed to exercise, the worker left voluntarily.
- B. Care of children.** A worker who left work to provide care for a child may have left:
1. For a compelling personal reason not attributable to the employer, depending upon the degree of necessity for the worker to provide that care. The Department shall consider the following factors when making its determination:
 - a. Child's age,
 - b. Child's health,
 - c. Home and neighborhood surroundings that might affect the child's safety,
 - d. Availability of child care arrangements, and
 - e. Availability of a leave of absence for the worker; or
 2. With good cause in connection with the work if:
 - a. The hours of work or place of employment were changed; or
 - b. The employer, without valid reason, refused a leave of absence.
- C. Home, spouse, or parent in another locality.**
1. The Department shall consider a spouse or unemancipated minor who left work to join the other spouse or a parent who has moved to a new locality, from which it is impractical to commute, to have left work for a compelling personal reason not attributable to the employer, if the other spouse or parent moved:
 - a. For a compelling personal reason; or
 - b. To establish a domicile at the new locality for three or more months.
 2. The Department shall consider a spouse or unemancipated minor who left work to accompany the other spouse or a parent who is a member of the armed services and who is transferred to another locality as a result of official orders to have left work for a compelling personal reason not attributable to the employer.
 3. For the purpose of this Section, an "unemancipated minor" is a person who is less than 18 years of age, is single, and who lives in the same household as the parent except for temporary absences, such as school attendance, vacations, or hospitalization.
- D. Household duties.** A worker who left work because working interferes with household duties left work without good cause in connection with the work, unless the household duties required of the worker are so compelling as to leave no reasonable alternative to leaving work.
- E. Housing.**
1. When a worker left work because of housing problems, the Department shall determine whether the worker left with or without good cause or for a compelling personal reason not attributable to the employer. The Department shall consider the following factors:
 - a. The availability of adequate housing within a reasonable distance of the work,
 - b. The cost of housing in relation to wages, and
 - c. Prospects of other work that would eliminate the housing problem.
 2. A worker left with good cause in connection with the work if:
 - a. Adequate housing was promised by an employer and was not provided; or
 - b. The employer informed the worker that housing was available, but such housing was so primitive or substandard that it was a menace to the health of the worker or the worker's family.

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

- F. Illness or death of others.**
1. A worker who left work because of the death or illness of a member of the worker's immediate family or to provide care for a family member left work for a compelling personal reason not attributable to the employer if:
 - a. A leave of absence could not be obtained or would have been impracticable, and
 - b. No other reasonable alternative to leaving work existed.
 2. A worker who left work to care for an ill relative left work with good cause in connection with the work:
 - a. If the worker's difficulty in caring for the ill relative was due to a change in working conditions, or
 - b. When the employer, without a valid reason, refused to grant a leave of absence for this purpose.
 3. For the purposes of this Section, the following are members of a worker's immediate family:
 - a. Spouse;
 - b. Parent;
 - c. Child;
 - d. Sibling; and
 - e. Any other person with a similar relationship to the worker, including foster parent, step-child, or guardian.
- G. Marriage.**
1. When a worker left work to get married or because the worker has married, the leaving is voluntary and without good cause in connection with the work.
 2. If the employer terminated the employment because of a company rule that prohibits continuing employment of both employees when co-workers marry, the separation is a discharge.
- H. Domestic violence.** Under A.R.S. § 23-771(D), if a worker left work because of domestic violence as defined in A.R.S. § 13-3601 or § 13-3601.02, the worker has left for a compelling personal reason not attributable to the employer if:
1. The circumstances required the worker to leave work and a leave of absence was not available or would have been impractical; or
 2. Remaining with the employer would present a threat to the safety of the worker, the worker's family, or co-workers and no other reasonable alternative to leaving work existed.
- Historical Note**
- Former Rule number -- Voluntary Leaving 155. - 155.4. Former Rule repealed, new Section R6-3-50155 adopted effective January 24, 1977 (Supp. 77-1). Amended effective March 19, 1979 (Supp. 79-2). Amended subsection (G), paragraph (2) effective July 24, 1980 (Supp. 80-4). Amended (A)(2), (B), (C), and (E) effective September 2, 1981 (Supp. 81-5). Amended effective September 24, 1986 (Supp. 86-5). Amended by final rulemaking at 13 A.A.R. 87, effective December 20, 2006 (Supp. 06-4).
- R6-3-50156. Reserved**
- R6-3-50157. Reserved**
- R6-3-50158. Reserved**
- R6-3-50159. Reserved**
- R6-3-50160. Reserved**
- R6-3-50161. Reserved**
- R6-3-50162. Reserved**
- R6-3-50163. Reserved**
- R6-3-50164. Reserved**
- R6-3-50165. Reserved**
- R6-3-50166. Reserved**
- R6-3-50167. Reserved**
- R6-3-50168. Reserved**
- R6-3-50169. Reserved**
- R6-3-50170. Reserved**
- R6-3-50171. Reserved**
- R6-3-50172. Reserved**
- R6-3-50173. Reserved**
- R6-3-50174. Reserved**
- R6-3-50175. Reserved**
- R6-3-50176. Reserved**
- R6-3-50177. Reserved**
- R6-3-50178. Reserved**
- R6-3-50179. Reserved**
- R6-3-50180. Reserved**
- R6-3-50181. Reserved**
- R6-3-50182. Reserved**
- R6-3-50183. Reserved**
- R6-3-50184. Reserved**
- R6-3-50185. Reserved**
- R6-3-50186. Reserved**
- R6-3-50187. Reserved**
- R6-3-50188. Reserved**
- R6-3-50189. Reserved**
- R6-3-50190. Evidence (V L 190)**
- A. General (V L 190.05)**
1. Evidence is that which furnishes any mode of proof or that which is submitted as a means of learning the truth of any alleged matter of fact. This evidence is usually in the form of oral or written statements of a claimant, employer, and/or witnesses. The adjudicator must obtain all pertinent evidence reasonably available to make a non-monetary determination.
 2. A claimant or employer statement, written and signed by him, is valuable as evidence. Documentary evidence, such as physicians' statements or union by-laws and contracts, is often significant. Such evidence should be fully identified and proved authentic in order to have evidential weight.
- B. Burden of proof and presumption (V L 190.1)**
1. The burden of proof consists of the requirement to submit evidence of such nature that, taking all other circumstances into account, the facts alleged appear to be true. When this burden has been met, the evidence becomes proof.
 2. The burden of proof rests upon the individual who makes a statement.
 - a. If a statement is denied by another party, and not supported by other evidence, it cannot be presumed to be true.

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

- b. When a voluntary leaving has been established, the burden of proof rests on the claimant to show that it was for nondisqualifying reasons.
 - c. When a claimant states that he did not leave voluntarily, and the employer maintains he did, the burden of proof shifts to the employer to establish that there has been a quit.
- C. Weight and sufficiency (V L 190.15)**
- 1. Evidence must be evaluated during the course of adjudication to determine whether it is sufficient to make a decision. Sufficiency is reached when further rebuttal or circumstantial evidence will not alter the conclusions of the adjudicator.
 - 2. When sufficient evidence has been obtained, all the facts available must be weighed. Only relevant evidence can be considered.
 - a. Unsupported oral statements may be outweighed by documentary evidence from disinterested third parties.
 - b. Specific detailed facts must be given more credence than general statements.
 - c. The testimony of eyewitnesses must be given more weight than hearsay statements.
- 1. Legally substandard employment.
 - 2. Work which meets legal standards, but involves undue risk to the worker's health or safety.
- C. A reasonable worker will not quit impulsively. He will attempt to maintain the employment except when this is impossible or impractical. Good cause is generally not established unless the worker takes one or more of the following steps prior to quitting in an attempt to adjust the grievance:**
- 1. Gives the work a fair trial.
 - 2. Attempts to adjust unsatisfactory working conditions.
 - 3. Requests a leave of absence when necessary to resolve some personal difficulty.
- D. A worker need not take such steps before quitting if they are impracticable or impossible, or would obviously not be fruitful.**

Historical Note

Former Rule number -- Voluntary Leaving 210. Former Rule repealed, new Section R6-3-50210 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-50211. Reserved**R6-3-50212. Reserved****R6-3-50213. Reserved****R6-3-50214. Reserved****R6-3-50215. Reserved****R6-3-50216. Reserved****R6-3-50217. Reserved****R6-3-50218. Reserved****R6-3-50219. Reserved****R6-3-50220. Reserved****R6-3-50221. Reserved****R6-3-50222. Reserved****R6-3-50223. Reserved****R6-3-50224. Reserved****R6-3-50225. Reserved****R6-3-50226. Reserved****R6-3-50227. Reserved****R6-3-50228. Reserved****R6-3-50229. Reserved****R6-3-50230. Reserved****R6-3-50231. Reserved****R6-3-50232. Reserved****R6-3-50233. Reserved****R6-3-50234. Reserved****R6-3-50235. Health or physical condition (V L 235)**

Historical Note
Former Rule number -- Voluntary Leaving 190. - 190.15.
Former Rule repealed, new Section R6-3-50190 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-50191. Reserved**R6-3-50192. Reserved****R6-3-50193. Reserved****R6-3-50194. Reserved****R6-3-50195. Reserved****R6-3-50196. Reserved****R6-3-50197. Reserved****R6-3-50198. Reserved****R6-3-50199. Reserved****R6-3-50200. Reserved****R6-3-50201. Reserved****R6-3-50202. Reserved****R6-3-50203. Reserved****R6-3-50204. Reserved****R6-3-50205. Reserved****R6-3-50206. Reserved****R6-3-50207. Reserved****R6-3-50208. Reserved****R6-3-50209. Reserved****R6-3-50210. Good cause (V L 210)**

- A.** The commonly accepted test of "good cause", when considering voluntary leaving, is "What would the reasonable worker have done under similar circumstances?" The following two points should be considered:
- 1. What were the claimant's reasons for leaving?
 - 2. Do the reasons justify leaving?
- B.** A worker's voluntary separation is not disqualifying if it is consistent with well defined public policy. Examples of this type of cause for leaving are:

A. General (V L 235.05)

- 1. Leaving work due to health or physical conditions may be for:
 - a. Compelling personal reasons; or
 - b. Good cause in connection with the work.
- 2. A contention that a leaving is for reasons of health or physical conditions must be substantiated. Supporting evidence may be:
 - a. Doctor's statement; or

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

- b. Employer or witness statement; or
- c. Adjudicator’s observation.
- 3. All separations from work caused by illness or physical disability raises a question of ability to work. This issue should be investigated and determined under R6-3-52235.
- B. Illness or injury (V L 235.25)**
 - 1. A worker who quits because his health or physical condition is adversely affected by the conditions of work must make a reasonable effort to correct the situation to avoid disqualification, unless efforts to correct the situation would be impossible or impractical. A reasonable effort might include:
 - a. Requesting a leave of absence to recover.
 - b. Requesting transfer to other duties which are not detrimental to his health.
 - c. Requesting that unfavorable working conditions be corrected.
 - 2. A worker would leave with good cause connected with his work if:
 - a. The injury or impairment of health was caused by working conditions which are substantially less favorable than those prevailing for similar work in the area; or
 - b. The job becomes too strenuous due to a change in working conditions placed in effect by the employer after the worker has established his ability to do the work for which he was hired.
 - 3. A worker leaves for compelling personal reasons not attributable to the employer if:
 - a. The work aggravates a health or physical condition which existed prior to the claimant’s acceptance of the job; or
 - b. His services are terminated as a result of compensable industrial injury, unless such injury was caused by working conditions substantially less favorable than those prevailing for similar work in the area; or
 - c. He is absent because of illness or injury, which fact he has reported to the employer, and during his absence he is replaced. Exception: If the disability lasts for seven working days or less and the worker is replaced, the finding shall be that the claimant was discharged for nondisqualifying reasons.
 - 4. As a general rule the worker who quits because of a physical handicap which makes his work too difficult for him leaves for a compelling personal reason not attributable to the employer. The determination depends upon the extent to which the worker is handicapped or to which the physical handicap increases his risk of injury or illness. Among the factors to consider are:
 - a. Did the worker give the job a fair trial?
 - b. Did he request a transfer to other work which he could perform?
 - c. Is the work suitable, considering the worker’s health and safety?
 - 5. If the employer changes the conditions of work, making it unsuitable for the handicapped worker, he leaves with good cause in connection with the work.
- C. Pregnancy (V L 235.4)**
 - 1. A woman who quits work because of pregnancy leaves voluntarily without good cause if the work was within her physical limitations.
 - 2. A woman who quits because her work became too difficult due to her pregnancy separates for a compelling personal reason provided that she had no reasonable alternative such as:

- a. Taking time off to recover from a minor spell of inability such as morning sickness.
- b. Transfer to less strenuous work.
- 3. A woman who quits because the employer changes her work assignments so that the work is too difficult for her to perform due to her pregnancy, leaves voluntarily with good cause in connection with the work.
- 4. A woman who is required by her employer to leave employment due to pregnancy, whether or not there is an employer rule requiring such separation, is discharged from employment. Such cases shall be considered under R6-3-51235.
- D. Risk of illness or injury (V L 235.45)**
 - 1. If a claimant quits because of an established risk to his health or safety, he leaves with good cause in connection with the work. Such risk might be shown by the employer’s failure to comply with government requirements concerning sanitation, temperature, ventilation, or safety regulations. This is a question of fact which should be determined upon information from appropriate governmental authorities.
 - 2. Standard and legally acceptable conditions of the industry may present undue risks to the health or safety of an individual because of some health problem peculiar to him. Such a leaving is for a compelling personal reason. Refer to R6-3-5005(C) and R6-3-50235(B).
 - 3. A worker may leave employment merely because he fears that his health and physical well being are endangered.
 - a. Such a fear generally does not provide good cause for leaving unless the conditions of the work are substantially less favorable than those prevailing for similar work in the area. Refer to R6-3-50235(B) and R6-3-50515(D).
 - b. The leaving must be rested for good cause. Refer to R6-3-50210.

Historical Note

Former Rule number -- Voluntary Leaving 235. - 235.45. Former Rule repealed, new Section R6-3-50235 adopted effective January 24, 1977 (Supp. 77-1). Amended effective February 15, 1978 (Supp. 78-1). Amended effective August 3, 1978 (Supp. 78-4). Amended subsection (B), paragraph (3), subparagraph (b) and repealed subsection (B), paragraph (6) effective July 24, 1980 (Supp. 80-4). Amended subsection (D) effective July 24, 1981 (Supp. 81-4).

- R6-3-50236. Reserved**
- R6-3-50237. Reserved**
- R6-3-50238. Reserved**
- R6-3-50239. Reserved**
- R6-3-50240. Reserved**
- R6-3-50241. Reserved**
- R6-3-50242. Reserved**
- R6-3-50243. Reserved**
- R6-3-50244. Reserved**
- R6-3-50245. Reserved**
- R6-3-50246. Reserved**
- R6-3-50247. Reserved**
- R6-3-50248. Reserved**
- R6-3-50249. Reserved**

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-50250. Reserved	R6-3-50294. Reserved
R6-3-50251. Reserved	R6-3-50295. Reserved
R6-3-50252. Reserved	R6-3-50296. Reserved
R6-3-50253. Reserved	R6-3-50297. Reserved
R6-3-50254. Reserved	R6-3-50298. Reserved
R6-3-50255. Reserved	R6-3-50299. Reserved
R6-3-50256. Reserved	R6-3-50300. Reserved
R6-3-50257. Reserved	R6-3-50301. Reserved
R6-3-50258. Reserved	R6-3-50302. Reserved
R6-3-50259. Reserved	R6-3-50303. Reserved
R6-3-50260. Reserved	R6-3-50304. Reserved
R6-3-50261. Reserved	R6-3-50305. Repealed
R6-3-50262. Reserved	
R6-3-50263. Reserved	
R6-3-50264. Reserved	
R6-3-50265. Reserved	
R6-3-50266. Reserved	
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R6-3-50282. Reserved	
R6-3-50283. Reserved	
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R6-3-50285. Reserved	
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R6-3-50288. Reserved	
R6-3-50289. Reserved	
R6-3-50290. Reserved	
R6-3-50291. Reserved	
R6-3-50292. Reserved	
R6-3-50293. Reserved	

Historical Note

Former Rule number -- Voluntary Leaving 305. Former Rule repealed, new Section R6-3-50305 adopted effective January 24, 1977 (Supp. 77-1). Amended effective March 5, 1982 (Supp. 82-2). Repealed effective July 22, 1997 (Supp. 97-3).

R6-3-50306. Reserved

R6-3-50307. Reserved

R6-3-50308. Reserved

R6-3-50309. Reserved

R6-3-50310. Reserved

R6-3-50311. Reserved

R6-3-50312. Reserved

R6-3-50313. Reserved

R6-3-50314. Reserved

R6-3-50315. New work (V L 315)

When an employee resigns rather than accepts conditions of employment which are different from those under which he has been working, a decision must be made as to whether he has left work voluntarily or has refused an offer of new work.

1. If the changes in working conditions are not substantial, a voluntary leaving is found.
2. If the changes in working conditions are so substantial as to constitute a new job (i.e., they are not expressly or impliedly authorized in the original employment relationship); the separation shall be regarded as a "discharge" and a refusal of a new offer of work. In such cases the failure to accept work shall be held to have occurred on the first workday following the last day of work.
3. If it is determined that the worker separated due to a lay-off and refused an offer of new work, the employer is an interested party to the refusal of work determination since the refusal issue arises from the separation.

Historical Note

Former Rule number -- Voluntary Leaving 315. Former Rule repealed, new Section R6-3-50315 adopted effective January 24, 1977 (Supp. 77-1). Amended effective August 19, 1981 (Supp. 81-4).

R6-3-50316. Reserved

R6-3-50317. Reserved

R6-3-50318. Reserved

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-50319. Reserved
 R6-3-50320. Reserved
 R6-3-50321. Reserved
 R6-3-50322. Reserved
 R6-3-50323. Reserved
 R6-3-50324. Reserved
 R6-3-50325. Reserved
 R6-3-50326. Reserved
 R6-3-50327. Reserved
 R6-3-50328. Reserved
 R6-3-50329. Reserved
 R6-3-50330. Reserved
 R6-3-50331. Reserved
 R6-3-50332. Reserved
 R6-3-50333. Reserved
 R6-3-50334. Reserved
 R6-3-50335. Reserved
 R6-3-50336. Reserved
 R6-3-50337. Reserved
 R6-3-50338. Reserved
 R6-3-50339. Reserved
 R6-3-50340. Reserved
 R6-3-50341. Reserved
 R6-3-50342. Reserved
 R6-3-50343. Reserved
 R6-3-50344. Reserved
R6-3-50345. Retirement
 A. Except as otherwise provided in subsection (B) and R6-3-50135.02, a worker who chooses to retire from employment leaves voluntarily without good cause in connection with the employment.
 B. If a worker retires for health reasons, the Department shall determine whether the worker left for good cause in connection with the employment or for a compelling personal reason not attributable to the employer as prescribed in R6-3-50235.

Historical Note

Former Rule number -- Voluntary Leaving 345. Former Rule repealed, new Section R6-3-50345 adopted effective January 24, 1977 (Supp. 77-1). Amended effective July 22, 1997 (Supp. 97-3).

R6-3-50346. Reserved
 R6-3-50347. Reserved
 R6-3-50348. Reserved
 R6-3-50349. Reserved
 R6-3-50350. Reserved
 R6-3-50351. Reserved
 R6-3-50352. Reserved
 R6-3-50353. Reserved

R6-3-50354. Reserved
 R6-3-50355. Reserved
 R6-3-50356. Reserved
 R6-3-50357. Reserved
 R6-3-50358. Reserved
 R6-3-50359. Reserved

R6-3-50360. Personal affairs (V L 360)

An individual who quits work to care for personal affairs generally leaves voluntarily without good cause in connection with his employment. However if the personal circumstances are so compelling or burdensome that the claimant has no reasonable alternative to quitting, his leaving is for compelling personal reasons. Leaving to care for personal affairs may involve business matters, settlement of an estate, a lawsuit, divorce proceedings, etc.

Historical Note

Former Rule number -- Voluntary Leaving 360. Former Rule repealed, new Section R6-3-50360 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-50361. Reserved
 R6-3-50362. Reserved
 R6-3-50363. Reserved
 R6-3-50364. Reserved

R6-3-50365. Prospect of other work (V L 365)**A. General (V L 365.05)**

1. A worker who has no objection to the work he has been doing and quits because he has prospects of other work, but no definite offer, leaves voluntarily without good cause in connection with his work.
2. A leaving to accept employment that would clearly better the claimant's economic or personal circumstances or working conditions, is for a compelling personal reason.
 - a. If the prospective employment fails to materialize because of circumstances beyond the control of the claimant the determination on the leaving would remain the same.
 - b. The claimant's statement that he left to accept other work is questionable when there is an unreasonable time lapse between the two jobs. This point may be decisive in determining whether or not the claimant left for a compelling personal reason.
3. A quit because the claimant objects to some aspect of the work he has been doing should be considered with reference to the appropriate Benefit Policy rule.

B. Leaving to enter self employment (V L 365.3). A worker who quits to enter self employment leaves voluntarily without good cause in connection with his work.

C. Leaving part-time work to accept full-time work (V L 365.42)
 1. Workers who leave part-time work to accept full-time work usually leave for compelling personal reasons not attributable to the employer.
 2. Workers who leave part-time work to accept full-time work when the hours and earnings have been reduced by the employer from full-time to part-time work, leave with good cause connected with the work.

D. Leaving full-time work to accept part-time work (V L 365.43)
 1. A worker who leaves full-time work for part-time work merely because of a preference for part-time work leaves without good cause in connection with his work.

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

2. A worker who leaves full-time work for part-time work leaves for compelling personal reasons not attributable to his employer if:
- It can be shown that personal circumstances or health reasons compelled the change; or
 - He quits unsuitable full-time work to accept part-time work for which he is qualified.

Historical Note

Former Rule number -- Voluntary Leaving 365. - 365.43.
Former Rule repealed, new Section R6-3-50365 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-50366. Reserved	R6-3-50396. Reserved
R6-3-50367. Reserved	R6-3-50397. Reserved
R6-3-50368. Reserved	R6-3-50398. Reserved
R6-3-50369. Reserved	R6-3-50399. Reserved
R6-3-50370. Reserved	R6-3-50400. Reserved
R6-3-50371. Reserved	R6-3-50401. Reserved
R6-3-50372. Reserved	R6-3-50402. Reserved
R6-3-50373. Reserved	R6-3-50403. Reserved
R6-3-50374. Reserved	R6-3-50404. Reserved
R6-3-50375. Reserved	R6-3-50405. Reserved
R6-3-50376. Reserved	R6-3-50406. Reserved
R6-3-50377. Reserved	R6-3-50407. Reserved
R6-3-50378. Reserved	R6-3-50408. Reserved
R6-3-50379. Reserved	R6-3-50409. Reserved
R6-3-50380. Repealed	R6-3-50410. Reserved

Historical Note

Adopted effective October 2, 1981 (Supp. 81-5).
Repealed effective December 9, 1982 (Supp. 82-6).

R6-3-50381. Reserved	R6-3-50411. Reserved
R6-3-50382. Reserved	R6-3-50412. Reserved
R6-3-50383. Reserved	R6-3-50413. Reserved
R6-3-50384. Reserved	R6-3-50414. Reserved
R6-3-50385. Repealed	R6-3-50415. Reserved

Historical Note

Former Rule number -- Voluntary Leaving 385. Former Rule repealed, new Section R6-3-50385 adopted effective January 24, 1977 (Supp. 77-1). Repealed effective July 22, 1997 (Supp. 97-3).

R6-3-50386. Reserved	R6-3-50416. Reserved
R6-3-50387. Reserved	R6-3-50417. Reserved
R6-3-50388. Reserved	R6-3-50418. Reserved
R6-3-50389. Reserved	R6-3-50419. Reserved
R6-3-50390. Reserved	R6-3-50420. Reserved
R6-3-50391. Reserved	R6-3-50421. Reserved
R6-3-50392. Reserved	R6-3-50422. Reserved
R6-3-50393. Reserved	R6-3-50423. Reserved
R6-3-50394. Reserved	R6-3-50424. Reserved
R6-3-50395. Reserved	R6-3-50425. Reserved
	R6-3-50426. Reserved
	R6-3-50427. Reserved
	R6-3-50428. Reserved
	R6-3-50429. Reserved
	R6-3-50430. Reserved
	R6-3-50431. Reserved
	R6-3-50432. Reserved
	R6-3-50433. Reserved
	R6-3-50434. Reserved
	R6-3-50435. Reserved
	R6-3-50436. Reserved
	R6-3-50437. Reserved
	R6-3-50438. Reserved

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-50439. Reserved

R6-3-50440. Repealed

Historical Note

Former Rule number - Voluntary Leaving 440. - 440.7.
Former Rule repealed, new Section R6-3-50440 adopted effective January 24, 1977 (Supp. 77-1). Amended effective March 5, 1981 (Supp. 81-2). Repealed effective July 22, 1997 (Supp. 97-3).

R6-3-50441. Reserved

R6-3-50442. Reserved

R6-3-50443. Reserved

R6-3-50444. Reserved

R6-3-50445. Reserved

R6-3-50446. Reserved

R6-3-50447. Reserved

R6-3-50448. Reserved

R6-3-50449. Reserved

R6-3-50450. Time (V L 450)**A. General (V L 450.05)**

1. As discussed in this section time refers to hours, or days of work, whether it be part time or full time, irregular or excessive, shift work or temporary work, and definite or indefinite dates.
2. When time is an issue it is advisable to obtain verification of exact hours, days or dates worked.
3. A worker who leaves his job for any reason involving time would be expected to attempt to adjust his grievance prior to leaving if such attempt was feasible.

B. Days of week (V L 450.1)

1. A worker may elect to leave his job because he objects to working a particular day or days of the week. Normally a worker will object to working on Saturday or Sunday because recreational and religious activities usually are centered on these days.
 - a. Objection to working Saturday or Sunday because of inconvenience does not constitute good cause for leaving unless it creates a work week which is excessive or interferes with activities determined to be compelling.
 - b. If a worker objects to working on Saturday or Sunday because of compelling religious reasons, his leaving will be for a compelling personal reason.
2. If a worker leaves because he is working only a limited number of days a week, he leaves without good cause unless his work schedule or the employer's stand-by requirements unreasonably interferes with a search for full time employment.

C. Hours (V L 450.15)

1. General (V L 450.151)
 - a. A worker who leaves because of a reasonable objection to his hours would leave with good cause in connection with his work.
 - b. Any legislation such as maximum hour provisions for certain individuals or occupations must be taken into consideration in the determination.
2. Irregular hours (V L 450.152)
 - a. A worker who leaves his job because his employer refuses his request for irregular hours generally leaves without good cause. If refusal of his request results in the worker having no reasonable alterna-

tive to leaving, his leaving will be for a compelling personal reason.

- b. When a worker is required by an employer to work irregular hours over an extended period of time and these hours unreasonably restrict his ability to maintain a normal private life, he leaves for good cause. Normally, leaving because of irregular hours that occur infrequently or for a short duration will result in a disqualification.
3. Long or short hours (V L 450.153)
 - a. Leaving work because of extended hours provides good cause for quitting if they are of indefinite or lengthy duration and unduly interfere with the worker's private life.
 - b. Leaving because of objection to short hours is normally disqualifying unless restrictions imposed by the employer prevent the worker from looking for full time work during his off duty hours.
4. Night work (V L 450.154)
 - a. A worker who leaves because he is required to continue to work nights generally leaves without good cause. If he can establish that his working hours were adversely affecting his health or so restricting his domestic life that he had no reasonable alternative to leaving, his leaving will be for a compelling personal reason.
 - b. A worker who leaves because of insistence on night work normally would be disqualified. If he can establish that he had no reasonable alternative to night work, his leaving should be adjudicated under R6-3-5005. This type of restriction will usually also involve an availability issue.
5. Prevailing standard (V L 450.155). A worker should not be disqualified for leaving work in which the hours are significantly in excess of the prevailing hours for similar work in the locality.
- D. Irregular employment (V L 450.2).** A worker who leaves his job because employment is irregular leaves without good cause if he can seek work during his time off. If a worker is in an isolated area which offers little or no prospects of full time work, and his hours have been substantially reduced, his leaving is for good cause if he leaves to seek work elsewhere.
- E. Layoff imminent (V L 450.25).** A worker who leaves a job prior to the effective date of a definite layoff leaves without good cause, if the layoff is the reason for leaving, unless he has a definite offer of new work.
- F. Leave of absence or holiday (V L 450.3)**
 1. When a worker leaves a job because he is refused a leave of absence or time off from the job, the adjudicator must consider the urgency of the worker's request and the effect the absence would have on the employer. If the claimant establishes that he was compelled to take time off and was refused, his leaving is not disqualifying.
 2. A leaving because a worker was required to work on a particular holiday is disqualifying unless it is shown that he was discriminated against in the assignment of holiday work.
- G. Overtime (V L 450.35)**
 1. The worker who quits his job because his employer refuses his request for overtime work leaves without good cause unless:
 - a. He can establish that the employer violated an agreement to provide him with overtime, or
 - b. He can establish that he has been discriminated against in the assignment of overtime work.

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

- 2. Occasional overtime work at the request of the employer does not constitute good cause for quitting even though overtime wages are not paid. However, many employers are required by legislation to pay overtime rates for overtime worked. Their failure to do so would constitute good cause for leaving.
- 3. Usually leaving because of required overtime, which is compensated for at overtime rates, is a disqualifying separation, unless it is shown that the overtime was discriminatory or unreasonable.
- H.** Part time work (V L 450.4). A worker who leaves part time work because of a desire to seek full time work leaves without good cause, unless the circumstances of the part time employment prevent him from seeking full time work during his non-working hours.
- I.** Shift work (V L 450.5). Leaving work because of an objection to working a particular shift is disqualifying unless it is shown that:
 - 1. The employer discriminated against the worker in assigning the shift, or
 - 2. The worker is unable to work the shift for a compelling reason.

Historical Note

Former Rule number - Voluntary Leaving 450. - 450.5. Former Rule repealed, new Section R6-3-50450 adopted effective January 24, 1977 (Supp. 77-1). Amended effective March 22, 1979 (Supp. 79-2).

- R6-3-50451. Reserved
- R6-3-50452. Reserved
- R6-3-50453. Reserved
- R6-3-50454. Reserved
- R6-3-50455. Reserved
- R6-3-50456. Reserved
- R6-3-50457. Reserved
- R6-3-50458. Reserved
- R6-3-50459. Reserved
- R6-3-50460. Reserved
- R6-3-50461. Reserved
- R6-3-50462. Reserved
- R6-3-50463. Reserved
- R6-3-50464. Reserved
- R6-3-50465. Reserved
- R6-3-50466. Reserved
- R6-3-50467. Reserved
- R6-3-50468. Reserved
- R6-3-50469. Reserved
- R6-3-50470. Reserved
- R6-3-50471. Reserved
- R6-3-50472. Reserved
- R6-3-50473. Reserved
- R6-3-50474. Reserved
- R6-3-50475. Union relations (V L 475)

- A.** Agreement with employer (V L 475.1). A Collective Bargaining Agreement is an agreement between employer(s) and an organized group of workers which covers reciprocally agreed conditions of work.
 - 1. The violation of a Collective Bargaining Agreement by either the employer or employee except in cases involving application of the labor dispute disqualification provision under A.R.S. § 23-777 is merely a breach of an obligation to abide by the terms of the agreement.
 - 2. A violation of a bargaining agreement by an employer would not necessarily provide a worker with a good cause for leaving under the provisions of the Employment Security Law of Arizona. Good cause in connection with the work would be found if:
 - a. The employer's action caused or would cause the claimant to suffer a substantial hardship or possible physical injury; or
 - b. The claimant can establish that continuation of the employment would result in penalty by his union which would be detrimental to him in obtaining other work.
 - 3. Leaving work because of alleged violations of a bargaining agreement concerning wages, hours, or working conditions should be adjudicated under the appropriate Section of these rules.
 - 4. In any case, failure by the claimant to attempt to adjust his grievance through the grievance procedure of his union would preclude a finding of good cause.
- B.** Refusal to join or retain membership in union (V L 475.6)
 - 1. A worker who has separated from work because of his refusal to join or retain membership in a union in a state which does not have a "right-to-work" law will have left work voluntarily without good cause in connection with the work when:
 - a. He accepts employment with the understanding that he will be required to join a union and then refuses to comply with the agreement; or
 - b. He allows his membership in the union to lapse when his employment depended on his remaining in good standing in his union.
 - 2. The above policy applies even if the employer is the one who informed the claimant that he was no longer employed.
 - 3. Under present statutes, rule R6-3-50475(B) does not apply to Arizona, which has a "right-to-work" law.

Historical Note

Former Rule number - Voluntary Leaving 475. - 475.6. Former Rule repealed, new Section R6-3-50475 adopted effective January 24, 1977 (Supp. 77-1).

- R6-3-50476. Reserved
- R6-3-50477. Reserved
- R6-3-50478. Reserved
- R6-3-50479. Reserved
- R6-3-50480. Reserved
- R6-3-50481. Reserved
- R6-3-50482. Reserved
- R6-3-50483. Reserved
- R6-3-50484. Reserved
- R6-3-50485. Reserved
- R6-3-50486. Reserved

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-50487. Reserved
 R6-3-50488. Reserved
 R6-3-50489. Reserved
 R6-3-50490. Reserved
 R6-3-50491. Reserved
 R6-3-50492. Reserved
 R6-3-50493. Reserved
 R6-3-50494. Reserved
 R6-3-50495. Repealed

Historical Note

Former Rule number -- Voluntary Leaving 495. Former Rule repealed, new Section R6-3-50495 adopted effective January 24, 1977 (Supp. 77-1). Repealed effective July 22, 1997 (Supp. 97-3).

R6-3-50496. Reserved
 R6-3-50497. Reserved
 R6-3-50498. Reserved
 R6-3-50499. Reserved

R6-3-50500. Wages (V L 500)**A. General (V L 500.05)**

1. A leaving because of dissatisfaction with wages usually involves one of the following situations. For a discussion of specific wage issues refer to the indicated section of these policy rules.

Agreement concerning wages (R6-3-50500(B))

Failure or refusal to pay (R6-3-50500(C))

Piece rate or commission basis (R6-3-50500(F))

Prevailing wage (R6-3-50500(G))

Reduction in rate of pay (R6-3-50500(H))

2. A worker is generally aware of the rate of pay prior to accepting a job. If he accepts employment at a specified wage, he cannot thereafter establish good cause for leaving because he becomes dissatisfied with his wages. This is true even though his rate of pay is substantially below prevailing for similar work. Good cause for leaving can be shown only if the rate of pay is below the legal minimum.
3. A worker who leaves because of dissatisfaction with his wage must make a reasonable effort to adjust his grievance prior to quitting in order to establish good cause.

B. Agreement concerning wages (V L 500.1)

1. An agreement concerning wages shall be considered to exist when a worker was informed about his rate of pay or failed to make an attempt to ascertain his wage rate when he accepted a job, and the worker is bound by the agreement. The wage agreement is no longer binding upon him, however, if the employer changes other conditions of employment sufficiently to constitute "new work". See R6-3-50315.
2. When an agreement concerning wages exists, a worker who leaves work solely because of dissatisfaction with the wage rate shall be disqualified for voluntarily leaving without good cause unless his rate of pay is below the legal minimum.
3. If the employer failed to inform the claimant of his rate of pay as requested at the time of hire, or the claimant is misinformed about his wage rate by an employment agency or agent, good cause for leaving may be established, if

- a. The rate of pay makes the work unsuitable in accordance with R6-3-53500(B); and
 - b. He took action to adjust his grievance immediately upon learning the actual wage rate.
4. The employer's failure to abide by a wage agreement does not necessarily establish good cause for leaving work. See R6-3-50500.H.

C. Failure or refusal to pay (V L 500.3)

1. A claimant would have good cause for quitting if the facts clearly establish that his employer willfully refused to pay him wages that were actually due, provided that he first made a reasonable attempt to adjust his grievance.
2. A worker has the right to receive his wage in the proper amount and when due. It would be unreasonable to expect him to continue working unless he is reasonably certain of being paid for his services. Thus a claimant would leave with good cause connected with his work; when:
 - a. The employer is repeatedly late paying his wages;
 - b. The claimant is repeatedly paid with checks drawn on insufficient funds even if restitution is made.
3. Isolated instances of late payment of wages, or payment of wages with a bad check when prompt restitution is made will not establish good cause for leaving.
4. A worker who quits because his employer deducts certain amounts from his wages to cover shortages, breakages, etc., leaves without good cause connected with the work if such deductions were made pursuant to a prior agreement, even though the claimant may not be at fault, provided the size of the deduction is reasonable. It would be unreasonable for an agreement or contract to require a deduction greater than 25% of a claimant's net wages from a single paycheck.
5. In the absence of a prior agreement between the claimant and the employer permitting such deductions, leaving with good cause in connection with the work will depend upon whether the employer has acted reasonably. If the facts establish that the claimant is guilty of willful or culpable negligence in connection with the cash shortages or breakage which lead to the deduction, the employer is considered to have acted reasonably, provided the size of the deduction is reasonable. It would be unreasonable for an employer to deduct more than 25% of a claimant's net wages from a single paycheck.
6. For the purposes of this regulation, net wages means gross wages less mandatory deductions.
7. If the employer makes deductions for shortages or breakage not authorized by the prior agreement, and the facts do not establish that the claimant is guilty of either willfulness or negligence, a claimant would have good cause for quitting unless the employer had refunded the deduction.

D. Increase refused (V L 500.4). A worker who quits solely because his employer has refused to grant him a pay increase leaves work voluntarily without good cause in connection with his employment, unless:

1. He had been assigned more responsible duties normally carrying a higher rate of pay for longer than a temporary short period of time; and
2. He attempted to adjust his grievance before leaving.

E. Living or low wage (V L 500.45). When a claimant has left his employment because of low wages or because he contends his wages do not constitute a living wage, the adjudicator should give first consideration to the prevailing rate R6-3-50500(G), and if applicable to piece rate or commission R6-3-50500(F).**F. Piece rate or commission (V L 500.65)**

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

1. In resolving separation issues for commission or piece rate worker's the adjudicator must determine whether the claimant left his job because he was personally unsuccessful, or because the employer's requirements or the conditions of work provided by the employer would have caused the average worker with proven ability to be unsuccessful.
 2. Generally, at the time of hire the employer will provide the commission or piece rate worker with a reasonable approximation of the amount of wages he can expect to earn while on the job. If the employer entices a worker to accept employment by quoting completely unrealistic potential earnings, or providing misleading wage information, and the worker's actual wages are disproportionately low, he would have good cause for leaving.
 3. An employer will be considered to have furnished misleading wage information when he indicates that the worker can expect to earn more than 10% in excess of the average wage of the other employees doing the same work on the same basis as the claimant.
 4. A worker's wages will be considered disproportionately low, if, after giving the work a fair trial, his average weekly earnings are substantially below the average weekly wage of his employer's other workers. The adjudicator will consider only those workers who did the same type of work and were paid on the same basis as the claimant. The period of time on which this average is based should as nearly as possible include a full cycle of the employer's business to avoid distortions created by seasonal fluctuations.
 5. The commission or piece rate worker would leave for compelling personal reasons not attributable to the employer; if
 - a. The employer provides the worker with a reasonable appraisal of the amount of wages he can expect to earn on the job but the worker's wages are disproportionately low because of personal inability to produce or sell; or
 - b. The employer did not discuss potential earnings with the worker before hire, or the adjudicator is unable to determine the approximate wages discussed, and his wages are disproportionately low.
 6. The worker leaves voluntarily without good cause when it is established that his low earnings are a result of his failure to:
 - a. Devote necessary time and effort to his work; or
 - b. Follow reasonable instructions of his employer; or
 - c. Give the work a fair trial.
 7. Determining if a worker devoted the necessary time and effort to a job or if he failed to follow reasonable instructions of his employer should not be unduly difficult. However, a determination as to whether a worker has given the work a "fair trial" is sometimes difficult. Several factors must be considered, such as:
 - a. Whether the claimant had actual or related experience in the type of work before accepting the job. Generally, the more extensive the prior experience, the shorter the time necessary to achieve success in the new job.
 - b. The length of time required to attain proficiency, or to develop contacts or leads necessary to result in average earnings in the occupation. For example, selling appliances may require much less time in developing leads than selling insurance.
 - c. The financial strain which would have been created for the claimant had he attempted to continue. For example, 2 or 3 months with little or no income would create an impossible situation for many workers even though they might have achieved success within 6 months.
- G.** Prevailing wage (V L 500.7). A claimant who leaves work solely because his wage is below the prevailing wage shall be disqualified for voluntarily leaving without good cause in connection with the work if he agreed to the wage when he accepted the job unless his rate of pay is below the legal minimum.
- H.** Reduction in wages (V L 500.75)
1. General (V L 500.751). Under the ordinary employment relationship, there is neither an express nor implied agreement that the employer will not reduce wages.
 2. A claimant who quits solely because his wages were reduced shall be disqualified for leaving work voluntarily unless he attempted to adjust his grievance prior to leaving and:
 - a. The wage rate is reduced to an amount which is below the legal minimum, or which would make the work unsuitable in accordance with the refusal of work portion of these rules; or
 - b. The employer arbitrarily reduced the wages as a means of discriminating against the worker, even though the reduced wage is not below the prevailing rate. Arbitrarily reduced means the reduction was substantial or disproportionate and not generally applied.
- Historical Note**
Former Rule number -- Voluntary Leaving 500. - 500.751. Former Rule repealed, new Section R6-3-50500 adopted effective January 24, 1977 (Supp. 77-1). Amended effective February 15, 1978 (Supp. 78-1).
- R6-3-50501. Reserved**
- R6-3-50502. Reserved**
- R6-3-50503. Reserved**
- R6-3-50504. Reserved**
- R6-3-50505. Repealed**
- Historical Note**
Former Rule number -- Voluntary Leaving 505. Former Rule repealed, new Section R6-3-50505 adopted effective January 24, 1977 (Supp. 77-1). Repealed effective July 22, 1997 (Supp. 97-3).
- R6-3-50506. Reserved**
- R6-3-50507. Reserved**
- R6-3-50508. Reserved**
- R6-3-50509. Reserved**
- R6-3-50510. Reserved**
- R6-3-50511. Reserved**
- R6-3-50512. Reserved**
- R6-3-50513. Reserved**
- R6-3-50514. Reserved**
- R6-3-50515. Working conditions (V L 515)**
- A.** General (V L 515.05)
1. The term "working conditions" includes all aspects of the employer-employee relationship, but in this Section it will be confined to environmental conditions such as light, sanitation, fellow-employees, etc.

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

2. A worker who leaves because of dissatisfaction with working conditions, must show that one or more of these conditions are substantially below those prevailing in the area for similar work. Mere dislike, distaste, or inconvenience created by small variations in working conditions will not establish good cause for leaving work. The determination generally will turn on a comparison of the claimant's actions with the degree of tolerance the normal worker would be expected to exercise before leaving under the same conditions.
 3. When an employer imposes unreasonable demands or working conditions which force a worker to terminate his employment, the worker would leave with good cause.
 4. Before good cause or a compelling personal reason for leaving can be established, a worker must have attempted to adjust his grievance prior to leaving unless such an attempt was not feasible.
- B. Apportionment of work (V L 515.2)**
1. An employer may reasonably alter or add to the job duties of an employee from time to time. Unless these changes render the work unsuitable, this is not good cause for leaving. Occasional emergency assignments do not establish good cause.
 2. Assignment of more work to one employee than another in the same classification does not in itself establish good cause for leaving. It may be good cause if:
 - a. The assignment is unreasonably difficult; or
 - b. The assignment of work was made on a discriminatory basis.
- C. Fellow employee (V L 515.4)**
1. A worker who leaves because of inharmonious relations with a fellow employee leaves with good cause if he is established that the conditions were so unpleasant that remaining at work would create an intolerable work situation for him.
 2. In determining whether a situation is intolerable, the following factors should be considered:
 - a. Would continued employment create a severe nervous strain or result in a physical altercation with the other employee?
 - b. Was the worker subjected to extreme verbal abuse or profanity? The importance of profane language as an adverse working condition varies in different types of work.
 3. A physical attack by a fellow-employee would be good cause for leaving if the claimant was clearly not at fault, unless the employer had taken reasonable steps to avoid a recurrence.
- D. Prevailing conditions for similar work in the area (V L 515.55)**
1. A worker who establishes that the actual conditions of his job were substantially below the prevailing standards in the area, leaves for good cause.
 2. It will often be difficult to compare conditions in one establishment against those prevailing in the area for similar work. The adjudicator, in making his determination, may want to refer to such information as:
 - union contracts
 - state or federal law
 - public health regulations
 3. If the conditions are not substandard, but yet create an undue hardship on the individual worker, he leaves for a compelling personal reason not attributable to the employer.
- E. Production requirement or quantity of duties (V L 515.6)**
1. A worker who leaves because of the employer's production requirements leaves without good cause if these requirements are reasonable. The following factors should be considered in determining reasonableness:
 - a. Are the production requirements creating a condition substantially below those prevailing in the area?
 - b. Are the requirements reflected equitably in the worker's wages?
 - c. Are the requirements discriminatory? See R6-3-50515(B).
 2. When a worker who leaves because he cannot, for some personal reason, meet an employer's work requirements, the adjudicator must consider the appropriate Section of these rules relating to his specific reason for leaving.
- F. Supervisor (V L 515.8).** When a worker leaves his job for any reason involving his relations with a supervisor, the adjudicator will apply the same considerations that apply to relations with a fellow employee; see R6-3-50515(C).

Historical Note

Former Rule number -- Voluntary Leaving 515. - 515.8.
 Former Rule repealed, new Section R6-3-50515 adopted effective January 24, 1977 (Supp. 77-1).

ARTICLE 51. DISCHARGE BENEFIT POLICY**R6-3-5101. Reserved****R6-3-5102. Reserved****R6-3-5103. Reserved****R6-3-5104. Reserved****R6-3-5105. General (Misconduct)****A. Misconduct.**

1. The following constitute misconduct sufficient to disqualify a worker from receipt of unemployment insurance benefits pursuant to A.R.S. § 23-775(2):
 - a. An act of wanton or willful disregard of the employer's interest;
 - b. A deliberate violation of the employer's rules;
 - c. A disregard of standards of behavior that the employer has the right to expect of an employee; or
 - d. Negligence to such a degree, or a recurrence of negligence that:
 - i. Manifests culpability, wrongful intent, or evil design; or
 - ii. Shows an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to the employer.
2. A worker does not need to have intended to wrong the employer for the Department to find misconduct connected with the work. Misconduct may be established if there is:
 - a. Indifference to and neglect of the duties required of the worker by the contract or terms of employment; or
 - b. A material breach of any material lawful duty required under the employment contract or terms of employment, when the employer expressly or impliedly sets forth the duty to the worker and the facts show the worker should have reasonably been able to avoid the situation that brought about the discharge.
 - i. In determining whether a worker should have been reasonably expected to have avoided the situation that caused the discharge, the Department shall consider the worker's knowledge of the worker's responsibilities through past experience, explanations, warnings, or other similar occurrences.

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

- ii. The Department shall evaluate the materiality of a duty and the materiality of the breach of the duty by considering what is customary in the type of business in which the worker was employed.
- B. Discharge for a compelling personal reason not attributable to the employer.**
1. The Department ordinarily restricts the determination of a separation from work for compelling personal reasons not attributable to the employer to circumstances that have no direct relationship to a worker's employment and the worker left employment for a cause beyond the worker's control. However, the Department may make a determination that the worker was discharged for a compelling personal reason not attributable to the employer when the employer discharged the worker under subsections (B)(2), (3), and (4).
 2. The Department may determine that the worker was discharged for a compelling personal reason not attributable to the employer when:
 - a. The employer had no reasonable alternative but to discharge the worker; and
 - b. One or more of the following circumstances is present:
 - i. The worker was discharged because of an absence due to incarceration that is determined not to be misconduct under R6-3-5115(E)(1);
 - ii. The worker was discharged because of a physical or mental condition that might have endangered the worker's own safety on the job or the safety of others, such as epilepsy or active tuberculosis; or
 - iii. The worker was discharged because the worker was unable to properly perform the work due to a physical or mental condition; or
 - iv. The worker was discharged because the employer entered into an agreement with another party, other than the worker, that would result in a violation by the employer of a federal or state law if the worker were retained in employment.
 3. The Department shall determine that a discharge was for a compelling personal reason not attributable to the employer when a worker was discharged because of events beyond the worker's reasonable control as a result of the worker being a victim of domestic violence, as defined in A.R.S. §§ 13-3601 and 13-3601.02. Examples of such events are the worker receiving unsolicited phone calls, unauthorized visitors, or other types of harassment at the work place.
 4. The Department shall determine that a discharge was for a compelling personal reason not attributable to the employer if:
 - a. The worker's employment was terminated because the worker's employer was called into active duty in the military; or
 - b. The worker's employment was terminated because a former employee of the employer returned to work for the employer after having been called into active duty in the military, displacing the worker.

Historical Note

Former Rule number Misconduct 5. - 5.1. Former Rule repealed, new Section R6-3-5105 adopted effective January 24, 1977 (Supp. 77-1). Amended effective February 15, 1978 (Supp. 78-1). Amended as an emergency effective August 1, 1979, pursuant to A.R.S. § 41-1003, valid

for only 90 days (Supp. 79-4). Former emergency adoption now adopted effective October 30, 1979 (Supp. 79-5). Amended subsection (B)(1), (2), and (3) effective July 24, 1980 (Supp. 80-4). Amended subsection (A) effective February 24, 1982 (Supp. 82-1). Amended effective December 20, 1995 (Supp. 95-4). Amended by final rulemaking at 13 A.A.R. 87, effective December 20, 2006 (Supp. 06-4). Amended by final rulemaking at 17 A.A.R. 1090, effective May 3, 2011 (Supp. 11-2).

R6-3-5106. Reserved**R6-3-5107. Reserved****R6-3-5108. Reserved****R6-3-5109. Reserved****R6-3-5110. Reserved****R6-3-5111. Reserved****R6-3-5112. Reserved****R6-3-5113. Reserved****R6-3-5114. Reserved****R6-3-5115. Absence (Misconduct 15)****A. General (Misconduct 15.05)**

1. Implicit in the work relationship is the duty of the employee to report for work and remain at work in accordance with the reasonable requirements of his employer. This duty is not absolute, but is qualified by circumstances relative to the situation of both employee and employer. In determining if a claimant's absence from work is a disregard of his employer's interest due regard must be accorded to the customs and conditions of work.
2. If it is customary for employees where the claimant worked to take a day off without pay, a claimant who does so and is discharged is not deemed to have been discharged for misconduct unless the circumstances indicate that he could reasonably have known that his employer would be injured by his absence.
3. When a claimant is discharged for not appearing at work on a day when he customarily does not work, his dismissal is generally for reasons other than misconduct.
4. An exception to the general rules of absence is the discharge of a claimant because of an absence due to incarceration for a first offense. Refer to R6-3-5115(E), "Absence due to incarceration."

B. Notice (Misconduct 15.1)

1. Generally, a claimant's failure to give proper notice of his absence from work in time to permit the employer to make such arrangements as he deems necessary to replace him is tantamount to misconduct connected with the work. However, inability to notify usually justifies a failure to give notice. If the claimant made all reasonable efforts to reach his employer, but could not, failure to give notice is not misconduct.
2. The practices of the employing establishment should be considered in determining what constitutes adequate notice. Absences for causes beyond the claimant's control may be misconduct if the facts establish that notice could have been given and the employer was inconvenienced, not because of the absence, but because of the lack of notice. A claimant's absence from work for causes beyond his control with proper notice at the earliest opportunity is not misconduct. In certain instances notice of absence is unnecessary or waived such as:

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

- a. When the employer has independent knowledge of the claimant's inability to be at work; or
- b. When it has been established by custom that notice is unnecessary; or
- c. When a claimant is the recipient of a severe shock such as the death of a member of his family.
3. Discharge because of failure to provide notice of absence due to incarceration should be adjudicated in accordance with rule R6-3-5115(E).
- C. Permission (Misconduct 15.15)**
1. It is reasonable for employer(s) to require that their employees request permission to be absent from work when such absence may be anticipated. A prudent worker will normally request permission and will not take time off when his request is refused.
2. When a claimant is denied permission for an impending absence from work and is absent- despite the employer's refusal, the necessity for the absence and his employer's reason for not granting permission must be weighed. The claimant's separation from work under such circumstances would be considered misconduct connected with his work; unless
- a. The employer has denied a legitimate leave request without valid reason; or
- b. The claimant would suffer serious detriment if he did not take time off work; or
- c. The claimant was absent for a compelling personal reason.
3. Failure of a claimant to request permission for an anticipated absence does not of itself constitute misconduct. Such cases should be evaluated in accordance with R6-3-5115(B), "Notice" and R6-3-5115(D), "Reasons for absence."
- D. Reasons for absence (Misconduct 15.2)**
1. A claimant who is discharged due to absences beyond his control such as illness, accident, unavoidable delay in transportation, urgent domestic responsibilities and the like is discharged for reasons other than misconduct. Even repeated absences for these causes are not deemed to be misconduct if the facts indicate the absence could not have been avoided. However, failure to give notice of such absences may constitute misconduct. Failure to give notice is discussed in R6-3-5115(B), "Notice."
2. Absence from work due to reasonably pressing domestic circumstances is not misconduct when proper notice is given. For example: serious illness or death of a close relative is deemed of such pressing circumstances as to justify the absence.
3. A claimant's discharge is considered to be for misconduct connected with his work when he is discharged because of an absence from work; when
- a. He is absent for a capricious reason; or
- b. He is absent for causes he does not substantiate, or gives no excuse for; or
- c. He is absent from work due to intoxication.
- E. Absence due to incarceration (Misconduct 15.25)**
1. A discharge for absence due to incarceration is disqualifying when:
- a. The claimant did not properly notify, or failed to make a reasonable effort to properly notify the employer of his absence; or
- b. The evidence clearly indicates that the claimant could have avoided his incarceration by the payment of a fine; or
- c. The claimant was incarcerated for a second time while working for his last employer; or
- d. The claimant was confined for a period in excess of 24 hours, and the available evidence tends to establish that he committed the offense for which he was confined.
2. A claimant who is discharged because of an absence or failure to give notice due to incarceration is separated from work for a compelling personal reason not attributable to his employer when the separation is determined not to be misconduct under rule R6-3-5115(E)(1).
3. If a claimant was discharged because of the offense which caused his incarceration the determination should be based on rule R6-3-51490, "Violation of law".

Historical Note

Former Rule number Misconduct 15. - 15.25. Former Rule repealed, new Section R6-3-5115 adopted effective January 24, 1977 (Supp. 77-1). Amended effective February 15, 1978 (Supp. 78-1). Amended effective August 3, 1978 (Supp. 78-4). Amended subsection (E)(2) effective July 24, 1980 (Supp. 80-4).

R6-3-5116. Reserved**R6-3-5117. Reserved****R6-3-5118. Reserved****R6-3-5119. Reserved****R6-3-5120. Reserved****R6-3-5121. Reserved****R6-3-5122. Reserved****R6-3-5123. Reserved****R6-3-5124. Reserved****R6-3-5125. Reserved****R6-3-5126. Reserved****R6-3-5127. Reserved****R6-3-5128. Reserved****R6-3-5129. Reserved****R6-3-5130. Reserved****R6-3-5131. Reserved****R6-3-5132. Reserved****R6-3-5133. Reserved****R6-3-5134. Reserved****R6-3-5135. Reserved****R6-3-5136. Reserved****R6-3-5137. Reserved****R6-3-5138. Reserved****R6-3-5139. Reserved****R6-3-5140. Reserved****R6-3-5141. Reserved****R6-3-5142. Reserved****R6-3-5143. Reserved****R6-3-5144. Reserved****R6-3-5145. Attitude toward employer (Misconduct 45)****A. General (Misconduct 45.05)**

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

1. In order for an act by a worker to be considered misconduct, it must be established that the results of the act had, or could have had, an adverse affect on the employer's interests.
 2. When a rule or standard of conduct normally applied in all employment relationships is violated, misconduct can be presumed but not established in every case. This would include matters involving prompt and regular attendance, dishonesty, violation of law, etc.
 3. To establish misconduct the act must have adversely affected the employer in his capacity as an employer and not as a private individual. Thus, if the worker is discharged because of an off-duty incident involving the employer and the interest of the employer adversely affected is not related to his position as an employer the claimant is discharged for reasons other than misconduct.
 4. In order for misconduct to be established the employer need not have actually suffered damage as a result of the worker's act, the potentiality for damage must also be considered. In many cases it may be established that his interests could have been adversely affected by the commission or omission of the act.
 5. In cases where a disregard of an implied obligation results in dismissal the adjudicator should consider any warnings the worker may have received for the same or similar violations since they draw the worker's attention to that which is expected.
- B. Agitation or criticism (Misconduct 45.1)**
1. When a worker expresses dissatisfaction with his employer or stirs up resentment against his employer, the conditions under which the action occurs and the worker's reason for taking such action will determine whether misconduct connected with the work is established.
 2. Individual or group expressions of dissatisfaction with wages or other working conditions, or attempts to organize other workers to express such dissatisfaction, are not misconduct when made in a manner that does not jeopardize the employer's business. Generally, when such actions are taken outside working hours and remain within the boundaries of reasonableness, misconduct will not be found.
 3. When a worker creates or expresses dissatisfaction, discontent, or resentment toward his employer for purposes other than to remedy problems, or improve working conditions, there is a strong indication of misconduct.
 4. Misconduct may be found in the actions of a worker whose unreasonable agitation or criticism stemmed from an intent to resolve grievances or to improve work conditions when such actions result in insubordination, material neglect of duties, etc.
- C. Competing with employer or aiding competitor (Misconduct 45.15)**
1. A worker who is discharged for engaging in a business, whether or not it is his own, that is in competition with the employer is discharged for disqualifying reasons. Even though he may be performing the work on his own time, if it is work which could have been performed by the employer, his actions are a disregard of the employer's interests.
 2. Misconduct may be indicated when an employee recommends a competitor of his employer to a customer who desires a service or product the employer can furnish.
 3. If an employer has an established rule which prohibits salesmen from carrying a competing line of merchandise, violation of such rule constitutes misconduct.
- D. Damage to equipment or materials (Misconduct 45.25)**
1. If a worker causes damage to, or creates a situation of potential damages to an employer's property, equipment or materials through indifference or carelessness, misconduct may be established.
 2. While minor instances of carelessness or negligence may not amount to indifference, repetition, especially after warning(s) establishes a disregard of the employer's interest and constitutes misconduct connected with the work. For a further discussion of negligence and accidents see R6-3-51300 and R6-3-51310.
- E. Disloyalty (Misconduct 45.3)**
- F. Disloyalty to employer (Misconduct 45.31)**
1. Disloyalty is misconduct when manifested by acts or omissions by a worker which establish a breach or the obligations owed his employer.
 2. Conspiring with fellow employees or others to cause damage or loss or ignoring a duty to act to prohibit loss or damage to the employer is disloyalty and is disqualifying.
 3. Knowingly, speaking or demonstrating against the employer's product(s) or operation in a manner which could adversely affect the confidence of customers or damage the reputation of the employer constitutes a disregard of the employer's interest.
- G. Security clearance (Misconduct 45.32).** A worker discharged because he cannot be cleared by the employer for access to classified security information which is required for the job is deemed to have been discharged for misconduct connected with the work if he knew or could reasonably be expected to know that clearance would be required and intentionally gave false or misleading information, or knowingly failed to disclose information that might affect his security clearance.
- H. Indifference (Misconduct 45.35)**
1. Normally a worker's lack of interest in the plans, purpose, or goals of his employer is not misconduct if the worker performs his own duties in a generally satisfactory manner.
 2. A worker who is discharged because he is not interested in or is considered not suited for promotion is not discharged for misconduct.
 3. Isolated acts of inefficiency, inability, errors in judgment or discretion, as well as single acts of ordinary negligence, do not establish indifference to a degree that warrants a finding of misconduct. Only when such indifference amounts to a serious neglect of the duties and responsibilities assigned to the worker would misconduct be indicated. In determining when neglect shows a degree of indifference warranting disqualification, the nature of the neglect, the number of instances of neglect, the worker's understanding of his duties as pointed out through expressed rules, warnings, etc., must be considered. See R6-3-51310.
- I. Injury to employer through relations with patron (Misconduct 45.4)**
1. It is of unusual importance to employers, who rely on public acceptance of their products or service, to have their employees serve the public in such a manner that the customer is pleased.
 2. It should be remembered, however, that in constantly dealing with the public, some friction will occur. Although an employer may well adopt the attitude that in such frictional situations the customer is always right, this is not necessarily so. Thus, an employee discharged because of some disagreement with a customer, is gener-

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

ally not to be disqualified unless he has allowed himself to act out of all proportion to the cause of the dispute.

Historical Note

Former Rule number Misconduct 45. - 45.4. Former Rule repealed, new Section R6-3-5145 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-5146. Reserved
 R6-3-5147. Reserved
 R6-3-5148. Reserved
 R6-3-5149. Reserved
 R6-3-5150. Reserved
 R6-3-5151. Reserved
 R6-3-5152. Reserved
 R6-3-5153. Reserved
 R6-3-5154. Reserved
 R6-3-5155. Reserved
 R6-3-5156. Reserved
 R6-3-5157. Reserved
 R6-3-5158. Reserved
 R6-3-5159. Reserved
 R6-3-5160. Reserved
 R6-3-5161. Reserved
 R6-3-5162. Reserved
 R6-3-5163. Reserved
 R6-3-5164. Reserved
 R6-3-5165. Reserved
 R6-3-5166. Reserved
 R6-3-5167. Reserved
 R6-3-5168. Reserved
 R6-3-5169. Reserved
 R6-3-5170. Reserved
 R6-3-5171. Reserved
 R6-3-5172. Reserved
 R6-3-5173. Reserved
 R6-3-5174. Reserved
 R6-3-5175. Reserved
 R6-3-5176. Reserved
 R6-3-5177. Reserved
 R6-3-5178. Reserved
 R6-3-5179. Reserved
 R6-3-5180. Reserved
 R6-3-5181. Reserved
 R6-3-5182. Reserved
 R6-3-5183. Reserved
 R6-3-5184. Reserved
 R6-3-5185. Connected with work (Misconduct 85)

- A. A disqualification for misconduct is assessed only when a claimant's discharge is determined to be in "connection with the work." Any action by a worker in the course of his duties, or committed on the employer's premises during working hours is connected with the work.
- B. Generally, what a worker does when he is off work is of no concern to the employer and the employer has no basis for holding him accountable for his off-duty conduct. However, when a worker's off-duty conduct bears such a relationship to his job as to render him unsuitable to continue in his job because of the adverse affect it would have on the employer's operation, such off-duty action would be connected with the work.
- C. If an employee's duties and responsibilities are such that his actions while off-duty may adversely affect the reputation, public trust, or confidence on which his employer's business is dependent his off-duty misconduct may be connected with the work.
- D. Adjudicators should refer to the following sections of the Policy rules for guidance on specific off-duty conduct issues:
- | | |
|------------------------------------|---------------|
| Absence due to incarceration | R6-3-5115(E) |
| Intoxicants and use of intoxicants | R6-3-51270 |
| Garnishment | R6-3-51485(B) |
| Violation of law | R6-3-51490 |

Historical Note

Former Rule number Misconduct 85. Former Rule repealed, new Section R6-3-5185 adopted effective January 24, 1977 (Supp. 77-1). Amended subsection (D) effective July 9, 1980 (Supp. 80-4).

R6-3-5186. Reserved

through

R6-3-51134. Reserved [45,948 Sections Reserved]

R6-3-51135. Repealed

Historical Note

Former Rule number Misconduct 135. - 135.35. Former Rule repealed, new Section R6-3-51135 adopted effective January 24, 1977 (Supp. 77-1). Section repealed effective July 22, 1997 (Supp. 97-3).

R6-3-51136. Reserved

R6-3-51137. Reserved

R6-3-51138. Reserved

R6-3-51139. Reserved

R6-3-51140. Misappropriation of Funds or Property; Falsification of Employment Records

- A. To determine whether a claimant's misappropriation of company funds or property is misconduct that will disqualify the claimant from receipt of unemployment benefits, the Department shall consider the employer's practices regarding the handling of funds and whether the claimant knew that the claimant was misappropriating funds.
1. A claimant who is discharged for knowingly misappropriating company funds is discharged for misconduct connected with employment. Misappropriation includes misusing credit cards, checks, or other financial instruments owned or controlled by the employer.
 2. A claimant who is discharged for retaining funds to which the claimant honestly believes the claimant is entitled, and makes adjustment or restitution upon notification, is discharged for reasons other than misconduct relating to such funds.

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

3. A claimant who is discharged for knowingly misappropriating company property, or conversion of the employer's property or theft is discharged for misconduct connected with employment. **R5-3-51165. Reserved**
4. A claimant who is discharged for retaining company property to which the claimant honestly believes the claimant is entitled, and makes adjustment or restitution upon notification, is discharged for reasons other than misconduct relating to such company property. **R5-3-51166. Reserved**
- B.** A claimant who is discharged for falsification of an employment application or for falsification of a written document related to the claimant's obtaining or retaining employment or for falsification of work or time records is discharged for misconduct related to employment when the available evidence establishes that the falsification was or is: **R5-3-51167. Reserved**
1. Material to the claimant's ability to obtain, retain, or perform the job; and **R5-3-51168. Reserved**
 2. Of such a nature as to adversely affect a material or substantial interest of the employer. **R5-3-51169. Reserved**
- R5-3-51170. Reserved**
- R5-3-51171. Reserved**
- R5-3-51172. Reserved**
- R5-3-51173. Reserved**
- R5-3-51174. Reserved**
- R5-3-51175. Reserved**
- R5-3-51176. Reserved**
- R5-3-51177. Reserved**

Historical Note

Former Rule number Misconduct 140. - 140.25. Former Rule repealed, new Section R6-3-51140 adopted effective January 24, 1977 (Supp. 77-1). Amended as an emergency effective August 1, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-4). Former emergency adoption now adopted effective October 30, 1979 (Supp. 79-5). Amended effective December 20, 1995 (Supp. 95-4). Amended by final rulemaking at 24 A.A.R. 1417, effective June 19, 2018 (Supp. 18-2).

- R5-3-51141. Reserved**
- R5-3-51142. Reserved**
- R5-3-51143. Reserved**
- R5-3-51144. Reserved**
- R5-3-51145. Reserved**
- R5-3-51146. Reserved**
- R5-3-51147. Reserved**
- R5-3-51148. Reserved**
- R5-3-51149. Reserved**
- R5-3-51150. Reserved**
- R5-3-51151. Reserved**
- R5-3-51152. Reserved**
- R5-3-51153. Reserved**
- R5-3-51154. Reserved**
- R5-3-51155. Reserved**
- R5-3-51156. Reserved**
- R5-3-51157. Reserved**
- R5-3-51158. Reserved**
- R5-3-51159. Reserved**
- R5-3-51160. Reserved**
- R5-3-51161. Reserved**
- R5-3-51162. Reserved**
- R5-3-51163. Reserved**
- R5-3-51164. Reserved**

- R5-3-51178. Reserved**
- R5-3-51179. Reserved**
- R5-3-51180. Reserved**
- R5-3-51181. Reserved**
- R5-3-51182. Reserved**
- R5-3-51183. Reserved**
- R5-3-51184. Reserved**
- R5-3-51185. Reserved**
- R5-3-51186. Reserved**
- R5-3-51187. Reserved**
- R5-3-51188. Reserved**
- R6-3-51189. Reserved**

R6-3-51190. Evidence (Misconduct 190)**A. General (Misconduct 190.05)**

1. Evidence is that which furnishes any mode of proof or that which is submitted as a means of learning the truth of any alleged matter of fact. This evidence is usually in the form of oral or written statements of a claimant, employer, or witnesses. The adjudicator must obtain all pertinent evidence reasonably available to make a non-monetary determination.
2. A claimant or employer statement written and signed by him is valuable as evidence. Documentary evidence, such as physician's statements or union by-laws and contracts, is often significant. Such evidence should be fully identified and proved authentic in order to have evidential weight.
3. From the standpoint of logic, evidence which does not tend to establish a fact should not be considered in determining the truth of that fact.

B. Burden of proof and presumption (Misconduct 190.1)

1. The burden of proof consists of the requirement to submit evidence of such nature that, taking all other circumstances into account, the facts alleged appear to be true. When this burden has been met, the evidence becomes proof.
2. The burden of proof rests upon the individual who makes a statement.
 - a. If a statement is denied by another party, and not supported by other evidence, it cannot be presumed to be true.

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

- b. When a discharge has been established, the burden of proof rests on the employer to show that it was for disqualifying reasons. This burden may be discharged by an admission by the claimant, or his failure or refusal to deny the charge when faced with it.
- c. An employer who discharges a worker and charges misconduct but refuses or fails to bring forth any evidence to dispute a denial by the claimant does not discharge the burden of proof. It is important to keep in mind that mere allegations of misconduct are not sufficient to sustain such a charge.
- C. Weight and sufficiency (Misconduct 190.15)
1. Evidence must be evaluated during the course of adjudication to determine whether it is sufficient to make a decision. Sufficiency is reached when further rebuttal or circumstantial evidence will not alter the conclusions of the adjudicator.
 2. When sufficient evidence has been obtained, all the facts available must be weighed. Only relevant evidence can be considered.
 - a. Unsupported oral statements may be outweighed by documentary evidence from disinterested third parties.
 - b. Specific detailed facts must be given more credence than general statements.
 - c. Credible testimony of an eye witness must be given more weight than hearsay statements.
 3. When the evidence, in its entirety, is evenly balanced, or weighs in favor of the claimant, misconduct has not been established and no disqualification is in order. When there is conflicting evidence, but the adjudicator concludes that the weight of evidence supports the employer's allegations, he should hold that the claimant was discharged for misconduct.
- Historical Note**
Former Rule number Misconduct 190. - 190.15. Former Rule repealed, new Section R6-3-51190 adopted effective January 24, 1977 (Supp. 77-1).
- R6-3-51191. Reserved
- R6-3-51192. Reserved
- R6-3-51193. Reserved
- R6-3-51194. Reserved
- R6-3-51195. Reserved
- R6-3-51196. Reserved
- R6-3-51197. Reserved
- R6-3-51198. Reserved
- R6-3-51199. Reserved
- R6-3-51200. Reserved
- R6-3-51201. Reserved
- R6-3-51202. Reserved
- R6-3-51203. Reserved
- R6-3-51204. Reserved
- R6-3-51205. Reserved
- R6-3-51206. Reserved
- R6-3-51207. Reserved
- R6-3-51208. Reserved
- R6-3-51209. Reserved
- R6-3-51210. Reserved
- R6-3-51211. Reserved
- R6-3-51212. Reserved
- R6-3-51213. Reserved
- R6-3-51214. Reserved
- R6-3-51215. Reserved
- R6-3-51216. Reserved
- R6-3-51217. Reserved
- R6-3-51218. Reserved
- R6-3-51219. Reserved
- R6-3-51220. Reserved
- R6-3-51221. Reserved
- R6-3-51222. Reserved
- R6-3-51223. Reserved
- R6-3-51224. Reserved
- R6-3-51225. Reserved
- R6-3-51226. Reserved
- R6-3-51227. Reserved
- R6-3-51228. Reserved
- R6-3-51229. Reserved
- R6-3-51230. Reserved
- R6-3-51231. Reserved
- R6-3-51232. Reserved
- R6-3-51233. Reserved
- R6-3-51234. Reserved
- R6-3-51235. Health or physical condition (Misconduct 235)**
Pregnancy (Misconduct 235.4). A discharge for pregnancy is never disqualifying, but under certain conditions may be for compelling personal reasons not attributable to the employer. See R6-3-5105(B).
- Historical Note**
Former Rule number Misconduct 235. - 235.4. Former Rule repealed, new Section R6-3-51235 adopted effective January 24, 1977 (Supp. 77-1). Amended effective February 15, 1978 (Supp. 78-1). Amended effective July 24, 1980 (Supp. 80-4). Typographical error corrected (Supp. 97-3).
- R6-3-51236. Reserved
- R6-3-51237. Reserved
- R6-3-51238. Reserved
- R6-3-51239. Reserved
- R6-3-51240. Reserved
- R6-3-51241. Reserved
- R6-3-51242. Reserved
- R6-3-51243. Reserved
- R6-3-51244. Reserved
- R6-3-51245. Reserved

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

- R6-3-51246. Reserved
- R6-3-51247. Reserved
- R6-3-51248. Reserved
- R6-3-51249. Reserved
- R6-3-51250. Reserved
- R6-3-51251. Reserved
- R6-3-51252. Reserved
- R6-3-51253. Reserved
- R6-3-51254. Reserved

R6-3-51255. Insubordination (Misconduct 255)

A. General (Misconduct 255.05)

1. An employer has the right to expect that reasonable orders, given in a civil manner, will be followed and that a supervisor's authority will be respected and not undermined. There is no precise rule by which to judge when a dispute with a supervisor constitutes insubordination if insolence, profanity, or threats are not involved. The pertinent overall consideration is whether the worker acted reasonably in view of all the circumstances. Some examples of insubordination are:
 - a. Refusal to follow reasonable and proper instructions; or
 - b. Insolence in actions or language, profanity, or threats toward a supervisor without due provocation; or
 - c. Refusal to accept assignment to suitable work.
2. Incompatibility with a supervisor does not of itself constitute insubordination, neither does an employee's emphatic insistence on discussing the situation if he is acting in good faith. Misconduct may exist if the worker resorts to hot-tempered remarks, threats, or insolence, without due provocation.

Historical Note

Former Rule number Misconduct 255. - 255.05. Former Rule repealed, new Section R6-3-51255 adopted effective January 24, 1977 (Supp. 77-1).

- R6-3-51256. Reserved
- R6-3-51257. Reserved
- R6-3-51258. Reserved
- R6-3-51259. Reserved
- R6-3-51260. Reserved
- R6-3-51261. Reserved
- R6-3-51262. Reserved
- R6-3-51263. Reserved
- R6-3-51264. Reserved
- R6-3-51265. Reserved
- R6-3-51266. Reserved
- R6-3-51267. Reserved
- R6-3-51268. Reserved
- R6-3-51269. Reserved

R6-3-51270. Intoxication and use of intoxicants (Misconduct 270)

- A.** When a claimant is discharged for drinking intoxicating liquor, or using illegal drugs at work, or reporting to work, or coming

- on the employer's premises under the influence of intoxicants, a disregard of the employer's interest may be established.
- B.** A discharge for intoxication off the job is not disqualifying unless it can be shown that a claimant's off-duty intoxication is connected with his work. See R6-3-5185.
 - C.** Absences or tardiness caused by off-duty intoxication or its after effects are usually considered to be for capricious reasons and should be adjudicated in accordance with R6-3-5115(C) and R6-3-5115(D).
 - D.** Inefficiency caused by the off-duty use of intoxicants may be misconduct, and should be treated the same as any other charge of inefficiency caused by actions within the control of the claimant. See R6-3-51300.

Historical Note

Former Rule number Misconduct 270. Former Rule repealed, new Section R6-3-51270 adopted effective January 24, 1977 (Supp. 77-1).

- R6-3-51271. Reserved
- R6-3-51272. Reserved
- R6-3-51273. Reserved
- R6-3-51274. Reserved
- R6-3-51275. Reserved
- R6-3-51276. Reserved
- R6-3-51277. Reserved
- R6-3-51278. Reserved
- R6-3-51279. Reserved
- R6-3-51280. Reserved
- R6-3-51281. Reserved
- R6-3-51282. Reserved
- R6-3-51283. Reserved
- R6-3-51284. Reserved
- R6-3-51285. Reserved
- R6-3-51286. Reserved
- R6-3-51287. Reserved
- R6-3-51288. Reserved
- R6-3-51289. Reserved
- R6-3-51290. Reserved
- R6-3-51291. Reserved
- R6-3-51292. Reserved
- R6-3-51293. Reserved
- R6-3-51294. Reserved
- R6-3-51295. Reserved
- R6-3-51296. Reserved
- R6-3-51297. Reserved
- R6-3-51298. Reserved
- R6-3-51299. Reserved

R6-3-51300. Manner of performing work (Misconduct 300)

A. General (Misconduct 300.05)

1. A worker has the implied duty of performing his work with ordinary care and diligence and of making reasonable efforts to live up to such standards of performance as

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

are required by his employer. Misconduct generally arises when a worker knowingly fails to exercise ordinary care in the performance of his duties.

2. "Ordinary care" means that degree of care which persons of ordinary prudence are accustomed to exercise under the same or similar circumstances, having due regard to his or others' rights and safety and to the objectives of the employer. This standard is general and application will vary with the circumstances. For example, the ordinary care expected of a precision engineer will vary considerably from the care expected of a ditch digger. The accepted standard of performance establishes what is ordinary care.
3. This does not mean that every claimant discharged because of unsatisfactory work performance is subject to disqualification. In the absence of gross carelessness or negligence, or recurrence of ordinary carelessness or negligence, the claimant's failure to perform his work properly is presumed to be attributed to good faith error in judgment, inability, incapacity, inadvertence, etc. A conscientious employee may be unable to perform his duties to the satisfaction of his employer because of limited mental capacity, inexperience, or lack of coordination. If such person is discharged for unsatisfactory work his discharge is not for misconduct.

B. Accident (Misconduct 300.1)

1. Accident is defined as "an event that takes place without one's foresight or expectation." A worker is expected to exercise that degree of ordinary care in proportion to the danger(s) inherent in the activity in which he is engaged.
2. When a worker fails to exercise ordinary care and an accident occurs, it establishes his negligence. The degree of negligence will determine whether there is misconduct. In determining the degree of negligence, the following should be considered:
 - a. The worker's knowledge of the potential seriousness of damage that could result from his negligence.
 - b. Whether he had been previously warned against negligent behavior which contributed to the final accident.
 - c. Pressure under which the worker had to make decisions which contributed to the accident.
 - d. Possibility for the claimant to have avoided the accident.
 - e. Extent to which other responsible persons contributed to the accident.

Historical Note

Former Rule number Misconduct 300. - 300.1. Former Rule repealed, new Section R6-3-51300 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-51301. Reserved**R6-3-51302. Reserved****R6-3-51303. Reserved****R6-3-51304. Reserved****R6-3-51305. Reserved****R6-3-51306. Reserved****R6-3-51307. Reserved****R6-3-51308. Reserved****R6-3-51309. Reserved****R6-3-51310. Neglect of duty (Misconduct 310)****A. Duties not discharged (Misconduct 310.1)**

1. When an employee is given certain tasks to do, an employer may expect that such duties will be performed in accordance with the ability of the worker. Failure to complete assigned work will be considered the same as improper completion of work. The reason(s) for the non-performance or improper performance will determine whether there was misconduct.
2. A worker discharged for failing to do work which he could reasonably have been able to do or who does work improperly without reasonable excuse, is discharged for misconduct. Important considerations are:
 - a. The worker's knowledge and understanding of his responsibilities, and
 - b. The extent of his opportunity and ability to do his work properly.

B. Personal comfort and convenience (Misconduct 310.15)

1. Loafing, as distinguished from inability to maintain a production requirement, must be considered in the light of the employee's past record and previous warnings.
2. Sleeping on the job is generally considered to be misconduct connected with the work. However, sleeping on the job may not establish misconduct, such as when:
 - a. The claimant's sleeping was caused by an unusual circumstance, such as a lengthy period of work; or
 - b. Drowsiness induced by medically prescribed drugs.

C. Temporary cessation of work (Misconduct 310.2)

1. Unauthorized cessation of work, for reasons within the control of the employee, and for inadequate cause, is considered misconduct connected with the work.
2. Employees need certain personal time during working hours. Temporary cessation of work for such purposes is generally not misconduct. However, failure to follow rules and procedures concerning leaving work area may be misconduct. The reasonableness of the worker's action under the specific circumstances will determine whether the act is misconduct.

Historical Note

Former Rule number Misconduct 310. - 310.2. Former Rule repealed, new Section R6-3-51310 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-51311. Reserved**R6-3-51312. Reserved****R6-3-51313. Reserved****R6-3-51314. Reserved****R6-3-51315. Reserved****R6-3-51316. Reserved****R6-3-51317. Reserved****R6-3-51318. Reserved****R6-3-51319. Reserved****R6-3-51320. Reserved****R6-3-51321. Reserved****R6-3-51322. Reserved****R6-3-51323. Reserved****R6-3-51324. Reserved****R6-3-51325. Reserved****R6-3-51326. Reserved****R6-3-51327. Reserved**

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-51328. Reserved	R6-3-51359. Reserved
R6-3-51329. Reserved	R6-3-51360. Reserved
R6-3-51330. Reserved	R6-3-51361. Reserved
R6-3-51331. Reserved	R6-3-51362. Reserved
R6-3-51332. Reserved	R6-3-51363. Reserved
R6-3-51333. Reserved	R6-3-51364. Reserved
R6-3-51334. Reserved	R6-3-51365. Reserved
R6-3-51335. Reserved	R6-3-51366. Reserved
R6-3-51336. Reserved	R6-3-51367. Reserved
R6-3-51337. Reserved	R6-3-51368. Reserved
R6-3-51338. Reserved	R6-3-51369. Reserved
R6-3-51339. Reserved	R6-3-51370. Reserved
R6-3-51340. Reserved	R6-3-51371. Reserved
R6-3-51341. Reserved	R6-3-51372. Reserved
R6-3-51342. Reserved	R6-3-51373. Reserved
R6-3-51343. Reserved	R6-3-51374. Reserved
R6-3-51344. Reserved	R6-3-51375. Reserved
R6-3-51345. Retirement	R6-3-51376. Reserved
A. A worker who has no alternative to retiring or leaving employment to accept a pension, because of a requirement imposed by the worker's employer or a collective bargaining agreement, is discharged for nondisqualifying reasons when:	R6-3-51377. Reserved
1. The collective bargaining agreement under which the worker is employed mandates the worker's retirement at a specified age,	R6-3-51378. Reserved
2. The employer has a rule mandating retirement at a specified age, or	R6-3-51379. Reserved
3. The employer notifies the worker that the worker has no choice but to accept retirement.	R6-3-51380. Reserved
B. The Department shall determine the employer's chargeability for benefits in accordance with A.R.S. § 23-727 and A.A.C. R6-3-1708.	R6-3-51381. Reserved
	R6-3-51382. Reserved
	R6-3-51383. Reserved
	R6-3-51384. Reserved
	R6-3-51385. Relation of offense to discharge (Misconduct 385)
	A. Before a disqualification for a discharge for misconduct may be applied, the worker must have committed an act(s) of misconduct connected with his work and he must have been discharged for such act(s).
	B. Generally, only the employer can state authoritatively the reasons for the worker's dismissal. If the discharge does not follow the commission of misconduct in a prompt and reasonable sequence of events, the burden falls on the employer to establish the causal relationship. When an unreasonable length of time has elapsed between the commission of the act and the discharge, the employer has in effect condoned the act, and the subsequent discharge is not for work-connected misconduct.
	Historical Note
	Former Rule number Misconduct 385. Former Rule repealed, new Section R6-3-51385 adopted effective January 24, 1977 (Supp. 77-1). Amended effective April 6, 1979 (Supp. 79-2).
R6-3-51346. Reserved	R6-3-51386. Reserved
R6-3-51347. Reserved	R6-3-51387. Reserved
R6-3-51348. Reserved	R6-3-51388. Reserved
R6-3-51349. Reserved	R6-3-51389. Reserved
R6-3-51350. Reserved	
R6-3-51351. Reserved	
R6-3-51352. Reserved	
R6-3-51353. Reserved	
R6-3-51354. Reserved	
R6-3-51355. Reserved	
R6-3-51356. Reserved	
R6-3-51357. Reserved	
R6-3-51358. Reserved	R6-3-51390. Relations with fellow employees (Misconduct 390)

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

- A. General (Misconduct 390.05). An employer has the right to expect that his employees will not conduct themselves toward each other in such manner as to interfere unduly with the routine or efficient conduct of his business. Temperamental inability to get along with fellow employees is not deemed to be misconduct connected with the work. Only when incompatibility manifests itself in an overt act which could impair the efficiency of operations, or could result in injury to the employer's interest may it be deemed misconduct.
- B. Abusive or profane language (Misconduct 390.1)
1. The use of abusive or profane language may be work connected misconduct depending upon the circumstances. If the employment is of a nature that the use of such language interferes with the proper routine of the employer's business, misconduct exists as there is a violation of the employee's duty to the employer.
 2. At some work sites mildly abusive and profane language are accepted as normal standards of behavior. The use of such language in those employment situations does not constitute misconduct. Only when it is used in such a belligerent or vociferous manner that there is interference with good order and discipline at the establishment can misconduct be established.
 3. The occasional use of profanity is not misconduct unless it leads to dissatisfaction and discord among employees, and the employer had previously warned against its use.
- C. Altercation or assault (Misconduct 390.2). Fighting with a fellow employee on the employer's premises is generally considered to be misconduct connected with the work. However, if the claimant is acting in self-defense or the evidence indicates that the fault and first blow or attempted assault rests with the other employee, the claimant is not deemed to have committed an act of misconduct connected with the work.
- D. Annoyance of fellow employee (Misconduct 390.25)
1. If an individual molests, knowingly irritates, or otherwise annoys his fellow employees during working hours, he shall be considered to have committed an act of misconduct connected with the work unless the disagreeable situation resulted from good faith actions or in connection with the worker's responsibilities.
 2. Ordinary bickering with or "baiting" a fellow employee generally is not deemed misconduct conducted with the work unless it becomes potentially harmful to the employer and the worker has been made aware through general rules or warnings that he must avoid or discontinue such action(s).

Historical Note

Former Rule number Misconduct 390. - 390.25. Former Rule repealed, new Section R6-3-51390 adopted effective January 24, 1977 (Supp. 77-1).

- R6-3-51391. Reserved
 R6-3-51392. Reserved
 R6-3-51393. Reserved
 R6-3-51394. Reserved
 R6-3-51395. Reserved
 R6-3-51396. Reserved
 R6-3-51397. Reserved
 R6-3-51398. Reserved
 R6-3-51399. Reserved
 R6-3-51400. Reserved

- R6-3-51401. Reserved
 R6-3-51402. Reserved
 R6-3-51403. Reserved
 R6-3-51404. Reserved
 R6-3-51405. Reserved
 R6-3-51406. Reserved
 R6-3-51407. Reserved
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 R6-3-51428. Reserved
 R6-3-51429. Reserved
 R6-3-51430. Reserved
 R6-3-51431. Reserved
 R6-3-51432. Reserved
 R6-3-51433. Reserved
 R6-3-51434. Reserved

R6-3-51435. Tardiness (Misconduct 435)

- A. The duty to report to work on time is similar to the duty to be present for work. The responsibility for punctuality is expressed or implied in the contract of employment.
- B. The degree of responsibility may vary in proportion to the potential harm to the employer and to the degree of control the worker had over his tardiness. Late arrival due to unavoidable delay in transportation, emergency situations, or causes not within the claimant's control is not misconduct. Unnecessary delay in arrival beyond the time that the worker should have been able to get to work after considering his reason for delay may constitute misconduct.
- C. An isolated instance of tardiness usually is not misconduct. However, when an employee has special responsibilities such as opening an establishment, furnishing power and heat for

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

others and the like, his failure to exercise a high degree of concern for punctuality may amount to misconduct. In the absence of pressing responsibilities, misconduct may be found in repetition of tardiness caused by the worker's failure to exercise due care for punctuality.

Historical Note

Former Rule number Misconduct 435. Former Rule repealed, new Section R6-3-51435 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-51436. Reserved
 R6-3-51437. Reserved
 R6-3-51438. Reserved
 R6-3-51439. Reserved
 R6-3-51440. Reserved
 R6-3-51441. Reserved
 R6-3-51442. Reserved
 R6-3-51443. Reserved
 R6-3-51444. Reserved
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 R6-3-51466. Reserved
 R6-3-51467. Reserved
 R6-3-51468. Reserved
 R6-3-51469. Reserved
 R6-3-51470. Reserved
 R6-3-51471. Reserved
 R6-3-51472. Reserved
 R6-3-51473. Reserved

R6-3-51474. Reserved

R6-3-51475. Union relations (Misconduct 475)

- A.** Membership or activity in union (Misconduct 475.5). Union activity except as hereinafter specified does not constitute an intentional breach of a worker's obligation toward his employer, nor may it be construed as disregard of the employer's interest. Membership in a union, agitation for unionization, or support of a union are not acts of misconduct in themselves. A worker who is discharged for joining a union is not discharged for misconduct connected with his work. This is generally also true of a worker dismissed because of union activity. However, when the union activities violate a known and reasonable company rule such as unauthorized solicitation of membership, or collection of dues and the like on company time or premises, a discharge for that reason is usually for misconduct connected with the work.
- B.** Refusal to join or retain membership in union (Misconduct 475.6)
1. The Constitution of Arizona provides: "No person shall be denied the opportunity to obtain or retain employment because of non-membership in a labor organization, nor shall the state or any subdivision thereof, or any corporation, individual or association enter into any agreement, written or oral, which excludes any person from employment or continuation of employment because of non-membership in a labor organization." In accordance therewith, a worker who is discharged in Arizona or in another state having a "right to work" law because of refusal to pay union initiation fees or membership dues, is discharged for a reason other than misconduct connected with the work.
 2. If the worker is discharged from employment in a state which does not have a "right to work" law, refer to R6-3-50475(B).

Historical Note

Former Rule number Misconduct 475. -475.6. Former Rule repealed, new Section R6-3-51475 adopted effective January 24, 1977 (Supp. 77-1). Amended effective March 19, 1979 (Supp. 79-2).

R6-3-51476. Reserved

R6-3-51477. Reserved

R6-3-51478. Reserved

R6-3-51479. Reserved

R6-3-51480. Reserved

R6-3-51481. Reserved

R6-3-51482. Reserved

R6-3-51483. Reserved

R6-3-51484. Reserved

R6-3-51485. Violation of company rule (Misconduct 485)

- A.** General (Misconduct 485.05)
1. An employee, discharged for violating a company rule, generally is considered discharged for misconduct connected with the work. This principle is based on the theory that when hired, an employee agrees to abide by the rules of his employer. This section covers rules peculiar to a particular employer, and not rules constituting the general code of industrial misconduct. In order for misconduct connected with the work to be found, it must be determined that the claimant knew "or should have

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

known” of the rule and that the rule is reasonable and uniformly enforced.

2. Recognition must be accorded to the type of business in which the employer is engaged and other surrounding circumstances. The rule must be reasonable in light of public policy and should not constitute an infringement upon the recognized rights and privileges of workers as individuals. Rules to affect the employee’s conduct outside the employer’s premises and which could not reasonably affect the employer’s interests are generally considered unreasonable.

B. Garnishment, assignment of wages, or failure to meet financial obligation (Misconduct 485.6)

1. Effective July 1, 1970, the Consumer Credit Protection Act prohibits an employer from discharging an employee on the ground that the employee’s wages were subjected to garnishment for any one indebtedness (U.S.C.A. 15-1671, et seq.). A discharge in violation of this law is not disqualifying.
 - a. “Garnishment for a single indebtedness” would include all garnishments taken to collect one debt and relates only to a garnishment action taken during employment with one employer.
 - b. Questions as to whether continuing or revolving accounts and other similar debt making processes constitute a single indebtedness should be directed to any office of the Wage and Hour Division of the Department of Labor, the organization charged with enforcement of this law.
2. When a worker is separated for a garnishment on other than a first indebtedness, misconduct may be established when the worker had received prior warning that discharge might result from such garnishment and:
 - a. He incurred the subsequent indebtedness through nonessential purchases, or
 - b. He failed to make a reasonable effort to pay for essential purchases when financially capable or make a reasonable effort to forestall garnishment on an essential purchase when not financially able to pay.

C. Motor vehicle (Misconduct 485.65). A claimant discharged for violating a company rule regarding the operation of a motor vehicle, is discharged for misconduct connected with the work when it appears that the violation of the company rule did, or could have reasonably been expected to, adversely affect the employer’s interests. See R6-3-51490 regarding violation of law in connection with motor vehicles.

D. Safety regulations (Misconduct 485.8). A worker who is discharged for violation of a safety rule almost always is determined to be discharged for misconduct connected with the work. It is only when a rule is petty, unknown to the workers, previously has been unenforced, or is violated unwittingly that misconduct is not found. In considering cases involving such situations, the extent of the hazard presented by the violation of the rule, and the care which the claimant exercised, are to be considered.

Historical Note

Former rule number Misconduct 485. - 485.8. Former rule repealed, new Section R6-3-51485 adopted effective January 24, 1977 (Supp. 77-1). Amended effective November 7, 1979 (Supp. 79-6).

R6-3-51486. Reserved

R6-3-51487. Reserved

R6-3-51488. Reserved

R6-3-51489. Reserved

R6-3-51490. Violation of law (Misconduct 490)

General (Misconduct 490.05)

1. A worker discharged from employment because of an alleged violation of a public law or rule shall be found to have been discharged for misconduct provided a preponderance of evidence establishes that:
 - a. The act(s) amounted to misconduct connected with the work (see R6-3-5185), and
 - b. The worker committed the act(s) alleged.
2. The allegation, arrest, charge, information or indictment is not evidence that the worker committed the alleged violation of public law or rule.
3. A felony offense connected with the work is misconduct. A misdemeanor offense or a violation of a public rule which has the potential to substantially and adversely affect the employer’s business interest is misconduct.
4. A worker discharged for refusal to violate a public law or rule will be found to have been discharged for a reason other than misconduct connected with the work.
5. A benefit determination shall not be delayed pending action by a court or another agency.

Historical Note

Former rule number Misconduct 490. - 490.05. Former rule repealed, new Section R6-3-51490 adopted effective January 24, 1977 (Supp. 77-1). Amended effective February 15, 1978 (Supp. 78-1). Amended effective October 22, 1981 (Supp. 81-5).

ARTICLE 52. ABLE AND AVAILABLE FOR WORK

R6-3-5201. Reserved

R6-3-5202. Reserved

R6-3-5203. Reserved

R6-3-5204. Reserved

R6-3-5205. General

An unemployed claimant is eligible to receive benefits under A.R.S. § 23-771 for a work week if the Department finds that the claimant was able and available to work during that week.

1. Availability for work is the readiness of a claimant to accept suitable work when offered. To be available for work, a claimant shall be:
 - a. Accessible to a labor market;
 - b. Ready to work on a full-time basis;
 - c. Free from personal circumstances that interfere with the claimant’s ability to accept and undertake some form of full-time work; and
 - d. Actively seeking work or following a course of action reasonably designed to result in the claimant’s prompt reemployment in full-time work.
2. The criterion is availability for work, rather than availability of work. The willingness or unwillingness of an employer to hire is irrelevant.
3. The term “work” means suitable work (work that is in a recognized occupation, for which the claimant is reasonably qualified and that the claimant does not have good cause to refuse).
4. “Availability for work” is a relative term. The objective of availability is to determine whether a claimant is genuinely and regularly attached to the labor market. “Avail-

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

ability for work” also is the relationship between the restrictions imposed by a claimant and the job requirements of the work that the claimant is qualified to perform. It implies that restrictions do not unduly lessen the possibilities of the claimant accepting suitable work. Unreasonable restrictions that substantially limit employment opportunities result in unavailability. Whether the restrictions are unreasonable depends on their source, as well as their effect on the possibilities of employment.

5. A claimant’s eligibility is not impaired when the claimant is physically unable to work, or engaged in activities that would prevent the claimant from working, provided:
 - a. The period involved is not more than one full calendar day, and
 - b. The inability or activities do not reduce or jeopardize the claimant’s opportunities for employment.
6. A claimant who is unable to work full-time because of an established disability is not ineligible as long as the claimant is:
 - a. Seeking work up to the limit of the claimant’s disability;
 - b. Is not completely unable to work; and
 - c. Able to work part time as provided by medical evidence that the restriction is due to a disability.
7. The Department shall consider only the working days in the claimant’s customary occupation when applying the one day’s inability to work or unavailability for work. “One working day” means a normal work shift. A normal shift for any claimant is what is standard for the claimant’s occupation. If the claimant is not able or available for more than a full shift, the claimant is ineligible for benefits.
8. The Department shall determine whether a claimant’s activities during a working day have reduced or jeopardized the claimant’s employment opportunities. This determination must be made objectively. For example, under any of the following situations, a claimant’s activities on the day in question may have reduced or jeopardized the claimant’s employment opportunities:
 - a. The claimant refused a job or referral;
 - b. The claimant failed to comply with the claimant’s union registration or referral regulations;
 - c. The Department or the claimant’s union tried to contact the claimant for possible referral but was unable to do so; or
 - d. An employer made an effort to contact the claimant for a job offer or interview, but was unable to do so.
9. In applying this rule, the nature of the claimant’s activities is not a factor. It is immaterial whether the activities resulted from compelling circumstances or from normal activities of people in general.

Historical Note

Former rule number - Able and Available 5. Former rule repealed, new Section R6-3-5205 adopted effective January 24, 1977 (Supp. 77-1). Amended by final rulemaking at 24 A.A.R. 1417, effective June 19, 2018 (Supp. 18-2).

R6-3-5206. Reserved
R6-3-5207. Reserved
R6-3-5208. Reserved
R6-3-5209. Reserved
R6-3-5210. Reserved
R6-3-5211. Reserved

R6-3-5212. Reserved
R6-3-5213. Reserved
R6-3-5214. Reserved
R6-3-5215. Reserved
R6-3-5216. Reserved
R6-3-5217. Reserved
R6-3-5218. Reserved
R6-3-5219. Reserved
R6-3-5220. Reserved
R6-3-5221. Reserved
R6-3-5222. Reserved
R6-3-5223. Reserved
R6-3-5224. Reserved
R6-3-5225. Reserved
R6-3-5226. Reserved
R6-3-5227. Reserved
R6-3-5228. Reserved
R6-3-5229. Reserved
R6-3-5230. Reserved
R6-3-5231. Reserved
R6-3-5232. Reserved
R6-3-5233. Reserved
R6-3-5234. Reserved
R6-3-5235. Reserved
R6-3-5236. Reserved
R6-3-5237. Reserved
R6-3-5238. Reserved
R6-3-5239. Reserved

R6-3-5240. Attendance at School or Training Course

- A.** In this rule, “full-time student” means a person who:
1. Satisfies the criteria for being a full-time student, as established by the school the student is attending;
 2. Is a part-time student at 2 different schools if the number of the student’s combined hours meets at least 1 school’s definition of full-time student; or
 3. Would be considered a full-time student under (1) or (2) and is enrolled in online courses that require the student to attend online lectures, participate in “blackboard” discussions, or be involved in other activities at a specific time that falls within the normal work day, unless the claimant meets one of the exceptions in (B)(1).
- B.** Except as otherwise provided in A.R.S. § 23-771.01 and A.A.C. R6-3-1809, a claimant who is or was a full-time student during the most recent regular school term is presumed unavailable for work.
1. A claimant who is currently attending school may remove the presumption of unavailability through 1 of the methods described in this subsection.
 - a. The claimant shows a pattern of concurrent, full-time work and full-time school attendance for the 9 month period before the claimant files an initial claim for unemployment insurance, and the claimant

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

has not, in order to attend school or a training course:

- i. Left suitable full-time work,
 - ii. Refused suitable full-time work, or
 - iii. Reduced the hours of work to part-time;
- b. The claimant, who cannot establish a 9-month pattern of concurrent full-time work and full-time school attendance because the claimant was engaged in active military service or other similar service for the United States during that period shows that the claimant:
- i. Is conducting a work search as prescribed in R6-3-52160, and
 - ii. Is willing to change class hours or drop classes to accept suitable full-time work, or
 - iii. Is able to work full time during hours other than the class hours.
- c. The claimant shows that the claimant attends classes only at night and is experienced at and seeking work readily available during daytime hours.
- d. The claimant is enrolled in online courses that allow the student to complete the courses at any time including evenings and weekends. The Department considers a claimant taking full time classes that fall into this category a "night" student and claimant may be eligible if the claimant is willing to accept full time work that falls during the claimant's normal occupation work hours, and claimant is seeking this type of work.
2. A claimant who is not currently attending school, but who attended school as a full-time student during the most recent regular term, may remove the presumption of unavailability if the claimant:
- a. Graduated or completed the course,
 - b. Discontinued school prior to the end of the term, or
 - c. Does not intend to return for the next regular term.
- C. A claimant attending school as a part-time student is presumed available for work when the claimant establishes that:
1. Schooling is incidental to full-time employment,
 2. The claimant did not leave full-time work to enroll as a part-time student, and
 3. There is full-time work available during hours other than the time when the claimant attends classes, or
 4. The claimant will change the hours of school attendance or drop classes in order to accept full-time work.
- D. A claimant attending a training course of less than 4 weeks' duration is eligible for benefits if:
1. The course is sponsored by an employer who will employ the claimant upon the claimant's successful completion of the course, or
 2. The course provides a vocational evaluation or other service that assists the claimant in becoming reemployed.

Historical Note

Former rule number - Able and Available 40. - 40.1. Former rule repealed, new Section R6-3-5240 adopted effective January 24, 1977 (Supp. 77-1). Amended subsection (A)(1) and (2) effective July 9, 1980 (Supp. 80-4). Section repealed; new Section adopted effective July 22, 1997 (Supp. 97-3). Amended by final rulemaking at 24 A.A.R. 1417, effective June 19, 2018 (Supp. 18-2).

R6-3-5241. Reserved**R6-3-5242. Reserved****R6-3-5243. Reserved****R6-3-5244. Reserved****R6-3-5245. Disloyalty (Able and Available 45)**

Security clearance (Able and Available 45.32). Any person unable to obtain employment in his work classification because he has been denied access to classified security information shall be held unavailable for work unless it is determined he is available for other suitable work for which a security clearance is not required.

Historical Note

Former rule number - Able and Available 45. - 45.32.
Former rule repealed, new Section R6-3-5245 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-5246. Reserved**R6-3-5247. Reserved****R6-3-5248. Reserved****R6-3-5249. Reserved****R6-3-5250. Reserved****R6-3-5251. Reserved****R6-3-5252. Reserved****R6-3-5253. Reserved****R6-3-5254. Reserved****R6-3-5255. Reserved****R6-3-5256. Reserved****R6-3-5257. Reserved****R6-3-5258. Reserved****R6-3-5259. Reserved****R6-3-5260. Reserved****R6-3-5261. Reserved****R6-3-5262. Reserved****R6-3-5263. Reserved****R6-3-5264. Reserved****R6-3-5265. Reserved****R6-3-5266. Reserved****R6-3-5267. Reserved****R6-3-5268. Reserved****R6-3-5269. Reserved****R6-3-5270. Citizenship or residence requirements (Able and Available 70)**

- A. An alien claimant who is residing illegally in the United States is unavailable for work.
- B. A claimant lawfully in the United States who will not be hired by certain employers because he is an alien, is available for work provided work not requiring citizenship exists in reasonable quantity in the area in which he resides, and he will accept such work.
- C. A claimant lawfully in the United States who lacks citizenship and restricts himself solely to work requiring citizenship is unavailable for work.

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

Historical Note

Former rule number - Able and Available 70. Former rule repealed, new Section R6-3-5270 adopted effective January 24, 1977 (Supp. 77-1).

- R6-3-5271. Reserved
- R6-3-5272. Reserved
- R6-3-5273. Reserved
- R6-3-5274. Reserved
- R6-3-5275. Reserved
- R6-3-5276. Reserved
- R6-3-5277. Reserved
- R6-3-5278. Reserved
- R6-3-5279. Reserved
- R6-3-5280. Reserved
- R6-3-5281. Reserved
- R6-3-5282. Reserved
- R6-3-5283. Reserved
- R6-3-5284. Reserved
- R6-3-5285. Reserved
- R6-3-5286. Reserved
- R6-3-5287. Reserved
- R6-3-5288. Reserved
- R6-3-5289. Reserved

R6-3-5290. Conscientious objection (Able and Available 90)

A claimant who places certain restrictions upon his availability because of religious convictions may be held available for work if it can be shown that work for which he is qualified exists within these limitations, or if he has previously performed full-time work under such limitations.

Historical Note

Former rule number - Able and Available 90. Former rule repealed, new Section R6-3-5290 adopted effective January 24, 1977 (Supp. 77-1).

- R6-3-5291. Reserved

through

- R6-3-52104. Reserved [46,813 Sections Reserved]

R6-3-52105. Contract obligation (Able and Available 105)

- A. An individual's normal field of employment may be narrowed by contract obligations. For example:
 1. Under contract terms with his last employer, he may be prohibited from accepting work in a certain line; or
 2. His contract with an employer may require that he hold himself ready to answer work calls from that employer on certain days of the week; or
 3. He may be required by a lease to remain on a certain piece of property most of his time.
- B. Before determining whether a contract renders an individual unavailable, the relevant restrictions of the contract must be considered. If the contract requires full-time employment, the claimant is not available for work. If it does not, the claimant's obligations must be examined to see whether they unduly restrict accepting full-time employment for which he is qualified. Undue restriction consists of that degree of restriction which leaves no reasonable possibility of acceptance of full-

time employment. Thus, if a salesman is obligated not to take sales work and cannot or will not take other work, he is unduly restricted and is unavailable for work.

- C. An individual may be under certain contractual obligations and still assert that if employment were offered he would accept it in violation of his contract. This assertion must be viewed in the light of all the circumstances; if it appears to be true, there is no restriction in fact. In this type of case, thoroughness of investigation by the adjudicator cannot be too greatly emphasized.
- D. A claimant who is "on call" or on "extra" or "stand-by" basis, but who is not required to work specific hours, may be presumed available for work if other circumstances indicate a readiness to accept work. A claimant on call who is not required to work specific hours and is ready to accept other work may be held available for work.
- E. A contract to work in the future does not affect availability for the present, unless preparation for employment restricts the claimant's acceptance of suitable work. There is no requirement that the individual must be available for work at some future time. The mere fact that the claimant has a contract to begin another job several months after filing his initial claim does not render him unavailable during the period prior to beginning work under the contract. However, if the claimant states that he is unwilling to accept work because he has a contract for work beginning some time in the near future, he is unavailable for work.

Historical Note

Former rule number - Able and Available 105. Former rule repealed, new Section R6-3-52105 adopted effective January 24, 1977 (Supp. 77-1).

- R6-3-52106. Reserved
- R6-3-52107. Reserved
- R6-3-52108. Reserved
- R6-3-52109. Reserved
- R6-3-52110. Reserved
- R6-3-52111. Reserved
- R6-3-52112. Reserved
- R6-3-52113. Reserved
- R6-3-52114. Reserved
- R6-3-52115. Reserved
- R6-3-52116. Reserved
- R6-3-52117. Reserved
- R6-3-52118. Reserved
- R6-3-52119. Reserved
- R6-3-52120. Reserved
- R6-3-52121. Reserved
- R6-3-52122. Reserved
- R6-3-52123. Reserved
- R6-3-52124. Reserved
- R6-3-52125. Reserved
- R6-3-52126. Reserved
- R6-3-52127. Reserved
- R6-3-52128. Reserved

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-52129. Reserved
 R6-3-52130. Reserved
 R6-3-52131. Reserved
 R6-3-52132. Reserved
 R6-3-52133. Reserved
 R6-3-52134. Reserved
 R6-3-52135. Reserved
 R6-3-52136. Reserved
 R6-3-52137. Reserved
 R6-3-52138. Reserved
 R6-3-52139. Reserved
 R6-3-52140. Reserved
 R6-3-52141. Reserved
 R6-3-52142. Reserved
 R6-3-52143. Reserved
 R6-3-52144. Reserved
 R6-3-52145. Reserved
 R6-3-52146. Reserved
 R6-3-52147. Reserved
 R6-3-52148. Reserved
 R6-3-52149. Reserved

R6-3-52150. Distance to work (Able and Available 150)**A. General (Able and Available 150.05)**

1. There is a presumption of unavailability if an individual resides in a community in which there is no type of work existent for which he is qualified, and he is unable to seek and accept work in other communities in which such work does exist. This presumption can be overcome by a showing that the individual has an attachment to the community in which he is residing and that other suitable work exists. In arriving at a determination of this nature it is necessary to identify the type or types of work which the individual might reasonably be able to do and establish that such work does exist. If such work does exist, a period of adjustment is permitted before the claimant is expected to seek work elsewhere. The length of the adjustment period will depend on the length and nature of the claimant's attachment to the community and his prospects of securing other related work. In establishing the existence or lack of existence of such work it is essential to consider the total number of jobs of such classifications rather than the number of job openings or job orders.
2. Regardless of the claimant's attachment to the community, he should be held available if some work exists in the community in which he resides and there is a reasonable expectancy of his obtaining such work.

B. In transit (Able and Available 150.1)

1. When an individual moves from locality to locality, it is important to determine whether the individual's activities are directed toward efforts to obtain work or are directed to personal efforts inconsistent with his attachment to the labor market.
2. A claimant who is absent from his home or the community in which he most recently performed work, without

additional evidence as to the reason for his absence, is presumed unavailable for work.

3. When the circumstances show that the claimant's purpose in traveling was to obtain employment and it was reasonable for him to believe that his opportunities for employment would be improved by the travel, he may be considered available for work during the period in which he was in transit.
- C. Removal from locality (Able and Available 150.15)**
1. Generally, a claimant must be in a position to accept work of a type for which he is qualified at a place where that type (or types) of work is done. The mere fact that a claimant goes or moves from one locality to another is not of itself a basis for holding him unavailable for work. The main factors to consider in such a case are:
 - a. What are his work opportunities in the new locality?
 - b. Does he actually want work in the new locality?
 - c. Does his reason for leaving the old locality or leaving employment in the former locality still exist and, if so, does this unduly restrict his availability for work?
 2. A claimant who goes to a new locality generally will be presumed available for work if:
 - a. The labor force conditions there afford him some work opportunities;
 - b. He has registered for work;
 - c. He is seeking work in the manner ordinarily followed by persons seeking work there; and
 - d. There are no undue restrictions on his employability.
 3. However, if the claimant left employment to go to the new locality or if his move was necessitated by personal or domestic circumstances, a more intensive inquiry into the reason surrounding the move must be made since the reason for leaving may restrict the individual's availability in the new location.
 4. If the individual left work in the old locality because of dissatisfaction with wages or some other working condition, the same or other objectionable working conditions may exist in the new locality. Thus, he may be restricting his employability in the new locality to such an extent that he is not considered available for work.
 5. If he left the locality because of his own health or illness or that of a member of his family, his ability to work or availability may be restricted in the new locality by the same circumstances, e.g., new climate does not improve health enough to enable him to work; member of family requires care which the claimant must give because of inability or unwillingness to obtain someone else to care for the family member.
 6. Various other factors may have a bearing as to whether a claimant is available for work in a new locality. Among these are:
 - a. The anticipated permanency of his stay;
 - b. His reasons for going there if he intended to remain only a temporary period;
 - c. The nature of the restrictions upon his employability;
 - d. His reasons for anticipating job opportunities in the new community;
 - e. His reasons for refusing work in other localities;
 - f. His willingness to relax restrictions as to other types of work he might accept after a reasonable period of time.
 7. If the community is so small that there is a question as to whether any work opportunities exist, the adjudicator must evaluate the work opportunities in the locality and

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

the number of vacancies which would normally occur in the occupations for which the claimant is qualified and will accept.

- D. Transportation and travel (Able and Available 150.2)**
1. The availability of a worker whose employment has terminated because he lacked transportation to and from the work he had been performing is questionable. This is particularly so when the loss of transportation appears to largely preclude his access to the work opportunities which characterize the specific labor force locality in which he seeks work.
 2. "Availability for work" generally presupposes that the individual is accessible to suitable work opportunities which the particular community ordinarily supplies. Generally, if the claimant cannot accept the work opportunities that exist because of lack of transportation, he is not deemed employable and therefore, is unavailable for work; however, the fact that he may lack transportation to any specific employment does not require this result. The adjudicator shall evaluate the work opportunities that do exist not only as to number but as to the amount of attrition which would normally occur in the types of positions that exist in the area and the claimant's accessibility to such work opportunities.
 3. When job offers are refused because of the distance, the issue of availability may enter into the decision because of transportation restrictions. Some points to be considered are:
 - a. The transportation facilities available to the claimant;
 - b. If dependent on public transportation, the proximity, routes and schedules are to be reviewed for the claimant's accessibility to adequate job opportunities;
 - c. If dependent on a relative or neighbor for transportation, the name and location of such relative or neighbor, the location of such job and the time the relative or neighbor leaves for and returns from work should be examined for the practicality of reliance on such individual for transportation.
 - d. The cost of transportation;
 - e. The transportation facilities the claimant had on his last job;
 - f. If no transportation is available to the main employment centers, whether he reduced his opportunity for reasonable expectancy of employment.
 4. A claimant who does not have public transportation available to him must have transportation previously arranged so that he would be immediately able to commute to suitable work to which he might be referred.
 5. A claimant without transportation from his residence to the major labor market centers during those hours in which the majority of the jobs for which he is reasonably fitted are performed generally will be held to be unavailable for work.
 6. A claimant who refuses to travel a reasonable commuting distance substantially reducing his opportunities for employment is not available for work unless there is a reasonable expectancy of his obtaining work in the restricted locality. "Beyond reasonable commuting distance" is generally:
 - a. More than 20 miles from the claimant's residence to place of employment, or
 - b. More than one hour elapsed commuting time one way, or

- c. Commuting expense equal to 15% or more of a claimant's gross wage. (The Department accepts the mileage allowance paid state of Arizona employees for use of their private vehicles for official travel as the standard for determining cost of travel to the claimant.)

Historical Note

Former rule number - Able and Available 150. - 150.2. Former rule repealed, new Section R6-3-52150 adopted effective January 24, 1977 (Supp. 77-1). Amended subsection (A), paragraph (1) and subsection (D), paragraphs (3) and (6) (Supp. 83-4).

R6-3-52151. Reserved**R6-3-52152. Reserved****R6-3-52153. Reserved****R6-3-52154. Reserved****R6-3-52155. Domestic circumstances (Able and Available 155)**

- A.** A claimant is considered available for work only when he is prepared to accept at once (or within a reasonable time) any offer of suitable full-time employment. When the claimant's domestic circumstances are such that no work can be accepted for a temporary or permanent period, the claimant is unavailable for work. If, however, the claimant's circumstances do not unduly restrict his chances of employment, he may be available.
- B.** The restrictions must be considered in the light of the prevailing conditions of work, the claimant's past experience in working under such restrictions, and the opportunity of obtaining work under such restrictions. Quantitative standards cannot be set forth, but a good working rule is that a claimant's restrictions must not narrow his field of employment to such a degree that he has no reasonable possibility of obtaining or accepting employment for which he is reasonably fitted.

Historical Note

Former rule number - Able and Available 155. Former rule repealed, new Section R6-3-52155 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-52156. Reserved**R6-3-52157. Reserved****R6-3-52158. Reserved****R6-3-52159. Reserved****R6-3-52160. Effort to secure employment or willingness to work (Able and Available 160)**

- A.** Application for work (Able and Available 160.1)
 1. In order to maintain continuing eligibility for unemployment insurance a claimant shall be required to show that, in addition to registering for work, he has followed a course of action which is reasonably designed to result in his prompt reemployment in suitable work. Consideration shall be given to the customary methods of obtaining work in his usual occupation or for which he is reasonably suited, and the current condition of the labor market. Subject to the foregoing, the following actions by a claimant either singular or in combination may be considered a reasonable effort to seek work.
 - a. Registering and continuing active checking with the claimant's union hiring or placement facility.
 - b. Registering with a placement facility of the claimant's professional organization.
 - c. Applying for employment with former employers.

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

- d. Making application with employers who may reasonably be expected to have openings suitable to the claimant.
- e. Registering with a placement facility of a school, college, or university if one is available to the claimant in his occupation or profession.
- f. Making application or taking examination for openings in the civil service of a governmental unit.
- g. Registering for suitable work with a private employment agency or an employer's placement facility.
- h. Responding to appropriate "want ads" for work which appear suitable to the claimant.
- i. Any other action found to constitute an effective means of seeking work suitable to the claimant.

No claimant, however, shall be denied benefits solely on the ground that he has failed or refused to register with a private employment agency or any other placement facility which charges the job seeker a fee for its services.

- 2. A claimant shall be deemed to have failed to make a reasonable effort to seek work on his own behalf if he has wilfully followed a course of action designed to discourage prospective employers from hiring him for suitable work.
 - 3. Notwithstanding any of the foregoing, if the prospects of suitable job openings other than those listed with the public Job Service in a particular locality, or time period are so remote that any effort to seek work other than by registration for work would be fruitless to the claimant and burdensome to employers, then such registration by the claimant shall be deemed a reasonable effort to seek work.
 - 4. A claimant is not required to register for work with the Job Service if he is unemployed due to a labor dispute at the establishment of his employer and he intends to return to work for such employer following termination of the dispute. Any claimant who is unemployed due to a labor dispute and who states on his initial claim that he register for work and lists his occupation is deemed to have met the Department's registration requirements. This applies equally to those claimants who normally obtain work by registering with their union hiring or placement facility.
 - 5. When a claimant has a definite date to return to work for a former employer, or a definite starting date for employment or approved training, the question of availability as it relates to continued work search will depend on the nature of the claimant's usual work, the condition of the labor market, and the span of time until he is to begin work or training.
 - a. A claimant who customarily performs work in which temporary employment is common must continue to seek temporary jobs until the beginning date of work or training to be considered available for work.
 - b. A claimant qualified only in work for which odd job employment seldom exists will not be expected to seek other employment during a reasonable period before the job or training is to start. A reasonable period is generally considered to be two weeks.
- B. Registration and reporting (Able and Available 160.3).** When a claimant fails to respond as directed to a Job Service call-in card or telephone call-in regarding a possible referral to employment, he is unavailable for work for the week in which he fails to respond unless such failure was due to non-receipt of the card or message through no fault of his or his agent.

Historical Note

Former rule number Able and Available 160. - 160.3.

Former rule repealed, new Section R6-3-52160 adopted effective January 24, 1977 (Supp. 77-1). Amended effective March 19, 1979 (Supp. 79-2).

R6-3-52161. Reserved

R6-3-52162. Reserved

R6-3-52163. Reserved

R6-3-52164. Reserved

R6-3-52165. Employer requirements (Able and Available 165)

A. General (Able and Available 165.05)

- 1. An employer has the right to set certain requirements which must be met by an individual to obtain employment. The failure or inability of an individual to meet the employer's requirements, although indicating a lack of qualifications for a particular job, will not render him unavailable for work if there are no undue restrictions upon the acceptance of other employment for which he is reasonably fitted. Some employers may require that an employee be bonded; others require physical and mental examinations, possession of certain tools, doctor's certificate, automobiles, or other equipment. Whether failure to meet such requirements would effectively bar the individual from suitable full-time employment depends on the customary practices in the claimant's occupation in that labor market area.
- 2. The refusal of employers to hire a worker because of non-work related requirements such as age, marital status, race or religion, constitutes unreasonable discrimination and does not render the worker unavailable.

B. Physical status (Able and Available 165.2). When a claimant is unable to meet a particular employer's physical requirements, he may be presumed able to work if it can be established that he is able to perform work for which he is reasonably qualified in some recognized occupation which exists in the community. The claimant's inability to pass an employer's physical examination or to meet its insurance requirements, in itself, does not establish his inability to work.

Historical Note

Former rule number -- Able and Available 165. - 165.2. Former rule repealed, new Section R6-3-5 2165 adopted effective January 24, 1977 (Supp. 77-1). Amended effective May 8, 1979 (Supp. 79-3).

R6-3-52166. Reserved

R6-3-52167. Reserved

R6-3-52168. Reserved

R6-3-52169. Reserved

R6-3-52170. Reserved

R6-3-52171. Reserved

R6-3-52172. Reserved

R6-3-52173. Reserved

R6-3-52174. Reserved

R6-3-52175. Reserved

R6-3-52176. Reserved

R6-3-52177. Reserved

R6-3-52178. Reserved

R6-3-52179. Reserved

R6-3-52180. Equipment (Able and Available 180)

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

- A. In certain skilled occupations such as automobile mechanic, bricklayer, carpenter, plasterer, plumber, or welder, workers customarily own the hand tools or special clothing which they use in performing their work. If a claimant is seeking work only in such occupations it is his responsibility to have such equipment available for immediate use during periods of unemployment.
- B. When a worker does not possess the customary equipment for his occupation and is unable or unwilling to purchase it, he is unavailable for work unless he is qualified for and is willing to accept other work existing in the area.

Historical Note

Former rule number Able and Available 180. Former rule repealed, new Section R6-3-52180 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-52181. Reserved

R6-3-52182. Reserved

R6-3-52183. Reserved

R6-3-52184. Reserved

R6-3-52185. Reserved

R6-3-52186. Reserved

R6-3-52187. Reserved

R6-3-52188. Reserved

R6-3-52189. Reserved

R6-3-52190. Evidence (Able and Available 190)**A. General (Able and Available 190.05)**

1. The question of ability to work frequently arises in cases when the claimant's employment was terminated by an illness or operation, but the claimant alleges a sufficient recovery to be able to return to work in his usual occupation. Any presumption of inability arising from a recent illness or operation may be rebutted by evidence showing the actual return to work following the illness or operation without a relapse. Employment subsequent to an illness is sufficient evidence of ability to work, provided it is not terminated because the individual has returned to work prematurely or found on trial he would be unable to do that type of work any longer.
2. Availability for work is more subjective and intangible than ability however, there are certain objective factors that may be applied in determining availability.

B. Burden of proof and presumptions (Able and Available 190.1)

1. When the claimant's physician states that the claimant is unable to do any work, the claimant may be presumed unable to work. However, when the claimant subsequently secures employment which is terminated by a layoff or a voluntary quit, either of which attributable to the claimant's lack of physical capacity to perform the work, his subsequent employment will not be sufficient in itself to overcome the physician's statement that the claimant is unable to work. Additional evidence however, may be presented to show that he is able to work.
2. A claimant may be presumed able to work when a physician certifies that the claimant can engage in full-time restricted work, provided the claimant is qualified to perform such work. A claimant may be presumed unable to work when a physician states he should not work for a specified period of time.
3. A claimant who states that he is able and willing to accept a part-time job but is unable to accept a full-time job because of a physical disability may be presumed to be

unable to work. A claimant who states that he is unable to work is considered unable to work.

4. The best proof of ability is evidence that work has actually been done by the claimant despite his physical disability. In the absence of evidence that the claimant's condition has altered, this is proof of ability. For example, a totally blind claimant was determined able to work when he showed that he had worked for two years as a machine fitter in a workshop for the blind.
5. A presumption of ability to work arises from the claimant's certification of ability and the statement of the reason for separation from his last employment for causes other than a disability. However, an availability issue may be raised at any time during the claims filing or work registration process. Among the factors which may raise such an issue are:
 - a. Allegations made by the employer or other interested persons.
 - b. The claimant's oral or written statements.
 - c. The adjudicator's observation of an obvious disability.
 - d. The claimant's receipt of disability compensation, health insurance benefits, or workmen's compensation.
 - e. Leaving or refusal of work because of physical restrictions.
 - f. Evidence that the claimant was unemployed for long periods of time, or intermittently, because of his physical condition.
6. When questions of inability do arise the claimant has the burden of establishing his ability to work. The presumption of disability may be rebutted by the claimant through any or all of the following: medical evidence, proof of employment, under the same circumstances prior to the date of the claim and discovery of additional work skills.
7. A presumption of unavailability may be raised by various circumstances such as:
 - a. Voluntary leaving of employment.
 - b. Refusal of work.
 - c. Discharge for misconduct.
 - d. Failure to register for work.
 - e. A long period of unemployment, or self employment.
 - f. Attendance at school or training, other than approved training.
 - g. Allegations by interested parties.
 - h. Domestic or personal circumstances.
 - i. Union restrictions.
 - j. Contract obligations, etc.
8. A claimant's certification that he is available for work is accepted as prima facie evidence of availability in the absence of evidence to the contrary. His statement that he is unwilling to accept work is accepted as proof of his unavailability. Seeking work, regular reporting to the Job Service office and registration for work is evidence of availability.
9. Statement of specific conditions and limitations on the type of work or the circumstances under which work will be accepted may create presumptions of unavailability. For example, the presumption of unavailability exists where a claimant states that he will only accept work of a type for which he is inadequately qualified by his inability to meet established standards, union membership requirements, and the like, or, where he restricts himself to work which does not exist in the community. There must be a reasonable possibility of his obtaining the type

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

of work for which he claims he is available during the hours to which he restricts himself, at the wages, and under the conditions stipulated by him. The work to which he restricts himself must be in a recognized occupation.

C. Weight and sufficiency (Able and Available 190.15)

1. Many factors relating to ability are identical with those bearing on availability. Factors involving involuntary leaving, refusal of work, failure to report to the local office, and a long period of unemployment are reviewed under the subject of availability. Additional factors relating exclusively to the establishment of ability to work are treated in paragraphs (2) and (3) of this rule.
2. The claimant who is unable to engage in his usual occupation because of illness or disability may be presumed able to work if he is qualified by training and experience for other work. In such cases, a doctor's certificate generally is sufficient evidence of ability, but the nature of the certificate should be scrutinized carefully. For example, a certificate showing that a claimant is able to engage in a "sedentary occupation, such as boot and shoe repairing," is not proof of ability when the claimant does not have the skill or training requisites for such an occupation. The recency of the physical examination must be considered in evaluating a medical report. When medical reports of the claimant's ability to work conflict, the major emphasis is placed upon the statement which most conforms to other information in the possession of the adjudicator.
3. A doctor's opinion that a worker's physical condition makes him more susceptible to industrial injuries and a bad employment risk is not of itself conclusive evidence, that the worker is unable to work. The term "ability to work" is interpreted as the actual physical ability of a claimant to perform work for which he is qualified.
4. The most convincing evidence of availability is full-time employment. Although an individual may have left work because of domestic duties, the fact that he subsequently accepts work when offered is evidence of availability for work. Previous full-time employment under circumstances similar to the individual's present circumstances is evidence of availability. For example, the individual who restricts herself to day work only because she is unable to find someone to care for her child except during the day is available for work if such work is generally performed in the area.
5. The extent to which a claimant's restrictions limit his possibility for employment is the criterion for establishing his availability.

Historical Note

Former rule number Able and Available 190. - 190.15.
Former rule repealed, new Section R6-3-52190 adopted effective January 24, 1977 (Supp. 77-1). Typographical error corrected (Supp. 97-3).

R6-3-52191. Reserved
R6-3-52192. Reserved
R6-3-52193. Reserved
R6-3-52194. Reserved
R6-3-52195. Reserved
R6-3-52196. Reserved
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R6-3-52199. Reserved
R6-3-52200. Reserved
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R6-3-52230. Reserved
R6-3-52231. Reserved
R6-3-52232. Reserved
R6-3-52233. Reserved
R6-3-52234. Reserved

R6-3-52235. Health or Physical Condition

A. General

1. A claimant is able to work if the claimant possesses the physical and mental capabilities necessary to perform suitable work for which the claimant is reasonably qualified.
2. "Work for which a claimant is qualified" is not restricted to the customary occupation of the claimant. It includes any type of work for which the claimant is reasonably qualified and that the claimant can perform under normal conditions of employment. A disability may entirely prevent a claimant from pursuing the claimant's customary

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

occupation and yet the claimant may retain sufficient physical and mental ability to perform some gainful work for which the claimant is reasonably qualified. The Department shall determine a claimant's "ability to work" on the basis of whether the claimant is able to work and not whether the claimant can obtain work.

3. "Able to work" does not include a claimant's appearance or any personal characteristic that might prejudice an employer against employing the claimant. To determine whether a claimant is able to work, the Department shall consider whether:
 - a. The work for which the claimant is qualified exists as a recognized part of the labor market; and
 - b. The claimant is capable of performing such work without endangering the claimant, coworkers, the public, or the employer.
4. The Department considers a skilled worker who can no longer follow the worker's trade more able to work than an unskilled worker because a skilled worker:
 - a. Typically possesses a number of skills that can be transferred to a larger number of related fields; and
 - b. Usually can assume more positions of responsibility.
- B. Age.** Age, in itself, does not create a presumption that a claimant is unable to work. A statement that a claimant was separated or retired because the claimant was unable to maintain the claimant's production raises just as much of a question as to the effect of the employer's requirements for the job as it does on the claimant's ability to perform work. If the claimant can show that the claimant is able to perform other suitable work for which the claimant is qualified and reasonably fitted, or that the claimant could still meet the production standards of other employers, the claimant would be able to work.
- C. Communicable disease**
 1. The Department may consider a claimant who suffers from an infectious or communicable disease to be able to work if the claimant is able to work in an occupation for which the claimant is reasonably qualified and:
 - a. The claimant is willing to accept work in an occupation where the disease would not be a hazard; or
 - b. The claimant is under medical treatment and a physician certifies that the disease is in a noncommunicable state.
 2. Except, a claimant is not able to work until a physician certifies that the claimant is able to work without endangering others when:
 - a. The claimant's physician states that the claimant should not work because of the danger of infecting others; or
 - b. The law of the community prohibits the claimant's employment because of the disease.
- D. Seizures.** When a claimant is subject to periodic seizures, attacks, or any episodic conditions that render the claimant unable to work during the seizure, attack, or episodic condition, the Department may consider the claimant able to work if, during the intervals between seizures, attacks, or episodic conditions, the claimant is able to perform work for which the claimant is qualified.
- E. Pregnancy**
 1. Pregnancy does not affect a woman's ability to work unless her physician restricts her from working in any occupation for which she is qualified.
 2. A pregnant woman who leaves employment because it is too difficult for her to perform work in her customary occupation may be considered able to work if there is medical evidence that she is able to do less strenuous

work for which she is reasonably qualified and she is ready to accept such work.

3. The Department shall consider a woman unavailable for work if the woman, because she is pregnant, voluntarily leaves suitable employment that she could have continued to perform and that did not adversely affect her health.
4. When a woman was unable to work in the early months of pregnancy and has recovered sufficiently to be able to return to work, the Department shall consider her able to work if her physician agrees that she is physically able to return to work.
5. When a pregnant woman restricts her availability for employment to work that does not require her to stand, lift heavy objects, or travel great distances, the Department may consider her able to work only if she shows that work for which she is reasonably qualified:
 - a. Does not require these conditions; and
 - b. There is a reasonable possibility of her obtaining work with those restrictions.
- F. Disability**
 1. A claimant with a disability may not be able to work full-time because of that disability. So long as the claimant is not completely restricted from all work, the Department may find the claimant able to work.
 2. If the claimant will be restricted in the claimant's ability to work or availability for work because of a disability, the Department may consider the claimant able to work if the claimant is seeking work up to the limit of the claimant's disability. Example: A claimant cannot work longer than four hours each day because of chronic pain. So long as that claimant is looking for and willing to work part time up to four hours per shift, the claimant is still able to work.
 3. A claimant who is completely disabled and cannot work at all is ineligible.
 4. A claimant shall substantiate the claimant's disability by appropriate documentation such as doctor's notes, military papers, or a judgment from a court.

Historical Note

Former rule number - Able and Available 235. - 235.4. Former rule repealed, new Section R6-3-52235 adopted effective January 24, 1977 (Supp. 77-1). Typographical error corrected (Supp. 97-3). Amended by final rulemaking at 24 A.A.R. 1417, effective June 19, 2018 (Supp. 18-2).

- R6-3-52236. Reserved**
- R6-3-52237. Reserved**
- R6-3-52238. Reserved**
- R6-3-52239. Reserved**
- R6-3-52240. Reserved**
- R6-3-52241. Reserved**
- R6-3-52242. Reserved**
- R6-3-52243. Reserved**
- R6-3-52244. Reserved**
- R6-3-52245. Reserved**
- R6-3-52246. Reserved**
- R6-3-52247. Reserved**
- R6-3-52248. Reserved**

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-52249. Reserved

R6-3-52250. Incarceration or other legal detention (Able and Available 250)

- A. An individual who is prevented from accepting employment because of confinement in jail is unavailable for work. However, every form of legal detention does not result in complete withdrawal from the labor market.
- B. In most instances, a person on probation is not unduly restricted. Neither is a person who is free on bond pending appearance in court. A person under a peace bond (a bond conditioned on performance or non-performance of certain acts) may or may not be available, depending upon how much his field of employment is restricted. Broadly speaking a person is available for work when his personal conditions and circumstances leave him free to accept and undertake some form of work for which he is qualified. The fact that employers may hesitate to employ a person with a police record is irrelevant, since the person's availability is not dependent upon the willingness of employers to hire him.

Historical Note

Former rule number - Able and Available 250. Former rule repealed, new Section R6-3-52250 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-52251. Reserved

R6-3-52252. Reserved

R6-3-52253. Reserved

R6-3-52254. Reserved

R6-3-52255. Reserved

R6-3-52256. Reserved

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R6-3-52280. Reserved

R6-3-52281. Reserved

R6-3-52282. Reserved

R6-3-52283. Reserved

R6-3-52284. Reserved

R6-3-52285. Leave or absence or vacation (Able and Available 285)

- A. A claimant on leave of absence generally is unavailable for work. The availability of the claimant depends upon the following factors:
1. The reason for the leave of absence; and
 2. Whether the leave of absence binds him from accepting employment during the duration of the leave; and
 3. Whether he has demonstrated that he is actively in the labor market; and
 4. Whether there is a financial necessity for the claimant being in the labor market.
- B. The nature of the leave is of primary importance. If examination of the written leave or interview of the claimant discloses that the claimant is receiving remuneration for the period of the leave, he must be deemed to be not unemployed. If the leave contains provisions prohibiting the claimant from accepting other employment, the claimant must show that he does not intend to comply with the provision of the leave and that he is actively in the labor market. If the claimant requested the leave to recuperate from an illness or because of domestic circumstances, the ability or availability of the claimant is questionable. When the claimant contends he is able and available despite his illness or despite the domestic circumstances, the case should be reviewed with reference to R6-3-52190(A) or R6-3-52155(A) of these rules. If the claimant has removed to this area because of the need for a change of climate and he is able to work, the nature of the leave of absence and his activities in attempting to secure work must be carefully reviewed.
- C. In order to demonstrate attachment to the labor market, the claimant must establish that he is making all reasonable efforts to obtain employment on his own behalf and that he is not restricting unduly the type and working conditions of the employment he will accept.
- D. The final factor for consideration, the financial necessity for the claimant's being in the labor market, always should be considered in determining the availability of a claimant on leave of absence. The financial status of the claimant should be examined. The need for an income to carry current expenses is a forceful argument of a claimant's real attitude toward a job and his efforts to seek employment.

Historical Note

Former rule number - Able and Available 285. Former rule repealed, new Section R6-3-52285 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-52286. Reserved

R6-3-52287. Reserved

R6-3-52288. Reserved

R6-3-52289. Reserved

R6-3-52290. Reserved

R6-3-52291. Reserved

R6-3-52292. Reserved

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-52293. Reserved

R6-3-52294. Reserved

R6-3-52295. Length of unemployment (Able and Available 295)

- A. In determining whether a claimant is available for work, consideration must be given to his length of unemployment. Although a claimant should be allowed a reasonable period of time in which to obtain suitable work at his highest skill, prolonged unwillingness to accept other work for which he is qualified may, in effect, render the claimant unavailable. Therefore, as the period of the claimant's unemployment lengths, he will be expected to lessen the restrictions he imposes as to the type of work he is seeking and is willing to accept.
- B. Generally, the reasonable period in which a claimant shall be allowed to restrict his availability to his highest skill without denial of benefits will be the periods specified in R6-3-53295. These periods are guides for availability purposes. In determining when a claimant should be required to widen his search for work, the adjudicator shall consider the claimant's personal circumstances and the prevailing labor market conditions.
- C. A claimant shall be deemed unavailable because he restricts his search or willingness to accept work to his highest skill;
 - 1. Beyond a reasonable period of adjustment; or
 - 2. Whenever the possibility of obtaining work at his highest skill is remote and there is a reasonable expectation of his securing other suitable work for which he is qualified.
- D. A claimant shall not be deemed unavailable because he restricts his search or willingness to accept work, to his highest skill if:
 - 1. He has good prospects of work at his highest skill; or
 - 2. Prospects of obtaining it are extremely limited due to excess job seekers for that type of work or other labor market conditions.

Historical Note

Former rule number - Able and Available 295. Former rule repealed, new Section R6-3-52295 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-52296. Reserved

R6-3-52297. Reserved

R6-3-52298. Reserved

R6-3-52298. Reserved

R6-3-52299. Reserved

R6-3-52300. Reserved

R6-3-52301. Reserved

R6-3-52302. Reserved

R6-3-52303. Reserved

R6-3-52304. Reserved

R6-3-52305. Military service (Able and Available 305)

- A. A person who is subject to call for military service is not necessarily unduly restricted from accepting employment. This is true even though employers may be unwilling to hire such a worker.
 - 1. A claimant may have been officially notified that he will be placed on active duty or active duty for training on or before a definite date and is limited to acceptance of temporary work. A claimant who is so restricted must be willing to accept temporary work without additional personal restrictions. Frequently such temporary work will

not utilize the claimant's highest skill. Also the wage may not be equal to that which he earned in permanent employment. However, the claimant's unwillingness to accept such work, if it is otherwise suitable, would render him unavailable.

- 2. Active duty and active duty for training in the armed forces (other than weekend drills) is employment. Thus an individual on such duty is usually in employment within the meaning of A.R.S. § 23-621 of the Employment Security Law and if in employment the question of availability need not be considered. If, however for a particular week the earnings for such duty are less than the claimant's weekly benefit amount, he may be unemployed and his availability should then be tested by the same criteria as any other claimant who is employed during a partial week.

Historical Note

Former rule number Able and Available 305. Former rule repealed, new Section R6-3-52305 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-52306. Reserved

R6-3-52307. Reserved

R6-3-52308. Reserved

R6-3-52309. Reserved

R6-3-52310. Reserved

R6-3-52311. Reserved

R6-3-52312. Reserved

R6-3-52313. Reserved

R6-3-52314. Reserved

R6-3-52315. Reserved

R6-3-52316. Reserved

R6-3-52317. Reserved

R6-3-52318. Reserved

R6-3-52319. Reserved

R6-3-52320. Notification of address (Able and Available 320)

A claimant is obligated to keep the local office through which he is filing informed of his current mailing address so that he may be offered referrals by mail. If he cannot be reached by direct mail, he is not available for work for any week in which he fails to give the local office an address at which he can be reached by direct mail. In no event, however, should a claimant be held unavailable if his change of address is reported on the next regular report day. The above principle also applies to a claimant who is on layoff subject to recall under a contract of employment which specifies that he is to keep the employer informed of the address at which he can be reached for recall.

Historical Note

Former rule number Able and Available 320. Former rule repealed, new Section R6-3-52320 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-52321. Reserved

R6-3-52322. Reserved

R6-3-52323. Reserved

R6-3-52324. Reserved

R6-3-52325. Reserved

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-52326. Reserved
 R6-3-52327. Reserved
 R6-3-52328. Reserved
 R6-3-52329. Reserved
 R6-3-52330. Reserved
 R6-3-52331. Reserved
 R6-3-52332. Reserved
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 R6-3-52367. Reserved
 R6-3-52368. Reserved

R6-3-52369. Reserved

R6-3-52370. Public service (Able and Available 370)

- A.** General (Able and Available 370.05). Witnesses, plaintiffs, and defendants are not employed and their availability on the days of their attendance at court is questionable. Since an individual is compelled by law to comply with a subpoena and since absence from work caused by such compliance does not constitute a breach of the employment contract, such individual is considered available for work.
- B.** Jury duty (Able and Available 370.1)
1. An individual shall not be deemed unavailable for work on the basis of his being selected as a member of a jury panel or as a juror in a specific trial. However, he must make a reasonable search for employment during the period he is so engaged.
 2. Compensation for jury service shall be treated as wages in determining the benefit amount to which a claimant is entitled. Such wages shall be reported as earned during the week in which the claimant performs service as a juror.
- C.** Public office (Able and Available 370.15)
1. Questions may arise as to whether persons engaged in certain types of public service are unavailable for work or are employed.
 2. Public officers such as judges, justices of the peace, policemen, etc., usually are considered as unavailable for work. However, when it is found that a public officer's duties require very little time and would not prevent his accepting suitable work for which he is qualified, he is considered to be available. For example, a justice of the peace in a rural community who is called upon only occasionally to perform marriage ceremonies, try cases, etc., may well be able to engage full time in his regular occupation.

Historical Note

Former rule number Able and Available 370. - 370.15.
 Former rule repealed, new Section R6-3-52370 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-52371. Reserved

R6-3-52372. Reserved

R6-3-52373. Reserved

R6-3-52374. Reserved

R6-3-52375. Receipt of other payments (Able and Available 375)

- A.** General (Able and Available 375.05). Current receipt of group health insurance benefits for a concurrent period of recuperation creates a presumption that the claimant is unable to work. This presumption can be overcome if the claimant can establish that he is qualified and able to do work of a specific kind and his statement is supported by corroborating evidence. However, information on local labor market conditions available to the local office may create a presumption that the physical requirements for all work of the type for which he is qualified are too difficult to be met by the claimant. The terms of the group or health insurance policy or plan must be investigated in order to ascertain whether the claimant's allegations in his claim for benefits are contradictory to the statements made to the group or health insurance plan for the purpose of securing benefits. If the claimant's contentions or statements are contradictory, the truthfulness of the claimant's statements must be weighed in the light of all the facts.
- B.** Disability compensation (Able and Available 375.1)

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

1. Receipt of compensation for disability raises a presumption that the claimant is not able to work, but it is not in itself conclusive evidence of inability.
2. If the disability prevents work in his former occupation and there is no evidence that he is qualified for other work, he may be considered unable to work.
- Evidence of the claimant's physical capacities must be obtained as a determination cannot be properly made solely on the basis of the receipt of workmen's disability compensation.
- C. Pension (Able and Available 375.3)
1. A claimant's retirement or receipt of a pension creates a presumption that either the claimant has withdrawn from the labor market or his retirement is involuntary because of his inability to continue work. Positive evidence that he has re-entered the labor market will be required to overcome the presumption of ineligibility after retirement.
2. The terms and conditions in the plan or policy under which the claimant has or was retired must be ascertained. If a condition for receipt of a pension requires withdrawal from all work, the claimant would be required to show what he has done to rescind or forego his rights to the pension.
3. If the terms of the retirement agreement or plan merely preclude the continuation of employment with a given employer but makes no restriction on employment in other localities and with other employers, the presumption that the claimant has withdrawn from the labor market may be refuted by:
- Employment after retirement,
 - Registration for work and certification of availability,
 - Efforts to find work.
- Historical Note**
Former rule number - Able and Available 375. - 375.3.
Former rule repealed, new Section R6-3-52375 adopted effective January 24, 1977 (Supp. 77-1).
- R6-3-52376. Reserved**
- R6-3-52377. Reserved**
- R6-3-52378. Reserved**
- R6-3-52379. Reserved**
- R6-3-52380. Reserved**
- R6-3-52381. Reserved**
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- R6-3-52411. Reserved**
- R6-3-52412. Reserved**
- R6-3-52413. Reserved**
- R6-3-52414. Reserved**
- R6-3-52415. Self-employment or other work (Able and Available 415)**
- A. General (Able and Available 415.05)
- The eligibility of self-employed individuals will initially be decided on the basis of their availability for work rather than on the basis of whether they are "employed" or "unemployed." The extent to which a claimant is prevented by the duties of his self-employment from accepting full-time suitable work is the criterion for establishing his availability.
 - The investment which the claimant has made in his enterprise, the existence of contractual obligations, the disposability of the business, and the nature and extent of the work which the claimant performs in his enterprise are all pertinent factors in determining his availability.
 - When the claimant is engaged in stop gap self-employment in an occupation other than his customary occupation, and his duties are incidental to the enterprise and can be delegated, or when there is no lease or contractual obligation, and the investment is small and the assets fluid, he may be available for work. However, when the investment in the enterprise is large or the income from the enterprise is substantial, a statement by the claimant that he is willing to give up the business is open to question.
 - If a claimant's activities are so limited that he can spend full time away from his enterprise during working hours, he is available for work. The fact that a claimant previously has worked full time under similar conditions is evidence of his availability.
- B. Agriculture (Able and Available 415.1)
- In determining the availability of self-employed farmers or ranchers, some of whom are available for work in spite

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

of the fact that they have an investment and perform services on the farm or ranch, several factors must be considered such as:

- a. The amount of time spent to complete their agricultural duties.
- b. The amount of livestock.
- c. The cost of hiring someone else to perform these duties as compared to the amount the claimant would be able to earn in his regular occupation.
- d. The particular season during which the claim for benefits is filed.

Historical Note

Former rule number - Able and Available 415. - 415.1.
Former rule repealed, new Section R6-3-52415 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-52416. Reserved
R6-3-52417. Reserved
R6-3-52418. Reserved
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R6-3-52447. Reserved
R6-3-52448. Reserved

R6-3-52449. Reserved

R6-3-52450. Time (Able and Available 450)

- A. A claimant who although willing to work full time, but who restricts himself to specific hours may be unavailable for work. The criterion is whether the restriction is such that it results in too narrow a market for his services in the locality in which he will work. When a claimant is unwilling to accept work requiring certain hours and the work is unsuitable for the claimant or he has good cause for its refusal, rejection of an offer of such work does not affect his availability.
- B. To be considered available for work, a claimant must be willing to accept suitable work during hours which afford him reasonable possibilities of obtaining work in the locality.
- C. When a claimant is unwilling to work during the hours prevailing for his kind of work, it is sometimes difficult to know whether the claimant is accessible to a substantial amount of work. As in other borderline cases, we look to the objective signs of the claimant's willingness to work. Factors to be considered are the claimant's work history, and whether his restriction to certain hours resulted from domestic necessities, or reasons of health, etc. The time restriction, which are within the worker's control, more easily show an unwillingness to work.
- D. A claimant who excludes employment requiring night hours is unavailable only when such hours are customary in his occupation or industry and there is not a substantial labor market during other hours.
- E. A claimant who restricts himself to night work because of personal reasons which are not compelling is unavailable for work, unless a substantial labor market remains for him.

Historical Note

Former rule number Able and Available 450. Former rule repealed, new Section R6-3-52450 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-52451. Reserved
R6-3-52452. Reserved
R6-3-52453. Reserved
R6-3-52454. Reserved
R6-3-52455. Reserved
R6-3-52456. Reserved
R6-3-52457. Reserved
R6-3-52458. Reserved
R6-3-52459. Reserved
R6-3-52460. Reserved
R6-3-52461. Reserved
R6-3-52462. Reserved
R6-3-52463. Reserved
R6-3-52464. Reserved
R6-3-52465. Reserved
R6-3-52466. Reserved
R6-3-52467. Reserved
R6-3-52468. Reserved
R6-3-52469. Reserved
R6-3-52470. Reserved
R6-3-52471. Reserved

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-52472. Reserved

R6-3-52473. Reserved

R6-3-52474. Reserved

R6-3-52475. Union relations (Able and Available 475)

A. General (Able and Available 475.05)

1. While union requirements may narrow a claimant's field of employment, a restriction to union conditions will not generally render a claimant unavailable for work if all of the following conditions are met:

- a. He is a member in good standing of the union whose standard of wages and working conditions he demands.
- b. The union has agreements affecting a substantial percentage of the jobs in the locality where he is seeking work.

2. The requirements for seeking work for a union member are outlined in R6-3-52160(A) of these rules.

B. Membership (Able and Available 475.5). Generally, lack of union membership does not render a claimant unavailable if there is a reasonable possibility of his obtaining employment in his usual occupation. A nonunion individual is not considered unavailable merely because an employer requires union membership as a prerequisite of being employed.

Historical Note

Former rule number Able and Available 475. - 475.5.

Former rule repealed, new Section R6-3-52475 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-52476. Reserved

R6-3-52477. Reserved

R6-3-52478. Reserved

R6-3-52479. Reserved

R6-3-52480. Reserved

R6-3-52481. Reserved

R6-3-52482. Reserved

R6-3-52483. Reserved

R6-3-52484. Reserved

R6-3-52485. Reserved

R6-3-52486. Reserved

R6-3-52487. Reserved

R6-3-52488. Reserved

R6-3-52489. Reserved

R6-3-52490. Reserved

R6-3-52491. Reserved

R6-3-52492. Reserved

R6-3-52493. Reserved

R6-3-52494. Reserved

R6-3-52495. Reserved

R6-3-52496. Reserved

R6-3-52497. Reserved

R6-3-52498. Reserved

R6-3-52499. Reserved

R6-3-52500. Wages (Able and Available 500)

A. A claimant should understand the import of any statement he makes regarding acceptable wages, and be aware of the prevailing rate. When it has been determined that a claimant has restricted the wages acceptable to him, an evaluation of the claimant's wage requirement is necessary to determine whether he is employable at the specified wage. The claimant's work history showing higher earnings and his possession of unusual abilities might result in employment at wages in excess of the prevailing rate. A claimant should be given a reasonable time in which to seek employment yielding comparable earnings, especially when the higher earnings appear due to superior ability. However, in time, when his continued unemployment clearly demonstrates that he must accept the prevailing rate if he is to obtain work in the particular locality, his refusal to accept the prevailing rate would render him unavailable for work.

B. In the absence of special circumstances, work at wages prevailing for his occupation in the community may be considered suitable for the claimant. Whether refusal of such work would render him unavailable depends upon whether such refusal results in his being inaccessible to a substantial number of work opportunities which the community affords. The fact that his restriction excludes some opportunities for suitable work is not conclusive that he is unavailable for work. If work in the particular locality in a particular occupation is quite standardized as to terms of employment and the vast majority of the local establishments provide rather uniform rates of pay for work in the claimant's occupation, a claimant's insistence upon higher wages for such work may result in his having only the slightest chance of becoming employed. Such a claimant would not be available for work.

C. In restricting acceptable wages to his former rate of pay, the claimant's availability is not impaired if there are reasonable prospects of reemployment at that figure in the near future.

D. A claimant who insists on union wages in a community where the union of which he is a member has agreements covering a substantial percentage of the jobs in the locality is not unduly restricting his availability. However, in a community where the union scale covers a very small percentage of jobs, such a restriction may render a claimant unavailable for work.

E. Claimants sometimes profess willingness to accept the prevailing wage scale on condition that they are guaranteed a higher wage by reason of overtime; a 48 rather than a 40-hour week; bonuses of one kind or another; or on condition they are guaranteed immediate promotion to a higher scale. Unless there is a substantial percentage of jobs in the locality subject to those conditions, the claimant is unavailable for work. (For a discussion of the method of determining prevailing wages, refer to R6-3-53500(B) of these rules.)

Historical Note

Former rule number Able and Available 500. Former rule repealed, new Section R6-3-52500 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-52501. Reserved

R6-3-52502. Reserved

R6-3-52503. Reserved

R6-3-52504. Reserved

R6-3-52505. Reserved

R6-3-52506. Reserved

R6-3-52507. Reserved

R6-3-52508. Reserved

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-52509. Reserved

R6-3-52510. Work, nature of (Able and Available 510)

Customary (Able and Available 510.1). A claimant who is unable to accept work in his usual occupation is able to work only if he shows that he is reasonably fitted for other work which he is capable of performing on a full-time basis, that such work exists in the community in which he resides, and he is willing to accept such work under the conditions and rate of pay that prevail for similar work in the community.

Historical Note

Former rule number Able and Available 510. - 510.1.

Former rule repealed, new Section R6-3-52510 adopted effective January 24, 1977 (Supp. 77-1).

ARTICLE 53. REFUSAL OF WORK BENEFIT POLICY

R6-3-5301. Reserved

R6-3-5302. Reserved

R6-3-5303. Reserved

R6-3-5304. Reserved

R6-3-5305. General; Definitions

- A.** As used in A.R.S. § 23-776(A), "when so directed by the employment office or the department" means that an employment office, as defined in A.R.S. § 23-616, or another placement service within the Department, has provided a referral to a job opening.
- B.** Except as provided in subsection (C)(2) and R6-3-53335, the offer of work shall be an offer from a new employer.
- C.** The Department shall not disqualify a claimant for a refusal of work even though the offered work was suitable if either condition listed in this subsection exists.
1. The claimant had good cause for the refusal. In this subsection, good cause means personal circumstances beyond the claimant's reasonable control and includes the following:
 - a. The claimant had a reasonable prospect of other work,
 - b. The claimant was ill, or
 - c. The claimant lacked transportation or child care.
 2. A continuing employer-employee relationship exists between the claimant and an employer who maintains a temporary or on-call roster of workers, and the work offered by this employer is for a period of 2 days or less. The Department shall determine the claimant's eligibility for benefits for the week in which the work was offered in accordance with R6-3-5205(7). Examples of employment in which a continuing employer-employee relationship exists are substitute teachers or workers registered with a temporary services agency.
- D.** In subsection (C)(1)(a), a reasonable prospect of other work includes:
1. A definite offer and acceptance of a job to begin at a definite time,
 2. A definite promise of a job although the starting date is an estimate by the employer, or
 3. The knowledge of a Department representative that jobs will soon be available in the claimant's occupation.

Historical Note

Former rule number - Refusal of Work 5. Former rule repealed, new Section R6-3-5305 adopted effective January 24, 1977 (Supp. 77-1). Section repealed; new Section adopted effective July 22, 1997 (Supp. 97-3).

R6-3-5306. Reserved

R6-3-5307. Reserved

R6-3-5308. Reserved

R6-3-5309. Reserved

R6-3-5310. Reserved

R6-3-5311. Reserved

R6-3-5312. Reserved

R6-3-5313. Reserved

R6-3-5314. Reserved

R6-3-5315. Reserved

R6-3-5316. Reserved

R6-3-5317. Reserved

R6-3-5318. Reserved

R6-3-5319. Reserved

R6-3-5320. Reserved

R6-3-5321. Reserved

R6-3-5322. Reserved

R6-3-5323. Reserved

R6-3-5324. Reserved

R6-3-5325. Reserved

R6-3-5326. Reserved

R6-3-5327. Reserved

R6-3-5328. Reserved

R6-3-5329. Reserved

R6-3-5330. Reserved

R6-3-5331. Reserved

R6-3-5332. Reserved

R6-3-5333. Reserved

R6-3-5334. Reserved

R6-3-5335. Reserved

R6-3-5336. Reserved

R6-3-5337. Reserved

R6-3-5338. Reserved

R6-3-5339. Reserved

R6-3-5340. Repealed

Historical Note

Former rule number - Refusal of Work 40. Former rule repealed, new Section R6-3-5340 adopted effective January 24, 1977 (Supp. 77-1). Section repealed effective July 22, 1997 (Supp. 97-3).

R6-3-5341. Reserved

through

R6-3-53149. Reserved [47,808 Sections Reserved]

R6-3-53150. Distance to work (Refusal of Work 150)

Commuting distance

1. Offered work which is beyond reasonable commuting distance generally would not be suitable work unless the

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

distance is customary for the claimant or most workers residing in the same locality as the claimant.

2. Offered work which would require a claimant to move to a new locality beyond reasonable commuting distance generally would not be suitable work. Factors to be considered in determining exceptions include:
 - a. Financial detriment to relocation,
 - b. Family restrictions to relocation,
 - c. Duration of claimant's unemployment,
 - d. Expected duration and wage of offered job,
 - e. Customs of claimant's customary occupation, and
 - f. Prospects of work in customary occupation within reasonable commuting distance.
3. "Beyond reasonable commuting distance" is generally:
 - a. More than 20 miles from the claimant's residence to place of employment, or
 - b. More than one hour elapsed commuting time one way, or
 - c. Commuting expense equal to 15% or more of the claimant's prospective gross wage. (The Department accepts the mileage allowance paid state of Arizona employees for use of their private vehicles for official travel as the standard for determining cost of travel to the claimant.)

Historical Note

Former rule number Refusal of Work 150. - 150.2. Former rule repealed, new Section R6-3-53 150 adopted effective January 24, 1977 (Supp. 77-1). Former Section R6-3-53150 repealed, new Section R6-3-53150 adopted effective July 27, 1983 (Supp. 83-4).

- R6-3-53151. Reserved
- R6-3-53152. Reserved
- R6-3-53153. Reserved
- R6-3-53154. Reserved
- R6-3-53155. Reserved
- R6-3-53156. Reserved
- R6-3-53157. Reserved
- R6-3-53158. Reserved
- R6-3-53159. Reserved
- R6-3-53160. Reserved
- R6-3-53161. Reserved
- R6-3-53162. Reserved
- R6-3-53163. Reserved
- R6-3-53164. Reserved
- R6-3-53165. Reserved
- R6-3-53166. Reserved
- R6-3-53167. Reserved
- R6-3-53168. Reserved
- R6-3-53169. Reserved

R6-3-53170. Employment office or other agency referral (Refusal of Work 170)**A. General (Refusal of Work 170.05)**

1. A disqualification should not be considered until it is clear that the claimant has had sufficient time to consider the offer or referral. While a claimant should need little or no time to determine whether he will accept work which

does not differ from his customary work, he may need substantial time to think over acceptance of other types of work.

2. A statement of preference for a specific type of work is not necessarily a refusal of other work. An attempt by the claimant to get better terms or a more desirable referral without a rejection of the offer should not be considered a refusal.
- B. Failure to report to employment office (Refusal of Work 170.15).** A claimant's failure to respond as directed to a job service call in card or telephone call, regarding a possible referral to employment, shall not be treated as a refusal of work since neither instructions to apply for work nor a definite offer of work was given. The issue in such cases is the claimant's availability for the week in question and should be adjudicated in accordance with R6-3-52160(B) of these rules.

Historical Note

Former rule number - Refusal of Work 170. - 170.15. Former rule repealed, new Section R6-3-53170 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-53171. Reserved

R6-3-53172. Reserved

R6-3-53173. Reserved

R6-3-53174. Reserved

R6-3-53175. Reserved

R6-3-53176. Reserved

R6-3-53177. Reserved

R6-3-53178. Reserved

R6-3-53179. Reserved

R6-3-53180. Reserved

R6-3-53181. Reserved

R6-3-53182. Reserved

R6-3-53183. Reserved

R6-3-53184. Reserved

R6-3-53185. Reserved

R6-3-53186. Reserved

R6-3-53187. Reserved

R6-3-53188. Reserved

R6-3-53189. Reserved

R6-3-53190. Reserved

R6-3-53191. Reserved

R6-3-53192. Reserved

R6-3-53193. Reserved

R6-3-53194. Reserved

R6-3-53195. Experience or training (Refusal of Work 195)**A. General (Refusal of Work 195.05)**

1. To avoid downgrading of the claimant's skills, his prior training and experience shall be considered before he is disqualified for refusing work beneath his highest skill.
2. If the claimant has been unemployed for a long time and prospects for work in his usual occupation are not favorable he may reasonably be expected to take other work.

B. Use of highest skill (Refusal of Work 195.2)

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

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| <ol style="list-style-type: none"> 1. A disqualification must be assessed when a claimant refuses a referral to employment or an offer of work because it would not utilize his highest skill unless it is shown that his action is reasonable and prudent. 2. The following factors must be considered in determining the reasonableness of the claimant's refusal: <ol style="list-style-type: none"> a. Length of unemployment. b. Prospects of his obtaining employment in his highest skill. c. Whether acceptance of lesser skilled work would adversely affect his obtaining work in his highest skill. 3. When the claimant's length of unemployment has been short and he has good prospects of obtaining work in his highest skill at an early date, work in a substantially lesser skill would not be suitable. However, if employment in a claimant's highest skill is extremely limited due to economic factors, technological changes, or other labor market conditions, the claimant may be disqualified if he refuses work which is otherwise suitable. 4. For guidelines as to the duration of the period during which a claimant may insist on work in his highest skill see R6-3-53295 of these rules. | <p>R6-3-53222. Reserved</p> <p>R6-3-53223. Reserved</p> <p>R6-3-53224. Reserved</p> <p>R6-3-53225. Reserved</p> <p>R6-3-53226. Reserved</p> <p>R6-3-53227. Reserved</p> <p>R6-3-53228. Reserved</p> <p>R6-3-53229. Reserved</p> <p>R6-3-53230. Reserved</p> <p>R6-3-53231. Reserved</p> <p>R6-3-53232. Reserved</p> <p>R6-3-53233. Reserved</p> <p>R6-3-53234. Reserved</p> <p>R6-3-53235. Health or physical condition (Refusal of Work 235)</p> <p>A. Illness or injury (Refusal of Work 235.25). Work that would adversely affect an existing physical or mental impairment of the claimant is unsuitable. Evidence such as a medical statement, if practical, should be obtained.</p> <p>B. Risk of illness or injury (Refusal of Work 235.45). Any work involving undue risk to the claimant's health, or work that fails to meet the standards of the industry is unsuitable.</p> |
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Historical Note

Former rule number - Refusal of Work 195. - 195.2. Former rule repealed, new Section R6-3-53195 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-53196. Reserved

R6-3-53197. Reserved

R6-3-53198. Reserved

R6-3-53199. Reserved

R6-3-53200. Reserved

R6-3-53201. Reserved

R6-3-53202. Reserved

R6-3-53203. Reserved

R6-3-53204. Reserved

R6-3-53205. Reserved

R6-3-53206. Reserved

R6-3-53207. Reserved

R6-3-53208. Reserved

R6-3-53209. Reserved

R6-3-53210. Reserved

R6-3-53211. Reserved

R6-3-53212. Reserved

R6-3-53213. Reserved

R6-3-53214. Reserved

R6-3-53215. Reserved

R6-3-53216. Reserved

R6-3-53217. Reserved

R6-3-53218. Reserved

R6-3-53219. Reserved

R6-3-53220. Reserved

R6-3-53221. Reserved

Historical Note

Former rule number Refusal of Work 235. - 235.45. Former rule repealed, new Section R6-3-53235 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-53236. Reserved

R6-3-53237. Reserved

R6-3-53238. Reserved

R6-3-53239. Reserved

R6-3-53240. Reserved

R6-3-53241. Reserved

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R6-3-53248. Reserved

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R6-3-53250. Reserved

R6-3-53251. Reserved

R6-3-53252. Reserved

R6-3-53253. Reserved

R6-3-53254. Reserved

R6-3-53255. Reserved

R6-3-53256. Reserved

R6-3-53257. Reserved

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-53258. Reserved
 R6-3-53259. Reserved
 R6-3-53260. Reserved
 R6-3-53261. Reserved
 R6-3-53262. Reserved
 R6-3-53263. Reserved
 R6-3-53264. Reserved

R6-3-53265. Interview and acceptance (Refusal of Work 265)
 Failure to accept or secure job offered (Refusal of Work 265.25). A claimant, after accepting a referral, may indicate by his actions that he did not accept it in good faith. He may, for example, without good cause fail to apply for the job, or his attitude and statements to the employer may imply that he is not applying for the job in good faith. Such indications, however, should be clear and definite before the claimant is considered to have refused an offer or referral. Before a disqualification is assessed under such circumstances, it should be clear that the job is suitable for the claimant.

Historical Note

Former rule number - Refusal of Work 265. - 265.25. Former rule repealed, new Section R6-3-53265 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-53266. Reserved
 R6-3-53267. Reserved
 R6-3-53268. Reserved
 R6-3-53269. Reserved
 R6-3-53270. Reserved
 R6-3-53271. Reserved
 R6-3-53272. Reserved
 R6-3-53273. Reserved
 R6-3-53274. Reserved
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 R6-3-53284. Reserved
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 R6-3-53288. Reserved
 R6-3-53289. Reserved
 R6-3-53290. Reserved
 R6-3-53291. Reserved
 R6-3-53292. Reserved

R6-3-53293. Reserved
 R6-3-53294. Reserved

R6-3-53295. Length of unemployment

- A. In determining whether work is suitable, consideration must be given to the length of the claimant's unemployment. A claimant should be allowed a reasonable adjustment period in which to find work in his customary or primary occupation. The length of the adjustment period is flexible and should be determined on the basis of all the circumstances of the case. The adjustment period begins with the first week of the claimant's unemployment or return to the labor market, whichever is later. While casual or odd jobs of less than one week's duration do not interrupt the adjustment period, they may serve as an indication of the claimant's prospects of work in his primary skill.
- B. The following are adjustment period limits in which a claimant may refuse without disqualification a referral to or offer of work solely because it does not utilize his primary skill or a skill of comparable level.

Adjustment Period	Skill Level
4 weeks	Unskilled
7 weeks	Semi-skilled
10 weeks	Skilled

- C. When there is no substantial labor market in the claimant's primary occupation, he will be expected to accept other suitable work for which he is qualified regardless of the length of his unemployment.

Historical Note

Former rule number Refusal of Work 295. Former rule repealed, new Section R6-3-53295 adopted effective January 24, 1977 (Supp. 77-1). Amended effective April 6, 1982 (Supp. 82-2).

R6-3-53296. Reserved
 R6-3-53297. Reserved
 R6-3-53298. Reserved
 R6-3-53299. Reserved
 R6-3-53300. Reserved
 R6-3-53301. Reserved
 R6-3-53302. Reserved
 R6-3-53303. Reserved
 R6-3-53304. Reserved
 R6-3-53305. Reserved
 R6-3-53306. Reserved
 R6-3-53307. Reserved
 R6-3-53308. Reserved
 R6-3-53309. Reserved
 R6-3-53310. Reserved
 R6-3-53311. Reserved
 R6-3-53312. Reserved
 R6-3-53313. Reserved
 R6-3-53314. Reserved
 R6-3-53315. Reserved
 R6-3-53316. Reserved
 R6-3-53317. Reserved

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

- R6-3-53318. Reserved
- R6-3-53319. Reserved
- R6-3-53320. Reserved
- R6-3-53321. Reserved
- R6-3-53322. Reserved
- R6-3-53323. Reserved
- R6-3-53324. Reserved
- R6-3-53325. Reserved
- R6-3-53326. Reserved
- R6-3-53327. Reserved
- R6-3-53328. Reserved
- R6-3-53329. Reserved

1978 (Supp. 78-4).

- R6-3-53336. Reserved
- R6-3-53337. Reserved
- R6-3-53338. Reserved
- R6-3-53339. Reserved
- R6-3-53340. Reserved
- R6-3-53341. Reserved
- R6-3-53342. Reserved
- R6-3-53343. Reserved
- R6-3-53344. Reserved
- R6-3-53345. Reserved
- R6-3-53346. Reserved
- R6-3-53347. Reserved
- R6-3-53348. Reserved
- R6-3-53349. Reserved
- R6-3-53350. Reserved
- R6-3-53351. Reserved
- R6-3-53352. Reserved
- R6-3-53353. Reserved
- R6-3-53354. Reserved
- R6-3-53355. Reserved
- R6-3-53356. Reserved
- R6-3-53357. Reserved
- R6-3-53358. Reserved
- R6-3-53359. Reserved
- R6-3-53360. Reserved
- R6-3-53361. Reserved
- R6-3-53362. Reserved
- R6-3-53363. Reserved
- R6-3-53364. Reserved

R6-3-53330. Offer of work (Refusal of Work 330)

- A. General (Refusal of Work 330.05). Before a claimant may be disqualified for refusing an offer of work, it must be established that:
 1. The job was open,
 2. The work was suitable,
 3. The offer was outright and unequivocal,
 4. The offer was genuine,
 5. The claimant received the offer, and
 6. The claimant received sufficient information concerning the prospective employment.
- B. Time (Refusal of Work 330.3). The time (or date) when an offer of work is made is significant in determining the applicability of A.R.S. § 23-776. When an individual refuses to accept a referral to, or an offer of suitable work subsequent or concurrent to his last employment, the application of this policy must be considered even though the refusal occurs before he files a claim.

Historical Note

Former rule number - Refusal of Work 330. - 330.3. Former rule repealed, new Section R6-3-53330 adopted effective January 24, 1977 (Supp. 77-1).

- R6-3-53331. Reserved
- R6-3-53332. Reserved
- R6-3-53333. Reserved
- R6-3-53334. Reserved

R6-3-53335. Offered work previously left or refused (Refusal of Work 335)

- A. Generally, no work shall be deemed suitable if a claimant has previously been disqualified in connection with his separation from such employment or has been previously disqualified for refusing a job offer for such position. However, if he is offered reemployment under substantially different working conditions, or if the circumstances which caused him to separate from the job no longer exist, the work may be considered suitable.
- B. When a worker is offered reemployment in a job which he left for compelling personal reasons, or from which he was separated for non-disqualifying reasons, the circumstances surrounding his separation shall be considered in determining the suitability of the job offer.

Historical Note

Former rule number Refusal of Work 335. Former rule repealed, new Section R6-3-53335 adopted effective January 24, 1977 (Supp. 77-1). Amended effective August 3,

R6-3-53365. Prospect of other work (Refusal of Work 365)

- A. A claimant who has reasonable prospects of employment in the near future may refuse other less suitable work with good cause. In general, the more definite the prospect, the more reasonable is the decision to wait for the more acceptable job.
- B. Prospect of obtaining future work may include:
 1. A definite offer and acceptance of a job to begin at a definite time; or
 2. A definite promise of a job although the starting date is an estimate by the employer; or
 3. An indefinite statement by the employer that he may have work for the claimant; or
 4. Statement by Job Service personnel; or
 5. General knowledge that jobs will soon be available in a particular industry.

Historical Note

Former rule number - Refusal of Work 365. Former rule repealed, new Section R6-3-53365 adopted effective January 24, 1977 (Supp. 77-1).

- R6-3-53366. Reserved

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-53367. Reserved	R6-3-53416. Reserved
R6-3-53368. Reserved	R6-3-53417. Reserved
R6-3-53369. Reserved	R6-3-53418. Reserved
R6-3-53370. Reserved	R6-3-53419. Reserved
R6-3-53371. Reserved	R6-3-53420. Reserved
R6-3-53372. Reserved	R6-3-53421. Reserved
R6-3-53373. Reserved	R6-3-53422. Reserved
R6-3-53374. Reserved	R6-3-53423. Reserved
R6-3-53375. Reserved	R6-3-53424. Reserved
R6-3-53376. Reserved	R6-3-53425. Reserved
R6-3-53377. Reserved	R6-3-53426. Reserved
R6-3-53378. Reserved	R6-3-53427. Reserved
R6-3-53379. Reserved	R6-3-53428. Reserved
R6-3-53380. Polygraph examination requirement	R6-3-53429. Reserved
A claimant may not be denied unemployment insurance benefits for refusing a referral to or an offer of new work if, as a condition of being employed, he must agree to submit to a polygraph examination, either as a pre-employment requirement or at any time during the course of his employment.	R6-3-53430. Reserved
	R6-3-53431. Reserved
	R6-3-53432. Reserved
	R6-3-53433. Reserved
	R6-3-53434. Reserved
	R6-3-53435. Reserved
	R6-3-53436. Reserved
	R6-3-53437. Reserved
	R6-3-53438. Reserved
	R6-3-53439. Reserved
	R6-3-53440. Reserved
	R6-3-53441. Reserved
	R6-3-53442. Reserved
	R6-3-53443. Reserved
	R6-3-53444. Reserved
	R6-3-53445. Reserved
	R6-3-53446. Reserved
	R6-3-53447. Reserved
	R6-3-53448. Reserved
	R6-3-53449. Reserved
	R6-3-53450. Time -- hours (Refusal of Work 450 - 450.15)
	A. Prevailing standard, comparison with (Refusal of Work 450.155). Section 23-776(C) of the Employment Security Law provides in part:
	". . . Notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to an otherwise eligible individual for refusing to accept new work under any of the following conditions: ". . . 2. If the ... hours of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; . . ."
	1. In order to conform with this provision of the Law consideration must be given to prevailing hours in every refusal of work issue. The term "hours" pertains to the number of hours required. The term "substantially less

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

favorable” means less favorable in an economic sense. Thus, prospective employment is not unsuitable merely because it requires work, at hours that are unusual, inconvenient or socially less desirable. The latter factors should however, be considered to determine whether there is good cause for refusal.

- 2. The relation between the standard or maximum work week permissible under Arizona or federal laws should be considered. If the regular hours required are in excess of these standards the work is unsuitable. The prevailing work week for similar work in the locality may however, be less than the legal maximum.
- 3. All available evidence should be considered in determining the prevailing hours for similar work. The experience of the Job Service, data from state and federal agencies, experience of unions, and evidence from workers and employers will all be of value. The number of hours worked by the largest number of workers in similar work should be used in arriving at the prevailing hours of work per day or week.
- 4. Comparison of hours worked in one job with hours in similar jobs should be based on only the normal work day. If overtime is usual and customary for the majority of workers performing similar work in the locality so that the final earnings are materially affected, the amount of overtime probably required of an offered job will need to be compared with that prevailing for other jobs. If it can be established at the time of the offer that the hours of work will be substantially less than those worked in similar jobs so that the earnings will be substantially reduced, the work would be substantially less favorable to the claimant.
- 5. The key words and phrases used in this rule are defined in R6-3-53350(B) of these rules.

B. Temporary (Refusal of Work 450.55)

- 1. Temporary work is not rendered unsuitable because of its duration. The fact that the prospective employment is temporary may give good cause for its refusal if:
 - a. Acceptance of temporary work precludes the claimant from returning to work with his regular employer; or
 - b. Acceptance would restrict the claimant from obtaining permanent work which he has good prospects of obtaining; or
 - c. Acceptance would involve expenditures for equipment, union dues or etc., disproportionate to the remuneration to be obtained.

Historical Note

Former rule number - Refusal of Work 450. - 450.55. Former rule repealed, new Section R6-3-53450 adopted effective January 24, 1977 (Supp. 77-1).

- R6-3-53451. Reserved
- R6-3-53452. Reserved
- R6-3-53453. Reserved
- R6-3-53454. Reserved
- R6-3-53455. Reserved
- R6-3-53456. Reserved
- R6-3-53457. Reserved
- R6-3-53458. Reserved
- R6-3-53459. Reserved
- R6-3-53460. Reserved

- R6-3-53461. Reserved
- R6-3-53462. Reserved
- R6-3-53463. Reserved
- R6-3-53464. Reserved
- R6-3-53465. Reserved
- R6-3-53466. Reserved
- R6-3-53467. Reserved
- R6-3-53468. Reserved
- R6-3-53469. Reserved
- R6-3-53470. Reserved
- R6-3-53471. Reserved
- R6-3-53472. Reserved
- R6-3-53473. Reserved
- R6-3-53474. Reserved

R6-3-53475. Union relations (Refusal of Work 475)

- A. General (Refusal of Work 475.05). A claimant may not be denied benefit for refusing a referral to, or an offer of new work if as a condition of being employed he would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.
- B. Nonunion shop or supervisor (Refusal of Work 475.55)
 - 1. A.R.S. § 23-776(B) of the Employment Security Law provides in part: “. . . In determining whether or not work is suitable for an individual, the department shall consider . . . his . . . prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation . . .”
 - 2. The fact that a union has a rule against a member working for a nonunion employer or on the same job with non-union workers does not of itself make the offered work unsuitable, or provide good cause for refusal.

Historical Note

Former rule number Refusal of Work 475. - 475.55. Former rule repealed, new Section R6-3-53475 adopted effective January 24, 1977 (Supp. 77-1).

- R6-3-53476. Reserved
- R6-3-53477. Reserved
- R6-3-53478. Reserved
- R6-3-53479. Reserved

R6-3-53480. Vacant due to labor dispute (Refusal of Work 480)

- A. Benefits cannot be denied an otherwise eligible claimant for refusing to accept new work if the position offered is vacant due directly to a strike, lock out, or other labor dispute.
- B. A labor dispute is defined in R6-3-56125(A) of these rules. The vacancy may be defined as any unfilled position which is open because it was held by a worker who is participating in the dispute or by a worker whose work is so integrated with that of the workers participating in the dispute that he cannot continue his work as long as the participants in the dispute are not working. Other vacancies may be created when workers are not permitted to work by those participating in the dispute or when there is a reorganization of jobs or creation of new jobs in the establishment involved in the dispute.

Historical Note

Former rule number - Refusal of Work 480. Former rule

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

repealed, new Section R6-3-53480 adopted effective January 24, 1977 (Supp. 77-1).

- R6-3-53481. Reserved
- R6-3-53482. Reserved
- R6-3-53483. Reserved
- R6-3-53484. Reserved
- R6-3-53485. Reserved
- R6-3-53486. Reserved
- R6-3-53487. Reserved
- R6-3-53488. Reserved
- R6-3-53489. Reserved
- R6-3-53490. Reserved
- R6-3-53491. Reserved
- R6-3-53492. Reserved
- R6-3-53493. Reserved
- R6-3-53494. Reserved
- R6-3-53495. Reserved
- R6-3-53496. Reserved
- R6-3-53497. Reserved
- R6-3-53498. Reserved
- R6-3-53499. Reserved

R6-3-53500. Wages (Refusal of Work 500)**A. Prior earnings, comparison with (Refusal of Work 500.35)**

1. Whether a claimant has good cause for refusing an offer of work in his customary occupation based solely on the grounds that the wages offered are less than those earned previously depends on:
 - a. Prospect of securing the wages he specifies.
 - b. Length of unemployment.
 - c. Condition of the labor market in his locality at that time.
2. Prior earnings are those received most recently especially, when the claimant has been receiving those earnings for a substantial period. If the worker's most recent earnings cover a brief period, such earnings need not be considered prior earnings unless they represent his present earning ability.

B. Prevailing rate (Refusal of Work 500.7)

1. No work shall be deemed suitable and benefits shall not be denied to an otherwise eligible individual for refusing to accept new work if the wages of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.
2. The key words and phrases are:
 - a. "Similar work." Is work closely related to the job being considered and generally recognized as of the same type. Actual comparison of jobs must be made on the basis of the similarity of the work done without regard to title; that is, the similarity of the operations performed, the skill, ability, knowledge required, and the responsibilities involved. Other factors such as hours of employment, permanency of the work, unionization, vacation, sick, and retirement benefits are conditions of work and should be considered only after the question of what is similar work is decided.

- b. "Locality." Conditions offered are to be compared with the conditions of similar work in the locality where the work is to be done. In establishing the competitive labor market locality for an occupation, the dominant considerations are the location of the establishments employing similar services; the area from which workers are normally drawn to supply the needs of these establishments; the commuting practices and ease of transportation in the locality; and the customary migration pattern of the workers in the occupation.
- c. "Wages." The customary practice of the trade in the area should be used in determining what constitutes wages. The comparison of wage rates alone, however, is not always sufficient to determine if the wages offered a claimant is substantially less favorable than those prevailing for similar work in the locality. Earnings are frequently affected not only by the wage rate and hours of work, but also by the method of payment, the overtime practices, and various extra bonuses and premiums. Only by taking all of the factors which would affect the claimant's earnings, and those of most workers in similar employment in the locality into consideration can it be determined whether the wages offered are less favorable than those prevailing.
- d. "Prevailing." The prevailing wage means the most outstanding or commonly paid rate for the largest number of workers employed in similar work in a locality. The model rate has generally been recognized as that prevailing where less than a majority, but as many as 40% of the workers in similar work are paid at the same rate. Therefore, when there is a single rate at which at least 40% of the workers in similar work are employed, that rate is prevailing. In the event there is no 40% mode, the prevailing rate may be determined by using the average or median wage as the standard for comparison, based on the best information available. The prevailing starting rate should be obtained in the same manner as the prevailing rate. The mode, must of necessity, be used in determining the prevailing conditions of work when fringe benefits are involved, since fringe benefits cannot be measured in numbers and cannot be averaged.
- e. "Substantially less favorable." The meaning of the phrase "substantially less favorable to the individual" cannot be determined in terms of any fixed percent age, amount, or degree of difference. Both the actual conditions of the work in question and the extent of the difference, as well as its effect on the worker must be considered. The basis for comparison in each case insofar as they can be determined is the conditions under which the greatest number of workers in the particular occupation are employed in the locality. If the conditions of the offered work and those prevailing are known, it is usually easy to determine whether the difference is of a material or substantial nature or is of no real consequence. However, in borderline cases, where it is not clear whether the difference is material, the claimant should not be subject to a disqualification for refusing work unless it is reasonably certain that the conditions on the job are not substantially less favorable than those prevailing for similar work in the locality.

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

Historical Note

Former rule number - Refusal of Work 500. - 500.7. Former rule repealed, new Section R6-3-53500 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-53501. Reserved**R6-3-53502. Reserved****R6-3-53503. Reserved****R6-3-53504. Reserved****R6-3-53505. Reserved****R6-3-53506. Reserved****R6-3-53507. Reserved****R6-3-53508. Reserved****R6-3-53509. Reserved****R6-3-53510. Work, nature of (Refusal of Work 510)****A. Customary (Refusal of Work 510.1)**

1. Occupation refers to the type of work a claimant was performing and not the industry in which he worked.
2. Customary occupation may be defined as follows:
 - a. The occupation in which an individual has developed his highest skill either through experience, training, or education; or
 - b. The occupation in which he has developed a skill through progressive steps of advancement, even though he has worked in such occupation for a relatively short period of time; or
 - c. The occupation in which he was engaged the longest period of time, when his work history indicates experience in a number of occupations involving related skills; or
 - d. The only occupation in which the claimant has engaged.
3. If during the adjustment period (Refer to R6-3-53295) a claimant has a good prospect of obtaining work in his customary occupation, he would have good cause for refusing other work. Conversely, if it is apparent there is little opportunity of obtaining work in his customary occupation he would not have good cause for refusing suitable work outside his customary occupation.

B. Light or heavy work (Refusal of Work 510.35). To be suitable, the offered work must be within the claimant's physical limitation.**Historical Note**

Former rule number - Refusal of Work 510. - 510.35. Former rule repealed, new Section R6-3-53510 adopted effective January 24, 1977 (Supp. 77-1).

R6-3-53511. Reserved**R6-3-53512. Reserved****R6-3-53513. Reserved****R6-3-53514. Reserved****R6-3-53515. Working conditions (Refusal of Work 515)****A. General (Refusal of Work 515.05)**

1. A worker may reasonably expect working conditions which do not involve undue risk to his health, safety or morals. Although these factors are separate and distinct, a number of considerations apply to all three.
2. Protective standards required by law and governmental regulations must be considered. Work which violates any of these standards is unsuitable.

3. Account should be taken of whether the conditions to which the claimant objects are found commonly in similar work in the community, and whether the claimant is and has been accustomed to such conditions of work.

4. Some risks such as those to morals, may be connected indirectly with the work itself.

B. Environment (Refusal of Work 515.35). Environmental factors could provide a claimant with good cause for refusing an offer of work. Work requiring travel in, or through an unsavory section of a city, for example, could provide a claimant with good cause for refusal, depending on the degree of risk involved.**C. Morals (Refusal of Work 515.5)**

1. Work that would adversely affect the morals of a claimant may be unsuitable. For example:
 - a. Employment by an illegal establishment.
 - b. Employment by a business with a poor reputation, if it is shown that the claimant's moral standards or reputation could be injured.
 - c. Work that would expose the claimant to considerable temptation (i.e., an alcoholic who is offered employment in a bar).

2. The risks include those indirectly connected with the work itself, thus:
 - a. Work by a waitress in a cocktail bar may be unsuitable because of the risks created by the type of patron.

D. Prevailing for similar work in locality (Refusal of Work 515.55)

1. No work shall be deemed suitable and benefits shall not be denied to any otherwise eligible individual for refusing to accept new work if the conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.

2. Working conditions comprise all phases of the employee's environment such as light, temperature, moisture, ventilation, sanitation, equipment, materials, production arrangements, location, traveling arrangements, and conduct of fellow workers and superiors. These conditions must be weighed against those prevailing for similar work in the locality. Union contracts, state laws, and the prevailing local practice of the industry provide standards which may be used in determining the quality of working conditions.

3. A claimant may refuse an offer of work with good cause if conditions are not standard, but create an undue hardship on the individual worker.

4. Key words and phrases, and sources of information applicable to this section are included in R6-3-53500(B) of these rules.

E. Safety (Refusal of Work 515.65)

1. Suitability of the job, may be judged by whether the work would be unduly dangerous to the ordinary worker and whether work safeguards meet the standards of the industry.

2. A claimant's personal characteristics, physical limitations, and lack of previous experience are contributing factors which should be examined.

Historical Note

Former rule number - Refusal of Work 515. - 515.65. Former rule repealed, new Section R6-3-53515 adopted effective January 24, 1977 (Supp. 77-1).

ARTICLE 54. BENEFIT CLAIMS, COMPUTATION, EXTENSION, AND OVERPAYMENT**R6-3-5401. Reserved**

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

1978 (Supp. 78-4). Amended effective March 5, 1981
(Supp. 81-2). Repealed effective December 20, 1995
(Supp. 95-4).

R6-3-5471. Reserved

R6-3-5472. Reserved

R6-3-5473. Reserved

R6-3-5474. Reserved

R6-3-5475. Claims and Registration

A. Definitions. In this Article:

1. "Department" means the Arizona Department of Economic Security and any other entity that has an agreement with the Department to provide unemployment insurance and reemployment services.
2. "Itinerant service" means unemployment insurance claims service on a regularly scheduled but less than full-time basis to a locality not within a reasonable commuting distance of an established, full-time claims office.
3. "Personal Identification Number" means a four-digit number selected and entered by the claimant into the unemployment insurance telephone claims filing system.

B. Initial claims. A person claiming unemployment insurance benefits shall:

1. File an initial claim with the Department:
 - a. In writing, using an application provided by the Department at an office that accepts unemployment insurance claims. A claimant may also request and submit an application by mail;
 - b. By telephone, using a toll-free number provided by the Department via the Department's web site, local telephone directories, and informational flyers; or
 - c. By Internet, using the service maintained for that purpose on the Department's web site.
2. The Department may limit the available methods of filing according to budgetary constraints or program needs. The Department shall provide information on how to file an initial claim on its web site, in its employment offices, and in employment offices operated by other public agencies throughout the state.
3. Include the following information on the initial claim:
 - a. The claimant's personal identifying information, including name, aliases, birth date, address, telephone number, occupation, Social Security number, and citizenship status;
 - b. The claimant's employment history, including information on the claimant's last employer, the claimant's last date of work, and the reason for the claimant's separation from employment or a statement as to whether the last work was part time;
 - c. A statement that the claimant is totally or partially unemployed, and information on the claimant's potential for employment, including:
 - i. A description of the circumstances under which the claimant is willing to accept employment, and
 - ii. The claimant's restrictions to accepting employment;
 - d. A statement of other benefits the claimant has obtained or is seeking, including workers' compensation, Social Security, retirement benefits, unemployment benefits from another state, and employment benefits such as accrued vacation pay;
 - e. An acknowledgment that the claimant may be subject to penalty for provision of false statements or information; and

f. The claimant's signature or personal identification number.

C. Registration; exemptions. A claimant who files a claim satisfies the registration for work requirements of A.R.S. § 23-771(A)(1). The Department shall not require further registration efforts by a claimant who:

1. Is unemployed due to a labor dispute at the establishment of the claimant's employer but intends to return to work for the employer when the dispute ends;
2. Is temporarily laid off from employment for a known duration of not more than 30 days and has been notified of the date to return to work;
3. Is residing in a geographic area in which the Department does not provide placement services;
4. Is registered for work with a labor union through which workers in the claimant's occupation normally obtain work;
5. Is enrolled in a training course that meets the requirements of A.R.S. § 23-771.01 and R6-3-1809; or
6. Is laid off from employment because of the seasonal nature of the claimant's occupation, and the Department has determined that no current placement opportunities exist for the claimant. When the season for the claimant's occupation resumes, the claimant shall register with the Department's employment service.

D. Effective date of claim. Except as otherwise provided in this Section, an initial claim for benefits is effective on the first day of the calendar week in which the claimant files a claim.

1. An initial claim for benefits filed at a biweekly itinerant service point is effective on the first day of the prior calendar week if the claimant's unemployment began in that week and the claimant reported to file the claim at the itinerant service point on the next regularly scheduled service date.
2. An initial claim filed by mail is effective on the first day of the calendar week in which the claimant requests the claim forms, if the claimant returns the completed forms within seven days of the date that the Department mailed or provided the forms to the claimant. In all other cases where the claimant files by mail, the effective date is the first day of the calendar week that the claimant mails the completed forms to the Department. The mailing date is the postmark date.

E. Earlier effective dates. The Department may give the claim an effective date earlier than the dates described in subsection (D) if:

1. The claimant shows that the Department gave the claimant incorrect information that caused the claimant to delay filing the claim;
2. The claimant was unable to timely file a claim because the Department did not provide accessible claim services;
3. The claimant filed a timely claim against another state and:
 - a. The claim was later cancelled or denied; or
 - b. The claimant did not qualify for benefits in the other state;

F. Cancellation of claims. At the request of a claimant, the Department may cancel a claim that has established a benefit year if:

1. The claimant:
 - a. Has filed a combined wage claim; or
 - b. Has sufficient wage credits in another state to qualify for a claim; and
 - c. Requests cancellation within 15 days of the most recently issued monetary determination; and

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

- d. Repays, or agrees to repay, any benefits received from the Arizona claim;
 - 2. The claimant is ineligible for benefits because the claimant earned wages in the base period from an employer who contributed to or maintained the claimant's pension plan, and the wages will not be in the base period of a subsequent claim;
 - 3. The claimant:
 - a. Initiates a claim during the final week of a benefit calendar quarter;
 - b. Will be eligible for a higher weekly benefit amount in the following benefit calendar quarter; and
 - c. Requests cancellation within seven days of the start of the new benefit calendar quarter;
 - 4. Except as provided in subsections (F)(1) through (3), the claimant initiates a claim but does not file for a week of unemployment, and the claimant will qualify for a higher weekly benefit amount in a subsequent benefit calendar quarter; or
 - 5. The claimant shows that the Department provided the claimant with incorrect information regarding the claimant's potential eligibility at the time the claim was initiated.
- G.** Continued claim for benefits. Except as otherwise provided in A.R.S. §§ 23-761 through 23-766, R6-3-1405, and R6-3-1809, for each week of unemployment claimed, a claimant shall timely file a continued claim for benefits or waiting period credit, on a form provided by the Department, by telephone, or through the Internet.
- 1. The Department may limit the available methods of filing these claims according to budgetary constraints or program needs. The Department shall provide each claimant with instructions on how to file continued claims at the time the initial claim is filed.
 - 2. A continued claim shall include the following information for the applicable claim period:
 - a. A statement of any employment the claimant held and any wages the claimant earned;
 - b. A statement as to the claimant's ability to work, availability for work, and efforts to seek work;
 - c. A statement as to whether the claimant received or refused any offers of work;
 - d. A statement that the claimant understands and acknowledges that the claimant has a duty to notify the Department of changes in any circumstances that may affect the claimant's eligibility for benefits; and
 - e. The claimant's signature or personal identification number.
 - 3. A claim is timely filed when the Department receives the claim within 14 days of the benefit week ending date. If the claim is mailed, the claim is timely if postmarked within 14 days of the benefit week ending date.
- H.** Untimely claims. The Department shall disallow an untimely claim unless:
- 1. The untimeliness was due to Department error; or
 - 2. The claimant establishes good cause for the untimeliness. As used in this Section "good cause" means that the untimeliness was due to a circumstance beyond the reasonable control of the claimant;
 - 3. Notwithstanding any other provision of this Section, when the untimely claim is the first occurrence in a benefit year, the Department shall not disallow the claim unless the Department finds that the untimeliness was willful. Willfulness is established if:
 - a. The claimant files the claim more than seven days after the 14-day period specified in subsection (G)(3), and
 - b. The Department has clear and convincing proof that the claimant knew of the filing requirements and deliberately chose to ignore them.
- I.** Adjudication and eligibility interviews.
- 1. The Department may require a claimant to participate in a:
 - a. Determination fact-finding proceeding, if an issue arises regarding eligibility; or
 - b. Periodic eligibility review, if a claimant has claimed benefits for at least two weeks.
 - 2. The Department shall give the claimant not less than five calendar days prior written notice if it schedules a proceeding or review.
 - 3. Except as otherwise provided in this subsection, a claimant who fails to report in person or be available via telephone, on a scheduled proceeding or interview date is ineligible for benefits for the week in which the appointment was scheduled, until the claimant reports to the Department.
 - a. The Department shall not hold the claimant ineligible if:
 - i. The claimant reports within three work days of the scheduled interview or the end of the same calendar week, whichever first occurs; or
 - ii. The claimant has good cause for the failure to report.
 - b. As used in this subsection, good cause includes the following circumstances:
 - i. The claimant was ill,
 - ii. The claimant lacked transportation to the appointment,
 - iii. The claimant had a job interview or work that precluded the claimant from keeping the appointment, or
 - iv. Other similar circumstances beyond the reasonable control of the claimant.
- J.** Reemployment services.
- 1. The Department may require a claimant to participate in a reemployment service program if the Department determines that the claimant:
 - a. Is likely to exhaust regular unemployment compensation benefits; and
 - b. Needs job search assistance services to make a successful transition to new employment.
 - 2. If a claimant who is required to participate in reemployment services fails to report to a reemployment service provider, or to fulfill the requirements of the claimant's reemployment service plan, the claimant is ineligible for benefits for the week during which the act of non-participation occurred, unless the claimant establishes good cause for non-participation. Good cause includes the circumstances listed in subsection (I)(3)(b).

Historical Note

Former rule number -- Miscellaneous 75. - 75.6. Former rule repealed, new Section R6-3-5475 adopted effective January 24, 1977 (Supp. 77-1). Section repealed, new Section adopted effective December 20, 1995 (Supp. 95-4). Amended by final rulemaking at 6 A.A.R. 3648, effective August 28, 2000 (Supp. 00-3). Amended by emergency rulemaking at 12 A.A.R. 3808, effective September 8, 2006 for 180 days (Supp. 06-3). Emergency renewed at 13 A.A.R. 1139, effective March 6, 2007 for 180 days (Supp. 07-1). Emergency expired. Section

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

amended by final rulemaking at 14 A.A.R. 1747, effective June 14, 2008 (Supp. 08-2).

- R6-3-5476. Reserved
- R6-3-5477. Reserved
- R6-3-5478. Reserved
- R6-3-5479. Reserved
- R6-3-5480. Reserved
- R6-3-5481. Reserved
- R6-3-5482. Reserved
- R6-3-5483. Reserved
- R6-3-5484. Reserved
- R6-3-5485. Reserved
- R6-3-5486. Reserved
- R6-3-5487. Reserved
- R6-3-5488. Reserved
- R6-3-5489. Reserved
- R6-3-5490. Reserved
- R6-3-5491. Reserved
- R6-3-5492. Reserved
- R6-3-5493. Reserved
- R6-3-5494. Reserved

R6-3-5495. Disqualification; Definition of Last Employment

- A. The Department shall determine whether to disqualify a claimant as prescribed in A.R.S. § 23-775(1) and (2) based on the reason for separation from the claimant's last employment when the claimant:
1. Initiates a benefit year;
 2. After a period of intervening employment during the benefit year, files a request to reopen the claim; or
 3. During a continuous period of filing, is employed and later separates from the employment.
- B. In this Section, "last employment" means the claimant's most recent work:
1. Lasting 2 consecutive work days or more during which the claimant worked the normal, customary full-time hours;
 2. Lasting 2 days or more in the same calendar week during which the claimant worked the normal, customary full-time hours;
 3. Occurring during a calendar week in which the claimant earned wages equal to or exceeding the claimant's weekly benefit amount; or
 4. Regardless of whether the claimant performed services or met the requirements of subsection (B)(1) through (3), which the claimant voluntarily left or from which the claimant was discharged.

Historical Note

Former rule number -- Miscellaneous 95. - 95.1. Former rule repealed, new Section R6-3-5495 adopted effective January 24, 1977 (Supp. 77-1). Amended effective June 24, 1981 (Supp. 81-3). Amended effective December 27, 1985 (Supp. 85-6). Amended effective July 22, 1997 (Supp. 97-3).

R6-3-5496. Reserved

R6-3-5497. Reserved

R6-3-5498. Reserved

R6-3-5499. Reserved

R6-3-54100. Extended benefits

- A. Work search requirements. Terms used in A.R.S. § 23-634.01 are explained as follows:
1. "Tangible evidence" is a written record of the work-seeking activities of the week, including the employer name and address, the date and method of contact, the individual contacted, the type of work sought, and the outcome of the contact.
 2. "A systematic and sustained effort" means the development and employment of a method or plan for seeking work, which is maintained each week. It must represent the course of action a reasonable and prudent person would employ.
 - a. For each week of extended benefits claimed, efforts to find employment must be made on more than one day of the week.
 - b. Registration with Job Service and/or membership in and registration with a union that serves as a hiring agent do not, by themselves, constitute a systematic and sustained effort to find work. This applies even if the union serves as the hiring agent for most prospective employers in the area. The claimant must, on his own initiative, make an active and independent effort to seek work. The work need not be in claimant's usual occupation, but must be work for which the claimant is qualified by experience or training.
 - c. With the exception of jury duty as described in (2)(d) below, an extended benefits claimant cannot establish good cause for failure to maintain a systematic and sustained search for work. The statutory disqualification applies if a claimant does not seek work due to illness, death in family, personal circumstances, or any other reason and claims extended benefits for the week(s). However, an extended benefit claimant may be found eligible under the one work day removal from the active labor force provisions of R6-3-5205(A)(6), (7), and (8) if the overall pattern for the week meets the requirements of a systematic and sustained effort to find work.
 - d. A claimant shall be excepted from the requirement of conducting a systematic and sustained work search if prevented from doing so on the basis of his being selected as a member of a jury panel or as a juror in a specific trial.
- B. Refusal of suitable work
1. An extended benefits claimant's prospects for obtaining work must be classified either "good" or "not good" before the first extended benefit payment is made. The claimant must be informed of this classification.
 - a. Prospects are "good" -- claimant has a definite prospect of work or a definite date to return to work within six weeks.
Prospects are "not good" -- there is no definite prospect of the claimant returning to work within the next six weeks.
 - b. This classification can be changed at any time during the extended benefit period as circumstances

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

warrant, providing the claimant is informed immediately of the reclassification.

c. This classification is not appealable unless it is a part of a determination regarding failure to apply for or accept an offer of suitable work.

2. For claimants classified as prospects are "good" the regular refusal of work provisions of A.R.S. § 23-77(A) and the Refusal of Work sections of these Benefit Policy rules apply.

3. For claimants classified prospects are "not good" the provisions of A.R.S. § 23-776(A) (including disqualification) do not apply. The failure to accept a referral to or an offer of work for a claimant in this classification must be adjudicated under A.R.S. § 23-634.01. The work shall be considered suitable if the claimant is capable of performing it without regard to use of claimant's highest skill and the following conditions are present:

a. The gross average weekly wage is equal to or exceeds the claimant's weekly benefit amount plus any applicable supplemental unemployment benefits;

b. The wages are equal to or exceed the minimum wage;

c. The offer has been listed with the Department of Economic Security, or the employer has provided the offer of work to the claimant in writing;

d. The claimant will not be required to join a company union or to resign from or refrain from joining a bona fide labor organization;

e. The position is not vacant due directly to a strike, lockout, or other labor dispute; or

f. The wages, hours or other conditions of the work offered are not substantially less favorable to the individual than those prevailing for similar work in the community.

4. Notwithstanding the provisions of R6-3-53335, there is no limitation to the number of times a claimant classified prospects are "not good" can be disqualified for refusal of the same job provided the offered job is not unsuitable under B.3. above.

C. Filing extended benefits. A.R.S. § 23-634(B) limits the payment of extended benefits to two weeks to an individual filing under the interstate benefit payment plan unless an extended benefit period is in effect in the state of filing.

1. In applying this statute, the state of filing is the determining factor. In some instances, the claimant may be residing in a state which is in an extended benefit period but may be filing for convenience in a neighboring state not in an extended benefit period. The claimant is not eligible for more than two weeks of extended benefits. This applies even though the actual state of residence may be Arizona.

This statute does not apply to an individual who is temporarily absent from the area of the regular reporting office and files transient or visiting (courtesy) claims. He is considered as filing from his regular local office until an interstate claim is initiated.

2. A claimant who has received two weeks of extended benefits while filing in an agent state not in an extended benefit period may not collect an additional two weeks of benefits by filing in another state not in an extended benefit period. The claimant may, however, receive benefits until the extended benefit award is exhausted if filing in an agent state which is in or enters an extended benefit period.

3. If the claimant is filing from a state in an extended benefit period and this period ends, the claimant is entitled to two further weeks of extended benefits, provided there is a sufficient balance in the extended benefit award and the claimant has not collected benefits for the additional two weeks.

Historical Note

Adopted effective March 17, 1982 (Supp. 82-2).

Amended effective December 27, 1985 (Supp. 85-6).

R6-3-54101. Reserved

R6-3-54102. Reserved

R6-3-54103. Reserved

R6-3-54104. Reserved

R6-3-54105. Reserved

R6-3-54106. Reserved

R6-3-54107. Reserved

R6-3-54108. Reserved

R6-3-54109. Reserved

R6-3-54110. Reserved

R6-3-54111. Reserved

R6-3-54112. Reserved

R6-3-54113. Reserved

R6-3-54114. Reserved

R6-3-54115. Reserved

R6-3-54116. Reserved

R6-3-54117. Reserved

R6-3-54118. Reserved

R6-3-54119. Reserved

R6-3-54120. Reserved

R6-3-54121. Reserved

R6-3-54122. Reserved

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R6-3-54132. Reserved

R6-3-54133. Reserved

R6-3-54134. Reserved

R6-3-54135. Reserved

R6-3-54136. Reserved

R6-3-54137. Reserved

R6-3-54138. Reserved

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-54139. Reserved	R6-3-54183. Reserved
R6-3-54140. Reserved	R6-3-54184. Reserved
R6-3-54141. Reserved	R6-3-54185. Reserved
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R6-3-54162. Reserved	R6-3-54206. Reserved
R6-3-54163. Reserved	R6-3-54207. Reserved
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R6-3-54168. Reserved	R6-3-54212. Reserved
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R6-3-54177. Reserved	R6-3-54221. Reserved
R6-3-54178. Reserved	R6-3-54222. Reserved
R6-3-54179. Reserved	R6-3-54223. Reserved
R6-3-54180. Reserved	R6-3-54224. Reserved
R6-3-54181. Reserved	R6-3-54225. Reserved
R6-3-54182. Reserved	R6-3-54226. Reserved

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-54227. Reserved	R6-3-54271. Reserved
R6-3-54228. Reserved	R6-3-54272. Reserved
R6-3-54229. Reserved	R6-3-54273. Reserved
R6-3-54230. Reserved	R6-3-54274. Reserved
R6-3-54231. Reserved	R6-3-54275. Reserved
R6-3-54232. Reserved	R6-3-54276. Reserved
R6-3-54233. Reserved	R6-3-54277. Reserved
R6-3-54234. Reserved	R6-3-54278. Reserved
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R6-3-54257. Reserved	R6-3-54301. Reserved
R6-3-54258. Reserved	R6-3-54302. Reserved
R6-3-54259. Reserved	R6-3-54303. Reserved
R6-3-54260. Reserved	R6-3-54304. Reserved
R6-3-54261. Reserved	R6-3-54305. Reserved
R6-3-54262. Reserved	R6-3-54306. Reserved
R6-3-54263. Reserved	R6-3-54307. Reserved
R6-3-54264. Reserved	R6-3-54308. Reserved
R6-3-54265. Reserved	R6-3-54309. Reserved
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R6-3-54269. Reserved	R6-3-54313. Reserved
R6-3-54270. Reserved	R6-3-54314. Reserved

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-54315. Reserved
 R6-3-54316. Reserved
 R6-3-54317. Reserved
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 R6-3-54336. Reserved
 R6-3-54337. Reserved
 R6-3-54338. Reserved
 R6-3-54339. Reserved

R6-3-54340. Overpayments (Miscellaneous 340)

Administrative penalty -- fraud or misrepresentation (Miscellaneous 340.05)

1. Section 23-778 of the Employment Security Law of Arizona provides:

“Any person who, within the 24 calendar months immediately preceding a week in which he files a valid claim for benefits, has made a false statement or representation of a material fact, knowing it to be false, or knowingly failed to disclose a material fact with intent to obtain benefits under this chapter, shall be disqualified for the week for which the claim was filed and for not more than 51 weeks immediately following such week as determined by the Commission according to the circumstances in each case.”
2. A claimant shall be disqualified under A.R.S. § 23-778, for the periods shown in paragraph (3) below, if he willfully and knowingly with intent to obtain benefits makes a false statement or representation or conceals a fact, and the true fact concealed by the false statement or nondisclosure is material
3. Periods of disqualification are applicable as follows:
 - a. Four weeks disqualification for each week of unreported earnings, up to a maximum of 52 weeks.
 - b. Ten weeks disqualification for false statements on separation, eligibility, refusal of work and other issues.

4. The effective date of the administrative penalty is the beginning date of the first otherwise valid waiting week or payable claim filed after the date of the determination which is the basis for establishing that the claimant made a false statement.
5. The terms used in the above quoted section of the Law mean:
 - a. False. A statement or representation is false if it is contrary to fact.
 - b. Knowingly
 - i. A false statement or representation is made knowingly if the person making it is aware that it is untrue or if he has no reasonable basis for believing that it is true.
 - ii. A claimant knowingly fails to disclose a fact if he deliberately withholds information which he knows should be disclosed to the Agency.
 - c. Material fact
 - i. A fact is material if in some way it affects the eventual outcome of a transaction. Thus, a fact which, if known, would result in a determination adverse to the claimant, is a material fact.
 - ii. A fact is not material if the failure to disclose it or the intentional misstatement of it would not cause injury. Thus, a fact which, if known, would cause no denial of benefits to the claimant is not material.
 - d. With intent to obtain benefits
 - i. This phrase refers to the claimant's purpose in knowingly making a false statement or representation or in knowingly failing to disclose a material fact. The fact that concealment of a material fact by willful misstatement or nondisclosure occurs in the course of claiming benefits suggests that the claimant's intent was to obtain benefits. In the absence of facts to indicate otherwise it may be assumed such was his purpose.
 - ii. If facts are discovered which indicate a different intent, the conclusions as to the claimant's intent must be based on consideration of all the facts and not merely on an assumption.
6. A claimant who inadvertently makes a mistake or omission, or who does not understand his responsibility or the questions asked him, and on the basis of information previously given him, cannot reasonably be expected to understand his responsibility, shall not be disqualified under A.R.S. § 23-778. If at any time during the investigation, it becomes apparent that one of the conditions required by the law, does not exist, the adjudicator must decline application of the administrative penalty.
7. This rule rescinds Unemployment Insurance regulation R6-3-1808 (former 30-7).

Historical Note

Former rule number -- Miscellaneous 340. - 340.05. Former rule repealed, new Section R6-3-54340 adopted effective January 24, 1977 (Supp. 77-1). Amended effective October 20, 1978 (Supp. 78-5).

R6-3-54341. Reserved
 R6-3-54342. Reserved
 R6-3-54343. Reserved
 R6-3-54344. Reserved
 R6-3-54345. Reserved

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-54346. Reserved	R6-3-54390. Reserved
R6-3-54347. Reserved	R6-3-54391. Reserved
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R6-3-54356. Reserved	R6-3-54400. Reserved
R6-3-54357. Reserved	R6-3-54401. Reserved
R6-3-54358. Reserved	R6-3-54402. Reserved
R6-3-54359. Reserved	R6-3-54403. Reserved
R6-3-54360. Reserved	R6-3-54404. Reserved
R6-3-54361. Reserved	R6-3-54405. Reserved
R6-3-54362. Reserved	R6-3-54406. Reserved
R6-3-54363. Reserved	R6-3-54407. Repealed
R6-3-54364. Reserved	
R6-3-54365. Reserved	
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R6-3-54368. Reserved	
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R6-3-54387. Reserved	
R6-3-54388. Reserved	
R6-3-54389. Reserved	

Historical Note

Former rule number -- Miscellaneous 407. - 407.1. Former rule repealed, new Section R6-3-54407 adopted effective January 24, 1977 (Supp. 77-1). Repealed effective July 22, 1997 (Supp. 97-3).

ARTICLE 55. TOTAL AND PARTIAL UNEMPLOYMENT BENEFIT POLICY

R6-3-5501. Reserved

through

R6-3-55414. Reserved [49,913 Sections Reserved]

R6-3-55415. Self-employment or other work (Total and Partial Unemployment 415)

Salesman, commission (T.P.U. 415.3)

1. The primary issue created when a claimant accepts sales work on a straight commission basis is that of his employment status. It must be determined whether or not he is considered unemployed and potentially eligible for benefits. The eligibility of a commission salesman must be determined from the standpoint of the particular job as well as the intent of the claimant in engaging in selling activities.
2. If a claimant's training, experience, or work history qualify him as a salesman, he may be considered employed and ineligible for benefits if he engages in selling activities. Each such case must be judged on the basis of the facts.
3. A claimant who has lost his customary work and engages in commission sales work, only as a stop-gap measure until work more suited to his training and experience becomes available, is not ineligible solely on the basis of engaging in commission selling.
4. A claimant performing services as a commission salesman, who receives commission payments in an amount less than his weekly benefit amount, may be considered unemployed if:
 - a. The number of hours spent on the job is restricted to less than full time by his employer; or

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

- b. It is neither customary nor practical in the community to devote full time to the selling activities; or
 - c. Regardless of the number of hours devoted to the activity, the selling is stop-gap, odd job work outside the customary occupation for which he is qualified and his acceptance of the work will not preclude his obtaining employment more suitable to his experience and training.
5. If a claimant engaged in commission selling is determined to be unemployed he must also meet the test of availability. Refer to R6-3-52160(A) of these rules.
 6. Commission payments should be allocated, as other wages, to the week in which the services were performed. However, certain circumstances sometimes arise which make it impossible for the claimant to determine the amount of wages earned during a given week or whether they will be paid. In such cases the claimant may report commissions as earnings for the week in which they are payable.

Historical Note

Former rule number -- Total and Partial Unemployment 415. - 415.3. Former rule repealed, new Section R6-3-55415 adopted effective January 24, 1977 (Supp. 77-1). Amended effective November 28, 1977 (Supp. 77-6). Amended effective May 8, 1979 (Supp. 79-3). Amended paragraph (4), subparagraph (c) effective November 24, 1982 (Supp. 82-6).

R6-3-55416. Reserved
 R6-3-54417. Reserved
 R6-3-54418. Reserved
 R6-3-54419. Reserved
 R6-3-54420. Reserved
 R6-3-54421. Reserved
 R6-3-54422. Reserved
 R6-3-54423. Reserved
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 R6-3-54457. Reserved
 R6-3-54458. Reserved
 R6-3-55459. Reserved

R6-3-55460. Type of Compensation**A. Separation Pay**

1. A separation payment includes wages in lieu of notice and severance payments made under an employment contract or policy of the employer under A.R.S. § 23-621.
2. A payment may be made:
 - a. As a lump sum at the time of termination of services; or
 - b. The employer may continue to include the worker on the employer's payroll for one or more pay periods following the termination of the worker's services.

B. Vacation, holiday or sick pay

1. For the purpose of Unemployment Insurance, payments received for vacation, sick or holiday leave are considered earnings and shall result in denial of benefits if allocated to periods during which claims are filed.
2. The appropriate period to which vacation, holiday, or sick pay is allocable will be determined in one of the following ways:
 - a. If there is a contract, written or verbal, in effect between the employer and the claimant at the time of separation, allocate to the appropriate period in accordance with the contract, continuing for the number of work days which the pay would cover at the regular wage rate.
 - b. If there is no contract, written or verbal, in effect, allocate to the appropriate period following the last day of work through the number of work days that the pay would cover at the regular wage rate.
3. If in a particular situation the agreement was made for a purpose other than to establish a vacation period (e.g., to prevent payment of UI benefits for an extended period which the pay would not cover at the worker's pay rate), the appropriate period will be determined as in subsection (B)(2)(b).

C. Back pay awards

1. Unemployment Insurance regulation R6-3-1703 requires employers to report wages of workers for the quarter in

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

which the wages were paid. For the purpose of determining a claimant's eligibility for an unemployment insurance award, wages are allocated to the quarter in which the wages were paid, in accordance with A.R.S. § 23-771(6).

2. For purposes of A.R.S. §§ 23-621, 23-771(6) and 23-779(A) and (B), back pay awards are wages for the period for which the payment is made, regardless of when paid. This shall not affect the manner in which wages are reported for contribution purposes.
3. For the purpose of this rule, back pay awards include, but are not limited to, awards
 - a. Under the Fair Labor Standards Act for unpaid overtime or minimum wages, but not for liquidated damages thereunder; and
 - b. Of the National Labor Relations Board or by private agreement consent or arbitration for loss of pay by reason of wrongful discharge.

Historical Note

Former rule number -- Total and Partial Unemployment 460. - 460.75. Former rule repealed, new Section R6-3-55460 adopted effective January 24, 1977 (Supp. 77-1).

Amended effective August 24, 1977 (Supp. 77-4).

Amended by final rulemaking at 24 A.A.R. 1417, effective June 19, 2018 (Supp. 18-2).

ARTICLE 56. LABOR DISPUTE BENEFIT POLICY**R6-3-5601. Definitions and Explanation of Terms**

The following definitions and explanation of terms apply to A.R.S. § 23-777 and Article 56 of this Chapter:

1. "Class" means a number of grades of workers, joined together for a common purpose.
2. "Directly interested in," when used in reference to a labor dispute, means that an employee is a member of a bargaining unit in which the terms or conditions of the employee's work will be directly affected by the outcome of a dispute.
 - a. An employee may be directly interested in the labor dispute even though the employee is not a member of a striking union.
 - b. An employee may be directly interested in a dispute even though the employee offered to continue working, or voted against or otherwise opposed the labor dispute.
 - c. An employee is not directly interested in a dispute if the employee was not in the bargaining unit involved in the labor dispute but may benefit from the labor dispute because the employer's practice is to bring the employment status of all the employees into line with a settlement reached with any particular group of employees.
3. "Establishment" means more than a factory or other business premises and may include combinations or portions of factories or other premises. An establishment is each separate project of an employing unit if the project is a separate activity for the purpose of employment.
4. "Financing," when used in reference to a labor dispute, means that an employee is contributing money to enable workers to strike. Mere payment of union dues is not financing a labor dispute. If all or a portion of the employee's union dues are used to pay strike benefits, or to, in some other way, support the employee's union or another union involved in a labor dispute at the establishment at which the employee is or was last employed, the employee is financing a labor dispute.
5. "Grade" means a particular classification within an occupation, such as apprentice or journeyman.
6. "Labor dispute" means any controversy between employees and their employer over terms, tenure, or conditions of employment, or the association or representation of employees in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment. A labor dispute may exist without a union or a collective bargaining agreement. A strike or a lockout is a form of labor dispute.
7. "Lockout" means that an employer is withholding employment from a group of employees to obtain the employees' acceptance of the employer's terms. A lockout does not require the inclusion of all employees in a particular grade or class. A lockout exists when all the following conditions are present:
 - a. The employer demands some concession from the employees,
 - b. The employer withholds employment in order to gain the concession, and
 - c. The employer intends to resume operations with the same employees when the concession is gained.
8. "Member of a bargaining unit" means any employee or group of employees, whether or not the employees belong to a union or other trade organization, who are members of a grade or class of employees represented by a bargaining unit that engages in bargaining on wages or other conditions of work.
9. "Participating in," when used in reference to a labor dispute at an establishment at which an employee is or was last employed, means that the employee has taken definite action such as stopping work, walking out, striking, picketing, or otherwise lending tangible aid to the worker group directly involved. Membership in a labor organization or union involved in a labor dispute is not participating in the dispute in the absence of other actions.
 - a. An employee participates in a dispute if the employee refuses to cross a picket line at an establishment at which the employee is or was last employed, regardless of whether the employee is a member of the picketing union, if:
 - i. The employee's job was open and work was available so the employee could have worked had the employee crossed the picket line; and
 - ii. The employee's refusal to cross was voluntary. The employee's refusal is not voluntary if the employee risked physical violence by crossing the picket line.
 - b. If the reason for the employee's failure to cross a picket line is respect for the strikers' cause, the employee is participating in the dispute.
10. "Strike" means that employees have stopped working because the employees have not reached an agreement with their employer on terms or conditions for continued employment, or the employer has refused the employees' demands for changes in the terms or conditions of employment. A strike exists when all the following conditions are present:
 - a. The employees have demanded an agreement with the employer or some concession from the employer,
 - b. The employees stop working in order to win the concession, and
 - c. The employees intend to return to work when the agreement with the employer is reached or the concession is won.

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

Historical Note

Adopted effective July 22, 1997 (Supp. 97-3).

R6-3-5602. Labor Dispute Notice

- A.** Notice by Employer. An employer involved in a labor dispute, strike, or lockout shall, upon request by the Department, provide the following information:
1. The address of each location affected by the dispute, the date the dispute began, and whether strikers have formed a picket line at each location;
 2. The name, address, and business agent of any labor organization involved in the dispute, and the date a contract or agreement with the organization expired;
 3. The issues involved in the dispute and the grade or class of employees who:
 - a. Have left work because of the dispute;
 - b. Are not a part of the dispute but are unemployed as a result of the dispute; and
 - c. Are continuing to work; and
 4. The name, social security number, and type of work performed by each employee who is unemployed due to the dispute.
- B.** Notice by Labor Organization. A labor organization involved in the dispute shall, upon request by the Department, provide the following information:
1. A description of the class of workers represented by the labor organization;
 2. A summary of the matters in dispute;
 3. Whether the labor organization has established a picket line;
 4. Whether the members are required to do picket duty; and
 5. Whether the members are paid while on strike.

Historical Note

Adopted effective July 22, 1997 (Supp. 97-3).

R6-3-5603. Eligibility During a Labor Dispute

- A.** When a worker's unemployment results from action taken in anticipation of the labor dispute but occurring before the dispute starts, the worker's unemployment is not due to the labor dispute. The start of a labor dispute does not change the reason for a worker's unemployment if the unemployment preceded the dispute.
- B.** When a labor dispute begins while a worker is on an approved absence from work, and the worker does not return to work at the end of the absence because of the labor dispute, the worker's unemployment is due to the labor dispute. An example of an approved absence is vacation, sick leave, or other similar reasons.
- C.** When a worker who is a member of a grade or class of workers participating in, financing, or directly interested in a labor dispute did not go out on strike with the other members, but subsequently became unemployed because the employer limits or stops work as the result of the strike, the worker is unemployed due to a labor dispute pursuant to A.R.S. § 23-777.
- D.** When an employer can no longer provide work to a worker who is not participating in, financing, or directly interested in a labor dispute because of the absence of other workers who are on strike, the worker is unemployed due to a lack of work as a result of the labor dispute. The Department shall not charge the employer for any benefits paid to the worker while the worker's unemployment is a result of the labor dispute.

Historical Note

Adopted effective July 22, 1997 (Supp. 97-3).

R6-3-5604. Termination of the Labor Dispute Disqualification

- A.** Discharge During Dispute
1. When, during an ongoing labor dispute, the employer discharges a worker who is unemployed due to a labor dispute, the Department shall not end the labor dispute disqualification until the employer establishes that the employer took positive and affirmative action to sever the employer-employee relationship, or the worker establishes that the worker:
 - a. Has been permanently replaced,
 - b. Abandoned the strike or dispute, and
 - c. Unconditionally offered to return to work.
 2. Positive and affirmative action by the employer to sever the employer-employee relationship includes:
 - a. Resumption of operations,
 - b. Permanent replacement of the discharged worker,
 - c. Discontinuance of company benefits,
 - d. Transfer of the employer's location, or
 - e. Sale of the business.
 3. Notwithstanding subsection (A)(1), the Department shall end the labor dispute disqualification and shall determine the worker's eligibility for benefits in accordance with the provisions of A.R.S. § 23-775(2) and Article 51 of this Chapter when the employer severs the employer-employee relationship because the worker:
 - a. Participates in a strike in violation of a no-strike clause in a collective bargaining agreement; or
 - b. Commits violence or unlawful conduct during picketing activities on, adjacent to, or directed at the employer's premises, property, operations, or personnel.
- B.** Quit During Dispute. The Department shall end the labor dispute disqualification if the Department determines the worker quit employment with a labor-dispute employer and does not intend to return to work at the end of the dispute,
- C.** New Employment During the Dispute. The Department shall end a labor dispute disqualification when the worker involved in an ongoing dispute has had new employment that began after the start of the labor dispute and the worker establishes the following:
1. The worker accepted the employment in good faith. Good faith means that the worker, in accepting the new work, intended to continue in the job and not return to the former employer at the end of the labor dispute.
 2. The worker was employed by the new employer for at least 8 weeks, and in each week the worker earned an amount equal to or exceeding the worker's weekly benefit amount. One or more periods of employment, not necessarily consecutive, with 1 or more employers meets the duration test if the total duration is at least 8 weeks.
- D.** Termination of Dispute. A labor dispute no longer exists at the time the disputants agree it has ended and are willing to resume operations and return to work.
1. If there is no agreement as to the date a dispute has ended, the Department shall establish an ending date from the dates of the following events:
 - a. The return to normal business operations,
 - b. The end of bargaining meetings, and
 - c. The striking unions' notice of a desire to return to work.
 2. When a labor dispute ends, the worker is no longer directly interested in, financing, or participating in a labor dispute. The labor-dispute disqualification ends with the last week in which the labor-dispute disqualification is applicable for any portion of a day within the employer's regular work week.

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

E. Employer's Chargeability. The Department shall determine chargeability for the claimant's base-period employers during and upon termination of the dispute as prescribed in R6-3-1708(D).

Historical Note

Adopted effective July 22, 1997 (Supp. 97-3).

R6-3-5605. Repealed

Historical Note

Former rule number -- Labor Dispute 5. Former rule repealed, new Section R6-3-5605 adopted effective January 24, 1977 (Supp. 77-1). Repealed effective July 22, 1997 (Supp. 97-3).

R6-3-5606. Reserved

R6-3-5606. Reserved

R6-3-5607. Reserved

R6-3-5608. Reserved

R6-3-5609. Reserved

R6-3-5610. Reserved

R6-3-5611. Reserved

R6-3-5612. Reserved

R6-3-5613. Reserved

R6-3-5614. Reserved

R6-3-5615. Reserved

R6-3-5616. Reserved

R6-3-5617. Reserved

R6-3-5618. Reserved

R6-3-5619. Reserved

R6-3-5620. Reserved

R6-3-5621. Reserved

R6-3-5622. Reserved

R6-3-5623. Reserved

R6-3-5624. Reserved

R6-3-5625. Reserved

R6-3-5626. Reserved

R6-3-5627. Reserved

R6-3-5628. Reserved

R6-3-5629. Reserved

R6-3-5630. Reserved

R6-3-5631. Reserved

R6-3-5632. Reserved

R6-3-5633. Reserved

R6-3-5634. Reserved

R6-3-5635. Repealed

Historical Note

Former rule number -- Labor Dispute 35. - 35.15. Former rule repealed, new Section R6-3-5635 adopted effective

January 24, 1977 (Supp. 77-1). Repealed effective July 22, 1997 (Supp. 97-3).

R6-3-5636. Reserved

through

R6-3-56124. Reserved [50,488 Sections Reserved]

R6-3-56125. Repealed

Historical Note

Former rule number - Labor Dispute 125. - 125.6. Former rule repealed, new Section R6-3-56125 adopted effective January 24, 1977 (Supp. 77-1). Repealed effective July 22, 1997 (Supp. 97-3).

R6-3-56126. Reserved

R6-3-56127. Reserved

R6-3-56128. Reserved

R6-3-56129. Reserved

R6-3-56130. Repealed

Historical Note

Former rule number - Labor Dispute 130. Former rule repealed, new Section R6-3-56130 adopted effective January 24, 1977 (Supp. 77-1). Repealed effective July 22, 1997 (Supp. 97-3).

R6-3-56131. Reserved

R6-3-56132. Reserved

R6-3-56133. Reserved

R6-3-56134. Reserved

R6-3-56135. Reserved

R6-3-56136. Reserved

R6-3-56137. Reserved

R6-3-56138. Reserved

R6-3-56139. Reserved

R6-3-56140. Reserved

R6-3-56141. Reserved

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R6-3-56143. Reserved

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R6-3-56151. Reserved

R6-3-56152. Reserved

R6-3-56153. Reserved

R6-3-56154. Reserved

R6-3-56155. Reserved

R6-3-56156. Reserved

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-56235. Reserved	R6-3-56279. Reserved
R6-3-56236. Reserved	R6-3-56280. Reserved
R6-3-56237. Reserved	R6-3-56281. Reserved
R6-3-56238. Reserved	R6-3-56282. Reserved
R6-3-56239. Reserved	R6-3-56283. Reserved
R6-3-56240. Reserved	R6-3-56284. Reserved
R6-3-56241. Reserved	R6-3-56285. Reserved
R6-3-56242. Reserved	R6-3-56286. Reserved
R6-3-56243. Reserved	R6-3-56287. Reserved
R6-3-56244. Reserved	R6-3-56288. Reserved
R6-3-56245. Reserved	R6-3-56289. Reserved
R6-3-56246. Reserved	R6-3-56290. Reserved
R6-3-56247. Reserved	R6-3-56291. Reserved
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R6-3-56249. Reserved	R6-3-56293. Reserved
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R6-3-56254. Reserved	R6-3-56298. Reserved
R6-3-56255. Reserved	R6-3-56299. Reserved
R6-3-56256. Reserved	R6-3-56300. Reserved
R6-3-56257. Reserved	R6-3-56301. Reserved
R6-3-56258. Reserved	R6-3-56302. Reserved
R6-3-56259. Reserved	R6-3-56303. Reserved
R6-3-56260. Reserved	R6-3-56304. Reserved
R6-3-56261. Reserved	R6-3-56305. Reserved
R6-3-56262. Reserved	R6-3-56306. Reserved
R6-3-56263. Reserved	R6-3-56307. Reserved
R6-3-56264. Reserved	R6-3-56308. Reserved
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R6-3-56266. Reserved	R6-3-56310. Reserved
R6-3-56267. Reserved	R6-3-56311. Reserved
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R6-3-56273. Reserved	R6-3-56317. Reserved
R6-3-56274. Reserved	R6-3-56318. Reserved
R6-3-56275. Reserved	R6-3-56319. Reserved
R6-3-56276. Reserved	R6-3-56320. Reserved
R6-3-56277. Reserved	R6-3-56321. Reserved
R6-3-56278. Reserved	R6-3-56322. Reserved

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-56323. Reserved	R6-3-56367. Reserved
R6-3-56324. Reserved	R6-3-56368. Reserved
R6-3-56325. Reserved	R6-3-56369. Reserved
R6-3-56326. Reserved	R6-3-56370. Reserved
R6-3-56327. Reserved	R6-3-56371. Reserved
R6-3-56328. Reserved	R6-3-56372. Reserved
R6-3-56329. Reserved	R6-3-56373. Reserved
R6-3-56330. Reserved	R6-3-56374. Reserved
R6-3-56331. Reserved	R6-3-56375. Reserved
R6-3-56332. Reserved	R6-3-56376. Reserved
R6-3-56333. Reserved	R6-3-56377. Reserved
R6-3-56334. Reserved	R6-3-56378. Reserved
R6-3-56335. Reserved	R6-3-56379. Reserved
R6-3-56336. Reserved	R6-3-56380. Reserved
R6-3-56337. Reserved	R6-3-56381. Reserved
R6-3-56338. Reserved	R6-3-56382. Reserved
R6-3-56339. Reserved	R6-3-56383. Reserved
R6-3-56340. Reserved	R6-3-56384. Reserved
R6-3-56341. Reserved	R6-3-56385. Reserved
R6-3-56342. Reserved	R6-3-56386. Reserved
R6-3-56343. Reserved	R6-3-56387. Reserved
R6-3-56344. Reserved	R6-3-56388. Reserved
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R6-3-56346. Reserved	R6-3-56390. Reserved
R6-3-56347. Reserved	R6-3-56391. Reserved
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R6-3-56350. Reserved	R6-3-56394. Reserved
R6-3-56351. Reserved	R6-3-56395. Reserved
R6-3-56352. Reserved	R6-3-56396. Reserved
R6-3-56353. Reserved	R6-3-56397. Reserved
R6-3-56354. Reserved	R6-3-56398. Reserved
R6-3-56355. Reserved	R6-3-56399. Reserved
R6-3-56356. Reserved	R6-3-56400. Reserved
R6-3-56357. Reserved	R6-3-56401. Reserved
R6-3-56358. Reserved	R6-3-56402. Reserved
R6-3-56359. Reserved	R6-3-56403. Reserved
R6-3-56360. Reserved	R6-3-56404. Reserved
R6-3-56361. Reserved	R6-3-56405. Reserved
R6-3-56362. Reserved	R6-3-56406. Reserved
R6-3-56363. Reserved	R6-3-56407. Repealed
R6-3-56364. Reserved	
R6-3-56365. Reserved	
R6-3-56366. Reserved	

Historical Note

Former rule number - Labor Dispute 407. - 407.05. Former rule repealed, new Section R6-3-56407 adopted effective January 24, 1977 (Supp. 77-1). Repealed effective July 22, 1997 (Supp. 97-3).

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6.3-56408. Reserved	5). Amended effective March 17, 1981 (Supp. 81-2). Repealed effective July 22, 1997 (Supp. 97-3).
R6-3-56409. Reserved	
R6-3-56410. Reserved	R6-3-56446. Reserved
R6-3-56411. Reserved	R6-3-56447. Reserved
R6-3-56412. Reserved	R6-3-56448. Reserved
R6-3-56413. Reserved	R6-3-56449. Reserved
R6-3-56414. Reserved	R6-3-56450. Reserved
R6-3-56415. Reserved	R6-3-56451. Reserved
R6-3-56416. Reserved	R6-3-56452. Reserved
R6-3-56417. Reserved	R6-3-56453. Reserved
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R6-3-56419. Reserved	R6-3-56455. Reserved
R6-3-56420. Reserved	R6-3-56456. Reserved
R6-3-56421. Reserved	R6-3-56457. Reserved
R6-3-56422. Reserved	R6-3-56458. Reserved
R6-3-56423. Reserved	R6-3-56459. Reserved
R6-3-56424. Reserved	R6-3-56460. Reserved
R6-3-56425. Reserved	R6-3-56461. Reserved
R6-3-56426. Reserved	R6-3-56462. Reserved
R6-3-56427. Reserved	R6-3-56463. Reserved
R6-3-56428. Reserved	R6-3-56464. Reserved
R6-3-56429. Reserved	R6-3-56465. Repealed
R6-3-56430. Reserved	Historical Note
R6-3-56431. Reserved	Former rule number - Labor Dispute 465. - 465.15. Former rule repealed, new Section R6-3-56465 adopted effective January 24, 1977 (Supp. 77-1). Repealed effective July 22, 1997 (Supp. 97-3).
R6-3-56432. Reserved	
R6-3-56433. Reserved	R6-3-56466. Reserved
R6-3-56434. Reserved	R6-3-56467. Reserved
R6-3-56435. Reserved	R6-3-56468. Reserved
R6-3-56436. Reserved	R6-3-56469. Reserved
R6-3-56437. Reserved	R6-3-56470. Repealed
R6-3-56438. Reserved	Historical Note
R6-3-56439. Reserved	Former rule number - Labor Dispute 470. - 470.1. Former rule repealed, new Section R6-3-56470 adopted effective January 24, 1977 (Supp. 77-1). Repealed effective July 22, 1997 (Supp. 97-3).
R6-3-56440. Reserved	
R6-3-56441. Reserved	ARTICLE 57. RESERVED
R6-3-56442. Reserved	ARTICLE 58. RESERVED
R6-3-56443. Reserved	ARTICLE 59. RESERVED
R6-3-56444. Reserved	ARTICLE 60. REPEALED
R6-3-56445. Repealed	R6-3-6001. Repealed
Historical Note	Historical Note
Former rule number - Labor Dispute 445.- 445.2. Former rule repealed, new Section R6-3-56445 adopted effective January 24, 1977 (Supp. 77-1). Amended effective March 22, 1979 (Supp. 79-2). Amended as an emergency effective August 1, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-4). Former emergency adoption now adopted effective October 30, 1979 (Supp. 79-	Adopted effective June 22, 1976 (Supp. 76-3). Repealed effective February 1, 1995 (Supp. 95-1).
	R6-3-6002. Repealed
	Historical Note
	Adopted effective June 22, 1976 (Supp. 76-3). Repealed effective February 1, 1995 (Supp. 95-1).

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

- R6-3-6003. Repealed**
 effective February 1, 1995 (Supp. 95-1).
Historical Note
 Adopted effective June 22, 1976 (Supp. 76-3). Repealed effective February 1, 1995 (Supp. 95-1).
- R6-3-6004. Repealed**
Historical Note
 Adopted effective June 22, 1976 (Supp. 76-3). Repealed effective February 1, 1995 (Supp. 95-1).
- R6-3-6005. Repealed**
Historical Note
 Adopted effective June 22, 1976 (Supp. 76-3). Repealed effective February 1, 1995 (Supp. 95-1).
- R6-3-6006. Repealed**
Historical Note
 Adopted effective June 22, 1976 (Supp. 76-3). Repealed effective February 1, 1995 (Supp. 95-1).
- ARTICLE 61. REPEALED**
- R6-3-6101. Repealed**
Historical Note
 Adopted effective June 22, 1976 (Supp. 76-3). Repealed effective February 1, 1995 (Supp. 95-1).
- R6-3-6102. Repealed**
Historical Note
 Adopted effective June 22, 1976 (Supp. 76-3). Repealed effective February 1, 1995 (Supp. 95-1).
- R6-3-6103. Repealed**
Historical Note
 Adopted effective June 22, 1976 (Supp. 76-3). Repealed effective February 1, 1995 (Supp. 95-1).
- R6-3-6104. Repealed**
Historical Note
 Adopted effective June 22, 1976 (Supp. 76-3). Repealed effective February 1, 1995 (Supp. 95-1).
- R6-3-6105. Repealed**
Historical Note
 Adopted effective June 22, 1976 (Supp. 76-3). Repealed effective February 1, 1995 (Supp. 95-1).
- R6-3-6106. Repealed**
Historical Note
 Adopted effective June 22, 1976 (Supp. 76-3). Repealed effective February 1, 1995 (Supp. 95-1).
- R6-3-6107. Repealed**
Historical Note
 Adopted effective June 22, 1976 (Supp. 76-3). Repealed effective February 1, 1995 (Supp. 95-1).
- ARTICLE 62. REPEALED**
- R6-3-6201. Repealed**
Historical Note
 Adopted effective June 22, 1976 (Supp. 76-3). Repealed effective February 1, 1995 (Supp. 95-1).
- R6-3-6202. Repealed**
Historical Note
 Adopted effective June 22, 1976 (Supp. 76-3). Repealed effective February 1, 1995 (Supp. 95-1).
- R6-3-6203. Repealed**
Historical Note
 Adopted effective June 22, 1976 (Supp. 76-3). Repealed effective February 1, 1995 (Supp. 95-1).
- R6-3-6204. Repealed**
Historical Note
 Adopted effective June 22, 1976 (Supp. 76-3). Repealed effective February 1, 1995 (Supp. 95-1).
- R6-3-6205. Repealed**
Historical Note
 Adopted effective June 22, 1976 (Supp. 76-3). Repealed effective February 1, 1995 (Supp. 95-1).
- ARTICLE 63. REPEALED**
- R6-3-6301. Repealed**
Historical Note
 Adopted effective June 22, 1976 (Supp. 76-3). Repealed effective February 1, 1995 (Supp. 95-1).
- R6-3-6302. Repealed**
Historical Note
 Adopted effective June 22, 1976 (Supp. 76-3). Repealed effective February 1, 1995 (Supp. 95-1).
- R6-3-6303. Repealed**
Historical Note
 Adopted effective June 22, 1976 (Supp. 76-3). Repealed effective February 1, 1995 (Supp. 95-1).
- R6-3-6304. Repealed**
Historical Note
 Adopted effective June 22, 1976 (Supp. 76-3). Repealed effective February 1, 1995 (Supp. 95-1).
- ARTICLE 64. REPEALED**
- R6-3-6401. Repealed**
Historical Note
 Adopted effective June 22, 1976 (Supp. 76-3). Repealed effective February 1, 1995 (Supp. 95-1).
- ARTICLE 65. REPEALED**
- R6-3-6501. Repealed**
Historical Note
 Adopted effective June 22, 1976 (Supp. 76-3). Repealed effective February 1, 1995 (Supp. 95-1).
- ARTICLE 66. REPEALED**
- R6-3-6601. Repealed**
Historical Note
 Adopted effective June 22, 1976 (Supp. 76-3). Repealed effective February 1, 1995 (Supp. 95-1).
- R6-3-6602. Repealed**
Historical Note
 Adopted effective June 22, 1976 (Supp. 76-3). Repealed effective February 1, 1995 (Supp. 95-1).
- R6-3-6603. Repealed**
Historical Note
 Adopted effective June 22, 1976 (Supp. 76-3). Repealed effective February 1, 1995 (Supp. 95-1).

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY - UNEMPLOYMENT INSURANCE

R6-3-6604. Repealed

effective February 1, 1995 (Supp. 95-1).

Historical Note

Adopted effective June 22, 1976 (Supp. 76-3). Repealed effective February 1, 1995 (Supp. 95-1).

R6-3-6606. Repealed

Historical Note

Adopted effective June 22, 1976 (Supp. 76-3). Repealed effective February 1, 1995 (Supp. 95-1).

R6-3-6605. Repealed

Historical Note

Adopted effective June 22, 1976 (Supp. 76-3). Repealed

41-1003. Required rule making

Each agency shall make rules of practice setting forth the nature and requirements of all formal procedures available to the public.

41-1954. Powers and duties

A. In addition to the powers and duties of the agencies listed in section 41-1953, subsection E, the department shall:

1. Administer the following services:

(a) Employment services, including manpower programs and work training, field operations, technical services, unemployment compensation, community work and training and other related functions in furtherance of programs under the social security act, as amended, the Wagner-Peyser act, as amended, the federal unemployment tax act, as amended, 33 United States Code, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(b) Individual and family services, which shall include a section on aging, services to children, youth and adults and other related functions in furtherance of social service programs under the social security act, as amended, title IV, except parts B and E, grants to states for aid and services to needy families with children and for child welfare services, title XX, grants to states for services, the older Americans act, as amended, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(c) Income maintenance services, including categorical assistance programs, special services unit, child support collection services, establishment of paternity services, maintenance and operation of a state case registry of child support orders, a state directory of new hires, a support payment clearinghouse and other related functions in furtherance of programs under the social security act, title IV, grants to states for aid and services to needy families with children and for child welfare services, title XX, grants to states for services, as amended, and other related federal acts and titles.

(d) Rehabilitation services, including vocational rehabilitation services and sections for the blind and visually impaired, communication disorders, correctional rehabilitation and other related functions in furtherance of programs under the vocational rehabilitation act, as amended, the Randolph-Sheppard act, as amended, and other related federal acts and titles.

(e) Administrative services, including the coordination of program evaluation and research, interagency program coordination and in-service training, planning, grants, development and management, information, legislative liaison, budget, licensing and other related functions.

(f) Manpower planning, including a state manpower planning council for the purposes of the federal-state-local cooperative manpower planning system and other related functions in furtherance of programs under the comprehensive employment and training act of 1973, as amended, and other related federal acts and titles.

(g) Economic opportunity services, including the furtherance of programs prescribed under the economic opportunity act of 1967, as amended, and other related federal acts and titles.

(h) Intellectual disability and other developmental disability programs, with emphasis on referral and purchase of services. The program shall include educational, rehabilitation, treatment and training services and other related functions in furtherance of programs under the developmental disabilities services and facilities construction act (P.L. 91-517) and other related federal acts and titles.

(i) Nonmedical home and community based services and functions, including department-designated case management, housekeeping services, chore services, home health aid, personal care, visiting nurse services, adult day care or adult day health, respite sitter care, attendant care, home delivered meals and other related services and functions.

2. Provide a coordinated system of initial intake, screening, evaluation and referral of persons served by the department.

3. Adopt rules it deems necessary or desirable to further the objectives and programs of the department.
4. Formulate policies, plans and programs to effectuate the missions and purposes of the department.
5. Employ and determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons subject to chapter 4, article 4 and, as applicable, article 5 of this title as may be necessary in the performance of its duties, contract for the services of outside advisors, consultants and aides as may be reasonably necessary and reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business.
6. Make contracts and incur obligations within the general scope of its activities and operations subject to the availability of funds.
7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of its purposes, objectives and programs.
8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.
9. Accept and disburse grants, matching funds and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.
10. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of its duties subject to the departmental rules on the confidentiality of information.
11. Establish and maintain separate financial accounts as required by federal law or regulations.
12. Advise and make recommendations to the governor and the legislature on all matters concerning its objectives.
13. Have an official seal that is judicially noticed.
14. Annually estimate the current year's population of each county, city and town in this state, using the periodic census conducted by the United States department of commerce, or its successor agency, as the basis for such estimates and deliver such estimates to the economic estimates commission before December 15.
15. Estimate the population of any newly annexed areas of a political subdivision as of July 1 of the fiscal year in which the annexation occurs and deliver such estimates as promptly as is feasible after the annexation occurs to the economic estimates commission.
16. Establish and maintain a statewide program of services for persons who are both hearing impaired and visually impaired and coordinate appropriate services with other agencies and organizations to avoid duplication of these services and to increase efficiency. The department of economic security shall enter into agreements for the utilization of the personnel and facilities of the department of economic security, the department of health services and other appropriate agencies and organizations in providing these services.
17. Establish and charge fees for deposit in the department of economic security prelayoff assistance services fund to employers who voluntarily participate in the services of the department that provide job service and retraining for persons who have been or are about to be laid off from employment. The department shall charge only those fees necessary to cover the costs of administering the job service and retraining services.
18. Establish a focal point for addressing the issue of hunger in this state and provide coordination and assistance to public and private nonprofit organizations that aid hungry persons and families throughout this state. Specifically such activities shall include:

- (a) Collecting and disseminating information regarding the location and availability of surplus food for distribution to needy persons, the availability of surplus food for donation to charity food bank organizations, and the needs of charity food bank organizations for surplus food.
- (b) Coordinating the activities of federal, state, local and private nonprofit organizations that provide food assistance to the hungry.
- (c) Accepting and disbursing federal monies, and any state monies appropriated by the legislature, to private nonprofit organizations in support of the collection, receipt, handling, storage and distribution of donated or surplus food items.
- (d) Providing technical assistance to private nonprofit organizations that provide or intend to provide services to the hungry.
- (e) Developing a state plan on hunger that, at a minimum, identifies the magnitude of the hunger problem in this state, the characteristics of the population in need, the availability and location of charity food banks and the potential sources of surplus food, assesses the effectiveness of the donated food collection and distribution network and other efforts to alleviate the hunger problem, and recommends goals and strategies to improve the status of the hungry. The state plan on hunger shall be incorporated into the department's state comprehensive plan prepared pursuant to section 41-1956.
- (f) Establishing a special purpose advisory council on hunger pursuant to section 41-1981.

19. Establish an office to address the issue of homelessness and to provide coordination and assistance to public and private nonprofit organizations that prevent homelessness or aid homeless individuals and families throughout this state. These activities shall include:

- (a) Promoting and participating in planning for the prevention of homelessness and the development of services to homeless persons.
- (b) Identifying and developing strategies for resolving barriers in state agency service delivery systems that inhibit the provision and coordination of appropriate services to homeless persons and persons in danger of being homeless.
- (c) Assisting in the coordination of the activities of federal, state and local governments and the private sector that prevent homelessness or provide assistance to homeless people.
- (d) Assisting in obtaining and increasing funding from all appropriate sources to prevent homelessness or assist in alleviating homelessness.
- (e) Serving as a clearinghouse on information regarding funding and services available to assist homeless persons and persons in danger of being homeless.
- (f) Developing an annual state comprehensive homeless assistance plan to prevent and alleviate homelessness.
- (g) Submitting an annual report to the governor, the president of the senate and the speaker of the house of representatives on the status of homelessness and efforts to prevent and alleviate homelessness. The department shall provide a copy of this report to the secretary of state.

20. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

21. Exchange information, including case specific information, and cooperate with the department of child safety for the administration of the department of child safety's programs.

B. If the department of economic security has responsibility for the care, custody or control of a child or is paying the cost of care for a child, it may serve as representative payee to receive and administer social security and United States department of veterans affairs benefits and other benefits payable to such child. Notwithstanding any law to the contrary, the department of economic security:

1. Shall deposit, pursuant to sections 35-146 and 35-147, such monies as it receives to be retained separate and apart from the state general fund on the books of the department of administration.
2. May use such monies to defray the cost of care and services expended by the department of economic security for the benefit, welfare and best interests of the child and invest any of the monies that the director determines are not necessary for immediate use.
3. Shall maintain separate records to account for the receipt, investment and disposition of funds received for each child.
4. On termination of the department of economic security's responsibility for the child, shall release any funds remaining to the child's credit in accordance with the requirements of the funding source or in the absence of such requirements shall release the remaining funds to:
 - (a) The child, if the child is at least eighteen years of age or is emancipated.
 - (b) The person responsible for the child if the child is a minor and not emancipated.

C. Subsection B of this section does not pertain to benefits payable to or for the benefit of a child receiving services under title 36.

D. Volunteers reimbursed for expenses pursuant to subsection A, paragraph 5 of this section are not eligible for workers' compensation under title 23, chapter 6.

E. In implementing the temporary assistance for needy families program pursuant to Public Law 104-193, the department shall provide for cash assistance to two-parent families if both parents are able to work only on documented participation by both parents in work activities described in title 46, chapter 2, article 5, except that payments may be made to families who do not meet the participation requirements if:

1. It is determined on an individual case basis that they have emergency needs.
2. The family is determined to be eligible for diversion from long-term cash assistance pursuant to title 46, chapter 2, article 5.

F. The department shall provide for cash assistance under temporary assistance for needy families pursuant to Public Law 104-193 to two-parent families for no longer than six months if both parents are able to work, except that additional assistance may be provided on an individual case basis to families with extraordinary circumstances. The department shall establish by rule the criteria to be used to determine eligibility for additional cash assistance.

G. The department shall adopt the following discount medical payment system for persons who the department determines are eligible and who are receiving rehabilitation services pursuant to subsection A, paragraph 1, subdivision (d) of this section:

1. For inpatient hospital admissions and outpatient hospital services the department shall reimburse a hospital according to the rates established by the Arizona health care cost containment system administration pursuant to section 36-2903.01, subsection G.

2. The department's liability for a hospital claim under this subsection is subject to availability of funds.
3. A hospital bill is considered received for purposes of paragraph 5 of this subsection on initial receipt of the legible, error-free claim form by the department if the claim includes the following error-free documentation in legible form:
 - (a) An admission face sheet.
 - (b) An itemized statement.
 - (c) An admission history and physical.
 - (d) A discharge summary or an interim summary if the claim is split.
 - (e) An emergency record, if admission was through the emergency room.
 - (f) Operative reports, if applicable.
 - (g) A labor and delivery room report, if applicable.
4. The department shall require that the hospital pursue other third-party payors before submitting a claim to the department. Payment received by a hospital from the department pursuant to this subsection is considered payment by the department of the department's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.
5. For inpatient hospital admissions and outpatient hospital services rendered on and after October 1, 1997, if the department receives the claim directly from the hospital, the department shall pay a hospital's rate established according to this section subject to the following:
 - (a) If the hospital's bill is paid within thirty days of the date the bill was received, the department shall pay ninety-nine percent of the rate.
 - (b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the department shall pay one hundred percent of the rate.
 - (c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the department shall pay one hundred percent of the rate plus a fee of one percent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.
6. For medical services other than those for which a rate has been established pursuant to section 36-2903.01, subsection G, the department shall pay according to the Arizona health care cost containment system capped fee-for-service schedule adopted pursuant to section 36-2904, subsection K or any other established fee schedule the department determines reasonable.
- H. The department shall not pay claims for services pursuant to this section that are submitted more than nine months after the date of service for which the payment is claimed.
- I. To assist in the location of persons or assets for the purpose of establishing paternity, establishing, modifying or enforcing child support obligations and other related functions, the department has access, including automated access if the records are maintained in an automated database, to records of state and local government agencies, including:
 1. Vital statistics, including records of marriage, birth and divorce.
 2. State and local tax and revenue records, including information on residence address, employer, income and assets.

3. Records concerning real and titled personal property.
4. Records of occupational and professional licenses.
5. Records concerning the ownership and control of corporations, partnerships and other business entities.
6. Employment security records.
7. Records of agencies administering public assistance programs.
8. Records of the motor vehicle division of the department of transportation.
9. Records of the state department of corrections.
10. Any system used by a state agency to locate a person for motor vehicle or law enforcement purposes, including access to information contained in the Arizona criminal justice information system.

J. Notwithstanding subsection I of this section, the department or its agents shall not seek or obtain information on the assets of an individual unless paternity is presumed pursuant to section 25-814 or established.

K. Access to records of the department of revenue pursuant to subsection I of this section shall be provided in accordance with section 42-2003.

L. The department also has access to certain records held by private entities with respect to child support obligors or obligees, or individuals against whom such an obligation is sought. The information shall be obtained as follows:

1. In response to a child support subpoena issued by the department pursuant to section 25-520, the names and addresses of these persons and the names and addresses of the employers of these persons, as appearing in customer records of public utilities, cable operators and video service providers.
2. Information on these persons held by financial institutions.

M. Pursuant to department rules, the department may compromise or settle any support debt owed to the department if the director or an authorized agent determines that it is in the best interest of this state and after considering each of the following factors:

1. The obligor's financial resources.
2. The cost of further enforcement action.
3. The likelihood of recovering the full amount of the debt.

N. Notwithstanding any law to the contrary, a state or local governmental agency or private entity is not subject to civil liability for the disclosure of information made in good faith to the department pursuant to this section.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 2, Article 13



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 1, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 12, 2022

SUBJECT: Arizona Department of Environmental Quality
Title 18, Chapter 2, Article 13

This Five-Year-Review Report from the Department of Environmental Quality relates to rules in Title 18, Chapter 2 regarding Air Pollution Control. The report covers Article 13 regarding Conformity Determinations. The purpose of this article is to establish state implementation plan (SIP) rules for specific locations under the federal Clean Air Act.

In August 2013, the Department submitted a 5YRR for Articles 10, 13, and 16. Specifically, Article 13 implemented the Diesel Conversion Grant Program. In September 2013, Article 13 expired under A.R.S. 41-1056(J). In April 2017 the Department promulgated a new Article 13 which established location specific SIP requirements. The 5YRR for Article 13 was originally due in April 2018, but the Department requested a reschedule request. The Council approved the rescheduling of the Article to February 2022. Therefore, this is the first 5YRR for these rules.

Proposed Action

The Department is not proposing any changes to the rules.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes, the Department cites to both general and specific statutory authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

Article 13 was promulgated in by final rulemaking at 23 A.A.R. 767 (Apr. 7, 2017). The economic impact was addressed in that rulemaking and there has been no identified change since Article 13 was adopted.

Stakeholders were identified as the residents of Hayden and Miami; and the owners and operators of the Miami and Hayden Smelters, which are Freeport-McMoRan Miami Inc. and Asarco, respectively.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

Arizona Department of Environmental Quality believes that these rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory and statutory objective.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Department indicates they did receive any written criticisms to the rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Department indicates the rules are clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, the Department indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Department indicates the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Department indicates the rules are enforced as written.

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

No, the Department indicates the rules are not more stringent than the corresponding federal laws; CAA (Clean Air Act) 110 and Part D of Title I of the CAA.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. Article 13 was promulgated in 2017, and the rules do not require the issuance of a regulatory permit or license.

11. Conclusion

The Department indicates the rules are clear, concise, understandable, effective, and consistent with other rules and statutes, and is therefore not proposing any changes to the rules.

Council staff recommends approval of this report.



Douglas A. Ducey
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



Misael Cabrera
Director

February 16, 2022

SENT VIA EMAIL ONLY

Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 N. 15th Ave., #305
Phoenix, AZ 85007
grrc@azdoa.gov

Re: Submittal of Five-Year Review Report for A.A.C. Title 18, Chapter 2, Article 13

Dear Chair Sornsins:

I am pleased to submit to you, pursuant to A.R.S. § 41-1056 and A.A.C. R1-6-301, our agency's Five-Year Review Report for A.A.C. Title 18, Chapter 2, Article 13 (SIP Rules for Specific Locations).

Pursuant to A.R.S. § 41-1056(A), I certify that ADEQ is in compliance with A.R.S. § 41-1091 requirements for filing of notices of substantive policy statements and annual publication of a substantive policy statement directory.

Please contact Zachary Dorn in the Air Quality Division at 602-771-4585, or dorn.zachary@azdeq.gov, if you have any questions.

Sincerely,

Misael Cabrera, P.E.
Director

Enclosure

Arizona Department of Environmental Quality
Five Year Review Report
Title 18. Environmental Quality
Chapter 2. Department of Environmental Quality - Air Pollution Control
Article 13. Conformity Determinations
February 28, 2022

1. Authorization of the rule by existing statutes

Article 13. State Implementation Plan Rules for Specific Locations

General Statutory Authority: A.R.S. §§ 49-104(A)(1), (10), 49-404(A), A.R.S. § 49-425(A)

Specific Statutory Authority: N/A

2. The objective of each rule:

Rule	Objective
Article 13. State Implementation Plan Rules for Specific Locations	The purpose of this article is to establish state implementation plan (SIP) rules for specific locations under the federal Clean Air Act (CAA). Currently, this Article contains rules for two nonattainment planning areas in Parts B and C, described below.
Part A	Reserved.
Part B. Hayden, Arizona Planning Area	The purpose of Part B is to control lead and sulfur dioxide (SO ₂) air pollution in Hayden nonattainment area as part of the Arizona SIP under the federal CAA.
R18-2-B1301	This rule establishes an emission limit and control requirements for lead emissions from the copper smelter located in Hayden, AZ that is currently owned and operated by Asarco, LLC. ADEQ adopted this rule and R18-2-B1301.01 to ensure that the smelter's lead emissions will not cause or contribute to violations of the 2008 lead national ambient air quality standard (NAAQS).
R18-2-B1301.01	The objective of this rule was to set control requirements for lead-bearing fugitive dust sources within Asarco's operations. This rule required Asarco to develop a fugitive dust plan that addresses controls and compliance requirements for sources of fugitive lead emissions, like paved and unpaved roads, concentrate storage, and reverts crushing.
R18-2-B1302	The objective of this rule is to establish SO ₂ control requirements and emission limits for the copper smelter located in Hayden, AZ and currently owned and operated by Asarco, LLC. ADEQ adopted this rule to ensure that the smelter's emissions will not cause or contribute to violations of the 2010 SO ₂ NAAQS.
Part C. Miami, Arizona Planning Area.	The purpose of Part C is to control SO ₂ air pollution in the Miami nonattainment area as part of the Arizona SIP under the federal CAA.
R18-2-C1301	Reserved.
R18-2-C1302	The objective of this rule is to establish control requirements and emission limits for the copper smelter located in Miami, AZ currently owned and operated by Freeport McMoRan, Inc. ADEQ adopted this rule to ensure that the smelter's emissions will not cause or contribute to violations of the 2010 SO ₂ NAAQS.

3. **Are the rules effective in achieving their objectives?** Yes No

The rules are effective except as indicated below.

Rule	Explanation
R18-2-B1301	The rule has implemented controls and lowered emissions; however, the rule is not effective as the Hayden lead nonattainment area is still not meeting the 2008 lead NAAQS. On January 31, 2022, the U.S. Environmental Protection Agency (EPA) issued a final rule determining that the Hayden nonattainment area failed to attain the lead NAAQS. 87 FR 4,805 (Jan. 31, 2022). This rule also determined that both the Miami and Hayden nonattainment areas failed to attain the 2010 SO ₂ NAAQS. <i>Id.</i>
R18-2-B1301.01	The rule implemented controls and lowered emissions; however, the rule is not effective as the Hayden lead nonattainment area failed to attain the 2008 lead NAAQS. <i>Id.</i>
R18-2-B1302	The rule implemented controls and lowered emissions; however, the rule is not effective as the Hayden SO ₂ nonattainment area failed to attain the 2010 SO ₂ NAAQS. <i>Id.</i>

4. **Are the rules consistent with other rules and statutes?** Yes No

The rules are consistent with other rules and statutes.

5. **Are the rules enforced as written?** Yes No

The rules are enforced as written.

6. **Are the rules clear, concise, and understandable?** Yes No

The rules are clear, concise, and understandable.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

8. **Economic, small business, and consumer impact comparison:**

Article 13 was promulgated in by final rulemaking at 23 A.A.R. 767 (Apr. 7, 2017). The economic impact was addressed in that rulemaking and there has been no identified change since Article 13 was adopted. The EIS is included with this document as Attachment A.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

No course of action for the current Article 13 was indicated in the agency's previous five-year rule review report.

In August 2013, ADEQ submitted a five-year rule review covering A.A.C. Title 18, Chapter 2, Articles 10, 13, and 16. At the time, Article 13 implemented the Diesel Conversion Grant Program. In this report, ADEQ noted that the program was originally established by a final rulemaking effective April 2, 2003. 9 A.A.R. 1295 (Apr. 25, 2003). In 2002, the Legislature conditionally repealed the Diesel Conversion Grant Program authorizing statute, A.R.S. § 49-551.01.

In September 2013, Article 13 expired under A.R.S. § 41-1056(J). 19 A.A.R. 2856 (Sept. 20, 2013).

In April 2017, ADEQ promulgated a new Article 13 on a different subject matter than the Diesel Conversion Grant Program. The new Article 13 established location specific SIP requirements, which currently includes the two copper smelters located in Hayden and Miami, AZ. 23 A.A.R. 767 (Apr. 7, 2017).

The five-year rule review for Article 13 was originally scheduled for April 2018. However, in January 2018, ADEQ requested that GRRRC reschedule the five-year rule review for Article 13. GRRRC granted this request and rescheduled the five-year rule review for Article 13 to February 2022. Therefore, this is the first five-year rule review for the current Article 13.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The costs of Article 13 included retrofit and compliance costs for the regulated sources in the Hayden and Miami nonattainment areas. At the time Article 13 was promulgated, Asarco estimated its retrofit project would cost an estimated \$110 million. 23 A.A.R. 767, 773 (Apr. 7, 2017). Similarly, Freeport estimate its project would cost \$250 million. *Id.* The persons who primarily benefit from the current Article 13 are residents of Hayden and Miami, as well as Asarco and Freeport employees, due to improved air quality from the rules and corresponding control technology to control lead and SO₂. While there are no economic studies that directly compare the costs and benefits of implementing the revised NAAQS for lead and SO₂ in Arizona specifically, the national studies have concluded that the monetized human health benefits far outweigh the costs of implementation.

EPA estimated that compliance costs for the lead NAAQS in 2016 alone would cost between approximately \$150 million to \$2.8 billion. For the benefits of this NAAQS, EPA created a Regulatory Impact Analysis (RIA) that examined the monetized human health benefits of reducing ambient exposure to lead, especially with regard to the severe developmental consequences for children.¹ Part of EPA's national model estimated adverse impact of blood levels of lead on cognitive function, which strongly relate to a child's future productivity and earning potential. These health benefits far outweigh these costs; EPA estimated the monetized health benefits would be between \$3.8 billion to \$6.9 billion, annually. 73 FR 66,964 (Nov. 12, 2008). The estimated cost for the 2010 SO₂ NAAQS is approximately \$1.5 billion. EPA's RIA for the 2010 SO₂ NAAQS estimated the revised standard would result in a national cost benefit between \$13 billion and \$33 billion, annually, from SO₂ related health endpoints such as: reduced emergency room visits, hospitalizations, lost work days, and cases of aggravated

¹ EPA, Regulatory Impact Analysis of the Proposed Revisions to the National Ambient Air Quality Standards for Lead (Oct. 2008), available at https://www.epa.gov/sites/default/files/2016-03/documents/ria_oct2008.pdf (last accessed Jan. 14, 2022).

asthma and bronchitis.² EPA's RIA quantified these SO₂ related health endpoints that EPA's integrated science assessment identified as sufficient to infer a likely causal relationship.

In addition to the monetized human health benefits discussed above, the benefits of Article 13 include compliance with the federal CAA and maintenance of federal grant money to support the program. A failure to comply with the nonattainment requirements of the CAA could result in federal sanctions, including the loss of highway funds and 2-to-1 emission offsets. CAA § 179. Further, the rules fulfill a state law requirement to maintain a SIP that provides for implementation, maintenance and enforcement of the NAAQS and protection of visibility as required by the CAA. A.R.S. § 49-404(A). Weighing the benefits and costs, ADEQ believes that the benefits of Article 13 outweigh the costs. Ensuring that specific areas of the State meet the NAAQS for lead and SO₂, as health issues, is a high priority for Arizona. Therefore, ADEQ believes that these rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory and statutory objective.

12. **Are the rules more stringent than corresponding federal laws?** Yes _ No **X**

The rules are not more stringent than corresponding federal laws, specifically CAA § 110 and Part D of Title I of the CAA.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Article 13 was promulgated in 2017. 23 A.A.R. 767 (Apr. 7, 2017). However, Article 13 does not require the issuance of a regulatory permit, license or agency authorization.

14. **Proposed course of action**

ADEQ continues to review rules consistent with Executive Order 2021-02. ADEQ does not propose any course of action for Article 13 at this time.

² EPA, Final Regulatory Impact Analysis for the SO₂ National Ambient Air Quality Standard (June 2010), available at https://www.epa.gov/sites/default/files/2020-07/documents/naaqs-so2_ria_final_2010-06.pdf (last accessed Jan. 14, 2022).



Attachment A

Article 13 Economic, Small Business, and Consumer Impact Statement

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY -

AIR POLLUTION CONTROL

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

The following discussion addresses each of the elements required for an economic, small business and consumer impact statement (ESBCIS) under A.R.S. § 41-1055.

An identification of the rule making.

The rulemaking addressed by this EIS consists of new rules added to the new Article 13 (R18-2-B1301; R18-2-B1301.01; R18-2-B1302; R18-2-C1301 (Reserved), and R18-2-C1302). The purpose of the amendments and new rulemaking is to bring nonattainment areas in the State of Arizona into compliance with new air quality standards for lead and sulfur dioxide pollution.

This EIS addresses the impact of the 2008 lead NAAQS and the 2010 sulfur dioxide NAAQS that requires the owner and operators of copper smelters, Asarco and Freeport-McMoRan Miami Inc., to install new and improved air pollution control equipment, apply for a new permit, and comply with new emission limits. The new NAAQS may result in increased compliance costs for Asarco and Freeport-McMoRan Miami Inc. and minor increased administrative costs for ADEQ.

An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the rule making.

The persons who will be directly affected by and bear the costs of this rulemaking are the owners and operators of the Miami and Hayden Smelters, which are Freeport-McMoRan Miami Inc. and Asarco, respectively. There are no other smelting facilities in the state of Arizona affected by this rulemaking.

The persons who will benefit from this rulemaking are the residents of Hayden and Miami, as well as the employees of Asarco and Freeport-McMoRan Miami Inc., due to the improved air quality that will result from this rulemaking and the corresponding control technology Asarco and Freeport-McMoRan Miami Inc. will be implementing to control lead and sulfur dioxide pollution.

A cost benefit analysis of the following:

(a) The probable costs and benefits to the implementing agency and other agencies

directly affected by the implementation and enforcement of the rule making.

ADEQ estimates that the current number of full-time employees assigned in the Permits and Compliance Sections of the Air Quality Division at ADEQ are adequate to implement and enforce the 2008 lead NAAQS in the Hayden nonattainment area and the 2010 sulfur dioxide NAAQS in the Hayden and Miami nonattainment areas. The costs of the rules to the implementing agency will therefore be minimal. Furthermore, permits for sources in the nonattainment areas are revised every five years, with minor revisions occurring periodically. Under A.A.C. R18-2-301(2) and R18-2-326(B)(1)(a), the permit applicant—in this case, Asarco and Freeport-McMoRan Miami Inc.—will ultimately be required to reimburse ADEQ for the cost of revisions as part of permit fees.

ADEQ has permitting, enforcement, and compliance jurisdiction in the Hayden and Miami nonattainment areas, and therefore, no other state agencies will be affected by this rulemaking.

(b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the rule making.

No political subdivision of the state operates a smelter of metal ore like copper. Under A.R.S. § 49-402(A)(2), ADEQ has original jurisdiction over all “sources, permits, and violations which pertain to...smelting of metal ore.” The costs of enforcing these new rules applicable to the Asarco and Freeport-McMoRan Miami Inc. copper smelters are likely to be minimal and will be recoverable through permit fees acquired from Asarco and Freeport-McMoRan Miami Inc.

(c) The probable costs and benefits to businesses directly affected by the rule making, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the rule making.

The rules that are the subject of this preamble and EIS are necessary to comply with federal requirements for the SIP program under the CAA. If ADEQ fails to adopt these rules, the federal requirements will apply to the copper smelters through the adoption of a Federal Implementation Plan (FIP) issued by EPA under Section 110(c) of the CAA. However, the issuance of a FIP would likely require more strict emission limits and controls for the copper smelters, and further delay the areas’ attainment of the lead and sulfur dioxide NAAQS as expeditiously as practicable, as required by the CAA.

If ADEQ fails to submit approvable SIPs, the nonattainment areas would be subject to sanctions under CAA Section 179(b), which can include a prohibition of highway funds and emission

offsets requirements for other facilities. Therefore this rulemaking is an effort to not only curb air pollution in Arizona, but to also avoid federal consequences.

Lead and sulfur dioxide pollution cause extreme health risks and burdensome healthcare costs. Such related costs and benefits obtained from controlling lead and sulfur dioxide pollution are discussed further below.

The effects of lead air pollution

According to EPA, lead is emitted into the air from a wide variety of source types. *73 Fed. Reg.* 29184, 29190 (2008). Source types include aviation fuel, industrial boilers, iron and steel foundries, and metal ore smelters. Once deposited out of the air, lead can be disturbed and re-suspended into the air. For example, if dust containing particles of lead settles on a road, the lead can become airborne when a truck drives on the road. Lead pollution in the air can be exceptionally troublesome due to its ease of transport in smaller particle sizes. Lead also subsists in the environment for a very long time, making full remediation difficult.

Lead can enter the human body through many routes, but it is primarily inhaled when it is a component of air pollution. In its review of scientific literature for the 2008 lead NAAQS, EPA examined air-related lead exposure through:

1. Inhalation of airborne lead, including re-suspended lead particles
2. Ingestion of lead deposited as indoor or outdoor dust or soil, dietary items (like crops and livestock), and drinking water

EPA recognizes that “lead has been demonstrated to exert ‘a broad array of deleterious effects on multiple organ systems via widely diverse mechanisms of action.’” *73 Fed. Reg.* 29184, 29197 (2008). Furthermore, a “safe” level of lead in the human body that causes little to no harm has yet to be determined. In promulgating the 2008 lead NAAQS, EPA focused primarily on neurological effects in children and cardiovascular effects in adults that “are currently clearly of greatest public health concern.”

Health experts agree that the developing nervous system of a child is the most sensitive to lead exposure. EPA states, “Functional manifestations of lead neurotoxicity during childhood include sensory, motor, cognitive, and behavioral impacts.” *73 Fed. Reg.* 29184, 29198 (2008). Studies

have observed lower IQ, reduced academic achievement, and decreased graduation rates in adolescents exposed to lead. Lead exposure is associated with more negative ratings by teachers and/or parents for children exhibiting inattentiveness, impulsivity, distractibility, and lack of concentration. Higher concentrations of lead in the blood are also linked to impaired memory and visual-spatial skills. Additional studies show early exposure to lead in adolescents may result in an increased likelihood of antisocial and criminal behavior later in life. Since children are exposed to lead early, it has more time to accumulate in the blood supply and bones, hindering overall development and growth.

Lead exposure in adults can cause coronary heart disease, strokes, premature death, and hypertension. Furthermore, lead bioaccumulates in the body, causing persistent, long-term health problems. Lead exposure can also cause kidney disease, anemia, decreased sperm count, increased blood pressure, and interference with vitamin D metabolism. In the body of a pregnant woman, lead can easily cross the placenta, resulting in continued fetal exposure during pregnancy with lasting neurological impacts after birth. Pregnant women who are exposed to even low levels of lead are at high risk for premature birth.

Other symptoms caused by lead exposure include: irritability; shortened attention span; fatigue; impaired growth; loss of appetite; learning disabilities; headaches; seizures; nausea and vomiting; and severe abdominal pain.

A discussion of the monetary costs and health-based benefits of the proposed rulemaking for lead follows.

Lead emissions controls and costs

The CAA prohibits the EPA from considering costs in setting or revising the NAAQS for any pollutant. However, in promulgating the 2008 lead NAAQS, EPA analyzed the associated costs for pollution control equipment and benefits associated with improved public health. EPA estimates that full implementation of the lead NAAQS by sources across the U.S. in 2016 alone would cost approximately \$150 million to \$2.8 billion. The health benefits far outweigh these costs, estimated between \$3.8 billion to \$6.9 billion. *73 Fed. Reg. 66964 (2008)*.

As part of the consent decree, Asarco will implement the Converter Retrofit Project at its Hayden copper smelter to reduce lead and sulfur dioxide emissions. The project will replace the existing five 13-foot diameter copper converters with three 15-foot diameter converters that operate more

efficiently. Improved primary and secondary hooded ventilation systems will also be installed above the smelting equipment to capture process off-gases. A new tertiary hooding system will further prevent emissions from escaping the smelting building. An upgraded vent gas baghouse will collect particulate and gaseous emissions coming from the converter dryers and flash furnace.

In addition to the Converter Retrofit Project, Asarco will also be implementing additional control technology for leaded fugitive dust sources. For example, solids from the acid plant scrubbers that process emissions from the flash furnace and copper converters will be dried in a fully enclosed system that is maintained under negative pressure instead of being dried in open piles outside. Materials like concentrate and reverts will no longer be stored in open piles outside, but rather on concrete pads with fences to block the wind and water sprays to minimize fugitive emissions. Unpaved roads will also be sprayed with chemical dust suppressants and paved roads will be sprayed with water to control leaded dust emissions. In addition to complying with the consent decree, these modifications will also contribute to the control strategy for the Hayden lead nonattainment area SIP.

In 2015, Asarco's Hayden operations emitted over three tons of lead emissions. In 2019, that amount is projected to decrease by half to roughly 1.5 tons. The cost of the retrofit project is estimated to be \$110 million.

Benefits of lead emissions controls

The primary benefit of installing the emissions control technologies is an overall reduction in lead in ambient air, which in turn, decreases health and welfare risks from exposure.

Health issues cause more hospital stays and sick time taken from work, putting more burden on health care systems and the economy. EPA estimated between \$3.8 billion to \$6.9 billion of benefits can be contributed to the new lead NAAQS, reflecting public health improvements and an expected increase in lifetime earnings as a result of avoiding IQ loss.

This rulemaking will also help the State of Arizona avoid federal sanctions implemented under the CAA. If the State fails in submitting the rules and SIP revision for the Hayden lead nonattainment area, EPA has the authority to prohibit highway funding and increase costly emission offset requirements for new or modified facilities.

This rulemaking is necessary because of the health benefits derived from the improved controls implemented at the copper smelter and to avoid federal consequences.

The effects of sulfur dioxide pollution

According to the Agency for Toxic Substances and Disease Registry (ATSDR), sulfur dioxide is a colorless gas with a pungent odor. Sulfur dioxide is a liquid when under pressure; it easily dissolves in water and cannot catch fire. Sulfur dioxide in the air results primarily from activities associated with the burning of fossil fuels (coal, oil) such as at power plants or from copper smelting. Once released into the environment, sulfur dioxide moves to the air where it can convert to sulfuric acid, sulfur trioxide, and sulfates.

Short-term exposures to high levels of sulfur dioxide can be life-threatening. Exposure to 100 parts per million parts of air (ppm) is considered immediately dangerous to life and health. Previously healthy nonsmoking miners who breathed sulfur dioxide released as a result of an explosion in an underground copper mine developed burning of the nose and throat, breathing difficulties, and severe airway obstructions. Long-term exposure to persistent levels can also affect health. Lung function changes have been observed in some workers exposed to 0.4 - 3.0 ppm of sulfur dioxide for 20 years or more. However, these workers were also exposed to other chemicals, making it difficult to attribute their health effects to sulfur dioxide exposure alone. Additionally, exercising asthmatics are sensitive to the respiratory effects of low concentrations (0.25 ppm) of sulfur dioxide.

Typical outdoor concentrations of sulfur dioxide may range from 0 to 1 ppm. Occupational exposures to sulfur dioxide may lawfully range from 0 to 5 ppm under state OSHA (Occupational Safety and Health Administration) regulations. During any 8-hour work shift of a 40-hour work week, the average concentration of sulfur dioxide in the workplace may not exceed 5 ppm.

Most of the effects of sulfur dioxide exposure that occur in adults (i.e., difficulty breathing, changes in the ability to breathe as deeply or take in as much air per breath, and burning of the nose and throat) are also of potential concern in children, but it is unknown whether children are more vulnerable to exposure. Children may be exposed to more sulfur dioxide than adults because they breathe more air for their body weight than adults do. Children also exercise more frequently than adults. Exercise increases breathing rate. This increase results in both a greater amount of sulfur dioxide in the lungs and enhanced effects on the lungs. One study suggested that

a person's respiratory health, and not his or her age, determines vulnerability to the effects of breathing sulfur dioxide.

Sulfur dioxide emissions controls and costs

Freeport-McMoRan Miami Inc.

The construction work being performed at the Freeport-McMoRan Miami Inc. Miami smelter includes process changes along with environmental upgrades to achieve sulfur dioxide emission reductions so that the Miami area will meet the new ambient air quality standards. The Miami Smelter emission control upgrades include new converter mouth covers, a new Aisle Scrubber, additional capture systems, and upgrades to the Acid Plant Tail Gas and Vent Fume Scrubbers to use caustic for sulfur dioxide removal to ensure attainment of EPA's more stringent sulfur dioxide NAAQS. At this time, the cost of the project is estimated to be \$250 million.

Asarco-Hayden

The Converter Retrofit Project and associated controls discussed above for lead pollution will also greatly mitigate sulfur dioxide emissions. As mentioned earlier, the project involves replacement of the existing five 13-foot diameter converters with three 15-foot diameter converters. Corresponding modifications will be made to the converter aisle in order to accommodate the larger converters. The retrofit includes installation of a new converter primary gas system. New secondary hoods will also be installed and designed to fit the new, larger converters and new primary hoods. The new secondary hoods will direct sulfur dioxide ventilation gases during blowing operations to the acid plant instead of a baghouse, improving control. Other upgrades include installation of a new converter aisle tertiary gas collection system, enhanced lime injection at the secondary and new vent gas baghouse to further control sulfur dioxide emissions, and improvements to the acid plant. Overall, the retrofit is projected to reduce current sulfur dioxide emissions by 90 percent, with a total sulfur dioxide capture rate of 99.5 percent of the sulfur dioxide produced during the copper smelting process. The cost of the converter retrofit project is estimated to be \$110 million.

Benefits of sulfur dioxide emissions controls

One of the primary benefits of installing the emissions control technologies is an overall reduction in sulfur dioxide emissions. EPA first set health based standards for sulfur dioxide in

1971 at a 24-hour primary standard at 140 parts per billion (ppb) and an annual average standard at 30 ppb. In 1996, EPA reviewed the sulfur dioxide NAAQS and chose not to revise the standards. The 2010 revision to the sulfur dioxide NAAQS established a new one-hour standard at a level of 75 ppb. *75 Fed. Reg. 35520 (2010)*.

Lowering the standard will result in health benefits by lowering exposure to sulfur dioxide, specifically short-term exposure. Initial respiratory reactions to sulfur dioxide include narrowing of the airways in the lungs and difficulty breathing. Individuals with sensitive or comprised respiratory systems, such as children, the elderly, and individuals with respiratory related illnesses are more susceptible to these reactions. These negative reactions commonly result in increased emergency room and hospital visits. The revised NAAQS is designed to lower emissions and reduce exposure to high levels of sulfur dioxide by lowering the level of the standard and establishing new averaging time frame. EPA estimates that a level of 75 ppb for sulfur dioxide will result in cost benefits between \$13 billion and \$33 billion from reduced emergency room visits, hospitalizations, lost work days, and cases of aggravated asthma and bronchitis.

In addition to direct impacts, sulfur dioxide is also a precursor to particulate matter that is 2.5 micrometers in diameter, which can penetrate deep into the lungs and cause serious health effects including increases in cardiovascular illness and mortality.

Additional benefits of this rulemaking include continued oversight and control of air emissions by ADEQ. As stated earlier for lead pollution, without approval of this rulemaking and SIPs, the CAA specifies that EPA must develop a federal implementation plan (FIP) to regulate sources within the planning area. In addition to a FIP, the Hayden and Miami nonattainment areas would also be subject to highway sanctions and offsets. Highway sanctions are prohibitions on certain transportation projects or grants within the planning area. Offset sanctions are requirements for new or modified sources to have a ratio of emissions reductions to increased emissions at a level of at least two to one. Both ADEQ and the business community will benefit from continued regulation at the state level as a result of avoiding federal sanctions.

A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the rule making.

ADEQ anticipates that employment impacts will be minor. ADEQ does not expect short- or long-term employment, production, or industrial growth in Arizona to be negatively impacted by this

rulemaking. Furthermore, no sources are expected to close from the implementation of this rulemaking.

Asarco-Hayden Operations

Asarco estimates that 10 contractors and 100 full-time employees will be needed in order to complete the retrofit project. Some of the contractors will be hired for planned maintenance outages during the construction period. Roughly 50 percent of the contractors will be hired from Arizona and the other 50 percent from the Southwest in general. Procurement of equipment for the retrofit project is scheduled to begin in 2015, with full completion of the project scheduled by the fourth quarter of 2018. Asarco is not planning to create any new full or part-time positions at the company as a result of this project.

Freeport-McMoRan Miami Inc. – Miami Operations

Through the various phases of the construction project described above, Freeport-McMoRan Miami Inc. expects to have over 500 contractors/individuals working on the construction; although this number will vary over the construction period. This estimate does not include contractors required for planned maintenance outages during the same time frame. While the number of contractors required for planned maintenance outages is contingent upon the work to be completed during the outage, it usually requires between 500 and 1,000 contractors.

Because of the increased demand for contractors, Freeport-McMoRan Miami Inc. anticipates a short-term increase in employment by the contractors throughout the project. Contractors will be selected on an as needed basis; some local and specialty contractors from outside the State may be necessary. No new positions will be created within the Freeport-McMoRan Miami Inc. Miami smelter for this project.

Construction will occur in two major phases. Phase 1 started with ADEQ's approval of the smelter's significant permit revision authorizing the proposed construction. Phase 2 will begin shortly after internal approval to move forward is received and Freeport-McMoRan Miami Inc. anticipates the project will be completed eight quarters after that approval is received.

A statement of the probable impact of the rule making on small businesses.

(a) An identification of the small businesses subject to the rule making.

Under A.R.S. § 41-1001(21):

“Small business” means a concern, including its affiliates, which is [1] *independently owned and operated*, which is [2] *not dominant in its field* and which [3] *employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year.* (Emphasis added.)

The lead and sulfur dioxide-related rules will apply only to the companies that own and operate copper smelters in Hayden and Miami, which is currently Asarco and Freeport-McMoRan Miami Inc., respectively. These companies do not qualify as small businesses.

As of 2014, Asarco’s Hayden operations employed over 600 people. Asarco is a subsidiary of Grupo Mexico, a public company, and one of the major copper producers in the world. According to its 2014 annual report, Grupo Mexico’s net profit was \$1.7 billion. Grupo Mexico nor Asarco’s Hayden operations meet the definition of a “small business” under A.R.S. § 41-1001(21).

As of this rulemaking, Asarco currently contracts with Smithco Enterprises, LLC, an operation that processes smelter byproducts like reverts for Asarco. Smithco’s business relies heavily on Asarco’s copper smelter. Several control measures required by this rulemaking (and the consent decree) will apply to some of Smithco’s operations. However, Asarco is paying for the control measures as part of the consent decree with EPA. Therefore, this rulemaking will not have a direct impact on Smithco.

In 2015, Freeport-McMoRan Miami Inc., also a public company and top producer of copper in the world, reported a \$15.8 billion revenue. Also in 2015, its Miami mine and smelter produced 43 million pounds of copper. As of 2016, roughly 760 people are employed at Freeport’s Miami operations. Freeport-McMoRan Miami Inc. Miami operations do not meet the definition of a “small business” under A.R.S. § 41-1001(21).

(b) The administrative and other costs required for compliance with the rule making.

Not applicable.

(c) A description of the methods that the agency may use to reduce the impact on small businesses.

Not applicable.

(d) The probable cost and benefit to private persons and consumers who are directly affected by the rule making.

Not applicable.

A statement of the probable effect on state revenues.

Since any costs associated with the rulemaking will be recoverable through air quality permit fees, there will be no net effect on state revenues.

A description of any less intrusive or less costly alternative methods of achieving the purpose of the rule making.

ADEQ was not able to identify any less intrusive or costly alternative methods for achieving the purpose of the rulemaking—attainment of the 2008 lead NAAQS and 2010 sulfur dioxide NAAQS. The smelters owned by Asarco and Freeport-McMoRan Miami Inc. are the primary source of emissions and are responsible for installing adequate control technologies that will bring the areas into compliance.

A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.

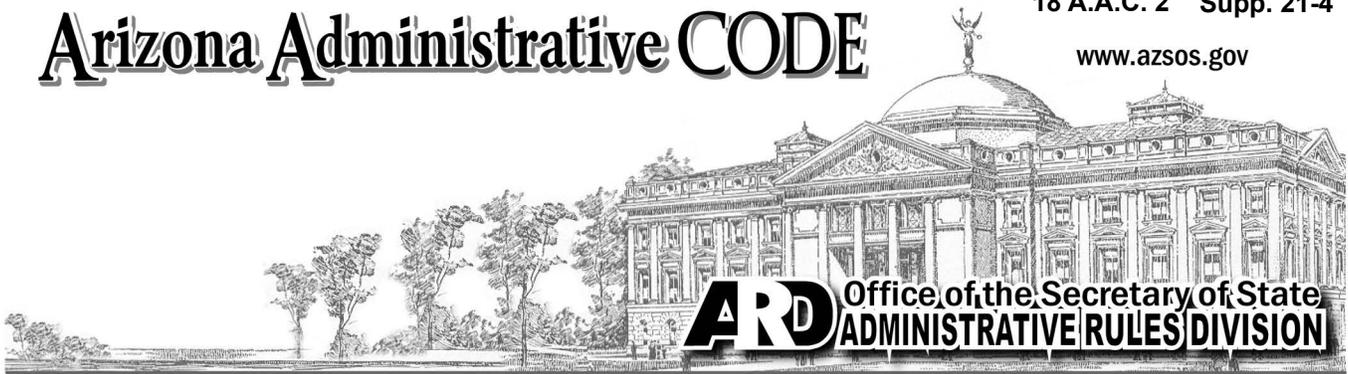
To support the emission limits and control requirements in both rules, ADEQ conducted air quality modeling using data obtained from Asarco, Freeport-McMoRan Miami Inc., and air quality monitors. ADEQ followed EPA Guidance in conducting the modeling.

Before conducting the air quality modeling, ADEQ identified lead and sulfur dioxide pollution sources in the Hayden nonattainment area and sulfur dioxide pollution sources in the Miami nonattainment area. To do this, ADEQ obtained emissions data from EPA's National Emission Inventory (NEI). After analyzing the emissions data, ADEQ determined that no other sources or combination of sources contributed as much as the Asarco smelter in the Hayden nonattainment area and the Freeport-McMoRan Miami Inc. smelter in the Miami nonattainment area.

ADEQ used the emissions data, in addition to meteorological and topographical data, to develop

emissions limits that demonstrate attainment. Since the copper smelters in both areas were identified as the primary sources of emissions, the modeling efforts concentrated on the facilities' operations. The emission limits derived from the modeling are conservative and factor in the emission control equipment efficiency as well as peak smelter production levels.

The modeling Technical Support Documents outline ADEQ's methods, approach, and empirical results. The documents for both nonattainment areas are available for review at ADEQ's Records Center. See section 7 of this preamble for more information.



TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

The table of contents on page one contains links to the referenced page numbers in this Chapter.
Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

This Chapter contains rules that were filed to be codified in the *Arizona Administrative Code* between the dates of
October 1, 2021 through December 31, 2021

R18-2-610.	Definitions for R18-2-610.01, R18-2-610.02, and R18-2-610.03	90
R18-2-610.03.	Agricultural PM General Permit for Crop Operations; Pinal County PM Nonattainment Area	95

R18-2-611.	Definitions for R18-2-611.01, R18-2-611.02, and R18-2-611.03	97
R18-2-611.03.	Agricultural PM General Permit for Animal Operations; Pinal County PM Nonattainment Area	105

Questions about these rules? Contact:

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The release of this Chapter in Supp. 21-4 replaces Supp. 20-4, 1-225 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), Administrative Rules Division, accepts state agency rule notice and other legal filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into Titles. Titles are divided into Chapters. A Chapter includes state agency rules. Rules in Chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each Chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2021 is cited as Supp. 21-1. Supplements are traditionally released three to four weeks after the end of the quarter because filings are accepted until the last day of the quarter.

Please note: The Office publishes by Chapter, not by individual rule Section. Therefore there might be only a few Sections codified in each Chapter released in a supplement. This is why the Office lists only updated codified Sections on the previous page.

RULE HISTORY

Refer to the HISTORICAL NOTE at the end of each Section for the effective date of a rule. The note also includes the *Register* volume and page number in which the notice was published (A.A.R.) and beginning in supplement 21-4, the date the notice was published in the *Register*.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate Chapters of the Code in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* Chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, www.azleg.gov. An agency’s authority note to make rules is often included at the beginning of a Chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a Chapter can be found at the Secretary of State’s website, www.azsos.gov under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor’s notes at the beginning of a Chapter provide information about rulemaking Sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

PERSONAL USE/COMMERCIAL USE

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Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

R18-2-901. Standards of Performance for New Stationary Sources 133

R18-2-902. General Provisions 136

R18-2-903. Standards of Performance for Fossil-fuel Fired Steam Generators 136

R18-2-904. Standards of Performance for Incinerators 136

R18-2-905. Standards of Performance for Storage Vessels for Petroleum Liquids 136

R18-2-906. Repealed 137

R18-2-907. Reserved 137

R18-2-908. Reserved 137

R18-2-909. Reserved 137

R18-2-910. Repealed 137

R18-2-911. Reserved 137

R18-2-912. Reserved 137

R18-2-913. Repealed 137

R18-2-914. Reserved 137

R18-2-915. Reserved 137

R18-2-916. Reserved 137

R18-2-917. Reserved 137

R18-2-918. Reserved 137

R18-2-919. Reserved 137

R18-2-920. Reserved 137

R18-2-921. Reserved 137

R18-2-922. Repealed 137

ARTICLE 10. MOTOR VEHICLES; INSPECTIONS AND MAINTENANCE

Former Article 10 consisting of Sections R9-3-1001, R9-3-1003 through R9-3-1013, R9-3-1016 through R9-3-1019, R9-3-1022, R9-3-1023, R9-3-1025 through R9-3-1031 renumbered as Article 10, Sections R18-2-1001, R18-2-1003 through R18-2-1013, R18-2-1016 through R18-2-1019, R18-2-1022, R18-2-1023, and R18-2-1025 through R18-2-1031 effective August 1, 1988.

Section

R18-2-1001. Definitions 137

R18-2-1002. Applicable Implementation Plan 139

R18-2-1003. Vehicles to be Inspected by the Mandatory Vehicle Emissions Inspection Program 139

R18-2-1004. Repealed 140

R18-2-1005. Time of Inspection 140

R18-2-1006. Emissions Test Procedures 140

R18-2-1007. Evidence of Meeting State Inspection Requirements 149

R18-2-1008. Procedure for Issuing Certificates of Waiver ... 149

R18-2-1009. Tampering Repair Requirements 150

R18-2-1010. Low Emissions Tune-up, Emissions and Evaporative System Repair 150

R18-2-1011. Vehicle Inspection Report 152

R18-2-1012. Inspection and Reinspections; Procedures and Fee 153

R18-2-1013. Repealed 153

R18-2-1014. Repealed 153

R18-2-1015. Repealed 153

R18-2-1016. Licensing of Inspectors and Fleet Agents 153

R18-2-1017. Inspection of Government Vehicles 154

R18-2-1018. Certificate of Inspection 155

R18-2-1019. Fleet Station Procedures and Permits 155

R18-2-1020. Department Issuance of Alternative Fuel Certificates 156

R18-2-1021. Reserved 156

R18-2-1022. Procedure for Waiving Inspections Due to Technical Difficulties 156

R18-2-1023. Certificate of Exemption for Out-of-State Vehicles 156

R18-2-1024. Expired 157

R18-2-1025. Inspection of Contractor’s Equipment and Personnel157

R18-2-1026. Inspection of Fleet Stations157

R18-2-1027. Repealed158

R18-2-1028. Repealed158

R18-2-1029. Vehicle Emission Control Devices158

R18-2-1030. Visible Emissions; Mobile Sources158

R18-2-1031. Repealed158

Table 1. Dynamometer Loading Table - Annual Tests ...158

Table 2. Emissions Standards - Annual Tests158

Table 3. Emissions Standards - Transient Loaded Emissions Tests160

Table 4. Transient Driving Cycle161

Table 5. Tolerances161

Table 6. Repealed161

ARTICLE 11. FEDERAL HAZARDOUS AIR POLLUTANTS

Article 11, consisting of Sections R18-2-1101 and R18-2-1102 adopted effective November 15, 1993 (Supp. 93-4).

Article 11 consisting of Sections R18-2-1101 and R18-2-1102 repealed effective September 26, 1990 (Supp. 90-3).

Article 11 consisting of Sections R9-3-1101, R9-3-1102, and Appendices 1 through 11 renumbered as Article 11, Sections R18-2-1101, R18-2-1102, and Appendices 1 through 11 (Supp. 87-3).

Section

R18-2-1101. National Emission Standards for Hazardous Air Pollutants (NESHAPs)162

R18-2-1102. General Provisions165

ARTICLE 12. VOLUNTARY EMISSIONS BANK

Article 12, consisting of Sections R18-2-1201 through R18-2-1208, made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1).

Section

R18-2-1201. Definitions165

R18-2-1202. Applicability166

R18-2-1203. Certification of Credits for Emission Reductions by Permitted Generators166

R18-2-1204. Certification of Credits for Emission Reductions by Regulatory Generators167

R18-2-1205. Certification of Credits for Emission Reductions by Plan Generators; Enforcement167

R18-2-1206. Opening Emissions Bank Accounts168

R18-2-1207. Registration of Emission Reduction Credits in Emissions Bank168

R18-2-1208. Transfer, Use, and Retirement of Emission Reduction Credits168

R18-2-1209. Exclusion of Emission Reduction Credits from Planning169

R18-2-1210. Fees169

ARTICLE 13. STATE IMPLEMENTATION PLAN RULES FOR SPECIFIC LOCATIONS

Article 13, consisting of Part B, Sections R18-2-B1301, R18-2-B1301.01, and R18-2-B1302; and consisting of Part C, Section R18-2-C1302; and Appendix 14 and 15 made by final rulemaking. See historical notes for effective dates (Supp. 17-1).

Article 13, consisting of Sections R18-2-1301 through R18-2-1307, rules expired under A.R.S. § 41-1056(J), effective April 30, 2013 (Supp. 13-3).

Article 13, consisting of Sections R18-2-1301 through R18-2-1307, made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2).

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

Section

R18-2-1301. Expired 169

R18-2-1302. Expired 169

R18-2-1303. Expired 169

R18-2-1304. Expired 169

R18-2-1305. Expired 169

R18-2-1306. Expired 169

R18-2-1307. Expired 169

PART A. RESERVED

PART B. HAYDEN, ARIZONA, PLANNING AREA

Section

R18-2-B1301. Limits on Lead Emissions from the Hayden Smelter 169

R18-2-B1301.01.Limits on Lead-Bearing Fugitive Dust from the Hayden Smelter 172

R18-2-B1302. Limits on SO2 Emissions from the Hayden Smelter 178

PART C. MIAMI, ARIZONA, PLANNING AREA

Section

R18-2-C1301. Reserved 182

R18-2-C1302. Limits on SO2 Emissions from the Miami Smelter 182

ARTICLE 14. CONFORMITY DETERMINATIONS

Section

R18-2-1401. Definitions 186

R18-2-1402. Applicability 189

R18-2-1403. Priority 189

R18-2-1404. Frequency of Conformity Determinations 189

R18-2-1405. Consultation 190

R18-2-1406. Content of Transportation Plans 194

R18-2-1407. Relationship of Transportation Plan and TIP Conformity with the NEPA Process 194

R18-2-1408. Fiscal Constraints for Transportation Plans and TIPs 194

R18-2-1409. Criteria and Procedures for Determining Conformity of Transportation Plans, Programs, and Projects: General 194

Table 1. Conformity Criteria 195

R18-2-1410. Criteria and Procedures: Latest Planning Assumptions 195

R18-2-1411. Criteria and Procedures: Latest Emissions Model 196

R18-2-1412. Criteria and Procedures: Consultation 196

R18-2-1413. Criteria and Procedures: Timely Implementation of TCMs 196

R18-2-1414. Criteria and Procedures: Currently Conforming Transportation Plan and TIP 196

R18-2-1415. Criteria and Procedures: Projects from a Plan and TIP 196

R18-2-1416. Criteria and Procedures: Localized CO and PM10 Violations (Hot Spots) 197

R18-2-1417. Criteria and Procedures: Compliance with PM10 Control Measures 197

R18-2-1418. Criteria and Procedures: Motor Vehicle Emissions Budget (Transportation Plan) 197

R18-2-1419. Criteria and Procedures: Motor Vehicle Emissions Budget (TIP) 198

R18-2-1420. Criteria and Procedures: Motor Vehicle Emissions Budget (Project Not from a Plan and TIP) 198

R18-2-1421. Criteria and Procedures: Localized CO Violations (Hot Spots) in the Interim and Transitional Periods 199

R18-2-1422. Criteria and Procedures: Interim and Transitional Period Reductions in Ozone and CO Areas (Transportation Plan)199

R18-2-1423. Criteria and Procedures: Interim Period Reductions in Ozone and CO Areas (TIP)200

R18-2-1424. Criteria and Procedures: Interim Period Reductions for Ozone and CO Areas (Project Not from a Plan and TIP)201

R18-2-1425. Criteria and Procedures: Interim Period Reductions for PM10 and NO2 Areas (Transportation Plan)201

R18-2-1426. Criteria and Procedures: Interim Period Reductions for PM10 and NO2 Areas (TIP)201

R18-2-1427. Criteria and Procedures: Interim Period Reductions for PM10 and NO2 Areas (Project Not from a Plan and TIP)202

R18-2-1428. Transition from the Interim Period to the Control Strategy Period202

R18-2-1429. Requirements for Adoption or Approval of Projects by Recipients of Funds Designated under 23 U.S.C. or the Federal Transit Act204

R18-2-1430. Procedures for Determining Regional Transportation-related Emissions205

R18-2-1431. Procedures for Determining Localized CO and PM10 Concentrations (Hot-spot Analysis)206

R18-2-1432. Using the Motor Vehicle Emissions Budget in the Applicable Implementation Plan or Implementation Plan Submission207

R18-2-1433. Enforceability of Design Concept and Scope and Project-level Mitigation and Control Measures207

R18-2-1434. Exempt Projects208

Table 2. Exempt Projects208

R18-2-1435. Projects Exempt from Regional Emissions Analyses208

Table 3. Projects Exempt From Regional Emissions Analyses209

R18-2-1436. Special Provisions for Nonattainment Areas Which are Not Required to Demonstrate Reasonable Further Progress and Attainment209

R18-2-1437. Reserved209

R18-2-1438. General Conformity for Federal Actions209

ARTICLE 15. FOREST AND RANGE MANAGEMENT BURNS

Article 15, consisting of R18-2-1501 through R18-2-1515, adopted effective October 8, 1996 (Supp. 96-4).

Section

R18-2-1501. Definitions209

R18-2-1502. Applicability210

R18-2-1503. Annual Registration, Program Evaluation and Planning210

R18-2-1504. Prescribed Burn Plan211

R18-2-1505. Prescribed Burn Requests and Authorization211

R18-2-1506. Smoke Dispersion Evaluation211

R18-2-1507. Prescribed Burn Accomplishment; Wildfire Reporting212

R18-2-1508. Wildland Fire Use: Plan, Authorization, Monitoring; Inter-agency Consultation; Status Reporting212

R18-2-1509. Emission Reduction Techniques212

R18-2-1510. Smoke Management Techniques213

R18-2-1511. Monitoring213

R18-2-1512. Burner Qualifications213

R18-2-1513. Public Notification and Awareness Program; Regional Coordination214

R18-2-1514. Surveillance and Enforcement214

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

3. The permitting authority shall provide notice to the Department of final action on the stationary source's application for a permit or permit revision.
4. Reductions in qualifying emissions reflected in the credits must be implemented before actual construction of the new stationary source or modification begins.
5. The Department shall register a withdrawal and use of credits used under subsection (B) on the later of:
 - a. Receipt of notice of approval of the application for a permit or permit revision for the stationary source; or
 - b. Implementation of the reductions reflected in the credits.

C. Retirement.

1. An account holder may retire credits in its account without using them as offsets by submitting the form prescribed by the Department.
2. On verification of the information contained in the form, the Department shall register a withdrawal and retirement of the credits from the account.

D. Continuation of Credits. Except to the extent otherwise required by the act, certified credits do not expire and continue in effect until withdrawn under subsection (B) or (C).**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1). Section R18-2-1208 renumbered to R18-2-1210; new Section R18-2-1208 made by final rulemaking at 25 A.A.R. 1433, effective July 28, 2019 (Supp. 19-2).

R18-2-1209. Exclusion of Emission Reduction Credits from Planning

Except to the extent otherwise required by the act, with regard to credits for emission reductions in an area for which a planning authority has responsibility, the planning authority shall:

1. Include the emissions for which the credits have been issued in the emissions inventory for the area as if reductions in those emissions had not yet occurred;
2. Account for the emissions for which the credits have been issued in any reasonable further progress or attainment demonstration for the area as if the reductions had not yet occurred; and
3. Refrain from relying on the reductions in any revision to the state implementation plan for the area.

Historical Note

New Section R18-2-1209 made by final rulemaking at 25 A.A.R. 1433, effective July 28, 2019 (Supp. 19-2).

R18-2-1210. Fees

- A. The owner or operator of a generator shall pay a non-refundable administrative fee of \$200.00 to the Department when submitting an application for certification. This fee is in addition to the fees specified in R18-2-326.
- B. An account holder using a credit under R18-2-1207(B) shall pay a non-refundable administrative fee of \$200.00 to the Department when submitting the application for use. This fee is in addition to the fees specified in R18-2-326.

Historical Note

New Section R18-2-1210 renumbered from R18-2-1208 and amended by final rulemaking at 25 A.A.R. 1433, effective July 28, 2019 (Supp. 19-2).

ARTICLE 13. STATE IMPLEMENTATION PLAN RULES FOR SPECIFIC LOCATIONS**R18-2-1301. Expired****Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

R18-2-1302. Expired**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

R18-2-1303. Expired**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

R18-2-1304. Expired**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

R18-2-1305. Expired**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

R18-2-1306. Expired**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

R18-2-1307. Expired**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

PART A. RESERVED**PART B. HAYDEN, ARIZONA, PLANNING AREA****R18-2-B1301. Limits on Lead Emissions from the Hayden Smelter****A. Applicability.**

1. This Section applies to the owner or operator of the Hayden Smelter.
2. Effective date. Except as otherwise provided, the requirements of this Section shall become applicable on the earlier of July 1, 2018 or 180 days after completion of all project improvements authorized by Significant Permit Revision No. 60647.

B. Definitions. In addition to general definitions contained in R18-2-101, the following definitions apply to this Section:

1. "ACFM" means actual cubic feet per minute.

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

2. "Anode furnace baghouse stack" means the dedicated stack that vents controlled off-gases from the anode furnaces to the Main Stack.
 3. "Blowing" shall mean the introduction of air or oxygen-enriched air into the converter furnace molten bath through tuyeres that are submerged below the level of the molten bath. The flow of air through the tuyeres above the level of the molten bath or into an empty converter shall not constitute blowing.
 4. "Capture system" means the collection of components used to capture gases and fumes released from one or more emission units, and to convey the captured gases and fumes to one or more control devices or a stack. A capture system may include, but is not limited to, the following components as applicable to a given capture system design: duct intake devices, hoods, enclosures, ductwork, dampers, manifolds, plenums, and fans.
 5. "Control device" means a piece of equipment used to clean and remove pollutants from gases and fumes released from one or more emission units that would otherwise be released to the atmosphere. Control devices may include, but are not limited to, baghouses, Electrostatic Precipitators (ESPs), and sulfuric acid plants.
 6. "Hayden Smelter" means the primary copper smelter located in Hayden, Gila County, Arizona at latitude 33°0'15"N and longitude 110°46'31"W.
 7. "Main Stack" means the center and annular portions of the 1,000-foot stack, which vents controlled off-gases from the INCO flash furnace, the converters, and anode furnaces and also vents exhaust from the tertiary hoods.
 8. "SCFM" means standard cubic feet per minute.
 9. "SLAMS monitor" means an ambient air monitor part of the State and Local Air Monitoring Stations network operated by State or local agencies for the purpose of demonstrating compliance with the National Ambient Air Quality Standards.
 10. "Smelting process-related fugitive lead emissions" means uncaptured and/or uncontrolled lead emissions that are released into the atmosphere from smelting copper in the INCO flash furnace, converters, and anode furnaces.
- C. Emission limit.** Main Stack lead emissions shall not exceed 0.683 pound of lead per hour.
- D. Operational Standards.**
1. Process equipment and control device operations. At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate smelter processes and associated emission capture and/or control equipment in a manner consistent with good air pollution control practices for minimizing lead emissions to the level required by subsection (C). Determination of whether acceptable operating and maintenance procedures are being used shall be based on all information available to the Department and EPA Region IX, which may include, but is not limited to, monitoring results, review of operating and maintenance procedures and records, and inspection of the relevant equipment.
 2. Capture system and control device operations and maintenance plan. The owner or operator shall develop and implement an operations and maintenance plan for each capture system and/or control device used to ventilate or control process gas or emissions from the flash furnace, including matte tapping, slag skimming and slag return operations; converter primary hoods, converter secondary hoods, tertiary ventilation system; and anode refining operations. The operations and maintenance plan must address the following requirements as applicable to each capture system and/or control device.
 - a. Monitoring devices. The plan shall provide for installation, operation, calibration, and maintenance of appropriate monitoring devices to measure and record operating limit values or settings at all times the required capture and control system is operating, except during periods of monitor calibration, repair, and malfunction. The initial plan shall provide for volumetric flow monitoring on the vent gas baghouse (inlet or outlet), each converter primary hood, each converter secondary hood, the tertiary ventilation system, and the anode furnace baghouse (inlet or outlet). All monitoring devices shall be accurate within +/- 10% and calibrated according to manufacturer's instructions. If direct measurement of the exhaust flow is infeasible due to physical limitations or exhaust characteristics, the owner or operator may propose a reliable equivalent method for approval. Initial monitoring may be adjusted as provided in subsection (D)(2)(e). Dampers that are manually set and remain in the same position while the capture system is operating are exempt from these monitoring requirements. Capture system damper position setting(s) shall be specified in the plan.
 - b. Operational limits. The owner or operator shall establish operating limits in the operations and maintenance plan for the capture systems and/or control devices that are representative and reliable indicators of the performance of the capture system and control device operations. Initial operating limits may be adjusted as provided in subsection (D)(2)(e). Initial operating limits shall include the following:
 - i. A minimum air flow for the furnace ventilation system and associated damper positions for each matte tapping hood or slag skimming hood when operating to ensure that the operation(s) are within the confines or influence of the capture system.
 - ii. A minimum air flow for the secondary hood baghouse and associated damper positions for each slag return hood to ensure that the operation is within the confines or influence of the capture system's ventilation draft during times when the associated process is operating.
 - iii. A minimum air infiltration ratio for the converter primary hoods of 1:1 averaged over 24 converter Blowing hours, rolled hourly measured as volumetric flow in primary hood less the volumetric flow of tuyere Blowing compared to the volumetric flow of tuyere Blowing.
 - iv. A minimum secondary hood exhaust rate of 35,000 SCFM during converter Blowing, averaged over 24 converter Blowing hours, rolled hourly.
 - v. A minimum secondary hood exhaust rate of 133,000 SCFM during all non-Blowing operating hours, averaged over 24 non-Blowing hours, rolled hourly.
 - vi. A minimum negative pressure drop across the secondary hood when the doors are closed equivalent to 0.007 inches of water.
 - vii. A minimum exhaust rate on the tertiary hooding of 400,000 ACFM during all times material

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

- is processed in the converter aisle, averaged over 24 hours and rolled hourly.
- viii. Fan amperes or minimum air flow for the anode furnace baghouse and associated damper positions for each anode furnace hood to ensure that the anode furnace off-gas port is within the confines or influence of the capture system's ventilation draft during times when the associated furnace is operating.
 - ix. The anode furnace charge mouth shall be kept covered when the tuyeres are submerged in the metal bath except when copper is being charged to or transferred from the furnace.
- c. Preventative maintenance. The owner or operator shall perform preventative maintenance on each capture system and control device according to written procedures specified in the operations and maintenance plan. The procedures must include a preventative maintenance schedule that is consistent with the manufacturer's or engineer's instructions, or operator's experience working with the equipment, and frequency for routine and long-term maintenance. This provision does not prohibit additional maintenance beyond that required by the plan.
 - d. Inspections. The owner or operator shall perform inspections in accordance with written procedures in the operations and maintenance plan for each capture system and control device that are consistent with the manufacturer's, engineer's, or operator's instructions for each system and device.
 - e. Plan development and revisions.
 - i. The owner or operator shall develop and keep current the plan required by this Section. Any plan or plan revision shall be consistent with this Section, shall be designed to ensure that the capture and control system performance conforms to the attainment demonstration in the Hayden 2008 Lead National Ambient Air Quality Standards Nonattainment Area State Implementation Plan (SIP), and shall be submitted to the Department for review. Any plan or plan revision submitted shall include the associated manufacturer's, engineer's or operator's recommendations and/or instructions used for capture system and control device operations and maintenance.
 - ii. The owner or operator shall submit the initial plan to the Department no later than May 1, 2018 and shall include the initial volumetric flow monitoring provisions in subsection (D)(2)(a), the initial operational limits in subsection (D)(2)(b), the preventative maintenance procedures in subsection (D)(2)(c), and the inspection procedures in subsection (D)(2)(d).
 - iii. The owner or operator shall submit to the Department for approval a plan revision with changes, if any, to the initial volumetric flow monitoring provisions in subsection (D)(2)(a) and initial operational limits in subsection (D)(2)(b) not later than six months after completing a fugitive emissions study conducted in accordance with Appendix 14. The Department shall submit the approved changes to the volumetric flow monitoring provisions and operational limits pursuant to this subsection to EPA Region IX as a SIP revision not later than 12 months after completion of a fugitive emissions study.
 - iv. Other plan revisions may be submitted at any time when necessary. All plans and plan revisions shall be designed to achieve operation of the capture system and/or control device consistent with the attainment demonstration in the Hayden 2008 Lead National Ambient Air Quality Standards Nonattainment Area SIP. Except for changes to the volumetric flow monitoring provisions in subsection (D)(2)(a) and operational limits in subsection (D)(2)(b), which shall require prior approval, plans and plan revisions may be implemented upon submittal and shall remain in effect until superseded or until disapproved by the Department. Disapprovals are appealable Department actions.
3. Emissions from the anode furnace baghouse stack shall be routed to the Main Stack.
- E. Performance Test Requirements.
1. Main stack performance tests. No later than 180 calendar days after completion of all Converter Retrofit Project improvements authorized by Significant Permit Revision No. 60647, the owner or operator shall conduct initial performance tests on the following:
 - a. the gas stream exiting the anode furnaces baghouse prior to mixing with other gas streams routed to the Main Stack.
 - b. the gas stream exiting the acid plant at a location prior to mixing with other gas streams routed to the Main Stack.
 - c. the gas stream exiting the secondary baghouse at a location prior to mixing with other gas streams routed to the Main Stack.
 - d. the gas stream collected by the tertiary hooding at a location prior to mixing with other gas streams routed to the Main Stack.
 - e. the gas stream exiting the vent gas baghouse at a location prior to mixing with other gas streams routed to the Main Stack.
 2. Subsequent performance tests on the gas streams specified in subsection (E)(1) shall be conducted at least annually.
 3. Performance tests shall be conducted under such conditions as the Department specifies to the owner or operator based on representative performance of the affected sources and in accordance with 40 CFR 60, Appendix A, Reference Method 29.
 4. At least 30 calendar days prior to conducting a performance test pursuant to subsection (E)(1), the owner or operator shall submit a test plan, in accordance with R18-2-312(B) and the Arizona Testing Manual, to the Department for approval. The test plan must include the following:
 - a. Test duration;
 - b. Test location(s);
 - c. Test method(s), including those for test method performance audits conducted in accordance with subsection (E)(6); and
 - d. Source operation and other parameters that may affect the test result.
 5. The owner or operator may use alternative or equivalent performance test methods as defined in 40 CFR § 60.2 when approved by the Department and EPA Region IX, as applicable, prior to the test.

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

6. The owner or operator shall include a test method performance audit during every performance test in accordance with 40 CFR § 60.8(g).
- F. Compliance Demonstration Requirements.**
1. For purposes of determining compliance with the Main Stack emission limit in subsection (C), the owner or operator shall calculate the combined lead emissions in pounds per hour from the gas streams identified in subsection (E)(1) based on the most recent performance tests conducted in accordance with subsection (E).
 2. The owner or operator shall determine compliance with the requirements in subsection (D)(2) as follows:
 - a. Maintaining and operating the emissions capture and control equipment in accordance with the capture system and control device operations and maintenance plan required in subsection (D)(2) and recording operating parameters for capture and control equipment as required in subsection (D)(2)(b); and
 - b. Conducting a fugitive emissions study in accordance with Appendix 14 starting not later than six months after completion of the Converter Retrofit Project authorized by Significant Permit Revision No. 60647. The fugitive emissions study shall demonstrate, as set forth in Appendix 14, that fugitive emissions from the smelter are consistent with estimates used in the attainment demonstration in the Hayden 2008 Lead National Ambient Air Quality Standards Nonattainment Area SIP.
 3. The owner or operator shall include periods of startup, shutdown, malfunction, or other upset conditions when determining compliance with the emission limit in subsection (C).
- G. Recordkeeping.** The owner or operator shall maintain the following records for at least five years and keep on-site for at least two years:
1. All records as specified in the operations and maintenance plan required under subsection (D)(2).
 2. All records of major maintenance activities and inspections conducted on emission units, capture systems, monitoring devices, and air pollution control equipment, including those set forth in the operations and maintenance plan required by subsection (D)(2).
 3. All records of performance tests, test plans, and audits required by subsection (E).
 4. All records of compliance calculations required by subsection (F).
 5. All records of fugitive emission studies and study protocols conducted in accordance with Appendix 14.
 6. All records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of concentrate drying, smelting, converting, anode refining, and casting emission units; and any malfunction of the associated air pollution control equipment that is inoperative or not operating correctly.
 7. All records of reports and notifications required by subsection (H).
- H. Reporting.** The owner or operator shall provide the following to the Department:
1. Notification of commencement of construction of any equipment necessary to comply with the operational or emission limits.
 2. Semiannual progress reports on construction of any such equipment postmarked by July 30 for the preceding January-June period and January 30 for the preceding July-December period.
3. Notification of initial startup of any such equipment within 15 business days of such startup.
 4. Whenever the owner or operator becomes aware of any exceedance of the emission limit set forth in subsection (C), the owner or operator shall notify the Department orally or by electronic or facsimile transmission as soon as practicable, but no later than two business days after the owner or operator first knew of the exceedance.
 5. Within 30 days after the end of each calendar-year quarter, the owner or operator shall submit a quarterly report to the Department for the preceding quarter that shall include dates, times, and descriptions of deviations when the owner or operator operated smelting processes and related control equipment in a manner inconsistent with the operations and maintenance plan required by subsection (D)(2).
 6. Reports from performance testing conducted pursuant to subsection (E) shall be submitted to the Department within 60 calendar days of completion of the performance test. The reports shall be submitted in accordance with the Arizona Testing Manual and A.A.C. R18-2-312(A).

Historical Note

New Section R18-2-B1301 made by final rulemaking at 23 A.A.R. 767, effective on the earlier of July 1, 2018, or 180 calendar days after completion of all Converter Retrofit Project improvements authorized by Significant Permit Revision No. 60647 (Supp. 17-1).

R18-2-B1301.01.Limits on Lead-Bearing Fugitive Dust from the Hayden Smelter

- A. Applicability.**
1. This Section applies to the owner or operator of the Hayden Smelter.
 2. Effective Date. Except as otherwise provided, the requirements of this Section shall become applicable on December 1, 2018.
- B. Definitions.** In addition to definitions contained in R18-2-101 and R18-2-B1301, the following definitions apply to this Section:
1. "Acid plant scrubber blowdown drying system" means the process in which Venturi scrubber blowdown solids are dried and packaged via a thickener, filter press, electric dryer, and supersack filling stations.
 2. "Control measure" means a piece of equipment used, or actions taken, to minimize lead-bearing fugitive dust emissions that would otherwise be released to the atmosphere. Control equipment may include, but are not limited to, wind fences, chemical dust suppressants, and water sprayers. Actions may include, but are not limited to, relocating sources, curtailing operations, or ceasing operations.
 3. "Hayden Lead Nonattainment Area" means the townships in Gila and Pinal Counties, as identified and codified in 40 CFR § 81.303, that are designated nonattainment for the 2008 Lead National Ambient Air Quality Standards.
 4. "High wind event" means any period of time beginning when the average wind speed, as measured at a meteorological station maintained by the owner or operator that is approved by the Department, is greater than or equal to 15 mph over a 15 minute period, and ending when the average wind speed, as measured at the approved meteorological station maintained by the owner or operator, falls below 15 mph over a 15 minute period.
 5. "Lead-bearing fugitive dust" means uncaptured and/or uncontrolled particulate matter containing lead that is

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

entrained in the ambient air and is caused by activities, including, but not limited to, the movement of soil, vehicles, equipment, and wind.

6. "Material pile" means material, including concentrate, uncrushed reverts, crushed reverts, and bedding material, that is stored in a pile outside a building or warehouse and is capable of producing lead-bearing fugitive dust.
 7. "Non-smelting process sources" means sources of lead-bearing fugitive dust that are not part of the hot metal process, which includes smelting in the INCO flash furnace, converting, and anode refining and casting. Non-smelting process sources include storage, handling, and unloading of concentrate, uncrushed reverts, crushed reverts, and bedding material; acid plant scrubber blowdown solids; and paved and unpaved roads.
 8. "Ongoing visible emissions" means observed emissions to the outside air that are not brief in duration.
 9. "Road" means any surface on which vehicles pass for the purpose of carrying people or materials from one place to another in the normal course of business at the Hayden Smelter.
 10. "Slag" means the inorganic molten material that is formed during the smelting process and has a lower specific gravity than copper-bearing matte.
 11. "Slag hauler" means any vehicle used to transport molten slag.
 12. "Storage and handling" means all activities associated with the handling and storage of materials that take place at the Hayden Smelter, including, but not limited to, stockpiling, transport on conveyor belts, transport or storage in rail cars, crushing and milling, arrival and handling of offsite concentrate, bedding, and handling of reverts.
 13. "Trackout/carry-out" means any materials that adhere to and agglomerate on the surfaces of motor vehicles, haul trucks, and/or equipment (including tires) and that may then fall onto the road.
- C. Operational Standards.
1. Equipment operations. At all times, the owner or operator shall operate and maintain all non-smelting process sources, including all associated air pollution control equipment, control measures, and monitoring equipment, in a manner consistent with good air pollution control practices for minimizing lead-bearing fugitive dust, and in accordance with the fugitive dust plan required by subsection (C)(2) and performance and housekeeping requirements in subsection (D). A determination of whether acceptable operating and maintenance procedures are being used shall be based on all available information to the Department and EPA Region IX, which may include, but is not limited to, monitoring results, review of operating and maintenance procedures and records, review of fugitive dust plans, and inspection of the relevant equipment.
 2. Fugitive dust plan. The owner or operator shall develop, implement, and follow a fugitive dust plan that is designed to minimize lead-bearing fugitive dust from non-smelting process sources. At minimum, the fugitive dust plan shall contain the following:
 - a. Performance and housekeeping requirements in subsection (D).
 - b. Design plans and specifications for each wind fence to be installed to control lead-bearing fugitive dust from non-smelting process sources identified in subsections (D)(11) through (D)(14). The dust plan shall contain height limits for the materials being stored in each wind fence, consistent with the design plans and specifications for that particular wind fence. Wind fence design and specifications shall:
 - i. Require full encircling of the source to be controlled, with reasonable and sufficient openings for ingress and egress;
 - ii. Consider the orientation of the wind fence to the prevailing winds;
 - iii. Consider the strength of the winds in the area where the fence will be located;
 - iv. Consider the porosity of the material to be used, which shall not exceed 50%; and
 - v. Consider the height of the fence relative to the height of the material being stored. At minimum, wind fence height shall be greater than or equal to the material pile height.
- c. Design plans and specifications for each new or modified water sprayer system used to control lead-bearing fugitive dust from non-smelting process sources specified in subsections (D)(11) through (D)(14). The number, type, location, watering intensity, flow rates, and other operational parameters of the water sprayers must meet moisture content objectives for sources specified in subsections (D)(11) through (D)(14). The owner or operator may include in the dust plan an exemption to the water requirements at times when the materials are sufficiently moist or it is raining and thus there is no need for additional wetting until the next scheduled watering to meet moisture content objectives. The dust plan shall include the following for each water sprayer:
 - i. Watering schedule;
 - ii. Watering intensity;
 - iii. Minimum flow rate or pressure drop;
 - iv. Appropriate and/or continuous monitoring;
 - v. Schedule for calibration based on the manufacturer's recommended calibration schedule;
 - vi. Preventative maintenance schedule; and
 - vii. Other applicable operational parameters.
 - d. Necessary improvements and/or modifications to material conveyor systems, along with a schedule for implementing improvements or modifications, targeted to minimize lead-bearing fugitive dust from non-smelting process sources specified in subsections (D)(11) through (D)(14), as applicable, to the greatest extent practicable. The improvements or modifications may include, but is not limited to, hooding of transfer points, utilizing water sprayers, and employing scrapers, brushes, or cleaning systems at all points where belts loop around themselves to catch and contain material before it falls to the ground.
 - e. Design plans for the concrete pads for the non-smelting process sources specified in subsections (D)(11) and (D)(13). The concrete pads shall be designed to capture, store, and control stormwater or sprayed water to minimize emissions to the greatest extent practicable, including curbing around the outer edges of the concrete pad where feasible.
 - f. Additional controls and measures for sources specified in subsections (D)(11) through (D)(14) to be implemented during high wind events. These additional controls or measures, which must include curtailment or other alteration of activity when appropriate, must be implemented at these sources during all periods of high wind.

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

- g. Sample inspection sheets, checklists, or logsheets for each of the inspections identified in subsection (D)(6), and in accordance with the following:
 - i. The inspection sheets or checklists shall include:
 - (1) Specific descriptions of the equipment being inspected and the specific functions being evaluated;
 - (2) The findings of the inspection;
 - (3) The date, time, and location of inspections; and
 - (4) An identification of who performed the inspection or logged the results.
 - ii. The logsheets for high wind events shall include:
 - (1) High wind event start time;
 - (2) High wind event end time;
 - (3) Description of area or activity inspected; and
 - (4) Description of corrective action taken if necessary.
 - h. Design plans of the new acid plant scrubber blow-down drying system specified in subsection (D)(15).
 - i. The name and location of the meteorological station, which must be approved by the Department, that is to be used by the owner or operator for determining high wind events pursuant to subsection (B)(4) and for implementing control requirements pursuant to subsection (D)(5).
3. Plan development and revisions. The owner or operator shall develop and keep current the fugitive dust plan required by subsection (C)(2). Any plan or plan revision shall be consistent with this Section and shall be submitted to the Department for review. The initial plan shall be submitted to the Department for review no later than May 1, 2017. Plans and plan revisions shall be consistent with good air pollution control practice for fugitive dust. Except for the meteorological station to be used for high wind events pursuant to subsection (D)(5), which shall require prior approval, plans and plan revisions may be implemented upon submittal and shall remain in effect until superseded or until disapproved by the Department. Disapprovals are appealable Department actions.
- D. Performance and Housekeeping Requirements.** The owner or operator shall comply with these requirements at all times regardless of a fugitive dust plan.
1. Water sprayers. The owner or operator shall implement a recordkeeping system to capture sprayer operations, including identification of the particular operation, lead-bearing fugitive dust source, timing and intensity of watering, and data regarding the quantity of water used at each water sprayer.
 2. Wind fences. The owner or operator shall ensure that wind fences used to control lead-bearing fugitive dust from the non-smelting process sources specified in subsections (D)(11) through (D)(14) meet the following requirements:
 - a. Wind fence height shall be greater than or equal to the material pile height. The allowed material pile height shall be posted in a readily visible location at each wind fence.
 - b. Wind fence porosity shall not exceed 50%.
 3. Material conveyor systems. For sources specified in subsections (D)(11) through (D)(14), as applicable, the owner or operator shall:
 - a. Minimize conveyor drop heights to the greatest extent practicable.
 - b. Clean any spills from conveyors within 30 minutes of discovery. The material collected must be handled in such a way so as to minimize lead-bearing fugitive dust to the maximum extent practicable.
 4. Vehicle transport of materials. The owner or operator shall maintain vehicle cargo compartments used to transport materials capable of producing lead-bearing fugitive dust so that the cargo compartment is free of holes or other openings and is covered by a tarp.
 5. High wind event requirements.
 - a. During high wind events, the owner or operator shall evaluate the non-smelting process sources specified in subsections (D)(11) through (D)(14) for ongoing visible emissions using the appropriate logsheet for each source.
 - b. If ongoing visible emissions are observed, the owner or operator shall promptly wet the source of emissions with the objective of mitigating further emissions.
 - c. If wetting does not appear to mitigate the ongoing visible emissions to 20% opacity or less, the owner or operator shall postpone associated handling of the source until the high wind event has ceased.
 6. Physical inspections. The owner or operator shall conduct physical inspections as follows:
 - a. Daily inspections of all water sprayers to make sure they are functioning and are in accordance with the dust plan;
 - b. Daily visual inspections of all material piles to make sure they are maintained within areas protected by a wind fence, that they are not higher than allowed for the wind fence, and to verify that moisture content requirements are met;
 - c. Daily inspections of all material handling areas to identify and clean up track out or spills of materials;
 - d. Daily inspections of conveyor systems to identify and clean up material spills;
 - e. Daily inspections of rumble grates sump levels;
 - f. Daily spot inspections of vehicles carrying lead-bearing fugitive dust-producing materials when vehicles are in use to ensure that material is not overloaded, is properly covered, and cargo compartments are intact;
 - g. Weekly inspections of wind fences for material integrity and structural stability;
 - h. Daily inspections of all paved roads to identify and clean up track out or spills of materials;
 - i. Daily inspections of unpaved roads in subsection (D)(10)(a) to identify areas where chemical dust suppressant coverage has broken down; and
 - j. Bi-weekly inspections of the acid plant scrubber blowdown drying system enclosure.
 7. Opacity limit and Method 9 readings.
 - a. Opacity from lead-bearing fugitive dust emissions shall not exceed 20% from any part of the facility at any time. Opacity shall be determined by using 40 CFR 60, Appendix A, Reference Method 9, except for unpaved roads, in which opacity shall be determined pursuant to subsection (D)(10)(c).
 - b. In the event that an employee observes ongoing visible emissions at a non-smelting process source covered by this Section, that employee shall promptly contact a Reference Method 9-certified observer,

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

- who shall promptly evaluate the emissions and conduct a Reference Method 9 reading, if possible.
- c. A Reference Method 9-certified observer shall conduct a weekly visible emissions survey of all non-smelting process sources covered by this Section and perform a Reference Method 9 reading for any plumes that on an instantaneous basis appear to exceed 15% opacity.
8. Corrective actions.
 - a. At any time that visible emissions from the non-smelting process sources covered by this Section appear to exceed 15% opacity, the owner or operator shall take prompt corrective action to identify the source of the emissions and abate such emissions, with the corrective action starting within 30 minutes after discovery. For any non-smelting process source that produces visible emissions that appear to exceed 15% opacity, the owner or operator shall perform an analysis of the root cause, and implement a strategy designed to prevent, to the extent feasible, the ongoing recurrence of the source of visible emissions. Within 14 days of completion of its analysis, if appropriate, the owner or operator shall modify the fugitive dust plan in subsection (C)(2) for any changes identified from the analysis differing from the current provisions of the fugitive dust plan.
 - b. At any time that the owner or operator becomes aware that provisions of the fugitive dust plan and/or performance and housekeeping provisions required by this Section are not being met, the owner or operator shall take prompt action to return to compliance, which may include modifications to monitoring, recordkeeping, and reporting requirements in the fugitive dust plan. This includes, but is not limited to, the following actions:
 - i. Return water sprayers to full operational status;
 - ii. Repair damaged conveyor hoodings or other enclosures;
 - iii. Apply additional water to ensure that sources are meeting moisture content requirements;
 - iv. Clean any trackout or spillage of dust-producing material, including dropoff of dust producing material from conveyors, using a street sweeper, vacuum, or wet broom with sufficient water and at the speed recommended by the manufacturer;
 - v. Reapplication of chemical dust suppressants in areas where the coating has broken down on unpaved roads; and
 - vi. Revisions to the fugitive dust plan to undertake improved monitoring, recordkeeping, and reporting requirements necessary to ensure that the controls contained in the fugitive dust plan are being implemented as contemplated by the fugitive dust plan.
 9. Paved Roads. These requirements apply to all roads at the facility currently paved and roads to be paved in the future. The owner or operator shall:
 - a. Clean roads at least once daily with a sweeper, vacuum, or wet broom in accordance with applicable manufacturer recommendations.
 - b. Maintain the integrity of the road surface.
 - c. Clean up trackout and carry-out of material on the following schedule:
 - i. As expeditiously as practicable, when trackout and carry-out extends a cumulative distance of 50 linear feet or more; and
 - ii. At the end of the workday, for all other trackout and carry-out.
 - d. Comply with a speed limit not to exceed 15 mph for all vehicular traffic. At minimum, speed limit signs shall be posted at all entrances and truck loading and unloading areas and/or at conspicuous areas along the roadway.
 10. Unpaved Roads. These requirements apply to the unpaved roads identified in subsections (D)(10)(a)(i) through (D)(10)(a)(iii) below, including any access points where the unpaved roads adjoin paved roads and any areas of vehicular handling of material. The owner or operator shall:
 - a. Implement a chemical dust suppressant application intensity and schedule, which at minimum shall be:
 - i. For the slag hauler road and all other unpaved roads used or to be used by the slag hauler, chemical dust suppressant shall be applied at least once per week during the summer, and once per every two weeks during the winter.
 - ii. For the main road to the secondary crusher, chemical dust suppressant shall be applied at least once every six weeks, year-round.
 - iii. For unpaved roads near reverts and silica flux crushing operations, chemical dust suppressant shall be applied at least once per two weeks during the summer, and once per month in the winter.
 - b. Increase the frequency of chemical dust suppressant application if necessary to reduce fugitive dust emissions from unpaved roads.
 - c. Not allow visible emissions to exceed 20% opacity and shall not allow silt loading equal to or greater than 0.33 oz/ft². However, if silt loading is equal to or greater than 0.33 oz/ft², then the owner or operator shall not allow the average percent silt content to exceed 6%. Compliance with these requirements shall be determined by the test methods described in Appendix 15.
 - d. Maintain sufficient watering trucks and personnel to operate such trucks to be employed as an interim measure whenever visible emissions or a breakdown in dust suppressant covering are observed at any point along the treated unpaved road system.
 - e. Immediately, but no later than 30 minutes after initial observation of any visible emissions, apply water or chemical dust suppressant to the portion of the unpaved road where the visible emissions were observed.
 - f. Reapply chemical dust suppressant within 24 hours of discovery of any area where the surface chemical dust suppressant coverage has broken down.
 - g. Collect and prevent from becoming airborne any runoff or material from rinsing or sweeping as soon as practicable.
 - h. Comply with a speed limit not to exceed 15 mph for all vehicular traffic. At minimum, speed limit signs shall be posted at all entrances and truck loading and unloading areas and/or at conspicuous areas along the roadway.
 11. Concentrate Storage, Handling, and Unloading. The owner or operator shall:
 - i. As expeditiously as practicable, when trackout and carry-out extends a cumulative distance of 50 linear feet or more; and
 - ii. At the end of the workday, for all other trackout and carry-out.

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

- a. Consolidate and manage all concentrate storage piles in one or more concrete storage pads.
 - b. Store concentrate in an area with a wind fence in accordance with requirements set forth in the fugitive dust plan and pursuant to subsection (D)(2).
 - c. Maintain water sprayers in accordance with requirements set forth in the fugitive dust plan and to ensure the surfaces of concentrate piles are wetted to maintain a nominal 10% surface moisture content as determined from representative samples using ASTM Method D2216-10 or other equivalent methods approved by the Department and EPA Region IX.
 - d. Minimize the footprint of the concentrate storage piles by pushing into the stockpile with a front end loader and sweeping open areas of the pads with a self-powered vacuum sweeper at least daily during use.
12. Uncrushed Reverts Handling and Storage. The owner or operator shall:
- a. Manage uncrushed revert material only in areas protected by a wind fence in accordance with requirements set forth in the fugitive dust plan and pursuant to subsection (D)(2).
 - b. Maintain water sprayers in accordance with requirements set forth in the fugitive dust plan and to ensure the surface of uncrushed revert material is wetted with the objective to minimize lead-bearing fugitive dust emissions to the greatest extent practicable.
13. Reverts Crushing Operations and Crushed Reverts Storage. The owner or operator shall:
- a. Crush revert and store crushed revert only on one or more concrete pads.
 - b. Crush revert and store crushed revert only within an area protected by a wind fence in accordance with requirements set forth in the fugitive dust plan and pursuant to subsection (D)(2).
 - c. Maintain water sprayers in accordance with requirements set forth in the fugitive dust plan and to ensure the surfaces of all crushed revert material, including revert managed after it is crushed, is wetted to maintain a nominal 10% surface moisture content as determined from representative samples using ASTM Method D2216-10 or other equivalent methods approved by the Department and EPA Region IX.
 - d. By October 2017, relocate all revert crushing operations to 33° 00' 25.84" N, 110° 46' 26.55" W and shall crush revert only at this new location.
14. Bedding Operations, Including Handling, Storage, and Unloading. The owner or operator shall:
- a. Perform all bedding activities, including loading and unloading of materials to be blended, only within an area protected by a wind fence in accordance with requirements set forth in the fugitive dust plan and pursuant to subsection (D)(2). These activities include the storage and handling areas for potentially lead-bearing fugitive dust-producing material within the bedding plant area.
 - b. Maintain water sprayers in accordance with requirements set forth in the fugitive dust plan and to ensure the surfaces of material in the bedding area is wetted to maintain a nominal 10% surface moisture content as determined from representative samples using ASTM Method D2216-10 or other equivalent methods approved by the Department and EPA Region IX.
 - c. Maintain rumble grates at all of the bedding plant's entrances and exits to shake off material on the loader tires as they enter and exit the area. Material that is tracked out of the bedding area must be cleaned up at the end of the workday.
 - d. Operate its bedding activities in a manner designed to avoid any trackout outside an area protected by a wind fence. Areas of material spillage or trackout, whether inside or outside of an area protected by a wind fence, shall be rinsed or cleaned daily.
15. Acid Plant Scrubber Blowdown Drying System.
- a. The owner or operator shall dry acid plant scrubber blowdown solids only in an enclosed system that uses a venturi scrubber, thickener, filter press, and electric dryer that is maintained under negative pressure at all times that materials are being dried.
 - b. The owner or operator shall maintain the negative pressure of the electric dryer using a 2,500 ACFM dryer ventilation fan that must run at all times the electric dryer is operational. Monitoring of the negative pressure shall be demonstrated through the run and stop states of the ventilation fan and electric dryer.
 - c. The acid plant scrubber blowdown drying system shall include the following elements:
 - i. Venturi scrubber slurry that reports to a new thickener.
 - ii. Underflow from the thickener that goes to a filter press for further liquid removal, with the resulting filter cake sent to two electric dryers operating in parallel to provide final drying of the dust cake.
 - iii. Exhaust from the dryers sent to the packed gas cooling tower inlet duct.
 - iv. Dried cake discharged directly into bags.
 - d. The owner or operator shall clean all areas previously used for scrubber blowdown drying and no longer use previous areas for scrubber blowdown drying.
- E. Contingency Requirements.
1. If the owner or operator does not meet the compliance schedule below in subsection (E)(3), or if the Hayden Lead Nonattainment Area does not attain the 2008 Lead National Ambient Air Quality Standards by the attainment date established in the Act, whichever occurs first, then the owner or operator shall increase the paved road cleaning frequency specified in subsection (D)(9) to twice per day.
 2. The owner or operator shall implement the contingency measure in subsection (E)(1) within 60 days of notification by EPA Region IX of either a failure to meet the compliance schedule in subsection (E)(3) or a failure to attain by the attainment date established in the Act, whichever occurs first.
 3. The compliance schedule is as follows. The Fugitive Dust Plan referred to in the compliance schedule shall mean the Fugitive Dust Plan submitted to the Administrator by the owner or operator to comply with requirements set forth in Consent Decree No. CV-15-02206-PHX-DLR, which became effective on December 30, 2015 in the United States District Court for the District of Arizona, as that plan may be later revised pursuant to subsection (C)(3):

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

Control Measure	Date of Implementation
Implementation of chemical dust suppression for unpaved roads.	Within 30 days of Administrator approval of application intensity and schedules in Fugitive Dust Plan.
Implementation of wind fences for materials piles (uncrushed reverts, reverts crushing and crushed reverts, bedding materials, and concentrate).	Within 120 days of Administrator approval of the Fugitive Dust Plan or the date of completion in the approved Fugitive Dust Plan, whichever is later.
Implementation of water sprays for materials piles (uncrushed reverts, reverts crushing and crushed reverts, bedding materials, and concentrate).	Within 120 days of Administrator approval of the Fugitive Dust Plan or the date of completion in the approved Fugitive Dust Plan, whichever is later.
Implementation of new acid plant scrubber blowdown drying system.	November 30, 2016
Implementation of new primary, secondary, and tertiary hooding systems for converter aisle for purposes of complying with requirements in R18-2-B1301.	July 1, 2018
Implementation of new ventilation system for matte tapping and slag skimming for flash furnace for purposes of complying with requirements in R18-2-B1301.	July 1, 2018

- F. Ambient Air and Meteorological Monitoring Requirements.**
1. The owner or operator shall conduct ambient air monitoring and sampling for lead as follows:
 - a. At minimum, the owner or operator shall continue to maintain and operate the ambient lead monitors located at ST-14 (the smelter parking lot), ST-23 (Hillcrest area), ST-26 (post office), and ST-18 (next to the concentrate handling area).
 - b. Samples must be collected continuously at all monitor sites specified in subsection (F)(1)(a). For the purposes of this requirement, “continuously” means that 24-hour filters are placed and collected at minimum, every six calendar days at all sites consistent with 40 CFR § 58.12.
 - c. The owner or operator shall follow the Hayden Smelter’s Quality Assurance Project Plan (QAPP) applicable to these monitors.
 - d. The monitors must be operated and maintained in accordance with 40 CFR 58, Appendix A.
 - e. The owner or operator shall submit each filter removed from each monitor to a certified laboratory for analysis no later than 18 calendar days after the filter’s removal. The owner or operator shall ensure that the laboratory performs its analysis and submits the results to the owner or operator no later than 21 calendar days from the lab’s receipt of the filter.
 - f. The owner or operator shall calculate, update, and maintain as a record the following data within 14 calendar days of receipt of any results pertaining to the monitor filters received from a certified lab:
 - i. The total pollutants on the filters collected and analyzed; and
 - ii. Calculations of 30-day rolling average ambient air levels of lead for the ST-23, ST-26, and ST-18 monitors, and 60-day rolling average ambient air levels of lead for the ST-14 monitor, expressed as µg/m³.
 - g. The owner or operator shall retain lead samples collected pursuant to this Section for at least three

years. The samples shall be stored in individually sealed containers and labeled with the applicable monitor and date. Upon request, the samples shall be provided to the Department within five business days.

2. The owner or operator shall conduct meteorological monitoring as follows:
 - a. Continuously monitor and record wind speed and direction data using equipment and a meteorological station approved by the Department.
 - b. The owner or operator shall calculate and record average wind speed in miles per hour over 15 minutes, rolled each minute.
 - c. Conduct wind speed and direction measurements using methods in accordance with EPA’s Quality Assurance Handbook for Air Pollution Measurement Systems, Volume IV, Meteorological Measurements, Version 2.0.
 3. The ambient air and meteorological monitoring stations required by this Section may be discontinued at the end of three full calendar years after the Hayden Lead Nonattainment Area is redesignated attainment for the 2008 Lead National Ambient Air Quality Standards.
- G. Compliance Demonstration Requirements.** The owner or operator shall demonstrate compliance with this Section by complying with all requirements in the fugitive dust plan pursuant to subsection (C)(2) and implementing all housekeeping and performance requirements pursuant to subsection (D).
- H. Recordkeeping.**
1. The owner or operator shall maintain the following records for at least five years and keep on-site for at least two years:
 - a. Current and past fugitive dust plans required by subsection (C)(2).
 - b. Physical inspection sheets, checklists, and logsheets for inspections conducted in accordance with subsection (D)(6).
 - c. All records of opacity and stabilization tests, if any, conducted in accordance with subsection (D)(10)(c).

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

- d. All records of surface moisture content tests, if any, conducted in accordance with subsection (D)(11), subsection (D)(13), and subsection (D)(14).
 - e. All records of major maintenance activities and inspections conducted on monitors required by subsection (F).
 - f. All records of quality assurance and quality control activities for the monitors required by subsection (F).
 - g. All air quality monitoring samples, rolling averages of ambient lead concentrations and necessary calculations, and data required by subsection (F).
 - h. All records of wind data from the meteorological station required by subsection (F).
 - i. All records of any periods during which a monitoring device required by subsection (F) is inoperative or not operating correctly.
 - j. All records of reports and notifications required by subsection (I).
2. All of the following records maintained for the purposes of the fugitive dust plan required by subsection (C)(2) must be maintained in a recordkeeping log or recordkeeping system. As part of the records, the owner or operator shall include the dates and times for each of the following observations or activities, the name of the employee documenting each activity or observation, and the nature and location of each observation activity:
- a. Each instance of observed visible emissions of 15% opacity or greater, along with a description of any corrective action undertaken and its success.
 - b. Water sprayer operations, including timing and intensity of watering to be captured in the water sprayer recordkeeping system.
 - c. Timing, location, type, and amount of chemical suppressant and water applied to unpaved roads, and a description of the nature and timing of any additional corrective action taken, as necessary, to minimize emissions to the greatest extent practicable.
 - d. Timing and location of all sweeping and cleaning of trackout or spillage material.
 - e. Timing and location of all washdown of concrete areas.
 - f. Timing and location of sump cleanouts.
 - g. Results of all visible emissions surveys and Reference Method 9 readings.
 - h. Appropriate records for operating conditions, including electric dryer ventilation fan start and stop times for the newly designed acid plant scrubber blowdown drying system.
 - i. Calibration records for all measurement devices, including maintenance of manufacturer's manuals or other documentation for suggested calibration schedules and accuracy levels for each measurement device.
 - j. Dates, times, and descriptions of deviations when the owner or operator's operations was carried out in a manner inconsistent with the fugitive dust plan required by subsection (C)(2).
- I. Reporting. Within 30 days after the end of each calendar-year quarter, the owner or operator shall submit a report to the Department covering the prior quarter that includes the following:
1. All instances where observed fugitive emissions coming from sources covered in this Section were 15% or greater.
 2. The date of all high wind events, with an identification of the location of the reading, wind speed, and duration of the event, and a description of actions taken as a result of the event on a source-by-source basis.
 3. All instances where corrective action was required with identification of the emission source involved, what triggered the corrective action, what action the owner or operator undertook to abate or mitigate the problem, and whether the corrective action achieved the intended results.
 4. A summary of all times when the electronic recordkeeping system was not recording data, and a summary and indication of the period when recorded data was outside of established operating parameters.
 5. A summary of progress of all new construction, installation, upgrades, or modifications to equipment or structures at the facility required by the fugitive dust plan and subsection (D), including dates of commencement and completion of construction, dates of operations of new or modified equipment or structures, and dates old or outdated equipment or structures were permanently retired.
 6. Raw monitoring data and calculated ambient lead concentrations from the ambient air monitoring stations required by subsection (F).

Historical Note

New Section R18-2-B1301.01 made by final rulemaking at 23 A.A.R. 767, effective December 1, 2018 (Supp. 17-1).

R18-2-B1302. Limits on SO₂ Emissions from the Hayden Smelter**A. Applicability.**

1. This Section applies to the owner or operator of the Hayden Smelter. It establishes limits on sulfur dioxide emissions from the Hayden Smelter and monitoring, recordkeeping and reporting requirements for those limits.
2. Effective date. Except as otherwise provided, the requirements of this Section shall become applicable on the earlier of July 1, 2018 or 180 days after completion of all project improvements authorized by Significant Permit Revision No. 60647.

B. Definitions. In addition to definitions contained in R18-2-101 and R18-2-B1301, the following definitions apply to this rule.

1. "Continuous emissions monitoring system" or "CEMS" means the total equipment, required under the emission monitoring provisions in this Chapter, used to sample, condition (if applicable), analyze, and to provide, on a continuous basis, a permanent record of emissions.
2. "Operating day" means any calendar day in which any of the following occurs:
 - a. Concentrate is smelted in the smelting furnace;
 - b. Copper or sulfur bearing materials are processed in the converters;
 - c. Blister or scrap copper is processed in the anode furnaces;
 - d. Molten metal, including slag, matte or blister copper, is transferred between vessels; or
 - e. Molten metal is cast into anodes or other intermediate or final products.
3. "Out of control period" means the time that begins with the completion of the fifth, consecutive, daily calibration drift check with a calibration drift in excess of two times the allowable limit, or the time corresponding to the completion of the daily calibration drift check preceding the daily calibration drift check that results in a calibration drift in excess of four times the allowable limit, and the time that ends with the completion of the calibration

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

check following corrective action that results in the calibration drifts at both the zero (or low-level) and high-level measurement points being within the corresponding allowable calibration drift limit.

C. Sulfur Dioxide Emissions Limitations.

1. Emissions from the Main Stack shall not exceed 1069.1 pounds per hour on a 14-operating day average unless 1,518 pounds or less is emitted during each hour of the 14-operating day period.
2. The owner and operator shall not cause to be discharged into the atmosphere from any affected unit subject to 40 CFR 60 subpart P any gases which contain sulfur dioxide in excess of the limit set forth in 40 CFR § 60.163(a) (as in effect on July 1, 2016 and no later editions).

D. Operational Standards.

1. Process equipment and control device operations. At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate smelter processes and associated emission control and/or control equipment in a manner consistent with good air pollution control practices for minimizing SO₂ emissions to the levels required by subsection (C). Determination of whether acceptable operating and maintenance procedures are being used will be based on all information available to the Director and EPA Region IX, which may include, but is not limited to, monitoring results, review of operating and maintenance procedures and records, and inspection of the relevant equipment.
2. Capture system and control device operations and maintenance plan. The owner or operator shall develop and implement an operations and maintenance plan for each capture system and/or control device used to ventilate or control process gas or emissions from the flash furnace including matte tapping, slag skimming, and slag return operations; converter primary hoods, converter secondary hoods, tertiary ventilation system, and anode refining operations. The operations and maintenance plan must address the following requirements as applicable to each capture system and/or control device.
 - a. Monitoring devices. The plan shall provide for installation, operation, calibration, and maintenance of appropriate monitoring devices to measure and record operating limit values or settings at all times the required capture and control system is operating, except during periods of monitor calibration, repair and malfunction. The initial plan shall provide for volumetric flow monitoring on the vent gas baghouse (inlet or outlet), each converter primary hood, each converter secondary hood, the tertiary ventilation system and the anode furnace baghouse (inlet or outlet). All monitoring devices shall be accurate within +/- 10% and calibrated according to manufacturer's instructions. If direct measurement of the exhaust flow is infeasible due to physical limitations or exhaust characteristics, the owner or operator may propose a reliable equivalent method for approval. Initial monitoring may be adjusted as provided in subsection (D)(2)(e). Dampers that are manually set and remain in the same position while the capture system is operating are exempt from these monitoring requirements. Capture system damper position setting(s) shall be specified in the plan.
 - b. Operational limits. The owner or operator shall establish operating limits in the operations and

maintenance plan for the capture systems and/or control devices that are representative and reliable indicators of the performance of the capture system and control device operations. The initial operating limits may be adjusted as provided in subsection (D)(2)(e). Initial operating limits shall include the following:

- i. Identification of those modes of operation when the double dampers between the flash furnace vessel and the vent gas system will be closed and the interstitial space evacuated to the acid plant.
 - ii. A minimum air flow for the furnace ventilation system and associated damper positions for each matte tapping hood or slag skimming hood when operating to ensure that the operation(s) are within the confines or influence of the capture system.
 - iii. A minimum air flow for the secondary hood baghouse and associated damper positions for each slag return hood to ensure that the operation is within the confines or influence of the capture system's ventilation draft during times when the associated process is operating.
 - iv. A minimum air infiltration ratio for the converter primary hoods of 1:1 averaged over 24 converter Blowing hours, rolled hourly measured as volumetric flow in primary hood less the volumetric flow of tuyere Blowing compared to the volumetric flow of tuyere Blowing.
 - v. A minimum secondary hood exhaust rate of 35,000 SCFM during converter Blowing, averaged over 24 converter Blowing hours, rolled hourly.
 - vi. A minimum secondary hood exhaust rate of 133,000 SCFM during all non-Blowing operating hours, averaged over 24 non-Blowing hours, rolled hourly.
 - vii. A minimum negative pressure drop across the secondary hood when the doors are closed equivalent to 0.007 inches of water.
 - viii. A minimum exhaust rate on the tertiary hooding of 400,000 ACFM during all times material is processed in the converter aisle, averaged over 24 hours and rolled hourly.
 - ix. Fan amperes or minimum air flow for the anode furnace baghouse and associated damper positions for each anode furnace hood to ensure that the anode furnace off-gas port is within the confines or influence of the capture system's ventilation draft during times when the associated furnace is operating.
 - x. The anode furnace charge mouth shall be kept covered when the tuyeres are submerged in the metal bath except when copper is being charged to or transferred from the furnace.
 - xi. The temperatures of the acid plant catalyst bed, which shall at minimum, meet the manufacturer's recommendations.
 - xii. The acid plant catalyst replenishment criteria, which shall at minimum, meet the manufacturer's recommendations.
- c. Preventative maintenance. The owner or operator must perform preventative maintenance on each capture system and control device according to written procedures specified in the operation and main-

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

tenance plan. The procedures must include a preventative maintenance schedule that is consistent with the manufacturer's or engineer's instructions, or operator's experience working with equipment, and frequency for routine and long-term maintenance. This provision does not prohibit additional maintenance beyond that required by the plan.

- d. Inspections. The owner or operator must perform inspections in accordance with written procedures in the operations and maintenance plan for each capture system and control device that are consistent with the manufacturer's, engineer's or operator's instructions for each system and device.
- e. Plan development and revisions.
 - i. The owner or operator shall develop and keep current the plan required by this Section. Any plan or plan revision shall be consistent with this Section, shall be designed to ensure that the capture and control system performance conforms to the attainment demonstration in the Hayden 2010 Sulfur Dioxide National Ambient Air Quality Standards Nonattainment Area State Implementation Plan (SIP), and shall be submitted to the Department for review. Any plan or plan revision submitted shall include the associated manufacturer's recommendations and/or instructions used for capture system and control device operations and maintenance.
 - ii. The owner or operator shall submit the initial plan to the Department no later than May 1, 2018 and shall include the initial volumetric flow monitoring provisions in subsection (D)(2)(a), the initial operational limits in subsection (D)(2)(b), the preventative maintenance procedures in subsection (D)(2)(c), and the inspection procedures in subsection (D)(2)(d).
 - iii. The owner or operator shall submit to the Department for approval a plan revision with changes, if any, to the initial volumetric flow monitoring provisions in subsection (D)(2)(a) and initial operational limits in subsection (D)(2)(b) not later than six months after completing a fugitive emissions study conducted in accordance with Appendix 14. The Department shall submit the approved changes to the volumetric flow monitoring provisions and operational limits pursuant to this subsection to EPA Region IX as a SIP revision not later than 12 months after completion of a fugitive emissions study.
 - iv. Other plan revisions may be submitted at any time when necessary. All plans and plan revisions shall be designed to achieve operation of the capture system and/or control device consistent with the attainment demonstration in the Hayden 2010 Sulfur Dioxide National Ambient Air Quality Standards Nonattainment Area SIP. Except for changes to the volumetric flow monitoring provisions in subsection (D)(2)(a) and operational limits in subsection (D)(2)(b), which shall require prior approval, plans and plan revisions may be implemented upon submittal and shall remain in effect until superseded or until disapproved by the Department.

Disapprovals are appealable Department actions.

3. Emissions from the anode furnace baghouse stack shall be routed to the Main Stack.

E. Monitoring.

1. To determine compliance with subsection (C)(1) the owner or operator of the Hayden Smelter shall install, calibrate, maintain, and operate a CEMS for continuously monitoring and recording SO₂ concentrations and stack gas volumetric flow rates at the following locations.
 - a. The exit of the acid plant;
 - b. The exit of the secondary hood particulate control device after the High Surface Area (HSA) lime injection system;
 - c. The exit of the flash furnace particulate control device after the HSA lime injection system;
 - d. The tertiary ventilation system prior to mixing with any other exhaust streams; and
 - e. The anode furnace baghouse stack prior to mixing with any other exhaust streams.
2. Except during periods of systems breakdown, repairs, maintenance, out-of-control periods, calibration checks, and zero and span adjustments, the owner or operator shall continuously monitor SO₂ concentrations and stack gas volumetric flow rates at each location in subsection (E)(1).
3. For purposes of this Section, continuous monitoring means the taking and recording of at least one measurement of SO₂ concentration and stack gas flow rate reading from the effluent of each affected stack, outlet, or other approved measurement location in each 15-minute period when the associated process units are operating. Fifteen-minute periods start at the beginning of each clock hour, and run consecutively. All CEMS required by subsection (E)(1) shall complete at least one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.
4. If the owner or operator can demonstrate to the Director that measurement of stack gas volumetric flow rate in the outlet of any particular piece of SO₂ control equipment would yield inaccurate results or would be technologically infeasible, then the Director may allow measurement of the flow rate at an alternative sampling point.
5. The owner or operator shall demonstrate that the CEMS required by subsection (E)(1) meet all of the following requirements:
 - a. The SO₂ CEMS installed and operated under this Section meets the requirements of 40 CFR 60, Appendix B, Performance Specification 2 and Performance Specification 6. The CEMS on the anode furnace baghouse stack and tertiary ventilation system shall complete an initial Relative Accuracy Test Audit (RATA) in accordance with Performance Specification 2. The RATA runs shall be tied to when the anode furnace is in use and, for the tertiary system, when the converters are in operation and/or material is being transferred in the converter aisle. Asarco may petition the Department and EPA Region IX on the criteria for subsequent RATAs for the anode furnace baghouse stack or tertiary ventilation system CEMS. The petition shall include submittal of CEMS data during the year.
 - b. The SO₂ CEMS installed and operated under this Section meets the quality assurance requirements of 40 CFR 60, Appendix F.

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

- c. The owner or operator shall notify the Director in writing at least 30 days in advance of the start of the relative accuracy test audit (RATA) performed on the CEMS.
 - d. The Director shall approve the location of all sampling points for monitoring SO₂ concentration and stack gas volumetric flow rates and the appropriate span values for the monitoring systems. This approval shall be in writing before installation and operation of the measurement instruments.
 - e. The measurement system installed and used under this subsection is subject to the manufacturer's recommended zero adjustment and calibration procedures at least once per operating day unless the manufacturer specifies or recommends calibration at shorter intervals, in which case the owner or operator shall follow those specifications or recommendations. The owner or operator shall make available a record of these procedures that clearly shows instrument readings before and after zero adjustment and calibration.
 - f. The owner or operator shall maintain on hand and ready for immediate installation sufficient spare parts or duplicate systems for the CEMS required by this Section to allow for the replacement within six hours of any monitoring equipment part that fails or malfunctions during operation.
6. The owner or operator of the Hayden Smelter may petition the Department to substitute annual stack testing for the tertiary ventilation or the anode furnace baghouse stack CEMS if the owner or operator demonstrates, for a period of two years, that either CEMS contribute(s) less than 5% individually of the total sulfur dioxide emissions. The Department must determine the demonstration adequate to approve the petition. Annual stack testing shall use EPA Methods 1, 4, and 6C in 40 CFR 60 Appendix A or an alternate method approved by the Department and EPA Region IX. Annual stack testing shall commence no later than the one year after the date the continuous emission monitoring system was removed. The owner or operator shall submit a test protocol to the Department at least 30 days in advance of testing. The protocol shall provide for three or more 24-hour runs unless the owner or operator justifies a different period and the Department approves such different period. Reports of testing shall be submitted to the Department no later than 60 days after testing or 30 days after receipt, whichever is later. The report shall provide an emissions rate, in the form of a pound per hour or pound per unit of production factor, that shall be used in the compliance demonstration in subsection (F)(1). Except as provided herein, the owner or operator shall otherwise comply with Section R18-2-312 in conducting such testing.
- F. Compliance Demonstration Requirements.**
1. For purposes of determining compliance with the emission limit in subsection (C)(1) the owner or operator shall calculate emissions for each operating day as follows:
 - a. Sum the hourly pounds of SO₂ vented to each uncontrolled shutdown ventilation flue and through each monitoring point listed in subsection (E)(1) for the current operating day and the preceding 13-operating days to calculate the total pounds of SO₂ emissions over the 14-operating day averaging period, as applicable.
 - b. Divide the total amount of SO₂ emissions calculated from subsection (F)(1)(a) by 336 to calculate the 14-operating day average SO₂ emissions.
 - c. If the calculation in subsection (F)(1)(b) exceeds 1069.1 pounds per hour, then the owner or operator shall sum the hourly pounds of SO₂ vented to each uncontrolled shutdown ventilation flue and through each monitoring point listed in subsection (E)(1) for each hour of the current operating day and each hour of the preceding 13-operating days to ascertain if any hour exceeded 1,518 pounds per hour.
 2. When no valid hour or hours of data have been recorded by a continuous monitoring system required by subsections (E)(1) and (E)(2) and the associated process unit is operating, the owner or operator shall calculate substitute data for each such period according to the following procedures:
 - a. For a missing data period less than or equal to 24 hours, substitute the average of the hourly SO₂ concentrations recorded by the system for the hour before and the hour after the missing data period.
 - b. For a missing data period greater than 24 hours, substitute the greater of:
 - i. The 90th percentile hourly SO₂ concentrations recorded by the system during the previous 720 quality-assured monitor operating hours.
 - ii. The average of the hourly SO₂ concentrations recorded by the system for the hour before and the four hours after the missing data period.
 - c. Notwithstanding subsections (F)(3)(a) and (F)(3)(b), the owner or operator may present any credible evidence as to the quantity or concentration of emissions during any period of missing data.
 3. The owner or operator shall determine compliance with the requirements in subsection (D)(2) as follows:
 - a. Maintaining and operating the emissions capture and control equipment in accordance with the capture system and control device operations and maintenance plan required in subsection (D)(2) and recording operating parameters for capture and control equipment as required in subsection (D)(2)(b); and
 - b. Conducting a fugitive study in accordance with Appendix 14 starting not later than six months after completion of the Converter Retrofit Project authorized by Significant Permit Revision No. 60647. The fugitive study shall demonstrate, as set forth in Appendix 14, that fugitive emissions from the smelter are consistent with estimates used in the attainment demonstration in the Hayden 2010 Sulfur Dioxide National Ambient Air Quality Standards Nonattainment Area SIP.
 4. The owner or operator shall include periods of startup, shutdown, malfunction, or other upset conditions when determining compliance with the emission limits in subsection (C).
 5. The owner and operator shall demonstrate compliance with the limit in subsection (C)(2) in accordance with 40 CFR §§ 60.165 and 60.166 (as in effect on July 1, 2016 and not later editions).
- G. Recordkeeping.**
1. The owner or operator shall maintain a record of each operation and maintenance plan required under subsection (D)(2).
 2. The owner or operator shall maintain the following records for at least five years:

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

- a. All measurements from the continuous monitoring system required by subsection (E)(1), including the date, place, and time of sampling or measurement; parameters sampled or measured; and results. All measurements will be calculated daily.
 - b. All records of quality assurance and quality control activities for emissions measuring systems required by subsection (E)(1).
 - c. All records of calibration checks, adjustments, maintenance, and repairs conducted on the continuous monitoring systems required by subsection (E); including records of all compliance calculations required by subsection (F).
 - d. All records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of concentrate drying, smelting, converting, anode refining and casting emission units; any malfunction of the associated air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device required by subsection (E)(1) is inoperative or not operating correctly.
 - e. All records of planned and unplanned shutdown ventilation flue utilization events and calculations used to determine emissions from shutdown ventilation flue utilization events if the owner or operator chooses to use the alternative compliance determination method.
 - f. All records of major maintenance activities and inspections conducted on emission units, capture system, air pollution control equipment, and CEMS, including those set forth in the operations and maintenance plan required by subsection (D)(2).
 - g. All records of operating days and production records required for calculations in subsection (F).
 - h. All records of fugitive emissions studies and study protocols conducted in accordance with Appendix 14.
 - i. All records of reports and notifications required by subsection (H).
- H. Reporting.**
1. The owner or operator shall notify the Director in writing at least 30 days in advance of the start of relative accuracy test audit (RATA) procedures performed on the continuous monitoring systems required by subsection (E)(1).
 2. Within 30 days after the end of each calendar quarter, the owner or operator shall submit a data assessment report to the Director in accordance with 40 CFR Part 60, Appendix F for the continuous monitoring systems required by subsection (E).
 3. The owner or operator shall submit an excess emissions and monitoring systems performance report or summary report form in accordance with 40 CFR § 60.7(c) to the Director quarterly for the continuous monitoring systems required by subsection (E)(1). Excess emissions means any 14-operating day average as calculated in subsection (F) in excess of the emission limit in subsection (C)(1), any period in which the capture and control system was operating outside of its parameters specified in the capture system and control device operation and maintenance plan in subsection (D)(2). For any 14-operating day period exceeding 1069.1 pounds per hour that the owner or operator claims does not exceed the limit in subsection (C)(1) because all hours in the operating period are below 1,518 pounds per hour, the owner or operator shall submit the CEMS data for each hour during that period. All reports shall be postmarked by the 30th day following the end of each calendar quarter time period.
4. The owner or operator shall provide the following to the Director:
 - a. The owner or operator shall notify the Director of commencement of construction of any equipment necessary to comply with the operational or emission limits.
 - b. The owner or operator shall submit semiannual progress reports on construction of any such equipment postmarked by July 30 for the preceding January-June period and January 30 for the preceding July-December period.
 - c. The owner or operator shall submit notification of initial startup of any such equipment within 15 business days of such startup.
- I. Preconstruction review.** This Section is determined to be Reasonably Available Control Technology (RACT) for SO₂ emissions from the operations subject to subsection (C) for purposes of minor source NSR requirement addressed in R18-2-334.
- Historical Note**
- New Section R18-2-B1302 made by final rulemaking at 23 A.A.R. 767, effective on the earlier of July 1, 2018, or 180 calendar days after completion of all Converter Retrofit Project improvements authorized by Significant Permit Revision No. 60647 (Supp. 17-1).
- PART C. MIAMI, ARIZONA, PLANNING AREA**
- R18-2-C1301. Reserved**
- Historical Note**
- New Section R18-2-C1301 reserved at 23 A.A.R. 767 (Supp. 17-1).
- R18-2-C1302. Limits on SO₂ Emissions from the Miami Smelter**
- A. Applicability.**
1. This Section applies to the owner or operator of the Miami Smelter. It establishes limits on SO₂ emissions from the Miami Smelter and monitoring, recordkeeping and reporting requirements for those limits.
 2. Effective date. Except as otherwise provided, the provisions of this Section shall take effect on the later of the effective date of the Administrator's action approving it as part of the state implementation plan or January 1, 2018.
- B. Definitions.** In addition to general definitions contained in R18-2-101, the following definitions apply to this rule.
1. "Capture system" means the collection of components used to capture gases and fumes released from one or more emission points, and to convey the captured gases and fumes to one or more control devices. A capture system may include, but is not limited to, the following components as applicable to a given capture system design: duct intake devices, hoods, enclosures, ductwork, dampers, manifolds, plenums, and fans.
 2. "Electric furnace" means a furnace in which copper matte and slag are heated by electrical resistance without the mechanical introduction of air or oxygen.
 3. "IsaSmelt[®] furnace" means a furnace in which air, oxygen, and fuel are injected through a top-submerged lance into a molten slag bath to produce slag and copper matte.
 4. "Miami Smelter" means the primary copper smelter located near Miami, Gila County, Arizona at latitude 33°24'50"N and longitude 110°51'25"W.

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

5. "Out of control period" means the time that begins with the completion of the fifth, consecutive, daily calibration drift check with a calibration drift in excess of two times the allowable limit, or the time corresponding to the completion of the daily calibration drift check preceding the daily calibration drift check that results in a calibration drift in excess of four times the allowable limit, and the time that ends with the completion of the calibration check following corrective action that results in the calibration drifts at both the zero (or low-level) and high-level measurement points being within the corresponding allowable calibration drift limit.
6. "Operating day" means any calendar day in which any of the following occurs:
- Concentrate is smelted in the Electric furnace or IsaSmelt[®] furnace;
 - Copper or sulfur bearing materials are processed in the converters;
 - Blister or scrap copper is processed in the anode furnaces or mold vessel;
 - Molten metal, including slag, matte or blister copper, is transferred between vessels;
 - Molten metal is cast into molds, anodes, or other intermediate or final products;
 - Power is provided to the electric furnace to make or maintain a molten bath; or
 - The anode furnace is heated to make or maintain a molten bath.
- C. Sulfur Dioxide Emission Limitations. Combined SO₂ emissions from the tail gas stack, vent fume stack, aisle scrubber stack, bypass stack, and smelter roofline fugitives shall not exceed 142.45 pounds per hour on a 30-day rolling average basis.
- D. Operational Standards.
- Process Equipment and control device operations. At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate smelter processes and associated emission control devices in a manner consistent with good air pollution control practices for minimizing SO₂ emissions from the process gases associated with the IsaSmelt[®] furnace, electric furnace, and converters at least to the levels required by subsection (C). Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Director and EPA Region IX, which may include, but is not limited to, monitoring results, review of operating and maintenance procedures and records, and inspection of the relevant equipment.
 - Capture system and control device operations and maintenance plan. The owner or operator shall develop and implement an operations and maintenance plan for each capture system and control device used to ventilate or control process gas or emissions associated with the IsaSmelt[®] furnace, electric furnace, and converters. The owner or operator shall submit the initial plan to the Department and EPA Region IX for review and approval by July 1, 2017.
 - The operations and maintenance plan must address the following requirements as applicable to each capture system and control device:
 - Monitoring devices. The plan shall provide for installation, operation, calibration, and maintenance of appropriate monitoring devices to measure and record operating limit or range values at all times the required system is operating. Dampers that are manually set and remain in the same position while the capture system is operating are exempt from these monitoring requirements.
 - Operational limits and ranges. The owner or operator shall establish operating limits and ranges in the plan for each capture system and control device that are representative and reliable indicators of capture system performance and control device operation. If selected as an operational limit or range, capture system damper position settings shall be specified in the plan.
 - Preventative maintenance. The owner or operator must perform preventative maintenance for each capture system and control device according to written procedures in the plan. The procedures must include a preventative maintenance schedule that is consistent with the manufacturer's or engineer's instructions and specified frequency for routine and long-term maintenance.
 - Inspections. The owner or operator must perform inspections in accordance with written procedures in the plan for each capture system and control device, including position verification of any manual damper settings specified in the plan, that are consistent with the manufacturer's or engineer's instructions for each system and device.
- b. The owner or operator shall operate and maintain each capture system and each control device in accordance with the plan required by subsection (D)(2) and as approved by the Department and EPA Region IX, except as provided herein. Until receiving initial approval of the plan, the owner or operator shall operate and maintain each capture system and each control device in accordance with the plan as initially submitted pursuant to subsection (D)(2). The owner or operator shall submit plan revisions for review by the Department and EPA Region IX. At any time, the Department and/or EPA Region IX may require the owner or operator to revise the plan if determined to be inconsistent with subsection (D)(2)(a). Within 60 days of receiving written notification from the Department or EPA Region IX specifying such inconsistency, the owner or operator shall submit a proposal to the Department and EPA Region IX that addresses the inconsistency. The owner or operator shall maintain a current copy of the plan onsite and available for review and inspection upon request.
- E. Monitoring.
- To determine compliance with subsection (C), the owner or operator shall install, calibrate, maintain, and operate continuous monitoring systems to monitor and record SO₂ concentrations and stack gas volumetric flow rates at the following locations.
 - The acid plant tail gas stack;
 - The vent fume stack;
 - The aisle scrubber stack; and
 - The bypass stack.
 - To determine compliance with the emission limit in subsection (C), the owner or operator shall install, calibrate, maintain, and operate a continuous monitoring system to

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

- monitor and record fugitive SO₂ concentrations at the Miami Smelter roofline.
3. Except during periods of continuous monitoring system breakdown, repairs, maintenance, out-of-control periods, calibration checks, and zero and span adjustments, the owner or operator shall continuously monitor SO₂ concentrations and stack gas volumetric flow rates at each location specified in subsection (E)(1) and use the monitored concentrations and volumetric flow rates when demonstrating compliance with the SO₂ emission limit in subsection (C) in accordance with subsection (F).
 4. Except during periods of continuous monitoring system breakdown, repairs, maintenance, out-of-control periods, calibration checks and zero and span adjustments, the owner or operator shall continuously monitor fugitive SO₂ emissions at the Miami Smelter roofline and use the monitored concentrations and volumetric flow rates when demonstrating compliance with the SO₂ emission limit in subsection (C) in accordance with subsection (F).
 5. For purposes of subsections (E)(3) and (E)(4), continuous monitoring means the taking and recording of at least one measurement of SO₂ concentration and stack gas flow rate reading from the effluent of each affected stack, outlet, or other approved measurement location in each 15-minute period when the associated process units are operating. Fifteen-minute periods start at the beginning of each clock hour, and run consecutively. All continuous monitoring systems required by subsection (E)(1) shall complete at least one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.
 6. If the owner or operator can demonstrate to the Director and EPA Region IX that measurement of stack gas volumetric flow rate in the outlet of any particular piece of SO₂ control equipment would yield inaccurate results or would be technologically infeasible, then the Director and EPA Region IX may allow measurement of the flow rate at an alternative sampling point.
 7. The owner or operator shall demonstrate that the continuous monitoring systems required by subsection (E)(1) meet all of the following requirements:
 - a. Each SO₂ continuous monitoring system shall meet the specifications under 40 CFR 60, Appendix B, Performance Specification 6.
 - b. Each SO₂ continuous monitoring system installed and operated under this Section shall also meet the quality assurance requirements of 40 CFR 60, Appendix F, Procedure 1.
 - c. The owner or operator shall notify the Director in writing at least 30 days in advance of the start of the relative accuracy test audit (RATA) procedures performed on each continuous monitoring system.
 - d. The Director shall approve the location of all sampling points for monitoring SO₂ concentrations and stack gas volumetric flow rates in writing before installation and operation of measurement instruments.
 - e. The span of each continuous monitoring system for the acid plant tail stack, vent fume stack, and aisle scrubber stack shall be set at a SO₂ concentration of zero to 0.20% by volume.
 - f. The span of the continuous monitoring system for the bypass stack shall be set at a SO₂ concentration of zero to 20% by volume.
 - g. The zero (or low-level value between 0 and 20% of the span value) and span (50% to 100% of span value) calibration drifts shall be checked at least once each operating day in accordance with a written procedure. The zero and span must, at a minimum, be adjusted whenever either the 24-hour zero drift or the 24-hour span drift exceeds two times the limit in 40 CFR Part 60, Appendix B, Performance Specification 2. The system must allow the amount of the excess zero and span drift to be recorded and quantified.
 - h. The owner or operator shall maintain on hand and ready for immediate installation sufficient spare parts or duplicate systems for the continuous monitoring system equipment required by this Section to allow for the replacement within six hours of any monitoring system equipment part that fails or malfunctions during operation.
 8. The owner or operator shall develop and implement a roofline fugitive emissions monitoring plan for the continuous monitoring system required by subsection (E)(2). The owner or operator shall submit the initial plan to the Department and EPA Region IX for review and approval by July 1, 2017.
 - a. The roofline fugitive emissions monitoring plan must address the following requirements:
 - i. The continuous monitoring system required by subsection (E)(2) must include measurement of fugitive emissions from, at a minimum, the Converter, Electric Furnace, Anode Furnace, and IsaSmelt[®] systems that is representative of total fugitive emissions.
 - ii. Each measurement system shall include at least one SO₂ analyzer and sufficient sampling locations that ensure collection of a representative sample along the roof monitor for each monitor system. The number of sample probes and their locations for each monitoring system shall account for the physical configuration of the vent, the locations of emitting activities relative to the vent, and heat generated by the equipment served by the vent.
 - iii. Each measurement system shall include validation of adequate velocity for flow measurements and sufficient flow and temperature sensors to ensure calculation of representative exhaust flows through each vent. The number of such sensors and their locations for each monitoring system shall account for the physical configuration of the vent, the locations of emitting activities relative to the vent, and heat generated by the equipment served by the vent.
 - iv. Each measurement system shall include an on-site data collection system that continuously logs and stores the measured SO₂ concentration, the measured flow velocity, and the measured temperature.
 - v. An appropriate range for zero-span drift shall be established for all SO₂ analyzers to ensure proper calibration and operation. Unless otherwise provided in the roofline fugitive emissions monitoring plan required by subsection (E)(8), the zero (or low-level) value determination shall be made using a gas containing between zero to 20% of the span value for SO₂ and the span (or high-level) value determination shall be made using a certified gas with a value between 50% and 100% of the span value for

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

- SO₂. For each SO₂ analyzer, a daily zero-span check shall be performed by introducing zero gas and a known concentration of span gas to the analyzer. If the zero or span drift for an analyzer is greater than 5% of the span gas concentration for five consecutive days or greater than 10% of the span gas concentration for one day, the analyzer shall be found to be operating improperly and appropriate measures shall be taken to return the analyzer to proper operation. The zero-span check shall be repeated after any such corrective action is taken.
- vi. All SO₂ analyzers shall be inspected quarterly by the owner or operator and inspected annually by an independent auditor. The inspections shall be conducted in accordance with the data accuracy assessment requirements of 40 CFR 60, Appendix F, Procedure 1, Section 5 or as otherwise provided in the roofline fugitive emissions monitoring plan required by subsection (E)(8). The quarterly inspections consist of two certified concentrations of SO₂ to each sample probe system and comparing the known concentrations to the concentrations logged by the corresponding on-site data collection system to generate a relative error for each system.
 - vii. The flow and temperature data shall be checked daily for proper operation of flow and temperature sensors in accordance with the roofline fugitive emissions monitoring plan required by subsection (E)(8). If a flow or temperature sensor is found to be operating improperly, appropriate measures shall be taken to return the sensor to proper operation.
 - viii. All temperature sensors shall be inspected annually. The inspection shall be conducted according to the manufacturer's specification. A temperature sensor tolerance range representative of proper sensor operation shall be established in the roofline fugitive emissions monitoring plan required by subsection (E)(8). If a temperature sensor is found to measure outside of an established tolerance range, the sensor shall be found to be operating improperly and appropriate measures shall be taken to return the sensor to proper operation.
 - ix. All flow sensors shall be calibrated semi-annually with calibration tools according to the manufacturer's specifications. A calibration tool range representative of proper sensor operation shall be established in the roofline fugitive emissions monitoring plan required by subsection (E)(8). If a flow sensor is found to measure outside of an established range, the sensor shall be found to be operating improperly and appropriate measures shall be taken to return the sensor to proper operation.
- b. The owner or operator shall operate and maintain the continuous monitoring system required by subsection (E)(2) in accordance with the roofline fugitive emissions monitoring plan required by subsection (E)(2) and as approved by the Department and EPA Region IX, except as provided herein. Until receiving initial approval of the plan, the owner or operator shall operate and maintain the continuous monitoring system required by subsection (E)(2) in accordance with the plan as initially submitted pursuant to subsection (E)(2). The owner or operator shall keep the plan current and consistent with subsection (E)(8)(a). The owner or operator shall maintain a current copy of the plan onsite and available for review and inspection upon request. The Department and/or EPA Region IX may require the owner or operator to revise the plan if determined to be inconsistent with subsection (E)(8)(a). Within 60 days of receiving written notification from the Department or EPA Region IX specifying such inconsistency, the owner or operator shall submit a proposal to the Department and EPA Region IX that addresses the inconsistency.
- F. Compliance Demonstration Requirements.**
1. Within 180 days of the effective date set forth in subsection (A)(2), the owner or operator shall demonstrate compliance with the emission limit in subsection (C) by calculating SO₂ emissions for each operating day as follows:
 - a. Sum the hourly pounds of SO₂ measured by the continuous monitoring systems required by subsection (E)(1) and (E)(2) for the current operating day and the preceding 29 operating days to calculate the total pounds of SO₂ emissions over the 30-operating day averaging period.
 - b. Multiply the operating days occurring during a 30-day averaging period by 24 to calculate the total operating hours over the most recent 30-operating day period.
 - c. Divide the total amount of SO₂ emissions calculated from subsection (F)(1)(a) by the total operating hours calculated from subsection (F)(1)(b) to calculate the 30-day rolling hourly average SO₂ emissions.
 2. For the continuous monitoring systems required by subsections (E)(1) and (E)(2), hourly emissions shall be computed as follows:
 - a. Except as provided under subsection (F)(2)(c), for a full operating hour (any clock hour with 60 minutes of unit operation), at least four valid data points are required to calculate the hourly average, i.e., one data point in each of the 15-minute quadrants of the hour.
 - b. Except as provided under subsection (F)(2)(c), for a partial operating hour (any clock hour with less than 60 minutes of unit operation), at least one valid data point in each 15-minute quadrant of the hour in which the unit operates is required to calculate the hourly average.
 - c. For any operating hour in which required maintenance or quality-assurance activities are performed:
 - i. If the unit operates in two or more quadrants of the hour, a minimum of two valid data points, separated by at least 15 minutes, is required to calculate the hourly average; or
 - ii. If the unit operates in only one quadrant of the hour, at least one valid data point is required to calculate the hourly average.
 - d. If a daily calibration error check is failed during any operating hour, all data for that hour shall be invalidated, unless a subsequent calibration error test is passed in the same hour and the requirements of subsection (F)(2)(c) are met, based solely on valid data recorded after the successful calibration.

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

- e. For each full or partial operating hour, all valid data points shall be used to calculate the hourly average.
 - f. Data recorded during periods of continuous monitoring system breakdown, repair, maintenance, out of control periods, calibration checks, and zero and span adjustments shall not be included in the data averages computed under subsection (F)(3).
 - g. Either arithmetic or integrated averaging of all data may be used to calculate the hourly average. The data may be recorded in reduced or non-reduced form.
3. When no valid hour or hours of data have been recorded by a continuous monitoring system required by subsections (E)(1) and (E)(2) and the associated process unit is operating, the owner or operator shall calculate substitute data for each such period according to the following procedures:
 - a. For a missing data period less than or equal to 24 hours, substitute the average of the hourly SO₂ concentrations recorded by the system for the hour before and the hour after the missing data period.
 - b. For a missing data period greater than 24 hours, substitute the greater of:
 - i. The 90th percentile hourly SO₂ concentrations recorded by the system during the previous 720 quality-assured monitor operating hours; or
 - ii. The average of the hourly SO₂ concentrations recorded by the system for the hour before and the hour after the missing data period.
 4. The owner or operator shall include periods of startup, shutdown, malfunction, or other upset conditions when determining compliance with the emission limit in subsection (C).
- G. Recordkeeping.**
1. The owner or operator shall maintain records as specified in the capture system and control device operations and maintenance plan required under subsection (D)(2) and the roofline fugitive emissions monitoring plan required under subsection (E)(8).
 2. The owner or operator shall maintain the following records for at least five years:
 - a. All measurements from the continuous monitoring systems required by subsection (E)(1) and (E)(2); including the date, place, and time of sampling or measurement, parameters sampled or measured, and results.
 - b. All records of all compliance calculations required by subsection (F).
 - c. All records of quality assurance and quality control activities conducted on the continuous monitoring systems required by subsection (E)(1) and (E)(2).
 - d. All records of continuous monitoring system breakdowns, repairs, maintenance, out of control periods, calibration checks, and zero and span adjustments for the continuous monitoring systems required by subsection (E)(1) and (E)(2).
 - e. All records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of Smelter processes; any malfunction of the associated air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device required by subsection (E)(1) and (E)(2) is inoperative.
 - f. All records of all major maintenance activities conducted on emission units, capture system, air pollution control equipment, and continuous monitoring systems; including those set forth in the operations and maintenance plan required by subsection (D)(2).
 - g. All records of reports and notifications required by subsection (H).
- H. Reporting**
1. Within 30 days after the end of each calendar quarter, the owner or operator shall submit a data assessment report to the Director in accordance with 40 CFR Part 60, Appendix F, Procedure 1 for the continuous monitoring systems required by subsection (E).
 2. The owner or operator shall submit an excess emissions and monitoring systems performance report and-or summary report form in accordance with 40 CFR § 60.7(c) to the Director semiannually for the continuous monitoring systems required by subsection (E)(1) and (E)(2). All reports shall be postmarked by the 30th day following the end of each six-month period.
 3. The owner or operator shall provide the following to the Director:
 - a. Notification of commencement of construction of the project improvements and equipment authorized by Significant Permit Revision No. 53592 to comply with the operational or emission limits in this Section no later than 30 days after such date.
 - b. Semiannual progress reports on construction of any such improvements and equipment on January 1 and July 1 of each calendar year until construction is complete.
 - c. Notification of initial startup of any such improvements and equipment within 15 days after such date.
- I. Preconstruction review.** This Section is determined to be Reasonably Available Control Technology (RACT) for SO₂ emissions from the operations subject to subsection (C) for purposes of minor source NSR requirements addressed in R18-2-334.

Historical Note

New Section R18-2-C1302 made by final rulemaking at 23 A.A.R. 767, on the later of the effective date of the Administrator's action approving it as part of the state implementation plan or January 1, 2018.

ARTICLE 14. CONFORMITY DETERMINATIONS**R18-2-1401. Definitions**

Terms used in this Article but not defined in this Article, Article 1 of this Chapter, or A.R.S. § 49-401.01 shall have the meaning given them by the CAA, Titles 23 and 40 U.S.C., other EPA regulations, or other USDOT regulations, in that order of priority. The following definitions and the definitions contained in Article 1 of this Chapter and in A.R.S. § 49-401.01 shall apply to this Article:

1. "ADEQ" means the Arizona Department of Environmental Quality.
2. "ADOT" means the Arizona Department of Transportation.
3. "Applicable implementation plan" is defined in § 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under § 110, or promulgated under § 110(c), or promulgated or approved pursuant to regulations promulgated under § 301(d) and which implements the relevant requirements of the CAA.
4. "CAA" means the Clean Air Act, as amended.
5. "Cause or contribute to a new violation" for a project means either of the following:
 - a. To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in

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49-104. Powers and duties of the department and director

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.
2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.
3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.
4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.
5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.
6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.
7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.
8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.
9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities

7. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.

10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.

11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. The department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.

12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.

13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.

14. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

15. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

16. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter. This paragraph does not adversely affect standards adopted by an Indian tribe under federal law.

17. Provide administrative and staff support for the oil and gas conservation commission.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.

2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.

3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.

4. Adopt procedural rules that are necessary to implement the authority granted under this title but that are not inconsistent

17. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.

5. Contract with other agencies, including laboratories, in furthering any department program.

6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.

7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at those places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation

nuisances or premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection I, paragraph 10.

13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

- (a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.
- (b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.
- (c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.
- (d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules may:

- (a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.
- (b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. The department may establish by rule a fee as a condition of licensure, including a maximum fee. As part of the rulemaking process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. The department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on:

(a) The direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.

(b) The availability of other funds for the duties performed.

(c) The impact of the fees on the parties subject to the fees.

(d) The fees charged for similar duties performed by the department, other agencies and the private sector.

18. Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the applicable provisions of title 27, chapter 4 relating to the oil and gas conservation commission.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203, except that state agencies are exempt from paying those fees that are not associated with the dredge and fill permit program established pursuant to chapter 2, article 3.2 of this title. For services provided under the dredge and fill permit program, a state agency shall pay either:

(a) The fees established by the department under the dredge and fill permit program.

(b) The reasonable cost of services provided by the department pursuant to an interagency service agreement.

2. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

3. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department

expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.
2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

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49-404. State implementation plan

A. The director shall maintain a state implementation plan that provides for implementation, maintenance and enforcement of national ambient air quality standards and protection of visibility as required by the clean air act.

B. The director may adopt rules that describe procedures for adoption of revisions to the state implementation plan.

C. The state implementation plan and all revisions adopted before September 30, 1992 remain in effect according to their terms, except to the extent otherwise provided by the clean air act, inconsistent with any provision of the clean air act, or revised by the administrator. No control requirement in effect, or required to be adopted by an order, settlement agreement or plan in effect, before the enactment of the clean air act in any area which is a nonattainment or maintenance area for any air pollutant may be modified after enactment in any manner unless the modification insures equivalent or greater emission reductions of the air pollutant. The director shall evaluate and adopt revisions to the plan in conformity with federal regulations and guidelines promulgated by the administrator for those purposes until the rules required by subsection B are effective.

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49-425. Rules; hearing

A. The director shall adopt such rules as the director determines are necessary and feasible to reduce the release into the atmosphere of air contaminants originating within the territorial limits of the state or any portion thereof and shall adopt, modify and amend reasonable standards for the quality of and emissions into the ambient air of the state for the prevention, control and abatement of air pollution. Additional standards shall be established for particulate matter emissions, sulfur dioxide emissions and other air contaminant emissions determined to be necessary and feasible for the prevention, control and abatement of air pollution. In fixing such ambient air quality standards, emission standards or standards of performance, the director shall give consideration but shall not be limited to the relevant factors prescribed by the clean air act.

B. No rule may be enacted or amended except after the director first holds a public hearing after thirty days' notice of such hearing. The proposed rule, or any proposed amendment of a rule, shall be made available to the public at the time of notice of such hearing.

C. The department shall enforce the rules adopted by the director.

D. All rules enacted pursuant to this section shall be made available to the public at a reasonable charge on request.

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DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 8, Article 6



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 1, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 12, 2022

SUBJECT: Department of Health Services
Title 9, Chapter 8, Article 6

This Five-Year-Review Report from the Department of Health Services relates to rules in Title 9, Chapter 8, Article 6 regarding Campgrounds.

In the last 5YRR report of these rules the Department proposed to amend its rules. The Department completed the Notice of Final Rulemaking and the Council approved the rulemaking on March 5, 2019.

Proposed Action

The Department is not proposing any changes to the rules.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes, the Department cites to both general and specific statutory authority.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

With a 2019 rulemaking, the rules in Article 6 were revised to address matters identified in the 2017 five-year review report for the camp grounds rules, and other changes were

made to improve efficiency and effectiveness of the rules. The stakeholders for the 2019 rulemaking were identified as the Department; county agencies acting as regulatory authorities; owners of campgrounds, and the public.

The Department believes that the economic impact of the 9 A.A.C. 8, Article 6, rules is as estimated in the Economic Impact Statement (EIS) and that the benefits of the rules continue to outweigh any associated costs.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The rules are designed to prevent conditions that would negatively affect public health and are used while conducting annual and compliant inspections of campgrounds. Without the rules, conditions dangerous to the public health would not be detected and mitigated. For these reasons, the Department has determined that the probable benefits of the rules outweigh their costs and that the rules provide the least burden and cost to achieve the underlying regulatory objective.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Department indicates they did not receive any written criticisms to the rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Department indicates the rules are clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, the Department indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Department indicates the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Department indicates the rules are enforced as written.

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

Not applicable. There are no corresponding federal laws to the rules.

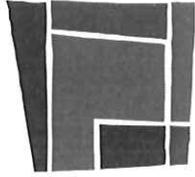
10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable, the rules do not require the issuance of a regulatory permit or license.

11. Conclusion

As mentioned above, the Department is not proposing any changes to the rules. Council staff finds the rules to be clear, concise, understandable, effective, and consistent with other rules and statutes.

Council staff recommends approval of this report.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

February 25, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Esq., Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Department of Health Services, 9 A.A.C. 8, Article 6, Five-Year-Review Report

Dear Ms. Sornsin:

Please find enclosed the Five-Year-Review Report from the Arizona Department of Health Services (Department) for 9 A.A.C. 8, Article 6, Campgrounds, which is due on February 28, 2022.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Vanessa Gonzales at Vanessa.Gonzales@azdhs.gov or 602-542-6330.

Sincerely,

A handwritten signature in black ink, appearing to read 'RL', written over a white background.

Robert Lane
Director's Designee

RL:vg

Enclosures

Douglas A. Ducey | Governor Don Herrington | Interim Director

150 North 18th Avenue, Suite 500, Phoenix, AZ 85007-3247 P | 602-542-1025 F | 602-542-1062 W | azhealth.gov

Health and Wellness for all Arizonans



Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 8. Department of Health Services – Food, Recreational, And Institutional Sanitation

Article 6. Campgrounds

February 2022

1. Authorization of the rule by existing statutes

Authorizing statutes: A.R.S. §§ 36-136(A)(4) and (7) and 36-136(G)

Implementing statutes: A.R.S. §§ 36-136(I)(8) and 36-601

2. The objective of each rule:

Rule	Objective
R9-8-601	To define terms used in the Article so the reader can consistently interpret the requirements.
R9-8-602	To establish what the Article does not apply to, notify that a violation of the Article is a public nuisance and define how inspections of campgrounds are to be conducted.
R9-8-603	To specify bathroom, toilet alternative, and shower room requirements for a campground.
Table 6.1	To specify bathroom or toilet alternative number requirements based on the number of individuals occupying the campground.
Table 6.2	To specify bathroom, toilet alternative, and shower room management health and safety requirements.
R9-8-604	To specify the requirements for common areas found within a campground.
R9-8-605	To establish requirements to ensure that a campground’s water supply is clean, easy to access, properly maintained, and sufficient to supply the maximum number of persons occupying the campground.
R9-8-606	To establish sewage disposal requirements to ensure the campground is maintained in a sanitary manner and operated in compliance with requirements in 18 A.A.C. 9, Articles 3 and 7.
R9-8-607	To establish standards and locations for refuse-disposal equipment, and the criteria to determine an appropriate refuse-disposal method.
R9-8-608	To establish requirements for operating and maintaining a camping shelter in a clean and sanitary manner.

3. Are the rules effective in achieving their objectives? Yes No

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation
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4. Are the rules consistent with other rules and statutes? Yes No

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation

5. **Are the rules enforced as written?** Yes No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency’s proposal for resolving the issue.

Rule	Explanation

6. **Are the rules clear, concise, and understandable?** Yes No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

If yes, please fill out the table below:

Commenter	Comment	Agency’s Response

8. **Economic, small business, and consumer impact comparison (summary):**

A.R.S. § 36-136(I)(8) requires the Department to adopt rules that “[d]efine and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for . . . campgrounds . . .” The rules are also required to prescribe “minimum standards for preparing food in a community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for . . . campgrounds . . . and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules.” To implement A.R.S. § 36-136(I)(8) for campgrounds, the Department adopted rules at 9 A.A.C. 8, Article 6. The rules in Article 6 prescribe measures necessary to ensure that campgrounds are built, operated, and maintained in a sanitary manner, and specifically provide minimum standards for supervision, water supply, sewage and refuse disposal, toilets, and construction and maintenance of buildings. The Department revised the rules in 2019, which included changing the name of Article 6 to “Campgrounds.”

The Department, pursuant to A.R.S. § 36-136(E), has delegated its campground inspection and abatement authority under A.R.S. § 36-136(I)(8) to the local health departments and environmental service departments, except Apache county. These departments use the rules while conducting annual and complaint inspections of campgrounds. Arizona campgrounds are inspected for general sanitation practices including, but not limited to, garbage and trash removal, sewage connections, and water and wastewater. During fiscal year 2021, 28 campgrounds were operating in Arizona. County sanitarians conducted 21 regular inspections, no complaint-based inspections, and no enforcement actions in these campgrounds. Additionally, in fiscal year 2021, the Department did not conduct any campground inspections or complaint-based inspections.

With the 2019 rulemaking, the rules in Article 6 were revised to address matters identified in the 2017 five-year-review report for the camp grounds rules, and other changes were made to improve efficiency and effectiveness of the rules. The Department completed an EIS when it revised the rules in 2019. The stakeholders for the 2019 rulemaking were identified in the EIS as the Department; county agencies acting as regulatory authorities; owners of campgrounds, and the public. The annual costs and revenues were designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000. Costs and benefits were listed as significant when meaningful or important, but not readily subject to quantification. The EIS stated the Department anticipated the following costs/benefits for the identified stakeholders:

- The Department was expected to incur a moderate cost to complete the 9 A.A.C. 8, Article 6 rulemaking and for providing technical assistance to counties and owners of campgrounds related to the rulemaking;
- The county agencies were expected to incur up to a moderate cost to provide training and technical support to employees and owners of campgrounds;
- The owners of campgrounds were not expected to incur additional cost and rather, were expected to receive significant benefit for having fewer requirements to comply; and
- The public was not expected to incur any costs.

With the 2019 rulemaking the Department believed the benefits of having the new campground rules outweighed any costs incurred by the Department, county agencies, and owners of a campgrounds. Specifically, the Department believed that the revised rules would significantly benefit the counties, owners of campgrounds, and the public because the rules were more effective and understandable and reduced regulatory burdens.

The Department believes that the economic impact of the 9 A.A.C. 8, Article 6, rules is as estimated in the EIS and that the benefit of the rules continue to outweigh any associated costs.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No √

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

Yes, the Department completed a rulemaking in response to the Department's 2017 five-year-review report, with the Notice of Final Rulemaking approved by the Governor's Regulatory Review Council on March 5, 2019, with an immediate effective date. The new rules became effective on March 6, 2019, when submitted to the Office of the Secretary of State.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The rules are designed to prevent conditions that would negatively affect public health and are used while conducting annual and compliant inspections of campgrounds. Without the rules, conditions dangerous to the public health would not be detected and mitigated. For these reasons, the Department has determined that the probable benefits of the rules outweigh their costs and that the rules provide the least burden and cost to achieve the underlying regulatory objective.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

The rules are not related to any federal laws.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The rules do not require the issuance of a regulatory permit, license, or agency authorization; however, the Department, pursuant to A.R.S. § 36-136(E) delegates its inspection authority to local health departments and environmental service departments, except Apache county. Local health departments and environmental departments holding such a delegation issue permits under their own respective authority.

14. **Proposed course of action:**

If possible, please identify a month and year by which the agency plans to complete the course of action.

Due to a recent revision of the rules and because the Department is unaware of any health, safety, or other urgent issues with the rules, the Department does not intend to conduct any rulemaking activities related to the rules. If any such matters arise, the Department will reevaluate whether a rulemaking is necessary.

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

R9-8-601. Definitions

In this Article, unless otherwise specified:

1. "Bathroom" means a structure or room that contains at least one toilet or urinal.
2. "Bedding" has the same meaning as in A.R.S. § 36-796.
3. "Campground" means land or a portion of land that is designated for the purpose of outdoor activities and offers campsites.
4. "Camping shelter" means either of the following:
 - a. A recreational vehicle offered for overnight use that:
 - i. Provides an individual a covered space, and
 - ii. Does not provide sleeping material; or
 - b. A structure offered for overnight use, such as a cabin or teepee, that:
 - i. Provides an individual a covered space; and
 - ii. Does not provide:
 - (a) Sleeping material,
 - (b) A lavatory, or
 - (c) A toilet.
5. "Campsite" means a plot of ground offered by a campground for overnight sleeping activities for an individual or a group of individuals to engage in any of the following uses for less than 30 days:
 - a. Erecting a self-provided tent,
 - b. Arranging self-provided sleeping material,
 - c. Occupying a camping shelter, or
 - d. Parking a self-provided motor vehicle as defined in A.R.S. § 44-281 or a self-provided recreational vehicle as defined in A.R.S. § 33-2102.
6. "Clean" means free from dirt or debris.
7. "Common area" means an area of a campground, excluding areas within a campsite, that is provided by a campground for general use.
8. "Community kitchen" means a structure or room, excluding areas within a campsite, that is provided by a campground for preparing food.
9. "Distribution system" has the same meaning as in A.A.C. R18-4-103(B).
10. "Easily cleanable" means a characteristic of a surface that allows effective removal of dirt and debris by normal cleaning methods based on the material, design, construction, and installation of the surface.
11. "Faucet" means a fixture connected to a distribution system that provides and regulates the flow of potable water.
12. "Fixture" means an attachment to a structure.
13. "Food" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for human consumption.
14. "Human excreta" means fecal and urinary discharges and includes any waste that contains this material.
15. "Lavatory" means a sink or a basin with a faucet that supplies potable water capable of reaching at least 85° F and with a drain connected to a sewage collection system.
16. "Non-absorbent" means incapable of being penetrated by liquid, such as a material coated or treated with rubber, plastic, or other sealing substance.
17. "Owns" means to have the right to possess, use, and convey the interest.
18. "Person" means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character or another agency.
19. "Potable water" means water safe for human consumption that meets the requirements of 18 A.A.C. 4 or satisfies the requirements in R9-8-605(4).
20. "Public health nuisance" means the activities or conditions dangerous to public health that are subject to A.R.S. § 36-601.
21. "Recreational vehicle" has the same meaning as in A.R.S. § 33-2102.
22. "Refuse" has the same meaning as in A.A.C. R18-13-302.
23. "Refuse container" means a receptacle that is capable of being moved and is used for refuse storage.
24. "Regulatory authority" means
 - a. The Department; or
 - b. Under delegation, 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.
25. "Responsible party" means a person who owns a campground or a designee of the person who owns the campground.
26. "Sanitary" means free from filth, bacteria, viruses, mold, and fungi.
27. "Sewage" has the same meaning as in A.A.C. R18-9-101.

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES - FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

- 28. "Sewage collection system" has the same meaning as in A.A.C. R18-9-101.
- 29. "Shower head" means a fixture connected to a distribution system that allows potable water to fall on a user's body.
- 30. "Shower room" means a structure or room that contains at least one shower head and at least one floor drain.
- 31. "Sleeping material" means any of the following:
 - a. A sheet,
 - b. A pillow,
 - c. A pillowcase,
 - d. A blanket, or
 - e. A sleeping bag.
- 32. "Stored" means holding refuse before the refuse is disposed of according to A.A.C. R18-13-311 and R18-13-312.
- 33. "Tent" means a collapsible structure that is designed for overnight sleeping purposes and capable of being moved.
- 34. "Toilet" means a water-flushed, chemical-flushed, or no-flush bowl for the disposal of human excreta.
- 35. "Toilet alternative" means any system other than a toilet that:
 - a. Is designed or used for the purpose of collecting human excreta; and
 - b. Has a process for waste treatment, such as composting, incinerating, chemical flushing, oil flushing, or a privy system.
- 36. "Urinal" means a water-flushed, chemical-flushed, or no-flush upright basin used for urination only.
- 37. "Utensil" means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 756, effective March 6, 2019 (Supp. 19-1).

R9-8-602. General Provisions

- A. This Article does not apply to:
 - 1. Primitive camp and picnic grounds as defined in A.R.S. § 36-136(I)(8), or
 - 2. Campgrounds located on federal or tribal land within the state.
- B. A violation of this Article is a public health nuisance and may be subject to abatement pursuant to A.R.S. § 36-602.
- C. Inspections of campgrounds shall be conducted in accordance with A.R.S. § 36-136(I)(8) by the regulatory authority.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 756, effective March 6, 2019 (Supp. 19-1).

R9-8-603. Bathroom, Toilet Alternative, and Shower Room Management

A responsible party shall ensure that:

- 1. No campsite is more than 400 feet from a toilet or toilet alternative;
- 2. Signs plainly indicate the locations of toilets and showers provided by the campground;
- 3. The campground has a sufficient number of toilets or toilet alternatives according to Table 6.1, and
- 4. Each bathroom, toilet alternative, and shower room provided by the campground meets the requirements listed in Table 6.2.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 756, effective March 6, 2019 (Supp. 19-1).

Table 6.1. Toilet or Toilet Alternative Requirements

Number of Individuals Occupying the Campground	Number of Toilets or Toilet Alternatives
1-25	1
26-50	2
51-75	3
Every additional 1-25	+1 additional

Historical Note

Table 6.1 made by final rulemaking at 25 A.A.R. 756, effective March 6, 2019 (Supp. 19-1).

Table 6.2. Bathroom, Toilet Alternative, and Shower Room Management

Requirement	Bathroom	Toilet Alternative	Shower Room
Is clean and sanitary	X	X	X
Is ventilated by an openable window, air conditioning, or other mechanical device	X	X	X

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES - FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

Has toilet paper	X	X	
Is maintained free from public health nuisance and free from insect and vermin infestation	X	X	X
Has refuse containers as specified in R9-8-607(1)	X	X	X
Has surfaces that are easily cleanable, sanitary, and free from gaps other than ventilation	X	X	X
Has soap and single-use paper towels or air hand dryers at each lavatory	X		
Has a floor drain connected to a sewage collection system and, if built after the effective date of this Article, has floors that slope to the drain.			X
Has potable water from all shower heads			X
Has floors and walls of a non-absorbent material			X

Historical Note

Table 6.2 made by final rulemaking at 25 A.A.R. 756, effective March 6, 2019 (Supp. 19-1).

R9-8-604. Common Area Management

A responsible party shall ensure that the following requirements are met:

1. Bedding and towels provided by the campground are:
 - a. Maintained in good-repair;
 - b. Clean and sanitary; and
 - c. Kept free of ectoparasites including bedbugs, lice, and mites.
2. A community kitchen provided by a campground:
 - a. Is maintained in a clean and sanitary condition; and
 - b. Complies with 9 A.A.C. 8, Article 1 if operating as a food establishment.
3. Any multi-use utensils and equipment provided by the campground are easily cleanable and either:
 - a. Are washed, rinsed, and made sanitary before use by each separate individual; or
 - b. A conspicuously located sign identifies which multi-use utensils and equipment provided by the campground are not washed, rinsed, and made sanitary before use by each separate individual.
4. A campground shall comply with 9 A.A.C. 8 Article 8, if within a common area, the campground provides a:
 - a. Natural bathing place as defined in A.A.C. R18-5-201,
 - b. Semi-artificial bathing place as defined in R9-8-801,
 - c. Spa as defined in A.A.C. R18-5-201, or
 - d. Swimming pool as defined in A.A.C. R18-5-201.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 756, effective March 6, 2019 (Supp. 19-1).

R9-8-605. Water Supply

A responsible party shall ensure that the following requirements are met:

1. All water provided by the campground for human consumption is potable water.
2. Any source of water provided by the campground that is not potable is clearly identified with "not for human consumption" signage at each access point.
3. The potable water supply and distribution system provided by the campground is designed to provide sufficient quantity at a minimum pressure of 20 pounds per square inch at ground level at each bathroom, shower room, and permanent water fixture provided by the campground.
4. No campsite is more than 300 feet from a potable water source.
5. If water is hauled to the campground as a potable water supply, the water and transport shall meet the requirements of A.A.C. R18-4-214.
6. If potable water provided by the campground is not from a public water system as defined by 18 A.A.C. 4:
 - a. The potable water provided is tested prior to use with results of:
 - i. No coliform bacteria or other fecal indicator present; and
 - ii. Nitrate (as N) no greater than 10 mg/l.
 - b. The potable water provided is routinely monitored to determine:
 - i. The presence or absence of total coliform bacteria at least once every month of operation, and
 - ii. The concentration of nitrates at least once every 3 months.

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES - FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

- c. Water samples collected in accordance with this section shall be analyzed by a laboratory that is licensed by the Arizona State Laboratory Office of Laboratory Services and licensed according to 9 A.A.C. 14, Article 6.
- d. Records of water sample results analyzed in accordance with this Section shall be:
 - i. Maintained at the campground for at least 12 months and
 - ii. Made available to the Department upon request.
- e. Written notification must be provided to the regulatory authority within 24 hours when any water quality requirement listed in subsection (a) is out-of-compliance.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 756, effective March 6, 2019 (Supp. 19-1).

R9-8-606. Sewage Disposal

A responsible party shall ensure that sewage and human excreta produced within the campground:

1. Does not create a public health nuisance; and
2. Is collected and disposed of by systems designed, constructed and operated in compliance with the requirements in 18 A.A.C. 9, Articles 3 and 7.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 756, effective March 6, 2019 (Supp. 19-1).

R9-8-607. Refuse Management

A responsible party shall ensure that the following requirements are met:

1. The campground has conspicuously located refuse containers that are:
 - a. Constructed of non-absorbent material that is capable of withstanding expected use and remaining easily cleanable, and
 - b. Covered.
2. Signs plainly indicate the locations of refuse containers.
3. No campsite is more than 200 feet from a refuse container.
4. Refuse produced within the campground:
 - a. Does not create a public health nuisance; and
 - b. Is collected, stored, and disposed of according to 18 A.A.C. 13, Article 3.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 756, effective March 6, 2019 (Supp. 19-1).

R9-8-608. Camping Shelter Management

A responsible party shall ensure that the following requirements are met:

1. A camping shelter is:
 - a. Clean and sanitary;
 - b. Ventilated by an openable window, air conditioning, or other mechanical device; and
 - c. Maintained free from public health nuisance and free from insect and vermin infestation.
2. Bedding and towels provided in a camping shelter are:
 - a. Maintained in good-repair;
 - b. Clean and sanitary; and
 - c. Kept free of ectoparasites including bedbugs, lice, and mites.

36-136. Powers and duties of director; compensation of personnel; rules; definitions

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
7. Prepare sanitary and public health rules.
8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real

9 A.A.C. 8, Article 6 Campgrounds – Statutory Authorities

property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

9 A.A.C. 8, Article 6 Campgrounds – Statutory Authorities

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

(a) Served at a noncommercial social event such as a potluck.

(b) Prepared at a cooking school that is conducted in an owner-occupied home.

(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of

9 A.A.C. 8, Article 6 Campgrounds – Statutory Authorities

this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-

9 A.A.C. 8, Article 6 Campgrounds – Statutory Authorities

183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

9 A.A.C. 8, Article 6 Campgrounds – Statutory Authorities

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

36-601. Public nuisances dangerous to public health

A. The following conditions are specifically declared public nuisances dangerous to the public health:

1. Any condition or place in populous areas that constitutes a breeding place for flies, rodents, mosquitoes and other insects that are capable of carrying and transmitting disease-causing organisms to any person or persons or any condition or place that constitutes a feral colony of

9 A.A.C. 8, Article 6 Campgrounds – Statutory Authorities

honeybees that is not currently maintained by a beekeeper and that poses a health or safety hazard to the public.

2. Any spoiled or contaminated food or drink intended for human consumption.

3. Any restaurant, food market, bakery or other place of business or any vehicle where food is prepared, packed, processed, stored, transported, sold or served to the public that is not constantly maintained in a sanitary condition.

4. Any place, condition or building that is controlled or operated by any governmental agency and that is not maintained in a sanitary condition.

5. All sewage, human excreta, wastewater, garbage or other organic wastes deposited, stored, discharged or exposed so as to be a potential instrument or medium in the transmission of disease to or between any person or persons.

6. Any vehicle or container that is used in the transportation of garbage, human excreta or other organic material and that is defective and allows leakage or spillage of contents.

7. The presence of ectoparasites such as bedbugs, lice, mites and others in any place where sleeping accommodations are offered to the public.

8. The maintenance of any overflowing septic tank or cesspool, the contents of which may be accessible to flies.

9. The pollution or contamination of any domestic waters.

10. The use of the so-called common drinking cup used for drinking purposes by more than one person. This paragraph does not apply to receptacles properly washed and sanitized after each service.

11. The presence of common towels for use of the public in any public or semipublic place unless properly washed and sanitized following each use.

12. Buildings or any parts of buildings that are in a filthy condition and that may endanger the health of persons living in the vicinity.

13. Spitting or urinating on sidewalks, or floors or walls of a public building or buildings used for public assemblage, or a building used for manufacturing or industrial purposes, or on the floors or platforms or any part of a railroad or other public conveyance.

14. The use of the contents of privies, cesspools or septic tanks or the use of sewage or sewage plant effluents for fertilizing or irrigation purposes for crops or gardens except by specific approval of the department of health services or the department of environmental quality.

15. The maintenance of public assemblage or places of assemblage without providing adequate sanitary facilities. Open surface privies are adequate sanitary facilities if they are outside populous areas and meet reasonable health requirements.

9 A.A.C. 8, Article 6 Campgrounds – Statutory Authorities

16. Hotels, tourist courts and other lodging establishments that are not kept in a clean and sanitary condition or for which suitable and adequate toilet facilities are not provided.

17. The storage, collection, transportation, disposal and reclamation of garbage, trash, rubbish, manure and other objectionable wastes other than as provided and authorized by law.

18. Water, other than that used by irrigation, industrial or similar systems for nonpotable purposes, that is sold to the public, distributed to the public or used in production, processing, storing, handling, servicing or transportation of food and drink and that is unwholesome, poisonous or contains deleterious or foreign substances or filth or disease causing substances or organisms.

19. The emission of mercaptan in a concentration level that causes endangerment to the health or safety of any considerable number of persons of a neighborhood or community.

20. The operation of an environmental laboratory in violation of chapter 4.3, article 1 of this title.

B. If the director has reasonable cause to believe from information furnished to the director or from investigation made by the director that any person is maintaining a nuisance or engaging in any practice contrary to the health laws of this state, the director shall promptly serve on that person by certified mail a cease and desist order requiring the person, on receipt of the order, promptly to cease and desist from that act. Within fifteen days after receipt of the order, the person to whom it is directed may request the director to hold a hearing. The director, as soon as practicable, shall hold a hearing, and if the director determines the order is reasonable and just and that the practice engaged in is contrary to the health laws of this state, the director shall order the person to comply with the cease and desist order.

C. If a person fails or refuses to comply with the order of the director, or if a person to whom the order is directed does not request a hearing and fails or refuses to comply with the cease and desist order served by mail under subsection B, the director may file an action in the superior court in the county in which a violation occurred, restraining and enjoining the person from engaging in further acts. The court shall proceed as in other actions for injunctions.

D. Notwithstanding subsection A, paragraph 19, the emission of mercaptan as a by-product of a pesticide is not a nuisance if applied according to state and federal restrictions.

E. Notwithstanding subsection A, paragraph 3, a restaurant that uses sawdust on the floors of its dining areas is not in violation of this section or local health department sanitary rules if the restaurant replaces the sawdust each day with clean sawdust and complies with applicable standards for fire safety.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 8, Article 5



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 1, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 10, 2022

SUBJECT: DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 8, Article 5, Recreational Vehicle and Parks

Summary

This Five Year Review Report (5YRR) relates to rules in Title 9, Chapter 8, Article 5, regarding Recreational Vehicles and Parks. The Department indicates that the rules in Article 5 “[p]rescribe measures necessary to ensure that trailer coach parks are built, operated, and maintained in a sanitary manner, and specifically provide minimum standards for inspection, water supply, sewage disposal, sanitation facilities, refuse, and waste disposal.”

In the previous 5YRR for these rules, which the Council approved in June 2017, the Department identified several issues with the rules. The Department extensively revised the rules through a regular rulemaking in 2019.

Proposed Action

The Department does not propose to take any action on these rules, but states that if any issues arise, the Department will determine if a rulemaking is necessary.

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes. The Department cites both general and specific statutory authority for the rules under review.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

In the Economic, Small Business, and Consumer Impact Statement (EIS) prepared with the 2019 rulemaking, the Department determined that the stakeholders were the Department, county agencies acting as regulatory authorities, owners of trailer coach parks, and the public.

The Department and county agencies were expected to incur moderate costs to provide training and technical support to employees and owners of trailer coach parks. The owners of trailer coach parks were not expected to incur any costs and rather, were expected to receive a significant benefit in having to comply with fewer requirements. The public was not expected to incur costs.

During fiscal year 2021, 1,815 recreational vehicle parks were operating in Arizona. County sanitarians conducted 1,326 regular inspections, 134 complaint-based inspections, and 2 enforcement actions in the recreational vehicle parks. The Department believes that the economic impact of the 9 A.A.C. 8, Article 5, rules is as estimated in the 2019 EIS and that the benefit of the rules continues to outweigh any associated costs.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The rules are designed to prevent conditions that would negatively affect public health and are used while conducting annual and compliant inspections of recreational vehicles and parks. Without the rules, conditions dangerous to the public health would not be detected and mitigated. For these reasons, the Department indicates that the probable benefits of the rules outweigh their costs and that the rules impose the least burden and cost to achieve the underlying regulatory objective.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. The Department did not receive any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes. The Department indicates that the rules are clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes. The Department states that the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes. The Department states that the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Department states that the rules are enforced as written.

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

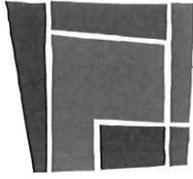
No. The Department indicates that there are no corresponding federal laws to these rules.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Department states that the rules do not require the issuance of a permit, license, or agency authorization. The Department indicates that pursuant to A.R.S. § 36-136(E), it delegates its inspection authority to local health departments and environmental service departments, with the exception of Gila county. The Department states that local jurisdictions with delegated inspection authority may issue permits under their own authority.

11. **Conclusion**

Council staff finds that the Department submitted a report that meets the requirements of A.R.S. § 41-1056. Council staff recommends approval of this report.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

February 25, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Esq., Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Department of Health Services, 9 A.A.C. 8, Article 5, Five-Year-Review Report

Dear Ms. Sornsin:

Please find enclosed the Five-Year-Review Report from the Arizona Department of Health Services (Department) for 9 A.A.C. 8, Article 5, Recreational Vehicles and Parks, which is due on March 31, 2022.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Vanessa Gonzales at Vanessa.Gonzales@azdhs.gov or 602-542-6330.

Sincerely,

A handwritten signature in black ink, appearing to read 'RL', written over a horizontal line.

Robert Lane
Director's Designee

RL:vg

Enclosures

Douglas A. Ducey | Governor Don Herrington | Interim Director

150 North 18th Avenue, Suite 500, Phoenix, AZ 85007-3247 P | 602-542-1025 F | 602-542-1062 W | azhealth.gov

Health and Wellness for all Arizonans



Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 8. Department of Health Services – Food, Recreational, And Institutional Sanitation

Article 5. Recreational Vehicles and Parks

February 2022

1. Authorization of the rule by existing statutes

Authorizing statutes: A.R.S. §§ 36-136(A)(4) and (7) and 36-136(G)

Implementing statutes: A.R.S. §§ 36-136(I)(8) and 36-601

2. The objective of each rule:

Rule	Objective
R9-8-501	To define terms used in the Article so the reader can consistently interpret the requirements.
R9-8-502	To establish what the Article does not apply to, notify that a violation of the Article is a public nuisance and define how inspections of recreational vehicle parks are to be conducted.
R9-8-503	To specify bathroom, toilet alternative, and shower room requirements for a recreational vehicle park.
Table 5.1	To specify bathroom or toilet alternative requirements based on the number of dependent recreational vehicles occupying a recreational vehicle park.
Table 5.2	To specify health and safety requirements for each bathroom, toilet alternative and shower room provided by the recreational vehicle park.
R9-8-504	To specify the requirements for common areas found within a recreational vehicle park.
R9-8-505	To establish requirements to ensure that a recreational vehicle park’s water supply is clean, easy to access, properly maintained, and sufficient to supply the maximum number of persons occupying the recreational vehicle park.
R9-8-506	To establish sewage disposal requirements to ensure the recreational vehicle park is maintained in a sanitary manner and operated in compliance with requirements in 18 A.A.C. 9, Articles 3 and 7.
R9-8-507	To establish standards and locations for refuse-disposal equipment, and the criteria to determine an appropriate refuse-disposal method.

3. Are the rules effective in achieving their objectives?

Yes √ No __

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation

4. **Are the rules consistent with other rules and statutes?** Yes No
If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation

5. **Are the rules enforced as written?** Yes No
If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency’s proposal for resolving the issue.

Rule	Explanation

6. **Are the rules clear, concise, and understandable?** Yes No
If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No
If yes, please fill out the table below:

Commenter	Comment	Agency’s Response

8. **Economic, small business, and consumer impact comparison (summary):**
 A.R.S. § 36-136(I)(8) requires the Department to adopt rules that “[d]efine and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for . . . trailer coach parks . . .” The rules are also required to prescribe “minimum standards for preparing food in a community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for . . . trailer coach parks . . . and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules.” To implement A.R.S. § 36-136(I)(8) for trailer coach parks, the Department adopted rules at 9 A.A.C. 8, Article 5. The rules in Article 5 prescribe measures necessary to ensure that trailer coach parks are built, operated, and maintained in a sanitary manner, and specifically provide minimum standards for inspection, water supply, sewage disposal, sanitation

facilities, refuse, and waste disposal. The Department revised the rules in 2019, which included changing the name of Article 5 to “Recreational Vehicles and Parks.”

The Department, pursuant to A.R.S. § 36-136(E), has delegated its recreational vehicles and parks inspection and abatement authority under A.R.S. § 36-136(I)(8) to the local health departments and environmental service departments, except for Gila County. These departments use the rules while conducting annual and complaint inspections of recreational vehicles and parks. Arizona recreational vehicles and parks are inspected for general sanitation practices including, but not limited to, garbage and trash removal, sewage connections, and water and wastewater. During fiscal year 2021, 1,815 recreational vehicle parks were operating in Arizona. County sanitarians conducted 1,326 regular inspections, 134 complaint-based inspections, and 2 enforcement actions in these recreational vehicle parks. Additionally, in fiscal year 2021, the Department did not conduct any recreational vehicle park inspections or complaint-based inspections.

With the 2019 rulemaking, the rules in Article 5 were revised to address matters identified in the 2017 five-year-review report for trailer coach parks, and other changes were made to improve efficiency and effectiveness of the rules. The Department completed an EIS when it revised the rules in 2019. The stakeholders for the 2019 rulemaking were identified in the EIS as the Department; county agencies acting as regulatory authorities, owners of trailer coach parks; and the public. The annual costs and revenues were designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000. Costs and benefits are listed as significant when meaningful or important, but not readily subject to quantification. The EIS stated that the Department anticipated the following costs/benefits for the identified stakeholders:

- The Department was expected to incur a moderate cost to complete the 9 A.A.C. 8, Article 5, rulemaking and a minimal cost for providing technical assistance to counties and owners of trailer coach parks related to the rulemaking;
- The county agencies were expected to incur up to a moderate cost to provide training and technical support to employees and owners of trailer coach parks;
- The owners of trailer coach parks were not expected to incur any costs and rather, were expected to receive significant benefit for having fewer requirements to comply with; and
- The public was not expected to incur any costs.

With the 2019 rulemaking the Department believed the benefits of having the new recreational vehicles and parks rules outweighed any costs incurred by the Department, county agencies, and owners of a recreational vehicles and parks. Specifically, the Department believed that the revised rules would significantly benefit the counties, owners of recreational vehicles and parks, and the public because the rules were more effective and understandable and reduced regulatory burdens.

The Department believes that the economic impact of the 9 A.A.C. 8, Article 5, rules is as estimated in the EIS and that the benefit of the rules continue to outweigh any associated costs.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

Yes, the Department completed a rulemaking in response to the Department's 2017 five-year-review report, with the Notice of Final Rulemaking approved by the Governor's Regulatory Review Council on March 5, 2019, with an immediate effective date. The new rules became effective on March 6, 2019, when submitted to the Office of the Secretary of State.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The rules are designed to prevent conditions that would negatively affect public health and are used while conducting annual and compliant inspections of recreational vehicles and parks. Without the rules, conditions dangerous to the public health would not be detected and mitigated. For these reasons, the Department has determined that the probable benefits of the rules outweigh their costs and that the rules provide the least burden and cost to achieve the underlying regulatory objective.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

The rules are not related to any federal laws.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The rules do not require the issuance of a regulatory permit, license, or agency authorization; however, the Department, pursuant to A.R.S. § 36-136(E) delegates its inspection authority to local health departments and environmental service departments, except Gila County. Local health departments and environmental departments holding such a delegation issue permits under their own respective authority.

14. Proposed course of action:

If possible, please identify a month and year by which the agency plans to complete the course of action.

Due to a recent revision of the rules and because the Department is unaware of any health, safety, or other urgent issues with the rules, the Department does not intend to conduct any rulemaking activities related to the rules. If any such issues arise, the Department will reevaluate whether a rulemaking is necessary.

TITLE 9. HEALTH SERVICES

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES

FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

ARTICLE 5. RECREATIONAL VEHICLES AND PARKS

2019 ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT
TITLE 9. HEALTH SERVICES
CHAPTER 8: FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION
ARTICLE 5. RECREATIONAL VEHICLES AND PARKS

1. An identification of the rulemaking:

The rules in Arizona Administrative Code (A.A.C.) Title 9, Chapter 8, Article 5 were adopted in 1980 and the rules have not been amended. In June 2002, sections R9-8-511 and R9-8-561 were allowed to expire. An economic, small business, and consumer impact statement (EIS) was not required and no EIS exists for the Article 5 rules. Except for renumbering, the statutory authorities for the rules have not changed since adopted. A.R.S. § 36-136(I)(8) requires the Department to create rules related to health and sanitation for various-specific aspects of recreational vehicle parks, including food preparation in community kitchens; sewage disposal; garbage and trash collection, storage and disposal; water supply, and inspections. Additionally, A.R.S. § 36-601 requires the Department to take action in response to “any person who is maintaining a nuisance or engaging in any practice contrary to the health laws of the state.”

To implement A.R.S. § 36-136(I)(8) for trailer coach parks, the Department adopted rules at 9 A.A.C. 8, Article 5. The 11 rules in Article 5 prescribe measures necessary to ensure that recreational vehicle parks are operated and maintained in a sanitary manner, and specifically provide minimum standards for water supply, sewage disposal, refuse management, community kitchens, and plans and specifications. The Department received an exception from the Governor’s rulemaking moratorium, established by Executive Order 2017-02, and amended the rules to address the matters identified in the 2017 five-year-review report for the trailer coach parks and to make other changes to improve efficiency and effectiveness of the rules. During the regular rulemaking process, the Department solicited comments from stakeholders on how the rules may be improved. The Department retitled Article 5 to “Recreational Vehicles and Parks.” The amendments will conform to rulemaking format and style requirements of the Governor’s Regulatory Review Council and the Office of the Secretary of State.

2. Identification of the persons, who will be directly affected by, bears the costs of, or directly benefits from the rules:

- a. The Department,
- b. County agencies,
- c. Owners of recreational vehicles parks, and
- d. The public.

3. Cost/benefit analysis:

This analysis covers costs and benefits associated with the rule changes and no new FTEs are required due to this rulemaking. The annual costs and revenues are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000. Costs and benefits are listed as significant when meaningful or important, but not readily subject to quantification.

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Benefit	Decreased Cost/ Increased Benefit
A. State and Local Government Agencies			
Department	Requires resources to amend and promulgate new rules Requires administrative support to provide technical assistance Increases effectiveness and clarity of the rules by: <ul style="list-style-type: none"> – Removing/amending antiquated terms and outdated citations; – Adding requirements for exemptions and inspections; – Removing requirements for applications, park plan, and plans and specifications; and – Simplifying requirements for sanitation facilities and service building 	Minimal-to-moderate Minimal-to-moderate None	None None Significant
County agencies	Increases effectiveness and clarity of the rules <ul style="list-style-type: none"> – Removing/amending antiquated terms and outdated citations; – Removing requirements for applications, park plan, and plans and specifications; and – Simplifying requirements for sanitation facilities and service building Requires administrative support to provide technical assistance Decreases the number of permits issued by clarifying recreational vehicle park definition Provides for inspections	None Minimal-to-moderate None None	Significant none Significant None

B. Privately Owned Businesses			
Owners	Adds exemption from recreational vehicle park rules	None	Significant
	Removes requirements for applications, park plan, plans and specifications	None	Significant
	Simplifies requirements for common areas, including community kitchens, in place of sanitation facilities and service building	None	Significant
	Adds requirements for swimming pools and spas	None	None-to-moderate
	Adds requirement for testing water if potable water is not provided by a public water system	Minimal	Significant
	Increases effectiveness and clarity of the rules by removing/amending antiquated terms and outdated citations	None	Significant
C. Consumers			
The public	Increases effectiveness and clarity of the rules	None	Significant

Through delegation agreements with Arizona’s counties, the Department and county agencies ensure minimum standards for the preparation of food in community kitchens, adequacy of sewage disposal, garbage and trash collection, storage and disposal, and water supply for recreational vehicle parks; and provide for inspection of recreational vehicle park premises; and for abatement as public nuisances of any premises or facilities that do not comply with the rules. The Department and county agencies’ environmental health sanitarians use the rules in 9 A.A.C. 8, Article 5, in conjunction with county codes and ordinances, while conducting inspections of trailer coach parks to ensure minimum standards are met.

The Department

The Department anticipates incurring a minimal-to-moderate cost for resources utilized to complete the Article 5 rulemaking; for providing multiple stakeholder meetings during the rulemaking process to ensure awareness and participation from affected persons; and for providing technical assistance to others related to inquiries about the new Article 5 rules. The Department also anticipates receiving a significant benefit from rules that are more effective, clear, and understandable. The new rules were amended to change and remove passive, outdated, and ambiguous language; update citations; remove requirements for application, park plan,

and plans and specifications; and simplify requirements for common areas and community kitchens in place of sanitation facilities and service buildings. The new rules also provide exemptions for those who the rules do not apply and adds requirement for inspections. Additionally, the rules were consolidated and amended to make consistent with rules in other Chapter 8 Articles. The changes made are consistent with the matters identified in the 2017 Five-year-review Report. The Department believes the benefit provided by the rulemaking is greater than the Department's cost.

County agencies

As mentioned previously, the Department delegates authority for regulating trailer coach parks (aka: recreational vehicles and parks) within their jurisdictions to the counties. County agencies permitted 1,823 trailer coach parks in fiscal year 2018; an increase of 20 trailer coach parks compared to previous 2017 fiscal year. County agencies also conducted 1,888 routine inspections, 100 complaint inspections, and initiated 43 enforcement actions. The Department anticipates that county agencies will receive a significant benefit from having new rules that are more effective, clear, and understandable. The new rules increase clarity and understandability by simplifying old requirements for sanitation facilities, service buildings, community kitchens, and recreational facilities, and instead, add new simplified requirements for common areas that include community kitchens. Likewise, removing antiquated language and amending outdated citations increases the rules effectiveness and county agencies' benefits. For example, in R9-8-533, the sewage system rule requires approval from the Department "to construct the sewers serving the trailer park." The "approval" requirement is antiquated and now regulated by the Department of Environmental Quality (DEQ). Also, the water supply rule in R9-8-531 contains an outdated citation to 9 A.A.C. 8, Article 2. The Department expects that deleting requirements for application, park plan, and plans and specifications will benefit county agencies by allowing county agencies to comply with ordinances, regulations, and codes adopted by their County Board of Supervisors.

Additionally, the Department expects most county agencies, depending on the county, may incur a minimal-to-moderate increase in costs for administrative support to provide technical assistance to employees and possible recreational vehicle park owners. However, the Department also anticipates county agencies could receive a significant benefit for new rules that specify which recreational vehicle parks the rules do not apply too, as well as new "recreational vehicle park" definition that clarifies a "recreational vehicle park" does not include mobile homes, also known as manufacture homes, used for residential purposes. The distinction between recreational vehicles and residential mobile homes is expected to decrease the number of recreational vehicle parks that are currently permitted and inspected. Hence, environmental health sanitarians employed by county agencies may see a decrease in the number of recreational vehicle parks requiring inspection, and county administrators may experience a decrease in the number of permits issued to

recreational vehicle parks now that they will not have to permit mobile home parks. Lastly, the Department anticipates that adding a new requirement for recreational vehicle park inspections will not increase county agencies' cost or benefit. In the July 2017 Apache County and Gila County delegation agreements, the counties elected not to include trailer coach parks; and for that reason are not affected by this rulemaking.

Owners

The Department believes that owners of recreational vehicle parks will receive a significant benefit from changes made by this rulemaking. The Department anticipates that owners, whose recreational vehicle parks as defined in R9-8-501 are no longer classified as a trailer coach park or as specified in R9-8-502 are exempt for Article 5, may receive a significant benefit. The benefit includes cost savings of monies used to pay permit fees and expenses incurred to maintain standards required by the rules. Additionally, the Department believes that other recreational vehicle park owners required to comply with the new rules will also receive a significant benefit. The Department expects these owners will receive a cost savings for not having to comply with old requirements to provide plans and specifications, application, and park plan or maintain specific standards for service buildings and sanitation facilities. Deleting these requirements, as well as others, reduces regulatory burden.

The Department believes that owners of recreational vehicle parks that are currently permitted by a county agency will receive a significant benefit due to clarifying requirements for common areas, including community kitchens; deleting requirements for service buildings and recreational facilities; and removing requirements for toilet facilities to provide a specified number of toilets, lavatories, and showers based on the number of recreational vehicle park spaces and "for each sex per additional 30 trailer spaces..." The Department believes the new requirement for recreational vehicle parks that provide a swimming pool and spa for dwellers' use will most likely experience no affect, since the rule requires owners to ensure compliance with 9 A.A.C. 18, Article 8, and 9 A.A.C. 18, Article 8 has been mostly effective since 1984 and last revised in 2015. A county agency inspecting a recreational vehicle park that has a swimming pool or spa would include verification that the swimming pool or spa complies with 9 A.A.C. 18, Article 8. The Department added a requirement for swimming pools and spas to be consistent with other state rules. Lastly, the Department believes the new rules that no longer contains antiquated terms and outdated citations increases effectiveness of the rules and will increase owners' ability to read, understand, and apply the rules.

The public

The Department believes that the public will not incur any costs as a result of this rulemaking and may receive a significant benefit from the Department, county agencies, and recreational vehicle park owners for having more effective, clear, and understandable rules. The Department believes the public could receive a

significant monetary saving if the park owners, whose costs decrease as a result of the rules, pass some their saving along to dwellers.

Overall, the Department believes that the rulemaking provides a substantial benefit to affected persons compared to any increased costs affected persons may incur.

4. A general description of the probable impact on private and public employment in business, agencies, and political subdivisions of this state directly affected by the rulemaking:

The Department does not expect public or private employment in the state to be affected by the rulemaking.

5. A statement of the probable impact of the rules on small businesses:

a. An identification of the small business subject to the rules:

Small businesses include recreational vehicle park owners.

b. The administrative and other costs required for compliance with the rules:

A summary of the administrative effects of the rulemaking is given in the cost/benefit analysis in Paragraph (3).

c. A description of the methods that the agency may use to reduce the impact on small businesses:

The Department knows of no other methods to further reduce the impact on small businesses.

d. The probable costs and benefits to private persons and consumers who are directly affected by the rules:

A summary of the effects of the rulemaking to private persons and consumers is given in the cost and benefit analysis in Paragraph (3).

6. A statement of the probable effect on state revenues:

The Department does not expect the rules to have an effect on state revenues.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking:

The Department has determined that there are no less intrusive or less costly alternatives for achieving the purpose of the rule.

8. A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data:

Not applicable.

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

ARTICLE 5. RECREATIONAL VEHICLES AND PARKS

R9-8-501. Definitions

In this Article, unless otherwise specified:

1. "Bathroom" means a structure or room that contains at least one toilet and lavatory.
2. "Bedding" has the same meaning as in A.R.S. § 36-796.
3. "Clean" means free from dirt or debris.
4. "Common area" means an area of a recreational vehicle park, excluding areas within dwelling spaces, that is provided by the recreational vehicle park for general use.
5. "Community kitchen" means a structure or room in a common area that is provided by a recreational vehicle park for preparing food.
6. "Compensation" means money or other consideration, including goods, services, vouchers, time, government or public expenditures, government or public funding, or another benefit that is received as payment.
7. "Dependent recreational vehicle" means a recreational vehicle that does not have a toilet, bathtub, or shower room.
8. "Distribution system" has the same meaning as in A.A.C. R18-4-103(B).
9. "Dwelling space" means a plot of ground designated to accommodate one recreational vehicle for dwelling or sleeping purposes for more than 30 days, and does not include a plot of ground that is:
 - a. Designated to accommodate one recreational vehicle and is occupied by the owner of the plot of ground; or
 - b. Exclusively designated to:
 - i. Accommodate a recreational vehicle specified in A.R.S. § 33-2102, and
 - ii. Remains on the plot of ground for dwelling for more than 180 consecutive days specified in A.R.S. § 33-2101.
10. "Easily cleanable" means a characteristic of a surface that allows effective removal of dirt and debris by normal cleaning methods based on the material, design, construction, and installation of the surface.
11. "Faucet" means a fixture connected to a distribution system that provides and regulates the flow of potable water.
12. "Fixture" means an attachment to a structure.
13. "Food" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for human consumption.
14. "Human excreta" means fecal and urinary discharges and includes any waste that contains this material.
15. "Independent recreational vehicle" means a vehicular type that has a toilet, bathtub, or shower room.
16. "Lavatory" means a sink or a basin with a faucet that supplies potable water and with a drain connected to a sewage collection system.
17. "Non-absorbent" means incapable of being penetrated by liquid, such as a material coated or treated with rubber, plastic, or other sealing substance.
18. "Owns" means to have the right to possess, use, and convey the interest.
19. "Person" means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character or another agency.
20. "Political subdivision" means the same as in A.R.S. § 38-382.
21. "Potable water" means water safe for human consumption that meets the requirements of 18 A.A.C. 4 or satisfies the requirements in R9-8-505(6).
22. "Public health nuisance" means the activities or conditions dangerous to public health that are subject to A.R.S. § 36-601.
23. "Recreational vehicle" has the same meaning as in A.R.S. § 33-2102.
24. "Recreational vehicle park" or "trailer coach park" specified in A.R.S. § 36-136(I)(8) is defined in this Article to mean a place or portion of a place that offers two or more dwelling spaces for recreational vehicles to use overnight, regardless of whether or not compensation is exchanged.
25. "Refuse" has the same meaning as in A.A.C. R18-13-302.
26. "Refuse container" means a receptacle that is capable of being moved and is used for refuse storage.
27. "Regulatory authority" means
 - a. The Department; or

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES - FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

- b. Under delegation, 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.
- 28. “Responsible party” means a person who owns a recreational vehicle park or a designee of the person who owns the recreational vehicle park.
- 29. “Sanitary” means free from filth, bacteria, viruses, mold, and fungi.
- 30. “Sewage” has the same meaning as in A.A.C. R18-9-101.
- 31. “Sewage collection system” has the same meaning as in A.A.C. R18-9-101.
- 32. “Shower head” means a fixture connected to a distribution system that allows potable water to fall on a user’s body.
- 33. “Shower room” means a structure or room that contains at least one shower head and at least one floor drain.
- 34. “Stored” means holding refuse before the refuse is disposed of according to A.A.C. R18-13-311 and R18-13-312.
- 35. “Toilet” means a water-flushed, chemical-flushed, or no-flush bowl for the disposal of human excreta.
- 36. “Toilet alternative” means any system other than a toilet that:
 - a. Is designed or used for the purpose of collecting human excreta; and
 - b. Has a process for waste treatment, such as composting, incinerating, chemical flushing, oil flushing, or a privy system.
- 37. “Utensil” means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 748, effective March 6, 2019 (Supp. 19-1).

R9-8-502. General Provisions

- A. This Article does not apply:
 - 1. To a recreational vehicle park located on federal or tribal land within the state;
 - 2. If an agency of the state or federal government or a political subdivision of the state provides land for overnight parking and restrictions for use of such areas are posted; or
 - 3. To recreational vehicles exempt under A.R.S. § 36-136(I)(8).
- B. A violation of this Article is a public health nuisance and may be subject to abatement pursuant to A.R.S. § 36-602.
- C. Inspections of recreational vehicle parks shall be conducted in accordance with A.R.S. § 36-136(I)(8) by the regulatory authority.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 748, effective March 6, 2019 (Supp. 19-1).

R9-8-503. Bathroom, Toilet Alternative, and Shower Room Management

- A. A responsible party shall ensure that a recreational vehicle park provides a bathroom or toilet alternative if it accommodates a recreational vehicle that does not have a toilet.
- B. A responsible party shall ensure that:
 - 1. No dwelling space offered for use by a recreational vehicle is more than 400 feet from a bathroom or toilet alternative;
 - 2. Signs plainly indicate the locations of bathrooms, toilet alternatives, and shower rooms provided by the recreational vehicle park; and
 - 3. The recreational vehicle park has a sufficient number of bathrooms or toilet alternatives according to Table 5.1.
- C. A responsible party shall ensure that each bathroom, toilet alternative, and shower room provided by the recreational vehicle park meets the requirements listed in Table 5.2.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 748, effective March 6, 2019 (Supp. 19-1).

Table 5.1. Bathroom or Toilet Alternative Requirements

Number of Dependent Recreational Vehicles Occupying the Recreational Vehicle Park	Number of Bathrooms or Toilet Alternatives
1-25	1
26-50	2
51-75	3

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES - FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

Every additional 1-25	+1 additional
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Historical Note

Table 5.1 made by final rulemaking at 25 A.A.R. 748, effective March 6, 2019 (Supp. 19-1).

Table 5.2. Bathroom, Toilet Alternative, and Shower Room Management

Requirement	Bathroom	Toilet Alternative	Shower Room
Is clean and sanitary	X	X	X
Is ventilated by an openable window, air conditioning, or other mechanical device	X	X	X
Has toilet paper	X	X	
Is maintained free from public health nuisance and free from insect and vermin infestation	X	X	X
Has refuse containers as specified in R9-8-507(1)	X	X	X
Has surfaces that are easily cleanable, sanitary and free from gaps other than ventilation	X	X	X
Has single-use soap or soap inside a dispenser at each provided lavatory	X		X
Has single-use paper towels or air hand dryers at each provided lavatory	X		X
Has a floor drain connected to a sewage collection system and, if built after the effective date of this Article, has floors that slope to the drain.			X
Has potable water from all shower heads			X
Has floors and walls of a non-absorbent material	X		X

Historical Note

Table 5.1 made by final rulemaking at 25 A.A.R. 748, effective March 6, 2019 (Supp. 19-1).

R9-8-504. Common Area Management

A responsible party shall ensure that the following requirements are met:

1. Each common area:
 - a. Is clean and sanitary,
 - b. Is ventilated by an openable window, air conditioning, or other mechanical device,
 - c. Is maintained free from public health nuisance and free from insect and vermin infestations, and
 - d. Has refuse containers as specified in R9-8-507(1).
2. Bedding and cloth towels provided by the recreational vehicle park are:
 - a. Maintained in good-repair;
 - b. Clean and sanitary; and
 - c. Kept free of ectoparasites including bedbugs, lice, and mites.
3. A community kitchen provided by a recreational vehicle park:
 - a. Is maintained in a clean and sanitary condition; and
 - b. Complies with 9 A.A.C. 8, Article 1, if operating as a food establishment.
4. Any multi-use utensils and equipment provided by a recreational vehicle park in a common areas or community kitchen are easily cleanable and either:
 - a. Are washed, rinsed, and made sanitary before use by each separate individual; or
 - b. A conspicuously located sign identifies which multi-use utensils and equipment provided by the recreational vehicle park are not washed, rinsed, and made sanitary before use by each separate individual.
5. A recreational vehicle park shall comply with 9 A.A.C. 8 Article 8, if within a common area, the recreational vehicle park provides a:
 - a. Natural bathing place as defined in A.A.C. R18-5-201,

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES - FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

- b. Semi-artificial bathing place as defined in R9-8-801,
- c. Spa as defined in A.A.C. R18-5-201, or
- d. Swimming pool as defined in A.A.C. R18-5-201.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 748, effective March 6, 2019 (Supp. 19-1).

R9-8-505. Water Supply

A responsible party shall ensure that the following requirements are met:

1. All water provided by the recreational vehicle park for human consumption is potable water.
2. Any source of water provided by the recreational vehicle park that is not potable is clearly identified with "not for human consumption" signage at each access point.
3. The potable water supply and distribution system provided by the recreational vehicle park is designed to provide sufficient quantity at a minimum pressure of 20 pounds per square inch at ground level at each bathroom, shower room, and permanent water fixture provided at by the recreational vehicle park.
4. No dwelling space is more than 300 feet from a potable water source.
5. If water is hauled to the recreational vehicle park as a potable water supply, the water and transport shall meet the requirements of A.A.C. R18-4-214.
6. If potable water provided by the recreational vehicle park is not from a public water system as defined by 18 A.A.C. 4:
 - a. The potable water provided is tested prior to use with results of:
 - i. No coliform bacteria or other fecal indicator present, and
 - ii. Nitrate (as N) no greater than 10 mg/l.
 - b. The potable water provided is routinely monitored to determine:
 - i. The presence or absence of total coliform bacteria at least once every month of operation, and
 - ii. The concentration of nitrates at least once every 3 months.
 - c. Water samples collected in accordance with this Section shall be analyzed by a laboratory that is licensed according to 9 A.A.C. 14, Article 6.
 - d. Records of water sample results analyzed in accordance with this Section shall be:
 - i. Maintained at the recreational vehicle park for at least 12 months, and
 - ii. Made available to the regulatory authority upon request.
 - e. Written notification must be provided to the regulatory authority within 24 hours when any water quality requirement listed in subsection (6)(a) out-of-compliance.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 748, effective March 6, 2019 (Supp. 19-1).

R9-8-506. Sewage Disposal

A responsible party shall ensure that sewage and human excreta produced within the recreational vehicle park:

1. Does not create a public health nuisance, and
2. Is collected and disposed of by systems designed, constructed and operated in compliance with the requirements in 18 A.A.C. 9, Articles 3 and 7.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 748, effective March 6, 2019 (Supp. 19-1).

R9-8-507. Refuse Management

A responsible party shall ensure that the following requirements are met:

1. The recreational vehicle park has conspicuously located refuse containers capable of adequately servicing all dwelling spaces that are:
 - a. Constructed of non-absorbent material that is capable of withstanding expected use and remaining easily cleanable, and
 - b. Covered.
2. Signs plainly indicate the locations of refuse containers.
3. Refuse produced within the recreational vehicle park:
 - a. Does not create a public health nuisance; and
 - b. Is collected, stored, and disposed of according to 18 A.A.C. 13, Article 3.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 748, effective March 6, 2019 (Supp. 19-1).

36-136. Powers and duties of director; compensation of personnel; rules; definitions

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
7. Prepare sanitary and public health rules.
8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real

9 A.A.C. 8, Article 5 Recreational Vehicles and Parks – Statutory Authorities

property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

9 A.A.C. 8, Article 5 Recreational Vehicles and Parks – Statutory Authorities

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

(a) Served at a noncommercial social event such as a potluck.

(b) Prepared at a cooking school that is conducted in an owner-occupied home.

(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of

9 A.A.C. 8, Article 5 Recreational Vehicles and Parks – Statutory Authorities

this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-

9 A.A.C. 8, Article 5 Recreational Vehicles and Parks – Statutory Authorities

183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

9 A.A.C. 8, Article 5 Recreational Vehicles and Parks – Statutory Authorities

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

36-601. Public nuisances dangerous to public health

A. The following conditions are specifically declared public nuisances dangerous to the public health:

1. Any condition or place in populous areas that constitutes a breeding place for flies, rodents, mosquitoes and other insects that are capable of carrying and transmitting disease-causing organisms to any person or persons or any condition or place that constitutes a feral colony of

9 A.A.C. 8, Article 5 Recreational Vehicles and Parks – Statutory Authorities

honeybees that is not currently maintained by a beekeeper and that poses a health or safety hazard to the public.

2. Any spoiled or contaminated food or drink intended for human consumption.

3. Any restaurant, food market, bakery or other place of business or any vehicle where food is prepared, packed, processed, stored, transported, sold or served to the public that is not constantly maintained in a sanitary condition.

4. Any place, condition or building that is controlled or operated by any governmental agency and that is not maintained in a sanitary condition.

5. All sewage, human excreta, wastewater, garbage or other organic wastes deposited, stored, discharged or exposed so as to be a potential instrument or medium in the transmission of disease to or between any person or persons.

6. Any vehicle or container that is used in the transportation of garbage, human excreta or other organic material and that is defective and allows leakage or spillage of contents.

7. The presence of ectoparasites such as bedbugs, lice, mites and others in any place where sleeping accommodations are offered to the public.

8. The maintenance of any overflowing septic tank or cesspool, the contents of which may be accessible to flies.

9. The pollution or contamination of any domestic waters.

10. The use of the so-called common drinking cup used for drinking purposes by more than one person. This paragraph does not apply to receptacles properly washed and sanitized after each service.

11. The presence of common towels for use of the public in any public or semipublic place unless properly washed and sanitized following each use.

12. Buildings or any parts of buildings that are in a filthy condition and that may endanger the health of persons living in the vicinity.

13. Spitting or urinating on sidewalks, or floors or walls of a public building or buildings used for public assemblage, or a building used for manufacturing or industrial purposes, or on the floors or platforms or any part of a railroad or other public conveyance.

14. The use of the contents of privies, cesspools or septic tanks or the use of sewage or sewage plant effluents for fertilizing or irrigation purposes for crops or gardens except by specific approval of the department of health services or the department of environmental quality.

15. The maintenance of public assemblage or places of assemblage without providing adequate sanitary facilities. Open surface privies are adequate sanitary facilities if they are outside populous areas and meet reasonable health requirements.

9 A.A.C. 8, Article 5 Recreational Vehicles and Parks – Statutory Authorities

16. Hotels, tourist courts and other lodging establishments that are not kept in a clean and sanitary condition or for which suitable and adequate toilet facilities are not provided.

17. The storage, collection, transportation, disposal and reclamation of garbage, trash, rubbish, manure and other objectionable wastes other than as provided and authorized by law.

18. Water, other than that used by irrigation, industrial or similar systems for nonpotable purposes, that is sold to the public, distributed to the public or used in production, processing, storing, handling, servicing or transportation of food and drink and that is unwholesome, poisonous or contains deleterious or foreign substances or filth or disease causing substances or organisms.

19. The emission of mercaptan in a concentration level that causes endangerment to the health or safety of any considerable number of persons of a neighborhood or community.

20. The operation of an environmental laboratory in violation of chapter 4.3, article 1 of this title.

B. If the director has reasonable cause to believe from information furnished to the director or from investigation made by the director that any person is maintaining a nuisance or engaging in any practice contrary to the health laws of this state, the director shall promptly serve on that person by certified mail a cease and desist order requiring the person, on receipt of the order, promptly to cease and desist from that act. Within fifteen days after receipt of the order, the person to whom it is directed may request the director to hold a hearing. The director, as soon as practicable, shall hold a hearing, and if the director determines the order is reasonable and just and that the practice engaged in is contrary to the health laws of this state, the director shall order the person to comply with the cease and desist order.

C. If a person fails or refuses to comply with the order of the director, or if a person to whom the order is directed does not request a hearing and fails or refuses to comply with the cease and desist order served by mail under subsection B, the director may file an action in the superior court in the county in which a violation occurred, restraining and enjoining the person from engaging in further acts. The court shall proceed as in other actions for injunctions.

D. Notwithstanding subsection A, paragraph 19, the emission of mercaptan as a by-product of a pesticide is not a nuisance if applied according to state and federal restrictions.

E. Notwithstanding subsection A, paragraph 3, a restaurant that uses sawdust on the floors of its dining areas is not in violation of this section or local health department sanitary rules if the restaurant replaces the sawdust each day with clean sawdust and complies with applicable standards for fire safety.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 8, Article 13



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 1, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 10, 2022

SUBJECT: DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 8, Article 13, Lodging Establishments

Summary

This Five Year Review Report (5YRR) from the Department of Health Services (Department) relates to rules in Title 9, Chapter 8, Article 13, regarding Lodging Establishments. The Department indicates that “[t]he rules in Article 13 prescribe measures necessary to ensure that hotels, motels, and tourist courts are built, operated, and maintained in a sanitary manner, and specifically provide minimum standards for inspection, dwelling units, water supply, sewage disposal, sanitation facilities, refuse, and waste disposal.”

In the previous 5YRR for these rules, which the Council approved in September 2017, the Department identified several issues with the rules. The Department addressed those issues through an extensive rulemaking on these rules in 2019.

Proposed Action

The Department does not propose to take any action on these rules. The Department indicates that if any issues arise, it will determine if a rulemaking is necessary.

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes. The Department cites both general and specific statutory authority for the rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department adopted the rules under review to ensure that hotel, motels, and tourist courts are built, operated, and maintained in a sanitary manner. The rules outline minimum establishment standards for inspection, dwelling units, water supply, sewage disposal, sanitation facilities, refuse, and waste disposal. During fiscal year 2021, 1,418 lodging establishments were operating in Arizona. During this time, the country conducted 1,037 inspections, 199 complaints-based inspections, and 12 enforcement actions.

The stakeholders include: the Department, county agencies who provide training and technical support, owners of lodging establishments, and the public.

The Department notes that the economic impact of the rules is the same as previously determined in the Economic, Small Business, and Consumer Impact Statement (EIS) prepared during 2019 rulemaking. In that EIS, the Department determined that the costs associated with the rule were minimal, with a minimal cost being less than \$1,000.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department indicates that the benefits of the lodging establishment rules outweigh any costs incurred by the Department, county agencies, and owners of lodging establishments. The Department believes that the rules significantly benefit the counties, owners of lodgings establishments, and the public.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. The Department did not receive any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes. The Department indicates that the rules are clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes. The Department indicates that the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes. The Department indicates that the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Department states that the rules are enforced as written.

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

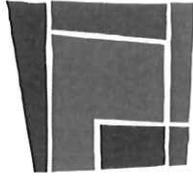
The Department indicates that there are no corresponding federal laws to these rules.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Department states that the rules do not require the issuance of a permit, license, or agency authorization. The Department indicates that pursuant to A.R.S. § 36-136(E), it delegates its inspection authority to local health departments and environmental service departments, with the exception of Apache county. The Department states that local jurisdictions with delegated inspection authority may issue permits under their own authority.

11. **Conclusion**

Council staff finds that the Department submitted a report that meets the requirements of A.R.S. § 41-1056. Council staff recommends approval of this report.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

February 25, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Esq., Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Department of Health Services, 9 A.A.C. 8, Article 13, Five-Year-Review Report

Dear Ms. Sornsin:

Please find enclosed the Five-Year-Review Report from the Arizona Department of Health Services (Department) for 9 A.A.C. 8, Article 13, Lodging Establishments, which is due on February 28, 2022.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Vanessa Gonzales at Vanessa.Gonzales@azdhs.gov or 602-542-6330.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert Lane', written over a circular scribble.

Robert Lane
Director's Designee

RL:vg

Enclosures

Douglas A. Ducey | Governor Don Herrington | Interim Director

150 North 18th Avenue, Suite 500, Phoenix, AZ 85007-3247 P | 602-542-1025 F | 602-542-1062 W | azhealth.gov

Health and Wellness for all Arizonans



Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 8. Department of Health Services – Food, Recreational, And Institutional Sanitation

Article 13. Lodging Establishments

February 2022

1. Authorization of the rule by existing statutes

Authorizing statutes: A.R.S. §§ 36-136(A)(4) through (7) and (G)

Implementing statutes: A.R.S. §§ 36-136(I)(8) and 36-601

2. The objective of each rule:

Rule	Objective
R9-8-1301	To define terms used in the Article so a reader can consistently interpret the requirements.
R9-8-1302	To establish what the Article does not apply to, notify that a violation of the Article is a public nuisance and define how inspections of lodging establishments are to be conducted.
R9-8-1303	To specify bathroom, toilet alternative, and shower room requirements for a lodging establishment.
Table 13.1	To specify bathroom and shower room management health and safety requirements.
R9-8-1304	To specify the requirements for common areas found within lodging establishments.
R9-8-1305	To establish requirements to ensure that the lodging establishment’s potable water supply is clean, easy to access, properly maintained, and sufficient to supply the maximum number of persons occupying the lodging establishment.
R9-8-1306	To establish sewage disposal requirements to ensure the lodging establishment is maintained in a sanitary manner and operated in compliance with requirements in 18 A.A.C. 9, Articles 3 and 7.
R9-8-1307	To establish standards and locations for refuse-disposal equipment, and the criteria to determine an appropriate refuse-disposal method.
R9-8-1308	To establish requirements for operating and maintaining a lodging unit in a clean and sanitary manner.

3. Are the rules effective in achieving their objectives?

Yes X No __

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation

4. **Are the rules consistent with other rules and statutes?** Yes X No

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation

5. **Are the rules enforced as written?** Yes X No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency’s proposal for resolving the issue.

Rule	Explanation

6. **Are the rules clear, concise, and understandable?** Yes X No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No X

If yes, please fill out the table below:

Rule	Explanation

8. **Economic, small business, and consumer impact comparison:**

A.R.S. § 36-136(I)(8) requires the Department to adopt rules that “[d]efine and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for . . . motels, tourist courts . . . and hotels.” The rules are also required to prescribe “minimum standards for preparing food in a community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and

disposal and water supply for . . . motels, tourist courts . . . and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules.” To implement A.R.S. § 36-136(I)(8) for hotels, motels, and tourist courts, the Department adopted rules at 9 A.A.C. 8, Article 13. The rules in Article 13 prescribe measures necessary to ensure that hotels, motels, and tourist courts are built, operated, and maintained in a sanitary manner, and specifically provide minimum standards for inspection, dwelling units, water supply, sewage disposal, sanitation facilities, refuse, and waste disposal. The Department revised the rules in 2019, which included changing the name of Article 13 to “Lodging Establishments.”

The Department, pursuant to A.R.S. § 36-136(E), has delegated its lodging establishment inspection and abatement authority under A.R.S. § 36-136(I)(8) to the local health departments and environmental service departments, except Apache County. These departments use the rules while conducting annual and complaint inspections of lodging establishments. Arizona lodging establishments are routinely inspected for general sanitation practices including, but not limited to, garbage and trash removal, sewage connections, and water and wastewater. During fiscal year 2021, 1,418 lodging establishments were operating in Arizona. County sanitarians conducted 1,037 regular inspections, 199 complaint-based inspections, and 12 enforcement actions in these establishments. Additionally, in fiscal year 2021, the Department did not conduct any lodging establishment regular or complaint-based inspections.

With the 2019 rulemaking, the rules in Article 13 were revised to address matters identified in the 2017 five-year-review report for the hotel, motels, and tourist courts rules, and other changes were made to improve efficiency and effectiveness of the rules. The Department completed an EIS when it revised the rules in 2019. The stakeholders for the 2019 rulemaking were identified in the EIS as the Department; county agencies acting as regulatory authorities; owners of hotels, motels, and tourist courts; and the public. The annual costs and revenues were designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000. Costs and benefits were listed as significant when meaningful or important, but not readily subject to quantification. The EIS stated that the Department anticipated the following costs/benefits for the identified stakeholders:

- The Department was expected to incur a moderate cost to complete the 9 A.A.C. 8, Article 13, rulemaking and for providing technical assistance to counties and owners of lodging establishments related to the rulemaking;
- The county agencies were expected to incur up to a moderate cost to provide training and technical support to employees and owners of lodging establishments;
- The owners of lodging establishments were expected to incur a minimal cost related to new requirements for windows and grounds; and
- The public was not expected to incur any costs.

With the 2019 rulemaking the Department believed the benefits of having the new lodging establishment rules outweighed any costs incurred by the Department, county agencies, and owners of a lodging establishment.

Specifically, the Department believed that the revised rules would significantly benefit the counties, owners of lodging establishments, and the public because the rules were more effective and understandable and reduced regulatory burdens.

The Department believes that the economic impact of the 9 A.A.C. 8, Article 13, rules is as estimated in the EIS and that the benefit of the rules continue to outweigh any associated costs.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No X

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

Yes, the Department completed a rulemaking in response to the Department's 2017 five-year-review report, with the Notice of Final Rulemaking approved by the Governor's Regulatory Review Council on March 5, 2019 with an immediate effective date. The new rules became effective on March 6, 2019, when submitted to the Office of the Secretary of State.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The rules are designed to prevent conditions that would negatively affect public health and are used while conducting annual and compliant inspections of lodging establishments. Without the rules, conditions dangerous to the public health would not be detected and mitigated. For these reasons, the Department has determined that the probable benefits of the rules outweigh their costs and that the rules provide the least burden and cost to achieve the underlying regulatory objective.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

The rules are not related to any federal laws.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The rules do not require the issuance of a regulatory permit, license, or agency authorization; however, the Department, pursuant to A.R.S. § 36-136(E) delegates its inspection authority to local health departments and

environmental service departments, except Apache County. Local health departments and environmental departments holding such a delegation issue permits under their own respective authority.

14. Proposed course of action

If possible, please identify a month and year by which the agency plans to complete the course of action.

Due to the recent revision of the rules and because the Department is unaware of any health, safety, or other urgent issues with the rules, the Department does not intend to conduct any rulemaking activities related to the rules. If any such issues arise, the Department will reevaluate whether a rulemaking is necessary.

TITLE 9. HEALTH SERVICES

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES

FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

ARTICLE 13. LODGING ESTABLISHMENTS

2019 ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT
TITLE 9. HEALTH SERVICES
CHAPTER 8: FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION
ARTICLE 13. LODGING ESTABLISHMENTS

1. An identification of the rulemaking:

According to Arizona Administrative Rules and Regulations (copyright 1975), the first filing of the hotels, motels and tourist courts rulemaking occurred prior to 1976. The rules have not been amended. In June 2002, Sections R9-8-1311 and R9-8-1315 were allowed to expire. Section R9-8-1313 was allowed to expire in June of 2007. Arizona Administrative Code does not include an effective date for the hotels, motels, and tourist courts rules and there is no economic, small business, and consumer impact statement (EIS) on file because it was not required at the time the rules were adopted. With the exception of renumbering, the statutory authorities for the rules have not changed since adopted. A.R.S. § 36-136(I)(8) requires the Department to create rules related to health and sanitation for various-specific aspects of lodging establishments, including food preparation in community kitchens; sewage disposal; garbage and trash collection, storage, and disposal; water supply; and inspections. Additionally, A.R.S. § 36-601 requires the Department to take action in response to “any person who is maintaining a nuisance or engaging in any practice contrary to the health laws of the state.” To implement A.R.S. 36-136(I)(8) for hotels, motels, and tourist courts, the Department adopted rules at 9 A.A.C. 8, Article 13. The twelve rules in Article 13 prescribe measures necessary to ensure that hotels, motels, and tourist courts are operated and maintained in a sanitary manner and specifically provide minimum standards for water supply, sewage disposal, refuse management, and community kitchens.

The Department received an exception from the Governor’s rulemaking moratorium, established by Executive Order 2017-02, and amended the rules to address matters identified in its 2017 five-year-review report for hotels, motels, and tourist courts and to make other changes to improve efficiency and effectiveness of the rules. During the regular rulemaking process, the Department solicited comments from stakeholders about how the rules may be improved. The Department retitled Article 13 to “Lodging Establishments.” The amendments will conform to rulemaking format and style requirements of the Governor’s Regulatory Review Council and the Office of the Secretary of State.

2. Identification of the persons, who will be directly affected by, bears the costs of, or directly benefits from the rules:

- a. The Department,
- b. County agencies,

- c. Owners of lodging establishments, and
- d. The public.

3. Cost/benefit analysis:

This analysis covers costs and benefits associated with the rule changes and no new FTEs are required due to this rulemaking. Annual cost and revenue changes are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000 in additional costs or revenues. Costs and benefits are listed as significant when meaningful or important, but not readily subject to quantification.

Description of Affected Groups	Description of Effect	Increased Cost/ Decreased Benefit	Decreased Cost/ Increased Benefit
A. State and Local Government Agencies			
Department	Resources may be needed to amend and promulgate new rules Resources may be needed for administrative support to provide technical assistance Increases effectiveness and clarity of the rules by: <ul style="list-style-type: none"> – Removing/amending antiquated terms and outdated citations – Adding more and clearer definitions – Updating water supply requirements – Adding requirements for exemptions, common area management, including swimming pools and spas – Removing requirements for windows, grounds, and inspections – Simplifying bathroom, and shower room requirements 	Minimal-to-moderate Minimal-to-moderate None	None None Significant
County agencies	Increases effectiveness and clarity of the rules Resources may be needed for administrative support to provide technical assistance The rules provide for inspections	None Minimal-to-moderate None	Significant None None

B. Privately Owned Businesses			
Owners of lodging establishments	Adds exemptions from rules	None	Significant
	Removes requirements for windows and grounds	None-to-minimal	None-to-minimal
	Updates water supply requirements	None-to-minimal	Significant
	Simplifies requirements for common areas, including community kitchens, swimming pools, and spas	None	None-to-moderate
	Simplifies bathroom, and shower room requirements	None	Significant
	Increases effectiveness and clarity of the rules	None	Significant
C. Consumers			
The public	Increases effectiveness and clarity of the rules	None	Significant

Through delegation agreements with Arizona’s counties, the Department and county agencies ensure minimum standards for the preparation of food in community kitchens, adequacy of sewage disposal, garbage and trash collection, storage and disposal, and water supply for lodging establishments; and provide for inspection of hotel, motel, and tourist court premises; and for abatement as public nuisances of any premises or facilities that do not comply with the rules. The Department and environmental health sanitarians employed by county agencies use the rules in 9 A.A.C. 8, Article 13 in conjunction with county codes and ordinances to conduct inspections of hotels, motels, and tourist courts and ensure minimum standards are met.

The Department

The Department anticipates incurring minimal-to-moderate costs for the resources necessary to complete the Article 13 rulemaking. For example, the Department conducted multiple stakeholder meetings during the rulemaking process to ensure awareness and participation from affected persons and may provide technical assistance related to inquiries about the new Article 13 rules. The Department also anticipates receiving a significant benefit from rules that are more effective and understandable. The rules were amended to change and remove passive, outdated, and ambiguous language; update citations; add more and clearer definitions; update water supply requirements; remove requirements for windows, grounds, and inspections; and simplify requirements for common areas, bathrooms, and shower rooms; and add requirements for pools and spas in new common area management rule. The new rules also provide exemptions for and add requirement for inspections. Additionally, the rules were consolidated and amended to make them consistent with rules in other

Chapter 8 Articles. The changes are consistent with matters identified in the 2017 five-year-review report. The Department believes the benefit provided by the rulemaking is greater than the Department's cost.

County agencies

The Department delegates authority to the counties to regulate hotels, motels, and tourist courts within their jurisdictions. County agencies permitted 1,367 lodging establishments in fiscal year 2018; a small decrease from the 1,372 lodging establishments reported in 2017. County agencies also conducted 1,431 routine inspections, 210 complaint investigations, and initiated 25 enforcement actions. The Department anticipates that county agencies will receive a significant benefit from new rules that are more effective, clear, and understandable. The new rules increase clarity and understandability by removing requirements for windows, grounds, and inspections and providing simplified requirements for common areas, including community kitchens, pools and spas. Water supply requirements have also been updated. Likewise, removing antiquated language and amending outdated citations increases the new rules effectiveness and benefits county agencies. For example, R9-8-1335 contains a reference to 9 A.A.C. 8, Article 2 regarding the "water supply system." However, the information regarding "water supply system" has since been recodified to A.A.C. Title 18, Chapter 4, Article 2, State Drinking Water Regulations.

Additionally, the Department expects most county agencies, depending on the county, may incur a minimal-to-moderate cost increase for administrative support to provide technical assistance to employees and lodging establishment owners. However, the Department anticipates that county agencies may also receive a significant benefit from new rules, which changed the Article's title to "lodging establishment," clearly defines "lodging establishment," and specifies which lodging establishments the rules do not apply to. In the July 2017 delegation agreement, Apache County elected not to include hotels, motels, and tourist courts, and for that, reason is not affected by this rulemaking.

Owners

The Department believes the rulemaking will provide a significant benefit to owners of both new and existing lodging establishments because owners will no longer have to comply with old requirements for plumbing, drinking water, and food service. Owners will also benefit from having a new requirement that clarifies establishments that Article 13 does not apply too; and clarifies requirements for water supply, bathrooms, shower rooms, and common areas, including community kitchens. A new requirement for swimming pools or spas is unlikely to impact lodging establishments, since the rule requires owners to ensure compliance with 9 A.A.C. 18, Article 8, which has been mostly effective since 1984 and lodging establishments that provide swimming pools and spas are already required to comply. The Department believes that the requirement for testing potable water may cause a small number of lodging establishments to incur a minimal cost, if at all.

The Department expects that most lodging establishments have a public water system; and for those that do not have a public water system, the testing process requires minor administration, water samples and test results may be sent by mail, and the cost of testing is nominal. Lastly, the Department believes that new rules that no longer contain antiquated terms and outdated citations increases effectiveness of the rules and should provide a significant benefit to owners' ability to read, understand, and apply the rules.

The public

The Department believes that the public will not incur any costs as a result of this rulemaking and may receive a significant benefit from more effective, clear, and understandable rules. The public may receive a significant monetary saving if owners, whose costs decrease as a result of the rules, pass some saving along to lodgers.

Overall, the Department believes that the rulemaking provides a substantial benefit to affected persons compared to any increased costs.

4. A general description of the probable impact on private and public employment in business, agencies, and political subdivisions of this state directly affected by the rulemaking:

The Department does not expect public or private employment in the state to be affected by the rulemaking.

5. A statement of the probable impact of the rules on small business:

a. An identification of the small business subject to the rules:

Small businesses include private lodging establishment owners.

b. The administrative and other costs required for compliance with the rules:

A summary of the administrative effects of the rulemaking is given in the cost/benefit analysis in Paragraph (3).

c. A description of the methods that the agency may use to reduce the impact on small businesses:

The Department knows of no other methods to further reduce the impact on small businesses.

d. The probable costs and benefits to private persons and consumers who are directly affected by the rules:

A summary of the effects of the rulemaking to private persons and consumers is given in the cost and benefit analysis in Paragraph (3).

6. A statement of the probable effect on state revenues:

The Department does not expect the rules to have an effect on state revenues.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking:

The Department has determined that there are no less intrusive or less costly alternatives for achieving the purpose of the rule.

8. A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data:

Not applicable.

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

ARTICLE 13. LODGING ESTABLISHMENTS

R9-8-1301. Definitions

In this Article, unless otherwise specified:

1. "Bathroom" means a structure or room that contains at least one toilet or urinal.
2. "Bedding" has the same meaning as in A.R.S. § 36-796.
3. "Clean" means free from dirt or debris.
4. "Common area" means any area of a lodging establishment, excluding areas within a lodging unit, that is provided by the lodging establishment for general use.
5. "Community kitchen" means a structure or room, excluding areas within a lodging unit, that is provided by a lodging establishment for preparing food.
6. "Compensation" means money or other consideration, including goods, services, vouchers, time, government or public expenditures, government or public funding, or another benefit that is received as payment.
7. "Distribution system" has the same meaning as in A.A.C. R18-4-103(B).
8. "Easily cleanable" means a characteristic of a surface that allows effective removal of dirt and debris by normal cleaning methods based on the material, design, construction, and installation of the surface.
9. "Faucet" means a fixture connected to a distribution system that provides and regulates the flow of potable water.
10. "Fixture" means an attachment to a structure.
11. "Food" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for human consumption.
12. "Human excreta" means fecal and urinary discharges and includes any waste that contains this material.
13. "Lavatory" means a sink or a basin with a faucet that supplies potable water and with a drain connected to a sewage collection system.
14. "Lodger" means the same as "transient" in A.R.S. § 42-5070(F).
15. "Lodging establishment" or "hotels, motels, or tourist courts" specified in A.R.S. § 36-136(I)(8) is defined in this Article to mean a place or portion of a place that offers two or more lodging units for lodgers to use in exchange for compensation, if:
 - a. The lodging units are located on a single plot of land,
 - b. Two or more lodging units are offered by the same owner or lessee, and
 - c. The lodging units are offered for a lodger to use for less than 30 consecutive days.
16. "Lodging unit" means the total space offered for overnight use as a single unit to an individual lodger or party of lodgers, if the space includes:
 - a. Bedding;
 - b. Sleeping material; and
 - c. The following:
 - i. A structure or room that has 3 or more sides and a top; or
 - ii. A mobile home, house trailer, recreational vehicle as defined in A.R.S. § 33-2102, houseboat, or other similar structure at a fixed location.
17. "Non-absorbent" means incapable of being penetrated by liquid, such as a material coated or treated with rubber, plastic, or other sealing substance.
18. "Owns" means to have the right to possess, use, and convey the interest.
19. "Person" means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character or another agency.
20. "Potable water" means water safe for human consumption that meets the requirements of 18 A.A.C. 4 or satisfies the requirements in R9-8-1305(4).
21. "Public health nuisance" means the activities or conditions dangerous to public health that are be subject to A.R.S. § 36-601.
22. "Refuse" has the same meaning as in A.A.C. R18-13-302.
23. "Refuse container" means a receptacle that is capable of being moved and is used for refuse storage.
24. "Regulatory authority" means
 - a. The Department; or
 - b. Under delegation, 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.
25. "Responsible party" means the person who owns a lodging establishment or a designee of a person who owns the lodging establishment.
26. "Sanitary" means free from filth, bacteria, viruses, mold, and fungi.
27. "Sewage" has the same meaning as in A.A.C. R18-9-101.
28. "Sewage collection system" has the same meaning as in A.A.C. R18-9-101.

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES - FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

- 29. "Shower head" means a fixture connected to a distribution system that allows potable water to fall on a user's body.
- 30. "Shower room" means a structure or a room that contains at least one shower head and at least one floor drain.
- 31. "Sleeping material" means any of the following:
 - a. A sheet,
 - b. A pillow,
 - c. A pillowcase,
 - d. A blanket, or
 - e. A sleeping bag.
- 32. "Stored" means holding refuse before the refuse is disposed of according to A.A.C. R18-13-311 and R18-13-312.
- 33. "Toilet" means a water-flushed, chemical-flushed, or no-flush bowl for the disposal of human excreta.
- 34. "Urinal" means a water-flushed, chemical-flushed, or no-flush upright basin used for urination only.
- 35. "Utensil" means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 763, effective March 6, 2019 (Supp. 19-1).

R9-8-1302. General Provisions

- A. This Article does not apply to:
 - 1. The activities listed in A.R.S. § 42-5070(B);
 - 2. A lodging establishment located on federal or tribal land within the state;
 - 3. A lodging establishment that:
 - a. Is owner occupied, and
 - b. Has no more than six lodging units;
 - 4. A camping shelter as defined in R9-8-601(4); or
 - 5. A dormitory on the campus of a college or university.
- B. A violation of this Article is a public health nuisance and may be subject to abatement pursuant to A.R.S. § 36-602.
- C. Inspections of lodging establishments shall be conducted in accordance with A.R.S. § 36-136(I)(8) by the regulatory authority.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 763, effective March 6, 2019 (Supp. 19-1).

R9-8-1303. Bathroom and Shower Room Management

- A. A responsible party shall ensure that each lodger has access to a toilet, a lavatory, and a shower room, located either:
 - 1. Within the lodging unit the lodger is occupying or
 - 2. Within 200 feet from an entrance to the lodging unit.
- B. A responsible party shall ensure that each bathroom and shower room provided by the lodging establishment meets the requirements listed in Table 13.1.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 763, effective March 6, 2019 (Supp. 19-1).

Table 13.1. Bathroom and Shower Room Management

Requirement	Bathroom	Shower Room
Is clean and sanitary	X	X
Is ventilated by an openable window, air conditioning, or other mechanical device	X	X
Has toilet paper	X	
Is maintained free from public health nuisance and free from insect and vermin infestation	X	X
Has refuse containers as specified in R9-8-1307(1)	X	X
Has surfaces that are easily cleanable, sanitary and free from gaps other than ventilation	X	X
Has single use soap or soap inside a dispenser	X	X
Has floors and walls of a non-absorbent material	X	X

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES - FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

Has single-use paper towels OR Hand dryers OR Cloth towels that are machine washed with detergent and machine dried before use by each separate individual or group of individuals who stay in a lodging unit	X	
Has cloth towels, which are machine washed with detergent and machine dried before use by each separate individual or group of individuals who stay in a lodging unit		X
Has a floor drain connected to a sewage collection system and, if built after the effective date of this Article, has floors that slope to the drain		X
Has potable water from all shower heads		X

Historical Note

Table 13.1 made by final rulemaking at 25 A.A.R. 763, effective March 6, 2019 (Supp. 19-1).

R9-8-1304. Common Area Management

A responsible party shall ensure that the following requirements are met:

1. Each common area:
 - a. Is clean and sanitary;
 - b. Is ventilated by an openable window, air conditioning, or other mechanical device;
 - c. Is maintained free from public health nuisance and free from insect and vermin infestation; and
 - d. Has refuse containers as specified in R9-8-1307(1).
2. Bedding and towels provided by the lodging establishment in each common area is:
 - a. Maintained in good-repair;
 - b. Clean and sanitary; and
 - c. Kept free of ectoparasites including bedbugs, lice, and mites.
3. A community kitchen provided by a lodging establishment complies with 9 A.A.C. 8, Article 1 if operating as a food establishment.
4. Any multi-use utensils and equipment provided by the lodging establishment are easily cleanable and either:
 - a. Are washed, rinsed, and made sanitary before use by each separate individual; or
 - b. A conspicuously located sign identifies which multi-use utensils and equipment provided by the lodging establishment are not washed, rinsed, and made sanitary before use by each separate individual.
5. A lodging establishment shall comply with 9 A.A.C. 8 Article 8, if within a common area, the lodging establishment provides a:
 - a. Natural bathing place as defined in A.A.C. R18-5-201,
 - b. Semi-artificial bathing place as defined in R9-8-801,
 - c. Spa as defined in A.A.C. R18-5-201, or
 - d. Swimming pool as defined in A.A.C. R18-5-201.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 763, effective March 6, 2019 (Supp. 19-1).

R9-8-1305. Water Supply

A responsible party shall ensure that the following requirements are met:

1. All water provided by the lodging establishment for human consumption is potable water.
2. Any source of water provided by the lodging establishment that is not potable is clearly identified with “not for human consumption” signage at each access point.
3. The potable water supply and distribution system provided by the lodging establishment is designed to provide sufficient quantity at a minimum pressure of 20 pounds per square inch at floor level at each bathroom, shower room, and permanent water fixture provided by the lodging establishment.
4. No lodging unit is more than 300 feet from a potable water source.
5. If water is hauled to the lodging establishment as a potable water supply, the water and transport shall meet the requirements of A.A.C. R18-4-214.
6. If potable water provided by the lodging establishment is not from a public water system as defined by 18 A.A.C. 4:
 - a. The potable water provided is tested prior to use with results of:
 - i. No coliform bacteria or other fecal indicator present, and
 - ii. Nitrate (as N) no greater than 10 mg/l.
 - b. The potable water provided is routinely monitored to determine:
 - i. The presence or absence of total coliform bacteria at least once every month of operation, and
 - ii. The concentration of nitrates at least once every three months.

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES - FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

- c. Water samples collected in accordance with this section shall be analyzed by a laboratory that is licensed by the Arizona State Laboratory Office of Laboratory Services and licensed according to 9 A.A.C. 14, Article 6.
- d. Records of water sample results analyzed in accordance with this section shall be:
 - i. Maintained at the lodging establishment for at least 12 months, and
 - ii. Made available to the Department upon request.
- e. Written notification must be provided to the regulatory authority within 24 hours when any water quality requirement listed in subsection (a) is out-of-compliance.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 763, effective March 6, 2019 (Supp. 19-1).

R9-8-1306. Sewage Disposal

A responsible party shall ensure that sewage and human excreta produced within the lodging establishment:

1. Does not create a public health nuisance; and
2. Is collected and disposed of by systems designed, constructed and operated in compliance with the requirements in 18 A.A.C. 9, Articles 3 and 7.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 763, effective March 6, 2019 (Supp. 19-1).

R9-8-1307. Refuse Management

A responsible party shall ensure that the following requirements are met:

1. The lodging establishment has conspicuously located refuse containers that are:
 - a. Constructed of non-absorbent material that is capable of withstanding expected use and remaining easily cleanable; and
 - b. Covered.
2. Refuse produced at the lodging establishment:
 - a. Does not create a public health nuisance; and
 - b. Is collected, stored, and disposed of according to 18 A.A.C. 13, Article 3.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 763, effective March 6, 2019 (Supp. 19-1).

R9-8-1308. Lodging Unit Management

A responsible party shall ensure that the following requirements are met:

1. Each lodging unit:
 - a. Is:
 - i. Clean and sanitary,
 - ii. Ventilated by an openable window, air conditioning, or other mechanical device, and
 - iii. Maintained free from public health nuisance and free from insect and vermin infestation.
 - b. Has refuse containers as specified in R9-8-1307(1).
 - c. Contains adequately sized sleeping material provided by a lodging establishment.
2. Bedding, sleeping material, and towels provided in a lodging unit are:
 - a. Maintained in good-repair;
 - b. Clean and sanitary; and
 - c. Kept free of ectoparasites including bedbugs, lice, and mites.
3. Cloth towels, sheets, and pillowcases provided in a lodging unit are machine washed with detergent and machine dried before use by each separate individual or group of individuals who stay in a lodging unit.
4. Multi-use utensils and equipment provided in a lodging unit meet the requirements in R9-8-1304(4).

Historical Note

New Section made by final rulemaking at 25 A.A.R. 763, effective March 6, 2019 (Supp. 19-1).

36-136. Powers and duties of director; compensation of personnel; rules; definitions

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
7. Prepare sanitary and public health rules.
8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real

9 A.A.C. 8, Article 13 Lodging Establishments – Statutory Authorities

property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

9 A.A.C. 8, Article 13 Lodging Establishments – Statutory Authorities

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

(a) Served at a noncommercial social event such as a potluck.

(b) Prepared at a cooking school that is conducted in an owner-occupied home.

(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of

9 A.A.C. 8, Article 13 Lodging Establishments – Statutory Authorities

this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-

9 A.A.C. 8, Article 13 Lodging Establishments – Statutory Authorities

183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

9 A.A.C. 8, Article 13 Lodging Establishments – Statutory Authorities

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

36-601. Public nuisances dangerous to public health

A. The following conditions are specifically declared public nuisances dangerous to the public health:

1. Any condition or place in populous areas that constitutes a breeding place for flies, rodents, mosquitoes and other insects that are capable of carrying and transmitting disease-causing organisms to any person or persons or any condition or place that constitutes a feral colony of

9 A.A.C. 8, Article 13 Lodging Establishments – Statutory Authorities

honeybees that is not currently maintained by a beekeeper and that poses a health or safety hazard to the public.

2. Any spoiled or contaminated food or drink intended for human consumption.

3. Any restaurant, food market, bakery or other place of business or any vehicle where food is prepared, packed, processed, stored, transported, sold or served to the public that is not constantly maintained in a sanitary condition.

4. Any place, condition or building that is controlled or operated by any governmental agency and that is not maintained in a sanitary condition.

5. All sewage, human excreta, wastewater, garbage or other organic wastes deposited, stored, discharged or exposed so as to be a potential instrument or medium in the transmission of disease to or between any person or persons.

6. Any vehicle or container that is used in the transportation of garbage, human excreta or other organic material and that is defective and allows leakage or spillage of contents.

7. The presence of ectoparasites such as bedbugs, lice, mites and others in any place where sleeping accommodations are offered to the public.

8. The maintenance of any overflowing septic tank or cesspool, the contents of which may be accessible to flies.

9. The pollution or contamination of any domestic waters.

10. The use of the so-called common drinking cup used for drinking purposes by more than one person. This paragraph does not apply to receptacles properly washed and sanitized after each service.

11. The presence of common towels for use of the public in any public or semipublic place unless properly washed and sanitized following each use.

12. Buildings or any parts of buildings that are in a filthy condition and that may endanger the health of persons living in the vicinity.

13. Spitting or urinating on sidewalks, or floors or walls of a public building or buildings used for public assemblage, or a building used for manufacturing or industrial purposes, or on the floors or platforms or any part of a railroad or other public conveyance.

14. The use of the contents of privies, cesspools or septic tanks or the use of sewage or sewage plant effluents for fertilizing or irrigation purposes for crops or gardens except by specific approval of the department of health services or the department of environmental quality.

15. The maintenance of public assemblage or places of assemblage without providing adequate sanitary facilities. Open surface privies are adequate sanitary facilities if they are outside populous areas and meet reasonable health requirements.

9 A.A.C. 8, Article 13 Lodging Establishments – Statutory Authorities

16. Hotels, tourist courts and other lodging establishments that are not kept in a clean and sanitary condition or for which suitable and adequate toilet facilities are not provided.

17. The storage, collection, transportation, disposal and reclamation of garbage, trash, rubbish, manure and other objectionable wastes other than as provided and authorized by law.

18. Water, other than that used by irrigation, industrial or similar systems for nonpotable purposes, that is sold to the public, distributed to the public or used in production, processing, storing, handling, servicing or transportation of food and drink and that is unwholesome, poisonous or contains deleterious or foreign substances or filth or disease causing substances or organisms.

19. The emission of mercaptan in a concentration level that causes endangerment to the health or safety of any considerable number of persons of a neighborhood or community.

20. The operation of an environmental laboratory in violation of chapter 4.3, article 1 of this title.

B. If the director has reasonable cause to believe from information furnished to the director or from investigation made by the director that any person is maintaining a nuisance or engaging in any practice contrary to the health laws of this state, the director shall promptly serve on that person by certified mail a cease and desist order requiring the person, on receipt of the order, promptly to cease and desist from that act. Within fifteen days after receipt of the order, the person to whom it is directed may request the director to hold a hearing. The director, as soon as practicable, shall hold a hearing, and if the director determines the order is reasonable and just and that the practice engaged in is contrary to the health laws of this state, the director shall order the person to comply with the cease and desist order.

C. If a person fails or refuses to comply with the order of the director, or if a person to whom the order is directed does not request a hearing and fails or refuses to comply with the cease and desist order served by mail under subsection B, the director may file an action in the superior court in the county in which a violation occurred, restraining and enjoining the person from engaging in further acts. The court shall proceed as in other actions for injunctions.

D. Notwithstanding subsection A, paragraph 19, the emission of mercaptan as a by-product of a pesticide is not a nuisance if applied according to state and federal restrictions.

E. Notwithstanding subsection A, paragraph 3, a restaurant that uses sawdust on the floors of its dining areas is not in violation of this section or local health department sanitary rules if the restaurant replaces the sawdust each day with clean sawdust and complies with applicable standards for fire safety.

GAME AND FISH COMMISSION
Title 12, Chapter 4, Article 6



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 1, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 11, 2022

SUBJECT: GAME AND FISH COMMISSION
Title 12, Chapter 4, Article 6, Rules of Practice Before the Commission

Summary

This Five Year Review Report (5YRR) from the Game and Fish Commission (Commission) relates to rules in Title 12, Chapter 4, Article 6, regarding Rules of Practice Before the Commission. The rules contain the practices and procedures for petitioning the Game and Fish Commission.

In the previous 5YRR for these rules, which the Council approved in March 2017, the Commission proposed to make several changes to the rules by June 2018. As indicated in Item 10 of this 5YRR, the Commission completed the prior proposed course of action via expedited rulemaking in February 2018.

Proposed Action

In this 5YRR, the Commission proposes to amend R12-4-609 (Commission Orders) as indicated in the report. The Commission plans to request an exception from the rulemaking moratorium by June 2022 and to submit a rulemaking to the Council by October 2023.

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes. The Commission cites both general and specific statutory authority for the rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Commission used the expedited rulemaking process to complete the last rulemaking on these rules and was not required to prepare an Economic, Small Business, and Consumer Impact Statement (EIS). However, the Commission anticipated the majority of the rulemaking would benefit persons regulated by the rule, members of the public and the Commission by clarifying rule language, creating consistency among existing Commission rules, reducing the burden on the regulated community where practical, implementing customer-service oriented processes, and allowing the Commission additional oversight where necessary. The rulemaking resulted in the estimated economic, small business, and consumer impacts as stated in the final expedited rulemaking package approved by G.R.R.C on February 6, 2018.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Commission indicates that there is no less intrusive or costly alternative method of achieving the purpose of the rules. The Commission stated that it would incur costs to implement the rule amendments but would not require any new full-time employees. The Commission indicates that the benefits of the rules outweigh the costs.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. The Commission did not receive any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes. The Commission states that the rules are clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes. The Commission states that the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes. The Commission states that the rules are effective in achieving their objectives. However, the Commission states that for R12-4-609 (Commission Orders), the

Commission states that it recently implemented limited entry angling and hunting events for aquatic wildlife, big game, game birds, and small game. The Commission recommends adding limited-entry permit-tags to the list of exemptions found in subsection (B) of this rule to make it more effective and provide the Commission more flexibility in offering limited-entry opportunities.

8. Has the agency analyzed the current enforcement status of the rules?

Yes. The Commission states that the rules are enforced as written.

9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

The Commission states that federal law is not applicable to these rules because they are based on state law.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The Commission indicates that the rules under review do not require a permit, license, or agency authorization.

11. Conclusion

Council staff finds that the Commission submitted a 5YRR that meets the requirements of A.R.S. § 41-1056. The Commission's proposed course of action timeline of submitting a rulemaking to the Council by October 2023 takes into account the Commission's own internal process to finalize a rulemaking to submit it to the Council. Council staff recommends approval of this report.



February 14, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Madam Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Five-year-Review Report: 12 A.A.C. 4, Article 6. Rules of Procedure Before the Commission

Dear Ms Sornsin:

Please find enclosed the Five Year Review Report of the Arizona Game and Fish Commission for 12 A.A.C. 4, Article 6. Rules of Procedure Before the Commission which is due on March 31, 2022.

The Arizona Game and Fish Commission hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Celeste Cook at (623) 236-7390 or at CCook@azgfd.gov.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ty E. Gray".

Ty E. Gray
Director

**TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION
ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION
FIVE-YEAR REVIEW REPORT**

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

For all rules within Article 6, the authorizing statute is A.R.S. § 17-231.

For each rule within Article 6, the implementing statutes are as follows:

R12-4-601. Definitions	A.R.S. §§ 17-231(A)(1), 41-1001, and 41-1092
R12-4-602. Petition for Rule or Review of Practice or Policy	A.R.S. §§ 17-231(B)(1) and 41-1033
R12-4-603. Written Comments on Proposed Rules	A.R.S. §§ 17-231(B)(1), 41-1003, and 41-1023
R12-4-604. Oral Proceedings Before the Commission	A.R.S. §§ 17-231(B)(1), 17-231(B)(12),41-1003, 41-1023
R12-4-605. Ex Parte Communication	A.R.S. §§ 17-231(A)(2), 41-1001, 41-1033, and 41-1092
R12-4-606. Standards for Revocation, Suspension, or Denial of a License	A.R.S. §§ 17-231(B)(1), 17-231(B)(12), and 17-340
R12-4-607. Proceedings for License Revocation, Suspension, or Denial of Right to Obtain a License, and Civil Damages	A.R.S. §§ 17-231(B)(1), 17-231(B)(12), 17-314, 17-340, 41-1003, and 41-1023
R12-4-608. Rehearing or Review of Commission Decisions	A.R.S. §§ 17-231(B)(1), 17-231(B)(12), 41-1001, 41-1092
R12-4-609. Commission Orders	A.R.S. §§ 17-231(B)(1)
R12-4-610. Petitions for the Closure of State or Federal Lands to Hunting, Fishing, Trapping, or Operation of Motor Vehicles	A.R.S. §§ 17-231(B)(1), 17-304, 17-452, and 41-1033
R12-4-611. Petition for Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy	A.R.S. §§ 17-231(B)(1) and Title 41, Chapter 6, Article 10

2. Objective of the rule, including the purpose for the existence of the rule.

R12-4-601. Petition for Rule or Review of Practice or Policy, 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 Article 6. The rule was adopted to facilitate consistent interpretation of the Commission's Article 6 rules.

R12-4-602. Petition for Rule or Rule Review, the objective of the rule is to establish the method and form a person shall use to petition the Arizona Game and Fish Commission to adopt, amend, or repeal a rule or review an agency

practice or policy. Under A.R.S. § 41-1033, all state agencies are required to establish the manner and form by which a person may petition the agency to request the making of a final rule or the review of an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule. The rule was adopted to meet this statutory mandate. The Director's Office, in coordination with the affected program, is responsible for facilitating the petition process. Since January 2017, the Commission has received nineteen petitions requesting the Commission amend or adopt a rule; and two petitions requesting a review of an existing agency practice. When a petition is received, the petition is placed on an agenda for an upcoming Commission meeting. The Community Engagement Administrator/Ombudsman or his designee assigns the petition to the appropriate program. The program evaluates the comments and suggestions provided in the petition and determines whether the suggested resolution meets the Department's mission and objectives, does not place an undue burden on the regulated community, is not discriminatory, and is permitted under statute. After this evaluation, the program makes a recommendation to the Commission to either accept or deny the petition. It is important to note, regardless of the Department's recommendation it is the Commission that makes the final decision in regards to accepting or denying a petition.

R12-4-603. Oral Proceedings Before the Commission, the objective of the rule is to establish the Department's operational process for oral proceedings held before the Commission. Under A.R.S. § 41-1023(F), each agency may make rules for the conduct of oral rulemaking proceedings. Those rules may include provisions calculated to prevent undue repetition in the oral proceedings. The rule was adopted to establish the requirements specific to an oral proceeding held by the Commission. The Director's Office is responsible for facilitating the oral proceeding process for rulemakings when held outside of an open Commission meeting. In October 2005, to reduce Department costs and streamline the rulemaking process the Department began holding oral proceedings for open rulemakings at regularly scheduled Commission meetings. At these meetings, members of the public are provided with an opportunity to speak to the Commission (in person or virtually). When members of the public provide comment for an item that is not listed on the agenda, no discussion or action can be taken by the Commission. However, the Commission may direct the Department to include the item on a future Commission meeting agenda for further discussion.

R12-4-604. Ex Parte Communication, the objective of the rule is to establish communication prohibitions during the course of Commission decision processes. The rule was adopted to prevent one party from having an undue advantage by having independent access to the Commission. Persons receiving an ex parte communication are required to place the ex parte communication on the public record and provide copies of such communication to all interested parties to the proceeding.

R12-4-605. Standards for Revocation, Suspension, or Denial of a License, the objective of the rule is to establish standards for the revocation, suspension, or denial of a Department-issued license. Under A.R.S. § 17-340, the Commission may, after a public hearing, revoke, or suspend a license issued to any person under Title 17 and deny that person the right to secure another license to take or possess wildlife. This includes hunting and fishing

licenses, special licenses issued under Article 4, and taxidermy, fur dealer, and license dealer licenses. Because the statute is permissive in regards to this authority, the rule was adopted to establish standards designed to ensure consistent interpretation of A.R.S. § 17-340. Currently, the Commission considers license revocation, suspension, and denial hearings at open Commission meetings on the schedule approved by the Commission. The Department's Law Enforcement Branch, in coordination with the Director's Office, the Department's Attorney's General and County Attorney's Office, is responsible for facilitating the hearing process. On an annual basis, the Commission holds approximately 49 revocation hearings. The Commission and each respondent (person whose fishing, hunting, guiding, or trapping license is being considered for suspension, revocation, and/or denial) are provided with copies of the original court docket and case report prepared by the law enforcement officer and all other pertinent materials. Each of the respondents is legally noticed for the Department hearing. It is important to note, regardless of the Department's recommendation it is the Commission that makes the final decision in regards to the revocation, suspension, or denial of any Department-issued license.

R12-4-606. Proceedings for License Revocation, Suspension, or Denial of Right to Obtain a License, and Civil Damages, the objective of the rule is to establish the proceedings for license revocation, suspension, or denial of Department issued licenses and the assessment of civil damages. Under A.R.S. § 17-340, the Commission may, after a public hearing, revoke, or suspend a license issued to any person under Title 17 and deny that person the right to secure another license to take or possess wildlife. This includes hunting and fishing licenses, special licenses issued under Article 4, and taxidermy, fur dealer, and license dealer licenses. Under A.R.S. § 17-314, the commission may bring a civil action in the name of the state against any person unlawfully taking, wounding or killing, or unlawfully in possession of certain wildlife. The rule was adopted to establish standards designed to ensure consistent interpretation of A.R.S. §§ 17-314 and 17-340. Currently, the Commission considers license revocation, suspension, and denial hearings and civil proceedings at open Commission meetings on the schedule approved by the Commission. The Department's Law Enforcement Branch, in coordination with the Director's Office, the Department's Attorney's General and County Attorney's Office, is responsible for facilitating the proceeding process. The Commission and each respondent (person whose fishing, hunting, guiding, or trapping license is being considered for suspension, revocation, and/or denial) are provided with copies of the original court docket and case report prepared by the law enforcement officer and all other pertinent materials. Each of the respondents is legally noticed for the Department hearing. It is important to note, regardless of the Department's recommendation it is the Commission that makes the final decision in regards to the revocation, suspension, or denial of any Department-issued license.

R12-4-607. Rehearing or Review of Commission Decisions, the objective of the rule is to establish the requirements for rehearing or review of a Commission decision. Under A.R.S. § 41-1092.09, a party may file a motion for rehearing or review within thirty days after service of the final administrative decision. A rehearing follows a Commission decision to revoke or suspend a person's license. A review is a Commission hearing on the Department's decision to deny a license issued under Title 17 to a person. The rule was adopted to establish standards designed to ensure consistent interpretation of A.R.S. § 41-1092.09. The Department's Law

Enforcement Branch, in coordination with the Director's Office, the Department's Attorney's General and County Attorney's Office, is responsible for is responsible for facilitating the rehearing process. The Commission and each respondent (person whose fishing, hunting, guiding, or trapping license is being considered for suspension, revocation, and/or denial) are provided with copies of the original court docket and case report prepared by the law enforcement officer and all other pertinent materials. Each of the respondents is legally noticed for the Department hearing. It is important to note, regardless of the Department's recommendation it is the Commission that makes the final decision in regards to the revocation, suspension, or denial of any Department-issued license.

R12-4-609. Commission Orders, the objective of the rule is to establish the public process for the consideration of a Commission Order. Under A.R.S. § 17-234, the Commission, shall by order, open, close or alter seasons and establish bag and possession limits for wildlife, but a Commission Order to open a season shall be issued not less than ten days prior to the opening date. The rule was adopted to establish standards designed to ensure consistent interpretation of A.R.S. § 17-234.

R12-4-610. Petitions for the Closure of State or Federal Lands to Hunting, Fishing, Trapping, or Operation of Motor Vehicles, the objective of the rule is to establish the requirements for submitting a petition for the closure of state or federal lands to hunting, fishing, trapping, or operation of motor vehicles. Since January 2017, the Commission has received four petitions requesting the closure of state or federal lands. Under A.R.S. § 17-452, the Commission may, with the concurrence of the land management agency involved and after a public hearing, order such area closed to motor vehicles for not more than five years from the date of such closure, provided that all roads in such area shall remain open unless specifically closed. The rule was adopted to meet this statutory mandate. A person is required to submit a petition using a form furnished by the Department, which streamlines the process and ensures consistency among petition requests. It is important to note, the petition process is not required when a landowner wants to close their property to hunting, fishing, trapping, or operation of motor vehicles. The Department's Development Branch, in coordination with the Director's office, the Department's Attorney's General, and the applicable land management agency, is responsible for scheduling oral proceedings for state or federal land closure petitions. Within five days of receiving a petition, the petition is reviewed to ensure it meets the requirements established under R12-4-610. When a petition is received 60 calendar days prior to a scheduled Commission meeting, the petition is placed on the agenda for that meeting. Petitions received less than 60 calendar days prior to a scheduled Commission meeting, are placed on the agenda of the next regularly scheduled Commission meeting. The Department evaluates the land closure petition and considers the impact the state or federal land closure would have on the hunting and fishing community. The evaluation process includes working with the petitioner, consulting with regional staff and the land management agency's staff, conducting site inspections, and discussing possible alternatives with the petitioner. If an agreement cannot be reached, the Department makes a recommendation to the Commission to either accept or deny the petition. It is important to note, regardless of the Department's recommendation it is the Commission that makes the final decision in regards to state and federal land closures.

R12-4-611. Petition for Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy, the objective of the rule is to establish the method and form a person shall use to petition the Arizona Game and Fish Commission when no remedy is provided in statute, rule, or policy. The rule was adopted to provide a method in which a person could petition the Commission for a resolution. A person is required to submit a petition using a form furnished by the Department, which streamlines the process and ensures consistency among petition requests. The Director's Office, in coordination with the affected program, is responsible for facilitating the petition process. Since January 2017, the Commission has received ## petitions requesting the Commission provide an administrative remedy for a matter not addressed in statute, rule, or policy. When a petition is received, the petition is placed on an agenda for an upcoming Commission meeting. The Community Engagement Administrator/Ombudsman or his designee assigns the petition to the appropriate program. The program evaluates the comments and suggestions provided in the petition and determines whether the suggested resolution meets the Department's mission and objectives, does not place an undue burden on the regulated community, is not discriminatory, and is permitted under statute. After this evaluation, the program makes a recommendation to the Commission to either accept or deny the petition. It is important to note, regardless of the Department's recommendation it is the Commission that makes the final decision in regards to accepting or denying a petition.

3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.

At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern, etc. Responses indicate the rules are understandable and applicable. In addition, the Department has not received any written comments from the public in regards to the rules. The Department believes this data indicates the following rules are effective.

R12-4-601. Definitions

R12-4-602. Petition for Rule or Review of Practice or Policy

R12-4-603. Written Comments on Proposed Rules

R12-4-604. Oral Proceedings Before the Commission

R12-4-605. Ex Parte Communication

R12-4-606. Standards for Revocation, Suspension, or Denial of a License

R12-4-607. Proceedings for License Revocation, Suspension, or Denial of Right to Obtain a License, and Civil Damages

R12-4-608. Rehearing or Review of Commission Decisions

R12-4-610. Petitions for the Closure of State or Federal Lands to Hunting, Fishing, Trapping, or Operation of Motor Vehicles

R12-4-611. Petition for a Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy

For R12-4-609. Commission Orders, the Commission recently implemented limited entry angling and hunting

events for aquatic wildlife, big game, game birds, and small game. The Department recommends adding limited-entry permit-tags to the list of exemptions provided under subsection (B) to make the rule more effective and provide the Commission with greater flexibility in offering these limited-entry opportunities.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rules are consistent with and are not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17, Title 41, and A.A.C. Title 12, Chapter 4.

A.R.S. § 17-340(G) authorizes the Commission to use the services of the Office of Administrative Hearings to conduct hearings and to make recommendations to the Commission. In addition to Title 41, the Office of Administrative Hearings adheres to the requirements of R2-19-105. Ex Parte Communications.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The following rules are enforced as written and the Department is not aware of any problems with the enforcement of the rules.

R12-4-601. Definitions

R12-4-602. Petition for Rule or Review of Practice or Policy

R12-4-603. Written Comments on Proposed Rules

R12-4-604. Oral Proceedings Before the Commission

R12-4-605. Ex Parte Communication

R12-4-606. Standards for Revocation, Suspension, or Denial of a License

R12-4-607. Proceedings for License Revocation, Suspension, or Denial of Right to Obtain a License, and Civil Damages

R12-4-608. Rehearing or Review of Commission Decisions

R12-4-609. Commission Orders

R12-4-610. Petitions for the Closure of State or Federal Lands to Hunting, Fishing, Trapping, or Operation of Motor Vehicles

R12-4-611. Petition for a Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy

6. Clarity, conciseness, and understandability of the rule.

The following rules are clear, concise, and understandable. The rules are logically organized and generally written in the active voice so they will be understood by the general public.

- R12-4-601. Definitions
- R12-4-602. Petition for Rule or Review of Practice or Policy
- R12-4-603. Written Comments on Proposed Rules
- R12-4-604. Oral Proceedings Before the Commission
- R12-4-605. Ex Parte Communication
- R12-4-606. Standards for Revocation, Suspension, or Denial of a License
- R12-4-607. Proceedings for License Revocation, Suspension, or Denial of Right to Obtain a License, and Civil Damages
- R12-4-608. Rehearing or Review of Commission Decisions
- R12-4-609. Commission Orders
- R12-4-610. Petitions for the Closure of State or Federal Lands to Hunting, Fishing, Trapping, or Operation of Motor Vehicles
- R12-4-611. Petition for a Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy

7. Summary of written criticisms of the rule received in last five years including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.

No written criticisms were received.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

The rulemaking resulted in the estimated economic, small business, and consumer impacts as stated in the final expedited rulemaking package approved by G.R.R.C. on February 6, 2018.

The Commission used the expedited rulemaking process to complete the last rulemaking and was not required to prepare an estimated economic, small business, and consumer impact statement. However, the Commission anticipated the majority of the rulemaking would benefit persons regulated by the rule, members of the public, and the Department by clarifying rule language, creating consistency among existing Commission rules, reducing the burden on the regulated community where practical, implementing customer-service-oriented processes, and allowing the Department additional oversight where necessary. The Commission anticipated the rulemaking would result in little or no impact to political subdivisions of this state; private and public employment in businesses, agencies or political subdivisions; or state revenues. The Commission also determined that there were no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. The Commission

anticipated the Department would incur costs to implement the proposed amendments but would not require any new full-time employees. The Commission determined that the benefits of the rulemaking outweighed the costs.

9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

The Department did not receive any analyses for the following rules:

R12-4-601. Definitions

R12-4-602. Petition for Rule or Review of Practice or Policy

R12-4-603. Written Comments on Proposed Rules

R12-4-604. Oral Proceedings Before the Commission

R12-4-605. Ex Parte Communication

R12-4-606. Standards for Revocation, Suspension, or Denial of a License

R12-4-607. Proceedings for License Revocation, Suspension, or Denial of Right to Obtain a License, and Civil Damages

R12-4-608. Rehearing or Review of Commission Decisions

R12-4-609. Commission Orders

R12-4-610. Petitions for the Closure of State or Federal Lands to Hunting, Fishing, Trapping, or Operation of Motor Vehicles

R12-4-611. Petition for a Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

The Department completed the course of action indicated in the previous five-year review report as follows:

Notice of Rulemaking Docket Opening: 23 A.A.R. 2863, October 13, 2017.

Notice of Proposed Expedited Rulemaking: 23 A.A.R. 2840, October 13, 2017.

Public Comment Period: September 15, 2017 through October 15, 2017.

G.R.R.C. approved the Notice of Final Expedited Rulemaking at the January 30, 2018 Council Meeting.

Notice of Final Expedited Rulemaking: 23 A.A.R. 393, February 23, 2018.

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rules within Article 6 establish requirements for administrative procedures involving the Commission and ensure compliance with statutory mandates.

Rules within Article 6 establish petition requirements that allow any person to petition the Commission for a rule change; the closure of state or federal land to fishing, hunting, recreational shooting and off-highway vehicle use; or a remedy when none is provided in statute, rule, or Department policies. A person is required to submit a petition using a form furnished by the Department, which streamlines the process and ensures consistency among petition requests. The public benefits from a rule that establishes the process by which they may request changes to current rule, practice, or policy.

Rules within Article 6 establish requirements for written comments for proposed rules. Any person may submit written statements, arguments, data, and views on proposed rules that have been filed with the Secretary of State. The public benefits from a rule that establishes the requirements by which a person may participate in the rulemaking process. In addition, public comments aid the Department in evaluating the impact the proposed rules may have on persons regulated by the rule.

Rules within Article 6 allow the Director to grant a continuance on the Commission's behalf. The rule limits the Director's authority to two instances; a person may request additional continuances from the Commission after two continuances have been granted by the Director. The public benefits from a rule that establishes the process by which a person may speak to the Commission or request a continuance. The Department benefits from a rule that establishes an efficient process for conduct at any oral proceeding held by the Department.

Rules within Article 6 establish the standards and proceedings for the revocation, suspension, and/or denial of a license and the assessment of civil damages. The civil assessment process is not intended to be punitive, but allows the Commission to recover financial damages to compensate the State for the loss of any wildlife. The Hunter Education requirement is imposed as a remedial measure to increase knowledge and prevent future violations. The public benefits from a concise and comprehensible Commission hearing process that effectively revokes, suspends, and/or denies a person's privilege to obtain a license when the person has demonstrated their inability to comply with, or disregard for, state wildlife rules. The public, the Department, and the Commission benefit from a rule that provides for an efficient process and uniform enforcement. Both the Department and the Commission benefit from a comprehensive and understandable hearing and civil assessment procedure.

Rules within Article 6 establish the public process for the consideration of a Commission Order. Commission Orders establish bag limits, hunt areas, season dates, and lawful methods for the take of wildlife; orders are reviewed and revised every two years, but may be revised sooner when it is determined necessary. The Department encourages persons to review the orders and provide comments to the Department. The public benefits from a rule that provides information regarding Commission orders.

The Commission, Department, and members of the public benefit from rules that comply with statutory mandates in an efficient manner.

The Commission, Department, and members of the public that demonstrates its accessibility to the public.

The Department bears the greater burden in facilitating these public processes, much of which is mandated by A.R.S. Title 41, Chapter 6, Article 6.

The Department has determined that the probable benefits of the rules within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule necessary to achieve the underlying regulatory objective.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

For all rules within Article 6, federal law is not directly applicable to the subject of the rules. The rules are based on state law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

For all rules within Article 6, the rules do not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to take no action for the following rules:

R12-4-601. Definitions

R12-4-602. Petition for Rule or Review of Practice or Policy

R12-4-603. Written Comments on Proposed Rules

R12-4-604. Oral Proceedings Before the Commission

R12-4-605. Ex Parte Communication

R12-4-606. Standards for Revocation, Suspension, or Denial of a License

R12-4-607. Proceedings for License Revocation, Suspension, or Denial of Right to Obtain a License, and Civil Damages

R12-4-608. Rehearing or Review of Commission Decisions

R12-4-610. Petitions for the Closure of State or Federal Lands to Hunting, Fishing, Trapping, or Operation of

Motor Vehicles

R12-4-611. Petition for a Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy

The Department proposes to amend the following rule as indicated in this report:

R12-4-609. Commission Orders

The Department anticipates requesting an exception to the rulemaking moratorium by June 2022 and submitting the Notice of Final Rulemaking for actions proposed in this report to the Council by June 2023, provided the Commission is granted permission to pursue rulemaking or the current moratorium is not extended.

NOTICE OF FINAL EXPEDITED RULEMAKING
TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R12-4-601	Re-number
R12-4-601	New Section
R12-4-602	Re-number
R12-4-602	Amend
R12-4-603	Re-number
R12-4-603	Amend
R12-4-604	Re-number
R12-4-604	Amend
R12-4-605	Re-number
R12-4-605	Amend
R12-4-606	Re-number
R12-4-606	Amend
R12-4-607	Re-number
R12-4-607	Amend
R12-4-608	New Section
R12-4-609	Amend
R12-4-610	Amend
R12-4-611	Amend

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) and 41-1027(A)

Implementing statute: A.R.S. §§ 17-231(B)(1), 17-231(B)(12), 17-231, 17-234, 17-304, 17-314, 17-340, 41-1003, 41-1023, 41-1033, and Title 41, Chapter 6, Article 10

3. The effective date of the rules:

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 rule is effective immediately upon filing with the Secretary of State's office as authorized under A.R.S. § 41-1027(H), which allows for an immediate effective date upon filing the Notice of Expedited Rulemaking with the Secretary of State's Office.

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: 23 A.A.R. (to be filled in by the Register Editor), October 13, 2017

Notice of Proposed Expedited Rulemaking: 23 A.A.R. (to be filled in by the Register Editor), October 13, 2017

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

Name: Celeste Cook, Rules and Policy Manager

Address: Arizona 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 website to track the progress of this rule; view the regulatory agenda and all previous Five-year Review Reports; and learn about any other agency rulemaking matters at <https://www.azgfd.com/agency/rulemaking/>.

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

The Arizona Game and Fish Commission proposes to amend its rules following the 2017 five-year rule review of Article 6, Rules of Practice Before the Commission, to enact recommendations developed during the five-year review. The recommended amendments are designed to align the rule with statute, enable the Department to provide better customer service, and reduce regulatory and administrative burdens wherever possible.

Under A.R.S. § 41-1027, an agency may use the expedited rulemaking process to if the rulemaking does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated and does one or more of the following: (A)(3) clarifies language of a rule without changing its effect; (A)(5) reduces or consolidates steps, procedures, or processes in the rules; or (A)(7) implements, without material change, a course of action that is proposed in a five-year review report approved by the Governor's Regulatory Review Council (G.R.R.C.) pursuant to A.R.S. § 41-1056 within one hundred eighty days of the date that the agency files the Notice of Proposed Expedited Rulemaking with the Secretary of State. The Commission approved the Article 6 Five-year Review Report (5YRR) at the December 2, 2016 Commission Meeting and G.R.R.C. approved the Article 6 5YRR at the March 7, 2017 Council Meeting.

An exemption from Executive Order 2015-01 was provided for this rulemaking by Hunter Moore, Natural Resource Policy Advisor, Governor's Office, in an email dated May 1, 2017.

R12-4-601. Petition for Rule or Review of Practice or Policy

The objective of the rule is to establish the manner and form in which a person may petition the Commission to adopt, amend, or repeal a rule or review an agency practice or policy. Under A.R.S. § 41-1033, all state agencies are required to establish the manner and form by which a person may petition the agency to request the making of a final rule or the review of an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule. The Commission proposes to adopt a definitions rule and transfer definitions provided within Article 6 rules to R12-4-601, and then renumber rules R12-4-601 through R12-4-607 to increase consistency between Commission rules and ensure conformity with the Arizona Administrative Procedures Act and Secretary of State's rulemaking format and style requirements and standards. The Commission proposes to renumber the rule to R12-4-602. The Commission also proposes to define the terms "business day", "Commission Chair" and "respondent" to clarify the terms referenced within Article 6 to ensure the consistent interpretation of Commission rules. A person is required to submit a petition that meets specific formatting requirements. In an effort to reduce the burden and costs to the regulated public and simplify and enhance the public petition process, the Commission also proposes to amend the rule to require a petitioner to use a form furnished by the Department. The proposed form will reduce the number of non-compliant petitions received by the Department by ensuring all petitions contain the applicable information; this will also reduce the amount of time spent by Department employees on working with petitioners to correct petitions that do not meet the requirements established under rule. This amendment will streamline the process going forward and ensure consistency in all future petitions. In addition, to increase consistency between Commission rules, the Commission proposes to amend the rule to require a person submitting a petition to provide a physical and mailing address (if different from the physical address) and an email address when one is available. The Commission also proposes to increase the amount of time in which the Department must review and accept or return the petition and the time in which the Commission must hear the petition to increase consistency between all Commission petition rules. The Commission proposes to amend the rule to replace the term "Director" with "Department" to reduce regulatory ambiguity. Because the petition process is delegated to appropriate Department staff for evaluation and recommendation of the proposed change, this amendment will make the rule more concise and ensure consistency between Commission rules. In addition, the Commission proposes to amend the rule to remove the statement that a petition shall be retained by the Department for a period of five-years and considered as a comment during the next five-year review process. This requirement is already prescribed under A.R.S. § 41-1056, it is not necessary to include the statement in rule.

R12-4-602. Written Comments on Proposed Rules

The objective of the rule is to establish requirements for written comments submitted to the Department in response to a notice of proposed rulemaking. Under A.R.S. § 41-1029, all state agencies are required to maintain all written petitions, requests, submissions, and comments received by the agency in connection with the rule. The Commission proposes to renumber the rule to R12-4-603. The Department recognizes the requirements specific to comments submitted on behalf of a group or organization are difficult to enforce. The Commission believes this information is necessary to determine the origin of the comment and the extent of its

influence. Often, the person who submits a comment on behalf of a group or organization does not include all of the information required to classify the comment as that of the organization. The Department then attempts to obtain the required information by contacting the person who submitted the comment; this is often a time-consuming process for Department staff. The Commission proposes to amend the rule to clarify how comments submitted on behalf of a group or organization are recorded when the person fails to include all of the required information to reduce the resources spent by Department staff and prevent administrative delay. The Commission also proposes to amend the rule to remove the requirement that a group or organization provide the type of memberships available and number of Arizona residents represented by the group as this information serves no useful purpose and to reduce the burdens and costs to persons regulated by the rule. In addition, the Commission proposes to amend the rule to remove unnecessary verbiage and list requirements specific to comments submitted on behalf of a group or organization to make the rule more concise and reduce regulatory ambiguity.

R12-4-603. Oral Proceedings Before the Commission

The objective of the rule is to establish the Commission's operational process for oral proceedings held before the Commission. Under A.R.S. § 41-1023(F), each agency may make rules for the conduct of oral rulemaking proceedings, and may include provisions calculated to prevent undue repetition in the oral proceedings. The Commission proposes to renumber the rule to R12-4-604. The Commission proposes to amend the rule to repeal the definition of "matter" and "proceeding" as the common-use definition is satisfactory. The Commission proposes to amend the rule to replace references to "Chair" with "Commission Chair" to increase consistency between Commission rules and Department publications. The Commission also proposes to amend the rule to list oral proceeding authorizations and requirements to make the rule more concise. In addition, the Commission proposes to amend the rule to remove "based on the amount of time available" to make the rule more concise. All of these amendments are proposed to reduce or consolidate steps, procedures, or processes in the rule and reduce regulatory ambiguity.

R12-4-604. Ex Parte Communication

The objective of the rule is to establish communication prohibitions during the course of Commission decision processes. The Commission proposes to renumber the rule to R12-4-605. The Commission proposes to amend the rule to repeal the definition of "individual outside the Commission" as the term is no longer referenced in rule. The Commission proposes to amend the rule to transfer the definition of "ex parte communication" to R12-4-601 to ensure conformity with the Arizona Administrative Procedures Act and Secretary of State's rulemaking format and style requirements and standards. Under A.R.S. § 17-340(G), the Commission may use the services of the Office of Administrative Hearings to conduct hearings and make recommendations to the Commission. The Office of Administrative Hearings adheres to the requirements of R2-19-105. Ex Parte Communications, not this rule. Thus, the Commission proposes to remove the reference to "hearing office." The Commission compared its rule to rules governing rehearing or review made by other self-supporting agencies (Arizona Medical Board, State Board of Dental Examiners, Office of Administrative Hearings, and State Board of Accountancy) and, as a result of this comparison, the Commission proposes to amend the rule to remove

language referencing the service of a memorandum and copies of each response and memorandum for each oral response to any ex parte communication received by the Commissioner as these are self-imposed burdens that serve no valid purpose. Because only members of the Commission are truly involved in the decision-making process and all persons are subject to the rule, the Commission proposes to remove redundant language from the rule to make the rule more concise. All of these amendments are proposed to reduce or consolidate steps, procedures, or processes in the rule and reduce regulatory ambiguity.

R12-4-605. Standards for Revocation, Suspension, or Denial of a License

The objective of the rule is to establish standards for the revocation, suspension, or denial of a Department-issued license (this includes hunting and fishing licenses, special licenses issued under Article 4, and fur dealer, guide, license dealer, and taxidermy licenses). The Commission proposes to renumber the rule to R12-4-606. Under A.R.S. § 17-340, the Commission may, after a public hearing, revoke or suspend a license issued to any person under Title 17 and deny that person the right to secure another license to take or possess wildlife. Laws 2006, Second Regular Session, Chapter 238 amended A.R.S. §§ 17-309 and 17-340 to include additional violations that may result in the suspension, revocation, or denial of a Department-issued license and the length of time for suspension, revocation, and denial actions. Under subsection (A), the Commission may hold a revocation hearing for a person convicted of certain violations; under Subsection (B), the Commission may hold a revocation hearing if the Department recommends a revocation, suspension, or denial for a person convicted of other violations. Currently under subsection (A), any person convicted of violating a wildlife law must go through the revocation hearing process. The Commission proposes to amend the rule to only require a revocation hearing upon recommendation of the Department. This change will provide the Department and Commission with greater flexibility in enforcing the rule and will reduce the burdens and costs to persons regulated by the rule. The Commission proposes to amend the rule to increase consistency between Commission rules and statute to reduce regulatory ambiguity. The Commission also proposes to amend the rule to replace references to "supports the following conclusion" with "indicates" to increase consistency between subsections. In addition, the Commission proposes to amend the rule to provide additional clarity by removing redundant language and restructuring the rule to more closely mirror A.R.S. § 17-340.

R12-4-606. Proceedings for License Revocation, Suspension, or Denial of Right to Obtain a License, and Civil Damages

The objective of the rule is to establish the proceedings for license revocation, suspension, or denial of Department issued licenses (this includes hunting and fishing licenses, special licenses issued under Article 4, and fur dealer, guide, license dealer, and taxidermy licenses) and the assessment of civil damages. The Commission proposes to renumber the rule to R12-4-607. Under A.R.S. § 17-340, the Commission may, after a public hearing, revoke or suspend a license issued to any person under Title 17 and deny that person the right to secure another license to take or possess wildlife. Under A.R.S. § 17-314, the Commission may bring a civil action in the name of the state against any person unlawfully taking, wounding or killing, or unlawfully in possession of certain wildlife. The Commission proposes to amend the rule to clearly indicate the rule applies only to actions taken under A.R.S. § 17-340 to reduce regulatory ambiguity. The Commission also proposes to

amend the rule to remove redundant language to make the rule more concise and understandable. Laws 2006, Second Regular Session, Chapter 238 amended A.R.S. § 17-340 to include additional time-frames for such suspension, revocation, or denial actions resulting from subsequent violations. As a result, a person's license may be revoked for five years, ten years, or permanently, depending on the number of convictions. In addition, the Commission proposes to amend the rule to reflect amendments made to statute to reduce regulatory ambiguity.

R12-4-607. Rehearing or Review of Commission Decisions

The objective of the rule is to establish the requirements for rehearing or review of a Commission decision. Under A.R.S. § 41-1092.09, a party may file a motion for rehearing or review within thirty days after service of the final administrative decision. A rehearing follows a Commission decision to revoke or suspend a person's license. A review is a Commission hearing on the Department's decision to deny a license to a person. The Commission proposes to renumber the rule to R12-4-608. The Commission proposes to amend the rule to transfer definitions included in this rule to R12-4-601 to ensure conformity with the Arizona Administrative Procedures Act and Secretary of State's rulemaking format and style requirements and standards. On occasion, a person fully intends to file an appeal to a Commission decision with the Maricopa County Superior Court, but unknowingly eliminates that option by failing to file a motion for rehearing or review with the Commission. The Commission proposes to amend the rule to indicate a person who fails to file a timely motion for rehearing or review is prohibited from seeking a judicial review of the Commission's decision to clarify when a rehearing or review is required and reduce regulatory ambiguity. The Commission proposes to remove the requirement that a person filing a motion for rehearing or review attach a supporting memorandum, specifying the grounds for the motion to reduce the burdens and costs to persons regulated by the rule as this information may be gleaned from the motion itself. During this review the Department compared this rule to rules governing rehearing or review made by other self-supporting agencies (Arizona Medical Board, State Board of Dental Examiners, and State Board of Accountancy) and, as a result of this comparison, the Commission proposes to amend the rule to clarify filing time-frames, extend the time in which the Commission may initiate a rehearing or review, and specify the time-frame in which the Commission shall hold the rehearing or review. These changes are made to increase clarity, make the rule more concise, and reduce regulatory uncertainty.

R12-4-609. Commission Orders

The objective of the rule is to establish the public process for the consideration of a Commission Order. Under A.R.S. § 17-234, the Commission shall by order open, close or alter seasons and establish bag and possession limits for wildlife, but a Commission Order to open a season shall be issued not less than ten days prior to the opening date. The Commission proposes to amend the rule to reduce the time in which the Department must post a public meeting notice and agenda and provide a draft of the proposed Commission Order from 20 days to 14. Due to leaned processes and technological advances, the Department is able to provide the required information in a shorter amount of time. In addition, an incident involving Tempe Town Lake gave light to the fact that the Commission does not have sufficient authority to issue an Order establishing a special season to allow the take of fish by additional methods on waters where a fish die-off is imminent due to the public

meeting notice time-frame requirement. In addition, to ensure the Commission is able to respond more quickly should a similar situation arise, the Commission proposes to amend the rule to allow the Commission to exempt the Commission and Department from the 14-day time-frame in order to review an order establishing a special season, allowing fish to be taken by additional methods on waters where a fish die-off is imminent to reduce processes in the rule.

**R12-4-610. Petitions for the Closure of State or Federal Lands to Hunting,
Fishing, Trapping, or Operation of Motor Vehicles**

The objective of the rule is to establish the requirements for submitting a petition for the closure of state or federal lands to hunting, fishing, trapping, or operation of motor vehicles. Under A.R.S. § 17-452, the Commission may, with the concurrence of the land management agency involved and after a public hearing, order such area closed to motor vehicles for not more than five years from the date of such closure, provided that all roads in such area shall remain open unless specifically closed. A person is required to submit a petition that meets specific formatting requirements. In an effort to reduce the burden and costs to the regulated public and simplify and enhance the public petition process, the Commission also proposes to amend the rule to require a petitioner to use a form furnished by the Department. The proposed form will reduce the number of non-compliant petitions received by the Department by ensuring all petitions contain the applicable information; this will also reduce the amount of time spent by Department employees on working with petitioners to correct petitions that do not meet the requirements established under rule. This amendment will streamline the process going forward and ensure consistency in all future petitions. In addition, to increase consistency between Commission rules, the Commission proposes to amend the rule to require a person submitting a petition to provide a physical and mailing address (if different from the physical address) and an email address when one is available. The Commission also proposes to increase the amount of time in which the Department must review and accept or return the petition and the time in which the Commission must hear the petition to increase consistency between all Commission petition rules. In addition, the Commission proposes to amend the rule to replace the term "Director" with "Department" to reduce regulatory ambiguity. Because the petition process is delegated to appropriate Department staff for evaluation and recommendation of the proposed change, this amendment will make the rule more concise and ensure consistency between Commission rules.

**R12-4-611. Petition for Hearing Before the Commission When No Remedy is
Provided in Statute, Rule, or Policy**

The objective of the rule is to establish the method and form a person shall use to petition the Arizona Game and Fish Commission when no remedy is provided in statute, rule, or policy. A person is required to submit a petition that meets specific formatting requirements. In an effort to reduce the burden and costs to the regulated public and simplify and enhance the public petition process, the Commission also proposes to amend the rule to require a petitioner to use a form furnished by the Department. The proposed form will reduce the number of non-compliant petitions received by the Department by ensuring all petitions contain the applicable information; this will also reduce the amount of time spent by Department employees on working with

petitioners to correct petitions that do not meet the requirements established under rule. This amendment will streamline the process going forward and ensure consistency in all future petitions. In addition, to increase consistency between Commission rules, the Commission proposes to amend the rule to require a person submitting a petition to provide a physical and mailing address (if different from the physical address) and an email address when one is available. The Commission also proposes to increase the amount of time in which the Department must review and accept or return the petition and the time in which the Commission must hear the petition to increase consistency between all Commission petition rules. In addition, the Commission proposes to amend the rule to replace the term "Director" with "Department" to reduce regulatory ambiguity. Because the petition process is delegated to appropriate Department staff for evaluation and recommendation of the proposed change, this amendment will make the rule more concise and ensure consistency between Commission rules.

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:

Under A.R.S. § 41-1027, the rulemaking is exempt from this requirement; however, the Commission offers the following: The proposed rulemaking implements changes the Department proposed to make as a result of the most recent five-year review of Article 6. The Commission's intent in proposing these amendments is to align the rule with statute, enable the Department to provide better customer-service, and reduce regulatory and administrative burdens wherever possible. The Commission believes the majority of the rulemaking will benefit persons regulated by the rule, members of the public, and the Department by clarifying rule language, creating consistency among existing Commission rules, reducing the burden on the regulated community where practical, implementing customer-service-oriented processes, and allowing the Department additional oversight where necessary. The Commission anticipates the rulemaking will result in little or no impact to 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. In addition to the cost of rulemaking, the Commission anticipates the Department will incur costs to implement the proposed amendments; however, these amendments will not require new full-time employees. Therefore, the Commission has determined that 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:

Minor grammatical and formatting corrections that were made at the request of 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:

In addition to the publication of the Notice of Proposed Expedited Rulemaking in the *Arizona Administrative Register*, the Department posted the Notice of Proposed Expedited Rulemaking to the Department's website, from September 15 to October 15, 2017, for the purpose of public comment. In addition, on October 15, 2017, the Department emailed information regarding the proposed rulemaking to persons interested in receiving rulemaking notices. The Department also issued a press release regarding the proposed changes included in the Notice of Proposed Expedited Rulemaking and the Department's contact information for persons interested in submitting a comment. The Department did not receive any public or stakeholder comments in response to the proposed expedited rulemaking.

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:

The subject matter covered in the rulemaking are governed by state law rather than any corresponding 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:

The agency has not received an analysis that compares the rule's impact of competitiveness of business in this state to the impact on business in other states.

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 6. RULES OF PRACTICE BEFORE THE COMMISSION

Section

R12-4-601. Definitions

~~R12-4-601.~~ R12-4-602. Petition for Rule or Review of Practice or Policy

~~R12-4-602.~~ R12-4-603. Written Comments on Proposed Rules

~~R12-4-603.~~ R12-4-604. Oral Proceedings Before the Commission

~~R12-4-604.~~ R12-4-605. Ex Parte Communication

~~R12-4-605.~~ R12-4-606. Standards for Revocation, Suspension, or Denial of a License

~~R12-4-606.~~ R12-4-607. Proceedings for License Revocation, Suspension, or Denial of Right to Obtain a License, and Civil Damages

~~R12-4-607.~~ R12-4-608. Rehearing or Review of Commission Decisions

~~R12-4-608.~~ ~~Expired~~

R12-4-609. Commission Orders

R12-4-610. Petitions for the Closure of State or Federal Lands to Hunting, Fishing, Trapping, or Operation of Motor Vehicles

R12-4-611. Petition for Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

R12-4-601. Definitions

The following definitions apply to this Article unless otherwise specified:

"Appealable agency action" has the same meaning as provided under A.R.S. § 41-1092.

"Business day" means any day other than a furlough day, Saturday, Sunday, or holiday,

"Commission Chair" means the person who presides over the Arizona Game and Fish Commission.

"Contested case" has the same meaning as provided under A.R.S. § 41-1001.

"Ex parte communication" means any oral or written communication with a Commissioner by a party concerning a substantive issue in a contested proceeding that is not part of the public record.

"Party" has the same meaning as provided under A.R.S. § 41-1001.

"Respondent" means the person named as the respondent in a notice of hearing issued by the Department.

R12-4-601 R12-4-602. Petition for Rule or Review of Practice or Policy

~~A. Any individual, including any organization or agency, requesting that the Commission make, amend, or repeal a rule, shall submit a petition as prescribed under this Section.~~ A person may petition the Commission under A.R.S. § 41-1033 for a:

1. Rulemaking action relating to a Commission rule, including making a new rule or amending or repealing an existing rule; or
2. Review of an existing Department practice or substantive policy statement alleged to constitute a rule.

~~B. Any individual, including any organization or agency, requesting that the Commission review an existing Department practice or substantive policy that the petitioner alleges to constitute a rule under A.R.S. § 41-1033, as defined under A.R.S. § 41-1001, shall submit a petition as prescribed under this Section.~~ To act under A.R.S. § 41-1033 and this Section, a person shall submit a petition form to the Arizona Game and Fish Department, Director's Office, 5000 W. Carefree Highway, Phoenix, AZ 85086. The form is available at any Department office and on the Department's website.

~~C. A petitioner shall not address more than only one rule, practice, or substantive policy in the petition.~~

~~D. If the Commission has considered and denied a petition, and a petitioner submits a petition within the next year that addresses the same substantive issue, the petitioner shall provide a written statement that contains any reason not previously considered by the Commission in making a decision.~~

~~E.D.~~ A petitioner shall submit an original and one copy of a the petition form to the Arizona Game and Fish Department, Director's Office, 5000 W. Carefree Highway, Phoenix, AZ 85086. The Commission shall render a decision on the petition as required under A.R.S. § 41-1033. The petition form is furnished by the Department and is available at any Department office and on the Department's website. A petitioner shall provide all of the following information:

1. Petitioner identification:
 - a. When the petition is submitted by a private person, the person's:

- i. Name;
 - ii. Physical and mailing address, if different from the physical address;
 - iii. Contact telephone number; and
 - iv. Email, when available;
 - b. When the petition is submitted by an organization or private group;
 - i. Name of organization or group;
 - ii. Name and title of the organization's or group's representative;
 - iii. Physical and mailing address, if different from the physical address;
 - iv. Representative's contact telephone number; and
 - v. Email, when available;
 - c. When the petition is submitted by a public agency;
 - i. Name of the public agency;
 - ii. Name and title of the agency's representative;
 - iii. Physical and mailing address if different from the physical address;
 - iv. Representative's contact telephone number; and
 - v. Email, when available;
 - 2. Type of request:
 - a. Adopt, amend, or repeal a rule, or
 - b. Review of a practice or substantive policy statement;
 - 3. When the petition is for rulemaking action:
 - a. Statement of the rulemaking action sought, including the *Arizona Administrative Code* citation of all existing rules, and the specific language of a new rule or rule amendment; and
 - b. Reasons for the rulemaking action, including an explanation of why an existing rule is inadequate, unreasonable, unduly burdensome, or unlawful;
 - 4. When the petition is for a review of an existing practice or substantive policy statement:
 - a. Subject matter of the existing practice or substantive policy statement, and
 - b. Reasons why the existing practice or substantive policy statement constitutes a rule;
 - 5. When the petitioner is a public agency, a summary of issues raised in any public meeting or hearing regarding the petition or any written comments offered by the public.
 - 6. Any other information required by the Department;
 - 7. Petitioner's signature; and
 - 8. Date on which the petition was signed.
- D-E.** In addition to the requirements listed under subsection (D), a person may submit supporting information with a petition, including:
- 1. Statistical data; and
 - 2. A list of other persons likely to be affected by the rulemaking action or the review, with an explanation of the likely effects.

- F.** When a petitioner submits a petition that addresses the same substantive issue considered by the Commission within the previous year, the petitioner shall also provide an additional written statement that includes rationale not previously considered by the Commission in making the previous decision.
- F.G.** ~~Within five working days after a petition is submitted, the Director~~ The Department shall determine whether the petition complies with this Section within fifteen business days after the date on which the petition was received.
1. If the petition complies with this Section ~~the Director~~:
 - a. The Department shall place the petition on a Commission open meeting agenda.
 - b. The petitioner may present oral testimony at that open meeting, ~~as established under R12-4-603~~ R12-4-604.
 - c. The Commission shall render a final decision on the petition as prescribed under A.R.S. § 41-1033.
 2. If a petition does not comply with ~~subsection (G) through (L) of this Section, the~~:
 - a. The Director shall return a copy of the petition as filed to the petitioner, and indicate
 - b. Indicate in writing why the petition does not comply with this Section. ~~The Director shall not place the petition on a Commission agenda. The Department shall maintain the original petition on file for five years and consider the petition as a comment during the five year review process. The petitioner shall be afforded the opportunity to resubmit a corrected petition.~~
- G.** ~~Petitions shall be typewritten, computer or word processor printed, or legibly handwritten, and double spaced, on 8 1/2" x 11" paper; or typewritten, computer or word processor printed, or legibly handwritten on a form provided by the Department. The title shall be centered at the top of the first page and appear as "Petition to the Arizona Game and Fish Commission." The petition shall include the items listed in subsections (H) through (L). The items in the petition shall be presented in the order in which they are listed in this Section.~~
- H.** ~~The title of Part 1 shall be "Identification of Petitioner." The title shall be centered at the top of the first page of this part. Part 1 shall contain:~~
1. ~~If the petitioner is a private individual, the name, mailing address, and telephone number of the petitioner;~~
 2. ~~If the petitioner is a private group or organization, the name and address of the group or organization; the name, mailing address, and telephone number of an individual who is designated as the representative or official contact for the petitioner; the total number of individuals, and the number of Arizona residents represented by the petitioner; or the names and addresses of all individuals represented by the petitioner; or~~
 3. ~~If the petitioner is a public agency, the name and address of the agency and the name, title, and telephone number of the agency's representative.~~
- I.** ~~The title of Part 2 shall be "Request for Rule" or "Request for Review," as applicable. The title shall be centered at the top of the first page of this part. Part 2 shall contain:~~
1. ~~If the petition is for a new rule, a statement to this effect, followed by the heading and specific language of the proposed rule;~~
 2. ~~If the request is for amendment of a current rule, a statement to this effect, followed by the Arizona Administrative Code number of the current rule proposed for amendment, the heading of the rule, the~~

~~specific, clearly readable language of the rule, indicating language to be deleted with strikeouts, and language to be added with underlining;~~

- ~~3. If the request is for repeal of a current rule, a statement to this effect, followed by the Arizona Administrative Code number of the rule proposed for repeal and the heading of the rule; or~~
- ~~4. If the request is for review of an existing agency practice or substantive policy statement that the petitioner alleges qualifies as a rule, as defined under A.R.S. § 41-1001, a statement to this effect, followed by the practice or policy number, if any, the practice or policy heading, if any, or a brief description of the practice or policy subject matter.~~

J. ~~The title of Part 3 shall be "Reason for the Petition." The title shall be centered at the top of the first page of this part. Part 3 shall contain:~~

- ~~1. The reason the petitioner believes rulemaking or review of a practice or policy is necessary;~~
- ~~2. Any statistical data or other justification supporting rulemaking or review of the practice or policy, with clear reference to any exhibits that are attached to or included with the petition;~~
- ~~3. An identification of any individuals or special interest groups the petitioner believes would be impacted by the rule or a review of the practice or policy, and how they would be impacted; and~~
- ~~4. If the petitioner is a public agency, a summary of issues raised in any public meeting or hearing regarding the petition, or any written comments offered by the public.~~

K. ~~The title of Part 4 shall be "Statutory Authority." The title shall be centered at the top of the first page of this part. In Part 4, the petitioner shall identify any statute that authorizes the Commission to make the rule, if known, or cite A.R.S. § 41-1033 if the petition relates to review of an existing practice or substantive policy statement.~~

L. ~~The title of Part 5 shall be "Date and Signature." The title shall be centered at the top of the first page of this part. Part 5 shall contain:~~

- ~~1. An original signature of the representative or official contact, if the petitioner is a private group or organization or private individual named under subsection (H)(1) or (H)(2); or~~
- ~~2. If the petitioner is a public agency, the signature of the agency head or the agency head's designee; and~~
- ~~3. The month, day, and year that the petition is signed.~~

R12-4-602 R12-4-603. Written Comments on Proposed Rules

A. ~~Any Under A.R.S. § 41-1023, an individual a person~~ may submit written statements, arguments, data, and views on the a proposed rules that have been filed with rulemaking published by the Secretary of State under A.R.S. § 41-1022 in the Arizona Administrative Register.

B. ~~An individual who submits~~ A person submitting a written comments comment to the Commission for consideration in a final decision on the rulemaking may voluntarily provide their name and mailing address. ~~To be placed into the rulemaking record and considered by the Commission for a final decision, the individual submitting the~~ The Commission may only consider written comments shall ensure that they:

1. Are received ~~before on or on before the closing close of record date for written comments,~~ as published by

the Secretary of State in the *Arizona Administrative Register*;

- ~~2.~~ Indicate if expressed on behalf of a group or organization, whether the views expressed are the official position of the group or organization, the number of individuals represented are represented, types of membership available, and number of Arizona residents in each membership category. Comments that do not include the information required under this subsection will be placed in the rulemaking record as the views of the individual submitting the comments and not the views of any group or organization; and
- ~~3.2.~~ Are submitted to the employee designated by the Department to receive written comments, as published in the ~~Arizona Administrative Register~~ agency contact identified in the Department's notice of proposed rulemaking as published by the Secretary of State in the *Arizona Administrative Register*.
3. In addition, a person submitting a comment submitted on behalf of a group or organization shall include a statement that the comment represents the official position of the group or organization. A comment submitted on behalf of a group or organization that does not contain this statement shall be considered the comment of the person submitting the comment, and not that of the group or organization.

~~R12-4-603~~ R12-4-604. Oral Proceedings Before the Commission

~~A.~~ For the purposes of this Section, "matter" or "proceeding" means any contested case, appealable agency action, rule or review petition hearing, rulemaking proceeding, or any public input at a Commission meeting.

~~B.A.~~ The Commission may allow an oral proceeding on any matter on the Commission's agenda. At an oral proceeding, the Commission Chair:

- ~~1.~~ The Chair is responsible for conducting the proceeding. If an individual wants to speak, the individual shall first request and be granted permission by the Chair.
- ~~2.~~ Depending on the nature of the proceeding, the Chair may administer an oath to a witness before receiving testimony.
- ~~3.~~ The Chair may order the removal of any individual who is disrupting the proceeding.
- ~~4.~~ Based on the amount of time available, the Chair may limit the number of presentations or the time for testimony regarding a particular issue and shall prohibit irrelevant or immaterial testimony.
 1. Is responsible for conducting the proceeding.
 2. May administer an oath to a witness before receiving testimony.
 3. May order the removal of any person who is disrupting a proceeding.
 4. May limit the number of presentations or the time for testimony regarding a particular issue.

~~B.~~ A person desiring to speak at an oral proceeding shall first request permission to speak from the Commission Chair.

~~5.C.~~ Technical rules of evidence do not apply to an oral proceeding, and no informality in any proceeding or in the manner of taking testimony invalidates any order, decision, or rule made by the Commission.

~~C.D.~~ The Commission authorizes the Director to designate a hearing officer for oral proceedings to take public input on proposed rulemaking. ~~The hearing officer has the same authority as the Chair in conducting oral proceedings, as provided in this Section.~~

~~D.E.~~ The Commission authorizes the Director to continue a scheduled proceeding to a later Commission meeting. To request a continuance, a petitioner shall:

1. Deliver the request to the Director no later than 24 hours before the scheduled proceeding;
2. Demonstrate that the proceeding has not been continued more than twice; and
3. Demonstrate good cause for the continuance.

R12-4-604 R12-4-605. Ex Parte Communication

~~A.~~ For purposes of this Section:

1. ~~"Individual outside the Commission" means any individual other than a Commissioner, personal aide to a Commissioner, Department employee, consultant of the Commission, or an attorney representing the Commission.~~
2. ~~"Ex parte communication" means any oral or written communication with the Commission that is not part of the public record and for which no reasonable prior written notice has been given to all interested parties.~~

~~B.A.~~ In any contested case (as defined in A.R.S. § 41-1001) or proceeding or appealable agency action (as defined in A.R.S. § 41-1092) before the Commission, ~~except to the extent required for disposition of ex parte matters as authorized by law or these rules of procedure, the following prohibitions apply to ex parte communication~~ A party shall not communicate, either directly or indirectly, with a Commissioner about any substantive issue in a pending contested case or appealable agency action, unless:

1. ~~An interested individual outside the Commission shall not make or knowingly cause to be made to any Commissioner, Commission hearing officer, personal aide to a Commissioner, Department employee, or consultant who is or may reasonably be expected to be involved in the decision making process of the proceeding, an ex parte communication relevant to the merits of the proceeding~~ All parties are present;
2. ~~A Commissioner, Commission hearing officer, personal aide to a Commissioner, Department employee, or consultant who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall not make or knowingly cause to be made to any interested person outside the Commission an ex parte communication relevant to the merits of the proceeding~~ The communication occurs during the scheduled proceeding, where an absent party failed to appear after proper notice; or
3. It is by written motion with a copy provided to all parties.

~~C.B.~~ A Commissioner, ~~Commission hearing officer, personal aide to a Commissioner, Department employee, or consultant who is or may be reasonably expected to be involved in the decisional process of the proceeding, who receives, makes, or knowingly causes to be made a~~ an ex parte communication prohibited by subsection (B)(1) or (B)(2) of this Section, shall place on the public record of the proceeding and serve on all interested parties to the proceeding:

1. A copy of ~~each~~ the written communication;
2. A ~~memorandum stating the substance of each~~ summary of the oral communication; and
3. A ~~copy of each response and memorandum stating the substance of each oral~~ The Commissioner's response to any such ex parte communication governed by subsections (C)(1) and (C)(2).

~~D. Upon receipt of a communication made or knowingly caused to be made by a party in violation of this Section, the Commission or its hearing officer, to the extent consistent with equity and fairness, may require the party to show cause why the claim or interest in proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the violation.~~

~~E.C. The provisions of this Section apply from the date that a notice of hearing for a contested case is served, a notice of or an appealable agency action is served, or a request for hearing is filed, whichever comes first, unless the person responsible for the communication has knowledge that a proceeding will be noticed, in which case the prohibitions apply from the date that the individual acquired the knowledge on the parties.~~

~~R12-4-605~~ **R12-4-606.** Standards for Revocation, Suspension, or Denial of a License

A. Under A.R.S. § 17-340, ~~when the Department makes a recommendation to the Commission for license revocation, the~~ Commission shall hold a hearing and may revoke, suspend, or deny any hunting, fishing, or trapping license for ~~an individual who has been~~ a person convicted of any of the following offenses:

- ~~1. Killing or wounding a big game animal during a closed season or possessing.~~
- ~~2. Possessing a big game animal taken during a closed season. Conviction for possession of a road kill animal or an animal that was engaged in depredation is not considered "possessing during a closed season" for the purposes of this subsection.~~
- ~~2.3. Destroying, injuring, or molesting livestock, or damaging or destroying personal property, notices or signboards, other improvements, or growing crops while hunting, fishing, or trapping.~~
- ~~4. Damaging or destroying personal property, growing crops, notices or signboards, or other improvements while hunting, fishing, or trapping.~~
- ~~5. Bartering, selling, or offering to sell unlawfully taken wildlife or wildlife parts.~~
- ~~3.6. Careless use of a firearm while hunting, fishing, or trapping that results in the injury or death of any person, if the act of discharging the firearm was deliberate.~~
- ~~4.7. Applying for or obtaining a license or permit by fraud or misrepresentation in violation of A.R.S. § 17-341.~~
- ~~8. Knowingly allowing another person to use the person's big game tag, except as provided under A.R.S. § 17-332(D).~~
- ~~5.9. Entering upon a game refuge or other area closed to hunting, trapping or fishing and taking, driving, or attempting to drive wildlife from the area in violation of A.R.S. §§ 17-303 and 17-304.~~
- ~~6.10. Unlawfully posting state or federal lands in violation of A.R.S. § 17-304(B).~~
- ~~11. Unlawfully using aircraft to take, assist in taking, harass, chase, drive, locate, or assist in locating wildlife in violation of A.R.S. § 17-340(A)(8).~~

~~B. Under A.R.S. § 17-340, the Commission shall hold a hearing and may revoke, suspend, or deny any hunting fishing, or trapping license if the Department recommends revocation, suspension, or denial of the license for an individual convicted of any of the following offenses:~~

- ~~1.12. Unlawfully taking or possessing big game, if sufficient evidence, which may or may not have been introduced in the court proceeding, supports any of the following conclusions:~~

- a. ~~The big game was taken without a valid license or permit.~~
- b. ~~The unlawful taking was willful and deliberate.~~
- e. ~~The person in unlawful possession aided the unlawful taking or was, or should have been, aware that the taking was unlawful.~~

~~2-13. Unlawfully taking or possessing small game or fish, if sufficient evidence, which may or may not have been introduced in the court proceeding, supports any of the following conclusions:~~

- a. ~~The taking was willful and deliberate.~~
- b. ~~The possession was in excess of the lawful possession limit plus the daily bag limit.~~

~~3-14. Unlawfully taking or possessing wildlife species if sufficient evidence, which may or may not have been introduced in the court proceeding, indicates that the act of taking was willful and deliberate and showed disregard for state wildlife laws.~~

15. Unlawful take of any bird or the removal of its nest or eggs.

~~4-16. Littering a public hunting or fishing area while taking wildlife, if sufficient evidence, which may or may not have been introduced in the court proceeding, indicates that an individual littered the area, the amount of litter discarded was unreasonably large, and that the individual convicted made no reasonable effort to dispose of the litter in a lawful manner.~~

~~5. Careless use of a firearm while hunting, fishing, or trapping that resulted in injury or death to any person, if the act of discharging the firearm was not deliberate, but sufficient evidence, which may or may not have been introduced in the court proceeding, indicates that the careless use demonstrated wanton disregard for the safety of human life or property.~~

17. Waste of edible portions of a game species under A.R.S. § 17-309, in violation of A.R.S. § 17-309(A)(5).

~~6-18. Any violation for which a license can be revoked under A.R.S. § 17-340, if the person has been convicted of a revocable offense within the past three years.~~

~~7-19. Violation Any violation of A.R.S. § 17-306 for unlawful possession of wildlife.~~

~~C.B.~~ Under A.R.S. §§ 17-238, 17-334, 17-340, 17-362, 17-363, and 17-364, ~~and 17-340~~, if when the Department ~~has made~~ makes a recommendation to the Commission for license revocation, the Commission shall hold a hearing and may revoke any fur dealer, guide, taxidermy, license dealers license, or special license (as defined ~~in~~ under R12-4-401) in any case where license revocation is authorized by law.

~~R12-4-606~~ **R12-4-607. Proceedings for License Revocation, Suspension, or Denial of Right to Obtain a License, and Civil Damages**

A. The Director may commence a proceeding for the Commission to revoke, suspend or deny a license under A.R.S. §§ 17-236, 17-238, 17-334, 17-340, 17-362, 17-363, and 17-364, ~~R12-4-105, and R12-4-605~~. The Director may also commence a proceeding for the Commission to impose a civil damages penalty under A.R.S. § 17-314.

B. The Commission shall conduct a hearing concerning revocation, suspension, or denial of the right to obtain a license in accordance with the Administrative Procedure Act, A.R.S. Title 41, Chapter 6, Article 10. ~~A~~ In a

proceeding conducted under A.R.S. § 17-340, a respondent shall limit testimony to facts that show why the license should not be revoked or denied. Because the Commission does not have the authority to consider or change the conviction, a respondent is not permitted to raise this issue in the proceeding. The Commission shall permit a respondent to offer testimony or evidence relevant to the Commission's decision to ~~order recovery of~~ impose a civil damages penalty or order a civil action for the recovery of wildlife parts.

- C. If a respondent does not appear for a hearing on the date scheduled, at the time and location noticed, no further opportunity to be heard ~~is~~ shall be provided, unless a rehearing or review is granted under ~~R12-4-607~~ R12-4-608. If the respondent does not wish to attend the hearing, the respondent may submit written testimony to the Department before the hearing date designated in the Notice of Hearing ~~required by A.R.S. § 17-340(D)~~. The Commission shall ensure that written testimony received at the time of the hearing is read into the record at the hearing.
- D. The Commission shall base its decision on the officer's case report, a summary prepared by the Department, a certified copy of the court record, and any testimony presented at the hearing. ~~With the notice of hearing required by A.R.S. § 17-340(D), the~~ The Department shall supply the respondent with a copy of each document provided to the Commission for use in reaching a decision.
- E. Any party may apply to the Commission for issuance of a subpoena to compel the appearance of any witness or the production of documents at any Commission hearing or deposition. ~~Not later~~ No less than 10 calendar days before the hearing ~~or deposition~~, the party shall file a written application that provides the name and address of the witness, the subject matter of the expected testimony, the documents sought to be produced, and the date, time, and place of the hearing ~~or deposition~~. The Commission ~~chair~~ Chair has the authority to issue the subpoenas.
 - 1. A party shall have a subpoena served as prescribed in the Arizona Rules of Civil Procedure, Rule 45. An employee of the Department may serve a subpoena at the request of the Commission ~~chair~~ Chair.
 - 2. A party may request that a subpoena be amended at any time before the deadline provided in this Section for filing the application. The party shall have the amended subpoena served as provided in subsection (E)(1).
- F. The Commission may vote to use the services of the office of administrative hearings to conduct a hearing concerning revocation, suspension, or denial of the right to obtain a license and to make a recommendation to the Commission, which shall review and accept, reject or modify the recommendation and issue its decision in an open meeting. When the Department receives a recommendation from the administrative law judge at least 30 days prior to the next regularly scheduled Commission meeting, the Department shall place the recommendation on the agenda for that meeting. A recommendation from the administrative law judge received after this time shall be considered at the next regularly scheduled open meeting.
- ~~F.G.~~ A license revoked by the Commission is suspended on the date of the hearing and revoked upon issuance of the findings of fact, conclusions of law, and order. If a respondent appeals the Commission's order revoking a license, the license is revoked after all appeals have been ~~completed~~ exhausted. A denial of the right to obtain a license is effective for a period ~~not to exceed five years, as~~ determined by the Commission as authorized under

A.R.S. § 17-340, beginning on the date of the hearing.

~~**G.H.**~~ A license suspended by the Commission is suspended on the date of the hearing, and suspended upon issuance of the findings of fact, conclusions of law, and order. If a respondent appeals the Commission's order suspending a license, the license is suspended after all appeals have been ~~completed~~ exhausted. ~~Under A.R.S. § 17-340(A), a~~ The suspension of a license is effective for a period not to exceed five years, as determined by the Commission as authorized under A.R.S. § 17-340, beginning on the date of the hearing.

~~**R12-4-607**~~ **R12-4-608. Rehearing or Review of Commission Decisions**

~~**A.**~~ For purposes of this Section the following terms apply:

- ~~1.~~ "Contested case" and "party" are defined as provided in A.R.S. § 41-1001;
- ~~2.~~ "Appealable agency action" is defined as provided in A.R.S. § 41-1092(3).

A. A party shall exhaust the party's administrative remedies by filing a motion for rehearing or review as provided in this Section. Failure to file a motion for rehearing or review within 30 days of service of the Commission's decision has the effect of prohibiting the party from seeking judicial review of the Commission's decision.

B. ~~Except as provided in subsection (G), any~~ A party in a contested case or appealable agency action before the Commission may file a motion for rehearing or review of a Commission decision, specifying the grounds upon which the motion is based. The motion for rehearing or review shall be filed within 30 calendar days after service of the final administrative Commission's decision. For purposes of this subsection a decision is served when personally delivered or mailed by certified mail to the party's last known residence or place of business. The party shall attach a supporting memorandum, specifying the grounds for the motion.

C. A party may amend a motion for rehearing or review at any time before the Commission rules upon the motion. ~~An opposing party has 15 calendar days after service to respond to the motion or the amended motion. A written response to a motion for rehearing or review may be filed and served within 15 days after service of the motion for rehearing or review.~~ The Commission has the authority to may require that the parties file written briefs supplemental memoranda on any issue raised in a motion or response, and allow for oral argument.

D. The Commission has the authority to grant rehearing or review for any of the following causes materially affecting the moving party's rights:

1. Irregularity in the proceedings of the Commission, or any order or abuse of discretion that deprived the moving party of a fair hearing;
2. Misconduct of the Commission, its staff, an administrative law judge, or the prevailing party;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the original hearing;
5. Excessive or insufficient penalties;
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the ~~progress of the proceeding~~;
7. That the findings of fact or decision is not justified by the evidence or is contrary to law.

- E. The Commission may ~~affirm or modify the decision~~ either deny the motion for rehearing or review or grant a rehearing to all or any of the parties on all or part of the issues or review for any of the reasons ~~in~~ listed under subsection (D) (E). The Commission's order ~~modifying a decision or~~ granting a rehearing or review shall specify the grounds for the order, and any rehearing shall cover only those ~~specified matters~~ grounds upon which the rehearing or review was granted.
- F. After giving the party notice and an opportunity to be heard, the Commission may grant a motion for a rehearing or review for a reason not stated in the motion.
- ~~F.G.~~ Not later than 15 calendar days, after a decision Within the time frame for filing the motion for rehearing or review, the Commission may grant a rehearing or review on its own initiative for any reason for which ~~it might~~ the Commission may have granted relief on motion of a party. ~~After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Commission may grant a motion for rehearing or review for a reason not stated in the motion.~~
- H. When the Commission grants a rehearing or review, the Commission shall hold the rehearing or review at its next regularly scheduled meeting or within 90 days of issuance of the order granting the rehearing or review. With the consent of the parties, the Commission may proceed to conduct the rehearing or review in the same meeting in which the Commission granted the rehearing or review.
- ~~G.~~ When a motion for rehearing or review is based upon affidavits, the party shall serve the affidavits with the motion. An opposing party may, within 10 calendar days after service, serve opposing affidavits. The Commission may extend this period for no more than 20 calendar days for good cause shown or by written stipulation of the parties. The Commission has the authority to permit reply affidavits.
- I. The Commission may take additional testimony, amend findings of fact and conclusions of law, and affirm, modify or reverse the original decision.

R12-4-609. Commission Orders

- A. Except as provided ~~in~~ under subsection (B):
1. ~~At least 20 calendar days before a meeting where the Commission will consider a Commission Order, the Department shall ensure that a public meeting notice and agenda for the public meeting is posted in accordance with A.R.S. § 38-431.02. The Department shall also issue a public notice of the recommended Commission Order to print and electronic media at least 20 calendar days before the meeting.~~ At least 14 calendar days before a meeting where the Commission will consider a Commission Order, the Department shall:
 - a. Post a public meeting notice and agenda in accordance with A.R.S. § 38-431.02; and
 - b. Issue a public notice of the recommended Commission Order in print and electronic media.
 2. ~~The Department shall ensure that the public meeting notice and agenda contains the date, time, and location of the Commission meeting where the Commission Order will be considered and a statement that the public may attend and present written comments at or before the meeting.~~ The Department shall ensure the public meeting notice and agenda includes:

- a. The date, time, and location of the Commission meeting where the Commission Order will be considered;
 - b. A statement that the public may attend and present written comments at or before the meeting; and
 - c. A statement that a copy of the proposed Commission Order shall be made available to the public 10 calendar days before the meeting. Copies are available for public inspection on the Department's website and at Department offices in Phoenix, Pinetop, Flagstaff, Kingman, Yuma, Tucson, and Mesa.
3. ~~The Department shall also ensure that the public meeting notice and agenda states that a copy of the proposed Commission Order is available for public inspection at the Department offices in Phoenix, Pinetop, Flagstaff, Kingman, Yuma, Tucson, and Mesa 10 calendar days before the meeting.~~ The Commission may make changes to the recommended Commission Order at the Commission meeting.
- B. The requirements of subsection (A) do not apply to a Commission orders establishing Order that establishes:
- 1. ~~Supplemental hunts~~ A supplemental hunt as prescribed in authorized under R12-4-115, and;
 - 2. ~~Special seasons~~ A special season for individuals that persons who possess a special license tags tag issued under A.R.S. § 17-346 and R12-4-120, and
 - 3. A special season that allows fish to be taken by additional methods on waters where a fish die-off is imminent as established under R12-4-317(C).
- C. The Department shall publish the content of all Commission orders and make them available to the public ~~without~~ free of charge.

R12-4-610. Petitions for the Closure of State or Federal Lands to Hunting, Fishing, Trapping, or Operation of Motor Vehicles

- A. ~~An individual or agency~~ A person requesting that the Commission consider closing state or federal land to hunting, fishing, or trapping as provided under A.R.S. § 17-304(B) or R12-4-110₂; or closing roads or trails on state lands as provided under R12-4-110, shall submit a petition as prescribed in this Section before the Commission will consider the request.
- B. A ~~petition~~ petitioner shall not address more than one contiguous closure request in a petition.
- C. ~~Once the Commission has considered and denied a petition, an individual who subsequently submits~~ A petitioner submitting a petition that addresses the same contiguous closure request previously considered and denied by the Commission shall provide ~~a~~ an additional written statement that ~~contains any reason~~ includes rationale not previously considered by the Commission ~~in making a decision.~~
- D. A petitioner shall submit ~~an original and one copy of the petition form~~ to the Director of the Arizona Game and Fish Department, Director's Office, 5000 W. Carefree Highway, Phoenix, AZ 85086, not less than 60 calendar days before a scheduled Commission meeting to be placed on the agenda for that meeting. If the Commission receives a petition after that time it will be considered at the next regularly scheduled open meeting. At any time, the petitioner may withdraw the petition or request delay to a later regularly scheduled open meeting. The petition form is furnished by the Department and is available at any Department office and on the Department's website. The petition form shall contain all of the following information:

1. Petitioner identification:
 - a. When the petitioner is the leaseholder of the area proposed for closure:
 - i. Name of person;
 - ii. Lease number;
 - iii. Physical and mailing address, if different from the physical address;
 - iv. Contact telephone number; and
 - v. Email, when available;
 - b. When the petitioner is anyone other than the leaseholder of the area proposed for closure:
 - i. Name of person;
 - ii. Lease number;
 - iii. Physical and mailing address, if different from the physical address;
 - iv. Contact telephone number;
 - v. Email, when available; and
 - vi. Name of each group or organization or organizations that the petitioner represents; or
 - c. When the petitioner is a public agency:
 - i. Name of person;
 - ii. Name of agency;
 - iii. Petitioner's title;
 - iv. Lease number;
 - v. Agency's physical and mailing address, if different from the physical address;
 - vi. Contact telephone number; and
 - vii. Email, when available;
2. Type of closure requested:
 - a. Hunting,
 - b. Fishing,
 - c. Trapping, or
 - d. Operation of motor vehicles.
3. Reason for petition:
 - a. Each reason why the closure should be considered under R12-4-110, A.R.S. § 17-304(B), or A.R.S. § 17-452(A);
 - b. Any data or other justification supporting the reasons for the closure with clear reference to any exhibits that may be attached to the petition;
 - c. Each person or segment of the public the petitioner believes will be impacted by the closure, including any other valid licensees, lessees, or permittees that will or may be affected, and how they will be impacted, including both positive and negative impacts;
 - d. If the petitioner is a public agency, a summary of issues raised in any public hearing or public meeting regarding the petition and a copy of written comments received by the petitioning agency; and

- e. A proposed alternate access route, under R12-4-110.
 - 4. A concise map identifying the specific location of the proposed closure;
 - 5. Petitioner's signature;
 - 6. Date on which the petition was signed; and
 - 7. Any other information required by the Department.
- E.** ~~Within 15 business days after the petition is filed, the Department~~ The Director ~~Department~~ shall determine whether the petition complies with the requirements established under A.R.S. § 17-452, R12-4-110, and this Section within 15 business days after receiving the petition.
- 1. ~~Once the Department determines that~~ If the petition meets these requirements, and ~~if provided~~ the petitioner has not agreed to an alternative solution or withdrawn the petition, the Department, in accordance with the schedule in subsection ~~(D)~~ (F), shall place the petition on the agenda for the Commission's next regularly scheduled open meeting and provide written notice to the petitioner of the meeting date ~~that the Commission will consider the petition.~~
 - 1. ~~The petitioner may present oral testimony in support of the petition at the Commission meeting, in accordance with the provisions established under R12-4-603.~~
 - 2. If a petition does not ~~meet~~ comply with the requirements prescribed under A.R.S. § 17-452, R12-4-110, and this Section, ~~the:~~
 - a. The Department shall return one copy of the petition as filed to the petitioner, and
 - b. Indicate in writing with the reasons why the petition does not comply with this Section ~~meet the requirements, and not place the petition on a Commission agenda.~~
 - 3. If the Department returns a petition to a petitioner for a reason that cannot be corrected, the Department shall serve on the petitioner a notice of appealable agency action under A.R.S. § 41-1092.03.
- F.** When the Department receives a petition not less than 60 calendar days before a regularly scheduled Commission meeting, the Department shall place the petition on the agenda for that meeting. A petition received after this time will be considered at the next regularly scheduled open meeting.
- G.** The petitioner may:
- 1. Present oral testimony in support of the petition at the Commission meeting, in accordance with the provisions established under R12-4-604.
 - 2. Withdraw the petition or request a continuance to a later regularly scheduled open meeting at any time.
- F.** ~~The petitioner shall submit a petition that:~~
- 1. ~~Is typewritten, computer or word processor printed, or legibly handwritten, and double spaced, on 8 1/2 x 11" paper;~~
 - 2. ~~Has a concise map that shows the specific location of the proposed closure;~~
 - 3. ~~Has the title "Petition for the Closure of Hunting, Fishing, or Trapping Privileges on Public Land" or "Petition for the Closure of Public Lands to the Operation of Motor Vehicles" at the top of the first page;~~
 - 4. ~~Is in four parts, with titles designating each part as prescribed in this subsection;~~
 - 5. ~~Has a "Part 1" with the title "Identification of Petitioner" and contains the following information, if~~

applicable:

- a. ~~If the petitioner is the leaseholder of the area proposed for closure, the name, lease number, mailing address, and home telephone number of the petitioner;~~
 - b. ~~If the petitioner is anyone other than the leaseholder, the name, mailing address, and telephone number of the leaseholder; the name, mailing address, and telephone number of the petitioner; and the name of each group or organization or organizations that the petitioner represents; or~~
 - e. ~~If the petitioner is a public agency, the name and address of the agency and the name, title, and telephone number of the agency's representative regarding the petition.~~
6. ~~Has a "Part 2" with the title "Request for Closure" and contains all of the following information, if applicable:~~
- a. ~~The type of closure requested: either a hunting, fishing, or trapping closure, or closure to the operation of motor vehicles;~~
 - b. ~~A complete legal description of the area to be closed;~~
 - e. ~~The name or identifying number of any road and the portion of the road affected by the closure; and~~
 - d. ~~The dates proposed for the closure:~~
 - i. ~~If the closure is to the operation of motor vehicles, the actual time period of the closure (up to five years), and whether or not the closure is seasonal; or~~
 - ii. ~~If the closure is for hunting, fishing, or trapping, whether or not the request is for a permanent closure or for some other period of time.~~
7. ~~Has a "Part 3" with the title "Reason for Closure" and contains all of the following information, if applicable:~~
- a. ~~Each reason why the closure should be considered under R12-4-110, A.R.S. § 17-304(B), or A.R.S. § 17-452(A);~~
 - b. ~~Any data or other justification supporting the reasons for the closure with clear reference to any exhibits that may be attached to the petition;~~
 - e. ~~Each individual or segment of the public the petitioner believes will be impacted by the closure, including any other valid licensees, lessees, or permittees that will or may be affected, and how they will be impacted, including both positive and negative impacts;~~
 - d. ~~If the petitioner is a public agency, a summary of issues raised in any public hearing or public meeting regarding the petition and a copy of each written comment or document of concurrence authorized under A.R.S. § 17-452(A), received by the petitioning agency; and~~
 - e. ~~A proposed alternate access route, under R12-4-110.~~
8. ~~Has a "Part 4" with the title "Dates and Signatures" and contains the following:~~
- a. ~~The original signature of the private party or the official contact named under subsection (F)(5)(a) or (b) of this Section, or, if the petitioner is a public agency, the signature of the agency head or the agency head's designee; and~~
 - b. ~~The month, day, and year when the petition was signed.~~

R12-4-611. Petition for a Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy

~~A.~~ A person may request a hearing before the Commission when an administrative remedy exists in does not exist under statute, rule, or policy, an aggrieved individual may request a hearing before the Commission by following the provisions of this Section by submitting a petition as prescribed by this Section.

~~B.~~ Any individual who requests a hearing under this Section shall submit a petition as prescribed in this Section before the request for a hearing will be considered by the Commission.

~~C.B.~~ A petitioner shall submit an original and one copy of a the petition form to the Arizona Game and Fish Department, Director's Office, 5000 W. Carefree Highway, Phoenix, AZ 85086. The petition form is furnished by the Department and is available at any Department office and on the Department's website. The petition form shall contain all of the following information:

1. Petitioner identification:

a. When the petitioner is a private person:

i. Name of person;

ii. Physical and mailing address, if different from the physical address;

iii. Contact telephone number; and

iv. Email, when available;

b. When the petitioner is a private group or organization:

i. Name of the person designated as the contact for the group or organization;

ii. Physical and mailing address, if different from the physical address;

iv. Contact telephone number;

v. Email, when available; or

c. When the petitioner is a public agency:

i. Name of person,

ii. Name of agency,

iii. Petitioner's title,

iv. Agency's physical and mailing address, if different from the physical address,

v. Contact telephone number, and

vi. Email, when available;

2. Statement of Facts and Issues:

a. Description of issue to be resolved, and

b. Any facts relevant to resolving the issue;

3. Specific proposed remedy;

4. Petitioner's signature;

5. Date on which the petition was signed; and

6. Any other information required by the Department.

- ~~D.~~ The petitioner shall ensure that the petition is typewritten, computer or word processor printed, or legibly handwritten, and double spaced on 8 1/2" x 11" paper. The petitioner shall place the title "Petition for Hearing by the Arizona Game and Fish Commission" at the top of the first page. The petition shall include the items listed in subsections (E) through (H). The petitioner shall present the items in the petition in the order in which they are listed in this Section.
- ~~E.~~ The petitioner shall ensure that the title of Part 1 is "Identification of Petitioner" and that Part 1 includes the following information, as applicable:
- ~~1.~~ If the petitioner is a private person, the name, mailing address, telephone number, and e-mail address (if available) of the petitioner;
 - ~~2.~~ If the petitioner is a private group or organization, the name and address of the organization; the name, mailing address, telephone number, and e-mail address (if available) of one person who is designated as the official contact for the group or organization; the number of individuals or members represented by the private group or organization, and the number of these individuals or members who are Arizona residents. If the petitioner prefers, the petitioner may provide the names and addresses of all members; or
 - ~~3.~~ If the petitioner is a public agency, the name and address of the agency and the name, title, telephone number, and e-mail address (if available) of the agency's representative.
- ~~F.~~ The petitioner shall ensure that the title of Part 2 is "Statement of Facts and Issues." Part 2 shall contain a description of the issue to be resolved, and a statement of the facts relevant to resolving the issue.
- ~~G.~~ The petitioner shall ensure that the title of Part 3 is "Petitioner's Proposed Remedy." Part 3 shall contain a full and detailed explanation of the specific remedy the petitioner is seeking from the Commission.
- ~~H.~~ The petitioner shall ensure that the title of Part 4 is "Date and Signatures." Part 4 shall contain:
- ~~1.~~ The original signature of the private party or the official contact named in the petition, or, if the petitioner is a public agency, the signature of the agency head or the agency head's designee; and
 - ~~2.~~ The month, day, and year that the petition is signed.
- ~~I.C.~~ If a petition does not comply with this Section, the ~~Director~~ Department shall return the petition and indicate why the petition is deficient:
- ~~1.~~ Return the petition to the petitioner, and
 - ~~2.~~ Indicate in writing why the petition does not comply with this Section.
- ~~J.D.~~ After the ~~Director~~ Department receives a petition that complies with this Section, the ~~Director~~ Department shall place the petition on the agenda of a regularly scheduled Commission meeting.
- ~~K.E.~~ If the Commission votes to deny a petition, the Department shall not accept a subsequent petition on the same ~~matter~~ issue, unless the petitioner presents new evidence or reasons for considering the subsequent petition.
- ~~L.F.~~ This Section does not apply to the following:
- ~~1.~~ A matter An action related to a license revocation, suspension, denial, or civil assessment penalty; or
 - ~~2.~~ An unsuccessful hunt permit-tag draw application, ~~where there was no~~ that did not involve an error on the part of the Department; or

3. The reinstatement of a bonus point, except as authorized under R12-4-107(M).

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

ARTICLE 3. TAKING AND HANDLING OF WILDLIFE

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

ARTICLE 8. WILDLIFE AREAS AND DEPARTMENT PROPERTY

R12-4-101, R12-4-103, R12-4-104, R12-4-105, R12-4-106, R12-4-107, R12-4-108, R12-4-110, R12-4-111, R12-4-112, R12-4-113, R12-4-114, R12-4-115, R12-4-116, R12-4-117, R12-4-118, R12-4-119, R12-4-120, R12-4-121, R12-4-124, R12-4-125, R12-4-302, R12-4-611, and R12-4-804

Economic, Small Business and Consumer Impact Statement

A. Economic, small business and consumer impact summary:

1. Identification of the proposed rulemaking.

The Arizona Game and Fish Commission proposes to amend its rules following the 2014 five-year rule review of 12 A.A.C. Chapter 4, Article 1, Definitions and General Provisions. The review report, as required under A.R.S. § 41-1056, established a course of action to amend Article 1 rules. A subsequent review of these recommendations evaluated their usefulness in practice and enforcement, resulting in the rulemaking as it is submitted in this Notice. In addition to the amendments proposed in the five-year review report, the Commission proposes to amend rules within 12 A.A.C. 4 to establish requirements necessary to allow a person to surrender an unused, original hunt permit-tag; allow a person to transfer an unused big game tag to a nonprofit organization that affords hunting opportunities and experiences to veterans with service-connected disabilities and establish an application process for a qualified nonprofit organization to implement recent legislative amendments resulting from Laws 2014, 2nd Regular Session, Ch. 55, Section 1; allow the Department to reinstate bonus points expended during the computer draw when a person donates an unused big game tag to a qualifying nonprofit organization or surrenders it to the Department; provide the Department with greater flexibility in procuring tags; enable the Department to move to a paperless application process for hunting and fishing licenses and big game tags; and remove the ability to petition the Commission for the reinstatement of bonus points. The Commission is also amending rule language where necessary to increase consistency between Commission rules and ensure conformity with the Arizona Administrative Procedures Act and the Secretary of State's rulemaking format and style requirements and standards. The Commission proposes to amend rules within 12 A.A.C. 4 as follows:

R12-4-101. Definitions

The objective of the rule is to establish definitions to assist in understanding the unique terms that are used throughout 12 A.A.C. 4. The rule is amended to define "bobcat seal" to provide clarity and increase consistency between Commission rules. The rule is amended to transfer definitions contained within the solicitation and events on state property rule to R12-4-101. The rule is amended to further clarify the Commission's interpretation of "day-long." In order to allow hunting in an area where a hunt number has

not been assigned by Commission Order, the rule is amended to remove "by a particular hunt number" from the definition of "hunt area." The rule is amended to define "person" to simplify rule language and ensure all applicable individuals and entities are included, as appropriate for a specific rule. Under A.R.S. § 17-331(A), a person is required to carry a license or "proof of purchase" and produce it on request to any game ranger, wildlife manager, or peace officer. Because Arizona hunting and fishing licenses and tags are available at Department offices, at license dealers, and online; the size, shape, format, and features of those licenses and tags will vary depending on where they were purchased. The rule is amended to define "proof of purchase" to communicate the acceptable criteria for meeting the requirements of A.R.S. § 17-331(A). The rule is also amended to define "adult bull buffalo," "adult cow buffalo," "rooster," and "yearling buffalo" to provide further clarity of terms referenced within Commission Order and rule. In addition, the rule is amended to remove "excluding male lambs" from the definition of "ram" to prevent a hunter from unintentionally violating the requirements established under statute, Commission Order, and rule. In the past, hunters have taken what they believed to be a ram only to find upon closer inspection that it was actually a male lamb.

R12-4-103. Duplicate Tags and Licenses

The objective of the rule is to establish requirements for the issuance of a duplicate license or tag when the original was not used and is lost, destroyed, mutilated, or otherwise unusable or a tag was placed on a harvested animal that was subsequently condemned and surrendered to the Department. The rule is amended to establish the license will expire on December 31 of the current year when the license expiration date cannot be verified. Due to the high volume of licenses sold by license dealers, the information from the sale of hunting and fishing licenses by license dealers may not be recorded in the Department's database for a period of time. This can be problematic now that a license is valid for 365 days from the date of purchase and a person can choose a license effective date up to 60 days out from the date of purchase.

R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Drawing and Purchase of Bonus Points

The objective of the rule is to prescribe application requirements for hunt permit-tags issued by the computer draw or for the purchase of a bonus point. The rule is amended to replace the term "Department-approved" with "Department-sanctioned" to make the rule more accurate. The rule is amended to prohibit a person, who has reached the bag limit for a specific genus, from applying for another hunt permit-tag for that genus during the same calendar year to align the rule with statute. Under A.R.S. § 17-309, it is unlawful for a person to take or possess wildlife in excess of the bag limit authorized by Commission Order. The rule is amended to establish the Commission's authority to determine the times, locations, and manner in which an applicant may apply for a hunt permit-tag. This will enable the Department to move towards a paperless process. The rule is amended to require all applicants submitting an application to the Department to certify the information provided on the application is true and correct to increase consistency between Commission rules. The rule is amended to clarify the differences in how the

Department processes fees submitted manually (paper application) and electronically (online application). The Department employs an online license application and computer draw system. At the time of application, a person who submits an application manually is required to submit all applicable required fees, which can include an application, tag, and license fee. If a person is unsuccessful in the computer draw, the Department processes a refund for the tag fee, only. At the time of application, a person who submits an electronic application is required to pay only the application and license fee. If a person is successful in the computer draw, the Department will then charge the applicant's debit or credit card for the tag fee. The rule is also amended to establish overpayments of \$5 or less will not be refunded and are considered a donation to the Arizona Game and Fish Fund because the processing cost for refunding these overpayments is greater than the nominal amount of the refund. The Department processes approximately 340 overpayments of \$5 or less each annually. The refund process involves multiple state agencies: the Department initiates the refund action; the General Accounting Office (GAO) processes the request and issues the warrants (refunds); the Department receives the warrants, verifies the payee and warrant amount, mails valid warrants, removes warrants payable to persons who subsequently submitted an insufficient funds payment, and initiates warrant corrections when necessary; GAO processes and issues the corrected warrants; and the Arizona Department of Revenue (ADOR) manages the unclaimed property process for any unclaimed refunds. Each refund costs the Department approximately \$2 to \$5 to process (Department materials and equipment as well as GAO and ADOR costs are not included in this estimate) and almost 70% of these refunds are not redeemed by the recipient. In addition, the rule is amended to allow a customer to retain any accrued loyalty and bonus points and be awarded a bonus point for that computer draw when the payment submitted is less than the required fees, but is sufficient to cover the application and license fees. Currently, when the Department rejects an application with insufficient funds, the applicant forfeits any accrued loyalty bonus point and is ineligible for the computer draw and the awarding of any bonus points; all funds (less the application fee) are returned to the customer. The proposed amendment will allow the Department to issue a license and award a bonus point, provided the funds submitted are sufficient to cover the application and license fees. The application will not be entered into the computer draw and any additional funds will be refunded. This change is in response to customer comments received by the Department.

R12-4-105. License Dealer's License

The objective of the rule is to establish definitions, eligibility criteria, application procedures, license holder requirements, authorized activities, and prohibited activities for a license dealer's license. The rule is amended to define "License Dealer Portal" and establish that a license dealer may be given authorization to issue online licenses through a License Dealer Portal. The Department is in the process of creating an online system that will allow a license dealer to log-in, issue hunting and fishing licenses, and access their license dealer account. The rule is amended to specify the deadline in which the license dealer shall transmit license and permit fees to the Department to align the rule with statute. Under A.R.S. § 17-338, a license dealer is required to transmit all license and permit fees collected to the Department within thirty

days; failure to comply with this requirement shall be cause to cancel a license dealer's license. The rule is also amended to clarify duplicate license and tag requirements by adding a subsection that specifically addresses duplicate affidavit requirements. The Department requires a license dealer to submit an affidavit for each duplicate license sold by the dealer; the affidavit is included in the Arizona Game and Fish license book (on the back of the Department copy of the license). A duplicate license, tag, or permit is \$4; however, any license dealer who fails to complete and submit the affidavit portion of the Department copy must remit the full license, tag, or permit fee. In addition, the rule is amended to include cancellation as a penalty that may be used when a license dealer fails to comply with the rule. Cancellation may occur when a license dealer fails to transmit all license and permit fees to the Department by the established deadline.

R12-4-106. Licensing Time-frames

The objective of the rule is to establish the time-frame during which the Department will review an application packet and grant or deny an applicant a special license or authorization. The rule heading is amended to clearly indicate the rule applies only to special licenses issued by the Department and does not include hunting or fishing licenses or permit- and nonpermit-tags. The rule is amended to define "license" and "administrative," "overall," and "substantive" review time-frames; describe when a time-frame period begins and ends; and specify how an applicant may withdraw an application to provide additional clarity. The rule is amended to specify possible outcomes that may occur when a person submits an application for a special license. The rule is amended to allow the applicant and the Department to extend the over-all time-frame to ease the regulatory burden on both the applicant and the Department. The rule is amended to address scenarios where an applicant either demonstrates they are not eligible for the license prior to the substantive review or fails to respond to Department correspondence; this will increase efficiency and allow the Department to better utilize its resources. The rule is amended to establish time-frames for the Authorization for Use of Drugs on Wildlife. The rule is also amended to reflect amendments made to Article 4. Live Wildlife, which combines the four game bird license rules into one overarching game bird rule. In addition, the rule is amended to remove references to special license-tags. The Commission believes the special big game license-tags technically do not fall within the definition of "license" as used in the Administrative Procedure Act because an application is not required for these licenses.

R12-4-107. Bonus Point System

The objective of the rule is to establish requirements for applying for and maintaining bonus points, which may improve an applicant's draw odds for big game computer draws. The rule is amended to clarify that a bonus point is applied to a record using the person's Department identification number. The rule is amended to clarify that a bonus point is not transferable. The rule is amended to specify a person shall expend any accrued bonus points for that genus when purchasing a surrendered hunt permit-tag by any method other than first-come, first-served. These changes are in response to customer comments received by the Department. As part of the tag surrender process, whenever it is possible to do so, the Department will attempt to re-issue a surrendered tag. The rule is amended to establish that the Department shall restore expended bonus points when a person donates or surrenders an unused, original hunt permit-tag in

compliance with R12-4-118 or R12-4-121. The rule is amended to clarify that a person who is unsuccessful in the first-come, first-served phase of the computer draw is not eligible for a bonus point. The rule is amended to clarify that a hunter education bonus point is awarded to a person who completes the Arizona Hunter Education Course and remove language relative to hunter education instructors. This change is made in response to customer comments submitted to the Department by the public. Completing the Department's hunter education course is one of the criteria for becoming a certified hunter education instructor. The rule is amended to specify which hunter education course qualifies a person for the hunter education bonus points. Because the Department provides a variety of hunter education courses (bow hunter education, trapper education, and hunter education), there is some confusion as to which course qualifies a person for the hunter education bonus points. This change is made in response to customer comments submitted to the Department by the public. The rule is amended to allow a customer to retain any accrued loyalty bonus points when the payment submitted is less than the required fees, but is sufficient to cover the application and license fees. The Department will issue a license and award a bonus point when the payment submitted by the applicant is less than the total sum of all required fees, provided the funds submitted are sufficient to cover the application and license fees. This change is made in response to customer comments submitted to the Department by the public. The rule is amended to simplify the process by which a military member may request the reinstatement of a bonus point by no longer requiring a person to submit a letter requesting the reinstatement of their bonus points. The information required in the letter is readily available on other documents that are submitted at the time of the request. The rule is also amended to specify that the tag surrender requirements established under the proposed R12-4-118 do not apply to a person who is requesting the reinstatement of expended bonus points due to mobilization, activation or required duty in response to a declared national or state emergency, or required duty in response to an action by the President, Congress, or a governor of the United States or its territories. The rule is amended to clarify the Department will not refund any fees paid for a license or hunt permit-tag when the person applies for reinstatement of their bonus points. In addition, the rule is amended to specify that any bonus point fraudulently obtained shall be removed from the person's Department record to increase consistency between statute and rule. Under A.R.S. § 17-341, it is unlawful for a person to knowingly purchase, apply for, accept, obtain or use, by fraud or misrepresentation a license, permit, tag or stamp to take wildlife and that a license or permit so obtained is void and of no effect from the date of issuance.

R12-4-108. Management Unit Boundaries

The objective of the rule is to establish Management Unit boundaries for the preservation and management of wildlife. The rule is amended to update Management Unit boundaries to incorporate future changes to management unit boundaries.

R12-4-110. Posting and Access to State Land

The objective of the rule is to establish standards of conduct on State Trust Lands and set forth the Commission's criteria for allowing the closure of roads leading to hunting and fishing areas. The rule is

amended to provide additional clarity by further defining “existing road” to clearly indicate that an existing road is a road that has not been closed by the Commission. The rule is amended to specify that a person must comply with the requirements of A.R.S. 17-304(C) when the Commission has authorized a closure of access to state lands. The rule is also amended to clarify the Commission's interpretation of the recreational permit exemption provided by the State Land Department. In addition, the rule is amended to establish a license holder shall not operate a motor vehicle off-road or on roads that are closed to the public, except to pick up lawfully taken big game animals, to increase consistency between Commission rules.

R12-4-111. Identification Number

The objective of the rule is to prescribe the information required to obtain a Department identification number, which is a unique number assigned by the Department to each applicant or licensee. The number is necessary to properly identify a person and link their license, permit, and tag records, maintained in the Department’s sportsman's database, to that person. The rule is amended to remove the option that allows a person to use their Social Security Number as the Department Identification Number to better protect the person's identity. In addition, the rule is amended to replace the term "alias" with "any additional names the person has lawfully used in the past or is known by" to provide additional clarity.

R12-4-112. Diseased, Injured, or Chemically Immobilized Wildlife

The objective of the rule is to establish the Director’s authority to allow Department employees to condemn a lawfully taken animal deemed to be unfit for consumption and issue a duplicate tag, thus allowing the hunter the opportunity to take another permitted animal. The rule is amended only to ensure conformity with the Arizona Administrative Procedures Act and the Secretary of State’s rulemaking format and style requirements and standards.

R12-4-113. Small Game Depredation Permit

The objective of the rule is to establish permitted activities authorized under A.R.S. § 17-239(D), which allows any person suffering property damage to exercise all reasonable measures to alleviate damage; not to include the injuring or killing of game mammals, game birds, or wildlife protected under federal law or regulation, unless authorized by the Department or the U.S. Fish and Wildlife Service. The rule is amended to incorporate by reference the most recent edition of the applicable regulation, 50 C.F.R. 21.41. The rule is also amended to clarify depredation permit application requirements. In addition, the rule is amended to establish the Department shall specify the allowable methods of take that may be used by the permit holder.

R12-4-114. Issuance of Nonpermit-tags and Hunt Permit-tags

The objective of the rule is to prescribe the hunt permit-tag structure, conditions under which the Commission may issue tags, application procedures, and distribution of hunt permit- and nonpermit-tags. The rule is amended to remove descriptive language relating to tag features. This change provides the Department with greater flexibility when procuring tags and implementing new tag features and enables the Department to offer "paperless" tags. The rule is amended to increase consistency between Commission rules by updating application requirements. The rule is amended to remove javelina from the list of game subject to the 10% nonresident cap to increase opportunity for nonresidents. The rule is amended to

establish the Department shall make available one hunt permit-tag when a hunt number has less than five, but more than one available hunt permit-tag. Because the Department reserves a total of 20% of available hunt permit-tags for the bonus point pass of the computer draw, this amendment may result in reserving less than 20% of available hunt permit-tags in other hunt numbers. The rule is amended to describe all phases of the computer draw process to provide a more complete description of the computer draw system. The rule is amended to clarify that a person may possess the same number of hunt permit-tags equal to the applicable bag limit to align the rule with Commission Order. The rule is amended to prohibit a person who has reached the bag limit for a specific genus from applying for another hunt permit-tag for that genus during the same calendar year to align the rule with statute. Under A.R.S. § 17-309, it is unlawful for a person to take or possess wildlife in excess of the bag limit authorized by Commission Order. The rule is also amended to establish in rule that the Commission may, at a public meeting, increase the number of hunt permit-tags issued to nonresidents in a computer draw when necessary to meet management objectives. In addition, the rule is amended to establish the Department shall not issue more than 50% of the hunt permit-tags available to nonresidents with the highest number of bonus points through the initial bonus point pass of the computer draw to increase opportunity for those persons who have no bonus points or very few bonus points.

R12-4-115. Supplemental Hunts and Hunter Pool

The objective of the rule is to establish the Commission's authority to offer a supplemental hunt when the regular season structure is not meeting management objectives, to take depredating wildlife, or address an immediate threat to the health, safety, or management of wildlife or its habitat, or public health or safety. The rule also establishes the requirements for the supplemental hunter pool, which is a listing of applicants who may be offered a restricted nonpermit-tag when the Department initiates a supplemental hunt. The rule is amended to define "companion tag" and "emergency season" to further clarify terms referenced within the rule and replace the term "supplemental hunt" with "restricted non-permit tag" to make the rule more concise. The rule is amended to enable the Commission to approve a supplemental hunt by Commission Order and establish a more efficient process by reducing the number of steps currently involved in the supplemental hunt process. The rule is amended to separate the processes and requirements specific to restricted nonpermit-tags and companion tags to make the rule more concise and understandable. The rule is amended to increase consistency between Commission rules by updating application requirements. The rule is also amended to clarify who is eligible to receive companion tag. When a supplemental hunt occurs in an area that matches the exact season dates and open areas of another big game hunt for which a computer draw has occurred, the Department will offer these restricted nonpermit-tags, also known as "companion tags," only to persons who were successful in that computer draw. In addition, the rule is amended to clarify that a person purchasing a restricted nonpermit-tag must either possess or purchase a license that is valid at the time of the supplemental hunt to increase consistency between Commission rules.

R12-4-116. Reward Payments

The objective of the rule is to establish reward payments requirements, to include the schedule of rewards.

The reward program was established to motivate persons to report violations and provide information that can result in the arrest of a perpetrator when a case cannot otherwise be resolved. The rule is amended to increase the reward value to \$500 for big game, eagles, and threatened and endangered species in an effort to maintain the intent of the rule. Reward amounts were established in 1991 and have not been increased since that time; also the purchasing power of a dollar at that time was close to twice that of today.

R12-4-117. Indian Reservations

The objective of the rule is to specify that a state license, permit, or tag is not required to hunt or fish on any Indian reservation located within Arizona, that any lawfully taken game or fish may be transported or processed anywhere in the State if it can be identified as to species and legality pursuant to statute, and that all wildlife transported in this State is subject to inspection. The rule is amended to correct a statutory reference, Laws 2012, 2nd Reg. Sess., Ch. 128, amended A.R.S. § 17-309, resulting in the renumbering of subsequent subsections. In addition, the rule is amended to clarify that an inspection may be required when a person transports wildlife taken on an Indian reservation anywhere in this State. Under A.R.S. § 17-211(E), a Game Ranger or Wildlife Manager may inspect all wildlife taken or transported anywhere in this State.

R12-4-118. Hunt Permit-tag Surrender

The objective of the proposed rule is to enable the Department to implement a tag surrender program, to include the establishment of a membership program and the requirements and limitations for the surrender of an unused, original hunt permit-tag. Laws 2013, First Regular Session, Ch. 197 granted the Arizona Game and Fish Commission the authority to establish license classifications and fees to give the Department the ability to operate more like a business. In response to this new authority, the Commission implemented a new basic license structure to generate additional revenue for the Game and Fish Fund, remove barriers for recruitment of new hunters and anglers, and provide more value to recruit and retain customers. Although the Department's revenue projections indicate a \$3.8 million revenue increase may result from the exempt rulemaking, it is too soon to tell if the projections were correct. The Arizona Game and Fish Department's principle operational revenue comes from the sale of hunting and fishing licenses, hunt permit-tags, stamps and matching funds from federal excise taxes hunters and anglers pay on guns, ammunition, fishing tackle, motorboat fuels, and related equipment. Over the past several years, sales of licenses, permits, stamps, and tags have trended downward while operational costs and Department responsibilities have either increased or expanded. In February 2014, the Commission directed the Department to proceed with the concept of a membership program, to include bundling products and services, as a means to encourage participation in recreational activities and generate additional revenue for the Game and Fish Fund. The Commission believes establishing a membership program will provide the public with a way to stay up-to-date on the latest hunting, angling, volunteer, and Department activities; connect with others who have like interests; and make a positive impact on the greater hunter, angler, and wildlife viewer community. The Commission also believes maintaining an active membership for multiple years can provide a rewarding experience as the program and its members grow. To solicit feedback and

support, the Department deployed an outreach campaign beginning in March 2014 to inform the public of the proposed membership program, to include bundling products and services; and continuing in July through August 2014 to inform the public of the proposed membership program and collect feedback about the bundled products and services. The campaign included public meetings in Mesa, Flagstaff, Glendale, Payson, Phoenix, and Tucson. The Department published information regarding the proposed membership program and bundled services on the Department's website and Facebook page. The Department also created a dedicated e-mail address through which the public could submit comments and suggestions in regards to the membership program and tag surrender concepts. The Department issued press releases to announce public meeting dates and direct people to the web page. The Department held meetings with key members of a number of conservation groups to discuss the membership program and the bundled products and services. In addition, the membership program and bundled products and services concept has been a standing agenda item at every Commission meeting since February 2014. In August 2014, the Commission directed the Department to incorporate the concept of a membership program as a means to encourage participation in recreational activities and generate additional revenue for the Game and Fish Fund into the Article 1 Rulemaking Package, for implementation in January 2016. The proposed rule specifies that different membership levels and prices will be based on the types of products and services offered. The Commission envisions the membership program and its associated benefits will continue to grow as new products and services become available. The proposed rule specifies the Department may establish the terms and conditions for the membership program, such as the membership is not transferable and that a payment made for the membership is not refundable. In addition, the proposed rule specifies the membership program is available for purchase/enrollment online-only to ensure immediate access to member benefits and to enable the Department to link the person's membership with their Department record, when one exists. The proposed rule limits the tag surrender program to a person who has a valid and active membership in a Department membership program; "valid and active membership" as defined in the proposed rule means a paid and unexpired membership in any level of the Department's membership program. The proposed rule requires a person wishing to participate in tag surrender to submit a valid application and surrender the unused, original hunt permit-tag prior to the close of business the day before the hunt begins. One of the most common comments submitted by the public related to the ability for a person to "game" the tag surrender program. For example, a person with a high number of bonus points could offer to apply with other person(s), for a fee, in order to increase the other person(s) odds of being drawn for a valued hunt permit-tag, then the person could surrender their tag, have their bonus points restored, and then repeat the process in the next computer draw offered by the Department. To prevent this from happening, the proposed rule establishes that a person is only eligible to surrender a tag for a specific species once before the bonus points accrued for that species must be expended. The proposed rule also limits the number of tags a person may surrender based on the person's membership level. The proposed rule requires the Department to restore the bonus points expended for the surrendered tag and award any bonus points the person would have accrued had the person been unsuccessful in the computer draw for

that surrendered tag. The proposed rule specifies the Department will not refund any fees paid for the surrendered tag, as prohibited under A.R.S. § 17-332(E). The proposed rule also enables the Department to re-issue or destroy the surrendered tag. The Department will base the decision to re-issue or destroy the surrendered tag using specific criteria, such as but not limited to the proximity to the start date of the hunt for which the tag is valid, the type of tag, and whether the tag is for a high demand hunt. The Commission proposes to re-issue a surrendered tag using any one or more of the following methods (in no particular order): 1) Offer the surrendered tag, beginning with the highest membership level in the Department's membership program, to a person who would have been next to receive a tag for that hunt number, as evidenced by the random numbers assigned during the Department's computer draw process. The person must possess or purchase a valid license in order to be eligible to purchase the surrendered tag. If the person is not interested in purchasing the surrendered tag or is not eligible because the person has already met the annual or lifetime bag limit for that genus, the tag would be offered to the next person within that membership level in the Department's membership program who would have been next to receive a tag for that hunt number, as evidenced by the random numbers assigned during the Department's computer draw process, and so on. 2) Offer the surrendered tag to a person who has a valid and active membership in any tier of the Department's membership program which contained a tag surrender option and would have been next to receive a tag for that hunt number, as evidenced by the random numbers assigned during the Department's computer draw process. The same limitations and requirements that apply to method #1 will apply to this method. 3) Offer the surrendered tag to an eligible person who would have been next to receive a tag, as evidenced by the random numbers assigned during the Department's computer draw process. The same limitations and requirements that apply to method 1 will apply to this method. 4) Offering the surrendered tag through the first-come, first-served process. For group applications where one or more members of the group is qualified under the particular method for re-issuing the surrendered tag, the Commission proposes to offer the surrendered tag first to the applicant designated "A," if eligible to receive the surrendered tag. If applicant "A" chooses not to purchase the surrendered tag or is not eligible, the Department will offer the surrendered tag to the applicant designated "B" if qualified to receive a surrendered tag. This process shall continue with applicants "C" and then "D" until the surrendered tag is either purchased or all qualified members of the group application choose not to purchase the surrendered tag. The proposed rule specifies that a person purchasing the surrendered tag shall expend all bonus points accrued for that genus, except for any accrued Hunter Education and loyalty bonus points. The Commission is concerned that a person who is successful in the computer draw may have the desire, but not the ability to surrender a hunt permit-tag for a hunt occurring later in the same year. In addition, the proposed rule specifies that a person is not eligible to petition the Commission under R12-4-611 for reinstatement of any forfeited bonus points, except as authorized under R12-4-107(M).

R12-4-119. Arizona Game and Fish Department Reserve

The objective of the rule is to prescribe requirements and duties for commissioned reserve officers and noncommissioned reserve volunteers for the purposes stated under A.R.S. § 17-214(B). The rule is

amended only to ensure conformity with the Arizona Administrative Procedures Act and the Secretary of State's rulemaking format and style requirements and standards.

R12-4-120. Issuance, Sale, and Transfer of Special Big Game License Tags

The objective of the rule is to establish procedures for the application, selection criteria, award, and issuance of special big game license-tags authorized under A.R.S. § 17-346. The rule is amended to establish that an organization cannot resubmit a corrected proposal but may submit a proposal again the following year because proposals are reviewed after the May 31 proposal deadline.

R12-4-121. Big Game Permit or Tag Transfer

The objective of the rule is to establish the requirements for an unused big game tag transfer as authorized under A.R.S. § 17-332, which allows a parent, guardian, or grandparent to transfer their unused big game tag to a minor child or grandchild. The rule also allows a person to transfer their unused big game tag to a 501(c)(3) organization that provides hunting opportunities and experiences to a minor child with a life-threatening medical condition or physical disability or a veteran of the Armed Forces of the United States with a service connected disability. The rule is amended to implement recent legislative amendments resulting from Laws 2014, 2nd Regular Session, Ch. 55, Section 1 (House Bill 2303) which allow a person to donate a tag to a veteran of the Armed Forces of the United States with a service connected disability and the Commission to establish an application process for a qualified nonprofit organization. The rule is amended to define "authorized nonprofit organization" as part of the application process for a qualified nonprofit organization. The rule is amended to replace "Department-approved" with "Department-sanctioned" to make the rule more accurate. The rule is amended to clarify that a tag may not be transferred to a person who has reached the applicable annual or lifetime bag limit for that genus to increase consistency between Commission laws and rules. Under A.R.S. § 17-309, it is unlawful for a person to take or possess wildlife in excess of the bag limit authorized by Commission Order. Currently, because this restriction is not addressed in rule, a person or organization may attempt to transfer a tag to a person who has already reached the annual or lifetime bag limit for that genus. The rule is also amended to allow a person to request the reinstatement of bonus points after donating an unused, original tag to a qualified 501(c)(3) organization, provided the person has a valid and active membership in the Department's membership program with at least one available unredeemed tag surrender at the time the person donates the hunt permit-tag to a qualified 501(c)(3) organization. This is done to ensure qualified 501(c)(3) organizations are not negatively impacted by the provisions established under the proposed new rule, R12-4-118. In addition, the rule is amended to establish application requirements for a nonprofit organization seeking to obtain donated big game tags for use by a minor child with a life-threatening medical condition or physical disability or a veteran of the Armed Forces of the United States with a service connected disability.

R12-4-124. Proof of Domicile

The Commission proposes to adopt a new rule to establish acceptable proof of domicile to align the rule with statute. Laws 2012, 2nd Regular Session, Ch. 237 and 272 amended A.R.S. §§ 5-301 and 17-101

respectively to authorize the Commission to prescribe which documents may be used to provide acceptable "proof of domicile." In creating this list, the Department reviewed lists of documents considered to prove residency for the purposes of registering a motor vehicle, attending state college, and applying for a hunting or fishing license in other states. The proposed rule specifies acceptable proof of domicile may be requested and that more than one document may be required.

R12-4-125. Public Solicitation or Event on Department Property

The objective of the rule is to establish the requirements and procedures the public shall use to request permission to conduct a solicitation or event on Department property, and to provide guidance to the Department for the review and management of public solicitations and events on Department property. The Commission proposes to renumber R12-4-804 to R12-4-125. The rule is amended to allow mid-level managers to approve minor, incidental solicitations on Department properties to make the approval process more efficient and eliminate unnecessary administrative delay. The rule replaces the term "applicant" with "sponsor" to make the rule more concise. The rule is amended to allow the consumption of alcohol at a solicitation or event and require a person who intends to serve alcohol to provide the Department with a copy of a current and valid license issued by the Arizona Department of Liquor Licenses and Control to the sponsor and vendor, as applicable, and a liquor liability rider, included with the insurance certificate. The rule is amended to require an applicant to provide proof of insurance no less than ten business days before the solicitation or event. The rule is amended to remove the ability for the Department to waive a requirement due to an applicant's inability to pay a deposit, an insurance premium, or a service provider to reduce the Department's and State's liability. The rule is amended to establish the Department shall deny an application when the sponsor is unable to demonstrate adequate compliance with local, state, or federal ordinances, codes, or regulations. The rule is amended to remove "rights of appeal" language as a person whose application is denied has no such right. The rule is amended to require a vendor who is working under a sponsor to provide certificates of insurance to the Department, when applicable. In addition, the rule is amended to establish a sponsor shall not allow the unlawful possession or use of drugs at the solicitation or event site to reduce the Department's and State's liability.

R12-4-302. Use of Tags

The objective of the rule is to establish requirements for the possession and use of tags issued by the Department. The rule is amended to remove descriptive language relating to the manner in which the tag is attached to the animal and specify that the tag shall be attached to the wildlife carcass in the manner indicated on the tag. This change provides the Department with greater flexibility when procuring tags and when implementing new tag features.

R12-4-611. Petition for Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy

The objective of the rule is to establish the requirements for submitting a petition for a hearing before the Commission when no remedy is provided in statute, rule, or policy. Current statute and administrative rule do not provide a remedy to a person who applied for the wrong hunt (e.g., hunter

meant to apply for a bull elk hunt, but entered a cow elk hunt number on the application) or is unable to use the hunt permit-tag for any reason. The Commission believes the tag surrender component of the membership program will provide a satisfactory remedy to a person who applied for the wrong hunt or is unable to use the hunt permit-tag. The rule is amended to prohibit persons from petitioning the Commission for reinstatement of any expended bonus points, except as authorized under R12-4-107(M). The Commission believes R12-4-118 provides a satisfactory remedy.

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

Overall, the Commission believes the amendments proposed in this rulemaking result in rules that are either less burdensome or have no significant impact on the regulated community. Therefore, this subsection will address only those rules deemed to have a significant impact on the regulated community.

**R12-4-104. Application Procedures for Issuance of Hunt Permit-tags
by Drawing and Purchase of Bonus Points**

Persons continue to apply for or obtain additional hunt permit-tags after they have reached the annual bag limit for that genus, which is prohibited under A.R.S. § 17-309. The Commission is unable to establish the frequency of occurrence as there is currently no mechanism in place to track these types of incidents. The Department contacts approximately 1,700 persons annually because their credit card payment was declined after a computer draw occurs. The Department processes approximately 340 refunds of \$5 or less annually; approximately 230 of those refunds are never redeemed by the recipient.

R12-4-105. License Dealer's License

License dealers fail to transmit all license and permit fees to the Department in a timely manner, approximately 325 times annually. License dealers fail to submit approximately 680 completed duplicate affidavits annually.

R12-4-107. Bonus Point System

A person who obtains a bonus point by fraud may apply that bonus point to an application once they are eligible to apply for a computer draw. The Commission is unable to establish the frequency of occurrence as there is currently no mechanism in place to track these types of incidents, but estimates the frequency of occurrence to be approximately seven to twelve applicants annually.

R12-4-118. Hunt Permit-tag Surrender

The Department has no mechanism in place that allows the Department to reinstate a person's bonus points expended when the hunter successfully draws a hunt permit-tag that they applied for in error or cannot use. In addition, the Department's principle operational revenue comes from the sale of hunting and fishing licenses, hunt permit-tags, stamps and matching funds from federal excise taxes hunters and anglers pay on guns, ammunition, fishing tackle, motorboat fuels, and related equipment. Over the past several years, sales of licenses, permits, stamps, and tags have trended downward while operational costs and Department responsibilities have either increased or expanded. New figures from

the U.S. Fish and Wildlife Service show that the number of hunters 16 and older declined by 10% between 1996 and 2006; from 14 million to about 12.5 million. The number of anglers also has declined by 15% between 1996 and 2006; from 35.2 million to about 30 million.

(b) 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.

Overall, the Commission believes the amendments proposed in this rulemaking result in rules that are either less burdensome or have no significant impact on the regulated community. Therefore, this subsection will address only those rules deemed to have a significant impact on the regulated community. For the rules identified below, the Commission believes the targeted conduct identified in (A)(1)(a) will continue to occur and may increase if the rule is not amended as indicated in (A)(1):

**R12-4-104. Application Procedures for Issuance of Hunt Permit-tags
by Drawing and Purchase of Bonus Points**

Hunter opportunity is negatively impacted when a person is able to continue to obtain tags after they have met the bag limit established by Commission Order. The Department expends approximately \$2 to \$5 to process each refund; processing costs for refunding these overpayments are greater than the nominal amount of the refund. The Department expends additional resources contacting persons whose credit card was declined after the computer draw occurs. Persons forfeit their loyalty point when their credit cards are declined after a computer draw occurs.

R12-4-105. License Dealer's License

The Department expends additional resources in contacting license dealers, attempting to collect untimely monies, and reconciling the monies, which prevents the timely submittal of license revenue, when a license dealer fails to submit a completed duplicate affidavit for each duplicate license sold. The Department itself is unable to apply the authority provided under A.R.S. § 17-338(A) in a timely manner, resulting in greater losses to the Department.

R12-4-107. Bonus Point System

Hunter opportunity is negatively impacted when a person applies bonus points obtained by fraud to a computer draw application. Persons forfeit their loyalty point when their credit card is declined after the computer draw occurs.

R12-4-118. Hunt Permit-tag Surrender

It can take years for a person to accrue enough bonus points to be successful in drawing a high demand hunt and to lose those bonus points for an unwanted hunt permit-tag can be devastating to some persons as bonus points are highly valued by most hunters. The Department relies on hunting and fishing license fees for the bulk of its revenue, with no money coming from the State's general fund (tax dollars). The loss of hunters and anglers are a long-term concern as the forecasted drop in future revenues make it difficult for the Department to afford the rising costs of conservation efforts and fund the acquisition of open space.

(c) The estimated change in frequency of the targeted conduct expected from the rule change.

**R12-4-104. Application Procedures for Issuance of Hunt Permit-tags
by Drawing and Purchase of Bonus Points**

R12-4-105. License Dealer's License

R12-4-107. Bonus Point System

The Commission anticipates the frequency of the targeted conduct identified in (A)(1)(a) will gradually decrease with each passing year after the effective date of the rule amendments.

R12-4-118. Hunt Permit-tag Surrender

The Commission is unable to establish the actual change in frequency as the membership and tag surrender programs are new ventures for the Department. The Commission envisions the types of products and services will continue to expand and anticipates that, over time, the number of persons purchasing/enrolling in Department membership programs will grow. Thus ensuring the Department is able to continue to conserve and manage Arizona's wildlife populations and their habitats in the future.

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

The Commission anticipates the proposed rulemaking in general will benefit the regulated community by creating more opportunities for the use of wildlife resources, with few costs, and maintaining resident hunting opportunity. The Commission believes the regulated community and the Department benefit from the proposed rulemaking through clarification of rule language governing general provisions. The Commission anticipates the proposed rulemaking may impact businesses, both large and small; however, the Commission has determined that the impact will not be significant enough to impact business revenues or payroll expenditures. In addition, the Commission anticipates the proposed rulemaking will provide a benefit to the regulated community and the Department by establishing a membership program and establishing the limitations and requirements for surrendering a tag and restoring the bonus points expended for the surrendered tag. It is difficult to quantify the value a person places on their bonus points; however, it can be significant. The Commission anticipates the proposed rulemaking will have a minimal impact on the regulated community. Becoming a member of the Department membership program is voluntary and only those persons who choose to participate in the program will pay a membership fee. The Commission does not anticipate the membership fee will significantly affect a person's ability to participate in an activity or have a significant impact on a person's income, revenue, or employment in this State related to that activity. The Department will benefit from the additional revenue that may be generated. The Commission anticipates the proposed rulemaking will not impact public or private employment. The Commission anticipates the proposed rulemaking will not have a significant impact on State revenues. In addition, the rulemaking will not impose increased monetary or regulatory costs on other state agencies, political subdivisions of this State, persons, or individuals so regulated. The Commission has determined that there are no alternative methods of achieving the objectives of the proposed rulemaking and that the benefits of the proposed rulemaking outweigh the costs.

R12-4-101. Definitions

The Commission anticipates the regulated community and the Department will benefit from the amendments that create or refine terms referenced throughout Commission rules as they help to clarify the Commission's intent and foster consistent interpretation of Commission rules. The Commission anticipates the regulated community and the Department will benefit from the amendments that define “proof of purchase” and removes “excluding male lambs” from the definition of ram because both amendments reduce the regulatory burden.

R12-4-103. Duplicate Tags and Licenses

The Commission anticipates the regulated community will benefit from the amendment that establishes an expiration date for duplicate licenses that are not recorded in the Department’s database. Persons whose original license expires before December 31 will gain a period of time, while persons who purchased an original license before December 31 will lose a period of time. However, if the person prefers not to lose a period of time they can provide the Department with proof of when they purchased the original license.

**R12-4-104. Application Procedures for Issuance of Hunt Permit-tags
by Drawing and Purchase of Bonus Points**

The Commission anticipates the regulated community and the Department will benefit from the amendment that provides application requirements for hunt permit-tags and bonus points. The Commission also anticipates the Department, GAO, and ADOR benefit from the amendment that establishes a minimum refund limit through costs savings from not processing refunds that have a greater cost to the agency than the refund itself. Persons who submit an overpayment of \$5 or less will bear costs; however, \$5 is a minimal amount. The Commission does not believe the rulemaking will have a significant impact on persons subject to the rule, especially when one considers that approximately 70% of those refunds for \$5 or less are not redeemed by the recipients. Currently, when the Department rejects an application based on insufficient funds, the applicant forfeits any accrued loyalty bonus points and is ineligible for the computer draw and the awarding of any bonus points and all funds (less the application fee) are returned to the customer. By allowing the Department to issue a license and award a bonus point when the payment submitted by the applicant is less than the total sum of all required fees, an applicant is able to retain their loyalty point and accrue a bonus point for that draw.

R12-4-105. License Dealer's License

The Commission anticipates the Department, GAO, and Attorney General's office will benefit from the amendment that establishes a deadline for the transmittal of license and permit fees. Under A.R.S. § 17-338, a license dealer is required to transmit all license and permit fees collected to the Department within thirty days; failure to comply with this requirement shall be cause to cancel a license dealer's license. Each year, license dealers fail to transmit license and permit fees to the Department in a timely manner. The Department, GAO, and Attorney General's office expend additional resources in contacting license dealers, attempting to collect untimely monies, and reconciling the monies, which prevents the timely submittal of license revenue, when a license dealer fails to submit a completed duplicate affidavit for each duplicate license sold. In some cases, license dealers continually fail to transmit license and permit fees to the

Department in a timely manner while continuing to sell additional licenses and permits. By the time the Department cancels the license dealer's license, the license dealer is in arrears, may have used the Department's license and permit fees to supplement their own business, and is unable to reimburse the Department (anywhere from \$4,500 to \$20,000 annually). For these license dealers, the Department attempts to collect those missing fees; any fees that are not collected by the Department are turned over to the Attorney General's office who initiates formal collection procedures. Once in collections, the third-party responsible for collecting monies on behalf of the State is permitted to negotiate payments and total amounts owed, which can result in the license dealer's debt being reduced to a fraction of the original amount owed to the Department, resulting in greater losses to the Department. The Commission also anticipates the Department will benefit from the amendment that clarifies duplicate affidavit requirements through increased efficiency by allowing the Department to better utilize its resources.

R12-4-106. Licensing Time-frames

The Commission anticipates the regulated community and the Department will benefit from the amendments designed to clarify the rule and reduce the regulatory burden.

R12-4-107. Bonus Point System

The Commission anticipates the regulated community and the Department will benefit from amendments that simplify the process by which a military member may request the reinstatement of bonus points. The regulated community will benefit from the amendment that allows the Department to void bonus points that were fraudulently obtained due to increased opportunity. The Commission anticipates the regulated community and the Department will benefit from amendments that allow a person to retain their loyalty point and accrue a bonus point for that draw when the payment submitted by the applicant is less than the total sum of all required fees, but is sufficient to cover the application and license fees.

R12-4-108. Management Unit Boundaries

The Commission anticipates the regulated community and the Department will benefit from amendments that update Management Unit boundaries. Hunters purchase tags that identify a specific hunting season and Management Unit, portion of a unit, or group of units; hunters rely on the unit boundary descriptions provided under R12-4-108 to ensure that they are in compliance with Game and Fish Commission laws, rules, and orders.

R12-4-110. Posting and Access to State Land

The Commission anticipates the regulated community and the Department will benefit from amendments that clarify the rule and increase consistency between Commission rules.

R12-4-111. Identification Number

The Commission anticipates the regulated community will benefit from the amendment that removes rule language that allowed a person to use their Social Security Number as the Department identification number. No longer allowing a person to use their Social Security Number as a Department identifier reduces the possibility of identity theft.

R12-4-114. Issuance of Nonpermit-tags and Hunt Permit-tags

The Commission anticipates the regulated community and the Department will benefit from a rule that establishes hunt permit- and nonpermit-tag requirements. The Commission anticipates prospective vendors, who were previously eliminated from consideration due to their inability to meet specific tag feature requirements, will benefit by being able to submit a proposal and possibly be awarded a bid. The Commission anticipates the regulated community and the Department will benefit from the amendment that allows a person to possess the same number of permit- and nonpermit-tags as allowed for the bag limit of that genus. Currently, a person who takes a mountain lion in a hunt area where multiple bag limits are authorized by Commission Order would have to leave the hunt area and go to a Department office or license dealer to obtain a second mountain lion tag. Allowing the purchase of multiple tags at one time reduces the regulatory burden on both the regulated community and the Department. The Commission also anticipates the Department will benefit from increased tag sales.

R12-4-118. Hunt Permit-tag Surrender

The Commission anticipates the proposed rulemaking will provide a benefit to the regulated community and the Department by establishing a membership program, to include the limitations and requirements for surrendering a tag and restoring the bonus points expended for the surrendered tag. It is difficult to quantify the value a person places on their bonus points; however, it can be significant. The Commission anticipates the proposed rulemaking will have a minimal impact on the regulated community. Becoming a member of the Department membership program is voluntary and only those persons who choose to participate in the program will pay a membership fee. Being eligible for a surrendered tag will increase opportunity for persons who are eligible to purchase a surrendered tag. The Commission does not anticipate the membership fee will significantly affect a person's ability to participate in an activity or have a significant impact on a person's income, revenue, or employment in this State related to that activity. While a fee is associated with the membership program, membership is voluntary and enrollment will have no impact on the person's odds in any computer draw held by the Department. The Commission anticipates the Department will bear costs associated with the development and administration of the tag surrender program. However, these costs should lessen with each passing year. The Commission also anticipates the Department will benefit from the ability to re-issue (re-sell) a surrendered tag.

R12-4-121. Big Game Permit or Tag Transfer

The Commission anticipates the Department will benefit from the amendment that brings the rule into alignment with recent legislative changes that allow a person to transfer their unused big game tag to a 501(c)(3) organization that provides hunting opportunities and experiences to a veteran of the Armed Forces of the United States with a service connected disability as the Department has received a number of comments asking to be able to donate their unused tag to a veteran. The Commission anticipates the regulated community and the Department will benefit from the amendment that establishes an application process for a qualified nonprofit organization by increasing consistency and ensuring fairness and equity between qualified nonprofit organizations. The Commission anticipates the regulated community and the Department will benefit from the amendment that clarifies a tag may not be transferred to a person who has

reached the applicable annual or lifetime bag limit. Under A.R.S. § 17-309, it is unlawful for a person to take or possess wildlife in excess of the bag limit authorized by Commission Order. Because the rule does not state this, some organizations have attempted to transfer a tag to a person who has met the bag limit for that species. The Commission anticipates the proposed rulemaking will provide a benefit to the regulated community by allowing the Department to restore the bonus points expended for the donated tag. It is difficult to quantify the value a person places on their bonus points; however, it can be significant. The Commission anticipates the Department will bear costs associated with the development and administration of the application process for a qualified nonprofit organization. However, these costs should lessen with each passing year.

R12-4-124. Proof of Domicile

The Commission anticipates the regulated community and the Department will benefit from the rulemaking that prescribes which documents may be used to provide acceptable "proof of domicile." In 2014, 176 persons were cited for purchasing a resident license or tag when they should have purchased a nonresident license or tag. While not every instance was due to misunderstanding of the residency requirements, the Commission anticipates the rulemaking will help increase understanding as to how the Department determines a person's true domicile for the purposes of establishing residency.

R12-4-125. Public Solicitation or Event on Department Property

The Commission anticipates the regulated community and the Department will benefit from the amendment that allows mid-level managers to approve minor, incidental solicitations on Department properties as the sponsor may receive the approval or denial of a request more quickly and the Department's administrative burden may be reduced. The Commission anticipates the amendments that require a vendor working under a sponsor to provide certificates of insurance to the Department; remove the ability for the Department to waive a requirement due to an applicant's inability to pay a deposit, an insurance premium, or a service provider; and prohibit the possession and use of unlawful drugs may impact the regulated community (public and private individuals or small businesses); however the Department has a duty to protect state assets. The Commission anticipates the rules can impact small businesses looking to conduct a solicitation or special event on state property in cases where a special event is cancelled due to costs for deposits, insurance coverage, medical support, security, and sanitary services. The Commission does not anticipate these requirements will result in an increased burden on the small businesses because these are standard requirements that are applicable to most facility rentals. However, these rules on special events can have a favorable impact on small businesses as well, such as insurance agents who provide coverage, medical support, security, and sanitary services.

R12-4-302. Use of Tags

The Commission anticipates prospective vendors, who were previously eliminated from consideration due to their inability to meet specific tag feature requirements, will benefit by being able to submit a proposal and possibly be awarded a bid.

R12-4-611. Petition for Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy

The Commission anticipates the Department will benefit from the amendment that prohibits a person from petitioning the Commission for reinstatement of any expended bonus points due to a reduced administrative burden. The Department expends resources administering the petition process. It is not possible to quantify the number of persons who applied for a wrong hunt or are unable to use the hunt permit-tag as many persons take no formal action; however, approximately four persons per year petition the Department for the reinstatement of bonus points.

3. The name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement.

Name: Amber Munig, Big Game Management Supervisor

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

Telephone: (623) 236- 7355

Fax: (623) 236-7929

E-mail: AMunig@azgfd.gov

B. The economic, small business and consumer impact statement:

1. Identification of the proposed rulemaking.

See paragraph (A)(1) above.

2. Identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking.

Overall, the Commission believes the amendments proposed in this rulemaking result in rules that are either less burdensome or have no significant impact on the regulated community. The Commission believes the general public, regulated community and the Department will benefit from the proposed rulemaking through clarification of rule language.

R12-4-103. Duplicate Tags and Licenses

Persons whose original license expires before December 31 will gain a period of time, while persons whose original license expires after December 31 will lose a period of time. However, if the person prefers not to lose a period of time they can provide the Department with proof of when they purchased the original license.

R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Drawing and Purchase of Bonus Points

A person whose credit card is declined after a computer draw occurs will benefit by being able to retain their loyalty point and accrue a bonus point for that computer draw. A person who submits an overpayment \$5 or less will not receive a refund; the overpayment will be considered a donation to the Game and Fish Fund. The Commission believes \$5 is an insignificant amount and the fact that almost 70% of these refunds are not redeemed supports this belief.

R12-4-105. License Dealer's License

A license dealer who fails to transmit license and permit fees to the Department in a timely manner will have their dealer license cancelled. This can impact their business, especially if the ability to issue a Department license draws customers to their business. However, transmitting fees to the Department is a statutory requirement and the fees collected, less the 5% commission authorized under A.R.S. § 17-338(B), belong to the Department.

R12-4-107. Bonus Point System

A military member who was successful in the computer draw and is subsequently activated or deployed will benefit from the simplified process by which the military member can request the reinstatement of bonus points. A person whose credit card is declined after a computer draw occurs will benefit by being able to retain their loyalty point and accrue a bonus point for that draw.

R12-4-108. Management Unit Boundaries

A person who purchases a tag for a particular Management Unit, portion of a unit, or group of units; will benefit from a rule that clearly described unit boundary descriptions.

R12-4-111. Identification Number

A person may benefit from the increased security of not having their Social Security Number printed on a Department license.

R12-4-114. Issuance of Nonpermit-tags and Hunt Permit-tags

A vendor, who was previously eliminated from consideration due to their inability to meet specific tag feature requirements, is able to submit a proposal and possibly be awarded a bid. The Department may benefit from having a greater selection of vendors to choose from when purchasing tags. A person who hunts multiple bag limit species will benefit by being able to purchase multiple tags at one time. The Department benefits from increased tag sales.

R12-4-118. Hunt Permit-tag Surrender

A person who becomes a member of the membership program will benefit from the unique services provided by the program, such as electronic accessibility to personalized content, the ability to surrender an unused, original hunt permit-tag and have a bonus point reinstated, opportunity to purchase surrendered tags, early access to draw results, and exclusive sales or special offers. While a fee is associated with the membership program, membership is voluntary and enrollment will have no impact on a person's odds in any computer draw held by the Department. A person who purchases a membership may surrender at least one unused, original hunt permit-tag; the Department will restore the bonus points expended for the surrendered tag and award the bonus point the person would have accrued had they been unsuccessful in

the computer draw. While one could establish the value of a bonus point simply as being equal to an application fee (\$7.50 to \$15 depending on when accrued), other factors may increase their value to the person who possessed them, such as the type of bonus point, the number of points, the particular genus, etc. In addition, a person who purchases a membership and was unsuccessful in a computer draw is eligible to purchase a surrendered hunt permit-tag for that computer draw. While one could establish the value of the surrendered tag as being equal to the actual tag fee (\$15 to \$5,400 depending on the genus), the satisfaction from an additional opportunity to hunt may increase its value to the person who purchases the surrendered tag. The Department will benefit from being able to re-issue a surrendered tag (\$15 to \$5,400 depending on the genus). However, it is not possible to quantify the number or value of the tags surrendered in any given period as this is a new venture for the Department. The Department will incur costs associated with the development and administration of the membership and tag surrender program. Initially, these costs will be significant, but should lessen with each passing year. However, the Commission anticipates the programs will be successful and will result in increased revenue for the Game and Fish Fund. The Department currently maintains sufficient staff in each respective area to carry out the requirements of the proposed rule; thus new full-time employees are not necessary to implement and enforce the rule.

R12-4-121. Big Game Permit or Tag Transfer

A nonprofit organization that provides outdoor experiences to children with life-threatening medical conditions or with physical disabilities or to veterans with service-connected disabilities and a person who donates an unused big game tag will benefit from a fair and equitable application process that authorizes a nonprofit organization to accept donated tags. In addition, a person who donates their tag to a nonprofit organization may claim their donation as a deduction for tax purposes. The Commission anticipates the proposed rulemaking will provide a benefit to the regulated community by allowing the Department to restore the bonus points expended for the donated tag. While one could establish the value of a bonus point simply as being equal to an application fee (\$7.50 to \$15 depending on when accrued), other factors may increase their value to the person who possessed them, such as the type of bonus point, the number of points, the particular genus, etc. The Commission anticipates the Department will bear costs associated with the development and administration of the application process for a qualified nonprofit organization and these costs should lessen with each passing year. The Department currently maintains sufficient staff in each respective area to carry out the requirements of the proposed rule; thus new full-time employees are not necessary to implement and enforce the rule.

R12-4-124. Proof of Domicile

A person who is unsure of their residency status will benefit from the rulemaking that prescribes documents that may be used as acceptable "proof of domicile." In 2014, 176 persons are cited for purchasing a resident license when they should have purchased a nonresident license.

R12-4-125. Public Solicitation or Event on Department Property

Public and private persons and small businesses will benefit from the amendment that allows mid-level managers to approve minor, incidental solicitations on Department properties as the person/business may receive the approval or denial of a request more quickly. In addition, this amendment will reduce the Department's administrative burden. A vendor working under a sponsor may be negatively impacted by the amendment that requires the sponsor to provide certificates of insurance to the Department. A sponsor may be negatively impacted by the amendment that removes the ability for the Department to waive a requirement due to an applicant's inability to pay a deposit, an insurance premium, or a service provider. The amendment that prohibits the possession and use of unlawful drugs may impact the regulated community (public and private persons and small businesses). However, these amendments are proposed to protect State assets. The rule can impact small businesses looking to conduct a solicitation or special event on state property in cases where a special event is cancelled due to costs for deposits, insurance coverage, medical support, security, and sanitary services. However, the rule can have a favorable impact on small businesses as well, such as businesses that provide insurance coverage, medical support, security, and sanitary services.

R12-4-302. Use of Tags

A vendor, who was previously eliminated from consideration due to their inability to meet specific tag feature requirements, is able to submit a proposal and possibly be awarded a bid. The Department may benefit from having a greater selection of vendors to choose from when purchasing tags.

R12-4-611. Petition for Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy

The Department will benefit from the amendment that prohibits a person from petitioning the Commission for reinstatement of any expended bonus points due to a reduced administrative burden. The Department expends resources administering the petition process.

3. Cost benefit analysis:

(a) Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the Economic, Small Business, and Consumer Impact Statement shall notify the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by council.

Overall, the Commission anticipates the proposed amendments will not have a significant impact on the Department or other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The Commission has determined that the proposed rulemaking will not require any additional full-time employees to implement and enforce the proposed amendments. The principle benefit the Department will receive from the proposed rulemaking is increasing customer satisfaction. Many of these proposals originated as a result of comments submitted by the regulated community. As

a result, some of the proposed amendments will create costs to the agency. Proposed amendments to R12-4-104, R12-4-114, and R12-4-118 will result in financial benefits to the Department. Proposed amendments to R12-4-104 will result in minute financial benefits to the Department, GAO, and ADOR. The Department, GAO, and ADOR ultimately benefits by being able to use its employees to the utmost of their assigned tasks. The Commission believes the benefits of the rulemaking outweigh any costs.

(b) Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.

The Commission anticipates the proposed amendments will have little or no impact on political subdivisions of this State.

(c) Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking.

Overall, the Commission anticipates the proposed amendments will not affect businesses, their revenues, or their payroll expenditures. Of those that do or may have an impact, the Commission does not anticipate the impact will be significant. The Commission believes the benefits of the rulemaking outweigh any costs.

4. General description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rulemaking.

Overall, the Commission anticipates the proposed amendments will have no impact on private and public employment in businesses, agencies, and political subdivisions of this State. Of those that do or may have an impact, the Commission does not anticipate the impact will be significant.

5. Statement of the probable impact of the proposed rulemaking on small businesses:

(a) Identification of the small businesses subject to the proposed rulemaking.

The proposed rulemaking will impact license dealers, nonprofit organizations that may qualify as businesses, and outfitters; if these businesses qualify as small businesses.

(b) Administrative and other costs required for compliance with the proposed rulemaking.

Overall, the Commission anticipates the proposed amendments will not result in increased administrative and other costs for small businesses. Of those that do or may have an impact, the Commission does not anticipate the impact will be significant.

(c) Description of the methods that the agency may use to reduce the impact on small businesses.

The Commission believes establishing less stringent compliance requirements for small businesses is not necessary as the proposed rules do not place any additional compliance or reporting requirements on businesses.

(d) Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

The Commission anticipates the proposed rulemaking will benefit private persons and consumers by clarifying license and permit rules and in doing so ensuring the continued integrity of and compliance with its rules. The Commission anticipates the proposed rulemaking will benefit private persons who participate in the membership program. The Commission does not anticipate the membership fee will significantly affect a person's ability to participate in an activity or have a significant impact on a person's income, revenue, or employment in this State related to that activity. A person who surrenders a tag in compliance with the proposed rule will benefit from having their bonus points reinstated. Given the Department's computer draw process, persons with bonus points have a higher likelihood of drawing a hunt permit-tag. A person who is eligible to purchase a surrendered tag may benefit from increased opportunity. While a nominal fee is associated with the membership program, membership is voluntary and enrollment will have no impact on the person's odds in any computer draw held by the Department.

6. Statement of the probable effect on state revenues.

The Commission anticipates the proposed amendments will have little or no impact on state revenues. The Department holds that, in general, the proposed rulemaking will not impact the general fund. The Commission anticipates the proposed amendments to R12-4-104 will result in minute financial benefits to the Department, GAO, and ADOR. The Department, GAO, and ADOR ultimately benefits by being able to use its employees to the utmost of their assigned tasks. The Commission anticipates the membership program will encourage participation in recreational activities and generate additional revenue for the Game and Fish Fund. The Commission believes the benefits of the rulemaking outweigh any costs.

7. Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking including the monetizing of the costs and benefits for each option and providing rationale for not using the nonselected alternatives.

The Commission has determined that there are no alternative methods of achieving the objectives of the proposed rulemaking.

8. Description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.

For this rulemaking, the Commission relied on empirical data based on agency experience, observations, or inference; which included comments from agency staff who administer and enforce rules included in this rulemaking, comments from the public, historical data (i.e., meeting notes from previous rulemaking teams, refund reports, license and permit sales reports, other state agency rules, recruitment and retention reports, etc.), current processes, benchmarking with other states, and the Department's wildlife objectives. This rulemaking includes rules that govern general provisions for hunting and fishing, such as application procedures for hunt permit-tags, the computer draw, license dealers, the bonus point system, management

unit boundaries, procedures for posting and access to state land, a membership program, and use of Department facilities; the taking and handling of wildlife; and petitioning the Commission when no remedy is provided in statute, rule, or policy. The subjects the rules address are based on social sciences rather than formal sciences, thus recommendations based on empirical data using agency experience and observations is acceptable data. The Commission approached this rulemaking and the use of the documentation, statistics, and research in a methodical way, testing various approaches and trying to replicate approaches that were successful in other states.

- C. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement.**

The Department tasked a team of subject matter experts to review and make recommendations for rules contained within Article 1. In its review, the team considered all comments from agency staff who administer and enforce Article 1 rules, comments from the public, historical data, current processes and environment, and the Department's wildlife objectives. The team took a customer-focused approach, considering each recommendation from a resource perspective and determining whether the recommendation would cause undue harm to the state's wildlife or negatively affect the Department's wildlife objectives. The team then determined whether the request was consistent with the Department's overall mission, if it could be effectively implemented given agency resources, and if it was acceptable to the public. The Commission believes the data utilized in completing this economic, small business, and consumer statement is more than adequate.

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

R12-4-601. Definitions

The following definitions apply to this Article unless otherwise specified:

“Appealable agency action” has the same meaning as provided under A.R.S. § 41-1092.

“Business day” means any day other than a furlough day, Saturday, Sunday, or holiday.

“Commission Chair” means the person who presides over the Arizona Game and Fish Commission.

“Contested case” has the same meaning as provided under A.R.S. § 41-1001.

“Ex parte communication” means any oral or written communication with a Commissioner by a party concerning a substantive issue in a contested proceeding that is not part of the public record.

“Party” has the same meaning as provided under A.R.S. § 41-1001.

“Respondent” means the person named as the respondent in a notice of hearing issued by the Department.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-231(A)(1), 41-1001, and 41-1092

Historical Note

Adopted effective December 22, 1987 (Supp. 87-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2). Amended by final rulemaking at 16 A.A.R. 1465, effective July 13, 2010 (Supp. 10-3). Section R12-4-601 renumbered to R12-4-602; new Section R12-4-601 made by final expedited rulemaking at 24 A.A.R. 393, effective February 6, 2018 (Supp. 18-1).

R12-4-602. Petition for Rule or Review of Practice or Policy

- A.** A person may petition the Commission under A.R.S. § 41-1033 for a:
1. Rulemaking action relating to a Commission rule, including making a new rule or amending or repealing an existing rule; or
 2. Review of an existing Department practice or substantive policy statement alleged to constitute a rule.
- B.** To act under A.R.S. § 41-1033 and this Section, a person shall submit a petition form to the Arizona Game and Fish Department, Director’s Office, 5000 W. Carefree Highway, Phoenix, AZ 85086. The form is available at any Department office and on the Department’s website.
- C.** A petitioner shall address only one rule, practice, or substantive policy in the petition.
- D.** A petitioner shall submit the petition form to the Arizona Game and Fish Department, Director’s Office, 5000 W. Carefree Highway, Phoenix, AZ 85086. The petition form is furnished by the Department and is available at any Department office and on the Department’s website. A petitioner shall provide all of the following information:
1. Petitioner identification:
 - a. When the petition is submitted by a private person, the person’s:
 - i. Name;

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

- ii. Physical and mailing address, if different from the physical address;
 - iii. Contact telephone number; and
 - iv. Email, when available;
 - b. When the petition is submitted by an organization or private group;
 - i. Name of organization or group;
 - ii. Name and title of the organization's or group's representative;
 - iii. Physical and mailing address, if different from the physical address;
 - iv. Representative's contact telephone number; and
 - v. Email, when available;
 - c. When the petition is submitted by a public agency;
 - i. Name of the public agency;
 - ii. Name and title of the agency's representative;
 - iii. Physical and mailing address if different from the physical address;
 - iv. Representative's contact telephone number; and
 - v. Email, when available;
 2. Type of request:
 - a. Adopt, amend, or repeal a rule, or
 - b. Review of a practice or substantive policy statement;
 3. When the petition is for rulemaking action:
 - a. Statement of the rulemaking action sought, including the Arizona Administrative Code citation of all existing rules, and the specific language of a new rule or rule amendment; and
 - b. Reasons for the rulemaking action, including an explanation of why an existing rule is inadequate, unreasonable, unduly burdensome, or unlawful;
 4. When the petition is for a review of an existing practice or substantive policy statement:
 - a. Subject matter of the existing practice or substantive policy statement, and
 - b. Reasons why the existing practice or substantive policy statement constitutes a rule;
 5. When the petitioner is a public agency, a summary of issues raised in any public meeting or hearing regarding the petition or any written comments offered by the public.
 6. Any other information required by the Department;
 7. Petitioner's signature; and
 8. Date on which the petition was signed.
- E.** In addition to the requirements listed under subsection (D), a person may submit supporting information with a petition, including:
1. Statistical data; and
 2. A list of other persons likely to be affected by the rulemaking action or the review, with an explanation of

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

the likely effects.

- F. When a petitioner submits a petition that addresses the same substantive issue considered by the Commission within the previous year, the petitioner shall also provide an additional written statement that includes rationale not previously considered by the Commission in making the previous decision.
- G. The Department shall determine whether the petition complies with this Section within 15 business days after the date on which the petition was received.
 - 1. If the petition complies with this Section:
 - a. The Department shall place the petition on a Commission open meeting agenda.
 - b. The petitioner may present oral testimony at that open meeting under R12-4-604.
 - c. The Commission shall render a final decision on the petition as prescribed under A.R.S. § 41-1033.
 - 2. If a petition does not comply with this Section:
 - a. The Director shall return the petition to the petitioner, and
 - b. Indicate in writing why the petition does not comply with this Section. The petitioner shall be afforded the opportunity to resubmit a corrected petition.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-231(B)(1) and 41-1033

Historical Note

Adopted effective December 22, 1987 (Supp. 87-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2). Section R12-4-602 renumbered to R12-4-603; new Section R12-4-602 renumbered from R12-4-601 and amended by final expedited rulemaking at 24 A.A.R. 393, effective February 6, 2018 (Supp. 18-1).

R12-4-603. Written Comments on Proposed Rules

- A. Under A.R.S. § 41-1023, a person may submit written statements, arguments, data, and views on a proposed rulemaking published by the Secretary of State in the Arizona Administrative Register.
- B. A person submitting a written comment to the Commission for consideration in a final decision on the rulemaking may voluntarily provide their name and mailing address. The Commission may only consider written comments that:
 - 1. Are received on or before the close of record date, as published by the Secretary of State in the Arizona Administrative Register; and
 - 2. Are submitted to the agency contact identified in the Department's notice of proposed rulemaking as published by the Secretary of State in the Arizona Administrative Register.
 - 3. In addition, a person submitting a comment submitted on behalf of a group or organization shall include a statement that the comment represents the official position of the group or organization. A comment

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

submitted on behalf of a group or organization that does not contain this statement shall be considered the comment of the person submitting the comment, and not that of the group or organization.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-231(B)(1), 41-1003, and 41-1023

Historical Note

Adopted effective December 22, 1987 (Supp. 87-4). Amended effective November 10, 1997 (Supp. 97-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2). Section R12-4-603 renumbered to R12-4-604; new Section R12-4-603 renumbered from R12-4-602 and amended by final expedited rulemaking at 24 A.A.R. 393, effective February 6, 2018 (Supp. 18-1).

R12-4-604. Oral Proceedings Before the Commission

- A. The Commission may allow an oral proceeding on any matter on the Commission's agenda. At an oral proceeding, the Commission Chair:
1. Is responsible for conducting the proceeding.
 2. May administer an oath to a witness before receiving testimony.
 3. May order the removal of any person who is disrupting a proceeding.
 4. May limit the number of presentations or the time for testimony regarding a particular issue.
- B. A person desiring to speak at an oral proceeding shall first request permission to speak from the Commission Chair.
- C. Technical rules of evidence do not apply to an oral proceeding, and no informality in any proceeding or in the manner of taking testimony invalidates any order, decision, or rule made by the Commission.
- D. The Commission authorizes the Director to designate a hearing officer for oral proceedings to take public input on proposed rulemaking.
- E. The Commission authorizes the Director to continue a scheduled proceeding to a later Commission meeting. To request a continuance, a petitioner shall:
1. Deliver the request to the Director no later than 24 hours before the scheduled proceeding;
 2. Demonstrate that the proceeding has not been continued more than twice; and
 3. Demonstrate good cause for the continuance.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-231(B)(1) 17-231(B)(12), 41-1003, and 41-1023

Historical Note

Adopted effective December 22, 1987 (Supp. 87-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2). Section R12-4-604 renumbered to R12-4-605; new Section R12-4-604

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

renumbered from R12-4-603 and amended by final expedited rulemaking at 24 A.A.R. 393, effective February 6, 2018 (Supp. 18-1).

R12-4-605. Ex Parte Communication

- A. A party shall not communicate, either directly or indirectly, with a Commissioner about any substantive issue in a pending contested case or appealable agency action, unless:
1. All parties are present;
 2. The communication occurs during the scheduled proceeding, where an absent party failed to appear after proper notice; or
 3. It is by written motion with a copy provided to all parties.
- B. A Commissioner who receives an ex parte communication shall place on the public record of the proceeding:
1. A copy of the written communication;
 2. A summary of the oral communication; and
 3. The Commissioner's response to any such ex parte communication.
- C. The provisions of this Section apply from the date that a notice of hearing for a contested case or an appealable agency action is served on the parties.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-231(A)(2), 41-1001, 41-1092, and 41-1033

Historical Note

Adopted effective December 22, 1987 (Supp. 87-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2). Section R12-4-605 renumbered to R12-4-606; new Section R12-4-605 renumbered from R12-4-604 and amended by final expedited rulemaking at 24 A.A.R. 393, effective February 6, 2018 (Supp. 18-1).

R12-4-606. Standards for Revocation, Suspension, or Denial of a License

- A. Under A.R.S. § 17-340, when the Department makes a recommendation to the Commission for license revocation, the Commission shall hold a hearing and may revoke, suspend, or deny any hunting, fishing, or trapping license for a person convicted of any of the following offenses:
1. Killing or wounding a big game animal during a closed season.
 2. Possessing a big game animal taken during a closed season.
 3. Destroying, injuring, or molesting livestock while hunting, fishing, or trapping.
 4. Damaging or destroying personal property, growing crops, notices or signboards, or other improvements while hunting, fishing, or trapping.
 5. Bartering, selling, or offering to sell unlawfully taken wildlife or wildlife parts.

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

6. Careless use of a firearm while hunting, fishing, or trapping that results in the injury or death of any person.
 7. Applying for or obtaining a license or permit by fraud or misrepresentation in violation of A.R.S. § 17-341.
 8. Knowingly allowing another person to use the person's big game tag, except as provided under A.R.S. § 17-332(D).
 9. Entering upon a game refuge or other area closed to hunting, trapping or fishing and taking, driving, or attempting to drive wildlife from the area in violation of A.R.S. §§ 17-303 and 17-304.
 10. Unlawfully posting state or federal lands in violation of A.R.S. § 17-304(B).
 11. Unlawfully using aircraft to take, assist in taking, harass, chase, drive, locate, or assist in locating wildlife in violation of A.R.S. § 17-340(A)(8).
 12. Unlawfully taking or possessing big game,
 13. Unlawfully taking or possessing small game or fish,
 14. Unlawfully taking or possessing wildlife species.
 15. Unlawful take of any bird or the removal of its nest or eggs.
 16. Littering a public hunting or fishing area while taking wildlife.
 17. Waste of edible portions of a game species under A.R.S. § 17-309, in violation of A.R.S. § 17-309(A)(5).
 18. Any violation for which a license can be revoked under A.R.S. § 17-340.
 19. Any violation of A.R.S. § 17-306.
- B.** Under A.R.S. §§ 17-238, 17-334, 17-340, 17-362, 17-363, and 17-364, when the Department makes a recommendation to the Commission for license revocation, the Commission shall hold a hearing and may revoke any fur dealer, guide, taxidermy, license dealers license, or special license (as defined under R12-4-401) in any case where license revocation is authorized by law.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-231(B)(1), 17-231(B)(12), and 17-340

Historical Note

Adopted effective December 22, 1987 (Supp. 87-4). Amended effective November 10, 1997 (Supp. 97-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2). Section R12-4-606 renumbered to R12-4-607; new Section R12-4-606 renumbered from R12-4-605 and amended by final expedited rulemaking at 24 A.A.R. 393, effective February 6, 2018 (Supp. 18-1).

R12-4-607. Proceedings for License Revocation, Suspension, or Denial of Right to Obtain a License, and Civil Damages

- A.** The Director may commence a proceeding for the Commission to revoke, suspend or deny a license under

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

A.R.S. §§ 17-236, 17-238, 17-334, 17-340, 17-362, 17-363, and 17-364. The Director may also commence a proceeding for the Commission to impose a civil penalty under A.R.S. § 17-314.

- B.** The Commission shall conduct a hearing concerning revocation, suspension, or denial of the right to obtain a license in accordance with the Administrative Procedure Act, A.R.S. Title 41, Chapter 6, Article 10. In a proceeding conducted under A.R.S. § 17-340, a respondent shall limit testimony to facts that show why the license should not be revoked or denied. Because the Commission does not have the authority to consider or change the conviction, a respondent is not permitted to raise this issue in the proceeding. The Commission shall permit a respondent to offer testimony or evidence relevant to the Commission's decision to impose a civil penalty or order a civil action for the recovery of wildlife parts.
- C.** If a respondent does not appear for a hearing on the date scheduled, at the time and location noticed, no further opportunity to be heard shall be provided, unless a rehearing or review is granted under R12-4-608. If the respondent does not wish to attend the hearing, the respondent may submit written testimony to the Department before the hearing date designated in the Notice of Hearing. The Commission shall ensure that written testimony received at the time of the hearing is read into the record at the hearing.
- D.** The Commission shall base its decision on the officer's case report, a summary prepared by the Department, a certified copy of the court record, and any testimony presented at the hearing. The Department shall supply the respondent with a copy of each document provided to the Commission for use in reaching a decision.
- E.** Any party may apply to the Commission for issuance of a subpoena to compel the appearance of any witness or the production of documents at any Commission hearing. No less than 10 calendar days before the hearing, the party shall file a written application that provides the name and address of the witness, the subject matter of the expected testimony, the documents sought to be produced, and the date, time, and place of the hearing. The Commission Chair has the authority to issue the subpoenas.

 - 1. A party shall have a subpoena served as prescribed in the Arizona Rules of Civil Procedure, Rule 45. An employee of the Department may serve a subpoena at the request of the Commission Chair.
 - 2. A party may request that a subpoena be amended at any time before the deadline provided in this Section for filing the application. The party shall have the amended subpoena served as provided in subsection (E)(1).
- F.** The Commission may vote to use the services of the office of administrative hearings to conduct a hearing concerning revocation, suspension, or denial of the right to obtain a license and to make a recommendation to the Commission, which shall review and accept, reject or modify the recommendation and issue its decision in an open meeting. When the Department receives a recommendation from the administrative law judge at least 30 days prior to the next regularly scheduled Commission meeting, the Department shall place the recommendation on the agenda for that meeting. A recommendation from the administrative law judge received after this time shall be considered at the next regularly scheduled open meeting.
- G.** A license revoked by the Commission is suspended on the date of the hearing and revoked upon issuance of

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

the findings of fact, conclusions of law, and order. If a respondent appeals the Commission's order revoking a license, the license is revoked after all appeals have been exhausted. A denial of the right to obtain a license is effective for a period determined by the Commission as authorized under A.R.S. § 17-340, beginning on the date of the hearing.

- H.** A license suspended by the Commission is suspended on the date of the hearing, and suspended upon issuance of the findings of fact, conclusions of law, and order. If a respondent appeals the Commission's order suspending a license, the license is suspended after all appeals have been exhausted. The suspension of a license is effective for a period determined by the Commission as authorized under A.R.S. § 17-340, beginning on the date of the hearing.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-231(B)(1), 17-231(B)(12), 17-314, 17-340, 41-1003, and 41-1023

Historical Note

Adopted effective June 13, 1977 (Supp. 77-3). Former Section R12-4-14 renumbered as Section R12-4-115 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-115 renumbered without change as Section R12-4-607 effective December 22, 1987 (Supp. 87-4). Amended effective November 10, 1997 (Supp. 97-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2). Section R12-4-607 renumbered to R12-4-608; new Section R12-4-607 renumbered from R12-4-606 and amended by final expedited rulemaking at 24 A.A.R. 393, effective February 6, 2018 (Supp. 18-1).

R12-4-608. Rehearing or Review of Commission Decisions

- A.** A party shall exhaust the party's administrative remedies by filing a motion for rehearing or review as provided in this Section. Failure to file a motion for rehearing or review within 30 days of service of the Commission's decision has the effect of prohibiting the party from seeking judicial review of the Commission's decision.
- B.** A party in a contested case or appealable agency action before the Commission may file a motion for rehearing or review of a Commission decision, specifying the grounds upon which the motion is based. The motion for rehearing or review shall be filed within 30 calendar days after service of the Commission's decision. For purposes of this subsection a decision is served when personally delivered or mailed by certified mail to the party's last known residence or place of business.
- C.** A party may amend a motion for rehearing or review at any time before the Commission rules upon the motion. A written response to a motion for rehearing or review may be filed and served within 15 days after service of the motion for rehearing or review. The Commission may require that the parties file supplemental memoranda on any issue raised in a motion or response, and allow for oral argument.
- D.** The Commission has the authority to grant rehearing or review for any of the following causes materially

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

affecting the moving party's rights:

1. Irregularity in the proceedings of the Commission, or any order or abuse of discretion that deprived the moving party of a fair hearing;
 2. Misconduct of the Commission, its staff, an administrative law judge, or the prevailing party;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the proceeding; or
 7. That the findings of fact or decision is not justified by the evidence or is contrary to law.
- E.** The Commission may either deny the motion for rehearing or review or grant a rehearing or review for any of the reasons listed under subsection (E). The Commission's order granting a rehearing or review shall specify the grounds for the order, and any rehearing shall cover only those grounds upon which the rehearing or review was granted.
- F.** After giving the party notice and an opportunity to be heard, the Commission may grant a motion for a rehearing or review for a reason not stated in the motion.
- G.** Within the time-frame for filing the motion for rehearing or review, the Commission may grant a rehearing or review on its own initiative for any reason for which the Commission may have granted relief on motion of a party.
- H.** When the Commission grants a rehearing or review, the Commission shall hold the rehearing or review at its next regularly scheduled meeting or within 90 days of issuance of the order granting the rehearing or review. With the consent of the parties, the Commission may proceed to conduct the rehearing or review in the same meeting in which the Commission granted the rehearing or review.
- I.** The Commission may take additional testimony, amend findings of fact and conclusions of law, and affirm, modify or reverse the original decision.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-231(B)(1), 17-231(B)(12), 41-1001, 41-1092

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective May 27, 1992 (Supp. 92-1). Amended effective November 10, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 211, effective December 14, 1999 (Supp. 99-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective January 31, 2002 (Supp. 02-1). New Section R12-4-608 renumbered from R12-4-607 and amended by final expedited rulemaking at 24 A.A.R. 393, effective February 6, 2018 (Supp. 18-1).

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

R12-4-609. Commission Orders

A. Except as provided under subsection (B):

1. At least 14 calendar days before a meeting where the Commission will consider a Commission Order, the Department shall:
 - a. Post a public meeting notice and agenda in accordance with A.R.S. § 38-431.02; and
 - b. Issue a public notice of the recommended Commission Order in print and electronic media.
2. The Department shall ensure the public meeting notice and agenda includes:
 - a. The date, time, and location of the Commission meeting where the Commission Order will be considered;
 - b. A statement that the public may attend and present written comments at or before the meeting; and
 - c. A statement that a copy of the proposed Commission Order shall be made available to the public 10 calendar days before the meeting. Copies are available for public inspection on the Department's website and at Department offices in Phoenix, Pinetop, Flagstaff, Kingman, Yuma, Tucson, and Mesa.
3. The Commission may make changes to the recommended Commission Order at the Commission meeting.

B. The requirements of subsection (A) do not apply to a Commission Order that establishes:

1. A supplemental hunt as authorized under R12-4-115;
2. A special season for persons who possess a special license tag issued under A.R.S. § 17-346 and R12-4-120, and
3. A special season that allows fish to be taken by additional methods on waters where a fish die-off is imminent as established under R12-4-317(C).

C. The Department shall publish the content of all Commission orders and make them available to the public free of charge.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-231(B)(1) and 17-234

Historical Note

Adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Amended effective November 10, 1997 (Supp. 97-4). Amended by final rulemaking at 9 A.A.R. 610, effective April 6, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2). Amended by final expedited rulemaking at 24 A.A.R. 393, effective February 6, 2018 (Supp. 18-1).

R12-4-610. Petitions for the Closure of State or Federal Lands to Hunting, Fishing, Trapping, or Operation

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

of Motor Vehicles

- A. A person requesting that the Commission consider closing state or federal land to hunting, fishing, or trapping as provided under A.R.S. § 17-304(B) or R12-4-110, or closing roads or trails on state lands as provided under R12-4-110, shall submit a petition as prescribed in this Section before the Commission will consider the request.
- B. A petitioner shall not address more than one contiguous closure request in a petition.
- C. A petitioner submitting a petition that addresses the same contiguous closure request previously considered and denied by the Commission shall provide an additional written statement that includes rationale not previously considered by the Commission.
- D. A petitioner shall submit the petition form to the Arizona Game and Fish Department, Director's Office, 5000 W. Carefree Highway, Phoenix, AZ 85086. The petition form is furnished by the Department and is available at any Department office and on the Department's website. The petition form shall contain all of the following information:
 - 1. Petitioner identification:
 - a. When the petitioner is the leaseholder of the area proposed for closure:
 - i. Name of person;
 - ii. Lease number;
 - iii. Physical and mailing address, if different from the physical address;
 - iv. Contact telephone number; and
 - v. Email, when available;
 - b. When the petitioner is anyone other than the leaseholder of the area proposed for closure:
 - i. Name of person;
 - ii. Lease number;
 - iii. Physical and mailing address, if different from the physical address;
 - iv. Contact telephone number;
 - v. Email, when available; and
 - vi. Name of each group or organization or organizations that the petitioner represents; or
 - c. When the petitioner is a public agency:
 - i. Name of person;
 - ii. Name of agency;
 - iii. Petitioner's title;
 - iv. Lease number;
 - v. Agency's physical and mailing address, if different from the physical address;
 - vi. Contact telephone number; and
 - vii. Email, when available;

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

2. Type of closure requested:
 - a. Hunting,
 - b. Fishing,
 - c. Trapping, or
 - d. Operation of motor vehicles.
 3. Reason for petition:
 - a. Each reason why the closure should be considered under R12-4-110, A.R.S. § 17-304(B), or A.R.S. § 17-452(A);
 - b. Any data or other justification supporting the reasons for the closure with clear reference to any exhibits that may be attached to the petition;
 - c. Each person or segment of the public the petitioner believes will be impacted by the closure, including any other valid licensees, lessees, or permittees that will or may be affected, and how they will be impacted, including both positive and negative impacts;
 - d. If the petitioner is a public agency, a summary of issues raised in any public hearing or public meeting regarding the petition and a copy of written comments received by the petitioning agency; and
 - e. A proposed alternate access route, under R12-4-110.
 4. A concise map identifying the specific location of the proposed closure;
 5. Petitioner's signature;
 6. Date on which the petition was signed; and
 7. Any other information required by the Department.
- E.** The Department shall determine whether the petition complies with the requirements established under A.R.S. § 17-452, R12-4-110, and this Section within 15 business days after receiving the petition.
1. If the petition meets these requirements, and provided the petitioner has not agreed to an alternative solution or withdrawn the petition, the Department, in accordance with the schedule in subsection (F), shall place the petition on the agenda for the Commission's next regularly scheduled open meeting and provide written notice to the petitioner of the meeting date.
 2. If a petition does not comply with the requirements prescribed under A.R.S. § 17-452, R12-4-110, and this Section:
 - a. The Department shall return the petition to the petitioner, and
 - b. Indicate in writing why the petition does not comply with this Section.
 3. If the Department returns a petition to a petitioner for a reason that cannot be corrected, the Department shall serve on the petitioner a notice of appealable agency action under A.R.S. § 41-1092.03.
- F.** When the Department receives a petition not less than 60 calendar days before a regularly scheduled Commission meeting, the Department shall place the petition on the agenda for that meeting. A petition

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

received after this time will be considered at the next regularly scheduled open meeting.

G. The petitioner may:

1. Present oral testimony in support of the petition at the Commission meeting, in accordance with the provisions established under R12-4-604.
2. Withdraw the petition or request a continuance to a later regularly scheduled open meeting at any time.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-231(B)(1), 17-304, 17-452, and 41-1033

Historical Note

Adopted effective March 1, 1991; filed February 28, 1991 (Supp. 91-1). Amended effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2). Amended by final rulemaking at 16 A.A.R. 1465, effective July 13, 2010 (Supp. 10-3). Amended by final expedited rulemaking at 24 A.A.R. 393, effective February 6, 2018 (Supp. 18-1).

R12-4-611. Petition for a Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy

- A.** A person may request a hearing before the Commission when an administrative remedy does not exist under statute, rule, or policy by submitting a petition as prescribed by this Section.
- B.** A petitioner shall submit the petition form to the Arizona Game and Fish Department, Director's Office, 5000 W. Carefree Highway, Phoenix, AZ 85086. The petition form is furnished by the Department and is available at any Department office and on the Department's website. The petition form shall contain all of the following information:
1. Petitioner identification:
 - a. When the petitioner is a private person:
 - i. Name of person;
 - ii. Physical and mailing address, if different from the physical address;
 - iii. Contact telephone number; and
 - iv. Email, when available;
 - b. When the petitioner is a private group or organization:
 - i. Name of the person designated as the contact for the group or organization;
 - ii. Physical and mailing address, if different from the physical address;
 - iii. Contact telephone number;
 - iv. Email, when available; or
 - c. When the petitioner is a public agency:
 - i. Name of person,

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

- ii. Name of agency,
 - iii. Petitioner's title,
 - iv. Agency's physical and mailing address, if different from the physical address,
 - v. Contact telephone number, and
 - vi. Email, when available;
2. Statement of Facts and Issues:
 - a. Description of issue to be resolved, and
 - b. Any facts relevant to resolving the issue;
 3. Specific proposed remedy;
 4. Petitioner's signature;
 5. Date on which the petition was signed; and
 6. Any other information required by the Department.
- C. If a petition does not comply with this Section, the Department shall:
1. Return the petition to the petitioner, and
 2. Indicate in writing why the petition does not comply with this Section.
- D. After the Department receives a petition that complies with this Section, the Department shall place the petition on the agenda of a regularly scheduled Commission meeting.
- E. If the Commission votes to deny a petition, the Department shall not accept a subsequent petition on the same issue, unless the petitioner presents new evidence or reasons for considering the subsequent petition.
- F. This Section does not apply to the following:
1. An action related to a license revocation, suspension, denial, or civil penalty;
 2. An unsuccessful hunt permit-tag draw application that did not involve an error on the part of the Department; or
 3. The reinstatement of a bonus point, except as authorized under R12-4-107(M).

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. A.R.S. §§ 17-231(B)(1) and Title 41, Chapter 6, Article 10

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2). Amended by final rulemaking at 16 A.A.R. 1465, effective July 13, 2010 (Supp. 10-3). Amended by final rulemaking at 21 A.A.R. 3025, effective January 2, 2016 (Supp. 15-4). Amended by final expedited rulemaking at 24 A.A.R. 393, effective February 6, 2018 (Supp. 18-1).

**ARTICLE 6 RULES OF PRACTICE BEFORE THE COMMISSION
STATUTORY AUTHORITY**

17-231. General powers and duties of the commission

A. The commission shall:

1. Adopt rules and establish services it deems necessary to carry out the provisions and purposes of this title.
2. Establish broad policies and long-range programs for the management, preservation and harvest of wildlife.
3. Establish hunting, trapping and fishing rules and prescribe the manner and methods that may be used in taking wildlife, but the commission shall not limit or restrict the magazine capacity of any authorized firearm.
4. Be responsible for the enforcement of laws for the protection of wildlife.
5. Provide for the assembling and distribution of information to the public relating to wildlife and activities of the department.
6. Prescribe rules for the expenditure, by or under the control of the director, of all funds arising from appropriation, licenses, gifts or other sources.
7. Exercise such powers and duties necessary to carry out fully the provisions of this title and in general exercise powers and duties that relate to adopting and carrying out policies of the department and control of its financial affairs.
8. Prescribe procedures for use of department personnel, facilities, equipment, supplies and other resources in assisting search or rescue operations on request of the director of the division of emergency management.
9. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

B. The commission may:

1. Conduct investigations, inquiries or hearings in the performance of its powers and duties.
2. Establish game management units or refuges for the preservation and management of wildlife.
3. Construct and operate game farms, fish hatcheries, fishing lakes or other facilities for or relating to the preservation or propagation of wildlife.
4. Expend funds to provide training in the safe handling and use of firearms and safe hunting practices.
5. Remove or permit to be removed from public or private waters fish which hinder or prevent propagation of game or food fish and dispose of such fish in such manner as it may designate.
6. Purchase, sell or barter wildlife for the purpose of stocking public or private lands and waters and take at any time in any manner wildlife for research, propagation and restocking purposes or for use at a game farm or fish hatchery and declare wildlife salable when in the public interest or the interest of conservation.
7. Enter into agreements with the federal government, with other states or political subdivisions of the state and with private organizations for the construction and operation of facilities and for management studies, measures or procedures for or relating to the preservation and propagation of wildlife and expend funds for carrying out such agreements.
8. Prescribe rules for the sale, trade, importation, exportation or possession of wildlife.

9. Expend monies for the purpose of producing publications relating to wildlife and activities of the department for sale to the public and establish the price to be paid for annual subscriptions and single copies of such publications. All monies received from the sale of such publications shall be deposited in the game and fish publications revolving fund.
 10. Contract with any person or entity to design and produce artwork on terms that, in the commission's judgment, will produce an original and valuable work of art relating to wildlife or wildlife habitat.
 11. Sell or distribute the artwork authorized under paragraph 10 of this subsection on such terms and for such price as it deems acceptable.
 12. Consider the adverse and beneficial short-term and long-term economic impacts on resource dependent communities, small businesses and the state of Arizona, of policies and programs for the management, preservation and harvest of wildlife by holding a public hearing to receive and consider written comments and public testimony from interested persons.
 13. Adopt rules relating to range operations at public shooting ranges operated by and under the jurisdiction of the commission, including the hours of operation, the fees for the use of the range, the regulation of groups and events, the operation of related range facilities, the type of firearms and ammunition that may be used at the range, the safe handling of firearms at the range, the required safety equipment for a person using the range, the sale of firearms, ammunition and shooting supplies at the range, and the authority of range officers to enforce these rules, to remove violators from the premises and to refuse entry for repeat violations.
 14. Solicit and accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title.
- C. The commission shall confer and coordinate with the director of water resources with respect to the commission's activities, plans and negotiations relating to water development and use, restoration projects under the restoration acts pursuant to chapter 4, article 1 of this title, where water development and use are involved, the abatement of pollution injurious to wildlife and in the formulation of fish and wildlife aspects of the director of water resources' plans to develop and utilize water resources of the state and shall have jurisdiction over fish and wildlife resources and fish and wildlife activities of projects constructed for the state under or pursuant to the jurisdiction of the director of water resources.
- D. The commission may enter into one or more agreements with a multi-county water conservation district and other parties for participation in the lower Colorado river multispecies conservation program under section 48-3713.03, including the collection and payment of any monies authorized by law for the purposes of the lower Colorado river multispecies conservation program.

17-304. Prohibition by landowner on hunting; posting; exception

- A. Landowners or lessees of private land who desire to prohibit hunting, fishing, trapping, or guiding on their lands without their permission shall post such lands closed to hunting, fishing, trapping, or guiding using notices or signboards.
- B. State or federal lands including those under lease may not be posted except by consent of the commission.
- C. The notices or signboards shall meet all of the following criteria:
 1. Be at least eight inches by eleven inches with plainly legible wording in capital and bold-

- faced lettering at least one inch high.
2. Contain the words "no trespassing," "no hunting," "no trapping," "no fishing," or "no guiding" either as a single phrase or in any combination.
 3. Be conspicuously placed on a structure or post at all points of vehicular access, at all property or fence corners and at intervals of not more than one-quarter mile along the property boundary, except that a post with one hundred square inches or more of orange paint may serve as the interval notices between property or fence corners and points of vehicular access. The orange paint shall be clearly visible and shall cover the entire aboveground surface of the post facing outward and on both lateral sides from the closed area.
- D. The entry of any person for the taking of wildlife is not grounds for an action for criminal trespassing pursuant to section 13-1502 unless either:
1. The land has been posted pursuant to this section and the notices and signboards also contain the words "no trespassing".
 2. The person knowingly remains unlawfully on any real property after a reasonable request to leave by a law enforcement officer acting at the request of the owner, the owner or any other person having lawful control over the property or the person knowingly disregards reasonable notice prohibiting entry to any real property.

17-314. Illegally taking, wounding, killing or possessing wildlife; civil penalty; enforcement

- A. The commission may impose a civil penalty against any person for unlawfully taking, wounding, killing or possessing any of the following wildlife, or part thereof, to recover the following minimum sums:
1. For each turkey or javelina \$ 500.00
 2. For each bear, mountain lion, pronghorn (antelope) or deer \$1,500.00
 3. For each elk or eagle, other than endangered species \$2,500.00
 4. For each predatory, fur-bearing or nongame animal \$250.00
 5. For each small game or aquatic wildlife animal \$50.00
 6. For each bighorn sheep, bison (buffalo) or endangered species animal \$8,000.00
- B. The commission may bring a civil action in the name of this state to enforce the civil penalty. The civil penalty, or a verdict or judgment to enforce the civil penalty, shall not be less than the sum fixed in this section. The minimum sum that the commission may recover from a person pursuant to this section may be doubled for a second violation, verdict or judgment and tripled for a third violation, verdict or judgment. The action to enforce the civil penalty may be joined with an action for possession and recovery had for the possession as well as the civil penalty.
- C. The pendency or determination of an action to enforce the civil penalty or for payment of the civil penalty or a judgment, or the pendency or determination of a criminal prosecution for the same taking, wounding, killing or possession, is not a bar to the other, nor does either affect the right of seizure under any other provision of the laws relating to game and fish.
- D. All monies recovered pursuant to this section shall be deposited in the wildlife theft prevention fund established by section 17-315.

17-340. Revocation, suspension and denial of privilege of taking wildlife; civil penalty; notice; violation; classification

- A. On conviction or after adjudication as a delinquent juvenile as defined in section 8-201 and in addition to other penalties prescribed by this title, the commission, after a public hearing, may

revoke or suspend a license issued to any person under this title and deny the person the right to secure another license to take or possess wildlife for a period of not to exceed five years for:

1. Unlawful taking, unlawful selling, unlawful offering for sale, unlawful bartering or unlawful possession of wildlife.
 2. Careless use of firearms that resulted in the injury or death of any person.
 3. Destroying, injuring or molesting livestock, or damaging or destroying growing crops, personal property, notices or signboards or other improvements while hunting, trapping or fishing.
 4. Littering public hunting or fishing areas while taking wildlife.
 5. Knowingly allowing another person to use the person's big game tag, except as provided by section 17-332, subsection D.
 6. A violation of section 17-303, 17-304, 17-316 or 17-341 or section 17-362, subsection A.
 7. A violation of section 17-309, subsection A, paragraph 5 involving a waste of edible portions other than meat damaged due to the method of taking as follows:
 - (a) Upland game birds, migratory game birds and wild turkey: breast.
 - (b) Deer, elk, pronghorn (antelope), bighorn sheep, bison (buffalo) and peccary (javelina): hind quarters, front quarters and loins.
 - (c) Game fish: fillets of the fish.
 8. A violation of section 17-309, subsection A, paragraph 1 involving any unlawful use of aircraft to take, assist in taking, harass, chase, drive, locate or assist in locating wildlife.
- B. On conviction or after adjudication as a delinquent juvenile and in addition to any other penalties prescribed by this title:
1. For a first conviction or a first adjudication as a delinquent juvenile, for unlawfully taking or wounding wildlife at any time or place, the commission, after a public hearing, may revoke, suspend or deny the person's privilege to take wildlife for a period of up to five years.
 2. For a second conviction or a second adjudication as a delinquent juvenile, for unlawfully taking or wounding wildlife at any time or place, the commission, after a public hearing, may revoke, suspend or deny the person's privilege to take wildlife for a period of up to ten years.
 3. For a third conviction or a third adjudication as a delinquent juvenile, for unlawfully taking or wounding wildlife at any time or place, the commission, after a public hearing, may revoke, suspend or deny the person's privilege to take wildlife permanently.
- C. In accordance with title 41, chapter 6, article 10 and notwithstanding subsection A of this section, a person against whom the commission imposes a civil penalty under section 17-314 for the unlawful taking, wounding, killing or possession of wildlife may be denied the right to obtain a license to take wildlife until the person has made full payment of the civil penalty.
- D. On receiving a report from the licensing authority of a state that is a party to the wildlife violator compact adopted under chapter 5 of this title that a resident of this state has failed to comply with the terms of a wildlife citation, the commission, after a public hearing, may suspend any license issued under this title to take wildlife until the licensing authority furnishes satisfactory evidence of compliance with the terms of the wildlife citation.
- E. In carrying out this section, the director shall notify the licensee, within one hundred eighty days after conviction, to appear and show cause why the license should not be revoked, suspended or denied. The notice may be served personally or by certified mail sent to the address appearing on the license.

- F. The commission shall furnish to license dealers the names and addresses of persons whose licenses have been revoked or suspended, and the periods for which they have been denied the right to secure licenses.
- G. The commission may use the services of the office of administrative hearings to conduct hearings and to make recommendations to the commission pursuant to this section.
- H. Except for a person who takes or possesses wildlife while under permanent revocation, a person who takes wildlife in this state, or attempts to obtain a license to take wildlife, at a time when the person's privilege to do so is suspended, revoked or denied under this section is guilty of a class 1 misdemeanor.

17-452. Restrictions on motor vehicle use; recommendations; agreements; rules

- A. When the commission determines that the operation of motor vehicles within a certain area, except private land, is or may be damaging to wildlife reproduction, wildlife management or wildlife habitat of such area, the commission, with the concurrence of the land management agency involved and after a public hearing, may order such area closed to motor vehicles for not more than five years from the date of such closure, provided that all roads in such area shall remain open unless specifically closed.
- B. The commission may also recommend that particular areas of land be set aside or made available for the use of recreational vehicles.
- C. The commission may enter into agreements with landowners and agencies controlling areas that the commission has made recommendations on pursuant to subsection B. Any such agreement shall stipulate the restrictions, prohibitions and permitted uses of motor vehicles in such area and the duties of the commission and such landowner or agency relating to the enforcement of the terms of such agreement.
- D. The commission shall adopt rules pursuant to title 41, chapter 6 to carry out the provisions of this section.

41-1003. Required rule making

Each agency shall make rules of practice setting forth the nature and requirements of all formal procedures available to the public.

41-1023. Public participation; written statements; oral proceedings

- A. After providing notice of docket openings, an agency may meet informally with any interested party for the purpose of discussing the proposed rule making action. The agency may solicit comments, suggested language or other input on the proposed rule. The agency may publish notice of these meetings in the register.
- B. For at least thirty days after publication of the notice of the proposed rule making, an agency shall afford persons the opportunity to submit in writing statements, arguments, data and views on the proposed rule, with or without the opportunity to present them orally.
- C. An agency shall schedule an oral proceeding on a proposed rule if, within thirty days after the published notice of proposed rule making, a written request for an oral proceeding is submitted to the agency personnel listed pursuant to section 41-1021, subsection B.
- D. An oral proceeding on a proposed rule may not be held earlier than thirty days after notice of its location and time is published in the register. The agency shall determine a location and time for the oral proceeding which affords a reasonable opportunity to persons to participate. The oral proceeding shall be conducted in a manner that allows for adequate discussion of the

substance and the form of the proposed rule, and persons may ask questions regarding the proposed rule and present oral argument, data and views on the proposed rule.

- E. The agency, a member of the agency or another presiding officer designated by the agency shall preside at an oral proceeding on a proposed rule. If the agency does not preside, the presiding official shall prepare a memorandum for consideration by the agency summarizing the contents of the presentations made at the oral proceeding. Oral proceedings must be open to the public and recorded by stenographic or other means.
- F. Each agency may make rules for the conduct of oral rule making proceedings. Those rules may include provisions calculated to prevent undue repetition in the oral proceedings.

41-1033. Petition for a rule or review of an agency practice, substantive policy statement, final rule or unduly burdensome licensing requirement; notice

- A. Any person may petition an agency to do either of the following:
 - 1. Make, amend or repeal a final rule.
 - 2. Review an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule.
- B. An agency shall prescribe the form of the petition and the procedures for the petition's submission, consideration and disposition. The person shall state on the petition the rulemaking to review or the agency practice or substantive policy statement to consider revising, repealing or making into a rule.
- C. Not later than sixty days after submission of the petition, the agency shall either:
 - 1. Reject the petition and state its reasons in writing for rejection to the petitioner.
 - 2. Initiate rulemaking proceedings in accordance with this chapter.
 - 3. If otherwise lawful, make a rule.
- D. The agency's response to the petition is open to public inspection.
- E. If an agency rejects a petition pursuant to subsection C of this section, the petitioner has thirty days to appeal to the council to review whether the existing agency practice or substantive policy statement constitutes a rule. The council chairperson shall place this appeal on the agenda of the council's next meeting if at least three council members make such a request of the council chairperson within two weeks after the filing of the appeal.
- F. A person may petition the council to request a review of a final rule based on the person's belief that the final rule does not meet the requirements prescribed in section 41-1030.
- G. A person may petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that the petitioner alleges is not specifically authorized by statute, is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern. On receipt of a properly submitted petition pursuant to this section, the council shall review the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement as prescribed by this section. This subsection does not apply to an individual or institution that is subject to title 36, chapter 4, article 10 or chapter 20.
- H. If the council receives information that indicates how an existing agency practice or substantive policy statement may constitute a rule, that a final rule does not meet the requirements prescribed in section 41-1030 or that an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement does not meet the guidelines prescribed in subsection G of this section and at least four council members request of the chairperson that the matter be heard in a public meeting:

1. Within ninety days after receipt of the fourth council member's request, the council shall determine whether any of the following applies:
 - (a) The agency practice or substantive policy statement constitutes a rule.
 - (b) The final rule meets the requirements prescribed in section 41-1030.
 - (c) An existing agency practice, substantive policy statement, final rule or regulatory licensing requirement meets the guidelines prescribed in subsection G of this section.
 2. Within ten days after receipt of the fourth council member's request, the council shall notify the agency that the matter has been or will be placed on an agenda.
 3. Not later than thirty days after receiving notice from the council, the agency shall submit a statement to the council that addresses whether any of the following applies:
 - (a) The existing agency practice, substantive policy statement constitutes a rule.
 - (b) The final rule meets the requirements prescribed in section 41-1030.
 - (c) An existing agency practice, substantive policy statement, final rule or regulatory licensing requirement meets the guidelines prescribed in subsection G of this section.
- I. For the purposes of subsection H of this section, the council meeting shall not be scheduled until the expiration of the agency response period prescribed in subsection H, paragraph 3 of this section.
- J. An agency practice, substantive policy statement, final rule or regulatory licensing requirement considered by the council pursuant to this section shall remain in effect while under consideration of the council. If the council determines that the agency practice or substantive policy statement constitutes a rule or that the final rule does not meet the requirements prescribed in section 41-1030, the practice, policy statement, rule or regulatory licensing requirement shall be considered void. If the council determines that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern, the council may modify, revise or declare void any such existing agency practice, substantive policy statement, final rule or regulatory licensing requirement.
- K. A council decision pursuant to this section shall include findings of fact and conclusions of law, separately stated. Conclusions of law shall specifically address the agency's authority to act consistent with section 41-1030.
- L. A decision by the council pursuant to this section is not subject to judicial review, except that, in addition to the procedure prescribed in this section or in lieu of the procedure prescribed in this section, a person may seek declaratory relief pursuant to section 41-1034.
- M. Each agency and the secretary of state shall post prominently on their websites notice of an individual's right to petition the council for review pursuant to this section.

41-1092.01. Office of administrative hearings; director; powers and duties; fund

- A. An office of administrative hearings is established.
- B. The governor shall appoint the director pursuant to section 38-211. At a minimum, the director shall have the experience necessary for appointment as an administrative law judge. The director also shall possess supervisory, management and administrative skills, as well as knowledge and experience relating to administrative law.
- C. The director shall:
 1. Serve as the chief administrative law judge of the office.
 2. Make and execute the contracts and other instruments that are necessary to perform the director's duties.

3. Subject to chapter 4, article 4 of this title, hire employees, including full-time administrative law judges, and contract for special services, including temporary administrative law judges, that are necessary to carry out this article. An administrative law judge employed or contracted by the office shall have graduated from an accredited college of law or shall have at least two years of administrative or managerial experience in the subject matter or agency section the administrative law judge is assigned to in the office.
 4. Make rules that are necessary to carry out this article, including rules governing ex parte communications in contested cases.
 5. Submit a report to the governor, speaker of the house of representatives and president of the senate by November 1 of each year describing the activities and accomplishments of the office. The director's annual report shall include a summary of the extent and effect of agencies' utilization of administrative law judges, court reporters and other personnel in proceedings under this article and recommendations for changes or improvements in the administrative procedure act or any agency's practice or policy with respect to the administrative procedure act. The director shall provide a copy of the report to the secretary of state.
 6. Secure, compile and maintain all decisions, opinions or reports of administrative law judges issued pursuant to this article and the reference materials and supporting information that may be appropriate.
 7. Develop, implement and maintain a program for the continuing training and education of administrative law judges and agencies in regard to their responsibilities under this article. The program shall require that an administrative law judge receive training in the technical and subject matter areas of the sections to which the administrative law judge is assigned.
 8. Develop, implement and maintain a program of evaluation to aid the director in the evaluation of administrative law judges appointed pursuant to this article that includes comments received from the public.
 9. Annually report the following to the governor, the president of the senate and the speaker of the house of representatives and provide a copy of this report to the secretary of state by December 1 for the prior fiscal year:
 - (a) The number of administrative law judge decisions rejected or modified by agency heads.
 - (b) By category, the number and disposition of motions filed pursuant to section 41-1092.07, subsection A to disqualify office administrative law judges for bias, prejudice, personal interest or lack of expertise.
 - (c) By agency, the number and type of violations of section 41-1009.
 10. Schedule hearings pursuant to section 41-1092.05 on the request of an agency or the filing of a notice of appeal pursuant to section 41-1092.03.
- D. The director shall not require legal representation to appear before an administrative law judge.
- E. Except as provided in subsection F of this section, all state agencies supported by state general fund sources, unless exempted by this article, and the registrar of contractors shall use the services and personnel of the office to conduct administrative hearings. All other agencies shall contract for services and personnel of the office to conduct administrative hearings.
- F. An agency head, board or commission that directly conducts an administrative hearing as an administrative law judge is not required to use the services and personnel of the office for that hearing.
- G. Each state agency, and each political subdivision contracting for office services pursuant to

subsection I of this section, shall make its facilities available, as necessary, for use by the office in conducting proceedings pursuant to this article.

- H. The office shall employ full-time administrative law judges to conduct hearings required by this article or other laws as follows:
 - 1. The director shall assign administrative law judges from the office to an agency, on either a temporary or a permanent basis, at supervisory or other levels, to preside over contested cases and appealable agency actions in accordance with the special expertise of the administrative law judge in the subject matter of the agency.
 - 2. The director shall establish the subject matter and agency sections within the office that are necessary to carry out this article. Each subject matter and agency section shall provide training in the technical and subject matter areas of the section as prescribed in subsection C, paragraph 7 of this section.
- I. If the office cannot furnish an office administrative law judge promptly in response to an agency request, the director may contract with qualified individuals to serve as temporary administrative law judges. These temporary administrative law judges are not employees of this state.
- J. The office may provide administrative law judges on a contract basis to any governmental entity to conduct any hearing not covered by this article. The director may enter into contracts with political subdivisions of this state, and these political subdivisions may contract with the director for the purpose of providing administrative law judges and reporters for administrative proceedings or informal dispute resolution. The contract may define the scope of the administrative law judge's duties. Those duties may include the preparation of findings, conclusions, decisions or recommended decisions or a recommendation for action by the political subdivision. For these services, the director shall request payment for services directly from the political subdivision for which the services are performed, and the director may accept payment on either an advance or reimbursable basis.
- K. The office shall apply monies received pursuant to subsections E and J of this section to offset its actual costs for providing personnel and services.
- L. The office shall receive complaints against a county, a local government as defined in section 9-1401 or a video service provider as defined in section 9-1401 or 11-1901 and shall comply with the duties imposed on the office pursuant to title 9, chapter 13 for complaints involving local governments and title 11, chapter 14 for complaints involving counties.

41-1092.02. Appealable agency actions; application of procedural rules; exemption from article

- A. This article applies to all contested cases as defined in section 41-1001 and all appealable agency actions, except contested cases with or appealable agency actions of:
 - 1. The state department of corrections.
 - 2. The board of executive clemency.
 - 3. The industrial commission of Arizona.
 - 4. The Arizona corporation commission.
 - 5. The Arizona board of regents and institutions under its jurisdiction.
 - 6. The state personnel board.
 - 7. The department of juvenile corrections.
 - 8. The department of transportation, except as provided in title 28, chapter 30, article 2.
 - 9. The department of economic security except as provided in section 46-458.

10. The department of revenue regarding:
 - (a) Income tax or withholding tax.
 - (b) Any tax issue related to information associated with the reporting of income tax or withholding tax unless the taxpayer requests in writing that this article apply and waives confidentiality under title 42, chapter 2, article 1.
11. The board of tax appeals.
12. The state board of equalization.
13. The state board of education, but only in connection with contested cases and appealable agency actions related to either:
 - (a) Applications for issuance or renewal of a certificate and discipline of certificate holders and noncertificated persons pursuant to sections 15-203, 15-505, 15-534, 15-534.01, 15-535, 15-545 and 15-550.
 - (b) The Arizona empowerment scholarship account program pursuant to title 15, chapter 19.
14. The board of fingerprinting.
15. The department of child safety except as provided in sections 8-506.01 and 8-811.
- B. Unless waived by all parties, an administrative law judge shall conduct all hearings under this article, and the procedural rules set forth in this article and rules made by the director apply.
- C. Except as provided in subsection A of this section:
 1. A contested case heard by the office of administrative hearings regarding taxes administered under title 42 shall be subject to section 42-1251.
 2. A final decision of the office of administrative hearings regarding taxes administered under title 42 may be appealed by either party to the director of the department of revenue, or a taxpayer may file and appeal directly to the board of tax appeals pursuant to section 42-1253.
- D. Except as provided in subsections A, B, E, F and G of this section and notwithstanding any other administrative proceeding or judicial review process established in statute or administrative rule, this article applies to all appealable agency actions and to all contested cases.
- E. Except for a contested case or an appealable agency action regarding unclaimed property, sections 41-1092.03, 41-1092.08 and 41-1092.09 do not apply to the department of revenue.
- F. The board of appeals established by section 37-213 is exempt from:
 1. The time frames for hearings and decisions provided in section 41-1092.05, subsection A, section 41-1092.08 and section 41-1092.09.
 2. The requirement in section 41-1092.06, subsection A to hold an informal settlement conference at the appellant's request if the sole subject of an appeal pursuant to section 37-215 is the estimate of value reported in an appraisal of lands or improvements.
- G. Auction protest procedures pursuant to title 37, chapter 2, article 4.1 are exempt from this article.

41-1092.03. Notice of appealable agency action or contested case; hearing; informal settlement conference; applicability

- A. Except as provided in subsection D of this section, an agency shall serve notice of an appealable agency action or contested case pursuant to section 41-1092.04. The notice shall:
 1. Identify the statute or rule that is alleged to have been violated or on which the action is based.

2. Identify with reasonable particularity the nature of any alleged violation, including, if applicable, the conduct or activity constituting the violation.
 3. Include a description of the party's right to request a hearing on the appealable agency action or contested case.
 4. Include a description of the party's right to request an informal settlement conference pursuant to section 41-1092.06.
- B. A party may obtain a hearing on an appealable agency action or contested case by filing a notice of appeal or request for a hearing with the agency within thirty days after receiving the notice prescribed in subsection A of this section. The notice of appeal or request for a hearing may be filed by a party whose legal rights, duties or privileges were determined by the appealable agency action or contested case. A notice of appeal or request for a hearing also may be filed by a party who will be adversely affected by the appealable agency action or contested case and who exercised any right provided by law to comment on the action being appealed or contested, provided that the grounds for the notice of appeal or request for a hearing are limited to issues raised in that party's comments. The notice of appeal or request for a hearing shall identify the party, the party's address, the agency and the action being appealed or contested and shall contain a concise statement of the reasons for the appeal or request for a hearing. The agency shall notify the office of the appeal or request for a hearing and the office shall schedule an appeal or contested case hearing pursuant to section 41-1092.05, except as provided in section 41-1092.01, subsection F.
- C. If good cause is shown an agency head may accept an appeal or request for a hearing that is not filed in a timely manner.
- D. This section does not apply to a contested case if the agency:
1. Initiates the contested case hearing pursuant to law other than this chapter and not in response to a request by another party.
 2. Is not required by law, other than this chapter, to provide an opportunity for an administrative hearing before taking action that determines the legal rights, duties or privileges of an applicant for a license.

41-1092.04. Service of documents

Unless otherwise provided in this article, every notice or decision under this article shall be served by personal delivery or certified mail, return receipt requested, or by any other method reasonably calculated to effect actual notice on the agency and every other party to the action to the party's last address of record with the agency. Each party shall inform the agency and the office of any change of address within five days of the change.

41-1092.05. Scheduling of hearings; prehearing conferences

- A. Except as provided in subsections B and C, hearings for:
1. Appealable agency actions shall be held within sixty days after the notice of appeal is filed.
 2. Contested cases shall be held within sixty days after the agency's request for a hearing.
- B. Hearings for appealable agency actions of or contested cases with self-supporting regulatory boards that meet quarterly or less frequently shall be held at the next meeting of the board after the board receives the written decision of an administrative law judge or the issuance of the notice of hearing, except that:
1. If the decision of the administrative law judge is received or the notice of hearing is issued within thirty days before the board meets, the hearing shall be held at the following meeting

of the board.

2. If good cause is shown, the hearing may be held at a later meeting of the board.
- C. The date scheduled for the hearing may be advanced or delayed on the agreement of the parties or on a showing of good cause.
- D. The agency shall prepare and serve a notice of hearing on all parties to the appeal or contested case at least thirty days before the hearing. The notice shall include:
 1. A statement of the time, place and nature of the hearing.
 2. A statement of the legal authority and jurisdiction under which the hearing is to be held.
 3. A reference to the particular sections of the statutes and rules involved.
 4. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. After the initial notice and on application, a more definite and detailed statement shall be furnished.
- E. Notwithstanding subsection D, a hearing shall be expedited as provided by law or upon a showing of extraordinary circumstances or the possibility of irreparable harm if the parties to the appeal or contested case have actual notice of the hearing date. Any party to the appeal or contested case may file a motion with the director asserting the party's right to an expedited hearing. The right to an expedited hearing shall be listed on any abatement order. The Arizona health care cost containment system administration may file a motion with every member grievance and eligibility appeal that cites federal law and that requests that a hearing be set within thirty days after the motion is filed.
- F. Prehearing conferences may be held to:
 1. Clarify or limit procedural, legal or factual issues.
 2. Consider amendments to any pleadings.
 3. Identify and exchange lists of witnesses and exhibits intended to be introduced at the hearing.
 4. Obtain stipulations or rulings regarding testimony, exhibits, facts or law.
 5. Schedule deadlines, hearing dates and locations if not previously set.
 6. Allow the parties opportunity to discuss settlement.

41-1092.06. Appeals of agency actions and contested cases; informal settlement conferences; applicability

- A. If requested by the appellant of an appealable agency action or the respondent in a contested case, the agency shall hold an informal settlement conference within fifteen days after receiving the request. A request for an informal settlement conference shall be in writing and shall be filed with the agency no later than twenty days before the hearing. If an informal settlement conference is requested, the agency shall notify the office of the request and the outcome of the conference, except as provided in section 41-1092.01, subsection F. The request for an informal settlement conference does not toll the sixty day period in which the administrative hearing is to be held pursuant to section 41-1092.05.
- B. If an informal settlement conference is held, a person with the authority to act on behalf of the agency must represent the agency at the conference. The agency representative shall notify the appellant in writing that statements, either written or oral, made by the appellant at the conference, including a written document, created or expressed solely for the purpose of settlement negotiations are inadmissible in any subsequent administrative hearing. The parties participating in the settlement conference shall waive their right to object to the participation of the agency representative in the final administrative decision.

41-1092.07. Hearings

- A. A party to a contested case or appealable agency action may file a nonperemptory motion with the director to disqualify an office administrative law judge from conducting a hearing for bias, prejudice, personal interest or lack of technical expertise necessary for a hearing.
- B. The parties to a contested case or appealable agency action have the right to be represented by counsel or to proceed without counsel, to submit evidence and to cross-examine witnesses.
- C. The administrative law judge may issue subpoenas to compel the attendance of witnesses and the production of documents. The subpoenas shall be served and, on application to the superior court, enforced in the manner provided by law for the service and enforcement of subpoenas in civil matters. The administrative law judge may administer oaths and affirmations to witnesses.
- D. All parties shall have the opportunity to respond and present evidence and argument on all relevant issues. All relevant evidence is admissible, but the administrative law judge may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues or by considerations of undue delay, waste of time or needless presentation of cumulative evidence. The administrative law judge shall exercise reasonable control over the manner and order of cross-examining witnesses and presenting evidence to make the cross-examination and presentation effective for ascertaining the truth, avoiding needless consumption of time and protecting witnesses from harassment or undue embarrassment.
- E. All hearings shall be recorded. The administrative law judge shall secure either a court reporter or an electronic means of producing a clear and accurate record of the proceeding at the agency's expense. Any party that requests a transcript of the proceeding shall pay the costs of the transcript to the court reporter or other transcriber.
- F. Unless otherwise provided by law, the following apply:
 - 1. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to adhere to the rules of evidence required in judicial proceedings is grounds for reversing any administrative decision or order if the evidence supporting the decision or order is substantial, reliable and probative.
 - 2. Copies of documentary evidence may be received in the discretion of the administrative law judge. On request, parties shall be given an opportunity to compare the copy with the original.
 - 3. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be used in the evaluation of the evidence.
 - 4. On application of a party or the agency and for use as evidence, the administrative law judge may permit a deposition to be taken, in the manner and on the terms designated by the administrative law judge, of a witness who cannot be subpoenaed or who is unable to attend the hearing. Subpoenas for the production of documents may be ordered by the administrative law judge if the party seeking the discovery demonstrates that the party has

reasonable need of the materials being sought. All provisions of law compelling a person under subpoena to testify are applicable. Fees for attendance as a witness shall be the same as for a witness in court, unless otherwise provided by law or agency rule. Notwithstanding section 12-2212, subpoenas, depositions or other discovery shall not be permitted except as provided by this paragraph or subsection C of this section.

5. Informal disposition may be made by stipulation, agreed settlement, consent order or default.
6. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.
7. A final administrative decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Conclusions of law shall specifically address the agency's authority to make the decision consistent with section 41-1030.

G. Except as otherwise provided by law:

1. At a hearing on an agency's denial of a license or permit or a denial of an application or request for modification of a license or permit, the applicant has the burden of persuasion.
2. At a hearing on an agency action to suspend, revoke, terminate or modify on its own initiative material conditions of a license or permit, the agency has the burden of persuasion.
3. At a hearing on an agency's imposition of fees or penalties or any agency compliance order, the agency has the burden of persuasion.
4. At a hearing held pursuant to chapter 23 or 24 of this title, the appellant or claimant has the burden of persuasion.

H. Subsection G of this section does not affect the law governing burden of persuasion in an agency denial of, or refusal to issue, a license renewal.

41-1092.08. Final administrative decisions; review; exception

- A. The administrative law judge of the office shall issue a written decision within twenty days after the hearing is concluded. The written decision shall contain a concise explanation of the reasons supporting the decision, including the findings of fact and conclusions of law. The administrative law judge shall serve a copy of the decision on the agency. On request of the agency, the office shall also transmit to the agency the record of the hearing as described in section 12-904, except as provided in section 41-1092.01, subsection F.
- B. Within thirty days after the date the office sends a copy of the administrative law judge's decision to the head of the agency, executive director, board or commission, the head of the agency, executive director, board or commission may review the decision and accept, reject or modify it. If the head of the agency, executive director, board or commission declines to review the administrative law judge's decision, the agency shall serve a copy of the decision on all parties. If the head of the agency, executive director, board or commission rejects or modifies the decision, the agency head, executive director, board or commission must file with the office, except as provided in section 41-1092.01, subsection F, and serve on all parties a copy of the administrative law judge's decision with the rejection or modification and a written justification setting forth the reasons for the rejection or modification of each finding of fact or conclusion of law. If there is a rejection or modification of a conclusion of law, the written justification shall be sent to the president of the senate and the speaker of the house of representatives.
- C. A board or commission whose members are appointed by the governor may review the decision

of the agency head, as provided by law, and make the final administrative decision.

- D. Except as otherwise provided in this subsection, if the head of the agency, the executive director or a board or commission does not accept, reject or modify the administrative law judge's decision within thirty days after the date the office sends a copy of the administrative law judge's decision to the head of the agency, executive director, board or commission, as evidenced by receipt of such action by the office by the thirtieth day, the office shall certify the administrative law judge's decision as the final administrative decision. If the board or commission meets monthly or less frequently, if the office sends the administrative law judge's decision at least thirty days before the next meeting of the board or commission and if the board or commission does not accept, reject or modify the administrative law judge's decision at the next meeting of the board or commission, as evidenced by receipt of such action by the office within five days after the meeting, the office shall certify the administrative law judge's decision as the final administrative decision.
- E. For the purposes of subsections B and D of this section, a copy of the administrative law judge's decision is sent on personal delivery of the decision or five days after the decision is mailed to the head of the agency, executive director, board or commission.
- F. The decision of the agency head is the final administrative decision unless either:
 - 1. The agency head, executive director, board or commission does not review the administrative law judge's decision pursuant to subsection B of this section or does not reject or modify the administrative law judge's decision as provided in subsection D of this section, in which case the administrative law judge's decision is the final administrative decision.
 - 2. The decision of the agency head is subject to review pursuant to subsection C of this section.
- G. If a board or commission whose members are appointed by the governor makes the final administrative decision as an administrative law judge or on review of the decision of the agency head, the decision is not subject to review by the head of the agency.
- H. A party may appeal a final administrative decision pursuant to title 12, chapter 7, article 6, except as provided in section 41-1092.09, subsection B and except that if a party has not requested a hearing on receipt of a notice of appealable agency action pursuant to section 41-1092.03, the appealable agency action is not subject to judicial review.
- I. This section does not apply to the Arizona peace officer standards and training board established by section 41-1821.

41-1092.09. Rehearing or review

- A. Except as provided in subsection B of this section:
 - 1. A party may file a motion for rehearing or review within thirty days after service of the final administrative decision.
 - 2. The opposing party may file a response to the motion for rehearing within fifteen days after the date the motion for rehearing is filed.
 - 3. After a hearing has been held and a final administrative decision has been entered pursuant to section 41-1092.08, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.
- B. A party to an appealable agency action of or contested case with a self-supporting regulatory board shall exhaust the party's administrative remedies by filing a motion for rehearing or review within thirty days after the service of the administrative decision that is subject to rehearing or review in order to be eligible for judicial review pursuant to title 12, chapter 7,

article 6. The board shall notify the parties in the administrative decision that is subject to rehearing or review that a failure to file a motion for rehearing or review within thirty days after service of the decision has the effect of prohibiting the parties from seeking judicial review of the board's decision.

- C. Service is complete on personal service or five days after the date that the final administrative decision is mailed to the party's last known address.
- D. Except as provided in this subsection, the agency head, executive director, board or commission shall rule on the motion within fifteen days after the response to the motion is filed or, if a response is not filed, within five days of the expiration of the response period. A self-supporting regulatory board shall rule on the motion within fifteen days after the response to the motion is filed or at the board's next meeting after the motion is received, whichever is later.

41-1092.10. Compulsory testimony; privilege against self-incrimination

- A. A person may not refuse to attend and testify or produce evidence sought by an agency in an action, proceeding or investigation instituted by or before the agency on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture unless it constitutes the compelled testimony or the private papers of the person that would be privileged evidence either pursuant to the fifth amendment of the Constitution of the United States or article II, section 10, Constitution of Arizona, and the person claims the privilege before the production of the testimony or papers.
- B. If a person asserts the privilege against self-incrimination and the agency seeks to compel production of the testimony or documents sought, the office or agency as provided in section 41-1092.01, subsection F may issue, with the prior written approval of the attorney general, a written order compelling the testimony or production of documents in proceedings and investigations before the office or agency as provided in section 41-1092.01, subsection F or apply to the appropriate court for such an order in other actions or proceedings.
- C. Evidence produced pursuant to subsection B of this section is not admissible in evidence or usable in any manner in a criminal prosecution, except for perjury, false swearing, tampering with physical evidence or any other offense committed in connection with the appearance made pursuant to this section against the person testifying or the person producing the person's private papers.

41-1092.11. Licenses; renewal; revocation; suspension; annulment; withdrawal

- A. If a licensee makes timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.
- B. Revocation, suspension, annulment or withdrawal of any license is not lawful unless, before the action, the agency provides the licensee with notice and an opportunity for a hearing in accordance with this article. If the agency finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the agency may order summary suspension of a license pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

41-1092.12. Private right of action; recovery of costs and fees; definitions

- A. If an agency takes an action against a party that is arbitrary, capricious or not in accordance with law, the action is an appealable agency action if all of the following apply:
 - 1. Within ten days after the action that is arbitrary, capricious or not in accordance with law, the party notifies the director of the agency in writing of the party's intent to file a claim pursuant to this section. This notice shall include a description of the action the party claims to be arbitrary, capricious or not in accordance with law and reasons why the action is arbitrary, capricious or not in accordance with law.
 - 2. The agency continues the action that is arbitrary, capricious or not in accordance with law more than ten days after the agency receives the notice.
 - 3. The action is not excluded from the definition of appealable agency action as defined in section 41-1092.
- B. This section only applies if an administrative remedy or an administrative or a judicial appeal of final agency action is not otherwise provided by law.
- C. If the party prevails, the agency shall pay reasonable costs and fees to the party from any monies appropriated to the agency and available for that purpose or from other operating monies of the agency. If the agency fails or refuses to pay the award within fifteen days after the demand, and if no further review or appeal of the award is pending, the prevailing party may file a claim with the department of administration. The department of administration shall pay the claim within thirty days in the same manner as an uninsured property loss under title 41, chapter 3.1, article 1, except that the agency is responsible for the total amount awarded and shall pay it from its operating monies. If the agency had appropriated monies available for paying the award at the time it failed or refused to pay, the legislature shall reduce the agency's operating appropriation for the following fiscal year by the amount of the award and shall appropriate that amount to the department of administration as reimbursement for the loss.
- D. If the administrative law judge determines that the appealable agency action is frivolous, the administrative law judge may require the party to pay reasonable costs and fees to the agency in responding to the appeal filed before the office of administrative hearings.
- E. For the purposes of this section:
 - 1. "Action against the party" means any of the following that results in the expenditure of costs and fees:
 - (a) A decision.
 - (b) An inspection.
 - (c) An investigation.
 - (d) The entry of private property.
 - 2. "Agency" means the department of environmental quality established pursuant to title 49, chapter 1, article 1.
 - 3. "Costs and fees" means reasonable attorney and professional fees.
 - 4. "Party" means an individual, partnership, corporation, association and public or private organization at whom the action was directed and who has expended costs and fees as a result of the action against the party.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)

Title 9, Chapter 28, Articles 6, 7



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 1, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 11, 2022

SUBJECT: ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
Title 9, Chapter 28, Articles 6 & 7

Summary

This Five-Year Review Report (5YRR) from the Arizona Health Care Cost Containment System (AHCCCS) relates to six (6) rules in Title 9, Chapter 28, Article 6 (RFP and Contract Process) and five (5) rules in Article 7 (Standards for Payments).

The rules in Article 6 relate to Request for Proposal and contract process for the Arizona Long-Term Care System (ALTCS). The ALTCS is health insurance for individuals who are age 65 or older, or who have a disability, and who require nursing facility level of care. Services may be provided in an institution or in a home or community-based setting. Pursuant to A.R.S. 36-2944, the director at least every five years shall prepare and issue a request for proposal and a proposed contract format to qualified group disability insurers, hospital and medical service corporations, health care services organizations and any other qualified public or private persons to be a program contractor and provide long-term care services. The director may adopt rules regarding the request for proposal process, which was done in Title 9, Chapter 28, Article 6.

The rules in Article 7 relate to Standards for Payments regarding ALTCS. Specifically, these rules describe general reimbursement requirements, the requirements for assessments to nursing facilities, the requirements for supplemental payments for nursing facilities, and the

criteria for determining the county that is financially responsible for the state's share of the ALTCS funding as referenced in A.R.S. §36-2913.

In the previous 5YRR for these rules, approved by the Council in October 2017, AHCCCS did not indicate any proposed changes to the rules.

Proposed Action

In the current report, AHCCCS does not propose to make any changes to the rules.

1. **Has the agency analyzed whether the rules are authorized by statute?**

AHCCCS cites both general and specific authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

AHCCCS indicates that for Articles 6 and 7 there has not been a rulemaking since the last 5YRR. Therefore, the economic impact is not significantly different from the original economic impact.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

AHCCCS believes the rules as written impose the least burden and cost when meeting their objectives.

4. **Has the agency received any written criticisms of the rules over the last five years?**

AHCCCS indicates it has not received written criticisms of the rules in the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

AHCCCS indicates the rules are clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

AHCCCS indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

AHCCCS indicates the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

AHCCCS indicates the rules are enforced as written.

9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

AHCCCS indicates the rules are not more stringent than corresponding federal law.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. The rules do not require a permit, license, or agency authorization.

11. Conclusion

This 5YRR relates to six (6) rules in Title 9, Chapter 28, Article 6 (RFP and Contract Process) and five (5) rules in Article 7 (Standards for Payments). AHCCCS indicates the rules are generally clear, concise, understandable, consistent, effective, and enforced as written. AHCCCS does not intend to take any action regarding these rules.

Council staff recommends approval of this report.

January 28, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: AHCCCS Title 9, Chapter 28, Article 6, Five Year Review Report

Dear Ms. Sornsins:

Please find enclosed the Five-Year Review Report of AHCCCS for Title 9, Chapter 28, Article 6 which is due on January 31, 2022.

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Nicole Fries at 602-417-4232 or nicole.fries@azahcccs.gov.

Sincerely,



Kasey Rogg
Assistant Director

Attachments

Arizona Health Care Cost Containment System (AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 28, Articles 6

January 2022

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 36-2932

Implementing statute: A.R.S. §§ 36-2944, 36-2943, 36-2959, and 36-2999.51

2. The objective of each rule:

Rule	Objective
R9-28-601	The objective of the rule is to list the authority for the Request for Proposal (RFP) and describe the applicability of Title 9 Chapter 28 Article 6
R9-28-602	The objective of this rule is to prescribe the contents of the RFP and the proposal process.
R9-28-603	The objective of this rule is to prescribe the process the Administration follows when awarding contracts.
R9-28-604	The objective of this rule is to prescribe the means of protesting an RFP or award including the administrative appeal process.
R9-28-605	The objective of this rule is to prescribe means by which an offeror or contractor may request from the Director a waiver of the requirement for hospital subcontracts.
R9-28-606	The objective of this rule is to prescribe sanctions the Director may impose on contractors for noncompliance and the factors considered when doing so.

3. **Are the rules effective in achieving their objectives?** Yes X No

4. **Are the rules consistent with other rules and statutes?** Yes X No

5. **Are the rules enforced as written?** Yes X No

6. **Are the rules clear, concise, and understandable?** Yes X No

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No X

8. Economic, small business, and consumer impact comparison:

There has not been a rulemaking since the last Five Year Review Report. Therefore, the economic impact is not significantly different than the original economic impact.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No X

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Not applicable.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Administration believes the rules as written impose the least burden and cost when meeting their objectives.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

13. **For rules adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Not applicable.

14. **Proposed course of action:**

The agency did not provide any recommended changes to this article, therefore there is no proposed course of action.

January 28, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: AHCCCS Title 9, Chapter 28, Article 7, Five Year Review Report

Dear Ms. Sornsins:

Please find enclosed the Five-Year Review Report of AHCCCS for Title 9, Chapter 28, Article 7 which is due on January 31, 2022.

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Nicole Fries at 602-417-4232 or nicole.fries@azahcccs.gov.

Sincerely,



Kasey Rogg
Assistant Director

Attachments

Not applicable.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Administration believes the rules as written impose the least burden and cost when meeting their objectives.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

13. **For rules adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Not applicable.

14. **Proposed course of action:**

The agency has no recommended changes, so there is no corresponding course of action proposed.

- a. Re-evaluating and revising the case management plan when the member transfers to another facility, transfers to a hospital, has a change in level of care; and
 - b. Monitoring receipt of services by a member;
5. Assist the member to maintain or progress toward the highest level of functioning;
 6. Ensure that records are transferred when the member is transferred from a facility or provider to a new facility or provider;
 7. Perform additional monitoring of a member with rehabilitation potential and whose condition is fragile or unstable, whose case management plan is marginally cost effective, or whose use of medical and hospital services is unusual;
 8. Arrange behavioral health services, if necessary. The case manager shall have initial and quarterly consultation and collaboration with a behavioral health professional to review the treatment plan, unless the case manager meets the definition of a behavioral health professional under A.A.C. R9-20-101.
- C. A program contractor shall submit a service plan and other information related to the case management plan upon request to the Administration.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective July 13, 1992 (Supp. 92-3). Amended effective November 5, 1993 (Supp. 93-4). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 18 A.A.R. 3380, effective January 1, 2013 (Supp. 12-4).

R9-28-511. Quality Management/Utilization Management (QM/UM) Requirements

A program contractor shall:

1. Comply with all requirements specified in A.A.C. R9-22-522; and
2. Submit a quarterly utilization control report within time lines specified in contract, and meet the requirements in 42 CFR 456 Subparts C, D, and F, October 1, 2004, incorporated by reference in R9-28-505.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended under an exemption from the provisions of the Administrative Procedure Act effective March 1, 1993 (Supp. 93-1). Amended effective November 5, 1993 (Supp. 93-4). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 5 A.A.R. 874, effective March 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

R9-28-512. Expired**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective December 8, 1997 (Supp. 97-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4851, effective October 9, 2002 (Supp. 02-4).

R9-28-513. Program Compliance Audits

The Administration shall meet the requirements specified under A.A.C. R9-22-521 for a program contractor.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

R9-28-514. Release of Safeguarded Information by the Administration and Contractors

The Administration, program contractors, providers, and noncontracting providers shall meet the requirements specified under A.A.C. R9-22-512 for an ALTCS applicant, or member.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

R9-28-515. Repealed**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Section repealed by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

ARTICLE 6. RFP AND CONTRACT PROCESS

Article 6, consisting of Sections R9-28-601 through R9-28-610, repealed; new Article 6, consisting of Sections R9-28-601 through R9-28-608, adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).

R9-28-601. General Provisions

- A. The Director has full operational authority to adopt rules for the RFP process and the award of contract under A.R.S. § 36-2944.
- B. The Administration shall follow the provisions under 9 A.A.C. 22, Article 6 for members, subject to limitations and exclusions under that Article, unless otherwise specified in this Chapter.
- C. The Administration shall award contracts under A.R.S. § 36-2932 to provide services under A.R.S. § 36-2939.
- D. The Administration is exempt from the procurement code under A.R.S. § 41-2501.
- E. The Administration and contractors shall retain all records relating to contract compliance for five years under A.R.S. § 36-2932 and dispose of the records under A.R.S. § 41-2550.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Amended by final rulemaking at 5 A.A.R. 874, effective March 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-602. RFP

The ALTCS RFP for a program contractor serving members who are EPD shall meet the requirements of A.R.S. §§ 36-2944, A.R.S. § 36-2939, A.A.C. R9-22-602, and Articles 2 and 11 of this Chapter.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000

(Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-603. Contract Award

The Administration shall award a contract under A.R.S. § 36-2944 and A.A.C. R9-22-603.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-604. Contract or Proposal Protests; Appeals

Contract or proposal protests or appeals shall be under A.A.C. R9-22-604 and 9 A.A.C. 34.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2502, effective November 13, 2012 (Supp. 12-3).

R9-28-605. Waiver of Contractor's Subcontract with Hospitals

A contractor's subcontract with hospitals may be waived under A.A.C. R9-22-605.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-606. Contract Compliance Sanction

- A.** The Administration shall follow sanction provisions under A.A.C. R9-22-606.
- B.** The Administration shall apply remedies found in 42 CFR 488, Subpart F, effective January 1, 2012, incorporated by reference and on file with the Administration and the Office of the Secretary of State, for a nursing facility that does not meet requirements of participation under 42 U.S.C. 1396r. This incorporation by reference contains no future editions or amendments.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2502, effective November 13, 2012 (Supp. 12-3).

R9-28-607. Repealed

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-608. Repealed

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-609. Repealed

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Section repealed by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).

R9-28-610. Repealed

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended under an exemption from the provisions of the Administrative Procedure Act effective March 1, 1993 (Supp. 93-1). Section repealed by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-28-701. Standards for Payment Related Definitions

Definitions. In this Article, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, the following phrase has the following meaning unless the context of the Article explicitly requires another meaning:

"County of fiscal responsibility" means the county that is financially responsible for the state's share of ALTCS funding.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3).

R9-28-701.10. General Requirements

The following Sections of A.A.C. Chapter 22, Articles 2 and 7, are applicable to reimbursement for services provided under the ALTCS program, except that the term "program contractor" shall be substituted for "contractor."

1. Scope of the Administration's and Contractor's Liability, R9-22-701.10;
2. Charges to Members, R9-22-702;
3. Payments by the Administration or by a program contractor, R9-22-703 and R9-22-705;
4. Contractor's Liability to Hospitals for the Provision of Emergency and Post-stabilization Care, R9-22-709;
5. Payment for Non-hospital services, R9-22-710;
6. Specialty Contracts, R9-22-712(G)(3), R9-22-712.01(10) and Article 2;

(Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-603. Contract Award

The Administration shall award a contract under A.R.S. § 36-2944 and A.A.C. R9-22-603.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-604. Contract or Proposal Protests; Appeals

Contract or proposal protests or appeals shall be under A.A.C. R9-22-604 and 9 A.A.C. 34.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2502, effective November 13, 2012 (Supp. 12-3).

R9-28-605. Waiver of Contractor's Subcontract with Hospitals

A contractor's subcontract with hospitals may be waived under A.A.C. R9-22-605.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-606. Contract Compliance Sanction

- A. The Administration shall follow sanction provisions under A.A.C. R9-22-606.
- B. The Administration shall apply remedies found in 42 CFR 488, Subpart F, effective January 1, 2012, incorporated by reference and on file with the Administration and the Office of the Secretary of State, for a nursing facility that does not meet requirements of participation under 42 U.S.C. 1396r. This incorporation by reference contains no future editions or amendments.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2502, effective November 13, 2012 (Supp. 12-3).

R9-28-607. Repealed

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-608. Repealed

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-609. Repealed

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Section repealed by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).

R9-28-610. Repealed

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended under an exemption from the provisions of the Administrative Procedure Act effective March 1, 1993 (Supp. 93-1). Section repealed by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-28-701. Standards for Payment Related Definitions

Definitions. In this Article, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, the following phrase has the following meaning unless the context of the Article explicitly requires another meaning:

"County of fiscal responsibility" means the county that is financially responsible for the state's share of ALTCS funding.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3).

R9-28-701.10. General Requirements

The following Sections of A.A.C. Chapter 22, Articles 2 and 7, are applicable to reimbursement for services provided under the ALTCS program, except that the term "program contractor" shall be substituted for "contractor."

1. Scope of the Administration's and Contractor's Liability, R9-22-701.10;
2. Charges to Members, R9-22-702;
3. Payments by the Administration or by a program contractor, R9-22-703 and R9-22-705;
4. Contractor's Liability to Hospitals for the Provision of Emergency and Post-stabilization Care, R9-22-709;
5. Payment for Non-hospital services, R9-22-710;
6. Specialty Contracts, R9-22-712(G)(3), R9-22-712.01(10) and Article 2;

7. Payments by the Administration for Hospital Services Provided to an Eligible Person, R9-22-712; R9-22-712.01 and R9-22-712.10;
8. Overpayment and Recovery of Indebtedness, R9-22-713;
9. Payments to Providers, R9-22-714;
10. Hospital Rate Negotiations, R9-22-715; and
11. Reinsurance, R9-22-720.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

R9-28-702. Repealed Nursing Facility Assessment

- A. For purposes of this Section, in addition to the definitions under A.R.S. § 36-2999.51, the following terms have the following meaning unless the context specifically requires another meaning:

“820 transaction” means the standard health care premium payments transaction required by 45 CFR 162.1702.

“Assessment year” means the 12 month period beginning October 1st each year.

“Nursing Facility Assessment” means a tax paid by a qualifying nursing facility to the Department of Revenue on a quarterly basis established under A.R.S. § 36-2999.52.

“Medicaid days” means days of nursing facility services paid for by the Administration or its contractors as the primary payor and as reported in AHCCCS’ claim and encounter data.

“Medicare days” means resident days where the Medicare program, a Medicare advantage or special needs plan, or the Medicare hospice program is the primary payor.

“Payment year” means the 12 month period beginning October 1st each year. “Payment year” means the 12 month period beginning October 1st each year.

- B. Subject to Centers for Medicare and Medicaid Services (CMS) approval, effective October 1, 2012, nursing facilities shall be subject to a provider assessment payable on a quarterly basis.
- C. All nursing facilities licensed in the state of Arizona shall be subject to the provider assessment except for:
1. A continuing care retirement community,
 2. A facility with 58 or fewer beds,
 3. A facility designated by the Arizona Department of Health Services as an Intermediate Care Facility for the Mentally Retarded,
 4. A tribally owned or operated facility located on a reservation, or
 5. Arizona Veteran’s Homes.
- D. The Administration shall calculate the prospective nursing facility provider assessment for qualifying nursing facilities as follows:
1. The Administration shall utilize each nursing facility’s Uniform Accounting Report (UAR) submitted to the Arizona Department of Health Services as of August 1st immediately preceding the assessment year. In addition, by August 1st each year, each nursing facility shall provide the Administration with any additional information necessary to determine the assessment. For any nursing facility that does not provide by August 1st the additional information requested by the Administration, the Administration shall determine the assessment based on the information available.

2. For each nursing facility, other than a nursing facility noted in subsection (D)(3), the provider assessment is calculated by multiplying the nursing facility’s non-Medicare resident day data for each assessment year by \$7.50.
3. For a nursing facility with the number of annual Medicaid days greater than or equal to the number required to achieve a slope of at least 1 applying the uniformity tax waiver test described in 42 CFR 433.68(e)(2), the provider assessment is calculated by multiplying the nursing facility’s non-Medicare resident day data for each assessment year by \$1.00.
4. The number of annual Medicaid days used in subsection (D)(3) shall be recalculated each August 1, to achieve a slope of at least 1 applying the uniformity tax waiver test described in 42 CFR 433.68(e)(2).
5. The assessment calculated under subsections (D)(2), (D)(3) and (D)(4), shall not exceed 3.5 percent of aggregate net patient service revenue of all assessed providers.
6. The Administration will forward the provider assessment by facility to the Department of Revenue by no later than December preceding the assessment year.
7. In the event a nursing facility closes during the assessment year, the nursing facility shall cease to be responsible for the portion of the assessment applied to the dates the nursing facility is not operating.
8. In the event a nursing facility begins operation during the assessment year, that facility would have no responsibility for the assessment until such time as the facility has UAR data that falls within the collection period for the assessment calculation.
9. In the event a nursing facility has a change of ownership such that the facility remains open and the ownership of the facility changes, the assessment liability transfers with the change in ownership.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 3244, effective October 1, 2005 (Supp. 05-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 19 A.A.R. 137, effective January 8, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 4168, effective February 1, 2014 (Supp. 13-4).

R9-28-703. Nursing Facility Supplemental Payments

- A. Nursing Facility Supplemental Payments
1. Using Medicaid resident bed day information from the most recent and complete twelve months of adjudicated claims and encounter data, for every combination of contractor and every facility eligible for a supplemental payment, the Administration shall determine annually a ratio equal to the number of bed days for the facility paid by each contractor divided by the total number of bed days paid to all facilities by all contractors and the Administration.
 2. Using the same information as used in (A)(1), for every facility eligible for a supplemental payment, the Administration shall determine annually a ratio equal to the number of bed days for the facility paid by the Administration divided by the total number of bed days paid to all facilities by all contractors and the Administration.

3. Quarterly, each contractor shall make payments to each facility in an amount equal to 98% of the amounts identified as Nursing Facility Enhanced Payments in the 820 transaction sent from AHCCCS to the contractor for the quarter multiplied by the percentage determined in subsection (A)(2) applicable to the contractor and to each facility.
 4. Quarterly, the Administration shall make payments to each facility in an amount equal to 99% of the amounts collected during the preceding quarter under R9-28-702, less amounts collected and used to fund the Nursing Facility Enhanced Payments included in the capitation paid to contractors and the corresponding federal financial participation, multiplied by the percentage determined in subsection (A)(2) applicable to the Administration and to each facility. The Administration shall make the supplemental payments to the nursing facilities within 20 calendar days of the determination of the quarterly supplemental payment.
 5. Neither the Administration nor the Contractors shall be required to make quarterly payments to facilities otherwise required by subsections (A)(3) or (A)(4) until the assessment collected and actually available in the nursing facility assessment fund, plus the corresponding federal financial participation, are equal to or greater than 101% of the amount necessary for contractors to make the payments to facilities described in subsections (A)(4) and (A)(5).
 6. Contractors shall not be required to make quarterly payments to facility otherwise required by subsection (A)(4) until the Administration has made a retroactive adjustment to the capitation rates paid to contractors to correct the Nursing Facility Enhanced payments based on actual member months for the specified quarter.
- B.** Each contractor must pay each facility the amount computed within 20 calendar days of receiving the nursing facility enhanced payment from the Administration. The contractors must confirm each payment and payment date to the Administration within 20 calendar days from receipt of the funds.
- C.** After each assessment year, the Administration shall reconcile the payments made by contractors under subsection (A) and (B) to the portion of the annual collections under R9-28-702 attributable to Medicaid resident bed days paid for by contractors for the same year, less one percent, plus available federal financial participation. The proportion of each nursing facility's Medicaid resident bed days as described in subsection (A)(2)(ii) shall be used to calculate the reconciliation amounts. Contractors shall make additional payments to or recoup payments from nursing facilities based on the reconciliation in compliance with the requirements of subsection (B).
- D.** General requirements for all payments.
1. A facility must be open on the date the supplemental payment is made in order to receive a payment. In the event a nursing facility closes during the assessment year, the nursing facility shall cease to be eligible for supplemental payments.
 2. In the event a nursing facility begins operation during the assessment year, that facility shall not receive a supplemental payment until such time as the facility has claims and encounter data that falls within the collection period for the payment calculation.
 3. In the event a nursing facility has a change of ownership, payments shall be made to the owner of the facility as of the date of the supplemental payment.
 4. Subsection (E)(3) shall not be interpreted to prohibit the current and prior owner from agreeing to a transfer of the payment from the current owner to the prior owner.
- E.** The Arizona Veterans' Homes are not eligible for supplemental payments.
- Historical Note**
- Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 19 A.A.R. 137, effective January 8, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 4168, effective February 1, 2014 (Supp. 13-4).
- R9-28-704. Repealed**
- Historical Note**
- Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).
- R9-28-705. Repealed**
- Historical Note**
- Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective April 25, 1990 (Supp. 90-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective November 5, 1993 (Supp. 93-4). Amended by final rulemaking at 5 A.A.R. 874, effective March 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).
- R9-28-706. Repealed**
- Historical Note**
- Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended subsections (A) and (B) effective June 6, 1989 (Supp. 89-2). Amended effective April 25, 1990 (Supp. 90-2). Amended effective November 5, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 10 A.A.R. 4658, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 3852, effective November 12, 2005 (Supp. 05-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).
- R9-28-707. Repealed**
- Historical Note**
- Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

Editor's Note: The following Section was amended under an exemption from the provisions of the Administrative Procedure Act which means that the amendment was not reviewed by the Governor's Regulatory Review Council; the agency did not submit a notice of proposed rulemaking for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rulemaking; and the Attorney General has not certified the rule. This Section was subsequently amended through the regular rulemaking process.

R9-28-708. Repealed

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective April 26, 1989 (Supp. 89-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective November 5, 1993 (Supp. 93-4). Amended by final rulemaking at 11 A.A.R. 3852, effective November 12, 2005 (Supp. 05-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

R9-28-709. Repealed

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended subsection (B) effective June 6, 1989 (Supp. 89-2). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

R9-28-710. Repealed

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended subsections (C) and (D) effective June 6, 1989 (Supp. 89-2). Amended effective September 22, 1997 (Supp. 97-3). Section repealed by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-711. Repealed

Historical Note

Adopted effective November 5, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

R9-28-712. County of Fiscal Responsibility

A. General requirements.

1. The Administration shall determine the county of fiscal responsibility under A.R.S. § 36-2913 for an applicant or member who is elderly or physically disabled.
2. A program contractor shall cover services and provisions specified in 9 A.A.C. 22, Articles 2 and 7 and Article 11 of this Chapter.

B. Criteria for determining county of fiscal responsibility for an applicant.

1. If the applicant resides in the applicant's own home, the county of fiscal responsibility is the county where the applicant currently resides.
2. This applies only if subsection (B)(3) does not apply. If the applicant is residing in a NF or alternative HCBS set-

ting, the county of fiscal responsibility is the county in which the applicant last resided in the applicant's own home.

3. If the applicant moves from another state directly into a NF or alternative HCBS setting in this state, the county of fiscal responsibility is the county in which the person currently resides.
 4. If the applicant moves from the Arizona State Hospital (ASH) into a NF or alternative HCBS setting, or is an inmate of a public institution moving from the public institution into a NF or alternative HCBS setting, the county of fiscal responsibility is the county in which the applicant resided in the applicant's own home prior to admission to ASH or the public institution.
- C. Criteria for determining if there is a change in county of fiscal responsibility for a member moving from one county to another county.**
1. No change in the county of fiscal responsibility. There is no change in the county of fiscal responsibility for a member if:
 - a. The member moves from a NF to another NF in a different county,
 - b. The member moves from a NF to an alternative HCBS setting in a different county,
 - c. The member moves from an alternative HCBS setting to another alternative HCBS setting in a different county,
 - d. The member moves from an alternative HCBS setting to a NF in a different county,
 - e. The member moves from the member's own home to an alternative HCBS setting in a different county,
 - f. The member moves from the member's own home to a NF in a different county,
 - g. The member moves from a NF or alternative HCBS setting into ASH, or
 - h. The member moves from ASH to a NF or alternative HCBS setting.
 2. Change in the county of fiscal responsibility. If a member moves from one county to another, the county of fiscal responsibility changes to the new county if the member moves from:
 - a. An alternative HCBS setting to the member's own home in a different county,
 - b. A NF to the member's own home in a different county,
 - c. The member's own home to the member's own home in a different county, or
 - d. ASH to the member's own home.
 3. Transfers between program contractors. The county of fiscal responsibility changes if the Administration transfers a member from one program contractor to a different program contractor and if:
 - a. Both program contractors agree, or
 - b. The Administration determines that it is in the best interest of the member.

Historical Note

Adopted effective November 4, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3).

R9-28-713. Repealed

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3). Section repealed by final rulemak-

ing at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

R9-28-714. Repealed

Historical Note

New Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

R9-28-715. Repealed

Historical Note

New Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

ARTICLE 8. TEFRA LIENS AND RECOVERIES

R9-28-801. Definitions Related to TEFRA Liens

In addition to the definitions in A.R.S. §§ 36-2901 and 36-2931, 9 A.A.C. 22, Article 1, and 9 A.A.C. 28, Article 1, the following definitions apply to this Article:

“Consecutive days” means days following one after the other without an interruption resulting from a discharge.

“File” means the date that AHCCCS receives a request for a State Fair Hearing under R9-28-805, as established by a date stamp on the request or other record of receipt.

“Home” means property in which a member has an ownership interest and that serves as the member’s principal place of residence. This property includes the shelter in which a member resides, the land on which the shelter is located, and related outbuildings.

“Recover” means that AHCCCS takes action to collect from a claim.

“TEFRA lien” means a lien under 42 U.S.C. 1396p of the Tax Equity and Fiscal Responsibility Act of 1982.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Section repealed; new Section adopted effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-801.01. TEFRA Liens – General

Purpose. The purpose of TEFRA is to allow AHCCCS to file a lien on an AHCCCS member’s interest in any real property before the member is deceased, including but not limited to life estates and beneficiary deeds.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-802. TEFRA Liens – Affected Members

- A. Except for members under R9-28-803, AHCCCS shall file a TEFRA lien against the real property of all members who are:
1. Receiving ALTCS services,
 2. 55 years of age or older, and
 3. Permanently institutionalized.

- B. A rebuttable presumption exists that a member is permanently institutionalized if the member has continually resided in a nursing facility, ICF/MR, or other medical institution defined in 42 CFR 435.1010 for 90 or more consecutive days. A member may rebut the presumption by providing a written opinion from a treating physician, rendered to a reasonable degree of medical certainty, that the member’s condition is likely to improve to the point that the member will be discharged from the medical institution and will be capable of returning home by a date certain.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Section repealed; new Section adopted effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-803. TEFRA Liens – Prohibitions

AHCCCS shall not file a TEFRA lien against a member’s home if one of the following individuals is lawfully residing in the member’s home:

1. Member’s spouse;
2. Member’s child who is under the age of 21;
3. Member’s child who is blind or disabled under 42 U.S.C. 1382c; or
4. Member’s sibling who has an equity interest in the home and who was residing in the member’s home for at least one year immediately before the date the member was admitted to a nursing facility, ICF/MR, or other medical institution as defined under 42 CFR 435.1010.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Section repealed; new Section adopted effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-804. TEFRA Liens – AHCCCS Notice of Intent

- A. Time-frame. At least 30 days before filing a TEFRA lien, AHCCCS shall send the member or member’s representative a Notice of Intent.
- B. Content of the Notice of Intent. The Notice of Intent shall include the following information:
1. A description of a TEFRA lien and the action that AHCCCS intends to take,
 2. How a TEFRA lien affects a member’s property,
 3. The legal authority for filing a TEFRA lien,
 4. The time-frames and procedures involved in filing a TEFRA lien, and
 5. The member’s right to request an exemption.
- C. Request for exemption. A member or a member’s representative may request an exemption. To request an exemption the member or the member’s representative shall submit a written statement to AHCCCS within 30 days from the receipt of the Notice of Intent describing the factual basis for a claim that the property should be exempt from placement of a TEFRA lien or from recovery of lien based on R9-28-802, R9-28-803, or R9-

36-2932. Arizona long-term care system; powers and duties of the director; expenditure limitation

A. The Arizona long-term care system is established. The system includes the management and delivery of hospitalization, medical care, institutional services and home and community based services to members through the administration, the program contractors and providers pursuant to this article together with federal participation under title XIX of the social security act. The director in the performance of all duties shall consider the use of existing programs, rules and procedures in the counties and department where appropriate in meeting federal requirements.

B. The administration has full operational responsibility for the system, which shall include the following:

1. Contracting with and certification of program contractors in compliance with all applicable federal laws.
2. Approving the program contractors' comprehensive service delivery plans pursuant to section 36-2940.
3. Providing by rule for the ability of the director to review and approve or disapprove program contractors' requests for proposals for providers and provider subcontracts.
4. Providing technical assistance to the program contractors.
5. Developing a uniform accounting system to be implemented by program contractors and providers of institutional services and home and community based services.
6. Conducting quality control on eligibility determinations and preadmission screenings.
7. Establishing and managing a comprehensive system for assuring the quality of care delivered by the system as required by federal law.
8. Establishing an enrollment system.
9. Establishing a member case management tracking system.
10. Establishing and managing a method to prevent fraud by applicants, members, eligible persons, program contractors, providers and noncontracting providers as required by federal law.
11. Coordinating benefits as provided in section 36-2946.
12. Establishing standards for the coordination of services.
13. Establishing financial and performance audit requirements for program contractors, providers and noncontracting providers.
14. Prescribing remedies as required pursuant to 42 United States Code section 1396r. These remedies may include the appointment of temporary management by the director, acting in collaboration with the director of the department of health services, in order to continue operation of a nursing care institution providing services pursuant to this article.
15. Establishing a system to implement medical child support requirements, as required by federal law. The administration may enter into an intergovernmental agreement with the department of economic security to implement this paragraph.
16. Establishing requirements and guidelines for the review of trusts for the purposes of establishing eligibility for the system pursuant to section 36-2934.01 and posteligibility treatment of income pursuant to subsection L of this section.

17. Accepting the delegation of authority from the department of health services to enforce rules that prescribe minimum certification standards for adult foster care providers pursuant to section 36-410, subsection B. The administration may contract with another entity to perform the certification functions.

18. Assessing civil penalties for improper billing as prescribed in section 36-2903.01, subsection K.

C. For nursing care institutions and hospices that provide services pursuant to this article, the director shall contract periodically as deemed necessary and as required by federal law for a financial audit of the institutions and hospices that is certified by a certified public accountant in accordance with generally accepted auditing standards or conduct or contract for a financial audit or review of the institutions and hospices. The director shall notify the nursing care institution and hospice at least sixty days before beginning a periodic audit. The administration shall reimburse a nursing care institution or hospice for any additional expenses incurred for professional accounting services obtained in response to a specific request by the administration. On request, the director of the administration shall provide a copy of an audit performed pursuant to this subsection to the director of the department of health services or that person's designee.

D. Notwithstanding any other provision of this article, the administration may contract by an intergovernmental agreement with an Indian tribe, a tribal council or a tribal organization for the provision of long-term care services pursuant to section 36-2939, subsection A, paragraphs 1, 2, 3 and 4 and the home and community based services pursuant to section 36-2939, subsection B, paragraph 2 and subsection C, subject to the restrictions in section 36-2939, subsections D and E for eligible members.

E. The director shall require as a condition of a contract that all records relating to contract compliance are available for inspection by the administration subject to subsection F of this section and that these records are maintained for five years. The director shall also require that these records are available on request of the secretary of the United States department of health and human services or its successor agency.

F. Subject to applicable law relating to privilege and protection, the director shall adopt rules prescribing the types of information that are confidential and circumstances under which that information may be used or released, including requirements for physician-patient confidentiality. Notwithstanding any other law, these rules shall provide for the exchange of necessary information among the program contractors, the administration and the department for the purposes of eligibility determination under this article.

G. The director shall adopt rules to specify methods for the transition of members into, within and out of the system. The rules shall include provisions for the transfer of members, the transfer of medical records and the initiation and termination of services.

H. The director shall adopt rules that provide for withholding or forfeiting payments made to a program contractor if it fails to comply with a provision of its contract or with the director's rules.

I. The director shall:

1. Establish by rule the time frames and procedures for all grievances and requests for hearings consistent with section 36-2903.01, subsection B, paragraph 4.

2. Apply for and accept federal monies available under title XIX of the social security act in support of the system. In addition, the director may apply for and accept grants, contracts and private donations in support of the system.

3. Not less than thirty days before the administration implements a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

J. The director may apply for federal monies available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state monies appropriated for

the administration of the system may be used as matching monies to secure federal monies pursuant to this subsection.

K. The director shall adopt rules that establish requirements of state residency and qualified alien status as prescribed in section 36-2903.03. The administration shall enforce these requirements as part of the eligibility determination process. The rules shall also provide for the determination of the applicant's county of residence for the purpose of assignment of the appropriate program contractor.

L. The director shall adopt rules in accordance with the state plan regarding posteligibility treatment of income and resources that determine the portion of a member's income that shall be available for payment for services under this article. The rules shall provide that a portion of income may be retained for:

1. A personal needs allowance for members receiving institutional services of at least fifteen per cent of the maximum monthly supplemental security income payment for an individual or a personal needs allowance for members receiving home and community based services based on a reasonable assessment of need.
2. The maintenance needs of a spouse or family at home in accordance with federal law. The minimum resource allowance for the spouse or family at home is twelve thousand dollars adjusted annually by the same percentage as the percentage change in the consumer price index for all urban consumers (all items; United States city average) between September 1988 and the September before the calendar year involved.
3. Expenses incurred for noncovered medical or remedial care that are not subject to payment by a third party payor.

M. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection may consider the differences between rural and urban conditions on the delivery of services.

N. The director shall not adopt any rule or enter into or approve any contract or subcontract that does not conform to federal requirements or that may cause the system to lose any federal monies to which it is otherwise entitled.

O. The administration, program contractors and providers may establish and maintain review committees dealing with the delivery of care. Review committees and their staff are subject to the same requirements, protections, privileges and immunities prescribed pursuant to section 36-2917.

P. If the director determines that the financial viability of a nursing care institution or hospice is in question, the director may require a nursing care institution and a hospice providing services pursuant to this article to submit quarterly financial statements within thirty days after the end of its financial quarter unless the director grants an extension in writing before that date. Quarterly financial statements submitted to the department shall include the following:

1. A balance sheet detailing the institution's assets, liabilities and net worth.
2. A statement of income and expenses, including current personnel costs and full-time equivalent statistics.

Q. The director may require monthly financial statements if the director determines that the financial viability of a nursing care institution or hospice is in question. The director shall prescribe the requirements of these statements.

R. The total amount of state monies that may be spent in any fiscal year by the administration for long-term care shall not exceed the amount appropriated or authorized by section 35-173 for that purpose. This article shall not be construed to impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

36-2943. Provider subcontracts; hospital reimbursement

A. Subcontracts for services rendered by providers pursuant to section 36-2940 shall be awarded through competitive statewide proposals in as nearly the same manner as that provided in section 41-2534. If there is not a sufficient number of qualified proposals, a subcontract may be negotiated with a provider and shall be awarded pursuant to section 41-2536. In order to deliver covered services to members enrolled or expected to be enrolled in the system within a county, the program contractor may negotiate and award without bid a provider subcontract if during the contract year there is an insufficient number of subcontracts awarded to providers. The term of the subcontract shall not extend beyond the next bid and subcontract award process as provided in this section, and the subcontract shall be at rates no greater than the weighted average rates for the appropriate level of care paid to similar providers in the same county. This section does not allow a program contractor to forego the competitive bid process pursuant to section 41-2534 unless there is an unanticipated increase in members enrolled in the system or a decrease in available beds brought about by the closure of a facility operated by a provider that is unable to be absorbed by current contracting providers located in the same general area. Before soliciting subcontracts without the competitive bid process, the program contractor shall receive approval from the director.

B. Hospitals that render care to members shall be paid by the program contractor as prescribed in section 36-2903.01, or such lower rate as may be negotiated by the program contractor.

C. The director may ensure through the subcontracts pursuant to subsection A of this section that at least ten per cent of the members are provided services pursuant to this article on a capitation basis.

D. A claim for an authorized service submitted by a licensed skilled nursing facility, an assisted living Arizona long-term care system provider or a home and community based Arizona long-term care system provider that renders care to members pursuant to this article shall be adjudicated within thirty calendar days after receipt by the program contractor. Any clean claim for an authorized service provided to a member that is not paid within thirty calendar days after the claim is received accrues interest at the rate of one per cent per month from the date the claim is submitted. The interest is prorated on a daily basis and must be paid by the program contractor at the time the clean claim is paid.

36-2944. Qualified plan health service contracts; proposals; administration; contract terms

A. For each county that has a population of four hundred thousand persons or less according to the most recent United States decennial census and that was not approved as a program contractor before January 1, 1994 or that officially states that it wishes to end its status as a program contractor, the director at least every five years shall prepare and issue a request for proposal and a proposed contract format to qualified group disability insurers, hospital and medical service corporations, health care services organizations and any other qualified public or private persons to be a program contractor and provide services pursuant to this article on a capitation rate basis to members who are enrolled with the program contractors by the system, who are not persons with developmental disabilities as defined in section 36-551 and who are residents of the county at the time of application for the system.

B. The director may adopt rules regarding the request for proposal process which provide:

1. For the award of contracts by categories of members or services in order to secure the most financially advantageous proposals for the system.

2. That each qualified proposal shall be entered with separate categories for the distinct groups of members or services to be covered by the proposed contracts, as set forth in the request for proposal.

3. For the procurement of reinsurance for expenses incurred by any program contractor, any member or the system in providing services in excess of amounts specified by the director in any contract year.

4. For second round competitive proposals to request voluntary price reduction of proposals from only those proposals that have been tentatively selected for award, before the final award or rejection of proposals.

C. Contracts shall be awarded as otherwise provided by law, except that in no event may a contract be awarded to any program contractor which will cause the system to lose any federal monies to which it is otherwise entitled.

D. After contracts are awarded pursuant to this section, the director may negotiate with any successful proposal respondent for the expansion or contraction of services or service areas if there are unnecessary gaps or duplications in services or service areas.

E. Payments to program contractors pursuant to this section shall be made monthly or quarterly and may be subject to contract provisions requiring the retention of a specified percentage of the payment by the director, a reserve fund or other contract provisions by which adjustments to the payments are made based on utilization efficiency, including incentives for maintaining quality care and minimizing unnecessary inpatient services. Reserve funds withheld from contracts shall be distributed to program contractors who meet performance standards established by the director. Any reserve fund established pursuant to this subsection shall be established as a separate account within the Arizona long-term care system fund.

F. Payments made pursuant to this section shall begin after a member is enrolled in the system.

G. Each program contractor pursuant to this section shall submit an annual audited financial and programmatic report for the preceding fiscal year as required by the administration. The report shall include beginning and ending fund balances, revenues and expenditures including specific identification of administrative costs. The report shall include the number of members served by the program contractor and the cost incurred for various types of services provided to members in a format prescribed by the director.

H. The director shall require contract terms necessary to ensure adequate performance by the program contractor of the provisions of each contract executed pursuant to this section. Contract provisions required by the director shall include the maintenance of deposits, performance bonds, financial reserves or other financial security.

36-2959. Reimbursement rates; capitation rates; annual review

A. The department shall contract with an independent consulting firm for an annual study of the adequacy and appropriateness of title XIX reimbursement rates to service providers for the persons with developmental disabilities program of both the Arizona long-term care system and the state only program. The consultant shall also include a recommendation for annual inflationary costs. Unless modified in response to federal or state law, the independent consulting firm shall include, in its recommendation, costs arising from amendments to existing contracts. The department may require, and the department's contracted providers shall provide, financial data to the department in the format prescribed by the department to assist in the study. A complete study of reimbursement rates shall be completed no less than once every five years.

B. Capitation rate adjustments shall be limited to utilization of existing services and inflation unless policy changes, including creation or expansion of programs, have been approved by the legislature or are specifically required by federal law or court mandate.

C. The administration shall contract with an independent consulting firm for an annual study of the adequacy and appropriateness of title XIX reimbursement rates to service providers for the elderly and physical disability program of the Arizona long-term care system. The administration may require, and the administration's contracted providers shall provide, financial data to the administration in the format prescribed by the administration to assist in the study. A complete study of reimbursement rates shall be completed no less than once every five years. In determining the adequacy of the rates in the five year study, the consulting firm shall examine in detail the costs associated with the delivery of services, including programmatic, administrative and indirect costs in providing services in rural and urban Arizona.

D. The department and the administration shall provide each of their reports to the joint legislative budget committee and the administration by October 1 of each year.

E. The department shall include the results of the study in its yearly capitation rate request to the administration.

F. If results of the study are not completely incorporated into the capitation rate, the administration shall provide a report to the joint legislative budget committee within thirty days of setting the final capitation rate, including reasons for differences between the rate and the study.

36-2999.51. Definitions

(Rpld. 10/1/23)

In this article, unless the context otherwise requires:

1. "Continuing care retirement community" means an entity that provides nursing facility services and assisted living or independent living services on a contiguous campus that is either registered as a life care facility with the department of insurance and financial institutions or has assisted living and independent living beds in the aggregate that equal at least twice the number of nursing facility beds. For the purposes of this paragraph, "contiguous" means land that adjoins or touches the other property held by the same or a related organization and land divided by a public road.
2. "Fiscal year" means the period beginning on October 1 and ending on September 30.
3. "Medicare resident days" means resident days that are funded by the medicare program, a medicare advantage or special needs plan or the medicare hospice program.
4. "Net patient service revenue" means gross inpatient revenues from services that are provided to nursing facility patients minus reductions from gross inpatient revenue. For the purposes of this paragraph, inpatient revenues from services do not include nonpatient care revenues such as beauty and barber income, vending income, interest and contributions, revenues from the sale of meals and all outpatient revenues.
5. "Nursing facility" means a health care institution that provides inpatient beds or resident beds and nursing services to persons who need nursing services on a continuing basis but who do not require hospital care or direct daily care from a physician. Nursing facility does not include the Arizona veterans' homes.
6. "Reductions from gross inpatient revenue" includes bad debts, contractual adjustments, uncompensated care, administrative, courtesy and policy discounts, adjustments and other similar revenue deductions.
7. "Resident day" means a calendar day of care provided to a nursing facility resident, including the day of admission and excluding the day of discharge. Resident day includes a day on which a bed is held for a patient and for which the facility receives compensation for holding the bed.
8. "Upper payment limit" means the limitation established pursuant to 42 Code of Federal Regulations section 447.272 that disallows federal matching funds if a state medicaid agency pays certain classes of nursing facilities an aggregate amount for services that would exceed the amount that would be paid for the same services furnished by that class of nursing facilities under medicare payment principles.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)

Title 9, Chapter 22, Articles 6, 7



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 1, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 11, 2022

SUBJECT: ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
Title 9, Chapter 22, Articles 6, 7

Summary

This Five-Year Review Report (5YRR) from the Arizona Health Care Cost Containment System (AHCCCS) relate to six (6) rules in Title 9, Chapter 22, Article 6 (RFP and Contract Process) and fifty-three (53) rules in Article 7 (Standards for Payments).

The rules in Article 6 relate to Request for Proposal (RFP) and contract process generally. Pursuant to A.R.S. § 36-2906, the director shall prepare and issue a request for proposal, including a proposed contract format, in each of the counties of this state, at least once every five years, to qualified group disability insurers, hospital and medical service corporations, health care services organizations and any other qualified public or private persons, including county-owned and operated health care facilities. The director shall adopt rules regarding the request for proposal process, which was done in Title 9, Chapter 22, Article 6. The rules in Article 7 relate to general standards for payments.

In the previous 5YRR for these rules, approved by the Council in November 2017, with regards to the rules in Article 7, AHCCCS indicated that it was "currently in the process of amending the [Diagnosis Related Group] rules to rebase the components of the DRG system using updated claims and encounter data" and would also "update the version of the All Patient Refined Diagnosis Related Group (APR-DRG) classification system established by 3M Health

Information Systems for dates of discharge beginning January 1, 2018." AHCCCS indicates it completed this proposed course of action by rulemaking subsequent to the prior 5YRR..

Proposed Action

As indicated in more detail below, AHCCCS intends to complete a rulemaking to address rules in Article 6 related to the RFP process that it believes are not currently effective in achieving their regulatory objectives and not enforced as written. AHCCCS indicates the proposed amendments are intended to: 1) Clarify the current RFP process wherein there are ambiguities, and 2) align AHCCCS's process to best practice and other state procurement laws. AHCCCS indicates it will request a rulemaking exemption to make these changes within a month of this 5YRR being approved by the Council.

1. Has the agency analyzed whether the rules are authorized by statute?

AHCCCS cites both general and specific authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

In the prior economic impact statement, AHCCCS stated that the amendments are primarily made to make the rules more clear, concise, and understandable. Minimal impact was anticipated. The small business community as a whole was not impacted by the clarifications. All affected entities benefit from the additional clarity and conciseness of the rule language. AHCCCS and contractors are also directly affected by and benefit from the clarifications.

AHCCCS indicates there has been no noticeable change in the economic impact on small businesses or consumers of these regulations, in this case the offerors to the agency's RFPs. This is because the prior rulemaking in 2012 enacted changes to streamline the RFP process for offerors. Since then, the rules have continued to operate as they were intended, are clear, concise, and understandable.

The rule changes represent the most cost-effective and efficient method of fulfilling the agency's responsibilities and impose only those requirements that are necessary to comply with federal law and state statute.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

For Article 6, AHCCCS believes the rules as written impose the least burden and cost when meeting their objectives. For Article 7, AHCCCS did not consider other alternatives because the changes are the most cost effective and efficient method of complying with federal law and state statute.

4. **Has the agency received any written criticisms of the rules over the last five years?**

AHCCCS indicates it has not received written criticisms of the rules in the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

AHCCCS indicates the rules are clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

AHCCCS indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

AHCCCS indicates the rules are generally effective in achieving their objectives. However, AHCCCS indicates rule R9-22-601 could be made more effective by amending the rule to remove the term "bids/offers" with "submitted proposals."

8. **Has the agency analyzed the current enforcement status of the rules?**

AHCCCS indicates the rules are generally enforced as written except for the following rules:

- R9-22-602
- R9-22-603
- R9-22-604

The amendments AHCCCS proposes to make regarding these rules are outlined in Section 5 of the 5YRR.

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

AHCCCS indicates the rules are not more stringent than corresponding federal law.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules do not require a permit, license, or agency authorization.

11. **Conclusion**

This 5YRR relates to six (6) rules in Title 9, Chapter 22, Article 6 (RFP and Contract Process) and fifty-three (53) rules in Article 7 (Standards for Payments). AHCCCS indicates the rules are generally clear, concise, understandable, consistent, effective, and enforced as written,

except for rules R9-22-601 through 604. For those rules AHCCCS intends to amend to clarify the current RFP process wherein there are ambiguities and align AHCCCS's process to best practice and other state procurement laws. AHCCCS indicates it intends to request a rulemaking exemption to make these changes within a month of this 5YRR being approved by the Council.

Council staff recommends approval of this report.

January 28, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: AHCCCS Title 9, Chapter 22, Article 6, Five Year Review Report

Dear Ms. Sornsins:

Please find enclosed the Five-Year Review Report of AHCCCS for Title 9, Chapter 22, Article 6 which is due on January 31, 2022.

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Nicole Fries at 602-417-4232 or nicole.fries@azahcccs.gov.

Sincerely,



Kasey Rogg
Assistant Director

Attachments

Arizona Health Care Cost Containment System (AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 22, Articles 6

January 2022

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 36-2903.01(F)

Implementing statute: A.R.S. § 36-2906

2. The objective of each rule:

Rule	Objective
R9-22-601	The objective of this rule is to list the authority for the Request for Proposal (RFP) and describe the applicability of Article 6.
R9-22-602	The objective of this rule is to prescribe the contents of the RFP and the proposal process.
R9-22-603	The objective of this rule is to prescribe the process the Administration follows when awarding contracts.
R9-22-604	The objective of these rules is to prescribe the means of protesting an RFP or award including the administrative appeal process.
R9-22-605	The objective of this rule is to prescribe means by which an offeror or contractor may request from the Director a waiver of the requirement for hospital subcontracts.
R9-22-606	The objective of this rule is to prescribe sanctions the Director may impose on contractors for noncompliance and the factors considered when doing so.

3. Are the rules effective in achieving their objectives?

Yes **X**

No

Except;

Rule	Objective
R9-22-601	Replace bids/offers with submitted proposals

4. Are the rules consistent with other rules and statutes?

Yes **X**

No

5. Are the rules enforced as written?

Yes **X**

No

Except;

Rule	Objective
R9-22-602	Remove “The Administration shall not request best and final offers more than once unless the Administration determines that it is advantageous to the state to request additional best and final offers.” from subsection B(8) because ADOA (Arizona Department of Administration) has removed this language from their rules and AHCCCS would like to align with state best practices for procurement. Add “or other scope of work as applicable,” to subsection A(2). Add “or post such information publicly with the solicitation” to subsection B(1). Change and in subsection B(3) to and/or. Change proposal to RFP in subsection D
R9-22-603	Update references to contract file to procurement file.

R9-22-604	<p>Add “to an RFP” to subsection C. Remove “or contract” from subsection C(2). Add “3. The protest must be submitted to the procurement office by email unless otherwise allowed for in the RFP Instructions to Offerors.” to subsection C. Change D to “Time for filing a RFP protest”. Add “4. A protest is due by 5:00pm Arizona time on the due date. If the due date does not fall on a business day, the protest is due on the next business day.” to subsection D. Add “Unless extended by a time period not to exceed 30 days under G(3)” to subsection G(1). Add “electronic mail” to subsection G(2). Change G(3) to read “The Administration may extend, for good cause, the time-limit for a decision in subsection (G)(1) by an additional time frame not to exceed 30 days. The procurement officer shall notify the protester in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.”</p>
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6. **Are the rules clear, concise, and understandable?** Yes No

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

8. **Economic, small business, and consumer impact comparison:**

There has been no noticeable change in economic impact on small businesses or consumers of these regulations, in this case the offerors to the agency’s RFPs (Request for Proposal). This is because the prior rulemaking in 2012 enacted changes to streamline the RFP process for offerors. Since then, the rules have continued to operate as they were intended, are clear, concise, and understandable. The changes recommended in this Five-Year Review Report have the same intention of streamlining the RFP process by updating the time for submissions and allowing correspondence, explicitly by e-mail, a practice already enacted by the agency. Therefore, the changes recommended in this report will have no economic impact on the agency or participants in the agency’s RFP process.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No

10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Administration believes the rules as written impose the least burden and cost when meeting their objectives.

12. **Are the rules more stringent than corresponding federal laws?** Yes No

13. **For rules adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Not applicable.

14. Proposed course of action:

Following GRRC approval of this Five-Year Review Report, AHCCCS plans to undertake a workgroup with internal stakeholders in the RFP process to determine whether larger changes are made to the RFP process. Since any substantive changes to the RFP process could implicate the eligibility of contractors' proposals, AHCCCS plans to undertake a regular rulemaking that allows for full participation by the public.

January 28, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: AHCCCS Title 9, Chapter 22, Article 7, Five Year Review Report

Dear Ms. Sornsins:

Please find enclosed the Five-Year Review Report of AHCCCS for Title 9, Chapter 22, Article 7 which is due on January 31, 2022.

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Nicole Fries at 602-417-4232 or nicole.fries@azahcccs.gov.

Sincerely,



Kasey Rogg
Assistant Director

Attachments

Arizona Health Care Cost Containment System (AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 22, Article 7

January 2022

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 36-2903.01(F)

Implementing statute: A.R.S. § 36-2906

2. The objective of each rule:

Rule	Comment
R9-22-701	The objective of this rule is to primarily provide definitions that specifically support the payment regulations outlined in Article 7.
R9-22-701.10	The objective of this rule is to describe the limitations on the scope of the liability for the Administration and contractors.
R9-22-702	The objective of this rule is to require health care providers to accept, as payment in full, the amount paid by the AHCCCS program plus any additional copayment or third-party payments made by or on behalf of the member. It also sets forth the circumstances when a member may be billed for services.
R9-22-703	The objective of this rule is to set forth claims submission timelines and related claims processing provisions required for reimbursement to providers for health care services.
R9-22-705	The objective of this rule is to describe payment guidelines for contracting prepaid health plans to reimburse subcontractors and non-contracting providers for the provision of health care services rendered to an AHCCCS member.
R9-22-708	The objective of this rule is to set forth provisions governing payment for services rendered to eligible American Indians.
R9-22-709	The objective of this rule is to describe provisions governing payment liability for emergency health care and subsequent care as well as facility transfer conditions.
R9-22-710	The objective of this rule is to describe provisions relating to fee schedules maintained by the Administration to reimburse non-hospital health care services.
R9-22-711	The objective of this rule is to describe the co-payment requirements that a member must pay when receiving medical services.
R9-22-712	The objective of this rule is to describe the cost-based reimbursement system that uses a prospective tiered per diem reimbursement methodology for inpatient services and a cost-to-charge ratio for outpatient services. The tiered per diem methodology includes: a statewide operating component, a blended statewide/hospital specific capital component and provisions for outlier payments; and provisions for transplant services and annual update factors.
R9-22-712.01	The objective of this rule is to describe the methodology for inpatient hospital reimbursement, explaining the tier rate data, components, assignment, and exclusions. In addition, it describes

	when the tiers are updated and how new hospitals, outliers, transplants, ownership changes, psychiatric hospital specialty facilities and outliers for new hospitals are reimbursed.
R9-22-712.05	The objective of this rule is to describe how the Graduate Medical Education Fund will be allocated among hospitals
R9-22-712.07	The objective of this rule is to describe how the Rural Hospital Inpatient Fund will be allocated among rural hospitals.
R9-22-712.09	The objective of this rule is to list the tier hierarchy of the inpatient reimbursement system.
R9-22-712.10	The objective of this rule is to describe general information applicable to the reimbursement of outpatient hospital services.
R9-22-712.15	The objective of this rule is to notify that reimbursement using the capped fee for service schedule is applicable to non-IHS acute hospitals.
R9-22-712.20	The objective of this rule is to describe the methodology for reimbursement using the capped fee for service schedule for outpatient hospital services.
R9-22-712.25	The objective of this rule is to describe how associated service costs are accounted for within the outpatient reimbursement methodology.
R9-22-712.30	The objective of this rule is to describe how reimbursement is made for a service not listed in the outpatient capped fee-for-service schedule.
R9-22-712.35	The objective of this rule is to describe how the outpatient capped fee for service schedule is adjusted by type of hospital submitting claims.
R9-22-712.40	The objective of this rule is to describe when updates are made to the outpatient fee schedule and rates used for reimbursement.
R9-22-712.45	The objective of this rule is to describe the reimbursement restrictions for outpatient hospital services.
R9-22-712.50	The objective of this rule is to describe the forms a hospital must use when billing for outpatient hospital services.
R9-22-712.60	The objective of this rule is to describe how the payments are made using the Diagnosis Related Group methodology.
R9-22-712.61	The objective of this rule explains the exceptions to the Diagnosis Related Group (DRG) methodology.
R9-22-712.62	The objective of this rule explains the calculation of the DRG base payment.
R9-22-712.63	The objective of this rule is to describe the calculation when the DRG base payment is not based on the statewide standardized amount.
R9-22-712.64	The objective of this rule sets forth the methodology for DRG base payments and the Outlier CCR (Cost-To-Charge Ratio) for out-of-state hospitals.
R9-22-712.65	The objective of this rule is to describe the DRG provider policy adjuster.
R9-22-712.66	The objective of this rule is to describe the DRG service policy adjuster.
R9-22-712.67	The objective of this rule explains the DRG reimbursement when there is a “transfer” of a member from a hospital to a short-term general hospital for inpatient care, a designated cancer center, children’s hospital, or a critical access hospital.

R9-22-712.68	The objective of this rule is to describe the DRG reimbursement when there is an unadjusted outlier add-on payment.
R9-22-712.69	The objective of this rule explains the DRG reimbursement when there is a covered day adjusted DRG base payment and covered day adjusted outlier add-on payment.
R9-22-712.70	The objective of this rule explains the DRG reimbursement when there is a covered day adjusted DRG payment and covered day adjusted outlier add-on payment for FES members.
R9-22-712.71	The objective of this rule describes the final DRG payment.
R9-22-712.72	The objective of this rule explains DRG reimbursement when there is an enrollment change during an inpatient stay.
R9-22-712.73	The objective of this rule explains DRG reimbursement for Inpatient stays for members eligible for Medicare.
R9-22-712.74	The objective of this rule describes DRG reimbursement when there is third party liability.
R9-22-712.75	The objective of this rule describes the payment for administrative days in relation to DRG reimbursement.
R9-22-712.76	The objective of this rule explains the reimbursement of interim claims in relation to DRG reimbursement.
R9-22-712.77	The objective of this rule describes DRG reimbursement when there are admissions and discharges on the same day.
R9-22-712.78	The objective of this rule explains DRG reimbursement when a member is readmitted to the hospital.
R9-22-712.79	The objective of this rule describes DRG reimbursement when there is a change in hospital's ownership.
R9-22-712.80	The objective of this rule explains DRG reimbursement pertaining to new hospitals.
R9-22-712.81	The objective of this rule describes how the Administration handles updates to the DRG.
R9-22-712.90	The objective of this rule is to set forth reimbursement requirements for hospital- based freestanding emergency departments.
R9-22-713	The objective of this rule is to require a provider to repay overpayments to the Administration.
R9-22-714	The objective of this rule is to describe the requirement of a provider agreement and to set forth specific requirements for the Administration and a contractor to reimburse a provider.
R9-22-715	The objective of this rule is to describe basic contractor responsibilities relating to hospital negotiations. This subsection also enables the Administration to negotiate with hospitals on behalf of prepaid health plans for AHCCCS services.
R9-22-718	The objective of this rule is to require contractors to enter a contract for reimbursement of inpatient hospital services with one or more hospitals in a county of more than 500,000 individuals. This rule also delineates mandatory terms to be included in the contract.
R9-22-719	The objective of this rule is to allow the Administration to retain a specified percentage of capitation reimbursement to distribute monies to contractors based on their performance outcomes.
R9-22-720	The objective of this rule is to describe the reimbursement of reinsurance for high-cost hospital services.

R9-22-730	The objective of this rule is to set forth the requirements for the hospital assessment levied against hospitals pursuant to ARS 36-2901.08.
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- 3. **Are the rules effective in achieving their objectives?** Yes No
- 4. **Are the rules consistent with other rules and statutes?** Yes No
- 5. **Are the rules enforced as written?** Yes No
- 6. **Are the rules clear, concise, and understandable?** Yes No
- 7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

8. **Economic, small business, and consumer impact comparison:**

The rules in this article change often, some change annually. However much of the economic change, does not have a corresponding economic impact on the public because the costs are offset by legislative appropriations or federal-match funds made by the Center for Medicare and Medicaid Services. Economic differences between the programs outlined in these rulemakings can fluctuate annually based on several factors, which are outlined in each unique rulemaking. An example of these factors can be found in the Economic Impact Statement of the most recent rulemaking in this article, which has been attached to this 5YRR. However, for this article, there has not been a substantive economic impact since the last 5YRR.

- 9. **Has the agency received any business competitiveness analyses of the rules?** Yes No
- 10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**

Yes, the prior course of action has been implemented in successive rulemakings following the last 5YRR.

- 11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Administration believes the rules as written impose the least burden and cost when meeting their objectives.

- 12. **Are the rules more stringent than corresponding federal laws?** Yes No

- 13. **For rules adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Not applicable.

14. Proposed course of action:

The agency did not recommend any changes to the article, therefore there is no proposed course of action.

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

4). Former Section R9-22-524 repealed, new Section R9-22-524 adopted effective October 1, 1985 (Supp. 85-4). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4).

R9-22-525. Repealed**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-525 adopted as an emergency adopted, amended and renumbered as Section R9-22-523, former Section R9-22-527 adopted as an emergency now adopted, amended and renumbered as Section R9-22-525 as a permanent rule effective August 30, 1982 (Supp. 82-4). Repealed effective October 1, 1985 (Supp. 85-5).

R9-22-526. Renumbered**Historical Note**

Adopted as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Adopted as a permanent rule effective May 16, 1983; text of the permanent rule identical to the emergency (Supp. 83-3). Former Section R9-22-526 repealed, new Section R9-22-526 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-526 renumbered and amended as Section R9-22-501 effective October 1, 1985 (Supp. 85-1).

R9-22-527. Renumbered**Historical Note**

Adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-527 renumbered and amended as Section R9-22-505 effective October 1, 1985 (Supp. 85-5).

R9-22-528. Renumbered**Historical Note**

Adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-528 renumbered and amended as Section R9-22-504 effective October 1, 1985 (Supp. 85-5).

R9-22-529. Renumbered**Historical Note**

Adopted as Section R9-22-529 effective October 1, 1985, then renumbered as Section R9-22-1002 effective October 1, 1985 (Supp. 85-5).

ARTICLE 6. RFP AND CONTRACT PROCESS**R9-22-601. General Provisions**

- A. The Director has full operational authority to adopt rules for the RFP process and the award of contracts under A.R.S. § 36-2906.
- B. This Article applies to the award of contracts under A.R.S. §§ 36-2904 and 36-2906 to provide services under A.R.S. § 36-2907 and the expenditure of public monies by the Administration pertaining to covered services when the procurement so states. The Administration shall establish conflict-of-interest safeguards for officers and employees of this state with responsibilities relating to contracts that comply with 42 U.S.C. 1396u-2(d)(3).
- C. The Administration is exempt from the procurement code under A.R.S. § 41-2501.
- D. The Administration and contractors shall retain all contract records for five years under A.R.S. § 36-2903 and dispose of the records under A.R.S. § 41-2550.
- E. The following terms are defined as related to this Article:

“Procurement file” means the official records file of the Director whether located in the Office of the Director or at the public procurement unit. The procurement file shall include in electronic or paper form a list of notified vendors, final solicitation, solicitation amendments, bids/offers, final proposal revisions, clarifications, and final evaluation report.

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-601 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Repealed effective October 1, 1983 (Supp. 83-5). Adopted effective July 16, 1985 (Supp. 85-4). Amended effective December 13, 1993 (Supp. 93-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2340, effective November 11, 2012 (Supp. 12-3).

R9-22-602. RFP

- A. RFP content. The Administration shall include the following items in any RFP under this Article:
 1. Instructions and information to an offeror concerning the proposal submission including:
 - a. The deadline for submitting a proposal,
 - b. The address of the office at which a proposal is to be received,
 - c. The period during which the RFP remains open, and
 - d. Any special instructions and information;
 2. The scope of covered services under Article 2 of this Chapter and A.R.S. §§ 36-2906 and 36-2907, covered populations, geographic coverage, service and performance requirements, and a delivery or performance schedule;
 3. The contract terms and conditions, including bonding or other security requirements, if applicable;
 4. The factors used to evaluate a proposal;
 5. The location and method of obtaining documents that are incorporated by reference in the RFP;
 6. A requirement that the offeror acknowledge receipt of all RFP amendments issued by the Administration;
 7. The type of contract to be used and a copy of a proposed contract form or provisions;
 8. The length of the contract service;
 9. A requirement for cost or pricing data;
 10. The minimum RFP requirements; and
 11. A provision requiring an offeror to certify that a submitted proposal does not involve collusion or other anti-competitive practices.
- B. Proposal process.
 1. After the deadline for submitting proposals, the Administration may open a proposal publicly and announce and record the name of the offeror. The Administration shall keep all other information contained in a proposal confidential. The Administration shall open a proposal for public inspection after contract award unless the Administration determines that disclosure is not in the best interest of the state.
 2. The Administration shall evaluate a proposal based on the GSA and the evaluation factors listed in the RFP.
 3. The Administration may initiate discussions with a responsive and responsible offeror to clarify and assure full understanding of an offeror's proposal. The Administration shall provide an offeror fair treatment with respect

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

to discussion and revision of a proposal. The Administration shall not disclose information derived from a proposal submitted by a competing offeror.

4. The Administration shall allow for the adjustment of covered services by expansion, deletion, segregation, or combination in order to secure the most financially advantageous proposals for the state.
 5. The Administration may conduct an investigation of a person or organization who has ownership or management interests in corporate offerors or affiliated corporate organizations of an offeror.
 6. The Administration may issue a written request for best and final offers. The Administration shall state in the request the date, time, and place for the submission of best and final offers.
 7. The Administration shall not request best and final offers more than once unless the Administration determines that it is advantageous to the state to request additional best and final offers. The Administration shall state in the written request for best and final offers that if the offeror does not submit a notice of withdrawal or a best and final offer, the Administration shall take the most recent offer as the offeror's best and final offer.
- C. Proposal rejection.
1. The Administration may reject an offeror's proposal if the offeror fails to supply the information requested by the Administration.
 2. The offeror shall not disclose information pertaining to its proposal to any other offeror prior to contract award. The offeror may disclose proposal information to a person other than another offeror if the recipient agrees to keep the information confidential until contract award. Disclosure in violation of this subsection may be grounds for rejecting a proposal.
 3. The Administration shall provide written notification to an offeror whose proposal is rejected. The rejection notice shall be part of the contract file and a public record.
 4. If the Administration determines that it is in the best interest of the state, the Administration may reject any and all proposals, in whole or in part, under the RFP. The reasons for rejection shall be part of the contract file. An offeror shall have no right to damages for any claims against the state, the state's employees, or agents if a proposal is rejected in whole or in part.
- D. Proposal cancellation. If the Administration determines that it is in the best interest of the state, the Administration may cancel a RFP. The reasons for cancellation shall be part of the contract file. An offeror shall have no right to damages for any claims against the state, the state's employees, or agents if a RFP is cancelled.

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-602 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Repealed effective October 1, 1983 (Supp. 83-5). Adopted effective July 16, 1985 (Supp. 85-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1).

R9-22-603. Contract Award

The Administration shall award a contract to the responsible and responsive offeror whose proposal is determined most advantageous to the state under A.R.S. § 36-2906. If the Administration determines that multiple contracts are in the best interest of the state, the Administration may award multiple contracts. The contract file shall contain the basis on which the award is made.

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-603 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Repealed effective October 1, 1983 (Supp. 83-5). Adopted effective July 16, 1985 (Supp. 85-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1).

R9-22-604. Contract or Proposal Protests; Appeals

- A. Disputes related to contract performance. This Section does not apply to a dispute related to contract performance. A contract performance dispute is governed by 9 A.A.C. 34.
- B. Resolution of a proposal protest. The procurement officer issuing a RFP shall have the authority to resolve proposal protests. An appeal from the decision of the procurement officer shall be made to the Director.
- C. Filing of a protest.
1. A person may file a protest with the procurement officer regarding:
 - a. A RFP issued by the Administration,
 - b. A proposed award, or
 - c. An award of a contract.
 2. A protester shall submit a written protest and include the following information:
 - a. The name, address, and telephone number of the protester;
 - b. The signature of the protester or protester's representative;
 - c. Identification of a RFP or contract number;
 - d. A detailed statement of the legal and factual grounds of the protest including copies of any relevant documents; and
 - e. The relief requested.
- D. Time for filing a protest.
1. A protester filing a protest alleging improprieties in an RFP or an amendment to an RFP shall file the protest at least 14 days before the due date of receipt of proposals.
 2. Any protest alleging improprieties in an amendment issued 14 or fewer days before the due date of the proposal shall be filed before the due date for receipt of proposals.
 3. In cases other than those covered in subsections (D)(1) and (2), a protester shall file a protest no later than 10 days after the procurement officer makes the procurement file available for public inspection.
- E. Stay of procurement during the protest. If a protester files a protest before the contract award, the procurement officer may issue a written stay of the contract award. In considering whether to issue a written stay of contract, the procurement officer shall consider but is not limited to considering whether:
1. A reasonable probability exists that the protest will be sustained, and
 2. The stay of the contract award is in the best interest of the state.

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

- F. Stay of contract award during an appeal to the Director. The Director shall automatically continue the stay of a contract award if:
1. An appeal is filed before a contract award, and
 2. The procurement officer issues a stay of the contract award under subsection (E), unless
 3. The Director issues a written determination that the contract award is necessary to protect the best interest of the state.
- G. Decision by the procurement officer.
1. The procurement officer shall issue a written decision no later than 14 days after a protest has been filed. The decision shall contain an explanation of the basis of the decision.
 2. The procurement officer shall furnish a copy of the decision to the protester by:
 - a. Certified mail, return receipt requested; or
 - b. Any other method that provides evidence of receipt.
 3. The Administration may extend, for good cause, the time-limit for decisions in subsection (G)(1) for a time not to exceed 30 days. The procurement officer shall notify the protester in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.
 4. If the procurement officer fails to issue a decision within the time-limits in subsection (G)(1) or (G)(3), the protester may proceed as if the procurement officer issued an adverse decision.
- H. Remedies.
1. If the procurement officer sustains the protest in whole or in part and determines that the RFP, proposed contract award, or contract award does not comply with applicable statutes and rules, the procurement officer shall order an appropriate remedy.
 2. In determining an appropriate remedy, the procurement officer shall consider all the circumstances of the procurement or proposed procurement, including:
 - a. Seriousness of the procurement deficiency,
 - b. Degree of prejudice to other interested parties or to the integrity of the RFP process,
 - c. Good faith of the parties,
 - d. Extent of performance,
 - e. Costs to the state, and
 - f. Urgency of the procurement.
 3. An appropriate remedy may include one or more of the following:
 - a. Terminating the contract;
 - b. Reissuing the RFP;
 - c. Issuing a new RFP;
 - d. Awarding a contract consistent with statutes, rules, and the terms of the RFP; or
 - e. Any relief determined necessary to ensure compliance with applicable statutes and rules.
- I. Appeals to the Director.
1. A person may file an appeal of a procurement officer's decision with both the Director and the procurement officer no later than five days from the date the decision is received. The date the decision is received shall be determined under subsection (G)(2).
 2. The appeal shall contain:
 - a. The information required in subsection (C)(2),
 - b. A copy of the procurement officer's decision,
 - c. The alleged factual or legal error in the decision of the procurement officer on which the appeal to the Director is based, and
 - d. A request for hearing unless the person requests that the Director's decision be based solely upon the procurement file.
- J. Dismissal. The Director shall not schedule a hearing and shall dismiss an appeal with a written determination if:
1. The appeal does not state a basis for protest,
 2. The appeal is untimely under subsection (I)(1), or
 3. The appeal is moot.
- K. Hearing. Hearings under this Section shall be conducted using the Arizona Administrative Procedure Act under A.R.S. Title 41, Ch. 6.

Historical Note

Adopted effective July 16, 1985 (Supp. 85-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2340, effective November 11, 2012 (Supp. 12-3).

R9-22-605. Waiver of Contractor's Subcontract with Hospitals

If a contractor is unable to obtain a subcontract with a hospital as contractually required, the contractor may request in writing a waiver from the Administration as allowed by A.R.S. § 36-2906. The contractor shall state in the request the reasons a waiver is believed to be necessary and all efforts the contractor has made to secure a subcontract.

Historical Note

Adopted effective January 31, 1986 (Supp. 86-1). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1). New Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2340, effective November 11, 2012 (Supp. 12-3).

R9-22-606. Contract Compliance Sanction

- A. The Director may impose sanctions upon a contractor for violation of any provision of this Chapter or of a contract. Sanctions include but are not limited to:
1. Suspension of any or all further member enrollment, by choice and/or assignment for a period of time.
 2. Imposition of a monetary sanction.
- B. The Director shall consider the nature, severity, and length of the violation when determining a sanction.
- C. The Director shall provide a contractor with written notice specifying grounds and terms for the sanction.
- D. Nothing contained in this Section shall be construed to prevent the Administration from imposing sanctions as provided in contract under A.R.S. § 36-2903.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2340, effective November 11, 2012 (Supp. 12-3).

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

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

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1. An appeal is filed before a contract award, and
 2. The procurement officer issues a stay of the contract award under subsection (E), unless
 3. The Director issues a written determination that the contract award is necessary to protect the best interest of the state.
- G. Decision by the procurement officer.
1. The procurement officer shall issue a written decision no later than 14 days after a protest has been filed. The decision shall contain an explanation of the basis of the decision.
 2. The procurement officer shall furnish a copy of the decision to the protester by:
 - a. Certified mail, return receipt requested; or
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 3. The Administration may extend, for good cause, the time-limit for decisions in subsection (G)(1) for a time not to exceed 30 days. The procurement officer shall notify the protester in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.
 4. If the procurement officer fails to issue a decision within the time-limits in subsection (G)(1) or (G)(3), the protester may proceed as if the procurement officer issued an adverse decision.
- H. Remedies.
1. If the procurement officer sustains the protest in whole or in part and determines that the RFP, proposed contract award, or contract award does not comply with applicable statutes and rules, the procurement officer shall order an appropriate remedy.
 2. In determining an appropriate remedy, the procurement officer shall consider all the circumstances of the procurement or proposed procurement, including:
 - a. Seriousness of the procurement deficiency,
 - b. Degree of prejudice to other interested parties or to the integrity of the RFP process,
 - c. Good faith of the parties,
 - d. Extent of performance,
 - e. Costs to the state, and
 - f. Urgency of the procurement.
 3. An appropriate remedy may include one or more of the following:
 - a. Terminating the contract;
 - b. Reissuing the RFP;
 - c. Issuing a new RFP;
 - d. Awarding a contract consistent with statutes, rules, and the terms of the RFP; or
 - e. Any relief determined necessary to ensure compliance with applicable statutes and rules.
- I. Appeals to the Director.
1. A person may file an appeal of a procurement officer's decision with both the Director and the procurement officer no later than five days from the date the decision is received. The date the decision is received shall be determined under subsection (G)(2).
 2. The appeal shall contain:
 - a. The information required in subsection (C)(2),
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- Historical Note**
- Adopted effective July 16, 1985 (Supp. 85-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2340, effective November 11, 2012 (Supp. 12-3).
- R9-22-605. Waiver of Contractor's Subcontract with Hospitals**
- If a contractor is unable to obtain a subcontract with a hospital as contractually required, the contractor may request in writing a waiver from the Administration as allowed by A.R.S. § 36-2906. The contractor shall state in the request the reasons a waiver is believed to be necessary and all efforts the contractor has made to secure a subcontract.
- Historical Note**
- Adopted effective January 31, 1986 (Supp. 86-1). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1). New Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2340, effective November 11, 2012 (Supp. 12-3).
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- A. The Director may impose sanctions upon a contractor for violation of any provision of this Chapter or of a contract. Sanctions include but are not limited to:
1. Suspension of any or all further member enrollment, by choice and/or assignment for a period of time.
 2. Imposition of a monetary sanction.
- B. The Director shall consider the nature, severity, and length of the violation when determining a sanction.
- C. The Director shall provide a contractor with written notice specifying grounds and terms for the sanction.
- D. Nothing contained in this Section shall be construed to prevent the Administration from imposing sanctions as provided in contract under A.R.S. § 36-2903.
- Historical Note**
- New Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2340, effective November 11, 2012 (Supp. 12-3).
- 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

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

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.

“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(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 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.

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

“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(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.

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

“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.

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-701 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-701 repealed, new Section R9-22-701 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Section repealed; new Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 2188, effective June 6, 2006 (Supp. 06-2). Amended by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 1782, effective June 30, 2007 (Supp. 07-2). Amended by exempt rulemaking at 13 A.A.R. 3190, effective October 1, 2007 (Supp. 07-3). Amended by exempt rulemaking at 13 A.A.R. 4032, effective November 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 1956, effective September 6, 2014; amended by exempt rulemaking at 20 A.A.R. 2755, effective January 1, 2015 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4).

R9-22-701.01. Reserved

R9-22-701.02. Reserved

R9-22-701.03. Reserved

R9-22-701.04. Reserved

R9-22-701.05. Reserved

R9-22-701.06. Reserved

R9-22-701.07. Reserved

R9-22-701.08. Reserved

R9-22-701.09. Reserved

R9-22-701.10 Scope of the Administration’s and Contractor’s Liability

The Administration shall bear no liability for providing covered services for any member beyond the date of termination of the member’s eligibility or during the member’s enrollment with a contractor. A contractor has no financial responsibility for services provided to a member beyond the last date of enrollment except as provided in Articles 2 and 5 of this Chapter and as specified in contract.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1).

R9-22-702. Charges to Members

- A.** For purposes of this subsection, the term “member” includes the member’s financially responsible representative as described under A.R.S. § 36-2903.01.
- B.** Registered providers must accept payment from the Administration or a contractor as payment in full.
- C.** Except as provided in subsection (D) a registered provider shall not request or collect payment from, refer to a collection agency, or report to a credit reporting agency an eligible person or a person claiming to be an eligible person.
- D.** An AHCCCS registered provider may charge, submit a claim to, or demand or collect payment from a member:
 1. To collect the copayment described in R9-22-711;
 2. To recover from a member that portion of a payment made by a third party to the member for an AHCCCS covered service if the member has not transferred the payment to the Administration or the contractor as required by the statutory assignment of rights to AHCCCS;
 3. To obtain payment from a member for medical expenses incurred during a period when the member intentionally withheld information or intentionally provided inaccurate information pertaining to the member’s AHCCCS eligibility or enrollment that caused payment to the provider to be reduced or denied;
 4. For a service that is excluded by statute or rule, or provided in an amount that exceeds a limitation in statute or rule, if the member signs a document in advance of receiving the service stating that the member understands the service is excluded or is subject to a limit and that the member will be financially responsible for payment for the excluded service or for the services in excess of the limit;
 5. When the contractor or the Administration has denied authorization for a service if the member signs a document in advance of receiving the service stating that the member understands that authorization has been denied and that the member will be financially responsible for payment for the service;

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

6. For services requested for a member enrolled with a contractor, and rendered by a noncontracting provider under circumstances where the member's contractor is not responsible for payment of "out of network" services under R9-22-705(A), if the member signs a document in advance of receiving the service stating that the member understands the provider is out of network, that the member's contractor is not responsible for payment, and that the member will be financially responsible for payment for the excluded service;
 7. For services rendered to a person eligible for the FESP if the provider submits a claim to the Administration in the reasonable belief that the service is for treatment of an emergency medical condition and the Administration denies the claim because the service does not meet the criteria of R9-22-217; or
 8. If the provider has received verification from the Administration that the person was not an eligible person on the date of service.
- E.** The signature requirement of subsections (D)(4), (D)(5), and (D)(6) do not apply if:
1. The member is unable or incompetent to sign such a document, or
 2. When services are rendered for the purpose of treating an emergency medical condition as defined in R9-22-217 and a delay in providing treatment to obtain a signature would have a significant adverse affect on the member's health.
- F.** Except as provided for in this Section, registered providers shall not bill a member when the provider could have received reimbursement from the Administration or a contractor but for the provider's failure to file a claim in accordance with the requirements of AHCCCS statutes, rules, the provider agreement, or contract, such as, but not limited to, requirements to request and obtain prior authorization, timely filing, and clean claim requirements.
- Historical Note**
- Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-702 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Amended as a permanent rule effective May 16, 1983; text identical to the emergency (Supp. 83-3). Former Section R9-22-702 repealed, new Section R9-22-702 adopted effective October 1, 1983 (Supp. 83-5). Amended by adding subsection (B) effective October 1, 1985 (Supp. 85-5). Amended by adding subsection (C) effective October 1, 1987 (Supp. 87-4). Amended effective April 13, 1990 (Supp. 90-2). Amended effective December 13, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 3217, effective October 1, 2005 (Supp. 05-3). Amended by exempt rulemaking at 17 A.A.R. 1707, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3).
- R9-22-703. Payments by the Administration**
- A.** General requirements. A provider shall enter into a provider agreement with the Administration that meets the requirements of A.R.S. § 36-2904 and 42 CFR 431.107(b) as of October 1, 2012, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
- B.** Timely submission of claims.
1. Under A.R.S. § 36-2904, the Administration shall deem a paper claim to be submitted on the date that it is received by the Administration. An electronic claim is deemed received by the Administration when the claim enters the information processing system designated by the Administration for electronic claims in a form that is capable of being processed by the designated information processing system. The Administration shall do one or more of the following for each claim it receives:
 - a. Place a date stamp on the face of the claim,
 - b. Assign a system-generated claim reference number, or
 - c. Assign a system-generated date-specific number.
 2. Unless a shorter time period is specified in contract, the Administration shall not pay a claim for a covered service unless the claim is initially submitted within one of the following time limits, whichever is later:
 - a. Six months from the date of service or for an inpatient hospital claim, six months from the date of discharge; or
 - b. Six months from the date of eligibility posting.
 3. Unless a shorter time period is specified in contract, the Administration shall not pay a clean claim for a covered service unless the claim is submitted within one of the following time limits, whichever is later:
 - a. Twelve months from the date of service or for an inpatient hospital claim, 12 months from the date of discharge; or
 - b. Twelve months from the date of eligibility posting.
 4. Unless a shorter time period is specified in contract, the Administration shall not pay a claim submitted by an HIS or tribal facility for a covered service unless the claim is initially submitted within 12 months from the date of service, date of discharge, or eligibility posting, whichever is later.
- C.** Claims processing.
1. The Administration shall notify the AHCCCS-registered provider with a remittance advice when a claim is processed for payment.
 2. The Administration shall reimburse a hospital for inpatient hospital admissions and outpatient hospital services rendered on or after March 1, 1993, as follows and in the manner and at the rate described in A.R.S. § 36-2903.01:
 - a. If the hospital bill is paid within 30 days from the date of receipt, the claim is paid at 99 percent of the rate.
 - b. If the hospital bill is paid between 30 and 60 days from the date of receipt, the claim is paid at 100 percent of the rate.
 - c. If the hospital bill is paid after 60 days from the date of receipt, the claim is paid at 100 percent of the rate plus a fee of one percent per month for each month or portion of a month following the 60th day of receipt of the bill until date of payment.
 3. A claim is paid on the date indicated on the disbursement check.
 4. A claim is denied as of the date of the remittance advice.
 5. The Administration shall process a hospital claim under this Article.
- D.** Prior authorization.
1. An AHCCCS-registered provider shall:

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

- a. Obtain prior authorization from the Administration for non-emergency hospital admissions, covered services as specified in Articles 2 and 12 of this Chapter, and for administrative days as described in R9-22-712.75,
 - b. Notify the Administration of hospital admissions under Article 2 of this Chapter, and
 - c. Make records available for review by the Administration upon request.
2. The Administration may deny a claim if the provider fails to comply with subsection (D)(1).
 3. If the Administration issues prior authorization for an inpatient hospital admission, a specific service, or level of care but subsequent medical review indicates that the admission, the service, or level of care was not medically appropriate, the Administration shall adjust the claim payment.
- E. Review of claims and coverage for hospital supplies.**
1. The Administration may conduct prepayment and post-payment review of any claims, including but not limited to hospital claims.
 2. Personal care items supplied by a hospital, including but not limited to the following, are not covered services:
 - a. Patient care kit,
 - b. Toothbrush,
 - c. Toothpaste,
 - d. Petroleum jelly,
 - e. Deodorant,
 - f. Septi soap,
 - g. Razor or disposable razor,
 - h. Shaving cream,
 - i. Slippers,
 - j. Mouthwash,
 - k. Shampoo,
 - l. Powder,
 - m. Lotion,
 - n. Comb, and
 - o. Patient gown.
 3. The following hospital supplies and equipment, if medically necessary and used by the member, are covered services:
 - a. Arm board,
 - b. Diaper,
 - c. Underpad,
 - d. Special mattress and special bed,
 - e. Gloves,
 - f. Wrist restraint,
 - g. Limb holder,
 - h. Disposable item used instead of a durable item,
 - i. Universal precaution,
 - j. Stat charge, and
 - k. Portable charge.
 4. The Administration shall determine in a hospital claims review whether services rendered were:
 - a. Covered services as defined in Article 2;
 - b. Medically necessary;
 - c. Provided in the most appropriate, cost-effective, and least restrictive setting; and
 - d. For claims with dates of admission on and after March 1, 1993, substantiated by the minimum documentation specified in A.R.S. § 36-2903.01.
 5. If the Administration adjudicates a claim, a person may file a claim dispute challenging the adjudication under 9 A.A.C. 34.
- F. Overpayment for AHCCCS services.**
1. An AHCCCS-registered provider shall notify the Administration when the provider discovers the Administration made an overpayment.
 2. The Administration shall recoup an overpayment from a future claim cycle if an AHCCCS-registered provider fails to return the overpaid amount to the Administration.
 3. The Administration shall document any recoupment of an overpayment on a remittance advice.
 4. An AHCCCS-registered provider may file a claim dispute under 9 A.A.C. 34 if the AHCCCS-registered provider disagrees with a recoupment action.
- G.** For services subject to limitations or exclusions such as the number of hours, days, or visits covered as described in Article 2 of this Chapter, once the limit is reached the Administration will not reimburse the services.
- H.** Prior quarter reimbursement. A provider shall:
1. Bill the Administration for services provided during a prior quarter eligibility period upon verification of eligibility or upon notification from a member of AHCCCS eligibility.
 2. Reimburse a member when payment has been received from the Administration for covered services during a prior quarter eligibility period. All funds paid by the member shall be reimbursed.
 3. Accept payment received by the Administration as payment in full.
- I.** Payment for in-state inpatient hospital services for claims with discharge dates on or before September 30, 2014. The Administration shall reimburse an in-state provider of inpatient hospital services rendered with a discharge date on or before September 30, 2014, the prospective tiered-per-diem amount in A.R.S. § 36-2903.01 and this Article.
- J.** Payment for out-of-state inpatient hospital services for claims with discharge dates on or before September 30, 2014. The Administration shall reimburse an out-of-state provider of inpatient hospital services rendered with a discharge date on or before September 30, 2014, for covered inpatient services by multiplying covered charges by the most recent statewide urban cost-to-charge ratio as determined in R9-22-712.01(6)(b).
- K.** Payment for inpatient hospital services for claims with discharge dates on and after October 1, 2014 regardless of admission date. The Administration shall reimburse an in-state or out-of-state provider of inpatient hospital services rendered with a discharge date on or after October 1, 2014, the DRG rate established by the Administration.
- L.** The Administration may enter into contracts for the provisions of transplant services.

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R-22-703 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-703 repealed, new Section R9-22-703 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Amended subsection (B), paragraph (1) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (A) effective September 16, 1987 (Supp. 87-3). Amended effective May 30, 1989 (Supp. 89-2). Amended effective September 29, 1992 (Supp. 92-3). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 3222, effective October 1, 2005 (Supp.

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

05-3). Amended by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by exempt rulemaking at 17 A.A.R. 1707, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3). Amended by final rulemaking at 19 A.A.R. 3309, November 30, 2013 (Supp. 13-4). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 27 A.A.R. 237, effective April 4, 2021 (Supp. 21-1).

R9-22-704. Repealed**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-704 adopted as an emergency now adopted and amended as a permanent rule effective August 30 1982 (Supp. 82-4). Amended effective October 1, 1983 (Supp. 83-5). Amended subsection A., Paragraph 2. effective October 1, 1985 (Supp. 85-5). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1).

R9-22-705. Payments by Contractors

- A.** General requirements. A contractor shall contract with providers to provide covered services to members enrolled with the contractor. The contractor is responsible for reimbursing providers and coordinating care for services provided to a member. Except as provided in subsection (A)(2), a contractor is not required to reimburse a noncontracting provider for services rendered to a member enrolled with the contractor.
1. Providers. A provider shall enter into a provider agreement with the Administration that meets the requirements of A.R.S. § 36-2904 and 42 CFR 431.107(b) as of March 6, 1992, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
 2. A contractor shall reimburse a noncontracting provider for services rendered to a member enrolled with the contractor as specified in this Article if:
 - a. The contractor referred the member to the provider or authorized the provider to render the services and the claim is otherwise payable under this Chapter, or
 - b. The service is emergent under Article 2 of this Chapter.
- B.** Timely submission of claims.
1. Under A.R.S. § 36-2904, a contractor shall deem a paper or electronic claim as submitted on the date that the claim is received by the contractor. The contractor shall do one or more of the following for each claim the contractor receives:
 - a. Place a date stamp on the face of the claim,
 - b. Assign a system-generated claim reference number, or
 - c. Assign a system-generated date-specific number.
 2. Unless a shorter time period is specified in subcontract, a contractor shall not pay a claim for a covered service unless the claim is initially submitted within one of the following time limits, whichever is later:

- a. Six months from the date of service or for an inpatient hospital claim, six months from the date of discharge; or
 - b. Six months from the date of eligibility posting.
3. Unless a shorter time period is specified in subcontract, a contractor shall not pay a clean claim for a covered service unless the claim is submitted within one of the following time limits, whichever is later:
 - a. Twelve months from the date of service or for an inpatient hospital claim, 12 months from the date of discharge; or
 - b. Twelve months from the date of eligibility posting.
- C.** Date of claim.
1. A contractor's date of receipt of an inpatient or an outpatient hospital claim is the date the claim is received by the contractor as indicated by the date stamp on the claim, the system-generated claim reference number, or the system-generated date-specific number assigned by the contractor.
 2. A hospital claim is considered paid on the date indicated on the disbursement check.
 3. A denied hospital claim is considered adjudicated on the date of the claim's denial.
 4. For a claim that is pending for additional supporting documentation specified in A.R.S. § 36-2903.01 or 36-2904, the contractor shall assign a new date of receipt upon receipt of the additional documentation.
 5. For a claim that is pending for documentation other than the minimum required documentation specified in either A.R.S. § 36-2903.01 or 36-2904, the contractor shall not assign a new date of receipt.
 6. A contractor and a hospital may, through a contract approved as specified in R9-22-715, adopt a method for identifying, tracking, and adjudicating a claim that is different from the method described in this subsection.
- D.** Payment for in-state inpatient hospital services for claims with discharge dates on or before September 30, 2014. A contractor shall reimburse an in-state provider of inpatient hospital services rendered with a discharge date on or before September 30, 2014, at either a rate specified by subcontract or, in absence of the subcontract, the prospective tiered-per-diem amount in A.R.S. § 36-2903.01 and this Article. Subcontract rates, terms, and conditions are subject to review and approval or disapproval under A.R.S. § 36-2904 and R9-22-715. This subsection does not apply to an urban contractor as specified in R9-22-718 and A.R.S. § 36-2905.01.
- E.** Payment for Inpatient out-of-state hospital payments for claims with discharge dates on or before September 30, 2014. In the absence of a contract with an out-of-state hospital that specifies payment rates, a contractor shall reimburse out-of-state hospitals for covered inpatient services by multiplying covered charges by the most recent statewide urban cost-to-charge ratio as determined in R9-22-712.01(6)(b).
- F.** Payment for inpatient hospital services for claims with discharge dates on and after October 1, 2014 regardless of admission date. Subject to R9-22-718 and A.R.S. § 36-2905.01 regarding urban hospitals, a contractor shall reimburse an in-state or out-of-state provider of inpatient hospital services, at either a rate specified by subcontract or, in absence of a subcontract, the DRG rate established by the Administration and this Article. Subcontract rates, terms, and conditions are subject to review and approval or disapproval under A.R.S. § 36-2904 and R9-22-715.
- G.** Payment for in-state outpatient hospital services.
A contractor shall reimburse an in-state provider of outpatient hospital services rendered on or after July 1, 2005,

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

at either a rate specified by a subcontract or, in absence of a subcontract, as provided under R9-22-712.10, A.R.S. § 36-2903.01 and other sections of this Article. The terms of the subcontract are subject to review and approval or disapproval under A.R.S. § 36-2904 and R9-22-715.

- H.** Outpatient out-of-state hospital payments. In the absence of a contract with an out-of-state hospital that specifies payment rates, a contractor shall reimburse out-of-state hospitals for covered outpatient services by applying the methodology described in R9-22-712.10 through R9-22-712.50. If the outpatient procedure is not assigned a fee schedule amount, the contractor shall pay the claim by multiplying the covered charges for the outpatient services by the statewide outpatient cost-to-charge ratio.
- I.** Payment for observation days. A contractor shall reimburse a provider and a noncontracting provider for the provision of observation days at either a rate specified by subcontract or, in the absence of a subcontract, as prescribed under R9-22-712, R9-22-712.10, and R9-22-712.45.
- J.** Review of claims and coverage for hospital supplies.
1. A contractor may conduct a review of any claims submitted and recoup any payments made in error.
 2. A hospital shall obtain prior authorization from the appropriate contractor for nonemergency admissions. When issuing prior authorization, a contractor shall consider the medical necessity of the service, and the availability and cost effectiveness of an alternative treatment. Failure to obtain prior authorization when required is cause for nonpayment or denial of a claim. A contractor shall not require prior authorization for medically necessary services provided during any prior period for which the contractor is responsible. If a contractor and a hospital agree to a subcontract, the parties shall abide by the terms of the subcontract regarding utilization control activities. A hospital shall cooperate with a contractor's reasonable activities necessary to perform concurrent review and shall make the hospital's medical records pertaining to a member enrolled with a contractor available for review.
 3. Regardless of prior authorization or concurrent review activities, a contractor may make prepayment or post-payment review of all claims, including but not limited to a hospital claim. A contractor may recoup an erroneously paid claim. If prior authorization was given for an inpatient hospital admission, a specific service, or level of care but subsequent medical review indicates that the admission, the service, or level of care was not medically appropriate, the contractor shall adjust the claim payment.
 4. A contractor and a hospital may enter into a subcontract that includes hospital claims review criteria and procedures if the subcontract meets the requirements of R9-22-715.
 5. Personal care items supplied by a hospital, including but not limited to the following, are not covered services:
 - a. Patient care kit,
 - b. Toothbrush,
 - c. Toothpaste,
 - d. Petroleum jelly,
 - e. Deodorant,
 - f. Septi soap,
 - g. Razor,
 - h. Shaving cream,
 - i. Slippers,
 - j. Mouthwash,
 - k. Disposable razor,
 - l. Shampoo,
 - m. Powder,
 - n. Lotion,
 - o. Comb, and
 - p. Patient gown.
6. The following hospital supplies and equipment, if medically necessary and used by the member, are covered services:
- a. Arm board,
 - b. Diaper,
 - c. Underpad,
 - d. Special mattress and special bed,
 - e. Gloves,
 - f. Wrist restraint,
 - g. Limb holder,
 - h. Disposable item used instead of a durable item,
 - i. Universal precaution,
 - j. Stat charge, and
 - k. Portable charge.
7. The contractor shall determine in a hospital claims review whether services rendered were:
- a. Covered services as defined in R9-22-201;
 - b. Medically necessary;
 - c. Provided in the most appropriate, cost-effective, and least restrictive setting; and
 - d. For claims with dates of admission on and after March 1, 1993, substantiated by the minimum documentation specified in A.R.S. § 36-2904.
8. If a contractor adjudicates a claim or recoups payment for a claim, a person may file a claim dispute challenging the adjudication or recoupment as described under 9 A.A.C. 34.
- K.** Non-hospital claims. A contractor shall pay claims for non-hospital services in accordance with contract, or in the absence of a contract, at a rate not less than the Administration's capped fee-for-service schedule or at a lower rate if negotiated between the two parties.
- L.** Payments to hospitals. A contractor shall pay for inpatient hospital admissions and outpatient hospital services rendered on or after March 1, 1993, as follows and as described in A.R.S. § 36-2904:
1. If the hospital bill is paid within 30 days from the date of receipt, the claim is paid at 99 percent of the rate.
 2. If the hospital bill is paid between 30 and 60 days from the date of receipt, the claim is paid at 100 percent of the rate.
 3. If the hospital bill is paid after 60 days from the date of receipt, the claim is paid at 100 percent of the rate plus a 1 percent penalty of the rate for each month or portion of the month following the 60th day of receipt of the bill until date of payment.
- M.** Interest payment. In addition to the requirements in subsection (L), a contractor shall pay interest for late claims as defined by contract.
- N.** For services subject to limitations or exclusions such as the number of hours, days, or visits covered as described in Article 2 of this Chapter, once the limit is reached the Administration will not reimburse the services.

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-705 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Amended as a permanent rule effective May 16, 1983; text of the

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

amended rule identical to emergency (Supp. 83-3). Former Section R9-22-705 repealed, new Section R9-22-705 adopted effective October 1, 1983 (Supp. 83-5).

Amended as an emergency effective October 25, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-5). Emergency expired. Permanent amendment adopted effective February 1, 1985 (Supp. 85-1).

Amended effective October 1, 1985 (Supp. 85-5).

Amended subsection (C) effective October 1, 1986 (Supp. 86-5). Amended subsection (C) effective October 1, 1987; amended subsection (C) effective December 22, 1987 (Supp. 87-4). Amended subsections (A) and (C) effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 5 A.A.R. 867, effective March 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 3222, effective October 1, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 1439, effective May 31, 2008 (Supp. 08-2). Amended by exempt rulemaking at 17 A.A.R. 1707, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-706. Repealed**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-706 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-706 repealed, new Section R9-22-706 adopted effective October 1, 1983 (Supp. 83-5). Adopted as an emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Amended as an emergency effective October 25, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-5).

Emergency expired. Permanent amendment adopted effective February 1, 1985 (Supp. 85-1). Amended effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Amended subsections (A), (D), (E), (F), and (G) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (F) effective December 22, 1987 (Supp. 87-4). Amended subsections (A) and (F) effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended effective September 22, 1997 (Supp. 97-3). Section repealed by final rulemaking at 10 A.A.R. 4656, effective January 1, 2005 (Supp. 04-4).

R9-22-707. Repealed**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-

3). Former Section R9-22-707 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Repealed as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Repealed as a permanent action effective May 16, 1983 (Supp. 83-3).

New Section R9-22-707 adopted effective October 1, 1983 (Supp. 83-5). Adopted as an emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Adopted as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Former Section R9-22-707 repealed, new Section R9-22-707 adopted effective October 1, 1985 (Supp. 85-5). Former Section R9-22-707 repealed, new Section R9-22-707 adopted effective October 1, 1986 (Supp. 86-5). Amended subsection (A) effective October 1, 1987 (Supp. 87-4). Amended effective September 29, 1992 (Supp. 92-3). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 856, effective May 5, 2007 (Supp. 07-1).

R9-22-708. Payments for Services Provided to Eligible American Indians

- A. For purposes of this Article “IHS enrolled” or “enrolled with IHS” means an American Indian who has elected to receive covered services through IHS instead of a contractor.
- B. For an American Indian who is enrolled with IHS, AHCCCS shall pay IHS the most recent all-inclusive inpatient, outpatient or ambulatory surgery rates published by Health and Human Services (HHS) in the Federal Register, or a separately contracted rate with IHS, for AHCCCS-covered services provided in an IHS facility. AHCCCS shall reimburse providers for the Medicare coinsurance and deductible amounts required to be paid by the Administration or contractor in Chapter 29, Article 3 of this Title.
- C. When IHS refers an American Indian enrolled with IHS to a provider other than an IHS or tribal facility, the provider to whom the referral is made shall obtain prior authorization from AHCCCS for services as required under Articles 2, 7 or 12 of this Chapter.
- D. For an American Indian enrolled with a contractor, AHCCCS shall pay the contractor a monthly capitation payment.
- E. Once an American Indian enrolls with a contractor, AHCCCS shall not reimburse any provider other than IHS or a Tribal facility.

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-708 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-708 repealed, new Section R9-22-708 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-708 renumbered and amended as Section R9-22-709, new Section R9-22-708 adopted effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Amended by final rulemaking at 10 A.A.R. 4656, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-709. Contractor’s Liability to Hospitals for the Provision of Emergency and Post-stabilization Care

A contractor is liable for emergency hospitalization and post-stabilization care as described in R9-22-210 and R9-22-210.01.

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-709 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-709 repealed, new Section R9-22-709 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-709 renumbered and amended as Section R9-22-713, former Section R9-22-708 renumbered and amended as Section R9-22-709 effective October 1, 1985 (Supp. 85-5). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 13 A.A.R. 856, effective May 5, 2007 (Supp. 07-1).

Editor's Note: The following Section was amended under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rules; and the Attorney General did not certify this rule. This Section was subsequently amended through the regular rulemaking process.

R9-22-710. Payments for Non-hospital Services

- A.** Capped fee-for-service. The Administration shall provide notice of changes in methods and standards for setting payment rates for services in accordance with 42 CFR 447.205, December 19, 1983, incorporated by reference and on file with the Administration and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
1. Non-contracted services. In the absence of a contract that specifies otherwise, a contractor shall reimburse a provider or noncontracting provider for non-hospital services according to the Administration's capped-fee-for-service schedule.
 2. Procedure codes. The Administration shall maintain a current copy of the National Standard Code Sets mandated under 45 CFR 160 (October 1, 2004) and 45 CFR 162 (October 1, 2004), incorporated by reference and on file with the Administration and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
 - a. A person shall submit an electronic claim consistent with 45 CFR 160 (October 1, 2004) and 45 CFR 162 (October 1, 2004).
 - b. A person shall submit a paper claim using the National Standard Code Sets as described under 45 CFR 160 (October 1, 2004) and 45 CFR 162 (October 1, 2004).
 - c. The Administration may deny a claim for failure to comply with subsection (A) (2) (a) or (b).
 3. Fee schedule. The Administration shall pay providers, including noncontracting providers, at the lesser of billed charges or the capped fee-for-service rates specified in subsections (A)(3)(a) through (A)(3)(d) unless a different fee is specified in a contract between the Administration and the provider, or is otherwise required by law.

- a. Physician services. Fee schedules for payment for physician services are on file at the central office of the Administration for reference use during customary business hours.
 - b. Dental services. Fee schedules for payment for dental services are on file at the central office of the Administration for reference use during customary business hours.
 - c. Transportation services. Fee schedules for payment for transportation services are on file at the central office of the Administration for reference use during customary business hours. For dates of service beginning:
 - i. October 1, 2012 through September 30, 2013, the Administration and its contractors shall reimburse ambulance services at 68.59 percent of the ADHS rates that are in effect as of August 2, 2012.
 - ii. October 1, 2013 through September 30, 2014, the Administration and its contractors shall reimburse ambulance services at 68.59 percent of the ADHS rates that are in effect as of August 2, 2013.
 - iii. October 1, 2014 through September 30, 2015, the Administration and its contractors shall reimburse ambulance services at 74.74 percent of the ADHS rates that are in effect as of August 2, 2014.
 - d. Medical supplies and durable medical equipment (DME). Fee schedules for payment for medical supplies and DME are on file at the central office of the Administration for reference use during customary business hours. The Administration shall reimburse a provider once for purchase of DME during any two-year period, unless the Administration determines that DME replacement within that period is medically necessary for the member. Unless prior authorized by the Administration, no more than one repair and adjustment of DME shall be reimbursed during any two-year period.
- B.** Pharmacy services. The Administration shall not reimburse pharmacy services unless the services are provided by a pharmacy having a subcontract with a Pharmacy Benefit Manager (PBM) contracted with AHCCCS. Except as specified in subsection (C), the Administration shall reimburse pharmacy services according to the terms of the contract.
- C.** FQHC Pharmacy reimbursement.
1. For purposes of this Section the following terms are defined:
 - a. "340B Drug Pricing Program" means the discount drug purchasing program described in 42 U.S.C 256b.
 - b. "340B Ceiling Price" means the maximum price that drug manufacturers can charge covered entities participating in the 340B Drug Pricing Program as reported by the drug manufacturer to HRSA.
 - c. "340B entity" means a covered entity, eligible to participate in the 340B Drug Pricing Program, as defined by the Health Resources and Human Services Administration.
 - d. "Actual Acquisition Cost (AAC)" means the purchase price of a drug paid by a pharmacy net of discounts, rebates, chargebacks and other adjustments to the price of the drug. The AAC excludes dispensing fees.

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

- e. "Contracted Pharmacy" means an arrangement through which a 340B entity may contract with an outside pharmacy to provide comprehensive pharmacy services utilizing medications subject to 340B pricing.
- f. "Dispensing Fee" means the amount paid for the professional services provided by the pharmacist for dispensing a prescription. The Dispensing Fee does not include any payment for the drugs being dispensed.
- g. "Federally Qualified Health Center" means a public or private non-profit health care organization that has been identified by HRSA and certified by CMS as meeting the criteria under sections 1861(aa)(4) and 1905(l)(2)(B) of the Social Security Act and receives funds under section 330 of the Public Health Service Act.
- h. "Federally Qualified Health Center Look-Alike" means a public or private non-profit health care organization that has been identified by HRSA and certified by CMS as meeting the definition of "health center" under section 330 of the Public Health Service Act, but does not receive grant funding under section 330.
- i. "FQHC or FQHC Look-Alike pharmacy" means a pharmacy that dispenses drugs to FQHC or FQHC-LA patients and that is owned and/or operated by an FQHC/FQHC-LA or by an entity that reports the costs of an FQHC/FQHC-LA on its Medicare Cost Report, whether or not collocated with an FQHC or an FQHC Look-Alike.
2. Effective the later of February 1, 2012, or CMS approval of a State Plan Amendment, an FQHC or FQHC Look-Alike shall:
- Notify the AHCCCS provider registration unit of its status as a 340B covered entity no later than:
 - 30 days after the effective date of this Section;
 - 30 days after registration with the Health Resources and Services Administration (HRSA) for participation in the 340B program, or
 - The time of application to become an AHCCCS provider.
 - Provide the 340B pricing file to the AHCCCS Administration upon request. The 340B pricing file shall be provided in the file format as defined by AHCCCS.
 - Identify 340B drug claims submitted to the AHCCCS FFS PBM or the Managed Care Contractors' PBMs for reimbursement. The 340B drug claim identification and claims processing for a drug claim submission shall be consistent with claim instructions issued and required by AHCCCS to identify such claims.
3. The FQHC and the FQHC Look-Alike pharmacies shall submit claims for AHCCCS members for drugs that are identified in the 340B pricing file, whether or not purchased under the 340B pricing file, with the lesser of:
- The actual acquisition cost, or
 - The 340B ceiling price.
4. The AHCCCS Fee-for-Service and Managed Care Contractors' PBMs shall reimburse claims for drugs which are identified in the 340B pricing file dispensed by FQHC and FQHC Look -Alike pharmacies, whether or not purchased under the 340B pricing file, at the amount submitted under subsection (C)(3) plus a dispensing fee listed in the AHCCCS Capped Fee-For-Service Schedule unless a contract between the 340B entity and a Managed Care Contractor's PBM specifies a different dispensing fee.
- Contracted pharmacies shall not submit claims for drugs dispensed under an agreement with the 340B entity as part of the 340B drug pricing program, and the AHCCCS Administration and Managed Care Contractors shall not reimburse such claims.
 - The AHCCCS Administration and Managed Care Contractors shall reimburse contracted pharmacies for drugs not dispensed under an agreement with the 340B entity as part of the 340B program at the price and dispensing fee set forth in the contract between the contracted pharmacy and the AHCCCS or its Managed Care Contractors' PBMs. Neither the Administration nor its Managed Care Contractors will reimburse a contracted pharmacy that does not have a contract with the Administration or MCO's PBM.
 - The AHCCCS Administration and its Managed Care Contractors shall reimburse FQHC and FQHC Look-Alike pharmacies for drugs that are not eligible under the 340B Drug Pricing Program at the price and dispensing fee set forth in their contract with the AHCCCS or its Managed Care Contractors' PBMs.
 - AHCCCS may periodically conduct audits to ensure compliance with this Section.

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-710 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Amended as a permanent rule effective May 16, 1983; text of amended rule identical to emergency (Supp. 83-3). Former Section R9-22-710 repealed, new Section R9-22-710 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985. The capped fee-for-service schedules, deleted from Section R9-22-710, are now on file at the central office of the Administration (Supp. 85-5). Amended subsections (B) through (D) effective October 1, 1986 (Supp. 86-5). Amended subsection (B) effective July 1, 1988 (Supp. 88-3). Amended subsection (B) effective April 27, 1989 (Supp. 89-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective December 13, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 3830, effective November 12, 2005 (Supp. 05-3). Amended by exempt rulemaking at 18 A.A.R. 212, effective February 1, 2012 (Supp. 12-1). Amended by exempt rulemaking at 18 A.A.R. 1971, effective August 1, 2012 (Supp. 12-3). Amended by exempt rulemaking at 18 A.A.R. 2630, effective October 1, 2012 (Supp. 12-4). Amended by final rulemaking at 19 A.A.R. 1681, effective August 9, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3525, effective October 18, 2013 (Supp. 13-4)

R9-22-711. Copayments**A.** For purposes of this Article:

- A copayment is a monetary amount that a member pays directly to a provider at the time a covered service is rendered.

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

2. An eligible individual is assigned to a hierarchy established in subsections (B) through (E), for the purposes of establishing a copayment amount.
 3. No refunds shall be made for a retroactive period if there is a change in an individual's status that alters the amount of a copayment.
- B.** The following services are exempt from AHCCCS copayments for all members:
1. Family planning services and supplies,
 2. Services related to a pregnancy or any other medical condition that may complicate the pregnancy, including tobacco cessation treatment for a pregnant woman,
 3. Emergency services as described in 42 CFR 447.56(2)(i),
 4. All services paid on a fee-for-service basis,
 5. Preventive services, such as well visits, immunizations, pap smears, colonoscopies, and mammograms,
 6. Provider preventable services.
- C.** The following individuals are exempt from AHCCCS copayments:
1. An individual under age 19, including individuals eligible for the KidsCare Program in A.R.S. § 36-2982;
 2. An individual determined to be Seriously Mentally Ill (SMI) by the Arizona Department of Health Services;
 3. An individual eligible for the Arizona Long-Term Care Program in A.R.S. § 36-2931;
 4. An individual eligible for QMB under Chapter 29;
 5. An individual eligible for the Children's Rehabilitative Services program under A.R.S. § 36-2906(E);
 6. An individual receiving nursing facility or HCBS services under R9-22-216;
 7. An individual receiving hospice care as defined in 42 U.S.C. 1396d(o);
 8. An American Indian individual enrolled in a health plan and has received services through an IHS facility, tribal 638 facility or urban Indian health program;
 9. An individual eligible in the Breast and Cervical Cancer program as described under Article 20;
 10. An individual who is pregnant and through the postpartum period following the pregnancy;
 11. An individual with respect to whom child welfare services are made available under Part B of Title IV of the Social Security Act on the basis of being a child in foster care, without regard to age;
 12. An individual with respect to whom adoption or foster care assistance is made available under Part E of Title IV of the Social Security Act, without regard to age; and
 13. An adult eligible under R9-22-1427(E), with income at or below 106% of the FPL.
- D.** Non-mandatory copayments. Unless otherwise listed in subsection (B) or (C), individuals under subsections (D)(1) through (6) are subject to the copayments listed in this subsection. A provider shall not deny a service when a member states to the provider an inability to pay a copayment.
1. A caretaker relative eligible under R9-22-1427(A);
 2. An individual eligible for Young Adult Transitional Insurance (YATI) in A.R.S. § 36-2901(6)(a)(iii);
 3. An individual eligible for State Adoption Assistance in R9-22-1433;
 4. An individual eligible for Supplemental Security Income (SSI);
 5. An individual eligible for SSI Medical Assistance Only (SSI/MAO) in Article 15; and
 6. An individual eligible for the Freedom to Work program in A.R.S. § 36-2901(6)(g).
 7. Copayment amount per service:
 - a. \$2.30 per prescription drug.
- b. \$3.40 per outpatient visit, excluding an emergency room visit, if any of the services rendered during the visit are coded as evaluation and management services or non-emergent surgical procedures according to the National Standard Code Sets. An outpatient visit includes any setting where these services are performed such as a physician's office, an Ambulatory Surgical Center (ASC), or a clinic.
 - c. \$2.30 per visit, if a copayment is not being imposed under subsection (D)(7)(b) and any of the services rendered during the visit are coded as physical, occupational or speech therapy services according to the National Standard Code Sets.
- E.** Mandatory copayments.
1. Copayments for individuals eligible for Transitional Medical Assistance (TMA) under R9-22-1427(B)(1)(c)(i). Unless otherwise listed in subsection (C), an individual is required to pay the following copayments for prescription drugs and outpatient services unless the service is provided during an emergency room visit or the service is otherwise exempt under subsection (B). An outpatient visit includes any setting where these outpatient services are performed such as, an outpatient hospital, a physician's provider's office, HCBS setting, an Ambulatory Surgical Center (ASC), or a clinic:
 - a. \$2.30 per prescription drug.
 - b. \$4.00 per outpatient visit, if any of the services rendered during the visit are coded as evaluation and management services according to the National Standard Code Sets.
 - c. If a copayment is not being imposed under subsection (E)(1)(b), \$3.00 per visit if any of the services rendered during the visit are coded as physical, occupational or speech therapy services according to the National Standard Code Sets.
 - d. If a copayment is not being imposed under subsection (E)(1)(b) or (c), \$3.00 per visit, if any of the services rendered during the visit are coded as non-emergent surgical procedures according to the National Standard Code Sets.
 2. Copayments for persons eligible under R9-22-1427(E) with income above 106% of the FPL and for persons eligible under A.R.S. §§ 36-2907.10 and 36-2907.11. Subject to CMS approval, unless otherwise listed in subsection (C), these individuals are required to pay the following copayments for prescription drugs and outpatient services unless the service is provided during an emergency room visit or the service is otherwise exempt under subsection (B). An outpatient visit includes any setting where these outpatient services are performed such as, an outpatient hospital, a physician's provider's office, HCBS setting, an Ambulatory Surgical Center (ASC), or a clinic:
 - a. \$4.00 per prescription drug.
 - b. \$5.00 per outpatient visit when the AHCCCS fee schedule for the visit code is a rate from \$50 to less than \$100, if any of the services rendered during the visit are coded as evaluation and management services according to the National Standard Code Sets.
 - c. \$10.00 per outpatient visit when the AHCCCS fee schedule for the visit code is a rate of \$100 or greater, if any of the services rendered during the visit are coded as evaluation and management services according to the National Standard Code Sets.
 - d. If a copayment is not being imposed under subsection (E)(2)(b) or (E)(2)(c), for services coded as

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

physical, occupational or speech therapy services according to the National Standard Code Sets.

- i. \$2.00 if the rate on the fee schedule is \$20 to \$39.99,
 - ii. \$4.00 if the rate on the fee schedule is \$40 to \$49.99, or
 - iii. \$5.00 if the rate on the fee schedule is \$50 and above per visit.
- e. If a copayment is not being imposed under subsection (E)(2)(b) – (E)(2)(d), for services coded as non-emergent surgical procedures according to the National Standard Code Sets,
- i. \$30.00 if the rate on the fee schedule is \$300 to \$499.99, or
 - ii. \$50.00 if the rate on the fee schedule is \$500 and above per visit.
- f. Unless the individual is otherwise exempt in subsection (C) or the service is exempted under subsection (B) the individual is required to pay \$2.00 per trip for non-emergency transportation in an urban area.
- g. Unless the individual is otherwise exempt in subsection (C) or the service is exempted under subsection (B) the individual is required to pay \$8.00 for non-emergency use of the emergency room.
- h. Unless the individual is otherwise exempt in subsection (C) or the service is exempted under subsection (B) the individual is required to pay \$75 for an Inpatient stay.
3. The provider may deny a service if the member does not pay the copayment required by subsection (E), however, a provider may choose to reduce or waive copayments under this subsection on a case-by-case basis.
- F. A provider is responsible for collecting any copayment imposed under this Section.
- G. The total aggregate amount of copayments under subsections (D) or (E) may not exceed 5% of the family's income as applied on a quarterly basis. The member may establish that the aggregate limit has been met on a quarterly basis by providing the Administration with records of copayments incurred during the quarter. In addition, the Administration shall also use claims and encounters information available to the Administration to establish when a member's copayment obligation has reached 5% of the family's income.
- H. Reduction in payments to providers. The Administration and its contractors shall reduce the payment it makes to any provider by the amount of a member's copayment obligation under subsection (E), regardless of whether the provider successfully collects the copayments described in this Section.

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Sections R9-22-711 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-711 repealed, new Section R9-22-711 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3).

Amended by exempt rulemaking at 9 A.A.R. 4557, effective October 1, 2003 (Supp. 03-4). Amended by exempt rulemaking at 10 A.A.R. 2194, effective May 3, 2004 (Supp. 04-2). Amended by exempt rulemaking at 10 A.A.R. 4266, effective October 1, 2004 (Supp. 04-3). Amended by final rulemaking at 16 A.A.R. 1449, effective October 1, 2010 (Supp. 10-3). Section amended by exempt rulemaking at 18 A.A.R. 461, effective April 1, 2012 (Supp. 12-1). Section amended by final rulemaking at 19 A.A.R. 2954, effective November 11, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 128, effective December 30, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 2755, effective January 1, 2015 (Supp. 14-3).

Editor's Note: The following Section was adopted and amended under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rules; and the Attorney General did not certify this rule. This Section was subsequently amended through the regular rulemaking process.

R9-22-712. Reimbursement: General

- A. Inpatient and outpatient discounts and penalties. If a claim is pending for additional documentation required under A.R.S. § 36-2903.01(G)(4), the period during which the claim is pending is not used in the calculation of the quick-pay discounts and slow-pay penalties under A.R.S. § 36-2903.01(G)(5).
- B. Inpatient and outpatient in-state or out-of-state hospital payments.
1. Payment for inpatient out-of-state hospital services for claims with discharge dates on or before September 30, 2014. In the absence of a contract with an out-of-state hospital that specifies payment rates, AHCCCS shall reimburse out-of-state hospitals for covered inpatient services by multiplying covered charges by the most recent statewide urban cost-to-charge ratio as determined in R9-22-712.01(6)(d).
 2. Payment for inpatient in-state hospital services for claims with discharge dates on or before September 30, 2014. AHCCCS shall reimburse an in-state provider of inpatient hospital services rendered with a discharge date on or before September 30, 2014, at the prospective tiered-per-diem amount in A.R.S. § 36-2903.01 and this Article.
 3. Payment for inpatient in-state or out-of-state hospital services for claims with discharge dates on and after October 1, 2014 regardless of admission date. Subject to R9-22-718 and A.R.S. § 36-2905.01 regarding urban hospitals, a contractor shall reimburse an in-state or out-of-state provider of inpatient hospital services, at either a rate specified by subcontract or, in the absence of a subcontract, the DRG rate established by the Administration and this Article. Subcontract rates, terms, and conditions are subject to review and approval or disapproval under A.R.S. § 36-2904 and R9-22-715.
 4. Outpatient out-of-state hospital payments. In the absence of a contract with an out-of-state hospital that specifies payment rates, AHCCCS shall reimburse an out-of-state hospital for covered outpatient services by applying the methodology described in R9-22-712.10 through R9-22-712.50. If the outpatient procedure is not assigned a fee schedule amount, the Administration shall pay the claim by multiplying the covered charges for the outpatient services by the statewide outpatient cost-to-charge ratio.

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

5. Outpatient in-state hospital payments. A contractor shall reimburse an in-state provider of outpatient hospital services rendered on or after July 1, 2005, at either a rate specified by a subcontract or, in absence of a subcontract, as provided under R9-22-712.10, A.R.S. § 36-2903.01 and other sections of this Article. The terms of the subcontract are subject to review and approval or disapproval under A.R.S. § 36-2904 and R9-22-715.
- C. Access to records. Subcontracting and noncontracting providers of outpatient or inpatient hospital services shall allow the Administration access to medical records regarding eligible persons and shall in all other ways fully cooperate with the Administration or the Administration's designated representative in performance of the Administration's utilization control activities. The Administration shall deny a claim for failure to cooperate.
- D. Prior authorization. The Administration or contractor may deny a claim if a provider fails to obtain prior authorization as required under R9-22-210.
- E. Review of claims. Regardless of prior authorization or concurrent review activities, the Administration may subject all hospital claims, including outliers, to prepayment medical review or post-payment review, or both. The Administration shall conduct post-payment reviews consistent with A.R.S. § 36-2903.01 and may recoup erroneously paid claims.
- F. Claim receipt.
1. The Administration's date of receipt of inpatient or outpatient hospital claims is the date the claim is received by the Administration as indicated by the date stamp on the claim and the system-generated claim reference number or system-generated date-specific number.
 2. Hospital claims are considered paid on the date indicated on disbursement checks.
 3. A denied claim is considered adjudicated on the date the claim is denied.
 4. Claims that are denied and are resubmitted are assigned new receipt dates.
 5. For a claim that is pending for additional supporting documentation specified in A.R.S. § 36-2903.01 or 36-2904, the Administration shall assign a new date of receipt upon receipt of the additional documentation.
 6. For a claim that is pending for documentation other than the minimum required documentation specified in either A.R.S. § 36-2903.01 or 36-2904, the Administration shall not assign a new date of receipt.
- G. Outpatient hospital reimbursement. The Administration shall pay for covered outpatient hospital services provided to eligible persons with dates of service from March 1, 1993 through June 30, 2005, at the AHCCCS outpatient hospital cost-to-charge ratio, multiplied by the amount of the covered charges.
1. Computation of outpatient hospital reimbursement. The Administration shall compute the cost-to-charge ratio on a hospital-specific basis by determining the covered charges and costs associated with treating eligible persons in an outpatient setting at each hospital. Outpatient operating and capital costs are included in the computation but outpatient medical education costs that are included in the inpatient medical education component are excluded. To calculate the outpatient hospital cost-to-charge ratio annually for each hospital, the Administration shall use each hospital's Medicare Cost Reports and a database consisting of outpatient hospital claims paid and encounters processed by the Administration for each hospital, subjecting both to the data requirements specified in R9-22-712.01. The Administration shall use the following methodology to establish the outpatient hospital cost-to-charge ratios:
 - a. Cost-to-charge ratios. The Administration shall calculate the costs of the claims and encounters for outpatient hospital services by multiplying the ancillary line item cost-to-charge ratios by the covered charges for corresponding revenue codes on the claims and encounters. Each hospital shall provide the Administration with information on how the revenue codes used by the hospital to categorize charges on claims and encounters correspond to the ancillary line items on the hospital's Medicare Cost Report. The Administration shall then compute the overall outpatient hospital cost-to-charge ratio for each hospital by taking the average of the ancillary line items cost-to-charge ratios for each revenue code weighted by the covered charges.
 - b. Cost-to-charge limit. To comply with 42 CFR 447.325, the Administration may limit cost-to-charge ratios to 1.00 for each ancillary line item from the Medicare Cost Report. The Administration shall remove ancillary line items that are non-covered or not applicable to outpatient hospital services from the Medicare Cost Report data for purposes of computing the overall outpatient hospital cost-to-charge ratio.
 2. New hospitals. The Administration shall reimburse new hospitals at the weighted statewide average outpatient hospital cost-to-charge ratio multiplied by covered charges. The Administration shall continue to use the statewide average outpatient hospital cost-to-charge ratio for a new hospital until the Administration rebases the outpatient hospital cost-to-charge ratios and the new hospital has a Medicare Cost Report for the fiscal year being used in the rebasing.
 3. Specialty outpatient services. The Administration may negotiate, at any time, reimbursement rates for outpatient hospital services in a specialty facility.
 4. Reimbursement requirements. To receive payment from the Administration, a hospital shall submit claims that are legible, accurate, error free, and have a covered charge greater than zero. The Administration shall not reimburse hospitals for emergency room treatment, observation hours or days, or other outpatient hospital services performed on an outpatient basis, if the eligible person is admitted as an inpatient to the same hospital directly from the emergency room, observation area, or other outpatient department. Services provided in the emergency room, observation area, and other outpatient hospital services provided before the hospital admission are included in the tiered per diem payment.
 5. Rebasing. The Administration shall rebase the outpatient hospital cost-to-charge ratios at least every four years but no more than once a year using updated Medicare Cost Reports and claim and encounter data.
 6. If a hospital files an increase in its charge master for an existing outpatient service provided on or after July 1, 2004, and on or before June 30, 2005, which represents an aggregate increase in charges of more than 4.7%, the Administration shall adjust the hospital-specific cost-to-charge ratio as calculated under subsection (G)(1) through (5) by applying the following formula:

$$CCR * [1.047 / (1 + \% \text{ increase})]$$

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

Where “CCR” means the hospital-specific cost-to-charge ratio as calculated under subsection (G)(1) through (5) and “% increase” means the aggregate percentage increase in charges for outpatient services shown on the hospital charge master.

“Charge master” means the schedule of rates and charges as described under A.R.S. § 36-436 and the rules that relate to those rates and charges that are filed with the Director of the Arizona Department of Health Services.

Historical Note

Adopted as an emergency effective February 23, 1983 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Adopted as a permanent rule effective May 16, 1983; text of adopted rule identical to emergency (Supp. 83-3). Former Section R9-22-712 repealed, new Section R9-22-712 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-712 renumbered and amended as Section R9-22-1001 effective October 1, 1985 (Supp. 85-5). New Section R9-22-712 adopted under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended effective January 14, 1997 (Supp. 97-1). Amended by exempt rulemaking at 10 A.A.R. 3831, effective August 25, 2004 (Supp. 04-3). Amended by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 11 A.A.R. 3231, effective October 1, 2005 (Supp. 05-3). Amended by final rulemaking at 14 A.A.R. 1439, effective May 31, 2008 (Supp. 08-2). Amended by exempt rulemaking at 17 A.A.R. 1337, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.01. Inpatient Hospital Reimbursement for claims with admission dates and discharge dates from October 1, 1998 through September 30, 2014

Inpatient hospital reimbursement. The Administration shall pay for covered inpatient acute care hospital services provided to eligible persons for claims with admission dates and discharge dates from October 1, 1998 through September 30, 2014, on a prospective reimbursement basis. The prospective rates represent payment in full, excluding quick-pay discounts, slow-pay penalties, and third-party payments for both accommodation and ancillary department services. The rates include reimbursement for operating and capital costs. The Administration shall make reimbursement for direct graduate medical education as described in A.R.S. § 36-2903.01. For payment purposes, the Administration shall classify each AHCCCS inpatient hospital day of care into one of several tiers appropriate to the services rendered. The rate for a tier is referred to as the tiered per diem rate of reimbursement. The number of tiers is seven and the maximum number of tiers payable per continuous stay is two. Payment of outlier claims, transplant claims, or payment to out-of-state hospitals, freestanding psychiatric hospitals, and other specialty facilities may differ from the inpatient hospital tiered per diem rates of reimbursement described in this Section.

1. Tier rate data. The Administration shall base tiered per diem rates effective on and after October 1, 1998 on Medicare Cost Reports for Arizona hospitals for the fiscal year ending in 1996 and a database consisting of inpatient hospital claims and encounters for dates of service matching each hospital’s 1996 fiscal year end.

- a. Medicare Cost Report data. Because Medicare Cost Report years are not standard among hospitals and were not audited at the time of the rate calculation, the Administration shall inflate all the costs to a common point in time as described in subsection (2) for each component of the tiered per diem rates. The Administration shall not make any changes to the tiered per diem rates if the Medicare Cost Report data are subsequently updated or adjusted. If a single Medicare Cost Report is filed for more than one hospital, the Administration shall allocate the costs to each of the respective hospitals. A hospital shall submit information to assist the Administration in this allocation.
 - b. Claim and encounter data. For the database, the Administration shall use only those inpatient hospital claims paid by the Administration and encounters that were accepted and processed by the Administration at the time the database was developed for rates effective on and after October 1, 1998. The Administration shall subject the claim and encounter data to a series of data quality, reasonableness, and integrity edits and shall exclude from the database or adjust claims and encounters that fail these edits. The Administration shall also exclude from the database the following claims and encounters:
 - i. Those missing information necessary for the rate calculation,
 - ii. Medicare crossovers,
 - iii. Those submitted by freestanding psychiatric hospitals, and
 - iv. Those for transplant services or any other hospital service that the Administration would pay on a basis other than the tiered per diem rate.
2. Tier rate components. The Administration shall establish inpatient hospital prospective tiered per diem rates based on the sum of the operating and capital components. The rate for the operating component is a statewide rate for each tier except for the NICU and Routine tiers, which are based on peer groups. The rate for the capital component is a blend of statewide and hospital-specific values, as described in A.R.S. § 36-2903.01. The Administration shall use the following methodologies to establish the rates for each of these components.
 - a. Operating component. Using the Medicare Cost Reports and the claim and encounter database, the Administration shall compute the rate for the operating component as follows:
 - i. Data preparation. The Administration shall identify and group into department categories, the Medicare Cost Report data that provide ancillary department cost-to-charge ratios and accommodation costs per day. To comply with 42 CFR 447.271, the Administration shall limit cost-to-charge ratios to 1.00 for each ancillary department.
 - ii. Operating cost calculation. To calculate the rate for the operating component, the Administration shall derive the operating costs from claims and encounters by combining the Medicare Cost Report data and the claim and encounter database for all hospitals. In performing this calculation, the Administration shall match the revenue codes on the claims and encounters to the

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

- departments in which the line items on the Medicare Cost Reports are grouped. The ancillary department cost-to-charge ratios for a particular hospital are multiplied by the covered ancillary department charges on each of the hospital's claims and encounters. The AHCCCS inpatient days of care on the particular hospital's claims and encounters are multiplied by the corresponding accommodation costs per day from the hospital's Medicare Cost Report. The ancillary cost-to-charge ratios and accommodation costs per day do not include medical education and capital costs. The Administration shall inflate the resulting operating costs for the claims and encounters of each hospital to a common point in time, December 31, 1996, using the DRI inflation factor and shall reduce the operating costs for the hospital by an audit adjustment factor based on available national data and Arizona historical experience in adjustments to Medicare reimbursable costs. The Administration shall further inflate operating costs to the midpoint of the rate year (March 31, 1999).
- iii. Operating cost tier assignment. After calculating the operating costs, the Administration shall assign the claims and encounters used in the calculation to tiers based on diagnosis, procedure, or revenue codes, or NICU classification level, or a combination of these. For the NICU tier, the Administration shall further assign claims and encounters to NICU Level II or NICU Level III peer groups, based on the hospital's certification by the Arizona Perinatal Trust. For the Routine tier, the Administration shall further assign claims and encounters to the general acute care hospital or rehabilitation hospital peer groups, based on state licensure by the Department of Health Services. For claims and encounters assigned to more than one tier, the Administration shall allocate ancillary department costs to the tiers in the same proportion as the accommodation costs. Before calculating the rate for the operating component, the Administration shall identify and exclude any claims and encounters that are outliers as defined in subsection (6).
 - iv. Operating rate calculation. The Administration shall set the rate for the operating component for each tier by dividing total statewide or peer group hospital costs identified in this subsection within the tier by the total number of AHCCCS inpatient hospital days of care reflected in the claim and encounter database for that tier.
- b. Capital component. For rates effective October 1, 1999 the capital component is calculated as described in A.R.S. § 36-2903.01.
 - c. Statewide inpatient hospital cost-to-charge ratio. For dates of service prior to October 1, 2007, the statewide inpatient hospital cost-to-charge ratio is used for payment of outliers, as described in subsections (4), (5), and (6), and out-of-state hospitals, as described in R9-22-712(B). The Administration shall calculate the AHCCCS statewide inpatient hospital cost-to-charge ratio by using the Medicare Cost Report data and claim and encounter database described in subsection (1) and used to determine the tiered per diem rates. For each hospital, the covered inpatient days of care on the claims and encounters are multiplied by the corresponding accommodation costs per day from the Medicare Cost Report. Similarly, the covered ancillary department charges on the claims and encounters are multiplied by the ancillary department cost-to-charge ratios. The accommodation costs per day and the ancillary department cost-to-charge ratios for each hospital are determined in the same way described in subsection (2)(a) but include costs for operating and capital. The Administration shall then calculate the statewide inpatient hospital cost-to-charge ratio by summing the covered accommodation costs and ancillary department costs from the claims and encounters for all hospitals and dividing by the sum of the total covered charges for these services for all hospitals.
 - d. Unassigned tiered per diem rates. If a hospital has an insufficient number of claims to set a tiered per diem rate, the Administration shall pay that hospital the statewide average rate for that tier.
3. Tier assignment. The Administration shall assign AHCCCS inpatient hospital days of care to tiers based on information submitted on the inpatient hospital claim or encounter including diagnosis, procedure, or revenue codes, peer group, NICU classification level, or a combination of these.
 - a. Tier hierarchy. In assigning claims for AHCCCS inpatient hospital days of care to a tier, the Administration shall follow the Hierarchy for Tier Assignment through September 30, 2014 in R9-22-712.09. The Administration shall not pay a claim for inpatient hospital services unless the claim meets medical review criteria and the definition of a clean claim. The Administration shall not pay for a hospital stay on the basis of more than two tiers, regardless of the number of interim claims that are submitted by the hospital.
 - b. Tier exclusions. The Administration shall not assign to a tier or pay AHCCCS inpatient hospital days of care that do not occur during a period when the person is eligible. Except in the case of death, the Administration shall pay claims in which the day of admission and the day of discharge are the same, termed a same day admit and discharge, including same day transfers, as an outpatient hospital claim. The Administration shall pay same day admit and discharge claims that qualify for either the maternity or nursery tiers based on the lesser of the rate for the maternity or nursery tier, or the outpatient hospital fee schedule.
 - c. Seven tiers. The seven tiers are:
 - i. Maternity. The Administration shall identify the Maternity Tier by a primary diagnosis code. If a claim has an appropriate primary diagnosis, the Administration shall pay the AHCCCS inpatient hospital days of care on the claim at the maternity tiered per diem rate.
 - ii. NICU. The Administration shall identify the NICU Tier by a revenue code. A hospital

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

- does not qualify for the NICU tiered per diem rate unless the hospital is classified as either a NICU Level II or NICU Level III perinatal center by the Arizona Perinatal Trust. The Administration shall pay AHCCCS inpatient hospital days of care on the claim that meet the medical review criteria for the NICU tier and have a NICU revenue code at the NICU tiered per diem rate. The Administration shall pay any remaining AHCCCS inpatient hospital day on the claim that does not meet NICU Level II or NICU Level III medical review criteria at the nursery tiered per diem rate.
- iii. ICU. The Administration shall identify the ICU Tier by a revenue code. The Administration shall pay AHCCCS inpatient hospital days of care on the claim that meets the medical review criteria for the ICU tier and has an ICU revenue code at the ICU tiered per diem rate. The Administration may classify any AHCCCS inpatient hospital days on the claim without an ICU revenue code, as surgery, psychiatric, or routine tiers.
 - iv. Surgery. The Administration shall identify the Surgery Tier by a revenue code and a valid surgical procedure code that is not on the AHCCCS excluded surgical procedure list. The excluded surgical procedure list identifies minor procedures such as sutures that do not require the same hospital resources as other procedures. The Administration shall only split a surgery tier with an ICU tier. AHCCCS shall pay at the surgery tier rate only when the surgery occurs on a date during which the member is eligible.
 - v. Psychiatric. The Administration shall identify the Psychiatric Tier by either a psychiatric revenue code and a psychiatric diagnosis or any routine revenue code if all diagnosis codes on the claim are psychiatric. The Administration shall not split a claim with AHCCCS inpatient hospital days of care in the psychiatric tier with any tier other than the ICU tier.
 - vi. Nursery. The Administration shall identify the Nursery Tier by a revenue code. The Administration shall not split a claim with AHCCCS inpatient hospital days of care in the nursery tier with any tier other than the NICU tier.
 - vii. Routine. The Administration shall identify the Routine Tier by revenue codes. The routine tier includes AHCCCS inpatient hospital days of care that are not classified in another tier or paid under any other provision of this Section. The Administration shall not split the routine tier with any tier other than the ICU tier.
4. Annual update. The Administration shall annually update the inpatient hospital tiered per diem rates through September 30, 2011.
 5. New hospitals. For rates effective on and after October 1, 1998, the Administration shall pay new hospitals the statewide average rate for each tier, as appropriate. The Administration shall update new hospital tiered per diem rates through September 30, 2011.
 6. Outliers. The Administration shall reimburse hospitals for AHCCCS inpatient hospital days of care identified as outliers under this Section by multiplying the covered charges on a claim by the Medicare Urban or Rural Cost-to-Charge Ratio. The Urban cost-to-charge ratio will be used for hospitals located in a county of 500,000 residents or more. The Rural cost-to-charge ratio will be used for hospitals located in a county of fewer than 500,000 residents.
 - a. Outlier criteria. For rates effective on and after October 1, 1998, the Administration set the statewide outlier cost threshold for each tier at the greater of three standard deviations from the statewide mean operating cost per day within the tier, or two standard deviations from the statewide mean operating cost per day across all the tiers. If the covered costs per day on a claim exceed the urban or rural cost threshold for a tier, the claim is considered an outlier. Outliers will be paid by multiplying the covered charges by the applicable Medicare Urban or Rural CCR. The resulting amount will be the outlier payment. If there are two tiers on a claim, the Administration shall determine whether the claim is an outlier by using a weighted threshold for the two tiers. The weighted threshold is calculated by multiplying each tier rate by the number of AHCCCS inpatient hospital days of care for that tier and dividing the product by the total tier days for that hospital. Routine maternity stays shall be excluded from outlier reimbursement. A routine maternity is any one-day stay with a delivery of one or two babies. A routine maternity stay will be paid at tier.
 - b. Update. The CCR is updated annually by the Administration for dates of service beginning October 1, using the most current Medicare cost-to-charge ratios published or placed on display by CMS by August 31 of that year. The Administration shall update the outlier cost thresholds for each hospital through September 30, 2011 as described under A.R.S. § 36-2903.01. For inpatient hospital admissions with begin dates of service on and after October 1, 2011, AHCCCS will increase the outlier cost thresholds by 5% of the thresholds that were effective on September 30, 2011.
 - c. Medicare Cost-to-Charge Ratio Phase-In. AHCCCS shall phase in the use of the Medicare Urban or Rural Cost-to-Charge Ratios for outlier determination, calculation and payment. The three-year phase-in does not apply to out-of-state or new hospitals.
 - i. Medicare Cost-to-Charge Ratio Phase-In outlier determination and threshold calculation. For outlier claims with dates of service on or after October 1, 2007 through September 30, 2008, AHCCCS shall adjust each hospital specific inpatient cost-to-charge ratio in effect on September 30, 2007 by subtracting one-third of the difference between the hospital specific inpatient cost-to-charge ratio and the effective Medicare Urban or Rural Cost-to-Charge Ratio. For outlier claims with dates of service on or after October 1, 2008 through September 30, 2009, AHCCCS shall adjust each hospital specific inpatient cost-to-charge ratio in effect on

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

- September 30, 2007 by subtracting two-thirds of the difference between the hospital specific inpatient cost-to-charge ratio and the effective Medicare Urban or Rural Cost-to-Charge Ratio. The adjusted hospital specific inpatient cost-to-charge ratios shall be used for all calculations using the Medicare Urban or Rural Cost-to-Charge Ratios, including outlier determination, and threshold calculation.
- ii. Medicare Cost-to-Charge Ratio Phase-In calculation for payment. For payment of outlier claims with dates of service on or after October 1, 2007 through September 30, 2008, AHCCCS shall adjust the statewide inpatient hospital cost-to-charge ratio in effect on September 30, 2007 by subtracting one-third of the difference between the statewide inpatient hospital cost-to-charge ratio and the effective Medicare urban or rural cost-to-charge ratio. For payment of outlier claims with dates of service on or after October 1, 2008 through September 30, 2009, AHCCCS shall adjust the statewide inpatient hospital cost-to-charge ratio in effect on September 30, 2007 by subtracting two-thirds of the difference between the statewide inpatient hospital cost-to-charge ratio and the effective Medicare urban or rural cost-to-charge ratio.
- iii. Medicare Cost-to-Charge Ratio for outlier determination, threshold calculation, and payment. For outlier claims with dates of service on or after October 1, 2009, the full Medicare Urban or Rural Cost-to-Charge Ratios shall be utilized for all outlier calculations.
- d. Cost-to-Charge Ratio used for qualification and payment of outlier claims.
 - i. For qualification and payment of outlier claims with begin dates of service on or after April 1, 2011 through September 30, 2011, the CCR will be equal to 95% of the ratios in effect on October 1, 2010.
 - ii. For qualification and payment of outlier claims with begin dates of service on or after October 1, 2011, the CCR will be equal to 90.25% of the most recent published Urban or Rural Medicare CCR as described in subsection (6)(b).
 - iii. For qualification and payment of outlier claims with begin dates of service on or after October 1, 2011 through September 30, 2012, AHCCCS will reduce the cost-to-charge ratio determined under subsection (6)(d)(ii) for a hospital that filed a charge master with ADHS on or after April 1, 2011 by an additional percentage equal to the total percent increase reported on the charge master.
 - iv. Subject to approval by CMS, for qualification and payment of outlier claims with begin dates of service on or after October 1, 2012, AHCCCS will reduce the cost-to-charge ratio determined under subsection (6)(d)(ii) for a hospital that filed a charge

master with ADHS on or after June 1, 2012 by an additional percentage equal to the total percent increase reported on the charge master.

- 7. Transplants. The Administration shall reimburse hospitals for an AHCCCS inpatient stay in which a covered transplant as described in R9-22-206 is performed through the terms of the relevant contract. If the Administration and a hospital that performs transplant surgery on an eligible person do not have a contract for the transplant surgery, the Administration shall not reimburse the hospital more than what would have been paid to the contracted hospital for that same surgery.
- 8. Ownership change. The Administration shall not change any of the components of a hospital's tiered per diem rates upon an ownership change.
- 9. Psychiatric hospitals. The Administration shall pay free-standing psychiatric hospitals an all-inclusive per diem rate based on the contracted rates used by the Department of Health Services.
- 10. Specialty facilities. The Administration may negotiate, at any time, reimbursement rates for inpatient specialty facilities or inpatient hospital services not otherwise addressed in this Section as provided by A.R.S. § 36-2903.01. For purposes of this subsection, "specialty facility" means a facility where the service provided is limited to a specific population, such as rehabilitative services for children.
- 11. Outliers for new hospitals. Outliers for new hospitals will be calculated using the Medicare Urban or Rural Cost-to-Charge Ratio times covered charges. If the resulting cost is equal to or above the cost threshold, the claim will be paid at the Medicare Urban or Rural Cost-to-Charge ratio.
- 12. Reductions to tiered per diem payment for inpatient hospital services. Inpatient hospital admissions with begin dates of service on or after October 1, 2011, shall be reimbursed at 95 percent of the tiered per diem rates in effect on September 30, 2011.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 3231, effective October 1, 2005 (Supp. 05-3). Amended by exempt rulemaking at 13 A.A.R. 3190, effective October 1, 2007 (Supp. 07-3). Amended by exempt rulemaking at 17 A.A.R. 1337, effective October 1, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 1914, effective July 18, 2012 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 3315, effective November 30, 2013 (Supp. 13-4). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

- R9-22-712.02. Reserved**
- R9-22-712.03. Reserved**
- R9-22-712.04. Reserved**
- R9-22-712.05. Graduate Medical Education Fund Allocation**
 - A.** Graduate medical education (GME) reimbursement as of September 30, 1997. Subject to legislative appropriation, the Administration shall make a distribution based on direct graduate medical education costs as described in A.R.S. § 36-2903.01(G)(9)(a).
 - B.** Subject to available funds and approval by CMS, the Administration shall annually distribute monies appropriated for the expansions of GME programs approved by the Administration to hospitals for direct program costs eligible for funding under

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

A.R.S. § 36-2903.01(G)(9)(b). A GME program is deemed to be established as of the date of its original accreditation. All determinations that are necessary to make distributions described by this subsection shall be made using information possessed by the Administration as of the date of reporting under subsection (B)(3).

1. Eligible health care facilities. A health care facility is eligible for distributions under subsection (B) if all of the following apply:
 - a. It is a hospital in Arizona that is the sponsoring institution of, or a participating institution in, one or more of the GME programs in Arizona;
 - b. It incurs direct costs for the training of residents in the GME programs, which costs are or will be reported on the hospital's Medicare Cost Report;
 - c. It is not administered by or does not receive its primary funding from an agency of the federal government.
2. Eligible resident positions. For purposes of determining program allocation amounts under subsection (B)(4) the following resident positions are eligible for consideration to the extent that the resident training takes place in Arizona and not at a health care facility made ineligible under subsection (B)(1)(c):
 - a. Filled resident positions in approved programs established as of October 1, 1999 at hospitals that receive funding as described in A.R.S. § 36-2903.01(G)(9)(a) that are additional to the number of resident positions that were filled as of October 1, 1999; and
 - b. All filled resident positions in approved programs other than GME programs described in A.R.S. § 36-2903.01(G)(9)(a) that were established before July 1, 2006.
3. Annual reporting. By April 1st of each year, each GME program and each hospital seeking a distribution under subsection (B) shall provide the applicable information listed in this subsection to the Administration:
 - a. A GME program shall provide all of the following:
 - i. The program name and number assigned by the accrediting organization;
 - ii. The original date of accreditation;
 - iii. The names of the sponsoring institution and all participating institutions current as of the date of reporting;
 - iv. The number of approved resident positions and the number of filled resident positions current as of the date of reporting;
 - v. For programs established as of October 1, 1999, the number of resident positions that were filled as of October 1, 1999, if the program has not already provided this information to the Administration;
 - b. A hospital seeking a distribution under subsection (B) shall provide all of the following that apply:
 - i. If the hospital uses the Intern and Resident Information System (IRIS) for tracking and reporting its resident activity to the fiscal intermediary, copies of the IRIS master and assignment files for the hospital's two most recently completed Medicare cost reporting years as filed with the fiscal intermediary;
 - ii. If the hospital does not use the IRIS or has less than two cost reporting years available in the form of the IRIS master and assignment files, the information normally contained in the IRIS master and assignment files in an alternative format for the hospital's two most recently completed Medicare cost reporting years;
4. Allocation of expansion funds. Annually the Administration shall allocate available funds to each approved GME program in the following manner:
 - a. Information provided by hospitals under subsection (B)(3)(b) shall be used to determine the program in which each eligible resident is enrolled and the number of days that each eligible resident worked in any area of the hospital complex or in a non-hospital setting under agreement with the reporting hospital during the period of assignment to that hospital. For this purpose, the Administration shall use data relating to the most recent 12-month period that is common to all information provided under subsections (B)(3)(b)(i) and (ii).
 - b. The number of eligible residents allocated to each participating institution within each approved GME program shall be determined as follows:
 - i. Total the number of days determined for each participating institution under subsection (B)(4)(a) and divide each total by 365.
 - ii. Proportionally adjust the result of subsection (B)(4)(b)(i) for each participating institution within each program according to the number of residents determined to be eligible under subsection (B)(2).
 - c. The number of allocated eligible residents determined under subsection (B)(4)(b)(ii) shall be adjusted for Arizona Medicaid utilization using the most recent Medicare Cost Report information on file with the Administration as of the date of reporting under subsection (B)(3) and the Administration's inpatient hospital claims and encounter data for the time period corresponding to the Medicare Cost Report information for each hospital. The Administration shall use only those inpatient hospital claims paid by the Administration and encounters that were adjudicated by the Administration as of the date of reporting under subsection (B)(3). The Medicaid-adjusted eligible residents shall be determined as follows:
 - i. For each hospital, the total AHCCCS inpatient hospital days of care shall be divided by the total Medicare Cost Report inpatient hospital days, multiplied by 100 and rounded up to the nearest multiple of 5 percent.
 - ii. The number of allocated eligible residents determined for each participating hospital under subsection (B)(4)(b)(ii) shall be multiplied by the percentage derived under subsection (B)(4)(c)(i) for that hospital. The number of allocated eligible residents determined under subsection (B)(4)(b)(ii) for a participating institution that is not a hospital and not a health care facility made ineligible under subsection (B)(1)(c) shall be multiplied by the percentage derived under subsection (B)(4)(c)(i) for the program's sponsoring institution or, if the sponsoring

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

- institution is not a hospital, the sponsoring institution's affiliated hospital. The number of allocated eligible residents determined under subsection (B)(4)(b)(ii) for a participating institution that is made ineligible under subsection (B)(1)(c) shall be multiplied by zero percent.
- d. The total allocation for each approved program shall be determined by multiplying the Medicaid-adjusted eligible residents determined under subsection (B)(4)(c)(ii) by the per-resident conversion factor determined below and totaling the resulting dollar amounts for all participating institutions in the program. The per-resident conversion factor shall be determined as follows:
 - i. Calculate the total direct GME costs from the most recent Medicare Cost Reports on file with the Administration for all hospitals that have reported such costs.
 - ii. Calculate the total allocated residents determined under subsection (B)(4)(b)(i) for those hospitals described under subsection (B)(4)(d)(i).
 - iii. Divide the total GME costs calculated under subsection (B)(4)(d)(i) by the total allocated residents calculated under subsection (B)(4)(d)(ii).
5. Distribution of expansion funds. On an annual basis subject to available funds, the Administration shall distribute the allocated amounts determined under subsection (B)(4) in the following manner:
- a. The allocated amounts shall be distributed in the following order of priority:
 - i. To eligible hospitals that do not receive funding in accordance with A.R.S. § 36-2903.01(G)(9)(a) for the direct costs of programs established before July 1, 2006;
 - ii. To eligible hospitals that receive funding in accordance with A.R.S. § 36-2903.01(G)(9)(a) for the direct costs of programs established before July 1, 2006;
 - b. The allocated amounts shall be distributed to the eligible hospitals in each approved program in proportion to the number of Medicaid-adjusted eligible residents allocated to each hospital within that program under subsection (B)(4)(c)(ii).
 - c. If funds are insufficient to cover all distributions within any priority group described under subsection (B)(5)(a), the Administration shall adjust the distributions proportionally within that priority group.
- C. Subject to available funds and approval by CMS, the Administration shall annually distribute monies appropriated for the expansions of GME programs approved by the Administration to hospitals for direct program costs eligible for funding under A.R.S. § 36-2903.01(G)(9)(c)(i). A GME program is deemed to be established as of the date of its original accreditation. All determinations that are necessary to make distributions described by this subsection shall be made using information possessed by the Administration as of the date of reporting under subsection (C)(3).
1. Eligible health care facilities. A health care facility is eligible for distributions under subsection (C) if it meets all the conditions of subsections (B)(1)(a) through (c).
 2. Eligible resident positions. For purposes of determining program allocation amounts under subsection (C)(4), the following resident positions are eligible for consideration to the extent that the resident training takes place in Arizona and not at a health care facility made ineligible under subsection (B)(1)(c):
 - a. All filled resident positions in approved programs established on or after July 1, 2006; and
 - b. For approved programs established on or after July 1, 2006 that have been established for less than one year as of the date of reporting under subsection (C)(3) and have not yet filled their first-year resident positions, all prospective residents reasonably expected by the program to be enrolled as a result of the most recently completed annual resident match.
3. Annual reporting. By April 1st of each year, each GME program and each hospital seeking a distribution under subsection (C) shall provide to the Administration:
- a. A GME program shall provide all of the following:
 - i. The requirements of subsections (B)(3)(a)(i) through (iv);
 - ii. The academic year rotation schedule on file with the program current as of the date of reporting; and
 - iii. For programs described under subsection (C)(2)(b), the number of residents expected to be enrolled as a result of the most recently completed annual resident match.
 - b. A hospital seeking a distribution under subsection (C) shall provide the requirements of subsection (B)(3)(b).
4. Allocation of expansion funds. Annually the Administration shall allocate available funds to approved GME programs in the following manner:
- a. Information provided by hospitals in accordance with subsection (B)(3)(b) shall be used to determine the program in which each eligible resident is enrolled and the number of days that each eligible resident worked in any area of the hospital complex or in a non-hospital setting under agreement with the reporting hospital during the period of assignment to that hospital. For this purpose, the Administration shall use data relating to the most recent 12-month period that is common to all information provided in accordance with subsections (B)(3)(b)(i) and (ii).
 - b. For approved programs whose resident activity is not represented in the information provided in accordance with subsection (B)(3)(b), information provided by GME programs under subsection (C)(3)(a) shall be used to determine the number of days that each eligible resident is expected to work at each participating institution.
 - c. The number of eligible residents allocated to each participating institution for each approved GME program shall be determined by totaling the number of days determined under subsections (C)(4)(a) and (b) and dividing the totals by 365.
 - d. The number of allocated residents determined under subsection (C)(4)(c) shall be adjusted for Arizona Medicaid utilization in accordance with subsection (B)(4)(c).
 - e. The total allocation for each approved program shall be determined in accordance with subsection (B)(4)(d).
5. Distribution of expansion funds. On an annual basis subject to available funds, the Administration shall distribute the allocated amounts determined under subsection (C)(4) to the eligible hospitals in each approved program in proportion to the number of Medicaid-adjusted eligible

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

- residents allocated to each within that program under subsection (C)(4)(d).
- D.** Subject to available funds and approval by CMS, the Administration shall annually distribute monies appropriated for GME programs approved by the Administration to hospitals for indirect program costs eligible for funding under A.R.S. § 36-2903.01(G)(9)(c)(ii). A GME program is deemed to be established as of the date of its original accreditation. All determinations that are necessary to make distributions described by this subsection shall be made using information possessed by the Administration as of the date of reporting under subsection (D)(3).
1. Eligible health care facilities. A health care facility is eligible for distributions under subsection (D) if all of the following apply:
 - a. It is a hospital in Arizona that is the sponsoring institution of, or a participating institution in, one or more of the GME programs in Arizona or is the base hospital for one or more of the GME programs in Arizona whose sponsoring institutions are not hospitals;
 - b. It incurs indirect program costs for the training of residents in the GME programs, which are or will be calculated on the hospital's Medicare Cost Report or are reimbursable under the Children's Hospitals Graduate Medical Education Payment Program administered by HRSA;
 - c. It is not administered by or does not receive its primary funding from an agency of the federal government.
 2. Eligible resident positions. For purposes of determining program allocation amounts under subsection (D)(4) the following resident positions are eligible for consideration to the extent that the resident training takes place in Arizona and not at a health care facility made ineligible under subsection (D)(1)(c):
 - a. Any filled resident position in an approved program that includes a rotation of at least one month per year in a county other than Maricopa or Pima whose population was less than 500,000 persons at the time the residency rotation was added to the academic year rotation schedule;
 - b. For approved programs that have been established for less than one year as of the date of reporting under subsection (D)(3) and have not yet filled their first-year resident positions, all prospective residents reasonably expected by the program to be enrolled as a result of the most recently completed annual resident match who will perform rotations of at least one month per year in a county other than Maricopa or Pima whose population was less than 500,000 persons at the time the residency rotation was added to the academic year rotation schedule.
 3. Annual reporting. By April 1st of each year, each GME program and each hospital seeking a distribution under subsection (D) shall provide to the Administration:
 - a. A GME program shall provide all of the following:
 - i. The requirements of subsections (B)(3)(a)(i) through (iv);
 - ii. The academic year rotation schedule on file with the program current as of the date of reporting;
 - iii. For programs described under subsection (D)(2)(c), the number of residents expected to be enrolled as a result of the most recently completed annual resident match.
 - b. A hospital seeking a distribution under subsection (D) shall provide the requirements of subsection (B)(3)(b)(iii).
 4. Allocation of funds for indirect program costs. Annually the Administration shall allocate available funds to approved GME programs in the following manner:
 - a. Using the information provided by programs under subsection (D)(3), the Administration shall determine for each program the number of residents in the program who are eligible under subsection (D)(2) and the number of months per year that each eligible resident will perform rotations in counties described by subsection (D)(2), multiply the number of eligible residents by the number of months and multiply the result by the per resident per month conversion factor determined under subsection (D)(4)(b).
 - b. Using the most recent Medicare Cost Reports on file with the Administration for all hospitals that have calculated a Medicare indirect medical education payment, the Administration shall determine a per resident per month conversion factor as follows:
 - i. Calculate each hospital's Medicare share by dividing the Medicare inpatient discharges on the Medicare Cost Report by the total inpatient hospital discharges on the Medicare Cost Report.
 - ii. Calculate the ratio of residents to beds by dividing the total allocated residents described in subsection (B)(4)(d)(ii) by the number of bed days available from the Medicare Cost Report and dividing the result by the number of days in the cost reporting period.
 - iii. Calculate the indirect medical education adjustment factor by adding 1 to the value calculated in (D)(4)(b)(ii), multiplying the result by the exponential value 0.405, subtracting 1 from the result, and multiplying that result by 1.35.
 - iv. Calculate each hospital's total indirect medical education cost by adding the DRG amounts other than outlier payments from the Medicare cost report and the managed care simulated payments from the Medicare Cost Report, multiplying the total by the indirect medical education adjustment factor determined in (D)(4)(b)(iii) and dividing the result by the Medicare share determined in (D)(4)(b)(i).
 - v. Calculate each hospital's Medicaid indirect medical education cost by multiplying the amount determined in (D)(4)(b)(iv) by the value determined in subsection (B)(4)(c)(i).
 - vi. Total the amounts determined in (D)(4)(b)(v) for all hospitals, divide the result by the total allocated residents described in subsection (B)(4)(d)(ii) for all hospitals, and divide that result by 12.
 5. Distribution of funds for indirect program costs. On an annual basis subject to available funds, the Administration shall distribute to each eligible hospital the amount calculated for the hospital at subsection (D)(4)(a).
- E.** Reallocation of funds. If funds appropriated for subsection (B) are not allocated by the Administration and funds appropriated for subsections (C) and (D) are insufficient to cover all distri-

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

butions under subsections (C)(5) and (D)(5), the funds not allocated under subsection (B) shall be allocated under subsections (C) and (D) to the extent of the calculated distributions. If funds are insufficient to cover all distributions under subsections (C)(5) and (D)(5), the Administration shall adjust the distributions proportionally. If funds appropriated for subsections (C) and (D) are not allocated by the Administration and funds appropriated for subsection (B) are insufficient to cover all distributions under subsection (B)(5), the funds not allocated under subsections (C) and (D) shall be allocated under subsection (B) to the extent of the calculated distributions.

F. The Administration may enter into intergovernmental agreements with local, county, and tribal governments wherein local, county and tribal governments may transfer funds or certify public expenditures to the Administration. Such funds or certification, subject to approval by CMS, will be used to qualify for additional federal funds. Those funds will be used for the purposes of reimbursing hospitals that are eligible under subsection (D)(1) and specified by the local, county, or tribal government for indirect program costs other than those reimbursed under subsection (D). The Administration shall allocate available funds in accordance with subsection (D) except that reimbursement with such funds is not limited to resident positions or rotations in counties with populations of less than 500,000 persons. On an annual basis subject to available funds, the Administration shall distribute to each eligible hospital the greatest among the following amounts, less any amounts distributed under subsection (D)(5):

1. The amount that results from multiplying the total number of eligible residents allocated to the hospital under subsection (B)(4)(d)(ii) by 12 by the per resident per month conversion factor determined under subsection (D)(4)(b);
2. The amount calculated for the hospital at subsection (D)(4)(b)(v);
3. The median of all amounts calculated at subsection (D)(4)(b)(v) if the hospital does not have an indirect medical education payment calculated on the Medicare Cost Report because it is a new training hospital; or
4. If the hospital does not have an indirect medical education payment calculated on the Medicare Cost Report because it is a children's hospital, the median Medicaid indirect medical education payment costs shall be calculated as follows:
 - a. For each hospital with indirect medical education costs on the Medicare Cost Report, determine a per resident total indirect medical education cost by dividing the total indirect medical education costs determined under subsection (D)(4)(b) by the number of filled resident positions under subsection (B)(2).
 - b. Determine the median per resident amount under subsection (F)(4)(a).
 - c. For each hospital without an indirect medical education component on the Medicare cost report, multiply the median per resident amount under subsection (F)(4)(b) by the number of filled resident positions under subsection (B)(2) for that hospital and by the Medicaid utilization percent for that hospital determined in subsection (B)(4)(c)(i).

Historical Note

New Section made by final rulemaking at 13 A.A.R. 1782, effective June 30, 2007 (Supp. 07-2). Amended by exempt rulemaking at 13 A.A.R. 4032, effective November 1, 2007 (Supp. 07-4). Amended by final rulemaking at 21 A.A.R. 3469, effective January 30, 2016 (Supp. 15-

4). Amended by final rulemaking at 24 A.A.R. 185, effective January 9, 2018 (Supp. 18-1). Amended by final rulemaking at 24 A.A.R. 3321, effective January 5, 2019 (Supp. 18-4).

R9-22-712.06. Reserved**R9-22-712.07. Rural Hospital Inpatient Fund Allocation**

- A. For purposes of this Section, the following words and phrases have the following meanings unless the context specifically requires another meaning:
1. "Calculated inpatient costs" means the sum of inpatient covered charges multiplied by the Milliman study's implied cost-to-charge ratio of .8959.
 2. "Claims paid amount" means the sum of all claims paid by the Administration and contractors, as reported by the contractor to the Administration, to a rural hospital for covered inpatient services rendered for dates of service during the previous state fiscal year.
 3. "Fund" means any state funds appropriated by the Legislature for the purposes set forth in A.R.S. § 36-2905.02 and any federal funds that are available for matching the state funds.
 4. "Inpatient covered charges" means the sum of all covered charges billed by a hospital to the Administration or contractors, as reported by the contractors to the Administration, for inpatient services rendered during the previous state fiscal year.
 5. "Milliman study" means the report issued by Milliman USA on March 11, 2004, to the Arizona Hospital and Healthcare Association that updated a portion of a cost study entitled "Evaluation of the AHCCCS Inpatient Hospital Reimbursement System" prepared by Milliman USA for AHCCCS on November 15, 2002. A copy of each report is on file with the Administration.
 6. "Rural hospital" means a health care institution that is licensed as an acute care hospital by the Arizona Department of Health Services for the previous state fiscal year and is not an IHS hospital or a tribally owned or operated facility and:
 - a. Has 100 or fewer PPS beds, not including beds reported as sub provider beds on the hospital's Medicare Cost Report, and is located in a county with a population of less than 500,000 persons, or
 - b. Is designated as a critical access hospital for the majority of the previous state fiscal year.
- B. Each February, the Administration shall allocate the Fund to the following three pools for the fiscal year:
1. Rural hospitals with 25 or fewer PPS beds not including sub provider beds and all Critical Access Hospitals, regardless of the number of beds in the Critical Access Hospital;
 2. Rural hospitals other than Critical Access Hospitals with 26 to 75 PPS beds not including sub provider beds; and
 3. Rural hospitals other than Critical Access Hospitals with 76 to 100 PPS beds not including sub provider beds.
- C. The Administration shall allocate the Fund to each pool according to the ratio of claims paid amount for all hospitals assigned to the pool to total claims paid amount for all rural hospitals.
- D. The Administration shall determine each hospital's claims paid amount and allocate the funds in each pool to each hospital in the pool based on the ratio of each hospital's claims paid amount to the sum of the claims paid amount for all hospitals assigned to the pool.
- E. The Administration shall not make a Fund payment to a hospital that will result in the hospital's claims paid amount plus

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

that hospital's Fund payment being greater than that hospital's calculated inpatient costs.

1. If a hospital's claims paid amount plus the hospital's Fund payment would be greater than the hospital's calculated inpatient costs, the Administration shall make a Fund payment to the hospital equal to the difference between the hospital's calculated inpatient costs and the hospital's claims paid amount.
2. The Administration shall reallocate any portion of a hospital's Fund allocation that is not paid to the hospital due to the reason in subsection (E)(1) to the other eligible hospitals in the pool based upon the ratio of the claims paid amount for each hospital remaining in the pool to the sum of the claims paid amount for each hospital remaining in the pool.

F. If funds remain in a pool after allocations to each hospital in the pool under subsections (D) and (E), the Administration

shall reallocate the remaining funds to the other pools based upon the ratio of each pool's original allocation of the Fund as determined under subsection (C) to the sum of the remaining pools' original Fund allocations under subsection (C). The Administration shall allocate remaining funds to the hospitals in the remaining pools under subsection (D) and (E). See Exhibit 1 for an example.

G. Subject to CMS approval of the method and distribution of the Fund, the administration or its contractors will distribute the Fund as a lump sum allocation to the rural hospitals in either one or two installments by the end of each state fiscal year.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 2188, effective June 6, 2006 (Supp. 06-2). Amended by final rulemaking at 22 A.A.R. 3476, effective January 30, 2016 (Supp. 15-4).

Exhibit 1. Pool Example

Pool A receives \$2,000,000. Pool B receives \$7,000,000. Pool C receives \$3,000,000. If all of the funds in Pool B are paid to eligible hospitals and there is \$1,000,000 remaining, the remaining funds would be allocated to Pool A and Pool C based on the ratio of each pool's original allocation (original allocations of \$2,000,000 and \$3,000,000) to the total of their original allocation (\$2,000,000 + \$3,000,000 = \$5,000,000). Pool A would receive 2/5 of the remaining funds (\$400,000) and Pool C would receive 3/5 of the remaining funds (\$600,000).

Historical Note

Exhibit 1 made by final rulemaking at 12 A.A.R. 2188, effective June 6, 2006 (Supp. 06-2).

R9-22-712.08. Reserved

R9-22-712.09. Hierarchy for Tier Assignment through September 30, 2014

TIER	IDENTIFICATION CRITERIA	ALLOWED SPLITS
MATERNITY	A primary diagnosis defined as maternity 640.xx - 643.xx, 644.2x - 676.xx, v22.xx - v24.xx or v27.xx.	None
NICU	Revenue Code of 174 and the provider has a Level II or Level III NICU.	Nursery
ICU	Revenue Codes of 200-204, 207-212, or 219.	Surgery Psychiatric Routine
SURGERY	Surgery is identified by a revenue code of 36x. To qualify in this tier, there must be a valid surgical procedure code that is not on the excluded procedure list.	ICU
PSYCHIATRIC	Psychiatric Revenue Codes of 114, 124, 134, 144, or 154 AND primary Psychiatric Diagnosis = 290.xx - 316.xx. If a routine revenue code is present and all diagnoses codes on the claim are equal to 290.xx - 316.xx, classify as a psychiatric claim.	ICU
NURSERY	Revenue Code of 17x, not equal to 174.	NICU
ROUTINE	Revenue Codes of 100 - 101, 110-113, 116 - 123, 126 - 133, 136 - 143, 146 - 153, 156 - 159, 16x, 206, 213, or 214.	ICU

Historical Note

New Section made by final rulemaking at 11 A.A.R. 3231, effective October 1, 2005 (Supp. 05-3). Amended by exempt rulemaking at 17 A.A.R. 1707, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.10. Outpatient Hospital Reimbursement: General

- A. Effective rule. The outpatient hospital reimbursement rules apply to dates of service beginning July 1, 2005, subject to Laws 2004, Ch. 279, § 19.
- B. Basis For Payment. Except as provided under R9-22-712.30, AHCCCS shall pay for designated outpatient procedures provided to AHCCCS members according to the AHCCCS Outpatient Capped Fee-For-Service Schedule as defined in R9-22-712.20.
- C. Data. AHCCCS shall use Medicare Cost Report and adjudicated claim and encounter data from non-IHS acute care hospitals located in the state of Arizona to develop fees for the AHCCCS Outpatient Capped Fee-For-Service Schedule.
- D. Hospital Services Subject To Fees. AHCCCS shall reimburse services, in the following outpatient hospital categories under the AHCCCS Outpatient Capped Fee-For-Service Schedule:
 1. Surgery,
 2. Emergency Department,
 3. Laboratory,
 4. Radiology,
 5. Clinic, and
 6. Other services.
- E. Reimbursement. AHCCCS shall reimburse outpatient hospital services by procedure codes, in proper combination with revenue codes, as prescribed by AHCCCS.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2).

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

R9-22-712.11. Reserved**R9-22-712.12. Reserved****R9-22-712.13. Reserved****R9-22-712.14. Reserved****R9-22-712.15. Outpatient Hospital Reimbursement: Affected Hospitals**

Except as provided in R9-22-712(G), the AHCCCS Outpatient Capped Fee-For-Service Schedule shall apply to AHCCCS payments for outpatient services in all non-IHS acute hospitals.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2).

R9-22-712.16. Reserved**R9-22-712.17. Reserved****R9-22-712.18. Reserved****R9-22-712.19. Reserved****R9-22-712.20. Outpatient Hospital Reimbursement: Methodology for the AHCCCS Outpatient Capped Fee-For-Service Schedule**

A. To establish the AHCCCS Outpatient Capped Fee-for-service Schedule for all claims with a begin date of service on or before September 30, 2011, AHCCCS shall:

1. Define the dataset of claims and encounters that shall be used to establish the AHCCCS Outpatient Capped Fee-for-service Schedule.
2. Identify all the claims and encounters from non-IHS acute hospitals located in Arizona for services to be paid under the AHCCCS Outpatient Capped Fee-for-service Schedule.
3. Match the revenue code on each detail of each claim and encounter to the ancillary line item CCR as reported on hospital-specific mapping documents and hospital-specific Medicare Cost Report for those hospitals that have submitted Medicare Cost Reports FYE 2002.
4. Multiply the line item CCR from subsection (A)(3) by the covered billed charge for that revenue code to establish the cost for the service.
5. Inflate the cost for the service from subsection (A)(4) using Global Insight Health-care Cost Review inflation factors from date of service month to the midpoint of the rate year in which the fees are initially effective.
6. Include associated costs under R9-22-712.25 to calculate the rates for emergency room and surgery services.
7. Combine data from all Arizona hospitals identified in subsection (A)(3) for each procedure code to establish the statewide median cost for each procedure.
8. Group procedure codes according to the Ambulatory Payment Classification (APC) System groups as listed in 69 FR 65682, November 15, 2004, and establish a statewide median cost for each APC. Multiply each statewide median APC cost by 116 percent to establish the AHCCCS-based fee for each procedure in that specific APC group. AHCCCS shall assign each procedure in the group the same fee.
9. For those procedure codes that are not grouped into any APC, establish a procedure-specific fee using either:
 - a. The AHCCCS Non-hospital Capped Fee-for-service Fee Schedule,
 - b. 116 percent of the procedure-specific median cost AHCCCS-based fee, or

c. The Medicare Clinical Laboratory Fee Schedule for laboratory services.

10. Compare the AHCCCS-based fee established in subsections (A)(8) and (9) against the comparable Medicare fee established for the Medicare APC group as listed in the 69 FR 65682, November 15, 2004. The fee for each procedure shall be the greater of the AHCCCS-based fee or the Medicare fee but no more than 150 percent of the AHCCCS-based fee; however, for those laboratory services for which a limit is established in the Medicare Clinical Laboratory Fee Schedule, the fee shall not exceed that limit.

11. Assign the 2005 Medicare fee in the AHCCCS Outpatient Capped Fee-for-service Schedule for those procedures for which there are fewer than 20 occurrences of the procedure code in the dataset, either independently, or, if applicable, for all procedure codes within an APC Group.

B. For all claims with a begin date of service on or after October 1, 2011, the AHCCCS Outpatient Capped Fee-for-Service Schedule shall be derived from the CMS Medicare Outpatient Prospective Payment System (OPPS) fee schedule modified by an Arizona conversion factor determined annually.

1. When clinic services are billed using 51X revenue codes, the reimbursement to the hospital is the difference between the facility and non-facility rates payable to the practitioner for the procedures listed in the Administration's Capped Fee-for-service Schedule under R9-22-710.
2. Observation services, when not billed in conjunction with a service for which a single payment is made under R9-22-712.25, are reimbursed at an hourly rate published in the Outpatient Capped Fee-for-service Schedule. This hourly rate includes reimbursement for associated services.

C. The AHCCCS Outpatient Capped Fee-for-service Schedule including the effective date of any changes to the listing are on file and posted on AHCCCS' web site.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 17 A.A.R. 1460, effective October 1, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 1914, effective July 18, 2012 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 3315, effective November 30, 2013 (Supp. 13-4).

R9-22-712.21. Reserved**R9-22-712.22. Reserved****R9-22-712.23. Reserved****R9-22-712.24. Reserved****R9-22-712.25. Outpatient Hospital Fee Schedule Calculations: Associated Service Costs**

- A. AHCCCS shall include the costs of associated services, as defined by revenue codes and procedure codes, when determining the specific fees for the outpatient hospital procedures for emergency department and surgery services.
- B. Payment made under subsection (A) or R9-22-712.20(B)(2) is inclusive of all services on the claim regardless of whether the services are provided on one or more days.
- C. A complete listing of the revenue codes and procedure codes for associated costs included in the payment for emergency and surgery services including the effective date of any changes to the listing are on file and posted on AHCCCS' web site.

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 17 A.A.R. 1460, effective October 1, 2011 (Supp. 11-3).

R9-22-712.26. Reserved

R9-22-712.27. Reserved

R9-22-712.28. Reserved

R9-22-712.29. Reserved

R9-22-712.30. Outpatient Hospital Reimbursement: Payment for a Service Not Listed in the AHCCCS Outpatient Capped Fee-For-Service Schedule

- A. AHCCCS shall calculate a statewide CCR for a service where a specific fee cannot be determined under R9-22-712.20.
- B. For claims with a begin date of service on or before September 30, 2011, the statewide CCR shall be calculated based on the costs and covered charges associated with a service under subsection (A) for all Arizona hospitals, using the method specified in R9-22-712.20(A)(3).
- C. For all claims with a begin date of service on or after October 1, 2011, the statewide CCR calculation shall equal either the CMS Medicare Outpatient Urban Cost-to-charge Ratio or the CMS Medicare Outpatient Rural Cost-to-charge Ratio published by CMS for the state of Arizona. AHCCCS shall use the urban cost-to-charge ratio for hospitals located in a county of 500,000 residents or more and for out-of-state hospitals. AHCCCS shall use the rural cost-to-charge ratio for hospitals located in a county of fewer than 500,000 residents. On October 1st of each year, AHCCCS shall adjust urban and rural CCRs to the CCRs as published by CMS in the *Federal Register* on or before August 1st of that year.
- D. To determine the payment amount for procedures where a specific fee is not determined under R9-22-712.20, the statewide CCR is multiplied by the covered charges.
- E. Reductions to payments for outpatient hospital services not listed in the AHCCCS Outpatient Capped Fee-For-Service Schedule. Outpatient hospital services not listed in the AHCCCS Outpatient Capped Fee-For-Service Schedule with dates of service on or after October 1, 2011, shall be reimbursed at 95 percent of the rate published by CMS pursuant to subsection (C) of this Section.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 17 A.A.R. 1460, effective October 1, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 1914, effective July 18, 2012 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 3315, effective November 30, 2013 (Supp. 13-4).

R9-22-712.31. Reserved

R9-22-712.32. Reserved

R9-22-712.33. Reserved

R9-22-712.34. Reserved

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, 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, 2020 through September 30, 2021, 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, 2020.

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype.

1. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria in (E)(1)(a), (b), (c), (d), or (e):
 - a. By May 27, 2020, a hospital which did not receive Differential Adjusted Payments from October 1, 2019 through September 30, 2020, submits a Letter of Intent to AHCCCS and a qualifying Health Information Exchange (HIE) organization in which the hospital agrees to achieve all of the following:
 - i. By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
 - ii. By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of qualifying HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department;
 - iii. By August 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
 - iv. By September 1, 2020, or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - v. By September 1, 2020, or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - vi. Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;
 - vii. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;
 - viii. By November 1, 2020, the hospital must approve and authorize a formal scope of work (SOW) with a qualifying HIE organization to initiate and complete a Phase 1 data quality improvement effort, as defined by the qualifying HIE organization in collaboration with the qualifying HIE organization;
 - ix. By January 1, 2021, the hospital must complete the Phase 1 initial data quality profile with a qualifying HIE organization;
 - x. By May 1, 2021, the hospital must complete the Phase 1 final data quality profile with a qualifying HIE organization;
- b. By May 27, 2020, a hospital which received Differential Adjusted Payments October 1, 2019 through September 30, 2020, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:
 - i. By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
 - ii. By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department, laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instruction, active medication, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
 - iii. By September 1, 2020, or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - iv. By September 1, 2020 or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - v. Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

- vi. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;
 - vii. By November 1, 2020, the hospital must approve and authorize a formal SOW to initiate and complete a Phase 2 data quality improvement effort, as defined by the qualifying HIE organization and in collaboration with the qualifying HIE organization;
 - viii. By January 1, 2021, the hospital must complete the Phase 2 initial data quality profile with a qualifying HIE organization;
 - ix. By May 1, 2021, the hospital must complete the Phase 2 final data quality profile with a qualifying HIE organization;
 - x. Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases:
 - (1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on July 2019 data, to the final data quality profile, based on March 2020 data.
 - (2) Meet a minimum performance standard of at least 60% based on March 2020 data.
 - (3) If performance meets or exceeds an upper threshold of 90% based on March 2020 data the hospital meets the criteria. Regardless of the percentage improvement from the baseline measurements;
 - c. Meet or exceed the statewide average on May 12, 2020 for the Severe Sepsis/Septic Shock (SEP-1) performance measure from the Medicare Hospital Compare website;
 - d. Be a participant in the Improving Pediatric Sepsis Outcomes collaborative in 2020;
 - e. For dates of services from October 1, 2020 through September 30, 2021, hospitals subject to APR-DRG reimbursement (Provider Type 02) may qualify for a DAP on codes J7296-J7298, J7300-J7301, and J7307 billed on the 1500 or UB-04 forms for long-acting reversible contraception devices.
2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets this criteria. By May 27, 2020, a hospital which received Differential Adjusted Payments October 1, 2019 through September 30, 2020, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:
- a. By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
 - b. By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department, laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
 - c. By September 1, 2020, or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - d. By September 1, 2020 or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - e. Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;
 - f. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;
 - g. By November 1, 2020, the hospital must approve and authorize a formal SOW to initiate and complete a Phase 2 data quality improvement effort, as defined by the qualifying HIE organization and in collaboration with the qualifying HIE organization;
 - h. By January 1, 2021, the hospital must complete the Phase 2 initial data quality profile with a qualifying HIE organization;
 - i. By May 1, 2021, the hospital must complete the Phase 2 final data quality profile with a qualifying HIE organization;
 - j. Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases:
 - i. Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on July 2019 data, to the final data quality profile, based on March 2020 data;
 - ii. Meet a minimum performance standard of at least 60% based on March 2020 data;
 - iii. If performance meets or exceeds an upper threshold of 90% based on March 2020 data the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements;
3. A hospital designated as type: hospital, subtype: long term, psychiatric, or rehabilitation by the Arizona Department of Health Services Division of Licensing Services will qualify for an increase if it meets the criteria specified in (E)(3)(a), (b), (c), (d), or (e):
- a. By May 27, 2020, a hospital which did receive Differential Adjusted Payments from October 1, 2019 through September 30, 2020, submits a Letter of

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:

- i. By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
 - ii. By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department;
 - iii. By August 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
 - iv. By September 1, 2020, or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - v. By September 1, 2020 or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - vi. Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;
 - vii. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;
 - viii. By November 1, 2020, the hospital must approve and authorize a formal SOW with a qualifying HIE organization to initiate and complete a Phase 1 data quality improvement effort, as defined by the qualifying HIE organization and in collaboration with the qualifying HIE organization;
 - ix. By January 1, 2021, the hospital must complete the Phase 1 initial data quality profile with a qualifying HIE organization;
 - x. By May 1, 2021, the hospital must complete the Phase 1 final data quality profile with a qualifying HIE organization;
- b. By May 27, 2020, a hospital which received Differential Adjusted Payments October 1, 2019 through September 30, 2020, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:
 - i. By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
 - ii. By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department, laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
 - iii. By September 1, 2020 or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - iv. By September 1, 2020 or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - v. Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;
 - vi. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;
 - vii. By November 1, 2020, the hospital must approve and authorize a formal SOW to initiate and complete a Phase 2 data quality improve-

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

- ment effort, as defined by the qualifying HIE organization and in collaboration with a qualifying HIE organization;
- viii. By January 1, 2021, the hospital must complete the Phase 2 initial data quality profile with a qualifying HIE organization;
 - ix. By May 1, 2021, the hospital must complete the Phase 2 final data quality profile with a qualifying HIE organization;
 - x. Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to DAP increases;
 - (1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on July 2019 data, to the final data quality profile, based on March 2020 data;
 - (2) Meet a minimum performance standard of at least 60% based on March 2020 data;
 - (3) If performance meets or exceeds an upper threshold of 90% based on March 2020 data the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.
- c. On May 12, 2020 is identified as a Medicare Annual Payment Update recipients on the QualityNet.org website;
 - d. On May 12, 2020 meets or falls below the national average for the rate of pressure ulcers that are new or worsened from the Medicare Long Term Hospital Compare website;
 - e. On May 12, 2020 meets or falls below the national average for the rate of pressure ulcers that are new or worsened from the Medicare Inpatient Rehabilitation Facility Compare website.
4. A hospital designated as type: hospital by the Arizona Department of Health Services Division of Licensing Services and is owned and/or operated by Indian Health Services (HIS) or under Tribal authority will qualify for an increase if it meets this criteria. By May 27, 2020, a hospital submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:
 - a. By May 27, 2020, the facility must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
 - b. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf;
 - c. By December 1, 2020, the facility must approve and authorize a formal SOW with a qualifying HIE organization to develop and implement the data exchange necessary to meet the requirements of Milestones d, e and f;
 - d. By April 1, 2021 the facility must electronically submit actual patient identifiable information to the production environment of a qualifying HIE organization, including admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the facility has an emergency department;
 - e. By June 1, 2021 the facility must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
 - f. If the facility has ambulatory and/or behavioral health practices, then no later than June 1, 2021 the facility must submit actual patient identifiable information to the production environment of a qualifying HIE, including registration, encounter summary, and SMI data elements as defined by the qualifying HIE organization.
 - F. If a hospital submits a Letter of Intent to AHCCCS and received the Differential Adjusted Payments October 1, 2019 through September 30, 2020, but fails to achieve or maintain one or more of the required criteria by the specified date, that hospital will be ineligible to receive any Differential Adjusted Payments for dates of service from October 1, 2020 through September 30, 2021 if a Differential Adjusted Payment is available at that time.
 - G. Fee adjustments made under subsections (A), (B), (C), (D), and (E) are on file with AHCCCS and current adjustments are posted on AHCCCS' website.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 3584, effective October 1, 2007 (Supp. 07-4). Amended by final rulemaking at 14 A.A.R. 1439, effective May 31, 2008 (Supp. 08-2). Amended by final rulemaking at 17 A.A.R. 1460, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4). Amended by final rulemaking at 23 A.A.R. 2338, effective October 1, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 2851, effective October 1, 2018 (Supp. 18-3). Amended by final rulemaking at 25 A.A.R. 3114, effective October 1, 2019 (Supp. 19-4). Amended by final rulemaking at 26 A.A.R. 3025, with an immediate effective date of November 3, 2020 (Supp 20-4).

R9-22-712.36. Reserved**R9-22-712.37. Reserved****R9-22-712.38. Reserved****R9-22-712.39. Reserved****R9-22-712.40. Outpatient Hospital Reimbursement: Annual and Periodic Update**

- A. Procedure codes. When procedure codes are issued by CMS and added to the Current Procedural Terminology published by the American Medical Association, AHCCCS shall add to the Outpatient Capped Fee-for-Service Schedule the new procedure codes for covered outpatient services and shall either assign the default CCR under R9-22-712.40(F)(2), the Medicare rate, or calculate an appropriate fee.

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

- B.** APC changes. AHCCCS may reassign procedure codes to new or different APC groups when APC groups are revised by CMS. AHCCCS may reassign procedure codes to a different APC group than Medicare. If AHCCCS determines that utilization of a procedure code within the Medicare program is substantially different from utilization of the procedure code in the AHCCCS program, AHCCCS may choose not to assign the procedure code to any APC group. For procedure codes not grouped into an APC by Medicare, AHCCCS may assign the code to an APC group when AHCCCS determines that the cost and resources associated with the non-assigned code are substantially similar to those in the APC group.
- C.** Annual update for Outpatient Hospital Fee Schedule. Beginning October 1, 2006, through September 30, 2011, AHCCCS shall adjust outpatient fee schedule rates:
1. Annually by multiplying the rates effective during the prior year by the Global Insight Prospective Hospital Market Basket Inflation Index; or
 2. In a particular year the director may substitute the increases in subsection (C)(1) by calculating the dollar value associated with the inflation index in subsection (C)(1), and applying the dollar value to adjust rates at varying levels.
- D.** Reductions to the Outpatient Capped Fee-For-Service Schedule. Claims paid using the Outpatient Capped Fee-For-Service Schedule with dates of service on or after October 1, 2011, shall be reimbursed at 95 percent of the rates in effect on September 30, 2011, subject to the annual adjustments to procedure codes and APCs under this Section.
- E.** Rebase. AHCCCS shall rebase the outpatient fees every five years.
- F.** Statewide CCR:
1. For begin dates of service on or before September 30, 2011, the statewide CCR calculated in R9-22-712.30 shall be recalculated at the time of rebasing. When rebasing, AHCCCS may recalculate the statewide CCR based on the costs and charges for services excluded from the outpatient hospital fee schedule.
 2. For begin dates of service on or after October 1, 2011, the statewide CCR shall be set under R9-22-712.30(C).
- G.** Other Updates. In addition to the other updates provided for in this Section, the Administration may adjust the Outpatient Capped Fee-For-Service Fee Schedule and the Statewide CCR to the extent necessary to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the geographic area.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 3584, effective October 1, 2007 (Supp. 07-4). Amended by final rulemaking at 14 A.A.R. 1439, effective May 31, 2008 (Supp. 08-2). Amended by final rulemaking at 17 A.A.R. 1460, effective October 1, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 1914, effective July 18, 2012 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 3315, effective November 30, 2013 (Supp. 13-4). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.41. Reserved**R9-22-712.42. Reserved****R9-22-712.43. Reserved****R9-22-712.44. Reserved****R9-22-712.45. Outpatient Hospital Reimbursement: Outpatient Payment Restrictions**

- A.** AHCCCS shall not reimburse hospitals for emergency room treatment, observation hours, or other outpatient hospital services performed on an outpatient basis if the member is admitted as an inpatient to the same hospital directly from the emergency room, observation, or other outpatient department.
- B.** AHCCCS shall include payment for the emergency room, observation, and other outpatient hospital services provided to the member before the hospital admission in the AHCCCS Inpatient Tiered Per Diem Capped Fee-For-Service Schedule under Article 7 of this Chapter.
- C.** Same day admit and discharge.
1. For discharges before September 30, 2014. Same day admit and discharge claims that qualify for either the maternity or nursery tiers shall be paid based on the lesser of the rate for the maternity or nursery tier, or the outpatient hospital fee schedule.
 2. For discharge dates on and after October 1, 2014. Same day admit and discharge claims are paid for through the outpatient fee schedule.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.46. Reserved**R9-22-712.47. Reserved****R9-22-712.48. Reserved****R9-22-712.49. Reserved****R9-22-712.50. Outpatient Hospital Reimbursement: Billing**

To receive appropriate reimbursement, hospitals shall:

1. Bill outpatient hospital services on the CMS approved Uniform Billing Form or in electronic format using the appropriate HIPAA transaction.
2. Follow the UB Manual Guidelines, as published by the National Uniform Billing Committee, and use the appropriate revenue code and procedure code combination as prescribed by AHCCCS and on file and online with AHCCCS.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2).

R9-22-712.51. Reserved**R9-22-712.52. Reserved****R9-22-712.53. Reserved****R9-22-712.54. Reserved****R9-22-712.55. Reserved****R9-22-712.56. Reserved****R9-22-712.57. Reserved****R9-22-712.58. Reserved**

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

R9-22-712.59. Reserved**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 the All Patient Refined Diagnosis Related Group (APR-DRG) classification system established by 3M Health Information Systems. The applicable version of the APR-DRG classification system shall be available on the agency's website.
- 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 Hospital 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 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.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

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;
- B. Notwithstanding section R9-22-712.60, claims for inpatient services that are covered by a RBHA or TRBHA, where the principal diagnosis on the claim is a behavioral health diagnosis, shall be reimbursed as prescribed by a per diem rate described by a fee schedule established by the Administration; however, if the principal diagnosis is a 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 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.
- 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.
- F. For inpatient services with a date of admission from October 1, 2020 through September 30, 2021, provided by a hospital in subsection (A) that qualifies, the administration shall pay the hospital an Inpatient Differential Adjusted Payment equal to the sum of the payment otherwise provided for in subsection (A) plus the product of the amount otherwise provided for in subsection (A) and a percentage published on the Administration's public website as part of its fee schedule, subsequent to a public notice published no later than September 1, 2020. A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype.
1. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria in subsection (F)(1)(a), (i) through (x), (F)(1)(b), (i) through (x), and (1) through (3); (F)(1)(c); (F)(1)(d), or (F)(1)(e):
 - a. By May 27, 2020, a hospital which did not receive Differential Adjusted Payments from October 1, 2019 through September 30, 2020, submits a Letter of Intent to AHCCCS and a qualifying Health Information Exchange (HIE) organization in which the hospital agrees to achieve all of the following:
 - i. By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

- achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
- ii. By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of qualifying HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department;
 - iii. By August 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
 - iv. By September 1, 2020, or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - v. By September 1, 2020, or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - vi. Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;
 - vii. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;
 - viii. By November 1, 2020, the hospital must approve and authorize a formal scope of work (SOW) with a qualifying HIE organization to initiate and complete a Phase 1 data quality improvement effort, as defined by the qualifying HIE organization in collaboration with the qualifying HIE organization;
 - ix. By January 1, 2021, the hospital must complete the Phase 1 initial data quality profile with a qualifying HIE organization;
 - x. By May 1, 2021, the hospital must complete the Phase 1 final data quality profile with a qualifying HIE organization;
- b. By May 27, 2020, a hospital which received Differential Adjusted Payments October 1, 2019 through September 30, 2020, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:
 - i. By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
 - ii. By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department, laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instruction, active medication, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
 - iii. By September 1, 2020, or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - iv. By September 1, 2020 or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - v. Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;
 - vi. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;
 - vii. By November 1, 2020, the hospital must approve and authorize a formal SOW to initiate and complete a Phase 2 data quality improvement effort, as defined by the qualifying HIE organization and in collaboration with the qualifying HIE organization;
 - viii. By January 1, 2021, the hospital must complete the Phase 2 initial data quality profile with a qualifying HIE organization;

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

- ix. By May 1, 2021, the hospital must complete the Phase 2 final data quality profile with a qualifying HIE organization;
 - x. Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases:
 - (1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on July 2019 data, to the final data quality profile, based on March 2020 data;
 - (2) Meet a minimum performance standard of at least 60% based on March 2020 data;
 - (3) If performance meets or exceeds an upper threshold of 90% based on March 2020 data the hospital meets the criteria. Regardless of the percentage improvement from the baseline measurements;
 - c. Meet or exceed the statewide average on May 12, 2020 for the Severe Sepsis/Septic Shock (SEP-1) performance measure from the Medicare Hospital Compare website;
 - d. Be a participant in the Improving Pediatric Sepsis Outcomes collaborative in 2020;
 - e. For dates of services from October 1, 2020 through September 30, 2021, hospitals subject to APR-DRG reimbursement (Provider Type 02) may qualify for a DAP on codes J7296-J7298, J7300-J7301, and J7307 billed on the 1500 or UB-04 forms for long-acting reversible contraception devices.
2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets this criteria. By May 27, 2020, a hospital which received Differential Adjusted Payments October 1, 2019 through September 30, 2020, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:
- a. By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
 - b. By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department, laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
 - c. By September 1, 2020, or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - d. By September 1, 2020 or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - e. Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;
 - f. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;
 - g. By November 1, 2020, the hospital must approve and authorize a formal SOW to initiate and complete a Phase 2 data quality improvement effort, as defined by the qualifying HIE organization and in collaboration with the qualifying HIE organization;
 - h. By January 1, 2021, the hospital must complete the Phase 2 initial data quality profile with a qualifying HIE organization;
 - i. By May 1, 2021, the hospital must complete the Phase 2 final data quality profile with a qualifying HIE organization;
 - j. Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases:
 - i. Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on July 2019 data, to the final data quality profile, based on March 2020 data;
 - ii. Meet a minimum performance standard of at least 60% based on March 2020 data;
 - iii. If performance meets or exceeds an upper threshold of 90% based on March 2020 data the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4). Amended by final rulemaking at 23 A.A.R. 2338, effective October 1, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 2851, effective October 1, 2018 (Supp. 18-3). Amended by final rulemaking at 25 A.A.R. 3111 and at 25 A.A.R. 3114, effective October 1, 2019 (Supp. 19-4). Amended by final rulemaking at 26 A.A.R. 3025, with an immediate effective date of November 3, 2020 (Supp 20-4).

R9-22-712.62. DRG Base Payment

- A.** The initial DRG base payment is the product of the DRG base rate, the DRG relative weight for the post-HCAC DRG code assigned to the claim, and any applicable provider and service policy adjustors.
- B.** The DRG base rate for each hospital is the statewide standardized amount of which the hospital's labor-related share of that amount is adjusted by the hospital's wage index. The hospital's labor share is determined based on the labor share for the

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

Medicare inpatient prospective payment system published in Volume 81 of the Federal Register at page 57312 published August 22, 2016. The hospital's wage index is determined based on the wage index tables reference in Volume 81 of the Federal Register at page 57311 published August 22, 2016. The statewide standardized amount is included in the AHCCCS capped fee schedule available on the agency's website.

- C. Claims shall be assigned both a DRG code derived from all diagnosis and surgical procedure codes included on the claim (the "pre-HCAC" DRG code) and a DRG code derived excluding diagnosis and surgical procedure codes associated with the health care acquired conditions that were not present on admission or any other provider-preventable conditions (the "post-HCAC" DRG code). The DRG code with the lower relative weight shall be used to process claims using the DRG methodology.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

R9-22-712.63. DRG Base Payments Not Based on the Statewide Standardized Amount

- A. Notwithstanding Section R9-22-712.62, a select specialty hospital standardized amount shall be used in place of the statewide standardized amount in subsection R9-22-712.62(B) to calculate the DRG base rate for the following hospitals:
1. Hospitals located in a city with a population greater than one million, which on average have at least 15 percent of inpatient days for patients who reside outside of Arizona, and at least 50 percent of discharges as reported on the 2011 Medicare Cost Report are reimbursed by Medicare.
 2. Hospitals designated as type: hospital, subtype: short-term that has a license number beginning "SH" in the Provider & Facility Database for Arizona Medical Facilities posted by the ADHS Division of Licensing Services on its website for March of each year.
- B. The select specialty hospital standardized amount is included in the AHCCCS capped fee schedule available on the agency's website.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

R9-22-712.64. DRG Base Payments and Outlier CCR for Out-of-State Hospitals

- A. DRG Base payment:
1. For high volume out-of-state hospitals defined in subsection (C), the wage adjusted DRG base payment is determined as described in R9-22-712.62.
 2. Notwithstanding subsection R9-22-712.62 the wage adjusted DRG base rate for out-of-state hospitals that are not high volume hospitals shall be included in the AHCCCS capped fee schedule available on the agency's website.
- B. Outlier CCR:
1. Notwithstanding subsection R9-22-712.68, the CCR used for the outlier calculation for out-of-state hospitals that are not high volume hospitals shall be the sum of the statewide urban default operating cost-to-charge ratio and the statewide capital CCR in the data file established as part of the Medicare Inpatient Prospective Payment System by CMS.

2. The CCR used for the outlier calculation for high volume out-of-state hospitals is the same as in-state hospitals as described in R9-22-712.68.

- C. A high volume out-of-state hospital is a hospital not otherwise excluded under R9-22-712.61, that is located in a county that borders the State of Arizona and had 500 or more AHCCCS covered inpatient days for the fiscal year beginning October 1, 2015.
- D. Other than as required by this Section, DRG reimbursement for out-of-state hospitals is determined under R9-22-712.60 through R9-22-712.81.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

R9-22-712.65. DRG Provider Policy Adjustor

- A. After calculating the DRG base payment as required in sections R9-22-712.62, R9-22-712.63, or R9-22-712.64, for claims from a high-utilization hospital, the product of the DRG base rate and the DRG relative weight for the post-HCAC DRG code shall be multiplied by a provider policy adjustor that is included in the AHCCCS capped fee schedule available on the agency's website.
- B. A hospital is a high-utilization hospital if the hospital had:
1. Covered inpatient days subject to DRG reimbursement, determined using adjudicated claim and encounter data during the fiscal year beginning October 1, 2015, equal to at least four hundred percent of the statewide average number of AHCCCS-covered inpatient days at all hospitals;
 2. A Medicaid inpatient utilization rate greater than 30% calculated as the ratio of AHCCCS-covered inpatient days to total inpatient days as reported in the hospital's Medicare Cost Report for the fiscal year ending 2016; and,
 3. Received less than \$2 million in add-on payment for outliers under R9-22-712.68, based on adjudicated claims and encounters for fiscal year beginning October 1, 2015.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

R9-22-712.66. DRG Service Policy Adjustor

In addition to Section 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 service policy adjustor listed in the AHCCCS capped fee schedule, available on the agency's website, corresponding to the following DRG codes:

1. Normal newborn DRG codes,
2. Neonates DRG codes,
3. Obstetrics DRG codes,
4. Psychiatric DRG codes,
5. Rehabilitation DRG codes,
6. Burn DRG codes.
7. Claims for members under age 19 assigned DRG codes other than listed above:
 - a. 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. For dates of discharge on or after January 1, 2016, for severity of illness levels 1 and 2,

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

- c. For dates of discharge on or after January 1, 2016 and before January 1, 2017, for severity of illness levels 3 and 4.
 - d. For dates of discharge on or after January 1, 2017, and before January 1, 2018 for severity of illness levels 3 and 4.
 - e. For dates of discharge on or after January 1, 2018, for severity of illness levels 3 and 4.
8. Claims for members assigned DRG codes other than listed above.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

R9-22-712.67. DRG Reimbursement: Transfers

- A. For purposes of this Section a “transfer” means the transfer of a member from a hospital to a short-term general hospital for inpatient care, a designated cancer center, 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.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4).

R9-22-712.68. DRG Reimbursement: Unadjusted Outlier Add-on Payment

- A. Claims for inpatient hospital services qualify for an outlier add-on payment if the claim cost exceeds the outlier cost threshold.
- B. The claim cost is determined by multiplying covered charges by an outlier CCR as described by the following subsections:
 - 1. For hospitals designated as type: hospital, subtype: children’s in the Provider & Facility Database for Arizona Medical Facilities posted by the ADHS Division of Licensing Services on its website for March of each year. The outlier CCR will be calculated by dividing the hospital total costs by the total charges using the most recent Medicare Cost Report available as of September 1 of that year.
 - 2. For Critical Access Hospitals the outlier CCR will be the sum of the statewide rural default operating cost-to-charge ratio and the statewide capital cost-to-charge ratio

in the data file established as part of the Medicare Inpatient Prospective Payment System by CMS.

- 3. For all other hospitals the outlier CCR will be the sum of the operating cost-to-charge ratio and the capital cost-to-charge ratio established for each hospital in the impact file established as part of the Medicare Inpatient Prospective Payment System by CMS.
- C. AHCCCS shall update the CCRs described in subsection (B) to conform to the most recent CCRs established by CMS as of September 1 of each year, and the CCRs so updated shall be used for claims with dates of discharge on or after October 1 of that year.
 - D. The outlier threshold is equal to the sum of the unadjusted DRG base payment plus the fixed loss amount. The fixed loss amount for critical access hospitals and for all other hospitals are included in the AHCCCS capped fee schedule available on the agency’s website.
 - E. For those inpatient hospital claims that qualify for an outlier add-on payment, the payment is calculated by subtracting the outlier threshold from the claim cost and multiplying the result by the DRG marginal cost percentage. The DRG marginal cost percentage for claims assigned DRG codes associated with the treatment of burns and for all other claims are included in the AHCCCS capped fee schedule available on the agency’s website.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

R9-22-712.69. DRG Reimbursement: Covered Day Adjusted DRG Base Payment and Covered Day Adjusted Outlier Add-on Payment

Adjustments to the payments are made to account for days not covered by AHCCCS as follows:

- 1. A covered day reduction factor unadjusted is determined if the member is not eligible on the first day of the inpatient stay but is eligible for subsequent days during the inpatient stay. In this case, a covered day reduction factor unadjusted is calculated by dividing the number of AHCCCS covered days by the DRG National Average length of stay. The number of AHCCCS covered days is equal to the number of days the member is eligible during the inpatient stay.
- 2. A covered day reduction factor unadjusted is also determined if the member is eligible on the first day of the inpatient stay but is determined ineligible for one or more days prior to the date of discharge. In this case, a covered day reduction factor unadjusted is calculated by adding one to the number of AHCCCS covered days and dividing the result by the DRG National Average length of stay. The number of AHCCCS covered days is equal to the number of days the member is eligible during the inpatient stay.
- 3. If the covered day reduction factor unadjusted is greater than one, then the covered day reduction factor final is one; otherwise, the covered day reduction factor final is equal to the covered day reduction factor unadjusted.
- 4. The covered day adjusted DRG base payment is an amount equal to the product of the unadjusted DRG base payment and the covered day reduction factor final.
- 5. The covered day adjusted DRG outlier add-on payment is an amount equal to the product of the unadjusted DRG outlier add-on payment and the covered day reduction factor final.

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.70. Covered Day Adjusted DRG Base Payment and Covered Day Adjusted Outlier Add-on Payment for FES members

In addition to the covered day reduction factor in R9-22-712.69, a covered day reduction factor unadjusted is determined for an inpatient stay during which an FES member receives services for the treatment of an emergency medical condition and also receives services once the condition no longer meets the criteria as an emergency medical condition described in R9-22-217.

1. A covered day reduction factor unadjusted is calculated by adding one to the AHCCCS covered days and dividing the result by the DRG National Average length of stay. The number of AHCCCS covered days is equal to the number of inpatient days during which an FES member receives services for an emergency medical condition as described in R9-22-217. For purposes of this adjustment, any portion of a day during which the FES member receives treatment for an emergency medical condition is counted as an AHCCCS covered day.
2. If the covered day reduction factor unadjusted is greater than one, then the covered day reduction factor final is one; otherwise, the covered day reduction factor final is equal to the covered day reduction factor unadjusted.
3. The covered day adjusted DRG base payment is an amount equal to the product of the unadjusted DRG base payment and the covered day reduction factor final.
4. The covered day adjusted DRG outlier add-on payment is an amount equal to the product of the unadjusted DRG outlier add-on payment and the covered day reduction factor final.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.71. Final DRG Payment

The final DRG payment is the sum of the final DRG base payment, the final DRG outlier add-on payment, and the Differential Adjusted Payment.

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.
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.
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, 2020 through September 30, 2021, the Inpatient 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, 2020. A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype.

- a. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria in (4)(a)(i), (1) through (10); (4)(a)(ii), (1) through (10)(a) through (c); and (4)(iii), (iv), or (v):
 - i. By May 27, 2020, a hospital which did not receive Differential Adjusted Payments from October 1, 2019 through September 30, 2020, submits a Letter of Intent to AHCCCS and a qualifying Health Information Exchange (HIE) organization in which the hospital agrees to achieve all of the following:
 - (1) By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
 - (2) By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of qualifying HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department;
 - (3) By August 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
 - (4) By September 1, 2020, electronically submit laboratory, radiology, transcription, and medication information, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination to a qualifying HIE or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if appli-

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

- cable;
- (5) By September 1, 2020, or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - (6) Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;
 - (7) By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;
 - (8) By November 1, 2020, the hospital must approve and authorize a formal scope of work (SOW) with a qualifying HIE organization to initiate and complete a Phase 1 data quality improvement effort, as defined by the qualifying HIE organization in collaboration with the qualifying HIE organization;
 - (9) By January 1, 2021, the hospital must complete the Phase 1 initial data quality profile with a qualifying HIE organization;
 - (10) By May 1, 2021, the hospital must complete the Phase 1 final data quality profile with a qualifying HIE organization;
- ii. By May 27, 2020, a hospital which received Differential Adjusted Payments October 1, 2019 through September 30, 2020, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:
- (1) By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
 - (2) By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department, laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instruction, active medication, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
- (3) By September 1, 2020, or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - (4) By September 1, 2020 or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - (5) Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;
 - (6) By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;
 - (7) By November 1, 2020, the hospital must approve and authorize a formal SOW to initiate and complete a Phase 2 data quality improvement effort, as defined by the qualifying HIE organization and in collaboration with the qualifying HIE organization;
 - (8) By January 1, 2021, the hospital must complete the Phase 2 initial data quality profile with a qualifying HIE organization;
 - (9) By May 1, 2021, the hospital must complete the Phase 2 final data quality profile with a qualifying HIE organization;
 - (10) Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases:
 - (a) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on July 2019 data, to the final data quality profile, based on March 2020 data;
 - (b) Meet a minimum performance standard of at least 60% based on March 2020 data;
 - (c) If performance meets or exceeds an upper threshold of 90% based on March 2020 data the hospital meets the criteria. Regardless of the percentage improvement from the baseline measurements;
- iii. Meet or exceed the statewide average on May 12, 2020 for the Severe Sepsis/Septic Shock

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

- (SEP-1) performance measure from the Medicare Hospital Compare website;
- iv. Be a participant in the Improving Pediatric Sepsis Outcomes collaborative in 2020;
 - v. For dates of services from October 1, 2020 through September 30, 2021, hospitals subject to APR-DRG reimbursement (Provider Type 02) may qualify for a DAP on codes J7296-J7298, J7300-J7301, and J7307 billed on the 1500 or UB-04 forms for long-acting reversible contraception devices.
- b. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if by May 27, 2020, a hospital which received Differential Adjusted Payments October 1, 2019 through September 30, 2020, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:
- i. By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
 - ii. By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department, laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
 - iii. By September 1, 2020, or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - iv. By September 1, 2020 or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - v. Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;
 - vi. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;
 - vii. By November 1, 2020, the hospital must approve and authorize a formal SOW to initiate and complete a Phase 2 data quality improvement effort, as defined by the qualifying HIE organization and in collaboration with the qualifying HIE organization;
 - viii. By January 1, 2021, the hospital must complete the Phase 2 initial data quality profile with a qualifying HIE organization;
 - ix. By May 1, 2021, the hospital must complete the Phase 2 final data quality profile with a qualifying HIE organization;
 - x. Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases:
 - (1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on July 2019 data, to the final data quality profile, based on March 2020 data;
 - (2) Meet a minimum performance standard of at least 60% based on March 2020 data;
 - (3) If performance meets or exceeds an upper threshold of 90% based on March 2020 data the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4). Amended by final rulemaking at 23 A.A.R. 2338, effective October 1, 2017 (Supp. 17-3). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4). Amended by final rulemaking at 24 A.A.R. 2851, effective October 1, 2018 (Supp. 18-3). Amended by final rulemaking at 25 A.A.R. 3114, effective October 31, 2019 (Supp. 19-4). Amended by final rulemaking at 26 A.A.R. 3025, with an immediate effective date of November 3, 2020 (Supp 20-4).

R9-22-712.72. DRG Reimbursement: Enrollment Changes During an Inpatient Stay

- A. If a member's enrollment changes during an inpatient stay, including changing enrollment from fee-for-service to a contractor, or vice versa, or changing from one contractor to another contractor, the contractor with whom the member is enrolled on the date of discharge shall be responsible for reimbursing the hospital for the entire length of stay under the DRG payment rules in sections R9-22-712.60 through R9-22-712.81. If the member is eligible but not enrolled with a contractor on the date of discharge, then the AHCCCS administration shall be responsible for reimbursing the hospital for the entire length of stay under the DRG payment rules in sections R9-22-712.60 through R9-22-712.81.
- B. When a member's enrollment changes during an inpatient stay, the hospital shall use the date of enrollment with the payer responsible on the date of discharge as the "from" date of service on the claim regardless of the date of admission.
- C. Interim claims submitted to a payer other than the payer responsible on the day of discharge shall be processed in the

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

same manner as other interim claims as described in R9-22-712.76.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

R9-22-712.73. DRG Reimbursement: Inpatient Stays for Members Eligible for Medicare

If the hospital receives less than the full Medicare payment for a member eligible for benefits under Part A of Medicare because the member has exceeded the maximum benefit permitted under Part A of Medicare, the hospital shall submit a separate claim for services performed after the date the maximum Medicare Part A benefit is exceeded. The claim may include all diagnosis codes for the entire inpatient stay, but the hospital is only required to include revenue codes, surgical procedure codes, service units, and charges for services performed after the date the Medicare Part A benefit is exceeded. A claim so submitted shall be reimbursed using the DRG payment methodology.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.74. DRG Reimbursement: Third Party Liability DRG payments are subject to reduction based on cost avoidance under Section R9-22-1003 and other rules regarding first-and third-party liability under Article 10 of this Chapter including cost avoidance for claims for ancillary services covered under Part B of Medicare.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

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

- A.** Categories of Administrative Days. Administrative days fall into one of two categories, either subsection (A)(1) or (A)(2).
1. Administrative days due to lack of appropriate placement options and not meeting inpatient medical criteria. 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.
 - a. 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.
 - b. 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.
 - c. 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.
 - d. 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.

- e. Administrative days include inpatient claims covered by a RBHA or TRBHA that otherwise meet the criteria in subsection (A)(1).
 2. Administrative days for claims with the principal diagnosis of behavioral health meeting inpatient medical criteria. Administrative days are days with dates of discharge on or after October 1, 2018, in which a member is admitted as an inpatient to an acute care hospital, meets the criteria for an acute inpatient stay, and the principal diagnosis on the hospital claim is a behavioral health diagnosis. Inpatient claims covered by a RBHA or TRBHA are not considered administrative days under subsection (A)(2) regardless of the principal diagnosis on the hospital claim.
- B.** Reimbursement of Administrative Days.
1. Administrative days under subsection (A)(1) 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 such as the rate paid for stays at a nursing facility.
 2. Administrative days under subsection (A)(2) are reimbursed at the daily rate found on the Inpatient Behavioral Health Capped Fee-For-Service Schedule meeting the criteria of "Service Description – Psychiatric Stay," regardless of revenue code.
- 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.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 3111, effective October 1, 2019 (Supp. 19-4).

R9-22-712.76. DRG Reimbursement: Interim Claims

- A.** For inpatient stays with a length of stay greater than 29 days, a hospital may submit interim claims for each 30 day period during the inpatient stay.
- B.** Hospitals shall be reimbursed for interim claims at a per diem rate of \$500 per day.
- C.** Following discharge, the hospital shall void all interim claims. In such circumstances, the hospital shall submit a claim to the payer with whom the member is enrolled on the date of discharge, whether the Administration or a contractor, for the entire inpatient stay for which the final claim shall be reimbursed under the DRG payment methodology. Interim claims will be recouped.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.77. DRG Reimbursement: Admissions and Discharges on the Same Day

- A.** Except as provided for in subsection (B), for any claim for inpatient services with an admission date and discharge date that are the same calendar date, the contractor or the Administration shall process the claim as an outpatient claim and the hospital shall be reimbursed under R9-22-712.10 through R9-22-712.50.
- B.** Claims with an admission date and discharge date that are the same calendar date that also indicate that the member expired

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

on the date of discharge shall be reimbursed under the DRG methodology.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.78. DRG Reimbursement: Readmissions

If a member is readmitted without prior authorization to the same hospital that the member was discharged from within 72 hours and the DRG code assigned to the claim for the prior admission has the same first three digits as the DRG code assigned to the claim for the readmission, then payment for the claim for the readmission will be disallowed only if the readmission could have been prevented by the hospital.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.79. DRG Reimbursement: Change of Ownership

The administration shall not change any of the components of the calculation of reimbursement for inpatient services using the DRG methodology based upon a change in the hospital's ownership except to the extent those components would change under the methodology had the hospital not changed ownership (e.g., updating the hospital's cost-to-charge ratio as of September 1 of each year under R9-22-712.68).

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.80. DRG Reimbursement: New Hospitals

- A. DRG base payment for new hospitals. For any hospital that does not have a labor share or wage index published by CMS as described in subsection R9-22-712.62(B) because the hospital was not in operation, the DRG base rate described in subsection R9-22-712.62(B) shall be calculated as the statewide standardized amount after adjusting that amount for the labor-related share and the wage index published by CMS as described in subsection R9-22-712.62(B) that is appropriate to the location of the hospital published by CMS as described in subsection R9-22-712.62(B).
- B. Outlier calculations for new hospitals. For any hospital that does not have an operating cost-to-charge ratio listed in the impact file described in subsection R9-22-712.68(B) because the hospital was not in operation prior to the publication of the impact file, the statewide urban or rural default operating cost-to-charge ratio appropriate to the location of the hospital and the statewide capital cost-to-charge ratio shall be used to determine the unadjusted outlier add-on payment. The statewide urban or rural default operating cost-to-charge ratio and the statewide capital cost-to-charge ratio shall be based on the ratios published by CMS and updated by the Administration as described in subsection R9-22-712.68(C).
- C. In addition to the requirement of this Section, DRG reimbursement for new hospitals is determined under R9-22-712.60 through R9-22-712.79.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

R9-22-712.81. DRG Reimbursement: Updates

In addition to the other updates provided for in Sections R9-22-712.60 through R9-22-712.80, the Administration may update the

version of the APR-DRG classification system established by 3M Health Information Systems, adjust the statewide standardized amount in Section R9-22-712.62, the base payments in sections R9-22-712.63 and R9-22-712.64, the provider policy adjustor in section R9-22-712.65, service policy adjustors Section R9-22-712.66, and the fixed loss amounts and marginal cost percentages used to calculate the outlier threshold in Section R9-22-712.68 to the extent necessary to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the geographic area. The Administration shall publish any proposed classification system on the agency's website at least 30 days prior to the effective date, to ensure a sufficient period for public comment, as required by 42 C.F.R. § 447.205. In addition, the public notice shall be available for inspection during normal business hours at 701 E. Jefferson, Phoenix, Arizona. The requirements of 42 CFR § 447.205 as of November 2, 2015 are incorporated by reference and do not include any later amendments.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

R9-22-712.90. Reimbursement of Hospital-based Free-standing Emergency Departments

- A. "Hospital-based freestanding emergency department" (hospital-based FSED) means an outpatient treatment center, as defined in R9-10-101, that: (1) provides emergency room services under R9-10-1019, (2) is subject to the requirements of 42 CFR 489.24, and (3) shares an ownership interest with a hospital, regardless of whether the outpatient treatment center operates under a hospital's single group license as described in A.R.S. § 36-422.
- B. A hospital-based FSED shall register with the Administration separately from the hospital with which an ownership interest is shared and shall obtain a separate provider identification number. The Administration shall not charge a separate provider enrollment fee for registration of a hospital-based FSED. The Administration shall accept a hospital's compliance with the provider screening and enrollment requirements of 42 CFR Part 455 as compliance by the hospital-based FSED.
- C. For dates of service on and after March 1, 2017, and except as provided in subsection (D), services provided by a hospital-based FSED for evaluation and management CPT codes 99281 through 99285 shall be reimbursed at the following percentages of the amounts otherwise reimbursable under sections R9-22-712.20 through R9-22-712.30. All other covered codes shall be reimbursed in accordance with sections R9-22-712.20 through R9-22-712.30 without a percentage reduction.
 1. 60% for a level 1 emergency department visit as indicated by CPT 99281.
 2. 80% for a level 2 emergency department visit as indicated by CPT 99282.
 3. 90% for a level 3 emergency department visit as indicated by CPT 99283.
 4. 100% for a level 4 or 5 emergency department visit as indicated by CPT codes 99284 and 99285.
- D. A hospital-based FSED located in a city or town in a county with less than 500,000 residents, where the only hospital in the city or town operating an emergency department closed on or after January 1, 2015, shall be reimbursed under sections R9-22-712.20 through R9-22-712.35 using the adjustment in R9-22-712.35 associated with the nearest hospital with which the

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

freestanding emergency department shares an ownership interest.

- E. Services provided by an outpatient treatment center that provides emergency room services under R9-10-1019, but does not otherwise meet the criteria in subsection A, shall be reimbursed based on the non-hospital AHCCCS capped fee-for-service schedule under R9-22-710.
- F. The Administration shall not reimburse a hospital for services provided at a hospital-based FSED if the member is admitted directly from a hospital-based FSED to a hospital with an ownership interest in the hospital-based FSED. As provided in R9-22-712.60(B), payments made for the inpatient stay using the DRG methodology shall be the sole reimbursement.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 22, February 11, 2017 (Supp. 16-4).

R9-22-713. Overpayment and Recovery of Indebtedness

- A. If a contractor or a subcontracting provider receives an overpayment from the Administration or otherwise becomes indebted to the Administration, the contractor or subcontracting provider shall immediately remit the amount of the indebtedness or overpayment to the Administration for deposit in the AHCCCS fund.
- B. If the funds described in subsection (A) are not remitted, the Administration may recover the funds paid by the Administration to a contractor or subcontracting provider through:
1. A repayment agreement executed with the Administration;
 2. Withholding or offsetting against current or future payments to be paid to the contractor or subcontracting provider; or
 3. Enforcement of, or collection against, the performance bond, financial reserve, or other financial security under A.R.S. § 36-2903.

Historical Note

Adopted as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Adopted as a permanent rule effective May 16, 1983; text of adopted rule identical to the emergency (Supp. 83-3). Former Section R9-22-713 repealed, new Section R9-22-713 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-713 renumbered and amended as Section R9-22-714, former Section R9-22-709 renumbered and amended as Section R9-22-713 effective October 1, 1985 (Supp. 85-5). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 856, effective May 5, 2007 (Supp. 07-1).

R9-22-714. Payments to Providers

- A. Provider agreement. The Administration or a contractor shall not reimburse a covered service provided to a member unless the provider has signed a provider agreement with the Administration that establishes the terms and conditions of participation and payment under A.R.S. § 36-2904.
- B. Provider reimbursement. The Administration or a contractor shall reimburse a provider for a service furnished to a member only if:
1. The provider personally furnishes the service to a specific member. For purposes of this Section, services personally furnished by a provider include:
 - a. Services provided by medical residents or dental students in a teaching environment; or
 - b. Services provided by a licensed or certified assistant under the general supervision of a licensed practi-

tioner in accordance with 4 A.A.C. 24, 9 A.A.C. 16, 4 A.A.C. 43, or 4 A.A.C. 45;

2. The provider verifies that individuals who have provided services described in subsection (B)(1) have not been placed on the List of Excluded Individuals/Entities (LEIE) maintained by the United States Department of Health and Human Services Office of the Inspector General (OIG), located at OIG's web site;
 3. The service contributes directly to the diagnosis or treatment of the member; and
 4. The service ordinarily requires performance by the type of provider seeking reimbursement.
- C. The Administration or a contractor may make a payment for covered services only:
1. To the provider;
 2. To anyone specified in a reassignment from the provider to a government agency or reassignment by a court order;
 3. To a business agent, if the agent's compensation for the service is:
 - a. Related to the cost of processing the billing;
 - b. Not related on a percentage or other basis to the amount that is billed or collected; and
 - c. Not dependent upon collection of the payment;
 4. To the employer of the provider, if the provider is required as a condition of employment to turn over the provider's fees to the employer;
 5. To the inpatient facility in which the service is provided, if the provider has a contract under which the inpatient facility submits the claim; or
 6. To a foundation, plan, or similar organization operating an organized health care delivery system, if the provider has a contract under which the foundation, plan or similar organization submits the claim.
- D. The Administration or a contractor shall not make a payment to or through a factor, either directly or by power of attorney, for a covered service furnished to a member by a provider.
- E. Reimbursement for a pathology service. Unless otherwise specified in a contract, the Administration or a contractor shall reimburse a pathologist for a pathology service furnished to a member only if the other requirements in this Section are met and the service is:
1. A surgical pathology service;
 2. A specific cytopathology, hematology, or blood banking pathology service that requires performance by a physician and is listed in the capped fee-for-service schedule;
 3. A clinical consultation service that:
 - a. Is requested by the member's attending physician or primary care physician,
 - b. Is related to a test result that is outside the clinically significant normal or expected range in view of the condition of the member,
 - c. Results in a written narrative report included in the member's medical record,
 - d. Requires the exercise of medical judgment by the consultant pathologist, and
 - e. Is listed in the capped fee-for-service schedule; or
 4. A clinical laboratory interpretative service that:
 - a. Is requested by the member's attending physician or primary care physician,
 - b. Results in a written narrative report included in the member's medical record,
 - c. Requires the exercise of medical judgment by the consultant pathologist, and
 - d. Is listed in the capped fee-for-service schedule.

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

Historical Note

Adopted as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Adopted as a permanent rule effective May 16, 1983; text of adopted rule is similar to the emergency (Supp. 83-3). Repealed effective October 1, 1983 (Supp. 83-5). Former Section R9-22-713 renumbered and amended as Section R9-22-714 effective October 1, 1985 (Supp. 85-5). Section repealed; new Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 9 A.A.R. 3800, effective October 4, 2003 (Supp. 03-3). Amended by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1).

Editor's Note: The following Section was amended under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rules; and the Attorney General did not certify this rule. This Section was subsequently amended through the regular rulemaking process.

R9-22-715. Hospital Rate Negotiations

- A.** A contractor that negotiates with hospitals for inpatient or outpatient services shall reimburse hospitals for services rendered on or after March 1, 1993, as described in A.R.S. § 36-2903.01 and this Article, or at the negotiated rate that, in the aggregate, does not exceed reimbursement levels that would have been paid under A.R.S. § 36-2903.01, and this Article. This subsection does not apply to urban hospitals described under R9-22-718. Contractors may engage in rate negotiations with a hospital at any time during the contract period.
- B.** The Administration may negotiate or contract with a hospital on behalf of a contractor for discounted hospital rates and may require that the negotiated discounted rates be included in a subcontract between the contractor and hospital.

Historical Note

Adopted as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Adopted as a permanent rule effective May 16, 1983; text of adopted rule identical to the emergency (Supp. 83-3). Repealed effective October 1, 1983 (Supp. 83-5). New Section R9-22-715 adopted effective October 1, 1985 (Supp. 85-5). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective January 14, 1997 (Supp. 97-1). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 3222, effective October 1, 2005 (Supp. 05-3). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

Editor's Note: The following Section was amended under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rules; and the Attorney General did not certify this rule. This Section was subsequently amended through the regular rulemaking process.

R9-22-716. Repealed**Historical Note**

Adopted effective October 1, 1985 (Supp. 85-5). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective January 14, 1997 (Supp. 97-1). Amended by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Section repealed by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1).

R9-22-717. Repealed**Historical Note**

Adopted effective July 30, 1993 (Supp. 93-3). Amended effective September 22, 1997 (Supp. 97-3). Section repealed by final rulemaking at 11 A.A.R. 3222, effective October 1, 2005 (Supp. 05-3).

Editor's Note: The following Section was originally adopted under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor's Regulatory Review Council. The agency was required to submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and was required to hold a public hearing. It has since been amended under the regular rulemaking process.

R9-22-718. Urban Hospital Inpatient Reimbursement Program

- A.** Definitions. The following definitions apply to this Section:
1. "Contractor" has the same meaning as set forth in A.R.S. § 36-2901, and includes all contractors regardless of whether the GSA's served by the contractor includes urban or rural counties.
 2. "Noncontracted Hospital" means an urban hospital, including psychiatric hospitals, which does not have a contract under this Section with a contractor.
 3. "Urban Hospital" means a hospital that is not a rural hospital, as defined in R9-22-712.07, and that is physically located in Maricopa or Pima County.
- B.** General Provisions.
1. This Section applies to an urban hospital who receives payment for inpatient hospital services under A.R.S. §§ 36-2903.01 and 36-2904.
 2. AHCCCS shall operate an inpatient hospital reimbursement program under A.R.S. § 36-2905.01 and this Section.
 3. Residency of the member receiving inpatient AHCCCS covered services is not a factor in determining which hospitals are required to contract with which contractors.
 4. A contractor shall enter into a contract for reimbursement for inpatient AHCCCS covered services with one or more urban hospitals located in the same county as the contractor.
 5. A noncontracted urban hospital shall be reimbursed for inpatient services by a contractor at 95% of the amount calculated as defined in A.R.S. § 36-2903.01 and this Article, unless otherwise negotiated by both parties.
- C.** Contract Begin Date. A contract under this Article shall cover inpatient acute care hospital services for members with hospital admissions on and after October 1, 2003.
- D.** Outpatient urban hospital services. Outpatient urban hospital services, including observation days and emergency room treatments that do not result in an admission, shall be reimbursed either through an urban hospital contract negotiated between a contractor and an urban hospital, or the reimbursement rates set forth in A.R.S. § 36-2903.01. Outpatient ser-

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

VICES in an urban hospital that result in an admission shall be paid as inpatient services in accordance with this Section.

E. Urban Hospital Contract.

1. Provisions of an urban hospital contracts. The urban hospital contract shall contain but is not limited to the following provisions:
 - a. Required provisions as described in the Request for Proposals (RFP);
 - b. Dispute settlement procedures. If the AHCCCS Grievance System prescribed in A.R.S. § 36-2903.01(B) and rule is not used, then arbitration shall be used;
 - c. Arbitration procedure. If arbitration is used, the urban hospital contract shall identify:
 - i. The parties' agreement on arbitrating claims arising from the contract,
 - ii. Whether arbitration is nonbinding or binding,
 - iii. Timeliness of arbitration,
 - iv. What contract provisions may be appealed,
 - v. What rules will govern arbitrations,
 - vi. The number of arbitrators that shall be used,
 - vii. How arbitrators shall be selected, and
 - viii. How arbitrators shall be compensated.
 - d. Timeliness of claims submission and payment;
 - e. Prior authorization;
 - f. Concurrent review;
 - g. Electronic submission of claims;
 - h. Claims review criteria;
 - i. Payment of discounts or penalties such as quick-pay and slow-pay provisions;
 - j. Payment of outliers;
 - k. Claim documentation specifications under A.R.S. § 36-2904.
 - l. Treatment and payment of emergency room services; and
 - m. Provisions for rate changes and adjustments.
 2. AHCCCS review and approval of urban hospital contracts:
 - a. AHCCCS may review, approve, or disapprove the hospital contract rates, terms, conditions, and amendments to the contract;
 - b. The AHCCCS evaluation of each urban hospital contract shall include but not be limited to the following areas:
 - i. Availability and accessibility of services to members,
 - ii. Related party interests,
 - iii. Inclusion of required terms pursuant to this Section, and
 - iv. Reasonableness of the rates.
- F. Quick-Pay/Slow-Pay.** A payment made by a contractor to a noncontracted hospital shall be subject to quick-pay discounts and slow-pay penalties under A.R.S. § 36-2904.

Historical Note

Adopted under an exemption from the provisions of the Administrative Procedure Act, effective January 29, 1997; pursuant to Laws 1996, Ch. 288, § 24 (Supp. 97-1). Amended by exempt rulemaking at 10 A.A.R. 500, effective February 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 13 A.A.R. 3190, effective October 1, 2007 (Supp. 07-3). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final

rulemaking at 24 A.A.R. 1515, effective June 30, 2018 (Supp. 18-2).

R9-22-719. Contractor Performance Measure Outcomes

The Administration may retain a specified percentage of capitation reimbursement to distribute to contractors based on their performance measure outcomes under A.R.S. § 36-2904. The Administration shall notify contractors 60 days prior to a new contract year if this methodology is implemented. The Administration shall specify the details of the reimbursement methodology in contract.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1).

R9-22-720. Reinsurance

- A.** Reinsurance is a stop-loss program provided by the Administration to a contractor for partial reimbursement of the cost of covered services for a member with an acute medical condition when the cost of covered services exceeds a pre-determined deductible level amount within a contract year. The Administration self-insures the reinsurance program through a reduction to capitation rates. The reinsurance program also includes a catastrophic reinsurance program for members diagnosed with specific medical conditions.
- B.** The Administration shall specify in contract guidelines for claims submission, processing, payment, and the types of care and services that are provided to a member whose care is covered by reinsurance.
- C.** When the Administration determines that a contractor does not follow the specified guidelines for care or services and the care or services could have been provided at a lower cost according to the guidelines, the Administration shall reimburse the contractor as if the care or services had been provided as specified in the guidelines.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 856, effective May 5, 2007 (Supp. 07-1).

R9-22-721. Behavioral Health Inpatient Facilities

"Behavioral health inpatient facility" means a health care institution, other than Arizona State Hospital, that meets the following requirements:

1. Provides continuous treatment to an individual experiencing a behavioral health issue that causes the individual to:
 - a. Have a limited or reduced ability to meet the individual's basic physical needs;
 - b. Suffer harm that significantly impairs the individual's judgment, reason, behavior, or capacity to recognize reality;
 - c. Be a danger to self;
 - d. Be a danger to others;
 - e. Be persistently or acutely disabled as defined in A.R.S. § 36-501; or
 - f. Be gravely disabled; and
2. Is one of the following facility types:
 - a. Psychiatric hospitals;
 - b. Mental health residential treatment centers;
 - c. Secure residential treatment centers with 17 or more beds;
 - d. Non-secure residential treatment centers with 1-16 beds;
 - e. Non-secure residential treatment centers with 17 or more beds;
 - f. Sub-acute facilities with 1-16 beds;

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

- g. Sub-acute facilities with 17 or more beds.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 3120, effective October 1, 2019 (Supp. 19-4).

R9-22-722.	Reserved
R9-22-723.	Reserved
R9-22-724.	Reserved
R9-22-725.	Reserved
R9-22-726.	Reserved
R9-22-727.	Reserved
R9-22-728.	Reserved
R9-22-729.	Reserved

Editor's Note: Amendments to Section R9-22-730 were filed as a final exempt rulemaking. AHCCCS provided an opportunity for public comment on the amended rules under Laws 2013, 1st Special Session, Ch. 10. A proposed exempt rulemaking was published in the Arizona Administrative Register at 21 A.A.R. 1041 (Supp. 15-3).

Editor's Note: Amendments to Section R9-22-730 were filed as a final exempt rulemaking. AHCCCS provided an opportunity for public comment on the amended rules under Laws 2013, 1st Special Session, Ch. 10. A proposed exempt rulemaking was published in the Arizona Administrative Register at 21 A.A.R. 491 (Supp. 15-2).

R9-22-730. Hospital Assessment Fund - Hospital Assessment

A. For purposes of this Section, the following terms are defined as provided below unless the context specifically requires another meaning:

1. "2019 Medicare Cost Report" means The Medicare Cost Report for the hospital fiscal year ending in calendar year 2019 as reported in the CMS Healthcare Provider Cost Reporting Information System (HCRIS) release dated October 9, 2020.
2. "2019 Uniform Accounting Report" means the Uniform Accounting Report submitted to the Arizona Department of Health Services as of December 10, 2020 for the hospital's fiscal year ending in calendar year 2019.
3. "Quarter" means the three month period beginning January 1, April 1, July 1, and October 1 of each year.
4. A "new hospital" means a licensed hospital that did not hold a license from the Arizona Department of Health Services prior to January 2, 2021.
5. "Outpatient Net Patient Revenues" means an amount, calculated using data in the hospital's 2019 Uniform Accounting Report, that is equal to the hospital's 2019 total net patient revenue multiplied by the ratio of the hospital's 2019 gross outpatient revenue to the hospital's 2019 total gross patient revenue.

B. Beginning January 1, 2014, for each Arizona licensed hospital not excluded under subsection (I) shall be subject to an assessment payable on a quarterly basis. The assessment shall be levied against the legal owner of each hospital as of the first day of the quarter, and except as otherwise required by subsections (D), (E) and (F). For the period beginning October 1, 2021, the assessment for each hospital shall be amount equal to the sum of: (1) the number of discharges reported on the hospital's 2019 Medicare Cost Report, excluding discharges reported on the Medicare Cost Report as "Other Long Term Care Discharges," multiplied by the following rates appropriate to the hospital's peer group; and (2) the amount of outpatient net

patient revenues multiplied by the following rate appropriate to the hospital's peer group:

1. \$748.50 per discharge and 1.3700% of outpatient net patient revenues for hospitals located in a county with a population less than 500,000 that are designated as type: hospital, subtype: short-term.
 2. \$748.50 per discharge and 0.5708% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: critical access hospital.
 3. \$187.25 per discharge and 0.5708% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: long term.
 4. \$187.25 per discharge and 0.5708% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: psychiatric, that reported 2,500 or more discharges on the 2019 Medicare Cost Report.
 5. \$598.75 per discharge and 1.4842% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term with 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital's 2019 Uniform Accounting Report.
 6. \$673.50 per discharge and 1.7125% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term with at least 10% but less than 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital's 2019 Uniform Accounting Report.
 7. \$149.75 per discharge and 0.4567% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: children's.
 8. \$748.50 per discharge and 2.2834% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term not included in another peer group.
- C. Peer groups for the four quarters beginning October 1 of each year are established based on hospital license type and subtype designated in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website January 2, 2021.
- D. Notwithstanding subsection (B), psychiatric discharges from a hospital that reported having a psychiatric sub-provider in the hospital's 2019 Medicare Cost Report, are assessed a rate of \$187.25 for each discharge from the psychiatric sub-provider as reported in the 2019 Medicare Cost Report. All discharges other than those reported as discharges from the psychiatric sub-provider are assessed at the rate required by subsection (B).
- E. Notwithstanding subsection (B), rehabilitative discharges from a hospital that reported having a rehabilitative sub-provider in the hospital's 2019 Medicare Cost Report, are assessed a rate of \$0 for each discharge from the rehabilitative sub-provider as reported in the 2019 Medicare Cost Report. All discharges other than those reported as discharges from the rehabilitative sub-provider are assessed at the rate required by subsection (B).
- F. Notwithstanding subsection (B), for any hospital that reported more than 23,000 discharges on the hospital's 2019 Medicare Cost Report, discharges in excess of 23,000 are assessed a rate of \$75.00 for each discharge in excess of 23,000. The initial 23,000 discharges are assessed at the rate required by subsection (B).
- G. Assessment notice. On or before the 15th day of the first month of the quarter or upon CMS approval, whichever is later, the Administration shall send to each hospital a notification that the Hospital Assessment Fund assessment invoice is

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

available to be viewed on a secure website. The invoice shall include the hospital's peer group assignment and the assessment due for the quarter.

- H.** Assessment due date. The Hospital Assessment Fund assessment must be received by the Administration no later than:
1. The 15th day of the second month of the quarter or
 2. In the event CMS approves the assessment after the 15th day of the first month of the quarter, 30 days after notification by the Administration that the assessment invoice is available.
- I.** Excluded hospitals. The following hospitals are excluded from the assessment based on the hospital's 2019 Medicare Cost Report and Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for January 2, 2021:
1. Hospitals owned and operated by the state, the United States, or an Indian tribe.
 2. Hospitals designated as type: hospital, subtype: short-term that have a license number beginning "SH".
 3. Hospitals designated as type: hospital, subtype: psychiatric that reported fewer than 2,500 discharges on the 2019 Medicare Cost Report.
 4. Hospitals designated as type: hospital, subtype: rehabilitation.
 5. Hospitals designated as type: med-hospital, subtype: special hospitals.
 6. Hospitals designated as type: hospital, subtype: short-term located in a city with a population greater than one million, which on average have at least 15 percent of inpatient days for patients who reside outside of Arizona, and at least 50 percent of discharges as reported on the 2019 Medicare Cost Report are reimbursed by Medicare.
 7. Hospitals designated as type: hospital, subtype: short-term that have at least 25 percent Medicare swing beds as percentage of total Medicare days, per the 2019 Medicare Cost Report.
- J.** New hospitals. For hospitals that did not file a 2019 Medicare Cost Report because of the date the hospital began operations:
1. If the hospital was open on the January 2 preceding the October assessment start date, the hospital assessment will begin on October 1 following the date the hospital began operating.
 2. If the hospital began operating between January 3 and June 30, the assessment will begin on October 1 of the following calendar year.
 3. A hospital is not considered a new hospital based on a change in ownership.
 4. The assessment will be based on the discharges reported in the hospital's first Medicare Cost Report and Uniform Accounting Report, which includes 12 months-worth of data, except when any of the following apply;
 - a. If there is not a complete 12 months-worth of data available, the assessment will be based on the annualized number of discharges from the date hospital operations began through December 31 preceding the October assessment start date. The hospital shall self-report the discharge data and all other data requested by the Administration necessary to determine the appropriate assessment to the Administration no later than January preceding the assessment start date for the new hospitals. "Annualized" means divided by a ratio equal to the number of months of data divided by 12 months.
 - b. If more than 12 months of data is available, the assessment will be based on the most recent 12 months of self-reported data, as of December 31;
5. For purposes of calculating subpart 4, if a new hospital shares a Medicare Identification Number with an existing hospital, the assessment amount will be based on self-reported data from the new hospital instead of the Medicare Cost Report. The data shall include the number of discharges and all other data requested by the Administration necessary to determine the appropriate assessment.
6. For hospitals providing self-reported data, described in subpart 4 and 5:
- a. Psychiatric discharges will be annualized to determine if subsections (B)(4) or (I)(3) apply to the assessment amount.
 - b. Discharges will be annualized to determine if subsection (F) applies to the assessment amount.
- K.** Changes of ownership. The parties to a change of ownership shall promptly provide written notice to the Administration of a change of ownership and any agreement regarding the payment of the assessment. The assessed amount will continue at the same amount applied to the prior owner. Assessments are the responsibility of the owner of record as of the first day of the quarter; however, this rule is not intended to prohibit the parties to a change of ownership from entering into an agreement for a new owner to assume the assessment responsibility of the owner of record as of the first day of the prior quarter.
- L.** Hospital closures. Hospitals that close shall pay a proportion of the quarterly assessment equal to that portion of the quarter during which the hospital operated.
- M.** Required information for the inpatient assessment. For any hospital that has not filed a 2019 Medicare Cost report, or if the 2019 Medicare Cost report does not include the reliable information sufficient for the Administration to calculate the inpatient assessment, the Administration shall use data reported on the 2019 Uniform Accounting Report filed by the hospital in place of the 2019 Medicare Cost report to calculate the assessment. If the 2019 Uniform Accounting Report filed by the hospital does not include reliable information sufficient for the Administration to calculate the inpatient assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the 2019 Medicare Cost report to calculate the assessment.
- N.** Required information for the outpatient assessment. For any hospital that has not filed a 2019 Uniform Accounting Report, or if the 2019 Uniform Accounting Report does not reconcile to 2019 Audited Financial Statements, the Administration shall use the data reported on 2019 Audited Financial Statements to calculate the outpatient assessment. If the 2019 Audited Financial Statements do not include the reliable information sufficient for the Administration to calculate the outpatient assessment, the Administration shall use data reported on the 2019 Medicare Cost report. If the Medicare Cost report does not include reliable information sufficient for the Administration to calculate the outpatient assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the 2019 Medicare Cost report to calculate the outpatient assessment.
- O.** The Administration will review and update as necessary rates and peer groups periodically to ensure the assessment is sufficient to fund the state match obligation to cover the cost of the populations as specified in A.R.S. § 36-2901.08.
- P.** Enforcement. If a hospital does not comply with this Section, the director may suspend or revoke the hospital's provider agreement. If the hospital does not comply within 180 days after the hospital's provider agreement is suspended or

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

revoked, the director shall notify the director of the Department of Health Services who shall suspend or revoke the hospital's license.

Historical Note

New Section R9-22-730 made by exempt rulemaking at 20 A.A.R. 281, effective January 15, 2014 (Supp. 14-1).

Amended by exempt rulemaking at 20 A.A.R. 1833, effective July 1, 2014 (Supp. 14-2). Amended by final exempt rulemaking at 21 A.A.R. 637, effective April 15, 2015 (Supp. 15-2). Amended by final exempt rulemaking at 21 A.A.R. 1486, effective July 16, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 22 A.A.R. 2050, effective July 14, 2016 (Supp. 16-4). Amended by final exempt rulemaking at 23 A.A.R. 1945, effective July 1, 2017 (Supp. 17-2). Amended by final exempt rulemaking at 24 A.A.R. 2229, effective July 10, 2018 (Supp. 18-3). Amended by final exempt rulemaking at 25 A.A.R. 1938, effective July 1, 2019 (Supp. 19-3). Amended by final exempt rulemaking at 26 A.A.R. 1702, effective July 1, 2020 (Supp. 20-3). Amended by final exempt rulemaking at 26 A.A.R. 2984, effective October 1, 2020 (Supp. 20-4). Amended by final exempt rulemaking at 27 A.A.R. 2370, effective October 1, 2021 (Supp. 21-3).

R9-22-731. Health Care Investment Fund - Hospital Assessment

- A.** For purposes of this Section, terms are the same as defined in R9-22-730 as provided below unless the context specifically requires another meaning.
- B.** Beginning October 1, 2020, for each Arizona licensed hospital not excluded under subsection (I) shall be subject to an assessment payable on a quarterly basis. The assessment shall be levied against the legal owner of each hospital as of the first day of the quarter, and except as otherwise required by subsections (D), (E) and (F). For the period beginning October 1, 2020, the assessment for each hospital shall be amount equal to the sum of: (1) the number of discharges reported on the hospital's 2018 Medicare Cost Report, excluding discharges reported on the Medicare Cost Report as "Other Long Term Care Discharges," multiplied by the following rates appropriate to the hospital's peer group; and (2) the amount of outpatient net patient revenues multiplied by the following rate appropriate to the hospital's peer group:
1. \$151.50 per discharge and 2.5886% of outpatient net patient revenues for hospitals located in a county with a population less than 500,000 that are designated as type: hospital, subtype: short-term.
 2. \$151.50 per discharge and 1.0786% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: critical access hospital.
 3. \$38.00 per discharge and 1.0786% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: long term.
 4. \$38.00 per discharge and 1.0786% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: psychiatric, that reported 2,500 or more discharges on the 2018 Medicare Cost Report.
 5. \$121.25 per discharge and 2.8043% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term with 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital's 2018 Uniform Accounting Report.
 6. \$136.50 per discharge and 3.2357% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term with at least 10% but less than 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital's 2018 Uniform Accounting Report.
 7. \$30.50 per discharge and 0.8629% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: children's.
 8. \$151.50 per discharge and 4.3143% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term not included in another peer group.
- C.** Peer groups for the four quarters beginning October 1 of each year are established based on hospital license type and subtype designated in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website January 2, 2020.
- D.** Notwithstanding subsection (B), psychiatric discharges from a hospital that reported having a psychiatric sub-provider in the hospital's 2018 Medicare Cost Report, are assessed a rate of \$38.00 for each discharge from the psychiatric sub-provider as reported in the 2018 Medicare Cost Report. All discharges other than those reported as discharges from the psychiatric sub-provider are assessed at the rate required by subsection (B).
- E.** Notwithstanding subsection (B), rehabilitative discharges from a hospital that reported having a rehabilitative sub-provider in the hospital's 2018 Medicare Cost Report, are assessed a rate of \$0 for each discharge from the rehabilitative sub-provider as reported in the 2018 Medicare Cost Report. All discharges other than those reported as discharges from the rehabilitative sub-provider are assessed at the rate required by subsection (B).
- F.** Notwithstanding subsection (B), for any hospital that reported more than 24,000 discharges on the hospital's 2018 Medicare Cost Report, discharges in excess of 24,000 are assessed a rate of \$15.25 for each discharge in excess of 24,000. The initial 24,000 discharges are assessed at the rate required by subsection (B).
- G.** Assessment notice. On or before the 20th day of the first month of the quarter or upon CMS approval, whichever is later, the Administration shall send to each hospital a notification that the assessment invoice is available to be viewed on a secure website. The invoice shall include the hospital's peer group assignment and the assessment due for the quarter.
- H.** Assessment due date. The assessment must be received by the Administration no later than the 20th day of the second month of the quarter.
- I.** Excluded hospitals. The following hospitals are excluded from the assessment based on the hospital's 2018 Medicare Cost Report and Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for January 2, 2020:
1. Hospitals owned and operated by the state, the United States, or an Indian tribe.
 2. Hospitals designated as type: hospital, subtype: short-term that have a license number beginning "SH".
 3. Hospitals designated as type: hospital, subtype: psychiatric that reported fewer than 2,500 discharges on the 2018 Medicare Cost Report.
 4. Hospitals designated as type: hospital, subtype; rehabilitation.
 5. Hospitals designated as type: med-hospital, subtype: special hospitals.
 6. Hospitals designated as type: hospital, subtype: short-term located in a city with a population greater than one

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

- million, which on average have at least 15 percent of inpatient days for patients who reside outside of Arizona, and at least 50 percent of discharges as reported on the 2018 Medicare Cost Report are reimbursed by Medicare.
7. Hospitals designated as type: hospital, subtype: short-term that have at least 25 percent Medicare swing beds as percentage of total Medicare days, per the 2018 Medicare Cost Report.
 - J. New hospitals. For hospitals that did not file a 2018 Medicare Cost Report because of the date the hospital began operations:
 1. If the hospital was open on the January 2 preceding the October assessment start date, the hospital assessment will begin on October 1 following the date the hospital began operating.
 2. If the hospital began operating between January 3 and June 30, the assessment will begin on October 1 of the following calendar year.
 3. A hospital is not considered a new hospital based on a change in ownership.
 4. The assessment will be based on the discharges reported in the hospital's first Medicare Cost Report and Uniform Accounting Report, which includes 12 months-worth of data, except when any of the following apply:
 - a. If there is not a complete 12 months-worth of data available, the assessment will be based on the annualized number of discharges from the date hospital operations began through December 31 preceding the October assessment start date. The hospital shall self-report the discharge data and all other data requested by the Administration necessary to determine the appropriate assessment to the Administration no later than January preceding the assessment start date for the new hospitals. "Annualized" means divided by a ratio equal to the number of months of data divided by 12 months.
 - b. If more than 12 months of data is available, the assessment will be based on the most recent 12 months of self-reported data, as of December 31;
 5. For purposes of calculating subpart 4, if a new hospital shares a Medicare Identification Number with an existing hospital, the assessment amount will be based on self-reported data from the new hospital instead of the Medicare Cost Report. The data shall include the number of discharges and all other data requested by the Administration necessary to determine the appropriate assessment.
 6. For hospitals providing self-reported data, described in subpart 4 and 5:
 - a. Psychiatric discharges will be annualized to determine if subsections (B)(4) or (I)(3) apply to the assessment amount.
 - b. Discharges will be annualized to determine if subsection (F) applies to the assessment amount.
 - L. Changes of ownership. The parties to a change of ownership shall promptly provide written notice to the Administration of a change of ownership and any agreement regarding the payment of the assessment. The assessed amount will continue at the same amount applied to the prior owner. Assessments are the responsibility of the owner of record as of the first day of the quarter; however, this rule is not intended to prohibit the parties to a change of ownership from entering into an agreement for a new owner to assume the assessment responsibility of the owner of record as of the first day of the prior quarter.
 - M. Hospital closures. Hospitals that close shall pay a proportion of the quarterly assessment equal to that portion of the quarter during which the hospital operated.
 - N. Required information for the inpatient assessment. For any hospital that has not filed a 2018 Medicare Cost report, or if the 2018 Medicare Cost report does not include the reliable information sufficient for the Administration to calculate the inpatient assessment, the Administration shall use data reported on the 2018 Uniform Accounting Report filed by the hospital in place of the 2018 Medicare Cost report to calculate the assessment. If the 2018 Uniform Accounting Report filed by the hospital does not include reliable information sufficient for the Administration to calculate the inpatient assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the 2018 Medicare Cost report to calculate the assessment.
 - O. Required information for the outpatient assessment. For any hospital that has not filed a 2018 Uniform Accounting Report, or if the 2018 Uniform Accounting Report does not reconcile to 2018 Audited Financial Statements, the Administration shall use the data reported on 2018 Audited Financial Statements to calculate the outpatient assessment. If the 2018 Audited Financial Statements do not include the reliable information sufficient for the Administration to calculate the outpatient assessment, the Administration shall use data reported on the 2018 Medicare Cost report. If the Medicare Cost report does not include reliable information sufficient for the Administration to calculate the outpatient assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the 2018 Medicare Cost report to calculate the outpatient assessment.
 - P. Enforcement. If a hospital does not comply with this section, the director may suspend or revoke the hospital's provider agreement. If the hospital does not comply within 180 days after the hospital's provider agreement is suspended or revoked, the director shall notify the director of the Department of Health Services who shall suspend or revoke the hospital's license.

Historical Note

New Section made by final exempt rulemaking at 26 A.A.R. 2984, effective October 1, 2020 (Supp. 20-4).

ARTICLE 8. REPEALED

Article 8, consisting of Sections R9-22-801 through R9-22-804 and Exhibit A, repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004. The subject matter of Article 8 is now in 9 A.A.C. 34 (Supp. 04-1).

R9-22-801. Repealed**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-801 adopted as an emergency adoption now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-801 repealed, new Section R9-22-801 adopted effective October 29, 1985 (Supp. 85-5). Amended subsections (C), (F), (H), (I), and (K) effective October 1, 1986 (Supp. 86-5). Change of heading only effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (H) effective May 30, 1989 (Supp. 89-2). Amended effective September 29, 1992 (Supp. 92-3). Section heading amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Amended effective December 13, 1993 (Supp. 93-4). Former Section R9-22-801 repealed, new Section R9-22-

36-2903.01. Additional powers and duties; report; definition

A. The director of the Arizona health care cost containment system administration may adopt rules that provide that the system may withhold or forfeit payments to be made to a noncontracting provider by the system if the noncontracting provider fails to comply with this article, the provider agreement or rules that are adopted pursuant to this article and that relate to the specific services rendered for which a claim for payment is made.

B. The director shall:

1. Prescribe uniform forms to be used by all contractors. The rules shall require a written and signed application by the applicant or an applicant's authorized representative, or, if the person is incompetent or incapacitated, a family member or a person acting responsibly for the applicant may obtain a signature or a reasonable facsimile and file the application as prescribed by the administration.

2. Enter into an interagency agreement with the department to establish a streamlined eligibility process to determine the eligibility of all persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). At the administration's option, the interagency agreement may allow the administration to determine the eligibility of certain persons, including those defined pursuant to section 36-2901, paragraph 6, subdivision (a).

3. Enter into an intergovernmental agreement with the department to:

(a) Establish an expedited eligibility and enrollment process for all persons who are hospitalized at the time of application.

(b) Establish performance measures and incentives for the department.

(c) Establish the process for management evaluation reviews that the administration shall perform to evaluate the eligibility determination functions performed by the department.

(d) Establish eligibility quality control reviews by the administration.

(e) Require the department to adopt rules, consistent with the rules adopted by the administration for a hearing process, that applicants or members may use for appeals of eligibility determinations or redeterminations.

(f) Establish the department's responsibility to place sufficient eligibility workers at federally qualified health centers to screen for eligibility and at hospital sites and level one trauma centers to ensure that persons seeking hospital services are screened on a timely basis for eligibility for the system, including a process to ensure that applications for the system can be accepted on a twenty-four hour basis, seven days a week.

(g) Withhold payments based on the allowable sanctions for errors in eligibility determinations or redeterminations or failure to meet performance measures required by the intergovernmental agreement.

(h) Recoup from the department all federal fiscal sanctions that result from the department's inaccurate eligibility determinations. The director may offset all or part of a sanction if the department submits a corrective action plan and a strategy to remedy the error.

4. By rule establish a procedure and time frames for the intake of grievances and requests for hearings, for the continuation of benefits and services during the appeal process and for a grievance process at the contractor level. Notwithstanding sections 41-1092.02, 41-1092.03 and 41-1092.05, the administration shall develop rules to establish the procedure and time frame for the informal resolution of grievances and appeals. A grievance that is not related to a claim for payment of system covered services shall be filed in writing with and received by the administration or the prepaid capitated provider or program contractor not later than sixty days after the date of the adverse action, decision or policy implementation being grieved. A grievance that is related to a claim for payment of system covered services must be filed in writing and received by the administration or the prepaid capitated provider or program contractor within twelve months after the date of service, within twelve months

after the date that eligibility is posted or within sixty days after the date of the denial of a timely claim submission, whichever is later. A grievance for the denial of a claim for reimbursement of services may contest the validity of any adverse action, decision, policy implementation or rule that related to or resulted in the full or partial denial of the claim. A policy implementation may be subject to a grievance procedure, but it may not be appealed for a hearing. The administration is not required to participate in a mandatory settlement conference if it is not a real party in interest. In any proceeding before the administration, including a grievance or hearing, persons may represent themselves or be represented by a duly authorized agent who is not charging a fee. A legal entity may be represented by an officer, partner or employee who is specifically authorized by the legal entity to represent it in the particular proceeding.

5. Apply for and accept federal funds available under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) in support of the system. The application made by the director pursuant to this paragraph shall be designed to qualify for federal funding primarily on a prepaid capitated basis. Such funds may be used only for the support of persons defined as eligible pursuant to title XIX of the social security act or the approved section 1115 waiver.

6. At least thirty days before the implementation of a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

7. In addition to the cost sharing requirements specified in subsection D, paragraph 4 of this section:

(a) Charge monthly premiums up to the maximum amount allowed by federal law to all populations of eligible persons who may be charged.

(b) Implement this paragraph to the extent permitted under the federal deficit reduction act of 2005 and other federal laws, subject to the approval of federal waiver authority and to the extent that any changes in the cost sharing requirements under this paragraph would permit this state to receive any enhanced federal matching rate.

C. The director is authorized to apply for any federal funds available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state funds appropriated for the administration and operation of the system may be used as matching funds to secure federal funds pursuant to this subsection.

D. The director may adopt rules or procedures to do the following:

1. Authorize advance payments based on estimated liability to a contractor or a noncontracting provider after the contractor or noncontracting provider has submitted a claim for services and before the claim is ultimately resolved. The rules shall specify that any advance payment shall be conditioned on the execution before payment of a contract with the contractor or noncontracting provider that requires the administration to retain a specified percentage, which shall be at least twenty percent, of the claimed amount as security and that requires repayment to the administration if the administration makes any overpayment.

2. Defer liability, in whole or in part, of contractors for care provided to members who are hospitalized on the date of enrollment or under other circumstances. Payment shall be on a capped fee-for-service basis for services other than hospital services and at the rate established pursuant to subsection G of this section for hospital services or at the rate paid by the health plan, whichever is less.

3. Deputize, in writing, any qualified officer or employee in the administration to perform any act that the director by law is empowered to do or charged with the responsibility of doing, including the authority to issue final administrative decisions pursuant to section 41-1092.08.

4. Notwithstanding any other law, require persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 to be financially responsible for any cost sharing requirements established in a state plan or a section 1115 waiver and approved by the centers for medicare and

medicaid services. Cost sharing requirements may include copayments, coinsurance, deductibles, enrollment fees and monthly premiums for enrolled members, including households with children enrolled in the Arizona long-term care system.

E. The director shall adopt rules that further specify the medical care and hospital services that are covered by the system pursuant to section 36-2907.

F. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection shall consider the differences between rural and urban conditions on the delivery of hospitalization and medical care.

G. For inpatient hospital admissions and outpatient hospital services on and after March 1, 1993, the administration shall adopt rules for the reimbursement of hospitals according to the following procedures:

1. For inpatient hospital stays from March 1, 1993 through September 30, 2014, the administration shall use a prospective tiered per diem methodology, using hospital peer groups if analysis shows that cost differences can be attributed to independently definable features that hospitals within a peer group share. In peer grouping the administration may consider such factors as length of stay differences and labor market variations. If there are no cost differences, the administration shall implement a stop loss-stop gain or similar mechanism. Any stop loss-stop gain or similar mechanism shall ensure that the tiered per diem rates assigned to a hospital do not represent less than ninety percent of its 1990 base year costs or more than one hundred ten percent of its 1990 base year costs, adjusted by an audit factor, during the period of March 1, 1993 through September 30, 1994. The tiered per diem rates set for hospitals shall represent no less than eighty-seven and one-half percent or more than one hundred twelve and one-half percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1994 through September 30, 1995 and no less than eighty-five percent or more than one hundred fifteen percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1995 through September 30, 1996. For the periods after September 30, 1996 no stop loss-stop gain or similar mechanisms shall be in effect. An adjustment in the stop loss-stop gain percentage may be made to ensure that total payments do not increase as a result of this provision. If peer groups are used, the administration shall establish initial peer group designations for each hospital before implementation of the per diem system. The administration may also use a negotiated rate methodology. The tiered per diem methodology may include separate consideration for specialty hospitals that limit their provision of services to specific patient populations, such as rehabilitative patients or children. The initial per diem rates shall be based on hospital claims and encounter data for dates of service November 1, 1990 through October 31, 1991 and processed through May of 1992. The administration may also establish a separate reimbursement methodology for claims with extraordinarily high costs per day that exceed thresholds established by the administration.

2. For rates effective on October 1, 1994, and annually through September 30, 2011, the administration shall adjust tiered per diem payments for inpatient hospital care by the data resources incorporated market basket index for prospective payment system hospitals. For rates effective beginning on October 1, 1999, the administration shall adjust payments to reflect changes in length of stay for the maternity and nursery tiers.

3. Through June 30, 2004, for outpatient hospital services, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to the covered charges. Beginning on July 1, 2004 through June 30, 2005, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to covered charges. If the hospital increases its charges for outpatient services filed with the Arizona department of health services pursuant to chapter 4, article 3 of this title, by more than 4.7 percent for dates of service effective on or after July 1, 2004, the hospital specific cost-to-charge ratio will be reduced by the amount that it exceeds 4.7 percent. If charges exceed 4.7 percent, the effective date of the increased charges will be the effective date of the adjusted Arizona health care cost containment system cost-to-charge ratio. The administration shall develop the methodology for a capped fee-for-service schedule and a statewide cost-to-charge ratio. Any covered outpatient service not included in the capped fee-for-service schedule shall be reimbursed by applying the statewide cost-to-charge ratio that is based on the services not included in the capped fee-for-service schedule. Beginning on July 1, 2005, the administration shall reimburse clean claims with dates of service on or after July 1, 2005, based on the capped fee-for-service schedule or the statewide cost-to-charge

ratio established pursuant to this paragraph. The administration may make additional adjustments to the outpatient hospital rates established pursuant to this section based on other factors, including the number of beds in the hospital, specialty services available to patients and the geographic location of the hospital.

4. Except if submitted under an electronic claims submission system, a hospital bill is considered received for purposes of this paragraph on initial receipt of the legible, error-free claim form by the administration if the claim includes the following error-free documentation in legible form:

- (a) An admission face sheet.
- (b) An itemized statement.
- (c) An admission history and physical.
- (d) A discharge summary or an interim summary if the claim is split.
- (e) An emergency record, if admission was through the emergency room.
- (f) Operative reports, if applicable.
- (g) A labor and delivery room report, if applicable.

Payment received by a hospital from the administration pursuant to this subsection or from a contractor either by contract or pursuant to section 36-2904, subsection I is considered payment by the administration or the contractor of the administration's or contractor's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.

5. For services rendered on and after October 1, 1997, the administration shall pay a hospital's rate established according to this section subject to the following:

- (a) If the hospital's bill is paid within thirty days of the date the bill was received, the administration shall pay ninety-nine percent of the rate.
- (b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate.
- (c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate plus a fee of one percent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. In developing the reimbursement methodology, if a review of the reports filed by a hospital pursuant to section 36-125.04 indicates that further investigation is considered necessary to verify the accuracy of the information in the reports, the administration may examine the hospital's records and accounts related to the reporting requirements of section 36-125.04. The administration shall bear the cost incurred in connection with this examination unless the administration finds that the records examined are significantly deficient or incorrect, in which case the administration may charge the cost of the investigation to the hospital examined.

7. Except for privileged medical information, the administration shall make available for public inspection the cost and charge data and the calculations used by the administration to determine payments under the tiered per diem system, provided that individual hospitals are not identified by name. The administration shall make the data and calculations available for public inspection during regular business hours and shall provide copies of the data and calculations to individuals requesting such copies within thirty days of receipt of a written request. The administration may charge a reasonable fee for the provision of the data or information.

8. The prospective tiered per diem payment methodology for inpatient hospital services shall include a mechanism for the prospective payment of inpatient hospital capital related costs. The capital payment shall

include hospital specific and statewide average amounts. For tiered per diem rates beginning on October 1, 1999, the capital related cost component is frozen at the blended rate of forty percent of the hospital specific capital cost and sixty percent of the statewide average capital cost in effect as of January 1, 1999 and as further adjusted by the calculation of tier rates for maternity and nursery as prescribed by law. Through September 30, 2011, the administration shall adjust the capital related cost component by the data resources incorporated market basket index for prospective payment system hospitals.

9. For graduate medical education programs:

(a) Beginning September 30, 1997, the administration shall establish a separate graduate medical education program to reimburse hospitals that had graduate medical education programs that were approved by the administration as of October 1, 1999. The administration shall separately account for monies for the graduate medical education program based on the total reimbursement for graduate medical education reimbursed to hospitals by the system in federal fiscal year 1995-1996 pursuant to the tiered per diem methodology specified in this section. The graduate medical education program reimbursement shall be adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Subject to legislative appropriation, on an annual basis, each qualified hospital shall receive a single payment from the graduate medical education program that is equal to the same percentage of graduate medical education reimbursement that was paid by the system in federal fiscal year 1995-1996. Any reimbursement for graduate medical education made by the administration shall not be subject to future settlements or appeals by the hospitals to the administration. The monies available under this subdivision shall not exceed the fiscal year 2005-2006 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement, except for monies distributed for expansions pursuant to subdivision (b) of this paragraph.

(b) The monies available for graduate medical education programs pursuant to this subdivision shall not exceed the fiscal year 2006-2007 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Graduate medical education programs eligible for such reimbursement are not precluded from receiving reimbursement for funding under subdivision (c) of this paragraph. Beginning July 1, 2006, the administration shall distribute any monies appropriated for graduate medical education above the amount prescribed in subdivision (a) of this paragraph in the following order or priority:

(i) For the direct costs to support the expansion of graduate medical education programs established before July 1, 2006 at hospitals that do not receive payments pursuant to subdivision (a) of this paragraph. These programs must be approved by the administration.

(ii) For the direct costs to support the expansion of graduate medical education programs established on or before October 1, 1999. These programs must be approved by the administration.

(c) The administration shall distribute to hospitals any monies appropriated for graduate medical education above the amount prescribed in subdivisions (a) and (b) of this paragraph for the following purposes:

(i) For the direct costs of graduate medical education programs established or expanded on or after July 1, 2006. These programs must be approved by the administration.

(ii) For a portion of additional indirect graduate medical education costs for programs that are located in a county with a population of less than five hundred thousand persons at the time the residency position was created or for a residency position that includes a rotation in a county with a population of less than five hundred thousand persons at the time the residency position was established. These programs must be approved by the administration.

(d) The administration shall develop, by rule, the formula by which the monies are distributed.

(e) Each graduate medical education program that receives funding pursuant to subdivision (b) or (c) of this paragraph shall identify and report to the administration the number of new residency positions created by the funding provided in this paragraph, including positions in rural areas. The program shall also report information related to the number of funded residency positions that resulted in physicians locating their practices in this state. The administration shall report to the joint legislative budget committee by February 1 of each year on the number of new residency positions as reported by the graduate medical education programs.

(f) Local, county and tribal governments and any university under the jurisdiction of the Arizona board of regents may provide monies in addition to any state general fund monies appropriated for graduate medical education in order to qualify for additional matching federal monies for providers, programs or positions in a specific locality and costs incurred pursuant to a specific contract between the administration and providers or other entities to provide graduate medical education services as an administrative activity. Payments by the administration pursuant to this subdivision may be limited to those providers designated by the funding entity and may be based on any methodology deemed appropriate by the administration, including replacing any payments that might otherwise have been paid pursuant to subdivision (a), (b) or (c) of this paragraph had sufficient state general fund monies or other monies been appropriated to fully fund those payments. These programs, positions, payment methodologies and administrative graduate medical education services must be approved by the administration and the centers for medicare and medicaid services. The administration shall report to the president of the senate, the speaker of the house of representatives and the director of the joint legislative budget committee on or before July 1 of each year on the amount of money contributed and number of residency positions funded by local, county and tribal governments, including the amount of federal matching monies used.

(g) Any funds appropriated but not allocated by the administration for subdivision (b) or (c) of this paragraph may be reallocated if funding for either subdivision is insufficient to cover appropriate graduate medical education costs.

10. Notwithstanding section 41-1005, subsection A, paragraph 9, the administration shall adopt rules pursuant to title 41, chapter 6 establishing the methodology for determining the prospective tiered per diem payments that are in effect through September 30, 2014.

11. For inpatient hospital services rendered on or after October 1, 2011, the prospective tiered per diem payment rates are permanently reset to the amounts payable for those services as of October 1, 2011 pursuant to this subsection.

12. The administration shall adopt a diagnosis-related group based hospital reimbursement methodology consistent with title XIX of the social security act for inpatient dates of service on and after October 1, 2014. The administration may make additional adjustments to the inpatient hospital rates established pursuant to this section for hospitals that are publicly operated or based on other factors, including the number of beds in the hospital, the specialty services available to patients, the geographic location and diagnosis-related group codes that are made publicly available by the hospital pursuant to section 36-437. The administration may also provide additional reimbursement for extraordinarily high cost cases that exceed a threshold above the standard payment. The administration may also establish a separate payment methodology for specific services or hospitals serving unique populations.

H. The director may adopt rules that specify enrollment procedures, including notice to contractors of enrollment. The rules may provide for varying time limits for enrollment in different situations. The administration shall specify in contract when a person who has been determined eligible will be enrolled with that contractor and the date on which the contractor will be financially responsible for health and medical services to the person.

I. The administration may make direct payments to hospitals for hospitalization and medical care provided to a member in accordance with this article and rules. The director may adopt rules to establish the procedures by which the administration shall pay hospitals pursuant to this subsection if a contractor fails to make timely payment to a hospital. Such payment shall be at a level determined pursuant to section 36-2904, subsection H

or I. The director may withhold payment due to a contractor in the amount of any payment made directly to a hospital by the administration on behalf of a contractor pursuant to this subsection.

J. The director shall establish a special unit within the administration for the purpose of monitoring the third-party payment collections required by contractors and noncontracting providers pursuant to section 36-2903, subsection B, paragraph 10 and subsection F and section 36-2915, subsection E. The director shall determine by rule:

1. The type of third-party payments to be monitored pursuant to this subsection.
2. The percentage of third-party payments that is collected by a contractor or noncontracting provider and that the contractor or noncontracting provider may keep and the percentage of such payments that the contractor or noncontracting provider may be required to pay to the administration. Contractors and noncontracting providers must pay to the administration one hundred percent of all third-party payments that are collected and that duplicate administration fee-for-service payments. A contractor that contracts with the administration pursuant to section 36-2904, subsection A may be entitled to retain a percentage of third-party payments if the payments collected and retained by a contractor are reflected in reduced capitation rates. A contractor may be required to pay the administration a percentage of third-party payments that are collected by a contractor and that are not reflected in reduced capitation rates.

K. The administration shall establish procedures to apply to the following if a provider that has a contract with a contractor or noncontracting provider seeks to collect from an individual or financially responsible relative or representative a claim that exceeds the amount that is reimbursed or should be reimbursed by the system:

1. On written notice from the administration or oral or written notice from a member that a claim for covered services may be in violation of this section, the provider that has a contract with a contractor or noncontracting provider shall investigate the inquiry and verify whether the person was eligible for services at the time that covered services were provided. If the claim was paid or should have been paid by the system, the provider that has a contract with a contractor or noncontracting provider shall not continue billing the member.

2. If the claim was paid or should have been paid by the system and the disputed claim has been referred for collection to a collection agency or referred to a credit reporting bureau, the provider that has a contract with a contractor or noncontracting provider shall:

- (a) Notify the collection agency and request that all attempts to collect this specific charge be terminated immediately.

- (b) Advise all credit reporting bureaus that the reported delinquency was in error and request that the affected credit report be corrected to remove any notation about this specific delinquency.

- (c) Notify the administration and the member that the request for payment was in error and that the collection agency and credit reporting bureaus have been notified.

3. If the administration determines that a provider that has a contract with a contractor or noncontracting provider has billed a member for charges that were paid or should have been paid by the administration, the administration shall send written notification by certified mail or other service with proof of delivery to the provider that has a contract with a contractor or noncontracting provider stating that this billing is in violation of federal and state law. If, twenty-one days or more after receiving the notification, a provider that has a contract with a contractor or noncontracting provider knowingly continues billing a member for charges that were paid or should have been paid by the system, the administration may assess a civil penalty in an amount equal to three times the amount of the billing and reduce payment to the provider that has a contract with a contractor or noncontracting provider accordingly. Receipt of delivery signed by the addressee or the addressee's employee is prima facie evidence of knowledge. Civil penalties collected pursuant to this subsection shall be deposited in the state general fund. Section 36-2918, subsections C, D and F, relating to the imposition, collection and enforcement of civil penalties, apply to civil penalties imposed pursuant to this paragraph.

L. The administration may conduct postpayment review of all claims paid by the administration and may recoup any monies erroneously paid. The director may adopt rules that specify procedures for conducting postpayment review. A contractor may conduct a postpayment review of all claims paid by the contractor and may recoup monies that are erroneously paid.

M. Subject to title 41, chapter 4, article 4, the director or the director's designee may employ and supervise personnel necessary to assist the director in performing the functions of the administration.

N. The administration may contract with contractors for obstetrical care who are eligible to provide services under title XIX of the social security act.

O. Notwithstanding any other law, on federal approval the administration may make disproportionate share payments to private hospitals, county operated hospitals, including hospitals owned or leased by a special health care district, and state operated institutions for mental disease beginning October 1, 1991 in accordance with federal law and subject to legislative appropriation. If at any time the administration receives written notification from federal authorities of any change or difference in the actual or estimated amount of federal funds available for disproportionate share payments from the amount reflected in the legislative appropriation for such purposes, the administration shall provide written notification of such change or difference to the president and the minority leader of the senate, the speaker and the minority leader of the house of representatives, the director of the joint legislative budget committee, the legislative committee of reference and any hospital trade association within this state, within three working days not including weekends after receipt of the notice of the change or difference. In calculating disproportionate share payments as prescribed in this section, the administration may use either a methodology based on claims and encounter data that is submitted to the administration from contractors or a methodology based on data that is reported to the administration by private hospitals and state operated institutions for mental disease. The selected methodology applies to all private hospitals and state operated institutions for mental disease qualifying for disproportionate share payments.

P. Disproportionate share payments made pursuant to subsection O of this section include amounts for disproportionate share hospitals designated by political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents. Subject to the approval of the centers for medicare and medicaid services, any amount of federal funding allotted to this state pursuant to section 1923(f) of the social security act and not otherwise spent under subsection O of this section shall be made available for distribution pursuant to this subsection. Political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents may designate hospitals eligible to receive disproportionate share payments in an amount up to the limit prescribed in section 1923(g) of the social security act if those political subdivisions, tribal governments or universities provide sufficient monies to qualify for the matching federal monies for the disproportionate share payments.

Q. Notwithstanding any law to the contrary, the administration may receive confidential adoption information to determine whether an adopted child should be terminated from the system.

R. The adoption agency or the adoption attorney shall notify the administration within thirty days after an eligible person receiving services has placed that person's child for adoption.

S. If the administration implements an electronic claims submission system, it may adopt procedures pursuant to subsection G of this section requiring documentation different than prescribed under subsection G, paragraph 4 of this section.

T. In addition to any requirements adopted pursuant to subsection D, paragraph 4 of this section, notwithstanding any other law, subject to approval by the centers for medicare and medicaid services, beginning July 1, 2011, members eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 shall pay the following:

1. A monthly premium of fifteen dollars, except that the total monthly premium for an entire household shall not exceed sixty dollars.

2. A copayment of five dollars for each physician office visit.
3. A copayment of ten dollars for each urgent care visit.
4. A copayment of thirty dollars for each emergency department visit.

U. Subject to the approval of the centers for medicare and medicaid services, political subdivisions of this state, tribal governments and any university under the jurisdiction of the Arizona board of regents may provide to the Arizona health care cost containment system administration monies in addition to any state general fund monies appropriated for critical access hospitals in order to qualify for additional federal monies. Any amount of federal monies received by this state pursuant to this subsection shall be distributed as supplemental payments to critical access hospitals.

V. For the purposes of this section, "disproportionate share payment" means a payment to a hospital that serves a disproportionate share of low-income patients as described by 42 United States Code section 1396r-4.

36-2906. Qualified plan health services contracts; proposals; administration

A. The administration shall:

1. Supervise the administrator.
2. Review the proposals.
3. Award contracts.

B. The director shall prepare and issue a request for proposal, including a proposed contract format, in each of the counties of this state, at least once every five years, to qualified group disability insurers, hospital and medical service corporations, health care services organizations and any other qualified public or private persons, including county-owned and operated health care facilities. The contracts shall specify the administrative requirements, the delivery of medically necessary services and the subcontracting requirements.

C. The director shall adopt rules regarding the request for proposal process that provide:

1. For definition of proposals in the following categories subject to the following conditions:

(a) Inpatient hospital services.

(b) Outpatient services, including emergency dental care, and early and periodic health screening and diagnostic services for children.

(c) Pharmacy services.

(d) Laboratory, x-ray and related diagnostic medical services and appliances.

2. Allowance for the adjustment of such categories by expansion, deletion, segregation or combination in order to secure the most financially advantageous proposals for the system.

3. An allowance for limitations on the number of high risk persons that must be included in any proposal.

4. For analysis of the proposals for each geographic service area as defined by the director to ensure the provision of health and medical services that are required to be provided throughout the geographic service area pursuant to section 36-2907.

5. For the submittal of proposals by a group disability insurer, a hospital and medical service corporation, a health care services organization or any other qualified public or private person intending to submit a proposal pursuant to this section. Each qualified proposal shall be entered with separate categories for the distinct groups of persons to be covered by the proposed contracts, as set forth in the request for proposal.

6. For the procurement of reinsurance for expenses incurred by any contractor or member or the system in providing services in excess of amounts specified by the director in any contract year. The director shall adopt rules to provide that the administrator may specify guidelines on a case by case basis for the types of care and services that may be provided to a person whose care is covered by reinsurance. The rules shall provide that if a contractor does not follow specified guidelines for care or services and if the care or services could be provided pursuant to the guidelines at a lower cost the contractor is entitled to reimbursement as if the care or services specified in the guidelines had been provided.

7. For the awarding of contracts to contractors with qualified proposals determined to be the most advantageous to the state for each of the counties in this state. A contract may be awarded that provides services only to persons defined as eligible pursuant to section 36-2901, paragraph 6, subdivision (b), (c), (d) or (e). The director may provide by rule a second round competitive proposal procedure for the director to request voluntary price

reduction of proposals from only those that have been tentatively selected for award, before the final award or rejection of proposals.

8. For the requirement that any proposal in a geographic service area provide for the full range of system covered services.

9. For the option of the administration to waive the requirement in any request for proposal or in any contract awarded pursuant to a request for proposal for a subcontract with a hospital for good cause in a county or area including but not limited to situations when such hospital is the only hospital in the health service area. In any situation where the subcontract requirement is waived, no hospital may refuse to treat members of the system admitted by primary care physicians or primary care practitioners with hospital privileges in that hospital. In the absence of a subcontract, the reimbursement level shall be at the levels specified in section 36-2904, subsection H or I.

D. Reinsurance may be obtained against expenses in excess of a specified amount on behalf of any individual for system covered emergency or inpatient services either through the purchase of a reinsurance policy or through a system self-insurance program as determined by the director. Reinsurance, subject to the approval of the director, may be obtained against expenses in excess of a specified amount on behalf of any individual for outpatient services either through the purchase of a reinsurance policy or through a system self-insurance program as determined by the director.

E. Notwithstanding the other provisions of this section, the administration may procure, provide or coordinate system covered services by interagency agreement with authorized agencies of this state or with a federal agency for distinct groups of eligible persons, including persons eligible for children's rehabilitative services through the department of economic security and persons eligible for comprehensive medical and dental program services through the department of child safety.

F. Contracts shall be awarded as otherwise provided by law, except that in no event may a contract be awarded to any respondent that will cause the system to lose any federal monies to which it is otherwise entitled.

G. After contracts are awarded pursuant to this section, the director may negotiate with any successful proposal respondent for the expansion or contraction of services or service areas if there are unnecessary gaps or duplications in services or service areas.

OFFICE OF TOURISM
Title 20, Chapter 3, Article 1



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 1, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 13, 2022

SUBJECT: OFFICE OF TOURISM
Title 20, Chapter 3, Article 1

Summary

This Five-Year Review Report (5YRR) from the Office of Tourism (Office) relates to four (4) rules in Title 20, Chapter 3, Article 1 related to "joint ventures" or tourism-related, advertising or promotional activity between the Office and one or more private corporations. These rules set the procedures, standards, and conditions for joint ventures with the Office.

In the previous 5YRR for these rules, approved by the Council in June 2017, the Office indicated it would seek a statutory amendment to A.R.S. § 41-2305(B)(12) to amend the term "private corporation" to the term "person" to better define eligible participants in joint ventures as the office believes the legislature originally intended. The Office indicated it would amend applicable rules after the statute was amended. In the present report, the Office indicates it did not complete this prior proposed course of action. The Office indicates the staff member that submitted the previous 5YRR is no longer with the Office, and did not provide any relevant information to other staff to implement the action.

Proposed Action

The Office indicates it intends to amend the statute to expand the definition of "joint-venture." After the amendment of statute is complete, the Office states it will work to

amend the rules under Title 20, Chapter 3, Article 1. The Office states all the rules under the Joint-Venture Article would be amended to capture the updated definition from the statutory amendment while incorporating other relevant elements of the agency's work. The Office anticipates submitting the rules to council in June of 2023.

1. Has the agency analyzed whether the rules are authorized by statute?

The Office cites both general and specific authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The rules allow the Office to enter into joint ventures that allow for cost sharing and amplification of statewide marketing. According to the Office, they enter into an average of around 30 joint ventures every year saving industry partners around \$800,000 annually. Stakeholders include the Office, business partners, and individuals who live in the state.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Office states the rules under the Joint-Venture Article provide a framework for the Office to engage in joint-ventures with private corporations, however, in their current state, the rules no longer suit the needs of the Office and the industry. The Office states the rules under the Joint-Venture Article are not being used. The Office has determined that the rules' language is too narrow in focus and implies that the Office would only enter into joint-ventures with private corporations. While this may have been the case in 1983, the Office indicates its work has evolved and the Office's partners include tribes, municipalities, non-profits, and private corporations. As it stands, the Office indicates there are no probable benefits or burdens of the rules. The Office states leaving these non-modernized rules untouched has placed a burden on the Office, as the rules have no use in their current state, but yet the Office is still responsible for responding on their purpose and use.

4. Has the agency received any written criticisms of the rules over the last five years?

The Office indicates it has not received written criticisms of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Office indicates the rules are not clear, concise, and understandable. Specifically, the Office states the rules' language is narrow in focus and fails to provide context for when to use the rules. The Office indicates the rules were originally adopted in 1983 and amended in 1997 and the Office's work has changed significantly since then. The Office would like to amend statute to expand the joint-venture definition to remove the mention of "private corporation" and

add in “entity” to encompass all of our partners. Further, the Office would like to provide additional context with the Joint-Venture Article on when the rules need to be used.

6. Has the agency analyzed the rules’ consistency with other rules and statutes?

The Office indicates the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules’ effectiveness in achieving its objectives?

The Office indicates the rules are not effective in achieving their objectives. Specifically, the Office indicates the rules contain outdated language that highlights that joint-ventures can only exist between the Office and a private corporation. The Office indicates its partners are not only private corporations, but also include tribes, municipalities, counties and non-profits. Further, the Office indicates it has had difficulty identifying when to use and/or enforce the rules under the Joint-Venture Article.

8. Has the agency analyzed the current enforcement status of the rules?

The Office indicates the rules are not enforced as written. The Office states its previous staff member that oversaw the rules of the Office left in 2018 after the last GRRC review. Prior to their departure the Office states they did not share information with other staff members on the Office’s rules and how they were supposed to be utilized/enforced. From historical documentation, the Office has determined that the previous staffer believed that the rules under Title 20, Chapter 3, Article 1 applied to one program, the Rural & Tribal Cooperative Marketing Program. However, the Office indicates the Rural & Tribal Cooperative Marketing Program partners with many entities not just private corporations, and thus fails to align with the joint-venture article rules. The Office intends to amend statute to expand the definition of joint-venture and then amend the rules under Title 20, Chapter 3, Article 1.

9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

Not applicable. There is no corresponding federal law.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The rules do not require a permit, license, or agency authorization.

11. Conclusion

This 5YRR from the Office relates to four (4) rules in Title 20, Chapter 3, Article 1 related to “joint ventures.” These rules set the procedures, standards, and conditions for joint ventures with the Office. The Office indicates the rules are consistent with other rules and statutes, but could be made more clear, concise, understandable, effective, and enforceable.

Specifically, the Office indicates it intends to amend the statute to expand the definition of “joint-venture.” After the amendment of statute is complete, the Office states it will work to amend the rules under Title 20, Chapter 3, Article 1. The Office states all the rules under the Joint-Venture Article would be amended to capture the updated definition from the statutory amendment while incorporating other relevant elements of the agency’s work. The Office anticipates submitting the rules to council in June of 2023.

Council staff recommends approval of this report.



February 28, 2022

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Arizona Office of Tourism, A.A.C. Title 20, Chapter 3, Article I, Five Year Review Report

Dear Ms. Sornsin:

Please find enclosed the Five Year Review Report of the Arizona Office of Tourism for Title 20, Chapter 3, Article I, which is due on February 28, 2022.

The Arizona Office of Tourism hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Alix Skelpsa Ridgway at 480-272-4274 or aridgway@tourism.az.gov.

Sincerely,

A handwritten signature in black ink that reads "Debbie Johnson". The signature is written in a cursive style.

Debbie Johnson
Director



**Arizona Office of Tourism (AOT)
5 YEAR REVIEW REPORT
A.A.C. Title 20, Chapter 3, Article I - February 28, 2022**

1. Authorization of the rules by existing statutes

- A.R.S. § 41-2305 (B)(5) authorizes AOT to “adopt rules it deems necessary or desirable to implement the purposes of the department and duties and powers of the director.”
- A.R.S. § 41-2305 (B)(12) authorizes the Office to engage in joint ventures with private corporations to further the goals of AOT.

2. The objective of each rule:

Rule	Objective
<i>R20-3-101.</i>	A complimentary definition to joint-ventures called out in A.R.S. § 41-2305 (B)(12).
<i>R20-3-102.</i>	A procedure for a private corporation to enter into a joint-venture with AOT.
<i>R20-3-103.</i>	Standards for AOT to evaluate the private corporation’s joint-venture proposal.
<i>R20-3-104.</i>	Conditions for the joint-venture between AOT and the private corporation.

*The Office doesn’t have historical knowledge of why the rules were originally adopted.

3. Are the rules effective in achieving their objectives?

- No, the rules are not effective in achieving their objective. The rules contain outdated language that highlights that joint-ventures can only exist between AOT and a private corporation. AOT’s partners are not only private corporations, we also work with tribes, municipalities, counties and non-profits. Further, the Office has had difficulty identifying when to use and/or enforce the rules under the Joint-Venture Article.

4. Are the rules consistent with other rules and statutes?

- Yes, the rules are consistent with AOT’s statutes, but AOT will seek a statutory amendment to expand how joint-venture is defined in terms of the Office’s work. The current statute related to the joint-venture article state:
“Exercise its statutory powers and duties by engaging in joint venture activities with private corporations which are specifically designed to further the goals of the office of tourism. Joint ventures entered into by the office of tourism shall conform to the constitution and the laws of this state.”

AOT's tourism industry partners are not just private corporations, and thus the current statute and corresponding article and rules are extremely limiting. Currently the Office doesn't use the Joint-Venture Article, and instead, we are using individual contracts and agreements to define responsibilities with entities. Following the passage of a statutory amendment to expand the joint-venture definition, AOT will seek to amend the rules under Title 20, Chapter 3, Article I.

5. Are the rules enforced as written?

- No, the rules are not enforced as written. AOT's previous staff member that oversaw the rules of the Office left in 2018 after the last GRRC review. Prior to their departure they did not share information with other staff members on the Office's rules and how they were supposed to be utilized/enforced. From historical documentation, we have determined that the previous staffer believed that the rules under Title 20, Chapter 3, Article I. applied to one program, the Rural & Tribal Cooperative Marketing Program. However, the Rural & Tribal Cooperative Marketing Program partners with many entities not just private corporations, and thus fails to align with the joint-venture article rules. AOT intends to amend statute to expand the definition of joint-venture and then amend the rules under Title 20, Chapter 3, Article I.

6. Are the rules clear, concise, and understandable?

- No, the rules' language is narrow in focus and fails to provide context for when to use the rules. The rules were originally adopted in 1983 and amended in 1997 and the Office's work has changed significantly since then. AOT would like to amend statute to expand the joint-venture definition to remove the mention of "private corporation" and add in "entity" to encompass all of our partners. Further, the Office would like to provide additional context with the Joint-Venture Article on when the rules need to be used.

7. Has the agency received written criticisms of the rules within the last five years?

- No, the Office has not received any written criticisms of the rules within the last five years.

8. Economic, small business, and consumer impact comparison:

- The Office is not currently utilizing the rules and has no impact to share.

9. Has the agency received any business competitiveness analyses of the rules?

- The Office has not received any business competitiveness analysis of the rules.

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

- No, the agency did not complete the course of action indicated in the agency's previous five-year-review report. The AOT staffer that submitted the previous 5YRR is no longer with the Office, and didn't provide any relevant information to another staffer to implement the action.

11. A determination that the probable benefits of the rules outweigh within this state the probable costs of the rules, and the rules imposes the least burden and costs to regulated persons by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

- The rules under the Joint-Venture Article provide a framework for the Office to engage in joint-ventures with private corporations, however, in their current state, the rules no longer suit the needs of the Office and the industry. The rules under the Joint-Venture Article are not being used. The Office has determined that the rules' language is too narrow in focus and implies that AOT would only enter into joint-ventures with private corporations. While this may have been the case in 1983, the work of the Office has evolved and our partners include tribes, municipalities, non-profits, and private corporations. As it stands, there are no probable benefits or burdens of the rules. Leaving these non-modernized rules untouched has placed a burden on the Office, as the rules have no use in their current state, but yet the Office is still responsible for responding on their purpose and use.

12. Are the rules more stringent than corresponding federal laws?

- No, federal law is not applicable to the rules.

13. For rules adopted after July 28, 2010 that require the issuance of a regulatory permit, license or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

- Not applicable.

14. Proposed course of action:

- The Office intends to amend statute to expand the definition of joint-venture. After the amendment of statute is complete, the Office will work to amend the rules under Title 20, Chapter 3, Article I. All the rules under the Joint-Venture Article would be amended to capture the updated definition from the statutory amendment while incorporating other relevant elements of the agency's work.
- For AOT to amend the rules under Title 20, Chapter 3, Article I - the Office first needs to seek a statutory amendment through the legislature. Once the statutory amendment is signed into law, AOT would begin the amendment process for the rules under the Joint-Venture Article. AOT would anticipate submitting the rules to council in June of 2023.

TITLE 20. COMMERCE, BANKING, AND INSURANCE**CHAPTER 3. OFFICE OF TOURISM**

(Authority: A.R.S. § 41-2301 et seq.)

20 A.A.C. 3, consisting of R20-3-101 through R20-3-104 recodified from 4 A.A.C. 41, consisting of R4-41-101 through R4-41-104 pursuant to R1-1-102 (Supp. 95-1).

ARTICLE 1. JOINT-VENTURES

Section

- R20-3-101. Definitions
 R20-3-102. Joint-Venture Procedures
 R20-3-103. Standards for Participants
 R20-3-104. Conditions of Participation

ARTICLE 1. JOINT-VENTURES**R20-3-101. Definitions**

The following term applies to this Article. "Joint-venture activity" means a tourism-related, advertising or promotional activity between the Arizona Office Tourism (the Office) and 1 or more private corporations.

Historical Note

Adopted effective October 19, 1983 (Supp. 83-5). R20-3-101 recodified from R4-41-101 (Supp. 95-1). Amended effective March 5, 1997 (Supp. 97-1). The phrase "1 year or more" was amended to read "1 or more" to correct a printing error (Supp. 99-3).

R20-3-102. Joint-Venture Procedures

A private corporation that wishes to participate in a joint-venture activity shall, on its own initiative or in response to an Office request, submit the following information:

1. The name and mailing address of the applicant corporation;
2. The physical address, if different from the mailing address;
3. The name and telephone number of the project coordinator;
4. The beginning and ending dates of the project;
5. The federal employer identification number;
6. A description of the project;
7. The benefit to the state from engaging in the joint-venture activity;
8. The markets to be reached;
9. The projected numbers of people to be reached; and

10. A projected budget, describing the allocation of monies.

Historical Note

Adopted effective October 19, 1983 (Supp. 83-5). R20-3-102 recodified from R4-41-102 (Supp. 95-1). Amended effective March 5, 1997 (Supp. 97-1).

R20-3-103. Standards for Participants

In determining whether to enter into a joint-venture activity, the Office shall consider the following standards:

1. Does the proposal supplement the Office's marketing objectives?
2. Is the proposal for an Arizona market identified in the Office's annual marketing plan?
3. Does the private corporation have experience in marketing a destination in the market selected?
4. Is it in the Office's best financial interest to participate?
5. Is the potential impact of the joint-venture activity beneficial to tourism in Arizona?
6. Is the marketing philosophy of the private corporation compatible with the marketing philosophy of the Office?

Historical Note

Adopted effective October 19, 1983 (Supp. 83-5). R20-3-103 recodified from R4-41-103 (Supp. 95-1). Amended effective March 5, 1997 (Supp. 97-1).

R20-3-104. Conditions of Participation

If the Office decides to enter into a joint-venture activity with a private corporation, the corporation shall agree to the following conditions:

1. The private corporation shall supply a minimum of 50% of the monies in cash or in kind for the joint-venture activity.
2. The state shall pay no monies before receipt of the services.
3. The Director of the Office shall be the final authority for all joint-venture activity.

Historical Note

Adopted effective October 19, 1983 (Supp. 83-5). R20-3-104 recodified from R4-41-104 (Supp. 95-1). Amended effective March 5, 1997 (Supp. 97-1).

41-2305. Powers and duties

A. In addition to other duties prescribed by law, the office of tourism shall:

1. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises to participate and cooperate in the promotion of tourism and tourism development in this state.
2. Undertake a comprehensive research program designed to establish the office as the central repository and clearinghouse for all data which relates to tourism.
3. Perform research necessary to determine a long-range tourism development plan for this state.
4. Conduct research at the request of the governor, the legislature or state or local agencies, pertaining to any of its objectives.
5. Formulate policies, plans and programs designed to promote tourism in this state.
6. Provide information and advice on request by local, state and federal agencies and by private citizens and business enterprises on all matters concerning its objectives. The office may provide information and literature in the same manner as described in section 11-259, subsection A.
7. Advise with and make recommendations to the governor and the legislature on all matters concerning tourism.
8. Make an annual report to the governor and the legislature on its activities, finances and the scope of its operations.
9. Conduct an annual statewide tourism symposium to discuss tourism promotion efforts, problems and matters of interest to the tourism industry.
10. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the office's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

B. The office may:

1. Subject to chapter 4, article 4 of this title, employ, determine the conditions of employment and specify the duties of administrative, secretarial and clerical assistants and contract for the services of outside advisors, consultants and aides reasonably necessary or desirable to enable it adequately to perform its duties. The compensation of such assistants shall be as determined pursuant to section 38-611. The positions of the director, the assistant director and all employees of the office of tourism shall be exempt positions of chapter 4, articles 5 and 6 of this title.
2. Make contracts and incur obligations reasonably necessary or desirable within the general scope of its activities and operations to enable it adequately to perform its duties.
3. Utilize any and all media of communication, publication and exhibition in the dissemination of information, advertising and publicity in any field relating to its purposes, objectives or duties.
4. Use its funds, facilities and services to provide matching contributions under federal or other programs which further the objectives and programs of the office.
5. Adopt rules it deems necessary or desirable to implement the purposes of the department and the duties and powers of the director.

6. Accept gifts, grants, matching funds and direct payments from public or private agencies or persons for the conduct of programs which are consistent with the general purposes and objectives of this chapter.
7. Conduct tourism education and discussion seminars and workshops to discuss tourism promotion efforts, problems and matters of interest to the tourism industry.
8. Designate, establish and operate state visitor or tourist information centers in the state which furnish tourist information and literature, subject to legislative appropriation.
9. Conduct research pertaining to any of its objectives.
10. Establish a reporting system for public agencies and private persons or enterprises in order to monitor state tourism.
11. Charge reasonable fees for services and publications. The director shall establish the fees.
12. Exercise its statutory powers and duties by engaging in joint venture activities with private corporations which are specifically designed to further the goals of the office of tourism. Joint ventures entered into by the office of tourism shall conform to the constitution and the laws of this state.

DEPARTMENT OF TRANSPORTATION
Title 17, Chapter 5, Article 10



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 1, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 11, 2022

SUBJECT: DEPARTMENT OF TRANSPORTATION
Title 17, Chapter 5, Article 10

Summary

This Five-Year Review Report (5YRR) from the Department of Transportation (Department) relates to nine (9) rules in Title 17, Chapter 5, Article 10 related to vehicles for hire. Vehicles for hire include taxis, livery vehicles, and limousines. It does not include rideshare services such as Uber or Lyft, which are designated as transportation network companies and regulated separately under Title 17, Chapter 5, Article 9.

Companies in the business of transporting passengers for hire under A.R.S. 28-9503, are required to obtain a Vehicle for Hire Permit. The rules in Title 17, Chapter 5, Article 10 prescribe the application process and renewal requirements necessary for vehicle for hire company permit issuance, allow for appropriate Department review of vehicle for hire company records, require a company to provide information regarding its designated points of contact, and clarify that a vehicle for hire company permit or renewal may be transferred or assigned to another person under certain circumstances.

This is the first 5YRR for these rules since the vehicle for hire rules were initially approved by the Council in 2017.

Proposed Action

The Department proposes to take no action regarding these rules.

1. Has the agency analyzed whether the rules are authorized by statute?

The Department cites both general and specific authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

An economic impact statement of the vehicle for hire company rules in 17 A.A.C. 5, Article 10 was written in 2017. The rules prescribe the application process and renewal requirements for vehicle for hire company permit issuance, allow for appropriate Department review of vehicle for hire company records, require a company to provide information regarding its designated point of contact, and clarify that a vehicle for hire company permit or renewal may be transferred or assigned to another person under certain circumstances.

The stakeholders affected are the Department, vehicle for hire and transportation network companies, and the public. The Department incurred costs of \$147,160 in Fiscal Year 2016 to establish an online application and renewal system to increase efficiency. Vehicle for hire and transportation network company companies incur costs of compliance, including applying online for a permit, and maintaining certain business records. Other costs to comply with vehicle safety checks, employee background checks, and mandatory insurance requirements for drivers providing vehicle for hire services are due to statutory requirements. The Department believes that the state and the public benefit from vehicle for hire company services as an alternative transportation option.

As of February 2022, a total of 1,212 businesses have valid vehicle for hire company permits. Most of the vehicle for hire companies are small businesses. Fees collected for the general fund in 2021 amounted to \$11,912.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Department routinely adopts the least costly and least burdensome option for any process or procedure required of the regulated public or business. The Department believes that the vehicle for hire company rules impose the least burden and cost to businesses regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying objective, and provide significant benefit to the public and the state.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department indicates it has not received written criticisms of the rules in the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Department indicates the rules are clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Department indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Department indicates the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

The Department indicates the rules are enforced as written.

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

Not applicable. The Department indicates there is no corresponding federal law.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Pursuant to A.R.S. § 41-1037(A), for rules that require the issuance of a regulatory permit, license or agency authorization, agencies shall use a general permit if the facilities, activities or practices in the class are substantially similar in nature, with some limited exceptions.

The Department indicates the rules provide for the issuance of a vehicle for hire company permit to a person that meets the statutory requirements of a vehicle for hire company as prescribed under A.R.S. Title 28, Chapter 30, Articles 1 and 2. The Department indicates the vehicle for hire company permit is considered a "general permit" in that the activities and practices authorized by the permit are the same for all companies issued the permit and allows all transportation network companies to provide the same services. As such, the Department is in compliance with A.R.S. § 41-1037.

11. **Conclusion**

This 5YRR relates to rules in Title 17, Chapter 5, Article 10 related to vehicles for hire. The Department indicates the rules are generally clear, concise, understandable, consistent, effective, and enforced as written. The Department does not intend to take any action regarding these rules.

Council staff recommends approval of this report.

Director's Office

Douglas A. Ducey, Governor
John S. Halikowski, Director
Kismet Weiss, Deputy Director/Chief Operating Officer
Gregory Byres, Deputy Director for Transportation

February 28, 2022

VIA EMAIL: grrc@azdoa.gov

Ms. Nicole Sornsin, Chair

Governor's Regulatory Review Council

100 N 15th Avenue, Suite 305

Phoenix, Arizona 85007

RE: Arizona Department of Transportation, 17 A.A.C. Chapter 5, Article 10, Five-year Review Report

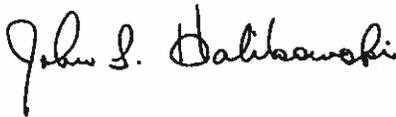
Dear Ms. Sornsin:

Please find enclosed the Arizona Department of Transportation's Five-year Review Report covering all rules located under 17 A.A.C. Chapter 5, Article 10, which is due on February 28, 2022.

This document complies with all requirements under A.R.S. § 41-1056 and A.A.C. R1-6-301. The Department certifies that it is in full compliance with the requirements of A.R.S. § 41-1091.

For information regarding the report, please communicate directly with John Lindley, Senior Rules Analyst, at (480) 267-6543 or email JLindley@azdot.gov.

Sincerely,



John S. Halikowski
Director

Enclosure



**Government Relations & Rules
Office of the Director**

Five-Year Review Report

A.A.C. Title 17 – Transportation

Chapter 5. Department of Transportation

Commercial Programs

Article 10. Vehicle For Hire

Douglas A. Ducey

Governor

John S. Halikowski

ADOT Director

Arizona Department of Transportation
5-YEAR REVIEW REPORT
Title 17. Transportation
Chapter 5. Department of Transportation - Commercial Programs
Article 10. Vehicle For Hire
February 28, 2022

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 28-366 and 28-9501 through 28-9527

Specific Statutory Authority: A.R.S. §§ 28-9502(A) and 28-9502(B)(2)

2. The objective of each rule:

Rule	Objective
R17-5-1001. Definitions	To clarify the Department's intended meaning for certain terms and phrases used throughout the Article.
R17-5-1002. Incorporation by Reference	To incorporate by reference the national standard and technical specifications needed to ensure that all taximeters used in this state are designed and maintained to automatically calculate, at a predetermined rate or rates, and indicate accurate charges for hire of a vehicle.
R17-5-1003. Vehicle for Hire Company Permit; Good Standing; Handbook 44	To provide eligibility requirements that must be met by any vehicle for hire company seeking authorization to operate a vehicle for hire company in this state.
R17-5-1004. Vehicle for Hire Company Permit - Initial Application; Issuance; Fee	To provide vehicle for hire company permit applicants with information regarding the permit application process and other requirements, including the permit application fee, statutory obligations to provide the Department with a designated point of contact and inform the Department if any changes are made to that designated point of contact, and the circumstances under which a vehicle for hire company permit may be transferred or assigned to another person.
R17-5-1005. Vehicle for Hire Company Permit - Renewal Application; Issuance; Fee	To provide vehicle for hire company permit renewal applicants with information regarding the permit renewal application process and other requirements, including the permit renewal application fee.
R17-5-1006. Vehicle for Hire Company Permit or Renewal - General Provisions	To provide vehicle for hire company permit holders with information relating to the assigned permit number.
R17-5-1007. Vehicle for Hire Company - Record Review; Inspection	To provide vehicle for hire company permit holders with information relative to the circumstances and process by which the Department may review all records a vehicle for hire company permit holder is required to maintain under Arizona law.

R17-5-1008. Posting of Fares	To provide vehicle for hire company permit holders with information regarding the posting of fares or the interior signage required if fares are determined by contract with a government agency.
R17-5-1009. Appealable Agency Actions; Rehearing; Judicial Review	To provide vehicle for hire companies with information regarding their right to have all contested cases and appealable agency actions heard by the Arizona Office of Administrative Hearings under A.R.S. Title 41, Article 10.

3. **Are the rules effective in achieving their objectives?** Yes No

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

The rules are effective in achieving their objectives, and the Department does not recommend any rule changes.

4. **Are the rules consistent with other rules and statutes?** Yes No

If not, please identify the rule(s) not consistent. Also, provide an explanation and identify the provisions not consistent with the rule(s).

These rules are consistent with other rules and statutes.

Rule	Explanation
N/A	N/A

5. **Are the rules enforced as written?** Yes No

If not, please identify the rule(s) not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

The Department enforces these rules as written.

Rule	Explanation
N/A	N/A

6. **Are the rules clear, concise, and understandable?** Yes No

If not, please identify the rule(s) not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

The rules are clear, concise, and understandable and the Department does not believe any rule changes are necessary.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

If yes, please fill out the table below:

The Department has not received any written criticisms on the rules within the last five years.

Commenter	Comment	Agency's Response
N/A	N/A	N/A

8. **Economic, small business, and consumer impact comparison:**

The economic impact of the vehicle for hire company rules in 17 A.A.C. 5, Article 10, has remained essentially the same as estimated in the economic impact statement submitted for the rules in 2017. However, the Department has now issued permits for 1,212 vehicle for hire companies operating in Arizona, which include both small and large companies.

These rules prescribe the application process and renewal requirements necessary for vehicle for hire company permit issuance, allow for appropriate Department review of vehicle for hire company records, require a company to provide information regarding its designated point of contact, and clarify that a vehicle for hire company permit or renewal may be transferred or assigned to another person under certain circumstances. The rules do not impose regulatory requirements on vehicle for hire company drivers.

[Laws 2016, Chapter 171](#) and [Laws 2016, Chapter 232](#) provided that all administrative authority over taxis, limousines, livery vehicles, and transportation network companies be transferred from the Department of Weights and Measures (DWM) to the Arizona Department of Transportation (ADOT). These rules, permanently codified by Final rulemaking at [23 A.A.R. 223](#), effective March 6, 2017, provide only minimal procedural requirements for the operation of vehicles for hire. All substantive requirements for the regulation of taxis, limousines, livery vehicles, and transportation network companies are located in the implementing statutes under A.R.S. §§ 28-9501 through 28-9527. The statutes give the responsibility to vehicle for hire companies to ensure that all vehicles used to provide transportation services meet state vehicle safety and emissions standards and have annual brake and tire inspections. The owner of a taxi, livery vehicle or limousine used to transport passengers for hire must also comply with the financial responsibility requirements of A.R.S. Title 28, Chapter 9, Articles 2 and 4, while operating vehicles for hire to provide transportation services.

A.R.S. § 28-9503(A) prohibits a company from acting as a vehicle for hire company in this state unless the vehicle for hire company has been issued a permit by the Department. The Department is required to charge and collect the application fee of up to \$1,000 as prescribed under A.R.S. § 28-9503(A) for a 3-year permit. By paying the application fee and meeting other statutory and rule requirements, a vehicle for hire company can contract with an unlimited number of drivers to provide transportation services throughout the state.

The Department does not receive the permit fees or have a specific appropriation to cover the program's administrative and other costs. Fees generated from the vehicle for hire company permits are deposited in the state general fund pursuant to A.R.S. § 28-9504. The public and state benefit from the revenue generated by these application fees that support other state programs. Political subdivisions benefit because the state has established a permitting process that ensures vehicle for hire companies are held to a minimal, but appropriate, level of oversight to protect general public safety. The statutes also require transportation network companies and vehicle for hire companies to conduct employee background checks and drug testing.

In August of 2016, a total of 263 businesses had valid vehicle for hire company permits. As of February 2022, a total of 1,212 businesses have valid vehicle for hire company permits. The vast majority of the taxi, livery, and limousine companies have small vehicle fleets, with many company fleets of less than 10 vehicles. Most of the vehicle for hire companies are small businesses. Several prominent vehicle for hire companies with very large fleets do not fall within the definition of a small business.

Number of Vehicle for Hire Companies Permitted in 2016	Fees Collected for General Fund in 2016	Number of Vehicle for Hire Companies Permitted in 2021	Fees Collected for General Fund in 2021
263	\$62,856	1,212	\$11,912*

*The significant difference between the fees collected in 2016 and 2021 is due to the 3-year staggered expiration dates on each permit.

Consumers who need local transportation benefit from the availability of vehicle for hire company transportation options for a variety of consumer transportation needs. Consumers benefit because the vehicle for hire statutes removed previous permitting requirements and regulations to encourage new business development and expand consumer transportation options.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No X

The Department did not receive any business competitive analyses of the rules.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

This is the first five-year-review report submitted by the Department since the Governor's Regulatory Review Council initially approved the vehicle for hire rules under 17 A.A.C. 5, Article 10, in 2017. No previous course of action was proposed.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department routinely adopts the least costly and least burdensome option for any process or procedure required of the regulated public or business. The Department believes that the vehicle for hire company rules impose the least burden and cost to businesses regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying objective, and provide significant benefit to the public and the state. The Department believes that many residents and visitors view the availability of vehicle for hire services favorably.

Vehicle for hire and transportation network company permits extend for 3 years rather than one year. Under previous legislation, a taximeter license from the DWM was \$24 per taximeter for one year. The current statutes require a vehicle for hire company operating a taxi to pay a \$24 application fee per vehicle used as a taxi at the time of application for a 3-year permit. The statutes also contain a cap of \$1,000 over three years for a taxi company that obtains a vehicle for hire company permit. The statutes and these rules reduce regulation over taxis, livery vehicles, and limousines and establish a streamlined permitting and renewal process for both vehicle for hire and transportation network companies.

The application process and requirements for vehicle for hire companies and transportation network companies have been automated and streamlined, which lowers the regulatory burden on these businesses. To increase efficiency, the Department incurred costs of \$147,160 in FY2016 to establish an on-line application and renewal system for use in registering all Arizona taxis, limousines, livery vehicles, and transportation network companies. A company that submits the necessary information

and pays the application fee may operate throughout the state and contract with an unlimited number of drivers for three years. The longer period of permit validity and the efficient online application process were both designed to reduce the regulatory burden on transportation network companies.

These rules provide minimal regulatory and compliance requirements on vehicle for hire companies in order to foster their development and growth in the state as new businesses. The rules require a company applying online for a vehicle for hire company permit to provide limited information, including an agent for service of process, an illustration of the company's trade dress, and to certify compliance with A.R.S. Title 28, Chapter 30, Article 1. Each company is required to maintain certain business records. Other costs to comply with vehicle safety checks, employee background checks, and mandatory insurance requirements for drivers providing vehicle for hire services are due to statutory requirements. The statutes place regulatory responsibility on vehicle for hire companies to ensure completion of driver background checks, vehicle safety inspections, and to maintain a zero-tolerance policy on driver drug and alcohol use.

These rules inform the public of the regulatory provisions relating to vehicles for hire and raise the level of compliance because vehicle for hire companies better understand the regulatory requirements. The Department believes that the public and the state both benefit from vehicle for hire company services as an alternative transportation option. The rules benefit Arizona residents and visitors who routinely rely on the alternative and affordable service options provided by these vehicle for hire companies for short distance travel in growing metropolitan areas. Arizona residents and visitors may choose a vehicle for hire company or any other transportation option that fits individual needs. In addition, the existence of vehicle for hire companies provides employment opportunities for part-time or full-time drivers.

The rules do not have any paperwork requirements or impose any compliance costs on individual drivers. Vehicle for hire company drivers must hold an Arizona driver's license in good standing without certain driving and other criminal violations, but do not pay any special license fees or taxes to the state. In addition, the vehicle for hire statutes provide that permitted vehicle for hire owners, companies, or drivers may not be required by any state taxing authority to pay transaction privilege tax or any similar tax on income derived from transporting persons for hire.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No X

The rules are not more stringent than federal law and there is no corresponding federal law directly related to these rules.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

These rules, last revised in 2017, provide for the issuance of a vehicle for hire company permit to a person that meets the statutory requirements of a vehicle for hire company as prescribed under A.R.S. Title 28, Chapter 30, Articles 1 and 2. The vehicle for hire company permit is in compliance with the general permit requirements of A.R.S. § 41-1037 and is considered a "general permit" in that the activities and practices authorized by the permit are the same for all companies issued the permit and allows all transportation network companies to provide the same services.

14. Proposed course of action

The Department does not believe any rule changes are necessary at this time.

CHAPTER 5. DEPARTMENT OF TRANSPORTATION - COMMERCIAL PROGRAMS

- A. A transportation network company permit or renewal issued by the Department under this Article shall include an assigned number that remains effective until either withdrawn by the Department or until it expires.
- B. A transportation network company permit or renewal issued by the Department under this Article shall not be transferred or assigned, in whole or in part, to any person other than the person to whom the permit is issued, except upon a merger, change in control, or sale of substantially all of the transportation network company's assets to an entity that assumes the duties and obligations of the permit. The transportation network company shall notify the Department within 30 days of such a transfer or assignment, and the Department shall have 30 days beginning on such notification to nullify the transfer or assignment based on the criteria set forth in this Article. An initial public offering shall not be deemed to trigger a transfer or assignment under this Section.

Historical Note

New Section made by exempt rulemaking under Laws 2015, Ch. 235, § 14, at 21 A.A.R. 1825, effective August 21, 2015 (Supp. 15-3). Section repealed; new Section made by final rulemaking at 23 A.A.R. 223, effective March 6, 2017 (Supp. 17-1).

R17-5-905. Transportation Network Company - Record Review

- A. The Department, after providing reasonable notice to a transportation network company, may review with or without cause all records a transportation network company is required to make available to the Department on request as provided under A.R.S. §§ 28-9554 through 28-9556.
- B. A transportation network company shall make all records described under subsection (A) available to the Department for review at an Arizona location.
- C. The Department shall conduct a record review during the transportation network company's normal business hours.
- D. The Department shall provide a copy of its review report to the transportation network company's designated point of contact. The report shall include the review results and indicate any violations found.

Historical Note

New Section made by exempt rulemaking under Laws 2015, Ch. 235, § 14, at 21 A.A.R. 1825, effective August 21, 2015 (Supp. 15-3). Section repealed; new Section made by final rulemaking at 23 A.A.R. 223, effective March 6, 2017 (Supp. 17-1).

R17-5-906. Transportation Network Company - Designated Point of Contact

- A. A transportation network company shall provide to the Department the name and contact information of the transportation network company's designated point of contact in this state.
- B. A transportation network company shall notify the Department within 10 business days of making a change to the name or contact information of the transportation network company's designated point of contact in this state.

Historical Note

New Section made by exempt rulemaking under Laws 2015, Ch. 235, § 14, at 21 A.A.R. 1825, effective August 21, 2015 (Supp. 15-3). Section repealed; new Section made by final rulemaking at 23 A.A.R. 223, effective March 6, 2017 (Supp. 17-1).

ARTICLE 10. VEHICLE FOR HIRE**R17-5-1001. Definitions**

In addition to the definitions in A.R.S. §§ 28-101 and 28-9501, the following terms apply to this Article unless otherwise specified:

"Appealable agency action" has the meaning prescribed in A.R.S. § 41-1092.

"Applicant" means a company that applies to the Department for a vehicle for hire company permit as prescribed under A.R.S. Title 28, Chapter 30, Article 1, and these rules.

"Application" means forms designated as an application and all documents and additional information the Department requires a vehicle for hire company applicant to submit to obtain a vehicle for hire company permit.

"Contested case" has the meaning prescribed in A.R.S. § 41-1001.

"Designated point of contact" means a person employed by a vehicle for hire company who has the authority to gather and provide records to the Department on request.

"Good standing" means that an applicant does not have:

Any outstanding civil penalties owed to the Department;

Any suspension, revocation, or cancellation of a vehicle for hire company permit issued by the Department;

Any delinquent fees, taxes, or unpaid balances owed to the Department; or

Any open complaints submitted to the Department regarding compliance with vehicle for hire statutes or rules.

"Government agency" means this state and any political subdivision of this state that receives and uses tax revenues.

"Handbook 44" means the U. S. Department of Commerce, National Institute of Standards and Technology (NIST) *Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices*, Section 5.54. Taximeters, revised as of 2016.

"NIST" means the National Institute of Standards and Technology of the U.S. Department of Commerce.

"Permittee" means the owner or responsible party in the vehicle for hire company that meets all permit requirements and holds a vehicle for hire company permit.

"Trade dress" means a removable and distinct logo, insignia or emblem attached to, or visible from the exterior of a taxi while providing vehicle for hire services as a taxi, and that includes the word "taxi" or "cab."

"Vehicle for hire company permit" means the permit required in A.R.S. § 28-9503 for a vehicle for hire company to operate in this state.

"Violation" means the failure of a vehicle for hire company to:

Provide to the Department any records the vehicle for hire company is required to maintain and provide on request, as provided in A.R.S. § 28-9507;

Follow these rules; or

Follow A.R.S. Title 28, Chapter 30, Articles 1 and 2.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 223, effective March 6, 2017 (Supp. 17-1).

R17-5-1002. Incorporation by Reference

CHAPTER 5. DEPARTMENT OF TRANSPORTATION - COMMERCIAL PROGRAMS

The Department incorporates by reference the U. S. Department of Commerce, National Institute of Standards and Technology (NIST) *Handbook 44*, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices, Section 5.54. Taximeters, revised as of 2016, and no later amendments or editions. The incorporated material is available at www.nist.gov/pml/pubs/hb44.cfm. The incorporated material is on file with the Department at 206 S. 17th Ave., Phoenix, AZ.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 223, effective March 6, 2017 (Supp. 17-1).

R17-5-1003. Vehicle for Hire Company Permit; Good Standing; Handbook 44

- A. An applicant to the Department for a vehicle for hire company permit shall be in good standing with the Department at the time the vehicle for hire company applies for or renews a vehicle for hire company permit.
- B. A vehicle for hire company that operates a vehicle for hire as a taxi shall have an operating taxi meter installed in each taxi by a person or company that uses *Handbook 44*.
- C. A vehicle for hire company operating a taxi shall maintain, and make available to the Department, records for the installation and calibration of each taxi meter for the duration of the three-year vehicle for hire company permit.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 223, effective March 6, 2017 (Supp. 17-1).

R17-5-1004. Vehicle for Hire Company Permit - Initial Application; Issuance; Fee

- A. A vehicle for hire company shall apply to the Department for a vehicle for hire company permit by:
 1. Completing and submitting the application form to the Department that is located at: www.azdot.gov;
 2. Providing the full name and contact information of the vehicle for hire company's agent for service of process in this state;
 3. Submitting a clear illustration of the vehicle for hire company's trade dress, if operating as a taxi;
 4. Paying the application fee of \$24 per vehicle that is used as a taxi by the vehicle for hire company at the time of application, not to exceed a total of \$1,000 per applicant, as required by A.R.S. § 28-9503;
 5. Certifying that the vehicle for hire company meets all vehicle for hire company requirements in A.R.S. Title 28, Chapter 30, Article 1; and
 6. Stating the total number of vehicles for hire in the vehicle for hire company fleet at the time of application.
- B. A vehicle for hire company shall provide to the Department the name and contact information of the vehicle for hire company's designated point of contact in this state.
- C. After the Department receives and accepts a completed application, all certifications, and the application fee, if applicable, the Department shall issue to an applicant a vehicle for hire company permit.
- D. A vehicle for hire company permit issued by the Department expires three years after the date of issuance.
- E. A vehicle for hire company may apply to renew a vehicle for hire company permit as provided in R17-5-1005.
- F. A vehicle for hire company shall notify the Department within 10 business days of making a change to the name or contact information of the vehicle for hire company's designated point of contact in this state.
- G. A vehicle for hire company permit or renewal issued by the Department under this Article may be transferred to a person

other than the person to whom the permit is issued, if ownership of the vehicle for hire company changes. The vehicle for hire company shall notify the Department within 30 days of such a transfer.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 223, effective March 6, 2017 (Supp. 17-1).

R17-5-1005. Vehicle for Hire Company Permit - Renewal Application; Issuance; Fee

- A. A vehicle for hire company shall apply to the Department for renewal of an existing vehicle for hire company permit under A.R.S. § 28-9503, no earlier than 90 days and no later than 30 days before the three-year permit expires by:
 1. Completing and submitting the required information, all certifications, and the application fee, if applicable, to the Department at: <https://secure.servicearizona.com>;
 2. Submitting a clear illustration of the vehicle for hire company's trade dress, if operating as a taxi, and if different than the illustration already on file with the Department;
 3. Paying the renewal application fee of \$24 per vehicle that is used as a taxi at the time of permit renewal, not to exceed a total of \$1,000 per applicant, as required by A.R.S. § 28-9503; and
 4. Certifying that the vehicle for hire company meets all the vehicle for hire company requirements in A.R.S. Title 28, Chapter 30, Article 1.
- B. Upon receipt and acceptance of all required documents, fees, if applicable, and certifications, the Department shall issue to an applicant a vehicle for hire company permit renewal.
- C. A vehicle for hire company permit renewal issued by the Department expires three years after the existing vehicle for hire company permit expires.
- D. The holder of an expired vehicle for hire company permit may apply to the Department for a new vehicle for hire company permit using the renewal application procedure provided under R17-5-1005(A).

Historical Note

New Section made by final rulemaking at 23 A.A.R. 223, effective March 6, 2017 (Supp. 17-1).

R17-5-1006. Vehicle for Hire Company Permit or Renewal - General Provisions

A vehicle for hire company permit issued by the Department shall include an assigned number that remains effective until either withdrawn by the Department or until the permit expires.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 223, effective March 6, 2017 (Supp. 17-1).

R17-5-1007. Vehicle for Hire Company; Record Review; Inspection

- A. The Department, after providing reasonable notice to a company with a vehicle for hire company permit, may review, with or without cause, all records of a vehicle for hire company as prescribed in A.R.S. § 28-9507, at intervals determined by the Department.
- B. A vehicle for hire company shall make all records described under subsection (A) available to the Department for review at an Arizona location.
- C. The Department shall conduct a record review during the vehicle for hire company's normal business hours.
- D. The Department may conduct a periodic, random inspection of a taxi meter and any vehicle for hire, or in response to a complaint by the public. An inspection may include an inspection

CHAPTER 5. DEPARTMENT OF TRANSPORTATION - COMMERCIAL PROGRAMS

of the taxi meter in a taxi and the signage required by A.R.S. § 28-9506.

- E. After the inspection, the Department shall provide a copy of the inspection report to the vehicle for hire company or the designated point of contact. The report shall include any deficiencies or violations indicated during the inspection.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 223, effective March 6, 2017 (Supp. 17-1).

R17-5-1008. Posting of Fares

- A. When a livery vehicle provides local transportation at fares that are established in a contract with a government agency, the livery vehicle interior signage shall indicate that fares are determined by contract with a government agency when providing those services.
- B. When a livery vehicle provides local transportation services at fares that are not established in a contract with a government

agency, the livery vehicle interior signage shall post fares in accordance with A.R.S. § 28-9506(A)(2).

Historical Note

New Section made by final rulemaking at 23 A.A.R. 223, effective March 6, 2017 (Supp. 17-1).

R17-5-1009. Appealable Agency Actions; Rehearing; Judicial Review

- A. A.R.S. Title 41, Chapter 6, Article 10 applies to all contested cases and all appealable agency actions of the Department under A.R.S. Title 28, Chapter 30, Article 2.
- B. A vehicle for hire company whose permit, renewal, or authority is denied has a right to a hearing, an opportunity for rehearing under A.R.S. Title 41, Chapter 6, Articles 6 and 10, and if the denial is upheld, judicial review under A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 223, effective March 6, 2017 (Supp. 17-1).

Arizona Department of Transportation
5-YEAR REVIEW REPORT
Title 17. Transportation
Chapter 5. Department of Transportation - Commercial Programs
Article 10. Vehicle For Hire
February 28, 2022

Definitions

A.R.S. § 28-101. Definitions

In this title, unless the context otherwise requires:

1. "Alcohol" means any substance containing any form of alcohol, including ethanol, methanol, propynol and isopropynol.
2. "Alcohol concentration" if expressed as a percentage means either:
 - (a) The number of grams of alcohol per one hundred milliliters of blood.
 - (b) The number of grams of alcohol per two hundred ten liters of breath.
3. "All-terrain vehicle" means either of the following:
 - (a) A motor vehicle that satisfies all of the following:
 - (i) Is designed primarily for recreational nonhighway all-terrain travel.
 - (ii) Is fifty or fewer inches in width.
 - (iii) Has an unladen weight of one thousand two hundred pounds or less.
 - (iv) Travels on three or more nonhighway tires.
 - (v) Is operated on a public highway.
 - (b) A recreational off-highway vehicle that satisfies all of the following:
 - (i) Is designed primarily for recreational nonhighway all-terrain travel.
 - (ii) Is eighty or fewer inches in width.
 - (iii) Has an unladen weight of two thousand five hundred pounds or less.
 - (iv) Travels on four or more nonhighway tires.
 - (v) Has a steering wheel for steering control.
 - (vi) Has a rollover protective structure.
 - (vii) Has an occupant retention system.
4. "Authorized emergency vehicle" means any of the following:
 - (a) A fire department vehicle.
 - (b) A police vehicle.
 - (c) An ambulance or emergency vehicle of a municipal department or public service corporation that is designated or authorized by the department or a local authority.

(d) Any other ambulance, fire truck or rescue vehicle that is authorized by the department in its sole discretion and that meets liability insurance requirements prescribed by the department.

5. "Autocycle" means a three-wheeled motorcycle on which the driver and passengers ride in a fully or partially enclosed seating area that is equipped with a roll cage, safety belts for each occupant and antilock brakes and that is designed to be controlled with a steering wheel and pedals.

6. "Automated driving system" means the hardware and software that are collectively capable of performing the entire dynamic driving task on a sustained basis, regardless of whether it is limited to a specific operational design domain.

7. "Automotive recycler" means a person that is engaged in the business of buying or acquiring a motor vehicle solely for the purpose of dismantling, selling or otherwise disposing of the parts or accessories and that removes parts for resale from six or more vehicles in a calendar year.

8. "Autonomous vehicle" means a motor vehicle that is equipped with an automated driving system.

9. "Aviation fuel" means all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating an internal combustion engine for use in an aircraft but does not include fuel for jet or turbine powered aircraft.

10. "Bicycle" means a device, including a racing wheelchair, that is propelled by human power and on which a person may ride and that has either:

(a) Two tandem wheels, either of which is more than sixteen inches in diameter.

(b) Three wheels in contact with the ground, any of which is more than sixteen inches in diameter.

11. "Board" means the transportation board.

12. "Bus" means a motor vehicle designed for carrying sixteen or more passengers, including the driver.

13. "Business district" means the territory contiguous to and including a highway if there are buildings in use for business or industrial purposes within any six hundred feet along the highway, including hotels, banks or office buildings, railroad stations and public buildings that occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway.

14. "Certificate of ownership" means a paper or an electronic record that is issued in another state or a foreign jurisdiction and that indicates ownership of a vehicle.

15. "Certificate of title" means a paper document or an electronic record that is issued by the department and that indicates ownership of a vehicle.

16. "Combination of vehicles" means a truck or truck tractor and semitrailer and any trailer that it tows but does not include a forklift designed for the purpose of loading or unloading the truck, trailer or semitrailer.

17. "Controlled substance" means a substance so classified under section 102(6) of the controlled substances act (21 United States Code section 802(6)) and includes all substances listed in schedules I through V of 21 Code of Federal Regulations part 1308.

18. "Conviction" means:

(a) An unvacated adjudication of guilt or a determination that a person violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal.

- (b) An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.
 - (c) A plea of guilty or no contest accepted by the court.
 - (d) The payment of a fine or court costs.
19. "County highway" means a public road that is constructed and maintained by a county.
20. "Dealer" means a person who is engaged in the business of buying, selling or exchanging motor vehicles, trailers or semitrailers and who has an established place of business and has paid fees pursuant to section 28-4302.
21. "Department" means the department of transportation acting directly or through its duly authorized officers and agents.
22. "Digital network or software application" has the same meaning prescribed in section 28-9551.
23. "Director" means the director of the department of transportation.
24. "Drive" means to operate or be in actual physical control of a motor vehicle.
25. "Driver" means a person who drives or is in actual physical control of a vehicle.
26. "Driver license" means a license that is issued by a state to an individual and that authorizes the individual to drive a motor vehicle.
27. "Dynamic driving task":
- (a) Means all of the real-time operational and tactical functions required to operate a vehicle in on-road traffic.
 - (b) Includes:
 - (i) Lateral vehicle motion control by steering.
 - (ii) Longitudinal motion control by acceleration and deceleration.
 - (iii) Monitoring the driving environment by object and event detection, recognition, classification and response preparation.
 - (iv) Object and event response execution.
 - (v) Maneuver planning.
 - (vi) Enhancing conspicuity by lighting, signaling and gesturing.
 - (c) Does not include strategic functions such as trip scheduling and selection of destinations and waypoints.
28. "Electric bicycle" means a bicycle or tricycle that is equipped with fully operable pedals and an electric motor of less than seven hundred fifty watts and that meets the requirements of one of the following classes:
- (a) "Class 1 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle or tricycle reaches the speed of twenty miles per hour.
 - (b) "Class 2 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that may be used exclusively to propel the bicycle or tricycle and that is not capable of providing assistance when the bicycle or tricycle reaches the speed of twenty miles per hour.
 - (c) "Class 3 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle or tricycle reaches the speed of twenty-eight miles per hour.
29. "Electric miniature scooter" means a device that:

- (a) Weighs less than thirty pounds.
- (b) Has two or three wheels.
- (c) Has handlebars.
- (d) Has a floorboard on which a person may stand while riding.
- (e) Is powered by an electric motor or human power, or both.
- (f) Has a maximum speed that does not exceed ten miles per hour, with or without human propulsion, on a paved level surface.

30. "Electric personal assistive mobility device" means a self-balancing device with one wheel or two nontandem wheels and an electric propulsion system that limits the maximum speed of the device to fifteen miles per hour or less and that is designed to transport only one person.

31. "Electric standup scooter":

- (a) Means a device that:
 - (i) Weighs less than seventy-five pounds.
 - (ii) Has two or three wheels.
 - (iii) Has handlebars.
 - (iv) Has a floorboard on which a person may stand while riding.
 - (v) Is powered by an electric motor or human power, or both.
 - (vi) Has a maximum speed that does not exceed twenty miles per hour, with or without human propulsion, on a paved level surface.
- (b) Does not include an electric miniature scooter.

32. "Evidence" includes both of the following:

- (a) A display on a wireless communication device of a department-generated driver license, nonoperating identification license, vehicle registration card or other official record of the department that is presented to a law enforcement officer or in a court or an administrative proceeding.
- (b) An electronic or digital license plate authorized pursuant to section 28-364.

33. "Farm" means any lands primarily used for agriculture production.

34. "Farm tractor" means a motor vehicle designed and used primarily as a farm implement for drawing implements of husbandry.

35. "Foreign vehicle" means a motor vehicle, trailer or semitrailer that is brought into this state other than in the ordinary course of business by or through a manufacturer or dealer and that has not been registered in this state.

36. "Fully autonomous vehicle" means an autonomous vehicle that is equipped with an automated driving system designed to function as a level four or five system under SAE J3016 and that may be designed to function either:

- (a) Solely by use of the automated driving system.
- (b) By a human driver when the automated driving system is not engaged.

37. "Golf cart" means a motor vehicle that has not less than three wheels in contact with the ground, that has an unladen weight of less than one thousand eight hundred pounds, that is designed to be and is operated at not more than twenty-five miles per hour and that is designed to carry not more than four persons including the driver.

38. "Hazardous material" means a material, and its mixtures or solutions, that the United States department of transportation determines under 49 Code of Federal Regulations is, or any quantity of a material listed as a select agent or toxin under 42 Code of Federal Regulations part 73 that is, capable of posing an unreasonable risk to health, safety and property if transported in commerce and that is required to be placarded or marked as required by the department's safety rules prescribed pursuant to chapter 14 of this title.

39. "Human driver" means a natural person in the vehicle who performs in real time all or part of the dynamic driving task or achieves a minimal risk condition for the vehicle.

40. "Implement of husbandry" means a vehicle that is designed primarily for agricultural purposes and that is used exclusively in the conduct of agricultural operations, including an implement or vehicle whether self-propelled or otherwise that meets both of the following conditions:

(a) Is used solely for agricultural purposes including the preparation or harvesting of cotton, alfalfa, grains and other farm crops.

(b) Is only incidentally operated or moved on a highway whether as a trailer or self-propelled unit. For the purposes of this subdivision, "incidentally operated or moved on a highway" means travel between a farm and another part of the same farm, from one farm to another farm or between a farm and a place of repair, supply or storage.

41. "Limousine" means a motor vehicle providing prearranged ground transportation service for an individual passenger, or a group of passengers, that is arranged in advance or is operated on a regular route or between specified points and includes ground transportation under a contract or agreement for services that includes a fixed rate or time and is provided in a motor vehicle with a seating capacity not exceeding fifteen passengers including the driver.

42. "Livery vehicle" means a motor vehicle that:

(a) Has a seating capacity not exceeding fifteen passengers including the driver.

(b) Provides passenger services for a fare determined by a flat rate or flat hourly rate between geographic zones or within a geographic area.

(c) Is available for hire on an exclusive or shared ride basis.

(d) May do any of the following:

(i) Operate on a regular route or between specified places.

(ii) Offer prearranged ground transportation service as defined in section 28-141.

(iii) Offer on demand ground transportation service pursuant to a contract with a public airport, licensed business entity or organization.

43. "Local authority" means any county, municipal or other local board or body exercising jurisdiction over highways under the constitution and laws of this state.

44. "Manufacturer" means a person engaged in the business of manufacturing motor vehicles, trailers or semitrailers.

45. "Minimal risk condition":

(a) Means a condition to which a human driver or an automated driving system may bring a vehicle in order to reduce the risk of a crash when a given trip cannot or should not be completed.

(b) Includes bringing the vehicle to a complete stop.

46. "Moped" means a bicycle, not including an electric bicycle, an electric miniature scooter or an electric standup scooter, that is equipped with a helper motor if the vehicle has a maximum piston displacement of fifty cubic centimeters or less, a brake horsepower of one and one-half or less and a maximum speed of twenty-five miles per hour or less on a flat surface with less than a one percent grade.

47. "Motorcycle" means a motor vehicle that has a seat or saddle for the use of the rider and that is designed to travel on not more than three wheels in contact with the ground but excludes a tractor, an electric bicycle, an electric miniature scooter, an electric standup scooter and a moped.

48. "Motor driven cycle" means a motorcycle, including every motor scooter, with a motor that produces not more than five horsepower but does not include an electric bicycle, an electric miniature scooter or an electric standup scooter.

49. "Motorized quadricycle" means a self-propelled motor vehicle to which all of the following apply:

(a) The vehicle is self-propelled by an emission-free electric motor and may include pedals operated by the passengers.

(b) The vehicle has at least four wheels in contact with the ground.

(c) The vehicle seats at least eight passengers, including the driver.

(d) The vehicle is operable on a flat surface using solely the electric motor without assistance from the pedals or passengers.

(e) The vehicle is a commercial motor vehicle as defined in section 28-5201.

(f) The vehicle is a limousine operating under a vehicle for hire company permit issued pursuant to section 28-9503.

(g) The vehicle is manufactured by a motor vehicle manufacturer that is licensed pursuant to chapter 10 of this title.

(h) The vehicle complies with the definition and standards for low-speed vehicles set forth in federal motor vehicle safety standard 500 and 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.

50. "Motor vehicle":

(a) Means either:

(i) A self-propelled vehicle.

(ii) For the purposes of the laws relating to the imposition of a tax on motor vehicle fuel, a vehicle that is operated on the highways of this state and that is propelled by the use of motor vehicle fuel.

(b) Does not include a scrap vehicle, a personal delivery device, a personal mobile cargo carrying device, a motorized wheelchair, an electric personal assistive mobility device, an electric bicycle, an electric miniature scooter, an electric standup scooter or a motorized skateboard. For the purposes of this subdivision:

(i) "Motorized skateboard" means a self-propelled device that does not have handlebars and that has a motor, a deck on which a person may ride and at least two tandem wheels in contact with the ground.

(ii) "Motorized wheelchair" means a self-propelled wheelchair that is used by a person for mobility.

51. "Motor vehicle fuel" includes all products that are commonly or commercially known or sold as gasoline, including casinghead gasoline, natural gasoline and all flammable liquids, and that are composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. Motor vehicle fuel does not include inflammable liquids that are specifically

manufactured for racing motor vehicles and that are distributed for and used by racing motor vehicles at a racetrack, use fuel as defined in section 28-5601, aviation fuel, fuel for jet or turbine powered aircraft or the mixture created at the interface of two different substances being transported through a pipeline, commonly known as transmix.

52. "Neighborhood electric shuttle":

(a) Means a self-propelled electrically powered motor vehicle to which all of the following apply:

(i) The vehicle is emission free.

(ii) The vehicle has at least four wheels in contact with the ground.

(iii) The vehicle is capable of transporting at least eight passengers, including the driver.

(iv) The vehicle is a commercial motor vehicle as defined in section 28-5201.

(v) The vehicle is a vehicle for hire as defined in section 28-9501 and operates under a vehicle for hire company permit issued pursuant to section 28-9503.

(vi) The vehicle complies with the definition and standards for low-speed vehicles set forth in federal motor vehicle safety standard 500 and 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.

(b) Includes a vehicle that meets the standards prescribed in subdivision (a) of this paragraph and that has been modified after market and not by the manufacturer to transport up to fifteen passengers, including the driver.

53. "Neighborhood electric vehicle" means a self-propelled electrically powered motor vehicle to which all of the following apply:

(a) The vehicle is emission free.

(b) The vehicle has at least four wheels in contact with the ground.

(c) The vehicle complies with the definition and standards for low-speed vehicles set forth in federal motor vehicle safety standard 500 and 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.

54. "Nonresident" means a person who is not a resident of this state as defined in section 28-2001.

55. "Off-road recreational motor vehicle" means a motor vehicle that is designed primarily for recreational nonhighway all-terrain travel and that is not operated on a public highway. Off-road recreational motor vehicle does not mean a motor vehicle used for construction, building trade, mining or agricultural purposes.

56. "Operational design domain":

(a) Means operating conditions under which a given automated driving system is specifically designed to function.

(b) Includes roadway types, speed range, environmental conditions, such as weather or time of day, and other domain constraints.

57. "Operator" means a person who drives a motor vehicle on a highway, who is in actual physical control of a motor vehicle on a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.

58. "Owner" means:

(a) A person who holds the legal title of a vehicle.

(b) If a vehicle is the subject of an agreement for the conditional sale or lease with the right of purchase on performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, the conditional vendee or lessee.

(c) If a mortgagor of a vehicle is entitled to possession of the vehicle, the mortgagor.

59. "Pedestrian" means any person afoot. A person who uses an electric personal assistive mobility device or a manual or motorized wheelchair is considered a pedestrian unless the manual wheelchair qualifies as a bicycle. For the purposes of this paragraph, "motorized wheelchair" means a self-propelled wheelchair that is used by a person for mobility.

60. "Personal delivery device":

(a) Means a device that is both of the following:

(i) Manufactured for transporting cargo and goods in an area described in section 28-1225.

(ii) Equipped with automated driving technology, including software and hardware, that enables the operation of the device with the remote support and supervision of a human.

(b) Does not include a personal mobile cargo carrying device.

61. "Personal mobile cargo carrying device" means an electronically powered device that:

(a) Is operated primarily on sidewalks and within crosswalks and that is designed to transport property.

(b) Weighs less than eighty pounds, excluding cargo.

(c) Operates at a maximum speed of twelve miles per hour.

(d) Is equipped with technology to transport personal property with the active monitoring of a property owner and that is primarily designed to remain within twenty-five feet of the property owner.

(e) Is equipped with a braking system that when active or engaged enables the personal mobile cargo carrying device to come to a controlled stop.

62. "Power sweeper" means an implement, with or without motive power, that is only incidentally operated or moved on a street or highway and that is designed for the removal of debris, dirt, gravel, litter or sand whether by broom, vacuum or regenerative air system from asphaltic concrete or cement concrete surfaces, including parking lots, highways, streets and warehouses, and a vehicle on which the implement is permanently mounted.

63. "Public transit" means the transportation of passengers on scheduled routes by means of a conveyance on an individual passenger fare-paying basis excluding transportation by a sightseeing bus, school bus or taxi or a vehicle not operated on a scheduled route basis.

64. "Reconstructed vehicle" means a vehicle that has been assembled or constructed largely by means of essential parts, new or used, derived from vehicles or makes of vehicles of various names, models and types or that, if originally otherwise constructed, has been materially altered by the removal of essential parts or by the addition or substitution of essential parts, new or used, derived from other vehicles or makes of vehicles. For the purposes of this paragraph, "essential parts" means integral and body parts, the removal, alteration or substitution of which will tend to conceal the identity or substantially alter the appearance of the vehicle.

65. "Residence district" means the territory contiguous to and including a highway not comprising a business district if the property on the highway for a distance of three hundred feet or more is in the main improved with residences or residences and buildings in use for business.

66. "Right-of-way" when used within the context of the regulation of the movement of traffic on a highway means the privilege of the immediate use of the highway. Right-of-way when used within the context of the real property

on which transportation facilities and appurtenances to the facilities are constructed or maintained means the lands or interest in lands within the right-of-way boundaries.

67. "SAE J3016" means surface transportation recommended practice J3016 taxonomy and definitions for terms related to driving automation systems for on-road motor vehicles published by SAE international in June 2018.

68. "School bus" means a motor vehicle that is designed for carrying more than ten passengers and that is either:

(a) Owned by any public or governmental agency or other institution and operated for the transportation of children to or from home or school on a regularly scheduled basis.

(b) Privately owned and operated for compensation for the transportation of children to or from home or school on a regularly scheduled basis.

69. "Scrap metal dealer" has the same meaning prescribed in section 44-1641.

70. "Scrap vehicle" has the same meaning prescribed in section 44-1641.

71. "Semitrailer" means a vehicle that is with or without motive power, other than a pole trailer or single-axle tow dolly, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that some part of its weight and that of its load rests on or is carried by another vehicle. For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28-601.

72. "Single-axle tow dolly" means a nonvehicle device that is drawn by a motor vehicle, that is designed and used exclusively to transport another motor vehicle and on which the front or rear wheels of the drawn motor vehicle are mounted on the tow dolly while the other wheels of the drawn motor vehicle remain in contact with the ground.

73. "State" means a state of the United States and the District of Columbia.

74. "State highway" means a state route or portion of a state route that is accepted and designated by the board as a state highway and that is maintained by the state.

75. "State route" means a right-of-way whether actually used as a highway or not that is designated by the board as a location for the construction of a state highway.

76. "Street" or "highway" means the entire width between the boundary lines of every way if a part of the way is open to the use of the public for purposes of vehicular travel.

77. "Taxi" means a motor vehicle that has a seating capacity not exceeding fifteen passengers, including the driver, that provides passenger services and that:

(a) Does not primarily operate on a regular route or between specified places.

(b) Offers local transportation for a fare determined on the basis of the distance traveled or prearranged ground transportation service as defined in section 28-141 for a predetermined fare.

78. "Title transfer form" means a paper or an electronic form that is prescribed by the department for the purpose of transferring a certificate of title from one owner to another owner.

79. "Traffic survival school" means a school that is licensed pursuant to chapter 8, article 7.1 of this title and that offers educational sessions that are designed to improve the safety and habits of drivers and that are approved by the department.

80. "Trailer" means a vehicle that is with or without motive power, other than a pole trailer or single-axle tow dolly, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so

that no part of its weight rests on the towing vehicle. A semitrailer equipped with an auxiliary front axle commonly known as a dolly is deemed to be a trailer. For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28-601.

81. "Transportation network company" has the same meaning prescribed in section 28-9551.

82. "Transportation network company vehicle" has the same meaning prescribed in section 28-9551.

83. "Transportation network service" has the same meaning prescribed in section 28-9551.

84. "Truck" means a motor vehicle designed or used primarily for the carrying of property other than the effects of the driver or passengers and includes a motor vehicle to which has been added a box, a platform or other equipment for such carrying.

85. "Truck tractor" means a motor vehicle that is designed and used primarily for drawing other vehicles and that is not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

86. "Vehicle":

(a) Means a device in, on or by which a person or property is or may be transported or drawn on a public highway.

(b) Does not include:

(i) Electric bicycles, electric miniature scooters, electric standup scooters and devices moved by human power.

(ii) Devices used exclusively on stationary rails or tracks.

(iii) Personal delivery devices.

(iv) Scrap vehicles.

(v) Personal mobile cargo carrying devices.

87. "Vehicle transporter" means either:

(a) A truck tractor capable of carrying a load and drawing a semitrailer.

(b) A truck tractor with a stinger-steered fifth wheel capable of carrying a load and drawing a semitrailer or a truck tractor with a dolly mounted fifth wheel that is securely fastened to the truck tractor at two or more points and that is capable of carrying a load and drawing a semitrailer.

A.R.S. § 28-9501. Definitions

In this chapter, unless the context otherwise requires:

1. "Taxi meter" means a device that automatically calculates at a predetermined rate the charge for the hire of a vehicle and that indicates the charge.

2. "Vehicle for hire" means a taxi, livery vehicle or limousine.

3. "Vehicle for hire company" means a company that offers local transportation through use of a taxi, livery vehicle or limousine or a combination of taxis, livery vehicles or limousines.

A.R.S. § 41-1001. Definitions

In this chapter, unless the context otherwise requires:

1. "Agency" means any board, commission, department, officer or other administrative unit of this state, including the agency head and one or more members of the agency head or agency employees or other persons directly or

indirectly purporting to act on behalf or under the authority of the agency head, whether created under the Constitution of Arizona or by enactment of the legislature. Agency does not include the legislature, the courts or the governor. Agency does not include a political subdivision of this state or any of the administrative units of a political subdivision, but does include any board, commission, department, officer or other administrative unit created or appointed by joint or concerted action of an agency and one or more political subdivisions of this state or any of their units. To the extent an administrative unit purports to exercise authority subject to this chapter, an administrative unit otherwise qualifying as an agency must be treated as a separate agency even if the administrative unit is located within or subordinate to another agency.

2. "Appealable agency action" has the same meaning prescribed in section 41-1092.
3. "Audit" means an audit, investigation or inspection pursuant to title 23, chapter 2 or 4.
4. "Code" means the Arizona administrative code, which is published pursuant to section 41-1011.
5. "Committee" means the administrative rules oversight committee.
6. "Contested case" means any proceeding, including rate making, except rate making pursuant to article XV, Constitution of Arizona, price fixing and licensing, in which the legal rights, duties or privileges of a party are required or permitted by law, other than this chapter, to be determined by an agency after an opportunity for an administrative hearing.
7. "Council" means the governor's regulatory review council.
8. "Delegation agreement" means an agreement between an agency and a political subdivision that authorizes the political subdivision to exercise functions, powers or duties conferred on the delegating agency by a provision of law. Delegation agreement does not include intergovernmental agreements entered into pursuant to title 11, chapter 7, article 3.
9. "Emergency rule" means a rule that is made pursuant to section 41-1026.
10. "Fee" means a charge prescribed by an agency for an inspection or for obtaining a license.
11. "Final rule" means any rule filed with the secretary of state and made pursuant to an exemption from this chapter in section 41-1005, made pursuant to section 41-1026, approved by the council pursuant to section 41-1052 or 41-1053 or approved by the attorney general pursuant to section 41-1044. For purposes of judicial review, final rule includes expedited rules pursuant to section 41-1027.
12. "General permit" means a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing.
13. "License" includes the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but does not include a license required solely for revenue purposes.
14. "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, change, reduction, modification or amendment of a license, including an existing permit,

certificate, approval, registration, charter or similar form of permission, approval or authorization obtained from an agency by the holder of a license.

15. "Licensing decision" means any action by an agency to grant or deny any request for permission, approval or authorization issued in response to any request from an applicant for a license or to the holder of a license to exercise authority within the scope of the license.

16. "Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

17. "Person" means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character or another agency.

18. "Preamble" means:

(a) For any rulemaking subject to this chapter, a statement accompanying the rule that includes:

(i) Reference to the specific statutory authority for the rule.

(ii) The name and address of agency personnel with whom persons may communicate regarding the rule.

(iii) An explanation of the rule, including the agency's reasons for initiating the rulemaking.

(iv) A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes 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.

(v) The economic, small business and consumer impact summary, or in the case of a proposed rule, a preliminary summary and a solicitation of input on the accuracy of the summary.

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

(vii) Such other matters as are prescribed by statute and that are applicable to the specific agency or to any specific rule or class of rules.

(b) In addition to the information set forth in subdivision (a) of this paragraph, for a proposed rule, the preamble also shall include a list of all previous notices appearing in the register addressing the proposed rule, a statement of the time, place and nature of the proceedings for the making, amendment or repeal of the rule and where, when and how persons may request an oral proceeding on the proposed rule if the notice does not provide for one.

(c) In addition to the information set forth in subdivision (a) of this paragraph, for an expedited rule, the preamble also shall include a statement of the time, place and nature of the proceedings for the making, amendment or repeal of the rule and an explanation of why expedited proceedings are justified.

(d) For a final rule, except an emergency rule, the preamble also shall include, in addition to the information set forth in subdivision (a), the following information:

(i) A list of all previous notices appearing in the register addressing the final rule.

(ii) A description of the changes between the proposed rules, including supplemental notices and final rules.

(iii) A summary of the comments made regarding the rule and the agency response to them.

(iv) A summary of the council's action on the rule.

(v) A statement of the rule's effective date.

(e) In addition to the information set forth in subdivision (a) of this paragraph, for an emergency rule, the preamble also shall include an explanation of the situation justifying the rule being made as an emergency rule, the date of the attorney general's approval of the rule and a statement of the emergency rule's effective date.

19. "Provision of law" means the whole or a part of the federal or state constitution, or of any federal or state statute, rule of court, executive order or rule of an administrative agency.

20. "Register" means the Arizona administrative register, which is:

(a) This state's official publication of rulemaking notices that are filed with the office of secretary of state.

(b) Published pursuant to section 41-1011.

21. "Rule" means an agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency. Rule includes prescribing fees or the amendment or repeal of a prior rule but does not include intraagency memoranda that are not delegation agreements.

22. "Rulemaking" means the process to make a new rule or amend, repeal or renumber a rule.

23. "Small business" means a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year. For purposes of a specific rule, an agency may define small business to include more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small businesses and organizations.

24. "Substantive policy statement" means a written expression which informs the general public of an agency's current approach to, or opinion of, the requirements of the federal or state constitution, federal or state statute, administrative rule or regulation, or final judgment of a court of competent jurisdiction, including, where appropriate, the agency's current practice, procedure or method of action based upon that approach or opinion. A substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents which only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties, confidential information or rules made in accordance with this chapter.

A.R.S. § 41-1092. Definitions

In this article, unless the context otherwise requires:

1. "Administrative law judge" means an individual or an agency head, board or commission that sits as an administrative law judge, that conducts administrative hearings in a contested case or an appealable agency action and that makes decisions regarding the contested case or appealable agency action.

2. "Administrative law judge decision" means the findings of fact, conclusions of law and recommendations or decisions issued by an administrative law judge.

3. "Appealable agency action" means an action that determines the legal rights, duties or privileges of a party, including the administrative completeness of an application other than an application submitted to the department of water resources pursuant to title 45, and that is not a contested case. Appealable agency actions do not include interim orders by self-supporting regulatory boards, rules, orders, standards or statements of policy of general

application issued by an administrative agency to implement, interpret or make specific the legislation enforced or administered by it or clarifications of interpretation, nor does it mean or include rules concerning the internal management of the agency that do not affect private rights or interests. For the purposes of this paragraph, administrative hearing does not include a public hearing held for the purpose of receiving public comment on a proposed agency action.

4. "Director" means the director of the office of administrative hearings.
5. "Final administrative decision" means a decision by an agency that is subject to judicial review pursuant to title 12, chapter 7, article 6.
6. "Office" means the office of administrative hearings.
7. "Self-supporting regulatory board" means any one of the following:
 - (a) The Arizona state board of accountancy.
 - (b) The barbering and cosmetology board.
 - (c) The board of behavioral health examiners.
 - (d) The Arizona state boxing and mixed martial arts commission.
 - (e) The state board of chiropractic examiners.
 - (f) The state board of dental examiners.
 - (g) The state board of funeral directors and embalmers.
 - (h) The Arizona game and fish commission.
 - (i) The board of homeopathic and integrated medicine examiners.
 - (j) The Arizona medical board.
 - (k) The naturopathic physicians medical board.
 - (l) The Arizona state board of nursing.
 - (m) The board of examiners of nursing care institution administrators and assisted living facility managers.
 - (n) The board of occupational therapy examiners.
 - (o) The state board of dispensing opticians.
 - (p) The state board of optometry.
 - (q) The Arizona board of osteopathic examiners in medicine and surgery.
 - (r) The Arizona peace officer standards and training board.
 - (s) The Arizona state board of pharmacy.
 - (t) The board of physical therapy.
 - (u) The state board of podiatry examiners.
 - (v) The state board for private postsecondary education.
 - (w) The state board of psychologist examiners.
 - (x) The board of respiratory care examiners.
 - (y) The state board of technical registration.
 - (z) The Arizona state veterinary medical examining board.
 - (aa) The acupuncture board of examiners.

- (bb) The Arizona regulatory board of physician assistants.
- (cc) The board of athletic training.
- (dd) The board of massage therapy.

Statutory Authority

A.R.S. § 28-366. Director; rules

The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for:

1. Collection of taxes and license fees.
2. Public safety and convenience.
3. Enforcement of the provisions of the laws the director administers or enforces.
4. The use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

A.R.S. § 28-9502. Powers and duties

A. The department shall adopt any rules necessary to carry out this chapter and adopt reasonable rules for the enforcement of this chapter. These rules have the force and effect of law and shall be adopted pursuant to title 41, chapter 6.

B. The department may:

1. Investigate complaints made to the department concerning violations of this chapter and, on its own initiative, conduct investigations it deems appropriate in order to develop information relating to prevailing procedures for taxi meter rate determination and possible violations of this chapter and to promote accuracy in the determination and representation of quantity in taxi meter rates.
2. Inspect and test taxi meters by a random systematic method determined by the director or in response to a complaint by the public to determine whether the taxi meters meet the requirements prescribed by the department by rule.
3. Apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating this chapter.
4. Subject to title 41, chapter 4, article 4, employ such personnel as needed to assist in administering this chapter.

C. During the course of an investigation or an enforcement action by the department, information regarding the complainant is confidential and is exempt from title 39, chapter 1 unless the complainant authorizes the information to be public.

A.R.S. § 28-9503. Vehicle for hire company permits; fees; violation; classification

A. A vehicle for hire company may not operate in this state unless the vehicle for hire company is issued a permit by the department. The vehicle for hire company may apply to the department on forms prescribed by the department. The permit is valid for three years. The department shall charge and collect an application fee of twenty-four dollars per vehicle that is used as a taxi by the vehicle for hire company at the time of application, not to exceed a total of one thousand dollars per applicant.

- B. The department shall issue a permit to an applicant that meets the requirements of this article.
- C. A vehicle for hire company shall maintain an agent for service of process in this state.
- D. If a fare is based on time or mileage or both time and mileage, a taxi shall have a taxi meter, except that if the service offered by the taxi is a prearranged ground transportation service as prescribed in section 28-141 for a predetermined fare, the taxi is not required to use the taxi meter.
- E. The department shall revoke a permit if the vehicle for hire company fails to maintain the requirements for either of the following:
 - 1. Motor vehicle licensing as prescribed by the department.
 - 2. Motor vehicle insurance as prescribed by section 28-4033.
- F. A vehicle for hire shall have a copy of the permit issued to the vehicle for hire company under this chapter inside the vehicle at all times.
- G. A taxi that is issued a permit by the department and that offers local transportation for a fare determined on the basis of the distance traveled or prearranged ground transportation service as prescribed in section 28-141 for a predetermined fare is not required to have an additional permit as a livery vehicle.
- H. A person or the person's agent who knowingly files with the department any notice, statement or other document required under this section that is false or that contains any material misstatement of fact is guilty of a class 2 misdemeanor.

A.R.S. § 28-9504. Fees to general fund

The director shall deposit, pursuant to sections 35-146 and 35-147, all fees collected pursuant to this chapter in the state general fund.

A.R.S. § 28-9505. Meters; duplicate receipts

- A. Every taxi that has a charge or fare based on time or mileage or both time and mileage shall have a taxi meter.
- B. The taxi meter shall be visible to the passengers of a taxi.
- C. If a taxi has the capability of producing a duplicate receipt, the driver shall print the duplicate receipt and provide the duplicate receipt to the passenger paying the fare.
- D. A taxi meter is not required to be used if the taxi is offering prearranged ground transportation service as defined in section 28-141 for a predetermined fare.

A.R.S. § 28-9506. Taxi and livery vehicle signage

- A. A taxi or livery vehicle shall display all of the following information either on an interior sign that is readily visible and that is either in a print or an electronic format or on a digital network or software application:
 - 1. The permittee's business name and address.
 - 2. An accurate representation of all fares and the fare computation method.
 - 3. The driver's name.
- B. At a minimum, a taxi is required to display readily visible exterior trade dress as defined in section 28-9551 that contains the word "taxi" or "cab".

A.R.S. § 28-9507. Vehicles for hire; criminal background checks; vehicle safety records; zero-tolerance policy; drug and alcohol use by driver; passenger complaints

A. A vehicle for hire company that is issued a permit by the department shall have available for inspection at all times by the department written evidence of a criminal background check conducted for any driver operating a vehicle for hire for the vehicle for hire company, whether as an employee or lessee. The criminal background check shall be completed before the driver is engaged as an employee or lessee.

B. A vehicle for hire company that is issued a permit by the department shall require that all of the company's vehicles for hire that are used to provide passenger transportation meet state vehicle safety and emissions standards for private vehicles and shall require the vehicles for hire to have, at a minimum, an annual brake and tire inspection that is performed by a qualified party. The vehicle for hire company shall maintain vehicle safety and emissions inspection records for at least two years and make the records available to the department on request.

C. A vehicle for hire company shall implement a zero-tolerance policy on the use of drugs and alcohol while a vehicle for hire driver is providing passenger transportation or is available to provide passenger transportation. The vehicle for hire company shall provide notice of this policy on its website or in the vehicle for hire, including procedures to file a complaint about a driver with whom a passenger was matched and who the passenger reasonably suspects was under the influence of drugs or alcohol during the course of the passenger transportation.

D. On receipt of a passenger complaint alleging a violation of the zero-tolerance policy, the vehicle for hire company shall do both of the following:

1. Immediately suspend the vehicle for hire driver's access to the company's vehicle for hire.
2. Conduct an investigation into the filed complaint. The suspension shall last the duration of the investigation.

E. If the vehicle for hire company's investigation confirms that the driver has violated the policy required by subsection C of this section, the vehicle for hire company shall permanently prohibit the driver's access to the company's vehicles for hire. The vehicle for hire company shall maintain enforcement records for at least two years after the date a passenger complaint is received by the company and make the records available to the department on request.

A.R.S. § 28-9521. Unlawful use of vehicle for hire; violation; classification

A. When any vehicle for hire specified in this chapter is in commercial use and a valid permit has not been procured by the vehicle for hire company, the department, after giving notice of the permit requirements to the vehicle for hire company, shall prohibit the further commercial use of the vehicle until the proper permit has been issued.

B. The owner of any business who has not applied for and has not been issued a permit by the department for the right to do business involving the use of a vehicle for hire and who is found offering vehicle for hire services to a consumer is guilty of a class 2 misdemeanor.

C. If a vehicle for hire is used contrary to any provision of this chapter or any rule adopted pursuant to this chapter, the department, in addition to any other penalty imposed by this chapter, shall suspend, revoke or refuse to renew the permit of the vehicle for hire company.

A.R.S. § 28-9522. Revocation or suspension of permits; procedure; judicial review

A. Except as otherwise provided by this section, any proceeding to revoke or suspend a permit issued pursuant to this chapter shall be conducted in accordance with title 41, chapter 6, article 10.

B. The director may initiate proceedings for revocation or suspension of a permit issued pursuant to this chapter on the director's own motion or on a verified complaint for noncompliance with or a violation of this chapter or of any rule adopted pursuant to this chapter.

C. If, after having been served with the notice of hearing as provided for in title 41, chapter 6, article 10, the permittee fails to appear at the hearing and defend, the department shall proceed to hear evidence against the permittee and shall enter an order as justified by the evidence. The order is final unless the permittee petitions for a review as provided in title 41, chapter 6, article 10.

D. At all hearings, the attorney general, an assistant attorney general or a special assistant designated by the attorney general shall appear and represent the department.

E. Except as provided in section 41-1092.08, subsection H, any final administrative decision made pursuant to this chapter is subject to judicial review pursuant to title 12, chapter 7, article 6.

A.R.S. § 28-9523. Violations; classification; jurisdiction

A. A person is guilty of a class 1 misdemeanor who:

1. Knowingly hinders, interferes with or obstructs in any way the director or any of the director's agents or inspectors in entering the premises where a taxi meter may be kept for inspecting or testing or in the performance of the official duties of the director or the director's agents or inspectors.

2. Impersonates in any way the director or any of the director's agents or inspectors by the use of the director's seal or a counterfeit of the director's seal or in any other manner.

3. Uses, or has in possession for the purpose of using for a commercial purpose, offers or exposes for sale or hire, or has in possession for the purpose of selling or hiring an incorrect taxi meter used or calculated to falsify the accuracy of the taxi meter.

B. A person is guilty of a class 2 misdemeanor who:

1. Uses a taxi meter that is so positioned that its indications cannot be accurately read and the metering operation cannot be observed from some position that may reasonably be assumed by a customer.

2. Violates this chapter or rules adopted under this chapter. A continuing violation may be deemed to be a separate violation each day during which the violation is committed for the purpose of imposing a fine.

C. The provisions of this section are in addition to and not in limitation of any other provision of law.

D. The attorney general and the county attorney have concurrent jurisdiction to prosecute violations of this chapter.

A.R.S. § 28-9524. Taxi meter; presumptive evidence of use

When a taxi meter is in or about any place in which or from which a vehicle for hire transaction is commonly carried on, there is a rebuttable presumption that the taxi meter is regularly used for the business purpose of the place.

A.R.S. § 28-9525. Civil penalties

A. A person who violates this chapter, any rule of the department or any permit requirement is subject to a civil penalty imposed by the director. A person who violates this chapter, any rule of the department or any permit requirement may request a hearing to review a civil penalty imposed under this section. The department shall conduct the hearing in accordance with title 41, chapter 6, article 10. The civil penalty may not exceed one thousand five hundred dollars for each infraction at each business location.

B. The attorney general shall bring actions to recover civil penalties pursuant to this section in the superior court in the county in which the violation occurred or in a county where the agency has its office. All monies derived from civil penalties shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

A.R.S. § 28-9526. Delinquent civil penalties and fees

In addition to any other penalty, if a civil penalty or any fee due pursuant to this chapter has not been paid within thirty days after the due date, the civil penalty or fee is delinquent and the department may refuse to issue a permit or may revoke a permit pursuant to this chapter until the civil penalty or fee is paid in full.

A.R.S. § 28-9527. Transaction privilege tax prohibited

A vehicle for hire owner, company or driver that has a permit issued pursuant to article 1 of this chapter is exempt from transaction privilege tax pursuant to sections 42-5062 and 42-6004 on income derived from transporting persons for hire.

F

CONSIDERATION AND DISCUSSION OF A.R.S. § 41-1033(G) PETITION AGAINST
DEPARTMENT OF HEALTH SERVICES RULES IN 9 A.A.C. 17



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM

MEETING DATE: June 1, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 12, 2022

SUBJECT: A.R.S. 41-1033(G) Petition - Department of Health Services

I. Background

On March 25, 2022, Council staff received an A.R.S. § 41-1033(G) Petition (petition) from Nathaniel Allen (petitioner) in reference to Department of Health Services (Department) rules in Arizona Administrative Code Title 9, Chapter 17, relating to the Medical Marijuana Program (medical marijuana rules).

The Department recently amended and adopted the medical marijuana rules at issue in this petition via exempt rulemaking in 2021. The Department conducted the exempt rulemaking to amend and adopt medical marijuana rules pursuant to a legislative exemption granted to it in SB1494, which was signed into law on June 7, 2019. This legislation made a number of changes to Arizona's medical marijuana program. Notably, it amended A.R.S. § 36-2801 *et seq.* to include new definitions of "independent third-party laboratory"¹ and "independent third-party laboratory agent" as well as introduced new requirements for the Department to certify, regulate, and inspect independent third-party laboratories and agents.

¹ "Independent third-party laboratory" is defined as "an entity that has a national or international accreditation and that is certified by the Department to analyze marijuana cultivated for medical use." "Independent third-party laboratory agent" is defined as "an owner, employee or volunteer of a certified independent third-party laboratory who is at least twenty-one years of age and who has not been convicted of an excluded felony offense." See A.R.S. 36-2801(8) and (9).

Pursuant to this statutory authority, the Department conducted an exempt rulemaking in 2021 at 25 A.A.R. 2421 to comply with this new legislation. In the justification for the exempt rulemaking, the Department stated:

Arizona Revised Statutes (A.R.S.) Chapter 28.1, as amended by Laws 2019, Ch. 318, requires the Arizona Department of Health Services (Department) to adopt rules to certify and regulate independent third-party laboratories (laboratories) and independent third party laboratory agents (laboratory agents) that analyze cultivated marijuana. The rules in A.A.C. Title 9, Chapter 17, specify the requirements for the Medical Marijuana Program, and the Department is revising these rules to comply with Laws 2019, Ch. 318. This rulemaking includes the following: establishing application and renewal fees for laboratories and laboratory agents; adopting rules to certify and regulate laboratories; adopting rules to register and regulate laboratory agents; codifying in rule the requirement that, beginning November 1, 2020, nonprofit medical marijuana dispensaries, before selling or dispensing marijuana, test the marijuana using a Department-certified laboratory; and codifying in rule the change to the validity of registry identification cards and registration certificates from one year to two years after the date of issuance....

Id.

It is Council staff's understanding that the petitioner is involved with a small business that is subject to these rules. However, the petitioner does not identify the business as an "independent third-party laboratory" as defined in the statute and does not identify himself as an "independent third-party laboratory agent" as defined in the statute.

II. Petitioner's argument

The petitioner appears to make two arguments. First, the petitioner states that the exempt rulemaking conducted by the Department to implement SB1494 was "expansive and unnecessarily burdensome..." and "[f]or a small laboratory business, A.A.C. Title 9, Chapter 17 quickly became a very complicated set of rules to navigate...." *See* Petition at 1-2. As such, it appears the petitioner is alleging that Article 4 of the medical marijuana rules are unduly burdensome pursuant to A.R.S. § 41-1033(G). However, it does not appear the petitioner has identified any specific burdens created by the rules that the petitioner indicates are undue. Second, the petitioner appears to argue that the Department lacked statutory authority under SB 1494 to enact certain certification requirements for third-party laboratories as discussed on pages 2 and 3 of the petition. As such, it appears the petitioner is arguing that these licensing requirements are not specifically authorized by statute pursuant to A.R.S. § 41-1033(G). Council staff notes that SB1494 added a new section, A.R.S. § 36-2804.07 (Independent third-party laboratories; certification; inspection), which in paragraph (A) states that "Independent third-party laboratories shall be certified by the Department."

III. Procedure for A.R.S. § 41-1033(G) Petitions

A.R.S. § 41-1033(G) allows a person to “petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that the petitioner alleges is not specifically authorized by statute, is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern. On receipt of a properly submitted petition pursuant to this section, the council shall review the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement as prescribed by this section.”

If the Council receives information pursuant to A.R.S. § 41-1033(G), and at least four Council members request of the Chairperson that the matter be heard in a public meeting:

1. Within ninety days after receipt of the fourth council member's request, the council shall determine whether the agency practice or substantive policy statement constitutes a rule, whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement meets the guidelines prescribed in subsection G of this Section.
2. Within ten days after receipt of the fourth council member's request, the council shall notify the agency that the matter has been or will be placed on an agenda.
3. Not later than thirty days after receiving notice from the council, the agency shall submit a statement to the council that addresses whether the existing agency practice, substantive policy statement constitutes a rule or whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement meets the guidelines prescribed in subsection G of this section.

See A.R.S. § 41-1033(H).

V. Conclusion

A.R.S. § 41-1033 does not provide requirements or standards to guide the Council in determining whether this petition should be given a hearing. Therefore, Council members should make their own assessments as to what information is relevant in determining whether this petition may be heard.

In Council staff's opinion, the petitioner has not indicated which specific rule he believes is “not specifically authorized by statute, is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern” under A.R.S. § 41-1033(G), rather, appears to indicate the entirety of Article 4 is unduly burdensome. However,

the petitioner has not identified with specificity which burdens imposed by the rules in Article 4 the petitioner believes are undue or not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern. Additionally, as discussed above, the Department properly adopted the rules in Article 4 pursuant to exemption in SB1494, and the rules regarding independent third-party laboratories are consistent with the Department's applicable statutory authority. As such, Council staff does not believe the petition contains sufficient information for the Council to hear this petition at a future public meeting pursuant to § 41-1033(H).

Petition and Appeal to the Arizona Governors Regulatory Review Council

by Nathaniel Allen, on behalf of myself and a small business I manage

Dear Council,

I am writing this petition and appeal in reference to A.R.S. § 41-1033(G) to request a review of an existing agency's practices *and* its regulatory licensing requirements that do not appear to be specifically authorized by statute pursuant to Title 32 and based on my belief that both the practices and regulatory licensing requirements *are* unduly burdensome *and* are not demonstrated to be *entirely* necessary to fulfill a public health, safety or welfare concern.

It is my understanding that while the director of the Department of Health Services ("department") did request rulemaking authority from the Governor's office in reference to executive order 2019-01 to initiate the exempt rulemaking to implement SB1494, the director's original request did not go far enough to describe to the Governor's office the expansive and unnecessarily burdensome rulemaking that followed. Additionally, it appears no other rulemaking authority to expand upon rules under SB1494 was made in 2020 following a new executive order that superseded 2019-01. Attached is that short email exchange where the department sought rulemaking authority under 2019-01 to initiate rulemaking for SB1494 (also notice the date of the email exchange occurring before the statutory time-period of ninety days for the law to even become effective). Between the date of the attached email and the date of the first filing of draft rules approximately sixty (60) days later, among several other additions, Article 4. Laboratories and Laboratory Agents was added -then consisting of around sixteen (16) pages of rules- and was intended to be used as the broad scaffolding to expand upon much further. The scaffolding subsequently ballooned under the guise of "we plan to stick to what is required in SB1494" from this single email seeking authority. For a small laboratory business, A.A.C. Title 9 Chapter 17 quickly became

a very complicated set of rules to navigate, especially while the rules themselves were still being adjusted seemingly on the fly.

The language in SB1494, to me, intended something different than what has occurred...that bill did intend for authority to be given to the department to mandate requirements for the lab testing of medical marijuana as the primary responsibility of the dispensary license holders and to adopt rules to “certify and regulate” [those certifications] independent third-party labs that would analyze marijuana cultivated for medical use, or in other words perform the lab testing; as well as to establish fees for certification of the labs and their agents. SB1494 does not appear to intend for the framework to have been unilaterally established *by the department* or prior to any of the recommendations having been made by the advisory council specified therein -because it had not yet convened-. Additionally, the bill intends for only certain rules to be set by the department where specifically stated *by the department* therein, the other guidelines were to be set by the labs themselves and assumedly in conjunction with the requirements of their accrediting bodies, hence the phrasing “In order to be certified as an independent third-party laboratory that is allowed to test marijuana and marijuana products for medical use pursuant to this chapter, an independent laboratory” -notice that it does not say *by the department*, the onus is on the lab- to: (1) Must meet requirements established *by the department*, including reporting and health and safety requirements. The requirements that were intended to be ‘established and regulated by the department’ were to be based on the advisory council’s recommendations for reporting and health and safety requirements; and the extend of which, I believe, is contemplated by what is now known as Table 3.1 in the rules...these parameters, analytes w/ action levels, and remediation options fully encapsulate what was intended, including what a certificate of compliance should include for reporting, as well as it established what accreditation scope would be necessary to be certified by the department in the first place. These certificates of compliance (“reports”) were intended to be used by the dispensary license holders and provided to patients (upon request) to verify that every batch of

marijuana or marijuana infused product had “passed” thru the testing requirements. This specific bill language is limited to three things and did not include *but not limited to* because it was not intended to be expanded upon; (2) Was a specific rule (not reiterated verbatim here) in statute intended to prevent conflicts of interest and partiality and bias from a lab owner who was also involved in other parts of the same industry and restricts lab owners from testing for their own financial or familial relationships. This rule, in and of itself, makes absolute sense and is designed to prevent what should be an obvious misuse of what must be an impartial and nonbiased analytical laboratory; (3) Must have a quality assurance program and standards. This was never intended to be established or regulated *by the department* otherwise it would have stated it as clearly as it does in items (1) and (7), it was always intended by SB1494 for (3) to be “onus on the lab” and regulated by the national or international accreditation associations themselves; same goes for (4), (5), (6), and (8) or else they would also state “as determined *by the department*” which they do not; (4) Must have an adequate chain of custody and sample requirement policies. [onus on the lab]; (5) Must have an adequate records retention process to preserve records. [onus on the lab]; (6) Must establish procedures to ensure that results are accurate, precise, and scientifically valid before reporting the results. [onus on the lab]; (7) Must be accredited by a national or international accreditation association or other similar accrediting entity, as determined *by the department*. This item was expressly stated to be determined *by the department* and consisted of them listing which accreditation associations were acceptable to them. ISO 17025:2017 was established as the required standard and a list of approved accreditation associations was added to Title 9 Chapter 17; and (8) Must establish policies and procedures for disposal and reverse distribution of samples that are collected by the laboratory. [again, the onus on the lab]. The single mechanism of regulation intended by SB1494 to be performed by the department thereafter was through proficiency testing wherein a lab who had satisfied the requirements of certification by the department and who was fully accredited to 17025:2017 for the parameters and analytes they intended to test marijuana for, would be sent random

samples of marijuana or marijuana infused product by the department or someone they contracted with, for evaluation. If any PT revealed potential issues, reasonable inspections would be triggered to further investigate problems and the department would then remediate. While remediation would include assessing civil penalties and suspending or revoking a laboratory certification, the specific rules around amounts or circumstances verifying specific violations, processes for inspection or due process in context were not defined.

The actual rules that have been adopted and that were adjusted multiple times in the process of becoming final in January 2021 including postponing select analytes until May 1, 2021 based solely on the fact that no labs could satisfy the requirements for them by November 1, 2020 and regardless of any potential for actual health and safety concern, go beyond what SB1494 intended for labs testing marijuana to subjected to. It is with all of this in mind that I petition and appeal to this Council. The small business that I manage has been subjected to multiple inspections and document requests throughout the rulemaking process and after it was complete. Findings have been made by the department that conflict with effective dates of rulemaking changes, some are being referred to as repeat findings "similar" -not same- to previous ones and based on rules that were either unclear and changed prior to January 15, 2021 or that remain unclarified, some are based on reference documents that appear to conflict with other reference documents, and assessments are now being proposed based on amounts that changed after initial findings were made and without any clear representation of what constituted a violation, how it would be measured against public or marijuana patient health and safety concerns or a process for determining civil penalties, and so forth.

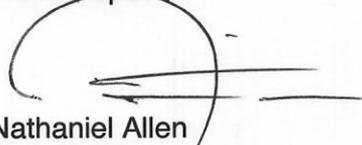
In reference again to the executive orders that were in place at the time, the department still has listed information on its website in the form of informational updates that appear to function outside of the rulemaking authority, that conflict with findings made during inspections, and appear to conflict with the executive orders directing the immediate removal of such. Separately, I have yet to see our small

business bill of rights from the department in reference to these rules at any inspection; I have yet to see any policy statement or guidance documents about these rules; and I have yet to see a due process disclosure in any of the written statements the department has provided at any inspection.

NEITHER was the authority given to the department in A.R.S. § 36-132(A)(1) with the power and duty to enforce the body of laws that protect the health of people of the State of Arizona and A.R.S. § 36-136(G) that authorizes the director to make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health, **NOR** the Arizona Medical Marijuana Act (the “AMMA”), A.R.S. § 36-2801 *et seq*, that established the rules that became effective April 14, 2011, as thereafter amended (the “Rules”) R9-17-101 *et seq*, that gave the Department rulemaking authority under the AMMA, the **SAME** authority used to adopt rules to certify and regulate independent third-party laboratories that analyze medical marijuana, SB1494 and executive approvals were. Furthermore, had the department believed certain parameters or analytes were harmful to the approximately 3% of Arizonan’s that were certified to consume medical marijuana or that they otherwise represented a public health or safety concern the department would have pursued rulemaking under that authority referenced above prior to SB1494, and not have acted as if it were outside their authority to do so for nine years.

I am petitioning this Council based on A.R.S. § 41-1033(G) to request a review of the exempt rulemaking that has occurred in A.A.C. Title 9 Chapter 17 that was intended to implement SB1494 and the departments enforcements upon certified laboratories subjected to them, including but not limited to while they were changing.

With Respect,



Nathaniel Allen

State of Arizona
Senate
Fifty-fourth Legislature
First Regular Session
2019

CHAPTER 318
SENATE BILL 1494

AN ACT

AMENDING SECTIONS 36-2801 AND 36-2803, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 28.1, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-2803.01; AMENDING SECTIONS 36-2804.01, 36-2804.05 AND 36-2804.06, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 28.1, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-2804.07; AMENDING SECTIONS 36-2806, 36-2810, 36-2816 AND 36-2819, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 28.1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 36-2820 AND 36-2821; RELATING TO MEDICAL MARIJUANA.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Subject to the requirements of article IV, part 1,
3 section 1, Constitution of Arizona, section 36-2801, Arizona Revised
4 Statutes, is amended to read:

5 36-2801. Definitions

6 In this chapter, unless the context otherwise requires:

7 1. "Allowable amount of marijuana":

8 (a) With respect to a qualifying patient, ~~the "allowable amount of~~
9 ~~marijuana"~~ means:

10 (i) ~~Two and one-half~~ TWO AND ONE-HALF ounces of usable marijuana.
11 ~~;~~ ~~and~~

12 (ii) If the qualifying patient's registry identification card
13 states that the qualifying patient is authorized to cultivate marijuana,
14 twelve marijuana plants contained in an enclosed, locked facility, except
15 that the plants are not required to be in an enclosed, locked facility if
16 the plants are being transported because the qualifying patient is moving.

17 (b) With respect to a designated caregiver, ~~the "allowable amount~~
18 ~~of marijuana"~~ for each patient assisted by the designated caregiver under
19 this chapter, means:

20 (i) ~~Two and one-half~~ TWO AND ONE-HALF ounces of usable marijuana.
21 ~~;~~ ~~and~~

22 (ii) If the designated caregiver's registry identification card
23 provides that the designated caregiver is authorized to cultivate
24 marijuana, twelve marijuana plants contained in an enclosed, locked
25 facility, except that the plants are not required to be in an enclosed,
26 locked facility if the plants are being transported because the designated
27 caregiver is moving.

28 (c) DOES NOT INCLUDE marijuana that is incidental to medical use,
29 but is not usable marijuana ~~as defined in this chapter, shall not be~~
30 ~~counted toward a qualifying patient's or designated caregiver's allowable~~
31 ~~amount of marijuana.~~

32 2. "Cardholder" means a qualifying patient, a designated caregiver,
33 ~~or~~ a nonprofit medical marijuana dispensary agent OR A INDEPENDENT
34 THIRD-PARTY LABORATORY AGENT who has been issued and possesses a valid
35 registry identification card.

36 3. "Debilitating medical condition" means one or more of the
37 following:

38 (a) Cancer, glaucoma, positive status for human immunodeficiency
39 virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic
40 lateral sclerosis, Crohn's disease, ~~OR~~ agitation of Alzheimer's disease
41 or the treatment of these conditions.

42 (b) A chronic or debilitating disease or medical condition or its
43 treatment that produces one or more of the following:

44 (i) Cachexia or wasting syndrome. ~~;~~

45 (ii) Severe and chronic pain. ~~;~~

- 1 (iii) Severe nausea. ~~;~~
- 2 (iv) Seizures, including those characteristic of epilepsy. ~~;~~
- 3 (v) Severe and persistent muscle spasms, including those
4 characteristic of multiple sclerosis.
- 5 (c) Any other medical condition or its treatment added by the
6 department pursuant to section 36-2801.01.
- 7 4. "Department" means the ~~Arizona~~ department of health services or
8 its successor agency.
- 9 5. "Designated caregiver" means a person who:
- 10 (a) Is at least twenty-one years of age.
- 11 (b) Has agreed to assist with a patient's medical use of marijuana.
- 12 (c) Has not been convicted of an excluded felony offense.
- 13 (d) Assists ~~no~~ NOT more than five qualifying patients with the
14 medical use of marijuana.
- 15 (e) May receive reimbursement for actual costs incurred in
16 assisting a registered qualifying patient's medical use of marijuana if
17 the registered designated caregiver is connected to the registered
18 qualifying patient through the department's registration process. The
19 designated caregiver may not be paid any fee or compensation for ~~his~~
20 service as a caregiver. Payment for costs under this subdivision ~~shall~~
21 DOES not constitute an offense under title 13, chapter 34 or under title
22 36, chapter 27, article 4.
- 23 6. "Enclosed, locked facility" means a closet, room, greenhouse or
24 other enclosed area THAT IS equipped with locks or other security devices
25 that permit access only by a cardholder.
- 26 7. "Excluded felony offense" means:
- 27 (a) A violent crime as defined in section 13-901.03, subsection B,
28 that was classified as a felony in the jurisdiction where the person was
29 convicted.
- 30 (b) A violation of a state or federal controlled substance law that
31 was classified as a felony in the jurisdiction where the person was
32 convicted but does not include:
- 33 (i) An offense for which the sentence, including any term of
34 probation, incarceration or supervised release, was completed ten or more
35 years earlier.
- 36 (ii) An offense involving conduct that would be immune from arrest,
37 prosecution or penalty under section 36-2811, except that the conduct
38 occurred before ~~the effective date of this chapter~~ DECEMBER 14, 2010 or
39 was prosecuted by an authority other than the state of Arizona.
- 40 8. "INDEPENDENT THIRD-PARTY LABORATORY" MEANS AN ENTITY THAT HAS A
41 NATIONAL OR INTERNATIONAL ACCREDITATION AND THAT IS CERTIFIED BY THE
42 DEPARTMENT TO ANALYZE MARIJUANA CULTIVATED FOR MEDICAL USE.

1 9. "INDEPENDENT THIRD-PARTY LABORATORY AGENT" MEANS AN OWNER,
2 EMPLOYEE OR VOLUNTEER OF A CERTIFIED INDEPENDENT THIRD-PARTY LABORATORY
3 WHO IS AT LEAST TWENTY-ONE YEARS OF AGE AND WHO HAS NOT BEEN CONVICTED OF
4 AN EXCLUDED FELONY OFFENSE.

5 ~~8.~~ 10. "Marijuana" means all parts of any plant of the genus
6 cannabis whether growing or not, and the seeds of such plant.

7 ~~9.~~ 11. "Medical use" means the acquisition, possession,
8 cultivation, manufacture, use, administration, delivery, transfer or
9 transportation of marijuana or paraphernalia relating to the
10 administration of marijuana to treat or alleviate a registered qualifying
11 patient's debilitating medical condition or symptoms associated with the
12 patient's debilitating medical condition.

13 ~~11.~~ 12. "Nonprofit medical marijuana dispensary" means a
14 not-for-profit entity that acquires, possesses, cultivates, manufactures,
15 delivers, transfers, transports, supplies, sells or dispenses marijuana or
16 related supplies and educational materials to cardholders. A nonprofit
17 medical marijuana dispensary may receive payment for all expenses incurred
18 in its operation.

19 ~~10.~~ 13. "Nonprofit medical marijuana dispensary agent" means a
20 principal officer, board member, employee or volunteer of a nonprofit
21 medical marijuana dispensary who is at least twenty-one years of age and
22 has not been convicted of an excluded felony offense.

23 ~~12.~~ 14. "Physician" means a doctor of medicine who holds a valid
24 and existing license to practice medicine pursuant to title 32, chapter 13
25 or its successor, a doctor of osteopathic medicine who holds a valid and
26 existing license to practice osteopathic medicine pursuant to title 32,
27 chapter 17 or its successor, a naturopathic physician who holds a valid
28 and existing license to practice naturopathic medicine pursuant to title
29 32, chapter 14 or its successor or a homeopathic physician who holds a
30 valid and existing license to practice homeopathic medicine pursuant to
31 title 32, chapter 29 or its successor.

32 ~~13.~~ 15. "Qualifying patient" means a person who has been diagnosed
33 by a physician as having a debilitating medical condition.

34 ~~14.~~ 16. "Registry identification card" means a document issued by
35 the department that identifies a person as a registered qualifying
36 patient, A registered designated caregiver, ~~or~~ a registered nonprofit
37 medical marijuana dispensary agent OR A REGISTERED INDEPENDENT THIRD-PARTY
38 LABORATORY AGENT.

39 ~~15.~~ 17. "Usable marijuana":

40 (a) Means the dried flowers of the marijuana plant, and any mixture
41 or preparation thereof. ~~, but~~

42 (b) Does not include:

43 (i) The seeds, stalks and roots of the plant. ~~and does not include~~

44 (ii) The weight of any non-marijuana ingredients combined with
45 marijuana and prepared for consumption as food or drink.

1 ~~16.~~ 18. "Verification system" means a secure, password-protected,
2 web-based system THAT IS established and maintained by the department AND
3 that is available to law enforcement personnel and nonprofit medical
4 marijuana dispensary agents on a ~~twenty-four hour~~ TWENTY-FOUR-HOUR basis
5 for ~~verification of~~ VERIFYING registry identification cards.

6 ~~17.~~ 19. "Visiting qualifying patient" means a person:

7 (a) Who is not a resident of Arizona or who has been a resident of
8 Arizona less than thirty days.

9 (b) Who has been diagnosed with a debilitating medical condition by
10 a person who is licensed with authority to prescribe drugs to humans in
11 the state of the person's residence or, in the case of a person who has
12 been a resident of Arizona less than thirty days, the state of the
13 person's former residence.

14 ~~18.~~ 20. "Written certification" means a document dated and signed
15 by a physician, stating that in the physician's professional opinion the
16 patient is likely to receive therapeutic or palliative benefit from the
17 medical use of marijuana to treat or alleviate the patient's debilitating
18 medical condition or symptoms associated with the debilitating medical
19 condition. The physician must:

20 (a) Specify the qualifying patient's debilitating medical condition
21 in the written certification.

22 (b) Sign and date the written certification only in the course of a
23 physician-patient relationship after the physician has completed a full
24 assessment of the qualifying patient's medical history.

25 Sec. 2. Subject to the requirements of article IV, part 1,
26 section 1, Constitution of Arizona, section 36-2803, Arizona Revised
27 Statutes, is amended to read:

28 36-2803. Rulemaking; notice

29 A. The department shall adopt rules:

30 1. Governing the manner in which the department considers petitions
31 from the public to add debilitating medical conditions or treatments to
32 the list of debilitating medical conditions set forth in section 36-2801,
33 paragraph 3, including public notice of, and an opportunity to comment in
34 a public hearing on, petitions.

35 2. Establishing the form and content of registration and renewal
36 applications submitted under this chapter.

37 3. Governing the manner in which the department considers
38 applications for and renewals of registry identification cards.

39 4. Governing nonprofit medical marijuana dispensaries, ~~for the~~
40 ~~purpose of protecting~~ TO PROTECT against diversion and theft without
41 imposing an undue burden on nonprofit medical marijuana dispensaries or
42 compromising the confidentiality of cardholders, including:

43 (a) The manner in which the department considers applications for
44 and renewals of registration certificates.

1 (b) Minimum oversight requirements for nonprofit medical marijuana
2 dispensaries.

3 (c) Minimum recordkeeping requirements for nonprofit medical
4 marijuana dispensaries.

5 (d) Minimum security requirements for nonprofit medical marijuana
6 dispensaries, including requirements ~~for protection of~~ TO PROTECT each
7 registered nonprofit medical marijuana dispensary location by a fully
8 operational security alarm system.

9 (e) Procedures for suspending or revoking the registration
10 certificate of nonprofit medical marijuana dispensaries that violate this
11 chapter or the rules adopted pursuant to this section.

12 5. Establishing application and renewal fees for registry
13 identification cards, ~~and~~ nonprofit medical marijuana dispensary
14 registration certificates AND INDEPENDENT THIRD-PARTY LABORATORY
15 CERTIFICATES, according to the following:

16 (a) The total amount of all fees shall generate revenues THAT ARE
17 sufficient to implement and administer this chapter, except that fee
18 revenue may be offset or supplemented by private donations.

19 (b) Nonprofit medical marijuana dispensary application fees may not
20 exceed \$5,000.

21 (c) Nonprofit medical marijuana dispensary renewal fees may not
22 exceed \$1,000.

23 (d) The total amount of revenue GENERATED from nonprofit medical
24 marijuana dispensary application and renewal fees, ~~and~~ registry
25 identification card fees for nonprofit medical marijuana dispensary agents
26 AND INDEPENDENT THIRD-PARTY LABORATORY AGENTS AND APPLICATION AND RENEWAL
27 FEES FOR INDEPENDENT THIRD-PARTY LABORATORIES shall be sufficient to
28 implement and administer ~~the nonprofit medical marijuana dispensary~~
29 ~~provisions of~~ this chapter, including the verification system, except that
30 the fee revenue may be offset or supplemented by private donations.

31 (e) The department may establish a sliding scale of patient
32 application and renewal fees based on a qualifying patient's household
33 income.

34 (f) The department may consider private donations under section
35 36-2817 to reduce application and renewal fees.

36 B. The department OF HEALTH SERVICES shall adopt rules that require
37 each nonprofit medical marijuana dispensary to display in a conspicuous
38 location a sign that warns pregnant women about the potential dangers to
39 fetuses caused by smoking or ingesting marijuana while pregnant or to
40 infants while breastfeeding and the risk of being reported to the
41 department of child safety during pregnancy or at the birth of the child
42 by persons who are required to report. The rules shall include the
43 specific warning language that must be included on the sign. The cost and
44 display of the sign required by rule shall be borne by the nonprofit
45 medical marijuana dispensary. The rules shall also require each

1 certifying physician to attest that the physician has provided information
2 to each qualifying female patient that warns about the potential dangers
3 to fetuses caused by smoking or ingesting marijuana while pregnant or to
4 infants while breastfeeding and the risk of being reported to the
5 department of child safety during pregnancy or at the birth of the child
6 by persons who are required to report.

7 C. The department is authorized to adopt the rules set forth in
8 subsections A and B of this section and shall adopt those rules pursuant
9 to title 41, chapter 6.

10 D. The department OF HEALTH SERVICES shall post prominently on its
11 public website a warning about the potential dangers to fetuses caused by
12 smoking or ingesting marijuana while pregnant or to infants while
13 breastfeeding and the risk of being reported to the department of child
14 safety during pregnancy or at the birth of the child by persons who are
15 required to report.

16 E. BEGINNING NOVEMBER 1, 2020, BEFORE SELLING OR DISPENSING
17 MARIJUANA OR MARIJUANA PRODUCTS TO REGISTERED QUALIFIED PATIENTS OR
18 REGISTERED DESIGNATED CAREGIVERS, NONPROFIT MEDICAL MARIJUANA DISPENSARIES
19 SHALL TEST MARIJUANA AND MARIJUANA PRODUCTS FOR MEDICAL USE TO DETERMINE
20 UNSAFE LEVELS OF MICROBIAL CONTAMINATION, HEAVY METALS, PESTICIDES,
21 HERBICIDES, FUNGICIDES, GROWTH REGULATORS AND RESIDUAL SOLVENTS AND
22 CONFIRM THE POTENCY OF THE MARIJUANA TO BE DISPENSED.

23 F. BEGINNING NOVEMBER 1, 2020, NONPROFIT MEDICAL MARIJUANA
24 DISPENSARIES SHALL:

25 1. PROVIDE TEST RESULTS TO A REGISTERED QUALIFYING PATIENT OR
26 DESIGNATED CAREGIVER IMMEDIATELY ON REQUEST.

27 2. DISPLAY IN A CONSPICUOUS LOCATION A SIGN THAT NOTIFIES PATIENTS
28 OF THEIR RIGHT TO RECEIVE THE CERTIFIED INDEPENDENT THIRD-PARTY LABORATORY
29 TEST RESULTS FOR MARIJUANA AND MARIJUANA PRODUCTS FOR MEDICAL USE.

30 G. THE DEPARTMENT SHALL ADOPT RULES TO CERTIFY AND REGULATE
31 INDEPENDENT THIRD-PARTY LABORATORIES THAT ANALYZE MARIJUANA CULTIVATED FOR
32 MEDICAL USE. THE DEPARTMENT SHALL ESTABLISH CERTIFICATION FEES FOR
33 LABORATORIES PURSUANT TO SUBSECTION A OF THIS SECTION. IN ORDER TO BE
34 CERTIFIED AS AN INDEPENDENT THIRD-PARTY LABORATORY THAT IS ALLOWED TO TEST
35 MARIJUANA AND MARIJUANA PRODUCTS FOR MEDICAL USE PURSUANT TO THIS CHAPTER,
36 AN INDEPENDENT THIRD-PARTY LABORATORY:

37 1. MUST MEET REQUIREMENTS ESTABLISHED BY THE DEPARTMENT, INCLUDING
38 REPORTING AND HEALTH AND SAFETY REQUIREMENTS.

39 2. MAY NOT HAVE ANY DIRECT OR INDIRECT FAMILIAL OR FINANCIAL
40 RELATIONSHIP WITH OR INTEREST IN A NONPROFIT MEDICAL MARIJUANA DISPENSARY
41 OR RELATED MEDICAL MARIJUANA BUSINESS ENTITY OR MANAGEMENT COMPANY, OR ANY
42 DIRECT OR INDIRECT FAMILIAL OR FINANCIAL RELATIONSHIP WITH A DESIGNATED
43 CAREGIVER FOR WHOM THE LABORATORY IS TESTING MARIJUANA AND MARIJUANA
44 PRODUCTS FOR MEDICAL USE IN THIS STATE.

1 C. A NONPROFIT MEDICAL MARIJUANA DISPENSARY THAT RECEIVES A
2 REGISTRATION CERTIFICATE PURSUANT TO SUBSECTION A, PARAGRAPH 1 OR 2 OF
3 THIS SECTION ON OR AFTER APRIL 1, 2020 MUST OPEN THE DISPENSARY AT THE
4 APPROVED LOCATION WITHIN EIGHTEEN MONTHS AFTER THE APPLICATION IS APPROVED
5 OR THE REGISTRATION CERTIFICATE BECOMES INVALID.

6 D. A NONPROFIT MEDICAL MARIJUANA DISPENSARY THAT IS ISSUED A
7 REGISTRATION CERTIFICATE PURSUANT TO SUBSECTION A, PARAGRAPH 1 OR 2 OF
8 THIS SECTION MAY RELOCATE ONLY AS FOLLOWS:

9 1. IF THE DISPENSARY IS LOCATED WITHIN A CITY OR TOWN, ONLY WITHIN
10 THAT CITY OR TOWN.

11 2. IF THE DISPENSARY IS LOCATED WITHIN AN UNINCORPORATED AREA, ONLY
12 WITHIN THE UNINCORPORATED AREA OF THE COUNTY WHERE THE DISPENSARY IS
13 LOCATED BUT NOT WITHIN TWENTY-FIVE MILES FROM ANOTHER DISPENSARY THAT HAS
14 BEEN ISSUED A DISPENSARY REGISTRATION CERTIFICATE.

15 E. FOR THE PURPOSES OF THIS SECTION, "GEOGRAPHIC AREA" MEANS A
16 CITY, TOWN OR UNINCORPORATED AREA OF A COUNTY.

17 Sec. 4. Subject to the requirements of article IV, part 1,
18 section 1, Constitution of Arizona, section 36-2804.01, Arizona Revised
19 Statutes, is amended to read:

20 36-2804.01. Registration; nonprofit medical marijuana
21 dispensary agents; independent third-party
22 laboratory agents; notices

23 A. A nonprofit medical marijuana dispensary agent OR AN INDEPENDENT
24 THIRD-PARTY LABORATORY AGENT shall be registered with the department
25 before volunteering or working at a NONPROFIT medical marijuana dispensary
26 OR AN INDEPENDENT THIRD-PARTY LABORATORY.

27 B. A nonprofit medical marijuana dispensary OR A CERTIFIED
28 INDEPENDENT THIRD-PARTY LABORATORY may apply to the department for a
29 registry identification card for a nonprofit medical marijuana dispensary
30 agent OR AN INDEPENDENT THIRD-PARTY LABORATORY AGENT by submitting:

31 1. The name, address and date of birth of the PROSPECTIVE nonprofit
32 medical marijuana dispensary agent OR INDEPENDENT THIRD-PARTY LABORATORY
33 AGENT.

34 2. A nonprofit medical marijuana dispensary agent OR INDEPENDENT
35 THIRD-PARTY LABORATORY AGENT application.

36 3. A statement signed by EITHER:

37 (a) The prospective nonprofit medical marijuana dispensary agent
38 pledging not to divert marijuana to anyone who is not allowed to possess
39 marijuana pursuant to this chapter.

40 (b) THE PROSPECTIVE INDEPENDENT THIRD-PARTY LABORATORY AGENT
41 ACKNOWLEDGING THAT REGISTERED INDEPENDENT THIRD-PARTY LABORATORY AGENTS
42 ARE PROHIBITED FROM DIVERTING MARIJUANA PURSUANT TO THIS CHAPTER.

43 4. The application fee.

1 C. A registered nonprofit medical marijuana dispensary OR CERTIFIED
2 INDEPENDENT THIRD-PARTY LABORATORY shall notify the department within ten
3 days after a nonprofit medical marijuana dispensary agent OR INDEPENDENT
4 THIRD-PARTY LABORATORY AGENT ceases to be employed by or volunteer at the
5 registered nonprofit medical marijuana dispensary OR CERTIFIED INDEPENDENT
6 THIRD-PARTY LABORATORY.

7 D. ~~NO~~ A person who has been convicted of an excluded felony offense
8 may NOT be a nonprofit medical marijuana dispensary agent OR AN
9 INDEPENDENT THIRD-PARTY LABORATORY AGENT.

10 E. The department may conduct a criminal records check in order to
11 carry out this section.

12 Sec. 5. Subject to the requirements of article IV, part 1,
13 section 1, Constitution of Arizona, section 36-2804.05, Arizona Revised
14 Statutes, is amended to read:

15 36-2804.05. Denial of registry identification card

16 A. The department may deny an application or renewal of a
17 qualifying patient's registry identification card only if the applicant:

18 1. Does not meet the requirements of section 36-2801, paragraph
19 ~~15~~ 15.

20 2. Does not provide the information required.

21 3. Previously had a registry identification card revoked for
22 violating this chapter.

23 4. Provides false information.

24 B. The department may deny an application or renewal of a
25 designated caregiver's registry identification card if the applicant:

26 1. Does not meet the requirements of section 36-2801, paragraph 5.

27 2. Does not provide the information required.

28 3. Previously had a registry identification card revoked for
29 violating this chapter.

30 4. Provides false information.

31 C. The department may deny a registry identification card to a
32 nonprofit medical marijuana dispensary agent if:

33 1. The agent applicant does not meet the requirements of section
34 ~~36-2801(10)~~ 36-2801, PARAGRAPH 13.

35 2. The applicant or ~~dispensary~~ DISPENSARY did not provide the
36 required information.

37 3. THE AGENT APPLICANT previously had a registry identification
38 card revoked for violating this chapter.

39 4. The applicant or dispensary provides false information.

40 D. The department may conduct a criminal records check of each
41 designated caregiver or nonprofit medical marijuana dispensary agent
42 applicant to carry out this section.

43 E. The department shall ~~give written notice to~~ NOTIFY the
44 registered nonprofit medical marijuana dispensary IN WRITING of the reason

1 for denying a registry identification card to a nonprofit medical
2 marijuana dispensary agent.

3 F. The department shall ~~give written notice to~~ NOTIFY the
4 qualifying patient IN WRITING of the reason for denying a registry
5 identification card to the qualifying patient's designated caregiver.

6 G. Denial of an application or renewal is considered a final
7 decision of the department subject to judicial review pursuant to title
8 12, chapter 7, article 6. Jurisdiction and venue for judicial review are
9 vested in the superior court.

10 Sec. 6. Subject to the requirements of article IV, part 1,
11 section 1, Constitution of Arizona, section 36-2804.06, Arizona Revised
12 Statutes, is amended to read:

13 36-2804.06. Expiration and renewal of registry identification
14 cards and registration certificates;
15 replacement

16 A. All registry identification cards and registration certificates
17 expire ~~one year~~ TWO YEARS after THEIR date of issue.

18 B. A registry identification card of a nonprofit medical marijuana
19 dispensary agent shall be ~~cancelled~~ CANCELED and ~~his~~ THE AGENT'S access to
20 the verification system shall be deactivated ~~upon~~ ON notification to the
21 department by a registered nonprofit medical marijuana dispensary that the
22 nonprofit medical marijuana dispensary agent is no longer employed by or
23 no longer volunteers at the registered nonprofit medical marijuana
24 dispensary.

25 C. THE DEPARTMENT SHALL ISSUE a renewal nonprofit medical marijuana
26 dispensary registration certificate ~~shall be issued~~ OR AN INDEPENDENT
27 THIRD-PARTY LABORATORY CERTIFICATE within ten days ~~of~~ AFTER receipt of the
28 prescribed renewal application and renewal fee from a registered nonprofit
29 medical marijuana dispensary OR INDEPENDENT THIRD-PARTY LABORATORY if ~~its~~
30 THE DISPENSARY'S registration certificate OR THE LABORATORY'S CERTIFICATE
31 is not under suspension and has not been revoked.

32 D. If a cardholder loses ~~his~~ A registry identification card, ~~he~~ THE
33 CARDHOLDER shall promptly notify the department. Within five days ~~of~~
34 AFTER the notification, ~~and~~ ~~upon~~ ON payment of a ~~ten-dollar~~ \$10 fee, the
35 department shall issue a new registry identification card with a new
36 random identification number to the cardholder and, if the cardholder is a
37 registered qualifying patient, to the registered qualifying patient's
38 registered designated caregiver, if any.

39 E. ON OR BEFORE DECEMBER 1, 2019, THE DEPARTMENT SHALL IMPLEMENT AN
40 ELECTRONIC REGISTRY CARD PROGRAM FOR REGISTRY IDENTIFICATION CARDS,
41 REGISTRATION CERTIFICATES, CERTIFICATES AND RENEWALS. THE ELECTRONIC
42 LICENSE PROGRAM SHALL ALLOW FOR THE ELECTRONIC VERIFICATION AND DELIVERY
43 OF REGISTRY IDENTIFICATION CARDS, REGISTRATION CERTIFICATES, CERTIFICATES
44 AND RENEWALS.

1 medical marijuana dispensary shall contain such provisions relative to the
2 disposition of revenues and receipts to establish and maintain its
3 nonprofit character. A registered nonprofit medical marijuana dispensary
4 need not be recognized as tax-exempt by the internal revenue service and
5 is not required to incorporate pursuant to title 10, chapter 19,
6 article 1.

7 B. The operating documents of a registered nonprofit medical
8 marijuana dispensary shall include procedures for the oversight of the
9 registered nonprofit medical marijuana dispensary and procedures to ensure
10 accurate recordkeeping.

11 C. A registered nonprofit medical marijuana dispensary shall have a
12 single secure entrance and shall implement appropriate security measures
13 to deter and prevent the theft of marijuana and unauthorized entrance into
14 areas containing marijuana.

15 D. A registered nonprofit medical marijuana dispensary is
16 prohibited from acquiring, possessing, cultivating, manufacturing,
17 delivering, transferring, transporting, supplying or dispensing marijuana
18 for any purpose except to assist registered qualifying patients with the
19 medical use of marijuana directly or through the registered qualifying
20 patients' designated caregivers OR AN INDEPENDENT THIRD-PARTY LABORATORY
21 AGENT OR A CERTIFIED INDEPENDENT THIRD-PARTY LABORATORY FOR THE PURPOSES
22 PRESCRIBED IN THIS CHAPTER AND DEPARTMENT RULE.

23 E. All cultivation of marijuana must take place in an enclosed,
24 locked facility, at a physical address provided to the department during
25 the registration process, ~~which~~ THAT can ~~only~~ be accessed ONLY by
26 registered nonprofit medical marijuana dispensary agents associated in the
27 registry with the nonprofit medical marijuana dispensary.

28 F. A registered nonprofit medical marijuana dispensary may acquire
29 usable marijuana or marijuana plants from a registered qualifying patient
30 or a registered designated caregiver only if the registered qualifying
31 patient or registered designated caregiver receives no compensation for
32 the marijuana.

33 G. A nonprofit medical marijuana dispensary shall not ~~permit~~ ALLOW
34 any person to consume marijuana on the property of ~~a~~ THE nonprofit
35 medical marijuana dispensary.

36 H. Registered nonprofit medical marijuana dispensaries are subject
37 to reasonable inspection by the department. The department shall give
38 reasonable notice of an inspection under this subsection.

39 I. BEGINNING NOVEMBER 1, 2020, REGISTERED NONPROFIT MEDICAL
40 MARIJUANA DISPENSARIES ARE SUBJECT TO PRODUCT TESTING BY CERTIFIED
41 INDEPENDENT THIRD-PARTY LABORATORIES PURSUANT TO THIS CHAPTER AND RULES
42 ADOPTED PURSUANT TO THIS CHAPTER.

43 J. NOTWITHSTANDING TITLE 13, CHAPTER 34, AN EMPLOYEE OF THE
44 DEPARTMENT OR AN INDEPENDENT THIRD-PARTY LABORATORY AGENT MAY NOT BE
45 CHARGED WITH OR PROSECUTED FOR POSSESSION OF MARIJUANA THAT IS CULTIVATED

1 FOR MEDICAL USE AS REQUIRED BY THIS CHAPTER AND THE RULES ADOPTED PURSUANT
2 TO THIS CHAPTER.

3 Sec. 9. Subject to the requirements of article IV, part 1,
4 section 1, Constitution of Arizona, section 36-2810, Arizona Revised
5 Statutes, is amended to read:

6 36-2810. Confidentiality

7 A. The following information received and records kept by the
8 department for purposes of administering this chapter are confidential,
9 exempt from title 39, chapter 1, article 2, exempt from section 36-105 and
10 not subject to disclosure to any individual or public or private entity,
11 except as necessary for authorized employees of the department to perform
12 official duties of the department pursuant to this chapter:

13 1. Applications or renewals, their contents and supporting
14 information submitted by qualifying patients and designated caregivers,
15 including information regarding their designated caregivers and
16 physicians.

17 2. Applications or renewals, their contents and supporting
18 information submitted by or on behalf of nonprofit medical marijuana
19 dispensaries in compliance with this chapter, including the physical
20 addresses of nonprofit medical marijuana dispensaries.

21 3. The individual names and other information identifying persons
22 to whom the department has issued registry identification cards.

23 B. Any dispensing information required to be kept under section
24 36-2806.02, subsection B or department regulation shall identify
25 cardholders by their registry identification numbers and not contain names
26 or other personally identifying information.

27 C. Any department hard drives or other data recording media that
28 are no longer in use and that contain cardholder information must be
29 destroyed. The department shall retain a signed statement from a
30 department employee confirming the destruction.

31 D. EXCEPT FOR PUBLIC HEALTH RESEARCH, data subject to this section
32 shall not be combined or linked in any manner with any other list or
33 database and shall not be used for any purpose not provided for in this
34 chapter.

35 E. This section does not preclude the following notifications:

36 1. Department employees may notify law enforcement about falsified
37 or fraudulent information submitted to the department if the employee who
38 suspects that falsified or fraudulent information has been submitted has
39 conferred with the employee's supervisor and both agree that the
40 circumstances warrant reporting.

41 2. The department may notify state or local law enforcement about
42 apparent criminal violations of this chapter if the employee who suspects
43 the offense has conferred with the employee's supervisor and both agree
44 that the circumstances warrant reporting.

1 3. Nonprofit medical marijuana dispensary agents may notify the
2 department of a suspected violation or attempted violation of this chapter
3 or department rules.

4 4. The department may notify the Arizona medical board, the Arizona
5 board of osteopathic examiners in medicine and surgery, the naturopathic
6 physicians medical board and the board of homeopathic and integrated
7 medicine examiners if the department believes a physician has committed an
8 act of unprofessional conduct as prescribed by the appropriate board's
9 statutes because of the licensee's failure to comply with the requirements
10 of this chapter or rules adopted pursuant to this chapter.

11 F. This section does not preclude submission of the section 36-2809
12 report to the legislature. The annual report submitted to the legislature
13 is subject to title 39, chapter 1, article 2.

14 Sec. 10. Subject to the requirements of article IV, part 1,
15 section 1, Constitution of Arizona, section 36-2816, Arizona Revised
16 Statutes, is amended to read:

17 36-2816. Violations; civil penalty; classification

18 A. A registered qualifying patient may not directly, or through ~~his~~
19 ~~THE PATIENT'S~~ designated caregiver, obtain more than ~~two-and-one-half~~ **TWO**
20 **AND ONE-HALF** ounces of marijuana from registered nonprofit medical
21 marijuana dispensaries in any fourteen-day period.

22 B. A registered nonprofit medical marijuana dispensary or agent may
23 not dispense, deliver or otherwise transfer marijuana to a person other
24 than:

- 25 1. Another registered nonprofit medical marijuana dispensary. ~~,~~
- 26 2. A registered qualifying patient. ~~or~~
- 27 3. A registered qualifying patient's registered designated
28 caregiver.

29 4. **A CERTIFIED INDEPENDENT THIRD-PARTY LABORATORY OR AN INDEPENDENT**
30 **THIRD-PARTY LABORATORY AGENT FOR PURPOSES PRESCRIBED IN SECTIONS 36-2803**
31 **AND 36-2806 AND DEPARTMENT RULE.**

32 C. A registered nonprofit medical marijuana dispensary may not
33 acquire usable marijuana or mature marijuana plants from any person other
34 than another registered nonprofit medical marijuana dispensary, a
35 registered qualifying patient or a registered designated caregiver. A
36 knowing violation of this subsection is a class 2 felony.

37 D. It is a class 1 misdemeanor for any person, including an
38 employee or official of the department or another state agency or local
39 government, to breach the confidentiality of information obtained pursuant
40 to this chapter.

41 E. Making false statements to a law enforcement official about any
42 fact or circumstance relating to the medical use of marijuana to avoid
43 arrest or prosecution is subject to a civil penalty of not more than ~~five~~
44 ~~hundred dollars~~ **\$500**, which shall be in addition to any other penalties

1 that may apply for making a false statement or for the use of marijuana
2 other than use undertaken pursuant to this chapter.

3 F. SUBJECT TO TITLE 41, CHAPTER 6, ARTICLE 10, THE DIRECTOR MAY
4 DENY, SUSPEND OR REVOKE, IN WHOLE OR IN PART, ANY REGISTRATION ISSUED
5 UNDER THIS CHAPTER IF THE REGISTERED PARTY OR AN OFFICER, AGENT OR
6 EMPLOYEE OF THE REGISTERED PARTY IS NOT IN SUBSTANTIAL COMPLIANCE WITH THE
7 PROVISIONS OF THIS CHAPTER OR ANY RULE ADOPTED PURSUANT TO THIS CHAPTER OR
8 IF THE NATURE OR NUMBER OF VIOLATIONS REVEALED BY ANY TYPE OF INSPECTION
9 OR INVESTIGATION CONSTITUTES A THREAT, OR DIRECT RISK, TO THE LIFE, HEALTH
10 OR SAFETY OF A QUALIFYING PATIENT OR THE PUBLIC.

11 G. IN ADDITION TO ANY OTHER PENALTIES AUTHORIZED BY THIS CHAPTER,
12 THE DIRECTOR MAY ASSESS A CIVIL PENALTY FOR VIOLATIONS OF THIS CHAPTER OR
13 ANY RULE ADOPTED PURSUANT TO THIS CHAPTER IN AN AMOUNT NOT TO EXCEED
14 \$1,000 FOR EACH VIOLATION. EACH DAY A VIOLATION OCCURS CONSTITUTES A
15 SEPARATE VIOLATION. THE MAXIMUM AMOUNT OF ANY ASSESSMENT IS \$5,000 FOR
16 ANY THIRTY-DAY PERIOD.

17 H. THE DIRECTOR SHALL ISSUE A NOTICE OF ASSESSMENT THAT INCLUDES
18 THE PROPOSED AMOUNT OF THE ASSESSMENT. IN DETERMINING THE AMOUNT OF A
19 CIVIL PENALTY ASSESSED AGAINST A PERSON UNDER SUBSECTION G OF THIS
20 SECTION, THE DEPARTMENT SHALL CONSIDER ALL OF THE FOLLOWING:

- 21 1. REPEATED VIOLATIONS OF THIS CHAPTER OR THE RULES ADOPTED
22 PURSUANT TO THIS CHAPTER.
- 23 2. PATTERNS OF NONCOMPLIANCE.
- 24 3. THE TYPES OF VIOLATIONS.
- 25 4. THE SEVERITY OF THE VIOLATIONS.
- 26 5. THE POTENTIAL FOR AND OCCURRENCES OF ACTUAL HARM.
- 27 6. THREATS TO HEALTH AND SAFETY.
- 28 7. THE NUMBER OF VIOLATIONS.
- 29 8. THE NUMBER OF PERSONS AFFECTED BY THE VIOLATIONS.
- 30 9. THE LENGTH OF TIME THE VIOLATIONS HAVE BEEN OCCURRING.

31 Sec. 11. Subject to the requirements of article IV, part 1,
32 section 1, Constitution of Arizona, section 36-2819, Arizona Revised
33 Statutes, is amended to read:

34 36-2819. Fingerprinting requirements

35 Each person applying as a designated caregiver, a principal officer,
36 agent or employee of a nonprofit medical marijuana dispensary, ~~OR~~ a
37 medical marijuana dispensary agent OR AN INDEPENDENT THIRD-PARTY
38 LABORATORY AGENT shall submit a full set of fingerprints to the department
39 for the purpose of obtaining a state and federal criminal records check
40 pursuant to section 41-1750 and Public Law 92-544. The department of
41 public safety may exchange this fingerprint data with the federal bureau
42 of investigation without disclosing that the records check is related to
43 the medical marijuana act and acts permitted by it. The department shall
44 destroy each set of fingerprints after the criminal records check is
45 completed.

1 B. THE MEDICAL MARIJUANA TESTING ADVISORY COUNCIL SHALL MAKE
2 RECOMMENDATIONS AND CONSULT WITH THE DIRECTOR REGARDING:

- 3 1. ESTABLISHING A REQUIRED TESTING PROGRAM.
4 2. TESTING AND POTENCY STANDARDS FOR MEDICAL MARIJUANA.
5 3. PROCEDURAL REQUIREMENTS FOR COLLECTING, STORING AND TESTING
6 SAMPLES OF MEDICAL MARIJUANA.
7 4. REPORTING RESULTS TO PATIENTS AND THE DEPARTMENT.
8 5. REMEDIATION AND DISPOSAL REQUIREMENTS FOR MEDICAL MARIJUANA THAT
9 FAILS TO MEET TESTING STANDARDS.
10 6. ADDITIONAL ITEMS AS NECESSARY.

11 C. MEMBERS OF THE ADVISORY COUNCIL ARE NOT ELIGIBLE TO RECEIVE
12 COMPENSATION BUT ARE ELIGIBLE FOR REIMBURSEMENT OF EXPENSES PURSUANT TO
13 TITLE 38, CHAPTER 4, ARTICLE 2.

14 D. THE COUNCIL ESTABLISHED BY THIS SECTION ENDS ON JULY 1, 2027
15 PURSUANT TO SECTION 41-3103.

16 Sec. 13. Intent

17 The legislature intends to prospectively establish prioritization
18 for the nonprofit medical marijuana dispensary registration certificates
19 that may be allocated to applicants and locations. The legislature does
20 not intend to exceed the limit on the number of registration certificates
21 that may be issued as specified in section 36-2804, Arizona Revised
22 Statutes.

23 Sec. 14. Department of health services; report; delayed
24 repeal

25 A. Subject to the requirements of article IV, part 1, section 1,
26 Constitution of Arizona, on or before December 31, 2019, the department of
27 health services shall submit a report to the governor, the speaker of the
28 house of representatives and the president of the senate on the medical
29 marijuana testing advisory council's findings and recommendations for
30 testing medical marijuana in this state and shall provide a copy of the
31 report to the secretary of state.

32 B. This section is repealed from and after June 30, 2020.

33 Sec. 15. Department of health services; rulemaking exemption

34 Subject to the requirements of article IV, part 1, section 1,
35 Constitution of Arizona, for the purposes of this act, the department of
36 health services is exempt from the rulemaking requirements of title 41,
37 chapters 6 and 6.1, Arizona Revised Statutes, for eighteen months after
38 the effective date of this act.

39 Sec. 16. Legislative intent

40 A. The legislature intends that, if marijuana is legalized in this
41 state for adult recreational use, the laboratory testing requirements
42 prescribed in sections 36-2803 and 36-2806, Arizona Revised Statutes, as
43 amended by this act, apply to marijuana for adult recreational use.

1 B. The legislature intends for the department of health services to
2 hire sufficient staff as determined by the director to regulate and test
3 the proficiency of certified independent third-party laboratories pursuant
4 to title 36, chapter 28.1, Arizona Revised Statutes.

5 Sec. 17. Requirements for enactment; three-fourths vote

6 Pursuant to article IV, part 1, section 1, Constitution of Arizona,
7 this act is effective only on the affirmative vote of at least
8 three-fourths of the members of each house of the legislature.

APPROVED BY THE GOVERNOR JUNE 7, 2019.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 7, 2019.



Arizona Secretary of State
 Digitally signed by Arizona Secretary of State
 Date: 2019.09.20 15:45:07 -07'00'

www.azsos.gov

Arizona Administrative REGISTER

Published by the Department of State ~ Office of the Secretary of State

Vol. 25, Issue 38 ~ Administrative Register Contents ~ September 20, 2019

Information	2396
Rulemaking Guide	2397
<u>RULES AND RULEMAKING</u>	
Proposed Rulemaking, Notices of	
2 A.A.C. 12 Office of the Secretary of State (Business Services Division)	2399
20 A.A.C. 5 Industrial Commission of Arizona	2404
Final Expedited Rulemaking, Notices of	
9 A.A.C. 16 Department of Health Services - Occupational Licensing	2409
Exempt Rulemaking, Notices of	
9 A.A.C. 17 Department of Health Services - Medical Marijuana Program	2421
<u>OTHER AGENCY NOTICES</u>	
Docket Opening, Notices of Rulemaking	
9 A.A.C. 7 Department of Health Services - Radiation Control	2442
20 A.A.C. 5 Industrial Commission of Arizona	2443
Substantive Policy Statement, Notices of Agency	
Acupuncture Board of Examiners	2445
Department of Agriculture - Plant Services Division	2445
Department of Insurance	2446
<u>GOVERNOR'S OFFICE</u>	
Governor's Executive Order 2019-01	
Moratorium on Rulemaking to Promote Job Creation and Customer-Service-Oriented Agencies; Protecting Consumers Against Fraudulent Activities	2447
<u>INDEXES</u>	
Register Index Ledger	2449
Rulemaking Action, Cumulative Index for 2019	2450
Other Notices and Public Records, Cumulative Index for 2019	2458
<u>CALENDAR/DEADLINES</u>	
Rules Effective Dates Calendar	2460
Register Publishing Deadlines	2462
<u>GOVERNOR'S REGULATORY REVIEW COUNCIL</u>	
Governor's Regulatory Review Council Deadlines	2463
Notice of Action Taken at the September 4, 2019 Meeting	2464

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Arizona Administrative Register
 Rhonda Paschal

From the Publisher

ABOUT THIS PUBLICATION

The authenticated pdf of the *Administrative Register* (A.A.R.) posted on the Arizona Secretary of State's website is the official published version for rulemaking activity in the state of Arizona.

Rulemaking is defined in Arizona Revised Statutes known as the Arizona Administrative Procedure Act (APA), A.R.S. Title 41, Chapter 6, Articles 1 through 10.

The *Register* is cited by volume and page number. Volumes are published by calendar year with issues published weekly. Page numbering continues in each weekly issue.

In addition, the *Register* contains notices of rules terminated by the agency and rules that have expired.

ABOUT RULES

Rules can be: made (all new text); amended (rules on file, changing text); repealed (removing text); or renumbered (moving rules to a different Section number). Rulemaking activity published in the *Register* includes: proposed, final, emergency, expedited, and exempt rules as defined in the APA, and other state statutes.

New rules in this publication (whether proposed or made) are denoted with underlining; repealed text is stricken.

WHERE IS A "CLEAN" COPY OF THE FINAL OR EXEMPT RULE PUBLISHED IN THE REGISTER?

The *Arizona Administrative Code* (A.A.C.) contains the codified text of rules. The A.A.C. contains rules promulgated and filed by state agencies that have been approved by the Attorney General or the Governor's Regulatory Review Council. The *Code* also contains rules exempt from the rulemaking process.

The authenticated pdf of *Code* chapters posted on the Arizona Secretary of State's website are the official published version of rules in the A.A.C. The *Code* is posted online for free.

LEGAL CITATIONS AND FILING NUMBERS

On the cover: Each agency is assigned a Chapter in the *Arizona Administrative Code* under a specific Title. Titles represent broad subject areas. The Title number is listed first; with the acronym A.A.C., which stands for the *Arizona Administrative Code*; following the Chapter number and Agency name, then program name. For example, the Secretary of State has rules on rulemaking in Title 1, Chapter 1 of the *Arizona Administrative Code*. The citation for this chapter is 1 A.A.C. 1, Secretary of State, Rules and Rulemaking

Every document filed in the office is assigned a file number. This number, enclosed in brackets, is located at the top right of the published documents in the *Register*. The original filed document is available for 10 cents a page.

Arizona Administrative REGISTER

Vol. 25

Issue 38

PUBLISHER
SECRETARY OF STATE
Katie Hobbs

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ADMINISTRATIVE REGISTER
This publication is available online for free at www.azsos.gov.

ADMINISTRATIVE CODE
A price list for the *Arizona Administrative Code* is available online. You may also request a paper price list by mail. To purchase a paper Chapter, contact us at (602) 364-3223.

PUBLICATION DEADLINES
Publication dates are published in the back of the *Register*. These dates include file submittal dates with a three-week turnaround from filing to published document.

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The Office of the Secretary of State is an equal opportunity employer.



Participate in the Process

Look for the Agency Notice

Review (inspect) notices published in the *Arizona Administrative Register*. Many agencies maintain stakeholder lists and would be glad to inform you when they proposed changes to rules. Check an agency's website and its newsletters for news about notices and meetings.

Feel like a change should be made to a rule and an agency has not proposed changes? You can petition an agency to make, amend, or repeal a rule. The agency must respond to the petition. (See A.R.S. § 41-1033)

Attend a public hearing/meeting

Attend a public meeting that is being conducted by the agency on a Notice of Proposed Rulemaking. Public meetings may be listed in the Preamble of a Notice of Proposed Rulemaking or they may be published separately in the *Register*. Be prepared to speak, attend the meeting, and make an oral comment.

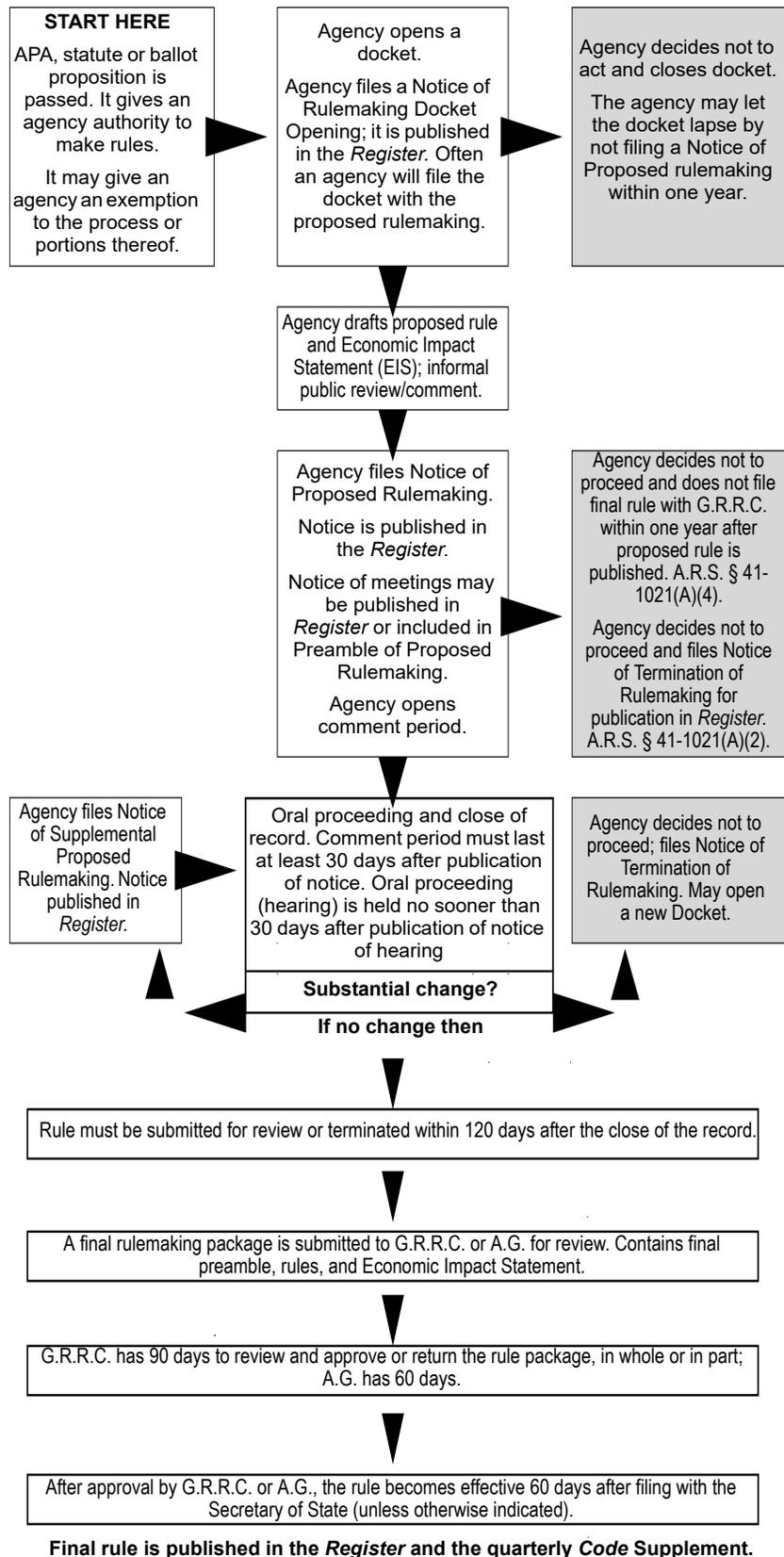
An agency may not have a public meeting scheduled on the Notice of Proposed Rulemaking. If not, you may request that the agency schedule a proceeding. This request must be put in writing within 30 days after the published Notice of Proposed Rulemaking.

Write the agency

Put your comments in writing to the agency. In order for the agency to consider your comments, the agency must receive them by the close of record. The comment must be received within the 30-day comment timeframe following the *Register* publication of the Notice of Proposed Rulemaking.

You can also submit to the Governor's Regulatory Review Council written comments that are relevant to the Council's power to review a given rule (A.R.S. § 41-1052). The Council reviews the rule at the end of the rulemaking process and before the rules are filed with the Secretary of State.

Arizona Regular Rulemaking Process



Definitions

Arizona Administrative Code (A.A.C.): Official rules codified and published by the Secretary of State's Office. Available online at www.azsos.gov.

Arizona Administrative Register (A.A.R.): The official publication that includes filed documents pertaining to Arizona rulemaking. Available online at www.azsos.gov.

Administrative Procedure Act (APA): A.R.S. Title 41, Chapter 6, Articles 1 through 10. Available online at www.azleg.gov.

Arizona Revised Statutes (A.R.S.): The statutes are made by the Arizona State Legislature during a legislative session. They are compiled by Legislative Council, with the official publication codified by Thomson West. Citations to statutes include Titles which represent broad subject areas. The Title number is followed by the Section number. For example, A.R.S. § 41-1001 is the definitions Section of Title 41 of the Arizona Administrative Procedures Act. The "§" symbol simply means "section." Available online at www.azleg.gov.

Chapter: A division in the codification of the *Code* designating a state agency or, for a large agency, a major program.

Close of Record: The close of the public record for a proposed rulemaking is the date an agency chooses as the last date it will accept public comments, either written or oral.

Code of Federal Regulations (CFR): The *Code of Federal Regulations* is a codification of the general and permanent rules published in the *Federal Register* by the executive departments and agencies of the federal government.

Docket: A public file for each rulemaking containing materials related to the proceedings of that rulemaking. The docket file is established and maintained by an agency from the time it begins to consider making a rule until the rulemaking is finished. The agency provides public notice of the docket by filing a Notice of Rulemaking Docket Opening with the Office for publication in the *Register*.

Economic, Small Business, and Consumer Impact Statement (EIS): The EIS identifies the impact of the rule on private and public employment, on small businesses, and on consumers. It includes an analysis of the probable costs and benefits of the rule. An agency includes a brief summary of the EIS in its preamble. The EIS is not published in the *Register* but is available from the agency promulgating the rule. The EIS is also filed with the rulemaking package.

Governor's Regulatory Review (G.R.R.C.): Reviews and approves rules to ensure that they are necessary and to avoid unnecessary duplication and adverse impact on the public. G.R.R.C. also assesses whether the rules are clear, concise, understandable, legal, consistent with legislative intent, and whether the benefits of a rule outweigh the cost.

Incorporated by Reference: An agency may incorporate by reference standards or other publications. These standards are available from the state agency with references on where to order the standard or review it online.

Federal Register (FR): The *Federal Register* is a legal newspaper published every business day by the National Archives and Records Administration (NARA). It contains federal agency regulations; proposed rules and notices; and executive orders, proclamations, and other presidential documents.

Session Laws or "Laws": When an agency references a law that has not yet been codified into the Arizona Revised Statutes, use the word "Laws" is followed by the year the law was passed by the Legislature, followed by the Chapter number using the abbreviation "Ch.," and the specific Section number using the Section symbol (§). For example, Laws 1995, Ch. 6, § 2. Session laws are available at www.azleg.gov.

United States Code (U.S.C.): The Code is a consolidation and codification by subject matter of the general and permanent laws of the United States. The Code does not include regulations issued by executive branch agencies, decisions of the federal courts, treaties, or laws enacted by state or local governments.

Acronyms

A.A.C. – *Arizona Administrative Code*

A.A.R. – *Arizona Administrative Register*

APA – *Administrative Procedure Act*

A.R.S. – *Arizona Revised Statutes*

CFR – *Code of Federal Regulations*

EIS – *Economic, Small Business, and Consumer Impact Statement*

FR – *Federal Register*

G.R.R.C. – *Governor's Regulatory Review Council*

U.S.C. – *United States Code*

About Preambles

The Preamble is the part of a rulemaking package that contains information about the rulemaking and provides agency justification and regulatory intent.

It includes reference to the specific statutes authorizing the agency to make the rule, an explanation of the rule, reasons for proposing the rule, and the preliminary Economic Impact Statement.

The information in the Preamble differs between rulemaking notices used and the stage of the rulemaking.



NOTICES OF PROPOSED RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Proposed Rulemakings.

A proposed rulemaking is filed by an agency upon completion and submittal of a Notice of Rulemaking Docket Opening. Often these two documents are filed at the same time and published in the same *Register* issue.

When an agency files a Notice of Proposed Rulemaking under the Administrative Procedure Act (APA), the notice is published in the *Register* within three weeks of filing. See the publication schedule in the back of each issue of the *Register* for more information.

Under the APA, an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule (A.R.S. §§ 41-1013 and 41-1022).

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the proposed rules should be addressed to the agency that promulgated the rules. Refer to item #4 below to contact the person charged with the rulemaking and item #10 for the close of record and information related to public hearings and oral comments.

**NOTICE OF PROPOSED RULEMAKING
TITLE 2. ADMINISTRATION
CHAPTER 12. OFFICE OF THE SECRETARY OF STATE**

[R19-188]

PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|
| R2-12-1201 | Re-number |
| R2-12-1201 | New Section |
| R2-12-1202 | Re-number |
| R2-12-1202 | Amend |
| R2-12-1203 | Re-number |
| R2-12-1204 | Re-number |
| R2-12-1204 | Amend |
| R2-12-1205 | Re-number |
| R2-12-1205 | Amend |
| R2-12-1206 | Re-number |
| R2-12-1206 | Amend |
| R2-12-1207 | Re-number |
| R2-12-1207 | Amend |
| R2-12-1208 | Re-number |
| R2-12-1208 | Repeal |
| R2-12-1209 | Repeal |
- 2. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
 Authorizing statute: A.R.S. § 41-352(C)
 Implementing statute: A.R.S. § 41-352(C)
- 3. 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: 25 A.A.R. 1189, May 10, 2019
- 4. The agency’s contact person who can answer questions about the rulemaking:**
 Name: Patricia A. Viverto, Director
 Address: Secretary of State, Business Services
 1700 W. Washington St., 7th Floor
 Phoenix, AZ 85007
 Telephone: (602) 542-6187
 Fax: (602) 542-4366
 E-mail: pviverto@azsos.gov
- 5. An agency’s justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**
 Electronic Notary statutes were repealed (A.R.S. §§ 41-352 through 355 and 357 through 370), with the exception of A.R.S § 41-351 defining “electronic signature”. A new section, A.R.S. § 41-352 was added, to include a directive that the Secretary of State shall adopt rules establishing standards for electronic notarization on or before December 31, 2019.



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

None

7. 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

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

Not applicable

9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Not applicable

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The agency does not intend to hold a public hearing on these rules unless a public hearing is requested within 30 days of the publication of this notice. The agency will accept written comments within 30 days of the publication of these rules, Monday through Friday, 8:00 a.m. to 5:00 p.m. Please submit written comments to the following person:

Name: Patricia A. Viverto, Director
Address: Secretary of State, Business Services
1700 W. Washington St., 7th Floor
Phoenix, AZ 85007
Telephone: (602) 542-6187
Fax: (602) 542-4366
E-mail: pviverto@azsos.gov

11. 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:

Not 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

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

None

13. The full text of the rules follows:

TITLE 2. ADMINISTRATION
CHAPTER 12. OFFICE OF THE SECRETARY OF STATE

ARTICLE 12. ELECTRONIC NOTARY

Section
R2-12-1201. Definitions

ARTICLE 12. ELECTRONIC NOTARY

R2-12-1201. Definitions

The following definitions shall apply to this Article unless context otherwise requires:

- 1. "Commission" means the same as defined in A.R.S. § 41-311(2).
2. "Electronic" means the same as defined in A.R.S. § 41-371(3).
3. "Electronic notarization" or "electronic notarial act" means a notarial act performed with respect to an electronic record in accordance with this Article while the signer is in the physical presence of the notary public.
4. "Electronic record" means the same as defined in A.R.S. § 41-371(4).
5. "Electronic seal" means the same as defined in A.R.S. § 41-371(5).
6. "Electronic signature" means the same as defined A.R.S. § 41-351.
7. "Non-repudiation" means the inability of the signer of an electronic document to deny their electronic signature without factual basis.
8. "Notarial act" means the same as defined in A.R.S. § 41-371(9).



9. "Person" means the same as defined in A.R.S. § 41-371(11).
 10. "Qualified Certificate Authority" means a certificate authority that issues digital certificates in compliance with the requirements of R2-12-1204.

~~R2-12-1201~~R2-12-1202. Application and Renewal Authority to Perform Electronic Notarization

Each applicant for an electronic notary commission or a renewal of an electronic notary commission shall: A notary public of this state may perform electronic notarizations during the term of the notary public's commission if:

1. Submit to the Secretary of State a verified application on a form prescribed by the Secretary of State that complies with A.R.S. § 41-312 and provides the following information about the applicant: The notary public has received written authorization from the Secretary of State to perform either:
 - a. Full name and any former names used by the applicant; Electronic notarizations under this Article; or
 - b. Physical address and telephone number; Remote online notarizations under Article 13; and
 - c. Mailing address and telephone number;
 - d. Business address, telephone number, fax number and email address, if applicable;
 - e. County of residence;
 - f. Gender;
 - g. Date of birth;
 - h. The previous commission number of the applicant if previously an electronic notary or notary public appointed under A.R.S. § 41-312 in Arizona, if applicable;
 - i. Responses to questions regarding the applicant's background on the following subjects:
 - i. Whether the applicant has been convicted of a felony or an undesignated offense in this or any other jurisdiction and whether the applicant has been restored to civil rights.
 - ii. Whether the applicant has been convicted of a lesser offense involving moral turpitude or of a nature that is incompatible with the duties of a notary public in this or any other jurisdiction such as a finding that the applicant engaged in conduct that would violate A.R.S. § 41-313 if adjudicated in Arizona, or that the applicant engaged in conduct that constituted misconduct in public office or demonstrated dishonesty or a lack of veracity.
 - iii. Whether the applicant has ever had a professional license revoked, suspended, restricted, or denied for misconduct, dishonesty, or any cause that relates to the duties or responsibilities of a notary public such as a finding that the applicant engaged in conduct that would violate A.R.S. § 41-313 if adjudicated in Arizona, or that the applicant engaged in conduct that demonstrated dishonesty or a lack of veracity.
 - iv. Whether the applicant has had a notary commission revoked, suspended, restricted, or denied in this state or any other jurisdiction.
 - v. Statement that applicant is 18 years of age or older.
 - vi. Statement of being an Arizona resident.
 - vii. Whether the applicant holds or has held a notary commission in another state or jurisdiction and the commission number and jurisdiction, if applicable.
2. The Secretary of State may require that the applicant provide a detailed explanation and supporting documentation for each response on the application regarding the applicant's background. The Secretary of State has not terminated or revoked such authorization.
3. Each applicant shall register with the Secretary of State in a manner prescribed by the Secretary of State the applicant's possession of an approved electronic notary token within 90 days of submitting the application.

~~R2-12-1202~~R2-12-1203. Applicant Filing Fee, Bond, and Bond Filing Fee Registration

- A. ~~The application and renewal fee is \$25. To receive authorization from the Secretary of State to perform electronic notarizations a notary public must submit an application in a format prescribed by the Secretary of State that provides the following information about the applicant:~~
 1. The applicant's full legal name and the name under which the applicant is commissioned as a notary public (if different);
 2. The applicant's email address;
 3. A description of the technologies or devices that the applicant intends to use to perform electronic notarizations;
 4. The name, address, and website URL of any vendors or other persons that will directly supply to the applicant the technologies that the applicant intends to use;
 5. A certification that the applicant has obtained a digital certificate from a qualified certificate authority to be used by the applicant in performing electronic notarizations;
 6. A certification that the technologies described in the application comply with the requirements of this Article.
- B. ~~The bond filing fee is \$25. The application must be submitted to the Secretary of State as provided by information posted on the secretary of state's website at <https://azsos.gov/>.~~
- C. ~~The applicant shall purchase a surety bond in the amount of \$25,000. The original bond shall be filed with the Secretary of State's office accompanying the application or renewal. If, during the term of a notary public's commission, the notary public intends to use the technologies of another vendor or person than those identified under subsection (A)(3) and (4), then an additional application or amendment identifying such other vendors or other persons must be submitted to the Secretary of State as provided in this section.~~
- D. ~~The bond shall contain, on its face, the oath of office for the electronic notary public as specified in A.R.S. § 38-231(E). The electronic notary shall endorse the oath on the face of the bond, immediately below the oath, by signing the electronic notary's name under which the person has applied to be commissioned as an electronic notary and exactly as the name appears on the notary application form filed with the Secretary of State's Office. Each application and renewal submitted under this section must be accompanied by a nonrefundable fee of \$25.~~



- E. If the technology identified in the application under subsection (A) conforms to the standards adopted under this Article and the applicant satisfies the requirements of this section, the Secretary of State shall approve the use of the technology and issue to the notary public written authorization to perform electronic notarizations.
- F. The Secretary of State may reject the application, or terminate or revoke a prior authorization given under this section, for the following reasons:
 - 1. The applicant's failure to comply with A.R.S. §§ 41-311 through 41-351 or this Article;
 - 2. Any information required under subsection (A) is missing, inaccurate or incomplete; or
 - 3. The technology identified in the application does not conform to the standards adopted under this Article.
- G. The Secretary of State shall notify the notary public of approval or rejection of the application within 45 days after receipt. If the application is rejected, the Secretary of State shall state the reasons for the rejection.
- H. The term of the commission for electronic notarization shall be the same as the term of the notary's existing notary commission.
- I. The renewal of the commission of a notary public who has previously received authorization to perform electronic notarizations does not constitute renewal of such authorization. Applicant shall submit another application as provided under subsection (A) and must receive authorization from the Secretary of State in order to continue to perform electronic notarizations.
- J. Nothing herein shall be construed to prohibit a notary public from receiving, installing, or using a hardware or software updates to the technologies that the notary public identified under subsection (A) if the hardware or software update does not result in technologies that are materially different from the technologies that the notary public identified previously.

R2-12-1203R2-12-1204. Notarial Journal Tamper Evident Technology

- A. An electronic notary public shall keep a journal of all electronic notarial acts in bound paper form with the same form as required in A.R.S. § 41-319 herein referenced as a "journal." If an electronic notary act is conducted upon an electronic signature that is not recognized under A.R.S. § 41-132, the electronic notary shall have the signer sign the paper journal in a manner consistent with A.R.S. § 41-319. A notary public must select one or more tamper-evident technologies to perform electronic notarizations. The tamper-evident technology must consist of a digital certificate complying with the X.509 standard adopted by the International Telecommunication Union or a similar industry-standard technology.
- B. The journal shall be under the control of the electronic notary. In performance of an electronic notarization, a notary public must attach or logically associate the notary public's electronic signature and electronic seal to an electronic record that is the subject of a notarial act by use of the digital certificate.
- C. If an electronic notary also holds commission as a notary public appointed under A.R.S. § 41-312, and the commission dates are identical between the two commissions, then the electronic notary may use the notary public journal as the electronic notary paper journal. If the dates are not identical, then the electronic notary shall maintain two separate journals. A notary public may not perform an electronic notarization if the digital certificate:
 - 1. Has expired;
 - 2. Has been revoked or terminated by the issuing or registering authority;
 - 3. Is invalid; or
 - 4. Is incapable of authentication.
- D. If a notary service electronic certificate is used in a manner to create an electronic signature in a notarial act, the document name, title, brief description of contents, and the time stamp shall be entered into the issuing electronic notary's journal as a notary service electronic certificate entry. Renewal of the notary's digital certificate is separate from the registration process with the Secretary of State and must be obtained from a qualified certificate authority capable of supplying certificates that comply with this section. Renewal of the certificate with the certificate authority is the responsibility of the notary.
- E. Journals are not deemed received until the Secretary of State accepts the journals as complete. The electronic notary shall not be subject to a penalty for delay outside the control of the electronic notary in delivering the journal to the Secretary of State.

R2-12-1204R2-12-1205. Standards for Electronic Notary Token and Notary Service Electronic Certificate Electronic Seal Requirements

- A. An electronic notary token, and subsequently a notary service electronic certificate, shall be approved under A.R.S. § 41-132. A notary public must use the same unique electronic seal for all electronic notarizations performed during an applicable commission period.
- B. A provider of an electronic notary token may not provide an official electronic notary token to a person unless the person first presents evidence of the electronic notary commission for that person to the provider. An electronic seal must substantially conform to the following design: a rectangular or circular seal with the notary public's name as it appears on the commission, the great seal of the state of Arizona, the words "Notary Public", "State of Arizona" and "My commission expires on (date)", the name of the county in which the notary public is commissioned, and the commission number.
- C. A provider of a notary service electronic certificate may not provide an official notary service electronic certificate to a person unless the person presents himself or herself before and receives authorization from an electronic notary for reception of the notary service electronic certificate. When affixed to an electronic record, an electronic seal must be clear, legible, and photographically reproducible. An electronic seal is not required to be within a minimum or maximum size when photographically reproduced on an electronic record.
- D. An electronic notary token shall contain:
 - 1. The commission number of the electronic notary;
 - 2. The full name of the electronic notary, as commissioned as an electronic notary;
 - 3. The expiration date of the notary's commission;
 - 4. A link to the commission record of the electronic notary on the Secretary of State's official web site; and
 - 5. Any applicable information relative to A.R.S. § 41-132.
- E. A notary service electronic certificate shall contain:
 - 1. The commission number of the electronic notary authorizing the notary service electronic certificate;



2. The identification of the authorizing electronic notary's electronic notary token;
 3. The full name of the individual, as presented to the electronic notary;
 4. A link to the authorizing commission record of the electronic notary on the Secretary of State's official web site; and
 5. Any applicable information relative to A.R.S. § 41-132.
- F. An electronic notary may possess only one electronic notary token.

R2-12-1205~~R2-12-1206. Use of Electronic Notary Tokens and Notary Service Electronic Certificate~~ Security of Electronic Signatures and Electronic Seals

- A. An electronic notary may only use an electronic notary token for the duties set forth in A.R.S. §§ 41-351 through 41-369 and interactions with the provider of the electronic notary token. A notary public's electronic signature and electronic seal must remain within the exclusive control of the notary public, including control by means of use of a password or other secure method of authentication. A notary public shall not disclose any access information used to affix the notary public's electronic signature or electronic seal to electronic records, except:
1. When requested by the Secretary of State or a law enforcement officer;
 2. When required by court order or subpoena; or
 3. Pursuant to an agreement to facilitate electronic notarizations with a vendor or other technology provider identified in an application submitted under this Article.
- B. A person may only use a notary service electronic certificate for the purposes of creating electronic notarized documents and interactions with the provider of the notary service electronic certificate. A notary public may not allow any other individual to use his or her electronic signature or electronic seal to perform a notarial act.
- C. Use of an electronic notary token is not complete without: Upon resignation, revocation, or expiration of the notary public's commission, the notary public's electronic seal (including any coding, disk, digital certificate, card, software, or password that enables the notary public to attach or logically associate the electronic seal to an electronic record) must be destroyed or disabled to prohibit its use by any other person.
1. Incorporating the electronic notary token elements into the document;
 2. Either directly incorporating the time and date of notarization or incorporating the time and date of notarization using a process of an approved time stamp provider;
 3. Affixing the notary's electronic signature.
- D. Use of a notary service electronic certificate is not complete without: A notary public must immediately notify an appropriate law enforcement agency and the Secretary of State on actual knowledge of the theft or vandalism of the notary public's electronic signature, electronic seal or digital certificate. A notary public shall immediately notify the Secretary of State on actual knowledge of the unauthorized use by another person of the notary public's electronic signature, electronic seal or digital certificate.
1. Presence of a date and time stamp from an approved time stamp token provider;
 2. Affixing the notary's electronic signature.

R2-12-1206~~R2-12-1207. Approval of Time Stamp Token Provider~~ Journal

Any person or entity that can provide a service that synchronizes time as defined in A.R.S. § 1-242 into a process using an electronic notary token or a notary service electronic certificate, where applicable, may be added to the list of approved time stamp token providers. All time stamp tokens that interact with electronic notary tokens and notary service electronic certificates need to meet the applicable technology standards required by A.R.S. § 41-132. An electronic notary public shall keep a journal of all electronic notarial acts in bound paper form with the same form as required in A.R.S. § 41-319 and shall be under the sole control of the electronic notary public.

R2-12-1207~~R2-12-1208. Fees Requirements for Authenticating the Notarial Act~~

Electronic notaries may charge the following fees: Electronic notarial acts need to fulfill certain basic requirements to ensure non-repudiation and the capability of being authenticated by the Secretary of State for purposes of issuing Apostilles and Certificates of Authentication. They are as follows:

1. Fee for an acknowledgment shall be not more than \$25. The fact of the notarial act, including the notary's identity, signature, and commission status, must be verifiable by the Secretary of State, and
2. Fee for an oath or affirmation shall be not more than \$25. The notarized electronic document will be rendered ineligible for authentication by the Secretary of State if it is improperly modified after the time of notarization, including any unauthorized alterations to the document content, the electronic notarial certificate, the notary public's electronic signature, and/or the notary public's official electronic seal.
3. Fee for a jurat shall be not more than \$25.
4. Fee for authorizing a notary service electronic certificate to a person shall be not more than \$50. This does not include any vendor fees or charges to the person for reception of the notary service electronic certificate.
5. Fee for any other notarial act shall be not more than \$25.

R2-12-1208. Penalty Fee for Lack of Notice Repealed

The penalty to be imposed upon an electronic notary for failure to provide signed notice as defined in the statute to the Secretary of State of each loss, theft, or compromise of the electronic notary's journal shall be \$10 per use of electronic notary token up to a maximum of \$500. When audit trail is not recoverable, the maximum of \$500 shall be imposed upon the electronic notary for each failure to provide proper notice of a loss, theft, or compromise of the electronic notary's journal.

R2-12-1209. Civil Penalties Repealed

- A. The penalty to be imposed upon an electronic notary for failure to provide signed notice as defined in the statute to the Secretary of State of each loss, theft, or compromise of a notary service electronic certificate or of loss, theft or compromise of any materials or processes used in creating an electronic notary token or authorizing a notary service electronic certificate shall be \$10 per day, up to a



maximum of \$500 for each failure to provide proper notice of a loss, theft, or compromise of a notary service electronic certificate or compromise of any materials or processes used in creating an electronic notary token.

- B. The penalty to be imposed upon an electronic notary for each failure to provide signed notice as defined in the statute to the Secretary of State of a change of address shall be \$10 per day, up to a maximum of \$250 for each failure to provide proper notice of a change of address.
C. The penalty to be imposed upon an electronic notary for failure to deposit the notary's electronic notary journal and records as defined in the statute with the Secretary of State shall be \$50 for the first day and then \$10 per day up to a maximum of \$500.

NOTICE OF PROPOSED RULEMAKING
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

[R19-189]

PREAMBLE

Table with 2 columns: Article, Part, or Section Affected (as applicable) and Rulemaking Action. Rows include R20-5-601, R20-5-602, and R20-5-629, all with 'Amend' as the action.

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

Authorizing statute: A.R.S. § 23-405(4)
Implementing statute: A.R.S. § 23-410

Note: Exemptions from Executive Orders 2017-02 and 2019-01 were provided for this rulemaking, as follows:

- Walking-Working Surfaces; Personal Protective Equipment (Fall Protection Systems) - January 13, 2017, by Brett Galley, Policy Assistant in the Office of the Arizona Governor.
Occupational Exposure to Beryllium - April 4, 2017, by Brett Galley, Policy Assistant in the Office of the Arizona Governor.
Occupational Exposure to Respirable Crystalline Silica; Correction - April 13, 2017; by Brett Galley, Policy Assistant in the Office of the Arizona Governor.
Cranes and Derricks in Construction: Operator Qualification, Revising the Beryllium Standard for General Industry, and Tracking of Workplace Injuries and Illnesses - August 16, 2019, by Kaitlin Harrier; Policy Advisor in the Office of the Arizona Governor.

3. 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: 25 A.A.R. 2443, September 20, 2019 (in this issue)

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

Name: Jessie Atencio, Director
Address: Division of Occupational Safety and Health, Industrial Commission of Arizona, 800 W. Washington St., Suite 203, Phoenix, AZ 85007
Telephone: (602) 542-5795
Fax: (602) 542-1614
E-mail: jessie.atencio@azdosh.gov

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

Section 18(c) of the Federal Occupational Safety and Health Act of 1970 requires state-administered occupational safety and health programs to adopt standards that are at least as effective as those adopted by the United States Department of Labor, Occupational Safety and Health Administration (OSHA). See also 29 CFR 1953.5; A.R.S. § 23-405(3). The Industrial Commission of Arizona (the Commission) is proposing to amend R20-5-601 (The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926), R20-5-602 (The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910), and R20-5-629 (The Occupational Injury and Illness Recording and Reporting Requirements, 29 CFR 1904) to incorporate by reference the following recent OSHA rule updates to 29 CFR 1926 (Safety and Health Regulations for Construction), 29 CFR 1910 (Occupational Safety and Health Standards), and 29 CFR 1904 (Recording and Reporting Occupational Injuries and Illnesses):

- OSHA Final rule published on September 1, 2016, titled Occupational Exposure to Respirable Crystalline Silica; Correction; published in the Federal Register at 81 FR 60272.
OSHA Final rule published on November 18, 2016, titled Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems); published in the Federal Register at 81 FR 82494.
OSHA Final rule published January 9, 2017, titled Occupational Exposure to Beryllium; published in the Federal Register at 82 FR 2470.



- OSHA Direct Final rule published on May 7, 2018 titled “Revising the Beryllium Standard for General Industry”; published in the *Federal Register* at 83 FR 19936.
- OSHA Final rule published on November 9, 2018, titled “Cranes and Derricks in Construction: Operator Qualification”; published in the *Federal Register* at 83 FR 56198.
- OSHA Final rule published on January 25, 2019, titled “Tracking of Workplace Injuries and Illnesses”; published in the *Federal Register* at 84 FR 380.

Occupational Exposure to Respirable Crystalline Silica: Correction

Under 29 CFR 1910 and 1926, employers are subject to standards for occupational exposure to respirable crystalline silica. On March 25, 2016, the Federal Occupational Safety & Health Administration (“OSHA”) published a final rule entitled “Occupational Exposure to Respirable Crystalline Silica” (the “Silica Rule”). In part, the Silica Rule retained the preceding permissible exposure limits (“PELs”) for respirable crystalline silica in general industry (29 CFR 1910.1000, Table Z-3) and construction (29 CFR 1926.55, appendix A) for industry sectors or operations where the new PEL of 50 $\mu\text{g}/\text{m}^3$ is not in effect. The preceding PELs applied to operations that are not covered by the new respirable silica standards, such as the processing of sorptive clays (*i.e.*, specific types of clay found in a few geologic deposits in the country that are used in a range of consumer products and industrial applications, such as pet litter and sealants for landfills). The preceding PELs also apply during the time between publication of the silica rule and the dates established for compliance with the rule. OSHA’s Final Rule titled “Occupational Exposure to Respirable Crystalline Silica; Correction” corrects certain typographical errors contained in the Final Silica Rule related to the formulas for the preceding PELs in general industry (29 CFR 1910.1000, Table Z-3) and construction (29 CFR 1926.55, appendix A), so that the formulas will appear as they did prior to publication of the Final Silica Rule.

Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems)

Under 29 CFR 1910, employers are subject to standards related to preventing workplace slips, trips, and falls, as well as other injuries and fatalities associated with walking working surface hazards. OSHA’s Final Rule titled Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems) revised and updates these general industry standards. The Final Rule includes revised and new provisions addressing, for example, fixed ladders; rope descent systems; fall protection systems and criteria, including personal fall protection systems; and training on fall hazards and fall protection systems. In addition, the Final Rule adds requirements on the design, performance, and use of personal fall protection systems. The Final Rule increases consistency between the general industry and construction standards, which will make compliance easier for employers who conduct operations in both industry sectors. Similarly, the Final Rule updates requirements to reflect advances in technology and to make them consistent with more recent OSHA standards and national consensus standards. OSHA has also reorganized the requirements and incorporated plain language in order to make the Final Rule easier to understand and follow. The Final Rule also uses performance-based language to give employers greater compliance flexibility.

OSHA believes that many employers already are in compliance with many provisions in the Final Rule; therefore, many employers should not have significant problems implementing the updated standards. In addition, because the Final Rule incorporates requirements from national consensus standards, most equipment manufacturers already provide equipment and systems that meet the requirements of the Final Rule.

Occupational Exposure to Beryllium & Revising the Beryllium Standard for General Industry

Under 29 CFR 1910 and 1926, employers are subject to standards for occupational exposure to beryllium. OSHA’s Final Rule titled Occupational Exposure to Beryllium updates existing standards for occupational exposure to beryllium and beryllium compounds. OSHA determined that employees exposed to beryllium at the previous permissible exposure limits face a significant risk of material impairment to their health, including increased risk of developing chronic beryllium disease and lung cancer. The Final Rule establishes new permissible exposure limits of 0.2 micrograms of beryllium per cubic meter of air (0.2 $\mu\text{g}/\text{m}^3$) as an 8-hour time-weighted average and 2.0 $\mu\text{g}/\text{m}^3$ as a short-term exposure limit determined over a sampling period of 15 minutes. The Final Rule also includes other provisions to protect employees, such as requirements for exposure assessment, methods for controlling exposure, respiratory protection, personal protective clothing and equipment, housekeeping, medical surveillance, hazard communication, and recordkeeping. The Final Rule covers exposures to beryllium in general industry, construction, and shipyards, but provides an exemption for materials containing only trace amounts of beryllium (less than 0.1% by weight) when the employer has objective data that employee exposure to beryllium will remain below the action level as an 8-hour time-weighted average under any foreseeable conditions.

Revising the Beryllium Standard for General Industry

OSHA’s Final Rule titled Revising the Beryllium Standard for General Industry includes a number of clarifying amendments to address the application of the 2017 beryllium standard (discussed above) to materials containing trace amounts of beryllium. The Final Rule amends the text of the 2017 beryllium standard for General Industry to clarify OSHA’s intent with respect to certain terms in the standard, including the definition of “Beryllium Work Area” (BWA), the definition of “emergency,” and the meaning of the terms “dermal contact” and “beryllium contamination.” It also clarifies OSHA’s intent with respect to provisions for disposal and recycling and with respect to provisions that OSHA intends to apply only where skin can be exposed to materials containing at least 0.1% beryllium by weight. OSHA states that the amendment to the standard is clarifying in nature and does not adversely impact the safety or health of employees. Finally, the Final Rule limits disposal and recycling requirements to materials that contain beryllium in concentrations of 0.1% by weight or more or are contaminated with beryllium, consistent with OSHA’s intention that provisions aimed at protecting workers from the effects of dermal contact do not apply in the case of materials containing only trace amounts of beryllium.

Cranes and Derricks in Construction: Operator Qualification

Under 29 CFR 1926, employers in construction are subject to standards related to crane operator training, certification/licensing, and competency. OSHA’s Final Rule titled Cranes and Derricks in Construction: Operator Qualification updates the existing standards by clarifying each employer’s duty to ensure the competency of crane operators through training, certification or licensing, and evaluation. OSHA is also altering a provision that required different levels of certification based on the rated lifting capacity of equipment. While testing organizations are not required to issue certifications distinguished by rated capacities, they are



permitted to do so, and employers may accept them or continue to rely on certifications based on crane type alone. Finally, the Final Rule establishes minimum requirements for determining operator competency. OSHA reports that the Final Rule will maintain safety and health protections for workers while reducing compliance burdens.

Tracking of Workplace Injuries and Illnesses

Under 29 CFR 1904, employers with more than 10 employees in most industries are required to keep records of occupational injuries and illnesses at their establishments. OSHA's Final Rule titled Tracking of Workplace Injuries and Illnesses is aimed at protecting worker privacy by amending the recordkeeping standards by rescinding the requirement for establishments with 250 or more employees to electronically submit information from OSHA Forms 300 and 301. These establishments will continue to be required to maintain those records on-site, and OSHA will continue to obtain them as needed through inspections and enforcement actions. In addition to reporting required after severe injuries, establishments will continue to submit information from their Form 300A. In addition, OSHA is amending the recordkeeping regulation to require covered employers to submit their Employer Identification Number (EIN) electronically along with their injury and illness data submission, which will facilitate use of the data and may help reduce duplicative employer reporting. Nothing in the final rule revokes an employer's duty to maintain OSHA Forms 300 and 301 for inspection. OSHA reports that the changes will improve enforcement targeting and compliance assistance, decrease burden on employers, and protect worker privacy and safety.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to 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 Commission did not review or rely on any study relevant to the proposed amended rules. To the extent applicable, studies, surveys, data, or other information reviewed and relied upon by OSHA are discussed in the Final Rules, which are electronically available at:

- <https://www.federalregister.gov/documents/2016/09/01/2016-20442/occupational-exposure-to-respirable-crystalline-silica-correction>
- <https://www.federalregister.gov/documents/2016/11/18/2016-24557/walking-working-surfaces-and-personal-protective-equipment-fall-protection-systems>
- <https://www.federalregister.gov/documents/2017/01/09/2016-30409/occupational-exposure-to-beryllium>
- <https://www.federalregister.gov/documents/2018/05/07/2018-09306/revising-the-beryllium-standard-for-general-industry>
- <https://www.federalregister.gov/documents/2018/11/09/2018-24481/cranes-and-derricks-in-construction-operator-qualification>
- <https://www.federalregister.gov/documents/2019/01/25/2019-00101/tracking-of-workplace-injuries-and-illnesses>

7. 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

8. The preliminary summary of the economic, small business and consumer impact: Occupational Exposure to Respirable Crystalline Silica; Correction

Adoption of the Final Rule titled "Occupational Exposure to Respirable Crystalline Silica; Correction" will have no economic, small business, or consumer impact, as the Final Rule only corrects typographical errors contained in the Final Silica Rule.

Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems)

OSHA reports that slips, trips, and falls constitute a significant risk, and estimated that the updated standard will prevent 29 fatalities and 5,842 injuries annually. OSHA summarized its findings with respect to the estimated costs, benefits, and net benefits of the updated standard in their economic analysis and determined annual benefits will significantly exceed the annual costs. OSHA's detailed analysis is electronically available at: <https://www.federalregister.gov/documents/2016/11/18/2016-24557/walking-working-surfaces-and-personal-protective-equipment-fall-protection-systems>.

Occupational Exposure to Beryllium

OSHA estimates that the Final Rule will prevent 90 fatalities and 46 new cases of chronic beryllium disease annually once the full effects are realized, and the estimates national cost of the Final Rule is \$73.9 million. OSHA estimates that the discounted monetized benefits of the Final Rule will be \$560.9 million annually and estimates that the Final Rule will generate net benefits of approximately \$487 million annually. OSHA admits, however, that there is a great deal of uncertainty in the estimated benefits due to assumptions made about dental workers' exposures and reductions. OSHA summarized its findings with respect to the estimated costs, benefits, and net benefits of the updated standard in their economic analysis, which is electronically available at: <https://www.federalregister.gov/documents/2017/01/09/2016-30409/occupational-exposure-to-beryllium>.

Revising the Beryllium Standard for General Industry

OSHA estimates that the Final Rule will, at a 3 percent discount rate over 10 years, result in a net annual cost savings of \$0.36 million per year, and, at a discount rate of 7 percent, will result in net annual cost savings of \$0.37 million per year. When OSHA uses a perpetual time horizon, the reported annualized cost savings of the Final Rule is \$0.37 million with 7 percent discounting. OSHA reported that the Final Rule would result in a net cost savings for employers in primary aluminum production and coal-fired utilities, which are the only industries in General Industry covered by the 2017 Beryllium Final Rule (discussed above) that OSHA identified with operations involving materials containing only trace beryllium (less than 0.1% beryllium by weight). Arizona has aluminum production businesses, coal powered generating stations, and one coal power plant. OSHA summarized its findings with respect to the estimated costs, benefits, and net benefits of the updated standard in their economic analysis, which is electronically available at: <https://www.federalregister.gov/documents/2018/05/07/2018-09306/revising-the-beryllium-standard-for-general-industry>.

Cranes and Derricks in Construction: Operator Qualification

OSHA reported that, on average, the impact of costs on employers will be low because most employers are currently provid-



ing some degree of operator training and performing operator competency evaluations to comply with the previous 29 CFR 1926.1427(k), and were previously doing so to comply with §§ 1926.550, 1926.20(b)(4), and 1926.21(b)(2). Employers who currently provide insufficient training will incur new compliance costs. OSHA summarized its findings with respect to the estimated costs, benefits, and net benefits of the updated standard in their economic analysis, which is electronically available at: <https://www.federalregister.gov/documents/2018/11/09/2018-24481/cranes-and-derricks-in-construction-operator-qualification>.

Tracking of Workplace Injuries and Illnesses

The Final Rule ameliorates a regulatory burden by rescinding the need for employers of 250 or more employees to submit OSHA Forms 300 and 301. In addition, OSHA amended the standard to require covered employers to submit their Employer Identification Number (EIN) electronically, along with their injury and illness data submission, which will facilitate use of the data and may help reduce duplicative employer reporting. Although the EIN requirement increases regulatory burden, OSHA reports that the actions together will allow it to improve enforcement targeting and compliance assistance, decrease burden on employers, and protect worker privacy and safety. OSHA summarized its findings with respect to the estimated costs, benefits, and net benefits of the updated standard in their economic analysis, which is electronically available at: <https://www.federalregister.gov/documents/2019/01/25/2019-00101/tracking-of-workplace-injuries-and-illnesses>.

9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Jessie Atencio, Director
 Address: Division of Occupational Safety and Health
 Industrial Commission of Arizona
 800 W. Washington St., Suite 203
 Phoenix, AZ 85007
 Telephone: (602) 542-5795
 Fax: (602) 542-1614
 E-mail: jessie.atencio@azdosh.gov

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Written comments can be submitted to the address listed in item 9 by the close of the comment period, which is at 5:00 p.m. on October 21, 2019. An oral proceeding on the proposed amended rule is scheduled for October 21, 2019, at 9:00 a.m., at the Industrial Commission of Arizona, 800 West Washington, Room 206, Phoenix, Arizona 85007.

11. 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.R.S. § 23-405(3) requires the Commission to “[c]ooperate with the federal government to establish and maintain an occupational safety and health program as effective as the federal occupational safety and health program.”

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 proposed amended rule does not require issuance of a regulatory permit or license.

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:

Section 18(c) of the Federal Occupational Safety and Health Act of 1970 requires state-administered occupational safety and health programs to adopt standards that are at least as effective as those adopted by the United States Department of Labor, Occupational Safety and Health Administration (“OSHA”). *See also* 29 CFR 1953.5; A.R.S. § 23-405(3). The Commission is proposing to amend R20-5-601 (“The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926”), R20-5-602 (“The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910”), and R20-5-629 (“The Occupational Injury and Illness Recording and Reporting Requirements, 29 CFR 1904”) to incorporate by reference the following recent OSHA rule updates to 29 CFR 1926 (“Safety and Health Regulations for Construction”), 29 CFR 1910 (“Occupational Safety and Health Standards”), and 29 CFR 1904 (“Recording and Reporting Occupational Injuries and Illnesses”):

- OSHA Final rule published on September 1, 2016, titled “Occupational Exposure to Respirable Crystalline Silica; Correction.”
- OSHA Final rule published on November 18, 2016, titled “Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems).”
- OSHA Final rule published January 9, 2017, titled “Occupational Exposure to Beryllium.”
- OSHA Direct Final rule published on May 7, 2018 titled “Revising the Beryllium Standard for General Industry.”
- OSHA Final rule published on November 9, 2018, titled “Cranes and Derricks in Construction: Operator Qualification.”
- OSHA Final rule published on January 25, 2019, titled “Tracking of Workplace Injuries and Illnesses.”

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

No analysis was submitted.

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

The Commission is proposing to amend R20-5-601 (“The Federal Occupational Safety and Health Standards for Construc-



tion, 29 CFR 1926”), R20-5-602 (“The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910”), and R20-5-629 (“The Occupational Injury and Illness Recording and Reporting Requirements, 29 CFR 1904”) to incorporate by reference the following recent OSHA rule updates to 29 CFR 1926 (“Safety and Health Regulations for Construction”), 29 CFR 1910 (“Occupational Safety and Health Standards”), and 29 CFR 1904 (“Recording and Reporting Occupational Injuries and Illnesses”):

- OSHA Final rule published on September 1, 2016, titled “Occupational Exposure to Respirable Crystalline Silica; Correction.”
- OSHA Final rule published on November 18, 2016, titled “Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems).”
- OSHA Final rule published January 9, 2017, titled “Occupational Exposure to Beryllium.”
- OSHA Direct Final rule published on May 7, 2018 titled “Revising the Beryllium Standard for General Industry.”
- OSHA Final rule published on November 9, 2018, titled “Cranes and Derricks in Construction: Operator Qualification.”
- OSHA Final rule published on January 25, 2019, titled “Tracking of Workplace Injuries and Illnesses.”

A copy OSHA’s Final Rules are available for inspection or reproduction at the Arizona Division of Occupational Safety and Health, 800 West Washington Street, Room 203, Phoenix, AZ 85007, or are electronically available at:

- <https://www.federalregister.gov/documents/2016/09/01/2016-20442/occupational-exposure-to-respirable-crystalline-silica-correction>
- <https://www.federalregister.gov/documents/2016/11/18/2016-24557/walking-working-surfaces-and-personal-protective-equipment-fall-protection-systems>
- <https://www.federalregister.gov/documents/2017/01/09/2016-30409/occupational-exposure-to-beryllium>
- <https://www.federalregister.gov/documents/2018/05/07/2018-09306/revising-the-beryllium-standard-for-general-industry>
- <https://www.federalregister.gov/documents/2018/11/09/2018-24481/cranes-and-derricks-in-construction-operator-qualification>
- <https://www.federalregister.gov/documents/2019/01/25/2019-00101/tracking-of-workplace-injuries-and-illnesses>

13. The full text of the rules follows:

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Section

- R20-5-601. The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926
- R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910
- R20-5-629. The Occupational Injury and Illness Recording and Reporting Requirements, 29 CFR 1904

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

R20-5-601. The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926

Each employer shall comply with the standards in the Federal Occupational Safety and Health Standards for Construction, as published in 29 CFR 1926, with amendments as of ~~June 23, 2016~~ February 7, 2019, incorporated by reference. Copies of these referenced materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to construction activity by all employers, both public and private, in the state of Arizona. This incorporation by reference does not include amendments or editions to 29 CFR 1926 published after ~~June 23, 2016~~ February 7, 2019.

R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910

Each employer shall comply with the standards in Subparts B through Z inclusive of the Federal Occupational Safety and Health Standards for General Industry, as published in 29 CFR 1910, with amendments as of ~~June 23, 2016~~ July 6, 2018, incorporated by reference. Copies of these reference materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to general industry activity by all employers, both public and private, in the state of Arizona; provided that this Section shall not apply to those conditions and practices which are the subject of R20-5-601. This incorporation by reference does not include amendments or editions to 29 CFR 1910 published after ~~June 23, 2016~~ July 6, 2018.

R20-5-629. The Occupational Injury and Illness Recording and Reporting Requirements, 29 CFR 1904

Each employer shall comply with the standards in the Federal Occupational Safety and Health Standards for Recordkeeping, as published in 29 CFR 1904, with amendments as of ~~January 1, 2017~~ February 25, 2019, incorporated by reference. Copies of the incorporated materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to recordkeeping by all employers, both public and private, in the state of Arizona. This incorporation by reference does not include amendments or editions to 29 CFR 1904 published after ~~January 1, 2017~~ February 25, 2019.



NOTICES OF FINAL EXPEDITED RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Final Expedited Rulemaking. The Office of the Secretary of State is the filing office and publisher of these rules.

Questions about the interpretation of the expedited rules should be addressed to the agency promulgating the rules. Refer to Item #5 to contact the person charged with the rulemaking.

**NOTICE OF FINAL EXPEDITED RULEMAKING
TITLE 9. HEALTH SERVICES
CHAPTER 16. DEPARTMENT OF HEALTH SERVICES
OCCUPATIONAL LICENSING**

[R19-190]

PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|
| Article 6 | New Article |
| R9-16-601 | New Section |
| R9-16-602 | New Section |
| R9-16-603 | New Section |
| R9-16-604 | New Section |
| R9-16-605 | New Section |
| R9-16-606 | New Section |
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| R9-16-615 | New Section |
| R9-16-616 | New Section |
| R9-16-617 | New Section |
| R9-16-618 | New Section |
| R9-16-619 | New Section |
| R9-16-620 | New Section |
| R9-16-621 | New Section |
| R9-16-622 | New Section |
| R9-16-623 | New Section |
| R9-16-624 | New Section |
- 2. Citations to the agency's statutory authority for the rulemaking to include the authorizing statute (general) and the implementing statute (specific):**
 Authorizing statutes: A.R.S. §§ 32-2803, 36-136(G)
 Implementing statutes: A.R.S. §§ 32-2803, 32-2804, 32-2811 through 32-2819, 32-2821, 32-2824 and 36-2841 through 32-2843
- 3. The effective date of the rules:**
 August 27, 2019
- 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 expedited rulemaking:**
 Notice of Rulemaking Docket Opening: 25 A.A.R. 1270, May 17, 2019
 Notice of Proposed Expedited Rulemaking: 25 A.A.R. 1329, May 31, 2019
- 5. The agency's contact person who can answer questions about the rulemaking:**
 Name: Megan Whitby, Bureau Chief
 Address: Department of Health Services
 Public Health Licensing Services
 150 N. 18th Ave., Suite 400
 Phoenix, AZ 85007
 Telephone: (602) 364-3052



Fax: (602) 364-2079
 E-mail: Megan.Whitby@azdhs.gov
 or
 Name: Robert Lane, Chief
 Address: Department of Health Services
 Office of Administrative Counsel and Rules
 150 N. 18th Ave., Suite 200
 Phoenix, AZ 85007
 Telephone: (602) 542-1020
 Fax: (602) 364-1150
 E-mail: Robert.Lane@azdhs.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, under A.R.S. § 41-1027, to include an explanation about the rulemaking:

Arizona Revised Statutes (A.R.S.) Title 9, Chapter 28, Article 2 provides for the certification of different classifications of radiation technologists. Rules for certification are currently in Arizona Administrative Code (A.A.C.) Title 12, Chapter 2. Laws 2017, Ch. 313, and Laws 2018, Ch. 234, makes the Arizona Department of Health Services (Department) responsible for regulating radiation technologists, replacing the Arizona Radiation Regulatory Agency, the Radiation Regulatory Hearing Board, and the Medical Radiologic Technology Board of Examiners in these duties. The rules in 12 A.A.C. 2 do not refer to the Department as the agency responsible for regulating radiation technologists. Moreover, the rules are inconsistent with statutory requirements and formatted in a way that is difficult to understand. All of these issues may cause confusion on the part of regulated persons, unnecessarily adding to their administrative burden, as described in a five-year-review report approved by the Governor's Regulatory Review Council in December 2018. In addition, the rules do not comply with requirements in HB 2569 relating to reciprocity of professional licenses. After receiving an exception from the Governor's rulemaking moratorium established by Executive Order 2019-01, the Department has revised the rules by expedited rulemaking to make changes described in the five-year-review report and to comply with HB 2569 to reduce the regulatory burden while achieving the same regulatory objective, comply with statutory requirements, and help eliminate confusion on the part of the public. The Department believes the rulemaking meets the criteria for expedited rulemaking since the changes to be made will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated.

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 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 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:

Under A.R.S. § 41-1055(D)(2), the Department is not required to provide an economic, small business, and consumer impact statement.

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

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

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

The Department received no written or oral comments about the rulemaking.

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

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

The Department believes the certification issued to an individual is a general permit in that certification specifies the individual and the tasks/services the individual is authorized by certification to provide, but a certified individual is not limited to providing the tasks/services in any one location.

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 laws do not apply to the certification rules. However, federal regulations may impact the scope of practice and methodologies employed by certified individuals.

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:

Materials incorporated by reference in this rulemaking are:

- In R9-16-603(B)(1) - 2017 American Society of Radiologic Technologists Limited X-Ray Machine Operator Practice Standards



- In R9-16-604(B)(1) - 2017 American Society of Radiologic Technologists Limited X-Ray Machine Operator Practice Standards
- In R9-16-605(B)(1) - 2017 American Society of Radiologic Technologists Bone Densitometry Practice Standards
- In R9-16-608(B) - 2017 American Society of Radiologic Technologists Radiography Practice Standards
- In R9-16-608(C)(1) - 2017 American Society of Radiologic Technologists Nuclear Medicine Practice Standards
- In R9-16-608(D) - 2017 American Society of Radiologic Technologists Radiation Therapy Practice Standards
- In R9-16-610(B)(1) - 2017 American Society of Radiologic Technologists Mammography Practice Standards
- In R9-16-613(B)(1) - 2017 American Society of Radiologic Technologists Computed Tomography Practice Standards
- In R9-16-616(B)(1) - 2017 American Society of Radiologic Technologists Radiologist Assistant Practice Standards

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 rules follows:

**TITLE 9. HEALTH SERVICES
CHAPTER 16. DEPARTMENT OF HEALTH SERVICES
OCCUPATIONAL LICENSING**

ARTICLE 6. RADIATION TECHNOLOGISTS

Section

R9-16-601.	<u>Definitions</u>
R9-16-602.	<u>Training Programs</u>
R9-16-603.	<u>Practical Radiological Technologist - Eligibility and Scope of Practice</u>
R9-16-604.	<u>Practical Technologist in Podiatry - Eligibility and Scope of Practice</u>
R9-16-605.	<u>Practical Technologist in Bone Densitometry - Eligibility and Scope of Practice</u>
R9-16-606.	<u>Application for Examination</u>
R9-16-607.	<u>Application for Initial Certification</u>
R9-16-608.	<u>Radiological Technologist, Nuclear Medicine Technologist, and Radiation Therapy Technologist - Eligibility and Scope of Practice</u>
R9-16-609.	<u>Initial Application for a Radiological Technologist, Nuclear Medicine Technologist, and Radiation Therapy Technologist</u>
R9-16-610.	<u>Mammographic Technologist - Eligibility and Scope of Practice</u>
R9-16-611.	<u>Student Mammographic Technologist Permit</u>
R9-16-612.	<u>Initial Application for Certification for a Mammographic Technologist</u>
R9-16-613.	<u>Computed Tomography Technologist - Eligibility and Scope of Practice</u>
R9-16-614.	<u>Application for Computed Tomography Technologist Preceptorship and Temporary Permit</u>
R9-16-615.	<u>Application for Initial Certification for a Computed Tomography Technologist</u>
R9-16-616.	<u>Radiologist Assistant - Eligibility and Scope of Practice</u>
R9-16-617.	<u>Application for Initial Certification for a Radiologist Assistant</u>
R9-16-618.	<u>Special Permit</u>
R9-16-619.	<u>Application</u>
R9-16-620.	<u>Renewal of Certification</u>
R9-16-621.	<u>Time-frames</u>
R9-16-622.	<u>Changes Affecting a Certificate or Certificate Holder; Request for a Duplicate Certificate</u>
R9-16-623.	<u>Fees</u>
R9-16-624.	<u>Enforcement</u>

ARTICLE 6. RADIATION TECHNOLOGISTS

R9-16-601. Definitions

In addition to the definitions in A.R.S. § 32-2801, the following definitions apply in this Article unless otherwise specified:

1. “Applicant” means:
 - a. An individual who submits an application packet, or
 - b. A person who submits a request for approval of a radiation technologist training program.
2. “Application packet” means the information, documents, and fees required by the Department for a certificate or permit.
3. “ARRT” means the American Registry of Radiologic Technologists.
4. “Authorized user” means the same as in A.A.C. R9-7-102.
5. “Calendar day” means each day, not including the day of the act, event, or default, from which a designated period of time beings to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
6. “CBRPA” means the Certification Board for Radiology Practitioner Assistants.
7. “Certification” means the issuing of a certificate.
8. “Chest radiography” means radiography performed to visualize the heart and lungs only.
9. “Continuing education” means a course or learning activity that provides instruction and training designed to develop or improve the professional competence of a certificate holder related to the certificate holder’s scope of practice.



10. “Contrast media” means material intentionally administered to a human body to define a part or parts of the human body that are not normally radiographically visible.
11. “Department-approved educational program” means a curriculum of courses and learning activities that is accredited by a nationally recognized accreditation body or granted approval through the Department.
12. “Department-approved examination” means a test administered through ARRT, NMTCB, ISCD, or CBRPA.
13. “Extremity” means the same as in A.A.C. R9-7-102.
14. “Fluoroscopy” means the use of radiography to directly visualize internal structures of the human body, the motion of internal structures, and fluids in real time, or near real-time, to aid in the treatment or diagnosis of disease or the performance of other medical procedures.
15. “ISCD” means the International Society for Clinical Densitometry.
16. “Nationally recognized accreditation body” means ARRT, NMTCB, ISCD, or CBRPA.
17. “NMTCB” means the Nuclear Medicine Technology Certification Board.
18. “Radiograph” means the record of an image, representing anatomical details of a part of a human body examined through the use of ionizing radiation, formed by the differential absorption of ionizing radiation within the part of the human body.
19. “Radiography” means the use of ionizing radiation in making radiographs.
20. “Radiopharmaceutical agent” means a radionuclide or radionuclide compound designed and prepared for administration to human beings.

R9-16-602. Training Programs

- A. The Department shall maintain a list of Department-approved educational programs according to A.R.S. § 32-2804 on the Department’s website at <https://www.azdhs.gov/licensing/special/index.php#mrt-provider-info>.
- B. An applicant may request Department approval of a curriculum of courses and learning activities as a training program by submitting an application packet that contains:
 1. An application, in a Department-provided format, that includes:
 - a. The name and address of the school providing the training program;
 - b. The name, title, telephone number, and e-mail address of the administrator or designee of the school; and
 - c. A list of each training program for which approval is being requested, including the number of hours of instruction provided for each;
 2. A copy of the curriculum that includes course titles and course descriptions; and
 3. A list of instructors providing the instruction and the credentials of each.
- C. The Department shall:
 1. Review each application packet according to R9-16-621; and
 2. If approved, add the applicant’s school to the list of Department-approved educational programs in subsection (A).
- D. If an applicant for certification or permit did not complete a Department-approved educational program, the applicant may submit to the Department a copy of the curriculum for the training program completed by the applicant with the applicant’s application packet in R9-16-606(B), R9-16-607(A), or R9-16-609(A).

R9-16-603. Practical Technologist in Radiology - Eligibility and Scope of Practice

- A. An individual is eligible for certification as a practical technologist in radiology if the individual:
 1. Is at least 18 years of age; and
 2. Either:
 - a. Has completed a training program in radiologic technology through a Department-approved educational program and achieved a score of at least 67% on a Department-approved examination; or
 - b. Meets the criteria in A.R.S. § 32-4302(A).
- B. An individual certified as a practical technologist in radiology shall:
 1. Follow the standards specified in the 2017 American Society of Radiologic Technologists Limited X-Ray Machine Operator Practice Standards available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_lxmo.pdf?sfvrsn=29e176d0_16, incorporated by reference, on file with the Department, and including no future editions or amendments;
 2. Perform only:
 - a. Chest radiography, and
 - b. Radiography of the extremities; and
 3. Not use fluoroscopy or contrast media.

R9-16-604. Practical Technologist in Podiatry - Eligibility and Scope of Practice

- A. An individual is eligible for certification as a practical technologist in podiatry if the individual:
 1. Is at least 18 years of age; and
 2. Either:
 - a. Has:
 - i. Completed a training program in podiatry radiology through a Department-approved educational program;
 - ii. Received a signed and dated attestation from a podiatrist licensed according to A.R.S. Title 32, Chapter 7, verifying that the applicant:
 - (1) Completed training under the direction of the licensed podiatrist, and
 - (2) Is proficient in independently taking radiographs; and
 - iii. Achieved a score of at least 70% on a Department-approved examination; or
 - b. Meets the criteria in A.R.S. § 32-4302(A).
- B. An individual certified as a practical technologist in podiatry shall:



1. Follow the standards specified in the 2017 American Society of Radiologic Technologists Limited X-Ray Machine Operator Practice Standards, available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_lxmo.pdf?sfvrsn=29e176d0_16, incorporated by reference, on file with the Department, and including no future editions or amendments; and
2. Only perform radiographic examinations of the lower leg, ankle, and foot, without the use of fluoroscopy or contrast media.

R9-16-605. Practical Technologist in Bone Densitometry - Eligibility and Scope of Practice

- A.** An individual is eligible for certification as a practical technologist in bone densitometry if the individual:
1. Is at least 18 years of age; and
 2. Either:
 - a. Has completed a training program in bone densitometry through a Department-approved educational program and achieved a score of at least 70% on a Department-approved examination, or
 - b. Meets the criteria in A.R.S. § 32-4302(A).
- B.** An individual certified as a practical technologist in bone densitometry shall:
1. Follow the standards specified in the 2017 American Society of Radiologic Technologists Bone Densitometry Practice Standards, available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_bd.pdf?sfvrsn=11e176d0_22, incorporated by reference, on file with the Department, and including no future editions or amendments; and
 2. Apply ionizing radiation only to a person's hips, spine, and extremities through the use of a bone density machine without the use of fluoroscopy or contrast media.

R9-16-606. Application for Examination

- A.** An individual may apply for examination if the individual meets eligibility criteria for a:
1. Practical technologist in radiology listed in R9-16-603(A);
 2. Practical technologist in podiatry listed in R9-16-604(A); or
 3. Practical technologist in bone densitometry listed in R9-16-605(A).
- B.** An applicant for examination shall submit an application packet to the Department that includes:
1. The information and documents required in R9-16-619;
 2. Except as provided in R9-16-602(D), documentation of completion of a Department-approved educational program; and
 3. For an applicant for examination as a practical technologist in podiatry, the attestation specified in R9-16-604(A)(2)(a)(ii).
- C.** The Department shall approve or deny an individual's application for examination according to R9-16-621.
- D.** If the Department determines that the application packet submitted under subsection (B) is complete and in compliance, the Department shall notify the applicant that the applicant is approved to test.
- E.** Upon notification by the Department according to subsection (D), and applicant:
1. Shall arrange testing through AART, and
 2. Has six months to complete testing before the applicant is required to re-apply for examination.

R9-16-607. Application for Initial Certification as a Practical Technologist in Radiology, Practical Technologist in Podiatry, or Practical Technologist in Bone Densitometry

- A.** Except as provided in subsection (B), an applicant for initial certification as a practical technologist in radiology, practical technologist in podiatry, or practical technologist in bone densitometry shall submit an application packet to the Department that includes:
1. The information and documents required in R9-16-619;
 2. Except as provided in R9-16-602(D), documentation of completion of a Department-approved educational program;
 3. Documentation of achieving the applicable minimum score on a Department-approved examination;
 4. For an application for a practical technologist in podiatry, the signed attestation in R9-16-604(A)(2)(a)(ii) containing:
 - a. The name and date of birth of the applicant,
 - b. The name and license number of the licensed podiatrist,
 - c. A statement by the licensed podiatrist verifying completion of the applicant's clinical training and approval of radiographic images taken by the applicant, and
 - d. The licensed podiatrist's signature and date; and
 5. The applicable fee in R9-16-623.
- B.** If an applicant for initial certification as a practical technologist in radiology, practical technologist in podiatry, or practical technologist in bone densitometry may be eligible for certification under A.R.S. § 32-4302(A), the applicant shall submit an application packet to the Department that includes:
1. The information and documentation required in R9-16-619;
 2. Documentation of the professional license or certification issued to the applicant by each state in which the applicant holds a professional license or certification;
 3. A statement, signed and dated by the applicant, attesting that the applicant:
 - a. Has been licensed or certified in another state for at least one year, with a scope of practice consistent with the scope of practice for which certification is being requested;
 - b. Has met minimum education requirements and, if applicable, work experience and clinical supervision requirements, according to A.R.S. § 32-4302(A)(3);
 - c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and
 - d. Does not have an complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct; and
 4. The applicable fee in R9-16-623.
- C.** The Department shall approve or deny an individual's application for initial certification according to R9-16-621.



R9-16-608. Radiologic Technologist, Nuclear Medicine Technologist, and Radiation Therapy Technologist - Eligibility and Scope of Practice

- A.** An individual is eligible to apply for initial certification as a radiologic technologist, nuclear medicine technologist, or radiation therapy technologist if the individual:
 - 1. Is at least 18 years of age; and
 - 2. Satisfies one of the following:
 - a. Holds current applicable ARRT or NMTCB certification.
 - b. Has completed a Department-approved educational program in radiation technology and has a passing score on a Department-approved examination, or
 - c. Meets the criteria in A.R.S. § 32-4302(A).
- B.** An individual certified as a radiologic technologist shall follow the standards specified in the 2017 American Society of Radiologic Technologists Radiography Practice Standards, available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_rad.pdf?sfvrsn=13e176d0_18, incorporated by reference, on file with the Department, and including no future editions or amendments.
- C.** An individual certified as a nuclear medicine technologist shall:
 - 1. Follow the standards specified in the 2017 American Society of Radiologic Technologists Nuclear Medicine Practice Standards, available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_nm.pdf?sfvrsn=1ee176d0_14, incorporated by reference, on file with the Department, and including no future editions or amendments; and
 - 2. Use radiopharmaceutical agents on humans for diagnostic or therapeutic purposes only.
- D.** An individual certified as a radiation therapy technologist shall follow the standards specified in the 2017 American Society of Radiologic Technologists Radiation Therapy Practice Standards, available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_rt.pdf?sfvrsn=18e076d0_16, incorporated by reference, on file with the Department, and including no future editions or amendments.

R9-16-609. Application for Initial Certification as a Radiation Technologist, Nuclear Medicine Technologist, or Radiation Therapy Technologist

- A.** Except as provided in subsection (B), an applicant for initial certification as a radiation technologist, nuclear medicine technologist, or radiation therapy technologist shall submit an application packet to the Department that includes:
 - 1. The information and documents required in R9-16-619;
 - 2. Either:
 - a. A copy of the applicant’s current ARRT or NMTCB certification; or
 - b. Documentation of:
 - i. Completing a Department-approved educational program, except as provided in R9-16-602(D); and
 - ii. Having a passing score on a Department-approved examination; and
 - 3. The applicable fee in R9-16-623.
- B.** If an applicant for initial certification as a radiation technologist, nuclear medicine technologist, or radiation therapy technologist may be eligible for certification under A.R.S. § 32-4302(A), the applicant shall submit an application packet to the Department that includes:
 - 1. The information and documentation required in R9-16-619;
 - 2. Documentation of the professional license or certification issued to the applicant by each state in which the applicant holds a professional license or certification;
 - 3. A statement, signed and dated by the applicant, attesting that the applicant:
 - a. Has been licensed or certified in another state for at least one year, with a scope of practice consistent with the scope of practice for which certification is being requested;
 - b. Has met minimum education requirements and, if applicable, work experience and clinical supervision requirements, according to A.R.S. § 32-4302(A)(3);
 - c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and
 - d. Does not have an complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct; and
 - 4. The applicable fee in R9-16-623.
- C.** The Department shall approve or deny an individual’s application for initial certification according to R9-16-621.

R9-16-610. Mammographic Technologist - Eligibility and Scope of Practice

- A.** An individual is eligible to apply for initial certification as a mammographic technologist if the individual:
 - 1. Is at least 18 years of age;
 - 2. Possesses a current Department-issued certification in radiologic technology; and
 - 3. Satisfies one of the following:
 - a. Holds a current ARRT certification in mammography;
 - b. Meets the initial training and education requirements in 21 CFR 900.12 and has a passing score on a Department-approved examination in mammography, or
 - c. Meets the criteria in A.R.S. § 32-4302(A).
- B.** An individual certified as a mammographic technologist:
 - 1. Shall follow the standards specified in the 2017 American Society of Radiologic Technologists Mammography Practice Standards, available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_mamm.pdf?sfvrsn=10e076d0_16, incorporated by reference, on file with the Department, and including no future editions or amendments; and
 - 2. May perform diagnostic mammography or screening mammography, as defined in A.R.S. § 30-651.

**R9-16-611. Student Mammography Permits**

- A.** Before beginning the initial training in 21 CFR 900.12 under R9-16-610(A)(3)(b), an individual shall obtain a student mammography permit from the Department.
- B.** An applicant for a student mammography permit shall submit an application packet to the Department that includes:
1. The information and documents required under R9-16-619; and
 2. A Department-provided agreement form that includes the following:
 - a. The name and date of birth of the applicant;
 - b. The name, license number, e-mail address, and telephone number of a radiologist, licensed under A.R.S. Title 32, Chapter 13 or 17 and certified in radiology by the American Board of Radiology;
 - c. A statement that the licensed radiologist is accepting responsibility for the applicant's supervision and training; and
 - d. The licensed radiologist's signature and date of signing.
- C.** The Department shall approve or deny an individual's application for a student mammography permit according to R9-16-621.
- D.** A student mammography permit is valid for one year from the date issued and may not be renewed.

R9-16-612. Application for Initial Certification as a Mammographic Technologist

- A.** Except as provided in subsection (B), an applicant for initial certification as a mammographic technologist shall submit an application packet to the Department that includes:
1. The information and documents required in R9-16-619;
 2. The applicant's current radiology technologist certificate number;
 3. The applicant's current student mammography permit number, if applicable;
 4. Either:
 - a. A copy of current ARRT certification in mammography; or
 - b. Documentation of:
 - i. Completing of initial education and training that meets the requirements specified in 21 CFR 900.12, and
 - ii. Having a passing score on a Department-approved examination in mammography; and
 5. The applicable fee in R9-16-623.
- B.** If an applicant for initial certification as a mammographic technologist may be eligible for certification under A.R.S. § 32-4302(A), the applicant shall submit an application packet to the Department that includes:
1. The information and documentation required in R9-16-619;
 2. Documentation of the license or certification as a mammographic technologist issued to the applicant by each state in which the applicant holds the license or certification;
 3. A statement, signed and dated by the applicant, attesting that the applicant:
 - a. Has been licensed or certified as a mammographic technologist in another state for at least one year;
 - b. Has met minimum education requirements and, if applicable, work experience and clinical supervision requirements, according to A.R.S. § 32-4302(A)(3);
 - c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and
 - d. Does not have an complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct; and
 4. The applicable fee in R9-16-623.
- C.** The Department shall approve or deny an individual's application for initial certification as a mammographic technologist according to R9-16-621.

R9-16-613. Computed Tomography Technologist - Eligibility and Scope of Practice

- A.** An individual is eligible to apply for initial certification as a computed tomography technologist if the individual:
1. Is at least 18 years of age;
 2. Possesses a current Department-issued certification as a radiologic technologist or nuclear medicine technologist; and
 3. Satisfies one of the following:
 - a. Holds a current ARRT or NMTCB certification in computed tomography;
 - b. Has completed two years of training in computed tomography and twelve hours of computed tomography-specific education, or
 - c. Meets the criteria in A.R.S. § 32-4302(A).
- B.** An individual certified as a computed tomography technologist:
1. Shall follow the standards specified in the 2017 American Society of Radiologic Technologists Computed Tomography Practice Standards, available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_ct.pdf?sfvrsn=9e076d0_16, incorporated by reference, on file with the Department, and including no future editions or amendments; and
 2. May apply ionizing radiation to a human using a computed tomography machine for diagnostic purposes.

R9-16-614. Application for Computed Tomography Preceptorship and Temporary Certification

- A.** Before beginning training under R9-16-613(A)(3)(b), an individual shall obtain a computed tomography preceptorship certificate from the Department.
- B.** An applicant for a computed tomography preceptorship certificate shall submit an application packet to the Department that includes:
1. The information and documents required under R9-16-619; and
 2. A Department-provided agreement form from a radiologist, licensed under A.R.S. Title 32, Chapter 13 or 17 and certified in radiology by the American Board of Radiology, that includes the following:
 - a. The name and date of birth of the applicant;
 - b. The name, license number, e-mail address, and telephone number of the licensed radiologist;



- c. A statement that the licensed radiologist is accepting responsibility for the applicant’s supervision and training; and
- d. The licensed radiologist’s signature and date of signing.
- C. The Department shall approve or deny an individual’s application for a computed tomography preceptorship certificate according to R9-16-621.
- D. A computed tomography preceptorship certificate is valid for one year from the date issued and may not be renewed.
- E. At least 30 days before the expiration of an individual’s computed tomography preceptorship certificate, the individual may apply for a computed tomography temporary certificate by submitting an application packet to the Department that includes:
 - 1. The information and documents required under R9-16-619; and
 - 2. A Department-provided agreement form from a radiologist, licensed under A.R.S. Title 32, Chapter 13 or 17 and certified in radiology by the American Board of Radiology, that includes the following:
 - a. The name and date of birth of the applicant;
 - b. The name, license number, e-mail address, and telephone number of the licensed radiologist;
 - c. A statement that the licensed radiologist is accepting responsibility for the applicant’s supervision and training; and
 - d. The licensed radiologist’s signature and date of signing.
- F. The Department shall approve or deny an individual’s application for a computed tomography temporary certificate according to R9-16-621.
- G. A computed tomography temporary certificate is valid for one year and may not be renewed.

R9-16-615. Application for Initial Certification for a Computed Tomography Technologist

- A. Except as provided in subsection (B), an applicant for initial certification as a computed tomography technologist shall submit an application packet to the Department that includes:
 - 1. The information and documents required in R9-16-619;
 - 2. The applicant’s current radiation technologist or nuclear medicine technologist certificate number;
 - 3. The applicant’s computed tomography preceptorship number or temporary certificate number, if applicable;
 - 4. Either:
 - a. A copy of the applicant’s current ARRT or NMTCB certification in computed tomography; or
 - b. Documentation of completion of:
 - i. Two years of training in computed tomography, and
 - ii. Twelve hours of computed tomography-specific education; and
 - 5. The applicable fee in R9-16-623.
- B. If an applicant for initial certification as a computed tomography technologist may be eligible for certification under A.R.S. § 32-4302(A), the applicant shall submit an application packet to the Department that includes:
 - 1. The information and documentation required in R9-16-619;
 - 2. Documentation of the license or certification as a computed tomography technologist issued to the applicant by each state in which the applicant holds the license or certification;
 - 3. A statement, signed and dated by the applicant, attesting that the applicant:
 - a. Has been licensed or certified as a computed tomography technologist in another state for at least one year;
 - b. Has met minimum education requirements and, if applicable, work experience and clinical supervision requirements, according to A.R.S. § 32-4302(A)(3);
 - c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and
 - d. Does not have an complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct; and
 - 4. The applicable fee in R9-16-623.
- C. The Department shall approve or deny an individual’s application for initial certification as a computed tomography technologist according to R9-16-621.

R9-16-616. Radiologist Assistant - Eligibility and Scope of Practice

- A. An individual is eligible to apply for initial certification as a radiologist assistant if the individual:
 - 1. Is at least 18 years of age; and
 - 2. Satisfies one of the following:
 - a. Holds a current ARRT or CBRPA certification as a radiologist assistant;
 - b. Has:
 - i. Completed a baccalaureate degree or post-baccalaureate certificate from an accredited educational institution that encompasses a radiologist assistant curriculum that includes a radiologist-directed clinical preceptorship, and
 - ii. Achieved a passing score on an ARRT or a CBRPA examination for radiologist assistants; or
 - c. Meets the criteria in A.R.S. § 32-4302(A).
- B. An individual certified as a radiologist assistant:
 - 1. Shall follow the standards specified the 2017 American Society of Radiologic Technologists Radiologist Assistant Practice Standards, available at https://www.asrt.org/docs/default-source/practice-standards-published/ps_raa.pdf?sfvrsn=1ae076d0_16, incorporated by reference on file with the Department, and including no future editions or amendments; and
 - 2. May perform the following procedures under the direction of a radiologist, licensed under A.R.S. Title 32, Chapter 13 or 17 and certified in radiology by the American Board of Radiology:
 - a. Fluoroscopy;
 - b. Assessment and evaluation of the physiological and psychological responsiveness of individuals undergoing radiologic procedures;



- c. Evaluation of image quality, making initial image observations and communicating observations to the supervising radiologist; and
 - d. Administration of contrast media or other medications prescribed by the supervising radiologist.
- C. A radiologist assistant shall not interpret images, make diagnoses, or prescribe medications or therapies.

R9-16-617. Application for Initial Certification as a Radiologist Assistant

- A. Except as provided in subsection (B), an applicant for initial certification as a radiologist assistant shall submit an application packet to the Department that includes:
- 1. The information and documents required in R9-16-619;
 - 2. Either:
 - a. The applicant's current ARRT or CBRPA certification as a radiologist assistant; or
 - b. Documentation of:
 - i. Completing a baccalaureate degree or post-baccalaureate certificate from an accredited educational institution that encompasses a radiologist assistant curriculum that includes a radiologist-directed clinical preceptorship, and
 - ii. Having a passing score on an ARRT or a CBRPA examination for radiologist assistants; and
 - 3. The applicable fee in R9-16-623.
- B. If an applicant for initial certification as a radiologist assistant may be eligible for certification under A.R.S. § 32-4302(A), the applicant shall submit an application packet to the Department that includes:
- 1. The information and documentation required in R9-16-619;
 - 2. Documentation of the license or certification as a radiologist assistant issued to the applicant by each state in which the applicant holds the license or certification;
 - 3. A statement, signed and dated by the applicant, attesting that the applicant:
 - a. Has been licensed or certified as a radiologist assistant in another state for at least one year;
 - b. Has met minimum education requirements and, if applicable, work experience and clinical supervision requirements, according to A.R.S. § 32-4302(A)(3);
 - c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and
 - d. Does not have a complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct; and
 - 4. The applicable fee in R9-16-623.
- C. The Department shall approve or deny an individual's application for initial certification as a radiologist assistant according to R9-16-621.

R9-16-618. Special Permits

- A. An applicant for a special permit under A.R.S. § 32-2814(B) shall submit an application packet to the Department containing:
- 1. The information and documents required in R9-16-619;
 - 2. An attestation, in a Department-provided format, from the health care institution in which the applicant proposes to practice:
 - a. Stating that the requesting health care institution is located in an Arizona medically underserved area, as defined in A.A.C. R9-15-101(4), or a health professional shortage area, as defined in A.A.C. R9-15-101(25);
 - b. Verifying that the health care institution developed and is implementing a program of continuing education for the applicant to protect the health and safety of individuals undergoing radiologic procedures; and
 - c. Signed and dated by the health care institution's administrator or designee; and
 - 3. A letter signed by the health care institution's administrator or designee that provides justification for the issuance of a special permit.
- B. The Department shall approve or deny an application for a special permit according to R9-16-621.
- C. A special permit is valid for no more than one year, but may be renewed as provided in subsection (A) if the circumstances justifying the issuance of a special permit have not changed.

R9-16-619. Application Information

An applicant for certification shall submit to the Department:

- 1. The following information in a Department-provided format:
 - a. The applicant's name;
 - b. The applicant's residential address and, if different, mailing address;
 - c. The applicant's telephone number;
 - d. The applicant's e-mail address;
 - e. The applicant's Social Security number, as required under A.R.S. §§ 25-320 and 25-502;
 - f. The applicant's date of birth;
 - g. The applicant's current employment in the radiation technology field, if applicable, including:
 - i. The employer's name,
 - ii. The applicant's position,
 - iii. Dates of employment,
 - iv. The address of the employer,
 - v. The supervisor's name,
 - vi. The supervisor's email address, and
 - vii. The supervisor's telephone number;
 - h. The applicant's educational history related to radiation technology, including:
 - i. The name and address of each educational institution,



- ii. The degree or certification received, and
 - iii. The applicant's date of graduation;
 - i. The type of certificate being applied for;
 - j. Whether the applicant has ever been convicted of a felony or a misdemeanor in this or another state;
 - k. If the applicant has been convicted of a felony or a misdemeanor:
 - i. The date of the conviction,
 - ii. The state or jurisdiction of the conviction,
 - iii. An explanation of the crime of which the applicant was convicted, and
 - iv. The disposition of the case;
 - l. Whether the applicant holds other professional licenses or certifications and, if so:
 - i. The professional license or certification, and
 - ii. The state in which the professional license or certification was issued;
 - m. Whether the applicant has had a professional license or certificate suspended, revoked, or had disciplinary action taken against the professional license or certificate;
 - n. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-621;
 - o. An attestation that the information submitted as part of an application packet is true and accurate; and
 - p. The applicant's signature and date of signing;
2. If the applicant has had a professional license or certificate suspended, revoked, or had disciplinary action taken against the professional license or certificate within the previous five years, documentation that includes:
- a. The date of the disciplinary action, revocation, or suspension;
 - b. The state or nationally accredited certifying body that issued the disciplinary action, revocation, or suspension; and
 - c. An explanation of the disciplinary action, revocation, or suspension;
3. If the applicant is currently ineligible for licensing or certification in any state because of a license revocation or suspension, documentation that includes:
- a. The date of the ineligibility for licensing or certification,
 - b. The state or jurisdiction of the ineligibility for licensing or certification, and
 - c. An explanation of the ineligibility for licensing or certification; and
4. Documentation for the applicant that complies with A.R.S. § 41-1080.

R9-16-620. Renewal of Certification

- A.** Certifications issued under R9-16-607, R9-16-609, R9-16-612, R9-16-615, and R9-16-617 are valid for two years after issuance, unless revoked.
- B.** A certificate holder may apply to renew a certification:
- 1. Within 90 days before the expiration date of the certificate holder's current certification;
 - 2. Within the 30-day period after the expiration date of the certificate holder's certification, if the certificate holder pays the late renewal penalty fee in R9-16-623; or
 - 3. Within the extension time period granted under A.R.S. § 32-4301.
- C.** An applicant for renewal of a certification shall submit to the Department an application packet, including:
- 1. The following in a Department-provided format:
 - a. The applicant's name, address, telephone number, email address, date of birth, and Social Security number;
 - b. The applicant's current certification number and type;
 - c. The applicant's current employment in the radiation technology field, if applicable, including:
 - i. The employer's name,
 - ii. The applicant's position,
 - iii. Dates of employment,
 - iv. The address of the employer,
 - v. The supervisor's name,
 - vi. The supervisor's email address, and
 - vii. The supervisor's telephone number;
 - d. Whether the applicant has, within the two years before the date of the application, had:
 - i. A certificate issued under this Article suspended or revoked; or
 - ii. A professional license or certificate revoked by another state, jurisdiction, or nationally recognized accreditation body;
 - e. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-621;
 - f. Attestation that all the information submitted as part of the application packet is true and accurate; and
 - g. The applicant's signature and date of signature;
 - 2. Either:
 - a. An attestation that the applicant completed continuing education required under A.R.S. § 32-2815(D) and that documentation of completion is available upon request, signed and dated by the applicant; or
 - b. A copy of the applicant's current certification from a nationally recognized accreditation body; and
 - 3. The applicable renewal fee and, if applicable, the late renewal penalty fee required in R9-16-623.
- D.** The Department shall approve or deny an application for recertification according to R9-16-621.

R9-16-621. Review Time-frames

- A.** For each type of certificate or permit issued by the Department under this Article, Table 6.1 specifies the overall time-frame described in A.R.S. § 41-1072(2).
- 1. An applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame.
 - 2. The extension of the substantive review time-frame and overall time-frame may not exceed 25% of the overall time-frame.



- B.** For each type of certificate or permit issued by the Department under this Article, Table 6.1 specifies the administrative completeness review time-frame described in A.R.S. § 41-1072(1).
 - 1. The administrative completeness review time-frame begins on the date the Department receives an application packet required in this Article.
 - 2. Except as provided in subsection (B)(3), the Department shall provide written notice of administrative completeness or a notice of deficiencies to an applicant within the administrative completeness review time-frame.
 - a. If an application packet is not complete, the notice of deficiencies shall list each deficiency and the information or documentation needed to complete the application packet.
 - b. A notice of deficiencies suspends the administrative completeness review time-frame and the overall time-frame from the date of the notice until the date the Department receives the missing information or documentation.
 - c. If the applicant does not submit to the Department all the information or documentation listed in the notice of deficiencies within 30 calendar days after the date of the notice of deficiencies, the Department shall consider the application packet withdrawn.
 - 3. If the Department issues a certificate during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.
- C.** For each type of certificate or permit issued by the Department under this Article, Table 6.1 specifies the substantive review time-frame described in A.R.S. § 41-1072(3), which begins on the date the Department sends a written notice of administrative completeness.
 - 1. Within the substantive review time-frame, the Department shall provide written notice to the applicant that the Department approved or denied the application.
 - 2. During the substantive review time-frame:
 - a. The Department may make one comprehensive written request for additional information or documentation; and
 - b. If the Department and the applicant agree in writing, the Department may make supplemental requests for additional information or documentation.
 - 3. A comprehensive written request or a supplemental request for additional information or documentation suspends the substantive review time-frame and the overall time-frame from the date of the request until the date the Department receives all the information or documentation requested.
 - 4. If the applicant does not submit to the Department all the information or documentation listed in a comprehensive written request or supplemental request for additional information or documentation within 30 calendar days after the date of the request, the Department shall deny the certificate or permit.
- D.** An applicant who is denied a certificate or permit may appeal the denial according to A.R.S. Title 41, Chapter 6, Article 10.

Table 6.1. Time-frames

<u>Type of Application</u>	<u>Administrative Completeness Review Time-frame (in Calendar Days)</u>	<u>Substantive Review Time-frame (in Calendar Days)</u>	<u>Overall Time-frame (in Calendar Days)</u>
<u>Application for Examination</u>	<u>30</u>	<u>30</u>	<u>60</u>
<u>Initial Certificate</u>	<u>30</u>	<u>30</u>	<u>60</u>
<u>Renewal Certificate</u>	<u>30</u>	<u>30</u>	<u>60</u>
<u>Student Mammography Permit</u>	<u>30</u>	<u>30</u>	<u>60</u>
<u>Computed Tomography Preceptorship Certificate or Computed Tomography Temporary Certificate</u>	<u>30</u>	<u>30</u>	<u>60</u>
<u>Special Permit</u>	<u>30</u>	<u>30</u>	<u>60</u>
<u>School Approval</u>	<u>60</u>	<u>60</u>	<u>120</u>

R9-16-622. Changes Affecting a Certificate or Certificate Holder: Request for a Duplicate Certificate

- A.** A certificate holder shall notify the Department in writing, within 30 calendar days after the effective date of a change in:
 - 1. The certificate holder’s residential address, mailing address, or e-mail address, including the new residential address, mailing address, or e-mail address;
 - 2. The certificate holder’s name, including a copy of the legal document establishing the certificate holder’s new name; or
 - 3. The certificate holder’s employer, including the name and address of the new employer.
- B.** A certificate holder may obtain a duplicate certificate by submitting to the Department:
 - 1. A written request for a duplicate certificate, in a Department-provided format, that includes:
 - a. The certificate holder’s name and address,
 - b. The certificate holder’s certificate number and expiration date, and
 - c. The certificate holder’s signature and date of signature; and
 - 2. The duplicate certificate fee in R9-16-623.
- C.** A certificate holder may submit to the Department, either as a separate written document or as part of the renewal application, a signed and dated request to transfer to inactive status or retirement status under A.R.S. § 32-2816(F).

R9-16-623. Fees

- A.** An applicant shall submit to the Department the following nonrefundable fees for:
 - 1. An initial application or renewal application for certification as a practical technologist in radiology, practical technologist in podiatry, or practical technologist in bone densitometry, \$60;



- 2. An initial application or renewal application for certification as a radiation technologist, nuclear medicine technologist, or radiation therapy technologist, \$60;
 - 3. An initial application or renewal application for certification as a mammographic technologist, \$20;
 - 4. An initial application or renewal application for certification as a computed tomography technologist, \$20;
 - 5. An initial application or renewal application for certification as a radiologist assistant, \$60; and
 - 6. A late renewal penalty fee according to A.R.S. § 32-2816(C), \$50.
- B.** The fee for a duplicate certificate is \$10.

R9-16-624. Enforcement

- A.** The Department may, as applicable:
- 1. Deny, revoke, or suspend a certificate or permit under A.R.S. § 36-2821;
 - 2. Request an injunction under A.R.S. § 36-2825; or
 - 3. Assess a civil money penalty under A.R.S. § 36-2821.
- B.** In determining which disciplinary action specified in subsection (A) is appropriate, the Department shall consider:
- 1. The type of violation.
 - 2. The severity of the violation.
 - 3. The danger to public health and safety.
 - 4. The number of violations.
 - 5. The number of individuals affected by the violations.
 - 6. The degree of harm to an individual.
 - 7. A pattern of noncompliance, and
 - 8. Any mitigating or aggravating circumstances.
- C.** A certificate holder or permittee may appeal a disciplinary action taken by the Department according to A.R.S. Title 41, Chapter 6, Article 10.



NOTICES OF EXEMPT RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Exempt Rulemaking.

It is not uncommon for an agency to be exempt from all steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act (APA) or Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10.

An agency's exemption is either written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters; or a court has

determined that an agency, board or commission is exempt from the rulemaking process.

The Office makes a distinction between certain exemptions as provided in these laws, on a case by case basis, as determined by an agency. Other rule exemption types are published elsewhere in the *Register*.

Notices of Exempt Rulemaking as published here were made with no special conditions or restrictions; no public input; no public hearing; and no filing of a Proposed Exempt Rulemaking.

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

[R19-191]

PREAMBLE

<u>1. Article, Part or Sections Affected (as applicable)</u>	<u>Rulemaking Action</u>
R9-17-101	Amend
R9-17-102	Amend
R9-17-103	Amend
R9-17-107	Amend
Table 1.1	Amend
R9-17-108	Amend
R9-17-109	Amend
R9-17-205	Amend
R9-17-308	Amend
R9-17-310	Amend
R9-17-316	Amend
R9-17-318	Amend
R9-17-322	Amend
R9-17-323	Amend
Article 4	New Article
R9-17-401	New Section
R9-17-402	New Section
R9-17-403	New Section
R9-17-404	New Section
R9-17-405	New Section
R9-17-406	New Section
R9-17-407	New Section
R9-17-408	New Section
R9-17-409	New Section
R9-17-410	New Section
R9-17-411	New Section

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. §§ 36-132(A)(1) and 36-136(G)
 Implementing statutes: A.R.S. §§ 36-2803, 36-2804.01, 36-2804.06, 36-2804.07, 36-2806, and 36-2819
 Statute or session law authorizing the exemption: Laws 2019, Ch. 318, § 15

3. The effective date of the rule and the agency's reason it selected the effective date:

August 27, 2019
 This is the date that SB 1494 is effective as Laws 2019, Ch. 318.

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: 25 A.A.R. 2057, August 9, 2019



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

Name: Thomas Salow, Branch Chief
 Address: Department of Health Services
 Public Health Licensing Services
 150 N. 18th Ave., Suite 400
 Phoenix, AZ 85007
 Telephone: (602) 364-1935
 Fax: (602) 364-3808
 E-mail: Thomas.Salow@azdhs.gov
 or
 Name: Robert Lane, Office Chief
 Address: Department of Health Services
 Office of Administrative Counsel and Rules
 150 N. 18th Ave., Suite 200
 Phoenix, AZ 85007
 Telephone: (602) 542-1020
 Fax: (602) 364-1150
 E-mail: Robert.Lane@azdhs.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:

Arizona Revised Statutes (A.R.S.) Chapter 28.1, as amended by Laws 2019, Ch. 318, requires the Arizona Department of Health Services (Department) to adopt rules to certify and regulate independent third-party laboratories (laboratories) and independent third party laboratory agents (laboratory agents) that analyze cultivated marijuana. The rules in A.A.C. Title 9, Chapter 17, specify the requirements for the Medical Marijuana Program, and the Department is revising these rules to comply with Laws 2019, Ch. 318. This rulemaking includes the following: establishing application and renewal fees for laboratories and laboratory agents; adopting rules to certify and regulate laboratories; adopting rules to register and regulate laboratory agents; codifying in rule the requirement that, beginning November 1, 2020, nonprofit medical marijuana dispensaries, before selling or dispensing marijuana, test the marijuana using a Department-certified laboratory; and codifying in rule the change to the validity of registry identification cards and registration certificates from one year to two years after the date of issuance. These rules conform to format and style requirements of the Office of the Secretary of State.

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

None

8. A showing of good cause why the rule is necessary to promote a statewide interest if the 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 registry identification card for a qualifying patient or designated caregiver, issued according to A.R.S. § 36-2804.02, or for a dispensary agent or laboratory agent, issued according to A.R.S. § 36-2804.01, may be considered a general permit. A registration certificate for a medical marijuana dispensary, issued according to A.R.S. § 36-2804, or a registration certificate for a laboratory, issued according to A.R.S. § 36-2804.07, is specific to the certificate 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 competitive-ness 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:

None



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 1. GENERAL

- Section
- R9-17-101. Definitions
- R9-17-102. Fees
- R9-17-103. Application Submission
- R9-17-107. Time-frames
- Table 1.1. Time-frames
- R9-17-108. Expiration of a Registry Identification Card, ~~or a~~ Dispensary Registration Certificate, or Laboratory Registration Certificate
- R9-17-109. Notifications and Void Registry Identification Cards

ARTICLE 2. QUALIFYING PATIENTS AND DESIGNATED CAREGIVERS

- Section
- R9-17-205. Denial or Revocation of a Qualifying Patient’s or Designated Caregiver’s Registry Identification Card

ARTICLE 3. DISPENSARIES AND DISPENSARY AGENTS

- Section
- R9-17-308. Renewing a Dispensary Registration Certificate
- R9-17-310. Administration
- R9-17-316. Inventory Control System
- R9-17-318. Security
- R9-17-322. Denial or Revocation of a Dispensary Registration Certificate
- R9-17-323. Denial or Revocation of a Dispensary Agent’s Registry Identification Card

ARTICLE 4. LABORATORIES AND LABORATORY AGENTS

- Section
- R9-17-401. Owner
- R9-17-402. Applying for a Laboratory Registration Certificate
- R9-17-403. Renewing a Laboratory Registration Certificate
- R9-17-404. Administration
- R9-17-405. Submitting an Application for a Laboratory Agent Registry Identification Card
- R9-17-406. Submitting an Application to Renew a Laboratory Agent’s Registry Identification Card
- R9-17-407. Inventory Control System
- R9-17-408. Security
- R9-17-409. Physical Plant
- R9-17-410. Denial or Revocation of a Laboratory Registration Certificate
- R9-17-411. Denial or Revocation of a Laboratory Agent’s Registry Identification Card

ARTICLE 1. GENERAL

R9-17-101. Definitions

In addition to the definitions in A.R.S. § 36-2801, the following definitions apply in this Chapter unless otherwise stated:

- 1. “Accreditation” means approval by the:
 - a. American Association of Laboratory Accreditation.
 - b. Perry Johnson Laboratory Accreditation.
 - c. ANSI National Accreditation Board.
 - d. International Accreditation Services, or
 - e. NELAC Institute.
- ~~1-2.~~ “Acquire” means to obtain through any type of transaction and from any source.
- ~~2-3.~~ “Activities of daily living” means ambulating, bathing, dressing, grooming, eating, toileting, and getting in and out of bed.
- ~~3-4.~~ “Amend” means adding or deleting information on an individual’s registry identification card that affects the individual’s ability to perform or delegate a specific act or function.



- 4-5. “Batch” means a specific lot of medical marijuana grown from one or more seeds or cuttings that are planted and harvested at the same time.
- 5-6. “Batch number” means a unique numeric or alphanumeric identifier assigned to a batch by a dispensary when the batch is planted.
- 6-7. “Calendar day” means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
- 7-8. “CHAA” means a Community Health Analysis Area, a geographic area based on population, established by the Department for use by public health programs.
- 8-9. “Change” means adding or deleting information on an individual’s registry identification card that does not substantively affect the individual’s ability to perform or delegate a specific act or function.
- 9-10. “Commercial device” means the same as in A.R.S. § 41-2051.
- 10-11. “Cultivation site” means the one additional location where marijuana may be cultivated, infused, or prepared for sale by and for a dispensary.
- 11-12. “Current photograph” means an image of an individual, taken no more than 60 calendar days before the submission of the individual’s application, in a Department-approved electronic format capable of producing an image that:
 - a. Has a resolution of at least 600 x 600 pixels but not more than 1200 x 1200 pixels;
 - b. Is 2 inches by 2 inches in size;
 - c. Is in natural color;
 - d. Is a front view of the individual’s full face, without a hat or headgear that obscures the hair or hairline;
 - e. Has a plain white or off-white background; and
 - f. Has between 1 and 1 3/8 inches from the bottom of the chin to the top of the head.
- 12-13. “Denial” means the Department’s final decision not to issue a registry identification card, a dispensary registration certificate, a laboratory registration certificate, or an approval of a change of dispensary or a dispensary’s cultivation site location, to an applicant because the applicant or the application does not comply with the applicable requirements in A.R.S. Title 36, Chapter 28.1 or this Chapter.
- 13-14. “Dispensary” means the same as “nonprofit medical marijuana dispensary” as defined in A.R.S. § 36-2801.
- 14-15. “Dispensary agent” means the same as “nonprofit medical marijuana dispensary agent” as defined in A.R.S. § 36-2801.
- 15-16. “Edible food product” means a substance, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.
- 16-17. “Enclosed area” when used in conjunction with “enclosed, locked facility” means outdoor space surrounded by solid, 10-foot walls, constructed of metal, concrete, or stone that prevent any viewing of the marijuana plants, and a 1-inch thick metal gate.
- 17-18. “Entity” means a “person” as defined in A.R.S. § 1-215.
- 18-19. “Generally accepted accounting principles” means the set of financial reporting standards established by the Financial Accounting Standards Board, the Governmental Accounting Standards Board, or another specialized body dealing with accounting and auditing matters.
- 19-20. “In-state financial institution” means the same as in A.R.S. § 6-101.
- 21. “Laboratory” means the same as “independent third-party laboratory” as defined in A.R.S. § 36-2801.
- 22. “Laboratory agent” means the same as “independent third-party laboratory agent” as defined in A.R.S. § 36-2801.
- 20-23. “Legal guardian” means an adult who is responsible for a minor:
 - a. Through acceptance of guardianship of the minor through a testamentary appointment or an appointment by a court pursuant to A.R.S. Title 14, Chapter 5, Article 2; or
 - b. As a “custodian” as defined in A.R.S. § 8-201.
- 21-24. “Medical record” means the same as:
 - a. “Adequate records” as defined in A.R.S. § 32-1401,
 - b. “Adequate medical records” as defined in A.R.S. § 32-1501,
 - c. “Adequate records” as defined in A.R.S. § 32-1800, or
 - d. “Adequate records” as defined in A.R.S. § 32-2901.
- 22-25. “Out-of-state financial institution” means the same as in A.R.S. § 6-101.
- 23-26. “Private school” means the same as in A.R.S. § 15-101.
- 24-27. “Public place”:
 - a. Means any location, facility, or venue that is not intended for the regular exclusive use of an individual or a specific group of individuals;
 - b. Includes, but not is limited to:
 - i. Airports;
 - ii. Banks;
 - iii. Bars;
 - iv. Child care facilities;



- v. Child care group homes during hours of operation;
 - vi. Common areas of apartment buildings, condominiums, or other multifamily housing facilities;
 - vii. Educational facilities;
 - viii. Entertainment facilities or venues;
 - ix. Health care institutions, except as provided in subsection (24)(c);
 - x. Hotel and motel common areas;
 - xi. Laundromats;
 - xii. Libraries;
 - xiii. Office buildings;
 - xiv. Parking lots;
 - xv. Parks;
 - xvi. Public transportation facilities;
 - xvii. Reception areas;
 - xviii. Restaurants;
 - xix. Retail food production or marketing establishments;
 - xx. Retail service establishments;
 - xxi. Retail stores;
 - xxii. Shopping malls;
 - xxiii. Sidewalks;
 - xxiv. Sports facilities;
 - xxv. Theaters; and
 - xxvi. Waiting rooms; and
- c. Does not include:
- i. Nursing care institutions as defined in A.R.S. § 36-401,
 - ii. Hospices as defined in A.R.S. § 36-401,
 - iii. Assisted living centers as defined in A.R.S. § 36-401,
 - iv. Assisted living homes as defined in A.R.S. § 36-401,
 - v. Adult day health care facilities as defined in A.R.S. § 36-401,
 - vi. Adult foster care homes as defined in A.R.S. § 36-401, or
 - vii. Private residences.

~~25-28.~~ “Public school” means the same as “school” as defined in A.R.S. § 15-101.

~~26-29.~~ “Registry identification number” means the random 20-digit alphanumeric identifier generated by the Department, containing at least four numbers and four letters, issued by the Department to a qualifying patient, designated caregiver, dispensary, ~~or~~ dispensary agent, laboratory, or laboratory agent.

~~27-30.~~ “Revocation” means the Department’s final decision that an individual’s registry identification card, ~~or~~ a dispensary registration certificate, or a laboratory registration certificate is rescinded because the individual, ~~or~~ the dispensary, or the laboratory does not comply with the applicable requirements in A.R.S. Title 36, Chapter 28.1 or this Chapter.

~~28-31.~~ “Working day” means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday or a statewide furlough day.

R9-17-102. Fees

- A. An applicant submitting an application to the Department shall submit the following nonrefundable fees:
1. Except as provided in R9-17-303(D), for registration of a dispensary, \$5,000;
 2. To renew the registration of a dispensary, \$1,000;
 3. To change the location of a dispensary, \$2,500;
 4. To change the location of a dispensary’s cultivation site or add a cultivation site, \$2,500;
 5. For a registry identification card for a:
 - a. Qualifying patient, except as provided in subsection (B), \$150;
 - b. Designated caregiver, \$200; ~~and~~
 - c. Dispensary agent, \$500; ~~and~~
 - d. Laboratory agent, \$500;
 6. For renewing a registry identification card for a:
 - a. Qualifying patient, except as provided in subsection (B), \$150;
 - b. Designated caregiver, \$200; ~~and~~
 - c. Dispensary agent, \$500; ~~and~~
 - d. Laboratory agent, \$500;
 7. For amending or changing a registry identification card, \$10; ~~and~~
 8. For requesting a replacement registry identification card, \$10; ~~and~~



- 9. For registration of a laboratory, \$5,000; and
- 10. To renew the registration of a laboratory, \$1,000.

B. A qualifying patient may pay a reduced fee of \$75 if the qualifying patient submits, with the qualifying patient’s application for a registry identification card or the qualifying patient’s application to renew the qualifying patient’s registry identification card, a copy of an eligibility notice or electronic benefits transfer card demonstrating current participation in the U.S. Department of Agriculture, Food and Nutrition Services, Supplemental Nutrition Assistance Program.

R9-17-103. Application Submission

- A. An applicant submitting an application for a registry identification card or to amend, change, or replace a registry identification card for a qualifying patient, designated caregiver, ~~or dispensary agent,~~ or laboratory agent, shall submit the application electronically in a Department-provided format.
- B. A residence address or mailing address submitted for a qualifying patient or designated caregiver as part of an application for a registry identification card is located in Arizona.
- C. A mailing address submitted for a principal officer or board member as part of a dispensary certificate registration application or as part of an application for a dispensary agent registration identification card is located in Arizona.
- D. A mailing address submitted for an owner as a part of a laboratory registration certificate application or as part of an application for a laboratory agent registration identification card is located in Arizona.

R9-17-107. Time-frames

- A. Within the administrative completeness review time-frame for each type of approval in Table 1.1, the Department shall:
 - 1. Issue a registry identification card ~~or,~~ dispensary registration certificate, or laboratory registration certificate;
 - 2. Provide a notice of administrative completeness to an applicant; or
 - 3. Provide a notice of deficiencies to an applicant, including a list of the information or documents needed to complete the application.
- B. An application for approval to operate a dispensary is not complete until the date the applicant states on a written notice provided to the Department that the dispensary is ready for an inspection by the Department.
- C. If the Department provides a notice of deficiencies to an applicant:
 - 1. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice of deficiencies until the date the Department receives the missing information or documents from the applicant;
 - 2. ~~If the applicant does not submit the missing information or documents to the Department within the time frame in Table 1.1, the~~ The Department shall consider the application withdrawn if the applicant does not submit the missing information or documents to the Department within the time-frame in Table 1.1; and
 - 3. If the applicant submits the missing information or documents to the Department within the time-frame in Table 1.1, the substantive review time-frame begins on the date the Department receives the missing information or documents.
- D. Within the substantive review time-frame for each type of approval in Table 1.1, the Department:
 - 1. Shall issue or deny a registry identification card ~~or,~~ dispensary registration certificate, or laboratory registration certificate;
 - 2. May complete an inspection that may require more than one visit to a dispensary and, if applicable, the dispensary’s cultivation site; ~~and~~
 - 3. May complete an inspection that may require more than one visit to a laboratory; and
 - ~~3.4.~~ May make one written comprehensive request for more information, unless the Department and the applicant agree in writing to allow the Department to submit supplemental requests for information.
- E. If the Department issues a written comprehensive request or a supplemental request for information:
 - 1. The substantive review time-frame and the overall time-frame are suspended from the date of the written comprehensive request or the supplemental request for information until the date the Department receives all of the information requested, and
 - 2. The applicant shall submit to the Department all of the information and documents listed in the written comprehensive request or supplemental request for information within 10 working days after the date of the comprehensive written request or supplemental request for information.
- F. If an applicant for an initial dispensary registration certificate is allocated a dispensary registration certificate as provided in R9-17-303, the Department shall provide a written notice to the applicant of the allocation of the dispensary registration certificate that contains the dispensary’s registry identification number.
 - 1. After the applicant receives the written notice of the allocation, the applicant shall submit to the Department for each principal officer or board member for whom fingerprints were submitted:
 - a. An application for a dispensary agent registry identification card that includes:
 - i. The principal officer’s or board member’s first name; middle initial, if applicable; last name; and suffix, if applicable;
 - ii. The principal officer’s or board member’s residence address and mailing address;
 - iii. The county where the principal officer or board member resides;
 - iv. The principal officer’s or board member’s date of birth;
 - v. The identifying number on the applicable card or document in subsection (F)(1)(b)(i) through (v);
 - vi. The name and registry identification number of the dispensary;
 - vii. One of the following:
 - (1) A statement that the principal officer or board member does not currently hold a valid registry identification card, or
 - (2) The assigned registry identification number for each valid registry identification card currently held by the princi-



- pal officer or board member;
 - viii. A statement signed by the principal officer or board member pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
 - ix. An attestation that the information provided in and with the application is true and correct; and
 - x. The signature of the principal officer or board member and the date the principal officer or board member signed;
- b. A copy the principal officer's or board member's:
- i. Arizona driver's license issued on or after October 1, 1996;
 - ii. Arizona identification card issued on or after October 1, 1996;
 - iii. Arizona registry identification card;
 - iv. Photograph page in the principal officer's or board member's U.S. passport; or
 - v. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the principal officer or board member:
 - (1) Birth certificate verifying U.S. citizenship,
 - (2) U. S. Certificate of Naturalization, or
 - (3) U. S. Certificate of Citizenship;
- c. A current photograph of the principal officer or board member; and
- d. The applicable fee in R9-17-102 for applying for a dispensary agent registry identification card.
2. After receipt of the information and documents in subsection (F)(1), the Department shall review the information and documents.
- a. If the information and documents for at least one of the principal officers or board members complies with the A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall issue:
 - i. A dispensary agent registry identification card to any principal officer or board member whose dispensary agent registry identification card application complies with A.R.S. Title 36, Chapter 28.1 and this Chapter; and
 - ii. The dispensary registration certificate.
 - b. If the information and documents for a dispensary agent registry identification card application for any principal officer or board member does not comply with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall deny the dispensary agent registry identification card application and provide notice to the principal officer or board member and to the dispensary that includes:
 - i. The specific reasons for the denial; and
 - ii. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.
- G. The Department shall issue:
- 1. A registry identification card ~~or~~ an approval to operate a dispensary, or a laboratory registration certificate, as applicable, if the Department determines that the applicant complies with A.R.S. Title 36, Chapter 28.1 and this Chapter;
 - 2. For an applicant for a registry identification card, a denial that includes the reason for the denial and the process for requesting judicial review if:
 - a. The Department determines that the applicant does not comply with A.R.S. Title 36, Chapter 28.1 and this Chapter; or
 - b. The applicant does not submit all of the information and documents listed in the written comprehensive request or supplemental request for information within 10 working days after the date of the comprehensive written request or supplemental request for information;
 - 3. For an applicant for a dispensary registration certificate, if the Department determines that the dispensary registration certificate application complies with A.R.S. Title 36, Chapter 28.1 and this Chapter but the Department is not issuing a dispensary registration certificate to the applicant because all available dispensary registration certificates have been allocated according to the criteria and processes in R9-17-303, written notice that:
 - a. The dispensary registration certificate application complies with A.R.S. Title 36, Chapter 28.1 and this Chapter;
 - b. The applicant was not allocated a dispensary registration certificate according to the criteria and processes in R9-17-303; and
 - c. The written notice is not a denial and is not considered a final decision of the Department subject to administrative review; or
 - 4. For an applicant for a dispensary registration certificate or a laboratory registration certificate, a denial that includes the reason for the denial and the process for administrative review if:
 - a. The Department determines that a dispensary registration certificate application or the laboratory registration certificate application does not comply with A.R.S. Title 36, Chapter 28.1 or this Chapter; or
 - b. The applicant does not submit all of the information and documents listed in the written comprehensive request or supplemental request for information within 10 working days after the date of the comprehensive written request or supplemental request for information.



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)
Changing a registry identification card	§ 36-2808	10	10	5	5
Requesting a replacement registry identification card	§ 36-2804.06	5	5	2	3
Applying for a registry identification card for a qualifying patient or a designated caregiver	§ 36-2804.02(A)	15	30	5	10
Amending a registry identification card for a qualifying patient or a designated caregiver	§ 36-2808	10	10	5	5
Renewing a qualifying patient's or designated caregiver's registry identification card	§§ 36-2804.02(A) and 36-2804.06	15	15	5	10
Applying for a dispensary registration certificate	§ 36-2804	30	10	5	25
Applying for approval to operate a dispensary	R9-17-305	45		15	30
Changing a dispensary location or adding or changing a dispensary's cultivation site location	§ 36-2804 and R9-17-307	90	90	30	60
Renewing a dispensary registration certificate	§ 36-2804.06	15	15	5	10
Applying for a dispensary agent registry identification card	§§ 36-2804.01 and 36-2804.03	15	30	5	10
Renewing a dispensary agent's registry identification card	§ 36-2804.06	15	15	5	10
<u>Applying for a laboratory registration certificate</u>	<u>§ 36-2804.07</u>	<u>90</u>	<u>90</u>	<u>30</u>	<u>60</u>
<u>Renewing a laboratory registration certificate</u>	<u>§ 36-2804.06</u>	<u>15</u>	<u>15</u>	<u>5</u>	<u>10</u>
<u>Applying for a laboratory agent registry identification card</u>	<u>§ 36-2804.01</u>	<u>15</u>	<u>30</u>	<u>5</u>	<u>10</u>
<u>Renewing a laboratory agent's registry identification card</u>	<u>§ 36-2804.06</u>	<u>15</u>	<u>15</u>	<u>5</u>	<u>10</u>

R9-17-108. Expiration of a Registry Identification Card, ~~or a~~ Dispensary Registration Certificate, ~~or~~ Laboratory Registration Certificate

- A. Except as provided in subsection (B), a registry identification card issued to a qualifying patient, designated caregiver, ~~or~~ dispensary agent, ~~or~~ laboratory agent is valid for ~~one year~~ two years after the date of issuance.
- B. If the Department issues a registry identification card to a qualifying patient, designated caregiver, ~~or~~ dispensary agent, ~~or~~ laboratory agent based on a request for a replacement registry identification card or an application to change or amend a registry identification card, the replacement, changed, or amended registry identification card shall have the same expiration date as the registry identification card being replaced, changed, or amended.
- C. Except as provided in subsection (D), a dispensary registration certificate is valid for ~~one year~~ two years after the date of issuance.



- D. If the Department issues an amended dispensary registration certificate based on a change of location or an addition of a cultivation site, the dispensary registration certificate shall have the same expiration date as the dispensary registration certificate previously held by the dispensary.
- E. An approval to operate a dispensary shall have the same expiration date as the dispensary registration certificate associated with the approval to operate the dispensary.
- F. A laboratory registration certificate is valid for two years after the original date of issuance.

R9-17-109. Notifications and Void Registry Identification Cards

- A. The Department shall provide written notice that a cardholder's registry identification card is void and no longer valid under A.R.S. Title 36, Chapter 28.1 and this Chapter to a:
 - 1. Qualifying patient when the Department receives notification from:
 - a. The qualifying patient that the qualifying patient no longer has a debilitating medical condition, or
 - b. The physician who provided the qualifying patient's written certification that the:
 - i. Qualifying patient no longer has a debilitating medical condition,
 - ii. Physician no longer believes that the qualifying patient would receive therapeutic or palliative benefit from the medical use of marijuana, or
 - iii. Physician believes that the qualifying patient is not using the medical marijuana as recommended;
 - 2. Designated caregiver when:
 - a. The Department receives notification from the designated caregiver's qualifying patient that the designated caregiver no longer assists the qualifying patient with the medical use of marijuana, or
 - b. The registry identification card for the qualifying patient that is listed on the designated caregiver's registry identification card is no longer valid; ~~or~~
 - 3. Dispensary agent when:
 - a. The Department receives the written notification, required in R9-17-310(A)(9), that the dispensary agent:
 - i. No longer serves as a principal officer, board member, or medical director for the dispensary;
 - ii. Is no longer employed by the dispensary; or
 - iii. No longer provides volunteer service at or on behalf of the dispensary; or
 - b. The registration certificate for the dispensary that is listed on the dispensary agent's registry identification card is no longer valid; or
 - 4. Laboratory agent when:
 - a. The Department receives the written notification, required in R9-17-404(10), that the laboratory agent no longer:
 - i. Serves as an owner for the laboratory,
 - ii. Is employed by the laboratory, or
 - iii. Provides volunteer service at or on behalf of the laboratory; or
 - b. The registration certificate for the laboratory that is listed on the laboratory agent's registration identification card is no longer valid.
- B. The Department shall void a qualifying patient's registry identification card:
 - 1. When the Department receives notification that the qualifying patient is deceased; or
 - 2. For a qualifying patient under 18 years of age, when the qualifying patient's designated caregiver's registry identification card is revoked.
- C. The written notice required in subsection (A) that a registry identification card is void is not a revocation and is not considered a final decision of the Department subject to judicial review.

ARTICLE 2. QUALIFYING PATIENTS AND DESIGNATED CAREGIVERS

R9-17-205. Denial or Revocation of a Qualifying Patient's or Designated Caregiver's Registry Identification Card

- A. The Department shall deny a qualifying patient's application for or renewal of the qualifying patient's registry identification card if the qualifying patient does not have a debilitating medical condition.
- B. The Department shall deny a designated caregiver's application for or renewal of the designated caregiver's registry identification card if the designated caregiver does not meet the definition of "designated caregiver" in A.R.S. § 36-2801.
- C. The Department may deny a qualifying patient's or designated caregiver's application for or renewal of the qualifying patient's or designated caregiver's registry identification card if the qualifying patient or designated caregiver:
 - 1. Previously had a registry identification card revoked for not complying with A.R.S. Title 36, Chapter 28.1 or this Chapter; or
 - 2. Provides false or misleading information to the Department.
- D. The Department shall revoke a qualifying patient's or designated caregiver's registry identification card if the qualifying patient or designated caregiver ~~provides medical marijuana to an individual who is not authorized to possess medical marijuana under A.R.S. Title 36, Chapter 28.1~~ diverts medical marijuana to an individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1.
- E. The Department shall revoke a designated caregiver's registry identification card if the designated caregiver has been convicted of an excluded felony offense.
- F. The Department may revoke a qualifying patient's or designated caregiver's registry identification card if the qualifying patient or designated caregiver knowingly violates A.R.S. Title 36, Chapter 28.1 or this Chapter.
- G. If the Department denies or revokes a qualifying patient's registry identification card, the Department shall provide written notice to the qualifying patient that includes:
 - 1. The specific reason or reasons for the denial or revocation; and
 - 2. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.
- H. If the Department denies or revokes a qualifying patient's designated caregiver's registry identification card, the Department shall provide written notice to the qualifying patient and the designated caregiver that includes:



1. The specific reason or reasons for the denial or revocation; and
2. The process for requesting a judicial review of the Department’s decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

ARTICLE 3. DISPENSARIES AND DISPENSARY AGENTS

R9-17-308. Renewing a Dispensary Registration Certificate

- A. An entity with a dispensary registration certificate that has not submitted an application for approval to operate a dispensary to the Department at least 60 calendar days before the expiration date of the dispensary registration certificate or has not obtained an approval to operate a dispensary issued by the Department is prohibited from renewing the dispensary registration certificate.
- B. To renew a dispensary registration certificate, a dispensary that has an approval to operate a dispensary issued by the Department, shall submit to the Department, at least 30 calendar days before the expiration date of the dispensary’s current dispensary registration certificate, the following:
 1. An application in a Department-provided format that includes:
 - a. The legal name of the dispensary;
 - b. The registry identification number for the dispensary;
 - c. The physical address of the dispensary;
 - d. The name of the entity applying;
 - e. The name of the individual designated to submit dispensary agent registry identification card applications on behalf of the dispensary;
 - f. The name and license number of the dispensary’s medical director;
 - g. The dispensary’s hours of operation during which the dispensary is available to dispense medical marijuana to qualifying patients and designated caregivers;
 - h. The name, address, date of birth, and registry identification number of each:
 - i. Principal officer,
 - ii. Board member, and
 - iii. Dispensary agent;
 - i. For each principal officer or board member, whether the principal officer or board member:
 - i. Has served as a principal officer or board member for a dispensary that had the dispensary registration certificate revoked,
 - ii. Is a physician currently providing written certifications for qualifying patients,
 - iii. Is a law enforcement officer, or
 - iv. Is employed by or a contractor of the Department;
 - j. The dispensary’s Transaction Privilege Tax Number issued by the Arizona Department of Revenue;
 - k. Whether the dispensary agrees to allow the Department to submit supplemental requests for information;
 - l. An attestation that the information provided to the Department to renew the dispensary registration certificate is true and correct; and
 - m. The signature of the individual or individuals in R9-17-301(A) and the date the individual or individuals signed;
 2. If the application is for renewing a dispensary registration certificate that was initially issued within the previous 12 months, a copy of the dispensary’s approval to operate a dispensary issued by the Department;
 3. A copy of an annual financial statement for the previous ~~year~~ two years, or for the portion of the previous ~~year~~ two years the dispensary was operational, prepared according to generally accepted accounting principles;
 4. A report of an audit by an independent certified public accountant of the annual financial statement required in subsection (B)(3); and
 5. The applicable fee in R9-17-102 for applying to renew a dispensary registration certificate.

R9-17-310. Administration

- A. A dispensary shall:
 1. Ensure that the dispensary is operating and available to dispense medical marijuana to qualifying patients and designated caregivers at least 30 hours weekly between the hours of 7:00 a.m. and 10:00 p.m.;
 2. Develop, document, and implement policies and procedures regarding:
 - a. Job descriptions and employment contracts, including:
 - i. Personnel duties, authority, responsibilities, and qualifications;
 - ii. Personnel supervision;
 - iii. Training in and adherence to confidentiality requirements;
 - iv. Periodic performance evaluations; and
 - v. Disciplinary actions;
 - b. Business records, such as manual or computerized records of assets and liabilities, monetary transactions, journals, ledgers, and supporting documents, including agreements, checks, invoices, and vouchers;
 - c. Inventory control, including:
 - i. Tracking;
 - ii. Packaging;
 - iii. Accepting marijuana from qualifying patients and designated caregivers;
 - iv. Acquiring marijuana from other dispensaries; ~~and~~
 - v. Disposing of unusable marijuana, which may include submitting any unusable marijuana to a local law enforcement agency; and
 - vi. Submitting marijuana or marijuana products to a laboratory agent or laboratory for testing;
 - d. Qualifying patient records, including purchases, denials of sale, any delivery options, confidentiality, and retention; and
 - e. Patient education and support, including:



- i. Availability of different strains of marijuana and the purported effects of the different strains;
 - ii. Information about the purported effectiveness of various methods, forms, and routes of medical marijuana administration;
 - iii. Methods of tracking the effects on a qualifying patient of different strains and forms of marijuana; and
 - iv. Prohibition on the smoking of medical marijuana in public places;
 3. Maintain copies of the policies and procedures at the dispensary and provide copies to the Department for review upon request;
 4. Review dispensary policies and procedures at least once every 12 months from the issue date of the dispensary registration certificate and update as needed;
 5. Employ or contract with a medical director;
 6. Ensure that each dispensary agent has the dispensary agent's registry identification card in the dispensary agent's immediate possession when the dispensary agent is:
 - a. Working or providing volunteer services at the dispensary or the dispensary's cultivation site, or
 - b. Transporting marijuana for the dispensary;
 7. Ensure that a dispensary agent accompanies any individual other than another dispensary agent associated with the dispensary when the individual is present in the enclosed, locked facility where marijuana is cultivated by the dispensary;
 8. Not allow an individual who does not possess a dispensary agent registry identification card issued under the dispensary registration certificate to:
 - a. Serve as a principal officer or board member for the dispensary,
 - b. Serve as the medical director for the dispensary,
 - c. Be employed by the dispensary, or
 - d. Provide volunteer services at or on behalf of the dispensary;
 9. Provide written notice to the Department, including the date of the event, within 10 working days after the date, when a dispensary agent no longer:
 - a. Serves as a principal officer or board member for the dispensary,
 - b. Serves as the medical director for the dispensary,
 - c. Is employed by the dispensary, or
 - d. Provides volunteer services at or on behalf of the dispensary;
 10. Document and report any loss or theft of marijuana from the dispensary to the appropriate law enforcement agency;
 11. Maintain copies of any documentation required in this Chapter for at least 12 months after the date on the documentation and provide copies of the documentation to the Department for review upon request;
 12. Post the following information in a place that can be viewed by individuals entering the dispensary:
 - a. If applicable, the dispensary's approval to operate;
 - b. The dispensary's registration certificate;
 - c. The name of the dispensary's medical director and the medical director's license number on a sign at least 20 centimeters by 30 centimeters;
 - d. The hours of operation during which the dispensary will dispense medical marijuana to a qualifying patient or a designated caregiver; and
 - e. A sign in a Department-provided format that contains the following language:
 - i. "WARNING: There may be potential dangers to fetuses caused by smoking or ingesting marijuana while pregnant or to infants while breastfeeding," and
 - ii. "WARNING: Use of marijuana during pregnancy may result in a risk of being reported to the Department of Child Safety during pregnancy or at the birth of the child by persons who are required to report;"
 13. Not lend any part of the dispensary's income or property without receiving adequate security and a reasonable rate of interest;
 14. Not purchase property for more than adequate consideration in money or cash equivalent;
 15. Not pay compensation for salaries or other compensation for personal services that is in excess of a reasonable allowance;
 16. Not sell any part of the dispensary's property or equipment for less than adequate consideration in money or cash equivalent; and
 17. Not engage in any other transaction that results in a substantial diversion of the dispensary's income or property.
- B. If a dispensary cultivates marijuana, the dispensary shall cultivate the marijuana in an enclosed, locked facility.

R9-17-316. Inventory Control System

- A. A dispensary shall designate in writing a dispensary agent who has oversight of the dispensary's medical marijuana inventory control system.
- B. A dispensary shall only acquire marijuana from:
 1. The dispensary's cultivation site,
 2. Another dispensary or another dispensary's cultivation site,
 3. A qualifying patient authorized by the Department to cultivate marijuana, or
 4. A designated caregiver authorized by the Department to cultivate marijuana.
- C. A dispensary shall establish and implement an inventory control system for the dispensary's medical marijuana that documents:
 1. Each day's beginning inventory, acquisitions, harvests, sales, disbursements, submissions to a laboratory agent or laboratory for testing, testing results received, disposal of unusable marijuana, and ending inventory;
 2. For acquiring medical marijuana from a qualifying patient or designated caregiver:
 - a. A description of the medical marijuana acquired including the amount and strain,
 - b. The name and registry identification number of the qualifying patient or designated caregiver who provided the medical marijuana,
 - c. The name and registry identification number of the dispensary agent receiving the medical marijuana on behalf of the dispensary, and
 - d. The date of acquisition;



- 3. For acquiring medical marijuana from another dispensary:
 - a. A description of the medical marijuana acquired including the amount, strain, and batch number;
 - b. The name and registry identification number of the dispensary providing the medical marijuana;
 - c. The name and registry identification number of the dispensary agent providing the medical marijuana;
 - d. The name and registry identification number of the dispensary agent receiving the medical marijuana on behalf of the dispensary; and
 - e. The date of acquisition;
- 4. For each batch of marijuana cultivated:
 - a. The batch number;
 - b. Whether the batch originated from marijuana seeds or marijuana cuttings;
 - c. The origin and strain of the marijuana seeds or marijuana cuttings planted;
 - d. The number of marijuana seeds or marijuana cuttings planted;
 - e. The date the marijuana seeds or cuttings were planted;
 - f. A list of all chemical additives, including nonorganic pesticides, herbicides, and fertilizers used in the cultivation;
 - g. The number of plants grown to maturity;
 - h. Harvest information including:
 - i. Date of harvest,
 - ii. Final processed usable marijuana yield weight, and
 - iii. Name and registry identification number of the dispensary agent responsible for the harvest, and
 - i. The disposal of medical marijuana that is not usable marijuana including the:
 - i. Description of and reason for the marijuana being disposed of including, if applicable, the number of failed or other unusable plants;
 - ii. Date of disposal;
 - iii. Method of disposal; and
 - iv. Name and registry identification number of the dispensary agent responsible for the disposal;
- 5. For providing medical marijuana to another dispensary:
 - a. The amount, strain, and batch number of medical marijuana provided;
 - b. The name and registry identification number of the other dispensary;
 - c. The name and registry identification number of the dispensary agent who received the medical marijuana on behalf of the other dispensary; and
 - d. The date the medical marijuana was provided; ~~and~~
- 6. For receiving edible food products infused with medical marijuana from another dispensary:
 - a. A description of the edible food products received from the dispensary including total weight of each edible food product and estimated amount and batch number of the medical marijuana infused in each edible food product;~~;~~
 - b. Total estimated amount and batch number of medical marijuana infused in the edible food products;~~;~~
 - c. The name and registry identification number of the:
 - i. Dispensary and the dispensary agent providing the edible food products to the receiving dispensary, and
 - ii. Dispensary agent receiving the edible food products on behalf of the receiving dispensary;~~;~~ and
 - d. The date the edible food products were provided to the dispensary; ~~and~~
- 7. For submitting marijuana or marijuana products to a laboratory agent or laboratory for testing:
 - a. The amount, strain, and batch number of the marijuana or marijuana products submitted;
 - b. The name and registry identification number of the laboratory;
 - c. The name and registry identification number of the laboratory agent who received the marijuana or marijuana products on behalf of the laboratory; and
 - d. The date the marijuana or marijuana products were submitted to the laboratory.
- D. The individual designated in subsection (A) shall conduct and document an audit of the dispensary’s inventory that is accounted for according to generally accepted accounting principles at least once every 30 calendar days.
 - 1. If the audit identifies a reduction in the amount of medical marijuana in the dispensary’s inventory not due to documented causes, the dispensary shall determine where the loss has occurred and take and document corrective action.
 - 2. If the reduction in the amount of medical marijuana in the dispensary’s inventory is due to suspected criminal activity by a dispensary agent, the dispensary shall report the dispensary agent to the Department and to the local law enforcement authorities.
- E. A dispensary shall:
 - 1. Maintain the documentation required in subsections (C) and (D) at the dispensary for at least five years from after the date on the document, and
 - 2. Provide the documentation required in subsections (C) and (D) to the Department for review upon request.

R9-17-318. Security

- A. Except as provided in R9-17-310(A)(7), a dispensary shall ensure that access to the enclosed, locked facility where marijuana is cultivated is limited to the dispensary’s principal officers, board members, and authorized dispensary agents.
- B. A dispensary agent may transport marijuana, marijuana plants, and marijuana paraphernalia between the dispensary and:
 - 1. The dispensary’s cultivation site,
 - 2. A qualifying patient, ~~and~~
 - 3. Another dispensary; ~~and~~
 - 4. A laboratory agent or laboratory for testing.
- 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;



- b. The date and start time of the trip;
 - c. A description of the marijuana, marijuana plants, or marijuana paraphernalia being transported; and
 - d. 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 without any medical marijuana identification;
 - 3. Have a means of communication with the dispensary; and
 - 4. Ensure that the marijuana, marijuana plants, or marijuana paraphernalia are not visible.
- E.** After transportation, a dispensary agent shall enter the end time of the trip and any changes to the trip plan on the trip plan required in subsection (C)(1).
- F.** A dispensary shall:
- 1. Maintain the documents required in subsection (C)(2) and (E), and
 - 2. 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 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 video 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 restrict access to the areas of the dispensary that contain marijuana and if applicable, the dispensary's cultivation site to authorized individuals only;
 - b. That provide for the identification of authorized individuals;
 - c. That prevent loitering;
 - d. For conducting electronic monitoring; and
 - e. For the use of a panic button.

R9-17-322. Denial or Revocation of a Dispensary Registration Certificate

- A.** The Department shall deny an application for a dispensary registration certificate or a renewal if:
- 1. For an application for a dispensary registration certificate, the physical address of the building or, if applicable, the physical address of the dispensary's cultivation site is within 500 feet of a private school or a public school that existed before the date the dispensary submitted the initial dispensary registration certificate application;
 - 2. A principal officer or board member:
 - a. Has been convicted of an excluded felony offense;
 - b. Has served as a principal officer or board member for a dispensary that:
 - i. Had the dispensary registration certificate revoked, or
 - ii. Did not obtain an approval to operate the dispensary within the first year after the dispensary registration certificate was issued;
 - c. Is under 21 years of age;
 - d. Is a physician currently providing written certifications for medical marijuana for qualifying patients;
 - e. Is a law enforcement officer; or
 - f. Is an employee or contractor of the Department; or
 - 3. The application or the dispensary does not comply with the requirements in A.R.S. Title 36, Chapter 28.1 and this Chapter.
- B.** The Department may deny an application for a dispensary registration certificate if a principal officer or board member of the dispensary provides false or misleading information to the Department.
- C.** The Department shall revoke a dispensary's registration certificate if:
- 1. The dispensary:
 - a. Operates before obtaining approval to operate a dispensary from the Department;



- b. ~~Dispenses, delivers, or otherwise transfers marijuana to an entity other than another dispensary with a valid dispensary registration certificate issued by the Department, a qualifying patient with a valid registry identification card, or a designated caregiver with a valid registry identification card~~ Diverts marijuana to an entity other than another dispensary with a valid dispensary registration certificate issued by the Department, a laboratory with a valid laboratory registration certificate issued by the Department, a qualifying patient with a valid registry identification card issued by the Department, a designated caregiver with a valid registry identification card issued by the Department, or a laboratory agent with a valid registry identification card issued by the Department; or
 - c. Acquires usable marijuana or mature marijuana plants from any entity other than another dispensary with a valid dispensary registration certificate issued by the Department, a qualifying patient with a valid registry identification card, or a designated caregiver with a valid registry identification card; or
2. A principal officer or board member has been convicted of an excluded felony offense.
- D. The Department may revoke a dispensary registration certificate if the dispensary does not:
- 1. Comply with the requirements in A.R.S. Title 36, Chapter 28.1 and this Chapter; or
 - 2. Implement the policies and procedures or comply with the statements provided to the Department with the dispensary’s application.
- E. If the Department denies a dispensary registration certificate application, the Department shall provide notice to the applicant that includes:
- 1. The specific reason or reasons for the denial, and
 - 2. All other information required by A.R.S. § 41-1076.
- F. If the Department revokes a dispensary registration certificate, the Department shall provide notice to the dispensary that includes:
- 1. The specific reason or reasons for the revocation; and
 - 2. The process for requesting a judicial review of the Department’s decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

R9-17-323. Denial or Revocation of a Dispensary Agent’s Registry Identification Card

- A. The Department shall deny a dispensary agent’s application for or renewal of the dispensary agent’s registry identification card if the dispensary agent:
- 1. Does not meet ~~the requirements in the definition “nonprofit medical marijuana dispensary agent” in A.R.S. § 36-2801(10);~~ or
 - 2. Previously had a registry identification card revoked for not complying with A.R.S. Title 36, Chapter 28.1 or this Chapter.
- B. The Department may deny a dispensary agent’s application for or renewal of the dispensary agent’s registry identification card if the dispensary agent provides false or misleading information to the Department.
- C. The Department shall revoke a dispensary agent’s registry identification card if the dispensary agent:
- 1. Uses medical marijuana, if the dispensary agent does not have a qualifying patient registry identification card;
 - 2. ~~Diverts medical marijuana to an individual who is not authorized to possess medical marijuana under A.R.S. Title 36, Chapter 28.1~~ entity other than another dispensary with a valid dispensary registration certificate issued by the Department, a laboratory with a valid laboratory registration certificate issued by the Department, a qualifying patient with a valid registry identification card issued by the Department, a designated caregiver with a valid registry identification card issued by the Department, or a laboratory agent with a valid registry identification card issued by the Department; or
 - 3. Has been convicted of an excluded felony offense.
- D. The Department may revoke a dispensary agent’s registry identification card if the dispensary agent knowingly violates A.R.S. Title 36, Chapter 28.1 or this Chapter.
- E. If the Department denies or revokes a dispensary agent’s registry identification card, the Department shall provide notice to the dispensary agent and the dispensary agent’s dispensary that includes:
- 1. The specific reason or reasons for the denial or revocation; and
 - 2. The process for requesting a judicial review of the Department’s decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

ARTICLE 4. LABORATORIES AND LABORATORY AGENTS

R9-17-401. Owner

- A.** For the purposes of this Chapter the following individuals are considered owners:
- 1. If an individual is applying for a laboratory registration certificate, the individual;
 - 2. If a corporation is applying for a laboratory registration certificate, two individuals who are officers of the corporation;
 - 3. If a partnership is applying for a laboratory registration certificate, two of the individuals who are partners;
 - 4. If a limited liability company is applying for a laboratory registration certificate, a manager or, if the limited liability company does not have a manager, an individual who is a member of the limited liability company;
 - 5. If an association or cooperative is applying for a laboratory registration certificate, two individuals who are members of the governing board of the association or cooperative;
 - 6. If a joint venture is applying for a laboratory registration certificate, two of the individuals who signed the joint venture agreement; and
 - 7. If a business organization type other than those described in subsections (A)(2) through (6) is applying for a laboratory registration certificate, two individuals who are members of the business organization.
- B.** When a laboratory is required by this Chapter to provide information, sign documents, or ensure actions are taken, the individual or individuals in subsection (A) shall comply with the requirement on behalf of the laboratory.

R9-17-402. Applying for a Laboratory Registration Certificate

- A.** To apply for a laboratory registration certificate, an applicant shall submit to the Department the following:
- 1. An application in a Department-provided format that includes:
 - a. The physical address of the laboratory;
 - b. The following information for the laboratory applying:



- a. Layout and dimensions of each room.
 - b. Name and function of each room.
 - c. Location of each hand washing sink.
 - d. Location of each toilet room, and
 - e. Means of egress;
 - 9. Documentation of accreditation;
 - 10. The laboratory's Transaction Privilege Tax Number issued by the Arizona Department of Revenue; and
 - 11. The applicable fee in R9-17-102 for applying for a laboratory registration certificate.
- B.** A change in location of the laboratory's physical address or ownership requires a new application to be submitted according to subsection (A).

R9-17-403. Renewing a Laboratory Registration Certificate

To renew a laboratory registration certificate, a laboratory shall submit to the Department, at least 30 calendar days before the expiration date of the laboratory's current registration certificate, but no more than 90 days before the expiration date of the laboratory's current registration certificate, the following:

- 1. An application in a Department-provided format that includes:
 - a. The physical address of the laboratory;
 - b. The following information for the laboratory:
 - i. The legal name of the laboratory.
 - ii. The registry identification number for the laboratory.
 - iii. Type of business organization.
 - iv. Mailing address.
 - v. Telephone number, and
 - vi. E-mail address;
 - c. The name of the owner designated to submit laboratory agent registry identification card applications on behalf of the laboratory;
 - d. The name, residence address, and date of birth of each owner;
 - e. The name of the technical laboratory director designated according to R9-17-404(3);
 - f. The name, residence address, and date of birth of each laboratory agent, if applicable;
 - g. For each laboratory agent, an attestation signed and dated by the laboratory agent that the laboratory agent has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801;
 - h. Whether the laboratory agrees to allow the Department to submit supplemental requests for information;
 - i. An attestation that the information provided to the Department to renew the laboratory registration certificate is true and correct; and
 - j. The signatures of the each owner of the laboratory according to R9-17-401(A) and the date the owner signed;
- 2. For each owner:
 - a. An attestation signed and dated by the owner that the owner has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801; and
 - b. An attestation signed and dated by the owner that the laboratory will not test medical marijuana and medical marijuana products for:
 - i. A dispensary, related medical marijuana business entity, or management company that the owner has a direct or indirect familial or financial relationship with or interest in; or
 - ii. A designated caregiver who the owner has a direct or indirect familial or financial relationship with;
- 3. If zoning restrictions have been enacted, a sworn statement signed and dated by the owner in R9-17-401(A) certifying that the laboratory is in compliance with any local zoning restrictions;
- 4. A copy of documentation issued by the local jurisdiction to the laboratory authorizing occupancy of the building as a laboratory, such as a certificate of occupancy, a special use permit, or a conditional use permit; and
- 5. The applicable fee in R9-17-102 for applying to renew a laboratory registration certificate.

R9-17-404. Administration

A laboratory shall:

- 1. Comply with the:
 - a. Quality assurance requirements in A.A.C. R9-14-615(B) and (C).
 - b. Operation requirements in A.A.C. R9-14-616, and
 - c. Laboratory records and reports requirements in A.A.C. R9-15-617(1) through (7);
- 2. Maintain accreditation;
- 3. Designate in writing a technical laboratory director who shall:
 - a. Ensure that all services and tests provided by the laboratory are performed in compliance with the requirements in this Article.
 - b. Direct and supervise services and tests provided by the laboratory and be responsible for the work of all personnel in the laboratory, and
 - c. Be responsible for safety and hazardous substance control in the laboratory;
- 4. Notify the Department in writing within 20 business days after any change in the technical laboratory director, providing the name and contact information for the new technical laboratory director;
- 5. Develop, document, and implement policies and procedures regarding:
 - a. Job descriptions and employment contracts, including:
 - i. Personnel duties, authority, responsibilities, and qualifications;



- ii. Personnel supervision;
 - iii. Training in and adherence to confidentiality requirements;
 - iv. Periodic performance evaluations; and
 - v. Disciplinary actions;
 - b. Business records, such as manual or computerized records of assets and liabilities, monetary transactions, journals, ledgers, and supporting documents, including agreements, checks, invoices, and vouchers;
 - c. Inventory control, including:
 - i. Tracking;
 - ii. Accepting marijuana or marijuana products for testing;
 - iii. Testing marijuana and marijuana products; and
 - iv. Disposing of marijuana or marijuana products, including the method of destruction, whether destroyed marijuana or marijuana products were tested, if not tested, the reason and whether any unusable marijuana or marijuana products were submitted to a local law enforcement agency;
 - d. Laboratory records, including submissions of medical marijuana for testing, ensuring testing results are accurate, precise, and scientifically valid before reporting the results, reporting of testing results, confidentiality, and retention;
 - e. A quality assurance program and standards;
 - f. A chain of custody and sample process;
 - g. A records retention process; and
 - h. Security;
 - 6. Review and document the review of laboratory policies and procedures at least once every 12 months after the issue date of the laboratory registration certificate and update as needed;
 - 7. Ensure that each laboratory agent has the laboratory agent's registry identification card in the laboratory agent's immediate possession when the laboratory agent is working or providing volunteer services related to marijuana or marijuana products testing at the laboratory;
 - 8. Ensure that a laboratory agent accompanies any individual other than another laboratory agent associated with the laboratory when the individual is present in the area of the laboratory where marijuana or marijuana products are being tested or stored for testing;
 - 9. Not allow an individual who does not possess a laboratory agent registry identification card issued under the laboratory registration certificate to:
 - a. Serve as an owner for the laboratory;
 - b. Be employed by the laboratory, or
 - c. Provide volunteer services at or on behalf of the laboratory;
 - 10. Provide written notice to the Department, including the date of the event, within 10 working days after the date, when a laboratory agent no longer:
 - a. Serves as an owner for the laboratory;
 - b. Is employed by the laboratory, or
 - c. Provides volunteer services at or on behalf of the laboratory;
 - 11. Document and report any loss or theft of marijuana or marijuana products from the laboratory to the appropriate law enforcement agency; and
 - 12. Maintain copies of any documentation required in this Chapter for at least 12 months after the date on the documentation and provide copies of the documentation to the Department for review upon request.

R9-17-405. Submitting an Application for a Laboratory Agent Registry Identification Card

To obtain a laboratory agent registry identification card for an individual serving as an owner for the laboratory, employed by the laboratory, or providing volunteer services at or on behalf of the laboratory, the owner shall submit to the Department the following for each laboratory agent:

- 1. An application in a Department-provided format that includes:
 - a. The laboratory agent's first name; middle initial, if applicable; last name; and suffix, if applicable;
 - b. The laboratory agent's residence address and mailing address;
 - c. The county where the laboratory agent resides;
 - d. The laboratory agent's date of birth;
 - e. The identifying number on the applicable card or document in subsection (5)(a) through (e);
 - f. The name and registry identification number of the laboratory; and
 - g. The signature of the individual in R9-17-402(A)(1)(c) designated to submit laboratory agent applications on the laboratory's behalf and the date the individual signed;
- 2. An attestation signed and dated by the laboratory agent that the laboratory agent:
 - a. Has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801, and
 - b. Will not test medical marijuana and medical marijuana products for:
 - i. A dispensary, related medical marijuana business entity, or management company that the laboratory agent has a direct or indirect familial or financial relationship with or interest in; or
 - ii. A designated caregiver who the laboratory has a direct or indirect familial or financial relationship with;
- 3. One of the following:
 - a. A statement that the laboratory agent does not currently hold a valid registry identification card, or
 - b. The assigned registry identification number for the laboratory agent for each valid registry identification card currently held by the laboratory agent;
- 4. A statement in a Department-provided format, signed by the laboratory agent, pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;



- 5. A copy of the laboratory agent's:
 - a. Arizona driver's license issued on or after October 1, 1996;
 - b. Arizona identification card issued on or after October 1, 1996;
 - c. Arizona registry identification card;
 - d. Photograph page in the laboratory agent's U.S. passport; or
 - e. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the laboratory agent:
 - i. Birth certificate verifying U.S. citizenship,
 - ii. U.S. Certificate of Naturalization, or
 - iii. U.S. Certificate of Citizenship;
- 6. A current photograph of the laboratory agent;
- 7. For the Department's criminal records check authorized in A.R.S. §§ 36-2804.01 and 36-2804.07:
 - a. The laboratory agent's fingerprints on a fingerprint card that includes:
 - i. The laboratory agent's first name; middle initial, if applicable; and last name;
 - ii. The laboratory agent's signature;
 - iii. If different from the laboratory agent, the signature of the individual physically rolling the laboratory agent's fingerprints;
 - iv. The laboratory agent's address;
 - v. If applicable, the laboratory agent's surname before marriage and any names previously used by the laboratory agent;
 - vi. The laboratory agent's date of birth;
 - vii. The laboratory agent's Social Security number;
 - viii. The laboratory agent's citizenship status;
 - ix. The laboratory agent's gender;
 - x. The laboratory agent's race;
 - xi. The laboratory agent's height;
 - xii. The laboratory agent's weight;
 - xiii. The laboratory agent's hair color;
 - xiv. The laboratory agent's eye color; and
 - xv. The laboratory agent's place of birth; or
 - b. If the laboratory agent's fingerprints and information required in subsection (7)(a) were submitted to the Department within the previous six months as part of an application for a designated caregiver registry identification card, a dispensary agent registry identification card, or a laboratory agent registry identification card, the registry identification number on the registry identification card issued to the laboratory agent as a result of the application; and
- 8. The applicable fee in R9-17-102 for applying for a laboratory agent registry identification card.

R9-17-406. Submitting an Application to Renew a Laboratory Agent's Registry Identification Card

To renew a laboratory agent's registry identification card for an individual serving as an owner for the laboratory, employed by the laboratory, or providing volunteer services at or on behalf of the laboratory, the laboratory shall submit to the Department, at least 30 calendar days before the expiration of the laboratory agent's registry identification card, but no more than 90 days before the expiration date of the laboratory's agent's registry identification card, the following:

- 1. An application in a Department-provided format that includes:
 - a. The laboratory agent's first name; middle initial, if applicable; last name; and suffix, if applicable;
 - b. The laboratory agent's residence address and mailing address;
 - c. The county where the laboratory agent resides;
 - d. The laboratory agent's date of birth;
 - e. The registry identification number on the laboratory agent's current registry identification card;
 - f. The identifying number on the applicable card or document in subsection (6)(a) through (e);
 - g. The name and registry identification number of the laboratory; and
 - h. The signature of the individual in R9-17-402(A)(1)(c) designated to submit laboratory agent applications on the laboratory's behalf and the date the individual signed;
- 2. If the laboratory agent's name in subsection (1)(a) is not the same name as on the laboratory agent's current registry identification card, one of the following with the laboratory agent's new name:
 - a. An Arizona driver's license,
 - b. An Arizona identification card, or
 - c. The photograph page in the laboratory agent's U.S. passport;
- 3. An attestation signed and dated by the laboratory agent that the laboratory agent:
 - a. Has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801; and
 - b. Will not test medical marijuana and medical marijuana products for:
 - i. A dispensary, related medical marijuana business entity or management company the laboratory agent has a direct or indirect familial or financial relationship with or interest in; or
 - ii. A designated caregiver the laboratory has a direct or indirect familial or financial relationship with;
- 4. One of the following:
 - a. A statement that the laboratory agent does not currently hold a valid registry identification card, or
 - b. The assigned registry identification number for the laboratory agent for each valid registry identification card currently held by the laboratory agent;
- 5. A statement in a Department-provided format signed by the laboratory agent pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;



6. A copy of the laboratory agent's:
 - a. Arizona driver's license issued on or after October 1, 1996;
 - b. Arizona identification card issued on or after October 1, 1996;
 - c. Arizona registry identification card;
 - d. Photograph page in the laboratory agent's U.S. passport; or
 - e. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the laboratory agent:
 - i. Birth certificate verifying U.S. citizenship,
 - ii. U.S. Certificate of Naturalization, or
 - iii. U.S. Certificate of Citizenship;
7. A current photograph of the laboratory agent;
8. For the Department's criminal records check authorized in A.R.S. §§ 36-2804.01 and 36-2804.07:
 - a. The laboratory agent's fingerprints on a fingerprint card that includes:
 - i. The laboratory agent's first name; middle initial, if applicable; and last name;
 - ii. The laboratory agent's signature;
 - iii. If different from the laboratory agent, the signature of the individual physically rolling the laboratory agent's fingerprints;
 - iv. The laboratory agent's address;
 - v. If applicable, the laboratory agent's surname before marriage and any names previously used by the laboratory agent;
 - vi. The laboratory agent's date of birth;
 - vii. The laboratory agent's Social Security number;
 - viii. The laboratory agent's citizenship status;
 - ix. The laboratory agent's gender;
 - x. The laboratory agent's race;
 - xi. The laboratory agent's height;
 - xii. The laboratory agent's weight;
 - xiii. The laboratory agent's hair color;
 - xiv. The laboratory agent's eye color; and
 - xv. The laboratory agent's place of birth; or
 - b. If the laboratory agent's fingerprints and information required in subsection (8)(a) were submitted to the Department within the previous six months as part of an application for a designated caregiver registry identification card, a dispensary agent registry identification card, or a laboratory agent registry identification card, the registry identification number on the registry identification card issued to the laboratory agent as a result of the application; and
9. The applicable fee in R9-17-102 for applying to renew a laboratory agent's registry identification card.

R9-17-407. Inventory Control System

- A.** A laboratory shall designate in writing a laboratory agent who has oversight of the laboratory's marijuana inventory control system.
- B.** A laboratory shall not accept submissions of marijuana or marijuana products for testing from an individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1.
- C.** A laboratory shall establish and implement an inventory control system for the laboratory's marijuana and marijuana products that documents:
 1. Each day's beginning marijuana and marijuana products inventory, marijuana and marijuana products submitted for testing, disposal of tested or unusable marijuana or marijuana products, and ending marijuana and marijuana products inventory; and
 2. As applicable, for submissions of marijuana and marijuana products for testing:
 - a. A description of the submitted marijuana or marijuana products including the amount, strain and batch number;
 - b. The name and registry identification number of the dispensary that submitted the marijuana or marijuana products;
 - c. The name and registry identification number of the dispensary agent that submitted the marijuana or marijuana products;
 - d. The name and registry identification number of the qualifying patient that submitted the marijuana or marijuana products;
 - e. The name and registry identification number of the designated caregiver that submitted the marijuana or marijuana products;
 - f. The name and registry identification number of the laboratory agent receiving the marijuana or marijuana products on behalf of the laboratory; and
 - g. The date of acquisition;
 - h. The date of each test; and
 - i. The test results.
- D.** The individual designated in subsection (A) shall conduct and document an audit of the laboratory's inventory that is accounted for according to generally accepted accounting principles at least once every 30 calendar days.
 1. If the audit identifies a reduction in the amount of marijuana or marijuana products in the laboratory's inventory not due to documented causes, the laboratory shall determine where the loss has occurred and take and document corrective action.
 2. If the reduction in the amount of marijuana or marijuana products in the laboratory's inventory is due to suspected criminal activity by a laboratory agent, the laboratory shall report the laboratory agent to the Department and to the local law enforcement authorities.
- E.** A laboratory shall:
 1. Maintain the documentation required in subsections (C) and (D) at the dispensary for at least five years after the date on the document, and



- 2. Provide the documentation required in subsections (C) and (D) to the Department for review upon request.

R9-17-408. Security

- A.** Except as provided in R9-17-404(8), a laboratory shall ensure that access to the area of the laboratory where marijuana or marijuana products are being tested or stored for testing is limited to a laboratory’s owners and authorized laboratory agents.
- B.** A laboratory agent may transport marijuana or marijuana products submitted for testing to a laboratory.
- C.** Before transportation to a laboratory, a laboratory agent shall:
 - 1. Complete a trip plan that includes:
 - a. The name of the laboratory agent in charge of transporting the marijuana or marijuana products;
 - b. The date and start time of the trip;
 - c. A description of the marijuana or marijuana products being transported; and
 - d. The anticipated route of transportation; and
 - 2. Provide a copy of the trip plan in subsection (C)(1) to the laboratory.
- D.** During transportation to the laboratory, a laboratory agent shall:
 - 1. Carry a copy of the trip plan in subsection (C)(1) with the laboratory agent for the duration of the trip;
 - 2. Use a vehicle without any medical marijuana identification;
 - 3. Have a means of communication with the laboratory; and
 - 4. Ensure that the marijuana or marijuana products are not visible.
- E.** After transportation, a laboratory agent shall enter the end time of the trip and any changes to the trip plan on the trip plan required in subsection (C)(1).
- F.** A laboratory shall:
 - 1. Maintain the documents required in subsection (C)(2) and (E), and
 - 2. 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 marijuana or marijuana products at the laboratory for testing, the laboratory 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 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 video 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 in each area of the laboratory where marijuana or marijuana products are being tested or stored for testing capable of identifying any activity occurring within the area in low light conditions;
 - v. Storage of video recordings from the video cameras for at least 30 calendar days;
 - vi. A failure notification system that provides an audible and visual notification of any failure in the electronic monitoring system; and
 - vii. 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 that:
 - a. Restrict access to the areas of the laboratory that contain marijuana or marijuana products and, if applicable, to authorized individuals only;
 - b. Provide for the identification of authorized individuals; and
 - c. Prevent loitering.

R9-17-409. Physical Plant

- A laboratory shall ensure that designated storage areas for marijuana or marijuana products or materials used in direct contact with marijuana or marijuana products are separate from storage areas for toxic or flammable materials and are maintained in a manner to prevent:
 - 1. Microbial contamination and proliferation, and
 - 2. Contamination or infestation by insects or rodents.

R9-17-410. Denial or Revocation of a Laboratory Registration Certificate

- A.** The Department shall deny an application for a laboratory registration certificate if:
 - 1. The physical address of the laboratory is within 500 feet of a private school or a public school that existed before the date the laboratory submitted the initial laboratory registration certificate application;
 - 2. An owner:
 - a. Has been convicted of an excluded felony offense, or
 - b. Is under 21 years of age;
 - 3. The application or the laboratory does not comply with the requirements in A.R.S. Title 36, Chapter 28.1 and this Chapter;
 - 4. The laboratory acquires marijuana or marijuana products from an individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;



5. The laboratory diverts marijuana or marijuana products to an individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
 6. An owner has any direct or indirect familial or financial relationship with or interest in a nonprofit medical marijuana dispensary or related medical marijuana business entity or management company, or any direct or indirect familial or financial relationship with a designated caregiver for whom the laboratory is testing marijuana and marijuana products for medical use in this state; or
 7. The laboratory fails to maintain accreditation.
- B.** The Department may deny an application for a laboratory registration certificate if an owner of the laboratory provides false or misleading information to the Department.
- C.** The Department shall revoke a laboratory's registration certificate if:
1. The laboratory acquires marijuana or marijuana products from an individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
 2. The laboratory diverts marijuana or marijuana products to an individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
 3. An owner has been convicted of an excluded felony offense;
 4. An owner has any direct or indirect familial or financial relationship with or interest in a nonprofit medical marijuana dispensary or related medical marijuana business entity or management company, or any direct or indirect familial or financial relationship with a designated caregiver for whom the laboratory is testing marijuana and marijuana products for medical use in this state; or
 5. The laboratory fails to maintain accreditation.
- D.** The Department may deny an application for a laboratory registration certificate or revoke a laboratory registration certificate if the laboratory does not:
1. Comply with the requirements in A.R.S. Title 36, Chapter 28.1 and this Chapter; or
 2. Implement the policies and procedures or comply with the statements provided to the Department with the laboratory's application.
- E.** If the Department denies a laboratory registration certificate application, the Department shall provide notice to the applicant that includes:
1. The specific reason or reasons for the denial, and
 2. All other information required by A.R.S. § 41-1076.
- F.** If the Department revokes a laboratory registration certificate, the Department shall provide notice to the laboratory that includes:
1. The specific reason or reasons for the revocation; and
 2. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

R9-17-411. Denial or Revocation of a Laboratory Agent's Registry Identification Card

- A.** The Department shall deny an application for or renewal of a laboratory agent's registry identification card if the laboratory agent does not meet the requirements in A.R.S. § 36-2801.
- B.** The Department may deny an application for or renewal of a laboratory agent's registry identification card if the laboratory agent provides false or misleading information to the Department.
- C.** The Department shall revoke a laboratory agent's registry identification card if the laboratory agent:
1. Uses marijuana, if the laboratory agent does not have a qualifying patient registry identification card;
 2. Diverts marijuana or marijuana products to an individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1; or
 3. Has been convicted of an excluded felony offense.
- D.** The Department may revoke a laboratory agent's registry identification card if the laboratory agent knowingly violates A.R.S. Title 36, Chapter 28.1 or this Chapter.
- E.** If the Department denies or revokes a laboratory agent's registry identification card, the Department shall provide notice to the laboratory agent and the laboratory agent's laboratory that includes:
1. The specific reason or reasons for the denial or revocation; and
 2. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

NOTICES OF RULEMAKING DOCKET OPENING

This section of the *Arizona Administrative Register* contains Notices of Rulemaking Docket Opening.

A docket opening is the first part of the administrative rulemaking process. It is an "announcement" that the agency intends to work on its rules.

When an agency opens a rulemaking docket to consider rulemaking, the Administrative Procedure Act (APA) requires the publication of the Notice of Rulemaking Docket Opening.

Under the APA effective January 1, 1995, agencies must submit a Notice of Rulemaking Docket Opening before beginning the formal rulemaking process. Many times an agency may file the Notice of Rulemaking Docket Opening with the Notice of Proposed Rulemaking.

The Office of the Secretary of State is the filing office and publisher of these notices. Questions about the interpretation of this information should be directed to the agency contact person listed in item #4 of this notice.

NOTICE OF RULEMAKING DOCKET OPENING DEPARTMENT OF HEALTH SERVICES RADIATION CONTROL

[R19-192]

- 1. Title and its heading:** 9, Health Services
Chapter and its heading: 7, Department of Health Services – Radiation Control
Articles and their headings: 7, Medical Uses of Radioactive Material
Section numbers: R9-7-705, R9-7-707, R9-7-710, R9-7-711, R9-7-719, R9-7-720, R9-7-721, R9-7-722, R9-7-723, R9-7-724, R9-7-727, R9-7-728, R9-7-731, and R9-7-744 (*The Department may add, delete, or modify other Sections, as necessary.*)

- 2. The subject matter of the proposed rules:**
Arizona Revised Statutes (A.R.S.) § 30-654(B)(5) requires the Arizona Department of Health Services (Department) to make rules deemed necessary to administer A.R.S. Title 30, Chapter 4, Control of Ionizing Radiation. The Department has adopted these rules in A.A.C. Title 9, Chapter 7. Arizona is an Agreement State by the Document negotiated between the U.S. Atomic Energy Commission (now U.S. Nuclear Regulatory Commission) and the Governor of Arizona in March of 1967 under A.R.S. § 30-656. In order to remain in compliance with the Agreement, Arizona must adopt regulations related to the control of radioactive material in a manner that is consistent with federal regulations. The U.S. Nuclear Regulatory Commission periodically issues changes, denoted as Regulation Toolbox: Review Summary Sheets for Regulation Amendments (RATS IDs), that are required to be incorporated by Agreement States. Several RATS IDs have not yet been incorporated into Arizona's rules related to the medical uses of radioactive material. The Department is revising the rules in A.A.C. Title 9, Chapter 7, Article 7, by expedited rulemaking to make changes to conform to the RATS IDs under 10 CFR Chapter I. The Department also plans to make other changes to reduce the administrative burden of the rules by clarifying existing language in the rules, correcting cross-references, and making the rules easier to understand. (The Department may add, delete, or modify other Sections, as necessary.)

- 3. A citation to all published notices relating to the proceeding:**
None

- 4. The name and address of agency personnel with whom persons may communicate regarding the rules:**

Name: Colby Bower, Assistant Director
Address: Department of Health Services
Public Health Licensing Services
150 N. 18th Ave., Suite 510
Phoenix, AZ 85007

Telephone: (602) 542-6383
Fax: (602) 364-4808

E-mail: Colby.Bower@azdhs.gov

or

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

Telephone: (602) 542-1020
Fax: (602) 364-1150

E-mail: Robert.Lane@azdhs.gov

- 5. The time during which the agency will accept written comments and the time and place where oral comments may be made:**

Written comments will be accepted at the addresses listed in item #4 until the close of record, which has not yet been determined.



No oral proceedings have been scheduled at this time.

6. A timetable for agency decisions or other action on the proceeding, if known:

To be announced in the Notice of Proposed Expedited Rulemaking

**NOTICE OF RULEMAKING DOCKET OPENING
INDUSTRIAL COMMISSION OF ARIZONA**

[R19-193]

- 1. Title and its heading:** 20, Commerce, Financial Institutions, and Insurance
- Chapter and its heading:** 5, Industrial Commission of Arizona
- Article and its heading:** 6, Occupational Safety and Health Standards
- Section numbers:** R20-5-601, R20-5-602, R20-5-629

2. The subject matter of the proposed rule:

Section 18(c) of the Federal Occupational Safety and Health Act of 1970 requires state-administered occupational safety and health programs to adopt standards that are at least as effective as those adopted by the United States Department of Labor, Occupational Safety and Health Administration (“OSHA”). See also 29 CFR 1953.5; A.R.S. § 23-405(3). The Industrial Commission of Arizona (the “Commission”) is proposing to amend R20-5-601 (“The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926”), R20-5-602 (“The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910”), and R20-5-629 (“The Occupational Injury and Illness Recording and Reporting Requirements, 29 CFR 1904”) to incorporate by reference the following recent OSHA rule updates to 29 CFR 1926 (“Safety and Health Regulations for Construction”), 29 CFR 1910 (“Occupational Safety and Health Standards”), and 29 CFR 1904 (“Recording and Reporting Occupational Injuries and Illnesses”):

- OSHA Final rule published on September 1, 2016, titled “Occupational Exposure to Respirable Crystalline Silica; Correction”; published in the *Federal Register* at 81 FR 60272.
- OSHA Final rule published on November 18, 2016, titled “Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems)”; published in the *Federal Register* at 81 FR 82494.
- OSHA Final rule published January 9, 2017, titled “Occupational Exposure to Beryllium”; published in the *Federal Register* at 82 FR 2470.
- OSHA Direct Final rule published on May 7, 2018 titled “Revising the Beryllium Standard for General Industry”; published in the *Federal Register* at 83 FR 19936.
- OSHA Final rule published on November 9, 2018, titled “Cranes and Derricks in Construction: Operator Qualification”; published in the *Federal Register* at 83 FR 56198.
- OSHA Final rule published on January 25, 2019, titled “Tracking of Workplace Injuries and Illnesses”; published in the *Federal Register* at 84 FR 380.

Occupational Exposure to Respirable Crystalline Silica; Correction

Under 29 CFR 1910 and 1926, employers are subject to standards for occupational exposure to respirable crystalline silica. On March 25, 2016, the Federal Occupational Safety & Health Administration (“OSHA”) published a final rule entitled “Occupational Exposure to Respirable Crystalline Silica” (the “Silica Rule”). In part, the Silica Rule retained the preceding permissible exposure limits (“PELs”) for respirable crystalline silica in general industry (29 CFR 1910.1000, Table Z-3) and construction (29 CFR 1926.55, appendix A) for industry sectors or operations where the new PEL of 50 -µg/m³ is not in effect. The preceding PELs applied to operations that are not covered by the new respirable silica standards, such as the processing of sorptive clays (*i.e.*, specific types of clay found in a few geologic deposits in the country that are used in a range of consumer products and industrial applications, such as pet litter and sealants for landfills). The preceding PELs also apply during the time between publication of the silica rule and the dates established for compliance with the rule. OSHA’s Final Rule titled “Occupational Exposure to Respirable Crystalline Silica; Correction” corrects certain typographical errors contained in the Final Silica Rule related to the formulas for the preceding PELs in general industry (29 CFR 1910.1000, Table Z-3) and construction (29 CFR 1926.55, appendix A), so that the formulas will appear as they did prior to publication of the Final Silica Rule.

Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems)

Under 29 CFR 1910, employers are subject to standards related to preventing workplace slips, trips, and falls, as well as other injuries and fatalities associated with walking working surface hazards. OSHA’s Final Rule titled Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems) revised and updates these general industry standards. The Final Rule includes revised and new provisions addressing, for example, fixed ladders; rope descent systems; fall protection systems and criteria, including personal fall protection systems; and training on fall hazards and fall protection systems. In addition, the Final Rule adds requirements on the design, performance, and use of personal fall protection systems. The Final Rule increases consistency between the general industry and construction standards, which will make compliance easier for employers who conduct operations in both industry sectors. Similarly, the Final Rule updates requirements to reflect advances in technology and to make them consistent with more recent OSHA standards and national consensus standards. OSHA has also reorganized the requirements and incorporated plain language in order to make the Final Rule easier to understand and follow. The Final Rule also uses performance-based language to give employers greater compliance flexibility.

OSHA believes that many employers already are in compliance with many provisions in the Final Rule; therefore, many employers should not have significant problems implementing the updated standards. In addition, because the Final Rule incorporates requirements from national consensus standards, most equipment manufacturers already provide equipment and systems that meet the requirements of the Final Rule.



Occupational Exposure to Beryllium & Revising the Beryllium Standard for General Industry

Under 29 CFR 1910 and 1926, employers are subject to standards for occupational exposure to beryllium. OSHA’s Final Rule titled Occupational Exposure to Beryllium updates existing standards for occupational exposure to beryllium and beryllium compounds. OSHA determined that employees exposed to beryllium at the previous permissible exposure limits face a significant risk of material impairment to their health, including increased risk of developing chronic beryllium disease and lung cancer. The Final Rule establishes new permissible exposure limits of 0.2 micrograms of beryllium per cubic meter of air (0.2 µg/m3) as an 8-hour time-weighted average and 2.0 µg/m3 as a short-term exposure limit determined over a sampling period of 15 minutes. The Final Rule also includes other provisions to protect employees, such as requirements for exposure assessment, methods for controlling exposure, respiratory protection, personal protective clothing and equipment, housekeeping, medical surveillance, hazard communication, and recordkeeping. The Final Rule covers exposures to beryllium in general industry, construction, and shipyards, but provides an exemption for materials containing only trace amounts of beryllium (less than 0.1% by weight) when the employer has objective data that employee exposure to beryllium will remain below the action level as an 8-hour time-weighted average under any foreseeable conditions.

Revising the Beryllium Standard for General Industry

OSHA’s Final Rule titled Revising the Beryllium Standard for General Industry includes a number of clarifying amendments to address the application of the 2017 beryllium standard (discussed above) to materials containing trace amounts of beryllium. The Final Rule amends the text of the 2017 beryllium standard for General Industry to clarify OSHA’s intent with respect to certain terms in the standard, including the definition of “Beryllium Work Area” (BWA), the definition of “emergency,” and the meaning of the terms “dermal contact” and “beryllium contamination.” It also clarifies OSHA’s intent with respect to provisions for disposal and recycling and with respect to provisions that OSHA intends to apply only where skin can be exposed to materials containing at least 0.1% beryllium by weight. OSHA states that the amendment to the standard is clarifying in nature and does not adversely impact the safety or health of employees. Finally, the Final Rule limits disposal and recycling requirements to materials that contain beryllium in concentrations of 0.1% by weight or more or are contaminated with beryllium, consistent with OSHA’s intention that provisions aimed at protecting workers from the effects of dermal contact do not apply in the case of materials containing only trace amounts of beryllium.

Cranes and Derricks in Construction: Operator Qualification

Under 29 CFR 1926, employers in construction are subject to standards related to crane operator training, certification/licensing, and competency. OSHA’s Final Rule titled Cranes and Derricks in Construction: Operator Qualification updates the existing standards by clarifying each employer’s duty to ensure the competency of crane operators through training, certification or licensing, and evaluation. OSHA is also altering a provision that required different levels of certification based on the rated lifting capacity of equipment. While testing organizations are not required to issue certifications distinguished by rated capacities, they are permitted to do so, and employers may accept them or continue to rely on certifications based on crane type alone. Finally, the Final Rule establishes minimum requirements for determining operator competency. OSHA reports that the Final Rule will maintain safety and health protections for workers while reducing compliance burdens.

Tracking of Workplace Injuries and Illnesses

Under 29 CFR 1904, employers with more than 10 employees in most industries are required to keep records of occupational injuries and illnesses at their establishments. OSHA’s Final Rule titled Tracking of Workplace Injuries and Illnesses is aimed at protecting worker privacy by amending the recordkeeping standards by rescinding the requirement for establishments with 250 or more employees to electronically submit information from OSHA Forms 300 and 301. These establishments will continue to be required to maintain those records on-site, and OSHA will continue to obtain them as needed through inspections and enforcement actions. In addition to reporting required after severe injuries, establishments will continue to submit information from their Form 300A. In addition, OSHA is amending the recordkeeping regulation to require covered employers to submit their Employer Identification Number (EIN) electronically along with their injury and illness data submission, which will facilitate use of the data and may help reduce duplicative employer reporting. Nothing in the final rule revokes an employer’s duty to maintain OSHA Forms 300 and 301 for inspection. OSHA reports that the changes will improve enforcement targeting and compliance assistance, decrease burden on employers, and protect worker privacy and safety.

3. A citation to all published notices relating to the proceeding:

Notice of Proposed Rulemaking: 25 A.A.R. 2404, September 20, 2019 (*in this issue*)

4. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Jessie Atencio, Director
Address: Division of Occupational Safety and Health
Industrial Commission of Arizona
800 W. Washington St., Suite 203
Phoenix, AZ 85007
Telephone: (602) 542-5795
Fax: (602) 542-1614
E-mail: Jessie.atencio@azdosh.gov

5. The time during which the agency will accept written comments and the time and place where oral comments may be made:

The Commission will accept written comments during a public comment period that will be noticed in the Notice of Proposed Rulemaking. Information regarding an oral proceeding will be included in the Notice of Proposed Rulemaking.

6. A timetable for agency decisions or other action on the proceeding, if known:

To be determined.



NOTICES OF SUBSTANTIVE POLICY STATEMENT

The *Administrative Procedure Act* (APA) requires the publication of Notices of Substantive Policy Statement issued by agencies (A.R.S. § 41-1013(B)(9)).

Substantive policy statements are written expressions which inform the general public of an agency's current approach to rule or regulation practice.

Substantive policy statements are advisory only. A substantive policy statement does not include internal procedural documents that only affect an agency's

internal procedures and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the APA.

If you believe that a substantive policy statement does impose additional requirements or penalties on regulated parties, you may petition the agency under A.R.S. § 41-1033 for a review of the statement.

NOTICE OF SUBSTANTIVE POLICY STATEMENT ACUPUNCTURE BOARD OF EXAMINERS

[M19-92]

1. **Title of the Substantive Policy Statement and the substantive policy statement number by which the substantive policy statement is referenced:**
Board Approval of Alcoholism, Substance Abuse, or Chemical Dependency Programs Offering Auricular Acupuncture
2. **Date the substantive policy statement was issued and the effective date of the policy statement if different from the issuance date:**
March, 27, 2019
3. **Summary of the contents of the substantive policy statement:**
In light of the opioid epidemic that has become a serious public health concern nationally and here in the state of Arizona, the Board has decided to set forth specific criteria for alcoholism, substance abuse, and chemical dependency programs that wish to seek approval from the Board to operate as a treatment program that can provide auricular acupuncture services through the employment of an auricular acupuncture certificate holder under the supervision of a licensed acupuncturist.
4. **Federal or state constitutional provision; federal or state statute, administrative rule, or regulation; or final court judgment that underlies the substantive policy statement:**
A.R.S. § 32-3922 provides that the State of Arizona Acupuncture Board of Examiners ("Board") may issue auricular acupuncture certificates for the purpose of treating alcoholism, substance abuse, or chemical dependency. A certificate issued pursuant to this statute only allows the certificate holder to practice auricular acupuncture under the supervision of a licensed Arizona acupuncturist in an alcoholism, substance abuse, or chemical dependency program ("treatment program"). The Board is authorized to approve these treatment programs under A.R.S. § 32-3922 (B).
5. **A statement as to whether the substantive policy statement is a new statement or a revision:**
This is a new Substantive Policy Statement
6. **The agency contact person who can answer questions about the substantive policy statement:**
Name: David Geriminsky, Executive Director
Address: Acupuncture Board of Examiners
1740 W. Adams
Phoenix, AZ 85007
Telephone: (602)364-0145
E-mail: info@acupuncture.az.gov
Website: www.acupunctureboard.az.gov
7. **Information about where a person may obtain a copy of the substantive policy statement and the costs for obtaining the policy statement:**
The Substantive Policy Statement is available at no cost on the Board's website at: <https://acupunctureboard.az.gov/statutes-rules/substantive-policy-statements>. A copy may also be obtained upon request at the Board Office at no charge.

NOTICE OF SUBSTANTIVE POLICY STATEMENT DEPARTMENT OF AGRICULTURE PLANT SERVICES DIVISION

[M19-93]

1. **Title of the substantive policy statement and the substantive policy statement number by which the substantive policy statement is referenced:**
SP 19-01: Industrial Hemp Sampling Method
2. **Date the substantive policy statement was issued and the effective date of the policy statement if different from the issuance date:**
Issue Date: September 12, 2019



- 3. Summary of the contents of the substantive policy statement:**
Advises the public of the Department’s current method for sampling industrial hemp plants or crops prior to harvest to determine compliance for total Delta-9 Tetrahydrocannabinol concentration.
- 4. Federal or state constitutional provision; federal or state statute, administrative regulation; or final court judgment that underlies the substantive policy statement:**
A.R.S. § 3-316 and A.A.C. R3-4-1008
- 5. A statement as to whether the substantive policy statement is a new statement or a revision:**
New
- 6. The agency contact person who can answer questions about the substantive policy statement:**
Name: Brian McGrew
Address: Department of Agriculture
1688 W. Adams
Phoenix, AZ 85007
Telephone: (602) 542-3228
E-mail: bmcgrew@azda.gov
- 7. Information about where a person may obtain a copy of the substantive policy statement and the costs for obtaining the policy statement:**
Copies of this policy statement may be obtained at no cost via email to the person listed above or on the Department website at <https://agriculture.az.gov>. Hard copies may be obtained for \$0.25 per page by submitting a public records request to the Department.

**NOTICE OF AGENCY SUBSTANTIVE POLICY STATEMENT
DEPARTMENT OF INSURANCE**

[M19-90]

- 1. Title of the substantive policy statement and the substantive policy statement number by which the policy statement is referenced:**
2019 Arizona Insurance Laws (Regulatory Bulletin 2019-02)
- 2. Date the substantive policy statement was issued and the effective date of the policy statement if different from the issuance date:**
The Department issued the substantive policy statement on August 27, 2019.
- 3. Summary of the contents of the substantive policy statement:**
The Regulatory Bulletin advises all insurance producers, surplus lines brokers, insurance industry representatives, insurance trade associations, life & disability insurers, property & casualty insurers and other interested parties of the major, newly enacted legislation affecting the Department of Insurance, its licensees and insurance consumers. This annually produced Regulatory Bulletin generally describes the substantive content of all bills that may be of interest to the insurance industry in Arizona.
- 4. Federal or state constitutional provision; federal or state statute, administrative rule, or regulation; or final court judgment that underlies the substantive policy statement:**
A.R.S. §§ 28-4133 (Amends), 20-1126 (Creates), 20-485 (Amends), 20-1401 (Amends), 20-1404 (Amends), 20-3321 (Amends), 20-3331 (Creates), 44-1751 (Amends), 44-1453 (Creates), 44-1754 (Creates), 20-241 (Creates), 20-242 (Creates), 20-103 (Amends), 20-408 (Amends), 20-416 (Amends), 20-417 (Amends), 20-481 (Amends), 20-481.33 (Amends), 20-492 (Creates), 20-492.01 (Creates), 20-492.02 (Creates), 20-492.03 (Creates), 20-492.04 (Creates), 20-492.05 (Creates), 20-492.06 (Creates), 20-450 (Amends), 20-451 (Amends), 20-452 (Amends), 20-2330 (Amends), 20-2324 (Amends), 20-259.01 (Amends), 28-4009 (Amends), 20-841.09 (Amends), 20-1057.13 (Amends), 20-1406.05 (Amends), 20-103 (Amends), 20-123 (Repeals), Title 44, chapter 11, article 25 (Repeals), 44-1799.91 (Creates), 44-1799.92 (Creates), 44-1799.93 (Creates), 44-1799.94 (Creates), 44-1799.95 (Creates), 44-1799.96 (Creates), 20-1379 (Amends), 20-1384 (Creates), 20-2104 (Amends), 20-951 (Amends), 20-952 (Amends), 20-1097 (Amends).
- 5. A statement as to whether the substantive policy statement is a new statement or a revision:**
This is a new statement.
- 6. The name, address, and telephone number of the person to whom questions and comments about the substantive policy statement may be directed:**
Name: Stephen Briggs
Address: Department of Insurance
100 N. 15th Ave., Suite 102
Phoenix, AZ 85007-2624
Email: sbriggs@azinsurance.gov
Telephone: (602) 364-3471
- 7. Information about where a person may obtain a copy of the substantive policy statement:**
Copies of this policy are available via the internet at <http://insurance.az.gov> or from the person listed in question #6 for 25 cents per page.



GOVERNOR EXECUTIVE ORDER

Executive Order 2019-01 is being reproduced in each issue of the *Administrative Register* as a notice to the public regarding state agencies' rulemaking activities.

This order has been reproduced in its entirety as submitted.

EXECUTIVE ORDER 2019-01**Moratorium on Rulemaking to Promote Job Creation and Customer-Service-Oriented Agencies; Protecting Consumers Against Fraudulent Activities**

[M19-04]

WHEREAS, government regulations should be as limited as possible; and

WHEREAS, burdensome regulations inhibit job growth and economic development; and

WHEREAS, protecting the public health, peace and safety of the residents of Arizona is a top priority of state government; and

WHEREAS, in 2015 the State of Arizona implemented a moratorium on all new regulatory rulemaking by State agencies through executive order and renewed the moratorium in 2016, 2017 and 2018; and

WHEREAS, the State of Arizona eliminated or repealed 422 needless regulations in 2018 and 676 in 2017 for a total of 1,098 needless regulations eliminated or repealed over two years; and

WHEREAS, estimates show these eliminations saved job creators more than \$31 million in operating costs in 2018 and \$48 million in 2017 for a total of over \$79 million in savings over two years; and

WHEREAS, approximately 283,300 private sector jobs have been added to Arizona since January 2015; and

WHEREAS, all government agencies of the State of Arizona should continue to promote customer-service-oriented principles for the people that it serves; and

WHEREAS, each State agency shall continue to conduct a critical and comprehensive review of its administrative rules and take action to reduce the regulatory burden, administrative delay and legal uncertainty associated with government regulation while protecting the health, peace and safety of residents; and

WHEREAS, each State agency should continue to evaluate its administrative rules using any available and reliable data and performance metrics; and

WHEREAS, Article 5, Section 4 of the Arizona Constitution and Title 41, Chapter 1, Article 1 of the Arizona Revised Statutes vests the executive power of the State of Arizona in the Governor.

NOW, THEREFORE, I, Douglas A. Ducey, by virtue of the authority vested in me by the Constitution and laws of the State of Arizona hereby declare the following:

1. A State agency subject to this Order shall not conduct any rulemaking, whether informal or formal, without the prior written approval of the Office of the Governor. In seeking approval, a State agency shall address one or more of the following as justifications for the rulemaking:
 - a. To fulfill an objective related to job creation, economic development or economic expansion in this State.
 - b. To reduce or ameliorate a regulatory burden while achieving the same regulatory objective.
 - c. To prevent a significant threat to the public health, peace, or safety.
 - d. To avoid violating a court order or federal law that would result in sanctions by a federal court for failure to conduct the rulemaking action.
 - e. To comply with a federal statutory or regulatory requirement if such compliance is related to a condition for the receipt of federal funds or participation in any federal program.
 - f. To comply with a state statutory requirement.
 - g. To fulfill an obligation related to fees or any other action necessary to implement the State budget that is certified by the Governor's Office of Strategic Planning and Budgeting.
 - h. To promulgate a rule or other item that is exempt from Title 41, Chapter 6, Arizona Revised Statutes, pursuant to section 41-1005, Arizona Revised Statutes.
 - i. To address matters pertaining to the control, mitigation, or eradication of waste, fraud or abuse within an agency or wasteful, fraudulent, or abusive activities perpetrated against an agency.
 - j. To eliminate rules which are antiquated, redundant or otherwise no longer necessary for the operation of state government.
2. A State agency subject to this Order shall not publicize any directives, policy statements, documents or forms on its website unless such are explicitly authorized by Arizona Revised Statutes or Arizona Administrative Code.
3. A State agency subject to this Order and which issues occupational or professional licenses shall review the agency's rules and practices related to receiving and acting on substantive complaints about unlicensed individuals who are allegedly holding them-



selves out as licensed professionals for financial gain and are knowingly or recklessly providing or attempting to provide regulated services which the State agency director believes could cause immediate and/or significant harm to either the financial or physical health of unknowing consumers within the state. Agencies shall identify and execute on opportunities to improve its complaint intake process, documentation, tracking, enforcement actions and coordination with proper law enforcement channels to ensure those allegedly trying to defraud unsuspecting consumers and putting them at risk for immediate and/or significant harm to their financial or physical health are stopped and effectively diverted by the State agency to the proper law-enforcement agency for review. A written plan on the agency’s process shall be submitted to the Governor’s Office no later than May 31, 2019.

4. For the purposes of this Order, the term “State agencies” includes, without limitation, all executive departments, agencies, offices, and all state boards and commissions, except for: (a) any State agency that is headed by a single elected State official; (b) the Corporation Commission; and (c) any board or commission established by ballot measure during or after the November 1998 general election. Those state agencies, boards and commissions excluded from this Order are strongly encouraged to voluntarily comply with this Order in the context of their own rulemaking processes.
5. This Order does not confer any legal rights upon any persons and shall not be used as a basis for legal challenges to rules, approvals, permits, licenses or other actions or to any inaction of a State agency. For the purposes of this Order, “person,” “rule,” and “rulemaking” have the same meanings prescribed in section 41-1001, Arizona Revised Statutes.

IN WITNESS THEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.

Douglas A. Ducey
GOVERNOR

DONE at the Capitol in Phoenix on this ninth day of January in the Year Two Thousand and Nineteen and of the Independence of the United States of America the Two Hundred and Forty-Third.

ATTEST:
Katie Hobbs
SECRETARY OF STATE



REGISTER INDEXES

The *Register* is published by volume in a calendar year (See “General Information” in the front of each issue for more information).

Abbreviations for rulemaking activity in this Index include:

PROPOSED RULEMAKING

PN = Proposed new Section
 PM = Proposed amended Section
 PR = Proposed repealed Section
 P# = Proposed renumbered Section

SUPPLEMENTAL PROPOSED RULEMAKING

SPN = Supplemental proposed new Section
 SPM = Supplemental proposed amended Section
 SPR = Supplemental proposed repealed Section
 SP# = Supplemental proposed renumbered Section

FINAL RULEMAKING

FN = Final new Section
 FM = Final amended Section
 FR = Final repealed Section
 F# = Final renumbered Section

SUMMARY RULEMAKING

PROPOSED SUMMARY

PSMN = Proposed Summary new Section
 PSMM = Proposed Summary amended Section
 PSMR = Proposed Summary repealed Section
 PSM# = Proposed Summary renumbered Section

FINAL SUMMARY

FSMN = Final Summary new Section
 FSMM = Final Summary amended Section
 FSMR = Final Summary repealed Section
 FSM# = Final Summary renumbered Section

EXPEDITED RULEMAKING

PROPOSED EXPEDITED

PEN = Proposed Expedited new Section
 PEM = Proposed Expedited amended Section
 PER = Proposed Expedited repealed Section
 PE# = Proposed Expedited renumbered Section

SUPPLEMENTAL EXPEDITED

SPEN = Supplemental Proposed Expedited new Section
 SPEM = Supplemental Proposed Expedited amended Section
 SPER = Supplemental Proposed Expedited repealed Section
 SPE# = Supplemental Proposed Expedited renumbered Section

FINAL EXPEDITED

FEN = Final Expedited new Section
 FEM = Final Expedited amended Section
 FER = Final Expedited repealed Section
 FE# = Final Expedited renumbered Section

EXEMPT RULEMAKING

EXEMPT

XN = Exempt new Section
 XM = Exempt amended Section
 XR = Exempt repealed Section
 X# = Exempt renumbered Section

EXEMPT PROPOSED

PXN = Proposed Exempt new Section
 PXM = Proposed Exempt amended Section
 PXR = Proposed Exempt repealed Section
 PX# = Proposed Exempt renumbered Section

EXEMPT SUPPLEMENTAL PROPOSED

SPXN = Supplemental Proposed Exempt new Section
 SPXR = Supplemental Proposed Exempt repealed Section
 SPXM = Supplemental Proposed Exempt amended Section
 SPX# = Supplemental Proposed Exempt renumbered Section

FINAL EXEMPT RULEMAKING

FXN = Final Exempt new Section
 FXM = Final Exempt amended Section
 FXR = Final Exempt repealed Section
 FX# = Final Exempt renumbered Section

EMERGENCY RULEMAKING

EN = Emergency new Section
 EM = Emergency amended Section
 ER = Emergency repealed Section
 E# = Emergency renumbered Section
 EEXP = Emergency expired

RECODIFICATION OF RULES

RC = Recodified

REJECTION OF RULES

RJ = Rejected by the Attorney General

TERMINATION OF RULES

TN = Terminated proposed new Sections
 TM = Terminated proposed amended Section
 TR = Terminated proposed repealed Section
 T# = Terminated proposed renumbered Section

RULE EXPIRATIONS

EXP = Rules have expired

See also “emergency expired” under emergency rulemaking

CORRECTIONS

C = Corrections to Published Rules

2019 Arizona Administrative Register Volume 25 Page Guide

Issue 1, Jan. 4, 2019.....1-87	Issue 2, Jan. 11, 2019.....88-116	Issue 3, Jan. 18, 2019.....117-140
Issue 4, Jan. 25, 2019.....141-172	Issue 5, Feb. 1, 2018.....173-284	Issue 6, Feb. 8, 2019.....285-344
Issue 7, Feb. 15, 2019.....345-396	Issue 8, Feb. 22, 2019.....397-426	Issue 9, March 1, 2019.....427-480
Issue 10, March 8, 2019.....481-544	Issue 11, March 15, 2019.....545-692	Issue 12, March 22, 2019.....693-740
Issue 13, March 29, 2019.....741-790	Issue 14, April 5, 2019.....791-866	Issue 15, April 12, 2019.....867-914
Issue 16, April 19, 2019.....915-988	Issue 17, April 26, 2019.....989-1128	Issue 18, May 3, 2019.....1129-1178
Issue 19, May 10, 2019.....1179-1212	Issue 20, May 17, 2019.....1213-1288	Issue 21, May 24, 2019.....1289-1324
Issue 22, May 31, 2019.....1325-1360	Issue 23, June 7, 2019.....1361-1406	Issue 24, June 14, 2019.....1407-1476
Issue 25, June 21, 2019.....1477-1578	Issue 26, June 28, 2019.....1579-1714	Issue 27, July 5, 2019.....1715-1776
Issue 28, July 12, 2019.....1777-1822	Issue 29, July 19, 2019.....1823-1880	Issue 30, July 26, 2019.....1881-1918
Issue 31, Aug. 2, 2019.....1919-2006	Issue 32, Aug. 9, 2019.....2007-2076	Issue 33, Aug. 16, 2019.....2077-2110
Issue 34, Aug. 23, 2019.....2111-2150	Issue 35, Aug. 30, 2019.....2151-2206	Issue 36, Sept. 6, 2019.....2207-2286
Issue 37, Sept. 13, 2019.....2287-2394		

RULEMAKING ACTIVITY INDEX

Rulemakings are listed in the Index by Chapter, Section number, rulemaking activity abbreviation and by volume page number. Use the page guide above to determine the *Register* issue number to review the rule. Headings for the Subchapters, Articles, Parts, and Sections are not indexed.

THIS INDEX INCLUDES RULEMAKING ACTIVITY THROUGH ISSUE 37 OF VOLUME 25.

**Administration, Department of -
Benefit Services Division**

 R2-6-105. SPM-1186;
 TM-2265

**Administration, Department of -
Public Buildings Maintenance**

 R2-11-301. FM-2211
 R2-11-302. FM-2211
 R2-11-303. FM-2211
 R2-11-304. FM-2211
 R2-11-305. FM-2211
 R2-11-306. FM-2211
 R2-11-307. FM-2211
 R2-11-309. FM-2211
 R2-11-310. FM-2211
 R2-11-311. FM-2211
 R2-11-312. FN-2211
 R2-11-401. FR-2211
 R2-11-402. FR-2211
 R2-11-403. FR-2211
 R2-11-404. FR-2211
 R2-11-405. FR-2211
 R2-11-406. FR-2211
 R2-11-407. FR-2211
 R2-11-408. FR-2211
 R2-11-409. FR-2211
 R2-11-501. PN-1481;
 FR-2211;
 F#-2211

**Agriculture, Department of - Animal
Services Division**

 R3-2-101. PM-2291
 R3-2-102. PM-2291
 R3-2-203. FXM-2081

 R3-2-208. PR-2291
 R3-2-301. PM-2291
 R3-2-302. PM-2291
 R3-2-401. PM-2291
 R3-2-402. PM-2291
 R3-2-403. PN-2291
 R3-2-404. PM-2291
 R3-2-405. PM-2291
 R3-2-406. PM-2291
 R3-2-407. PM-2291
 R3-2-408. PM-2291
 R3-2-409. PM-2291
 R3-2-410. PR-2291;
 PN-2323
 R3-2-411. PR-2291
 R3-2-412. PR-2291
 R3-2-413. PM-2291
 R3-2-501. PM-2291
 R3-2-503. PM-2291
 R3-2-504. PM-2291
 R3-2-505. PM-2291
 R3-2-601. PR-2291
 R3-2-602. PM-2291
 R3-2-603. PR-2291
 R3-2-604. PR-2291
 R3-2-605. PM-2291
 R3-2-606. PM-2291
 R3-2-607. PM-2291
 R3-2-608. PR-2291
 R3-2-609. PM-2291
 R3-2-611. PM-2291
 R3-2-612. PM-2291
 R3-2-613. PM-2291
 R3-2-614. PM-2291
 R3-2-615. PM-2291
 R3-2-616. PM-2291

 R3-2-617. PM-2291
 R3-2-618. PM-2291
 R3-2-620. PM-2291
 R3-2-701. FXM-2081;
 PM-2291
 R3-2-702. PM-2291
 R3-2-703. PM-2291
 R3-2-708. PM-2291
 R3-2-801. PM-2291
 R3-2-803. PM-2291
 R3-2-804. PM-2291
 R3-2-805. PM-2291
 R3-2-807. PM-2291
 R3-2-808. PM-2291
 R3-2-810. FXM-2081
 R3-2-901. PM-2291
 R3-2-902. PM-2291
 R3-2-906. PM-2291
 R3-2-907. PM-2291
 R3-2-908. PM-2291

**Agriculture, Department of - Citrus
Fruit and Vegetable Division**

 R3-10-101. FXM-2089
 R3-10-102. FXM-2089

**Agriculture, Department of - Envi-
ronmental Services Division**

R3-3-702. FXM-2084

**Agriculture, Department of - Office
of Commodity Development and
Promotion**

R3-6-102. FXM-2088

**Agriculture, Department of - Pest
Management Division**



R3-8-103.	FXM-720	R7-5-101.	FXM-1926	R14-2-2616.	PN-355;
Agriculture, Department of - Plant Services Division		R7-5-208.	FXM-1926	R14-2-2617.	SPN-2033
R3-4-101.	PM-795	R7-5-301.	FXM-1926		PN-355;
Table 1.	PM-795	R7-5-402.	FXM-1926		SPN-2033
R3-4-201.	PM-795	R7-5-501.	FXM-1926	R14-2-2618.	PN-355;
R3-4-202.	PM-795	R7-5-504.	FXM-1926		SPN-2033
R3-4-203.	PN-795	R7-5-506.	FXM-1926	R14-2-2619.	PN-355;
Table 2.	PN-795	R7-5-509.	FXM-1926		SPN-2033
Table 3.	PN-795	R7-5-602.	FXM-1926	R14-2-2620.	PN-355;
R3-4-204.	PM-795	Child Safety, Department of - Permanency and Support Services			SPN-2033
R3-4-218.	PM-795	R21-5-201.	EM-771;	R14-2-2621.	PN-355;
R3-4-219.	PR-795		PM-2347		SPN-2033
R3-4-220.	PM-795	R21-5-205.	EM-771;	R14-2-2622.	PN-355;
R3-4-226.	PR-795		PM-2347		SPN-2033
R3-4-228.	PR-795	Clean Elections Commission, Citizens		R14-2-2623.	PN-355;
R3-4-229.	PM-795				SPN-2033
R3-4-231.	PM-795	R2-20-104.	PM-1411;	R14-2-2624.	PN-355;
R3-4-234.	PR-795		PM-2115;		SPN-2033
R3-4-238.	PR-795	R2-20-113.	TM-2129	R14-2-2625.	PN-355;
R3-4-239.	PM-795		PM-1413;		SPN-2033
R3-4-240.	PR-795	R2-20-702.	FM-2118	R14-2-2626.	PN-355;
R3-4-241.	PM-795		PM-1414;		SPN-2033
R3-4-242.	PR-795	R2-20-704.	FM-2120	R14-2-2627.	PN-355;
R3-4-244.	PR-795		PM-1417;		SPN-2033
R3-4-245.	PM-795		FM-2122	Corporation Commission, Arizona - Transportation	
Table 4.	PN-795	Contractors, Registrar of		R14-5-201.	FM-151
Table 5.	PN-795	R4-9-116.	EXP-373	R14-5-202.	FM-151
Table 6.	PN-795	R4-9-121.	EXP-373	R14-5-204.	FM-151
R3-4-246.	PR-795	Corporation Commission, Arizona - Fixed Utilities		Dispensing Opticians, Board of	
R3-4-248.	PM-795	R14-2-211.	EM-1798	R4-20-120.	PM-2326
R3-4-301.	FXM-2085	R14-2-2601.	PN-355;	Economic Security, Department of - Child Support Enforcement	
R3-4-501.	PM-795		SPN-2033	R6-7-103.	PM-1719
R3-4-901.	PM-795	R14-2-2602.	PN-355;	Economic Security, Department of - Food Stamps Program	
R3-4-1001.	XN-1447		SPN-2033	R6-14-301.	TN-413
R3-4-1002.	XN-1447	R14-2-2603.	PN-355;	R6-14-302.	TN-413
R3-4-1003.	XN-1447		SPN-2033	R6-14-303.	TN-413
R3-4-1004.	XN-1447	R14-2-2604.	PN-355;	R6-14-304.	TN-413
R3-4-1005.	XN-1447		SPN-2033	R6-14-305.	TN-413
Table 1.	XN-1447	R14-2-2605.	PN-355;	R6-14-306.	TN-413
R3-4-1006.	XN-1447		SPN-2033	R6-14-307.	TN-413
R3-4-1007.	XN-1447	R14-2-2606.	PN-355;	R6-14-308.	TN-413
R3-4-1008.	XN-1447		SPN-2033	R6-14-309.	TN-413
R3-4-1011.	XN-1447	R14-2-2607.	PN-355;	R6-14-310.	TN-413
R3-4-1012.	XN-1447		SPN-2033	R6-14-311.	TN-413
R3-4-1013.	XN-1447	R14-2-2608.	PN-355;	R6-14-401.	TN-413
R3-4-1014.	XN-1447		SPN-2033	R6-14-402.	TN-413
Arizona Health Care Cost Containment System (AHCCCS) - Administration		R14-2-2609.	PN-355;	R6-14-403.	TN-413
R9-22-303.	FM-1849		SPN-2033	R6-14-404.	TN-413
R9-22-712.35.	PM-1781	R14-2-2610.	PN-355;	R6-14-405.	TN-413
R9-22-712.61.	PM-1781;		SPN-2033	R6-14-406.	TN-413
	PM-1787	R14-2-2611.	PN-355;	R6-14-407.	TN-413
R9-22-712.71.	PM-1781		SPN-2033	R6-14-408.	TN-413
R9-22-712.75.	PM-1787	R14-2-2612.	PN-355;	R6-14-409.	TN-413
R9-22-721.	PM-1790		SPN-2033	R6-14-410.	TN-413
R9-22-730.	FXM-1938	R14-2-2613.	PN-355;	R6-14-411.	TN-413
			SPN-2033	R6-14-412.	TN-413
Board of Physician Assistants, Arizona Regulatory		R14-2-2614.	PN-355;	R6-14-413.	TN-413
R4-17-203.	FM-401		SPN-2033		
Charter Schools, State Board for		R14-2-2615.	PN-355;		
			SPN-2033		

R6-14-414.	TN-413	R6-10-122.	PR-1365;	R18-2-1203.	PM-8; FM-1433
R6-14-415.	TN-413		P#-1365;	R18-2-1204.	PM-8; FM-1433
R6-14-416.	TN-413		PM-1365	R18-2-1205.	PM-8; FM-1433
R6-14-417.	TN-413	R6-10-123.	P#-1365;	R18-2-1206.	PM-8; FM-1433
R6-14-501.	TN-413		PM-1365	R18-2-1207.	PM-8; FM-1433
R6-14-502.	TN-413	R6-10-124.	P#-1365;	R18-2-1208.	P#-8; PN-8;
R6-14-503.	TN-413		PM-1365		F#-1433;
R6-14-504.	TN-413	R6-10-125.	P#-1365;		FN-1433
R6-14-505.	TN-413		PM-1365	R18-2-1209.	PN-8;
R6-14-506.	TN-413	R6-10-126.	PM-1365		FN-1433
R6-14-507.	TN-413	R6-10-301.	PM-1365	R18-2-1210.	P#-8;
		R6-10-302.	PM-1365		PM-8;
		R6-10-303.	PM-1365		F#-1433;
					FM-1433
Economic Security, Department of - Social Services		Education, State Board of		Environmental Quality, Department of - Hazardous Waste Management	
R6-5-3301.	FN-885	R7-2-201.	FXM-98	R18-8-101.	FM-435
R6-5-3302.	FN-885	R7-2-206.	FXM-98	R18-8-260.	FM-435
R6-5-3303.	FN-885	R7-2-303.	FXM-1550	R18-8-261.	FM-435
R6-5-3304.	FN-885	R7-2-319.	FXN-962	R18-8-262.	FM-435
R6-5-3305.	FN-885	R7-2-320.	FXN-962	R18-8-263.	FM-435
R6-5-3306.	FN-885	R7-2-604.03.	FXM-965	R18-8-264.	FM-435
R6-5-3307.	FN-885	R7-2-615.	FXM-1552	R18-8-265.	FM-435
		R7-2-1301.	FXM-967	R18-8-266.	FM-435
		R7-2-1302.	FXM-967	R18-8-268.	FM-435
		R7-2-1303.	FXM-967	R18-8-270.	FM-435
		R7-2-1304.	FXM-967	R18-8-271.	FM-435
		R7-2-1305.	FXM-967	R18-8-273.	FM-435
		R7-2-1306.	FXR-967	R18-8-280.	FM-435
		R7-2-1307.	FXM-967		
Economic Security, Department of - The JOBS Program		Environmental Quality, Department of - Air Pollution Control		Environmental Quality, Department of - Underground Storage Tanks	
R6-10-101.	PM-1365	R18-2-101.	PM-993;	R18-12-101.	PM-1485
R6-10-101.01.	PM-1365		SPM-2352	R18-12-102.	PM-1485
R6-10-102.	PM-1365	R18-2-220.	FM-888	R18-12-210.	PM-1485
R6-10-103.	P#-1365;	R18-2-301.	SPM-2352	R18-12-211.	PM-1485
	PN-1365	R18-2-302.01.	SPM-2352	R18-12-219.	PN-1485
R6-10-104.	P#-1365;	R18-2-304.	SPM-2352	R18-12-220.	PM-1485
	PM-1365	R18-2-334.	SPM-2352	R18-12-221.	PM-1485
R6-10-105.	P#-1365;	R18-2-406.	SPM-2352	R18-12-222.	PM-1485
	PM-1365	R18-2-1001.	FM-485	R18-12-223.	PM-1485
R6-10-106.	P#-1365;	R18-2-1002.	FN-485	R18-12-230.	PM-1485
	PM-1365	R18-2-1003.	FM-485	R18-12-231.	PM-1485
R6-10-107.	P#-1365;	R18-2-1005.	FM-485	R18-12-232.	PM-1485
	PN-1365	R18-2-1006.	FM-485	R18-12-233.	PM-1485
R6-10-108.	P#-1365;	R18-2-1007.	FM-485	R18-12-234.	PM-1485
	PM-1365	R18-2-1008.	FM-485	R18-12-235.	PN-1485
R6-10-109.	P#-1365;	R18-2-1009.	FM-485	R18-12-236.	PN-1485
	PM-1365	R18-2-1010.	FM-485	R18-12-237.	PN-1485
R6-10-110.	P#-1365;	R18-2-1011.	FM-485	R18-12-240.	PM-1485
	PM-1365	R18-2-1012.	FM-485	R18-12-241.	PM-1485
R6-10-111.	P#-1365;	R18-2-1013.	FR-485	R18-12-242.	PM-1485
	PM-1365	R18-2-1016.	FM-485	R18-12-243.	PM-1485
R6-10-112.	P#-1365;	R18-2-1017.	FM-485	R18-12-244.	PM-1485
	PM-1365	R18-2-1018.	FM-485	R18-12-245.	PM-1485
R6-10-113.	P#-1365;	R18-2-1019.	FM-485	R18-12-250.	PM-1485
	PM-1365	R18-2-1020.	FM-485	R18-12-251.	PM-1485
R6-10-114.	P#-1365;	R18-2-1023.	FM-485	R18-12-252.	PN-1485
	PM-1365	R18-2-1025.	FM-485	R18-12-260.	PM-1485
R6-10-115.	P#-1365;	R18-2-1026.	FM-485	R18-12-261.	PM-1485
	PM-1365	R18-2-1027.	FR-485	R18-12-261.01.	PM-1485
R6-10-116.	P#-1365;	R18-2-1028.	FR-485	R18-12-261.02.	PM-1485
	PM-1365	R18-2-1028.	FR-485	R18-12-262.	PM-1485
R6-10-117.	P#-1365;	R18-2-1031.	FR-485	R18-12-263.	PM-1485
	PM-1365	Table 5.	FM-485	R18-12-263.02.	PM-1485
R6-10-118.	P#-1365;	R18-2-1201.	PM-8; FM-1433	R18-12-263.03.	PM-1485
	PM-1365	R18-2-1202.	PM-8; FM-1433		
R6-10-119.	P#-1365;				
	PM-1365				
R6-10-120.	P#-1365;				
	PM-1365				
R6-10-121.	P#-1365;				
	PN-1365				

R18-12-263.04. PM-1485
 R18-12-264. PM-1485
 R18-12-264.01. PM-1485
 R18-12-270. PM-1485
 R18-12-271. PM-1485
 R18-12-272. PM-1485
 R18-12-274. PM-1485
 R18-12-280. PM-1485
 R18-12-281. PM-1485
 R18-12-300. PM-1485
 R18-12-301. PM-1485
 R18-12-305. PM-1485
 R18-12-306. PM-1485
 R18-12-307. PM-1485
 R18-12-308. PM-1485
 R18-12-309. PM-1485
 R18-12-310. PM-1485
 R18-12-311. PR-1485
 R18-12-312. PM-1485
 R18-12-313. PM-1485
 R18-12-314. PM-1485
 R18-12-315. PM-1485
 R18-12-316. PM-1485
 R18-12-317. PM-1485
 R18-12-318. PM-1485
 R18-12-319. PM-1485
 R18-12-320. PM-1485
 R18-12-322. PM-1485
 R18-12-324. PM-1485
 R18-12-325. PM-1485
 R18-12-404. PM-1485
 R18-12-405. PM-1485
 R18-12-408. PM-1485
 R18-12-409. PM-1485
 R18-12-410. PM-1485
 R18-12-501. PM-1485
 R18-12-801. PM-1485
 R18-12-804. PM-1485
 R18-12-805. PM-1485
 R18-12-806. PM-1485
 R18-12-808. PM-1485
 R18-12-809. PM-1485
 R18-12-951. PN-1485
 R18-12-952. PN-1485

Environmental Quality, Department of - Water Pollution Control

R18-9-101. PEM-1293
 R18-9-103. PEM-1293

Environmental Quality, Department of - Water Quality Standards

R18-11-101. PM-177
 R18-11-107.1. PM-177
 R18-11-109. PM-177
 R18-11-114. PM-177
 R18-11-115. PM-177
 R18-11-120. PM-177
 R18-11-122. PM-177
 Appendix A. PM-177
 Table 1. PM-177
 Table 2. PM-177
 Table 3. PM-177
 Table 4. PM-177
 Table 5. PM-177
 Table 6. PM-177

Table 11. PR-177; PN-177
 Table 12. PR-177; PN-177
 Table 13. PN-177
 Table 14. PN-177
 Table 15. PN-177
 Table 16. PN-177
 Table 17. PN-177
 Appendix B. PM-177
 Appendix C. PM-177

Financial Institutions, Department of - Real Estate Appraisal Division

R4-46-101. FM-1139
 R4-46-103. FR-1139
 R4-46-106. FM-1139
 R4-46-107. FM-1139
 R4-46-201. FM-1139
 R4-46-201.01. FM-1139
 R4-46-202. FR-1139
 R4-46-202.01. FM-1139
 R4-46-203. FM-1139
 R4-46-204. FM-1139
 R4-46-205. PR-1139
 R4-46-207. PR-1139
 R4-46-209. FM-1139
 R4-46-301. FM-1139
 R4-46-302. FR-1139
 R4-46-303. FR-1139
 R4-46-304. FR-1139
 R4-46-305. FR-1139
 R4-46-306. FR-1139
 R4-46-301.01. FN-1139
 R4-46-302.01. FN-1139
 R4-46-303.01. FN-1139
 R4-46-304.01. FN-1139
 R4-46-305.01. FN-1139
 R4-46-306.01. FN-1139
 R4-46-307.01. FN-1139
 R4-46-401. FM-1139
 R4-46-402. FM-1139
 R4-46-403. FM-1139
 R4-46-404. FM-1139
 R4-46-405. FM-1139
 R4-46-406. FM-1139
 R4-46-407. FM-1139
 R4-46-408. FM-1139
 R4-46-501. FM-1139
 R4-46-503. FM-1139
 R4-46-504. FM-1139
 R4-46-505. FM-1139
 R4-46-506. FM-1139
 R4-46-508. FM-1139
 R4-46-509. FM-1139
 R4-46-510. FM-1139
 R4-46-511. FM-1139

Game and Fish Commission

R12-4-101. FM-1047
 R12-4-102. PM-349;
 FM-1854
 R12-4-106. PM-349;
 FM-1854
 R12-4-204. PN-349;
 FM-1854
 R12-4-216. FM-1047
 R12-4-301. FM-1047

R12-4-302. FM-1047
 R12-4-303. PM-875;
 FM-1047
 R12-4-304. FM-1047
 R12-4-305. FM-1047
 R12-4-306. FM-1047
 R12-4-307. FM-1047
 R12-4-308. FM-1047
 R12-4-309. FM-1047
 R12-4-310. FM-1047
 R12-4-311. FM-1047
 R12-4-313. FM-1047
 R12-4-314. FN-1047
 R12-4-315. FR-1047
 R12-4-316. FR-1047
 R12-4-317. FR-1047
 R12-4-318. FM-1047
 R12-4-319. FM-1047
 R12-4-320. FM-1047
 R12-4-321. FM-1047
 R12-4-322. FM-1047
 R12-4-401. FM-1047
 R12-4-1001. PN-124;
 FN-1860
 R12-4-1002. PN-124;
 FN-1860
 R12-4-1003. PN-124;
 FN-1860
 R12-4-1004. PN-124;
 FN-1860
 R12-4-1005. PN-124;
 FN-1860

Health Services, Department of - Communicable Diseases and Infections

R9-6-401. PM-2327
 R9-6-403. PM-2327
 R9-6-404. PM-2327
 R9-6-405. PM-2327
 R9-6-406. PM-2327
 R9-6-407. PM-2327
 R9-6-408. PM-2327
 R9-6-409. PM-2327
 R9-6-1201. FEM-255
 R9-6-1202. FEM-255
 R9-6-1203. FEM-255
 R9-6-1204. FEM-255

Health Services, Department of - Emergency Medical Services

R9-25-201. FM-953
 R9-25-202. FM-953
 R9-25-203. FM-953
 R9-25-204. FM-953
 R9-25-205. FM-953
 R9-25-206. FM-953
 R9-25-207. FM-953

Health Services, Department of - Food, Recreational, and Institutional Sanitation

R9-8-102. PEM-675;
 FEM-1547
 R9-8-501. FN-748
 R9-8-502. FN-748

R9-8-503.	FN-748	R9-10-104.	PM-549;	R9-10-228.	PEM-2217
Table 5.1.	FN-748		FM-1583;	R9-10-233.	PM-549;
Table 5.2.	FN-748		PM-2217		FM-1583
R9-8-504.	FN-748	R9-10-104.01.	PEN-2217	R9-10-234.	PEM-2217
R9-8-505.	FN-748	R9-10-105.	PM-549;	R9-10-302.	PM-549;
R9-8-506.	FN-748		FM-1583;		FM-1583
R9-8-507.	FN-748		PEM-2217	R9-10-303.	PM-549;
R9-8-512.	FR-748	R9-10-106.	PM-549;		FM-1583
R9-8-521.	FR-748		XM-1222;	R9-10-306.	PM-549;
R9-8-522.	FR-748		FM-1583		FM-1583
R9-8-523.	FR-748	R9-10-107.	PR-549;	R9-10-307.	PM-549;
R9-8-531.	FR-748		PN-549;		FM-1583
R9-8-533.	FR-748		FR-1583;	R9-10-308.	PM-549;
R9-8-541.	FR-748		FN-1583		FM-1583
R9-8-542.	FR-748	R9-10-108.	PM-549;	R9-10-314.	PM-549;
R9-8-543.	FR-748		FM-1583		FM-1583
R9-8-544.	FR-748	Table 1.1.	PM-549;	R9-10-315.	PM-549;
R9-8-551.	FR-748		FM-1583		FM-1583
R9-8-601.	FN-756	R9-10-109.	PM-549;	R9-10-316.	PM-549;
R9-8-602.	FN-756		FM-1583		FM-1583
R9-8-603.	FN-756	R9-10-110.	PM-549;	R9-10-321.	PM-549;
Table 6.1.	FN-756		FM-1583;		FM-1583
Table 6.2.	FN-756		PEM-2217	R9-10-322.	PEM-2217
R9-8-604.	FN-756	R9-10-111.	PM-549;	R9-10-323.	FEM-259
R9-8-605.	FN-756		FM-1583	R9-10-324.	PM-549;
R9-8-606.	FN-756	R9-10-112.	PM-549;		FM-1583
R9-8-607.	FN-756		FM-1583	R9-10-401.	PM-549;
R9-8-608.	FN-756	R9-10-113.	PM-549;		FM-1583
R9-8-611.	FR-756		FM-1583	R9-10-402.	PM-549;
R9-8-612.	FR-756	R9-10-114.	PM-549;		FM-1583
R9-8-613.	FR-756		FM-1583	R9-10-403.	PM-549;
R9-8-614.	FR-756	R9-10-115.	PM-549;		FM-1583
R9-8-615.	FR-756		FM-1583	R9-10-408.	PM-549;
R9-8-616.	FR-756	R9-10-116.	PM-549;		FM-1583
R9-8-617.	FR-756		FM-1583	R9-10-409.	PM-549;
R9-8-1301.	FN-763	R9-10-118.	PM-549;		FM-1583
R9-8-1302.	FN-763		FM-1583	R9-10-412.	PM-549;
R9-8-1303.	FN-763	R9-10-119.	PEM-1159;		FM-1583
Table 13.1.	FN-763		FEM-1893	R9-10-414.	PM-549;
R9-8-1304.	FN-763	R9-10-201.	PM-549;		FM-1583
R9-8-1305.	FN-763		FM-1583	R9-10-415.	PM-549;
R9-8-1306.	FN-763	R9-10-202.	PM-549;		FM-1583
R9-8-1307.	FN-763		FM-1583	R9-10-418.	PM-549;
R9-8-1308.	FN-763	R9-10-203.	PM-549;		FM-1583
R9-8-1312.	FR-763		FM-1583	R9-10-425.	PM-549;
R9-8-1314.	FR-763	R9-10-206.	PM-549;		FM-1583
R9-8-1321.	FR-763		FM-1583	R9-10-426.	PEM-2217
R9-8-1322.	FR-763	R9-10-207.	PM-549;		PM-549;
R9-8-1331.	FR-763		FM-1583	R9-10-427.	FM-1583
R9-8-1332.	FR-763	R9-10-210.	PM-549;		FM-1583
R9-8-1333.	FR-763		FM-1583	R9-10-501.	X#-1222;
R9-8-1334.	FR-763	R9-10-215.	PM-549;		XN-1222
R9-8-1335.	FR-763		FM-1583	R9-10-502.	X#-1222;
R9-8-1336.	FR-763	R9-10-217.	PM-549;		XN-1222
R9-8-1337.	FR-763		FM-1583;	R9-10-503.	X#-1222;
R9-8-1338.	FR-763		PEM-2217		XN-1222
		R9-10-219.	PM-549;	R9-10-504.	X#-1222;
			FM-1583		XN-1222
		R9-10-220.	PM-549;	R9-10-505.	X#-1222;
			FM-1583		XN-1222
		R9-10-224.	PM-549;	R9-10-506.	X#-1222;
			FM-1583		XN-1222
		R9-10-225.	PM-549;	R9-10-507.	X#-1222;
			FM-1583		XN-1222
		R9-10-226.	PM-549;	R9-10-508.	X#-1222;
			FM-1583		XN-1222

**Health Services, Department of -
Health Care Institutions: Licensing**

R9-10-509.	X#-1222; XN-1222	R9-10-720.	PM-549; FM-1583; PEM-2217	R9-10-1317.	PEM-2217
R9-10-510.	X#-1222; XN-1222	R9-10-721.	FEM-259	R9-10-1414.	PM-549; FM-1583
R9-10-511.	X#-1222; XN-1222	R9-10-722.	FM-1583	R9-10-1415.	FEM-259
R9-10-512.	X#-1222; XN-1222	R9-10-801.	PM-549; FM-1583	R9-10-1416.	PEM-2217
R9-10-513.	X#-1222; XN-1222	R9-10-802.	PM-549; FM-1583	R9-10-1505.	PEM-1159; FEM-1893
R9-10-514.	X#-1222; XN-1222	R9-10-803.	PM-549; FM-1583	R9-10-1509.	PEM-1159; FEM-1893
R9-10-515.	X#-1222; XN-1222	R9-10-806.	PM-549; FM-1583	R9-10-1514.	PEM-2217
R9-10-516.	X#-1222; XN-1222	R9-10-807.	PM-549; FM-1583	R9-10-1610.	FEM-259
R9-10-517.	FEM-259; X#-1222; XN-1222	R9-10-807.	PM-549; FM-1583	R9-10-1712.	FEM-259
R9-10-518.	X#-1222; XN-1222; PEM-2217	R9-10-808.	PM-549; FM-1583	R9-10-1810.	FEM-259
R9-10-519.	XN-1222	R9-10-810.	PM-549; FM-1583	R9-10-1901.	PR-549; FR-1583
R9-10-520.	XN-1222	R9-10-814.	PM-549; FM-1583	R9-10-1902.	PM-549; FM-1583
R9-10-521.	XN-1222	R9-10-815.	PM-549; FM-1583; PEM-2217	R9-10-1910.	PEM-2217
R9-10-522.	XN-1222	R9-10-817.	PM-549; FM-1583	R9-10-2101.	X#-1222
R9-10-523.	XN-1222	R9-10-818.	PM-549; FM-1583; PEM-2217	R9-10-2102.	X#-1222; XM-1222
R9-10-524.	XN-1222	R9-10-819.	FEM-259	R9-10-2103.	X#-1222
R9-10-525.	XN-1222	R9-10-820.	PM-549; FM-1583; PEM-2217	R9-10-2104.	X#-1222
R9-10-602.	PM-549; FM-1583	R9-10-917.	FEM-259	R9-10-2105.	X#-1222
R9-10-607.	PM-549; FM-1583	R9-10-918.	PEM-2217	R9-10-2106.	X#-1222
R9-10-617.	FEM-259	R9-10-1002.	PM-549; FM-1583	R9-10-2107.	X#-1222
R9-10-618.	PEM-2217	R9-10-1003.	PM-549; FM-1583	R9-10-2108.	X#-1222
R9-10-702.	PM-549; FM-1583	R9-10-1013.	PM-549; FM-1583	R9-10-2109.	X#-1222
R9-10-703.	PM-549; FM-1583	R9-10-1014.	PM-549; FM-1583	R9-10-2110.	X#-1222
R9-10-706.	PM-549; FM-1583	R9-10-1017.	PM-549; FM-1583	R9-10-2111.	X#-1222; XM-1222
R9-10-707.	PM-549; FM-1583	R9-10-1018.	PM-549; FM-1583; PEM-2217	R9-10-2112.	X#-1222
R9-10-708.	PM-549; FM-1583	R9-10-1019.	PM-549; FM-1583; PEM-2217	R9-10-2113.	X#-1222
R9-10-711.	PM-549; FM-1583	R9-10-1025.	PM-549; FM-1583; PEM-2217	R9-10-2114.	X#-1222
R9-10-712.	PM-549; FM-1583	R9-10-1029.	PEM-2217	R9-10-2115.	X#-1222
R9-10-713.	PM-549; FM-1583	R9-10-1030.	FEM-259	R9-10-2116.	X#-1222
R9-10-714.	PM-549; FM-1583	R9-10-1031.	PM-549; FM-1583	R9-10-2117.	X#-1222
R9-10-715.	PM-549; FM-1583	R9-10-1102.	PM-549; FM-1583	R9-10-2118.	X#-1222
R9-10-716.	PM-549; FM-1583	R9-10-1116.	FEM-259		
R9-10-717.	PM-549; FM-1583	R9-10-1117.	PEM-2217		
R9-10-717.01.	PN-549; FN-1583	R9-10-1203.	PEM-2185		
R9-10-718.	PM-549; FM-1583	R9-10-1206.	PEM-2185		
R9-10-719.	PM-549; FM-1583	R9-10-1315.	PEM-2217		
		R9-10-1316.	FEM-259		

**Health Services, Department of -
Health Programs Services**

R9-13-101.	PM-697; FM-1827
R9-13-102.	PM-697; FM-1827
Table 13.1.	PN-697; FN-1827
R9-13-103.	PM-697; FM-1827
R9-13-104.	PM-697; FM-1827
R9-13-105.	PM-697; FM-1827
R9-13-106.	PN-697; FN-1827
R9-13-107.	PR-697; PN-697; FR-1827; FN-1827
R9-13-108.	PR-697; PN-697; FR-1827; FN-1827
R9-13-109.	PR-697; PN-697; FR-1827; FN-1827
R9-13-110.	PN-697; FN-1827

R9-13-111. PN-697;
FN-1827
R9-13-112. PN-697;
FN-1827
R9-13-113. PN-697;
FN-1827
R9-13-114. PN-697;
FN-1827
R9-13-115. PN-697;
FN-1827

**Health Services, Department of -
Noncommunicable Diseases**

R9-4-101. PM-2011
R9-4-201. PM-2011
R9-4-202. PM-2011
R9-4-301. PM-2011
R9-4-302. PM-2011
R9-4-401. PM-2011
R9-4-402. PM-2011
R9-4-403. PM-2011
R9-4-404. PM-2011
R9-4-405. PM-2011
R9-4-501. PM-2011
R9-4-502. PM-2011
R9-4-503. PM-2011
R9-4-504. PM-2011

**Health Services, Department of -
Occupational Licensing**

R9-16-601. PEM-1329
R9-16-602. PEM-1329
R9-16-603. PEM-1329
R9-16-604. PEM-1329
R9-16-605. PEM-1329
R9-16-606. PEM-1329
R9-16-607. PEM-1329
R9-16-608. PEM-1329
R9-16-609. PEM-1329
R9-16-610. PEM-1329
R9-16-611. PEM-1329
R9-16-612. PEM-1329
R9-16-613. PEM-1329
R9-16-614. PEM-1329
R9-16-615. PEM-1329
R9-16-616. PEM-1329
R9-16-617. PEM-1329
R9-16-618. PEM-1329
R9-16-619. PEM-1329
R9-16-620. PEM-1329
R9-16-621. PEM-1329
R9-16-622. PEM-1329
R9-16-623. PEM-1329
R9-16-624. PEM-1329

**Health Services, Department of -
Sober Living Homes**

R9-12-101. PN-289;
FN-1419
R9-12-102. PN-289;
FN-1419
R9-12-103. PN-289;
FN-1419
R9-12-104. PN-289;
FN-1419

R9-12-105. PN-289;
FN-1419
R9-12-106. PN-289;
FN-1419
R9-12-107. PN-289;
FN-1419
Table 1.1. PN-289;
FN-1419
R9-12-201. PN-289;
FN-1419
R9-12-202. PN-289;
FN-1419
R9-12-203. PN-289;
FN-1419
R9-12-204. PN-289;
FN-1419
R9-12-205. PN-289;
FN-1419
R9-12-206. PN-289;
FN-1419
R9-12-207. PN-289;
FN-1419

Industrial Commission of Arizona

R20-5-507. PM-878;
FM-2182;
PM-2345

**Information Technology Agency,
Government**

R2-18-101. PM-93; FM-1133
R2-18-201. PM-93; FM-1133
R2-18-301. PM-93; FM-1133
R2-18-401. PM-93; FM-1133
R2-18-501. PN-93; FN-1133
R2-18-502. PN-93; FN-1133
R2-18-503. PN-93; FN-1133

Insurance, Department of

R20-6-401. PEM-1220
R20-6-1101. PM-880;
FM-1923
R20-6-2401. XN-155
R20-6-2402. XN-155
R20-6-2403. XN-155
R20-6-2404. XN-155
R20-6-2405. XN-155
R20-6-2406. XN-155

Medical Board, Arizona

R4-16-101. FM-145;
PM-2155
R4-16-102. FM-145
R4-16-103. FM-145
R4-16-401. FM-145
R4-16-402. FM-145
R4-16-501. PM-2155
R4-16-502. PM-2155
R4-16-503. PM-2155
R4-16-504. PM-2155
R4-16-505. PM-2155
R4-16-506. PM-2155
R4-16-507. PM-2155
R4-16-508. PM-2155
R4-16-509. PM-2155
R4-16-510. PM-2155

**Mine Inspector, State - Aggregate
Mined Land Reclamation**

R11-3-101. FN-828
R11-3-102. FN-828
R11-3-103. FN-828
R11-3-201. FN-828
R11-3-202. FN-828
R11-3-203. FN-828
R11-3-204. FN-828
R11-3-205. FN-828
R11-3-206. FN-828
R11-3-207. FN-828
R11-3-208. FN-828
R11-3-209. FN-828
R11-3-210. FN-828
R11-3-211. FN-828
R11-3-212. FN-828
R11-3-301. FN-828
R11-3-302. FN-828
R11-3-401. FN-828
R11-3-402. FN-828
R11-3-501. FN-828
R11-3-502. FN-828
R11-3-503. FN-828
R11-3-504. FN-828
R11-3-505. FN-828
R11-3-601. FN-828
R11-3-602. FN-828
R11-3-603. FN-828
R11-3-701. FN-828
R11-3-702. FN-828
R11-3-703. FN-828
R11-3-704. FN-828
R11-3-705. FN-828
R11-3-801. FN-828
R11-3-802. FN-828
R11-3-803. FN-828
R11-3-804. FN-828
R11-3-805. FN-828
R11-3-806. FN-828
R11-3-807. FN-828
R11-3-808. FN-828
R11-3-809. FN-828
R11-3-810. FN-828
R11-3-811. FN-828
R11-3-812. FN-828
R11-3-813. FN-828
R11-3-814. FN-828
R11-3-815. FN-828
R11-3-816. FN-828
R11-3-817. FN-828
R11-3-818. FN-828
R11-3-819. FN-828
R11-3-820. FN-828
R11-3-821. FN-828

Nursing, Board of

R4-19-101. FM-919
R4-19-201. FM-919
R4-19-202. FR-919
R4-19-203. FM-919
R4-19-204. FR-919
R4-19-205. FM-919
R4-19-206. FM-919
R4-19-207. FM-919
R4-19-209. FM-919

Revenue, Department of - Transaction Privilege and Use Tax Section

R15-5-1860. FEM-327

Secretary of State, Office of

R2-12-901. PN-121
 R2-12-902. PN-121
 R2-12-903. PN-121
 R2-12-904. PN-121
 R2-12-905. PN-121
 R2-12-906. PN-121
 R2-12-907. PN-121
 R2-12-908. PN-121
 R2-12-909. PN-121

Tax Deferred Annuity and Deferred Compensation Plans, Governing Committee for

R2-9-101. PR-91; FR-883

Transportation, Department of - Fuel Taxes

R17-8-401. PEM-2125
 R17-8-403. PEM-2125
 R17-8-404. PEM-2125
 R17-8-501. PEM-2125
 R17-8-502. PEM-2125
 R17-8-504. PEM-2125

Transportation, Department of - Third-party Programs

R17-7-206. EXP-1736
 R17-7-207. EXP-1736
 R17-7-304. EXP-1736
 R17-7-305. EXP-1736
 R17-7-501. EXP-1736
 R17-7-502. EXP-1736

Transportation, Department of - Title, Registration, and Driver

Licenses

R17-4-101. PN-670;
 FN-1885
 R17-4-313. XM-104;
 XR-2261;
 XN-2261
 R17-4-351. PN-745;
 FN-1890
 R17-4-352. PN-745;
 FN-1890
 R17-4-407. PR-670;
 PN-670;
 FR-1885;
 FN-1885
 R17-4-409. PM-670;
 FM-1885

OTHER NOTICES AND PUBLIC RECORDS INDEX

Other notices related to rulemakings are listed in the Index by notice type, agency/county and by volume page number. Agency policy statements and proposed delegation agreements are included in this section of the Index by volume page number. Public records, such as Governor Office executive orders, proclamations, declarations and terminations of emergencies, summaries of Attorney General Opinions, and county notices are also listed in this section of the Index and published by volume page number.

THIS INDEX INCLUDES OTHER NOTICE ACTIVITY THROUGH ISSUE 37 OF VOLUME 25.

Agency Ombudsman, Notices of

First Things First, Early Childhood Development and Health Board; p. 385
 Game and Fish Commission; p. 385
 Public Safety, Department of; p. 854

Docket Opening, Notices of Rulemaking

Administration, Department of - Public Buildings Maintenance; 2 A.A.C. 11; p. 1560
 Arizona Health Care Cost Containment System (AHCCCS) - Administration; 9 A.A.C. 22; pp. 1802-1803
 Agriculture, Department of - Animal Services Division; 3 A.A.C. 2; pp. 2372-2373
 Agriculture, Department of - Plant Services Division; 3 A.A.C. 4; p. 849
 Child Safety, Department of - Permanency and Support Services; 21 A.A.C. 5; p. 2374
 Clean Elections Commission, Citizens; 2 A.A.C. 20; pp. 1456-1457, 2130
 Corporation Commission, Arizona - Fixed Utilities; 14 A.A.C. 2; pp. 376
 Dispensing Opticians, Board of; 4 A.A.C. 20; p. 1163

Economic Security, Department of - Child Support Enforcement; 6 A.A.C. 7; pp. 1737-1738
 Economic Security, Department of - Food Stamps Program; 6 A.A.C. 14; pp. 1739-1740
 Economic Security, Department of - The JOBS Program; 6 A.A.C. 10; p. 1389
 Environmental Quality, Department of - Air Pollution Control; 18 A.A.C. 2; pp. 51-52, 1113, 1163-1164
 Environmental Quality, Department of - Water Pollution Control; 18 A.A.C. 9; p. 1308
 Environmental Quality, Department of - Water Quality Standards; 18 A.A.C. 11; p. 273
 Facilities Board, School; 7 A.A.C. 6; p. 1740
 Game and Fish Commission; 12 A.A.C. 4; pp. 128, 375-376, 894
 Health Services, Department of - Child Care Facilities; 9 A.A.C. 5; p. 1561
 Health Services, Department of - Communicable Diseases and Infestations; 9 A.A.C. 6; p. 1342
 Health Services, Department of - Emergency Medical Services; 9 A.A.C. 25; p. 1271
 Health Services, Department of - Food, Recreational, and Institutional Sanitation; 9 A.A.C. 8; pp. 374-375, 466, 724

Health Services, Department of - Health Care Institutions: Licensing; 9 A.A.C. 10; pp. 678, 1457, 2093, 2266
 Health Services, Department of - Noncommunicable Diseases; 9 A.A.C. 4; p. 1341
 Health Services, Department of - Occupational Licensing; 9 A.A.C. 16; p. 1270
 Industrial Commission of Arizona; 20 A.A.C. 5; pp. 895, 2373
 Information Technology Agency, Government; 2 A.A.C. 18; pp. 107-108
 Insurance, Department of; 20 A.A.C. 6; pp. 161, 896
 Medical Board, Arizona; 4 A.A.C. 16; p. 1898
 Nursing Care Institution Administrators and Assisted Living Facility Managers, Board of Examiners for; p. 2093
 Osteopathic Examiners in Medicine and Surgery, Board of; 4 A.A.C. 22; p. 723
 Pharmacy, Board of; 4 A.A.C. 23; pp. 51, 2092
 Podiatry, Board of; 4 A.A.C. 25; p. 465
 Public Safety, Department of - Criminal Identification Section; 13 A.A.C. 1; p. 331
 Public Safety, Department of - School Buses; 13 A.A.C. 13; p. 894

Retirement System Board, State; 2 A.A.C. 8; p. 1270
 Revenue, Department of - General Administration; 15 A.A.C. 10; 1189
 Secretary of State, Office of; 2 A.A.C. 12; p. 1189, 1737
 Tax Deferred Annuity and Deferred Compensation Plans, Governing Committee for; 2 A.A.C. 9; p. 107
 Transportation, Department of - Fuel Taxes; 17 A.A.C. 8; p. 2130
 Transportation, Department of - Oversize and Overweight Special Permits; 17 A.A.C. 6; p. 680
 Transportation, Department of - Title, Registration, and Driver Licenses; 17 A.A.C. 4; p. 679

Governor’s Office

Executive Order 2019-01: pp. 131-132

Governor’s Regulatory Review Council

Notices of Action Taken at Monthly Meetings: pp. 342, 424, 787-788, 984-986, 1358-1359, 1576-1577, 1916-1917, 2205-2206

Guidance Document, Notices of

Health Services, Department of; pp. 109, 2054
 Revenue, Department of; pp. 1191-1192

Proposed Delegation Agreement, Notices of

Environmental Quality, Department of; pp. 1741-1760, 2055
 Health Services, Department of; p. 681

Public Information, Notices of

Accountancy, Board of; p. 468
 Environmental Quality, Department of; pp. 57-63, 1942-1990
 Environmental Quality, Department of - Water Pollution Control; pp. 162, 1114, 1459
 Game and Fish Commission; pp. 53-57
 Gaming, Department of - Racing Division - Boxing and Mixed Martial Arts Commission; p. 850
 Health Services, Department of; p. 2058
 Health Services, Department of - Health Care Institutions: Licensing; p. 2375
 Health Services, Department of - Medical Marijuana Program; p. 2057

Technical Registration, Board of; p. 725

Substantive Policy Statement, Notices of

Accountancy, Board of; pp. 469, 1899
 Behavioral Health Examiners, Board of; pp. 1344, 2376
 Contractors, Registrar of; p. 1197
 Finance Authority, Water Infrastructure; pp. 380-383
 Gaming, Department of - Racing Division - Boxing and Mixed Martial Arts Commission; pp. 851-853
 Health Services, Department; pp. 1115, 1309
 Insurance, Department; p. 532
 Lottery Commission, State; pp. 726, 2132
 Nursing, Board of; pp. 726, 2267
 Osteopathic Examiners in Medicine and Surgery; pp. 2267-2269
 Peace Officer Standards and Training Board, Arizona (AZPOST); p. 1805
 Psychologist Examiners, Board; p. 2269
 Podiatry Examiners, Board of; p. 1460
 Real Estate Department, State; pp. 129-130
 Revenue, Department of; pp. 1193-1196
 State Land Department, Arizona; pp. 378-380
 Technical Registration, Board of; p. 1273
 Water Resources, Department of; pp. 332, 378



RULES EFFECTIVE DATES CALENDAR

A.R.S. § 41-1032(A), as amended by Laws 2002, Ch. 334, § 8 (effective August 22, 2002), states that a rule generally becomes effective 60 days after the day it is filed with the Secretary of State's Office. The following table lists filing dates and effective dates for rules that follow this provision. Please also check the rulemaking Preamble for effective dates.

January		February		March		April		May		June	
Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date
1/1	3/2	2/1	4/2	3/1	4/30	4/1	5/31	5/1	6/30	6/1	7/31
1/2	3/3	2/2	4/3	3/2	5/1	4/2	6/1	5/2	7/1	6/2	8/1
1/3	3/4	2/3	4/4	3/3	5/2	4/3	6/2	5/3	7/2	6/3	8/2
1/4	3/5	2/4	4/5	3/4	5/3	4/4	6/3	5/4	7/3	6/4	8/3
1/5	3/6	2/5	4/6	3/5	5/4	4/5	6/4	5/5	7/4	6/5	8/4
1/6	3/7	2/6	4/7	3/6	5/5	4/6	6/5	5/6	7/5	6/6	8/5
1/7	3/8	2/7	4/8	3/7	5/6	4/7	6/6	5/7	7/6	6/7	8/6
1/8	3/9	2/8	4/9	3/8	5/7	4/8	6/7	5/8	7/7	6/8	8/7
1/9	3/10	2/9	4/10	3/9	5/8	4/9	6/8	5/9	7/8	6/9	8/8
1/10	3/11	2/10	4/11	3/10	5/9	4/10	6/9	5/10	7/9	6/10	8/9
1/11	3/12	2/11	4/12	3/11	5/10	4/11	6/10	5/11	7/10	6/11	8/10
1/12	3/13	2/12	4/13	3/12	5/11	4/12	6/11	5/12	7/11	6/12	8/11
1/13	3/14	2/13	4/14	3/13	5/12	4/13	6/12	5/13	7/12	6/13	8/12
1/14	3/15	2/14	4/15	3/14	5/13	4/14	6/13	5/14	7/13	6/14	8/13
1/15	3/16	2/15	4/16	3/15	5/14	4/15	6/14	5/15	7/14	6/15	8/14
1/16	3/17	2/16	4/17	3/16	5/15	4/16	6/15	5/16	7/15	6/16	8/15
1/17	3/18	2/17	4/18	3/17	5/16	4/17	6/16	5/17	7/16	6/17	8/16
1/18	3/19	2/18	4/19	3/18	5/17	4/18	6/17	5/18	7/17	6/18	8/17
1/19	3/20	2/19	4/20	3/19	5/18	4/19	6/18	5/19	7/18	6/19	8/18
1/20	3/21	2/20	4/21	3/20	5/19	4/20	6/19	5/20	7/19	6/20	8/19
1/21	3/22	2/21	4/22	3/21	5/20	4/21	6/20	5/21	7/20	6/21	8/20
1/22	3/23	2/22	4/23	3/22	5/21	4/22	6/21	5/22	7/21	6/22	8/21
1/23	3/24	2/23	4/24	3/23	5/22	4/23	6/22	5/23	7/22	6/23	8/22
1/24	3/25	2/24	4/25	3/24	5/23	4/24	6/23	5/24	7/23	6/24	8/23
1/25	3/26	2/25	4/26	3/25	5/24	4/25	6/24	5/25	7/24	6/25	8/24
1/26	3/27	2/26	4/27	3/26	5/25	4/26	6/25	5/26	7/25	6/26	8/25
1/27	3/28	2/27	4/28	3/27	5/26	4/27	6/26	5/27	7/26	6/27	8/26
1/28	3/29	2/28	4/29	3/28	5/27	4/28	6/27	5/28	7/27	6/28	8/27
1/29	3/30			3/29	5/28	4/29	6/28	5/29	7/28	6/29	8/28
1/30	3/31			3/30	5/29	4/30	6/29	5/30	7/29	6/30	8/29
1/31	4/1			3/31	5/30			5/31	7/30		



July		August		September		October		November		December	
Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date
7/1	8/30	8/1	9/30	9/1	10/31	10/1	11/30	11/1	12/31	12/1	1/30
7/2	8/31	8/2	10/1	9/2	11/1	10/2	12/1	11/2	1/1	12/2	1/31
7/3	9/1	8/3	10/2	9/3	11/2	10/3	12/2	11/3	1/2	12/3	2/1
7/4	9/2	8/4	10/3	9/4	11/3	10/4	12/3	11/4	1/3	12/4	2/2
7/5	9/3	8/5	10/4	9/5	11/4	10/5	12/4	11/5	1/4	12/5	2/3
7/6	9/4	8/6	10/5	9/6	11/5	10/6	12/5	11/6	1/5	12/6	2/4
7/7	9/5	8/7	10/6	9/7	11/6	10/7	12/6	11/7	1/6	12/7	2/5
7/8	9/6	8/8	10/7	9/8	11/7	10/8	12/7	11/8	1/7	12/8	2/6
7/9	9/7	8/9	10/8	9/9	11/8	10/9	12/8	11/9	1/8	12/9	2/7
7/10	9/8	8/10	10/9	9/10	11/9	10/10	12/9	11/10	1/9	12/10	2/8
7/11	9/9	8/11	10/10	9/11	11/10	10/11	12/10	11/11	1/10	12/11	2/9
7/12	9/10	8/12	10/11	9/12	11/11	10/12	12/11	11/12	1/11	12/12	2/10
7/13	9/11	8/13	10/12	9/13	11/12	10/13	12/12	11/13	1/12	12/13	2/11
7/14	9/12	8/14	10/13	9/14	11/13	10/14	12/13	11/14	1/13	12/14	2/12
7/15	9/13	8/15	10/14	9/15	11/14	10/15	12/14	11/15	1/14	12/15	2/13
7/16	9/14	8/16	10/15	9/16	11/15	10/16	12/15	11/16	1/15	12/16	2/14
7/17	9/15	8/17	10/16	9/17	11/16	10/17	12/16	11/17	1/16	12/17	2/15
7/18	9/16	8/18	10/17	9/18	11/17	10/18	12/17	11/18	1/17	12/18	2/16
7/19	9/17	8/19	10/18	9/19	11/18	10/19	12/18	11/19	1/18	12/19	2/17
7/20	9/18	8/20	10/19	9/20	11/19	10/20	12/19	11/20	1/19	12/20	2/18
7/21	9/19	8/21	10/20	9/21	11/20	10/21	12/20	11/21	1/20	12/21	2/19
7/22	9/20	8/22	10/21	9/22	11/21	10/22	12/21	11/22	1/21	12/22	2/20
7/23	9/21	8/23	10/22	9/23	11/22	10/23	12/22	11/23	1/22	12/23	2/21
7/24	9/22	8/24	10/23	9/24	11/23	10/24	12/23	11/24	1/23	12/24	2/22
7/25	9/23	8/25	10/24	9/25	11/24	10/25	12/24	11/25	1/24	12/25	2/23
7/26	9/24	8/26	10/25	9/26	11/25	10/26	12/25	11/26	1/25	12/26	2/24
7/27	9/25	8/27	10/26	9/27	11/26	10/27	12/26	11/27	1/26	12/27	2/25
7/28	9/26	8/28	10/27	9/28	11/27	10/28	12/27	11/28	1/27	12/28	2/26
7/29	9/27	8/29	10/28	9/29	11/28	10/29	12/28	11/29	1/28	12/29	2/27
7/30	9/28	8/30	10/29	9/30	11/29	10/30	12/29	11/30	1/29	12/30	2/28
7/31	9/29	8/31	10/30			10/31	12/30			12/31	3/1



REGISTER PUBLISHING DEADLINES

The Secretary of State's Office publishes the Register weekly. There is a three-week turnaround period between a deadline date and the publication date of the Register. The weekly deadline dates and issue dates are shown below. Council meetings and Register deadlines do not correlate. Also listed are the earliest dates on which an oral proceeding can be held on proposed rulemakings or proposed delegation agreements following publication of the notice in the Register.

Deadline Date (paper only) Friday, 5:00 p.m.	Register Publication Date	Oral Proceeding may be scheduled on or after
April 12, 2019	May 3, 2019	June 3, 2019
April 19, 2019	May 10, 2019	June 10, 2019
April 26, 2019	May 17, 2019	June 17, 2019
May 3, 2019	May 24, 2019	June 24, 2019
May 10, 2019	May 31, 2019	July 1, 2019
May 17, 2019	June 7, 2019	July 8, 2019
May 24, 2019	June 14, 2019	July 15, 2019
May 31, 2019	June 21, 2019	July 22, 2019
June 7, 2019	June 28, 2019	July 29, 2019
June 14, 2019	July 5, 2019	August 5, 2019
June 21, 2019	July 12, 2019	August 12, 2019
June 28, 2019	July 19, 2019	August 19, 2019
July 5, 2019	July 26, 2019	August 26, 2019
July 12, 2019	August 2, 2019	September 3, 2019
July 19, 2019	August 9, 2019	September 9, 2019
July 26, 2019	August 16, 2019	September 16, 2019
August 2, 2019	August 23, 2019	September 23, 2019
August 9, 2019	August 30, 2019	September 30, 2019
August 16, 2019	September 6, 2019	October 7, 2019
August 23, 2019	September 13, 2019	October 15, 2019
August 30, 2019	September 20, 2019	October 21, 2019
September 6, 2019	September 27, 2019	October 28, 2019
September 13, 2019	October 4, 2019	November 4, 2019
September 20, 2019	October 11, 2019	November 12, 2019
September 27, 2019	October 18, 2019	November 18, 2019
October 4, 2019	October 25, 2019	November 25, 2019
October 11, 2019	November 1, 2019	December 2, 2019
October 18, 2019	November 8, 2019	December 9, 2019
October 25, 2019	November 15, 2019	December 16, 2019
November 1, 2019	November 22, 2019	December 23, 2019



GOVERNOR’S REGULATORY REVIEW COUNCIL DEADLINES

The following deadlines apply to all Five-Year-Review Reports and any adopted rule submitted to the Governor’s Regulatory Review Council. Council meetings and Register deadlines do not correlate. We publish these deadlines as a courtesy.

All rules and Five-Year Review Reports are due in the Council office by 5 p.m. of the deadline date. The Council’s office is located at 100 N. 15th Ave., Suite 402, Phoenix, AZ 85007. For more information, call (602) 542-2058 or visit <http://grrc.az.gov>.

GOVERNOR’S REGULATORY REVIEW COUNCIL DEADLINES FOR 2019

[M19-05]

DEADLINE FOR PLACEMENT ON AGENDA*	FINAL MATERIALS SUBMITTED TO COUNCIL	DATE OF COUNCIL STUDY SESSION	DATE OF COUNCIL MEETING
<i>Tuesday</i> January 22, 2019	<i>Tuesday</i> February 19, 2019	<i>Tuesday</i> February 26, 2019	<i>Tuesday</i> March 5, 2019
<i>Tuesday</i> February 19, 2019	<i>Tuesday</i> March 19, 2019	<i>Tuesday</i> March 26, 2019	<i>Tuesday</i> April 2, 2019
<i>Tuesday</i> March 19, 2019	<i>Tuesday</i> April 23, 2019	<i>Tuesday</i> April 30, 2019	<i>Tuesday</i> May 7, 2019
<i>Tuesday</i> April 23, 2019	<i>Tuesday</i> May 21, 2019	Wednesday May 29, 2019	<i>Tuesday</i> June 4, 2019
<i>Tuesday</i> May 21, 2019	<i>Tuesday</i> June 18, 2019	<i>Tuesday</i> June 25, 2019	<i>Tuesday</i> July 2, 2019
<i>Tuesday</i> June 18, 2019	<i>Tuesday</i> July 23, 2019	<i>Tuesday</i> July 30, 2019	<i>Tuesday</i> August 6, 2019
<i>Tuesday</i> July 23, 2019	<i>Tuesday</i> August 20, 2019	<i>Tuesday</i> August 27, 2019	Wednesday September 4, 2019
<i>Tuesday</i> August 20, 2019	<i>Tuesday</i> September 17, 2019	<i>Tuesday</i> September 24, 2019	<i>Tuesday</i> October 1, 2019
<i>Tuesday</i> September 17, 2019	<i>Tuesday</i> October 22, 2019	<i>Tuesday</i> October 29, 2019	<i>Tuesday</i> November 5, 2019
<i>Tuesday</i> October 22, 2019	<i>Tuesday</i> November 19, 2019	<i>Tuesday</i> November 26, 2019	<i>Tuesday</i> December 3, 2019
<i>Tuesday</i> November 19, 2019	<i>Tuesday</i> December 24, 2019	<i>Tuesday</i> January 7, 2020	<i>Tuesday</i> January 14, 2020
<i>Tuesday</i> December 24, 2019	<i>Tuesday</i> January 21, 2020	<i>Tuesday</i> January 28, 2020	<i>Tuesday</i> February 4, 2020

* Materials must be submitted by **5 PM** on dates listed as a deadline for placement on a particular agenda. Placement on a particular agenda is not guaranteed.



GOVERNOR'S REGULATORY REVIEW COUNCIL
NOTICE OF ACTION TAKEN AT THE SEPTEMBER 4, 2019 MEETING

[M19-91]

Rules:

1. DEPARTMENT OF ENVIRONMENTAL QUALITY (R19-0906)

Title 18, Chapter 11, Article 1, Water Quality Standards for Surface Waters

Amend: R18-11-101, R18-11-107.01, R18-11-109, R18-11-114, R18-11-115, R18-11-120, R18-11-122, Appendix A, Table 1, Table 2, Table 3, Table 5, Table 6, Appendix B, Appendix C

Repeal: Table 11, Table 12

New Table: Table 11, Table 12, Table 13, Table 14, Table 15, Table 16, Table 17

COUNCIL ACTION: APPROVED

2. ARIZONA DEPARTMENT OF REVENUE (R19-0902)

Title 15, Chapter 10, Article 5, Electronic Filing Program

Amend: R15-10-502, R15-10-503

COUNCIL ACTION: APPROVED

3. ARIZONA DEPARTMENT OF INSURANCE (Expedited Rulemaking) (R19-0904)

Title 20, Chapter 6, Article 4, Types of Insurance Companies

Amend: R20-6-401

COUNCIL ACTION: APPROVED

4. ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY (Expedited Rulemaking) (R19-0903)

Title 18, Chapter 9, Article 1, Aquifer Protection Permits - General Provisions

Amend: R18-9-101, R18-9-103

COUNCIL ACTION: APPROVED

5. ARIZONA STATE RETIREMENT SYSTEM (R19-0905)

Title 2, Chapter 8, Article 3, Long-Term Disability and Article 8, Recovery of Overpayments

Amend: R2-8-301, R2-8-302, R2-8-303, R2-8-304, R2-8-807

COUNCIL ACTION: APPROVED WITH CHANGES

6. GAME AND FISH COMMISSION (R19-0901)

Title 12, Chapter 4, Article 3, Taking and Handling of Wildlife

Amend: R12-4-303

COUNCIL ACTION: APPROVED WITH DIFFERENT EFFECTIVE DATE

Five Year Review Reports:

1. INDUSTRIAL COMMISSION (F19-0904)

Title 20, Chapter 5, Article 1, Workers' Compensation Practice and Procedure

COUNCIL ACTION: APPROVED

2. DEPARTMENT OF REVENUE (F19-0908)

Title 15, Chapter 2, Department of Revenue - Income and Withholding Tax Section

COUNCIL ACTION: APPROVED

3. DEPARTMENT OF FINANCIAL INSTITUTIONS (F19-0906)

Title 20, Chapter 4, Article 9, Mortgage Brokers; Article 18, Mortgage Bankers; and Article 19, Commercial Mortgage Bankers

COUNCIL ACTION: APPROVED



4. INDUSTRIAL COMMISSION (F19-0903)

Title 20, Chapter 5, Article 2, Self-Insurance Requirements for Individual Employers and Workers' Compensation Pools Organized Under A.R.S. 11-952.01(B) and 41-621.01

COUNCIL ACTION: APPROVED

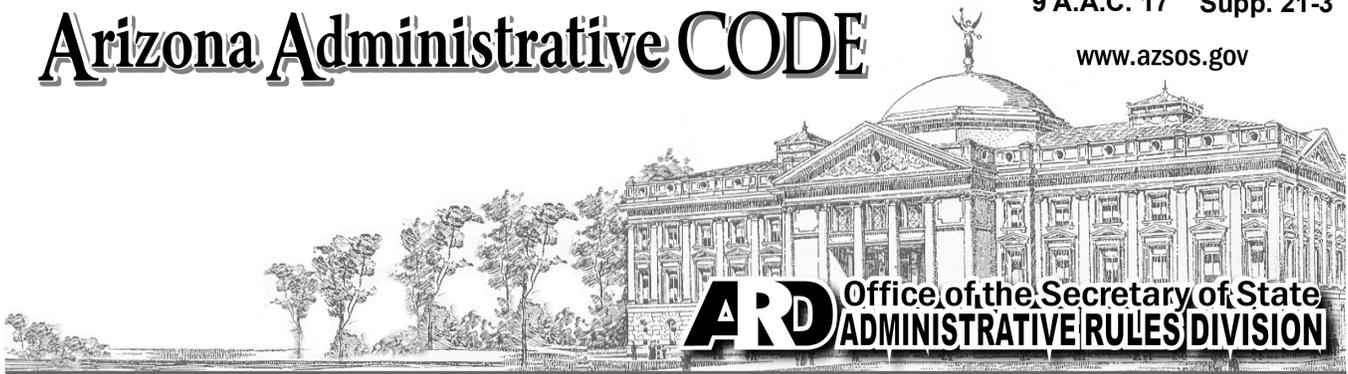
5. DEPARTMENT OF HEALTH SERVICES (F19-0901)

Title 9, Chapter 1, Article 1, Rules of Practice and Procedure; Article 2, Public Participation in Rulemaking; and Article 3, Disclosure of Medical Records, Payment Records, and Public Health Records

COUNCIL ACTION: APPROVED

Governor's Regulatory Review Council Calendar, 2020

COUNCIL ACTION: APPROVED



TITLE 9. HEALTH SERVICES

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

The table of contents on page one contains links to the referenced page numbers in this Chapter.
Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

This Chapter contains rules that were filed to be codified in the *Arizona Administrative Code* between the dates of July 1, 2021 through September 30, 2021

[R9-17-306. Changes to a Dispensary Registration Certificate](#) 25 [R9-17-324. Dual Licensees](#)40

*R19-17-308 was amended twice in the third quarter of 2021.
To view the rule as amended in July, refer to the historical note at the end of the Section for the Register publication volume and page number.*

[R9-17-308. Renewing a Dispensary Registration Certificate](#) 26

Questions about these rules? Contact:

Department: Department of Health Services
Public Health Licensing Services
Address: 150 N. 18th Ave., Suite 400
Phoenix, AZ 85007
Website: <https://www.azdhs.gov/licensing/>
Name: Thomas Salow, Branch Chief
Telephone: (602) 364-1935
Fax: (602) 364-3808
E-mail: Thomas.Salow@azdhs.gov

The release of this Chapter in Supp. 21-3 replaces Supp. 21-2, 1-59 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), Administrative Rules Division, accepts state agency rule notice and other legal filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into Titles. Titles are divided into Chapters. A Chapter includes state agency rules. Rules in Chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each Chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2021 is cited as Supp. 21-1. Supplements are traditionally released three to four weeks after the end of the quarter because filings are accepted until the last day of the quarter.

Please note: The Office publishes by Chapter, not by individual rule Section. Therefore there might be only a few Sections codified in each Chapter released in a supplement. This is why the Office lists only updated codified Sections on the previous page.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate Chapters of the Code in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* Chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, www.azleg.gov. An agency’s authority note

to make rules is often included at the beginning of a Chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a Chapter can be found at the Secretary of State’s website, www.azsos.gov under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor’s notes at the beginning of a Chapter provide information about rulemaking Sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing Chapters using these paper colors.

PERSONAL USE/COMMERCIAL USE

This Chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.



Administrative Rules Division
The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

TITLE 9. HEALTH SERVICES

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

Authority: A.R.S. §§ 36-136(G), 36-2803 and 36-2854

Supp. 21-3

Editor’s Note: Under A.R.S. 41-1011(C) Table 3.1 referenced in this Chapter now includes the table name Analytes for clarity. This change did not alter the sense, meaning or effect of any rule in this Chapter (Supp. 21-2).

Editor’s Note: To assist with compliance of exempt rules filed and effective January 15, 2021, the Administrative Rules Division has expedited the publication of this Chapter and released it in Supp. 20-4. Multiple notice filings were received with amendments to the same Sections in this supplement release. For versioning of these Sections, refer to the published notice in the Arizona Administrative Register (Supp. 20-4).

Editor’s Note: Section R9-17-102 and its historical note were inadvertently removed in Supp. 20-2; the Section and historical note have been restored as last amended in Supp. 19-3 (Supp. 20-3).

Editor’s Note: This Chapter was adopted under a one-year exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Proposition 203 passed by the voters in November 2010. Although exempt from certain provisions of the rulemaking process, Section 6 of the Proposition required the Department to provide the public with an opportunity to comment on these rules before publishing the exempted rules. The Department posted proposed rules for comment on its web site, conducted statewide public meetings and also posted public comments received on its web site. (Supp. 11-2).

Editor’s Note: 9 A.A.C. 17, formerly contained the rules of the Department of Health Services - Pure Food Control. This Chapter expired under A.R.S. § 41-1056(E) at 13 A.A.R. 3531, effective August 31, 2007 (Supp. 07-3).

CHAPTER TABLE OF CONTENTS

ARTICLE 1. GENERAL

Article 1, consisting of Sections R9-17-101 through R9-17-109, made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2).

Section

R9-17-101. Definitions 3

R9-17-102. Fees 5

R9-17-103. Application Submission 5

R9-17-104. Changing Information on a Registry Identification Card 5

R9-17-105. Requesting a Replacement Registry Identification Card 5

R9-17-106. Adding a Debilitating Medical Condition 5

R9-17-107. Time-frames 6

Table 1.1 Time-frames 8

R9-17-108. Expiration of a Registry Identification Card, Dispensary Registration Certificate, or Laboratory Registration Certificate 9

R9-17-109. Notifications and Void Registry Identification Cards 9

ARTICLE 2. QUALIFYING PATIENTS AND DESIGNATED CAREGIVERS

Article 2, consisting of Sections R9-17-201 through R9-17-205, made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2).

Section

R9-17-201. Debilitating Medical Conditions 10

R9-17-202. Applying for a Registry Identification Card for a Qualifying Patient or a Designated Caregiver ... 10

R9-17-203. Amending a Qualifying Patient’s or Designated Caregiver’s Registry Identification Card 14

R9-17-204. Renewing a Qualifying Patient’s or Designated Caregiver’s Registry Identification Card16

R9-17-205. Denial or Revocation of a Qualifying Patient’s or Designated Caregiver’s Registry Identification Card20

ARTICLE 3. DISPENSARIES AND DISPENSARY AGENTS

Article 3, consisting of Sections R9-17-301 through R9-17-323, made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2).

Section

R9-17-301. Principal Officers and Board Members20

R9-17-302. Repealed21

R9-17-303. Dispensary Registration Certificate Allocation Process21

R9-17-304. Applying for a Dispensary Registration Certificate22

R9-17-305. Applying for Approval to Operate a Dispensary 24

R9-17-306. Changes to a Dispensary Registration Certificate25

R9-17-307. Applying to Change a Dispensary’s Location or Change or Add a Dispensary’s Cultivation Site .25

R9-17-308. Renewing a Dispensary Registration Certificate 26

R9-17-309. Inspections27

R9-17-310. Administration27

R9-17-311. Submitting an Application for a Dispensary Agent Registry Identification Card28

R9-17-312. Submitting an Application to Renew a Dispensary Agent’s Registry Identification Card29

R9-17-313. Medical Director30

R9-17-314. Dispensing Medical Marijuana31

R9-17-315. Qualifying Patient Records31

R9-17-316. Inventory Control System31

R9-17-317. Product Labeling33

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

R9-17-317.01. Analysis of Medical Marijuana or a Marijuana Product 33
 Table 3.1. Analytes 35
 R9-17-318. Security 37
 R9-17-319. Edible Food Products 38
 R9-17-320. Cleaning and Sanitation 38
 R9-17-321. Physical Plant 39
 R9-17-322. Denial or Revocation of a Dispensary Registration Certificate 39
 R9-17-323. Denial or Revocation of a Dispensary Agent’s Registry Identification Card 40
 R9-17-324. Dual Licensees 40

ARTICLE 4. LABORATORIES AND LABORATORY AGENTS

Article 4, consisting of Sections R9-17-401 through R9-17-411, made by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3).

Section
 R9-17-401. Owner 41
 R9-17-402. Applying for a Laboratory Registration Certificate 41
 R9-17-402.01. Applying for Approval for Testing 43

R9-17-403. Renewing a Laboratory Registration Certificate 44
 R9-17-404. Administration44
 R9-17-404.01. Compliance Monitoring46
 R9-17-404.02. Proficiency Testing; Accuracy Testing46
 R9-17-404.03. Method Criteria and References for Chemical Analyses47
 R9-17-404.04. Method Criteria and References for Analyses for Microbial Contaminants51
 R9-17-404.05. Quality Assurance52
 R9-17-404.06. Operations53
 R9-17-404.07. Adding or Removing Parameters for Testing55
 R9-17-405. Submitting an Application for a Laboratory Agent Registry Identification Card55
 R9-17-406. Submitting an Application to Renew a Laboratory Agent’s Registry Identification Card56
 R9-17-407. Inventory Control System57
 R9-17-408. Security57
 R9-17-409. Physical Plant58
 R9-17-410. Denial or Revocation of a Laboratory Registration Certificate59
 R9-17-411. Denial or Revocation of a Laboratory Agent’s Registry Identification Card59

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

ARTICLE 1. GENERAL

R9-17-101. Definitions

In addition to the definitions in A.R.S. § 36-2801, the following definitions apply in this Chapter unless otherwise stated:

1. "Accreditation" means being deemed as technically competent under ISO 17025 by the:
 - a. American Association of Laboratory Accreditation,
 - b. Perry Johnson Laboratory Accreditation,
 - c. ANSI National Accreditation Board, or
 - d. International Accreditation Services.
2. "Accuracy testing" means a mechanism in which a laboratory performs testing on samples with known characteristics, prepared by the laboratory, to determine a laboratory agent's ability to analyze samples within specific acceptance criteria.
3. "Acquire" means to obtain through any type of transaction and from any source.
4. "Activities of daily living" means ambulating, bathing, dressing, grooming, eating, toileting, and getting in and out of bed.
5. "Amend" means adding or deleting information on an individual's registry identification card that affects the individual's ability to perform or delegate a specific act or function.
6. "Analyte" means a specific substance for which testing is performed by a laboratory.
7. "Applicant" means:
 - a. An individual submitting an application for a registry identification card or to amend, change, or replace a registry identification card for a qualifying patient, designated caregiver, dispensary agent, or laboratory agent;
 - b. An entity submitting an application for a dispensary registration certificate or approval to operate a dispensary; or
 - c. An individual or entity submitting an application for a laboratory registration certificate, approval to test, or approval to change parameters.
8. "Batch" means:
 - a. When referring to cultivated medical marijuana, a specific lot of medical marijuana grown from one or more seeds or cuttings that are planted and harvested at the same time;
 - b. When referring to marijuana products, a specific amount of a marijuana product infused, manufactured, or prepared for sale from the same set of ingredients at the same time; and
 - c. When referring to testing of medical marijuana or a marijuana product, a specific set of samples prepared and tested during the same run using the same equipment.
9. "Batch number" means a unique numeric or alphanumeric identifier assigned to a batch by a dispensary when:
 - a. The batch of medical marijuana is planted, or
 - b. The batch of a marijuana product is infused, manufactured, or prepared for sale.
10. "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
11. "Change" means:
 - a. When used in relation to a registry identification card, adding or deleting information on an individual's registry identification card that does not substantively affect the individual's ability to perform or delegate a specific act or function;
 - b. When used in relation to a place, moving to a different location;
 - c. When used in relation to an individual, selecting a different individual to perform specific actions;
 - d. When used in relation to parameters, revising a laboratory's standard operating procedures or quality assurance plan, required in R9-17-404.06, due to:
 - i. Adding or removing a parameter,
 - ii. Altering a testing method, or
 - iii. Using a different instrument for performing a test; and
 - e. When used in relation to testing results, altering the testing results in any way and for any reason.
12. "Commercial device" means the same as in A.R.S. § 3-3451.
13. "Contaminant" means matter, pollutant, hazardous substance, or other substance that is not intended to be part of dispensed medical marijuana or a marijuana product.
14. "Cultivation site" means the one additional location where marijuana may be cultivated, infused, or prepared for sale by and for a dispensary.
15. "Current photograph" means an image of an individual, taken no more than 60 calendar days before the submission of the individual's application, in a Department-approved electronic format capable of producing an image that:
 - a. Has a resolution of at least 600 x 600 pixels but not more than 1200 x 1200 pixels;
 - b. Is 2 inches by 2 inches in size;
 - c. Is in natural color;
 - d. Is a front view of the individual's full face, without a hat or headgear that obscures the hair or hairline;
 - e. Has a plain white or off-white background; and
 - f. Has between 1 and 1 3/8 inches from the bottom of the chin to the top of the head.
16. "Denial" means the Department's final decision not to issue a registry identification card, a dispensary registration certificate, a laboratory registration certificate, or an approval of a change of dispensary or a dispensary's cultivation site location, to an applicant because the applicant or the application does not comply with the applicable requirements in A.R.S. Title 36, Chapter 28.1 or this Chapter.
17. "Dispensary" means the same as "nonprofit medical marijuana dispensary" as defined in A.R.S. § 36-2801.
18. "Dispensary agent" means the same as "nonprofit medical marijuana dispensary agent" as defined in A.R.S. § 36-2801.
19. "Dual licensee" means the same as in A.R.S. § 36-2850.
20. "Edible food product" means a substance, beverage, or ingredient used or intended for use or for sale in whole or in part for human oral consumption.
21. "Enclosed area" when used in conjunction with "enclosed, locked facility" means outdoor space surrounded by solid, 10-foot walls, constructed of metal, concrete, or stone that prevent any viewing of the marijuana plants, and a 1-inch thick metal gate.
22. "Entity" means the same as in A.R.S. § 29-2102.
23. "Generally accepted accounting principles" means the set of financial reporting standards established by the Financial Accounting Standards Board, the Governmental Accounting Standards Board, or another specialized body dealing with accounting and auditing matters.

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

24. "Geographic area" means the same as in A.R.S. § 36-2803.01.
25. "In-state financial institution" means the same as in A.R.S. § 6-101.
26. "Inhalable" means intended for use through intake into the lungs of an individual.
27. "Laboratory" means the same as "independent third-party laboratory" as defined in A.R.S. § 36-2801.
28. "Laboratory agent" means the same as "independent third-party laboratory agent" as defined in A.R.S. § 36-2801.
29. "Legal guardian" means an adult who is responsible for a minor:
- Through acceptance of guardianship of the minor through a testamentary appointment or an appointment by a court pursuant to A.R.S. Title 14, Chapter 5, Article 2; or
 - As a "custodian" as defined in A.R.S. § 8-201.
30. "Marijuana establishment" means the same as in A.R.S. § 36-2850.
31. "Medical record" means the same as:
- "Adequate records" as defined in A.R.S. § 32-1401,
 - "Adequate medical records" as defined in A.R.S. § 32-1501,
 - "Adequate records" as defined in A.R.S. § 32-1800, or
 - "Adequate records" as defined in A.R.S. § 32-2901.
32. "Out-of-state financial institution" means the same as in A.R.S. § 6-101.
33. "Parameter" means the combination of a particular type of sample with a specific instrument or equipment by which the sample will be tested for a specific analyte or characteristic.
34. "Proficiency testing" means a mechanism in which samples with known characteristics are submitted to a laboratory for analysis to determine a laboratory agent's ability to analyze samples within specific acceptance criteria.
35. "Proficiency testing service" means an independent company or other person acceptable to the Department, based on ISO/IEC 17043:2010 certification, that:
- Is the source for samples with known characteristics for proficiency testing, and
 - Assesses the acceptability of a laboratory agent's results from the samples with known characteristics during proficiency testing.
36. "Private school" means the same as in A.R.S. § 15-101.
37. "Public place":
- Means any location, facility, or venue that is not intended for the regular exclusive use of an individual or a specific group of individuals;
 - Includes, but not is limited to:
 - Airports;
 - Banks;
 - Bars;
 - Child care facilities;
 - Child care group homes during hours of operation;
 - Common areas of apartment buildings, condominiums, or other multifamily housing facilities;
 - Educational facilities;
 - Entertainment facilities or venues;
 - Health care institutions, except as provided in subsection (37)(c);
 - Hotel and motel common areas;
 - Laundromats;
 - Libraries;
 - Office buildings;
 - Parking lots;
 - Parks;
 - Public transportation facilities;
 - Reception areas;
 - Restaurants;
 - Retail food production or marketing establishments;
 - Retail service establishments;
 - Retail stores;
 - Shopping malls;
 - Sidewalks;
 - Sports facilities;
 - Theaters; and
 - Waiting rooms; and
 - Does not include:
 - Nursing care institutions as defined in A.R.S. § 36-401,
 - Hospices as defined in A.R.S. § 36-401,
 - Assisted living centers as defined in A.R.S. § 36-401,
 - Assisted living homes as defined in A.R.S. § 36-401,
 - Adult day health care facilities as defined in A.R.S. § 36-401,
 - Adult foster care homes as defined in A.R.S. § 36-401, or
 - Private residences.
38. "Public school" means the same as "school" as defined in A.R.S. § 15-101.
39. "Registry identification number" means the random 20-digit alphanumeric identifier generated by the Department, containing at least four numbers and four letters, issued by the Department to a qualifying patient, designated caregiver, dispensary, dispensary agent, laboratory, or laboratory agent.
40. "Revocation" means the Department's final decision that an individual's registry identification card, a dispensary registration certificate, or a laboratory registration certificate is rescinded because the individual, the dispensary, or the laboratory does not comply with the applicable requirements in A.R.S. Title 36, Chapter 28.1 or this Chapter.
41. "Sample" means:
- A representative portion of a larger quantity of medical marijuana or a marijuana product,
 - A specific quantity of a substance or set of substances to be used for testing purposes, or
 - To collect the representative portion in subsection (41)(a).
42. "Working day" means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday or a state-wide furlough day.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4). Amended by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020 (Supp. 20-2). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4). Amended by exempt rulemaking at 27 A.A.R. 747, effective

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

tive May 3, 2021 (Supp. 21-2).

R9-17-102. Fees

- A.** An applicant submitting an application to the Department shall submit the following nonrefundable fees:
1. Except as provided in R9-17-303(D), for registration of a dispensary, \$5,000;
 2. To renew the registration of a dispensary, \$1,000;
 3. To change the location of a dispensary, \$2,500;
 4. To change the location of a dispensary's cultivation site or add a cultivation site, \$2,500;
 5. For a registry identification card for a:
 - a. Qualifying patient, except as provided in subsection (B), \$150;
 - b. Designated caregiver, \$200;
 - c. Dispensary agent, \$500; and
 - d. Laboratory agent, \$500;
 6. For renewing a registry identification card for a:
 - a. Qualifying patient, except as provided in subsection (B), \$150;
 - b. Designated caregiver, \$200;
 - c. Dispensary agent, \$500; and
 - d. Laboratory agent, \$500;
 7. For amending or changing a registry identification card, \$10;
 8. For requesting a replacement registry identification card, \$10;
 9. For registration of a laboratory, \$5,000; and
 10. To renew the registration of a laboratory, \$1,000.
- B.** A qualifying patient may pay a reduced fee of \$75 if the qualifying patient submits, with the qualifying patient's application for a registry identification card or the qualifying patient's application to renew the qualifying patient's registry identification card, a copy of an eligibility notice or electronic benefits transfer card demonstrating current participation in the U.S. Department of Agriculture, Food and Nutrition Services, Supplemental Nutrition Assistance Program.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4). Amended by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Section R9-17-102 and its historical note were inadvertently removed in Supp. 20-2; the Section and historical note have been restored as last amended in Supp. 19-3 (Supp. 20-3).

R9-17-103. Application Submission

- A.** An applicant submitting an application for a registry identification card or to amend, change, or replace a registry identification card for a qualifying patient, designated caregiver, dispensary agent, or laboratory agent, shall submit the application electronically in a Department-provided format.
- B.** A residence address or mailing address submitted for a qualifying patient or designated caregiver as part of an application for a registry identification card is located in Arizona.
- C.** A mailing address submitted for a principal officer or board member as part of a dispensary certificate registration application or as part of an application for a dispensary agent registration identification card is located in Arizona.
- D.** A mailing address submitted for an owner as a part of a laboratory registration certificate application or as part of an application for a laboratory agent registration identification card is located in Arizona.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4). Amended by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3).

R9-17-104. Changing Information on a Registry Identification Card

Except as provided in R9-17-203(B) and (C), to make a change to a cardholder's name or address on the cardholder's registry identification card, the cardholder shall submit to the Department, within 10 working days after the change, a request for the change that includes:

1. The cardholder's name and the registry identification number on the cardholder's current registry identification card;
2. The cardholder's new name or address, as applicable;
3. For a change in the cardholder's name, one of the following with the cardholder's new name:
 - a. An Arizona driver's license,
 - b. An Arizona identification card, or
 - c. The photograph page in the cardholder's U.S. passport;
4. For a change in address, the county where the new address is located;
5. The effective date of the cardholder's new name or address; and
6. The applicable fee in R9-17-102 for changing a registry identification card.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2).

R9-17-105. Requesting a Replacement Registry Identification Card

To request a replacement card for a cardholder's registry identification card that has been lost, stolen, or destroyed, the cardholder shall submit to the Department, within 10 working days after the cardholder's registry identification card was lost, stolen, or destroyed, a request for a replacement card that includes:

1. The cardholder's name and date of birth;
2. If known, the registry identification number on the cardholder's lost, stolen, or destroyed registry identification card;
3. If the cardholder cannot provide the registry identification number on the cardholder's lost, stolen, or destroyed registry identification card, a copy of one of the following documents that the cardholder submitted when the cardholder obtained the registry identification card:
 - a. Arizona driver's license,
 - b. Arizona identification card,
 - c. Arizona registry identification card, or
 - d. Photograph page in the cardholder's U.S. passport; and
4. The applicable fee in R9-17-102 for requesting a replacement registry identification card.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2).

R9-17-106. Adding a Debilitating Medical Condition

- A.** An entity may request the addition of a medical condition to the list of debilitating medical conditions in R9-17-201 by sub-

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

mitting to the Department, at the times specified in subsection (C), the following in writing:

1. The entity's name;
 2. The entity's mailing address, name of contact individual, telephone number, and, if applicable, e-mail address;
 3. The name of the medical condition the entity is requesting be added;
 4. A description of the symptoms and other physiological effects experienced by an individual suffering from the medical condition or a treatment of the medical condition that may impair the ability of the individual to accomplish activities of daily living;
 5. The availability of conventional medical treatments to provide therapeutic or palliative benefit for the medical condition or a treatment of the medical condition;
 6. A summary of the evidence that the use of marijuana will provide therapeutic or palliative benefit for the medical condition or a treatment of the medical condition; and
 7. Articles, published in peer-reviewed scientific journals, reporting the results of research on the effects of marijuana on the medical condition or a treatment of the medical condition supporting why the medical condition should be added.
- B.** The Department shall:
1. Acknowledge in writing the Department's receipt of a request for the addition of a medical condition to the list of debilitating medical conditions listed in R9-17-201 within 30 calendar days after receiving the request;
 2. Review the request to determine if the requester has provided evidence that:
 - a. The specified medical condition or treatment of the medical condition impairs the ability of the individual to accomplish activities of daily living, and
 - b. Marijuana usage provides a therapeutic or palliative benefit to an individual suffering from the medical condition or treatment of the medical condition;
 3. Within 90 calendar days after receiving the request, notify the requester that the Department has determined that the information provided by the requester:
 - a. Meets the requirements in subsection (B)(2) and the date the Department will conduct a public hearing to discuss the request; or
 - b. Does not meet the requirements in subsection (B)(2), the specific reason for the determination, and the process for requesting judicial review of the Department's determination pursuant to A.R.S. Title 12, Chapter 7, Article 6;
 4. If applicable:
 - a. Schedule a public hearing to discuss the request;
 - b. Provide public notice of the public hearing by submitting a Notice of Public Information to the Office of the Secretary of State, for publication in the *Arizona Administrative Register* at least 30 calendar days before the date of the public hearing;
 - c. Post a copy of the request on the Department's web site for public comment at least 30 calendar days before the date of the public hearing; and
 - d. Hold the public hearing no more than 150 calendar days after receiving the request; and
 5. Within 180 calendar days after receiving the request:
 - a. Add the medical condition to the list of debilitating medical conditions, or
 - b. Provide written notice to the requester of the Department's decision to deny the request that includes:
 - i. The specific reasons for the Department's decision; and
 - ii. The process for requesting judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.
- C.** The Department shall accept requests for the addition of a medical condition to the list of debilitating medical conditions in R9-17-201 in January and July of each calendar year starting in January 2012.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2).

R9-17-107. Time-frames

- A.** Within the administrative completeness review time-frame for each type of approval in Table 1.1, the Department shall:
1. Issue a registry identification card, a dispensary registration certificate, an approval to operate a dispensary, a laboratory registration certificate, an approval for testing, or an approval to add a parameter;
 2. Provide a notice of administrative completeness to an applicant; or
 3. Provide a notice of deficiencies to an applicant, including a list of the information or documents needed to complete the application.
- B.** An application for approval to operate a dispensary is not complete until the date the applicant states on a written notice provided to the Department according to R9-17-305 that the dispensary is ready for an inspection by the Department.
- C.** A laboratory's application for approval for testing is not complete until the date the applicant states on a written notice provided to the Department according to R9-17-402.01 that the laboratory is ready for an inspection by the Department.
- D.** If the Department provides a notice of deficiencies to an applicant:
1. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice of deficiencies until the date the Department receives the missing information or documents from the applicant; and
 2. The Department shall consider the application withdrawn if the applicant does not submit the missing information or documents to the Department within the time-frame in Table 1.1.
- E.** Within the substantive review time-frame for each type of approval in Table 1.1, the Department:
1. According to subsection (H), shall issue or deny:
 - a. A registry identification card, dispensary registration certificate, or laboratory registration certificate; or
 - b. Approval to operate a dispensary, approval for testing, or approval to add a parameter;
 2. May complete an inspection that may require more than one visit to a dispensary and, if applicable, the dispensary's cultivation site;
 3. May complete an inspection that may require more than one visit to a laboratory; and
 4. May make one written comprehensive request for more information, unless the Department and the applicant agree in writing to allow the Department to submit supplemental requests for information.
- F.** If the Department issues a written comprehensive request or a supplemental request for information:
1. The substantive review time-frame and the overall time-frame are suspended from the date of the written comprehensive request or the supplemental request for information until the date the Department receives all of the information requested, and

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

2. The applicant shall submit to the Department all of the information and documents listed in the written comprehensive request or supplemental request for information within 10 working days after the date of the comprehensive written request or supplemental request for information.
- G.** If an applicant for an initial dispensary registration certificate is allocated a dispensary registration certificate as provided in R9-17-303, the Department shall provide a written notice to the applicant of the allocation of the dispensary registration certificate that contains the dispensary's registry identification number.
1. After the applicant receives the written notice of the allocation, the applicant shall submit to the Department for each principal officer or board member for whom fingerprints were submitted according to R9-17-304(C)(3)(b):
 - a. An application for a dispensary agent registry identification card that includes:
 - i. The principal officer's or board member's first name; middle initial, if applicable; last name; and suffix, if applicable;
 - ii. The principal officer's or board member's residence address and mailing address;
 - iii. The county where the principal officer or board member resides;
 - iv. The principal officer's or board member's date of birth;
 - v. The identifying number on the applicable card or document in subsection (G)(1)(b)(i) through (v);
 - vi. The name and registry identification number of the dispensary;
 - vii. One of the following:
 - (1) A statement that the principal officer or board member does not currently hold a valid registry identification card, or
 - (2) The assigned registry identification number for each valid registry identification card currently held by the principal officer or board member;
 - viii. A statement signed by the principal officer or board member pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
 - ix. An attestation that the information provided in and with the application is true and correct; and
 - x. The signature of the principal officer or board member and the date the principal officer or board member signed;
 - b. A copy the principal officer's or board member's:
 - i. Arizona driver's license issued on or after October 1, 1996;
 - ii. Arizona identification card issued on or after October 1, 1996;
 - iii. Arizona registry identification card;
 - iv. Photograph page in the principal officer's or board member's U.S. passport; or
 - v. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the principal officer or board member:
 - (1) Birth certificate verifying U.S. citizenship,
 - (2) U.S. Certificate of Naturalization, or
 - (3) U.S. Certificate of Citizenship;
- c. A current photograph of the principal officer or board member; and
- d. The applicable fee in R9-17-102 for applying for a dispensary agent registry identification card.
2. After receipt of the information and documents in subsection (G)(1), the Department shall review the information and documents.
 - a. If the information and documents for at least one of the principal officers or board members complies with the A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall issue:
 - i. A dispensary agent registry identification card to any principal officer or board member whose dispensary agent registry identification card application complies with A.R.S. Title 36, Chapter 28.1 and this Chapter; and
 - ii. The dispensary registration certificate.
 - b. If the information and documents for a dispensary agent registry identification card application for any principal officer or board member does not comply with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall deny the dispensary agent registry identification card application and provide notice to the principal officer or board member and to the dispensary that includes:
 - i. The specific reasons for the denial; and
 - ii. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.
- H.** If an application for an initial laboratory registration certificate is approved, the Department shall review the information and documents submitted according to R9-17-402(A)(4) and:
1. If the information and documents for at least one of the owners comply with the A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall issue:
 - a. A laboratory agent registry identification card to any owner who complies with A.R.S. Title 36, Chapter 28.1 and this Chapter; and
 - b. The laboratory registration certificate; and
 2. If the information and documents submitted according to R9-17-402(A)(4) for an owner do not comply with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall deny the owner a laboratory agent registry identification card and provide notice to the owner and to the laboratory that includes:
 - a. The specific reasons for the denial; and
 - b. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.
- I.** The Department shall issue:
1. A registry identification card, renewal of a dispensary registration certificate, an approval to operate a dispensary, renewal of a laboratory registration certificate, an approval for testing, or an approval to add a parameter, as applicable, if the Department determines that the applicant complies with A.R.S. Title 36, Chapter 28.1 and this Chapter;
 2. For an applicant for a registry identification card, a denial that includes the reason for the denial and the process for requesting judicial review if:
 - a. The Department determines that the applicant does not comply with A.R.S. Title 36, Chapter 28.1 and this Chapter; or
 - b. The applicant does not submit all of the information and documents listed in the written comprehensive request or supplemental request for information

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

- within 10 working days after the date of the comprehensive written request or supplemental request for information;
3. For an applicant for an initial dispensary registration certificate, if the Department determines that the dispensary registration certificate application complies with A.R.S. Title 36, Chapter 28.1 and this Chapter:
 - a. A dispensary registration certificate, if not all available dispensary registration certificates have been allocated according to the criteria and processes in R9-17-303; or
 - b. Written notice that:
 - i. The dispensary registration certificate application complies with A.R.S. Title 36, Chapter 28.1 and this Chapter;
 - ii. The applicant was not allocated a dispensary registration certificate according to the criteria and processes in R9-17-303 because all available dispensary registration certificates have been allocated according to the criteria and processes in R9-17-303; and
 - iii. The written notice is not a denial and is not considered a final decision of the Department subject to administrative review; or
 4. For an applicant for a dispensary registration certificate, an approval to operate, a laboratory registration certificate, an approval for testing, or an approval to add a parameter, a denial that includes the reason for the denial and the process for administrative review if:
 - a. The Department determines that the applicant does not comply with A.R.S. Title 36, Chapter 28.1 or this Chapter; or
 - b. The applicant does not submit all of the information and documents listed in the written comprehensive request or supplemental request for information within 10 working days after the date of the comprehensive written request or supplemental request for information.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4). Amended by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 968, effective April 20, 2020 (Supp. 20-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3).

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)
Changing a registry identification card	§ 36-2808	10	10	5	5
Requesting a replacement registry identification card	§ 36-2804.06	5	5	2	3
Applying for a registry identification card for a qualifying patient or a designated caregiver	§ 36-2804.02(A)	15	30	5	10
Amending a registry identification card for a qualifying patient or a designated caregiver	§ 36-2808	10	10	5	5
Renewing a qualifying patient's or designated caregiver's registry identification card	§§ 36-2804.02(A) and 36-2804.06	15	15	5	10
Applying for a dispensary registration certificate	§ 36-2804	30	10	5	25
Applying for approval to operate a dispensary	R9-17-305	45	-	15	30
Changing a dispensary location or adding or changing a dispensary's cultivation site location	§ 36-2804 and R9-17-307	90	90	30	60
Renewing a dispensary registration certificate	§ 36-2804.06	15	15	5	10
Applying for a dispensary agent registry identification card	§§ 36-2804.01 and 36-2804.03	15	30	5	10
Renewing a dispensary agent's registry identification card	§ 36-2804.06	15	15	5	10

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

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 laboratory registration certificate	§ 36-2804.07	90	90	30	60
Applying for approval for testing	R9-17-402.01	90	90	30	60
Renewing a laboratory registration certificate	§ 36-2804.06	15	15	5	10
Applying to add a parameter	R9-17-404.07	90	90	30	60
Applying for a laboratory agent registry identification card	§ 36-2804.01	15	30	5	10
Renewing a laboratory agent's registry identification card	§ 36-2804.06	15	15	5	10

Historical Note

New Table 1.1 made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Table 1.1 amended by emergency rulemaking at 18 A.A.R. 1010, effective April 11, 2012 for 180 days (Supp. 12-2). Emergency expired; Table 1.1 amended by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4). Section symbols added to A.R.S. citations (Supp. 17-2). Amended by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 968, effective April 20, 2020 (Supp. 20-2).

R9-17-108. Expiration of a Registry Identification Card, Dispensary Registration Certificate, or Laboratory Registration Certificate

- A. Except as provided in subsection (B), a registry identification card issued to a qualifying patient, designated caregiver, dispensary agent, or laboratory agent is valid for two years after the date of issuance.
- B. If the Department issues a registry identification card to a qualifying patient, designated caregiver, dispensary agent, or laboratory agent based on a request for a replacement registry identification card or an application to change or amend a registry identification card, the replacement, changed, or amended registry identification card shall have the same expiration date as the registry identification card being replaced, changed, or amended.
- C. Except as provided in subsection (D), a dispensary registration certificate is valid for two years after the date of issuance.
- D. If the Department issues an amended dispensary registration certificate based on a change of location or an addition of a cultivation site, the dispensary registration certificate shall have the same expiration date as the dispensary registration certificate previously held by the dispensary.
- E. An approval to operate a dispensary shall have the same expiration date as the dispensary registration certificate associated with the approval to operate the dispensary.
- F. A laboratory registration certificate is valid for two years after the original date of issuance.
- G. A laboratory's approval for testing shall have the same expiration date as the laboratory registration certificate associated with the laboratory's approval to test.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3).

R9-17-109. Notifications and Void Registry Identification Cards

- A. The Department shall provide written notice that a cardholder's registry identification card is void and no longer valid under A.R.S. Title 36, Chapter 28.1 and this Chapter to:
 1. Qualifying patient when the Department receives notification from:
 - a. The qualifying patient that the qualifying patient no longer has a debilitating medical condition, or
 - b. The physician who provided the qualifying patient's written certification that the:
 - i. Qualifying patient no longer has a debilitating medical condition,
 - ii. Physician no longer believes that the qualifying patient would receive therapeutic or palliative benefit from the medical use of marijuana, or
 - iii. Physician believes that the qualifying patient is not using the medical marijuana as recommended;
 2. Designated caregiver when:
 - a. The Department receives notification from the designated caregiver's qualifying patient that the designated caregiver no longer assists the qualifying patient with the medical use of marijuana, or
 - b. The registry identification card for the qualifying patient that is listed on the designated caregiver's registry identification card is no longer valid;
 3. Dispensary agent when:
 - a. The Department receives the written notification, required in R9-17-310(A)(9), that the dispensary agent:
 - i. No longer serves as a principal officer, board member, or medical director for the dispensary;
 - ii. Is no longer employed by the dispensary; or
 - iii. No longer provides volunteer service at or on behalf of the dispensary; or
 - b. The registration certificate for the dispensary that is listed on the dispensary agent's registry identification card is no longer valid; or
 4. Laboratory agent when:
 - a. The Department receives the written notification, required in R9-17-404(10), that the laboratory agent no longer:
 - i. Serves as an owner for the laboratory,

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

- ii. Is employed by the laboratory, or
- iii. Provides volunteer service at or on behalf of the laboratory; or
- b. The registration certificate for the laboratory that is listed on the laboratory agent's registration identification card is no longer valid.
- B. The Department shall void a qualifying patient's registry identification card:
 - 1. When the Department receives notification that the qualifying patient is deceased; or
 - 2. For a qualifying patient under 18 years of age, when the qualifying patient's designated caregiver's registry identification card is revoked.
- C. The written notice required in subsection (A) that a registry identification card is void is not a revocation and is not considered a final decision of the Department subject to judicial review.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4). Amended by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3).

ARTICLE 2. QUALIFYING PATIENTS AND DESIGNATED CAREGIVERS**R9-17-201. Debilitating Medical Conditions**

An individual applying for a qualifying patient registry identification card shall have a diagnosis from a physician of at least one of the following debilitating medical conditions:

1. Cancer;
2. Glaucoma;
3. Human immunodeficiency virus;
4. Acquired immune deficiency syndrome;
5. Hepatitis C;
6. Amyotrophic lateral sclerosis;
7. Crohn's disease;
8. Agitation of Alzheimer's disease;
9. A chronic or debilitating disease or medical condition or the treatment for a chronic or debilitating disease or medical condition that produces cachexia or wasting syndrome;
10. A chronic or debilitating disease or medical condition or the treatment for a chronic or debilitating disease or medical condition that produces severe and chronic pain;
11. A chronic or debilitating disease or medical condition or the treatment for a chronic or debilitating disease or medical condition that produces severe nausea;
12. A chronic or debilitating disease or medical condition or the treatment for a chronic or debilitating disease or medical condition that produces seizures, including those characteristic of epilepsy;
13. A chronic or debilitating disease or medical condition or the treatment for a chronic or debilitating disease or medical condition that produces severe or persistent muscle spasms, including those characteristic of multiple sclerosis; or
14. A debilitating medical condition approved by the Department under A.R.S. § 36-2801.01 and R9-17-106.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2).

R9-17-202. Applying for a Registry Identification Card for a Qualifying Patient or a Designated Caregiver

- A. Except for a qualifying patient who is under 18 years of age, a qualifying patient is not required to have a designated caregiver.
- B. A qualifying patient may have only one designated caregiver at any given time.
- C. Except for a qualifying patient who is under 18 years of age, if the information submitted for a qualifying patient complies with A.R.S. Title 36, Chapter 28.1 and this Chapter but the information for the qualifying patient's designated caregiver does not comply with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall issue the registry identification card for the qualifying patient separate from issuing a registry identification card for the qualifying patient's designated caregiver.
- D. If the Department issues a registry identification card to a qualifying patient under subsection (C), the Department shall continue the process for issuing or denying the qualifying patient's designated caregiver's registry identification card.
- E. The Department shall not issue a designated caregiver's registry identification card before the Department issues the designated caregiver's qualifying patient's registry identification card.
- F. Except as provided in subsection (G), to apply for a registry identification card, a qualifying patient shall submit to the Department the following:
 1. An application in a Department-provided format that includes:
 - a. The qualifying patient's:
 - i. First name; middle initial, if applicable; last name; and suffix, if applicable;
 - ii. Date of birth; and
 - iii. Gender;
 - b. Except as provided in subsection (F)(1)(i), the qualifying patient's residence address and mailing address;
 - c. The county where the qualifying patient resides;
 - d. The qualifying patient's e-mail address;
 - e. The identifying number on the applicable card or document in subsection (F)(2)(a) through (e);
 - f. The name, address, and telephone number of the physician providing the written certification for medical marijuana for the qualifying patient;
 - g. Whether the qualifying patient is requesting authorization for cultivating marijuana plants for the qualifying patient's medical use because the qualifying patient believes that the qualifying patient resides at least 25 miles from the nearest operating dispensary;
 - h. If the qualifying patient is requesting authorization for cultivating marijuana plants, whether the qualifying patient is designating the qualifying patient's designated caregiver to cultivate marijuana plants for the qualifying patient's medical use;
 - i. If the qualifying patient is homeless, an address where the qualifying patient can receive mail;
 - j. Whether the qualifying patient would like notification of any clinical studies needing human subjects for research on the medical use of marijuana;
 - k. An attestation that the information provided in the application is true and correct; and
 - l. The signature of the qualifying patient and date the qualifying patient signed;
 2. A copy of the qualifying patient's:
 - a. Arizona driver's license issued on or after October 1, 1996;
 - b. Arizona identification card issued on or after October 1, 1996;

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

- c. Arizona registry identification card;
- d. Photograph page in the qualifying patient's U.S. passport; or
- e. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the qualifying patient:
 - i. Birth certificate verifying U.S. citizenship,
 - ii. U.S. Certificate of Naturalization, or
 - iii. U.S. Certificate of Citizenship;
- 3. A current photograph of the qualifying patient;
- 4. A statement in a Department-provided format signed by the qualifying patient pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
- 5. A physician's written certification in a Department-provided format dated within 90 calendar days before the submission of the qualifying patient's application that includes:
 - a. The physician's:
 - i. Name,
 - ii. License number including an identification of the physician license type,
 - iii. Office address on file with the physician's licensing board,
 - iv. Telephone number on file with the physician's licensing board, and
 - v. E-mail address;
 - b. The qualifying patient's name and date of birth;
 - c. A statement that the physician has made or confirmed a diagnosis of a debilitating medical condition as defined in A.R.S. § 36-2801 for the qualifying patient;
 - d. An identification, initialed by the physician, of one or more of the debilitating medical conditions in R9-17-201 as the qualifying patient's specific debilitating medical condition;
 - e. If the debilitating medical condition identified in subsection (F)(5)(d) is a condition in:
 - i. R9-17-201(9) through (13), the underlying chronic or debilitating disease or medical condition; or
 - ii. R9-17-201(14), the debilitating medical condition;
 - f. A statement, initialed by the physician, that the physician:
 - i. Has established a medical record for the qualifying patient, and
 - ii. Is maintaining the qualifying patient's medical record as required in A.R.S. § 12-2297;
 - g. A statement, initialed by the physician, that the physician has conducted an in-person physical examination of the qualifying patient within the previous 90 calendar days appropriate to the qualifying patient's presenting symptoms and the qualifying patient's debilitating medical condition diagnosed or confirmed by the physician;
 - h. The date the physician conducted the in-person physical examination of the qualifying patient;
 - i. A statement, initialed by the physician, that the physician reviewed the qualifying patient's:
 - i. Medical records including medical records from other treating physicians from the previous 12 months,
 - ii. Response to conventional medications and medical therapies, and
 - iii. Profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database;
 - j. A statement, initialed by the physician, that the physician has explained the potential risks and benefits of the medical use of marijuana to the qualifying patient;
 - k. A statement, initialed by the physician, that, in the physician's professional opinion, the qualifying patient is likely to receive therapeutic or palliative benefit from the qualifying patient's medical use of marijuana to treat or alleviate the qualifying patient's debilitating medical condition;
 - l. A statement, initialed by the physician, that, if the physician has referred the qualifying patient to a dispensary, the physician has disclosed to the qualifying patient any personal or professional relationship the physician has with the dispensary;
 - m. A statement, initialed by the physician, that the physician has provided information to the qualifying patient, if the qualifying patient is female, that warns about:
 - i. The potential dangers to a fetus caused by smoking or ingesting marijuana while pregnant or to an infant while breastfeeding, and
 - ii. The risk of being reported to the Department of Child Safety during pregnancy or at the birth of the child by persons who are required to report;
 - n. An attestation that the information provided in the written certification is true and correct; and
 - o. The physician's signature and the date the physician signed;
- 6. If the qualifying patient is designating a caregiver, the following in a Department-provided format:
 - a. The designated caregiver's first name; middle initial, if applicable; last name; and suffix, if applicable;
 - b. The designated caregiver's date of birth;
 - c. The designated caregiver's residence address and mailing address;
 - d. The county where the designated caregiver resides;
 - e. The identifying number on the applicable card or document in subsection (F)(6)(i)(i) through (v);
 - f. One of the following:
 - i. A statement that the designated caregiver does not currently hold a valid registry identification card, or
 - ii. The assigned registry identification number for the designated caregiver for each valid registry identification card currently held by the designated caregiver;
 - g. An attestation signed and dated by the designated caregiver that the designated caregiver has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801;
 - h. A statement signed by the designated caregiver:
 - i. Agreeing to assist the qualifying patient with the medical use of marijuana; and
 - ii. Pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
 - i. A copy of the designated caregiver's:
 - i. Arizona driver's license issued on or after October 1, 1996;
 - ii. Arizona identification card issued on or after October 1, 1996;

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

- iii. Arizona registry identification card;
- iv. Photograph page in the designated caregiver's U.S. passport; or
- v. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the designated caregiver:
 - (1) Birth certificate verifying U.S. citizenship,
 - (2) U.S. Certificate of Naturalization, or
 - (3) U.S. Certificate of Citizenship;
- j. A current photograph of the designated caregiver; and
- k. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
 - i. The designated caregiver's fingerprints on a fingerprint card that includes:
 - (1) The designated caregiver's first name; middle initial, if applicable; and last name;
 - (2) The designated caregiver's signature;
 - (3) If different from the designated caregiver, the signature of the individual physically rolling the designated caregiver's fingerprints;
 - (4) The designated caregiver's address;
 - (5) If applicable, the designated caregiver's surname before marriage and any names previously used by the designated caregiver;
 - (6) The designated caregiver's date of birth;
 - (7) The designated caregiver's Social Security number;
 - (8) The designated caregiver's citizenship status;
 - (9) The designated caregiver's gender;
 - (10) The designated caregiver's race;
 - (11) The designated caregiver's height;
 - (12) The designated caregiver's weight;
 - (13) The designated caregiver's hair color;
 - (14) The designated caregiver's eye color; and
 - (15) The designated caregiver's place of birth; or
 - ii. If the designated caregiver's fingerprints and information required in subsection (F)(6)(k)(i) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the designated caregiver as a result of the application; and
- 7. The applicable fees in R9-17-102 for applying for:
 - a. A qualifying patient registry identification card; and
 - b. If applicable, a designated caregiver registry identification card.
- G.** To apply for a registry identification card for a qualifying patient who is under 18 years of age, the qualifying patient's custodial parent or legal guardian responsible for health care decisions for the qualifying patient shall submit to the Department the following:
 - 1. An application in a Department-provided format that includes:
 - a. The qualifying patient's:
 - i. First name; middle initial, if applicable; last name; and suffix, if applicable;
 - ii. Date of birth; and
 - iii. Gender;
 - 2. A current photograph of the:
 - a. Qualifying patient, and
 - b. Qualifying patient's custodial parent or legal guardian serving as the qualifying patient's designated caregiver;
 - 3. An attestation in a Department-provided format signed and dated by the qualifying patient's custodial parent or legal guardian that the qualifying patient's custodial parent or legal guardian is requesting authorization for cultivating medical marijuana plants for the qualifying patient's medical use because the qualifying patient's custodial parent or legal guardian believes that the qualifying patient resides at least 25 miles from the nearest operating dispensary;
 - 4. Whether the qualifying patient's custodial parent or legal guardian would like notification of any clinical studies needing human subjects for research on the medical use of marijuana;
 - 5. Whether the individual submitting the application on behalf of the qualifying patient under 18 years of age is the qualifying patient's custodial parent or legal guardian;
 - 6. One of the following:
 - i. A statement that the qualifying patient's custodial parent or legal guardian does not currently hold a valid registry identification card, or
 - ii. The assigned registry identification number for the qualifying patient's custodial parent or legal guardian for each valid registry identification card currently held by the qualifying patient's custodial parent or legal guardian;
 - 7. An attestation that the information provided in the application is true and correct; and
 - 8. The signature of the qualifying patient's custodial parent or legal guardian and the date the qualifying patient's custodial parent or legal guardian signed;

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

- ent or legal guardian has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801;
4. A statement in a Department-provided format signed by the qualifying patient's custodial parent or legal guardian who is serving as the qualifying patient's designated caregiver:
 - a. Allowing the qualifying patient's medical use of marijuana;
 - b. Agreeing to assist the qualifying patient with the medical use of marijuana; and
 - c. Pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
 5. A copy of one of the following for the qualifying patient's custodial parent or legal guardian:
 - a. Arizona driver's license issued on or after October 1, 1996;
 - b. Arizona identification card issued on or after October 1, 1996;
 - c. Arizona registry identification card;
 - d. Photograph page in the qualifying patient's custodial parent or legal guardian U.S. passport; or
 - e. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the qualifying patient's custodial parent or legal guardian:
 - i. Birth certificate verifying U.S. citizenship,
 - ii. U.S. Certificate of Naturalization, or
 - iii. U.S. Certificate of Citizenship;
 6. If the individual submitting the application on behalf of a qualifying patient is the qualifying patient's legal guardian, a copy of documentation establishing the individual as the qualifying patient's legal guardian;
 7. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
 - a. The qualifying patient's custodial parent or legal guardian's fingerprints on a fingerprint card that includes:
 - i. The qualifying patient's custodial parent or legal guardian's first name; middle initial, if applicable; and last name;
 - ii. The qualifying patient's custodial parent or legal guardian's signature;
 - iii. If different from the qualifying patient's custodial parent or legal guardian, the signature of the individual physically rolling the qualifying patient's custodial parent's or legal guardian's fingerprints;
 - iv. The qualifying patient's custodial parent's or legal guardian's address;
 - v. If applicable, the qualifying patient's custodial parent's or legal guardian's surname before marriage and any names previously used by the qualifying patient's custodial parent or legal guardian;
 - vi. The qualifying patient's custodial parent's or legal guardian's date of birth;
 - vii. The qualifying patient's custodial parent's or legal guardian's Social Security number;
 - viii. The qualifying patient's custodial parent's or legal guardian's citizenship status;
 - ix. The qualifying patient's custodial parent's or legal guardian's gender;
 - x. The qualifying patient's custodial parent's or legal guardian's race;
 - xi. The qualifying patient's custodial parent's or legal guardian's height;
 - xii. The qualifying patient's custodial parent's or legal guardian's weight;
 - xiii. The qualifying patient's custodial parent's or legal guardian's hair color;
 - xiv. The qualifying patient's custodial parent's or legal guardian's eye color; and
 - xv. The qualifying patient's custodial parent's or legal guardian's place of birth; or
 - b. If the qualifying patient's custodial parent's or legal guardian's fingerprints and information required in subsection (G)(7)(a) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the qualifying patient's custodial parent or legal guardian as a result of the application;
8. A written certification from the physician in subsection (G)(1)(i) and a separate written certification from the physician in (G)(1)(j) in a Department-provided format dated within 90 calendar days before the submission of the qualifying patient's application that includes:
 - a. The physician's:
 - i. Name,
 - ii. License number including an identification of the physician license type,
 - iii. Office address on file with the physician's licensing board,
 - iv. Telephone number on file with the physician's licensing board, and
 - v. E-mail address;
 - b. The qualifying patient's name and date of birth;
 - c. An identification of one or more of the debilitating medical conditions in R9-17-201 as the qualifying patient's specific debilitating medical condition;
 - d. If the debilitating medical condition identified in subsection (G)(9)(c) is a condition in:
 - i. R9-17-201(9) through (13), the underlying chronic or debilitating disease or medical condition; or
 - ii. R9-17-201(14), the debilitating medical condition;
 - e. For the physician listed in subsection (G)(1)(i):
 - i. A statement that the physician has made or confirmed a diagnosis of a debilitating medical condition as defined in A.R.S. § 36-2801 for the qualifying patient;
 - ii. A statement, initialed by the physician, that the physician:
 - (1) Has established a medical record for the qualifying patient, and
 - (2) Is maintaining the qualifying patient's medical record as required in A.R.S. § 12-2297;
 - iii. A statement, initialed by the physician, that the physician has conducted an in-person physical examination of the qualifying patient within the previous 90 calendar days appropriate to the qualifying patient's presenting symptoms and the qualifying patient's debilitating medical condition diagnosed or confirmed by the physician;

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

- iv. The date the physician conducted the in-person physical examination of the qualifying patient;
 - v. A statement, initialed by the physician, that the physician reviewed the qualifying patient's:
 - (1) Medical records, including medical records from other treating physicians from the previous 12 months,
 - (2) Response to conventional medications and medical therapies, and
 - (3) Profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database;
 - vi. A statement, initialed by the physician, that the physician has explained the potential risks and benefits of the use of medical marijuana to the qualifying patient's custodial parent or legal guardian responsible for health care decisions for the qualifying patient; and
 - vii. A statement, initialed by the physician, that the physician has provided information to the qualifying patient's custodial parent or legal guardian responsible for health care decisions for the qualifying patient, if the qualifying patient is female, that warns about:
 - (1) The potential dangers to a fetus caused by smoking or ingesting marijuana while pregnant or to an infant while breastfeeding, and
 - (2) The risk of being reported to the Department of Child Safety during pregnancy or at the birth of the child by persons who are required to report;
 - f. For the physician listed in subsection (G)(1)(j), a statement, initialed by the physician, that the physician conducted a comprehensive review of the qualifying patient's medical records from other treating physicians;
 - g. A statement, initialed by the physician, that, in the physician's professional opinion, the qualifying patient is likely to receive therapeutic or palliative benefit from the qualifying patient's medical use of marijuana to treat or alleviate the qualifying patient's debilitating medical condition;
 - h. A statement, initialed by the physician, that, if the physician has referred the qualifying patient's custodial parent or legal guardian to a dispensary, the physician has disclosed to the qualifying patient any personal or professional relationship the physician has with the dispensary;
 - i. An attestation that the information provided in the written certification is true and correct; and
 - j. The physician's signature and the date the physician signed; and
9. The applicable fees in R9-17-102 for applying for a:
- a. Qualifying patient registry identification card, and
 - b. Designated caregiver registry identification card.
- H.** For purposes of this Article, "25 miles" includes the area contained within a circle that extends for 25 miles in all directions from a specific location.
- I.** For purposes of this Article, "residence address" when used in conjunction with a qualifying patient means:
- 1. The street address including town or city and zip code assigned by a local jurisdiction; or
 - 2. For property that does not have a street address assigned by a local jurisdiction, the legal description of the property on the title documents recorded by the assessor of the county in which the property is located.
- Historical Note**
- New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4). Amended by final rulemaking 23 A.A.R. 970, effective June 6, 2017 (Supp. 17-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3).
- R9-17-203. Amending a Qualifying Patient's or Designated Caregiver's Registry Identification Card**
- A.** To add a designated caregiver or to request a change of a qualifying patient's designated caregiver, the qualifying patient shall submit to the Department, within 10 working days after the addition or the change, the following:
- 1. An application in a Department-provided format that includes:
 - a. The qualifying patient's name and the registry identification number on the qualifying patient's current registry identification card;
 - b. If applicable, the name of the qualifying patient's current designated caregiver and the date the designated caregiver last provided or will last provide assistance to the qualifying patient;
 - c. The name of the individual the qualifying patient is designating as caregiver; and
 - d. The signature of the qualifying patient and date the qualifying patient signed;
 - 2. For the caregiver the qualifying patient is designating:
 - a. The designated caregiver's first name; middle initial, if applicable; last name; and suffix, if applicable;
 - b. The designated caregiver's date of birth;
 - c. The designated caregiver's residence address and mailing address;
 - d. The county where the designated caregiver resides;
 - e. The identifying number on the applicable card or document in subsection (A)(2)(i)(i) through (v);
 - f. One of the following:
 - i. A statement that the designated caregiver does not currently hold a valid registry identification card, or
 - ii. The assigned registry identification number for the designated caregiver for each valid registry identification card currently held by the designated caregiver;
 - g. An attestation in a Department-provided format signed and dated by the designated caregiver that the designated caregiver has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801;
 - h. A statement in a Department-provided format signed by the designated caregiver:
 - i. Agreeing to assist the qualifying patient with the medical use of marijuana; and
 - ii. Pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
 - i. A copy the designated caregiver's:
 - i. Arizona driver's license issued on or after October 1, 1996;
 - ii. Arizona identification card issued on or after October 1, 1996;

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

- iii. Arizona registry identification card;
 - iv. Photograph page in the designated caregiver's U.S. passport; or
 - v. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the designated caregiver:
 - (1) Birth certificate verifying U.S. citizenship,
 - (2) U.S. Certificate of Naturalization, or
 - (3) U.S. Certificate of Citizenship;
 - j. A current photograph of the designated caregiver; and
 - k. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
 - i. The designated caregiver's fingerprints on a fingerprint card that includes:
 - (1) The designated caregiver's first name; middle initial, if applicable; and last name;
 - (2) The designated caregiver's signature;
 - (3) If different from the designated caregiver, the signature of the individual physically rolling the designated caregiver's fingerprints;
 - (4) The designated caregiver's address;
 - (5) If applicable, the designated caregiver's surname before marriage and any names previously used by the designated caregiver;
 - (6) The designated caregiver's date of birth;
 - (7) The designated caregiver's Social Security number;
 - (8) The designated caregiver's citizenship status;
 - (9) The designated caregiver's gender;
 - (10) The designated caregiver's race;
 - (11) The designated caregiver's height;
 - (12) The designated caregiver's weight;
 - (13) The designated caregiver's hair color;
 - (14) The designated caregiver's eye color; and
 - (15) The designated caregiver's place of birth;
 or
 - ii. If the designated caregiver's fingerprints and information required in subsection (A)(2)(k)(i) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the designated caregiver as a result of the application; and
 - 3. The applicable fee in R9-17-102 for applying for a designated caregiver registry identification card.
- B.** To amend a qualifying patient's address on the qualifying patient's registry identification card when the qualifying patient or the qualifying patient's designated caregiver is authorized to cultivate marijuana, the qualifying patient shall submit to the Department, within 10 working days after the change in address, the following:
- 1. The qualifying patient's name and the registry identification number on the qualifying patient's current registry identification card;
 - 2. The qualifying patient's new address;
 - 3. The county where the new address is located;
 - 4. The name of the qualifying patient's designated caregiver, if applicable;
 - 5. Whether the qualifying patient is requesting authorization for cultivating marijuana plants for the qualifying patient's medical use because the qualifying patient believes that the qualifying patient resides at least 25 miles from the nearest operating dispensary;
 - 6. If the qualifying patient is requesting authorization for cultivating marijuana plants, whether the qualifying patient is designating the qualifying patient's designated caregiver to cultivate marijuana plants for the qualifying patient's medical use;
 - 7. The effective date of the qualifying patient's new address; and
 - 8. The applicable fee in R9-17-102 for applying to:
 - a. Amend a qualifying patient's registry identification card; and
 - b. If the qualifying patient is designating a designated caregiver for cultivation authorization, amend a designated caregiver's registry identification card.
- C.** To request authorization to cultivate marijuana based on a qualifying patient's current address or a new address, the qualifying patient shall submit to the Department, if applicable within 10 working days after the change in address, the following:
- 1. The qualifying patient's name and the registry identification number on the qualifying patient's current registry identification card;
 - 2. If the qualifying patient's address is a new address, the qualifying patient's:
 - a. Current address,
 - b. New address,
 - c. The county where the new address is located, and
 - d. The effective date of the qualifying patient's new address;
 - 3. The name of the qualifying patient's designated caregiver, if applicable;
 - 4. Whether the qualifying patient is requesting authorization for cultivating marijuana plants for the qualifying patient's medical use because the qualifying patient believes that the qualifying patient resides at least 25 miles from the nearest operating dispensary;
 - 5. If the qualifying patient is requesting authorization for cultivating marijuana plants, whether the qualifying patient is designating the qualifying patient's designated caregiver to cultivate marijuana plants for the qualifying patient's medical use; and
 - 6. The applicable fee in R9-17-102 for applying to:
 - a. Amend a qualifying patient's registry identification card; and
 - b. If the qualifying patient is designating a designated caregiver for cultivation authorization, amend a designated caregiver's registry identification card.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4). The Department made a clerical error to R19-17-203(A)(1)(c) when promulgating rules in Supp. 12-4Remediateor clarity "that" has been moved after "individual" at the request of the Department at file number R19-242 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3).

R9-17-204. Renewing a Qualifying Patient's or Designated Caregiver's Registry Identification Card

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

- A. Except for a qualifying patient who is under 18 years of age, to renew a qualifying patient's registry identification card, the qualifying patient shall submit the following to the Department at least 30 calendar days before the expiration date of the qualifying patient's registry identification card:
1. An application in a Department-provided format that includes:
 - a. The qualifying patient's first name; middle initial, if applicable; last name; and suffix, if applicable;
 - b. The qualifying patient's date of birth;
 - c. Except as provided in subsection (A)(1)(j), the qualifying patient's residence address and mailing address;
 - d. The county where the qualifying patient resides;
 - e. The qualifying patient's e-mail address;
 - f. The registry identification number on the qualifying patient's current registry identification card;
 - g. The name, address, and telephone number of the physician providing the written certification for medical marijuana for the qualifying patient;
 - h. Whether the qualifying patient is requesting authorization for cultivating marijuana plants for the qualifying patient's medical use because the qualifying patient believes that the qualifying patient resides at least 25 miles from the nearest operating dispensary;
 - i. If the qualifying patient is requesting authorization for cultivating marijuana plants, whether the qualifying patient is designating the qualifying patient's designated caregiver to cultivate marijuana plants for the qualifying patient's medical use;
 - j. If the qualifying patient is homeless, an address where the qualifying patient can receive mail;
 - k. Whether the qualifying patient would like notification of any clinical studies needing human subjects for research on the medical use of marijuana;
 - l. An attestation that the information provided in the application is true and correct; and
 - m. The signature of the qualifying patient and the date the qualifying patient signed;
 2. If the qualifying patient's name in subsection (A)(1)(a) is not the same name as on the qualifying patient's current registry identification card, one of the following with the qualifying patient's new name:
 - a. An Arizona driver's license,
 - b. An Arizona identification card, or
 - c. The photograph page in the qualifying patient's U.S. passport;
 3. A current photograph of the qualifying patient;
 4. A statement in a Department-provided format signed by the qualifying patient pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
 5. A physician's written certification in a Department-provided format dated within 90 calendar days before the submission of the qualifying patient's renewal application that includes:
 - a. The physician's:
 - i. Name,
 - ii. License number including an identification of the physician license type,
 - iii. Office address on file with the physician's licensing board,
 - iv. Telephone number on file with the physician's licensing board, and
 - v. E-mail address;
 - b. The qualifying patient's name and date of birth;
 - c. A statement that the physician has made or confirmed a diagnosis of a debilitating medical condition as defined in A.R.S. § 36-2801 for the qualifying patient;
 - d. An identification of one or more of the debilitating medical conditions in R9-17-201 as the qualifying patient's specific debilitating medical condition;
 - e. If the debilitating medical condition identified in subsection (A)(5)(d) is a condition in:
 - i. R9-17-201(9) through (13), the underlying chronic or debilitating disease or medical condition; or
 - ii. R9-17-201(14), the debilitating medical condition;
 - f. A statement, initialed by the physician, that the physician:
 - i. Has established a medical record for the qualifying patient, and
 - ii. Is maintaining the qualifying patient's medical record as required in A.R.S. § 12-2297;
 - g. A statement, initialed by the physician, that the physician has conducted an in-person physical examination of the qualifying patient within the previous 90 calendar days appropriate to the qualifying patient's presenting symptoms and the qualifying patient's debilitating medical condition diagnosed or confirmed by the physician;
 - h. The date the physician conducted the in-person physical examination of the qualifying patient;
 - i. A statement, initialed by the physician, that the physician reviewed the qualifying patient's:
 - i. Medical records including medical records from other treating physicians from the previous 12 months,
 - ii. Response to conventional medications and medical therapies, and
 - iii. Profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database;
 - j. A statement, initialed by the physician, that the physician has explained the potential risks and benefits of the medical use of marijuana to the qualifying patient;
 - k. A statement, initialed by the physician, that, in the physician's professional opinion, the qualifying patient is likely to receive therapeutic or palliative benefit from the qualifying patient's medical use of marijuana to treat or alleviate the qualifying patient's debilitating medical condition;
 - l. A statement, initialed by the physician, that, if the physician has referred the qualifying patient to a dispensary, the physician has disclosed to the qualifying patient any personal or professional relationship the physician has with the dispensary;
 - m. A statement, initialed by the physician, that the physician has provided information to the qualifying patient, if the qualifying patient is female, that warns about:
 - i. The potential dangers to a fetus caused by smoking or ingesting marijuana while pregnant or to an infant while breastfeeding, and
 - ii. The risk of being reported to the Department of Child Safety during pregnancy or at the birth of the child by persons who are required to report;
 - n. An attestation that the information provided in the written certification is true and correct; and

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

- o. The physician's signature and the date the physician signed;
6. If the qualifying patient is designating a caregiver or if the qualifying patient's designated caregiver's registry identification card has the same expiration date as the qualifying patient's registry identification card, the following in a Department-provided format:
- The designated caregiver's first name; middle initial, if applicable; last name; and suffix, if applicable;
 - The designated caregiver's date of birth;
 - The designated caregiver's residence address and mailing address;
 - The county where the designated caregiver resides;
 - If the qualifying patient is renewing the designated caregiver's registry identification card, the registry identification number on the designated caregiver's registry identification card associated with the qualifying patient;
 - If the qualifying patient is designating an individual not previously designated as the qualifying patient's designated caregiver, the identification number on and a copy of the designated caregiver's:
 - Arizona driver's license issued on or after October 1, 1996;
 - Arizona identification card issued on or after October 1, 1996;
 - Arizona registry identification card;
 - Photograph page in the designated caregiver's U.S. passport; or
 - Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the designated caregiver:
 - Birth certificate verifying U.S. citizenship,
 - U.S. Certificate of Naturalization, or
 - U.S. Certificate of Citizenship;
 - If the qualifying patient is designating an individual not previously designated as the qualifying patient's designated caregiver, one of the following:
 - A statement that the designated caregiver does not currently hold a valid registry identification card, or
 - The assigned registry identification number for the designated caregiver for each valid registry identification card currently held by the designated caregiver;
 - A current photograph of the designated caregiver;
 - An attestation signed and dated by the designated caregiver that the designated caregiver has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801;
 - A statement in a Department-provided format signed by the designated caregiver:
 - Agreeing to assist the qualifying patient with the medical use of marijuana; and
 - Pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1; and
 - For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
 - The designated caregiver's fingerprints on a fingerprint card that includes:
 - The designated caregiver's first name; middle initial, if applicable; and last name;
 - The designated caregiver's signature;
 - If different from the designated caregiver, the signature of the individual physically rolling the designated caregiver's fingerprints;
 - The designated caregiver's address;
 - If applicable, the designated caregiver's surname before marriage and any names previously used by the designated caregiver;
 - The designated caregiver's date of birth;
 - The designated caregiver's Social Security number;
 - The designated caregiver's citizenship status;
 - The designated caregiver's gender;
 - The designated caregiver's race;
 - The designated caregiver's height;
 - The designated caregiver's weight;
 - The designated caregiver's hair color;
 - The designated caregiver's eye color; and
 - The designated caregiver's place of birth; or
 - If the designated caregiver's fingerprints and information required in subsection (A)(6)(k)(i) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the designated caregiver as a result of the application;
7. If the qualifying patient's designated caregiver's registry identification card has the same expiration date as the qualifying patient's registry identification card and the designated caregiver's name in subsection (A)(6)(a) is not the same name as on the designated caregiver's current registry identification card, one of the following with the designated caregiver's new name:
- An Arizona driver's license,
 - An Arizona identification card, or
 - The photograph page in the designated caregiver's U.S. passport; and
8. The applicable fees in R9-17-102 for applying to:
- Renew a qualifying patient's registry identification card; and
 - If applicable, issue or renew a designated caregiver's registry identification card.
- B.** To renew a registry identification card for a qualifying patient who is under 18 years of age, the qualifying patient's custodial parent or legal guardian responsible for health care decisions for the qualifying patient shall submit to the Department the following:
- An application in a Department-provided format that includes:
 - The qualifying patient's:
 - First name; middle initial, if applicable; last name; and suffix, if applicable; and
 - Date of birth;
 - The qualifying patient's residence address and mailing address;
 - The county where the qualifying patient resides;
 - The registry identification number on the qualifying patient's current registry identification card;

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

- e. The qualifying patient's custodial parent's or legal guardian's first name; middle initial, if applicable; last name; and suffix, if applicable;
 - f. The qualifying patient's custodial parent's or legal guardian's residence address and mailing address;
 - g. The county where the qualifying patient's custodial parent or legal guardian resides;
 - h. The qualifying patient's custodial parent's or legal guardian's e-mail address;
 - i. The registry identification number on the qualifying patient's custodial parent's or legal guardian's current registry identification card;
 - j. The name, address, and telephone number of a physician who has a physician-patient relationship with the qualifying patient and is providing the written certification for medical marijuana for the qualifying patient;
 - k. The name, address, and telephone number of a second physician who has conducted a comprehensive review of the qualifying patient's medical record maintained by other treating physicians, and is providing a written certification for medical marijuana for the qualifying patient;
 - l. Whether the qualifying patient's custodial parent or legal guardian is requesting approval for cultivating marijuana plants for the qualifying patient's medical use because the qualifying patient's custodial parent or legal guardian believes that the qualifying patient resides at least 25 miles from the nearest operating dispensary;
 - m. Whether the qualifying patient's custodial parent or legal guardian would like notification of any clinical studies needing human subjects for research on the medical use of marijuana;
 - n. A statement in a Department-provided format signed by the qualifying patient's custodial parent or legal guardian who is serving as the qualifying patient's designated caregiver:
 - i. Allowing the qualifying patient's medical use of marijuana;
 - ii. Agreeing to assist the qualifying patient with the medical use of marijuana; and
 - iii. Pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
 - o. An attestation that the information provided in the application is true and correct; and
 - p. The signature of the qualifying patient's custodial parent or legal guardian and the date the qualifying patient's custodial parent or legal guardian signed;
2. If the qualifying patient's custodial parent's or legal guardian's name in subsection (B)(1)(e) is not the same name as on the qualifying patient's custodial parent's or legal guardian's current registry identification card, one of the following with the custodial parent's or legal guardian's new name:
 - a. An Arizona driver's license,
 - b. An Arizona identification card, or
 - c. The photograph page in the qualifying patient's custodial parent's or legal guardian's U.S. passport;
 3. A current photograph of the qualifying patient;
 4. A written certification from the physician in subsection (B)(1)(j) and a separate written certification from the physician in subsection (B)(1)(k) in a Department-provided format dated within 90 calendar days before the submission of the qualifying patient's renewal application that includes:
 - a. The physician's:
 - i. Name,
 - ii. License number including an identification of the physician license type,
 - iii. Office address on file with the physician's licensing board,
 - iv. Telephone number on file with the physician's licensing board, and
 - v. E-mail address;
 - b. The qualifying patient's name and date of birth;
 - c. An identification of one or more of the debilitating medical conditions in R9-17-201 as the qualifying patient's specific debilitating medical condition;
 - d. If the debilitating medical condition identified in subsection (B)(4)(c) is a condition in:
 - i. R9-17-201(9) through (13), the underlying chronic or debilitating disease or medical condition; or
 - ii. R9-17-201(14), the debilitating medical condition;
 - e. For the physician listed in subsection (B)(1)(j):
 - i. A statement that the physician has made or confirmed a diagnosis of a debilitating medical condition as defined in A.R.S. § 36-2801 for the qualifying patient;
 - ii. A statement, initialed by the physician, that the physician:
 - (1) Has established a medical record for the qualifying patient, and
 - (2) Is maintaining the qualifying patient's medical record as required in A.R.S. § 12-2297;
 - iii. A statement, initialed by the physician, that the physician has conducted an in-person physical examination of the qualifying patient within the previous 90 calendar days appropriate to the qualifying patient's presenting symptoms and the qualifying patient's debilitating medical condition diagnosed or confirmed by the physician;
 - iv. The date the physician conducted the in-person physical examination of the qualifying patient;
 - v. A statement, initialed by the physician, that the physician reviewed the qualifying patient's:
 - (1) Medical records including medical records from other treating physicians from the previous 12 months,
 - (2) Response to conventional medications and medical therapies, and
 - (3) Profile on the Arizona Board of Pharmacy Controlled Substances Prescription Monitoring Program database;
 - vi. A statement, initialed by the physician, that the physician has explained the potential risks and benefits of the use of medical marijuana to the qualifying patient's custodial parent or legal guardian responsible for health care decisions for the qualifying patient; and
 - vii. A statement, initialed by the physician, that the physician has provided information to the qualifying patient's custodial parent or legal guardian responsible for health care decisions for the qualifying patient, if the qualifying patient is female, that warns about:

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

- (1) The potential dangers to a fetus caused by smoking or ingesting marijuana while pregnant or to an infant while breastfeeding, and
- (2) The risk of being reported to the Department of Child Safety during pregnancy or at the birth of the child by persons who are required to report;
- f. For the physician listed in subsection (B)(1)(k), a statement, initialed by the physician, that the physician conducted a comprehensive review of the qualifying patient's medical records from other treating physicians;
- g. A statement, initialed by the physician, that, in the physician's professional opinion, the qualifying patient is likely to receive therapeutic or palliative benefit from the qualifying patient's medical use of marijuana to treat or alleviate the qualifying patient's debilitating medical condition;
- h. A statement, initialed by the physician, that, if the physician has referred the qualifying patient's custodial parent or legal guardian to a dispensary, the physician has disclosed to the qualifying patient's custodial parent or legal guardian any personal or professional relationship the physician has with the dispensary;
- i. An attestation that the information provided in the written certification is true and correct; and
- j. The physician's signature and the date the physician signed; and
5. A current photograph of the qualifying patient's custodial parent or legal guardian;
6. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
 - a. The qualifying patient's custodial parent's or legal guardian's fingerprints on a fingerprint card that includes:
 - i. The qualifying patient's custodial parent's or legal guardian's first name; middle initial, if applicable; and last name;
 - ii. The qualifying patient's custodial parent's or legal guardian's signature;
 - iii. If different from the qualifying patient's custodial parent or legal guardian, the signature of the individual physically rolling the qualifying patient's custodial parent's or legal guardian's fingerprints;
 - iv. The qualifying patient's custodial parent's or legal guardian's address;
 - v. If applicable, the qualifying patient's custodial parent's or legal guardian's surname before marriage and any names previously used by the qualifying patient's custodial parent or legal guardian;
 - vi. The qualifying patient's custodial parent's or legal guardian's date of birth;
 - vii. The qualifying patient's custodial parent's or legal guardian's Social Security number;
 - viii. The qualifying patient's custodial parent's or legal guardian's citizenship status;
 - ix. The qualifying patient's custodial parent's or legal guardian's gender;
 - x. The qualifying patient's custodial parent's or legal guardian's race;
 - xi. The qualifying patient's custodial parent's or legal guardian's height;
 - xii. The qualifying patient's custodial parent's or legal guardian's weight;
 - xiii. The qualifying patient's custodial parent's or legal guardian's hair color;
 - xiv. The qualifying patient's custodial parent's or legal guardian's eye color; and
 - xv. The qualifying patient's custodial parent's or legal guardian's place of birth; or
- b. If the qualifying patient's custodial parent's or legal guardian's fingerprints and information required in subsection (B)(6)(a) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the patient's custodial parent or legal guardian serving as the qualifying patient's designated caregiver as a result of the application; and
7. The applicable fees in R9-17-102 for applying to renew a:
 - a. Qualifying patient's registry identification card, and
 - b. Designated caregiver's registry identification card.
- C. Except as provided in subsection (A)(6), to renew a qualifying patient's designated caregiver's registry identification card, the qualifying patient shall submit to the Department, at least 30 calendar days before the expiration date of the designated caregiver's registry identification card, the following:
 1. An application in a Department-provided format that includes:
 - a. The qualifying patient's first name; middle initial, if applicable; last name; and suffix, if applicable;
 - b. The registry identification number on the qualifying patient's current registry identification card;
 - c. The designated caregiver's first name; middle initial, if applicable; last name; and suffix, if applicable;
 - d. The designated caregiver's date of birth;
 - e. The designated caregiver's residence address and mailing address;
 - f. The county where the designated caregiver resides;
 - g. The registry identification number on the designated caregiver's current registry identification card;
 2. If the designated caregiver's name in subsection (C)(1)(a) is not the same name as on the designated caregiver's current registry identification card, one of the following with the designated caregiver's new name:
 - a. An Arizona driver's license,
 - b. An Arizona identification card, or
 - c. The photograph page in the designated caregiver's U.S. passport;
 3. A current photograph of the designated caregiver;
 4. A statement in a Department-provided format signed by the designated caregiver:
 - a. Agreeing to assist the qualifying patient with the medical use of marijuana; and
 - b. Pledging not to divert marijuana to any individual or person who is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1; and
 5. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
 - a. The designated caregiver's fingerprints on a fingerprint card that includes:
 - i. The designated caregiver's first name; middle initial, if applicable; and last name;
 - ii. The designated caregiver's signature;

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

- iii. If different from the designated caregiver, the signature of the individual physically rolling the designated caregiver's fingerprints;
 - iv. The designated caregiver's address;
 - v. If applicable, the designated caregiver's surname before marriage and any names previously used by the designated caregiver;
 - vi. The designated caregiver's date of birth;
 - vii. The designated caregiver's Social Security number;
 - viii. The designated caregiver's citizenship status;
 - ix. The designated caregiver's gender;
 - x. The designated caregiver's race;
 - xi. The designated caregiver's height;
 - xii. The designated caregiver's weight;
 - xiii. The designated caregiver's hair color;
 - xiv. The designated caregiver's eye color; and
 - xv. The designated caregiver's place of birth; or
- b. If the designated caregiver's fingerprints and information required in subsection (C)(1)(j)(i) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the designated caregiver as a result of the application; and
6. The applicable fee in R9-17-102 for renewing a designated caregiver's registry identification card.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by final rulemaking at 23 A.A.R. 970, effective June 6, 2017 (Supp. 17-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3).

R9-17-205. Denial or Revocation of a Qualifying Patient's or Designated Caregiver's Registry Identification Card

- A. The Department shall deny a qualifying patient's application for or renewal of the qualifying patient's registry identification card if the qualifying patient does not have a debilitating medical condition.
- B. The Department shall deny a designated caregiver's application for or renewal of the designated caregiver's registry identification card if the designated caregiver does not meet the definition of "designated caregiver" in A.R.S. § 36-2801.
- C. The Department may deny a qualifying patient's or designated caregiver's application for or renewal of the qualifying patient's or designated caregiver's registry identification card if the qualifying patient or designated caregiver:
 - 1. Previously had a registry identification card revoked for not complying with A.R.S. Title 36, Chapter 28.1 or this Chapter; or
 - 2. Provides false or misleading information to the Department.
- D. The Department shall revoke a qualifying patient's or designated caregiver's registry identification card if the qualifying patient or designated caregiver diverts medical marijuana to an individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1.
- E. The Department shall revoke a designated caregiver's registry identification card if the designated caregiver has been convicted of an excluded felony offense.
- F. The Department may revoke a qualifying patient's or designated caregiver's registry identification card if the qualifying patient or designated caregiver knowingly violates A.R.S. Title 36, Chapter 28.1 or this Chapter.
- G. If the Department denies or revokes a qualifying patient's registry identification card, the Department shall provide written notice to the qualifying patient that includes:
 - 1. The specific reason or reasons for the denial or revocation; and
 - 2. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.
- H. If the Department denies or revokes a qualifying patient's designated caregiver's registry identification card, the Department shall provide written notice to the qualifying patient and the designated caregiver that includes:
 - 1. The specific reason or reasons for the denial or revocation; and
 - 2. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3).

ARTICLE 3. DISPENSARIES AND DISPENSARY AGENTS**R9-17-301. Principal Officers and Board Members**

- A. For the purposes of this Chapter, in addition to the individual or individuals identified in the dispensary's by-laws or other organizational governing documents as principal officers of the dispensary, if applicable, the following individuals are considered principal officers:
 - 1. If a corporation is applying for a dispensary registration certificate, two individuals who are officers of the corporation, including, but not limited to, the president or chief executive officer and those individuals serving in the positions of secretary and treasurer;
 - 2. If a partnership is applying for a dispensary registration certificate, all individuals who are general partners and the principal officers of any entity general partner;
 - 3. If a limited liability company is applying for a dispensary registration certificate, all managers of a manager-managed limited liability company, all members of a member-managed limited liability company, and the principal officers of an entity manager or member;
 - 4. If an association or cooperative is applying for a dispensary registration certificate, the chief executive officer, executive director, or other comparable leader of the association or cooperative; and
 - 5. If a business organization type other than those described in subsections (A)(1) through (4) is applying for a dispensary registration certificate, two individuals who occupy the top leadership positions of the business organization.
- B. For purposes of this Chapter, in addition to the individual or individuals identified in the dispensary's by-laws or other organizational governing documents as board members of the dispensary, if applicable, the following individuals are considered board members:
 - 1. If a corporation is applying for a dispensary registration certificate, the members of the board of directors of the corporation;
 - 2. If a partnership is applying for a dispensary registration certificate, the partners who are not limited partners;

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

3. If a limited liability company is applying for a dispensary registration certificate, the principal officers of the limited liability company;
 4. If an association or cooperative is applying for a dispensary registration certificate, the principal officers of the association or cooperative; and
 5. If a business organization type other than the types of business organizations in subsections (B)(1) through (4), the principal officers of the business organization.
2. If the Department determines that the Department is not allowed to issue additional dispensary registration certificates, the Department shall, on the Department's website:
 - a. Post the information that the Department is not accepting dispensary registration certificate applications, and
 - b. Maintain the information until the next review.

- B.** If the Department receives, by 60 working days after the date the Department begins accepting applications, more dispensary registration certificate applications that are complete and are in compliance with A.R.S. Title 36, Chapter 28.1 and this Chapter to participate in the allocation process than the Department is allowed to issue, the Department shall allocate the dispensary registration certificates according to the following criteria:

1. If dispensary registration certificate applications are received for a county that does not contain a dispensary:
 - a. If only one dispensary registration certificate application is received for a dispensary located in the county, the Department shall allocate the dispensary registration certificate to that applicant; or
 - b. If more than one dispensary registration certificate application is received for a dispensary located in the county, the Department shall prioritize and allocate a dispensary registration certificate to an applicant according to subsection (B)(2);

2. For dispensary registration certificate applications received according to subsection (B)(1)(b), the Department shall prioritize and allocate a dispensary registration certificate to an applicant according to the following:

- a. If only one dispensary registration certificate application is received for a dispensary located in a geographic area in the county that is at least 25 miles from another dispensary and from which another dispensary has moved, the Department shall allocate the dispensary registration certificate to that applicant;
- b. If more than one dispensary registration certificate application is received for a dispensary located in a geographic area in the county that is at least 25 miles from another dispensary and from which another dispensary has moved, the Department shall prioritize and allocate a dispensary registration certificate to an applicant based on which proposed dispensary location will provide dispensary services to the most qualifying patients within five miles of the proposed dispensary location, as determined from the number of registry identification cards issued to qualifying patients; and
- c. If no dispensary registration certificate applications are received for a dispensary located in a geographic area in the county that meets the criteria in subsection (2)(a), the Department shall allocate a dispensary registration certificate in the county as follows:
 - i. If only one dispensary registration certificate application is received for a dispensary located in a geographic area that is at least 25 miles from another dispensary, the Department shall allocate the dispensary registration certificate to that applicant;
 - ii. If more than one dispensary registration certificate application is received for a dispensary located in a geographic area that is at least 25 miles from another dispensary, the Department shall allocate a dispensary registration certificate

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4). Amended by exempt rulemaking at 27 A.A.R. 747, effective May 3, 2021 (Supp. 21-2).

R9-17-302. Repealed**Historical Note**

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by emergency rulemaking at 18 A.A.R. 1010, effective April 11, 2012 for 180 days (Supp. 12-2). Repealed by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4).

R9-17-303. Dispensary Registration Certificate Allocation Process

- A.** Each calendar year, the Department may review current valid dispensary registration certificates to determine if the Department may issue additional dispensary registration certificates pursuant to A.R.S. § 36-2804(C).
1. If the Department determines that the Department may issue additional dispensary registration certificates, the Department shall post, on the Department's website, the information that the Department is accepting dispensary registration certificate applications, including the deadline for accepting dispensary registration certificate applications.
 - a. The Department shall post the information in subsection (A)(1) at least 30 calendar days before the date the Department begins accepting applications.
 - b. The deadline for submission of dispensary registration certificate applications is 10 working days after the date the Department begins accepting applications.
 - c. Sixty working days after the date the Department begins accepting applications, the Department shall determine if the Department received more dispensary registration certificate applications that are complete and in compliance with A.R.S. Title 36, Chapter 28.1 and this Chapter to participate in the allocation process than the Department is allowed to issue.
 - i. If the Department received more dispensary registration certificate applications than the Department is allowed to issue, the Department shall allocate any available dispensary registration certificates according to the priorities established in subsection (B).
 - ii. If the Department is allowed to issue a dispensary registration certificate for each dispensary registration certificate application the Department received, the Department shall allocate the dispensary registration certificates to those applicants.

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

- cate to an applicant based on random drawing; and
- iii. If no dispensary registration certificate is allocated according to subsection (B)(2)(c)(i) or (ii), the Department shall allocate a dispensary registration certificate to an applicant for a dispensary located in the county based on random drawing;
3. If additional dispensary registration certificates are available after dispensary registration certificates are allocated for a county that does not contain a dispensary according to subsection (B)(1) or (2), the Department shall allocate the dispensary registration certificates as follows:
 - a. If only one dispensary registration certificate application is received for a dispensary located in a geographic area that is at least 25 miles from another dispensary and from which another dispensary has moved since the previous allocation of dispensary registration certificates, the Department shall allocate the dispensary registration certificate to that applicant; or
 - b. If more than one dispensary registration certificate application is received for a dispensary located in a geographic area that is at least 25 miles from another dispensary and from which another dispensary has moved since the previous allocation of dispensary registration certificates, the Department shall prioritize and allocate dispensary registration certificates to applicants based on which proposed dispensary location will provide dispensary services to the most qualifying patients within five miles of the proposed dispensary location, as determined from the number of registry identification cards issued to qualifying patients;
 4. If additional dispensary registration certificates are available after dispensary registration certificates are allocated according to subsections (B)(1), (2), and (3), the Department shall allocate the dispensary registration certificates as follows:
 - a. If only one dispensary registration certificate application is received for a dispensary located in a geographic area in which there are no other dispensaries operating within 25 miles of the geographic area, the Department shall allocate a dispensary registration certificate to that applicant; or
 - b. If more than one dispensary registration certificate application is received for a dispensary located in a geographic area in which there are no other dispensaries operating within 25 miles of the geographic area, the Department shall allocate a dispensary registration certificate to an applicant based on random drawing; and
 5. If additional dispensary registration certificates are available after dispensary registration certificates are allocated according to subsections (B)(1) through (4), for all dispensary registration certificate applications not allocated a dispensary registration certificate, the Department shall allocate a dispensary registration certificate to an applicant based on random drawing.
- C. If there is a tie or a margin of 0.1% or less in the scores generated by applying the criteria in subsection (B), the Department shall randomly select one dispensary registration certificate application and allocate a dispensary registration certificate to that applicant.
 - D. For purposes of subsection (B):
 1. "Five miles" includes the area contained within a circle that extends for five miles in all directions from a specific location, not the distance traveled from the specific location by road; and
 2. "25 miles" includes the area contained within a circle that extends for 25 miles in all directions from the center of a geographic area, not the distance traveled from the center of the geographic area by road.
 - E. If the Department does not allocate a dispensary registration certificate to an applicant that had submitted a dispensary registration certificate application that the Department determined was complete and in compliance with A.R.S. Title 36, Chapter 28.1 and this Chapter to participate in the allocation process, the Department shall:
 1. Provide a written notice to the applicant that states that, although the applicant's dispensary registration certificate application was complete and complied with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department did not allocate the applicant a dispensary registration certificate under the processes in this Section; and
 2. Return \$1,000 of the application fee to the applicant.
 - F. If the Department receives a dispensary registration certificate application at a time other than the time stated in subsection (B), the Department shall return the dispensary registration certificate application, including the application fee, to the applicant.
- Historical Note**
- New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by emergency rulemaking at 18 A.A.R. 1010, effective April 11, 2012 for 180 days (Supp. 12-2). Emergency expired (Supp. 12-4). Amended by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4).
- R9-17-304. Applying for a Dispensary Registration Certificate**
- A. An individual shall not be an applicant, principal officer, or board member on:
 1. More than one dispensary registration certificate application for a location in a single geographic area, or
 2. More than five dispensary registration certificate applications for locations in different geographic areas.
 - B. If the Department determines that an individual is an applicant, principal officer, or board member on more than one dispensary registration certificate application for a geographic area or more than five dispensary registration certificate applications, the Department shall review the applications and provide the applicant on each of the dispensary registration certificate applications with a written comprehensive request for more information that includes the specific requirements in A.R.S. Title 36, Chapter 28.1 and this Chapter that the dispensary registration certificate application does not comply with.
 1. If an applicant withdraws an application to comply with this Chapter and submits information demonstrating compliance with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall process the applicant's remaining dispensary registration certificate applications according to this Chapter.
 2. If an applicant does not withdraw an application or submit information demonstrating compliance with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall issue a denial to the applicant according to R9-17-322.

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

3. An application fee submitted with a dispensary registration certificate application in subsection (B) that is withdrawn is not refunded.
- C. To apply for a dispensary registration certificate, an applicant shall submit to the Department the following:
1. An application in a Department-provided format that includes:
 - a. The legal name of the proposed dispensary;
 - b. The physical address and geographic area of the proposed dispensary;
 - c. The following information for the applicant:
 - i. Name of the individual or entity applying,
 - ii. Type of business organization,
 - iii. Mailing address,
 - iv. Telephone number, and
 - v. E-mail address;
 - d. The name of the individual designated to submit dispensary agent registry identification card applications on behalf of the proposed dispensary;
 - e. The name and professional license number of the proposed dispensary's medical director;
 - f. The name, residence address, and date of birth of each:
 - i. Principal officer, and
 - ii. Board member;
 - g. For each principal officer or board member, whether the principal officer or board member:
 - i. Has served as a principal officer or board member for a dispensary that had the dispensary registration certificate revoked;
 - ii. Is a physician currently providing written certifications for qualifying patients;
 - iii. Is a law enforcement officer; or
 - iv. Is employed by or a contractor of the Department;
 - h. Whether the applicant agrees to allow the Department to submit supplemental requests for information;
 - i. A statement that, if the applicant is issued a dispensary registration certificate, the proposed dispensary will not operate until the proposed dispensary is inspected and obtains an approval to operate from the Department;
 - j. An attestation that the information provided to the Department to apply for a dispensary registration certificate is true and correct; and
 - k. The signatures of each principal officer and each board member of the proposed dispensary according to R9-17-301 and the date signed;
 2. If the applicant is one of the business organizations in R9-17-301(A)(2) through (7), a copy of the business organization's articles of incorporation, articles of organization, or partnership or joint venture documents that include:
 - a. The name of the business organization,
 - b. The type of business organization, and
 - c. The names and titles of the individuals in R9-17-301(A) and (B);
 3. For each principal officer and each board member:
 - a. An attestation signed and dated by the principal officer or board member that the principal officer or board member has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801; and
 - b. For the Department's criminal records check authorized in A.R.S. §§ 36-2804 and 36-2804.05:
 - i. The principal officer's or board member's fingerprints on a fingerprint card that includes:
 - (1) The principal officer's or board member's first name; middle initial, if applicable; and last name;
 - (2) The principal officer's or board member's signature;
 - (3) If different from the principal officer or board member, the signature of the individual physically rolling the principal officer's or board member's fingerprints;
 - (4) The principal officer's or board member's residence address;
 - (5) If applicable, the principal officer's or board member's surname before marriage and any names previously used by the principal officer or board member;
 - (6) The principal officer's or board member's date of birth;
 - (7) The principal officer's or board member's Social Security number;
 - (8) The principal officer's or board member's citizenship status;
 - (9) The principal officer's or board member's gender;
 - (10) The principal officer's or board member's race;
 - (11) The principal officer's or board member's height;
 - (12) The principal officer's or board member's weight;
 - (13) The principal officer's or board member's hair color;
 - (14) The principal officer's or board member's eye color; and
 - (15) The principal officer's or board member's place of birth; or
 - ii. If the fingerprints and information required in subsection (C)(3)(b)(i) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the principal officer or board member as a result of the application;
 4. Policies and procedures that comply with the requirements in this Chapter for:
 - a. Inventory control,
 - b. Laboratory testing of medical marijuana and medical marijuana products,
 - c. Qualifying patient recordkeeping,
 - d. Security, and
 - e. Patient education and support;
 5. As required in A.R.S. § 36-2804(B)(1)(d), a sworn statement, signed and dated by the each principal officer and each board member of the proposed dispensary according to R9-17-301, certifying that the proposed dispensary is in compliance with any local zoning restrictions;
 6. Documentation from the local jurisdiction where the proposed dispensary's physical address is located that:
 - a. There are no local zoning restrictions for the proposed dispensary's location, or
 - b. The proposed dispensary's location is in compliance with any local zoning restrictions;

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

7. Documentation of:
- Ownership of the physical address of the proposed dispensary, or
 - Permission from the owner of the physical address of the proposed dispensary for the applicant for a dispensary registration certificate to operate a dispensary at the physical address;
8. The proposed dispensary's by-laws including:
- The names and titles of individuals designated as principal officers and board members of the proposed dispensary;
 - Whether the applicant plans to:
 - Cultivate marijuana;
 - Acquire marijuana from qualifying patients, designated caregivers, or other dispensaries;
 - Sell or provide marijuana to other dispensaries;
 - Transport marijuana;
 - Prepare, sell, or dispense marijuana-infused edible food products;
 - Prepare, sell, or dispense marijuana-infused non-edible products;
 - Sell or provide marijuana paraphernalia or other supplies related to the administration of marijuana to qualifying patients and designated caregivers;
 - Deliver medical marijuana to qualifying patients; or
 - Provide patient support and related services to qualifying patients;
 - Provisions for the disposition of revenues and receipts to ensure that the proposed dispensary operates on a not-for-profit basis; and
 - Provisions for amending the proposed dispensary's by-laws;
9. A business plan demonstrating the on-going viability of the proposed dispensary on a not-for-profit basis that includes:
- A description and total dollar amount of expenditures already incurred to establish the proposed dispensary or to secure a dispensary registration certificate by the applicant for the dispensary registration certificate;
 - A description and total dollar amount of monies or tangible assets received for operating the proposed dispensary from entities other than the applicant for the dispensary registration certificate or a principal officer or board member associated with the applicant, including the entity's name and the interest in the dispensary or the benefit the entity obtained;
 - Projected expenditures expected before the proposed dispensary is operational;
 - Projected expenditures after the proposed dispensary is operational; and
 - Projected revenue; and
10. The applicable fee in R9-17-102 for applying for a dispensary registration certificate.
- D.** Before an entity with a dispensary registration certificate begins operating a dispensary, the entity shall apply for and obtain an approval to operate a dispensary from the Department.
- Historical Note**
- New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by emergency rulemaking at 18 A.A.R. 1010, effective April 11, 2012 for 180 days (Supp. 12-2). Emergency expired (Supp. 12-4). Amended by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4).
- R9-17-305. Applying for Approval to Operate a Dispensary**
- A.** To apply for approval to operate a dispensary, a person holding a dispensary registration certificate shall submit to the Department, and, if the dispensary registration certificate was issued on or after April 1, 2020, within 18 months after the dispensary registration certificate was issued, the following:
- An application in a Department-provided format that includes:
 - The name and registry identification number of the dispensary;
 - The physical address of the dispensary;
 - The name, address, and date of birth of each dispensary agent;
 - Except as provided in R9-17-324, the name and professional license number of the dispensary's medical director;
 - If applicable, the physical address of the dispensary's cultivation site;
 - The dispensary's Transaction Privilege Tax Number issued by the Arizona Department of Revenue;
 - The dispensary's proposed hours of operation during which the dispensary plans to be available to dispense medical marijuana to qualifying patients and designated caregivers;
 - Whether the dispensary agrees to allow the Department to submit supplemental requests for information;
 - Whether the dispensary and, if applicable, the dispensary's cultivation site are ready for an inspection by the Department;
 - If the dispensary and, if applicable, the dispensary's cultivation site are not ready for an inspection by the Department, the date the dispensary and, if applicable, the dispensary's cultivation site will be ready for an inspection by the Department;
 - An attestation that the information provided to the Department to apply for approval to operate a dispensary is true and correct; and
 - The signatures of each principal officer and each board member of the dispensary according to R9-17-301 and the date signed;
 - A copy of documentation issued by the local jurisdiction to the dispensary authorizing occupancy of the building as a dispensary and, if applicable, as the dispensary's cultivation site, such as a certificate of occupancy, a special use permit, or a conditional use permit;
 - A sworn statement, signed and dated by each principal officer and each board member of the dispensary according to R9-17-301, certifying that the dispensary is in compliance with local zoning restrictions;
 - The distance to the closest private school or public school from:
 - The dispensary; and
 - If applicable, the dispensary's cultivation site;
 - A site plan drawn to scale of the dispensary location showing streets, property lines, buildings, parking areas, outdoor areas if applicable, fences, security features, fire hydrants if applicable, and access to water mains;
 - A floor plan drawn to scale of the building where the dispensary is located showing the:
 - Layout and dimensions of each room,
 - Name and function of each room,

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

- c. Location of each hand washing sink,
 - d. Location of each toilet room,
 - e. Means of egress,
 - f. Location of each video camera,
 - g. Location of each panic button, and
 - h. Location of natural and artificial lighting sources;
7. If applicable, a site plan drawn to scale of the dispensary's cultivation site showing streets, property lines, buildings, parking areas, outdoor areas if applicable, fences, security features, fire hydrants if applicable, and access to water mains; and
8. If applicable, a floor plan drawn to scale of each building at the dispensary's cultivation site showing the:
- a. Layout and dimensions of each room,
 - b. Name and function of each room,
 - c. Location of each hand washing sink,
 - d. Location of each toilet room,
 - e. Means of egress,
 - f. Location of each video camera,
 - g. Location of each panic button, and
 - h. Location of natural and artificial lighting sources.
- B.** A dispensary's cultivation site may be located anywhere in the state where a cultivation site is allowed by the local jurisdiction.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4). Amended by exempt rulemaking at 27 A.A.R. 747, effective May 3, 2021 (Supp. 21-2).

R9-17-306. Changes to a Dispensary Registration Certificate

- A.** Except as provided in R9-17-324, a dispensary may not transfer or assign the dispensary registration certificate.
- B.** A dispensary may change the location of the:
1. Dispensary:
 - a. If the dispensary was allocated a dispensary registration certificate on or after April 1, 2020, according to A.R.S. § 36-2803.01(D); and
 - b. If the dispensary was allocated a dispensary registration certificate before April 1, 2020:
 - i. Within the first three years after the Department issued the dispensary's registration certificate, to another location in the geographic area where the dispensary is located; or
 - ii. After the first three years after the Department issued a dispensary registration certificate to the dispensary, to another location in the state; or
 2. Dispensary's cultivation site to another location in the state.
- C.** A dispensary or the dispensary's cultivation site shall not cultivate, manufacture, distribute, dispense, or sell medical marijuana at a new location until the dispensary submits an application for a change in a dispensary location or a change or addition of a cultivation site in R9-17-307 and the Department issues an amended dispensary registration certificate or an approval for the dispensary's cultivation site's new location to the dispensary.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4). Amended by exempt rulemaking at 27 A.A.R. 1587, with

an immediate effective date of September 7, 2021 (Supp. 21-3).

R9-17-307. Applying to Change a Dispensary's Location or Change or Add a Dispensary's Cultivation Site

- A.** To change the location of a dispensary or the dispensary's cultivation site or to add a cultivation site, the dispensary shall submit an application to the Department that includes:
1. The following information in a Department-provided format:
 - a. The legal name of the dispensary;
 - b. The registry identification number for the dispensary;
 - c. Whether the request is for:
 - i. A change of location for the dispensary,
 - ii. A change of location for the dispensary's cultivation site, or
 - iii. An addition of a cultivation site;
 - d. The current physical address of the dispensary or the dispensary's cultivation site;
 - e. The physical address of the proposed location for the dispensary or the dispensary's cultivation site;
 - f. The distance to the closest public school or private school from:
 - i. The proposed location for the dispensary, or
 - ii. The proposed location for the dispensary's cultivation site;
 - g. The name of the entity applying;
 - h. If applicable, the anticipated date of the change of location;
 - i. Whether the proposed dispensary or the dispensary's proposed cultivation site is ready for an inspection by the Department;
 - j. If the proposed dispensary or the dispensary's proposed cultivation site is not ready for an inspection by the Department, the date the dispensary or the dispensary's cultivation site will be ready for an inspection by the Department;
 - k. An attestation that the information provided to the Department to apply for a change in location is true and correct; and
 - l. The signature of each principal officer and board member of the dispensary according to R9-17-301 and the date signed;
 2. A copy of documentation issued by the local jurisdiction to the dispensary authorizing occupancy of the proposed building as a dispensary or location as the dispensary's cultivation site, such as a certificate of occupancy, a special use permit, or a conditional use permit;
 3. A sworn statement, signed by each principal officer and board member of the dispensary according to R9-17-301, certifying that the location of the proposed dispensary building or of the dispensary's proposed cultivation site is in compliance with local zoning restrictions;
 4. If the change in location is for the dispensary:
 - a. A site plan drawn to scale of the proposed dispensary location showing streets, property lines, buildings, parking areas, outdoor areas if applicable, fences, security features, fire hydrants if applicable, and access to water mains; and
 - b. A floor plan drawn to scale of the building where the proposed dispensary is located showing the:
 - i. Layout and dimensions of each room,
 - ii. Name and function of each room,
 - iii. Location of each hand washing sink,
 - iv. Location of each toilet room,
 - v. Means of egress,

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

- vi. Location of each video camera,
 - vii. Location of each panic button, and
 - viii. Location of natural and artificial lighting sources;
5. If the change in location is for the dispensary's cultivation site or if adding a cultivation site:
 - a. A site plan drawn to scale of the dispensary's proposed cultivation site showing streets, property lines, buildings, parking areas, outdoor areas if applicable, fences, security features, fire hydrants if applicable, and access to water mains; and
 - b. If applicable, a floor plan drawn to scale of each building used by the dispensary's proposed cultivation site showing the:
 - i. Layout and dimensions of each room,
 - ii. Name and function of each room,
 - iii. Location of each hand washing sink,
 - iv. Location of each toilet room,
 - v. Means of egress,
 - vi. Location of each video camera,
 - vii. Location of each panic button, and
 - viii. Location of natural and artificial lighting sources; and
 6. The applicable fee in R9-17-102 for applying for a change in location or the addition of a cultivation site.
- B.** If the information and documents submitted by the dispensary comply with A.R.S. Title 36, Chapter 28.1 and this Chapter, the Department shall issue an amended dispensary registration certificate that includes the new address of the new location and retains the expiration date of the previously issued dispensary registration certificate.
- C.** An application for a change in location of a dispensary or a dispensary's cultivation site or the addition of a cultivation site may not be combined with an application for renewing a dispensary registration certificate. The Department shall process each application separately according to the applicable time-frame established in R9-17-107.
- D.** A dispensary shall submit written notification to the Department when the dispensary no longer uses a previously approved cultivation site.
- g. The dispensary's hours of operation during which the dispensary is available to dispense medical marijuana to qualifying patients and designated caregivers;
 - h. The name, address, date of birth, and registry identification number of each:
 - i. Principal officer,
 - ii. Board member, and
 - iii. Dispensary agent;
 - i. For each principal officer or board member, whether the principal officer or board member:
 - i. Has served as a principal officer or board member for a dispensary that had the dispensary registration certificate revoked,
 - ii. Is a physician currently providing written certifications for qualifying patients,
 - iii. Is a law enforcement officer, or
 - iv. Is employed by or a contractor of the Department;
 - j. The dispensary's Transaction Privilege Tax Number issued by the Arizona Department of Revenue;
 - k. Whether the dispensary agrees to allow the Department to submit supplemental requests for information;
 - l. An attestation that the information provided to the Department to renew the dispensary registration certificate is true and correct; and
 - m. The signature of each principal officer and board member of the dispensary according to R9-17-301 and the date signed;
2. If the application is for renewing a dispensary registration certificate that was initially issued within the previous 12 months, a copy of the dispensary's approval to operate a dispensary issued by the Department;
 3. Except as specified in R9-17-324(E):
 - a. A copy of an annual financial statement for the previous two years, or for the portion of the previous two years the dispensary was operational, prepared according to generally accepted accounting principles; and
 - b. A report of an audit by an independent certified public accountant of the annual financial statement required in subsection (3)(a); and
 4. The applicable fee in R9-17-102 for applying to renew a dispensary registration certificate.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3).

Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4).

R9-17-308. Renewing a Dispensary Registration Certificate

To renew a dispensary registration certificate, a dispensary that has an approval to operate a dispensary issued by the Department, shall submit to the Department, at least 30 calendar days before the expiration date of the dispensary's current dispensary registration certificate, the following:

1. An application in a Department-provided format that includes:
 - a. The legal name of the dispensary;
 - b. The registry identification number for the dispensary;
 - c. If the dispensary is a dual licensee, the marijuana establishment license number;
 - d. The physical address of the dispensary;
 - e. The name of the entity applying;
 - f. Except as provided in R9-17-324(D), the name and license number of the dispensary's medical director;

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by emergency rulemaking at 18 A.A.R. 1010, effective April 11, 2012 for 180 days (Supp. 12-2). Emergency expired (Supp. 12-4). Amended by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4). Amended by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4). Amended by exempt rulemaking at 27 A.A.R. 747, effective May 3, 2021 (Supp. 21-2). Amended by exempt rulemaking at 27 A.A.R. 1229, with an immediate effective date of July 23, 2021; amended by exempt rulemaking at 27 A.A.R. 1587, with an immediate effective date of September 7, 2021 (Supp. 21-3).

R9-17-309. Inspections

- A. Submission of an application for a dispensary registration certificate constitutes permission for entry to and inspection of

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

the dispensary and, if applicable, the dispensary's cultivation site.

- B.** Except as provided in subsection (D), an onsite inspection of a dispensary or the dispensary's cultivation site shall occur at a date and time agreed to by the dispensary and the Department that is no later than five working days after the date the Department submits a written request to the dispensary to schedule the certification or compliance inspection, unless the Department agrees to a later date and time.
- C.** The Department shall not accept allegations of a dispensary's or a dispensary's cultivation site's noncompliance with A.R.S. Title 36, Chapter 28.1 or this Chapter from an anonymous source.
- D.** If the Department receives an allegation of a dispensary's or a dispensary's cultivation site's noncompliance with A.R.S. Title 36, Chapter 28.1 or this Chapter, the Department may conduct an unannounced inspection of the dispensary or the dispensary's cultivation site.
- E.** If the Department identifies a violation of A.R.S. Title 36, Chapter 28.1 or this Chapter during an inspection of a dispensary or the dispensary's cultivation site:
1. The Department shall provide the dispensary with a written notice that includes the specific rule or statute that was violated; and
 2. The dispensary shall notify the Department in writing, with a postmark date within 20 working days after the date of the notice of violations, identifying the corrective actions taken and the date of the correction.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3).

R9-17-310. Administration**A.** A dispensary shall:

1. Ensure that the dispensary is operating and available to dispense medical marijuana and marijuana products to qualifying patients and designated caregivers:
 - a. At least 30 hours weekly between the hours of 7:00 a.m. and 10:00 p.m.; and
 - b. For a dispensary with a dispensary registration certificate issued on or after April 1, 2020, within 18 months after receiving the dispensary registration certificate;
2. Develop, document, and implement policies and procedures regarding:
 - a. Job descriptions and employment contracts, including:
 - i. Personnel duties, authority, responsibilities, and qualifications;
 - ii. Personnel supervision;
 - iii. Training in and adherence to confidentiality requirements;
 - iv. Periodic performance evaluations; and
 - v. Disciplinary actions;
 - b. Business records, such as manual or computerized records of assets and liabilities, monetary transactions, journals, ledgers, and supporting documents, including agreements, checks, invoices, and vouchers;
 - c. Inventory control, including:
 - i. Tracking;

- ii. Packaging;
 - iii. Accepting marijuana from qualifying patients and designated caregivers;
 - iv. Acquiring marijuana or marijuana products from other dispensaries;
 - v. Providing marijuana or marijuana products to another dispensary; and
 - vi. Either:
 - (1) Providing samples of marijuana or marijuana products to a laboratory for testing, or
 - (2) Allowing a laboratory agent access to medical marijuana or marijuana product to collect samples;
- d.** Laboratory testing, including:
- i. The analytes, including possible contaminants, to be tested for;
 - ii. The process for separating a batch of marijuana or of a marijuana product until laboratory testing has been completed and testing results received by the dispensary;
 - iii. The process for collecting samples of medical marijuana or a marijuana product for laboratory testing, including:
 - (1) The amount to be collected from each batch,
 - (2) The method for ensuring that a sample collected is representative of the batch,
 - (3) The packaging of the sample,
 - (4) The method for documenting chain of custody for the sample, and
 - (5) Methods to deter tampering with the sample and to determine whether tampering has occurred;
 - vi. The process for submitting a sample of medical marijuana or a marijuana product to a laboratory agent or laboratory for testing;
 - v. The process for requesting retesting of the remaining portion of a sample of medical marijuana or a marijuana product; and
 - vi. Actions to be taken on the basis of laboratory testing results;
- e.** Remediation, including:
- i. Criteria for when a batch of medical marijuana or marijuana product can be remediated;
 - ii. The process by which each type of medical marijuana or marijuana product is remediated, including the methods for remediation and subsequent retesting; and
 - iii. Documentation of the remediation process;
- f.** Disposal of medical marijuana or a marijuana product, including:
- i. Destroying a batch of marijuana or a marijuana product that does not meet the requirements in Table 3.1 Analytes and documenting the destruction;
 - ii. Submitting marijuana that is not usable marijuana to a local law enforcement agency and documenting the submission; or
 - iii. Otherwise disposing of marijuana or a marijuana product such that the marijuana or marijuana product is unrecognizable or cannot otherwise be used and documenting the method of disposal, the laboratory agent overseeing the disposal, and the date of disposal;

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

- g. Qualifying patient records, including purchases, denials of sale, any delivery options, confidentiality, and retention; and
 - h. Patient education and support, including the development and distribution of materials on:
 - i. Availability of different strains of marijuana and the purported effects of the different strains;
 - ii. Information about the purported effectiveness of various methods, forms, and routes of medical marijuana administration;
 - iii. Information about laboratory testing, the analytes for which the dispensary receives testing results, the right to receive a copy of the final report of testing specified in R9-17-404.06 upon request, and how to read and understand the final report of testing;
 - iv. Methods of tracking the effects on a qualifying patient of different strains and forms of marijuana; and
 - v. Prohibition on the smoking of medical marijuana in public places;
 - 3. Maintain copies of the policies and procedures at the dispensary and provide copies to the Department for review upon request;
 - 4. Review dispensary policies and procedures at least once every 12 months from the issue date of the dispensary registration certificate and update as needed;
 - 5. Except as provided in R9-17-324(D), employ or contract with a medical director;
 - 6. Except as provided in R9-17-324(C), ensure that each dispensary agent has the dispensary agent's registry identification card in the dispensary agent's immediate possession when the dispensary agent is:
 - a. Working or providing volunteer services at the dispensary or the dispensary's cultivation site, or
 - b. Transporting marijuana for the dispensary;
 - 7. Except as provided in R9-17-324(C), ensure that a dispensary agent accompanies any individual other than another dispensary agent associated with the dispensary when the individual is present in the enclosed, locked facility where marijuana is cultivated by the dispensary;
 - 8. Except as provided in R9-17-324(C), not allow an individual who does not possess a dispensary agent registry identification card issued under the dispensary registration certificate to:
 - a. Serve as a principal officer or board member for the dispensary,
 - b. Serve as the medical director for the dispensary,
 - c. Be employed by the dispensary, or
 - d. Provide volunteer services at or on behalf of the dispensary;
 - 9. Provide written notice to the Department, including the date of the event, within 10 working days after the date, when a dispensary agent no longer:
 - a. Serves as a principal officer or board member for the dispensary,
 - b. Serves as the medical director for the dispensary,
 - c. Is employed by the dispensary, or
 - d. Provides volunteer services at or on behalf of the dispensary;
 - 10. Document and report any loss or theft of marijuana from the dispensary to the appropriate law enforcement agency;
 - 11. Maintain copies of any documentation required in this Chapter for at least 12 months after the date on the documentation and provide copies of the documentation to the Department for review upon request;
 - 12. Post the following information in a place that can be viewed by individuals entering the dispensary:
 - a. If applicable, the dispensary's approval to operate;
 - b. The dispensary's registration certificate;
 - c. Except as provided in R9-17-324(D), the name of the dispensary's medical director and the medical director's professional license number on a sign at least 20 centimeters by 30 centimeters;
 - d. The hours of operation during which the dispensary will dispense medical marijuana to a qualifying patient or a designated caregiver;
 - e. A sign in a Department-provided format that contains the following language:
 - i. "WARNING: There may be potential dangers to fetuses caused by smoking or ingesting marijuana while pregnant or to infants while breastfeeding," and
 - ii. "WARNING: Use of marijuana during pregnancy may result in a risk of being reported to the Department of Child Safety during pregnancy or at the birth of the child by persons who are required to report;" and
 - f. A sign stating that a qualifying patient has the right to receive the results of laboratory testing of medical marijuana or a marijuana product; and
 - 13. Except as provided in R9-17-324(D):
 - a. Not lend any part of the dispensary's income or property without receiving adequate security and a reasonable rate of interest,
 - b. Not purchase property for more than adequate consideration in money or cash equivalent,
 - c. Not pay compensation for salaries or other compensation for personal services that is in excess of a reasonable allowance,
 - d. Not sell any part of the dispensary's property or equipment for less than adequate consideration in money or cash equivalent, and
 - e. Not engage in any other transaction that results in a substantial diversion of the dispensary's income or property.
- B.** If a dispensary cultivates marijuana, the dispensary shall cultivate the marijuana in an enclosed, locked facility.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4). Amended by final rulemaking at 23 A.A.R. 970, effective June 6, 2017 (Supp. 17-2). Amended by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020 (Supp. 20-2). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4). Amended by exempt rulemaking at 27 A.A.R. 747, effective May 3, 2021 (Supp. 21-2).

R9-17-311. Submitting an Application for a Dispensary Agent Registry Identification Card

Except as provided in R9-17-107(F) or R9-17-324(C), to obtain a dispensary agent registry identification card for an individual serving as a principal officer or board member for the dispensary, employed by the dispensary, or providing volunteer services at or

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

on behalf of the dispensary, the dispensary shall submit to the Department the following for each individual:

1. An application in a Department-provided format that includes:
 - a. The individual's first name; middle initial, if applicable; last name; and suffix, if applicable;
 - b. The individual's residence address and mailing address;
 - c. The county where the individual resides;
 - d. The individual's date of birth;
 - e. The identifying number on the applicable card or document in subsection (5)(a) through (e);
 - f. The name and registry identification number of the dispensary; and
 - g. The signature of the individual in R9-17-304(C)(1)(d) or of a principal officer or board member, as applicable, designated to submit dispensary agent applications on the dispensary's behalf and the date signed;
2. An attestation signed and dated by the individual that the individual has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801;
3. One of the following:
 - a. A statement that the individual does not currently hold a valid registry identification card, or
 - b. The assigned registry identification number for the individual for each valid registry identification card currently held by the individual;
4. A statement in a Department-provided format signed by the individual pledging not to divert marijuana to any other individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
5. A copy of the individual's:
 - a. Arizona driver's license issued on or after October 1, 1996;
 - b. Arizona identification card issued on or after October 1, 1996;
 - c. Arizona registry identification card;
 - d. Photograph page in the individual's U.S. passport; or
 - e. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the individual:
 - i. Birth certificate verifying U.S. citizenship,
 - ii. U.S. Certificate of Naturalization, or
 - iii. U.S. Certificate of Citizenship;
6. A current photograph of the individual;
7. For the Department's criminal records check authorized in A.R.S. §§ 36-2804.01 and 36-2804.05:
 - a. The individual's fingerprints on a fingerprint card that includes:
 - i. The individual's first name; middle initial, if applicable; and last name;
 - ii. The individual's signature;
 - iii. If different from the individual, the signature of another individual physically rolling the individual's fingerprints;
 - iv. The individual's address;
 - v. If applicable, the individual's surname before marriage and any names previously used by the individual;
 - vi. The individual's date of birth;
 - vii. The individual's Social Security number;
 - viii. The individual's citizenship status;
 - ix. The individual's gender;
 - x. The individual's race;
 - xi. The individual's height;

- xii. The individual's weight;
 - xiii. The individual's hair color;
 - xiv. The individual's eye color; and
 - xv. The individual's place of birth; or
 - b. If the individual's fingerprints and information required in subsection (7)(a) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card for another dispensary, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the individual as a result of the application; and
8. The applicable fee in R9-17-102 for applying for a dispensary agent registry identification card.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by emergency rulemaking at 18 A.A.R. 1010, effective April 11, 2012 for 180 days (Supp. 12-2). Emergency expired (Supp. 12-4). Amended by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by exempt rulemaking at 27 A.A.R. 747, effective May 3, 2021 (Supp. 21-2).

R9-17-312. Submitting an Application to Renew a Dispensary Agent's Registry Identification Card

To renew a dispensary agent's registry identification card, a dispensary shall submit to the Department, at least 30 calendar days before the expiration of the dispensary agent's registry identification card, the following:

1. An application in a Department-provided format that includes:
 - a. The dispensary agent's first name; middle initial, if applicable; last name; and suffix, if applicable;
 - b. The dispensary agent's residence address and mailing address;
 - c. The county where the dispensary agent resides;
 - d. The dispensary agent's date of birth;
 - e. The registry identification number on the dispensary agent's current registry identification card;
 - f. The name and registry identification number of the dispensary; and
 - g. The signature of the individual in R9-17-304(C)(1)(d) or of a principal officer or board member, as applicable, designated to submit dispensary agent applications on the dispensary's behalf and the date signed;
2. An attestation signed and dated by the dispensary agent that the dispensary agent has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801;
3. If the dispensary agent's name in subsection (1)(a) is not the same name as on the dispensary agent's current registry identification card, one of the following with the dispensary agent's new name:
 - a. An Arizona driver's license,
 - b. An Arizona identification card, or
 - c. The photograph page in the dispensary agent's U.S. passport;
4. A statement in a Department-provided format signed by the dispensary agent pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

5. A current photograph of the dispensary agent;
6. For the Department's criminal records check authorized in A.R.S. § 36-2804.05:
 - a. The dispensary agent's fingerprints on a fingerprint card that includes:
 - i. The dispensary agent's first name; middle initial, if applicable; and last name;
 - ii. The dispensary agent's signature;
 - iii. If different from the dispensary agent, the signature of the individual physically rolling the dispensary agent's fingerprints;
 - iv. The dispensary agent's address;
 - v. If applicable, the dispensary agent's surname before marriage and any names previously used by the dispensary agent;
 - vi. The dispensary agent's date of birth;
 - vii. The dispensary agent's Social Security number;
 - viii. The dispensary agent's citizenship status;
 - ix. The dispensary agent's gender;
 - x. The dispensary agent's race;
 - xi. The dispensary agent's height;
 - xii. The dispensary agent's weight;
 - xiii. The dispensary agent's hair color;
 - xiv. The dispensary agent's eye color; and
 - xv. The dispensary agent's place of birth; or
 - b. If the dispensary agent's fingerprints and information required in subsection (6)(a) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card for another dispensary, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the dispensary agent as a result of the application; and
7. The applicable fee in R9-17-102 for applying to renew a dispensary agent's registry identification card.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by emergency rulemaking at 18 A.A.R. 1010, effective April 11, 2012 for 180 days (Supp. 12-2). Emergency expired (Supp. 12-4). Amended by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by exempt rulemaking at 27 A.A.R. 747, effective May 3, 2021 (Supp. 21-2).

R9-17-313. Medical Director

- A. Except as provided in R9-17-324(D), a dispensary shall appoint an individual who is a physician to function as a medical director.
- B. During a dispensary's hours of operation, a medical director or an individual who is a physician and is designated by the medical director to serve as medical director in the medical director's absence is:
 1. Onsite; or
 2. Able to be contacted by any means possible, such as by telephone or pager.
- C. A medical director shall:
 1. Develop and provide training to the dispensary's dispensary agents at least once every 12 months from the initial date of the dispensary's registration certificate on the following subjects:
 - a. Guidelines for providing information to qualifying patients related to risks, benefits, and side effects associated with medical marijuana;
 - b. Guidelines for providing support to qualifying patients related to the qualifying patient's self-assessment of the qualifying patient's symptoms, including a rating scale for pain, cachexia or wasting syndrome, nausea, seizures, muscle spasms, and agitation;
 - c. Recognizing signs and symptoms of substance abuse; and
 - d. Guidelines for refusing to provide medical marijuana to an individual who appears to be impaired or abusing medical marijuana; and
 2. Assist in the development and implementation of review and improvement processes for patient education and support provided by the dispensary.
- D. A medical director shall provide oversight for the development and dissemination of:
 1. Educational materials for qualifying patients and designated caregivers that include:
 - a. Alternative medical options for the qualifying patient's debilitating medical condition;
 - b. Information about possible side effects of and contraindications for medical marijuana including possible impairment with use and operation of a motor vehicle or heavy machinery, when caring for children, or of job performance;
 - c. Guidelines for notifying the physician who provided the written certification for medical marijuana if side effects or contraindications occur;
 - d. A description of the potential for differing strengths of medical marijuana strains and products;
 - e. Information about potential drug-to-drug interactions, including interactions with alcohol, prescription drugs, non-prescription drugs, and supplements;
 - f. Techniques for the use of medical marijuana and marijuana paraphernalia;
 - g. Information about different methods, forms, and routes of medical marijuana administration;
 - h. Signs and symptoms of substance abuse, including tolerance, dependency, and withdrawal; and
 - i. A listing of substance abuse programs and referral information;
 2. A system for a qualifying patient or the qualifying patient's designated caregiver to document the qualifying patient's pain, cachexia or wasting syndrome, nausea, seizures, muscle spasms, or agitation that includes:
 - a. A log book, maintained by the qualifying patient and or the qualifying patient's designated caregiver, in which the qualifying patient or the qualifying patient's designated caregiver may track the use and effects of specific medical marijuana strains and products;
 - b. A rating scale for pain, cachexia or wasting syndrome, nausea, seizures, muscles spasms, and agitation;
 - c. Guidelines for the qualifying patient's self-assessment or, if applicable, assessment of the qualifying patient by the qualifying patient's designated caregiver; and
 - d. Guidelines for reporting usage and symptoms to the physician providing the written certification for medical marijuana and any other treating physicians; and

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

3. Policies and procedures for refusing to provide medical marijuana to an individual who appears to be impaired or abusing medical marijuana.
- E. A medical director for a dispensary shall not provide a written certification for medical marijuana for any qualifying patient.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by exempt rulemaking at 27 A.A.R. 747, effective May 3, 2021 (Supp. 21-2).

R9-17-314. Dispensing Medical Marijuana

- A. Before a dispensary agent dispenses medical marijuana or a marijuana product to a qualifying patient or a designated caregiver, the dispensary agent shall:
1. Verify the qualifying patient's or the designated caregiver's identity,
 2. Offer any appropriate patient education or support materials,
 3. Make available the results of testing of the medical marijuana or marijuana product required in R9-17-317.01(A), if requested by the qualifying patient or designated caregiver,
 4. Enter the qualifying patient's or designated caregiver's registry identification number on the qualifying patient's or designated caregiver's registry identification card into the medical marijuana electronic verification system,
 5. Verify the validity of the qualifying patient's or designated caregiver's registry identification card,
 6. Verify that the amount of medical marijuana or marijuana product the qualifying patient or designated caregiver is requesting would not cause the qualifying patient to exceed the limit on obtaining no more than two and one-half ounces of medical marijuana during any 14-calendar-day period, and
 7. Enter the following information into the medical marijuana electronic verification system for the qualifying patient or designated caregiver:
 - a. The amount of medical marijuana dispensed,
 - b. Whether the medical marijuana was dispensed to the qualifying patient or to the qualifying patient's designated caregiver,
 - c. The date and time the medical marijuana was dispensed,
 - d. The dispensary agent's registry identification number, and
 - e. The dispensary's registry identification number.
- B. 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.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by exempt rulemaking at 26 A.A.R. 2991, with an effective date of November 1, 2020 (Supp. 20-4).

R9-17-315. Qualifying Patient Records

- A. A dispensary shall ensure that:
1. A qualifying patient record is established and maintained for each qualifying patient who obtains medical marijuana or a marijuana product from the dispensary;
 2. An entry in a qualifying patient record:

- a. Is recorded only by a dispensary agent authorized by dispensary policies and procedures to make an entry,
 - b. Is dated and signed by the dispensary agent,
 - c. Includes the dispensary agent's registry identification number, and
 - d. Is not changed to make the initial entry illegible;
3. If an electronic signature is used to sign an entry, the dispensary agent whose signature the electronic code represents is accountable for the use of the electronic signature;
 4. A qualifying patient record is only accessed by a dispensary agent authorized by dispensary policies and procedures to access the qualifying patient record;
 5. A qualifying patient record is provided to the Department for review upon request;
 6. A qualifying patient record is protected from loss, damage, or unauthorized use; and
 7. A qualifying patient record is maintained for five years after the date of the qualifying patient's or, if applicable, the qualifying patient's designated caregiver's last request for medical marijuana from the dispensary.
- B. If a dispensary maintains qualifying patient records electronically, the dispensary shall ensure that:
1. There are safeguards to prevent unauthorized access, and
 2. The date and time of an entry in a qualifying patient record is recorded electronically by an internal clock.
- C. A dispensary shall ensure that the qualifying patient record for a qualifying patient who requests or whose designated caregiver on behalf of the qualifying patient requests medical marijuana or a marijuana product from the dispensary contains:
1. Qualifying patient information that includes:
 - a. The qualifying patient's name;
 - b. The qualifying patient's date of birth; and
 - c. The name of the qualifying patient's designated caregiver, if applicable;
 2. Documentation of any patient education and support materials provided to the qualifying patient or the qualifying patient's designated caregiver, including a description of the materials and the date the materials were provided; and
 3. For each time the qualifying patient requests and does not obtain medical marijuana or a marijuana product or, if applicable, the designated caregiver requests on behalf of the qualifying patient and does not obtain medical marijuana or a marijuana product from the dispensary, the following:
 - a. The date,
 - b. The name and registry identification number of the individual who requested the medical marijuana or marijuana product, and
 - c. The dispensary's reason for refusing to provide the medical marijuana or marijuana product.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3).

R9-17-316. Inventory Control System

- A. A dispensary shall designate in writing a dispensary agent who has oversight of the dispensary's medical marijuana inventory control system.
- B. A dispensary shall only acquire marijuana from:
1. The dispensary's cultivation site,
 2. Another dispensary or another dispensary's cultivation site,

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

3. A qualifying patient authorized by the Department to cultivate marijuana, or
 4. A designated caregiver authorized by the Department to cultivate marijuana.
- C. A dispensary shall establish and implement an inventory control system for the dispensary's medical marijuana and marijuana products that documents:
1. The following amounts:
 - a. Each day's beginning inventory of medical marijuana and marijuana products,
 - b. Acquisitions according to subsection (B),
 - c. Medical marijuana harvested by the dispensary,
 - d. Medical marijuana and marijuana products provided to another dispensary,
 - e. Medical marijuana and marijuana products dispensed to a qualifying patient or designated caregiver,
 - f. Medical marijuana and marijuana products submitted to a laboratory for testing according to R9-17-317.01,
 - g. Medical marijuana or marijuana products that were disposed of, and
 - h. The day's ending medical marijuana and marijuana products inventory;
 2. For acquiring medical marijuana from a qualifying patient or designated caregiver:
 - a. A description of the medical marijuana acquired including the amount and strain,
 - b. The name and registry identification number of the qualifying patient or designated caregiver who provided the medical marijuana,
 - c. The name and registry identification number of the dispensary agent receiving the medical marijuana on behalf of the dispensary, and
 - d. The date of acquisition;
 3. For acquiring medical marijuana or a marijuana product from another dispensary:
 - a. A description of the medical marijuana or marijuana product acquired including:
 - i. The amount, batch number, and strain of the medical marijuana or marijuana product;
 - ii. For a marijuana product, the ingredients in order of abundance; and
 - iii. For an edible marijuana product infused with medical marijuana or a marijuana product:
 - (1) The date of manufacture,
 - (2) The total weight of the edible marijuana product, and
 - (3) The estimated amount and batch number of the medical marijuana or marijuana product infused in the edible marijuana product;
 - b. The name and registry identification number of the dispensary providing the medical marijuana or marijuana product;
 - c. The name and registry identification number of the dispensary agent providing the medical marijuana or marijuana product;
 - d. The name and registry identification number of the dispensary agent receiving the medical marijuana or marijuana product on behalf of the dispensary; and
 - e. The date of acquisition;
 4. For each batch of marijuana cultivated:
 - a. The batch number;
 - b. Whether the batch originated from marijuana seeds or marijuana cuttings;
 - c. The origin and strain of the marijuana seeds or marijuana cuttings planted;
 - d. The number of marijuana seeds or marijuana cuttings planted;
 - e. The date the marijuana seeds or cuttings were planted;
 - f. A list of all chemical additives, including nonorganic pesticides, herbicides, and fertilizers used in the cultivation;
 - g. The number of plants grown to maturity; and
 - h. Harvest information including:
 - i. Date of harvest,
 - ii. Final processed usable marijuana yield weight, and
 - iii. Name and registry identification number of the dispensary agent responsible for the harvest;
 5. For providing medical marijuana or a marijuana product to another dispensary:
 - a. A description of the medical marijuana or marijuana product provided including:
 - i. The amount, batch number, and strain of the medical marijuana or marijuana product;
 - ii. For a marijuana product, the ingredients in order of abundance; and
 - iii. For an edible marijuana product infused with medical marijuana or a marijuana product:
 - (1) The date of manufacture,
 - (2) The total weight of the edible marijuana product, and
 - (3) The estimated amount and batch number of the medical marijuana or marijuana product infused in the edible marijuana product;
 - b. The name and registry identification number of the other dispensary;
 - c. The name and registry identification number of the dispensary agent who received the medical marijuana or marijuana product on behalf of the other dispensary; and
 - d. The date the medical marijuana or marijuana product was provided;
 6. For submitting marijuana or marijuana products to a laboratory agent or laboratory for testing:
 - a. The amount, strain, and batch number of the marijuana or marijuana product submitted;
 - b. The name and registry identification number of the laboratory;
 - c. The name and registry identification number of the laboratory agent who received the marijuana or marijuana product on behalf of the laboratory; and
 - d. The date the marijuana or marijuana product was submitted to the laboratory; and
 7. For disposal of medical marijuana or a marijuana product that is not to be dispensed or used for making a marijuana product:
 - a. Description of and reason for the medical marijuana or marijuana product being disposed of including, if applicable:
 - i. The number of failed or other unusable plants, and
 - ii. The results of laboratory testing;
 - b. Date of disposal;
 - c. Method of disposal; and
 - d. Name and registry identification number of the dispensary agent responsible for the disposal.

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

- D. The individual designated in subsection (A) shall conduct and document an audit of the dispensary's inventory that is accounted for according to generally accepted accounting principles at least once every 30 calendar days.
1. If the audit identifies a reduction in the amount of medical marijuana or a marijuana product in the dispensary's inventory not due to documented causes, the dispensary shall determine and document where the loss has occurred and take and document corrective action.
 2. If the reduction in the amount of medical marijuana or a marijuana product in the dispensary's inventory is due to suspected criminal activity by a dispensary agent, the dispensary shall report the dispensary agent to the Department and to the local law enforcement authorities.
- E. A dispensary shall:
1. Maintain the documentation required in subsections (C) and (D) at the dispensary for at least five years after the date on the document, and
 2. Provide the documentation required in subsections (C) and (D) to the Department for review upon request.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4).

R9-17-317. Product Labeling

- 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 Analytes, 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);
 - b. Total cannabidiol, reported according to R9-17-404.03(S)(2)(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. 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, or another dispensary;
 8. If not infused or prepared for sale by the dispensary, whether the marijuana product was obtained from 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 another dispensary, the dispensary shall ensure that:
1. The medical marijuana or marijuana product is labeled with:
 - a. The dispensary's registry identification number;
 - 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.
- C. A dispensary shall ensure that medical marijuana or a marijuana product being submitted to a laboratory for testing is labeled according to requirements in R9-17-317.01(B)(5).

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020; amended by exempt rulemaking at 26 A.A.R. 968, effective April 20, 2020 (Supp. 20-2). Amended by exempt rulemaking at 26 A.A.R. 2991, with an effective date of November 1, 2020; amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4).

R9-17-317.01. Analysis of Medical Marijuana or a Marijuana Product

- A. Before offering a batch of medical marijuana or of a marijuana product for sale or dispensing to a qualifying patient or designated caregiver, a dispensary shall ensure that:
1. Except as provided in subsection (A)(2), each batch of medical marijuana or marijuana product is tested in compliance with requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 Analytes; and
 2. Each batch of a marijuana product is tested according to requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 Analytes for, as applicable:
 - a. At least potency and microbial contaminants other than mycotoxins if the marijuana product was prepared from another marijuana product, such as a concentrate or tincture, that is in compliance with requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 Analytes, using none of the following:
 - i. A temperature above which any analyte could chemically decompose or react with a component of the marijuana product;
 - ii. A pressure above which any analyte could chemically decompose or react with a component of the marijuana product;
 - iii. A process by which any analyte in the marijuana product that is in compliance with requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 Analytes may be further concentrated; or
 - iv. A solvent other than water; or
 - b. All analytes except ethanol if the marijuana product is intended to contain ethanol.
- B. A dispensary shall ensure that:

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

1. Until laboratory testing has been completed and testing results received by the dispensary that comply with requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 Analytes, a batch of marijuana or of a marijuana product is stored in a location away from medical marijuana and marijuana products offered for dispensing;
 2. Only one sample of each batch of medical marijuana or marijuana product is collected according to ANSI/ASQ Standard Z1.4 (2018), General Inspection Level II, incorporated by reference, including no future editions, and available at <https://asq.org/quality-resources/z14-z19>, including:
 - a. Use, as applicable, of one of the following sampling methods:
 - i. Top, middle, and bottom sampling using a sample thief, a device consisting of two nested tubes with one or more aligned slots through which a sample may be collected and then sealed into the inner tube by rotating the outer tube;
 - ii. Star pattern sampling from the top, middle, and bottom of each storage container;
 - iii. Collecting discrete incremental units of a batch, such as every tenth unit or every twentieth drop; or
 - iv. Quartering until the sample reaches the size specified in subsection (B)(3); and
 - b. For sampling methods specified in subsections (B)(2)(a)(i) through (iii), quartering the volume of the aggregated portions collected to obtain the sample size specified in subsection (B)(3);
 3. The size of the sample provided to a laboratory is sufficient for testing and, if necessary, retesting;
 4. Each sample in subsection (B)(3) is packaged in a container made of:
 - a. The same material that would be used for dispensing, or
 - b. Another material that will not react with or leach into the sample;
 5. Each packaged sample is labeled with the:
 - a. The dispensary's registry identification number;
 - b. The amount, strain, and batch number of the medical marijuana or marijuana product;
 - c. The storage temperature for the medical marijuana or marijuana product; and
 - d. The date of sampling;
 6. A packaged sample in subsection (B)(4) is submitted to a laboratory that:
 - a. Has a laboratory registration certificate issued by the Department, and
 - b. Is approved for testing by the Department for an analyte for which testing is being requested;
 7. Except as specified in subsections (A)(2) and (C)(1) or (3)(b), as applicable, the samples in subsection (B)(4) are tested for each analyte specified in Table 3.1 Analytes by a laboratory that is approved by the Department for testing the analyte;
 8. Only batches of marijuana or marijuana products for which laboratory testing results in subsection (B)(7) are in compliance with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 Analytes are offered for sale or dispensing; and
 9. Except as provided in subsection (C), any batch of marijuana or marijuana product that does not comply with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 Analytes is remediated, if applicable, or destroyed according to policies and procedures.
- C.** If a dispensary receives a final report of testing, specified in R9-17-404.06(B)(3), from a laboratory that indicates that a batch of marijuana or marijuana product does not comply with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 Analytes, the dispensary:
1. Within seven days after receiving the final report of testing, may request retesting of the remaining portion of the sample in subsection (B)(4) for all analytes that do not comply with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 Analytes by a second, independent laboratory that is approved by the Department for testing the analytes;
 2. If the final report of testing from the second, independent laboratory indicates that any analyte tested for according to subsection (C)(1) does not comply with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 Analytes, shall remediate, if applicable, or destroy the batch of marijuana or marijuana product according to policies and procedures;
 3. If the final report of testing from the second, independent laboratory indicates that all analytes tested for according to subsection (C)(1) comply with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 Analytes:
 - a. Shall ensure that the batch of medical marijuana or marijuana product is not offered for sale or dispensing; and
 - b. May request retesting of the remaining portion of the sample in subsection (B)(4) for the analytes that do not comply with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 Analytes by a third, independent laboratory that is approved by the Department for testing the analytes; and
 4. If the dispensary requested retesting of the remaining portion of the sample in subsection (B)(4) for an analyte by a third, independent laboratory according to subsection (C)(3)(b):
 - a. If the final report of testing from the third, independent laboratory indicates that the analyte tested for according to subsection (C)(3) complies with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 Analytes, may offer the batch of medical marijuana or marijuana product for sale or dispensing; and
 - b. If the final report of testing from the third, independent laboratory indicates that an analyte tested for according to subsection (C)(3) does not comply with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 Analytes, shall remediate, if applicable, or destroy the batch of medical marijuana or marijuana product according to policies and procedures.
- D.** A dispensary shall ensure that remediation of a batch of marijuana or of a marijuana product that has undergone laboratory testing and does not comply with the requirements in R9-17-404.03, R9-17-404.04, and Table 3.1 Analytes:
1. Is performed according to policies and procedures,
 2. Uses a method that is appropriate to address an analyte not in compliance with Table 3.1 Analytes, and
 3. Does not introduce or produce a substance in a concentration that is known to be harmful to humans.
- E.** If a batch of medical marijuana or a marijuana product is remediated, a dispensary shall submit samples from the remediated batch for laboratory testing according to subsection (B).

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

F. A dispensary shall provide to the Department upon request a sample of the dispensary’s inventory of medical marijuana or a marijuana product of sufficient quantity to enable the Department to conduct an analysis of the medical marijuana or marijuana product.

(Supp. 20-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by exempt rulemaking at 26 A.A.R. 2991, with an effective date of November 1, 2020; amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4).

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020

Table 3.1. Analytes

Key:

- CAS Number = Chemical Abstract Services Registry number
- CFU = Colony-forming unit, a method to estimate the number of viable bacteria or fungal cells in a sample
- * = Testing for the analyte required beginning May 1, 2021

A. Microbial Contaminants		
Analyte	Maximum Allowable Contaminants	Required Action
<i>Escherichia coli</i>	100 CFU/g	Remediate and retest, or Destroy
<i>Salmonella</i> spp.	Detectable in 1 gram	Destroy
<i>Aspergillus flavus</i> <i>Aspergillus fumigatus</i> <i>Aspergillus niger</i> <i>Aspergillus terreus</i>	Inhalable: Detectable in 1 gram	Remediate and retest, Remediate and use for preparing an extract or a concentrate, or Destroy
*Mycotoxins: Aflatoxin B1, B2, G1, and G2 Ochratoxin A	Marijuana product, except a marijuana product intended for topical application, prepared from an extract or concentrate of medical marijuana: 20 µg/kg (ppb) of total aflatoxins 20 µg/kg (ppb) of ochratoxin	Destroy

B. Heavy Metals		
Analyte	Maximum Allowable Concentration	Required Action
Arsenic	0.4 ppm	Remediate and retest, or Destroy
Cadmium	0.4 ppm	
Lead	1.0 ppm	
Mercury	1.2 ppm	

C. Residual Solvents			
Analyte	CAS Number	Maximum Allowable Concentration	Required Action
Acetone	67-64-1	1,000 ppm	Remediate and retest, or Destroy
Acetonitrile	75-05-8	410 ppm	
Benzene	71-43-2	2 ppm	
Butanes (measured as the cumulative residue of n-butane and iso-butane)	106-97-8 and 75-28-5, respectively	5,000 ppm	
Chloroform	67-66-3	60 ppm	
Dichloromethane	75-09-2	600 ppm	
Ethanol	64-17-5	5,000 ppm	
Ethyl Acetate	141-78-6	5,000 ppm	
Ethyl Ether	60-29-7	5,000 ppm	
Heptane	142-82-5	5,000 ppm	
Hexanes (measured as the cumulative residue of n-hexane, 2-methylpentane, 3-methylpentane, 2,2-dimethylbutane, and 2,3-dimethylbutane)	110-54-3, 107-83-5, 96-14-0, 75-83-2, and 79-29-8, respectively	290 ppm	
Isopropyl Acetate	108-21-4	5,000 ppm	
Methanol	67-56-1	3,000 ppm	

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

Pentanes (measured as the cumulative residue of n-pentane, iso-pentane, and neo-pentane)	109-66-0, 78-78-4, and 463-82-1, respectively	5,000 ppm	
2-Propanol (IPA)	67-63-0	5,000 ppm	
Propane	74-98-6	5,000 ppm	
Toluene	108-88-3	890 ppm	
Xylenes (measured as the cumulative residue of 1,2-dimethylbenzene, 1,3-dimethylbenzene, and 1,4-dimethylbenzene, and the non-xylene, ethyl benzene)	1330-20-7 (95-47-6, 108-38-3, and 106-42-3, respectively, and 100-41-4)	2,170 ppm	

D. Pesticides, Fungicides, Growth Regulators			
Analyte	CAS Number	Maximum Allowable Concentration	Required Action
*Abamectin	71751-41-2	0.5 ppm	Remediate and retest, or Destroy
Acephate	30560-19-1	0.4 ppm	
Acequinocyl	57960-19-7	2.0 ppm	
Acetamiprid	135410-20-7	0.2 ppm	
Aldicarb	116-06-3	0.4 ppm	
Azoxystrobin	131860-33-8	0.2 ppm	
*Bifenazate	149877-41-8	0.2 ppm	
Bifenthrin	82657-04-3	0.2 ppm	
Boscalid	188425-85-6	0.4 ppm	
Carbaryl	63-25-2	0.2 ppm	
Carbofuran	1563-66-2	0.2 ppm	
*Chlorantraniliprole	500008-45-7	0.2 ppm	
*Chlorfenapyr	122453-73-0	1.0 ppm	
Chlorpyrifos	2921-88-2	0.2 ppm	
*Clofentezine	74115-24-5	0.2 ppm	
*Cyfluthrin	68359-37-5	1.0 ppm	
*Cypermethrin	52315-07-8	1.0 ppm	
*Daminozide	1596-84-5	1.0 ppm	
*DDVP (Dichlorvos)	62-73-7	0.1 ppm	
Diazinon	333-41-5	0.2 ppm	
Dimethoate	60-51-5	0.2 ppm	
Ethoprophos	13194-48-4	0.2 ppm	
Etofenprox	80844-07-1	0.4 ppm	
Etoxazole	153233-91-1	0.2 ppm	
Fenoxycarb	72490-01-8	0.2 ppm	
Fenpyroximate	134098-61-6	0.4 ppm	
*Fipronil	120068-37-3	0.4 ppm	
Flonicamid	158062-67-0	1.0 ppm	
Fludioxonil	131341-86-1	0.4 ppm	
Hexythiazox	78587-05-0	1.0 ppm	
Imazalil	35554-44-0	0.2 ppm	
Imidacloprid	138261-41-3	0.4 ppm	
Kresoxim-methyl	143390-89-0	0.4 ppm	
Malathion	121-75-5	0.2 ppm	
Metalaxyl	57837-19-1	0.2 ppm	
Methiocarb	2032-65-7	0.2 ppm	
Methomyl	16752-77-5	0.4 ppm	
Myclobutanil	88671-89-0	0.2 ppm	
Naled	300-76-5	0.5 ppm	

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

Oxamyl	23135-22-0	1.0 ppm
*Paclobutrazol	76738-62-0	0.4 ppm
*Permethrins (measured as the cumulative residue of cis- and trans- isomers)	52645-53-1 (54774-45-7 and 51877-74-8)	0.2 ppm
*Phosmet	732-11-6	0.2 ppm
Piperonyl_butoxide	51-03-6	2.0 ppm
*Prallethrin	23031-36-9	0.2 ppm
Propiconazole	60207-90-1	0.4 ppm
Propoxur	114-26-1	0.2 ppm
*Pyrethrins (measured as the cumulative residue of pyrethrin 1, cinerin 1 and jasmolin 1)	8003-34-7 (121-21-1, 25402-06-6, and 4466-14-2)	1.0 ppm
*Pyridaben	96489-71-3	0.2 ppm
*Spinosad	168316-95-8	0.2 ppm
Spiromesifen	283594-90-1	0.2 ppm
Spirotetramat	203313-25-1	0.2 ppm
Spiroxamine	118134-30-8	0.4 ppm
Tebuconazole	107534-96-3	0.4 ppm
Thiacloprid	111988-49-9	0.2 ppm
Thiamethoxam	153719-23-4	0.2 ppm
Trifloxystrobin	141517-21-7	0.2 ppm

E. Potency		
Analyte	Labelling	Required Action
Tetrahydrocannabinolic acid (THC-A)	Label claim is not within +/- 20% of tested value	Revise label as necessary
Delta-9-tetrahydrocannabinol (Δ 9-THC)		
Cannabidiolic acid (CBD-A)		
Cannabidiol (CBD)		

F. Herbicides		
Analyte	Maximum Allowable Contaminant	Required Action
Pendimethalin	0.1 ppm	Remediate and retest, or Destroy

Historical Note

New Table 3.1 Analytes made by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020 (Supp. 20-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by exempt rulemaking at 26 A.A.R. 2848, with an immediate effective date of October 15, 2020; amended by exempt rulemaking at 26 A.A.R. 2991, with an effective date of November 1, 2020 (Supp. 20-4).

R9-17-318. Security

- A.** Except as provided in R9-17-310(A)(7) or R9-17-324(C), a dispensary shall ensure that access into areas of the dispensary or the dispensary's cultivation site where marijuana is cultivated, processed, manufactured, or stored is limited to the dispensary's principal officers, board members, and authorized dispensary agents.
- 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 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;
 - 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 stop and arrival and departure time from the 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 without any medical marijuana identification;

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

3. Have a means of communication with the dispensary; and
 4. Ensure that the marijuana, marijuana plants, marijuana products, or marijuana paraphernalia are not visible.
- E.** After transportation, a dispensary agent shall enter the end time of the trip and any changes to the trip plan on the trip plan required in subsection (C)(1).
- 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 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 restrict access to the areas of the dispensary that contain marijuana and, if applicable, the dispensary's cultivation site to authorized individuals only;
 - b. That provide for the identification of authorized individuals;
 - c. That prevent loitering;
 - d. For conducting electronic monitoring; and
 - e. For the use of a panic button.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by

exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by exempt rulemaking at 27 A.A.R. 747, effective May 3, 2021 (Supp. 21-2).

R9-17-319. Edible Food Products

- A.** A dispensary that prepares, sells, or dispenses marijuana-infused edible food products shall:
1. Before preparing, selling, or dispensing marijuana-infused edible food product obtain written authorization from the Department to prepare, sell, or dispense marijuana-infused edible food products;
 2. If the dispensary prepares the marijuana-infused edible food products, ensure that the marijuana-infused edible food products are prepared according to the applicable requirements in 9 A.A.C. 8, Article 1;
 3. If the marijuana-infused edible food products are not prepared at the dispensary, obtain and maintain at the dispensary a copy of the current written authorization to prepare marijuana-infused edible food products from the dispensary that prepares the marijuana-infused edible products; and
 4. If a dispensary sells or dispenses marijuana-infused edible food products, ensure that the marijuana-infused edible food products are sold or dispensed according to applicable requirements in 9 A.A.C. 8, Article 1.
- B.** A dispensary is responsible for the content and quality of any edible food product sold or dispensed by the dispensary.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2).

R9-17-320. Cleaning and Sanitation

- A.** A dispensary shall ensure that:
1. Any building or equipment used by a dispensary for the cultivation, harvest, preparation, packaging, storage, infusion, or sale of medical marijuana or marijuana products is maintained in a clean and sanitary condition;
 2. Medical marijuana or marijuana products, in the process of production, preparation, manufacture, packing, storage, sale, distribution, or transportation, are protected from flies, dust, dirt, and all other contamination;
 3. Refuse or waste products incident to the manufacture, preparation, packing, selling, distributing, or transportation of medical marijuana or marijuana products are removed from the building used as a dispensary and, if applicable, a building at the dispensary's cultivation site at least once every 24 hours or more often as necessary to maintain a clean condition;
 4. All trucks, trays, buckets, other receptacles, platforms, racks, tables, shelves, knives, saws, cleavers, other utensils, or the machinery used in moving, handling, cutting, chopping, mixing, canning, packaging, or other processes are cleaned daily;
 5. Any equipment used in the preparation of marijuana products is clean, in good repair, and, if applicable, calibrated according to the manufacturer's recommendations;
 6. Any supplies used in the preparation of marijuana products, including flammable or volatile chemicals, are stored in a manner to avoid a hazardous condition from occurring; and
 7. All stored marijuana products are securely covered.
- B.** A dispensary shall ensure that a dispensary agent at the dispensary or the dispensary's cultivation site:

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

1. Cleans the dispensary agent's hands and exposed portions of the dispensary agent's arms in a hand washing sink:
 - a. Before preparing medical marijuana or marijuana products including working with food, equipment, and utensils;
 - b. During preparation, as often as necessary to remove soil and contamination and to prevent cross-contamination when changing tasks;
 - c. After handling soiled equipment or utensils;
 - d. After touching bare human body parts other than the dispensary agent's clean hands and exposed portions of arms; and
 - e. After using the toilet room;
2. If working directly with the preparation of medical marijuana or the infusion of marijuana into non-edible products:
 - a. Keeps the dispensary agent's fingernails trimmed, filed, and maintained so that the edges and surfaces are cleanable;
 - b. Unless wearing intact gloves in good repair, does not have fingernail polish or artificial fingernails on the dispensary agent's fingernails; and
 - c. Wears protective apparel such as coats, aprons, gowns, or gloves to prevent contamination;
3. Wears clean clothing appropriate to assigned tasks;
4. Reports to the medical director any health condition experienced by the dispensary agent that may adversely affect the safety or quality of any medical marijuana or marijuana products with which the dispensary agent may come into contact; and
5. If the medical director determines that a dispensary 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 or marijuana products until the medical director determines that the dispensary agent's health condition will not adversely affect the medical marijuana or marijuana products.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4).

R9-17-321. Physical Plant

- A. A dispensary or a dispensary's cultivation site shall be located at least 500 feet from a private school or a public school that existed, as applicable:
 1. Before the date the dispensary submitted the initial dispensary registration certificate application,
 2. Before the date of an application to change the location of the dispensary, or
 3. Before the date of an application to add a cultivation site.
- B. A dispensary shall provide onsite parking or parking adjacent to the building used as the dispensary.
- C. A building used as a dispensary or the location used as a dispensary's cultivation site shall have:
 1. At least one toilet room;
 2. Each toilet room shall contain:
 - a. A flushable toilet;
 - b. Mounted toilet tissue;
 - c. A sink with running water;

- d. Soap contained in a dispenser; and
 - e. Disposable, single-use paper towels in a mounted dispenser or a mechanical air hand dryer;
3. At least one hand washing sink not located in a toilet room;
 4. Designated storage areas for medical marijuana or materials used in direct contact with medical marijuana separate from storage areas for toxic or flammable materials; and
 5. If preparation or packaging of medical marijuana is done in the building, a designated area for the preparation or packaging that:
 - a. Includes work space that can be sanitized, and
 - b. Is only used for the preparation or packaging of medical marijuana.
- D.** For each commercial device used at a dispensary or the dispensary's cultivation site, the dispensary shall:
1. Ensure that the commercial device is licensed or certified pursuant to A.R.S. § 41-2091,
 2. Maintain documentation of the commercial device's license or certification, and
 3. Provide a copy of the commercial device's license or certification to the Department for review upon request.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3).

R9-17-322. Denial or Revocation of a Dispensary Registration Certificate

- A. The Department shall deny an application for a dispensary registration certificate or a renewal if:
 1. For an application for a dispensary registration certificate, the physical address of the building or, if applicable, the physical address of the dispensary's cultivation site is within 500 feet of a private school or a public school that existed before the date the dispensary submitted the initial dispensary registration certificate application, before the date of an application to change the location of the dispensary, or before the date of an application to add a cultivation site;
 2. A principal officer or board member:
 - a. Has been convicted of an excluded felony offense;
 - b. Has served as a principal officer or board member for a dispensary that:
 - i. Had the dispensary registration certificate revoked, or
 - ii. Did not obtain an approval to operate the dispensary within the first year after the dispensary registration certificate was issued;
 - c. Is under 21 years of age;
 - d. Is a physician currently providing written certifications for medical marijuana for qualifying patients;
 - e. Is a law enforcement officer; or
 - f. Is an employee or contractor of the Department; or
 3. The application or the dispensary does not comply with the requirements in A.R.S. Title 36, Chapter 28.1 and this Chapter.
- B. The Department may deny an application for a dispensary registration certificate if a principal officer or board member of the dispensary provides false or misleading information to the Department.
- C. The Department shall revoke a dispensary's registration certificate if:
 1. The dispensary:

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

- a. Operates before obtaining approval to operate a dispensary from the Department;
 - b. Diverts marijuana to an entity other than:
 - i. Another dispensary with a valid dispensary registration certificate issued by the Department,
 - ii. A laboratory with a valid laboratory registration certificate issued by the Department,
 - iii. A qualifying patient with a valid registry identification card issued by the Department,
 - iv. A designated caregiver with a valid registry identification card issued by the Department,
 - v. A dispensary agent with a valid registry identification card issued by the Department accepting the marijuana on behalf of a dispensary, or
 - vi. A laboratory agent with a valid registry identification card issued by the Department accepting the marijuana on behalf of a laboratory;
 - c. Acquires usable marijuana or mature marijuana plants from any entity other than another dispensary with a valid dispensary registration certificate issued by the Department, a qualifying patient with a valid registry identification card, or a designated caregiver with a valid registry identification card; or
 - d. Acquires a marijuana product from any person other than another dispensary with a valid dispensary registration certificate issued by the Department; or
2. A principal officer or board member has been convicted of an excluded felony offense.
- D.** The Department may revoke a dispensary registration certificate if the dispensary does not:
1. Comply with the requirements in A.R.S. Title 36, Chapter 28.1 and this Chapter; or
 2. Implement the policies and procedures or comply with the statements provided to the Department with the dispensary's application.
- E.** If the Department denies a dispensary registration certificate application, the Department shall provide notice to the applicant that includes:
1. The specific reason or reasons for the denial, and
 2. All other information required by A.R.S. § 41-1076.
- F.** If the Department revokes a dispensary registration certificate, the Department shall provide notice to the dispensary that includes:
1. The specific reason or reasons for the revocation; and
 2. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by emergency rulemaking at 18 A.A.R. 1010, effective April 11, 2012 for 180 days (Supp. 12-2). Emergency expired (Supp. 12-4). Amended by final rulemaking at 18 A.A.R. 3354, with an immediate effective date of December 5, 2012 (Supp. 12-4). Amended by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3).

R9-17-323. Denial or Revocation of a Dispensary Agent's Registry Identification Card

- A.** The Department shall deny a dispensary agent's application for or renewal of the dispensary agent's registry identification card if the dispensary agent:

1. Does not meet the definition "nonprofit medical marijuana dispensary agent" in A.R.S. § 36-2801; or
 2. Previously had a registry identification card revoked for not complying with A.R.S. Title 36, Chapter 28.1 or this Chapter.
- B.** The Department may deny a dispensary agent's application for or renewal of the dispensary agent's registry identification card if the dispensary agent provides false or misleading information to the Department.
- C.** The Department shall revoke a dispensary agent's registry identification card if the dispensary agent:
1. Uses medical marijuana, if the dispensary agent does not have a qualifying patient registry identification card;
 2. Diverts marijuana to an entity other than:
 - a. Another dispensary with a valid dispensary registration certificate issued by the Department,
 - b. A laboratory with a valid laboratory registration certificate issued by the Department,
 - c. A qualifying patient with a valid registry identification card issued by the Department,
 - d. A designated caregiver with a valid registry identification card issued by the Department,
 - e. A dispensary agent with a valid registry identification card issued by the Department accepting the marijuana on behalf of a dispensary, or
 - f. A laboratory agent with a valid registry identification card issued by the Department accepting the marijuana on behalf of a laboratory; or
 3. Has been convicted of an excluded felony offense.
- D.** The Department may revoke a dispensary agent's registry identification card if the dispensary agent knowingly violates A.R.S. Title 36, Chapter 28.1 or this Chapter.
- E.** If the Department denies or revokes a dispensary agent's registry identification card, the Department shall provide notice to the dispensary agent and the dispensary agent's dispensary that includes:
1. The specific reason or reasons for the denial or revocation; and
 2. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 734, effective April 14, 2011 (Supp. 11-2). Amended by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3).

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).
- B.** If a dispensary is a dual licensee, the entity holding the valid dispensary registration certificate may:

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

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 may allow an individual without a dispensary agent registry identification card to be employed by or contracted with the dispensary and into areas of the dispensary or the dispensary's cultivation site where marijuana is cultivated, processed, manufactured, or stored if:
1. The individual has a marijuana facility agent license, issued under 9 A.A.C. 18, Article 2, associated with the entity holding the dispensary's dispensary registration certificate and marijuana establishment license; or
 2. The individual:
 - a. Is not at the dispensary or the dispensary's cultivation site more than once per week; and
 - b. When at the dispensary or the dispensary's cultivation site, is supervised by a dispensary agent who has a valid registry identification card or an individual in subsection (C)(1).
- D. A dispensary that is a dual licensee is exempt from the requirements in:
1. R9-17-310(A)(5), (12), and (13);
 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 or 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.
- E. A dual licensee:
1. If the dispensary has notified the Department according to subsection (A)(2) that the dispensary has begun operating on a for-profit basis and provided a valid marijuana establishment license number according to R9-17-308(1)(c), is exempt from the requirements in R9-17-308(3); and
 2. If the dispensary is still operating on a not-for-profit basis and provided a valid marijuana establishment license number according to R9-17-308(1)(c), may submit to the Department when renewing the dispensary's dispensary registration certificate an attestation, in a Department-provided format, that the dispensary is operating on a not-for-profit basis in lieu of submitting the copy of an annual financial statement required in R9-17-308(3)(a) and the report of an audit required in R9-17-308(3)(b).
- F. 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.

Historical Note

New Section made by exempt rulemaking at 27 A.A.R. 747, effective May 3, 2021 (Supp. 21-2). Amended by exempt rulemaking at 27 A.A.R. 1587, with an immediate effective date of September 7, 2021 (Supp. 21-3).

ARTICLE 4. LABORATORIES AND LABORATORY AGENTS**R9-17-401. Owner**

- A. For the purposes of this Article the following individuals are considered owners:
1. If an individual is applying for a laboratory registration certificate, the individual;
 2. If a corporation is applying for a laboratory registration certificate, two individuals who are officers of the corporation;
 3. If a partnership is applying for a laboratory registration certificate, two of the individuals who are partners;
 4. If a limited liability company is applying for a laboratory registration certificate, a manager or, if the limited liability company does not have a manager, an individual who is a member of the limited liability company;
 5. If an association or cooperative is applying for a laboratory registration certificate, two individuals who are members of the governing board of the association or cooperative;
 6. If a joint venture is applying for a laboratory registration certificate, two of the individuals who signed the joint venture agreement; and
 7. If a business organization type other than those described in subsections (A)(2) through (6) is applying for a laboratory registration certificate, two individuals who are members of the business organization.
- B. When a laboratory is required by this Chapter to provide information, sign documents, or ensure actions are taken, the individual or individuals in subsection (A) shall comply with the requirement on behalf of the laboratory.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4).

R9-17-402. Applying for a Laboratory Registration Certificate

- A. To apply for a laboratory registration certificate, an applicant shall submit to the Department the following:
1. An application in a Department-provided format that includes:
 - a. The physical address of the laboratory;
 - b. The distance to the closest private school or public school from the laboratory;
 - c. The following information for the laboratory applying:
 - i. The legal name of the laboratory,

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

- ii. Type of business organization,
 - iii. Mailing address,
 - iv. Telephone number, and
 - v. E-mail address;
 - d. The name of the owner designated to submit laboratory agent registry identification card applications on behalf of the laboratory;
 - e. The name, residence address, and date of birth of each owner;
 - f. The identifying number on the applicable card or document in subsection (A)(4)(d)(i) through (v);
 - g. The name, residence address, and date of birth of the technical laboratory director designated according to R9-17-404(3);
 - h. The name, residence address, and date of birth of each laboratory agent other than an owner or the technical laboratory director, if applicable;
 - i. Whether the laboratory agrees to allow the Department to submit supplemental requests for information;
 - j. An attestation that the information provided to the Department to apply for a laboratory registration certificate is true and correct; and
 - k. The signatures of the owner of the laboratory, according to R9-17-401(A), and the technical laboratory director and the date each signed;
2. Policies and procedures that comply with the requirements in this Chapter that contain:
- a. Inventory control;
 - b. A chain of custody and sample requirement process;
 - c. A records retention process;
 - d. A secure method to transfer the portion of a sample remaining after testing to another laboratory with an approval for testing issued by the Department:
 - i. For testing of parameters or analytes that the laboratory receiving the sample from a dispensary is not approved by the Department to conduct, or
 - ii. For retesting at the request of a dispensary according to R9-17-317.01(C);
 - e. Security;
 - f. A process to ensure marijuana or marijuana products testing results are accurate, precise, and scientifically valid before reporting the results; and
 - g. A process for disposal of marijuana or marijuana products that are submitted to the laboratory for testing;
3. If the applicant is one of the business organizations in R9-17-401(A)(2) through (7), a copy of the business organization's articles of incorporation, articles of organization, or partnership or joint venture documents that include:
- a. The name of the business organization,
 - b. The type of business organization, and
 - c. The names and titles of the individuals in R9-17-401(A);
4. For each owner:
- a. An attestation signed and dated by the owner that the owner has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801;
 - b. An attestation signed and dated by the owner that the owner does not have a direct or indirect familial or financial relationship with or interest in a dispensary, related medical marijuana business entity, or management company;
 - c. An attestation signed and dated by the owner that the laboratory will not test marijuana or marijuana products for a designated caregiver who the owner has a direct or indirect familial or financial relationship with;
- d. An attestation signed and dated by the owner pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
- e. A copy the owner's:
- i. Arizona driver's license issued on or after October 1, 1996;
 - ii. Arizona identification card issued on or after October 1, 1996;
 - iii. Arizona registry identification card;
 - iv. Photograph page in the owner's U.S. passport; or
 - v. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the owner:
 - (1) Birth certificate verifying U.S. citizenship,
 - (2) U.S. Certificate of Naturalization, or
 - (3) U.S. Certificate of Citizenship; and
- f. For the Department's criminal records check authorized in A.R.S. §§ 36-2804.01 and 36-2804.07:
- i. The owner's fingerprints on a fingerprint card that includes:
 - (1) The owner's first name; middle initial, if applicable; and last name;
 - (2) The owner's signature;
 - (3) If different from the owner, the signature of the individual physically rolling the owner's fingerprints;
 - (4) The owner's residence address;
 - (5) If applicable, the owner's surname before marriage and any names previously used by the owner;
 - (6) The owner's date of birth;
 - (7) The owner's Social Security number;
 - (8) The owner's citizenship status;
 - (9) The owner's gender;
 - (10) The owner's race;
 - (11) The owner's height;
 - (12) The owner's weight;
 - (13) The owner's hair color;
 - (14) The owner's eye color; and
 - (15) The owner's place of birth; or
 - ii. If the fingerprints and information required in subsection (A)(4)(f)(i) were submitted to the Department as part of an application for a designated caregiver registry identification card, dispensary agent registry identification card, or laboratory agent registry identification card within the previous six months, the registry identification number on the registry identification card issued to the owner as a result of the application;
5. If zoning restrictions have been enacted, a sworn statement signed and dated by the individual or individuals in R9-17-401(A) certifying that the laboratory is in compliance with any local zoning restrictions;
6. A copy of documentation issued by the local jurisdiction to the laboratory authorizing occupancy of the building as a laboratory, such as a certificate of occupancy, a special use permit, or a conditional use permit;
7. A site plan drawn to scale of the laboratory location showing streets, property lines of the contiguous premises, buildings, parking areas, outdoor areas if applicable,

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

- fences, security features, fire hydrants if applicable, and access to water mains;
8. A building plan drawn to scale of the building where the laboratory is located showing the:
 - a. Layout and dimensions of each room;
 - b. Name and function of each room;
 - c. Fire ratings of the materials used for ceilings, walls, doors, and floors of rooms used to store flammable substances;
 - d. Location of each fire protection device;
 - e. Layout of heating, air conditioning, exhaust, and ventilation systems;
 - f. Location and layout of refrigerated rooms or freezer rooms;
 - g. Location of each sink, safety shower, other water supply, or plumbing fixture;
 - h. Location of fixed or movable equipment and instruments that require dedicated electrical, water, vacuum, gas, or other building systems;
 - i. Location of security measures or equipment to protect from diversion of marijuana or marijuana products; and
 - j. Means of egress;
 9. Documentation of accreditation of the location specified according to subsection (A)(1)(a) for which the applicant is applying for a laboratory registration certificate;
 10. The laboratory's Transaction Privilege Tax Number issued by the Arizona Department of Revenue, if applicable; and
 11. The applicable fee in R9-17-102 for applying for a laboratory registration certificate.
- B.** Within 72 hours after an owner receives a laboratory registration certificate pursuant to an application submitted according to subsection (A), the owner shall apply for a laboratory agent registry identification card, according to R9-17-405, for each laboratory agent, including a technical laboratory director.
- C.** A change in location of the laboratory's physical address or ownership requires a new application to be submitted according to subsection (A).
- D.** A separate laboratory registration certificate is required for each noncontiguous portion of a laboratory.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020; amended by exempt rulemaking at 26 A.A.R. 968, effective April 20, 2020 (Supp. 20-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3).

R9-17-402.01. Applying for Approval for Testing

To apply for approval for testing, an applicant shall submit to the Department, at least 60 calendar days before the expiration of the initial laboratory registration certificate for the laboratory, the following:

1. An application in a Department-provided format that includes:
 - a. The name and registry identification number of the laboratory;
 - b. The physical address of the laboratory;
 - c. The name of the applicant;
 - d. The name of the technical laboratory director designated according to R9-17-404(3);
 - e. For each parameter for which approval for testing is being requested:
 - i. The analyte to be tested for;
 - ii. The instruments and equipment to be used for testing; and
 - iii. The software to be used at the laboratory for instrument control and data reduction interpretation;
 - f. The laboratory's proposed hours of operation;
 - g. Whether the laboratory agrees to allow the Department to submit supplemental requests for information;
 - h. Whether the laboratory is ready for an inspection by the Department;
 - i. If the laboratory is not ready for an inspection by the Department, the date the laboratory will be ready for an inspection by the Department;
 - j. An attestation that the information provided to the Department to apply for approval for testing is true and correct; and
 - k. The signatures of the owner of the laboratory, according to R9-17-401(A), and the technical laboratory director and the date each signed;

2. For each parameter and analyte listed according to subsection (1)(e):
 - a. The limit of quantitation;
 - b. A copy of a proficiency testing report, if applicable, or accuracy testing documentation; and
 - c. A copy of the standard operating procedure;
3. Policies and procedures that comply with the requirements in this Chapter that include:
 - a. A quality assurance program and standards, and
 - b. A process to compile testing results into a single laboratory report to be provided to a dispensary; and
4. If different from the building plan submitted according to R9-17-402(A)(8), a building plan drawn to scale of the building where the laboratory is located showing the:
 - a. Layout and dimensions of each room;
 - b. Name and function of each room;
 - c. Fire ratings of the materials used for ceilings, walls, doors, and floors of rooms used to store flammable substances;
 - d. Location of each fire protection device;
 - e. Layout of heating, air conditioning, exhaust, and ventilation systems;
 - f. Location and layout of refrigerated rooms or freezer rooms;
 - g. Location of each sink, safety shower, other water supply, or plumbing fixture;
 - h. Location of fixed or movable equipment and instruments that require dedicated electrical, water, vacuum, gas, or other building systems;
 - i. Location of security equipment to protect from diversion of marijuana or marijuana products; and
 - j. Means of egress.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020; amended by exempt rulemaking at 26 A.A.R. 968, effective April 20, 2020 (Supp. 20-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3).

R9-17-403. Renewing a Laboratory Registration Certificate

To renew a laboratory registration certificate, an applicant shall submit to the Department, at least 30 calendar days before the expiration date of the current laboratory registration certificate, but no

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

more than 90 days before the expiration date of the current laboratory registration certificate, the following:

1. An application in a Department-provided format that includes:
 - a. The physical address of the laboratory;
 - b. The following information for the laboratory:
 - i. The legal name of the laboratory,
 - ii. The registry identification number for the laboratory,
 - iii. Type of business organization,
 - iv. Mailing address,
 - v. Telephone number, and
 - vi. E-mail address;
 - c. The name of the owner designated to submit laboratory agent registry identification card applications on behalf of the laboratory;
 - d. The name, residence address, and date of birth of each owner;
 - e. The name, residence address, and date of birth of the technical laboratory director designated according to R9-17-404(3);
 - f. The name, residence address, and date of birth of each laboratory agent, if applicable;
 - g. Whether the laboratory agrees to allow the Department to submit supplemental requests for information;
 - h. An attestation that the information provided to the Department to renew the laboratory registration certificate is true and correct; and
 - i. The signatures of the owner of the laboratory, according to R9-17-401(A), and the technical laboratory director and the date each signed;
2. For each owner:
 - a. An attestation signed and dated by the owner that the owner has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801; and
 - b. An attestation signed and dated by the owner that the laboratory will not test medical marijuana and medical marijuana products for:
 - i. A dispensary, related medical marijuana business entity, or management company that the owner has a direct or indirect familial or financial relationship with or interest in; or
 - ii. A designated caregiver who the owner has a direct or indirect familial or financial relationship with;
3. For each current parameter and analyte, documentation of current accreditation;
4. If a change has been made to the standard operating procedure for a current parameter, a copy of the revised standard operating procedure;
5. If a change has been made in the quality assurance plan for a current parameter required in R9-17-404.03 or R9-17-404.04, a copy of the revised quality assurance plan; and
6. The applicable fee in R9-17-102 for applying to renew a laboratory registration certificate.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020; amended by exempt rulemaking at 26 A.A.R. 968, effective April 20, 2020 (Supp. 20-2). Amended by exempt rulemaking at 26

A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3).

R9-17-404. Administration

An owner of a laboratory with a laboratory registration certificate shall:

1. Comply with the:
 - a. Quality assurance requirements in R9-17-404.05,
 - b. Operation requirements in R9-17-404.06, and
 - c. Laboratory records and reports requirements in R9-17-404;
2. Maintain accreditation for each approved parameter and analyte;
3. Designate in writing a technical laboratory director who:
 - a. Has knowledge and experience in overseeing a laboratory as documented by:
 - i. A doctoral degree in chemistry, biochemistry, microbiology, or a similar laboratory science;
 - ii. A master's degree in chemistry, biochemistry, microbiology, or a similar laboratory science and at least two years of experience working in a laboratory and providing laboratory testing; or
 - iii. A bachelor's degree in chemistry, biochemistry, microbiology, or a similar laboratory science and at least four years of experience working in a laboratory and providing laboratory testing; and
 - b. Is responsible for:
 - i. Ensuring that all services and tests provided by the laboratory are performed in compliance with the requirements in this Article;
 - ii. Directing and supervising services and tests provided by the laboratory;
 - iii. Overseeing the work of all personnel in the laboratory;
 - iv. Providing ongoing training to laboratory agents, as applicable to the functions performed by a laboratory agent; and
 - v. Ensuring safety and hazardous substance control in the laboratory;
4. Notify the Department in writing within 20 business working days after any change in the technical laboratory director, providing the name and contact information for the new technical laboratory director;
5. Develop, document, and implement policies and procedures regarding:
 - a. Job descriptions and employment contracts, including:
 - i. Personnel duties, authority, responsibilities, and qualifications;
 - ii. Personnel supervision;
 - iii. Ongoing training, applicable to the functions performed by a laboratory agent;
 - iv. Training in and adherence to confidentiality requirements;
 - v. Periodic performance evaluations, including proficiency testing or accuracy testing, as applicable, on a rotating basis among all laboratory agents performing similar functions; and
 - vi. Disciplinary actions;
 - b. Business records, such as manual or computerized records of assets and liabilities, monetary transactions, journals, ledgers, and supporting documents, including agreements, checks, invoices, and vouchers;
 - c. Inventory control, including:

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

- i. Tracking;
- ii. Accepting medical marijuana or marijuana products for testing;
- iii. Transferring a portion of a sample to another laboratory for testing of parameters or analytes that the laboratory is not approved by the Department to conduct;
- iv. Testing medical marijuana and marijuana products;
- v. Providing the remaining sample of tested medical marijuana or a marijuana product to another laboratory with an approval for testing issued by the Department at the request of a dispensary according to R9-17-317.01(C);
- vi. Retaining the residual portion of a sample accepted for testing from a dispensary for at least 14 days after sending the final report of testing required in R9-17-404.06(B)(3) to the dispensary; and
- vii. Disposing of medical marijuana or a marijuana product such that the marijuana or marijuana product is unrecognizable or cannot otherwise be used and documenting:
 - (1) The method of disposal;
 - (2) Whether the medical marijuana or marijuana product was tested;
 - (3) If not tested, the reason for not testing;
 - (4) The laboratory agent overseeing the disposal; and
 - (5) The date of disposal;
- d. Standard operating procedures, including:
 - i. The review and updating of standard operating procedures;
 - ii. Requirements for a laboratory agent to review current, new, or updated standard operating procedures applicable to the functions performed by the laboratory agent; and
 - iii. Documenting the review of standard operating procedures by applicable laboratory agents;
- e. Laboratory records, including:
 - i. Maintenance and monitoring of instruments and equipment;
 - ii. Acceptance of medical marijuana and marijuana products for testing;
 - iii. The chain of custody for a sample accepted by the laboratory for testing;
 - iv. The storage of a submitted sample prior to testing to maintain the integrity of the sample and analyte;
 - v. The process for selecting a homogeneous portion of a submitted sample for testing;
 - vi. Ensuring testing results are accurate, precise, and scientifically valid before reporting the results;
 - vii. Reporting of testing results, including:
 - (1) Testing results obtained from another laboratory for testing of parameters or analytes that the laboratory is not approved by the Department to conduct, or
 - (2) Testing results provided to another laboratory from which the laboratory had received a portion of a sample for testing of parameters or analytes that the other laboratory is not approved by the Department to conduct;
 - viii. If applicable, transfer of a portion of a sample to another laboratory with an approval for testing issued by the Department for testing of parameters or analytes that the laboratory is not approved by the Department to conduct, including:
 - (1) The name and registry identification number of the dispensary from which the sample was obtained,
 - (2) The name and registry identification number of the laboratory to which the portion of the sample is being transferred,
 - (3) The date of the transfer,
 - (4) The amount of sample being transferred,
 - (5) The name and registry identification number of the laboratory agent receiving the marijuana or marijuana products on behalf of the other laboratory;
 - (6) The parameters or analytes being tested by the other laboratory, and
 - (7) The testing results obtained from the other laboratory;
 - ix. If applicable, transfer of the portion of a sample remaining after testing to another laboratory with an approval for testing issued by the Department at the request of a dispensary according to R9-17-317.01(C), including:
 - (1) The name and registry identification number of the dispensary,
 - (2) The name and registry identification number of the dispensary agent requesting the transfer on behalf of the dispensary,
 - (3) The date of the request,
 - (4) The amount of sample being transferred,
 - (5) The name and registry identification number of the other laboratory, and
 - (6) The name and registry identification number of the laboratory agent receiving the marijuana or marijuana products on behalf of the other laboratory;
 - x. Confidentiality; and
 - xi. Retention;
- f. A quality assurance program and standards;
- g. A records retention process; and
- h. Security;
- 6. Review and document the review of laboratory policies and procedures at least once every 12 months after the issue date of the laboratory registration certificate and update as needed;
- 7. Ensure that each laboratory agent has the laboratory agent's registry identification card in the laboratory agent's immediate possession when the laboratory agent is working or providing volunteer services related to marijuana or marijuana products testing at the laboratory;
- 8. Ensure that a laboratory agent accompanies any individual other than another laboratory agent associated with the laboratory when the individual is present in the area of the laboratory where marijuana or marijuana products are being tested or stored for testing;
- 9. Not allow an individual who does not possess a laboratory agent registry identification card issued under the laboratory registration certificate to:
 - a. Serve as an owner for the laboratory,
 - b. Be employed by the laboratory, or
 - c. Provide volunteer services at or on behalf of the laboratory;

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

10. Provide written notice to the Department, including the date of the event, within 10 working days after the date, when a laboratory agent no longer:
 - a. Serves as an owner for the laboratory,
 - b. Is employed by the laboratory, or
 - c. Provides volunteer services at or on behalf of the laboratory; and
11. Unless otherwise specified, maintain copies of any documentation required in this Chapter for at least two years after the date on the documentation and provide copies of the documentation to the Department for review upon request.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020 (Supp. 20-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4).

R9-17-404.01. Compliance Monitoring

- A. Submission of an application for a laboratory registration certificate constitutes permission for:
 1. The Department's entry to and inspection of the laboratory, and
 2. The Department to conduct proficiency testing according to R9-17-404.02.
- B. The Department shall conduct:
 1. An initial laboratory inspection; and
 2. A follow-up laboratory inspection, at least annually.
- C. The Department shall comply with A.R.S. § 41-1009 in conducting a laboratory inspection or investigation.
- D. The Department shall not accept allegations of a laboratory's noncompliance with A.R.S. Title 36, Chapter 28.1 or this Chapter from an anonymous source.
- E. If the Department receives an allegation of a laboratory's noncompliance with A.R.S. Title 36, Chapter 28.1 or this Chapter, the Department may conduct an unannounced inspection of the laboratory.
- F. If the Department determines that a laboratory is not in compliance with the requirements of A.R.S. Title 36, Chapter 28.1, or this Chapter, the Department:
 1. Shall provide the owner, according to R9-17-401(A), and technical laboratory director with a written notice that includes the specific rule or statute that was violated; and
 2. May:
 - a. Take an enforcement action as described in R9-17-410; or
 - b. Require that the technical laboratory director submit to the Department, within 30 calendar days after written notice from the Department, a corrective action plan to address issues of compliance that do not directly affect the health or safety of a qualifying patient or laboratory agent that:
 - i. Describes how each identified instance of noncompliance will be corrected and reoccurrence prevented, and
 - ii. Includes a date for correcting each instance of noncompliance that is appropriate to the actions necessary to correct the instance of noncompliance.
- G. Under A.R.S. § 41-1009(G) and (I), the Department's decision regarding whether a technical laboratory director may submit a

corrective action plan on behalf of a laboratory or whether a deficiency has been corrected or has been corrected within a reasonable period of time is not an appealable agency action as defined by A.R.S. § 41-1092.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020 (Supp. 20-2).

R9-17-404.02. Proficiency Testing; Accuracy Testing

- A. At least once in each 12-month period, and more often if requested by the Department, a technical laboratory director shall have at least one laboratory agent, selected according to policies and procedures, participate in proficiency testing provided by the Department or a proficiency testing service that:
 1. Includes at least one proficiency testing sample for each parameter and analyte for which the laboratory has been approved or is requesting approval and for which proficiency testing samples are available;
 2. Demonstrates the laboratory agent's competence in testing for the parameter; and
 3. If the laboratory has been approved or has requested approval to test an analyte by different methods, may use the same proficiency testing sample for each method.
- B. If a proficiency testing sample is not available for a specific parameter and analyte, a technical laboratory director shall have at least one laboratory agent, selected according to policies and procedures, participate in accuracy testing for the parameter.
- C. To demonstrate competence in testing for a parameter, testing results reported for the parameter shall be within acceptance limits established by the Department, according to R9-17-404.03 or R9-17-404.04, or the proficiency testing service, as applicable.
- D. A technical laboratory director shall ensure that:
 1. Each sample for proficiency testing accepted at the laboratory is analyzed at the laboratory;
 2. Each sample for accuracy testing is analyzed at the laboratory;
 3. Each sample for proficiency testing or accuracy testing is tested according to R9-17-404.03 or R9-17-404.04, using the same procedures and techniques employed for routine sample testing;
 4. A proficiency testing service provides the results for each proficiency testing sample directly to the laboratory and the Department;
 5. If proficiency testing is provided by the Department, the laboratory submits to the Department payment for the actual costs of the materials for proficiency testing; and
 6. If proficiency testing is not provided by the Department, the laboratory selects a proficiency testing service and contracts with and pays the proficiency testing service directly for proficiency testing.
- E. The Department may submit blind proficiency testing samples to a laboratory at any time during the certification period.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020 (Supp. 20-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3).

R9-17-404.03. Method Criteria and References for Chemical Analyses

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

- A.** In addition to the definitions in A.R.S. § 36-2801 and R9-17-101, the following definitions apply in this Section unless otherwise stated:
1. "Limit of quantitation" means the lowest concentration of an analyte that may be detected and the concentration of the analyte reliably and accurately determined.
 2. "Matrix" means the specific components of a sample, other than the analyte being tested for.
 3. "Mid-level standard" means a standard that is between the highest concentration and lowest concentration of standards containing the same substances that are used as a reference when testing for the concentration of an analyte.
 4. "Response factor" means the ratio between a signal produced by an analyte relative to a signal produced by an internal standard at a specific concentration.
 5. "Retention time" means the length of time taken by an analyte to pass through a chromatography column.
 6. "Standard" means a sample of known concentration and containing specific substances that is used as a reference when testing for the concentration of an analyte.
- B.** To perform laboratory testing using chemical analytical methods for any of the analytes in Table 3.1 Analytes, a laboratory may use:
1. An established national or international chemical method; or
 2. A laboratory-developed method that was validated according to:
 - a. AOAC - Appendix K: Guidelines for Dietary Supplements and Botanicals, 2013, which is incorporated by reference, includes no future editions or amendments, and is available at http://www.eoma.aoc.org/app_k.pdf;
 - b. USDA - Guidelines for the Validation of Chemical Methods for the FDA FVM Program, 2nd Edition, April 2015, which is incorporated by reference, includes no future editions or amendments, and is available at <https://www.fda.gov/media/81810/download>; or
 - c. ICH - Validation of Analytical Procedures: Text and Methodology Q2(R1) 2005, which is incorporated by reference, includes no future editions or amendments, and is available at https://database.ich.org/sites/default/files/Q2_R1_Guideline.pdf or <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/q2-r1-validation-analytical-procedures-text-and-methodology>.
- C.** A technical laboratory director shall ensure that all instruments and equipment used for testing medical marijuana or a marijuana product by chemical analytical methods are:
1. Set up, tuned, and calibrated according to:
 - a. Manufacturer's acceptance criteria, or
 - b. Criteria validated according to subsection (B), as applicable;
 2. Monitored and maintained according to AOAC - Guidelines for Laboratories Performing Microbiological and Chemical Analyses of Food, Dietary Supplements, and Pharmaceuticals, Appendix A: Equipment, August 2018, which is incorporated by reference, includes no future editions or amendments, and is available at <https://www.aoc.org/aoc-accreditation-guidelines-for-laboratories-alacc>; and
 3. Applicable for the analytes to be tested.
- D.** A technical laboratory director shall ensure that for an initial demonstration of capability:
1. Before implementing a method, at least four replicate reference samples for each analyte are:
 - a. Spiked into a clean matrix with, as applicable, an amount $\pm 20\%$ of the maximum allowable concentration for the analyte in Table 3.1 Analytes or the mid-level standard for potency testing;
 - b. Taken through the entire sample preparation and analysis process;
 - c. Have a relative standard deviation of $\pm 20\%$; and
 - d. Have an accuracy that meets the acceptance criteria in subsection (K)(2)(c);
 2. Whenever a significant change to instrumentation or to a standard operating procedure occurs, the laboratory demonstrates, as specified in subsection (D)(1), that acceptable precision and bias can still be obtained by the changed conditions; and
 3. Whenever a new laboratory agent who will be performing testing on medical marijuana or marijuana products is being trained, the laboratory agent demonstrates, as specified in subsection (D)(1), acceptable precision and bias.
- E.** For potency testing or testing for pesticides, fungicides, herbicides, growth regulators, or residual solvents, a technical laboratory director shall ensure that:
1. For establishing the retention time for an analyte, the retention time is determined by three injections, over the course of a 72-hour period, of a standard $\pm 20\%$ of, as applicable:
 - a. The maximum allowable concentration in Table 3.1 Analytes for the analyte; or
 - b. The mid-level standard for potency testing; and
 2. The width of the retention time window for each analyte is defined as ± 3 times the standard deviation of the mean absolute retention time that was established during the 72-hour period or 0.1 minutes, whichever is greater.
- F.** A technical laboratory director shall ensure that:
1. The laboratory complies with the following requirements related to calibration and standards:
 - a. Except as specified in subsection (F)(1)(c), a minimum of:
 - i. Five standards are used for an average response factor or for a linear model,
 - ii. Six standards are used for a quadratic model, and
 - iii. Seven standards are used for a cubic model;
 - b. An X-value of zero is not included as a calibration point;
 - c. A calibration curve for heavy metal testing includes a minimum of three standards and a calibration blank;
 - d. One standard is $\pm 20\%$ of the limit of quantitation;
 - e. Except as specified in subsection (F)(1)(f) and as applicable, one standard for each analyte is $\pm 20\%$ of the:
 - i. Maximum allowable concentration in Table 3.1 Analytes for the analyte, or
 - ii. Mid-level standard for potency testing; and
 - f. For testing for residual solvents, either:
 - i. One standard for each analyte is $\pm 20\%$ of the maximum allowable concentration in Table 3.1 Analytes for the analyte; or
 - ii. A standard is created containing a concentration of specific analytes that is a dilution factor from the maximum allowable concentration in Table 3.1 Analytes for the analyte and is used when performing multiple runs on a sample, with or without dilution, to cover the range of

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

- maximum allowable concentrations in Table 3.1 Analytes;
- g. One standard is above the maximum allowable concentration in Table 3.1 Analytes for an analyte;
2. The acceptance criteria for testing is one of the following, as applicable:
 - a. The maximum relative standard deviation for the average calibration factor, for an external calibration model, or the response factor, for an internal calibration model, is no more than 20%; and
 - b. For linear and non-linear calibration models, the coefficient of determination (r^2) is greater than or equal to 0.99;
 3. For chromatographic testing methods using internal standards for calibration:
 - a. The relative retention time of each analyte to the internal calibration standard is within 0.06 units;
 - b. The areas of the peaks for the internal standards in any sample are between 50 and 200% of the area of the peak of the internal standard in subsection (F)(1)(e) used for calibration; and
 - c. The internal standards:
 - i. Have retention times similar to the analytes being tested for,
 - ii. Do not interfere with any of the analytes, and
 - iii. Have similar chemical properties as the analytes being tested for; and
 4. For methods testing for heavy metals using internal standards, the internal standards:
 - a. Are appropriate for the analyte, and
 - b. Do not interfere with any of the analytes.
- G.** To obtain an acceptable calibration, a technical laboratory director:
1. May use any of the following options:
 - a. Perform instrument maintenance to optimize analyte responses, as long as all resulting calibration models meet the acceptance criteria appropriate for the analyte;
 - b. If the problem appears to be associated with a single standard:
 - i. Reanalyze that one standard, at the time of calibration and before any samples are analyzed, to rule out problems due to random error; and
 - ii. Recalculate and reevaluate the standard against the acceptance criteria;
 - c. Narrow the calibration range by replacing one or more of the calibration standards at the upper or lower ends of the curve;
 - d. Narrow the calibration range by removing data points from either extreme end of the range and recalculating the calibration function; or
 - e. Perform a new initial calibration according to subsection (F); and
 2. May not:
 - a. Remove data points from within a calibration range while still retaining the extreme ends of the calibration range, or
 - b. Use non-linear calibrations to compensate for detector saturation or to avoid proper instrument maintenance.
- H.** A technical laboratory director shall ensure that for initial calibration verification:
1. Standards are prepared either from a different source or from a different lot of standards from the same source than the source from which the initial calibration standards specified in subsection (F)(1) were obtained and used as applicable:
 - a. Be $\pm 20\%$ of:
 - i. The maximum allowable concentrations for an analyte in Table 3.1 Analytes,
 - ii. According to subsection (F)(1)(f)(ii), or
 - iii. The mid-level standard for potency testing; and
 - b. Contain all analytes being reported to comply with R9-17-317(A)(5); and
 2. The following acceptance criteria are used:
 - a. For potency testing, 80 to 120% recovery of true value;
 - b. For testing for pesticides, fungicides, herbicides, growth regulators, mycotoxins, or residual solvents, 70 to 130% recovery of the true value; and
 - c. For heavy metal testing, 90 to 110% recovery of the true value.
- I.** A technical laboratory director shall ensure that for the limit of quantitation:
1. The limit of quantitation is initially verified by the analysis of at least seven replicate samples, spiked at the limit of quantitation, and processed through all preparation and analysis steps of the method;
 2. The signal-to-noise ratio of the replicate samples in subsection (I)(1) is at least 5:1;
 3. The mean recovery of the replicate samples in subsection (I)(1) is:
 - a. For potency testing, $\pm 20\%$ of the true value;
 - b. For testing for pesticides, fungicides, herbicides, growth regulators, mycotoxins, or residual solvents, $\pm 50\%$ of the true value; and
 - c. For heavy metal testing, $\pm 35\%$ of the true value;
 4. The relative standard deviation of the replicate samples in subsection (I)(1) is less than 20%;
 5. The limit of quantitation is, as applicable, no greater than:
 - a. Half the maximum allowable concentrations for an analyte in Table 3.1 Analytes;
 - b. For chlorfenapyr, cyfluthrin, or cypermethrin, the maximum allowable concentrations for the analyte in Table 3.1 Analytes; or
 - c. 1.0 mg/g for each analyte for potency testing;
 6. Any changes to specific sample amounts, dilutions, or volumes employed are reflected in the limit of quantitation stated on a sample report;
 7. The signal-to-noise ratio in subsection (I)(2) is reverified each time the instrument used for testing is calibrated; and
 8. Documentation of the current limit of quantitation is maintained for each analyte for each instrument.
- J.** Except as provided in subsection (P), a technical laboratory director shall ensure that for batch analysis:
1. Continuing calibration verification standards:
 - a. Are prepared from the same calibration standard source used to prepare the standards specified in subsection (F)(1):
 - i. Initially, with a concentration $\pm 20\%$ of, as applicable, the maximum allowable concentration for an analyte in Table 3.1 Analytes, according to subsection (F)(1)(f)(ii), or the mid-level standard for potency testing for all analytes being reported to comply with R9-17-317(A)(5); and
 - ii. Subsequently, with a concentration at or between the highest concentration and lowest concentration of standards for the analytes in the batch;

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

- b. Have the following acceptance criteria:
 - i. For potency testing, 80 - 120% recovery of true value;
 - ii. For testing for pesticides, fungicides, herbicides, growth regulators, mycotoxins, or residual solvents, 70 - 130% recovery of the true value; and
 - iii. For heavy metal testing, 90 - 110% recovery of the true value;
2. If internal standards are used in continuing calibration verification, the acceptability criteria of the internal standards is determined as follows:
 - a. For testing for pesticides, fungicides, herbicides, growth regulators, or residual solvents by mass spectrometry, if the area of the peak for an internal standard is different by a factor of two from the area of the respective standard in subsection (F)(1)(e), for the most recent initial calibration sequence, according to subsection (F):
 - i. The mass spectrometer is inspected for malfunctions and corrected, and
 - ii. Reanalysis of the continuing calibration verification meets acceptance criteria in subsection (J)(1)(b)(ii) before any samples are tested; and
 - b. For heavy metal testing:
 - i. The intensity of an internal standard is monitored for each analysis to ensure that the intensity does not vary by more than $\pm 30\%$, with respect to the intensity during the initial calibration in subsection (F); and
 - ii. If the intensity of an internal standard is outside the range also observed in the calibration blank required in subsection (F)(1)(c):
 - (1) Testing is stopped until the problem is corrected, the instrument is recalibrated, and the new calibration is verified;
 - (2) Reanalysis of the continuing calibration verification meets acceptance criteria in subsection (J)(1)(b)(iii) before any samples are tested; and
 - (3) The affected samples are retested; and
3. The frequency of continuing calibration verification is as follows:
 - a. For testing by a method other than mass spectrometry:
 - i. At the beginning of the test;
 - ii. After every 20 samples, not counting a quality control sample, such as a sample required in subsection (K); and
 - iii. At the end of the test; and
 - b. For testing by mass spectrometry:
 - i. At the beginning of the testing,
 - ii. After every 12 hours of running, and
 - iii. At the end of the run.
- K. Except as provided in subsection (P), a technical laboratory director shall ensure that for batch analysis:
 1. A method blank, with a matrix similar to each type of sample matrix to be tested within the batch:
 - a. Contains the same internal standards as the samples in the batch,
 - b. Is prepared and tested with each batch, and
 - c. Produces results below the limit of quantitation;
 2. Except as provided in subsection (R), a laboratory control sample and duplicate:
 - a. Are prepared $\pm 20\%$ of, as applicable:
 - i. The maximum allowable concentrations for an analyte in Table 3.1 Analytes,
 - ii. According to subsection (F)(1)(f)(ii), or
 - iii. The mid-level standard for potency testing;
- L. A technical laboratory director shall ensure that:
 1. Except as provided in subsection (P), for potency testing or testing for pesticides, fungicides, herbicides, growth regulators, or residual solvents by mass spectrometry, the relative intensities of the characteristic ions agrees within 30% of the relative intensities of these ions in the reference spectrum; and
 2. For heavy metal testing, the intensity of each internal standard is monitored for each analysis to ensure that the intensity does not vary more than $\pm 30\%$, with respect to
 - b. Are carried through all stages of sample preparation and included with each analytical batch of up to 20 samples; and
 - c. Have the following acceptance criteria:
 - i. For potency testing, 80 - 120% recovery of true value;
 - ii. Except as specified in subsection (K)(2)(c)(iii), for testing for pesticides, fungicides, or growth regulators, 70 - 130% recovery of the true value;
 - iii. For Acequinocyl, Bifenthrin, Fludioxomil, Hexythiazox, Imazalil, Naled, Imidacloprid, and Spiroxamine, 70 - 130% recovery of the true value or according to control limits derived according to R9-17-404.05(B)(10);
 - iv. For residual solvents except propane and butane, 70 - 130% recovery of the true value;
 - v. For propane or butane, 60 - 140% recovery of the true value;
 - vi. For herbicides and mycotoxins, 70 - 130% recovery of the true value or according to control limits derived according to R9-17-404.05(B)(10); and
 - vii. For heavy metal testing, 80 - 120% recovery of the true value;
3. The relative percent difference for the laboratory control sample and duplicate for each analyte, calculated on the basis of concentration or amount, is no more than 20%; and
4. A matrix spike derived from the dispensary-submitted sample:
 - a. Is prepared $\pm 20\%$ of, as applicable, the maximum allowable concentrations for an analyte in Table 3.1 Analytes or the mid-level standard for potency testing;
 - b. Is carried through all stages of sample preparation and included with each analytical batch of up to 20 samples for each matrix type; and
 - c. Has either the following acceptance criteria or acceptance criteria within statistically derived limits developed by the laboratory:
 - i. For potency testing, 80 - 120% recovery of true value or according to control limits derived according to R9-17-404.05(B)(10);
 - ii. For testing for pesticides, fungicides, herbicides, growth regulators, mycotoxins, or residual solvents, 70 - 130% recovery of the true value or according to control limits derived according to R9-17-404.05(B)(10); and
 - iii. For heavy metal testing, 75 - 125% recovery of the true value.

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

- the intensity of the internal standard during the initial calibration specified in subsection (F).
- M.** A technical laboratory director shall ensure that the resolution of chromatographic peaks in potency testing or testing for pesticides, fungicides, herbicides, growth regulators, or residual solvents by a method other than mass spectrometry is maintained so that the height of the valley between the two chromatographic peaks is less than 50% of the average of the two peak heights.
- N.** A technical laboratory director shall ensure that confirmation for testing for pesticides, fungicides, herbicides, growth regulators, or residual solvents by a method other than mass spectrometry:
1. Is performed using:
 - a. A second column:
 - i. That has a stationary phase dissimilar to the stationary phase in the primary column, and
 - ii. From which the analyte is eluted in a different order than from the primary column;
 - b. A different instrument type, such as gas chromatography followed by mass spectrometry;
 - c. Gas chromatography with two different types of detectors; or
 - d. Other recognized confirmation techniques;
 2. Meets the applicable criteria in subsections (D) through (M); and
 3. Includes as part of the confirmation of the analyte:
 - a. An evaluation of the agreement of the quantitative values of the results from both methods of testing; and
 - b. Determination of the relative percent difference between the values.
- O.** If the relative percent difference between the values obtained according to subsection (N) is more than 40%, a technical laboratory director shall ensure that:
1. The chromatograms are checked to see if an obviously overlapping peak is causing an erroneously high result, and the chromatographic conditions are reviewed; and
 2. Either:
 - a. If a problem is found with one of the tests, the result from the other test is reported; and
 - b. If there is no evidence of a chromatographic problem, the higher result is reported.
- P.** A technical laboratory director may release testing results that are scientifically valid and defensible, according to R9-17-404.06(B)(3), with the following data qualifier notations if:
1. The target analyte detected in the calibration blank required in subsection (F)(1)(c) or the method blank specified in subsection (K)(1) is at or above the limit of quantitation, but the sample result:
 - a. For potency testing, is below the limit of quantitation – B1; or
 - b. When testing for pesticides, fungicides, herbicides, growth regulators, heavy metals, or residual solvents, is below the maximum allowable concentration in Table 3.1 Analytes for the analyte – B2;
 2. The limit of quantitation and the sample results were adjusted to reflect sample dilution – D1;
 3. The relative intensity of a characteristic ion in a sample analyte exceeded the acceptance criteria in subsection (L)(1) with respect to the reference spectra, indicating interference – I1;
 4. When testing for pesticides, fungicides, herbicides, growth regulators, heavy metals, or residual solvents, the percent recovery of a laboratory control sample is greater than the acceptance limits in subsection (K)(2)(c), but the sample's target analytes were not detected above the maximum allowable concentrations in Table 3.1 Analytes for the analytes in the sample – L1;
5. The recovery from the matrix spike in subsection (K)(4) was:
- a. High, but the recovery from the laboratory control sample in subsection (K)(2) was within acceptance criteria – M1,
 - b. Low, but the recovery from the laboratory control sample in subsection (K)(2) was within acceptance criteria – M2, or
 - c. Unusable because the analyte concentration was disproportionate to the spike level, but the recovery from the laboratory control sample in subsection (K)(2) was within acceptance criteria – M3;
6. The analysis of a spiked sample required a dilution such that the spike recovery calculation does not provide useful information, but the recovery from the associated laboratory control sample in subsection (K)(2) was within acceptance criteria – M4;
7. The analyte concentration was determined by the method of standard addition, in which the standard is added directly to the aliquots of the analyzed sample – M5;
8. A description of the variance is described in the final report of testing according to R9-17-404.06(B)(3)(d)(ii) – N1;
9. The relative percent difference for the laboratory control sample and duplicate exceeded the limit in subsection (K)(3), but the recovery in subsection (K)(2) was within acceptance criteria – R1;
10. The relative percent difference for a sample and duplicate exceeded the limit in subsection (O) – R2; or
11. The recovery from continuing calibration verification standards exceeded the acceptance limits in subsection (J)(1)(b), but the sample's target analytes were not detected above the maximum allowable concentrations in Table 3.1 Analytes for the analytes in the sample – V1.
- Q.** A technical laboratory director shall include in the final report of testing, according to R9-17-404.06(B)(3)(d)(iii), the following data qualifier notations if:
1. Sample integrity was not maintained – Q1;
 2. The sample is heterogeneous, and sample homogeneity could not be readily achieved using routine laboratory practices – Q2; or
 3. Testing result is for informational purposes only and cannot be used to satisfy dispensary testing requirements in R9-17-317.01(A) or labeling requirements in R9-17-317 – Q3.
- R.** For batch analysis of samples to determine potency, a technical laboratory director may check precision by using either a duplicate laboratory control sample or a duplicate sample prepared from the medical marijuana or marijuana product being tested, according to requirements in subsections (K)(2) and (3).
- S.** A technical laboratory director shall ensure that the reporting units for:
1. Pesticides, fungicides, herbicides, growth regulators, heavy metals, or residual solvents are in parts per million (ppm); and
 2. Potency are:
 - a. In either:
 - i. Percent (w/w) relative to the bulk plant material or marijuana product, as applicable: or
 - ii. Number of milligrams per designated unit; and
 - b. For:

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

- i. Total tetrahydrocannabinol, the sum of tetrahydrocannabinolic acid (THC-A), multiplied by 0.877, and delta-9-tetrahydrocannabinol (Δ 9-THC); and
- ii. Total cannabidiol, the sum of cannabidiolic acid (CBD-A), multiplied by 0.877, and cannabidiol (CBD).

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020 (Supp. 20-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by exempt rulemaking at 26 A.A.R. 2848, with an immediate effective date of October 15, 2020; amended by exempt rulemaking at 26 A.A.R. 2991, effective November 1, 2020; amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4).

R9-17-404.04. Method Criteria and References for Analytes for Microbial Contaminants

- A. To perform laboratory testing for the microbial contaminants in Table 3.1 Analytes, a laboratory shall use an applicable method:
 1. Described in:
 - a. The Bacteriological Analytical Manual (BAM), 2019, which is incorporated by reference, includes no future editions or amendments, and is available at <https://www.fda.gov/food/laboratory-methods-food/bacteriological-analytical-manual-bam>; or
 - b. AOAC Official Methods of Analysis, 21st Edition, 2019, which is incorporated by reference, includes no future editions or amendments, and is available at <https://www.aoac.org/official-methods-of-analysis-21st-edition-2019>; and
 2. Validated according to, as applicable:
 - a. AOAC - Appendix J: Guidelines for Validation of Microbiological Methods for Food and Environmental Surfaces, 2012, which is incorporated by reference, includes no future editions or amendments, and is available at http://www.eoma.aoac.org/app_j.pdf;
 - b. AOAC - Appendix K: Guidelines for Dietary Supplements and Botanicals, 2013, which is incorporated by reference, includes no future editions or amendments, and is available at http://www.eoma.aoac.org/app_k.pdf; or
 - c. ICH - Validation of Analytical Procedures: Text and Methodology Q2(R1) 2005, which is incorporated by reference, includes no future editions or amendments, and is available at https://database.ich.org/sites/default/files/Q2_R1_Guideline.pdf or <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/q2-r1-validation-analytical-procedures-text-and-methodology>.
- B. A technical laboratory director shall ensure that all instruments and equipment used for testing medical marijuana or a marijuana product for microbial contaminants are:
 1. Set up, calibrated, and verified according to:
 - a. Manufacturer's acceptance criteria; and
 - b. Requirements for the specific method, as specified in subsection (A)(1)(a) or (b), as applicable;
 2. Monitored and maintained according to AOAC - Guidelines for Laboratories Performing Microbiological and Chemical Analyses of Food, Dietary Supplements, and Pharmaceuticals, 6.3: Facilities and Environmental Conditions, 6.4: Equipment, 7.7: Ensuring the Validity of Results, and Appendix A: Equipment, August 2018, which is incorporated by reference, includes no future editions or amendments, and is available at <https://www.aoac.org/aoac-accreditation-guidelines-for-laboratories-alacc>; and
3. Applicable for the analytes to be tested.
- C. A technical laboratory director shall ensure that:
 1. The organisms required as controls are checked, as appropriate for their application:
 - a. To ensure there is no contamination with other organisms,
 - b. For verification of biochemical or other biological characteristics, and
 - c. To ascertain the number of organisms; and
 2. Documentation is maintained of the:
 - a. Checking required in subsection (C)(1), and
 - b. Traceability of the organisms in subsection (C)(1) from date of possession.
- D. A technical laboratory director shall ensure that for an initial demonstration of capability:
 1. Before implementing a method, at least four replicate reference samples for each analyte are:
 - a. Spiked with control organisms at an amount allowing for quantitation, and
 - b. Taken through the entire sample preparation and analysis process;
 2. Whenever a significant change to instrumentation or to a standard operating procedure occurs, the laboratory demonstrates, as specified in subsection (D)(1), that acceptable precision and bias can still be obtained by the changed conditions; and
 3. Whenever a new laboratory agent who will be performing testing on medical marijuana or marijuana products is being trained, the laboratory agent demonstrates, as specified in subsection (D)(1), acceptable precision and bias.
- E. A technical laboratory director shall ensure that each batch of media or reagent:
 1. Is examined to ensure it is suitable for use;
 2. If externally prepared, has a certificate of meeting quality control standards, issued by the manufacturer;
 3. If internally prepared, has documentation of:
 - a. Instructions for preparation;
 - b. Traceability to dehydrated media or reagent concentrate;
 - c. Sterility, including, as applicable:
 - i. Autoclave records showing the date, run number, autoclave identifier, nature of the material being autoclaved, time at desired temperature, and name of the laboratory agent starting the autoclave; and
 - ii. For another sterilization method, records showing the date, type of sterilization method, nature of the material being sterilized, confirmation of the sterilization as applicable to the method, and name of the laboratory agent initiating the sterilization method;
 - d. Checking for the following, as applicable, including the name of the laboratory agent who performed the check and date of the check:
 - i. pH,
 - ii. Appearance,
 - iii. Fill volumes,
 - iv. Batch size, and
 - v. Quantity; and

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

4. Undergoes quality control verification, as applicable, including the name of the laboratory agent who performed the verification and date of verification, for:
 - a. The ability of media to sustain growth of the organism for which the media will be used;
 - b. If applicable, the ability of media to select for specific organisms or characteristics of an organism;
 - c. The ability of a reagent to function as intended; and
 - d. Sterility of the media or reagent before use.
- F.** If test kits or other identification systems are used for laboratory testing, a technical laboratory director shall ensure that:
1. Each lot of test kits or other identification systems undergoes quality control verification, including the name of the laboratory agent who performed the verification and date of verification, for:
 - a. Having a certificate of meeting quality control standards, issued by the manufacturer; and
 - b. Passing a visual inspection of physical characteristics;
 2. If an identification system is intended to speciate organisms, the identification system is tested with at least one control organism appropriate for the identification system to confirm acceptability; and
 3. For testing using ELISA:
 - a. The ELISA testing calibration curve has at least four standards;
 - b. The standards in subsection (F)(3)(a) bracket the maximum allowable contaminants in Table 3.1 Analytes for the analyte; and
 - c. For linear and non-linear calibration models, the coefficient of determination (r^2) is greater than or equal to 0.99.
- G.** A technical laboratory director shall ensure that:
1. For testing for *Aspergillus* with a plating method:
 - a. One of the following plating media is used:
 - i. Malt extract agar, BAM Media M182;
 - ii. Dichloran rose bengal chloramphenicol agar, BAM Media M183; or
 - iii. Potato dextrose agar with rose bengal and chloramphenicol; and
 - b. PetrifilmTM, SimplateTM, or another pre-made plate that is unsuitable for growing spreading molds is not used; and
 2. For testing for mycotoxins by any method, at least a 0.5 g sample is tested.
- H.** A technical laboratory director shall include in the final report of testing, according to R9-17-404.06(B)(3)(d)(iii), the following data qualifier notations if:
1. The limit of quantitation and the sample results were adjusted to reflect sample dilution - D1;
 2. A description of the variance is described in the final report of testing according to R9-17-404.06(B)(3)(d)(ii) - N1;
 3. Sample integrity was not maintained - Q1;
 4. The sample is heterogeneous, and sample homogeneity could not be readily achieved using routine laboratory practices - Q2; or
 5. Testing result is for informational purposes only and cannot be used to satisfy dispensary testing requirements in R9-17-317.01(A) or labeling requirements in R9-17-317 - Q3.
- I.** A technical laboratory director shall ensure that:
1. The reporting units for *Escherichia coli* are colony forming units per gram (CFU/g);
 2. Reporting for *Salmonella* is “Detected” or “Not detected” in one gram;
3. Reporting for *Aspergillus* is “Detected” or “Not detected” in one gram; and
 4. Reporting for mycotoxins includes:
 - a. Total aflatoxins in units of micrograms per kilogram ($\mu\text{g}/\text{kg}$), and
 - b. Ochratoxin A in units of micrograms per kilogram ($\mu\text{g}/\text{kg}$).

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020 (Supp. 20-2). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4).

R9-17-404.05. Quality Assurance

- A.** An owner holding a laboratory registration certificate or applicant shall ensure that the analytical data produced at the owner’s or applicant’s laboratory are of known and acceptable precision and accuracy, as prescribed by the method criteria for each analyte in R9-17-404.03 or R9-17-404.04, and are scientifically valid and defensible.
- B.** An owner holding a laboratory registration certificate or applicant shall establish, implement, and comply with a written quality assurance plan that contains the following and is available at the laboratory for Department review:
1. A title page identifying the laboratory and date of review and including the technical laboratory director’s signature of approval;
 2. A table of contents;
 3. An organization chart or list of the laboratory personnel, including names, lines of authority, and identification of principal quality assurance personnel;
 4. A copy of the current laboratory registration certificate and a list of approved parameters;
 5. A statement of quality assurance objectives, including data quality objectives with precision and accuracy goals and the criteria for determining the acceptability of each testing;
 6. Specifications for preservation of samples;
 7. A procedure for documenting laboratory receipt of samples and tracking of samples during laboratory testing;
 8. A procedure for analytical instrument calibration, including frequency of calibration and complying with the requirements for calibration in subsection (D);
 9. A procedure for testing data reduction and validation and reporting of final results, including the identification and treatment of data outliers, the determination of the accuracy of data transcription, and all calculations;
 10. If using control limits derived by the laboratory as a basis for determining acceptance of a testing result, a procedure to ensure that the control limits are:
 - a. Statistically significant, valid, and defensible; and
 - b. Updated at least every 12 months;
 11. A statement of the frequency of all quality control checks;
 12. A statement of the acceptance criteria for all quality control checks;
 13. Preventive maintenance procedures and schedules;
 14. Assessment procedures for data acceptability, including appropriate procedures for manual integration of chromatograms and when manual integration is inappropriate;
 15. Corrective action procedures to be taken when results from analytical quality control checks are unacceptable, including steps to demonstrate the presence of any interference if the precision, accuracy, or limit of quantitation

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

of the reported testing result is affected by the interference; and

16. Procedures for chain-of-custody documentation, including procedures for the documentation and reporting of any deviation from the sample handling or preservation requirements.
- C. An owner holding a laboratory registration certificate or applicant shall ensure that a laboratory's written quality assurance plan is a separate document available at the laboratory and includes all of the components required in subsection (B), but an owner or applicant may satisfy the components required in subsections (B)(3) through (15) through incorporating by reference provisions in separate documents, such as standard operating procedures.
- D. An owner holding a laboratory registration certificate or applicant shall:
1. Have available at the laboratory all methods, equipment, reagents, and supplies necessary for the testing for which the owner or applicant is approved or is requesting approval;
 2. Use only reagents of a grade equal to or greater than that required by the method criteria in R9-17-404.03 or R9-17-404.04, and document the use of the reagents;
 3. Maintain and require each laboratory agent performing testing on medical marijuana or a marijuana product to comply with a complete and current standard operating procedure that meets the requirements for each method, as specified in R9-17-404.03 or R9-17-404.04, which shall include at least:
 - a. A description of all procedures to be followed when the method is performed;
 - b. A list of the concentrations for calibration standards, check standards, and spikes;
 - c. Requirements for instrumental conditions and set up;
 - d. A requirement for frequency of calibration;
 - e. The quantitative methods to be used to calculate the final concentration of an analyte in samples, including any factors used in the calculations and the calibration algorithm used; and
 - f. Requirements for preventative maintenance;
 4. Calibrate each instrument as required by the standard operating procedure, as specified in R9-17-404.03 or R9-17-404.04, for which the equipment is used;
 5. Maintain calibration documentation, including documentation that demonstrates the calculations performed using each calibration model;
 6. Develop, document, and maintain a current limit of quantitation, as specified in R9-17-404.03, for each compliance parameter for each instrument;
 7. For each parameter and analyte tested at the laboratory use the quality control acceptance criteria specified according to R9-17-404.03, R9-17-404.04, and Table 3.1 Analytes;
 8. Discard or segregate all expired standards or reagents;
 9. Maintain a record showing the traceability of reagents; and
 10. Ensure that a calibration model is not used or changed to avoid necessary instrument maintenance.
- E. Except as provided in subsection (F), an owner holding a laboratory registration certificate or applicant shall ensure that each laboratory standard operating procedure is a separate document available at the laboratory and includes all of the components required in subsection (D)(3).
- F. An owner holding a laboratory registration certificate or applicant may satisfy the components required in subsections

(D)(3)(e) and (f) through incorporating by reference provisions in separate documents, such as other standard operating procedures.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020 (Supp. 20-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4).

R9-17-404.06. Operations

- A. A technical laboratory director shall ensure that:
1. A sample of medical marijuana or a marijuana product accepted at the technical laboratory director's laboratory is analyzed:
 - a. Either:
 - i. At the laboratory, or
 - ii. For testing of parameters or analytes that the laboratory is not approved by the Department to conduct, at another laboratory with an approval for testing issued by the Department; and
 - b. As received;
 2. If an instrument or equipment used for testing medical marijuana or a marijuana product has a mechanism to track any changes made to testing results, the tracking mechanism is installed and activated;
 3. The facility and utilities required to operate equipment and perform testing of medical marijuana or marijuana products are maintained;
 4. Environmental controls are maintained within the laboratory to ensure that laboratory environmental conditions do not affect analytical results beyond quality control limits established for the methods performed at the laboratory;
 5. Storage, handling, and disposal of hazardous materials at the laboratory are in accordance with all state and federal regulations;
 6. The laboratory complies with all applicable federal, state, and local occupational safety and health regulations; and
 7. The following information is maintained for all laboratory agents providing supervisory, quality assurance, or analytical functions related to testing of medical marijuana or a marijuana product:
 - a. A summary of each laboratory agent's education and professional experience;
 - b. Documentation of each laboratory agent's applicable certifications and specialized training;
 - c. Information related to the laboratory agent's registry identification card;
 - d. Documentation of each laboratory agent's review of the quality assurance plan required under R9-17-404.05(B) and the methods and laboratory standard operating procedures for all testing of marijuana or marijuana products performed by the laboratory agent or for which the laboratory agent has supervisory or quality assurance responsibility;
 - e. Documentation of each laboratory agent's completion of training on the use of equipment and of proper laboratory technique, including the name of the laboratory agent, the name of the instructor, the duration of the training, and the date of completion of the training;

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

- f. Documentation of each laboratory agent's completion of training classes, continuing education courses, seminars, and conferences that relate to the testing procedures used by the laboratory agent for testing of marijuana or marijuana products;
 - g. Documentation of each laboratory agent's completion of initial demonstration of capability, as required in R9-17-404.03(D)(3) or R9-17-404.04(D)(3), for each approved method performed by the laboratory agent;
 - h. Documentation of each laboratory agent's performance of proficiency testing or accuracy testing, as applicable; and
 - i. Documentation of each laboratory agent's completion of training related to instrument calibration that includes:
 - i. Instruction on each calibration model that the laboratory agent will use or for which the laboratory agent will review data;
 - ii. For each calibration model in subsection (A)(7)(i)(i), description of the specific aspects of the calibration model that might compromise the data quality, such as detector saturation, lack of detector sensitivity, the calibration model's not accurately reflecting the calibration points, inappropriate extension of the calibration range, weighting factors, and dropping of mid-level calibration points without justification; and
 - iii. Instruction that a calibration model shall not be used or changed to avoid necessary instrument maintenance.
- B. A technical laboratory director shall ensure that:**
1. A testing record for marijuana or marijuana products contains:
 - a. Sample information, including the following:
 - i. A unique sample identification assigned at the laboratory;
 - ii. A description of the marijuana or marijuana product from which the submitted sample was taken, including the amount, strain, and batch number;
 - iii. The sample collection date and time; and
 - iv. The type of testing to be performed, including whether the testing is to satisfy the requirement in R9-17-317.01(A) or for a dispensary's information only;
 - b. A picture of the sample as submitted;
 - c. The name and registry identification number of the dispensary, qualifying patient, or designated caregiver submitting the sample to the laboratory;
 - d. If applicable, name and the registry identification number of the dispensary agent submitting the sample to the laboratory on behalf of a dispensary;
 - e. The date and time of receipt of the sample at the laboratory;
 - f. The name and registry identification number of the laboratory agent who received the sample at the laboratory;
 - g. The dates and times of testing, including the date and time of each critical step;
 - h. Whether testing results related to a sample were changed;
 - i. If testing results related to a sample were changed, what was changed, the name of the laboratory agent who changed the testing results, the time and date the data were changed, and why the testing results were changed;
2. A testing result for medical marijuana or a marijuana product that is known to be inaccurate is not reported; and
3. Except as specified in subsection (C), a final report of testing of marijuana or marijuana products contains:
 - a. The name, address, and telephone number of the laboratory;
 - b. The registry identification number assigned to the laboratory by the Department;
 - c. Actual scientifically valid and defensible results of testing of a sample of medical marijuana or a marijuana product in appropriate units of measure, obtained in accordance with R9-17-404.03, R9-17-404.04, and the quality assurance plan;
 - d. As applicable:
 - i. A statement that testing results were obtained according to requirements in the quality assurance plan in R9-17-404.05, in the applicable standard operating procedure, and in R9-17-404.03 or R9-17-404.04;
 - ii. A description of any variances from the requirements in the quality assurance plan in R9-17-404.05, the applicable standard operating procedure, R9-17-404.03, or R9-17-404.04 made to ensure scientifically valid and defensible testing results, and the reason for the variance; or
 - iii. A qualifier according to R9-17-404.03(P) or (Q);
 - e. A list of each method used to obtain the reported results;
 - f. Sample information, including the following:
 - i. The unique sample identification assigned at the laboratory;
 - ii. A picture of the sample as submitted;
 - iii. A description of the marijuana or marijuana product from which the submitted sample was taken, including the amount, strain and batch number;
 - iv. The sample collection date and time;
 - v. The name and registry identification number of the dispensary, laboratory, qualifying patient, or designated caregiver submitting the sample to the laboratory; and
 - vi. If applicable, name and the registry identification number of the dispensary agent submitting the sample to the laboratory on behalf of a dispensary;
 - g. The date of testing for each parameter reported;
 - h. The date of the final report; and
 - i. The technical laboratory director's or designee's signature.
- C. If a sample of medical marijuana or a marijuana product accepted at a laboratory is analyzed at another laboratory, as**

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

allowed according to R9-17-404.06(A)(1)(a)(ii), a technical laboratory director shall ensure that the final report of testing required in subsection (B)(3) includes a copy of the final report of testing from each laboratory to which the laboratory accepting the sample from a dispensary sent a portion of the sample for testing of parameters or analytes that the laboratory is not approved by the Department to conduct.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020 (Supp. 20-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4).

R9-17-404.07. Adding or Removing Parameters for Testing

- A.** During the term of a laboratory registration certificate, an owner may request to have one or more parameters:
1. Added to the laboratory registration certificate, or
 2. Removed from the laboratory registration certificate.
- B.** To request a change to one or more parameters, an applicant shall submit to the Department:
1. The following information in a Department-provided format:
 - a. The name, address, and telephone number of the applicant;
 - b. The name, address, and telephone number of the laboratory for which the change is requested;
 - c. If requesting the removal of a parameter, identification of the parameter to be removed;
 - d. If requesting the addition of a parameter:
 - i. The analyte to be tested for,
 - ii. The instruments and equipment to be used for testing,
 - iii. The software to be used at the laboratory for instrument control and data reduction interpretation, and
 - iv. The limit of quantitation, if applicable;
 - e. An attestation that the information provided to the Department to apply for the addition of a parameter is true and correct; and
 - f. The signatures of the owner of the laboratory, according to R9-17-401(A), and the technical laboratory director and the date each signed;
 2. The following for each parameter requested to be added:
 - a. A copy of current accreditation;
 - b. A copy of a proficiency testing report, if applicable, or accuracy testing documentation; and
 - c. A copy of the standard operating procedure; and
 3. If applicable, any changes to the quality assurance plan in R9-17-404.05(B) made due to the addition or removal of the parameter.
- C.** The Department may conduct a laboratory inspection during the substantive review period for a request to have one or more parameters added to a laboratory registration certificate.
- D.** The Department shall process a request to have one or more parameters added to a laboratory registration certificate as provided in R9-17-107.

Historical Note

New Section made by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020 (Supp. 20-2). Amended by exempt rulemaking at 26

A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3).

R9-17-405. Submitting an Application for a Laboratory Agent Registry Identification Card

To obtain a laboratory agent registry identification card for an individual serving as an owner for the laboratory, employed by the laboratory, or providing volunteer services at or on behalf of the laboratory, the owner shall submit to the Department the following for each laboratory agent:

1. An application in a Department-provided format that includes:
 - a. The laboratory agent's first name; middle initial, if applicable; last name; and suffix, if applicable;
 - b. The laboratory agent's residence address and mailing address;
 - c. The county where the laboratory agent resides;
 - d. The laboratory agent's date of birth;
 - e. The identifying number on the applicable card or document in subsections (5)(a) through (e);
 - f. The name and registry identification number of the laboratory; and
 - g. The signature of the individual in R9-17-402(A)(1)(c) designated to submit laboratory agent applications on the laboratory's behalf and the date the individual signed;
2. An attestation signed and dated by the laboratory agent that the laboratory agent:
 - a. Has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801, and
 - b. Will not test medical marijuana and medical marijuana products for:
 - i. A dispensary, related medical marijuana business entity, or management company that the laboratory agent has a direct or indirect familial or financial relationship with or interest in; or
 - ii. A designated caregiver who the laboratory has a direct or indirect familial or financial relationship with;
3. One of the following:
 - a. A statement that the laboratory agent does not currently hold a valid registry identification card, or
 - b. The assigned registry identification number for the laboratory agent for each valid registry identification card currently held by the laboratory agent;
4. A statement in a Department-provided format, signed by the laboratory agent, pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
5. A copy of the laboratory agent's:
 - a. Arizona driver's license issued on or after October 1, 1996;
 - b. Arizona identification card issued on or after October 1, 1996;
 - c. Arizona registry identification card;
 - d. Photograph page in the laboratory agent's U.S. passport; or
 - e. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the laboratory agent:
 - i. Birth certificate verifying U.S. citizenship,
 - ii. U.S. Certificate of Naturalization, or
 - iii. U.S. Certificate of Citizenship;
6. A current photograph of the laboratory agent;
7. For the Department's criminal records check authorized in A.R.S. §§ 36-2804.01 and 36-2804.07:

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

- a. The laboratory agent's fingerprints on a fingerprint card that includes:
 - i. The laboratory agent's first name; middle initial, if applicable; and last name;
 - ii. The laboratory agent's signature;
 - iii. If different from the laboratory agent, the signature of the individual physically rolling the laboratory agent's fingerprints;
 - iv. The laboratory agent's address;
 - v. If applicable, the laboratory agent's surname before marriage and any names previously used by the laboratory agent;
 - vi. The laboratory agent's date of birth;
 - vii. The laboratory agent's Social Security number;
 - viii. The laboratory agent's citizenship status;
 - ix. The laboratory agent's gender;
 - x. The laboratory agent's race;
 - xi. The laboratory agent's height;
 - xii. The laboratory agent's weight;
 - xiii. The laboratory agent's hair color;
 - xiv. The laboratory agent's eye color; and
 - xv. The laboratory agent's place of birth; or
 - b. If the laboratory agent's fingerprints and information required in subsection (7)(a) were submitted to the Department within the previous six months as part of an application for a designated caregiver registry identification card, a dispensary agent registry identification card, or a laboratory agent registry identification card, the registry identification number on the registry identification card issued to the laboratory agent as a result of the application; and
8. The applicable fee in R9-17-102 for applying for a laboratory agent registry identification card.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3).

R9-17-406. Submitting an Application to Renew a Laboratory Agent's Registry Identification Card

To renew a laboratory agent's registry identification card for an individual serving as an owner for the laboratory, employed by the laboratory, or providing volunteer services at or on behalf of the laboratory, the laboratory shall submit to the Department, at least 30 calendar days before the expiration of the laboratory agent's registry identification card, but no more than 90 days before the expiration date of the laboratory's agent's registry identification card, the following:

1. An application in a Department-provided format that includes:
 - a. The laboratory agent's first name; middle initial, if applicable; last name; and suffix, if applicable;
 - b. The laboratory agent's residence address and mailing address;
 - c. The county where the laboratory agent resides;
 - d. The laboratory agent's date of birth;
 - e. The registry identification number on the laboratory agent's current registry identification card;
 - f. The identifying number on the applicable card or document in subsection (6)(a) through (e);
 - g. The name and registry identification number of the laboratory; and
 - h. The signature of the individual in R9-17-402(A)(1)(c) designated to submit laboratory agent applications on the laboratory's behalf and the date the individual signed;
2. If the laboratory agent's name in subsection (1)(a) is not the same name as on the laboratory agent's current registry identification card, one of the following with the laboratory agent's new name:
 - a. An Arizona driver's license,
 - b. An Arizona identification card, or
 - c. The photograph page in the laboratory agent's U.S. passport;
3. An attestation signed and dated by the laboratory agent that the laboratory agent:
 - a. Has not been convicted of an excluded felony offense as defined in A.R.S. § 36-2801; and
 - b. Will not test medical marijuana and medical marijuana products for:
 - i. A dispensary, related medical marijuana business entity or management company the laboratory agent has a direct or indirect familial or financial relationship with or interest in; or
 - ii. A designated caregiver the laboratory has a direct or indirect familial or financial relationship with;
4. One of the following:
 - a. A statement that the laboratory agent does not currently hold a valid registry identification card, or
 - b. The assigned registry identification number for the laboratory agent for each valid registry identification card currently held by the laboratory agent;
5. A statement in a Department-provided format signed by the laboratory agent pledging not to divert marijuana to any individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
6. A copy of the laboratory agent's:
 - a. Arizona driver's license issued on or after October 1, 1996;
 - b. Arizona identification card issued on or after October 1, 1996;
 - c. Arizona registry identification card;
 - d. Photograph page in the laboratory agent's U.S. passport; or
 - e. Arizona driver's license or identification card issued before October 1, 1996 and one of the following for the laboratory agent:
 - i. Birth certificate verifying U.S. citizenship,
 - ii. U.S. Certificate of Naturalization, or
 - iii. U.S. Certificate of Citizenship;
7. A current photograph of the laboratory agent;
8. For the Department's criminal records check authorized in A.R.S. §§ 36-2804.01 and 36-2804.07:
 - a. The laboratory agent's fingerprints on a fingerprint card that includes:
 - i. The laboratory agent's first name; middle initial, if applicable; and last name;
 - ii. The laboratory agent's signature;
 - iii. If different from the laboratory agent, the signature of the individual physically rolling the laboratory agent's fingerprints;
 - iv. The laboratory agent's address;
 - v. If applicable, the laboratory agent's surname before marriage and any names previously used by the laboratory agent;
 - vi. The laboratory agent's date of birth;
 - vii. The laboratory agent's Social Security number;
 - viii. The laboratory agent's citizenship status;
 - ix. The laboratory agent's gender;
 - x. The laboratory agent's race;
 - xi. The laboratory agent's height;

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

- xii. The laboratory agent's weight;
- xiii. The laboratory agent's hair color;
- xiv. The laboratory agent's eye color; and
- xv. The laboratory agent's place of birth; or
- b. If the laboratory agent's fingerprints and information required in subsection (8)(a) were submitted to the Department within the previous six months as part of an application for a designated caregiver registry identification card, a dispensary agent registry identification card, or a laboratory agent registry identification card, the registry identification number on the registry identification card issued to the laboratory agent as a result of the application; and
- 9. The applicable fee in R9-17-102 for applying to renew a laboratory agent's registry identification card.
 - d. The name and registry identification number of the qualifying patient that submitted the marijuana or marijuana products;
 - e. The name and registry identification number of the designated caregiver that submitted the marijuana or marijuana products;
 - f. The name and registry identification number of the laboratory agent receiving the marijuana or marijuana products on behalf of the laboratory;
 - g. The date of acquisition;
 - h. The date of each test; and
 - i. The testing results; and
- 5. For disposal of the remaining sample of medical marijuana or a marijuana product after testing:
 - a. The amount and description of the medical marijuana or marijuana product being disposed of;
 - b. The name and registry identification number of the dispensary submitting the sample,
 - c. Date of disposal;
 - d. Method of disposal; and
 - e. Name and registry identification number of the laboratory agent responsible for the disposal.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3).

R9-17-407. Inventory Control System

- A. A laboratory shall not accept submissions of marijuana or marijuana products for testing from an individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1.
- B. A technical laboratory director shall designate in writing a laboratory agent who has oversight of the laboratory's marijuana inventory control system.
- C. A technical laboratory director shall establish and implement an inventory control system for the laboratory's medical marijuana and marijuana products that documents:
 - 1. The following amounts in appropriate units:
 - a. Each day's beginning inventory of medical marijuana and marijuana products,
 - b. Medical marijuana and marijuana products accepted for testing,
 - c. The portions of a sample of medical marijuana or a marijuana product removed for testing with the name of the laboratory agent removing each portion,
 - d. Medical marijuana and marijuana products transferred to or from another laboratory for testing of parameters or analytes that the laboratory receiving a sample from a dispensary is not approved by the Department to conduct,
 - e. Medical marijuana and marijuana products transferred to another laboratory at the request of a dispensary according to R9-17-317.01(C),
 - f. Medical marijuana or marijuana products that were disposed of, and
 - g. The day's ending medical marijuana and marijuana products inventory;
 - 2. The chain of custody for each sample of medical marijuana or a marijuana product submitted to the laboratory for testing;
 - 3. Any damage to a sample's container or possible tampering;
 - 4. As applicable, for submissions of marijuana and marijuana products for testing:
 - a. A description of the submitted marijuana or marijuana products including the amount, strain and batch number;
 - b. The name and registry identification number of the dispensary that submitted the marijuana or marijuana products;
 - c. The name and registry identification number of the dispensary agent that submitted the marijuana or marijuana products;
- D. The individual designated in subsection (B) shall conduct and document an audit of the laboratory's inventory that is accounted for according to generally accepted accounting principles at least once every 30 calendar days.
 - 1. If the audit identifies a reduction in the amount of marijuana or marijuana products in the laboratory's inventory not due to documented causes, the technical laboratory director shall determine where the loss has occurred and take and document corrective action.
 - 2. If the reduction in the amount of marijuana or marijuana products in the laboratory's inventory is due to suspected criminal activity by a laboratory agent, the technical laboratory director shall report the laboratory agent to the Department and to the local law enforcement authorities and document the report.
- E. A laboratory shall:
 - 1. Maintain the documentation required in subsections (C) and (D) at the laboratory for at least five years after the date on the document, and
 - 2. Provide the documentation required in subsections (C) and (D) to the Department for review upon request.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020; amended by exempt rulemaking at 26 A.A.R. 968, effective April 20, 2020 (Supp. 20-2). Amended by exempt rulemaking at 26 A.A.R. 1905, with an immediate effective date of August 28, 2020 (Supp. 20-3). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4).

R9-17-408. Security

- A. Except as provided in R9-17-404(8), a laboratory shall ensure that access to the area of the laboratory where marijuana or marijuana products are being tested or stored for testing is limited to a laboratory's owners and authorized laboratory agents.
- B. A laboratory agent may transport marijuana or marijuana products submitted for testing to a laboratory.
- C. Before transportation to a laboratory, a laboratory agent shall:
 - 1. Complete a trip plan that includes:
 - a. The name of the laboratory agent in charge of transporting the marijuana or marijuana products;

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

- b. The date and start time of the trip;
 - c. A description of the marijuana or marijuana products being transported;
 - d. Any anticipated stops during the trip, including the locations of the stops; and
 - e. The anticipated route of transportation; and
2. Provide a copy of the trip plan in subsection (C)(1) to the laboratory.
- D.** During transportation to the laboratory, a laboratory agent shall:
- 1. Carry a copy of the trip plan in subsection (C)(1) with the laboratory agent for the duration of the trip;
 - 2. Use a vehicle without any medical marijuana identification;
 - 3. Have a means of communication with the laboratory; and
 - 4. Ensure that the marijuana or marijuana products are not visible.
- E.** After transportation, a laboratory agent shall enter the end time of the trip and any changes to the trip plan on the trip plan required in subsection (C)(1).
- F.** If a dispensary agent transports medical marijuana or a marijuana product to a laboratory for testing, the laboratory shall require that a copy of the trip plan be provided by the dispensary before accepting the medical marijuana or marijuana product for testing.
- G.** A laboratory shall:
- 1. Maintain the documents required in subsections (C)(2), (E), and (F); and
 - 2. Provide a copy of the documents required in subsections (C)(2), (E), and (F) to the Department for review upon request.
- H.** To prevent unauthorized access to marijuana or marijuana products at the laboratory for testing, the laboratory 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 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 video 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 in each area of the laboratory where marijuana or marijuana products are being tested or stored for testing capable of identifying any activity occurring within the area in low light conditions;
 - v. Storage of video recordings from the video cameras for at least 30 calendar days;
 - vi. A failure notification system that provides an audible and visual notification of any failure in the electronic monitoring system; and
 - vii. 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 that:
- a. Restrict access to the areas of the laboratory that contain marijuana or marijuana products and, if applicable, to authorized individuals only;
 - b. Provide for the identification of authorized individuals; and
 - c. Prevent loitering.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020 (Supp. 20-2).

R9-17-409. Physical Plant

- A.** A laboratory shall ensure that designated storage areas for marijuana or marijuana products or materials used in direct contact with marijuana or marijuana products are:
- 1. Separate from storage areas for toxic or flammable materials; and
 - 2. Maintained in a manner to prevent:
 - a. Microbial contamination and proliferation, and
 - b. Contamination or infestation by insects or rodents.
- B.** A laboratory shall ensure that:
- 1. Storage areas are designated for:
 - a. Medical marijuana and marijuana products awaiting testing;
 - b. Reagents, standards, and other testing relates chemicals or materials; and
 - c. The remaining portions of tested medical marijuana and marijuana products retained according to R9-17-404(5)(c)(vi);
 - 2. Designated storage areas are monitored to ensure that a:
 - a. Room temperature storage area is maintained between 20°C and 28°C,
 - b. Refrigerated storage area is maintained between 2°C and 8°C, and
 - c. Freezer storage area is maintained at less than -20°C;
 - 3. A storage area for the storage of medical marijuana or marijuana product awaiting testing is labeled to indicate the temperature range and types of medical marijuana or marijuana products to be stored in the storage area;
 - 4. Medical marijuana or a marijuana product awaiting testing is stored at an appropriate temperature, as specified on the packaged sample;
 - 5. Reagents, standards, and other testing relates chemicals or materials are stored according to manufacturer's directions; and
 - 6. The remaining portions of tested medical marijuana and marijuana products are stored in a refrigerated storage area or a freezer storage area to reduce microbial proliferation.
- C.** A laboratory shall ensure that a designated area for testing medical marijuana or a marijuana product for microbial contaminants is maintained in a manner to prevent exposure of the medical marijuana or marijuana product to external microbial contaminants.
- D.** A laboratory shall ensure that a designated area for testing medical marijuana or a marijuana product for pesticides, fungicides, herbicides, growth regulators, heavy metals, or residual solvents is maintained in a manner to prevent exposure of

CHAPTER 17. DEPARTMENT OF HEALTH SERVICES - MEDICAL MARIJUANA PROGRAM

the medical marijuana or marijuana product to external contamination.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020 (Supp. 20-2). Amended by exempt rulemaking at 27 A.A.R. 111, with an immediate effective date of January 15, 2021 (Supp. 20-4).

R9-17-410. Denial or Revocation of a Laboratory Registration Certificate

- A.** The Department shall deny an application for a laboratory registration certificate if:
1. The physical address of the laboratory is within 500 feet of a private school or a public school that existed before the date the laboratory submitted the initial laboratory registration certificate application;
 2. An owner:
 - a. Has been convicted of an excluded felony offense, or
 - b. Is under 21 years of age;
 3. The application or the laboratory does not comply with the requirements in A.R.S. Title 36, Chapter 28.1 and this Chapter;
 4. The laboratory acquires marijuana or marijuana products from an individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
 5. The laboratory diverts marijuana or marijuana products to an individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
 6. An owner has any direct or indirect familial or financial relationship with or interest in a dispensary or related medical marijuana business entity or management company, or any direct or indirect familial or financial relationship with a designated caregiver for whom the laboratory is testing marijuana and marijuana products for medical use in this state; or
 7. The laboratory fails to maintain accreditation.
- B.** The Department may deny an application for a laboratory registration certificate if an owner of the laboratory provides false or misleading information to the Department.
- C.** The Department shall revoke a laboratory's registration certificate if:
1. The laboratory acquires marijuana or marijuana products from an individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
 2. The laboratory diverts marijuana or marijuana products to an individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1;
 3. An owner has been convicted of an excluded felony offense;
 4. An owner has any direct or indirect familial or financial relationship with or interest in a dispensary or related medical marijuana business entity or management company, or any direct or indirect familial or financial relationship with a designated caregiver for whom the laboratory is testing marijuana and marijuana products for medical use in this state; or
 5. The laboratory fails to maintain accreditation.

- D.** The Department may deny an application for a laboratory registration certificate or revoke a laboratory registration certificate if the laboratory does not:
1. Comply with:
 - a. The requirements in A.R.S. Title 36, Chapter 28.1 and this Chapter; or
 - b. The provisions in a corrective action plan submitted according to R9-17-404.01(E)(2)(b); or
 2. Implement the policies and procedures or comply with the statements provided to the Department with the laboratory's application.
- E.** If the Department denies a laboratory registration certificate application, the Department shall provide notice to the applicant that includes:
1. The specific reason or reasons for the denial, and
 2. All other information required by A.R.S. § 41-1076.
- F.** If the Department revokes a laboratory registration certificate, the Department shall provide notice to the laboratory that includes:
1. The specific reason or reasons for the revocation; and
 2. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3). Amended by exempt rulemaking at 26 A.A.R. 734, with an immediate effective date of April 2, 2020 (Supp. 20-2).

R9-17-411. Denial or Revocation of a Laboratory Agent's Registry Identification Card

- A.** The Department shall deny an application for or renewal of a laboratory agent's registry identification card if the laboratory agent does not meet the requirements in A.R.S. § 36-2801.
- B.** The Department may deny an application for or renewal of a laboratory agent's registry identification card if the laboratory agent provides false or misleading information to the Department.
- C.** The Department shall revoke a laboratory agent's registry identification card if the laboratory agent:
1. Uses marijuana, if the laboratory agent does not have a qualifying patient registry identification card;
 2. Diverts marijuana or marijuana products to an individual who or entity that is not allowed to possess marijuana pursuant to A.R.S. Title 36, Chapter 28.1; or
 3. Has been convicted of an excluded felony offense.
- D.** The Department may revoke a laboratory agent's registry identification card if the laboratory agent knowingly violates A.R.S. Title 36, Chapter 28.1 or this Chapter.
- E.** If the Department denies or revokes a laboratory agent's registry identification card, the Department shall provide notice to the laboratory agent and the laboratory agent's laboratory that includes:
1. The specific reason or reasons for the denial or revocation; and
 2. The process for requesting a judicial review of the Department's decision pursuant to A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

New Section made by exempt rulemaking at 25 A.A.R. 2421, effective August 27, 2019 (Supp. 19-3).